Ongc Ltd vs Petroleum Coal Labour Union & Ors on 17 April, 2015

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Bench: C. Nagappan, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3727 OF 2015
(Arising out of SLP (C) No. 5532 of 2012)

ONGC LTD. ....APPELLANT

VERSUS

PETROLEUM COAL
LABOUR UNION & ORS. ...RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

The appellant-Corporation has questioned the correctness of the judgment and order dated 11.08.2011 passed by the High Court of Judicature at Madras whereby the High Court dismissed the Writ Appeal No. 1006 of 2011 filed by the appellant-Corporation against the dismissal of their W.P. No. 1846 of 2000 challenging the award dated 26.05.1999 passed by the Industrial Tribunal, Tamil Nadu, in I.D. No.66 of 1991, wherein it was held that non- regularisation of the concerned workmen in the dispute is not justified and directed the appellant-Corporation to regularise the services of the

concerned workmen with effect from 14.01.1990, the date on which all of them completed 480 days.

The relevant facts are briefly stated hereunder to appreciate the rival legal contentions urged on behalf of the parties in this appeal.

The appellant-Corporation is a Public Sector Undertaking of the Government of India in the name of Oil and Natural Gas Corporation Limited (hereinafter referred to as the 'Corporation'). The Corporation has a project in the Cauveri Basin, situated in and around Karaikal, Union Territory of Puducherry and about 1050 employees have been regularly employed by the Corporation for its project. For the purpose of the Corporation's security requirement for the project, it initially employed the concerned workmen some of whom are members of the respondent-Union, as security guards and security supervisors through contractors. However, on the notification dated 08.12.1976 issued by the Government of India under Section 10(1) of the Contract Labour (Abolition and Regulation) Act, 1970, abolishing contract labour for watch and ward, dusting and cleaning jobs in the Corporation, the concerned workmen were employed as per the settlement arrived at between the Trade Union and the Management of the Corporation under Section 18(1) of the Industrial Disputes Act, 1947 (for short 'the Act'), under which it was agreed to form a Co-operative Society in the name of 'Thai Security Service Priyadarshini Indira Cooperative Society' (for short 'the Co-operative Society') for the welfare of such erstwhile contract workmen. The services were utilised by the Corporation through the Co-operative Society to meet its requirements and for the time period for which required, thus dispensing with intermediary contractors.

On 24.11.1982 subject to sanction by the Government of India, the Corporation passed a resolution by its policy decision to entrust security work to the Central Industrial Security Force (CISF) to protect their installations. The said resolution was sanctioned by the President of India on 16.12.1985 for creation of posts for security coverage of the Corporation.

This decision of the Corporation was challenged by the Tamilnadu National Industrial and Commercial Employees Union by filing W.P. No. 9688 of 1987 and W.P. No. 11964 of 1987 was filed by the Petroleum Industrial Casual Contract Labour Union before the High Court of Madras on the ground of breach of settlement arrived at under Section 18(1) of the Act and prayed for a consequential direction to absorb the workmen as regular employees. The workmen obtained an interim order dated 6.10.1987 restraining the Corporation from dispensing with the services of the workmen. The learned single Judge of the High Court upheld the policy decision of the Corporation even in the absence of the copy of the policy framed by the Central Government and dismissed the aforesaid writ petitions vide order dated 5.1.1988 holding that the workers were not entitled for regularisation and rejected the contentions of the workmen in these writ petitions.

On 8.9.1987, the Corporation sent a letter to the Co-operative Society to withdraw the services of the security personnel of the Co-operative Society w.e.f. 19.10.1987 after handing over charge of the Corporation Unit to CISF personnel. An order was passed by the Director General, CISF, releasing 52 posts with immediate effect for induction of CISF personnel in the Corporation.

Thereafter, since the induction of the CISF personnel into security posts of the Corporation was still awaiting sanction from the Central Government, the Corporation issued memorandum of appointment directly to each one of the concerned workmen appointing them in the posts of 'Watch and Ward Security' on term basis from 13.1.1988 to 29.2.1988 and also on the condition that the 'Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission' (for short 'the Certified Standing Orders') will not apply to them. The concerned workmen were paid a monthly salary of approximately Rs.445/- per month to security guards and Rs.675/- per month to security supervisors. After completion of the above mentioned term, the concerned workmen were continued by the Corporation in their respective posts as a stop gap measure without formal written orders. As a result of which, the concerned workmen who were engaged through contractors and those who were members of the Co-operative Society became employees of the Corporation on temporary basis.

Thereafter, the concerned workmen raised an industrial dispute claiming regularisation of their services in the Corporation and on 10.10.1991, the Central Government in exercise of its power under Section 10 of the Act, 1947 referred the same to the Industrial Tribunal, Chennai, Tamil Nadu (for short 'the Tribunal') to adjudicate the dispute on the following two questions:

> "(i) whether the management of ONGC is justified in not regularising the workmen in the instant dispute, and, if not, to what relief the workmen are entitled to?
>
> (ii) whether the management of ONGC is justified in not paying equal wages to the workmen in the instant dispute on par with that of the regular workmen and, if not, to what relief the workmen are entitled to?"

The reference was taken on file by the Tribunal as I.D. No.66 of 1991. On 28.04.1993, the Trade Union filed a memo stating that question no.(ii) of the dispute had been settled out of Court and no further adjudication was required in that regard by the Tribunal. The Tribunal, adjudicated the industrial dispute on question no.(i) referred to it on the basis of facts, circumstances and evidence on record and passed an award dated 26.05.1999, directing the Corporation to regularise the services of the concerned workmen by relying on the legal principles laid down by this Court in the case of Air India Statutory Corporation & Ors. v. United Labour Union & Ors.[1] and further held that the concerned workmen were entitled for regularisation of their services since they had completed 480 days of work as required under Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

Aggrieved by the award passed by the Tribunal, the Corporation challenged the same by filing W.P. No.1846 of 2000 before the learned single Judge, inter alia, contending that the Tribunal has erroneously exercised its jurisdiction and passed an award directing the Corporation to regularise the services of the concerned workmen. It was further contended by the Corporation that the concerned workmen were originally engaged through contractors, without following any procedure of selection and appointment, therefore, their services cannot be regularised. In support of this contention, reliance was placed on the decision of this Court in the case of Secretary, State of Karnataka & Ors. v. Uma Devi (3) & Ors.[2].

On behalf of the concerned workmen, it was contended before the single Judge of the High Court that the dispute falls within the jurisdiction of the Tribunal under the provisions of the Act and that the Tribunal had sufficient jurisdiction to adjudicate the dispute referred to it. It was further contended on behalf of the concerned workmen that they have been working on temporary basis from the year 1988 and continuing their services on temporary basis is an unfair labour practice on the part of the Corporation. Therefore, it was contended that the Tribunal was right in directing the concerned workmen to be regularized and that the law laid down in the case of Uma Devi (supra) had no application to cases of industrial adjudication.

The learned single Judge on appreciation of the facts, circumstances and the legal contentions urged on behalf of both the parties held that the dispute between the parties regarding non-regularisation of the concerned workmen falls within the scope of industrial dispute as defined under Section 2(k) of the Act. It is further held that the concerned workmen are all victims of unfair labour practice having been employed by the Corporation for several years on temporary basis and even though they were not appointed by following the procedure laid down by the Corporation for recruitment to such posts, they were entitled for regularisation and that their appointment cannot be stated to be illegal. With the above findings, the writ petition was dismissed on merits by the learned single Judge of the High Court by its judgment and order dated 04.01.2011.

The said judgment and order of the learned single Judge was challenged by the Corporation by filing Writ Appeal No. 1006 of 2011 before the Division Bench of the High Court raising certain questions of law. After considering the facts, circumstances and nature of the evidence on record which was placed before the Tribunal the same was appreciated by the learned single Judge, the learned Division Bench of the High Court held that the appointment of the concerned workmen by the Corporation cannot be termed as illegal appointment, but was only an irregular appointment and therefore, they were entitled for regularisation in their services having been employed on temporary basis and having completed more than 240 days in the calendar year subsequent to 13.1.1988. Therefore, it was held by the learned Division Bench of the High Court that no justifiable or reasonable grounds were found for it to interfere with the judgment and order passed by the learned single Judge of the High Court. The writ appeal of the Corporation was dismissed accordingly. Hence, the Corporation filed this appeal by framing certain substantial questions of law for consideration of this Court.

It has been contended by Mr. P.P. Rao, the learned senior counsel for the Corporation that the concerned workmen have no right to be regularised as they have been appointed on term basis without following due procedure as per the Recruitment and Promotion Regulations, 1980 of the Oil and Natural Gas Commission. The direction contained in the award of the Tribunal to regularise the workmen w.e.f. 1.4.1990 is contrary to the law declared by the Constitution Bench of this Court in Secretary, State of Karnataka v. Uma Devi (supra) having regard to the following aspects of the case on hand:

> The appointments of workmen were illegal not irregular, as they were made without proper competition among qualified persons The concerned workmen do not possess the qualifications and training required for discharging duties as security guards

against attacks by armed gangs or terrorists.

They were not working against sanctioned posts.

The sanction obtained subsequently was only for deployment of members of the CISF.

The concerned workmen were, as a stop gap arrangement, though not qualified but found physically fit, were employed for a short period anticipating the posting of CISF personnel.

They were not allowed to continue voluntarily by the management without intervention of any mandatory provision of law or orders of Tribunal and Courts. They could not be discharged and had to be allowed to continue only on account of legal compulsion, i.e. 33(1) of the I.D. Act 1947 and the interim orders of the learned single Judge and the Division Bench. The management cannot be compelled by judicial order to regularise the services of unqualified and untrained workmen as security guards for discharging duties which only qualified and trained members of an organised armed force could competently discharge.

Further, it has been contended by Mr. Rao that in any event, since the workmen themselves having sought regularisation only from 1.4.1991, the Tribunal was not at all justified in directing regularisation with effect from 1.4.1990 and the High Court also erred in directing regularisation of workmen with retrospective effect from 1.4.1990.

It is further contended by him that the award of the Tribunal is unsustainable in law by placing reliance on Air India Statutory Corporation (supra) which has been subsequently overruled by the Constitution Bench in Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors.[3]. In fact, the concerned workmen were not contract labourers when the industrial dispute was referred to the Tribunal for its adjudication.

It has been further contended by him that the courts below have erred in holding that though the procedure contemplated in the Certified Standing Orders of the Corporation was not followed when the workmen were appointed on temporary basis they are still entitled for regularisation in their services by the Corporation. It is further contended by the learned senior counsel that the very appointment itself having been illegal, no order of regularisation of the services of the concerned workmen could be passed by the Tribunal. The Corporation would term the appointment of the concerned workmen as illegal appointment as they were appointed in the said post either through a contractor or through the Co-operative Society, without following the procedure contemplated for selection as per the Recruitment Rules and appointments were given to the concerned workmen as per the Certified Standing Orders of the Corporation. In support of the said contention reliance was placed on the decision of this Court in the case of Uma Devi (supra). Further, it has been contended

by him that the law declared in the case of Maharashtra State Road Transport Corporation & Anr. v. Casteribe Rajya Parivahan Karamchari Sanghatana[4] was per incuriam as the same is inconsistent with the earlier coordinate Bench decision in U.P. Power Corporation Ltd. & Anr. v. Bijli Mazdoor Sangh & Ors.[5] wherein it was declared that the Tribunal cannot give relief to the workmen which is violative of Article 14 of the Constitution of India and the concept of regularisation explained in Uma Devi's case (supra).

Further, it has been contended that the Certified Standing Orders cannot prevail over Uma Devi's case or Article 14 of the Constitution of India; therefore, the concerned workmen cannot rely upon such orders to seek regularisation. In any case, the Certified Standing Orders only confer the right of consideration and therefore, it is not a vested right for the concerned workmen for regularisation in their services. The reliance placed on the Certified Standing Orders by them is misconceived, hence the award and judgments are vitiated in law and liable to be set aside by allowing this appeal.

On the other hand, Mr. C.U. Singh, the learned senior counsel on behalf of the concerned workmen has strongly rebutted each one of the above contentions put forth by Mr. Rao the learned senior counsel on behalf of Corporation, by erroneously placing reliance on the right of the Corporation to implement the alleged "policy decision" to induct the CISF personnel in the posts of the Corporation inter alia contending that it is an admitted position that this opening ground taken by the Corporation was neither canvassed before the learned single Judge nor the Division Bench of the High Court. Nonetheless, it is to be noted that while raising this ground, the Corporation has not placed on record any document evidencing the so-called "policy decision" of the Central Government to induct the CISF personnel in the posts of the Corporation.

Mr. Santosh Krishnan, the learned counsel also appearing for the concerned workmen has contended that a "policy decision" cannot alter the Certified Standing Orders of the Corporation except in terms of Section 10 of the Standing Orders Act, 1946. Further, it is urged by him that the only relevant document on record is the letter dated 8.9.1987, which states that the "policy decision" is of the Central Government and not of the Corporation. However, the Corporation did not even amend its Recruitment Rules or Certified Standing Orders to implement this "policy decision" only to recruit the CISF personnel for Watch and Ward Services posts of the Corporation. This has been further affirmed by the Tribunal in its findings of fact that the said defence of the Corporation is only a ruse. The Tribunal has held while answering the question referred to it in the order of reference that the "policy decision" taken by the Corporation is a misnomer as the Corporation may be controlled by the Central Government, however, by no means does it enjoy the power or the privilege to make any policy decisions as understood by the courts below. Merely by characterising an act or omission as a "policy decision" does not absolve the Corporation from acting in accordance with law and regularise the services of the concerned workmen as regular workmen as per Clause 2(ii) of the Certified Standing Orders of the Corporation.

Further, on the contention of the Corporation that the Judgment and order dated 5.1.1988 in W.P. Nos. 9688 of 1987 and 11964 of 1987 forecloses the rights of the concerned workmen, it is rebutted by the learned senior counsel on behalf of the concerned workmen that the said ground was not canvassed either before the learned single Judge or the Division Bench of the High Court. A perusal

of judgment and order would reveal that none of the concerned workmen, specifically the answering respondents were party to the aforesaid proceedings and the Corporation itself claimed that only "some of the respondent workmen had filed W.P. No.9688 of 1987 for absorption". Further, it is urged by him that assuming without conceding that judgment and order dated 5.1.1988 in W.P. Nos. 9688 of 1987 and 11964 of 1987 related to regularisation of the concerned workmen, a crucial fact separates those proceedings from the present proceedings as the Corporation on 13.1.1988 admittedly ordered in favour of the workmen by appointing them on "term basis". As a result of such appointment orders issued in favour of each one of the concerned workmen, they became employees of the Corporation albeit on "term basis", therefore, the industrial dispute raised by the concerned workmen acquired different rights than the challenge in W.P. 9688 and 11964 of 1987. It is further urged that the above submission can also be seen in the light of the Certified Standing Orders of the Corporation, wherein the employees such as the concerned workmen can claim regularisation once they fulfil 240 days of continuous service in twelve calendar months and possess minimum qualification. The concerned workmen were found to have completed 240 days of work in a calendar year subsequent to 13.1.1988, therefore, the judgment and order dated 5.1.1988 in W.P. Nos. 9688 of 1987 and 11964 of 1987 do not bear any relevance to this litigation as the legal status of the parties stood modified subsequent to the said judgment. Further, the judgment rendered by the High Court in W.P. Nos. 9688 of 1987 and 11964 of 1987 without the policy decisions of the Central Government being produced and examined in those proceedings, any observation made in that regard is wholly untenable in law.

Further, it is contended by the learned counsel for the concerned workmen that the Corporation cannot disclaim the legality of its own Certified Standing Orders by stating that it cannot prevail over Uma Devi's case (supra) or Article 14 of the Constitution and that the Standing Orders only confer the right of consideration and not a vested right for regularisation. It is contended by him that for the last 24 years, the Corporation has not considered and in any case will not consider the concerned workmen for regularisation to the post of the Corporation if the same is left to their own discretion. Further, it is urged by him that failure to honour the Standing Orders for so many years is what constitutes "unfair trade practice" on the part of the Corporation in the present case.

Rebutting the contention urged on behalf of the Corporation that the concerned workmen are not qualified to be regularized, it has been contended by the learned senior counsel for the concerned workmen that the Tribunal has noted that the concerned workmen are far more qualified than the existing security personnel of the Corporation and that they are qualified to be appointed as security guards and supervisors, except one of them. The learned counsel on behalf of the concerned workmen contended that the Recruitment Rules are not amended prescribing that only the CISF personnel are qualified for guard work.

It is further contended by him that in the case of Uma Devi(supra), this Court had the occasion to deal with the issue of "litigious employment". Admittedly, the concerned workmen were voluntarily appointed by the Corporation initially on term basis. It is by virtue of Section 33 of the Industrial Disputes Act that the Corporation is prevented from terminating the employment of the concerned workmen during the pendency of the industrial dispute. The decision of the Tribunal was rendered on 26.05.1999 and during the period 1990-1999, the concerned workmen did not enjoy any litigious

employment but were beneficiaries of a statutorily mandated protection and the Corporation has the right under Section 33(i)(a) of the Act to seek permission from the conciliation officer/Tribunal to remove them from their services but that has not been done by it. Therefore, it would be an improper and misleading contention of the Corporation to describe this scenario as litigious employment, which contention of it does not stand for judicial scrutiny of this Court.

We have heard the factual and rival legal contentions urged by the learned senior counsel on behalf of both the parties and answer the same as discussed below.

Whether jurisdiction of the Tribunal to direct the Corporation to regularise the services of the concerned workmen in the posts is valid and legal?

The Central Government in exercise of its powers under Section 10 of the Act referred the existing Industrial Dispute between the concerned workmen and the Corporation to the Tribunal which rightly adjudicated point

(i) of the dispute (supra) on the basis of the facts, circumstances and evidence on record and passed an award dated 26.5.1999 directing the Corporation that the services of the concerned workmen should be regularised with effect from the date on which all of them completed 480 days, subsequent to their appointment by the memorandum of appointment. The contention urged on behalf of the Corporation that the Tribunal has no power to pass such an award compelling the Corporation to regularise the services of the concerned workmen is wholly untenable in law. Even if we consider the same, the said contention is contrary to the legal principles laid down by this Court in the case of Hari Nandan Prasad & Anr. v. Employer I/R To Management of Food Corporation of India & Anr.[6], wherein the decisions in U.P. Power Corporation v. Bijli Mazdoor Sangh & Ors. and Maharashtra Road Transport Corporation v. Casteribe Rajya Parivahan Karamchari Sanghathana and Uma Devi (all referred to supra) were discussed in detail. The relevant paragraphs are extracted hereunder:

> "25. While accepting the submission of the appellant therein viz. U.P. Power Corpn., the Court gave the following reasons: (U.P. Power Corpn. Case, SCC pp. 758-59, paras 6-8) "6. It is true as contended by the learned counsel for the respondent that the question as regards the effect of the industrial adjudicators' powers was not directly in issue in Umadevi case. But the foundational logic in Umadevi case is based on Article 14 of the Constitution of India. Though the industrial adjudicator can vary the terms of the contract of the employment, it cannot do something which is violative of Article 14. If the case is one which is covered by the concept of regularisation, the same cannot be viewed differently.
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> 7.The plea of the learned counsel for the respondent that at the time the High Court decided the matter, decision in Umadevi case was not rendered is really of no consequence. There cannot be a case of [pic]regularisation without there being employee-employer relationship. As noted above the concept of regularisation is clearly linked with Article 14 of the Constitution. However, if in a case the fact

> situation is covered by what is stated in para 45 of Umadevi case the industrial adjudicator can modify the relief, but that does not dilute the observations made by this Court in Umadevi case about the regularisation.
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> 8.On facts it is submitted by the learned counsel for the appellants that Respondent 2 himself admitted that he never worked as a pump operator, but was engaged as daily labourer on daily-wage basis. He also did not possess the requisite qualification. Looked at from any angle, the direction for regularisation, as given, could not have been given in view of what has been stated in Umadevi case."

It is clear from the above that the Court recognized the underlying message contained in Umadevi case to the effect that regularisation of a daily- wager, who has not been appointed after undergoing the proper selection procedure, etc. is impermissible as it was violative of Article 14 of the Constitution of India and this principle predicated on Article 14 would apply to the Industrial Tribunal as well inasmuch as there cannot be any direction to regularise the services of a workman in violation of Article 14 of the Constitution. As we would explain hereinafter, this would mean that the Industrial Court would not issue a direction for 23regularising the services of a daily-wage worker in those cases where such regularisation would tantamount to infringing the provisions of Article 14 of the Constitution. But for that, it would not deter the Industrial Tribunals/Labour Courts from issuing such direction, which the industrial adjudicators otherwise possess, having regard to the provisions of the Industrial Disputes Act specifically conferring such powers. This is 24recognized by the Court even in the aforesaid judgment.

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30. Detailed reasons are given in support of the conclusion stating that the MRTU and PULP Act provides for and empowers the Industrial/Labour Courts to decide about the unfair labour practice committed/being committed by any person and to declare a particular practice to be unfair labour practice if it so found and also to direct such person to cease and desist from unfair labour practice. The provisions contained in Section 30 of the MRTU and PULP Act giving such a power to the Industrial and Labour Courts vis--vis the ratio of Umadevi are explained by the Court in the following terms: (Maharashtra SRTC case, SCC pp. 573-74, paras 32-33 & 36) "32. The power given to the Industrial and Labour Courts under Section 30 is very wide and the affirmative action mentioned therein is inclusive and not exhaustive. Employing badlis, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees is an unfair labour practice on the part of the employer under Item 6 of Schedule IV. Once such unfair labour practice on the part of the employer is established in the complaint, the Industrial and Labour Courts are empowered to issue preventive as well as positive direction to an erring employer.

33. The provisions of the MRTU and PULP Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi. As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlis,

casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in Item 6 of Schedule IV and the power of the Industrial and [pic]Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.

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36. Umadevi does not denude the Industrial and Labour Courts of their statutory power under Section 30 read with Section 32 of the MRTU and PULP Act to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV where the posts on which they have been working exist. Umadevi cannot be held to have overridden the powers of the Industrial and Labour Courts in passing appropriate order under Section 30 of the MRTU and the PULP Act, once unfair labour practice on the part of the employer under Item 6 of Schedule IV is established."

XXX XXX XXX [pic]33. In this backdrop, the Court in Maharashtra SRTC case was of the opinion that the direction of the Industrial Court to accord permanency to these employees against the posts which were available, was clearly permissible and within the powers, statutorily conferred upon the Industrial/Labour Courts under Section 30(1)(b) of the MRTU and PULP Act, 1971 which enables the industrial adjudicator to take affirmative action against the erring employer and as those powers are of wide amplitude abrogating (sic including) within their fold a direction to accord permanency."

(emphasis laid by this Court) Further, it is very clear from the facts that all the concerned workmen have got the qualifications required for their regularisation, except one of them and have been employed by the Corporation even prior to 1985 in the posts through various irregular means. The Tribunal has got every power to adjudicate an industrial dispute and impose upon the employer new obligations to strike a balance and secure industrial peace and harmony between the employer and workmen and ultimately deliver social justice which is the constitutional mandate as held by the Constitution Bench of this Court in a catena of cases. This above said legal principle has been laid down succinctly by this Court in the case of The Bharat Bank Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi & the Bharat Bank Employee's Union, Delhi[7], the relevant paragraph of the said case is extracted hereunder:

> "61.We would not examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial

> Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employees is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function. In describing the true position of an Industrial Tribunal in dealing with labour disputes, this Court in Western India Automobile Association v. Industrial Tribunal, Bombay, and others[1949] F.C.R. 321 quoted with approval a passage from Ludwig Teller's well known work on the subject, where the learned author observes that "industrial arbitration may involve the extension of an existing agreement or the making of a new one or in general the creation of new obligations or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements."

The views expressed in these observations were adopted in its entirety by this Court. Our conclusion, therefore, is that an Industrial Tribunal formed under the Industrial Disputes Act is not a judicial tribunal and its determination is not a judicial determination in the proper sense of these expressions."

It has been further held by this Court in the case of Life Insurance Corporation Of India v. D. J. Bahadur & Ors.[8], as follows:

> "22. The Industrial Disputes Act is a benign measure, which seeks to pre- empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure, so that the energies of the partners in production may not be dissipated in counter-productive battles and the assurance of industrial justice may create a climate of goodwill...."

Thus, the powers of an Industrial Tribunal/Labour Court to adjudicate the industrial dispute on the points of dispute referred to it by the appropriate government have been well established by the legal principles laid down by this Court in a catena of cases referred to supra. Therefore, the Tribunal has rightly passed an award directing the Corporation to regularise the services of the concerned workmen.

Whether the appointment of the concerned workmen in the services of the Corporation is irregular or illegal?

In the case on hand, the concerned workmen were employed by the Corporation initially through contractors. Thereafter, on issuance of notification dated 08.12.1976 by the Central Government abolishing contract labour for the posts of Watch and Ward, dusting and cleaning jobs in the Corporation under Section 10(1) of the Contract Labour (Abolition and Regulation) Act, 1970, the Corporation and the concerned workmen arrived at a settlement under Section 18(1) of the Act, wherein a Co-operative Society was formed in the name of 'Thai Security Service Priyadarshini Indira Cooperative Society' for their welfare, thus dispensing with intermediary contractors. During

the pendency of the sanction from the Central Government of the alleged "Policy decision", the concerned workmen were appointed directly from 13.1.1988 to 29.2.1988 and thereafter, they were employed continuously without written orders by the Corporation. It is the contention of the learned senior counsel on behalf of the Corporation that the services of the concerned workmen cannot be regularised as their appointment was originally and initially through contractors and thereafter, without following any procedure of selection and appointment as per the Recruitment Rules and therefore, the same is illegal by placing reliance on the decision of this Court in para 43 of Uma Devi case (supra). Further, this Court in the case of Ajaypal Singh v. Haryana Warehousing Corporation[9] opined that when a workman is initially appointed in violation of Articles 14 and 16 of the Constitution of India, then the employer at the time of re-employment of the retrenched workman cannot take the plea that the initial appointment was in violation of the abovementioned provisions. The relevant paragraph of the Ajaypal Singh case(supra) is extracted hereunder:

> "19. The provisions of Industrial Disputes Act and the powers of the Industrial and Labour Courts provided therein were not at all under consideration in Umadevi's case. The issue pertaining to unfair labour practice was neither the subject matter for decision nor was it decided in Umadevi's case."

The plea of the Corporation that the reason for not regularising the concerned workmen under the Certified Standing Orders of the Corporation is allegedly due to the fact that the appointment of the concerned workmen was made without following due procedure under the Recruitment Rules and that their appointments were illegal. This plea cannot be accepted by us in view of the legal principle laid down by this Court in the above decision, wherein it is clearly laid down that the Corporation cannot deny the rights of the workmen by taking the plea that their initial appointment was contrary to Articles 14 and 16 of the Constitution.

It is also contended on behalf of the Corporation that the right to be considered for regularisation by the Corporation as provided under Clause 2(ii) of the Certified Standing Orders of the Corporation does not mean right to regularisation and the discretion to regularise the workmen is with the Corporation as the same has to be exercised keeping in mind the interest of the organization by implementing the alleged "policy decision"

> of appointing the CISF personnel to the security posts. This contention urged on behalf of the learned senior counsel for the Corporation cannot be accepted by us for the reason that even though due procedure was not followed by the Corporation for the appointment of the concerned workmen, this does not disentitle them of their right to seek regularisation of their services by the Corporation under the provisions of the Certified Standing Orders, after they have rendered more than 240 days of service in a calendar year from the date of the memorandum of appointment issued to each one of the concerned workmen in the year 1988. The alleged "policy decision" to appoint CISF personnel to the security post is on deputation basis and cannot be called appointment per se. Whereas, the concerned workmen have acquired their right to be regularised under the provision of Clause 2(ii) of the 'Certified Standing Orders for Contingent Employees of the Oil and Natural Gas Commission', which

states thus:

"2. (i) Classification of workmen.

The contingent employees of the Commission shall hereafter be classified as :-

Temporary, and Casual

(ii) A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by Commission may be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as casual workman."

The above emphasised portion of Clause 2(ii) of the Certified Standing Orders states that a temporary workman who has put in not less than 240 days of attendance in any calendar period of 12 consecutive months, which is actually contrary to the provision under Section 25B(2)a of the Act, which states that a workman shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than one hundred and ninety days in the case of a workman employed below ground in a mine and two hundred and forty days in any other case. In any case, it is clear that the concerned workmen have clearly completed more than 240 days of services subsequent to the memorandum of appointment issued by the Corporation in the year 1988 in a period of twelve calendar months, therefore, they are entitled for regularisation of their services into permanent posts of the Corporation as per the Act as well as the Certified Standing Orders of the Corporation.

It is the contention of the learned senior counsel on behalf of the Corporation that the policy decision to induct the CISF for the purpose of providing security to its projects passed by the Corporation is an act by the Central Government under Section 30A of the Oil and Natural Gas Commission Act, 1959 (for short 'the ONGC Act'), which the Parliament by way of enactment No.23 of 1977 inserted after Section 30 of the principle Act. The said provision states that the Corporation shall be bound by such directions, including directions regarding reservation of posts for Scheduled Castes and the Scheduled Tribes, as the Central Government may from time to time, for reasons to be recorded in writing, give to the Corporation in respect of its affairs.

For the Corporation to implement such a provision which affects the service conditions of its employees, it is necessary for the Corporation to first modify the Certified Standing Orders by following the procedure provided under Section 10 of the Industrial Employment (Standing Orders) Act, 1946 as the same is a Special enactment and therefore, prevails over the provisions under the

ONGC Act and Recruitment Rules. The Corporation undisputedly has not made any such modification to its Certified Standing Orders by following the procedure for modification of conditions of service as per Section 10 of the Industrial Employment (Standing Orders) Act, 1946. The scope of the said act has been succinctly laid down by this Court in the case of The U.P. State Electricity Board & Anr. v. Hari Shankar Jain & Ors.[10], upon which decision the learned senior counsel Mr. C.U. Singh has rightly placed reliance, the relevant paragraphs of the said case are extracted hereunder:

> 6. Let us now examine the various statutory provisions in their proper context with a view to resolve the problem before us. First, the Industrial Employment (Standing Orders) Act, 1946. Before the passing of the Act, conditions of service of industrial employees were invariably ill-defined and were hardly ever known with even a slight degree of precision to the employees. There was no uniformity of conditions of service for employees discharging identical duties in the same establishment. Conditions of service were generally ad-hoc and the result of oral arrangements which left the employees at the mercy of the employer. With the growth of the trade union movement and the right of collective bargaining, employees started putting forth their demands to end this sad and confusing state of affairs. Recognising the rough deal that was being given to workers by employers who would not define their conditions of service and the inevitability of industrial strife in such a situation, the legislature intervened and enacted the Industrial Employment (Standing Orders) Act. It was stated in the statement of objects and reasons:
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> "Experience has shown that 'Standing Orders', defining the conditions [pic]of recruitment, discharge, disciplinary action, holidays, leave etc., go a long way towards minimising friction between the management and workers in industrial undertakings. Discussion on the subject at the tripartite Indian Labour Conferences revealed a consensus of opinion in favour of legislation. The Bill accordingly seeks to provide for the framing of 'Standing Orders' in all industrial establishments employing one hundred and more workers."

It was, therefore, considered, as stated in the preamble "expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them". The scheme of the Act, as amended in 1956 and as it now stands, requires every employer of an industrial establishment as defined in the Act to submit to the Certifying Officer draft Standing Orders, that is, "Rules relating to matters set out in the Schedule", proposed by him for adoption in his industrial establishment. This is mandatory. It has to be done within six months after the commencement of the Act. Failure to do so is punishable and is further made a continuing offence. The draft Standing Orders are required to cover every matter set out in the schedule. The Schedule enumerates the matters to be provided in the Standing Orders and they include classification of workmen, shift working, attendance and late coming, leave and holidays, termination of employment, suspension or dismissal for misconduct, means of redress for wronged workmen etc. Item11 of the Schedule is "Any other matter which may be prescribed". By a notification dated November 17, 1959 the

Government of Uttar Pradesh has prescribed "Age of superannuation or retirement, rate of pension or any other facility which the employer may like to extend or may be agreed upon between the parties" as a matter requiring to be provided in the Standing Orders. On receipt of the draft Standing Orders from the employee, the Certifying Officer is required to forward a copy of the same to the trade union concerned or the workmen inviting them to prefer objections, if any. Thereafter the Certifying Officer is required to give a hearing to the employer and the trade union or workmen as the case may be and to decide "whether or not any modification of or addition to the draft submitted by the employer is necessary to render the draft Standing Orders certifiable under the Act". Standing Orders are certifiable under the Act only if provision is made therein for every matter set out in the schedule, if they are in conformity with the provisions of the Act and if the Certifying Officer adjudicates them as fair and reasonable. The Certifying Officer is invested with the powers of a civil court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses etc. etc. The order of the Certifying Officer is subject to an appeal to the prescribed Appellate Authority. The Standing Orders as finally certified are required to be entered in a register maintained by the Certifying Officer. The employer is required to prominently post the Certified Standing Orders on special boards maintained for that purpose. This is the broad scheme of the Act. The Act also provides for exemptions. About that, later. The Act, [pic]as originally enacted, precluded the Certifying Officer from adjudicating upon the fairness or reasonableness of the Draft Standing Orders submitted by the employer but an amendment introduced in 1956 now casts a duty upon the Certifying Officer to adjudicate upon the fairness or reasonableness of the draft Standing Orders. The scheme of the Act has been sufficiently explained by this Court in Associated Cement Co. Ltd. v.P.D. Vyas3, Rohtak Hissar District Electricity Supply Co. Ltd. v. State of U.P., and Western India Match Co. Ltd. v. Workmen. The Industrial Employment (Standing Orders) Act is thus seen to be an Act specially designed to define the terms of employment of workmen in industrial establishments, to give the workmen a collective voice in defining the terms of employment and to subject the terms of employment to the scrutiny of quasi-judicial authorities by the application of the test of fairness and reasonableness. It is an Act giving recognition and form to hard-won and precious rights of workmen. We have no hesitation in saying that it is a special Act expressly and exclusively dealing with the schedule-enumerated conditions of service of workmen in industrial establishments.

XXX XXX XXX

10. We have already shown that the Industrial Employment (Standing Orders) Act is a special Act dealing with a specific subject, namely the conditions of service, enumerated in the schedule, of workmen in industrial establishments. It is impossible to conceive that Parliament sought to abrogate the provisions of the Industrial Employment (Standing Orders) Act embodying as they do hard-won and precious rights of workmen and prescribing as they do an elaborate procedure, including a quasi-judicial determination, by a general, incidental provision like Section 79(c) of the Electricity (Supply) Act. It is obvious that Parliament did not have before it the Standing Orders Act when it passed the Electricity Supply Act and Parliament never meant that the Standing Orders Act should stand pro tanto repealed by Section 79(c) of the Electricity Supply Act. We are clearly of the view that the provisions of the Standing Orders Act must prevail over Section 79(c) of the Electricity Supply Act, in regard to matters to which the Standing Orders Act applies.

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13. Next, we turn to the submission based on the notification made under Section 13-B of the Standing Orders Act. Section 13-B reads as follows:

> "13-B. Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

(emphasis laid by this Court)

33. In view of the legal principles laid down by this Court in the above said case, the alleged policy decision taken under Section 30A of the ONGC Act does not prevail over the Standing Orders Act framed under the Industrial Employment (Standing Orders) Act, 1946, which is the Special Enactment. Therefore, the alleged "policy decision" taken by the Corporation is neither valid in law nor applicable in the case on hand. The legal principle laid down in the case of The U.P. State Electricity Board & Anr. v. Hari Shankar Jain were reiterated by this Court in the case of Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. & Ors.[11], wherein it was held thus:

> "The Parliament enacted the Industrial Employment (Standing Orders) Act, 1946 ('1946 Act' for short). The long title of the Act provides that it was an act to require employers in industrial establishments formally to define conditions of employment under them. The preamble of the Act provides that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. By Section 3, a duty was cast on the employer governed by the Act to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. After going through the procedure prescribed in the Act, the Certifying Officer has to certify the draft standing orders. Section 8 requires the Certifying Officer to keep a copy of standing orders as finally certified under the Act in a register to be maintained for the purpose. Sub-section 2 of Section 13 imposes a penalty on employer who does any act in contravention of the standing orders finally certified under the Act. The act was a legislative response to the laissez fairs rule of hire and fire at sweet will. It was an attempt at imposing a statutory contract of service between two parties unequal to negotiate, on the footing of equality. This was vividly noticed by this Court in Western India Match Company Ltd. v. Workmen as under:
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> In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually

beneficial bargain between the employer and the workmen. Such a bargain they took it for granted, would, secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith.

The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management and Ors. Workmen in Buckinghan and Carnatic Mills Madras v. Buckingham and Carnatic Mills and M/s. Glaxo Laboratories (I) Ltd. v. The Presiding Officer, Labour Court, Meerut and Ors."

(emphasis laid by this Court)

34. Further, on the direction of this Court after concluding the submissions made in this appeal, the learned counsel on behalf of the Corporation was directed to submit a copy of the Policy of the Government of India for the year 1982 along with the affidavit of the responsible officer of the Corporation. The learned counsel has accordingly produced the 'Government Policies and Guidelines for Public Sector Enterprises and Perceptions on Public Sector of PSE Chiefs & the Scope (Vol. I) compiled by Dr. Raj Nigam' containing a gist of BPE O.M. No. 2(97)/72-BPE(GM-I) dated 5th December, 1972 and BPE O.M. No. 2(38)/75-BPE(GM-I) dated 17th May 1975 in Guideline Nos. 421 and 422 respectively, as per the direction of this Court vide order dated 25.03.2015. In this regard, to examine the tenability of the submission of the learned senior counsel on behalf of the Corporation the relevant portion of the above mentioned document is extracted hereunder to consider the contention urged in this regard:

"421. Security Arrangements in Public Enterprises:

Ministries etc. are aware that a force called the Central Industrial Security Force has been constituted under the Ministry of Home Affairs for the security of industrial undertakings of the Central Government.

The question of evolving a uniform procedure in regard to the deployment of the Force and in providing security arrangements in the various undertakings has been under consideration of the Government particularly with a view to ensuring better coordination between the I.G.C.I.S.F. and the administrative Ministries/Public Enterprises. It has been decided that the following steps should be taken in this regard:

There should be close Association between CISF and a Public Enterprise, right from its inception. In other words as soon as a new Enterprise is sanctioned, information

about such sanction should be sent automatically to the I.G.,C.I.S.F. so that he can start liaison from the very outset, with the concerned officials in the Ministry concerned and the Chief Executive of the project as soon as he is appointed.

No new Enterprise should appoint its own Watch and Ward Security staff, even during construction stage unless a clearance has been obtained from the I.G.,C.I.S.F. that he is not in a position to take over the security functions of the Enterprise from the very beginning.

Whenever an investment decision is cleared at the level of the Public Investment Board an intimation that such a project has been cleared, should be sent to I.G.,C.I.S.F. Ministries etc. are to take necessary action accordingly.

422. Security Arrangements in Public Enterprises:

The DIG CISF in a recent communication to the Bureau of Public Enterprises has pointed out that a number of undertaking have been employing their own Watch and Ward personnel without obtaining clearance from CISF Hqrs., in contravention of the Guidelines issued vide BPE O.M. No.2(97)/72-BPE(GM-I) dated 5th December, 1972.

It is once again reiterated that it is the statutory duty not only of the CISF but also of the Public Sector Undertakings to induct CISF for better protection and security of the industrial undertakings.

The administrative Ministries may impress upon the public units under their administrative control not covered in the enclosed list (not given here), the need for the early induction of the CISF force in the units provide better security arrangements. The units may be advised to contact IG, CISF, 183 Jor Bagh, New Delhi without any further delay for finalising the arrangements"

Further, the learned counsel on record for the Corporation has also submitted the Sanction letter for creation of temporary posts for the security coverage of ONGC installation by Central Government, the relevant portion of which is extracted hereunder:

"To The Director General, Central Industrial Security Force, 13-CGO's Complex, Lodhi Road, New Delhi-110003.

Subject:-Creation of temporary posts for the security coverage of ONGC installations at Madras, Visakhapatnam and Nursapur & Razole Area.

With reference to your U.O. No. 29013/6/85-Ind-I dated 31.10.1985.I am directed to convey the sanction of the President to the creation of the following temporary posts

for the security coverage of ONGC Installations at Madras, Vishakapatnam and Nursapur & Razole Area in the existing pay scales with usual allowances from the date(s) and the post(s) are filled in till the 28th February,..... .....

This issue with the concurrence of Integrated Finance Division vide their Dy. No.3057/85-Fin. III (D-I) dated 12.12.1985.

Yours faithfully, (N.B.Kumar) Under Secretary to the Government of India"

We have perused the above two documents. The above mentioned sanction letter by the Central Government is for the creation of temporary posts for the security coverage of ONGC installation and not to depute CISF specifically into security posts in the Corporation, therefore, the reliance placed on the same in support of the contention urged by the learned senior counsel on behalf of the Corporation is misplaced as the same is wholly untenable in law as the same is not reflected in the sanction letter referred to supra. Further, the above mentioned guidelines cannot be considered to be the policy of the Central Government as it is not framed in accordance with the relevant 'Business Transaction Rules' of the Central Government. Therefore, we are of the considered view that even if for the sake of argument, the decision to employ the CISF personnel into security posts of the Corporation is considered as the policy decision of the Corporation, the provision under Clause 2(ii) of Certified Standing Orders surely overrides the policy decision, as the said clause is not amended by following the provisions of the Act of 1946 and therefore, the said argument does not hold water as the Certified Standing Orders of the Corporation as per the Judgments of this Court referred to supra and the principle of law laid down in those cases are aptly applicable to the fact situation of the concerned workmen for their regularisation in the security posts of the Corporation.

As we have already stated that the alleged policy documents produced by the Corporation as per the direction of this Court is traceable to Section 30A of the ONGC Act enacted by the Parliament as per the contention urged on behalf of the Corporation. Therefore, the contention that the said Policy is binding upon the Corporation and the concerned workmen is wholly untenable in law for more than one reason which we have stated above. The said document cannot be said to be the Policy framed by the Central Government represented by the Ministry of Petroleum and Natural Gas, which is an independent ministry having the power to formulate and administer various Central laws relating to Petroleum and Natural Gas, however, the same must be executed in the name of the President of India and shall be authenticated in such a manner as specified in the relevant 'Business Transaction Rules'. In the instant case, the alleged Policy formulated by the Central Government has not been issued by following the due procedure as provided under the 'Business Transaction Rules'. For this reason also, the said document produced by the learned counsel for the Corporation to justify the alleged Policy being applicable to the concerned workmen cannot be called as the policy document passed under Section 30A of the Act by the Central Government and moreover, the same was not incorporated by way of an amendment to the Certified Standing Orders of the Corporation by following the procedure as provided under Section 10 of the Industrial Employment (Standing Orders) Act, 1946.

The reliance placed upon these documents by the Corporation in justification of their claim that the concerned workmen are not entitled to be regularised in their services as permanent employees in their posts as per the award passed by the Tribunal is misplaced and wholly untenable in law. Therefore, the same cannot be accepted by this Court. Hence, the said contention is liable to be rejected and is accordingly rejected.

Further, it was contended by the learned senior counsel that the Certified Standing Orders of the Corporation do not apply to the concerned workmen to claim regularisation in their posts as regular employees as provided under Clause 2(ii) of the Certified Standing Orders of the Corporation. The said contention is wholly untenable in law as the Standing Orders of the Corporation certainly apply to the concerned workmen as they have been rendering their services in the Corporation even prior to the year 1985, being appointed through contractors, the Co-operative Society and directly thereafter vide memorandum of appointment in the year 1988 by issuing appointment orders on different dates during that year on the condition that the Certified Standing Orders of the ONGC will not be applicable to them. Such a condition incorporated in the appointment orders issued to the concerned workmen is not valid in law and the same is void for the reason that they are workmen for the purpose of the Certified Standing Orders and therefore, the above said condition has to be ignored. When the concerned workmen were appointed by issuing the memorandum of appointment to work in the posts of the Corporation, providing them with monthly salaries, it cannot arbitrarily and unilaterally state that the Certified Standing Orders of the Corporation are not applicable to the concerned workmen. The concerned workmen cannot be denied their legitimate, statutory and fundamental right to be regularised in their posts as provided under Clause 2 (ii) of the Certified Standing Orders on the basis of the above said contention urged on their behalf and also because the Corporation did not follow the due procedure as provided under the Appointment and Recruitment Rules for appointment of the concerned workmen in the Corporation. The said contention urged by the learned senior counsel on behalf of the Corporation is an afterthought to justify their irregular act of appointing them as temporary workmen and continuing them as such for a number of years though they are entitled for regularisation under Clause 2(ii) of the Standing Orders of the Corporation, which action of it amounts to an unfair labour practice as defined under Section 2(ra) of the Act, read with the provisions of Sections 25T and 25U of the Act, which prohibits such employment in the Corporation. It would be unjust and unfair to deny them regularisation in their posts for the error committed by the Corporation in the procedure to appoint them in the posts. Further, the Corporation cannot use the alleged "policy decision" as a veil to justify its action which included inaction on its part in not regularising the concerned workmen in their services under Clause 2(ii) of the Certified Standing Orders.

In light of the above said discussion and legal principles laid down by this Court in the cases referred to supra, we are of the considered view that the procedure of appointments adopted by the Corporation with respect to the concerned workmen initially appointed through contractors, subsequently through the Co-operative Society, and then vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 and thereafter, continuing them in their services in the posts by the Corporation without following any procedure as contended by the learned senior counsel on behalf of the Corporation whose contention is untenable in law and their appointment can be said as irregular appointments but not as illegal as the same was not objected to

by any other Authority of the Corporation at any point of time. But their appointment in their posts and continuing them in their services is definitely cannot be termed as illegal, at best it can be called irregular. Therefore, the Certified Standing Orders of the Corporation by all means apply to the concerned workmen. The legal contention urged on behalf of the Corporation that the statutory right claimed by the concerned workmen under Clause 2(ii) of the Certified Standing Orders of the Corporation for regularizing them in their posts as regular employees after rendering 240 days of service in a calendar is not an absolute right conferred upon them and their right is only to consider their claim. This plea of the learned senior counsel cannot again be accepted by us for the reason that the Corporation is bound by law to take its decision to regularise the services of the concerned workmen as regular employees as provided under Clause 2(ii) of the Certified Standing Orders after their completion of 240 days of service in a calendar year as they have acquired valid statutory right. This should have been positively considered by the Corporation and granted the status of regular employees of the Corporation for the reason that it cannot act arbitrarily and unreasonably deny the same especially it being a Corporate Body owned by the Central Government and an instrumentality of the State in terms of Article 12 of the Constitution and therefore, it is governed by Part III of the Constitution. The Corporation should exercise its power fairly and reasonably in accordance with law. This has not been done by the Corporation as per the law laid down by this Court in the case of Olga Tellis & Ors. v. Bombay Municipal Corporation and Ors.[12] wherein it was held as under:-

> "40. Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right, in this case the right to life, must conform to the norms of justice and fairplay. Procedure, which is unjust or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. Any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: the action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from [pic]the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. Sir Raymond Evershed says that, "from the point of view of the ordinary citizen, it is the procedure that will most strongly weigh with him. He will tend to form his judgment of the excellence or otherwise of the legal system from his personal knowledge and experience in seeing the legal machine at work". Therefore, "He that takes the procedural sword shall perish with the sword."

Therefore, the concerned workmen have approached the Tribunal by raising an industrial dispute regarding the regularisation of their services in the Corporation. The same has been properly adjudicated by the Tribunal based on pleadings, evidence on record and in accordance with law. Therefore, the same cannot be found fault with by this Court in this appeal.

Further, the contention urged on behalf of the Corporation that the concerned workmen do not possess the required qualifications for their respective posts, in this regard, we have gone through the facts recorded by the Courts below in comparison with the 'Recruitment and Promotion Regulations, 1980 of the Oil and Natural Gas Commission' framed and published with previous approval of the Central Government in exercise of the powers conferred upon it under Section 32 of the Oil and Natural Gas Commission Act, 1959, and we are fully satisfied that all of the concerned workmen barring just one of the concerned workmen have all the qualifications required to be regularised in the permanent posts of the Corporation as regular employees.

Further, it has been contended by the learned senior counsel on behalf of the Corporation that in the absence of any plea taken by the workmen in their claim statement regarding unfair labour practice being committed by the Corporation against the concerned workmen, the learned single Judge and the Division Bench ought not to have entertained the said plea as it is a well settled principle of law that such plea must be pleaded and established by a party who relies before the Tribunal. In support of the above contention reliance was placed by him on the decision of this Court in Siemens Limited & Anr. v. Siemens Employees Union & Anr.[13] The said contention of the learned senior counsel on behalf of the Corporation is wholly untenable in law and the reliance placed on the aforesaid case is misplaced for the reason that it is an undisputed fact that the workmen have been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularised in the permanent posts of the Corporation. The said fact was duly noted by the High Court as per the contention urged on behalf of the Corporation and held on the basis of facts and evidence on record that the same attracts entry Item No.10 of Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of an unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act. In fact, the said finding of fact has been recorded by both the learned single Judge and the Division Bench of the High Court in the impugned judgment on the ground urged on behalf of the Corporation. Even if, this Court eschews the said finding and reason recorded in the impugned judgment accepting the hyper technical plea urged on behalf of the Corporation that there is no plea of unfair labour practice made in the claim statement, this Court in this appeal cannot interfere with the award of the Tribunal and the impugned judgment and order of the High Court for the other reasons assigned by them for granting relief to the concerned workmen. Even in the absence of plea of an act of unfair labour practice committed by the Corporation against the concerned workmen, the Labour Court/High Court have got the power to record the finding of fact on the basis of the record of the conciliation officer to ensure that there shall be effective adjudication of the industrial dispute to achieve industrial peace and harmony in the industry in the larger interest of public, which is the prime object and intendment of the Industrial Disputes Act. This principle of law has been well established in a catena of cases of this Court. In the instant case, the commission of an unfair labour practice in relation to the concerned workmen by the Corporation is ex-facie clear from the facts pleaded by both the parties and therefore, the courts have the power to adjudicate the same effectively to resolve the dispute between the parties even in

the absence of plea with regard to such an aspect of the case.

For the reasons recorded in this judgment, we hold that the judgments and orders of both the learned single Judge and Division Bench of the High Court in favour of the concerned workmen are legal and valid. The High Court has rightly dismissed the appeal of the Corporation by affirming the award passed by the Tribunal.

Therefore, this appeal must fail and accordingly, the same is dismissed. Since the industrial dispute between the parties has been litigated for the last 25 years, it would be just and proper for this Court to give directions as hereunder:

> (i) The Corporation is directed to comply with the terms and conditions of the award passed by the Tribunal and regularise the services of the concerned workmen in their posts and compute the back-wages, monetary benefits and other consequential monetary benefits including terminal benefits payable to the concerned workmen on the basis of the periodical revision of pay scales applicable from the date of their entitlement, namely, by regularizing them in their services after their completion of 240 days of service in a calendar year in the Corporation as provided under Clause 2 (ii) of the Certified Standing Orders, within eight weeks from the date of receipt of the copy of this Judgment;

(ii) If the Corporation fails to comply with the above given directions, the back-wages shall be paid to the concerned workmen with an interest at the rate of 9% per annum. The Corporation is further directed to submit the compliance report for perusal of this Court after the expiry of the said eight weeks. There shall be no order as to costs.

.....J. [V.GOPALA GOWDA] .....J. [C. NAGAPPAN] New Delhi, April 17, 2015 ITEM NO.1A-For Judgment COURT NO.11 SECTION XV S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s)...../2015 @ SLP(C) No. 5532/2012 ONGC LTD. Appellant(s) VERSUS PETROLEUM COAL LABOUR UNION & ORS. Respondent(s) Date : 17/04/2015 This matter was called on for pronouncement of JUDGMENT today.

For Appellant(s) M/s Arputham Aruna & Co.

For Respondent(s) Mr. V.N. Subramaniam, Adv.
Mr. Satish Kumar,Adv.

Mr. Santosh Krishnan, Adv.
Mrs. Sonam Anand, Adv.
Mr. Deeptakirti Verma,Adv.

Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted.

The appeal is dismissed in terms of the signed Reportable Judgment.

(VINOD KR.JHA) (MALA KUMARI SHARMA)
COURT MASTER COURT MASTER
(Signed Reportable Judgment is placed on the file)

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[1] (1997) 9 SCC 377
[2] (2006) 4 SCC 1
[3] (2001) 7 SCC 1
[4] (2009) 8 SCC 556
[5] (2007) 5 SCC 755
[6] (2014) 7 SCC 190
[7] AIR 1950 SC 188
[8] (1981) 1 SCC 315
[9] 2014(13)SCALE636
[10] (1978) 4 SCC 16
[11] (1984) 3 SCC 369
[12] (1985)3 SCC 545
[13] (2011) 9 SCC 775