SUPREME COURT OF INDIA

Balwant Rai Saluja

Vs.

Air India Ltd.

C.A.Nos.10264-10266 of 2013

(V.Gopala Gowda and Chandramauli Kr. Prasad JJ.)

13.11.2013

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. Leave granted.

2. Air India Limited was constituted under the Air Corporations Act, 1953. By virtue of Section 3 of the Air Corporations (Transfer of Undertakings and Repeal) Act, 1994, Air India has vested in Indian Airlines Limited. It has Ground Services Department at Indira Gandhi International Airport, Delhi. Respondent No. 2 is Hotel Corporation of India, which is a Government Company incorporated under the Companies Act. The authorized share capital of the Hotel Corporation of India, hereinafter referred to as the Corporation, is Rupees 10 crores, divided into 10 lakhs equity shares of Rs. 100/- each. The Corporation is a wholly owned subsidiary of Air India and its entire share capital is held by Air India and its nominee. Excepting 6 shares, 4,99,994 shares have been subscribed by Air India and rest by its nominees. Air India controls the composition of the Board of Directors and appoints Directors in consultation with the Government of India. The power to remove the Directors from office before the expiry of the term is vested with Air India, in consultation with the Government of India, so also the power to fill up the vacancies caused by death, resignation, retirement or otherwise. General management of the Corporation is vested in the hands of the Managing Director. Notwithstanding that, Air India is conferred with the power to issue such directions or instructions as it may think fit in regard to the finances and the conduct of the business and affairs of the Corporation. Duty has been cast upon the Corporation to

comply with and give effect to such directions and instructions. The main objects for which the Corporation is incorporated are large and include carrying the business of hotels, motels, restaurants, cafés, kitchens, refreshment rooms, canteens and depots etc. in general and its incidental and ancillary objects are establishment of catering and opening hotels, which would tend to promote or assist in Air India's business as an international air carrier. Respondent No. 3, Chef Air Flight Catering, hereinafter referred to as 'Chef Air', is one of the units of the Corporation.

3. Section 46 of the Factories Act, inter alia, confers power on the State Government to make rules requiring a specified factory where more than 250 workers are ordinarily employed, to provide and maintain a canteen for the use of the workers. In exercise of the aforesaid power, Rules 65 to 71 have been incorporated in the Delhi Factory Rules, 1950, hereinafter referred to as 'the Rules'. Rule 65(1) was to come into force in respect of any class or description of factories on such dates as the Chief Commissioner may by notification in the Official Gazette appoint. Rule 65(2) of the Rules, inter alia, contemplates that the occupier of every factory notified by the Chief Commissioner, where more than 250 workers are ordinarily employed, shall provide in or near the factory an adequate canteen in accordance with the standard prescribed in those Rules. In pursuance of the provisions of sub-rule (1) of Rule 65 of the Rules, the Lieutenant-Governor of the Union Territory of Delhi, by notification in the Official Gazette, dated 21st of January, 1991, directed that Rules 65 to 70 of the Rules shall apply to the factories specified in the said Rules with effect from the date of publication of the notification in the Official Gazette. It included M/s. Air India Ground Services Department, Indira Gandhi International Airport, Delhi (Engineering Unit).

4. The workmen working in Air India Ground Services Department Canteen, hereinafter referred to as 'the Canteen', raised an industrial dispute and the competent Government made a reference to the Central Government Industrial Tribunal as to whether the demand of the workmen employed by Chef Air to provide canteen service to be treated as deemed employees of the management of Air India is justified and, if so, what relief the workmen are entitled to? The workmen laid their claim and, according to them, they were employed by Air India on casual basis in the Canteen and their employment was through Chef Air, which is a unit of the Corporation. According to the workmen, the Corporation has entered into a contract with Air India to run and maintain the canteen and for that purpose, they were initially appointed for a period of 40 days and said period used to be extended from time to time and in this way each of them had completed

service for 240 days in a year. According to the workmen, they were called for interview on several occasions but had not been selected and on the contrary, persons junior to them have been regularized. The workmen have further alleged that Air India had entered into a contract with the Corporation to deny the workmen their legitimate right by circumventing the various provisions of the Contract Labour (Regulation and Abolition) Act, 1970. According to them, they were performing duties of a permanent and perennial nature required by Air India but were being paid wages less than the regular employees. Case of the workmen further is that issuance of letters of appointment for 40 days with artificial break in service is an unfair labour practice and on the aforesaid grounds they sought regularization of the services with back wages in Air India.

5. Air India resisted the claim of the workmen, inter alia, stating that they were not their employees and relationship of employer and employee does not exist between them. According to them, Chef Air is a unit of the Corporation engaged in various businesses including establishing and running of canteens. According to Air India, the Canteen is being run and maintained by the Corporation on the basis of a fixed subsidy per employee provided by them. It is a specific assertion of Air India that they have no control over the workmen and that their conditions of service are governed by the Rules and Regulations of the Corporation. Air India has admitted that the infrastructure of the Canteen was provided by them but its management is in the hands of the Corporation. Air India has further pointed out that letters of appointment, token numbers, ESI cards etc. have been issued to the workmen by the Corporation and, hence, the prayer for regularizing their services by Air India is misconceived. Air India has denied that the Canteen in question is a statutory canteen and was employing more than 250 workers.

6. On the basis of the materials placed on record, the Central Government Industrial Tribunal, hereinafter referred to as "the Tribunal", came to the conclusion that the Corporation is 100% subsidiary of Air India and the Canteen in question is a statutory Canteen established for the welfare of more than 2,000 workers. The Tribunal also came to the conclusion that the Canteen is established within the premises of Air India and the Corporation carries on its business under the control and administration of Air India. According to the Tribunal, the running of the Canteen by the Corporation in respect of the statutory duty of Air India cannot be said to be its independent act. Accordingly, the Tribunal observed that hiring of employees for running the statutory canteen by the Corporation is a camouflage and the workmen employed in the Canteen are deemed employees of Air India. Thus, the Tribunal held the demand of the workers to be justified and

finding that the workmen have been terminated from their services during the pendency of the dispute held that the termination is illegal and, accordingly, set aside the termination of their employment and directed reinstatement with 50% back wages.

7. Assailing the aforesaid award of the Tribunal, Air India preferred writ petition before the High Court.

8. The learned Single Judge held that Air India is the sole holder of the shares of the Corporation but it is a separate legal entity which is independent of its shareholders. The authority to issue directions does not merge the identity of the Corporation with the shareholder. The learned Single Judge accordingly held as follows:

> "……Thus, in my view the mere fact of HCI being a 100% subsidiary of Air India and the aforesaid peculiar Articles of Association would not be decisive of whether the employees aforesaid of HCI and working in the canteen of Air India are to be treated as employees of Air India or not."

9. As regards the grievance of the workmen that Air India had devised to employ the workmen through a unit of the Corporation to defeat their rights, the learned Single Judge observed as follows:

> "19. One thing which emerges is that in the present case, no motive to defeat any rights of the employees, in Air India entering into a contract with Chef Air (a unit of HCI) for operating its canteen, even if it be a statutory canteen have been established. It was not as if by employing workmen in HCI instead of in Air India, the workmen were being made employees of a weaker entity against whom they can claim no rights. After all HCI is also a Government of India company as Air India is."

10. The learned Single Judge further came to the conclusion that the Corporation was not incorporated for the sole purpose of operating the Canteen for Air India but was set up as a legal entity to carry on business in diverse fields. According to the learned Single Judge, Air India engaged the Corporation which has expertise in the field to run and operate the Canteen and that will not make the workmen employees of Air India. The learned Single Judge ultimately held as follows:

> "23. HCI in the present case is seen as one such expert. It has been providing flight catering services to Air India and other airlines besides carrying on other allied businesses. As aforesaid, HCI was not incorporated merely to run the canteen of Air India so as to keep the employees of the said canteen, managed through the medium of HCI, at arm's length from Air India. HCI is a business entity in its own right and no mala fides have been established in Air India entrusting the operation and management of the canteen aforesaid to HCI. As aforesaid, in spite of repeated asking, no prejudice is shown to have been caused to the workmen in them being the employees of the HCI instead of Air India. Of my own I can only gauge that may be as employees of Air India they may be entitled to a free flight once in a while and which they may not be entitled to as an employee of HCI. However, that is hardly determinative of the matter in controversy. Again it is not as if Air India is attaining to offload its canteen employees to an entity which is sick or near the stage of being closed down. HCI is informed to be a running concern."

11. Accordingly, it set aside the award passed by the Tribunal.

12. The workmen, aggrieved by the same, preferred an appeal before the Division Bench of the High Court. The Division Bench framed the following question for its consideration:

> "11. The core issue that emanates for consideration is whether in the obtaining factual matrix it can be held that the employees of the canteen established by Air India in its premises and run by the HCI be treated as regular employees of Air India. Before we advert to the factual canvas, we think it appropriate to refer to the citations in the field, cull out the principles and analyse whether they are applicable to the material brought on record."

13. The Division Bench of the High Court analysed the facts, referred to the various decisions of this Court and ultimately came to the conclusion that the Corporation is a separate entity and not a part of Air India as found by the Tribunal. It endorsed the finding of the learned Single Judge that merely because the Articles of Association confer power on Air India to issue such directions or instructions as it may think fit in regard to conduct of the business and affairs of the Corporation and make it obligatory for the Corporation to carry on the direction of Air India, would not merge the identity of the shareholders with the Corporation. The Division Bench ultimately affirmed the decision of the learned Single Judge and, while doing so, observed as follows:

> "20. On the basis of the aforesaid enunciation of law, the factual matrix is required to be tested. As is manifest, there is no material on record to show that the respondent - Air India had any role in the appointment of the employees in the canteen. No administrative or disciplinary action could be taken by the respondent against the canteen workers. The respondent had itself not undertaken the obligation to run the canteen but had only provided facility so that its employees could avail the canteen facilities. It is not a case where the employees of the canteen were enlisted under a welfare fund scheme, provident fund scheme and medical scheme of the respondent – management. The responsibility to run the canteen was absolutely with the HCI and it was totally a contractual relationship between the two. Air India had no say in the selection or other affairs of the canteen workers."

14. Mr. Jayant Bhushan, Senior Advocate appearing on behalf of the appellants submits that the obligation to provide for the Canteen is with Air India and, therefore, the workmen are entitled to be treated as their employees and Air India their employer. It is further contended that Air India has a large role to play in the operation and management of the Canteen and, in the circumstances, the veil of the contract has to be lifted and this Court is competent to do so to arrive at the truth. In support of the submission reliance has been placed on a large number of decisions of this Court. I do not have the slightest hesitation in accepting this broad submission of Mr. Bhushan and, hence, I deem it unnecessary to refer to all those decisions. It is well settled that the court can lift the veil, look to the conspectus of factors governing employment, discern the naked truth though concealed intelligently. The court has to be astute in piercing the veil to avoid the mischief and achieve the purpose of law. It cannot be swayed by legal appearance. The court's duty is to find out whether contract between the principal employer and the contractor is sham, nominal or merely a camouflage to deny employment benefits to the workmen.

15. Once the veil is pierced, the control of Air India is writ large over the Corporation, submits Mr. Bhushan. He points out that the Corporation is a wholly owned subsidiary of Air India which controls the composition of the Board of Directors and appoints and removes Directors in consultation with the Government of India. According to him, the general management of the Corporation is vested in its Managing Director. Notwithstanding that, Air India is conferred with the power to issue directions or instructions as it may think fit in regard to the finances and the conduct of the business and affairs of the Corporation and, hence, the workmen

employed by the Corporation are, in fact, the employees of Air India. Mr. C.U. Singh, however, submits that notwithstanding the aforesaid power vested in Air India, the Corporation is still a separate legal entity. The fact that its entire share is held by Air India or Air India has the power to appoint the Board of Directors, issue directions etc., will not denude the legal status of the Corporation as a Government company. The fact that the Canteen required to be provided by Air India is being run by the Corporation through one of its units Chef Air will not make Air India its principal employer. He points out that in order to determine the principal employer one is required to see as to who is paying the salary, who is supervising the work, the role played in selection and appointment of the workmen, disciplinary control over them and whether such employees are covered under the welfare scheme of Air India etc. He points out that the responsibility to run the Canteen is with the Corporation and, hence, Air India cannot be treated as its principal employer. According to him, the Corporation is a separate legal entity and even though Air India is a holding company, the Corporation shall still be a separate legal entity. Further, the Corporation is not subservient to Air India but is a servant to its Memorandum of Association and Articles of Association. In support of the submission, reliance has been placed on a decision of this Court in the case of Heavy Engineering Mazdoor Union v. State of Bihar, (1969) 1 SCC 765. Paragraph 5 of the judgment reads as under:

> "5. It is true that besides the Central Government having contributed the entire share capital, extensive powers are conferred on it, including the power to give directions as to how the company should function, the power to appoint directors and even the power to determine the wages and salaries payable by the company to its employees. But these powers are derived from the company's memorandum of association and the articles of association and not by reason of the company being the agent of the Central Government. The question whether a corporation is an agent of the State must depend on the facts of each case. Where a statute setting up a corporation so provides, such a corporation can easily be identified as the agent of the State as in Graham v. Public Works Commissioners, 1901 (2) KB 781, where Phillimore J. said that the Crown does in certain cases establish with the consent of Parliament certain officials or bodies who are to be treated as agents of the Crown even though they have the power of contracting as principals. In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government Department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a

minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. (See The State Trading Corporation of India Ltd. v. The Commercial Tax Officer, Visakhapatnam, 1964 (4) SCR 99 at 188, per Shah, J. and Tamlin v. Hannaford, 1950 (1) KB 18 at 25, 26). Such an inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. (Cf. London County Territorial and Auxiliary Forces Association v. Nichol's., 1948 (2) All ER 432."

(underlining mine)

16. Mr. Singh has also drawn my attention to a Constitution Bench judgment of this Court in the case ofSteel Authority of India Ltd. v. National Union Waterfront Workers, (2001) 7 SCC 1, in which it has been held as follows:

"41. ……The President of India appoints Directors of the Company and the Central Government gives directions as regards the functioning of the Company. When disputes arose between the workmen and the management of the Company, the Government of Bihar referred the disputes to the Industrial Tribunal for adjudication. The union of the workmen raised an objection that the appropriate Government in that case was the Central Government, therefore, reference of the disputes to the Industrial Tribunal for adjudication by the State Government was incompetent. A two-Judge Bench of this Court elaborately dealt with the question of appropriate Government and concluded that the mere fact that the entire share capital was contributed by the Central Government and the fact that all its shares were held by the President of India and certain officers of the Central Government, would not make any difference. It was held that in the absence of a statutory provision, a commercial corporation acting on its own behalf, even though it was controlled, wholly or partially, by a government department would be ordinarily presumed not to be a servant or agent of the State……."

17. I have considered the rival submissions and find substance in the submission of Mr. Singh and the authorities relied on do support his contention. The Corporation undisputedly is a Government Corporation incorporated under the Companies Act.

It is a legal entity altogether different from its shareholders. In my opinion, the fact that Air India or its nominee are the shareholders of the Corporation and in the management of business and finances, it is subject to the directions issued by Air India in terms of the Memorandum of Association and Articles of Association shall not merge the Corporation's identity in shareholders. In my opinion, the Corporation is a separate legal entity, not subservient to Air India but a servant to its Memorandum of Association and Articles of Association.

18. Mr. Bhushan, then submits that the Corporation may be a separate legal entity but Air India's control over the affairs of the Canteen makes it the principal employer. He points out that many of the articles for running the Canteen were purchased by Air India and, in fact, grievances pertaining to running of the Canteen were entertained by it. These, according to the learned counsel, clearly show that Air India is the principal employer.

19. I have bestowed my consideration to the aforesaid submission, but find no substance in the same. Few of the well recognized tests to find out the real relationship are whether the principal employer:

1) pays the salary to the workmen instead of the contractor,

2) controls and supervises the work of the employees,

3) has role in selection and appointment of the employees, and

4) acts as a disciplinary authority over the conduct and discipline of the employees.

20. Reference in this connection can be made to a decision of this Court in the case of Haldia Refinery Canteen Employees Union and Others v. Indian Oil Corporation Ltd. & Ors. (2005) 5 SCC 51, wherein it has been held as follows:

> "16…..It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management."

(underlining mine)

21. In the case of International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374, this Court echoed the same view and observed as follows:

> "38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.
>
> 39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

22. This Court has taken the same view in General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal, (2011) 1 SCC 635, in which it has been held as follows:

> "10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the

> contract labourers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant."

23. Bearing in mind the principles aforesaid, when I proceed to consider the facts of the present case, I find that Air India does not fulfill the test laid down so as to treat it as the principal employer. It is not the case of the workmen that it is Air India which pays their emoluments instead of the Corporation. Air India has neither any role in selection and appointment of the workmen nor it controls and supervises their work. It is further not their case that Air India is their disciplinary authority over their conduct and discipline. In my opinion, Air India, by giving subsidy at a specified rate or for that matter purchasing few articles for the Canteen on its behalf and further bringing to the notice of the Corporation the complaint in regard to the functioning of the Canteen, will not make it the principal employer. As has rightly been observed by the High Court, the Corporation is a Government company like Air India and the workmen in no way will be prejudiced if they continue to be the employees of the Corporation. In my opinion, there does not seem to be any mala fide or oblique motive in Air India entering into a contract with Chef Air, a unit of the Corporation for operating its Canteen. Certainly, it is not to defeat the rights of the workmen.

24. Mr. Bhushan, lastly submits that the workmen were engaged in the Canteen provided by Air India in compliance of Rule 65(2) of the Rules framed in exercise of powers under Section 46 of the Factories Act. According to him, the workmen of a statutory canteen have to be treated as employees of such establishment whose obligation is to provide for the Canteen. In the case in hand, according to Mr. Bhushan, the obligation to provide for the Canteen is with Air India and, therefore, the workmen are entitled to be treated as their employees and Air India their employer. In support of the submission reliance has been placed on a decision of this Court in the case of M.M.R. Khan v. Union of India, 1990 Supp SCC 191, and my attention has been drawn to Paragraph 39 of the judgment which reads as follows:

> "39. The result, therefore, is that the workers engaged in the statutory canteens as well as those engaged in non-statutory recognised canteens in the railway establishments are railway employees and they are entitled to be

treated as such. The Railway Board has already treated the employees of all statutory and 11 Delhi based non-statutory recognised canteens as railway employees w.e.f. October 22, 1980. The employees of the other non-statutory recognised canteens will, however, be treated as railway employees w.e.f. April 1, 1990. They would, therefore, be entitled to all benefits as such railway employees with effect from the said date, according to the service conditions prescribed for them under the relevant rules/orders."

25. Reliance has also been placed on a Constitution Bench decision of this Court in the case of Steel Authority of India Ltd. (supra) referred to by the learned counsel for Air India also and my attention has been drawn to paragraph 107 thereof, which records as follows:

"107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

26. According to Mr. Bhushan, the Constitution Bench judgment clinches the issue. I do not find any substance in the submission of Mr. Bhushan and the authorities relied on are clearly distinguishable. In my opinion, the obligation to provide Canteen is by itself not decisive to determine the status of workmen employed in the Canteen. Reference in this connection can be made to a decision of this Court in Workmen of the Canteen of Coates of India Ltd. v. Coates of India Ltd. & Ors. (2004) 3 SCC 547 wherein it has been held as follows:

> "4…….It is sufficient for us to state that some requirement under the Factories Act of providing a canteen in the industrial establishment, is by itself not decisive of the question or sufficient to determine the status of the persons employed in the canteen."
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> (underlining mine)

27. The aforesaid submission has squarely been dealt with by this Court in the case of Hari Shankar Sharma v. Artificial Limbs Manufacturing Corpn., (2002) 1 SCC 337, and this Court in no uncertain terms has held that as an absolute proposition of law it cannot be said that "whenever in discharge of statutory mandate a canteen is set up or other facilities provided by the establishment, the employee of the canteen or such other facility become the employee of that establishment". Relevant portion of the judgment reads as follows:

> "5. The submission of the appellants that because the canteen had been set up pursuant to a statutory obligation under Section 46 of the Factories Act therefore the employees in the canteen were the employees of Respondent 1, is unacceptable. First, Respondent 1 has disputed that Section 46 of the Factories Act at all applies to it. Indeed, the High Court has noted that this was never the case of the appellants either before the Labour Court or the High Court. Second, assuming that Section 46 of the Factories Act was applicable to Respondent 1, it cannot be said as an absolute proposition of law that whenever in discharge of a statutory mandate, a canteen is set up or other facility is provided by an establishment, the employees of the canteen or such other facility become the employees of that establishment. It would depend on how the obligation is discharged by the establishment. It may be carried out wholly or substantially by the establishment itself or the burden may be delegated to an independent contractor. There is nothing in Section 46 of the Factories Act, nor has any provision of any other statute been pointed out to us by the appellants, which provides for the mode in which the specified establishment must set up a canteen. Where it is left to the discretion of the establishment concerned to discharge its obligation of setting up a canteen either by way of direct recruitment or by employment of a contractor, it cannot be postulated that in the latter event, the persons working in the canteen would be the employees of the establishment. Therefore, even assuming that Respondent 1 is a specified industry within the meaning of Section 46 of the Factories Act, 1946, this by itself would

not lead to the inevitable conclusion that the employees in the canteen are the employees of Respondent 1."

28. Now referring to the authority of this Court in the case of M.M.R. Khan (supra), the same is clearly distinguishable. In this case, it has been held that the workmen engaged in the statutory canteens as well as those engaged in non-statutory recognized canteens are railway employees and they have to be treated as such. This Court came to the aforesaid conclusion as, on fact, it was found that though the workmen were employed in the canteen through the device of a labour contract, they were essentially working under the control and supervision of the railway establishment. Further, the provision for running and operating the canteen was in the Establishment Manual of the Railways. Under these circumstances, this Court came to the conclusion that the workmen engaged in the statutory canteens were, in fact, the railway employees. No such facts exist in the present case.

29. In the Steel Authority of India Ltd.(supra), the Constitution Bench observed that the authorities of this Court show that they fall in three classes including the aforesaid class but it has not endorsed the said view. In fact, the decisions which I have referred to in the earlier paragraphs of this judgment negate this contention. I have tested the case of the workmen on the touchstone of the principles laid down by this Court and find that they do not satisfy those tests so as to hold that Air India is the principal employer.

30. Having found no substance in any of the submissions made on behalf of the appellants, I do not find any merit in these appeals and they are dismissed accordingly, but without any order as to costs.

JUDGMENT

V. GOPALA GOWDA, J.

31. Leave granted.

32. I have gone through the judgment of my learned brother Judge in these civil appeals, in which my learned brother Judge has concurred with the impugned judgment. However, I am in respectful disagreement with the opinion of my learned brother and I am recording my reasons for the same.

These appeals have been filed by the appellants challenging the judgment and order dated 2nd May, 2011 passed in L.P.A. Nos.388 of 2010, 390 of 2010 and 391 of 2010 confirming the judgment and order dated 8th April, 2010 of the learned single Judge of the Delhi High Court passed in WP Nos.14178 of 2004, 14181/2004 and 14182 of 2004, wherein the learned single Judge has set aside the common award dated 5th May, 2004 of the Central Government Industrial Tribunal (for short 'CGIT') passed in Industrial Disputes case Nos. 97, 98 and 99 of 1996. The CGIT recorded that the concerned workmen of Chefair, a unit of Hotel Corporation of India (for short HCI) with which Air India had entered into a contract to provide canteen services at its establishment, are entitled to be treated as being employees of it and consequently held that they are entitled to the relief sought for by them. The said judgment of CGIT was set aside by the Division Bench of the Delhi High Court in LPA Nos.388 of 2010, 390 of 2010 and 391 of 2010 vide its judgment dated 2nd May, 2011 after adverting to certain relevant facts, legal contentions and cases like M.M.R. Khan & Ors. v. Union of India & Ors.[1], and some other decisions of this Court and concurred with the finding of facts and reasons recorded by the learned single Judge in setting aside the award and consequently dismissed the appeals of the concerned workmen. That is how these Civil Appeals are filed by the workmen urging various factual and legal contentions in support of their claims with a request to set aside the impugned judgments and orders of the Division Bench and the learned single Judge of the Delhi High Court in the aforesaid Letter Patent Appeals and the writ petitions.

33. Since my learned brother Judge has referred to certain facts and legal contentions to decide the points that arose for consideration of this Court, I also refer to certain relevant necessary facts and rival legal contentions urged on behalf of the parties with a view to answer the contentious points that would arise in these appeals to answer the same.

34. Three industrial disputes case Nos. 97, 98 and 99 of 1996 were registered by CGIT pursuant to the order of references made by the Central Government in the Ministry of Labour vide its order No.L-11012/23/96-IR (Coal-I) dated 23.10.96 for adjudication on the points of dispute referred to it in relation to the workmen mentioned in the respective orders of references made by it and in relation to other industrial disputes namely ID Case Nos. 107/96 and 108/96 which are individual cases of industrial disputes filed by the concerned workmen since their services

were illegally terminated by the employer Air India during pendency of the industrial disputes referred to supra in relation to the absorption of the services of the concerned workmen by the Management of Air India before the CGIT without obtaining the approval from the CGIT, despite the order dated 04.12.1996 passed by CGIT wherein an undertaking was given by the Management of Air India that neither it will change the contractor Chefair without permission of/intimation to the Tribunal nor will it take any action against the workmen listed in the reference order made to the CGIT for an adjudication of their dispute. Despite the same, the services of the concerned workmen in the Industrial disputes in case ID Nos.97, 98 and 99/1996 were terminated. The action of the Management of Air India in terminating the services of the concerned workmen in the complaint ID Nos. 107 and 108/1996 is in contravention of Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'I.D. Act'). Therefore, the complaints were filed by the said workmen under Section 33(A) of the I.D. Act to adjudicate the existing industrial dispute between the concerned workmen and the Management of Air India regarding their illegal order of termination during the pendency of the industrial disputes referred by the Central Government which are registered as reference Nos.97, 98 and 99 of 1996 with regard to the absorption of the services of the contract labour employees, employed by the HCI on behalf of M/s Air India and made them to work in the Chefair. The aforesaid canteen is the statutory canteen in terms of the definition of Section 46 of the Factories Act, according to the appellants herein and they requested the CGIT for answering the points of dispute which was referred to in the order of references made by the Central Government in ID Nos.97 to 99, to treat them as the deemed employees of the Management of Air India and also to set aside the orders of termination passed against individual concerned workmen and requested the CGIT to pass an order of reinstatement with all consequential benefits including the award of back-wages.

35. In support of their respective claims and counter claims on behalf of the workmen and the Management of Air India, they filed their statements respectively in the cases referred to supra before the CGIT. In the claim petition, the workmen contended that the canteen which is being run by the Air India through HCI through Chefair has engaged the concerned workmen in these cases as contract employees in various capacities and they have been working in the canteen run by the Management of Air India through Chefair ranging from 3 to 20 years on the date of references made by the Central Government to the CGIT which in turn is run by its subsidiary Company HCI. Delhi State Government in exercise of its power under Section 46 of the Factories Act, 1948 framed Rules 65 to 70 called Delhi Factories Rules of 1950 (hereinafter referred to as 'the Rules'). A

Notification was issued by the Lt. Governor of the Union Territory of Delhi under Rule 65(2) of the Rules stating that the Rules of the Factories Act shall apply to the factories specified in the Schedule to the said notification. In the Schedule to the notification, the description of the factory at serial No. 9- M/s. Air India Ground Services Deptt. IGI, Air Port Delhi (Engineering Unit) F.D.1725 is one of the specified factories, the same is marked as – Ex.P. 4 in the Industrial dispute cases before the CGIT.

36. Rule 65 states for providing canteen, Rule 66 speaks of Dining Hall, Rule 67 provides Equipment, Rule 68 for fixing the prices to be charged, Rule 69 deals with Accounts and Rule 70 deals with Managing Committee to manage the affairs of the statutory canteen. The relevant Rules will be adverted to in the reasoning portion of my judgment while answering the relevant contentious points that will be framed shortly.

37. Strong reliance was placed upon the Rules and the Notification referred to supra by the learned senior counsel Mr. Jayant Bhushan inter alia contending that the canteen is being run by the Air India through HCI by Chefair where the concerned workmen have been working in different capacities for number of years such as cook, ground cleaning staff, servicing, washing staff etc. etc.

> The HCI employed them on contract basis as canteen workers though they have been discharging their duties which are in perennial nature. Then action of the Management of Air India in employing the concerned workmen on contract basis is an unfair labour practice as defined under Section 2(ra) of the I.D. Act enumerated in the Vth Schedule to the Act, which provision was inserted by way of an amendment by Act No. 46 of 1982 w.e.f. 21.8.1984 at serial No. 10 to the Vth Schedule which states that "to employ workmen as casual or temporary workers and to continue them as such for years with the object to deprive them of the status and privileges of permanent workmen is an unfair labour practice on the part of the employer". It is further stated that Management of Air India has employed more than 2000 employees in its factory and therefore notification issued by the Lt. Governor of Delhi on 21st January, 1991 applying Rules 65 to 70 of Rules 1950 to the said establishment framed under Section 46 of the Factories Act will be applicable to the canteen in question run by the HCI on behalf of Air India. It is the case pleaded and proved before the CGIT by the concerned workmen and it has recorded the finding in this regard in their favour by placing reliance upon three judge bench decision of this Court in the cases of

M.M.R. Khan (supra), Parimal Chandra Raha & Ors. v. Life Insurance Corporation of India and Ors.[2], and another decision of this Court in Basti Sugar Mills Ltd. v. Ram Ujagar & Ors.[3] in support of the legal contention urged on behalf of the workmen that employees of statutory canteens i.e. canteens which are required to be compulsorily provided to its workmen in the factory as per Section 46 of the Factories Act are employees of the establishment not only for the purpose of Factories Act but also for all other purposes. In the case of Parimal Chandra Raha referred to supra, this Court has held that for canteen workers of contractor who runs the canteen, it must pass the relevant test to determine on the facts as to whether providing canteen to its workmen by a factory was obligatory on its part. In Basti Sugar Mills Ltd.'s case, this Court has held that the work of removal of press mud was given to the contractor and the workmen in that case were employed by the contractor to do that work, the contractor terminated their services on completion of the work. The stand taken in the said case by the establishment was that they had nothing to do with the workmen. The workmen in the case approached this Court for relief against the termination of their services. This Court held that the workmen were employed in the industry to do manual work for reward and therefore it is held that the Company was their employer, as the workmen were employed by the contractor with whom the Company had contracted in the course of conducting its business for execution of the said work of removal of the press mud which is ordinarily part of the industry. Further reliance was placed by the learned counsel upon the decision of this Court inUnion of India & Ors. v. M. Aslam & Ors.[4] wherein this Court has held that for the unit run canteens of Army, Navy and Air Forces, the employees of such canteens are entitled to service benefits as government servants. Finding of fact was recorded by the CGIT in favour of the concerned workmen while answering the points of dispute referred to it by the Central Government with reference to the factual legal aspects and evidence on record from the aforesaid cases. This finding is found fault with by the Single Judge and Division Bench of the Delhi High Court and they had set aside the finding recorded by CGIT. Strong reliance was placed by the Delhi High Court upon the plea taken by Air India and HCI with regard to the fact that though HCI is subsidiary Company of the Air India, it is governed by its own Memorandum and Articles of Association as existed in the Companies Act and is governed by the provisions of the said Act. HCI is an independent legal entity from that of the Air India. The learned single Judge while accepting the factual and legal contentions urged on behalf of Air India, has

referred to paragraph 17 of his judgment and stated with reference to the Memorandum and Articles of Association, and observed that the general management of business of HCI vests with its Board of Directors, no doubt, the same is subject to the directions, if any, that will be issued from time to time from Air India with regard to the finance and conduct of its business affairs. However, the composition of the Board of Directors of HCI is constituted by Air India in consultation with the Government of India. In view of the said reason, it cannot be said that the concerned contract employees employed by HCI to do work in the canteen are employees of Air India in the face of the first principle of Corporate law with reference to Salomon v. Salomon & Co. Ltd.[5], wherein it was held that Company is a person all together different from its shareholders though Air India is the sole holder of the shares of the HCI. The HCI is a legal entity independent of its shareholders with reference to Section 46 in Chapter V of the Factories Act under the heading "welfare". The mandatory provision is provided to maintain a canteen in the establishment, which is a measure for the welfare of the workers, the statutory obligation on the part of the industrial establishment to provide and maintain a canteen in the factory. If it is found that the operation of such canteen has been entrusted to such an expert, it cannot be said that the employees deployed by such expert in such canteen becomes employees of the factory/establishment. Further, it is held by him that HCI was not incorporated merely to run the canteen of Air India so as to keep the employees of the canteen maintained by it at arm's length from Air India. The HCI is a business entity on its own rights and no malafide have been established by the concerned workmen in the Management of Air India in entrusting the operation and management of its canteen to the HCI and no prejudice is shown to have been caused to the concerned workmen being the employees of the HCI instead of Air India, except that they may be entitled to a free flight once in a while from it, which they may not be entitled to get as workmen of the HCI. Therefore, he has held that it is hardly determinative of the matter in controversy and thereafter he has referred to the judgments of this Court in Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors.[6], Steel Authority of India Ltd. & Ors. v. National Union Waterfront Workers & Ors.[7], International Airport Authority of India v. International Air Cargo Workers' Union & Anr.[8], in support of his conclusion laid down by applying the test laid down in those cases to the fact situation and held that there is no relationship of employer and employee and hence no existing industrial dispute would arise within the meaning of Section 2(k) of the I.D. Act between the concerned workmen

and the Management of Air India. Therefore, he has quashed the award of the CGIT which was affirmed by the Division Bench of the Delhi High Court in the aforesaid L.P.As by accepting the reasons recorded by the learned single Judge and also after extracting certain relevant paragraphs from the decisions of this Court in the cases of M.M.R. Khan, Parimal Chandra Raha, Indian Petrochemicals Corporation Ltd., (all referred to supra) Hari Shanker Sharma and Ors. v. Artificial Limbs Manufacturing Corporation and Ors[9]. The Division Bench of Delhi High court has concurred with the finding and reasons recorded by the learned single Judge in the impugned judgment and dismissed the letter patent appeals of the concerned workmen. The correctness of the said judgment and order are impugned in these civil appeals by the concerned workmen reiterating their factual and legal contentions as has been adverted to before the CGIT and the High Court in the writ petition and the appeals. Therefore, the same need not be adverted to once again in this judgment with a view to avoid repetition.

38. It is contended by the learned senior counsel Mr. Jayant Bhushan on behalf of the concerned workmen, placing strong reliance upon Section 46 of the Factories Act and notification of the year 1991 referred to supra issued by Lt. Governor of the Union Territory of Delhi upon the Rules 65 to 70 of the Rules that the Management of Air India is enumerated at serial No.9 in the Schedule to the said notification. Therefore, the Management of Air India was required to provide a statutory canteen to its workmen in its industrial establishment and the learned senior counsel also placed strong reliance upon the Memorandum and Articles of Association of HCI particularly clause 33 in Chapter XIII to substantiate his contentions that the control and directions that will be issued from time to time with regard to running of the canteen and managing the canteen is on the Management of Air India to HCI wherein, the Management of Air India was the occupier. The learned senior counsel has further placed strong reliance upon the findings recorded by the CGIT in its award in answer to the points of disputes referred to it holding that the concerned workmen were employed by HCI to work in the statutory canteen of the Management of Air India and placed strong reliance upon the judgment of this Court in State of U.P. & Ors. v. Renusagar Power Co. & Ors.[10], which is followed by two other judgments of this Court in Delhi Development Authority v. Skipper Construction Co. (P.) Ltd. & Anr.[11], Kapila Hingorani v. State of Bihar[12], wherein this court has laid down the legal principles by following the judgment of Salomon v. Salomon (supra) with a view to find out as to whether the contract employment of the concerned workmen by

the HCI on behalf of the Management of Air India is a sham or a camouflage. The CGIT has pierced the veil with reference to the existing factual situation and found that the concerned workmen had been working in the statutory canteen required to be established and managed by the Management of the Air India as per Rule 65(2) of the Rules and the HCI is a subsidiary Company of the Air India as it holds 100% share holding and therefore, the Air India has got the control and supervision of its business under clause 33 of the Memorandum and Articles of Association. Therefore he has requested this Court to set aside the findings of fact recorded by the learned single judge, which are concurred with by the Division Bench in the impugned judgment and order as it is vitiated not only on account of erroneous finding for non consideration of the proved facts and legal evidence on record but also suffers from error of law as has been laid down by this Court in catena of cases referred to supra upon which the learned senior counsel has placed strong reliance in support of the case of the concerned workmen in these appeals.

39. Further he has placed strong reliance upon the judgment of this Court in M.M.R. Khan's case particularly paragraphs 25, 27 and 30 in support of the proposition of law wherein this Court has held that rules framed by the State Government of Delhi under Section 46 of the Factories Act are obligatory on the part of the Railway Administration to provide and maintain statutory canteen. In pursuant to the above rules and notifications, this Court has held that canteens were incidental and connected with the manufacturing process and is subject to the manufacturing process. The nature of the canteen is deemed to be the statutory, since it is a necessary concomitant of the manufacturing activity and further railway establishment has recognized the obligation of the Railway Administration by the Act which makes provision for meeting the cost of the canteen though Railway Administration to employ any staff committee or cooperative society for the management of the canteen. The legal responsibility for the proper management of such canteen rests not with such agency but solely with the Railway Administration. With reference to paragraph 27 of the said decision and also having regard to the undisputed fact of the case in hand that the Chefair unit of the HCI in which canteen is being run is situated in the premises of the Air India and that it is also the statutory duty of the Air India under Rules 65(2) and 65(4) of the Delhi Factories Rules, that the canteen building should be situated not less than fifty feet from any latrine, urinals, boiler house, coal stacks, ash dumps and any other source of dust, smoke or obnoxious fumes etc. and that the manager of the factory shall submit for the approval of Chief Inspector of plans and site plan as provided under sub- rule (3) of Rule 65 and further that the construction of the canteen building is in accordance with Rules 65, 66, 67 and 70 which would

clearly go to show that the said canteen is established by Air India to discharge its welfare statutory obligation to its workmen/employees as provided under the Factories Act and Rules framed under by the State government of Delhi. Also, the managing committee constituted under the Rules should consult from time to time regarding the quality and quantity of food stuff to be prepared and served in the canteen to its workmen/employees and for other purposes. Therefore, he has contended that the legal principles laid down by this Court in M.M.R. Khan's case with all fours are applicable to the present fact situation. Hence, it is contended by the learned senior counsel that the findings and reasons recorded by the learned single Judge and the Division Bench in the impugned judgments after setting aside the finding of facts recorded in the award on this aspect of the matter by CGIT in answer to the points referred to it is not only erroneous but also suffers from error in law and is liable to be set aside and the common award passed by CGIT should be restored.

40. Another ground urged by the learned senior counsel is that the High Court failed to appreciate the fact that the canteen has been in existence since 1945. It is a deemed statutory canteen under Section 46 of the Factories Act vide notification of 1991 referred to supra. Therefore, the CGIT has come to the right conclusion and held that the canteen is incidental to and running the canteen and the work of the workmen is subject to the supervision and control of Air India. It is further contended that the Division Bench of the Delhi High Court has erroneously applied the judgments in Indian Petrochemicals Corporation Ltd., Parimal Chandra Raha and referred to para 22 of M.M.R. Khan's case, Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of Tamil Nadu & Ors.[13], Haldia Refinery Canteen Employees Union & Ors. v. Indian Oil Corporation & Ors.[14], and Hari Shanker Sharma (supra) to set aside the findings of the CGIT and concurred with the finding of learned single Judge. Therefore, the learned senior counsel has urged this Court for quashing of the impugned judgments of both the learned single judge and the Division Bench since the same are not only based on erroneous reasoning but also suffer from error in law in view of the clear pronouncement of law laid down by this Court in the three Judge Bench decision of this Court in the case of M.M.R. Khan (supra) on the question of providing and maintaining statutory canteen to its workmen/employees in support of his contentions that the employment of contract employees by Air India through HCI to run the statutory canteen in its premises is a sham and camouflage to deprive the legitimate statutory and fundamental rights of the concerned workmen. Therefore, he submits that the CGIT was justified in lifting the veil or piercing the veil from the nature of employment to provide and maintain the statutory canteen by Air India through

HCI and the finding by CGIT is supported by plethora of judgments of this Court referred to supra. It is further submitted by him that there is direct control and supervision on the functioning of the canteen and its employees by Air India being a statutory canteen which is required to be maintained by it in conformity with Rules 65 to 70 of the Delhi Factories Rules 1950 and under Section 46 of the Factories Act and notification has been rightly issued enlisting the Management of Air India in the Schedule to the said notification for providing and maintaining the statutory canteen which notification has not been questioned by Air India. Therefore, the decisions of the Supreme Court referred to supra regarding piercing the veil for the purpose of finding out the real facts and to give effect to the object and intendment of the statute while recruiting the workmen on contract basis which is in violation of the statutory provisions of the Industrial Disputes Act has been rightly arrived at by the CGIT on proper appreciation of pleadings and evidence on record to answer the points in the affirmative. Therefore, the learned senior counsel has requested this Court to interfere with the impugned judgments and for restoration of the award passed by the CGIT.

41. Mr. C.U. Singh, learned senior counsel for the respondent sought to justify the impugned judgment of the Division Bench of the Delhi High Court in affirming the judgment of the learned single Judge by placing strong reliance upon the decisions of this Court in Dena Nath & Ors. v. National Fertilisers & Ors.[15], and Steel Authority of India (supra). It is contended by the learned senior counsel for the respondent that the Division Bench after adverting to the rival legal contentions has elaborately referred to the decision of M.M.R. Khan's case and the various other decisions referred to in the impugned judgment rightly concurred with the findings and reasons recorded by the learned single judge in reversing the findings and reasons recorded in the Award by the CGIT on the points of dispute referred to it by the Central Government for its adjudication. On appreciation of facts pleaded and evidence on record, keeping in view the fact that the concerned workmen are employed in the canteen by the HCI which is the statutory Corporation, therefore, the Management of Air India has no power of recruitment, disciplinary control on the employees and no control and supervision on functioning of the workmen of the canteen. Therefore, the High Court has rightly arrived at the conclusion and held that there is no relationship of master and servant or employer and employee between the concerned workmen of the canteen and the Air India. The HCI is an independent legal entity which has been carrying on with its business strictly in conformity with the Memorandum and Articles of Association and therefore he contends that there is no need for this Court to interfere with the impugned judgments. Further, he has urged that the canteen in which the concerned workmen

were employed by HCI is not a statutory canteen and the finding recorded by the CGIT on the points of dispute by placing reliance upon the Notification of 1991 and that Air India has employed more than 2000 employees and that the said canteen is the statutory canteen and that there is an obligation on the part of the Management of Air India to cater the food stuff to its workers and employees, is an erroneous finding and also suffers from error in law. Therefore, the said finding has been rightly set aside by the learned single Judge, the same is affirmed by the Division Bench of the Delhi High Court by concurring with decision of the learned single judge. Hence, he further contends that there is no questions of law much less the questions of law framed by the workmen in the appeals involved which require to be considered and answered by this Court in exercise of its jurisdiction. Hence he has prayed for dismissal of these appeals.

42. On the basis of rival factual and legal contentions, the following questions of law would arise for consideration:

1) Whether the canteen which is run through HCI from its Chefair unit by the Management of Air India, is the statutory canteen of it under Rules 65 to 70 of the Delhi Factories Rules of 1950?

2) Whether engaging the contract workmen in the canteen situated in the premises of Air India through HCI amounts to sham and camouflage by Air India to deprive the legitimate statutory and fundamental rights of the concerned workmen as provided under the provisions of the Industrial Disputes Act and the Constitution and can this Court pierce the veil to find out and ascertain the real and correct facts as to whether they are the workmen of Air India?

3) Whether the findings and reasons recorded by the CGIT on the points of disputes in the common award dated 5th May, 2004 in ID Nos. 97, 98, 99, 107 and 108 of 1996 are legal and valid?

4) Whether the findings recorded by the learned single Judge in CWP No.14178, 14181 and 14182 of 2004 which are concurred with by the Division Bench in LPA Nos.388, 390 and 391 of 2010 suffer from erroneous reasoning and error in law and warrant interference by this Court?

5) What award the concerned workmen are entitled to?

Answer to Point Nos. 1 and 2:

43. First two points are answered together by assigning the following reasons since they are inter-related. At the very outset it is critically useful to place on record certain relevant questions of fact which are on record and are not in dispute with a view to determine the nature of dispute between the parties that is referred to by the CGIT for adjudication in exercise of its power and examine the rights and obligations of the parties to find out as to what relief the concerned workmen in the appeals are entitled to, keeping in view the provisions of Factories Act read with the Delhi Factories Rules of 1950, The Contract Labour (Regulations and Abolition) Act, 1970 and the Industrial Disputes Act, 1947.

44. It is an undisputed fact that the Labour Department vide its notification dated 21st January, 1991 issued in pursuance of the provisions of sub-rule (1) of Rule 65 of the Delhi Factories Rules wherein Lt. Governor of Union Territory of Delhi directed that Rules 65 to 70 of the Rules which shall apply to the factories which are mentioned in the Schedule to the said Notification at serial No.9 – M/s. Air India Ground Services Deptt. IGI, Air Port Delhi (Engineering Unit) F.D.1725 is enlisted. In view of the aforesaid notification, the Air India is statutorily required to maintain and provide a canteen in its factory premises to cater the food stuff to its employees/ workmen. It is the case of the concerned workmen that there are 2000 workmen working in the establishment of Air India which plea is accepted by the CGIT and the finding of fact is recorded on the basis of evidence on record by it, particularly, the admission made by the witness examined on behalf of Air India before CGIT.

45. Rules 65 to 70 of the Rules framed by the Union Territory of Delhi under Section 46 of the Factories Act are applicable in respect of Air India as it is enlisted in the Schedule to the Notification issued by the Labour Department referred to supra, to provide a statutory canteen by a factory where 250 workmen are employed by it. The case of the concerned workmen in the industrial disputes raised by them is that Air India has employed more than 2000 workmen and on the basis of the pleadings and evidence on record has proved the points of dispute referred to it in the Industrial disputes referred to supra. The Air India has now challenged the applicability of the Notification and the Rules framed by the Delhi Union Territory under Section 46 of the Factories Act. The case pleaded by the workmen on the other hand is that they are working in Chefair which belongs to the HCI which is wholly owned subsidiary Company of Air India with expertise in food preparation and catering to the employees/workmen and traveling passengers

in their domestic and international Air Crafts, and it is bound by its Memorandum and Articles of Association, which is comprehensive enough to regulate the conduct of its business for Air India including the nature of employer and employee relationship. The service conditions prevailing in the HCI vis-a-vis its employees are comparable to the relation between the workers and Air India and Chefair in terms of monetary benefits and the same are largely similar. The cost of providing the canteen services to its employees/workmen was provided by Air India on the basis of 'per employee subsidy'. The CGIT, with reference to Factories Rules and Notification referred to supra has held that Air India has to provide food stuff to its employees/workmen at the subsidiary rate. The pleadings of Air India in its counter statement filed before the CGIT are cleverly designed and drafted stating that there were not more than 250 employees/workmen of Air India in order to apply the relevant provisions of the Factories Act and Rules in relation to a statutory canteen run by HCI through Chefair and therefore the notification is not applicable to the Air India. The said pleadings of M/s Air India on a jurisdictional fact was demolished by the concerned workmen of the canteen by cross examining the witness of Air India, who is its designated officer. He has stated in his evidence unequivocally that the actual number of workmen/employees availing the canteen facilities in the factory premises were in the range of 2000 persons - a figure which was at least not less than eight times the number contained in the original pleadings of Air India. Air India, in spite of being the statutory corporation did not consider it necessary to come to the court with clean hands but on the other hand, it has suppressed relevant material fact regarding the number of employees/workmen working in its establishment. Therefore, the CGIT, on the basis of admission made by the witness examined on behalf of the Air India as MW1, has recorded the finding of fact holding that a total figure of 2000 employees/workmen are working in its establishment and they are availing the canteen facilities, which is run through the HCI from its Chefair unit in the premise of Air India. The wholly owned subsidiary corporation- HCI has adopted unfair labour practice as defined under Section 2(ra) of the I.D. Act at serial No. 10 entry in the Vth Schedule under the heading of the Unfair Labour Practices practiced by the employer, by keeping workers in employment in the canteen for 40 days at a time and thereafter employing them on contract basis after a break though the nature of work to be performed by them in the canteen have been perennial in nature, for the reason that they were required to provide and maintain the statutory canteen in the factory premises to cater the food stuff to its employees/ workmen. Therefore, they have committed a statutory offence punishable under the provision of Section 25U of the I.D. Act for employing the concerned workmen on contract basis with a break in their service which constitutes unfair labour practice and is

prohibited under Section 25T of the I.D. Act either by the employer or the workmen under the above Schedule to the I.D. Act. The concerned workmen got the Industrial Disputes referred to the CGIT for adjudication on the points of the dispute referred to it by the Central Government in the orders of reference who are covered in the award passed by the CGIT. They have been discharging the permanent nature of work in different capacities working continuously ranging from 3 years to 20 years with an artificial break after 40 days of employment by the employer with an oblique motive to deprive them of their legitimate statutory right of regularizing them as permanent workmen in the statutory canteen which is being run by the Air India in its factory premises through HCI from its Chefair unit.

46. Mr. Jayant Bhushan, the learned senior counsel on behalf of the appellants-concerned workmen with reference to the pleadings of the parties and the evidence on record, has rightly placed strong reliance upon the Notification of 1991 issued by the Labour Department enlisting Air India in the Schedule to the Notification at serial No.9 to provide a statutory canteen to the employees/ workmen of Air India which is being run through HCI from its Chefair unit on its behalf which is its subsidiary company as it has got 100% share holding as per Memorandum and Articles of Association. On the basis of pleadings and evidence on record, the learned senior counsel substantiated the finding of fact recorded by the CGIT, wherein it has held that the concerned workmen are employed by Air India through its subsidiary Corporation- HCI, which is a sham contract and this veil is required to be pierced to find out the real facts involved in the case as to whether they are working for Air India or the HCI. The learned senior counsel has rightly placed strong reliance upon the decision of three Judge Bench decision of this Court in Hussainbhai, Calicut v. Alath Factory Thezhilali Union, Kozhikode and Ors.[16], the relevant paragraph of which reads as under:

> "5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the

> immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances." (Emphasis laid by this Court)

47. He has further very rightly placed reliance upon the three Judge Bench decision of this Court in the case of Kanpur Suraksha Karamchari Union v. Union of India & Ors.[17] wherein this Court has held with reference to interpreting Section 2(n) and Section 46 of the Factories Act read with Rules of UP Factories Rules 1950 - Rule 1968, Section 7 and after adverting to the Government of India Notification order No. 18/(1)80/D(JCM) dated 25th July, 1981 accorded sanction to treat all employees of the canteen established in defence industrial establishments under Section 46 of the Act as the government employees with immediate effect and further made observations in the said case that in certain cases, canteens are run by either contractors or co-operative societies or some other bodies.

48. The legal question that arose for consideration of this Court in that case was whether the services of the workers, before they were declared to be government employees should be taken into consideration for purposes of calculating their pension dues on retirement. E.S. Venkataramiah J., as he then was, in Kanpur Suraksha Karamchari Union (supra), speaking for the Court observed as under:

> "4. The Act is applicable both to the factories run by government and the factories run by other private companies, organisations, persons etc. It was enacted for the purpose of improving the conditions of the workers in the factories. Section 46 of the Act reads thus:
>
> '46. Canteens.—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for—
>
> (a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (c).'

5……The expression "occupier" of a factory is defined in Section 2(n) of the Act as the person who has ultimate control over the affairs of the factory, provided that (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier; (ii) in the case of a company, any one of the directors shall be deemed to be the occupier; and (iii) in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier. Under clause (iii) of Section 2(n) of the Act, in the case of a factory owned or controlled by the Central Government, the person or persons appointed to manage the affairs of the factory by the Central Government shall be deemed to be the occupier. The person so appointed to manage the affairs of the factory of the Central Government is under an obligation to comply with Section 46 of the Act by establishing a canteen for the benefit of workers. The Canteen Managing Committee, as stated above, has to be established under Rule 68 of the Rules to manage the affairs of the canteen. The functions of the Canteen Managing Committee are merely advisory. It is appointed by the Manager appointed under Section 7 of the Act and the Manager is required to consult the Canteen Managing Committee from time to time as to the quality and quantity of foodstuff served in the canteen, the

arrangement of the menus, times of meals in the canteen etc. The food, drink and other items served in the canteen are required to be sold on "no profit" basis and the prices charged are subject to the approval of the Managing Committee. The accounts pertaining to a canteen in a government factory may be audited by its departmental Accounts Officers."

Rule 67, sub-rules (1), (2) and (3), is traceable in this case which reads thus:

"67. Equipment:

5) There shall be provided and maintained sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for efficient running of the canteen. Suitable clean clothes for employees serving in the canteen shall also be provided and maintained.

6) The furniture utensils and other equipment shall be maintained in a class and hygienic condition. A service counter, if provided, shall have a top of smooth and impervious material. Suitable facilities including an adequate supply of hot water shall be provided for the cleaning of utensils and equipment.

7) Where the canteen is managed by a co-operative society, registered under the Bombay Co-operative Societies Act, 1952, as in force in the Union Territory of Delhi, the occupier shall provide and maintain the equipment as required under sub-rule (1) for such canteen."

49. In the case in hand, it is an undisputed fact that the building for running the canteen is situated in the Air India premises. It has got statutory obligation under aforesaid rules read with the Notification of 1991 referred to supra to provide for necessary furniture and infrastructure to run the statutory canteen in the premises of Air India. In the case of Kanpur Suraksha Karmachari Union referred to supra, it was urged on behalf of the management that before the government orders were passed, the number of years of service rendered by the workmen under the managing Committee before government officially absorbed them, could not be counted as years of service rendered by them. The Court had rejected the said contention urged on behalf of the management and held that even though the management of the canteen may be by the Managing Committee, the workers were employees of the factory and their services for the purposes of pension would have to be calculated with effect from the date they started working in the canteen.

Further, in the said case on the basis of pleadings and legal contentions urged on behalf of the parties it is held that the management of the canteen could be with the certain committee for determining the rights of the workers, it was the occupier of the factory who is responsible for them. The said conclusion was arrived at by this Court in that case after noticing the rights conferred on the workers though the interpretation was not confined to the provisions of the Factories Act but also regarding retirement benefits payable to the workmen employed in the canteen in the said case. It was further observed by this Court that one test which is derived is in relation to the question as to who is the occupier of the relevant factory and whose responsibility is it to see whether the canteen is provided and is running in accordance with the provisions of the Factories Act?

50. Learned senior counsel on behalf of the workmen has also placed reliance upon another judgment of this Court in Parimal Chandra Raha (supra) upon which the CGIT placed reliance in arriving at the right conclusion to hold that the concerned workmen are entitled for absorption. In the above said case, this Court held that the appellant workmen working in the canteens at different offices of LIC across the country were like regular employees of the LIC as the canteens are run and managed by different entities like Canteen Committees, Cooperative Society of the employees and even contractors and directions about how to run the canteen were issued by the LIC. In the said case, the infrastructure, the premises, the furniture, electricity, water etc. were supplied by the LIC. The working hours were also fixed by the LIC. Though LIC was obviously not a factory, and the canteen established and run by it was not a statutory canteen, still this Court held that whether the canteen was to be run under an obligatory provision of the Factories Act or under a non-statutory obligation to provide a canteen, the position is the same and that the canteen workers become a part of the establishment. Therefore, in the said case it is held that the workmen were entitled to the same wages as Class-IV employees of the LIC.

51. In another decision rendered by three judge Bench of this Court in the M.M.R.Khan's case, demands were made by the canteen workers in many manufacturing establishments like textiles, sugar mills, rope factories and also in service establishments like RBI, LIC, Railways and Airways for establishment of a statutory canteen where there are more than 250 workmen working in such factory. In public sector undertaking like Airways, there are different types of situations. One of them is the statutory canteen which must be provided by such Industrial establishment which is a factory in terms of the definition of the Factories Act, since manufacturing activities are involved. In the instant case the Air India falls

under the category of factory where the occupier is defined under Section 2(n) of the Factories Act and therefore, it is duty bound to provide a canteen to its employees/ workmen which is known as the statutory canteen. It is the statutory obligation on the part of Air India to provide a statutory canteen under the provisions of Factories Act and Rules and therefore, it is one more strong circumstance in favour of the concerned workmen for regularization in their services as permanent workmen by the Air India. The most important legal aspect of the case which is required to be considered by me in this case is that the law stipulates statutory obligation on the part of Air India to provide and maintain statutory canteen to cater the food stuff to its employees/ workmen as per notification referred to supra. Therefore, the canteen facility to be provided to the employees/ workmen cannot be withdrawn by the owner of the establishment, namely, the principal employer. Therefore, the necessary corollary to this condition is the fact that in such a situation the nature of employment involved in the canteen in question is perennial in nature. The need for workers to run the canteen by the Management of Air India is permanent. The vacancies of various posts in the canteen are permanent in nature.

52. From the review of case law on this aspect, two kinds of situations arise, one in which the contractor is changed but not the workers employed. In the Parimal Chandra Raha and the Indian Petrochemicals cases referred to supra, such were the situations, upon which strong reliance is placed by the learned single Judge and the Division Bench of the High Court to set aside the finding of fact recorded by the CGIT in its award on the points of disputes referred to it. This Court has taken a note of this relevant fact and considered the same in the instant case to decide as to whether the canteen workers should be regularized by the principal employer? The other situation is where the contractor is changed and along with him the workers also get the boot. The effect of this situation appears that the workers have been temporary. In reality they are kept temporary in order to perpetuate ‘unfair labour practice by the employer, which is not permissible in view of Section 25T of the I.D. Act read with entry at Serial No. 10 in the Vth Schedule of the I.D. Act regarding unfair labour practices on the part of the employer. In the case in hand, I hold that Air India is the principal employer and Chefair - an unit under HCI is the contractor, on the basis of the pleadings of the parties and law laid down by this Court referred to supra in the earlier paragraph of this judgment. The CGIT has rightly arrived at the finding that Chefair is the unit of HCI which renews the contract of canteen workers every forty days. Unfortunately, the said workers, have been continued as contract workers in the canteen though they have completed 240 days of continuous service in a year as defined under Section 25B of the I.D. Act

which action of the Air India is unfair labour practice and is prohibited under Section 25T of the I.D. Act. In spite of statutory prohibition of employing the concerned workmen in the canteen on contract basis in permanent nature of work, the Chefair - a unit of HCI and Air India have indulged in unfair labour practices as defined under Section 2(ra) read with Section 25T and the Vth Schedule of the I.D. Act, with a deliberate intention to deprive the statutory rights of the concerned workmen which is a glaring patent illegality committed by them for which they are liable to be punished under Section 25U of the I.D. Act read with the Rules.

53. If the case pleaded by Air India and HCI is accepted by the single Judge and the Division Bench of the High Court, it amounts to giving a reward to Air India, who is the principal employer. It also amounts to holding that the concerned workmen are contract employees of the contractor and they are not put in the continuous service which amounts to conferring reward upon the HCI and AIR India who have committed illegality. Both the learned single Judge and the Division Bench of the High Court have erroneously accepted the case pleaded by Air India and HCI which suffers from error in law as it goes against the statutory provisions of the Factories Act, Rules and the I.D. Act. The concerned workmen who are working in the canteen at the relevant time have been working in the vacancies which are permanent in nature. Therefore, they are required to be regularized by the principal employer as permanent workmen and they are also entitled to the consequential benefits since they have rendered their services for more than 3 to 20 years continuously saving the artificial breaks imposed on them by the employer from time to time to deprive them from regularization as permanent employees of the establishment as has been held by the CGIT in its award by accepting the claim of the workmen.

54. Further, it is clear from the Rules of 1950 and the Notification of 1991 referred to supra that Air India is the occupier under Section 2(n) of the Factories Act and it must provide and maintain a statutory canteen for its employees/ workmen. The vacancies in various posts that exist for canteen workers are permanent in nature but the Management of HCI on behalf of Air India has continued them as contract workers for a long period with a break after 40 days, which is an unfair labour practice on their part though it is prohibited under Section 25T of the I.D. Act. The temporary rotation of concerned workers in the vacancies of the canteen by the HCI, which is an instrumentality of the state is to countenance a situation where two statutory entities of the above nature collude together to perpetuate ‘unfair labour practices’ as defined under Section 2(ra) which is enumerated at serial no. 10 under the heading of ‘unfair labour practice’ on the part of the employer in the

Vth Schedule to the I.D. Act. Therefore, this Court is bound to ensure the implementation of all relevant laws, especially those enacted by the Legislature to fulfil the constitutional obligations under the Directive Principles of State Policy and bring this unholy alliance between Air India and HCI to an end by declaring the canteen workers as employees of the principal employer.

55. The M.M.R. Khan's case referred to supra, fully supports the finding recorded by the CGIT on the points of dispute in favour of the concerned workmen by directing the Air India to regularize them as canteen workers. At Para 25 of the said judgment the observations made by this Court which are very relevant for our purpose read thus:

> "25. Since in terms of the Rules made by the State Governments under Section 46 of the Act, it is obligatory on the railway administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the railway Administration created by the Act and as pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the railway administration may employ anyone such as a staff committee or a co-operative society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the railway administration. If the management of the canteen is handed over to a consumer cooperative society the bye-laws of such society have to be amended suitably to provide for an overall control by the railway administration."

56. Before applying the legal principles laid down in the above paragraph of the case to the case in hand, it is pertinent to note that at the very outset three kinds of canteens exist in the Railways. They are: (i) Statutory canteens as required under Section 46 of the Factories Act, 1948 where more than 250 employees are working, (ii) Non-statutory non- recognized canteens which employ 250 or less than 250 employees and hence there is no statutory obligation on the part of the employer to maintain them, where workers exceed hundred and such canteens are set up with prior approval of the Railway Board, and (iii) Non-Statutory non-

recognized canteens where 100 or less than hundred workers work and are set up without prior approval of the Railway Board.

57. In the decision of this Court in M.M.R. Khan(supra), the workers engaged in the first and second category of canteens mentioned above were treated as Railway employees after considering the relevant facts and statutory provisions of the Factories Act and the Rules. Thus, this Court held that the workmen would be entitled to all service conditions prescribed for them under relevant rules/orders. The relevant paragraph from the said decision reads as under:

> ”30. While discussing above the contention that the employees in the statutory canteens cannot be treated as railway employees even for the purposes of the said Act, we have referred to the various developments, and documents on record including the court decisions. It is not necessary to repeat them here. In view of the same, the contention advanced by Mr Ramaswamy that the railway administration is engaged in varied welfare activities, and the employees engaged in these activities will also have to be treated as railway employees, in case, the canteen employees are 2recognized as railway employees does not appeal to us. We express no opinion on the subject as to whether the employees engaged in other welfare activities will or will not be entitled to the status of the railway employees, since neither they nor the facts pertaining to them are before us. Our conclusion that the employees in the statutory canteens are entitled to succeed in their claim is based purely on facts peculiar to them as discussed above. If by virtue of all these facts they are entitled to the status of railway employees and they cannot be deprived of that status merely because some other employees similarly or dissimilarly situated may also claim the same status. The argument to say the least can only be described as one in terrorem, and as any other argument of the kind has to be disregarded.”
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> (Emphasis laid by the Court)

58. I have carefully analysed the law enunciated by this Court in M.M.R. Khan’s case which throws interesting light on the history of the canteen workers’ litigation which I have carefully considered and applied the legal principle laid down in that case to the fact situation of the case in hand. The canteen workers of the canteen of Railways in Kharagpur approached the High Court of Calcutta praying that they be recognized as Railway workers and that all service conditions available to railway workers be made available to them. The learned single Judge dismissed the

petition. The Division Bench directed the respondents to recognize the workers as Railway employees but rejected their plea for similar service conditions. The matter came before this Court and the Court was inclined to agree with the Division Bench decision of the Calcutta High Court and left it open to the Union of India. The railway board acted on the initiative of this Court and declared that all Kharagpur canteen workers, soon followed by all statutory canteen workers across India would be deemed railway workers, but governed by their earlier service conditions. The prime mover therefore was not the Railway Establishment Manual (REM) but a judicial interpretation clubbed with judicial nudging, to achieve the constitutional goals for canteen workers. Therefore the contention urged by Mr. C.U. Singh, learned senior counsel on behalf of Air India that the decision rendered by this Court in M.M.R. Khan's case is distinguishable from the facts of the instant case, as this Court placed reliance upon the REM and the circulars issued by the Railway Board in the above referred case is wholly untenable in law, for the reason that REM is also invoked by the Railways. I have to state that this Court has not given relief to railway canteen workers because of the REM. On the contrary, it is the statutory status of one type of canteen that was the prime mover, not only for workers to claim their rights, but also for the railways to find a basis for classification and then create a suitable administrative system to govern all kinds of canteen workers using a reasonable basis for classification. Indeed the distinguishing feature adopted by the Railways in the above referred case is primarily the one provided by the Factories Act and the Rules. The relevant fact has been duly recognized by this Court in the aforesaid case without in any way watering down the importance of a statutory canteen to be provided to the employees/ workmen by the occupier of a factory. The learned single Judge and Division Bench have unjustly refused the claim of the canteen workmen by accepting the untenable arguments advanced by the learned senior counsel on behalf of the Air India that the canteen run through HCI from Chefair is not the statutory canteen and Air India is not the principal employer. This conclusion is not only erroneous but is also contrary to the law laid down by this Court in the cases referred to supra which are binding upon it.

59. The presence of a statutory obligation on the part of Air India to run a canteen must always be seen as one more strong circumstance for me to determine the wider question of regularization of the concerned workmen involved in this case. In Indian Petrochemicals Corpn.'s case, referred to supra we noticed the facts of that case which are quite similar to the case in hand. This Court was greatly influenced in determinative way of the finding of fact and recorded that the workers were in continuous employment in the canteen for a considerable length of

time. The underlying test is what is the nature of employment of the concerned workmen in the case in hand? Is it a temporary or casual vacancy or is it perennial and permanent in nature? The answer to the aforesaid queries by me is that in all statutory canteens, the nature of employment, of vacancies, is indeed of a permanent nature and those who deploy the workmen on contract basis to discharge statutory duties of an employer amounts to unfair labour practice. In the nature of rotational hire and fire, policy adopted by the employer must not be rewarded for the illegalities perpetuated by them. This is more so when the principal employer is a statutory corporation coupled with the fact that the contractor also is one such entity and the two should not be allowed to continue their unfair labour practices to employ the workmen on contract basis in the canteen to discharge the statutory duty by the occupier to provide and maintain a statutory canteen for its employees/workmen in its factory. Both Air India and HCI have colluded with each other to perpetuate unfair labour practices by engaging the concerned workmen in the statutory canteen of the principal employer- Air India.

60. Another important angle is examined by me in relation to the nature of test to be used to determine employment relations between the parties. Classically jurists like Salmond and others while developing the jurisprudence relating to Torts have laid down the test to determine the relationships between ‘master and servant’. In such situations the predominant test deployed was the test of control and supervision. It is needless to state that post constitutional jurisprudence in India must no longer be allowing practice of the traditional master and servant relationship but should be facilitating employer-employee relationships mediated by constitutional jurisprudence which is relevant to the area of labour law jurisprudence in our country in the interest of maintaining industrial peace and harmony which is in larger public interest.

61. Further there has been considerable discussion in the area of determining the relevant test relating to the jurisprudence of employer- employee relationship. Sometimes, we have fallen back on the old principles of master and servant and quite often when we find that these were not capable of delivering justice to the workers keeping with the principles contained in our Directive Principles of State Policy as enshrined in Part IV of the Constitution, this Court has taken note of this difficult situation and has devised new tests to meet the challenges of the new times.

62. That is why the legal principle has been enunciated by this Court right from the Hussainbhai Calicut, M.M.R. Khan, Parimal Chandra Raha to Harjinder Singh v.

Punjab State Warehousing Corporation[18] establishing the trend of healthy constitutional jurisprudence and its application to labour law keeping in mind the basic feature of the constitution namely to render social justice to the weaker sections of the society as has been held by this Court in Kesvananda Bharati v. State of Kerala[19]. The concept of social justice has been vividly explained in the case of Harjinder Singh, the relevant paragraph of which is extracted hereunder:

> "30. Of late, there has been a visible shift in the courts' approach in dealing with the cases involving the interpretation of social welfare legislations. The attractive mantras of globalisation and liberalisation are fast becoming the raison d'être of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial and unorganised workers. In large number of cases like the present one, relief has been denied to the employees falling in the category of workmen, who are illegally retrenched from service by creating by- lanes and side-lanes in the jurisprudence developed by this Court in three decades. The stock plea raised by the public employer in such cases is that the initial employment/engagement of the workman/employee was contrary to some or the other statute or that reinstatement of the workman will put unbearable burden on the financial health of the establishment. The courts have readily accepted such plea unmindful of the accountability of the wrong doer and indirectly punished the tiny beneficiary of the wrong ignoring the fact that he may have continued in the employment for years together and that micro wages earned by him may be the only source of his livelihood."

63. Courts in this country have been faced with the problem to resolve the dilemma as to who is really independent contractor and who is not? In the light of the Constitution Bench decision in Steel Authority of India's case (supra) on the subject, the crucial test is to determine whether the nature of the contractual relationship between the parties that is juristically introduced is a genuine one or a sham contract. It must be noted that employers and their organizations and indeed all parties to labour litigation keep close watch on the evolving jurisprudence and tailor legal agreement and paper contracts accordingly to suit the purpose of finding the cheapest and most exploitable labour with honourable exceptions as we have seen in the case of the railway management. This craze for facilitating 'flexible labour' which is another phrase for 'hire and fire' deserves no constitutional sympathy.

64. Two broad judicial approaches have manifested themselves in the above background - one that responds to constitutional jurisprudence, as pointed out in Harjinder Singh's case (supra) and the other that abides by the new dogmas of globalisation and liberalisation. It is my considered view that I must abide by the former jurisprudence keeping in view the mandate we find in the judgments of this Court referred to supra.

65. The test which I come across is almost universal in its application to address the wide range of fact situations which has been discussed by me in this judgment. In the case of Hussainbhai (supra), this Court has held that the test of economic control in contrast to the test of control and supervision is the test to ascertain the employer-employee relationship. I am inclined to apply the above test to the fact situation of the case in hand to determine the fact as to whether a genuine contract or a sham contract exists between Air India and the Hotel Corporation of India. Indeed if I pierce the veil of legal appearances that is contained in the contractual arrangement between the two public sector corporations named above, I must come to the conclusion that what I see is a sham contract between them behind which many unfair labour practices like the 40 days contract of employment of the concerned workmen in the canteen has been perpetuated by them in order to deny permanent employment to the workmen in the canteen which is of permanent and statutory in nature and therefore carries with it permanent vacancies.

66. The learned senior counsel on behalf of Air India, placing reliance upon the decision of this Court referred to supra urged that the concerned workmen in the canteen are 'workmen' only for the purpose of Factories Act. I disagree with the said contention and the view point for the reason that the same workers are also 'workers' as defined under Section 2(s) of the I.D. Act and permanently keeping them on a temporary status is against entries at serial numbers 5 and 10 of the Vth Schedule of the I.D. Act pertains to "Unfair Labour Practices" under the I.D. Act which prohibits employers from committing such illegalities, for which the statutory penal action is prescribed under Section 25U of the I.D. Act on such persons. The existing practice that is followed by either the Hotel Corporation of India or Air India independent of each other or in collusion thereof is unbecoming of a model employer. Interestingly, this position would remain the same irrespective of whether the canteen worker is an employee of the 'independent contractor' or the 'principal employer'.

67. Further question is whether the above two legal entities are independent of each other or not, has become central focus to stay within the confines of the test of

'control and supervision'. I am prompted to find out whether the wholly owned subsidiary, the HCI is acting at the behest of Air India and if so to what extent. If, however, I have to apply the other tests already laid down by this Court as, I propose to do in this case in Hussainbhai's case, then the independence of the separate legal personalities and the interpretation made in Salomon v. Salomon, on which the learned single judge relies, pales into insignificance. The relevant paragraph reads as under:

> "Then, if the company was a real company, fulfilling all the requirements of the Legislature, it must be treated as a company, as an entity, consisting indeed of certain corporators, but a distinct and independent corporation. The Court of Appeal seem to treat the company sometimes as substantial and sometimes as shadowy and unreal: it must be one or the other, it cannot be both. A Court cannot impose conditions not imposed by the Legislature, and say that the shareholders must not be related to each other, or that they must hold more than one share each. There is nothing to prevent one shareholder or all the shareholders holding the shares in trust for some one person. What is prohibited is the entry of a trust on the register: s. 30 . If all the shares were held in trust that would not make the company a trustee."

68. The said principle has been followed by this Court in catena of cases namely, Kanpur Suraksha Karamchari Union and Basti Sugar Mills Ltd. referred to supra. In the case of State of UP v. Renusagar Power Co. (supra), this Court held as under:

> "55. ……On the other hand these English cases have often pierced the veil to serve the real aim of the parties and for public purposes. See in this connection the observations of the Court of appeal in DHN Food Distributors Ltd. v. London Borough of Tower Hamlets. It is not necessary to take into account the facts of that case. We may, however, note that in that case the corporate veil was lifted to confer benefit upon a group of companies under the provisions of the Land Compensation Act, 1961 of England. Lord Denning at p. 467 of the report has made certain interesting observations which are worth repeating in the context of the instant case. The Master of the Rolls said at p. 467 as follows:
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> 'Third, lifting the corporate veil. A further very interesting point was raised by counsel for the claimants on company law. We all know that in many respects a group of companies are treated together for the purpose of general

accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says: 'there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group'. This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries. These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in Harold Holdsworth & Co. (Wakefield) Ltd. v. Caddies. So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance. The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly. It was not necessary for them to go through a conveyancing device to get it……'

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65. Mr. Justice O. Chinnappa Reddy speaking for this Court in LIC v. Escorts Ltd. had emphasised that the corporate veil should be lifted where the associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected. After referring to several English and Indian cases, this Court observed that ever since A. Salomon & Co. Ltd. case a company has a legal independent existence distinct from individual members. It has since been held that the corporate veil may be lifted and corporate personality may be looked in. Reference was made to Pennington and Palmer's Company Laws.

66. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the

situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.

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68. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence."

(Emphasis laid by the Court)

69. The above said judgment is followed by this Court in D.D.A. v. Skipper Construction Co.(supra). The relevant paragraphs read as under:

"26. The law as stated by Palmer and Gower has been approved by this Court in TELCO v. State of Bihar. The following passage from the decision is apposite:

'… Gower has classified seven categories of cases where the veil of a corporate body has been lifted. But, it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in

determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be the persons who actually work for the corporation.'

27. In DHN Food Distributors Ltd. v. London Borough of Tower Hamlets the court of appeal dealt with a group of companies. Lord Denning quoted with approval the statement in Gower's Company Law that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group".

> The learned Master of Rolls observed that "this group is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three in one" — and, alternatively, as "one in three".

28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people.

> The concept of resulting trust and equity"

> (Emphasis laid by the Court)

70. In Kapila Hingorani v. State of Bihar (supra), this Court held as under:

"26. The proposition that a company although may have only one shareholder will be a distinct juristic person as adumbrated in Salomon v. Salomon and Co., has time and again been visited by the application of doctrine of lifting the corporate veil in revenue and taxation matters. (See Dal Chand and Sons v. CIT and Juggilal Kamlapat v. CIT.)

27. The corporate veil indisputably can be pierced when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest.(See CIT v. Sri Meenakshi Mills Ltd., Workmen v. Associated Rubber Industry Ltd., New Horizons Ltd. v. Union of India, State of U.P. v. Renusagar Power Co., Hussainbhai v. Alath Factory Thezhilali Union and Secy., H.S.E.B. v. Suresh.)"

(Emphasis laid by the Court)

71. This Court in Secretary, HSEB v. Suresh & Ors.[20] has held as under: "6. In order to keep the said plants and stations clean and hygienic, the appellant-Board, upon tenders being floated, awards contracts to contractors who undertake the work of keeping the same clean and hygienic. One such contract was awarded to one Kashmir Singh, for "proper, complete and hygienic cleaning, sweeping and removal of garbage from the Main Plant Building" at Panipat, at the rate of Rs 33,000 per month with a stipulation to engage minimum 42 Safai Karamcharis with effect from 15-5-1987 for a period of one year and in terms therewith the contractor took over the work and performed the said work through the above-stated Safai Karamcharis.

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9. The High Court did in fact note with care and caution the doctrine of "lifting of the veil" in industrial jurisprudence and recorded that in the contextual facts and upon lifting of the veil, question of having any contra opinion as regards the exact relationship between the contesting parties would not arise and as such directed reinstatement though, however, without any back wages. While it is true that the doctrine enunciated in Saloman v. Saloman & Co. Ltd. came to be recognised in the corporate jurisprudence but its applicability in the present context cannot be doubted, since the law court invariably has to rise up to the occasion to do justice between the parties in a manner as it deems fit. Roscoe Pound stated that the greatest virtue of the law court is flexibility and as and when the situation so

demands, the law court ought to administer justice in accordance therewith and as per the need of the situation.

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13. There is, however, a total unanimity of judicial pronouncements to the effect that in the event the contract labour is employed in an establishment for seasonal workings, question of abolition would not arise but in the event of the same being perennial in nature, that is to say, in the event of the engagement of labour force through an intermediary which is otherwise in the ordinary course of events and involves continuity in the work, the legislature is candid enough to record its abolition since involvement of the contractor may have its social evil of labour exploitation and thus the contractor ought to go out of the scene bringing together the principal employer and the contract labourers rendering the employment as direct, and resultantly a direct employee. This aspect of the matter has been dealt with great lucidity, by one of us (Majmudar, J.) in Air India Statutory Corpn. v. United Labour Union.

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17. Needless to note at this juncture that the Contract Labour (Regulation and Abolition) Act being a beneficial piece of legislation as engrafted in the statute-book, ought to receive the widest possible interpretation in regard to the words used and unless words are taken to their maximum amplitude, it would be a violent injustice to the framers of the law. As a matter of fact the law is well settled by this Court and we need not dilate much by reason therefor to the effect that the law courts exist for the society and in the event of there being a question posed in the matter of interpretation of a beneficial piece of legislation, question of interpreting the same with a narrow pedantic approach would not be justified. On the contrary, the widest possible meaning and amplitude ought to be offered to the expressions used as otherwise the entire legislation would lose its efficacy and contract labour would be left at the mercy of the intermediary.

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20. It has to be kept in view that this is not a case in which it is found that there was any genuine contract labour system prevailing with the Board. If it

was a genuine contract system, then obviously it had to be abolished as per Section 10 of the Contract Labour Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so-called contractor Kashmir Singh was a mere name lender and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the management witness Shri A.K. Chaudhary also could not tell whether Shri Kashmir Singh was a licensed contractor or not. That workman had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time was registered as the principal employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a principal employer and the so-called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so-called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised."

(Emphasis laid by the Court)

72. The legal principle laid down by this Court by following the exposition of law for lifting the veil to find out real facts is very much necessary to the facts of the case in hand having the law laid down in the case of Salomon v. Salomon (supra) to examine the correctness of the findings of the High Court in reversing the finding of fact recorded in favour of the concerned workmen by the CGIT in its award with a view to find out whether the arrangement with or without the consent of the owner company facilitated the violation of the basic principles of labour jurisprudence established in this country over a period of more than six decades, especially principles relating to security of tenure, retrenchment, natural justice, and many other standards relating to "decent conditions at work". If two statutory corporations owned by the Government of India are governed by Rule of law, namely Factories Act and Industrial Disputes Act, in the manner in which they contended, it would be opposed to the labour jurisprudence and constitute a clear

case of unfair labour practice which is against the law enunciated by this Court in plethora of cases referred to supra whose relevant paragraphs are extracted as above in support of my conclusion to hold that the finding in the impugned judgments of the High Court that is, the HCI, though it is a subsidiary company of Air India, yet it is a separate and distinct legal entity and that the concerned workmen have been employed by the HCI and not Air India and hence, there is no relationship of employer and employee and disciplinary control upon them by Air India, which has been reached at by the High Court and setting aside the findings recorded by the CGIT in favour of the concerned workmen, is not only erroneous but also suffers from error in law as the same is opposed to the law laid down by this Court in catena of cases referred to supra.

73. Any other test required to be applied to the question of the legal entity of the so called 'independent contractor', is irrelevant to the critical issues which arise in this case. The view taken by the Delhi High Court regarding the separate legal identity of both these corporations, and erroneously setting aside the findings of the CGIT is not the determining factor in this case. There have been varying practices in vogue in this regard. In the Parimal Chandra Raha's case (supra), it is noticed that there were 'Managing Committees', and 'Cooperative Societies' which could not exist without a separate legal personality that is, 'Contractors', many of them also create convenient legal personalities under garb of different legal entities. The presence of a contractor clothed with a legal personality or not as in the case of the defence establishments referred to above in the Suraksha Karamchari Union's case (supra) also has hardly ever been considered to be a determinative test pertaining to canteen workers on contract.

74. For the reasons recorded by me on the contentious points with reference to the facts, legal evidence and law laid down by this Court in plethora of cases, I am in agreement with the CGIT on the finding of facts recorded by it on the question of the relationship between the concerned workmen and the Air India on proper appreciation of pleadings and the legal evidence on record and piercing the veil to the fact situation to find out true facts which is rightly answered by CGIT on the points of disputes and the said finding is in conformity with the law laid down by this Court in Hussainbhai' case and M.M.R. Khan and other cases referred to supra for the reason that the contract with the HCI which is a subsidiary Company of Air India and employing the contract workers to work in the statutory canteen, is a sham contract. They have been engaged in permanent nature of work continuously for number of years. The finding of fact recorded by the CGIT on the points of dispute holding that they are entitled for regularization and to be absorbed as

employees of Air India, without prejudice to any managerial arrangement to avail the expertise of the HCI of India through existing arrangements. Indeed that would be a win-win situation for all the stake holders concerned in this case- the corporates, the Air India employees numbering more than 2000 in this case and the disempowered canteen workers and that would also be in harmony with our constitutional jurisprudence.

75. However it must be clarified that the requirement of reservation as provided for in Articles 14 and 16 of the Constitution must be complied with while regularizing the canteen workers as employees of Air India. This can be achieved by complying with relevant provisions of the I.D. Act in contrast to the action taken by the HCI in violation of the said statute. It is also further relevant to note that the only relief the workers have sought is one of regularization on the rolls of Air India. This does not itself impose any additional expenditure for it. Therefore, the concern of the learned single Judge of the High Court, on this count is not attracted in the context of the relief sought for by the concerned workmen.

76. The special facts which are intermingled with questions of fact relevant to the case at hand may once again be noticed by me to hold that the concerned workmen have completed 240 days despite attempt of the contractor by giving break in service of the concerned workmen by the statutory corporation which is an instrumentality of the state which is not permissible in law.

77. The wages of the canteen workers and other costs are paid through the arrangement of per head subsidy @ of Rs.340/- for over 2000 employees, to the contractor that is, HCI by the principal employer -Air India. The supervision and control of the establishment is adequately provided for through the 'Memorandum and Articles of Association' which binds both the 'sole owner' and the 'wholly owned subsidiary'. The service of running the statutory canteen is provided for the benefit of the employees of Air India. The statutory obligation on the part of Air India to run the canteen is squarely placed on the shoulders of the occupier of the factory as per Section 2(n) of the Factories Act, because they employ more than 2000 employees despite resorting to pleadings stating that it did not employ more than 250 workers, thus seeking to escape from the consequences that may follow in case of a 'statutory canteen' without challenging the Notification of the Labour Department issued by the Lt. Governor of Delhi under Rules 65 to 70 of the Rules.

78. For the above reasons, in addition to the test of economic control, as held by this Court in Hussainbhai’s case, I am of the view that the relief sought for by the

concerned workmen which is accepted by the CGIT is legal and valid. Therefore, I have to accept the finding and reasons recorded by the CGIT though the reasons which I have assigned are not the reasons assigned by it but the conclusions arrived at by the CGIT while determining the points of dispute referred to it are legal and valid. Therefore, the reasons assigned by me in this judgment must be read into the reasons of the award of the CGIT. The aforesaid reasons are assigned by me in this judgment after careful examination of the rival legal contentions urged by the learned senior counsel on behalf of the parties with reference to the provisions of the Factories Act, Rules, Contract Labour Act and Industrial Disputes Act and law laid down by this Court in catena of cases. These points are accordingly answered in favour of the workmen.

Answer to point No. 3:

79. In view of the foregoing reasons recorded by me in answering the point Nos. 1 and 2 after adverting to the relevant facts and interpretation of certain provisions of the Factories Act, Rules and the Industrial Disputes Act, particularly Sections 2(k), 2(s) read with the provisions of Section 25(T) and Section 25(U) of the Industrial Disputes Act and Entry No.10 in the Vth Schedule under the definition of unfair labour practices as defined in Section 2(ra) regarding the employment of the workmen on contract basis against the permanent nature of employment in the statutory canteen I have held that this practice by Air India constitutes unfair labour practice. The decisions rendered by this Court which have been extensively referred to by me and some of the cases referred to by the CGIT have rightly answered the points of dispute in favour of the concerned workmen, on proper appreciation of the facts pleaded, legal evidence on record and I have applied the legal principles laid down by this Court in the cases of Basti Sugar Mills Ltd., Parimal Chandra Raha, Kanpur Suraksha Karamchari Union and M.M.R. Khan (all referred to supra) to the fact situation of the case on hand to restore the award of the CGIT. The CGIT has rightly come to the conclusion and recorded the finding of fact assigning valid and cogent reasons. Therefore, I have to answer that the findings and reasons recorded by CGIT on the points of dispute in relation to the concerned employees declaring that the concerned contract workers of the canteen are deemed employees of Air India is a right decision which has been reached after appreciation of evidence on record and adhering to the legal principles laid down by this Court in catena of cases. Further, setting aside the termination orders passed against some of the concerned workmen covered in the industrial dispute case Nos.97 to 99 of 1996 is also justified for the reason that the services of the concerned workmen in the above cases were terminated during pendency of the

industrial disputes before CGIT regarding absorption of the concerned workmen as permanent employees, without obtaining approval from the CGIT as required under Section 33(2)(b) of the I.D. Act. Apart from the above reason, the termination of services of the workmen involved in the above industrial dispute cases is unsustainable in law for the reason that they have not complied with the mandatory provisions of Section 25F, clauses (a) and (b) of the I.D. Act and have not obtained the permission from the Central Government as required under Section 25N of Chapter VB of the I.D. Act. Therefore, the orders of termination passed against the concerned workmen are void ab initio in law and the same are liable to be set aside. I have to hold that the CGIT has rightly passed an award in favour of all the workmen in all the Industrial Disputes on the file of CGIT on findings and reasons recorded on the points of dispute referred to it by the Central Government upon which adjudication is made by the CGIT. The same cannot be termed either as erroneous or error in law. Accordingly, I answer the point No.3 in favour the concerned workmen.

Answer to point No.4:

80. The findings and reasons recorded on the contentious points by both the learned single Judge and the Division Bench of the Delhi High Court in the impugned judgment that no better service conditions than the Management of HCI would be provided to the canteen workers except to get free air tickets which apparently some employees of Air India are entitled to, is untenable in law. Incidentally this is another aspect which may have a bearing on the question of viability in terms of prevailing practice in industry. Perhaps, Air India must explore the significance of the region cum industry principle so well developed in our labour jurisprudence. It is seriously concerned about competition and viability rather than focus on the handful of canteen workers.

81. The learned single Judge and the Division Bench have interfered with the finding of fact recorded in the common award passed by the CGIT by disagreeing with the findings and reasons recorded by the CGIT and holding that the HCI is a subsidiary corporation of Air India and it has got 100% share holding and power to appoint the Directors of the HCI and after referring to the decisions of this Court in Kanpur Suraksha Karamchari Union case (supra), it held that it is a separate legal entity which finding of fact and reason has been concurred with by the Division Bench by assigning the similar reasons placing reliance on the decision of this Court in M.M.R. Khan’s case which decision supports the case of the concerned workmen. The said decision is distinguished by the Division Bench of the High

Court after adverting to certain paragraphs without considering the relevant paragraph Nos. 25 and 30 which has laid down the legal principle and also referred to other judgments namely Indian Petrochemicals Corporation Ltd. and Hari Shanker Sharma referred to supra without piercing the veil to the real facts of the case.

82. Both the learned single Judge and the Division Bench have exceeded in their jurisdiction in exercising their extraordinary and supervisory jurisdiction in the Writ Petitions and the Letter Patent Appeals, while examining the correctness and findings recorded by the CGIT in the common award which the High Court has disagreed with and has set aside the common award impugned in the Writ Petitions filed by Air India. Both the learned single Judge and the Division Bench have exceeded their jurisdiction in interfering with findings of fact recorded by the CGIT on the points of dispute and the contentious issues on proper appreciation of pleadings, evidence on record and law laid down by this Court in the cases referred to in the award I have referred to the relevant factual aspects and legal evidence and the statutory provisions of the Factories Act, Rules and the Industrial Disputes Act, while answering to Point Nos.1, 2 and 3 in favour of the concerned workmen by recording my reasons in this judgment. Therefore, I have to hold that the learned single Judge and the Division Bench exceeded in their jurisdiction to interfere with the finding of fact recorded by the CGIT on the points of dispute which were referred to by the Central Government. For the reasons recorded by me on point Nos. 1 and 2 in this judgment and further answering the point No.3 in affirmative in favour of the concerned workmen holding that findings and reasons recorded by the CGIT on the point of dispute referred to it by the Central government are neither erroneous nor suffers from error in law. Also I have to hold while answering to point No. 4 that both the learned single Judge and the High Court have disagreed with the correct finding of fact recorded by the CGIT in its award. The findings recorded by the learned Singh Judge and Division Bench in the impugned judgment are not only erroneous but suffers from error in law as the same is contrary to the statutory provisions and law laid down by this Court which have been extensively referred to by me in the reasoning portion of this judgment in answer to point Nos. 1 and 2. Hence, I have to hold that findings and reasons recorded in the impugned judgment is wholly untenable and liable to be set aside and accordingly set aside by answering point no. 4 in affirmative in favour of the concerned workmen.

Answer to Point No.5:

83. Since I have answered point No. 4 in favour of the concerned workmen and against Air India, the appellants are entitled for the reliefs as prayed for in these appeals. Accordingly, these appeals are allowed and common award dated 5.5.2004 passed in I.D. Nos.97 to 99 of 1996 in favour of the workmen is restored. Further, I direct the Management of Air India to absorb all the concerned workmen covered in the I.D. Nos.97 to 99 of 1996 as permanent workmen on its rolls from the date of their appointment and grant all the consequential benefits such as salary for which they are entitled for after computing properly, taking into consideration the pay scale and periodical wage revision that has taken place and are applicable to the respective posts of the concerned workmen as per the notification issued by the Lt. Governor, Union Territory of Delhi and on the basis of similar notifications applicable for them.

84. Since I have allowed I.D. Nos. 97 to 99 of 1996, the Industrial Dispute case Nos. 107 and 108 of 1996 involving the workmen whose services were terminated during the pendency of petition before CGIT, must also be treated as permanent workmen at par with the concerned workmen involved in the instant case. The award for their reinstatement to their posts shall be passed with all consequential benefits with full back wages.

85. Accordingly, I allow the appeals of the concerned workmen in the above said terms.

[1] 1990 (Supp) SCC 191
[2] 1995 suppl. (2) SCC 611
[3] AIR 1964 SC 355
[4] (2001) 1 SCC 720
[5] 1897 AC 22
[6] (1999) 6 SCC 439,
[7] (2001)7 SCC 1
[8] (2009)13 SCC 374
[9] (2002) 1 SCC 337
[10] (1988) 4 SCC 59,
[11] (1996) 4 SCC 622
[12] (2003) 6 SCC 1
[13] (2004) 3 SCC 514
[14] (2005) 5 SCC 51
[15] (1992) 1 SCC 695
[16] (1978) 4 SCC 257

[17] (1988) 4 SCC 478
[18] (2010)3 SCC 192
[19] (1973)4 SCC 225
[20] (1999) 3 SCC 601