Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2244 OF 2002

International Airport Authority of India … Appellant

Vs.

International Air Cargo Workers' Union & Anr. … Respondents

J U D G M E N T

R.V.RAVEENDRAN, J.

This appeal by special leave is filed against the judgment and order dated 12.11.2001 passed by the High Court of Madras in Writ Appeal No.544/1998 reversing the order dated 15.12.1997 passed by a learned Single Judge in Writ Petition No. 6126 of 1995 and restoring the award dated 23.12.1994 passed by the Industrial Tribunal, Madras in ID NO.65 of 1991. The case has a chequered history and has come up after several rounds of litigations.

2. The International Airport Authority of India (IAAI for short), the appellant herein, was established under the International Airports Authority Act, 1971. It established a cargo complex at Madras in the year 1978. Under an agreement dated 30.1.1978, it granted a licence to a private company known as M/s. Airfreight Private Ltd. (referred to as 'Airfreight') to be its ground handling agent in respect of export, import and transshipment cargo consignments. Under the said agreement, Airfreight was to receive payment from the owners of the cargo for the work done, had to engage the services of required number of workers for handling the cargo and be responsible for payment of wages to the workers. It was also required to pay a licence fee to IAAI, linked to the total revenue realized by it. (minimum being Rs.12 lacs, maximum being Rs.43.50 lacs plus an agreed percentage of the revenue over and above 60 lacs). IAAI had no privity of contract, obligation or responsibility towards the workers employed by the Airfreight.

3. In the year 1985 IAAI decided to take over the ground handling work and entrust it to a new licencee by inviting competitive tenders. Therefore, by letter dated 19.9.1985 IAAI informed Airfreight that the ground handling agency operations should be handed over to its officers on 31.10.1985. Thus

from 1.11.1985, Airfreight ceased to be the ground handling agent of IAAI at Madras Airport. The termination of the handling contract of Airfreight did not require IAAI or the new licencee of IAAI to take over the workers employed by Airfreight. In the circumstances, the workers (loaders and packers) employed by Airfreight in connection with the ground handling work, who were likely to be retrenched/discharged, made an appeal to IAAI to provide them employment.

First Round

4. The Airfreight Workers Union also filed Writ Petition No.11683/1985 in the Madras High Court, seeking a direction to IAAI to employ all those workers who had been employed by Airfreight in connection with the ground handling work at the Madras Airport cargo complex and not to recruit anyone from outside. IAAI and Airfreight were impleaded as respondents 1 and 2 in the said writ petition. In view of the appeal made by the said workers, IAAI unilaterally came forward with a scheme to mitigate their hardship, and filed the following memo before the High Court :

> "The authority (IAAI) will consider mitigating the hardship of the ex-loaders and packers of M/s Air Freight claimed to be caused on account of its take over of cargo handling function by accommodating them as far as possible except by way of regular absorption in the services of IAAI till such time the authority has made its own regular arrangements, on contract

> basis through a Co-operative Society formed on specified terms and conditions and period as per the policy of IAAI framed from time to time".

The High Court recorded the memo filed by IAAI and dismissed the writ petition on 12.12.1985, in view of the agreement expressed by the learned counsel for Airfreight Workers Union.

5. The workers of Airfreight took steps to form a co-operative society which was registered under the name and style of 'Airport Industrial Co-operative Service Society Ltd.', ('society' for short) on 28.11.1985. Pending finalization of a contract with the said society, in terms of the memo filed in WP No.11683/1985, IAAI started engaging some of the workers of Airfreight as casual labour on day to day basis depending on the actual requirements.

Second Round

6. The Airfreight Workers Union and the society filed Writ Petition No.5164 of 1986 seeking a direction to IAAI to hand over the ground handling work at the Madras Airport Cargo Complex to the society, on terms to be mutually agreed or in the alternative absorb the ex-employees of Airfreight on its permanent rolls and till then maintain status quo. During

the pendency of the said writ petition, an agreement was entered on 1.7.1986 under which the society agreed to provide 70 loaders cum packers at the Madras Air Cargo Complex on a consolidated monthly payment of Rs.45,870. It was further agreed as follows : (i) that the said arrangement would be in force for a period of six months; (ii) that if any additional loaders-cum-packers were required by IAAI, the society will provide them at the rate of Rs.15 per manshift; (iii) that IAAI would sympathetically consider the society's request for increasing the monthly payment to Rs.50,000; (iv) that the agreement would be implemented within 10 days; and (v) that W.P. No.5164 of 1986 would be withdrawn voluntarily. The agreement confirmed that the settlement had been arrived at without any pressure from either side, in mutual interest, for the smooth operation of the cargo complex. In view of it, when W.P. No.5164 of 1986 came up on 2.7.1986, the learned counsel submitted that the matter was settled out of court and accordingly the petition was dismissed as withdrawn.

Third Round

7. IAAI agreed to the request of the society to increase the monthly payment to Rs.50,000 and a more detailed agreement was executed on 14.7.1986 between IAAI and society under which the society agreed to

provide manpower (loaders-cum-packers) for unloading, shifting, stacking, marking unpacking, packing, stitching, strapping, counting of cargo and other miscellaneous porterage jobs at Madras Airport, round the clock, in three shifts. The agreement reiterated that the total number of loaders-cum-packers to be made available by the society on regular basis will be 70; that the additional loaders cum packers will be made available on a further payment of Rs.15 per manshift; and that the agreement would be in force between 10.7.1986 to 19.1.1987. The said agreement specifically provided as follows : (a) that the workers (members of the society) would have no direct relationship whatsoever with IAAI, except on matters of execution of work and all dealings and remuneration to them would be through the society (vide clause 35); (b) that the society should make good any damage caused to the cargo consignments or to the property of IAAI, by the loaders-cum-packers, either due to negligence or willful acts (vide cl. 21); (c) that the society shall comply with the requirement of Contract Labour (Regulation and Abolition) Act, 1970 ('CLRA Act' for short) and other labour laws, in particular, the statutory provisions regarding minimum wages; (d) that to ensure that wages were paid by the society to its employees whose services were made available to IAAI as contract labour, IAAI will have the right to demand that the wages be disbursed by the

society to its employees, in the presence of IAAI's representative (vide clause 7); (d) that IAAI will not be responsible either for any injury sustained by the employees of the society during the performance of their duties or for payment of any damages or compensation due to any dispute between the society and its workers (vide cl. 8); (e) that in case it was noticed by IAAI that the work carried out by the society was not upto the required standard, and the society failed to improve, inspite of two days written notice about the bad state of work and demand for improvement, IAAI could impose fines and deduct the amount of fines from the society's bills; and if fines had no effect, IAAI would have the right to terminate the contract by giving a month’s notice and forfeit the security deposit (vide clause 9); (f) that the society would carry out the jobs as per the specifications of IAAI and to its satisfaction, and in case of any complaints by IAAI either as regards the nature of service or as regards the personnel doing the same, the society would attend to the complaints promptly (vide clause 12); and (g) that the society, apart from being in constant touch with the officers of IAAI, through an authorized representative, would also have a supervisor employed on round-the-clock basis at the cargo complex to supervise, control and ensure proper execution of the work assigned to the loaders-cum-packers and to co-ordinate with IAAI (vide clause 17).

8. The society entered into a fresh agreement dated 11.12.1987 agreeing to provide loaders-cum-packers at the Madras airport complex, for a period of two years from 1.9.1987. The lump sum payment by IAAI was revised as Rs.60,000 per month for providing 70 loaders and three supervisors. It was agreed that the said amount had been determined by assuming the minimum wage as Rs.20 per day and if there was any statutory increase beyond Rs.20/-, such excess should be borne by IAAI.

9. When the said term was coming to an end, the International Air Cargo Workers Union (first respondent) and the society filed Writ Petition No.9110 of 1989 seeking service security to the 89 workers and treat them on par with regular employees of IAAI by giving them wages/benefits/ privileges of regular workmen. The said petition was dismissed on 18.12.1989 reserving liberty to raise the issues and demands in the proceedings under the Industrial Disputes Act, 1947 ('ID Act' for short), as the workers had already raised an industrial dispute demanding direct employment and the conciliation had ended in a failure on 26.9.1989.

Fourth Round

10. The conciliation officer submitted a Failure Report dated 3.10.1989, in regard to the conciliation Government of India however refused to refer the dispute for adjudication on the ground that workmen in dispute were employed by the society and not by IAAI. The order of refusal also stated :

> "Therefore the dispute is not maintainable against the IAAI management under the ID Act indirectly. The Union has demanded abolition of contract labour system in the loading/unloading operations etc. The question of abolition of contract labour system is dealt with under CLRA Act which lays down the criteria and the procedure for abolition of this system. The Union could, therefore, avail of the remedy available under the said Act…. "

The said communication dated 7.12.1989 was challenged in W.P. No.10719 of 1990. The said writ petition was allowed by order dated 26.3.1991 on the ground that the central government could not pre-judge the issue and while considering whether a dispute should be referred under section 10 of ID Act, the government is not supposed to delve into merits of the case and indulge in any adjudicatory process. The High Court, therefore, directed the government to reconsider the matter and take a fresh decision in regard to the request for reference. In pursuance of it, the government reconsidered

the matter and referred the following dispute to the Industrial Tribunal, Madras, by order dated 14.10.1991 :

> "Whether the action of the Management of International Airport Authority of India, Madras is justified in not absorbing the workers/members of Airport International Cooperative Service Society, their Contractor. If not, to what relief the concerned workmen are entitled ?"

Fifth Round

11. In the meanwhile IAAI issued a tender notice dated 19.11.1990 inviting tenders for the cargo handling work at the Air Cargo Complex. The said tender notice was challenged by the first respondent Union in W.P. No.18560 of 1990. In that petition, the first respondent Union *inter alia* contended that the IAAI had no valid registration of its establishment under section 7 of the CLRA Act and therefore the contract labour namely the workers employed by the society should be treated directly employed by IAAI. The said writ petition was dismissed by the High Court by order dated 6.12.1990 holding that in the absence of a notification under section 10 of the CLRA Act, prohibiting employment of contract labour in regard to the process of cargo handling, and in the absence of any material to show that the workers were deemed to be workmen of IAAI, the appropriate remedy was to agitate the matter before the concerned labour authority instead of filing a writ petition. The said order of the learned Single Judge

was challenged by the union by filing a writ appeal (WA No.1265/1990) which was dismissed by judgment dated 3.1.1991. The Division Bench noted that IAAI had registered its establishment under section 7 of the CLRA Act on 23.3.1990 and the tender notice was issued only thereafter on 19.11.1990. The Division Bench also held that the Union having consciously resorted to the remedy available under industrial law, and not having demurred against the dismissal of WP No.9110/1989 cannot re-agitate the same question in a writ petition challenging the tender notice.

Sixth Round

12. Again when IAAI invited fresh tenders, the first respondent Union filed W.P. No.273 of 1994 seeking a direction to IAAI not to invite tenders for loading/unloading operations or take any other action which will have the effect of discharging the workers engaged in the loading and unloading operations. The said writ petition was dismissed by order dated 22.6.1994 on the ground that the issue was pending adjudication by Industrial Tribunal and writ petitions for similar relief had been rejected earlier. The learned single Judge observed :

> "Having regard to the memorandum issued by IAAI wherein IAAI specifically stated that the workmen concerned would be accommodated as far as possible except by way of equal absorption in the services of IAAI (Underlining is mine), which was noticed and recorded by S.Mohan J., as he then was, with the consent of Mr. K.S.Janakiraman, then counsel

> for workmen, and the subsequent agreement entered into on 1.7.1986, 14.7.1986 and 21.5.1992, it would not in my opinion, be possible for the workmen to claim that the Authority should be directed not to disengage the workmen."

The writ appeal (WA No.800 of 1994) challenging the said order was also dismissed on 27.6.1994.

Seventh (current) Round

13. The reference made by the central government which was registered as ID No.65 of 1991 was decided by the Industrial Tribunal, Madras, in favour of the workers by award dated 23.12.1994. The Tribunal directed IAAI to absorb the members of the society whose names were stated in the annexures to the claim statement, (excluding only those who died or left service), with effect from the date of the award. In the said award the tribunal recorded the following findings :

> (a) The memo filed by IAAI in W.P. No.11683 of 1985 (which was agreed to by the workers union), resulting in dismissal of W.P. No.11683/1985 filed by the workers' union, amounted to a settlement which was not valid, as IAAI was in a dominant position to dictate terms and compel the workers union to enter into the settlement to circumvent the provisions of law and deprive the legitimate right of the workmen to permanent status.
>
> (b) The said memo of IAAI requiring the workers to form a society was a ploy adopted by IAAI to defeat the legitimate claim of the workers to permanent status to which they were entitled as they had worked for 5 to 14 years previously under Airfreight and thereafter under the IAAI who

was the principal employer and after the termination of the handling agency of Airfreight, their workers became the direct employees of IAAI.

(c) After the termination of the handling agency in favour of Airfreight, its employees were directly engaged by IAAI and received salary from IAAI. Thus they became the direct employees of IAAI from November 1985. Once the workers became its employees, IAAI could not change their status from direct workers to indirect workers.

(d) Even when the workmen were working as contract labour through the society, IAAI was exercising direct supervision and control over them, directly paying wages to them and taking disciplinary action against them and all these showed that they were considered and dealt with as direct employees of IAAI and the agreement between IAAI and the society was sham and nominal.

(e) Any attempt by IAAI to appoint the workmen as contract labour is illegal and would amount to an unfair labour practice.

14. The said award was challenged by IAAI in W.P. No.6126/1995. A learned Single Judge of Madras High Court allowed the said writ petition by order dated 15.12.1997 and set aside the award of the Tribunal. Nevertheless having regard to the facts of the case, in particular IAAI being a public sector undertaking was required to be a model employer, issued the following directions :

(i) The Central Government and the Advisory Board constituted under the CLRA Act should consider whether deployment of contract labour in regard to packing, loading and unloading in IAAI's Madras Cargo Complex should be abolished and take appropriate decision thereon.

(ii) Till such a decision was taken, the workers concerned shall be continued notwithstanding the interruption in their employment as contract labourers from 1994 to the date of that order (15.12.1997), as contract labour on the terms and conditions that were in force between IAAI and the

society prior to 1994 subject to the condition that the wages payable to such workers shall not be less than what was paid to contract labour who were engaged between 1994 and 1997; and the said workers shall be engaged from January, 1998, their engagement being subject to good behaviour, conduct, discipline and efficient performance.

(iii) If the Central Government issues a notification under section 10 under the CLRA Act, prohibiting contract labour in regard to loading, unloading and packing in the cargo complex all those who had worked as contract labour under the contract between the society and the IAAI up to the numbers specified in the contract shall be absorbed in the IAAI as was directed by this Court in the case of *Air India Statutory Corporation v. United Labour Union* [1997 (9) SCC 377].

15. The first respondent Union challenged the said order of learned Single Judge before a Division Bench in Writ Appeal No.544/1998. A Division Bench of the Madras High Court by its judgment dated 12.11.2001 allowed the appeal and set aside the order of the learned Single Judge and restored the award of the Tribunal. The Division Bench was of the view that when the Tribunal had recorded a finding of fact that the contract labour were under the direct supervision and control of IAAI, that they were paid salary directly by IAAI, that they were subjected to suspension and other disciplinary control by IAAI, that the contract between IAAI and the society was sham and nominal, the consequential finding that they were the direct employees of IAAI ought not to have been disturbed by the learned Single Judge. The Division Bench was of the view that the findings recorded by

the tribunal were unexceptionable. The said decision is under challenge in this appeal.

The legal background and questions for decision

16. When the learned Single Judge considered the matter, the legal position was governed by the decision in *Gujarat Electricity Board vs. Hind Mazdoor Sabha* – 1995 (5) SCC 27, partly modified by *Air India Satutory Corporation vs. United Labour Union* – 1997 (9) SCC 377. By the time the Division Bench decided the writ appeal, the decision of the Constitution Bench in *Steel Authority of India Ltd., vs. National Union Waterfront Workers* – 2001 (7) SCC 1 (for short '*SAIL*') had been rendered, but on account of the short gap between the two dates, the Division Bench did not notice the decision in *SAIL*.

17. In *Gujarat Electricity Board*, this Court held :

> "….. the exclusive authority to decide whether the contract labour should be abolished or not is that of the appropriate Government under the said provision. It is further not disputed before us that the decision of the Government is final subject, of course, to the judicial review on the usual

> grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate Government under Section 10 of the Act arises only where the labour contract is genuine and the question whether the contract is genuine, or not can be examined and adjudicated upon by the court or the industrial adjudicator, as the case may be. Hence in such cases, the workmen can make a grievance that there is no genuine contract and that they are in fact the employees of the principal employer.
>
> If the contract is sham or not genuine, the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and for claiming the appropriate service conditions. When such dispute is raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, that he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine, he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so if the dispute is espoused by the direct workmen of the principal employer. If the workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give any relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act."

In view of the provisions of section 10 of the Act, it is only the appropriate government which has the authority to abolish genuine labour contract in accordance with the provisions of the said section. No court including industrial adjudicator has jurisdiction to do so.

18. *Gujarat Electricity Board* was partly overruled in *Air India* in regard to the question whether on abolition of contract labour system, the contract labour have to be automatically absorbed by the principal employer, this Court held as follows in *Air India* :

> "The moment the contract labour system stands prohibited under section 10(1), the embargo to continue as a contract labour is put an end direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the employer."

19. A course correction, if we may use that expression, was applied by the Constitution Bench, in *SAIL*. This Court made it clear that neither section 10 nor any other provision in CLRA Act provides for automatic absorption of contract labour on issuing a notification by the appropriate government under section 10(1) of the CLRA Act and consequently the principal employer cannot be required to absorb the contract labour working in the establishment. This Court further held that on a prohibition notification being issued under section 10(1) of the CLRA Act, prohibiting employment of contract labour in any process, operation or other work, if an industrial dispute is raised by any contract labour in regard to conditions of

service, the industrial adjudicator will have to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment *or for supply of contract labour for work of the establishment under a genuine contract,* or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham or nominal and merely a camouflage, then the so called contract labour will have to be treated as direct employees of the principle employer and the industrial adjudicator should direct the principle employer to regularize their services in the establishment subject to such conditions as it may specify for that purpose. On the other hand if the contract is found to be genuine and at the same time there is a prohibition notification under section 10(1) of CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give preference to the erstwhile contract labour if otherwise found suitable, if necessary by giving relaxation of age. As noticed above, *SAIL* did not specifically deal with the legal position as to when a dispute is brought before the Industrial Adjudicator as to whether

the contract labour agreement is sham, nominal and merely a camouflage, when there is no prohibition notification under section 10(1) of CLRA Act.

20. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in *Gujarat Electricity Board* continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the

industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise. 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 contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. 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.

21. On the contention urged, the following questions arise for our consideration in this case:

(i) Whether the agreement between the contractor society and the IAAI in regard to cargo handling work was sham and nominal and consequently, the workers engaged as contract labour in regard to cargo handling work, were the direct employees of IAAI ?

(ii) Whether the status of loaders-cum-packers engaged in cargo handling work was illegally changed from that of direct casual labour to contract labour in violation of section 9A of the ID Act, 1947?

(iii) In the absence of a notification under section 10 of CLRA Act prohibiting the employment of contract labour in the process/operation of cargo handling work, whether the workmen employed as contract labour are entitled to claim absorption?

22. In the claim statement filed before the Tribunal, the specific case of the first respondent representing 88 workers was two-fold. The first was that they were employed as direct casual labour in IAAI from November, 1985 and July, 1986; that when the union filed W.P.No.11683/1995 seeking regularization of the workers, IAAI made the union to agree for the terms of a memorandum filed in the said proceedings, as a result of which their status

was changed to that of contract labour through the society which became an intermediary; and that as there was no settlement as defined in ID Act and as there was no notice under section 9A of the ID Act before effecting change in status of the said workers, the introduction of the contract between IAAI and the society whereby the direct employees were converted into contract labour, was violative of provisions of ID Act. The second was that the cargo handling (loading, unloading and packing operations) was one of the main functions of IAAI, that in Calcutta and Bombay Airports, IAAI had engaged workers directly for the said operations, that therefore, IAAI had to get the said work done through the direct employees even at Madras and IAAI cannot adopt different yardsticks for different places. What is significant is that the union did not plead that the contract labour agreement between the society and IAAI was sham and nominal. In fact, it could not do so, as the contract was not with a private contractor operating with a profit motive, but with a society of the very workers. Nor did the first respondent Union allege that IAAI was exercising direct control and supervision over their work or that IAAI was directly paying their salary or that IAAI was directly taking disciplinary action against them. In short, the two grounds urged were violation of section 9A of the ID Act and adoption

of different standards and methods at different cities in regard to cargo handling.

23. The Tribunal did not consider the first ground nor it did decide the matter with reference to the second ground. On the other hand, it held that IAAI being in a dominant position, the union was constrained to agree to the IAAI's memorandum (filed in Writ Petition No. 11683 of 1985) and form a co-operative society as a device to deprive the workmen of their rights and to circumvent the provisions of various labour laws. The Tribunal also held that IAAI could not change the status of the members of the union from direct to indirect workers after they had worked as casual employees directly under the IAAI for about seven months between November, 1985 to July, 1986. It also held that IAAI exercised the control and supervision over the workmen, punished and suspended the erring workers and made direct payment of wages and therefore, they were to be treated as the direct employees of IAAI and as they worked for more than 180 days, they are entitled to permanent status under the provisions of Tamil Nadu Conferment of Permanent Status to Workmen Act, 1984. As noticed above, the Division Bench of the High Court while reversing the decision of the well reasoned

judgment of the learned Single Judge, re-affirmed these findings of the Tribunal and restored the award.

24. One of the reasons given by the Division Bench to restore the order of the Tribunal is that the High Court in its writ jurisdiction should not interfere with the award of Industrial Tribunal based on the findings of fact. Reliance is placed on the decisions of this Court in *Indian Overseas Bank vs. IOB Staff Canteen Workers' Union* [2000 (4) SCC 245] and *R. K. Panda vs. Steel Authority of India* [1994 (5) SCC 204]. It is true that in exercising the writ jurisdiction, the High Court cannot sit in appeal over the findings and award of the Industrial Tribunal and therefore, cannot re-appreciate evidence. The findings of fact recorded by a fact finding authority should ordinarily be considered as final. The findings of the Tribunal should not be interfered in writ jusidiction merely on the ground that the material on which the tribunal had acted was insufficient or not credible. It is also true that as long as the findings of fact are based on some materials which are relevant, findings may not be interfered with merely because another view is also possible. But where the Tribunal records findings on no evidence or irrelevant evidence, it is certainly open to the High Court to interfere with the award of the Industrial Tribunal. In this case, the grounds on which the

union sought relief of absorption and the grounds on which the Tribunal ultimately granted relief are completely different. Having regard to the several decisions in the earlier rounds of litigation, which had attained finality, it is doubtful whether the Tribunal could have considered these issues at all. Even assuming that the tribunal could have considered the said grounds as having risen for decision, the question is whether there was any basis or material for its finding and assumptions. Let us examine the findings.

25. *The first finding is that there was a settlement between the union and IAAI, as per memorandum filed in Writ Petition No. 11693 of 1985 and that the workmen were pressurized and constrained to enter into the said settlement by way of the memorandum filed by IAAI before the High Court.*

25.1) We find that there was neither a settlement in the form of a memorandum nor any pressure on the union to agree for the same. It is necessary to remember the factual background. IAAI had granted the privilege of cargo handling work by way of licence to Airfreight. The licence agreement dated 30.1.1978 between IAAI and Airfreight showed that it was not a contract labour agreement. In fact, there was no payment made by IAAI to Airfreight for the ground handling of cargo. On the other hand, for the privilege of being appointed as the ground handling agency,

Airfreight paid a licence fee to IAAI minimum being Rs.12 lakhs, maximum being Rs.43.50 lakhs plus a share in the revenue over and above the stipulated revenue. Airfreight as ground handling agency, collected charges in regard to export, import and transhipment cargo from consignor/consignee and employed its own personnel and labour to manage and control the entire ground handling cargo. The said ground handling agency agreement between IAAI and Airfreight continued till 31.10.1985. It is, therefore, clear that upto 31.10.1985, the workmen engaged by Air Freight in regard to the handling of cargo were the regular/permanent employees of Air Freight, and were in no way connected with IAAI. In fact, they would not even fall with in the definition of "contract labour" in section 2(b) of CLRA Act. When the agreement of IAAI with Air Freight came to an end on 31.10.1985 , there was no obligation on the part of the IAAI to employ the workers of Airfreight or to continue with the workers previously employed by Airfreight in regard to cargo handling work. IAAI at that juncture had the choice either to give a fresh licence to someone else, or enter into a contract labour agreement, or get the work done directly. But before IAAI could choose or finalize an alternative arrangement, ex-employees of Airfreight, through the Airfreight workers' Union which subsequently became the International Air Cargo Workers' Union (first

respondent herein) approached the Madras High Court in Writ Petition No.11683 of 1985 with a prayer that IAAI should employ the workers employed by Airfreight in regard to ground handling operations and should not recruit any other person.

25.2) IAAI being a statutory authority, being under an obligation to act fairly, wanted to mitigate the hardship to the workers of Airfreight (loaders and packers), as a consequence of terminating the cargo ground handling contract of Airfreight. After considering the matter, it therefore, filed a memo before the court unilaterally indicating certain steps. It proposed to mitigate the hardship of such workers. The steps indicated were :

(a) Workers of Airfreight who were engaged in the cargo handling operation could form a cooperative society;

(b) Till it made its own arrangements, IAAI would consider accommodating the ex-loaders and packers of Airfreight as far as possible, on contract basis through a co-operative society formed by such workers, on terms, conditions and period to be decided by IAAI from time to time, as per its policy.

(c) Under no circumstances the proposal/scheme would involve regular absorption of the workers in the service of IAAI.

25.3) The workers being clearly aware of the legal position that they were not entitled to absorption under IAAI as they were the regular employees of Airfreight, and that IAAI had no obligation to absorb or employ them, submitted to the court that they were agreeable to what was stated by IAAI in the memorandum. Therefore, the High Court after recording the memorandum submitted by IAAI and also recording the submission of the counsel for the workers' Union that it was agreeable to the memorandum, dismissed the writ petition. Thus, the claim of workers of Airfreight who were engaged in the cargo handling operations till 31.10.1985, that they should be employed directly as regular employees of IAAI, stood rejected and attained finality.

25.4) Having regard to the said factual background and having regard to the fact that the memorandum filed by IAAI was not a settlement between the parties, but was only an unilateral proposal by IAAI in a pending writ petition, and in view of the fact that the union was agreeable for such a course and did not press the relief of absorption or direct employment under IAAI, it is not possible to hold that the terms of the memorandum were terms of a settlement arrived at by IAAI from a dominant position, by applying pressure on the workers. This is not a case of the workers giving

up any right or interest, but a case of a benefit or concession being voluntarily extended by IAAI as a responsible organization, to mitigate hardship. It is unfortunate that in the absence of any pleadings or evidence about any such pressure or undue influence, the Tribunal chose to refer to the said memorandum filed in the writ proceedings as a settlement reached by compulsion and pressure, ignoring the fact that it was filed unilaterally in a writ petition and accepted by the workers and the High Court.

26. The second finding by the Tribunal is that the workers were entitled to continue as direct casual labour of IAAI beyond July, 1986 and they would have so continued but for change in their status as contract labour, effected by IAAI.

26.1) As notice above, these workers were the permanent employees of Airfreight. When Airfreight ceased to be the ground handling agent, it was Airfreight's responsibility to deploy its workers elsewhere. But knowing that Airfreight may not continue them in service in view of termination of the licence, these workers requested IAAI to offer them employment. Though there was no obligation to offer them employment or give any other relief, on humanitarian grounds and to mitigate the hardship of these workers, IAAI proposed that if the workers formed a co-operative society, it may consider giving the cargo handling work to such society so that the workers

of Airfreight can earn their livelihood. It also agreed purely as an interim measure to employ them as casual labourers till the formalities of formation of the society and the society entering into a contract with IAAI were completed. Therefore the direct casual employment given to the workers was purely an interim or *ad hoc* measure as a part of the package proposal made by IAAI in its memorandum filed before the High Court, duly recorded by the High Court in W.P. No.11683 of 1985, and accepted by the workers. On formation of the society and on the society entering into a contract with IAAI for providing contract labour, there was no need to employ these workers as casual labourers. Nor did the workers had any right to claim continuation as casual labourers. In fact they did they claim any such right. They worked for less than 240 days as casual labourers under IAAI and were not entitled to claim the benefit of either section 25F nor regularization on the basis of such short casual service as daily rated employees. Therefore, it follows that on the basis of the service as casual employees between November, 1985 and July, 1986, the workers are not entitled to any relief.

26.2) As a corollary, we may also consider whether there was any violation of section 9A of ID Act. Section 9A provides that no employer, who

proposes to effect any change in the conditions of service applicable to any workman in respect any matters specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected, or within 21 days of giving such notice. Thus the notice of change under section 9A of ID Act is required only if the employer wants to change the condition of service of its workmen in regard to matters enumerated in the Fourth Schedule to the Act. This Court has held that a change which is not related to the conditions of service enumerated in the Fourth Schedule, in particular, retrenchment, will not attract the provisions of section 9A of ID Act (vide workmen of *L. Robert D'Souza v. Executive Engineer, Southern Railways* - 1982 (1) SCC 645, and *Workmen of Sur Iron & Steel Co. Pvt. Ltd.* v. *Sur Iron & Steel Company Pvt. Ltd*. - 1970 (3) SCC 618]. In this case, the action of IAAI in entering into a contract with the society was something that was proposed when the workers were the employees of Airfreight. Further, the effect of the contract with the society was not to change the conditions of service, but to put an end to the direct casual daily wage employment of the said workers. As noticed above, the workers were specifically put on notice that their casual employment was purely *ad hoc* and as a humanitarian measure, to be continued only till a

contract labour contract was negotiated and finalized with the society. This was recorded by the court while dismissing the writ petition filed by the workers' union. The workers are not entitled to put forth a contention contrary to the proposal/scheme of IAAI recorded by the High Court in the order dated 12.12.1985 passed in W.P. No.11683 of 1985. Therefore, the question of violation of section 9A of ID Act does not arise.

27. *The third finding is that the contracts dated 1.7.1986, 14.7.1986 and 11.12.1987 between society and IAAI for supply of contract labour was sham and nominal.*

27.1) We have already referred to the circumstances in which the said contract labour agreement was executed. To repeat, the workers were the regular and permanent employees of Airfreight till 31.10.1985. When Airfreight ceased to be the ground handling agent, apprehending retrenchment by Airfreight, the workers appealed to the IAAI to provide them some employment. They also approached the High Court in a writ petition. IAAI categorically stated that it cannot absorb them. Purely as a humanitarian measure and to mitigate their hardship, the IAAI offered to entrust the work of handling of cargo to a society formed by these workers and the workers through their union, readily agreed to form a society and

the cargo handling work was given to the society and the workers as the members of the society benefited from such work/contract by working as contract labour. Instead of working under private employer operating with a profit motive, they worked under their own society. The contract labour agreement was entered by the IAAI with the workers' society not to deny the workers of their right to continue as casual direct labour but, on the other hand, to provide them succour by awarding the contract to their society. The offer of IAAI to enter into a contract with the society formed by the workers, for supply of contract labour was readily welcomed and accepted by the workers' union in W.P. No.11683 of 1985 filed by it. Virtually, the seal of approval by the court was put on the same by recording the proposal and the acceptance of the workers the same. The writ petition of the workers was dismissed and attained finality. Thus, the contracts with the society were genuine, beneficial voluntary bilateral contracts and there was nothing sham or nominal about it. It should also be noticed that at no point of time, the workers or their union pleaded that the agreement between IAAI and the society was sham or nominal. A careful reading of the claim statement filed before the tribunal and the evidence given by WW-1 shows that not even an allegation or claim to that effect was made in that behalf. In these

circumstances, it is un-understandable as to how the tribunal could have held that the agreement was sham and nominal.

27.2) Unfortunately, the Tribunal goes to the extent of referring to the memo filed by the IAAI before the High Court in WP No.11683 of 1985 offering to give the cargo handling contract to the society formed by the workers of Airfreight, as a compromise or settlement which is opposed to public policy, principles of natural justice and an unfair labour practice. It further describes it as a settlement which the workers were constrained to enter. We have already referred to this aspect and find that no such pressure was applied and in fact the memo was not an agreement signed by parties, and there was no obligation on the part of IAAI to make the said offer as per the memo.

28. The last finding is that there were three indicators to show that contract labour for loading/unloading were direct employees of IAAI : direct payment of wages, direct penal action by IAAI against the contract labour, and direct control and supervision of contract labour by IAAI. Therefore, the contracts for supply of contract labour were 'paper' contracts and a camouflage to deny benefits of labour laws to the members of first respondent Union.

28.1) We will first examine whether there was any material at all to hold that the wages were being directly paid by IAAI to the contract labour. The

contracts between IAAI and the society make it crystal clear that a lump sum consideration was to be paid by the IAAI to the society and the society was responsible for payment to its members who were send as contract labour. The workers did not produce any document to show that the payment was made by IAAI directly to the workers. But The Tribunal wrongly held that Ex. W-1 to W-6 showed that the payment was directly made. Ex. W-1 is an appointment letter dated 31.1.1978 issued to one Godaraman by Airfreight. Ex.W-2 dated 31.10.1983 is a pay-slip of one D. Natarajan issued by Airfreight. Both these documents relate to the period prior to 31.10.1985 when the workers were the permanent employees of Airfreight, and had absolutely no connection with IAAI. Ex.W-3 dated 18.4.1988 is a cash receipt for payment of ex-gratia amount paid to cargo loaders for the period 22.3.1986 to 9.5.1986 and 17.5.1986 to 23.5.1986. It shows that a sum of Rs.7,267.20 was paid as ex gratia amount. Though the said receipt is dated 18.4.1988, it clearly shows that the payment related to the work done between 22.3.1986 to 9.5.1986 and 17.5.1986 to 23.5.1986 when, admittedly, these workers were direct casual daily wage employees under IAAI and when the contract between IAAI and the society had not even come into existence. The contract labour arrangement admittedly came into existence only from 1.7.1986. This document has, therefore, no

relevance to show that any payment was made to the contract labour directly. Ex.W-4 is a Circular dated 18.2.1986 of IAAI notifying that wages of 82 loaders mentioned therein had been drawn from 1.1.1986 to 31.1.1986 and directed the said daily wage labourers to receive their wages immediately. This again is of no relevance as it related to the period prior to the contract labour agreement when the workers were working as casual daily wage employees directly under the IAAI. Ex.W-5 is the pay-slip of one S.C. Yadav for May, 1990 who was working in the Bombay Airport and Ex. W-6 is a pay-slip of one Aseem Das, Cargo Loader for June, 1990 who was working in the Calcutta Airport. These two documents were produced only to show that the IAAI had employed some persons as direct labour in its cargo department in Calcutta and Bombay Airports and had nothing to do with the workers who were working at Madras. On the basis of these documents, the Tribunal has held that payments were being directly made to workers when they were contract labours. This is a finding based on absolutely no evidence and shockingly perverse and is liable to be rejected accordingly.

28.2) The Tribunal held that IAAI was taking penal and disciplinary action by suspending and punishing the contract labour and that was proof of

direct employment. This finding is also based on no evidence. Not even a single document was produced to show that any notice of suspension or show cause notice for disciplinary action or order imposing punishment was passed by IAAI in regard to any of the contract labour. Reliance was placed on Ex.W10, M-15 to M-17, M-21, M-23 as also M2, 24 to 31 and 34 to 40 to prove that IAAI was directly taking action against the contract labour. None of them is relevant. Ex.W-10 is a letter dated 7.3.1990 from IAAI to the society, stating that one Ram Chander, loader-cum-packer had given an assurance to work in a disciplined manner and therefore it was decided to allow him to work. This is not a communication addressed to the contract labour but to the society informing the society that Ram Chander may be permitted to work in view of his assurance to behalf properly. M-15 to M-17 are 3 letters dated 9.3.1987, 16.6.1988 and 11.6.1990 addressed by IAAI to the society regarding the allotment of contract labour and their identification. Ex.M-21 is a letter dated 20/22.2.1991 from IAAI to the society for supply of contract labour. Ex.M-23 is a letter dated 14.5.1991 from IAAI to the society regarding duty roster. Ex.M24 is a letter dated 2.12.1987 from IAAI to the society informing that there is no improvement in the attendance of the contract labour, and requesting the society to take necessary action to improve their attendance. Ex.M25 to 31 and 34 to 40 are

letters complaining about pilferage and other irregularities committed by the contract labour noticed by security personnel. These letters give the particulars of the irregularities committed and inform the society not to send them to work pending investigation. None of them relates to imposition of punishment by IAAI as employer against any employee. These are merely communications informing the contractor society that some of the contract labour provided by it were guilty of some illegal acts and therefore directing the contractor not to send those employees. This was expressly provided for in clauses 20 and 25 of the Contract Labour Agreement. Thus, none of these documents is evidence of any penal or disciplinary action by IAAI against the contract labour.

28.3) The next ground referred is that the contract labour were working under the direct supervision and control of officers of IAAI. This is not in fact disputed. The contract labour were engaged in handling cargo, that is loading, unloading and movement of cargo in the Cargo Complex of IAAI. Naturally, the work had to be done under the supervision of the officers of IAAI. Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer. Clause 17 of the Contract

Agreement required a supervisor to be employed by the society also. Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer.

28.3) It is thus seen that all the three grounds mentioned by the Tribunal and which have found favour with the Division Bench as indicators of direct employment by IAAI and the contract labour agreement with the society being a camouflage, are wholly baseless.

29. In view of the above we answer the questions as follows :

(i) The contract labour agreement between IAAI and the society was not sham, nominal or as a camouflage and the contract labour were not the direct employees of IAAI.

(ii) There was no violation of section 9A of the ID Act.

(iii) In the absence of a notification under section 10 of CLRA Act prohibiting the employment of contract labour in the operation of cargo handling work, the workmen employed as contract labour are not entitled to claim absorption.

30. In the light of our findings on the two questions the order of the Division Bench cannot be sustained and is liable to be set aside and the

order of the learned Single Judge has to be restored. We may however note that the last direction given by the learned Single Judge that in the event of the Central Government issuing a notification under section 10 of CLRA Act, all those who had worked as contract labour under the contract between IAAI and society should be absorbed in the same manner as was directed by this Court in *Air India* is a direction which is bad in law, as subsequent to the said decision of the learned Single Judge, this Court in *SAIL*, reversed the decision in *Air India.* IAAI did not challenge the said direction. *SAIL* has also made it clear that the decision in *Air India* is overruled prospectively and any declaration or direction issued by industrial adjudicator or High Court for absorption of contract labour following the judgment in *Air India* shall hold good and shall not be set aside, altered or modified on the basis of the decision in *SAIL*. Therefore, the said direction of the learned single Judge which has attained finality, as IAAI did not challenge the same, is not disturbed. In view of the above, the appeal is allowed in part, the order of the Division Bench is set aside and the order of the learned Single Judge is restored.

31. We are informed that during the pendency of the writ petition, in pursuance of an interim order, the workers were being paid Rs.1,000/- per

month without extracting any work. In the writ appeal, the Division Bench modified the said interim order on 1.9.1998. While continuing the direction for the monthly payment of Rs.1,000/-, it directed that the workers who reported for work and worked under the current contractor should be paid Rs.1,281/- per month and those who did not report to work, but awaited the result of litigation, should continue to receive Rs.1,000/- per month. In pursuance of it, seven workers apparently reported to work and worked up to 15.4.2002 and were paid Rs.1,281 per month; the remaining 70 chose not to report to work and continued to receive Rs.1,000/- per month. Apparently those 70 were otherwise engaged or employed and therefore did not choose to report to work. The judgment of the Division Bench dated 12.11.2001 which restored the award of the Tribunal, was stayed by this Court. When IAAI challenged the judgment of the Division Bench restoring the award of the Tribunal, this Court on 15.3.2002 directed that status quo as on the date of the judgment of the High Court be maintained. By a subsequent interim order dated 21.2.2003, this Court observed that it will be difficult for this court to issue any direction in terms of the interim order granted by the High Court would be a bad precedent in labour law, as that would mean directing payment for not doing any work. This Court therefore directed IAAI to extract appropriate work from the workers and to pay them Rs.1,000/- to

such of them who worked. It was clarified that payment of Rs.1,000/- would be without prejudice to the rights of the parties as may be finally determined. In view of our final decision, the only further direction we propose to make is that in regard to the period subsequent to 21.2.2003, if any of the workers had worked and had been paid only Rs.1,000/- per month, IAAI shall pay for the said period by way of monthly salary a sum equivalent to the minimum wages. The difference between the minimum wage and Rs.1,000 shall be paid by the IAAI to the said workers who have worked, within 3 months from today. Parties to bear their respective costs.

……..J.
(R V Raveendran)

New Delhi;
April 13, 2009.

…….J.
(Lokeshwar Singh Panta)