SUPREME COURT OF INDIA

BARAT FRITZ WERNER LTD.

Vs.

STATE OF KARNATAKA

02/02/2001

(S. Rajendra Babu & S.N. Variava.)

Special Leave Petition (civil) 7371 of 1998

Special Leave Petition (civil) 10674 of 1998

Special Leave Petition (civil) 10675 of 1998

Special Leave Petition (civil) 10701-10702 of 1998

Special Leave Petition (civil) 11057 of 1998

Special Leave Petition (civil) 11651 of 1998

Special Leave Petition (civil) 12651 of 1998

Special Leave Petition (civil) 20769 of 2000

Special Leave Petition (civil) 6285 of 1998

Special Leave Petition (civil) 7420 of 1998

Special Leave Petition (civil) 7580 of 1998

Special Leave Petition (civil) 7581 of 1998

Special Leave Petition (civil) 7582 of 1998

Special Leave Petition (civil) 8125 of 1998

Special Leave Petition (civil) 8127 of 1998

Special Leave Petition (civil) 8179 of 1998

Special Leave Petition (civil) 8192 of 1998

Special Leave Petition (civil) 8202-8205 of 1998

Special Leave Petition (civil) 8290 of 1998

Special Leave Petition (civil) 8315 of 1998

Special Leave Petition (civil) 9893-9897 of 1998

Special Leave Petition (civil) 6515 of 1999

JUDGMENT

RAJENDRA BABU, J. :

On the basis of a report made by the National Commission on Labour in the year 1966 in paragraph 9.10 to the effect that the practice of employing contract labour is prevalent in varying degree in almost all the industries and services. Since the system of employment of contract labour led to various abuses, the question of its abolition was accentuated. There had been consistent demand by the labour for abolishing the system of contract labour.

The dispute relating to contract labour or its absorption by the employer was, therefore, held to be an industrial dispute. [Standard Vacuum Refining Co. of India Ltd. vs. Its Workmen & Anr., 1960 (3) SCR 466]. Thereafter industrial adjudication interfered to abolish or modify the system of contract labour in industrial undertakings depending on the facts arising in each case.

Then came on the scene the fate of contract workers in the canteen established as mandated under Section 46 of the Factories Act, 1947. In Saraspur Mills Co.Ltd. vs. Ramanlal Chimanlal & Ors., 1973 (3) SCR 967, in view of Section 46 of the Factories Act and rules made thereunder requiring an employer to provide a canteen in a factory where more than 250 workers are employed for the use of the workers even if run by a cooperative society were workmen of the factory as it was under a mandatory obligation to maintain and run the canteen. This question was more elaborately dealt with in M.M.R.Khan & Ors. vs. Union of India & Ors., 1990(Supp) SCC 191. In that case, this Court was concerned with canteen run by Railway establishments falling into three different categories :

1. Canteens compulsorily provided either pursuant to Section 46 of the Factories Act or under other enactment described as statutory factories;

2. Canteens set up as a staff welfare measure with the approval of the Railway Board in terms of Railway Establishment Manual;

3. Canteens established though as a staff welfare measure but without the approval of the Railway Board in terms of Railway Establishment Manual.

The employees falling in the first and the second categories were held to be employees of the Railway establishment while the employees falling in the third category were not held to be so.

In All India Railway Institute of Employees Association vs. Union of India, 1991 (2) LLJ 265, again this Court dealt with this question where the employees in the Railway Institute or clubs were not treated as employees of the Railway establishment.

In the meanwhile, law further developed in such a manner that even in relation to employees

working in those canteens who were not established pursuant to Section 46 of the Factories Act but pursuant to a settlement entered into with the employees or under an award made by an industrial Tribunal or by way of a condition of service, the matter was examined in Parimal Chandra Raha & Ors. vs. L.I.C. of India & Ors., 1995 Supp. (2) SCC 611, that such employees must be treated as employees of the establishment. Of course, in Indian Petrochemicals Corpn. Ltd. & Anr. vs. Shramik Sena & Ors., 1999(6) SCC 439, a new gloss was given to this decision by stating that the presumption arising under the Factories Act in relation to such workers is available only for the purpose of the Act and no further. However, in Employers in relation to the Management of RBI vs. Workmen, 1996(3) SCC 267, this Court struck a different note. Again this Court in Indian Overseas Bank vs. I.O.B.Staff Canteen Workers Union & Anr., 2000 (4) SCC 245, considered the effect of the decisions in MMR Khan [supra], Parimal Chandra Raha [supra], Employers in relation to the Management of RBI [supra] and Indian Petrochemicals Corpn. Ltd. & Anr. vs. Shramik Sena & Ors., 1999(6) SCC 439, and it was made clear that the workers of a particular canteen statutorily obligated to be run render no more than to deem them to be workers for limited purpose of the Factories Act and not for all purposes and in cases where it is a non-statutory recognised canteen the Court should find out whether the obligation to run was implicit or explicit on the facts proved in that case and the ordinary test of control, supervision and the nature of facilities provided were taken note of to find out whether the employees therein are those of the main establishment. However, in these cases that exercise may not be required. What we are concerned with here is the validity of the notifications under the Contract Labour [Regulation & abolition] Act, 1970 [hereinafter referred to as the Act].

A notification was issued by the Government of Karnataka under Section 10 of the Act on 11.4.1997 prohibiting with effect from the date of publication of the notifications employment of contract labour in industrial canteens and factories employing 250 workers or above in the State of Karnataka. Writ petitions were filed before the High Court of Karnataka challenging the validity of the same on various grounds. However, the High Court upheld the validity of the said notifications and dismissed the writ petitions. Hence these petitions under Article 136 of the Constitution.

Before we embark upon the contentions that are raised in these cases, it may be necessary to briefly survey the provisions contained in the Factories Act and the Act.

The Factories Act was enacted to regulate the law relating to labour in factories. Section 46 of the Factories Act provides that the State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed a canteen or canteens shall be provided and maintained by the occupier for the use of the workers. Section 2(n) defines the expression occupier to mean a person who has ultimate control over the affairs of the factory and further enumerates the persons who could be deemed to be occupier in case of a firm, a company or a Government. Section 2(l) defines the expression worker to mean a person who is employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process but does not include any member of the armed forces. Rule 93 of the Karnataka Factories Rules, 1969, framed under Section 46 of the Factories Act by the State of Karnataka, provides that the occupier of every factory notified by the State Government, and wherein more than 250 workers are ordinarily employed shall provide in or near the factory an adequate canteen according to the standards prescribed in the rules. Thereafter the details regarding building, provision for dining hall, kitchen, store room, pantry and washing places separately for

workers and for utensils are provided. Rule 94 of the Rules gives the details regarding dining hall. Rule 95 requires the occupier to provide and maintain sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of the canteen in a clean and hygienic condition. Rule 96(1) provides that food, drink and other items served in the canteen shall be sold on a non-provide basis and the prices charged shall be subject to the approval of the Canteen Managing Committee, provided that if the management bears the cost of wages of canteen staff, buildings, water, lighting, fuel and insurance, it shall not be incumbent on them to run the canteen on any further loss to themselves. Thereafter, certain details have been set forth as to what to be computed as part of the expenditure in fixing the prices. Rule 97 provides for maintenance of the canteen. Rule 98 provides for appointment of a Canteen Managing Committee. Rule 99 provides for food-stuffs to be served and prices to be charged. Rule 99-A provides for annual medical examination for fitness of each member of canteen staff. Rule 100 provides for shelter room, rest room and the lunch room.

Now we may have a look at the provisions of the Act.

Under Section 2(c) of the Act, a contractor, in relation to an establishment, means a person who undertakes to produce a given result for the establishment. Under Section 2(i) of the Act, a workman is a person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work. A workman is deemed to be as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. Chapter III of the Act provides for registration of establishments employing contract labour in which apart from regulating the contract labour the appropriate Government may also provide for prohibition of the same under Section 10 of the Act. Section 10 of the Act enables the appropriate Government may, after consultation with the Central Board, as the case may be, a State Board, prohibit, by notification in the official gazette, employment of contract labour in any process, operation or other work in any establishment. Before issuing a notification as aforesaid, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors such as:

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in the establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Under Section 2(e) of the Act, establishment means any office or department of the Government or a local authority, or any place where any industry, trade, business, manufacture or occupation that is carried on.

In the background of these provisions, the contentions put forth before us on behalf of the Petitioners are that the worker under the Factories Act is defined as meaning a engaged directly or through any agency (including a contractor) in any manufacturing process, or in cleaning any part of

the machinery or premises used for a manufacturing process or in any other kind of work incidental to or connected with the manufacturing process or subject to the manufacturing process; that the worker engaged in a canteen is not in any activity connected in the manufacturing process. The canteen being only a facility offered to the workmen and is dependent only on the number of workmen employed in the factory namely, the figure being in excess of 250 and on no other consideration; that under the Karnataka Factories Rules, 1969, it has been clearly provided under proviso to Rule 96(1), that if the management bears the cost of wages of canteen staff, buildings, water, lighting, fuel and insurance, it shall not be incumbent on them to run the canteen on any further loss to themselves, which clearly indicates that in such circumstances they could do so through an intermediary; that even where the Act applies, the Act makes a clear distinction between the prohibition of contract labour and the regulation of contract labour; that the prohibition is contemplated only in respect of operations which are activities closely and intimately connected with the main activity of factory or establishment and where it is not, then section 10 does not apply and the regulatory sections of the Act come into place; that the basis on which contract labour can be abolished under the section is that it should relate to the manufacturing, industry, trade, business or occupation that is carried on in the establishment; in other words in matters integral to the work in the establishment and not to a mere facility in respect of its workmen as defined in Section 2(l) of the Factories Act; that the abolition of contract labour can be effected only in respect of work which is integral to the industry and vitally connected with the work carried in the establishment or factory and relied in support of this proposition on the following decisions:

(i) Standard Vacuum Refining Co. (supra). [That was a case of cleaning of the machinery.]

(ii) Shibu Metal Works vs. Their Workmen, 1966 (1) LLJ 717. [Being employed for work which was of a permanent nature as it was a part of manufacturing process of the goods manufactured in the factory.]

(iii) Vegoils Pvt. Ltd. 1972 1 SCR 673. [that the feeding of hoppers in the solvent extraction plant is an activity closely and intimately connected with main activity of the appellant namely crushing oil cakes and oil seeds for extraction of oil and other chemical production.]

The learned counsel for the Petitioners further submitted that thus the Act makes a clear distinction between activities germane and intimately connected with any particular industry and other activities which are not so connected; that the prohibition of employment of contract labour is confined to process; operation and other works which is incidental to or necessary for the industry trade, business, manufacture or occupation that is carried on in the establishment. This was so, also in the case of Catering Cleaners of Southern Railways v. Union of India, 1987 (2) SCR 164, where in this court observed that it appears to be clear that the work of cleaning, catering establishment and pantry car is necessary and incidental to the industry or business of the Southern Railway and therefore the requirement of Section 10(2) is satisfied.; that the dichotomy in the Act is emphasized in the case of Gammon India Ltd., etc.etc., vs. Union of India & Ors. etc., 1974 (3) SCR 665, at pages 669 and 670. The words other work in any establishment in Section 10 are to be construed as ejusdem generis. The expression other work in the collection of words process, operation or other work in any establishment occurring in section 10 has not the same meaning as the expression in connection with the work of an establishment, spoken in relation to workmen or contractor (and occurring in definition of section2); that in the two cases Parimal Chandra Raha (supra) and the case of Reserve Bank of India (supra) it is made clear that where the intention is only to provide an extra facility to the workmen that different considerations arise and it is not necessary that the facility should be accorded only through the employment of permanent workmen.

Apart from these contentions, further contentions addressed by the Petitioners are that there is no effective consultation as required under Section 10 of the Act by the State Government before issuing the impugned notifications prohibiting employment of contract labour in the canteen establishments nor is there application of mind to the various factors such as conditions of work and benefits provided for the contract labour in the establishment and other relevant factors given under sub-section (2) of Section 10 of the Act. We will advert to the various details of these arguments when we deal with this aspect.

In reply, the learned Advocate General and Smt. Indira Jaising, learned senior counsel, have contended that the definition of a worker or a factory under Factories At, 1948, will not be of guidance nor relevant in determining the question as to whether the provision of a canteen is incidental to the industry and whether contract labour engaged for the same should be abolished under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (Act); that this is so because the Act concerns itself with an establishment defined in Section 2(e)(ii) as any place where any industry, trade, business, manufacture or occupation is carried on; that the definition does not confine itself to the manufacturing alone; that Section 46 of the Factories Act mandates that any factory with more than 250 workers must provide and maintain a canteen. Therefore the responsibility of provision and maintenance of a canteen in or near the factory is not one of mere provision but also one of maintenance. This is buttressed by the Rules 93 to 99; that the work of a canteen is therefore not only incidental to, but also absolutely necessary and integral to the operation of a factory employing 250 or more workmen. (See : J.K. Cotton Spinning & Weaving Mills Co Ltd. v. Badri Mali & Ors. (1964 (3) SCR 724); that an establishment which engages more than 250 workers must out of necessity maintain a canteen; that Section 10 of the Act prefixes the listing of relevant factors with the words such as, a term interpreted by this Court in Royal Hatcheries Pvt Ltd. v. State of A.P. & Ors. (1994 Supp (1) SCC 429), to mean only illustrative and not exhaustive. (See also Shri Sitaram Sugar Company Limited & Anr. vs. Union of India, 1990 (3) SCC 233); that various factors will have to be looked at and the same would weigh more than others depending upon the class of establishments in respect of whom the Government is examining abolition; that in respect of the class of establishments employing more than 250 workers, the factor which weighs strongly is running of canteen as a statutory necessity ; that from this statutory obligation flows the other criterion, its perennial nature, as long as the factory employs 250 or more workmen it has a continuing obligation; that it has also been consistently held that the practice of employing contract labour in jobs of a perennial nature is baneful, archaic and medieval and not suitable to modern times. The Act itself was introduced to prevent exploitation and unjust labour practices; that there exists no right to employ contract labour, abolition does not result in deprivation of any right; that the character of the exercise viz a viz Section 10 being legislative, the court ought not to interfere with the notification; that the abolition being qua the process and not qua the establishment, the characteristic feature of any establishment is an irrelevant consideration under Section 10; that it has been consistent legislative practice to issue notification qua a process and not an establishment/company as held in Air India Statutory Corpn. v. United Labour Unions, 1997 (9) SCC 59; that a decision under Section 10 is not quasi judicial as if it were so, the legislature would have statutorily built in the safeguards of natural justice e.g. the revocation of a licence under Section 14 of the Act; that the character of the exercise is quasi-legislative and it is a conditional legislation and is therefore subject to no pre-decisional due process. (State of Tamil Nadu v. K. Sabanagam, 1988 (1) SCC 318]; that despite the act being quasi-legislative, the Act and in the instant case the action of the board as well as the State Government has ensured a fair process in the decision making. The Act ensues fairness by providing a tripartite composition for the Board including representatives of the management and contractors, the Board ensured fairness by

providing a public notice (internal page 26 of impugned order) and receiving and considering representations/objections and obtaining reports in respect of major areas (internal page 31 of impugned order). The Government ensured fairness by not accepting the Boards advice in routine but permitted the employers to put on record their objections (internal page 31 of the impugned order). (See :Shri Sitaram Sugar Co. Ltd (supra); that out of the 740 odd affected industries only a few have impugned the notification and the in any event, it is not the case of the petitioners such as ITC and L&T that they have not been given an opportunity to make a representation/objections before the Board/Committee/Government. In fact it is their case that they made did make representations. In the circumstances, the decision making process has been fair; that Section 10 of the Act permits the appropriate Government to abolish contract labour in respect of any work in any establishment; that this Court in Lucknow Development Authority v. M.K. Gupta (1994 (1) SCC 243) has held that the word any ordinarily means one or some or all and that in that context was used in a wider sense extending from one to all; that it follows that power in respect of abolishing a process, operation or other work in respect of one establishment could well be exercised to cover some and even all, if the circumstances so warrant; that the manner of exercise of the power is left to the discretion of the State Government. The Government may consider that a certain activity is typical in an industry and it would be unproductive to mandate that it this quasi-legislative power be applied in instalments or by examining each and every unit of that industry; that, in any event, as evidenced from the statement of objects and reasons for the Act, the proposed Bill aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate government, the Act concerns itself not with the nitty gritty of each and every establishment, but with categories, types and classes of activities which, if undertaken through contract labour, may warrant abolition; that this Court in Gammons Case (supra) has laid down that the fundamental norm of the Act is abolition and only if abolition is not possible would the options such as regulation be considered; that defences of industrial sickness and/or arrangement through co-operatives do not hold water; that once the appropriate Government in consultation with the Board is of the opinion that Section 10(2) of the Act conditions apply, it should as a norm opt for the abolition option unless a strong case can be made out for a lesser alternative; that the courts have in a catena of case law held that in judicial review the Court shall not sit in judgment over the material or the result but restrict its examination to only limited grounds such as perversity and gross injustice would the Court interfere; that even in the absence of a Section 10 notification, this Court has held canteen workers to be employees of the concerned industry.. In the instant case, given the notification, the case is on strong footing.

The High Court in the course of its judgment considered similar contentions raised before it. After referring to the objectives of the Act and the decisions of this Court in Royal Hatcheries Pvt. Ltd. vs. State of A.P., [supra], and Gammon India Ltd. [supra] the High Court held that the policy of the Act was to abolish contract labour wherever possible and where it cannot be altogether abolished, the policy of the Act is to regulate the working conditions of the contract labour to ensure payment of wages and essential amenities. While opining as to whether contract labour has to be abolished or not the consideration that has to be had to the fact as to whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment. The High Court further held that the Government before taking the decision to issue the notification did bear in mind the necessary factors in this regard. The High Court referred to the nature of the composition of the Advisory Board, various deliberations of the meetings of the Advisory Board and the files of the Government relating to the decision taken to abolish the contract labour. After a detailed discussion in the course of its noting, the Government decided to abolish the contract labour from canteens in establishments employing 250 or more employees. All facts that had been raised

by various groups of persons have been taken note of apart from requirements of the statute and thereafter a decision has been taken by the Government. The High Court noticed that the running of the canteen is of a perennial nature and the canteen is provided pursuant to the mandatory requirement of the Factories Act where there are more than 250 workers. The canteen having been established pursuant to the requirement of Section 46 of the Factories Act the same would be incidental and connected with the work of the establishment. The fact that maintaining is not part of the core or competency of the industry is irrelevant for deciding the question whether the contract labour should be abolished or not. On this basis, the High Court decided against the Petitioners.

From what we have narrated above, it is clear that the Petitioners have made provisions for running of the canteen in their establishments through a contractor at any rate on the basis that as a mandatory requirement of law or as contended for some of the Petitioners under the rules framed under the Factories Act to make provision for establishment of a canteen even assuming for a moment that the Petitioners have provided only for facilities to run a canteen and they are not themselves running the canteen but it is only with the help of a contractor the same is being run subject of course to the restrictions placed in the Act in regard to the price and the provisions made by the canteen managing committee even so the fact remains that they fall into a particular class of persons namely factories engaging more than 250 workmen in respect of whom canteen facilities have been provided in terms of Section 46 of the Factories Act and the rules framed thereunder and in such establishments the policy of the Government is to see that there is no contract labour but direct labour. To meet this view of the Government, the contention put forth on behalf of the Petitioners is that the objectives of a factory and an establishment is to produce the goods or services as the case may be in terms of the Memorandum of Association or any other document under which it is established and supply of food or beverages is not one of their objectives and, therefore, the workmen in such establishments can never be treated as the workmen of the factory. If at all such workmen are treated as workmen of the factory it is only for the purpose of the Factories Act as has been held by this Court in IPCL case. Under the Factories Act, a worker is defined under Section 2(l) to mean a person who is employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process. The Factories Act has been enacted to regulate labour in factories. The main object of the Factories Act, 1948 is to ensure adequate safety measures and to promote the health and welfare of the workers employed in factories initiating various measures from time to time to ensure that adequate standards of safety, health and welfare are achieved at all work places. In particular, in the context of the need to secure maximum production and productivity an appropriate work culture conducive to safety, health and happiness of workers has to be evolved in the factories. To achieve these objectives more effectively, this enactment has been made. In fact, by amendments to the term worker so as to include within its meaning contract labour employed in any manufacturing process, improvement of the provisions in regard to safety and appointment of safety officers, reduction of the minimum number of women employees have been made. The said enactment was intended for the regulation in such a manner as to benefit the welfare of the workers. Therefore, the objective of the Act is to confine the applicability of the Act only to those workers on the premises of the factory as factory workmen and not working in the industry as such. The industry or the establishment which runs the factory is much larger expression and it includes not merely the workmen in the factory but others also. In that background, various provisions have been made in the Factories Act for the welfare of those who work in the factory and it became necessary to limit the number of workers who would

be covered by the Factories Act. Therefore, the definition of worker meant to relate to a factory where a manufacturing process activity is carried as otherwise it does not constitute a factory. That definition of worker cannot be read outside the context of the factories as defined under the Factories Act. But if this definition is applied in the manner suggested by the learned counsel for the Petitioners, it would be doubtful whether those in the Administration or the Accounts Department or the Stores or other personnel like a Welfare Officer in the establishment which runs the factory can at all be called the employees of the establishment or not. The kind of definition sought to be relied upon by the learned counsel for the Petitioners to be read beyond the statute would lead to absurd results. Therefore, we do not think we can subscribe to such a submission. What is to be seen in a case of this nature is the definition as given in the Act. The worker therein is defined in a very broad way. A workman would mean any person employed in or in connection with the work of any establishment whether he is hired with or without the knowledge of the principal employer. We may also notice that even where Factories Act is not applicable to an establishment but canteen facility is provided as a condition of service, this Court has in several cases examined the question from various angles including the conditions referred to in Section 10 of the Act. If the arguments of the learned counsel were to be accepted, then all those cases where the question of considering a canteen worker as falling within the ambit of worker under the Factories Act would not arise for that enactment is not applicable and would form an officer class of establishments to which the Act would be applicable. That is not the intention of the Act at all. This Court having found that it is one of the incidental activities of the establishment, which is necessary for running it, and after ascertaining its perennial or ephemeral nature, done ordinarily through regular workers or otherwise and necessarily employ whole-time employees have all been considered and held that these employees are regular employees of the establishment without reference to the Act. It cannot be disputed that the provision for canteen is a welfare measure and necessarily a requirement to run the same is incidental to the main activity of the establishment particularly when it becomes a condition of service. Viewed from this angle, the suggestion to examine the definition of worker in the Factories Act and to find out necessity to have such worker to run the establishment will be an academic exercise in semantics without any practical effect. Therefore, the argument of Shri Pai that the canteen workmen are not engaged directly as workers in a factory and therefore we should treat such workmen as workers engaged in the industry will not be correct but plainly fallacious.

In this context, we may advert to the decision in M/s J.K.Cotton Spinning & Weaving Mills Co. Ltd. [supra] wherein gardeners engaged in maintaining the bungalows provided for the officers of the industry were also treated as workers. The contention put forth on behalf of the Petitioners to distinguish this decision is that it depended on the definition available under the ID Act as in force in that particular area where the factory had been established. It is not their case that Factories Act was not applicable in that area but in order to ascertain whether the workers are covered by the ID Act or not what was seen was the definition under the ID Act. In the same way what we have to see in the present case is the definition of the term worker as provided under the Act and not the Factories Act. The learned counsel for the Petitioners relied upon Section 119 of the Factories Act to contend that the Factories Act would weigh over the Act. In the first place, the learned counsel is unable to establish that there is any inconsistency between the Factories Act and the Act. Unless such inconsistency is pointed out this provision would not be attracted at all. Therefore, we have to reject this contention also. Under Rule 96 of the Karnataka Factories Rules, 1969, it has been provided that if the management bears the cost of wages of canteen staff, buildings, water, lighting, fuel and insurance it shall not be incumbent on them to run the canteen on any further loss to themselves, which clearly indicate that in such circumstances they could run the canteen through an intermediary. Therefore, they contend that there is no legal obligation upon them to run a canteen

but their obligation is only to provide facilities for running of the canteen by bearing the cost of wages of canteen staff, buildings, water, lighting, fuel and insurance, if the said canteen cannot be carried on in an economically viable manner. But no factual foundation has been laid in any of these petitions to point out that they have incurred losses to themselves in running these canteens and, therefore, an intermediary has become necessary. Unless that exercise is done this argument cannot be considered. The learned counsel for the Petitioners sought to make a distinction arising under Section 10 of the Act in relation to prohibition of contract labour and regulation of contract labour. They contended that the basis on which contract labour can be abolished under this section is that it should relate to the manufacturing, industry, trade, business or occupation that is carried on in the establishment. In other words, in matters integral to the work in the establishment and not to a mere facility in respect of its workmen as defined in Section 2(l) of the Factories Act. Once again, the argument cannot be appreciated at all because it would be a matter of policy for the Government to prohibit or to regulate the contract labour in an establishment does not necessarily dependent upon whether they are engaged in the core activity or a peripheral activity like the facility of a canteen. Learned counsel for the Petitioners adverted to certain decisions in Standard Vacuum Refining Co., wherein the abolition was in relation to the workmen engaged in the cleaning of the machinery; Shibu Metal Works, wherein workers being engaged for work which was of a permanent nature and it was a part of manufacturing process of the goods manufactured in the factory; Vegoils Pvt. Ltd., wherein it was in relation to the feeding of hoppers in the solvent extraction plant which is an activity closely and intimately connected with main activity of the appellant such as crushing oil cakes and oil seeds for extraction of oil and other chemical production; Catering Cleaners of Southern Railways where it was observed that the work of cleaning, catering establishment and pantry car is necessary and incidental to the industry or business of the Southern Railway and, therefore, the requirement of Section 10(2) was satisfied. The words other work in any establishment in section 10 are to be construed as ejusdom generis and the expression other work in the collection of words process, operation or other work in any establishment occurring in section 10 has not the same meaning as the expression in connection with the work of an establishment with reference to a workman or a contractor.

Section 10 of the Act provides for prohibition of employment of contract labour in any process, operation or other work in an establishment. The words Process, operation or other work need not be interpreted to mean only the core activity and not peripheral activity as is sought to be suggested by learned counsel for Petitioners. In sub- section (2) of Section 10 of the Act certain guidelines have been provided for the Government before the issue of any notification to find out whether the Process, operation or other work is incidental or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment. The expression used therein is wide in ambit to cover other activity arising in industry and not merely the actual manufacture. Otherwise to understand the expression Process, operation or other work other than the meaning given in clause (a) of sub-section (2) of section 10 would be to narrow down the meaning thereto. That does not seem to be the intention of the enactment at all. Therefore, we cannot agree with the submission made by the learned counsel for the Petitioners in this regard either.

Shri Venugopal, learned senior counsel appearing for some of the Petitioners, contended that there has been no consultation by the Government of Karnataka in an effective manner before the issue of the notification. He referred to certain details of the different meetings held by the Advisory Board. The fact is that the decision to abolish the contract labour in the canteen establishments was taken by the Advisory Board as earlier as 1988 but the same was not given effect to and the matter was further discussed and information was gathered from different sources. Ultimately, the Advisory Board sent its advice to the Government suggesting the abolition of the contract labour. When the

matter went back to the Government, the factors, such as, the report of the Advisory Board and the various conditions of the work and the benefits of the contract labour in the establishment, need for such activity, whether it is a perennial in nature or otherwise and whether such activity is done ordinarily through regular workmen in that establishment or an establishment similar thereto or whether it is sufficient to employ considerable number of whole-time workmen, were all taken note of in a detailed noting prepared by the Government before reaching that decision. These files have been perused by the High Court based upon which the High Court upheld the notifications in question. We have also been taken through these files and we can say that the High Court is justified in reaching that conclusion. What is required to be done by the Government in this regard is to consult the Board and it does not mean that the Government is bound by the advice given by the Advisory Board. All that is required is that the Government should consult the Advisory Board which has been done in the present case which consisted of representations from different sections such as the Government nominees, the management, the employees and the contractor who have establishments apart from effectively ascertaining information from various sources, these members in the Advisory Board itself had sufficient experience in different fields who also could form an opinion in regard to the same. Based upon such report and all the factors available in the State as per the information furnished to them from different sources, the Government had reached the conclusion it did. Further, learned counsel referred to different proceedings of the Advisory Board to contend that they are inconclusive and cannot give due advice to the Government. We may notice that apart from the deliberations, the Advisory Board has collected material from different districts and information from the Department of Labour. That material was also taken note of by the Government in reaching its conclusion and hence even assuming that the Advisory Boards proceedings were inconclusive will not materially affect the decision of the Government.

It was next contended that conditions in each one of the factories had to be ascertained and separate notification had to be issued in respect of each one of the factories. This argument needs to be rejected out right because when the Government was formulating the policy it has to take note of the conditions prevalent generally in such establishments and not with reference to any one or other. In general, if it is found that it would be appropriate to abolish contract labour in canteens run by factories, individual distinctive features do not affect such a decision.

It is next contended that only one notification is issued and not with reference to each of the establishment separately and, therefore, the action of the Government is vitiated. When the notification is applicable to establishments falling in a particular category, the fact that separate notification is not issued will not make impact on the action of the Government in the issue of a notification, if otherwise it is valid. Hence this contention also has no merit.

After we reserved the matter for orders, it is brought to our notice that the Government of Karnataka has issued a notification on 15th November, 2000 in No.LD 46 LWA 2000 rescinding notification No.KAE 5 LWA 97 dated 11th April, 1997 prohibiting under Section 10 of the Act contract labour in certain processes of steel re-rolling mills. The consideration for issue or cancellation of notifications in regard to steel re-rolling mills have no bearing on the issue on hand as in the present case prohibition is only with respect to contract labour in canteens maintained pursuant to Section 46 of the Factories Act and the principles applicable in regard to the two issues are entirely different.

Therefore, we do not find any merit in any arguments advanced on behalf of the Petitioners. Thus the petitions are liable to be and are dismissed. The challenge to the notification fails. No costs.

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The Petitioner in this case claims that the Petitioner is a sick industry and, therefore, requires a different kind of treatment at the hands of the Government and that the Government had not taken note of the fact whether the Act should be made applicable in respect of industries which are sick or not. During the pendency of these proceedings, the Board for Industrial & Financial Reconstruction has made an order providing for a scheme for revival and reconstruction of the Petitioner and, therefore, it is not feasible to provide for abolition of contract labour in such an establishment and abolition of contract labour will not be more beneficial to the workmen concerned. This stand is strongly refuted by the respondents. The fact that the industry is sick and it has been subjected to the proceedings before the BIFR is undoubtedly correct but the view of the BIFR is that the networth of the company would become positive by the year 1999-2000 and the accumulated losses would be wiped out by the year 2000-2001. If those are the circumstances it will be too hazardous for us to embark upon a consideration as to whether the Government should have separately considered in respect of such an industry also to abolish contract labour or not. When as a matter of policy the Government adopted that in respect of industry where there is at least 250 workmen and a canteen had been provided in terms of the Factories Act and the rules framed thereunder to abolish contract labour pursuant to which the action has now been taken, we do not think the Petitioner can stand on a different footing merely because it has become sick. In that view of the matter, we find no substance in the separate contentions addressed on behalf of the Petitioner in this petition.

This petition also stands dismissed. No costs.