REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.__3641-42__ OF 2008
(Arising out of SLP (C) No.22320-22321 of 2004)

FOOD CORPORATION OF INDIA & ANR. … APPELLANTS

Versus

PALA RAM & ORS. … RESPONDENTS

{With C.A. No._3654 of 2008 [@ SLP (C) No. 1742/2008], C.A. Nos._3655-56 of 2008 [@ SLP (C) No. 22335-22336/2004 & C.A. No._3657 of 2008 [@ SLP (C) No. 2757/2006]}

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. The case has a chequered history.

Appellant has been constituted under the Food Corporation of India Act, 1964. For the purpose of carrying out its activities, it maintains a large number of godowns in different parts of the country including the States of Punjab and Haryana. As the law stood then, the respective State Governments were considered to be the appropriate Government in respect of the appellant. Various State Governments issued Notification prohibiting employment of contract labour in some processes in its establishments purported to be in exercise of its power under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, "the Act").

Indisputably, the Government of India in exercise of the same power issued a Notification bearing No. S.O. No. 779(E) on or about 9.12.1976 to the following effect:

> "S.O. No. 779(E) – In exercise of the power conferred by sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970) the Central Government after consultation with the Central Advisory Contract Labour Board, hereby prohibits employment of contract labour on and from the 1.3.1977, for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate Government under the said Act is the Central Government: (emphasis supplied)
>
> Provided that this notification shall not apply to the outside cleaning and other maintenance operations of multi-storeyed buildings where such cleaning or

> maintenance operations cannot be carried out except with specialized experience."

In a decision of this Court titled "***Food Corporation of India Workers' Union* v. *Food Corporation of India & ors."*** reported in (1985) 2 S.C.C. 294, it was held:

> "On the interpretation of the relevant sections extracted above, we hold that the 'appropriate Government' for the purpose of this case pertaining to the regional offices and their warehouses in the respective States is the State Government and not the Central Government."

3. However, on or about 28.1.1986, the definition of 'Appropriate Government' was amended by Act 14 of 1986 in terms whereof, the Central Government was declared to be the 'appropriate Government', inter alia, so far as establishments of FCI are concerned.

4. The Central Government thereafter issued a Notification on or about 28.5.1992 stating that no case for abolition of contract labour in respect of the jobs of sweeping, cleaning, dusting and watching of buildings in Food Corporation of India was made out. It reads as under:

> "No. U.23013/11/89-LW
> Government of India : Ministry of Labour
> Jaisalmar House, Mansingh Road,

New Delhi, Dated 28th May, 1992

To,
All the members of Central
Advisory contract Labour Board.

Subject: Report (Part-I) of the Committee constituted to study the working of Contractor Labour System in Sweeping, Cleaning, Dusting and Watching of Buildings owned or occupied by establishments in respect of which the Central Government has become the appropriate government after the amendment in 1986 of the Contract Labour (Regulation and Abolition) Act, 1970.

Sir,

I am directed to refer to this Ministry's letter of even No. dated 3rd April, 1992 and to say that the matter relating to the dusting and watching of buildings owned or occupied by the Corporation of India. Unit Trust of India, and Central Warehousing Corporation was discussed in the 24th meeting of the Central Advisory Contract Labour Board held on 29.02.1992 at New Delhi under the Chairmanship of Union Deputy Labour Minister. It was inter-alia decided to leave the matter further for a decision by Government keeping in views the views expressed in the matter.

2. In pursuance of the recommendations of the Board, the matter has been considered in detail by the Central Government and it has been decided not to prohibit employment of Contract Labour in the sweeping, cleaning, dusting and watching of Building owned or occupied by the establishments, of Food Corporation of India, Industrial Finance Corporation of India, for which the appropriate Government under the Contract Labour (Regulation and Abolition) Act, 1970 is the Central Government.

Yours faithfully,

Sd/-
(Smt. P. Vankatachalam)

Deputy Secretary of the Govt. of India
And Secretary of the Central Advisory
Contract Labour Board."

5. The question as to whether on abolition of contract labour, the contract labourers working under the contractors became direct employees of the management, has been debated in various High Courts. The question came up before this Court in ***Air India Statutory Corporation & Ors.*** **v.** ***United Labour Union & ors.*** reported in (1997) 9 S.C.C. 377 where it was held that all the contract labourers on issuance of Notification dated 9.12.1976 became the direct employees of the respective managements. The decision of this Court in ***Food Corporation of India Workers' Union*** (supra) however was not noticed.

6. A series of writ petitions thereafter were filed before the Punjab & Haryana High Court. In one of the matters, a Division Bench of the said Court in LPA No. 742 of 1993 by a judgment and order dated 21.7.1998 opined that the contract labour in the depots of the appellant by reason of the said notification dated 9.12.1976, the workmen were entitled to the benefits of the said decision of ***Air India*** (supra) holding:

> "Accordingly, on finding the work to be perennial nature, it had recommending and the Central

> Government had considered and accepted the recommendation to abolish the recommendation to abolish the contract labour system in the afore-said services. Having abolished it the Central Government was denuded its power under Section 10(1) to again appoint insofar as the above services of the Mohile Committee to go once over into the self – same question and recommendation of the latter not to abolish the contract labour system in the above service and the acceptance there of by the Central Government are without any legal base and therefore nonest."

7. It was also held that the Central Government was the appropriate Government in view of the decision of this Court in ***Air India*** (supra), stating :

> "11. After recording the above mentioned conclusions their Lordships examined the correctness of the directions given by Bombay High Court for enforcement of the notification dated 09-12-1976 qua to the establishment of the Corporation and upheld the same.
>
> 12. In view of the judgment of the Supreme Court in Air India Statutory Corporation's Case (supra) approving decision of the Bombay High Court which has direct bearing on the case of the appellant, the impugned order of the learned Single Judge in which he dissented from the decision of the Bombay High Court cannot be regarded as laying down correct law. In our opinion the interpretation given by the Apex Court to the definition of appropriate Government is also sufficient to upset the impugned judgment.

> 13. In the result we allow and set aside the order of the learned Single Judge. Consequently the writ petition filed by the appellant is accepted and the respondent – Corporation is directed to give effect to the notification dated 09.12.1976 while making employment in its establishment. As a logical corollary, the respondent is restrained from employ watchman for its godowns as contract labour."

8. Indisputably, a Special Writ Petition filed thereagainst by the petitioner was dismissed by an order dated 30.8.1999 stating:

> "In view of the circular No. 2 of 1999 dated 23.3.1999 by the Food Corporation of India and Office Memorandum No. S-16-11/2/99-LW dated 8.2.1999 issued by the Government of India, this Special Leave Petition deserves to be dismissed. The Special Leave Petition is, therefore, dismissed."

9. This question, however, again came up for consideration before a Constitution Bench of this Court in ***Steel Authority of India Limited & ors.*** **v.** ***National Union Waterfront Workers & ors.*** [(2001) 7 SCC 1].

The Constitution Bench took a different view. ***Air India*** (supra) was overruled prospectively. It was held that there being no provision under the Act to direct absorption of the contract labour on abolition thereof, ***Air India*** (supra) did not lay down a good law, stating:

"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.

*** *** ***

119. We are not persuaded to accede to the contention that a workman, who is not an outworker, must be treated as a regular employee of the principal employer. It has been noticed above that an outworker falls within the exclusionary clause of the definition of "workman". The word "outworker" connotes a person who carries out the type of work, mentioned in sub-clause (*C*) of clause (*i*) of Section 2(1), of the principal employer with the materials supplied to him by such employer either

> (*i*) at his home, or (*ii*) in some other premises not under the control and management of the principal employer. A person who is not an outworker but satisfies the requirement of the first limb of the definition of "workman" would, by the very definition, fall within the meaning of the term "workman". Even so, if such a workman is within the ambit of the contract labour, unless he falls within the aforementioned classes, he cannot be treated as a regular employee of the principal employer.
>
> **120.** We have also perused all the Rules and forms prescribed thereunder. It is clear that at various stages there is involvement of the principal employer. On an exhaustive consideration of the provisions of the CLRA Act we have held above that neither they contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under Section 10(1) of the CLRA Act, a fortiori much less can such a relationship be found to exist from the Rules and the forms made thereunder."

The summary of the decision was outlined in paragraph 125; the relevant portions whereof are as under:

> "(2)(*a*) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and

(2) having regard to

(*i*) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(*b*) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in *Air India case* prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question 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 is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

The meaning of the expression "industrial adjudicator" was stated in the following terms:

> "126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

10. Interpretation of the decision of this Court in ***Steel Authority of India Limited*** (supra) vis-à-vis the circulars issued by the Central Government as also by the appellant fell for consideration in a large number of writ petitions filed by the concerned workmen of different establishments of the appellant.

11. We have noticed hereinbefore the decision of the Division Bench of the Punjab & Haryana High Court rendered in L.P.A. No. 742 of 1993. The said decision itself was construed differently. Whereas one Division Bench in its judgment and order dated 22.8.2002 passed in Writ Petition No. 4695 of 1999 titled "Sunil Kumar Vs. FCI & Ors." opined that the said Notification dated 9.12.1976 became final vis-à-vis the establishment of FCI in Sangrur District, as noticed hereinafter, other Benches of the said

Court, however, took a different view. We may, however, notice the Division Bench decision in "Sunil Kumar" wherein it was held:

> "The only argument which survives for consideration of this Court is whether the petitioners are entitled to claim benefit of the directions contained in sub-para No. (6) of paragraph No. 121 of the judgment in Steel Authority of India's case (supra). Learned counsel for the petitioners contended that the judgment in relation to Food Corporation India Class IV Employees Union (Regd.) Sangrur, has attained finality and has been implemented and, thus, would fall under the exception carved out by the Hon'ble Apex Court in clause (2)(b) of paragraph No. 121 and, therefore, the petitioners are entitled to the relief limited to the extent that the Corporation would grant them preferential treatment in terms of sub-para (6) of paragraph 121 of the judgment. According to him, by issuing the letters of 1999 and the judgment of the Letters Patent Bench as well as the Apex Court would make the judgment enforceable in favour of all employees of the Food Corporation India, irrespective of territory, as the judgment would have to be read as a judgment in rem and not in personem. In other words, the Food Corporation India being the respondent in these petitions, is bound to enforce the judgment qua all its employees and particularly those who are working in the State of Punjab."

12. Posing the question as to what would be the meaning of the expression "if it has otherwise attained finality and/or it has been implemented" used in ***Steel Authority of India Limited*** (supra) and having noticed the fact that the Notification dated 9.12.1976 stood set aside by the Constitution Bench of this Court, it was observed that the appellant cannot

justify refusing relief to the employees of the same sector of the Corporation, rather same District, i.e. Sangrur in the following terms :

> "It is not disputed that Sunam is a part of District Sangrur and the petitioners are well within their rights to claim the benefit of a settled right. It is only implementation of the earlier judgment as the Union itself was a party before the High Court in the other cases.
>
> On the one hand, the workers do not question the genuineness of the agreement, while on the other, the management admits implementation of the notification and it having attained finality as back as in the year 1999. Once these two ingredients are satisfied in light of the judgment of the Hon'ble Apex Court, denying limited relief in terms of sub-paragraph (6) of paragraph No. 121 of the judgment of Hon'ble Apex Court to the petitioners, may not be permissible.
>
> We have granted relief to the petitioners in these petitions as it is only direction in furtherance to the judgment of the Court pending between the parties to the writ and which has attained finality. While, if we were to deny relief to the petitioners, it would amount to obstructing implementation of the judgment which has attained finality upto the highest court of the land. In other words, it would tantamount to denial of a settled relief. This judgment merely adds to the existing order of the court particularly in view of the fact that the respondents have admittedly implemented the notification in question."

13. Indisputably, the Special Leave Petitions filed thereagainst have been dismissed by this Court by an order dated 24.2.2003. Appellant thereafter

issued two advertisements being dated 13.9.2003 and 20.8.2003 for enrolment of agencies for provision of security coverage of FCI foodgrains stored in various godowns/CAP complexes in Haryana and also for the purpose of security of FCI building at Chandigarh. A Division Bench of the High Court opined that the workmen were entitled to the benefit of para 125 (b) of the judgment in ***Steel Authority of India Limited*** (supra) as interpreted by the Division Bench of the said High Court in L.P.A. No. 742 of 1993 and Writ Petition No. 4695 of 1999. The advertisements were quashed. The main judgment was delivered in CWP No. 15484 of 2003. That case pertained to the State of Punjab.

14. Two other matters including one pertaining to the State of Haryana came up for consideration before the High Court in CWP No. 16476 of 2003 and CWP No. 16482 of 2003. The main judgment was delivered in CWP No. 15484 of 2003. The said decision was followed in other cases. Noticing the decision of this Court in ***Steel Authority of India Limited*** (supra) as contained in para 125(b), it was held:

> "The observations aforesaid must accordingly be applied to the present case. The judgment of this court in the LPA is dated 21.7.1998. It is conceded that directions given in that judgment had been implemented and acted upon and in view of the observations of the Supreme Court, the petitioners herein thus fall within the exceptions. We have also been referred to the Division

> Bench Judgment of this Court passed on 22.8.2002, in Civil Writ Petition No. 4695 of 1999 Sunil Kumar and Others vs. F.C.I. and others. The relevant observations are as under:-
>
> > 'Consequently, in view of the discussion aforestated, we allow this writ petition, however, limited to the extent that the petitioners would be entitled to the relief in the light of the observations made by the Hon'ble Court in the case of Steel Authority of India (supra). However, the parties are left to bear their own costs.'
> >
> > In the aforesaid judgment after considering the implications of the judgment of the Supreme Court in Steel Authority of India's case (supra), the Division Bench granted the necessary relief to the petitioners.
> >
> > We accordingly direct that the petitioners are entitled to the same relief. The writ petition is allowed in the above terms. In this view of the matter, the advertisement Annexure P12 is quashed. The respondents are directed to take a fresh decision in the light of the observations aforesaid within a period of four months from the day a certified copy of the order is supplied to them."

Curiously, the appellants have filed only two Special Leave Petitions bearing No. 22320-21 of 2004 and 22335-36 of 2004 questioning the decision of the High Court in CWP No. 16476 of 2003 and CWP No. 16482 of 2003 and no Special Leave Petition has been filed against the main judgment, viz., CWP No. 15484 of 2003.

15. Before, however, embarking on the contentions raised by the parties, we may also notice that Review Petitions had been filed thereagainst which by reason of an order dated 21.5.2004 were dismissed.

16. The Food Corporation of India Class IV Employees' Union filed a Writ Petition praying for the following reliefs:

> "i) a writ in the nature of mandamus or any other writ, order of direction directing the Respondents to employ the persons mentioned in Annexure P/1 as watchmen in accordance with the directions of the Hon'ble Supreme Court of India in Steel Authority of India's case reported as AIR 2001 SC 3527 and in accordance with the directions given by this Hon'ble Court in Civil Writ Petition No. 4695 of 1999 decided on 22.8.2002 (Annexure P/8)

ii) any other writ, order or direction which in the circumstances, of this case, this Hon'ble Court deems fit and proper be also passed;

iii) issuance of advance notices be dispensed with;

iv) filing of certified copies of annexures be dispensed with;

v) cost of the petition be awarded."

It was furthermore prayed:

> "i) that during the pendency of the writ petition, the Respondents be restrained from employing any other persons in preference to the persons mentioned in Annexure P-1;

ii) and Respondents be directed to dispense with the services of the SPOs/Home Guards employed as watch and ward staff by way of a stop gap arrangement."

17. A Division Bench of the said Court dismissed the said Writ Petition giving liberty to the Union to approach the Labour Court.

18. Special Leave Petition (Civil) No. 2757 of 2006 arose out of the said order. Raj Kumar and 71 others also filed a Writ Petitioin before the High Court which was marked as CWP No. 3945 of 2006. Therein a contention was raised that the petitioners who had been working as watchmen could not have been asked to appear at a test having regard to the directions issued by this Court in ***Steel Authority of India Limited*** (supra). Reliance therefor was placed on the decision of the Division Bench of the High Court in CWP No. 15484 of 2003 as also a decision in Food Corporation of India, Class IV Employments Union (Regd.) Sangrur v. Food Corporation of India, Chandigarh, 1999 (1) Punjab Law Reporter 35. The Division Bench opined that having regard to another Constitution Bench decision of this Court rendered in ***Secretary, State of Karnataka and others*** **v.** ***Umadevi and others*** [JT 2006 (4) SC 420 : (2006) 4 SCC 1], the Writ Petition is not maintainable stating :

> "The various grounds raised by the petitioners need not be separately dealt with because the Supreme Court of India in Secretary, State of Karnataka and others vs. Umadevi and others JT 2006 (4) 420, has clarified that the right to employment, if it is a part of right to file, would stand denuded by preferring persons who had got in casually or who had come through the back door. It would be consistent with the policy of Article 39(a) of the Constitution of India, if the Courts recognized that the appointment to a post in government service or in the service of its instrumentalities could only be by way of a proper selection in a manner recognized by legislation in the context of the provisions of the Constitution of India.
>
> This quite clearly would not permit FCI to recruit the petitioners who had until 1999 worked for various period as watchmen on contract labour. If the petitioners are seeking benefit of direction given by this Court in Food Corporation of India, Class IV Employments Union (Regd.) Sangrur Vs. Food Corporation of India, Chandigarh (1999-1) Punjab Law Reporter 35 then in Umadevi's case (supra), the Supreme Court had also clarified that a decision which ran counter to the principles settled by them shall stand denuded of their effect as precedent.
>
> Consequently, we have no hesitation in holding that all judgments and directions which run counter to Umadevi's case including judgment of this court in Food Corporation of India, Class IV Employments Union (Regd.) Sangrur (supra) and any other judgment which seems to enforce notification of 1976 to re-employ the contract labour stand denuded of its effect as precedent."

19. Mr. Ajit Pudussery, learned counsel appearing on behalf of the appellant would submit that the Division Bench of the High Court

misconstrued and misinterpreted the decision of this Court in ***Steel Authority of India Limited*** (supra) as also the decision rendered in the case of CWP Nos. 4891 and 4887 of 2004 as the fact thereof was confined to the District of Sangrur only. Each establishment being separate and distinct, the decision in CWP Nos. 4891 and 4887 of 2004 could not have been applied in relation to all other godowns.

20. Mr. Dharmendra Kumar Sinha, learned counsel appearing on behalf of the respondent, on the other hand, would submit that it is incorrect that the decision of the Punjab & Haryana High Court in CWP Nos. 4891 and 4887 of 2004 was rendered only in relation to the Sangrur District inasmuch as it was contended that from a perusal of the order passed by the Punjab & Haryana High Court as also the Circulars issued both by the Central Government and the Food Corporation of India itself would appear that the contract labour stood abolished and in that view of the matter the impugned judgments rendered in CWP No. 15484 of 2003, CWP No. 16482 of 2003 and CWP No. 15694 of 2003 are wholly unassailable.

The learned counsel would contend that the fact of the matters being wholly undisputed, the High Court has committed a manifest error in passing the order dated 15.9.2005 in CWP Nos. 4891 and 4887 of 2004

which is the subject matter of Special Leave Petition (Civil) No. 2747 of 2006. Furthermore, the right of the workmen having been preserved and protected in terms of the Constitution Bench decision of this Court in ***Steel Authority of India Limited*** (supra), the High Court manifestly erred in dismissing the Writ Petition filed by the Raj Kumar & ors. relying on or on the basis of the Constitution Bench decision in ***Umadevi*** (supra).

21. The core question involved in these appeals is the interpretation of the judgment of this Court in ***Steel Authority of India Limited*** (supra) and in particular clause (b) of para 125 thereof. ***Air India*** (supra) has been overruled prospectively. What has been directed is that despite the said judgment, if any order had been passed or any action had been taken giving effect to the Notification dated 9.12.1976, the same would not be called in question in any Tribunal or Court including the High Court subject to the condition that the same has otherwise attained finality or had been implemented.

22. What was therefore required to be implemented or finality attached to any judgment delivered or action taken, relates to the Notification of the Central Government dated 9.12.1976. We do not find from the discussions in any of the judgments of the High Court that the said Notification dated 9.12.1976 had been given effect to. We have noticed hereinbefore that the

Central Government upon becoming the appropriate Government in relation to the appellant – Corporation issued a Notification on or about 28.5.1992. The validity of the said Notification is not in question. Once the prohibition purported to have been made by the Central Government in terms of its Notification dated 9.12.1976 stood withdrawn with effect from 28.5.1992, the question of prohibiting employment of contract labour in sweeping or watching buildings owned or occupied by all the establishments of Food Corporation of India, inter alia, would not arise.

It may be true that the writ petitioner in the writ application, inter alia, contended that the Corporation had implemented the decision both in Punjab and Haryana. What was however was sought to be implemented was the Circular letters issued by the Central Government and/or the Food Corporation of India itself, which find reference in the order of this Court dated 30.8.1999 passed in Special Leave Petition (Civil) No. 4605 of 1999.

We may notice Circular No. 2 of 1999 as also Office Memorandum dated 8.2.1999. By reason of the said Office Memorandum dated 8.2.1999, the Central Government acting as the 'appropriate Government' in respect of the Food Corporation of India opined that the Notification dated 9.12.1976 is applicable to it and the Regional Labour Commissioner (C) Chandigarh has initiated action to enforce the said Notification, stating:

> "In the circumstances, since the jobs in watching of the buildings owned or occupied by the establishment, far which the Appropriate Government is the Central Government, have been prohibited by the notification dated 9.12.1976, the Food Corporation of India would be well advised not to engage contract labour in the jobs specified in the notification."

The Circular No. 2 of 1999 dated 23.3.1999 issued by the Food Corporation of India is to the same effect whereby it was directed:

> "In view of the above instructions of the Ministry of Labour, you are requested not to engage the contract labour in the jobs specified in the notification dated 9.12.76 (copy enclosed). Further it should be assured that the instructions are strictly followed.
>
> Please acknowledge the receipt."

What however has not been noticed is the Notification issued under Section 10(1) by the Central Government itself in the year 1992. The effect of the Notification issued under sub-Section (1) of Section 10 of the 1970 Act cannot be taken away by a Circular letter issued by the Central Government or by the appellant itself. The right of the workmen to file a writ petition for obtaining a writ in the nature of mandamus must be based on a legal right. This Court in ***Steel Authority of India Limited*** (supra) only recognized an existing right and not any future right.

Such a right was to be existing as on 30.8.2001 when the judgment in ***Steel Authority of India Limited*** (supra) was rendered and not thereafter. Any decision rendered thereafter could not confer a right much less any other right. In terms of the aforementioned judgment, what has been done is to recognize such a right and not declaring the same afresh. The law as enunciated in ***Steel Authority of India Limited*** (supra) is very clear. Even the provisions of 1970 Act are unambiguous and explicit. There has to be a Notification abolishing contract labour as regards watching of the buildings or godowns belonging to the Corporation for the purpose of storage of foodgrains.

23. Whether as on 9.12.1976 the Central Government was the appropriate Government or not as opined by this Court in ***Food Corporation of India Workers' Union*** (supra) may not be of much significance as the Central Government admittedly became the appropriate Government with effect from 28.1.1986.

24. Clause (b) of Section 125 uses the word 'establishments' in plural. A Corporation therefore may have more than one establishment. We may notice hereinbefore the differences of opinion amongst the Benches of the Punjab & Haryana High Court itself.

Whereas in the case of 'Sunil Kumar' a Division Bench opined that the establishment which was the subject matter of L.P.A. No. 742 of 1993 was confined to the district of Sangrur, a different view is sought to be projected before us.

It is, however, evident from the decision in L.P.A. No. 742 of 1993 dated 21.7.1998 that the petitioner therein confined its case to Sangrur. It was the Sangrur branch of the Union which filed the application. The learned counsel may be correct that while allowing the Writ Petition, no distinction was made between one or the other godowns or one or the other Regional Offices situated either in the State of Punjab or in the State of Haryana. But as is well known, a judgment must be construed on its own facts. Application of the said judgment in relation to the Sangrur establishment of the Corporation is not in dispute. But the question as to whether in absence of any valid Notification abolishing contract labour the same could be held to be binding on other establishments or not required serious consideration. The High Court unfortunately in its judgment did not pose any such question.

It is interesting to notice that the writ petition filed by the Union and of the Raj Kumar apparently proceeded on the basis that they were

appointed by the Corporation. In the writ petition filed by Raj Kumar and others, camouflage was pleaded.

What was sought to be contended was that the contractor was supplier of labour. It was not the contention that the watchmen had been deployed by the contractor. The gravamen of the contention is that for all intent and purport they have been appointed by the Corporation itself. It was stated that the Assistant Manager used to prepare the duty list of the watchmen. It has categorically been averred:

> "That although the petitioners were shown to have been employed through the contractor yet the petitioners worked under the direct supervision and control of the officials of the respondent – Corporation."

This Court in ***Steel Authority of India Ltd.*** **v. Union of India & ors.** [2006 (9) SCALE 597] held:

> "22. We may reiterate that neither the Labour Court nor the writ court could determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of the Appropriate Government.
>
> 23. A decision in that behalf undoubtedly is required to be taken upon following the procedure laid down in Sub-section (1) of Section 10 of the

> 1947 Act. A notification can be issued by an appropriate Government prohibiting employment of contract labour if the factors enumerated in Sub-section (2) of Section 10 of the 1970 Act are satisfied.
>
> 24. When, however, a contention is raised that the contract entered into by and between the management and the contractor is a sham one, in view of the decision of this Court in Steel Authority of India Limited (supra), an industrial adjudicator would be entitled to determine the said issue. The industrial adjudicator would have jurisdiction to determine the said issue as in the event if it be held that the contract purportedly awarded by the management in favour of the contractor was really a camouflage or a sham one, the employees appointed by the contractor would, in effect and substance, be held to be direct employees of the management. The view taken in the Steel Authority of India Limited (supra) has been reiterated by this Court subsequently. [See e.g. Nitinkumar Nathalal Joshi and Ors. v. Oil and Natural Gas Corporation Ltd. and Ors. and Municipal Corporation of Greater Mumbai v. K.V. Shramik Sangh and Ors."

The writ petition, therefore, was not maintainable.

Out attention, however, has been drawn to the fact that the direction of the High Court in L.P.A. No. 742 of 1993 was applicable both to Punjab as well as Haryana which had not been denied or disputed. We may notice the following contention raised in the petition in this regard.

> "This direction it is submitted is applicable both to Punjab as well as Haryana as both fall within the jurisdiction of this Hon'ble Court."

The said statement therefore was primarily made for invoking the jurisdiction of the High Court. In any event, if a decision is not applicable as has been found by one Bench of the High Court, the same would not become applicable only because the Corporation failed to rebut the said contention. It is a question of jurisdiction.

25. The writ petitions of the workmen do not disclose the names of the contractors. It has not been disclosed as to whether the contractors were registered or not. What are the terms and conditions of employment have also not been stated. On and from which date each individual was appointed and by which contractor and in respect of which establishment has not been disclosed.

The writ petition filed by the Raj Kumar and others categorically show that the averments made therein proceeded on the basis that the actual employer was the Corporation. If that be so, having regard to the decision of this Court in ***Steel Authority of India Limited*** (supra), the writ petition

could not have been entertained. No authority or forum has scrutinized the records. The registers maintained by the so-called contractors had not been scrutinized. It was obligatory on the part of the High Court to take recourse thereto. The benefit of any order or action taken will be a reputation to State must have a direct nexus with the Notification dated 9.12.1976, that 9.12.1976 Notification ceased to have any application, question of its attained finality in law would not arise.

26. Our attention has been drawn to the Order dated 23.1.2004 passed in CWP No. 15484 of 2003 wherein it was recorded:

> "It is the conceded position that the matter was taken by the Food Corporation of India in a special Leave Petition before the Supreme Court which too was dismissed on 30.08.1999. It is further conceded that the directions of the Division Bench were subsequently complied with by the Food Corporation of India."

What was conceded was the implementation of the order in relation to Sangrur District and not others. We therefore do not find any illegality in the order dated 15.9.2005 passed in CWP No. 4891 of 2004. So far as the order passed in CWP No. 3945 of 2006 is concerned we again do not find any illegality therein apart from the fact that on their own showing, the writ petition was not maintainable.

27. Keeping in view the decision of this Court in ***Steel Authority of India Limited*** (supra), it is evident from the writ petition itself that another right, viz., a right under Section 25(h) of the Industrial Disputes Act, 1947 had been claimed. The benefit of ***Steel Authority of India Limited*** (supra) was sought to be invoked without stating the requisite foundational facts therefor.

They were asked to appear in the written test. They were asked to do so for judging their eligibility. They must know how to read and write. They were required to show that they were in a position to perform their duties as watchmen. Their contention that they should be exempted from appearing at the written test was wholly unfounded. The High Court may not be correct in following the Constitution Bench decision of this Court in ***Umadevi*** (supra), but there cannot be any doubt whatsoever that the ultimate conclusion of the High Court is correct; particularly, when it had categorically been stated in the written reply of the Corporation that the recruitment for the post provided for a test so that it could be determined as to whether the candidates were literate or not. We may furthermore notice that in para 3 of the said written reply it was stated by the Corporation :

> "…Some persons were employed as Watchmen/security guards through contractors/security agencies. It is wrong

> that the appointment was shown to be through contractor. The correct position is that the said workmen were employees of the contractor. No watchman who was the employee of the contractor was given appointment letter by the answering respondent. Whether the contractor concerned issued any appointment letter or not in the knowledge of the answering respondent. This fact can be disclosed by the contractor."

[See Bharat Heavy Electric Ltd. v. E.S.I. Corporation, AIR 2008 SCW 1494]

A series of disputed questions of fact therefore was raised. Even on that premise, the writ petition was, thus, not maintainable.

28. We therefore allow the appeals arising out of Petition for Special Leave to Appeal (Civil) Nos. 22320-22321 of 2004 and 22335-22336 of 2004 and dismiss the appeals arising out of Petition for Special Leave to Appeal (Civil) Nos. 1742 of 2008 and 2757 of 2006.

29. In view of the fact that the order dated 23.1.2004 passed in CWP No. 15484 of 2003 is not in question, the same must be held to have been

attained finality. In the facts and circumstances of the case, however, there shall be no order as to costs.

……..……J.
[S.B. Sinha]

……..……J.
[V.S. Sirpurkar]

New Delhi
May 16, 2008