(2014) 9 Supreme Court Cases 407

(BEFORE H.L. DATTU, R.K. AGRAWAL AND ARUN MISHRA, JJ.)

BALWANT RAI SALUJA
AND ANOTHER . . Appellants;

Versus

AIR INDIA LIMITED AND OTHERS . . Respondents.

Civil Appeals Nos. 10264-66 of 2013†, decided on August 25, 2014

A. **Labour Law — Employer-employee relationship — Determination of existence of — Test of complete administrative control i.e. complete, effective and absolute control and supervision of employer over employee, laid down**

— Workmen engaged in statutory canteens of Air India, canteens run by contractor HCI (a wholly-owned subsidiary of Air India) in premises of principal establishment, Air India — Whether can be considered as employees of Air India — Held, supervision and control exercised by the principal establishment were as a consequence of obligations imposed under 1950 Factory Rules — Air India merely has control of supervision over the working of the statutory canteen — Issues regarding appointment, dismissal, payment of salaries, etc. of said workmen are within control of the contractor, HCI — Appellant workmen not under effective and absolute control of Air India — Thus, appellants not workmen of Air India and therefore not entitled to regularisation of their services — Further, there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of Air India and the workers of such canteen — Therefore, appellant workmen cannot be placed at the same footing as Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter — Delhi Factories Rules, 1950, Rr. 65 to 70

B. **Labour Law — Employer-employee relationship — Workmen engaged in statutory canteen by contractor on premises of principal employer's establishment — Whether workmen of principal employer/establishment — Application of complete administrative control test**

— Appellants, workers engaged on a casual or temporary basis by a contractor (HCL, a wholly-owned subsidiary of Air-India) to operate and run a statutory canteen, under the provisions of Factories Act, 1948, on premises of Air India — Employees of the statutory canteen, held, are workmen of the establishment only for purpose of the Act of 1948 and not for any other purposes and do not ipso facto become employees of the principal employer — Statutory obligation created under S. 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to 1948 Act and it does not govern the rights of employees with reference to

† From the Judgment and Order dated 2-5-2011 in LPAs Nos. 388 and 390-91 of 2010 of the High Court of Delhi at New Delhi

appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc. — Solely by virtue of deemed status under 1948 Act, the workers cannot claim regularisation in their employment from Air India — View in *Indian Petrochemicals*, (1999) 6 SCC 439, followed — For the workers, to be called the employees of the factory they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers — Factories Act, 1948 — Ss. 46 and 47 — Delhi Factories Rules, 1950 — Rr. 65 to 70 — Public Sector — Statutory canteen — Workers of — Status of — Regularisation

C. **Labour Law — Factories Act, 1948 — Nature of — Held, it is a social legislation which provides for health, safety, welfare, working hours, leave and other benefits for workers employed in factories and also provides for improvement of working conditions within the factory premises**

The question before this Bench in this matter was whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment.

The appellants were workers who claim to be the deemed employees of the management of Air India on the grounds, inter alia, that they work in a canteen established on the premises of Respondent 1 Air India and that too, for the benefit of the employees of the said respondent. It is urged that since the canteen is maintained as a consequence of a statutory obligation under Section 46 of the 1948 Act, and that since by virtue of Notification dated 21-1-1991, Rules 65 to 70 of the Delhi Factory Rules, 1950 have become applicable to Respondent 1, the said workers should be held to be the employees of the management of the corporation, on which such statutory obligation is placed, that is, Air India.

Answering the reference in the terms below and dismissing the appeals of the workmen, the Supreme Court

Held :

To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, the Supreme Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen. The relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(*i*) who appoints the workers;

(*ii*) who pays the salary/remuneration;

(*iii*) who has the authority to dismiss;

(*iv*) who can take disciplinary action;

(*v*) whether there is continuity of service; and

(*vi*) extent of control and supervision i.e. whether there exists complete control and supervision. (Paras 52 to 65)

Dharangadhra Chemical Works Ltd. v. *State of Saurashtra*, AIR 1957 SC 264, *followed*

Bengal Nagpur Cotton Mills v. *Bharat Lal*, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16; *International Airport Authority of India* v. *International Air Cargo Workers' Union*, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257; *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353; *Ram Singh* v. *UT, Chandigarh*, (2004) 1 SCC 126 : 2004 SCC (L&S) 14; *Workmen of Nilgiri Coop. Mktg. Society Ltd.* v. *State of T.N.*, (2004) 3 SCC 514 : 2004 SCC (L&S) 476, *affirmed*

Ready Mixed Concrete (South East) Ltd. v. *Minister of Pensions and National Insurance*, (1968) 2 QB 497 : (1968) 2 WLR 775 : (1968) 1 All ER 433; *Short* v. *J. and W. Henderson Ltd.*, (1946) 62 TLR 427 : 1946 SC (HL) 24; *JGE* v. *Portsmouth Roman Catholic Diocesan Trust*, 2012 EWCA Civ 938, *referred to*

Mersey Docks and Harbour Board v. *Coggins & Griffith (Liverpool) Ltd.*, 1947 AC 1 : (1946) 2 All ER 345 (HL), *cited*

Therefore, the only consideration before the Supreme Court is the nature of control that Air India may have over HCI (contractor which was wholly-owned subsidiary of Air India), and whether such control may be called effective and absolute control. Such control over HCI would be required to be established to show that the appellant workmen were in fact the employees of Air India.

(Para 83)

Reference was made by the appellants to certain documents such as minutes of meetings, etc. to show that Air India was exercising control over HCI in matters relating to transfer of workmen in the canteen, rates of subsidies, items on the menu, uniforms of the canteen staff, etc. On a perusal of the said documents, it is found that the said matters were, again, in the nature of supervision. In fact, most of these were as a consequence of the obligations imposed under the Delhi Factories Rules, 1950. Air India, being the entity bearing the financial burden, would give suggestions on the running of the canteen. Furthermore, in light of complaints, issues or even suggestions raised by its own employees who would avail the said canteen services, Air India would put forth recommendations or requests to ensure the redressal of said complaints or grievances. As regards discussions over uniforms, prices, subsidies, etc., it may be noted that the same are obligations under the 1950 Rules as applicable to Air India. In light of the principles applied in *Haldia Refinery Canteen Employees Union*, (2005) 5 SCC 51, such control would have nothing to do with either the appointment, dismissal or removal from service, or the taking of disciplinary action against the workmen working in the canteen.

(Paras 86 and 87)

The mere fact that Air India has a certain degree of control over HCI, does not mean that the employees working in the canteen are Air India's employees. Air India exercises control that is in the nature of supervision. Being the primary shareholder in HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, Air India would be entitled to have an opinion or a say in ensuring effective utilisation of resources, monetary or otherwise. The said supervision or control would appear to be merely to ensure due maintenance of standards and quality in the said canteen. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of Air India and the workers of the given canteen. Therefore, the appellant workmen cannot be placed at the same footing as Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants herein made no claim

or prayer against either of the other respondents, that is, HCI or Chefair. (Paras 87 and 89)

Therefore, the appellant workmen cannot be said to be under the effective and absolute control of Air India. Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularisation of their services. (Para 88)

The 1948 Act is a social legislation and it provides for the health, safety, welfare, working hours, leave and other benefits for workers employed in factories and it also provides for the improvement of working conditions within the factory premises. Section 46 of the Factories Act, 1948 Act statutorily places an obligation on the occupier of a factory to provide and maintain a canteen in the factory where more than two hundred and fifty workers are employed. There is nothing in the said provision which provides for the mode in which the factory must set up a canteen. It appears to be left to the discretion of the factory concerned to either discharge the said obligation of setting up a canteen either by way of direct involvement or through a contractor or any other third party. By virtue of Notification No. 27(12)89-CIF/Lab/464 dated 21-1-1991, Rules 65 to 70 of the Delhi Factory Rules, 1950 were made applicable to M/s Air India Ground Services Department. The Rules impose obligations upon the occupier of the factory as regards providing for and maintaining the said canteen. Rules 65 to 70 of the 1950 Rules are in furtherance of the duty prescribed on the State Government to run statutory canteens as per Section 46 of the 1948 Act. (Paras 28, 29, 16 and 17)

The workmen of a statutory canteen would be the workmen of the principal establishment for the purpose of the 1948 Act only and not for all other purposes. The statutory obligation created under Section 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the 1948 Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc. Therefore, the argument that the employees of the statutory canteen ipso facto become the employees of the principal employer is rejected. Solely by virtue of this deemed status under the 1948 Act, the said workers would not be able to claim regularisation in their employment from Air India. The 1948 Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts or policies. In terms of the above, the reference is answered as follows: the workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the 1948 Act, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers, which test as already held above, the appellants fail. (Paras 30, 41, 76 and 90)

Indian Petrochemicals Corpn. Ltd. v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138; *RBI* v. *Workmen*, (1996) 3 SCC 267 : 1996 SCC (L&S) 691, *followed*

Hari Shankar Sharma v. *Artificial Limbs Mfg. Corpn.*, (2002) 1 SCC 337 : 2002 SCC (L&S) 120; *Workmen* v. *Coates of India Ltd.*, (2004) 3 SCC 547 : 2004 SCC (L&S) 504; *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*, (2005) 5 SCC 51 : 2005 SCC (L&S) 593; *State of Karnataka* v. *KGSD Canteen Employees' Welfare Assn.*, (2006) 1 SCC 567 : 2006 SCC (L&S) 158; *Indian Overseas Bank* v. *Staff Canteen Workers' Union*, (2000) 4 SCC 245 : 2000 SCC (L&S) 471; *Barat Fritz Werner Ltd.* v. *State of Karnataka*, (2001) 4 SCC 498 : 2001 SCC (L&S) 752; *Balwant Rai Saluja* v. *Air India Ltd.*, (2011) 180 DLT 396; *Air India Ltd.* v. *Rakesh Kumar*, (2010) 116 DRJ 302 : (2010) 126 FLR 614, *affirmed*

Balwant Rai Saluja v. *Air India Ltd.*, (2013) 15 SCC 85, view of C.K. Prasad, J., *affirmed*

M.M.R. Khan v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541; *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*, (1974) 3 SCC 66 : 1973 SCC (L&S) 410; *Hussainbhai* v. *Alath Factory Thezhilali Union*, (1978) 4 SCC 257 : 1978 SCC (L&S) 506; *Basti Sugar Mills Ltd.* v. *Ram Ujagar*, AIR 1964 SC 355 : (1964) 2 SCR 838; *Ahmedabad Mfg. and Calico Printing Co. Ltd.* v. *Workmen*, (1953) 2 LLJ 647 (Tri); *Parimal Chandra Raha* v. *LIC*, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282; *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, *distinguished*

D. **Constitution of India — Art. 141 — Pronouncement of earlier coordinate Bench binding on later Bench of the same or smaller number of Judges — It is not necessary that it should be a decision rendered by a Full Court or a Constitution Bench of the Supreme Court — Thus, ratio thereof being attracted fully on facts of present case, three-Judge Bench decision [in *Indian Petrochemicals*, (1999) 6 SCC 439] held, binding on present three-Judge Bench (Para 33)**

Indian Petrochemicals Corpn. Ltd. v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138; *Union of India* v. *Raghubir Singh*, (1989) 2 SCC 754, *followed*

E. **Corporate Laws — Company Law — Corporate veil — Lifting of — Principle of, should be applied in a restrictive manner — Held, doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company — It should be applied only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability — The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company — Its application would thus depend upon the facts and circumstances of each case — Companies Act, 1956 — S. 34 — Companies Act, 2013, S. 9**

F. **Corporate Laws — Company Law — Corporate structure — Subsidiary versus Parent/Holding company — Control exercised by holding company — Whether holding structure/subsidiary company sham or camouflage — Whether holding structure such as to warrant treating subsidiary and holding company as one entity — Piercing corporate veil therefor — When warranted**

— Contractor HCI, a subsidiary of Air India running and operating statutory canteen for Air India employing contract workmen in statutory canteen — Such contract workmen whether employees of establishment or contract labour — Lifting the corporate veil therefor — When permissible

— Held, despite being a wholly-owned subsidiary of Air India, contractor HCI and AI are distinct legal entities — Articles of association of HCI, in no way give control of running the said canteen to Air India — Functions of appointment, dismissal, disciplinary action, etc. of the canteen staff, are retained with HCI — Thus, the exercise of control by HCI clearly indicated that it is not a sham or camouflage created by Air India to avoid certain statutory liabilities — Doctrine of piercing the veil to be exercised sparingly by the courts and cannot be applied in given factual scenario — Further, for piercing the veil of incorporation, mere ownership and control is not a sufficient ground — It should be established that the control and impropriety by Air India resulted in depriving the appellant workmen herein of their legal rights — Further, on perusal of the memorandum of association and articles of association of HCI, it cannot be said that Air India intended to create HCI as a mere façade for the purpose of avoiding liability towards the appellant workmen herein — Companies Act, 1956 — Ss. 2(47) and 4(1) & (3) — Companies Act, 2013, Ss. 2(46) & (87)

Held :

The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case. (Paras 70 and 74)

Vodafone International Holdings BV v. *Union of India*, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867; *Salomon* v. *Salomon & Co. Ltd.*, 1897 AC 22 : (1895-99) All ER Rep 33 (HL); *LIC* v. *Escorts Ltd.*, (1986) 1 SCC 264; *United States* v. *Bestfoods*, 141 L Ed 2d 43 : 524 US 51 (1998); *Prest* v. *Petrodel Resources Ltd.*, (2013) 2 AC 415 : (2013) 3 WLR 1 : 2013 UKSC 34, *relied on*

Ben Hashem v. *Ali Shayif*, 2008 EWHC 2380 (Fam), *approved*

The Companies Act in India and all over the world have statutorily recognised subsidiary company as a separate legal entity. Section 2(47) of the Companies Act, 1956 defines "subsidiary company" or "subsidiary", to mean a subsidiary company within the meaning of Section 4 of the 1956 Act. For the purpose of the 1956 Act, a company shall be, subject to the provisions of Section 4(3) of the 1956 Act, deemed to be subsidiary of another. Section 4(1) of the 1956 Act further imposes certain preconditions for a company to be a subsidiary of another. The other such company must exercise control over the composition of the Board of Directors of the subsidiary company, and have a controlling interest of over 50% of the equity shares and voting rights of the given subsidiary company. (Paras 66 and 67)

In the present set of appeals, it is an admitted fact that HCI is a wholly-owned subsidiary of Air India. It has been urged by the appellants that the Court should pierce the veil and declare that HCI is a sham and a camouflage. Therefore, the liability regarding the appellants herein would fall upon Air India, not HCI. (Para 66)

It can be noticed from the memorandum of association and the articles of association of HCI, that the primary objects of HCI have no direct relation with Air India. It is only one of the many incidental or ancillary objects of HCI that make a direct reference to assisting Air India. The argument that HCI runs the canteen solely for Air India's purpose and benefit could not succeed in this light. HCI has several primary objects, which include the running of hotels, motels, etc., in addition to establishing shops, kitchens, canteens and refreshment rooms. Air India only finds mention under HCI's ancillary objects. It cannot be said that the memorandum of association of HCI provides that HCI functions only for Air India. Nor can it be said that the fundamental activity of HCI is to run and operate the said statutory canteen for Air India. (Paras 77 to 79)

As regards HCI's articles of association, it is stated therein that HCI shall be a wholly-owned subsidiary of Air India and that its share capital shall be held by Air India and/or its nominees. Furthermore, the said articles included provisions whereby Air India controls the composition of the Board of Directors of HCI, including the power to remove any such Director or even the Chairman of the Board. Further, Air India has the right to issue directions to HCI, which the latter is bound to comply with. In this regard, it may be contended that Air India has effective and absolute control over HCI and that therefore the latter is merely a veil between the appellant workmen and Air India. This contention is not correct. (Para 80)

Nothing has been shown that such provisions in the articles of association are either bad in law or would impose some liability upon Air India, in terms of calling the appellants to be its own workers. The said articles are not impermissible in law. The doctrine of piercing the veil cannot be applied in the given factual scenario. Despite being a wholly-owned subsidiary of Air India, Respondent 1 and Respondent 2 are distinct legal entities. The management of business of HCI is under its own Board of Directors. The issue relating to the appointment of the Board of Directors of HCI by Air India would be a consequence of statutory obligations of a wholly-owned subsidiary under the 1956 Act. In the present case, HCI is a separate legal entity incorporated under the 1956 Act and is carrying out the activity of operating and running of the given canteen. The said articles of association of HCI, in no way give control of running the said canteen to Air India. The functions of appointment, dismissal, disciplinary action, etc. of the canteen staff, are retained with HCI. Thus, the exercise of control by HCI clearly indicated that the said Respondent 2 is not a sham or camouflage created by Respondent 1 to avoid certain statutory liabilities. (Paras 81 and 85)

The present facts would not be a fit case to pierce the veil, which must be exercised sparingly by the courts. Further, for piercing the veil of incorporation, mere ownership and control is not a sufficient ground. It should be established that the control and impropriety by Air India resulted in depriving the appellant workmen herein of their legal rights. As regards the question of impropriety, the Division Bench of the High Court in the impugned order dated 2-5-2011, noted that there has been no advertence on merit, in respect of the workmen's rights

qua HCI, and the claim to the said right may still be open to the workmen as per law against HCI. Thus, it cannot be concluded that the controller "Air India" has avoided any obligation which the workmen may be legally entitled to. Further, on perusal of the memorandum of association and articles of association of HCI, it cannot be said that Air India intended to create HCI as a mere façade for the purpose of avoiding liability towards the appellant workmen herein. (Para 82)

G. **Constitution of India — Art. 141 — Ratio decidendi — Binding effect of decision — Extends only to observations on points raised and decided, and not on aspects not decided nor on which there was any occasion to express an opinion — Issue of liability of principal employer to workmen employed in statutory canteens — Applicability of Constitution Bench decision in *SAIL*, (2001) 7 SCC 1 on issue of absorption of contract workers into the principal establishment pursuant to notification issued under S. 10 of Contract Labour (Abolition and Regulation) Act, 1970 — Held, *SAIL case* is not applicable as issues in present matter were neither argued nor subject matter of the dispute in that case — Labour Law — Employer-employee relationship — Labour Law — Contract Labour (Abolition and Regulation) Act, 1970, S. 10**

Held :

The binding nature of a decision would extend to only observations on points raised and decided by the Court and not on aspects which it has neither decided nor had occasion to express its opinion upon. The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. Further, it is only a ratio of the judgment or the principle upon which the question before the Court is decided which must be considered as binding to be applied as an appropriate precedent. (Paras 21, 22, 26 and 27)

State of Punjab v. *Baldev Singh*, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080; *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court*, (1990) 3 SCC 682 : 1991 SCC (L&S) 71; *State of Orissa* v. *Sudhansu Sekhar Misra*, AIR 1968 SC 647 : (1968) 2 SCR 154, *followed*

CIT v. *Sun Engg. Works (P) Ltd.*, (1992) 4 SCC 363, *affirmed*

SAIL v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, *distinguished*

Air India Statutory Corpn. v. *United Labour Union*, (1997) 9 SCC 377 : 1997 SCC (L&S) 1344, *held, overruled prospectively*

VST Industries Ltd. v. *Workers' Union*, (2001) 1 SCC 298 : 2001 SCC (L&S) 227; *G.B. Pant University of Agriculture and Technology* v. *State of U.P.*, (2000) 7 SCC 109 : 2000 SCC (L&S) 884; *Union of India* v. *M. Aslam*, (2001) 1 SCC 720 : 2001 SCC (L&S) 302; *F.A. & A.B. Ltd.* v. *Lupton (Inspector of Taxes)*, 1972 AC 634 : (1971) 3 WLR 670 : (1971) 3 All ER 948 (HL); *Griffiths* v. *J.P. Harrison (Watford) Ltd.*, 1963 AC 1 : (1962) 2 WLR 909 : (1962) 1 All ER 909 (HL); *Bishop (Inspector of Taxes)* v. *Finsbury Securities Ltd.*, (1966) 1 WLR 1402 : (1966) 3 All ER 105 (HL); *Quinn* v. *Leathem*, 1901 AC 495 : (1900-03) All ER Rep 1 (HL), *cited*

B-D/53718/CL

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27. (1996) 3 SCC 267 : 1996 SCC (L&S) 691, *RBI* v. *Workmen* 426*f*
28. 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282, *Parimal Chandra Raha* v. *LIC* 419*d-e*, 426*d-e*, 426*g*, 428*a-b*, 429*e-f*, 433*c*
29. (1992) 4 SCC 363, *CIT* v. *Sun Engg. Works (P) Ltd.* 423*e-f*
30. (1990) 3 SCC 682 : 1991 SCC (L&S) 71, *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court* 424*a*, 424*c-d*
31. 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541, *M.M.R. Khan* v. *Union of India* 419*d-e*, 426*f*, 428*a-b*, 429*e-f*, 431*f-g*, 432*b*, 433*a*
32. (1989) 2 SCC 754, *Union of India* v. *Raghubir Singh* 426*c*
33. (1986) 1 SCC 264, *LIC* v. *Escorts Ltd.* 440*f-g*
34. (1978) 4 SCC 257 : 1978 SCC (L&S) 506, *Hussainbhai* v. *Alath Factory Thezhilali Union* 419*d-e*, 431*b*, 431*e*
35. (1974) 3 SCC 66 : 1973 SCC (L&S) 410, *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal* 419*d-e*, 422*a-b*, 429*e-f*, 430*c-d*, 431*a*
36. 1972 AC 634 : (1971) 3 WLR 670 : (1971) 3 All ER 948 (HL), *F.A. & A.B. Ltd.* v. *Lupton (Inspector of Taxes)* 424*a-b*, 424*b*
37. (1968) 2 QB 497 : (1968) 2 WLR 775 : (1968) 1 All ER 433, *Ready Mixed Concrete (South East) Ltd.* v. *Minister of Pensions and National Insurance* 434*a*, 434*b-c*, 434*d*, 434*f*, 434*g-h*
38. AIR 1968 SC 647 : (1968) 2 SCR 154, *State of Orissa* v. *Sudhansu Sekhar Misra* 424*e*
39. (1966) 1 WLR 1402 : (1966) 3 All ER 105 (HL), *Bishop (Inspector of Taxes)* v. *Finsbury Securities Ltd.* 424*b*
40. AIR 1964 SC 355 : (1964) 2 SCR 838, *Basti Sugar Mills Ltd.* v. *Ram Ujagar* 430*f-g*
41. 1963 AC 1 : (1962) 2 WLR 909 : (1962) 1 All ER 909 (HL), *Griffiths* v. *J.P. Harrison (Watford) Ltd.* 424*a-b*
42. AIR 1957 SC 264, *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra* 435*a*, 436*f-g*, 437*a-b*
43. (1953) 2 LLJ 647 (Tri), *Ahmedabad Mfg. and Calico Printing Co. Ltd.* v. *Workmen* 430*g*
44. 1947 AC 1 : (1946) 2 All ER 345 (HL), *Mersey Docks and Harbour Board* v. *Coggins & Griffith (Liverpool) Ltd.* 437*a*
45. (1946) 62 TLR 427 : 1946 SC (HL) 24, *Short* v. *J. and W. Henderson Ltd.* 434*d*, 434*d-e*, 434*g-h*
46. 1901 AC 495 : (1900-03) All ER Rep 1 (HL), *Quinn* v. *Leathem* 424*d*
47. 1897 AC 22 : (1895-99) All ER Rep 33 (HL), *Salomon* v. *Salomon & Co. Ltd.* 439*e*, 439*f*

The Judgment of the Court was delivered by

H.L. DATTU, J.— In view of the difference of opinion by two learned Judges, and by referral order dated 13-11-2013[1] of this Court, these civil appeals are placed before us for our consideration and decision. The question before this Bench is whether the workmen engaged in statutory canteens, through a contractor, could be treated as employees of the principal establishment.

2. At the outset, it requires to be noticed that the learned Judges differed in their opinion regarding the liability of the principal employer running statutory canteens and further regarding the status of the workmen engaged thereof. The learned Judges differed on the aspect of supervision and control which was exercised by Air India Ltd. (for short "Air India"), Respondent 1, and Hotel Corporations of India Ltd. (for short "HCI"), Respondent 2, over the said workmen employed in these canteens. The learned Judges also had varying interpretations regarding the status of HCI as a sham and camouflage subsidiary by Air India created mainly to deprive the legitimate statutory and fundamental rights of the workmen concerned and the necessity to pierce the veil to ascertain their relation with the principal employer.

3. The two-Judge Bench[1] has expressed contrasting opinions on the prevalence of an employer-employee relationship between the principal employer and the workers in the said canteen facility, based on, inter alia, issues surrounding the economic dependence of the subsidiary role in management and maintenance of the canteen premises, representation of workers, modes of appointment and termination as well as resolving disciplinary issues among workmen. The Bench also differed on the issue pertaining to whether such workmen should be treated as employees of the principal employer only for the purposes of the Factories Act, 1948 (for short "the 1948 Act") or for other purposes as well.

Facts

4. The present set of appeals came before a two-Judge Bench of this Court against a judgment and order dated 2-5-2011 of a Division Bench of the High Court of Delhi in *Balwant Rai Saluja* v. *Air India Ltd.*[2] The present dispute finds origin in an industrial dispute which arose between the appellant workmen herein of the statutory canteen and Respondent 1 herein. The said industrial dispute was referred by the Central Government, by its order dated 23-10-1996 to the Central Government Industrial Tribunal-cum-Labour Court (for short "CGIT"). The question referred was whether the workmen as employed by Respondent 3 herein, to provide canteen services at the establishment of Respondent 1 herein, could be treated as deemed employees of the said Respondent 1. Vide order dated 5-5-2004, CGIT held that the workmen were employees of Respondent 1 Air India and therefore their claim was justified. Furthermore, the termination of services of the workmen during the pendency of the dispute was held to be illegal.

1 *Balwant Rai Saluja* v. *Air India Ltd.*, (2013) 15 SCC 85

2 (2011) 180 DLT 396

5. By judgment and order dated 8-4-2010[3], the learned Single Judge of the High Court of Delhi set aside and quashed CGIT's award and held that the said workmen would not be entitled to be treated as or deemed to be the employees of Air India. The Division Bench of the High Court of Delhi vide impugned order dated 2-5-2011[2] found no error in the order passed by the learned Single Judge of the High Court. The appeal was dismissed by the Division Bench confirming the order of the learned Single Judge who observed that the responsibility to run the canteen was absolutely with HCI and that Air India and HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of Air India and to be regularised was rejected by the learned Single Judge.

6. In the present set of appeals, the appellants are workers who claim to be the deemed employees of the management of Air India on the grounds, inter alia, that they work in a canteen established on the premises of Respondent 1 Air India and that too, for the benefit of the employees of the said respondent. It is urged that since the canteen is maintained as a consequence of a statutory obligation under Section 46 of the 1948 Act, and that since by virtue of Notification dated 21-1-1991, Rules 65 to 70 of the Delhi Factory Rules, 1950 (for short "the 1950 Rules") have become applicable to Respondent 1, the said workers should be held to be the employees of the management of the corporation, on which such statutory obligation is placed, that is, Air India.

7. Respondent 1 is a company incorporated under the Companies Act, 1956 and is owned by the Government of India. The primary object of the said respondent is to provide international air transport/travel services. It has Ground Services Department at Indira Gandhi International Airport, Delhi. The Labour Department vide its Notification dated 20-1-1991 under sub-rule (1) of Rule 65 of the 1950 Rules, has enlisted the said M/s Air India Ground Services Department, thereby making Rules 65 to 70, of the 1950 Rules applicable to the same.

8. Respondent 2 HCI is also a company incorporated under the Companies Act, 1956 and is a separate legal entity from Air India. As per the memorandum of association of Respondent 2, the same is a wholly-owned subsidiary of Air India. The main objects of the said respondent, inter alia, are to establish refreshment rooms, canteens, etc. for the sale of food, beverages, etc.

9. Respondent 2 has various units and Respondent 3, being Chefair Flight Catering (for short "Chefair"), provides flight catering services to various airlines, including Air India. It is this Chefair unit of HCI that operates and runs the canteen. It requires to be noticed that the appellant workmen are

3 *Air India Ltd.* v. *Rakesh Kumar*, (2010) 116 DRJ 302 : (2010) 126 FLR 614

2 *Balwant Rai Saluja* v. *Air India Ltd.*, (2011) 180 DLT 396

engaged on a casual or temporary basis by Respondents 2 and 3 to render canteen services on the premises of Respondent 1 Air India.

Issue

10. The main issue for consideration before this Court in the present reference is "whether workers, engaged on a casual or temporary basis by a contractor (HCI) to operate and run a statutory canteen, under the provisions of the 1948 Act, on the premises of a factory Air India, can be said to be the workmen of the said factory or corporation".

Submissions

11. Shri Jayant Bhushan, learned Senior Counsel for the appellant workmen has two alternative submissions; *firstly*, that in the event of a statutory requirement to provide for a canteen or any other facility, the employees of the said facility would automatically become employees of the principal employer, irrespective of the existence of any intermediary that may have been employed to run that facility. *Secondly*, the test of sufficient control by the principal employer over the operation of the canteen and consequently over the appellant workmen, should prevail. Therefore, the Court should pierce the veil and take note of the fact that the contractor was a mere camouflage, and the principal employer was in real control of the canteen and its workmen. Reference is made to the following cases in support of his submissions — *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*[4], *Hussainbhai* v. *Alath Factory Thezhilali Union*[5], *M.M.R. Khan* v. *Union of India*[6] and *Parimal Chandra Raha* v. *LIC*[7].

12. Shri Jayant Bhushan also submits that the issue raised in these appeals is squarely covered by the observations made by the Constitution Bench in *SAIL* v. *National Union Waterfront Workers*[8].

13. While supporting the judgment in *SAIL case*[8], Shri C.U. Singh, learned Senior Counsel for Respondent 1 Air India would contend that the issue that came up for consideration before the Constitution Bench[8] is entirely different and, therefore, the said decision has no bearing on the facts and the question of law raised in the present set of appeals. Shri C.U. Singh would then refer to the various case laws cited by the learned counsel for the appellants to show that they are not only distinguishable on facts, but are inapplicable to the facts of the present case. He would also refer to the three-Judge Bench decision of this Court in *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*[9], and then would submit that the proposition of law enunciated in *Indian Petrochemicals case*[9] is followed by this Court in

4 (1974) 3 SCC 66 : 1973 SCC (L&S) 410
5 (1978) 4 SCC 257 : 1978 SCC (L&S) 506
6 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541
7 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282
8 (2001) 7 SCC 1 : 2001 SCC (L&S) 1121
9 (1999) 6 SCC 439 : 1999 SCC (L&S) 1138

Hari Shankar Sharma v. *Artificial Limbs Mfg. Corpn.*[10], *Workmen* v. *Coates of India Ltd.*[11], *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*[12] and *State of Karnataka* v. *KGSD Canteen Employees' Welfare Assn.*[13]

14. Insofar as the second submission of the learned counsel for the appellants is concerned, Shri C.U. Singh would submit that it is not the test of sufficient control, but the test of effective and absolute control which would be relevant, and that if the said test, in the given facts is applied, the appellants would fail to establish the employer and employee relationship. In aid of his submissions, he refers to *Bengal Nagpur Cotton Mills* v. *Bharat Lal*[14], *International Airport Authority of India* v. *International Air Cargo Workers' Union*[15] and *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*[16].

Relevant provisions

15. To appreciate the point of view of the parties to the present lis, it is necessary to notice the relevant provisions.

16. Section 46 of the 1948 Act statutorily places an obligation on the occupier of a factory to provide and maintain a canteen in the factory where more than two hundred and fifty workers are employed. There is nothing in the said provision which provides for the mode in which the factory must set up a canteen. It appears to be left to the discretion of the factory concerned to either discharge the said obligation of setting up a canteen either by way of direct involvement or through a contractor or any other third party. The provision reads as under:

> "**46. *Canteens*.**—(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.
>
> (2) Without prejudice in the generality of the foregoing power, such rules may provide for—
>
> (*a*) the date by which such canteen shall be provided;
>
> (*b*) the standard in respect of construction, accommodation, furniture and other equipment of the canteen;
>
> (*c*) the foodstuffs to be served therein and the charges which may be made therefor;
>
> (*d*) the constitution of a Managing Committee for the canteen and representation of the workers in the management of the canteen;

10 (2002) 1 SCC 337 : 2002 SCC (L&S) 120
11 (2004) 3 SCC 547 : 2004 SCC (L&S) 504
12 (2005) 5 SCC 51 : 2005 SCC (L&S) 593
13 (2006) 1 SCC 567 : 2006 SCC (L&S) 158
14 (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16
15 (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257
16 (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353

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

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

17. By virtue of Notification No. 27(12)89-CIF/Lab/464 dated 21-1-1991, Rules 65 to 70 of the 1950 Rules were made applicable to M/s Air India Ground Services Department. The Rules impose obligations upon the occupier of the factory as regards providing for and maintaining the said canteen. Rules 65 to 70 of the 1950 Rules are in furtherance of the duty prescribed on the State Government to run statutory canteens as per Section 46 of the 1948 Act:

17.1. Rule 65, inter alia, provides for an official notification and approval of the occupier canteen facility as well as additional guidelines regarding the construction, accommodation, hygiene, ventilation, sanitation and other maintenance works.

17.2. Rule 66 prescribes for setting up a dining hall with adequate space and furniture along with reservation of dining space for women employees.

17.3. Rule 67 enumerates the requisite equipment such as utensils, furniture, uniforms for the canteen staff and other equipment to be purchased and maintained in a hygienic manner.

17.4. Rule 68 prescribes that the prices to be charged on foodstuffs and other items will be on a non-profit basis, as approved by the Canteen Managing Committee.

17.5. Rule 69 illustrates the procedure for handling the auditing of accounts, under the supervision of the Canteen Managing Committee as well as Inspector of Factories.

17.6. Lastly, Rule 70 enumerates the consultative role of the Managing Committee regarding, inter alia, the quality and quantity of foodstuffs served, arrangement of menus, duration for meals, etc. It also prescribes that such a committee must have equal representation of persons nominated by the occupier and elected members by the workers of the factory. The Manager is entrusted with determining and supervising the procedure for conducting such elections and dissolving the Committee at the expiry of its two-year statutory term.

Discussion

18. Before we deal with the issue that arises for consideration, it would be necessary to consider the applicability of the Constitution Bench decision in *SAIL case*[8]. The learned counsel refers to paras 106 and 107 of the said judgment to contend that the observations made therein is the expression of the Court on the question of law and since it is the decision of the Constitution Bench, the same would be binding on this Court. To appreciate

8 *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

the submission of the learned counsel, we notice the following paragraphs: (SCC pp. 55-56)

> "*106.* We have gone through the decisions of this Court in *VST Industries case*[17], *G.B. Pant University case*[18] and *M. Aslam case*[19]. All of them relate to statutory liability to maintain the canteen by the principal employer in the factory/establishment. That is why in those cases, as in *Saraspur Mills case*[4] the contract labour working in the canteen were treated as workers of the principal employer. These cases stand on a different footing and it is not possible to deduce from them the broad principle of law that on the contract labour system being abolished under sub-section (1) of Section 10 of the CLRA Act the contract labour working in the establishment of the principal employer have to be absorbed as regular employees of the establishment.
>
> *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 labourer 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."

19. By placing his fingers on Clause (*iii*) of para 107 in *SAIL case*[8], the learned counsel would contend that the said observation is the ratio of the Court's decision and, therefore, it is binding on all other courts. We do not agree. The Constitution Bench in *SAIL case*[8] was primarily concerned with the meaning of the expression "appropriate Government" in Section 2(1)(*a*) of the Contract Labour (Regulation and Abolition) Act, 1970 and in Section 2(*a*) of the Industrial Disputes Act, 1947 and the other issue was

17 *VST Industries Ltd.* v. *Workers' Union*, (2001) 1 SCC 298 : 2001 SCC (L&S) 227
18 *G.B. Pant University of Agriculture and Technology* v. *State of U.P.*, (2000) 7 SCC 109 : 2000 SCC (L&S) 884
19 *Union of India* v. *M. Aslam*, (2001) 1 SCC 720 : 2001 SCC (L&S) 302
4 *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*, (1974) 3 SCC 66 : 1973 SCC (L&S) 410
8 *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

automatic absorption of the contract labour in the establishment of the principal employer as a consequence of an abolition notification issued under Section 10(1) of the Contract Labour (Regulation and Abolition) Act. The Court while overruling the judgment in *Air India Statutory Corpn.* v. *United Labour Union*[20], prospectively, held that neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issue of notification under the said section, prohibiting contract labour and consequently the principal employer is not required to absorb the contract labour working in the establishment concerned.

20. *Firstly*, in the aforesaid decision in *SAIL case*[8], (*i*) the issue whether contract labourers working in statutory canteen(s) would fall within the meaning of expression "workmen" under the 1948 Act and therefore they are employees of the principal employer, and (*ii*) whether the principal employer to fulfil its obligation under Section 46 of the 1948 Act engages a contractor, the employees of the contractor can claim regularisation and extension of the service conditions extended to the employees of the principal employer did not remotely arise for consideration of the Court.

21. *Secondly*, in our considered view, the observations made by the Constitution Bench in para 107 of the judgment in *SAIL case*[8] by no stretch of imagination can be considered "the law declared" by the Court. We say so for the reason, the Court after noticing several decisions which were brought to its notice, has summarised the view expressed in those decisions in three categories. The categorisation so made cannot be said to be the declaration of law made by the Court which would be binding on all the courts within the territory of India as envisaged under Article 141 of the Constitution of India.

22. This Court in *CIT* v. *Sun Engg. Works (P) Ltd.*[21] has observed: (SCC pp. 385-86, para 39)

> "*39.* … It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

20 (1997) 9 SCC 377 : 1997 SCC (L&S) 1344

8 *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

21 (1992) 4 SCC 363

23. Further, this Court in *Punjab Land Development and Reclamation Corpn. Ltd.* v. *Labour Court*[22], observed as follows: (SCC p. 707, para 44)

"*44.* An analysis of judicial precedent, ratio decidendi and the ambit of earlier and later decisions is to be found in the House of Lords' decision in *F.A. & A.B. Ltd.* v. *Lupton (Inspector of Taxes)*[23], Lord Simon concerned with the decisions in *Griffiths* v. *J.P. Harrison (Watford) Ltd.*[24] and *Bishop (Inspector of Taxes)* v. *Finsbury Securities Ltd.*[25] with their interrelationship and with the question whether *Lupton case*[23] fell within the precedent established by the one or the other case, said: (AC p. 658)

'... what constitutes binding precedent is the ratio decidendi of a case, and this is almost always to be ascertained by an analysis of the material facts of the case—that is, generally, those facts which the tribunal whose decision is in question itself holds, expressly or implicitly, to be material.' "

24. It is stated therein that a judicial decision is the abstraction of the principle from the facts and arguments of the case. It was further observed in *Punjab Land Development case*[22], that: (*Punjab Land Development case*[22], SCC p. 710, para 53)

"*53.* Lord Halsbury's dicta in *Quinn* v. *Leathem*[26]: (AC p. 506)

'... every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides.'

This Court held in *State of Orissa* v. *Sudhansu Sekhar Misra*[27], that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not other observation found therein nor what logically follows from the various observations made in it."

25. A Constitution Bench of this Court in *State of Punjab* v. *Baldev Singh*[28], held that a judgment has to be considered in the context in which it was rendered and that a decision is an authority for what it decides and it is not everything said therein that constitutes a precedent.

26. In our view, the binding nature of a decision would extend to only observations on points raised and decided by the Court and not on aspects which it has neither decided nor had occasion to express its opinion upon.

22 (1990) 3 SCC 682 : 1991 SCC (L&S) 71
23 1972 AC 634 : (1971) 3 WLR 670 : (1971) 3 All ER 948 (HL)
24 1963 AC 1 : (1962) 2 WLR 909 : (1962) 1 All ER 909 (HL)
25 (1966) 1 WLR 1402 : (1966) 3 All ER 105 (HL)
26 1901 AC 495 : (1900-03) All ER Rep 1 (HL)
27 AIR 1968 SC 647 : (1968) 2 SCR 154
28 (1999) 6 SCC 172 : 1999 SCC (Cri) 1080

The observation made in a prior decision on a legal question which arose in a manner not requiring any decision and which was to an extent unnecessary, ought to be considered merely as an obiter dictum. We are further of the view that a ratio of the judgment or the principle upon which the question before the Court is decided must be considered as binding to be applied as an appropriate precedent.

27. The Constitution Bench in *SAIL case*[8], decided on the limited issue surrounding the absorption of contract workers into the principal establishment pursuant to a notification issued by the appropriate Government under Section 10 of the Contract Labour (Abolition and Regulation) Act, 1970. The conclusion in para 125 of *SAIL case*[8], inter alia, states that on issuance of a notification under Section 10(1) of the Contract Labour (Abolition and Regulation) Act, 1970 passed by the appropriate Government would not entail the automatic absorption of contract workers operating in the establishment and the principal employer will not be burdened with any liability thereof. The issue surrounding workmen employed in statutory canteens and the liability of principal employer was neither argued nor subject of dispute in *SAIL case*[8]. Therefore, in our considered view the decision on which reliance was placed by the learned counsel does not assist him in the facts of the present case.

28. The 1948 Act is a social legislation and it provides for the health, safety, welfare, working hours, leave and other benefits for workers employed in factories and it also provides for the improvement of working conditions within the factory premises. Section 2 of the 1948 Act is the interpretation clause. Apart from others, it provides the definition of "worker" under Section 2(*l*) of the 1948 Act, to mean a person employed, directly or through any other agency, whether for wages or not, in any manufacturing or cleaning process.

29. Section 46 of the 1948 Act requires the establishment of canteens in factories employing more than two hundred and fifty workers. The State Government have been given power under the section to make rules requiring that such canteens be provided in the factory under sub-section (2), the items for which rules are to be framed have been specified. The sub-section also contemplates the delegation by the State Government the power to the Chief Inspector to make rules in respect of the food to be served in such canteens and their charges. In exercise of the rule-making power, the Delhi State has framed and notified the 1950 Rules, in which Rules 65 to 70 are incorporated to give effect to the purpose of Section 46 of the 1948 Act.

30. The question before us is "when the company is admittedly required to run the canteen in compliance with the statutory obligation under Section 46 of the 1948 Act, whether the canteen employees employed by the contractor are to be treated as the employees of the company only for the purpose of the 1948 Act or for all the other purposes."

8 *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

31. Before we advert to the aforesaid issue raised and canvassed, we intend to notice some of the decisions of this Court where a similar issue was raised and answered.

32. In *Indian Petrochemicals case*[9] a three-Judge Bench of this Court has stated the law on the point by holding that the employees of the statutory canteens are covered within the definition of "workmen" under the 1948 Act and not for all other purposes. The Court went on to observe that the 1948 Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. They are governed by other statutes, rules, contracts or policies. The aforesaid viewpoint is reiterated by this Court in *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*[12], and in *Hari Shankar Sharma* v. *Artificial Limbs Mfg. Corpn.*[10]

33. As observed by the Constitution Bench of this Court in *Union of India* v. *Raghubir Singh*[29], the pronouncement of law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or a smaller number of Judges and in order that such decision is binding, it is not necessary that it should be a decision rendered by a Full Court or a Constitution Bench of the Supreme Court. *Indian Petrochemicals case*[9] is decided by a three-Judge Bench of this Court and the facts and the legal issues raised in the present appeals are the same or similar as in *Indian Petrochemicals case*[9], and since we are not persuaded to take a different view in the matter, the observations made therein is binding on us.

34. This Court in *Indian Petrochemicals case*[9], while explaining the decision in *Parimal Chandra Raha case*[7], has stated that in *Raha case*[7], the Supreme Court did not specifically hold that the deemed employment of the workers is for all purposes nor did it specifically hold that it is only for the purposes of the 1948 Act. However, a reading of the judgment in its entirety makes it clear that the deemed employment is only for the purpose of the 1948 Act. Therefore, it has to be held that the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the 1948 Act only and not for all other purposes. To arrive at this conclusion, the Court has followed the view expressed by this Court in *M.M.R. Khan case*[6] and *RBI* v. *Workmen*[30].

35. The proposition of law in *Indian Petrochemicals case*[9] has been reiterated in *Hari Shankar Sharma case*[10]. This Court stated that: (*Hari Shankar Sharma case*[10], SCC p. 341, para 6)

> "*6.* The observations in *Parimal Chandra Raha case*[7] relied on by the appellants which might have supported the submission of the appellants

9 *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138
12 (2005) 5 SCC 51 : 2005 SCC (L&S) 593
10 (2002) 1 SCC 337 : 2002 SCC (L&S) 120
29 (1989) 2 SCC 754 : (1989) 178 ITR 548
7 *Parimal Chandra Raha* v. *LIC*, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282
6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541
30 (1996) 3 SCC 267 : 1996 SCC (L&S) 691

have been explained by a larger Bench in *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*[9] where it was held, after considering the provisions of the Factories Act and the previous decisions on the issue, that the workmen of a statutory canteen would be the workmen of the establishment only for the purpose of the Factories Act and not for all other purposes unless it was otherwise proved that the establishment exercised complete administrative control over the employees serving in the canteen."

The aforesaid principle has also been applied in *Haldia case*[12], *KGSD Canteen case*[13], *Indian Overseas Bank* v. *Staff Canteen Workers' Union*[31] and *Barat Fritz Werner Ltd.* v. *State of Karnataka*[32].

36. *Coates of India Ltd. case*[11] was regarding a dispute over the status of the appellant workmen therein who were hired by a contractor to work in a canteen run on the premises of the respondent company. This Court observed that merely some requirement under the 1948 Act of providing a canteen in the industrial establishment is by itself not conclusive of the question or sufficient to determine the status of the persons employed in the canteen. The Industrial Court and the learned Single Judge of the High Court held in favour of the workmen. However, the Division Bench of the High Court held in favour of the respondent company therein. This Court took note of the relevant finding of fact by the learned Single Judge therein and upheld the conclusion of the Division Bench of the High Court, that the workmen were employed only by the contractor to run the canteen, and they were not employees of the respondent company. The Court went on to observe that since the canteen employees were not directly appointed by the company nor had they ever moved the company for leave or other benefits enjoyed by the regular employees of the company, and further that the canteen employees got their wages from the respective contractors and, therefore, they are not employees of the company.

37. *Haldia case*[12] was similar to the facts of the present case. In that case, the appellant workmen were working in the statutory canteen run by the respondent through a contractor in its factory. It was contended therein that the factory of the respondent where the workmen were employed was governed by the provisions of the 1948 Act and the canteen where the said workmen were employed would be a statutory canteen and the same was maintained for the benefit of the workmen employed in the factory. It was alleged therein that the respondent had direct control over the said workmen and the contractor had no control over the management, administration and

9 (1999) 6 SCC 439 : 1999 SCC (L&S) 1138

12 *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*, (2005) 5 SCC 51 : 2005 SCC (L&S) 593

13 *State of Karnataka* v. *KGSD Canteen Employees' Welfare Assn.*, (2006) 1 SCC 567 : 2006 SCC (L&S) 158

31 (2000) 4 SCC 245 : 2000 SCC (L&S) 471

32 (2001) 4 SCC 498 : 2001 SCC (L&S) 752

11 *Workmen* v. *Coates of India Ltd.*, (2004) 3 SCC 547 : 2004 SCC (L&S) 504

functioning of the said canteen. Therefore, writ applications were filed seeking issuance of mandamus to the respondent to absorb the appellants in the service of the respondent therein and to regularise them as such. This Court then made a detailed reference to *Parimal Chandra Raha case*[7], *M.M.R. Khan case*[6] and *Indian Petrochemicals case*[9].

38. The Court then extensively referred to the terms and conditions of the contract between the canteen contractor and the respondent to ascertain whether there was any control of the respondent company therein over the workers in the canteen, and if so what was the nature of the said control. It was observed as follows: (*Haldia case*[12], SCC pp. 59-60, paras 14-15)

> "*14.* No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This, however, does not mean that the employees working in the canteen have become the employees of the management.
>
> *15.* A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in *Indian Petrochemicals Corpn. Ltd.*[9] shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in *Indian Petrochemicals Corpn. Ltd. case*[9] is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance with any statutory provisions/obligations is concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages, etc. and also for depositing the provident fund contributions with the authorities concerned. The contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned

7 *Parimal Chandra Raha* v. *LIC*, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282

6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541

9 *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138

12 *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*, (2005) 5 SCC 51 : 2005 SCC (L&S) 593

under the contract brought by the employees of the contractor, third party or by the Central or State Government authorities."

39. As regards the nature of control exercised by the management over the workmen employed by the contractor to work in the said canteen, it was observed by this Court in *Haldia case*[12] that the control was of a supervisory nature and that there was no control over disciplinary action or dismissal. Such control was held not to be determinative of the alleged fact that the workmen were under the control of the management. This Court observed as follows: (SCC p. 60, para 16)

> "*16*. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability, etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employees of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering proper service to the employees of the management."

40. The last case that we intend to refer on this point is that of *KGSD Canteen case*[13], wherein this Court was required to answer the question as to whether the employees of the canteen are employees of the State or whether their services should be directed to be regularised or not. However, in the said case, the State had no statutory compulsion to run and maintain any canteen for its employees. This Court made reference to numerous cases on this issue, inter alia, *Saraspur Mills case*[4], *Parimal Chandra Raha case*[7], *M.M.R. Khan case*[6], *Indian Petrochemicals case*[9], the Constitution Bench decision in *SAIL case*[8], *Hari Shankar Sharma case*[10] and *Haldia case*[12].

41. We conclude that the question as regards the status of workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act has been well settled by a catena of decisions of

12 *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*, (2005) 5 SCC 51 : 2005 SCC (L&S) 593

13 *State of Karnataka* v. *KGSD Canteen Employees' Welfare Assn.*, (2006) 1 SCC 567 : 2006 SCC (L&S) 158

4 *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*, (1974) 3 SCC 66 : 1973 SCC (L&S) 410

7 *Parimal Chandra Raha* v. *LIC*, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282

6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541

9 *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138

8 *SAIL* v. *National Union Waterfront Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

10 *Hari Shankar Sharma* v. *Artificial Limbs Mfg. Corpn.*, (2002) 1 SCC 337 : 2002 SCC (L&S) 120

this Court. This Court is in agreement with the principle laid down in *Indian Petrochemicals case*[9] wherein it was held that: (SCC p. 449, para 22)

> "*22.* ... the workmen of a statutory canteen would be the workmen of the establishment for the purpose of the 1948 Act only and not for all other purposes."

We add that the statutory obligation created under Section 46 of the 1948 Act, although establishes certain liability of the principal employer towards the workers employed in the given canteen facility, this must be restricted only to the 1948 Act and it does not govern the rights of employees with reference to appointment, seniority, promotion, dismissal, disciplinary actions, retirement benefits, etc., which are the subject-matter of various other legislations, policies, etc. Therefore, we cannot accept the submission of Shri Jayant Bhushan, learned counsel that the employees of the statutory canteen ipso facto become the employees of the principal employer.

42. We may now refer to the various decisions cited by learned counsel Shri Jayant Bhushan.

43. *Saraspur Mills case*[4] came before this Court as a result of a dispute under the Bombay Industrial Relations Act, 1946. In that case, the appellant company was responsible for maintaining the canteen under the provisions of Section 46 of the 1948 Act and the Rules made thereunder. The appellant therein had handed over the task of running the said canteen to a cooperative society. The society employed the respondent workmen in the canteen. One of the issues that came up for consideration before this Court was that, whether the employees of the said cooperative society could be said to be the employees of the appellant company. The case of the workmen was that the appellant company was running the canteen to fulfil its statutory obligations and thus the running of the said canteen would be part of the undertaking of the appellant although the appellant did not run itself the canteen but handed over the premises to the cooperative society to run it for the use and welfare of the company's employees and to discharge its legal obligation. The appellant company had resisted the claim by contending that the workmen had never been employed by it but by the cooperative society which was its licensee. This Court after referring to the amended definition of employee and employer in Sections 3(13) and 3(14) of the Bombay Industrial Relations Act, 1946 and the definition of "worker" under the 1948 Act, and also referring to earlier decision in *Basti Sugar Mills Ltd.* v. *Ram Ujagar*[33], held that since under the 1948 Act, it was the duty of the appellant company to run and maintain the canteen for use of its employees, the ratio of the decision in *Ahmedabad Mfg. and Calico Printing Co. Ltd.* v. *Workmen*[34] would be fully applicable in which the very same provisions of the 1948 Act were considered and confirmed the finding of the Industrial Court.

9 *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138
4 *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*, (1974) 3 SCC 66 : 1973 SCC (L&S) 410
33 AIR 1964 SC 355 : (1964) 2 SCR 838
34 (1953) 2 LLJ 647 (Tri)

44. It would be relevant to note that the primary reasoning of the Court in *Saraspur Mills case*[4] to hold that the workers of the canteen run by a cooperative society to be the employees of the appellant company therein, was in view of the amended definition of "employer" and "employee" as found under the Bombay Industrial Relations Act, 1946 and definition of "workmen" under the 1948 Act. Since no such expansive definition finds mention neither in the 1948 Act nor in the facts of the present case, it would not be proper to place reliance on the given case as a precedent herein.

45. In *Hussainbhai case*[5], the dispute arose between workmen hired by a contractor to make ropes within the factory premises on one hand, and the petitioner who was the factory owner manufacturing ropes who had engaged such contractor, on the other hand. The issue therein pertained to whether such workmen would be that of the contactor or the petitioner. In the said case, the Court went into the concept of employer-employee relationship from the point of view of economic realities. It was observed, by a three-Judge Bench, that: (SCC p. 259, para 5)

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

46. *Hussainbhai case*[5] did not deal with the 1948 Act, much less any statutory obligation thereunder. The case proceeded on the test of employer-employee relationship to ascertain the actual employer. The Court gave due weight and consideration to the concept of "economic control" in this regard. It may only be appropriate for the Court in the present case to refer to this judgment as regards determining the employer-employee relationship.

47. *M.M.R. Khan*[6] also came up for consideration before a three-Judge Bench of this Court. It related to the workers employed in canteens run in the different railway establishments. The relief claimed was that the workers concerned should be treated as railway employees and should be extended all service benefits which are available to the said railway employees. The Court was concerned, in the said case, with three types of canteens: (*i*) statutory canteens; (*ii*) non-statutory, recognised canteens; and (*iii*) non-statutory, non-recognised canteens. As regards statutory canteens, the Court noticed that under Section 46 of the 1948 Act, the occupier of a factory was not only

4 *Saraspur Mills Co. Ltd.* v. *Ramanlal Chimanlal*, (1974) 3 SCC 66 : 1973 SCC (L&S) 410

5 *Hussainbhai* v. *Alath Factory Thezhilali Union*, (1978) 4 SCC 257 : 1978 SCC (L&S) 506

6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541

obliged to provide for and maintain a canteen where more than 250 workers are employed, but was also obliged to abide by the rules which the Government concerned may make, including the rules for constitution of a Managing Committee for running the canteen and for representation of the workers in the management of the canteen. In other words, the whole working and functioning of the canteen has to conform to the statutory rules made in that behalf.

48. It would be relevant to notice the facts noted by this Court in *M.M.R. Khan case*[6]. This Court had made an explicit reference to the relevant provisions of the Railway Establishment Manual and the Administrative Instructions on Departmental Canteens in Offices and Industrial Establishments of the Government as issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions of the Government of India, which dealt with the canteens and had express provisions thereunder that were integral to the final decision of this Court. The issue that arose before the Court was whether the employees of the statutory canteen could be said to be the employees of the railway administration as well. This Court observed that: (SCC pp. 204-05, paras 25-26)

> "*25.* Since in terms of the Rules made by the State Governments under Section 46 of the Act, it is obligatory on the railway administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the Railway Administration created by the Act and as pointed out earlier Paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the Railway Administration may employ anyone such as a staff committee or a cooperative society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the railway administration. If the management of the canteen is handed over to a consumer cooperative society the bye-laws of such society have to be amended suitably to provide for an overall control by the Railway Administration.
>
> *26.* In fact as has been pointed out earlier the Administrative Instructions on departmental canteens in terms state that even those canteens which are not governed by the said Act have to be under a complete administrative control of the department concerned and the recruitment, service conditions and the disciplinary proceedings to be taken against the employees have to be taken according to the rules made in that behalf by the said department. In the circumstances, even where the employees are appointed by the staff committee/cooperative society it

6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541

will have to be held that their appointment is made by the department through the agency of the committee/society as the case may be."

49. We are in agreement with the view expressed in *M.M.R. Khan case*[6]. We further observe that the reasoning of the Court, as noticed hereinabove, was based on the Railway Establishment Rules and the relevant administrative instructions issued by the Government of India. By virtue of the aforesaid Rules and administrative instructions, it was made mandatory that the complete administrative control of the canteen be given to the Railway Administration. Such mandatory obligations are not present in the instant case. In light of the same, the given case cannot be said to be a precedent on the general proposition as regards the status of employees of a statutory canteen established under the 1948 Act.

50. We have already referred to the decision of this Court in *Parimal Chandra Raha case*[7], and, therefore, we are not referring to the said decision once over again. However, we add that in *Parimal Chandra Raha case*[7], this Court made a general observation that under the provisions of the 1948 Act, it is statutorily obligatory on the employer to provide and maintain a canteen for the use of his employees. As a consequence, the Court stated that the canteen would become a part of the principal establishment and, therefore, the workers employed in such canteen would be the employees of the said establishment. This Court went on to observe that the canteen was a part of the establishment of the corporation, that the contractors engaged were only a veil between the corporation and the canteen workers and therefore, the canteen workers were the employees of the corporation. This Court, while arriving at the said conclusion laid emphasis on the contract between the corporation and the contractor, whereby it was shown that the terms of the said contract were in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Furthermore, it was found that majority of the workers had been working in the said canteen continuously for a long time, whereas the intermediaries were changed on numerous occasions.

51. In light of the above discussion, in our view, the case laws on which reliance is placed by the learned counsel would not assist him to drive home the point canvassed.

52. To ascertain whether the workers of the contractor can be treated as the employees of the factory or company on whose premises they run the said statutory canteen, this Court must apply the test of complete administrative control. Furthermore, it would be necessary to show that there exists an employer-employee relationship between the factory and the workmen working in the canteen. In this regard, the following cases would be relevant to be noticed.

53. This Court would first refer to the relevant pronouncements by various English Courts in order to analyse their approach regarding employer-employee relationship.

6 *M.M.R. Khan* v. *Union of India*, 1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541

7 *Parimal Chandra Raha* v. *LIC*, 1995 Supp (2) SCC 611 : 1995 SCC (L&S) 983 : (1995) 30 ATC 282

54. In *Ready Mixed Concrete (South East) Ltd.* v. *Minister of Pensions and National Insurance*[35], McKenna, J. laid down three conditions for the existence of a contract of service. As provided at QB p. 515 in *Ready Mixed Concrete case*[35], the conditions are as follows:

> "... (*i*) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master. (*ii*) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (*iii*) The other provisions of the contract are consistent with its being a contract of service."

55. In *Ready Mixed Concrete case*[35], McKenna, J. further elaborated upon the abovequoted conditions. As regards the first, he stated that there must be wages or remuneration; else there is no consideration and therefore no contract of any kind. As regards the second condition, he stated that control would include the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. Furthermore, to establish a master-servant relationship, such control must be existent in a sufficient degree.

56. McKenna, J. in *Ready Mixed Concrete case*[35] further referred to Lord Thankerton's "four indicia" of a contract of service said in *Short* v. *J. and W. Henderson Ltd.*[36] *J. and W. Henderson case*[36] at p. 429, observes as follows:

> "(*a*) The master's power of selection of his servant; (*b*) the payment of wages or other remuneration; (*c*) the master's right to control the method of doing the work; and (*d*) the master's right of suspension or dismissal."

57. A recent decision by the Court of Appeal, in *JGE* v. *Portsmouth Roman Catholic Diocesan Trust*[37], Ward, L.J. while discussing the hallmarks of the employer-employee relationship, observed that an employee works under the supervision and direction of his employer, whereas an independent contractor is his own master bound by his contract but not by his employer's orders. Ward, L.J. followed the observations made by McKenna, J. in *Ready Mixed Concrete case*[35] as mentioned above. *JGE case*[37], further noted that "control" was an important factor in determining an employer-employee relationship. It was held, after referring to numerous judicial decisions, that there was no single test to determine such a relationship. Therefore, what would be needed to be done is to marshal various tests, which should cumulatively point either towards an employer-employee relationship or away from one.

58. *Short* v. *J. and W. Henderson Ltd.*[36], as cited in *Ready Mixed Concrete case*[35] and in *JGE case*[37], was also referred to in the four-Judge

35 (1968) 2 QB 497 : (1968) 2 WLR 775 : (1968) 1 All ER 433
36 (1946) 62 TLR 427 : 1946 SC (HL) 24
37 2012 EWCA Civ 938

Bench decision of this Court in *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra*[38]. In *Dharangadhra Chemical Works case*[38], it was observed that: (AIR p. 268, para 14)

> "*14.* … the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work…."

59. In *Ram Singh* v. *UT, Chandigarh*[39], as regards the concept of control in an employer-employee relationship, it was observed as follows: (SCC p. 131, para 15)

> "*15.* In determining the relationship of employer and employee, no doubt, 'control' is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole 'test of control'. An integrated approach is needed. 'Integration' test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are — who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the 'mutual obligations' between them. (See *Industrial Law*, 3rd Edn., by I.T. Smith and J.C. Wood at pp. 8 to 10.)"

60. In *Bengal Nagpur Cotton Mills case*[14] this Court observed that: (SCC p. 638, paras 9-10)

> "*9.* In this case, the industrial adjudicator has granted relief to the first respondent in view of its finding that he should be deemed to be a direct employee of the appellant. The question for consideration is whether the said finding was justified.
>
> *10.* It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. Two of the well-recognised tests to find out whether the contract labourers are the direct employees of the principal employer are: (*i*) whether the principal employer pays the salary instead of the contractor; and (*ii*) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a

38 AIR 1957 SC 264
39 (2004) 1 SCC 126 : 2004 SCC (L&S) 14
14 *Bengal Nagpur Cotton Mills* v. *Bharat Lal*, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16

consequence held that the first respondent is a direct employee of the appellant."

61. Further, the above case made reference to *International Airport Authority of India case*[15] wherein the expression "control and supervision" in the context of contract labour was explained by this Court. The relevant part of *International Airport Authority of India case*[15], as quoted in *Bengal Nagpur Cotton Mills case*[14] is as follows: (*Bengal Nagpur Cotton Mills case*[14], SCC pp. 638-39, para 12)

"*12.* '*38.* … if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor.' (*International Airport Authority of India case*[15], SCC p. 388, paras 38-39)"

62. A recent decision concerned with the employer-employee relationship was that of *Nalco case*[16]. In this case, the appellant had established two schools for the benefit of the wards of its employees. The writ petitions were filed by the employees of each school for a declaration that they be treated as the employees of the appellant company on grounds of, inter alia, real control and supervision by the latter. This Court, while answering the issue canvassed was of the opinion that the proper approach would be to ascertain whether there was complete control and supervision by the appellant therein. In this regard, reference was made to *Dharangadhra Chemical Works case*[38] wherein this Court had observed that: (*Nalco case*[16], SCC pp. 768-69, para 22)

"*22.* '*14.* The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise

15 *International Airport Authority of India* v. *International Air Cargo Workers' Union*, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257

14 *Bengal Nagpur Cotton Mills* v. *Bharat Lal*, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16

16 *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353

38 *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra*, AIR 1957 SC 264

and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work, or to borrow the words of Lord Uthwatt at p. 23 in *Mersey Docks and Harbour Board* v. *Coggins & Griffith (Liverpool) Ltd.*[40], "*The proper test is whether or not the hirer had authority to control the manner of execution of the act in question*".' (*Dharangadhra Chemical Works case*[38], AIR p. 268, para 14)" (emphasis supplied)

63. The *Nalco case*[16] further made reference to *Workmen of Nilgiri Coop. Mktg. Society Ltd.* v. *State of T.N.*[41], wherein this Court had observed as follows: (*Nalco case*[16], SCC p. 771, para 27)

"*27.* '*37.* The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result: (*a*) who is the appointing authority; (*b*) who is the paymaster; (*c*) who can dismiss; (*d*) how long alternative service lasts; (*e*) the extent of control and supervision; (*f*) the nature of the job e.g. whether it is professional or skilled work; (*g*) nature of establishment; (*h*) the right to reject.

38. With a view to find out reasonable solution in a problematic case of this nature, what is needed is an integrated approach meaning thereby integration of the relevant tests wherefor it may be necessary to examine as to whether the workman concerned was fully integrated into the employer's concern meaning thereby independent of the concern although attached therewith to some extent.' (*Workmen of Nilgiri Coop. Mktg. Society case*[41], SCC p. 529, paras 37-38)"

64. It was concluded by this Court in *Nalco case*[16] that there may have been some element of control with Nalco because its officials were nominated to the Managing Committee of the said schools. However, it was observed that the abovesaid fact was only to ensure that the schools run smoothly and properly. In this regard, the Court observed as follows: (SCC p. 772, para 30)

"*30.* … However, this kind of 'remote control' would not make Nalco the employer of these workers. This only shows that since Nalco is shouldering and meeting financial deficits, it wants to ensure that the money is spent for the rightful purposes."

65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(*i*) who appoints the workers;

(*ii*) who pays the salary/remuneration;

40 1947 AC 1 : (1946) 2 All ER 345 (HL)

38 *Dharangadhra Chemical Works Ltd.* v. *State of Saurashtra*, AIR 1957 SC 264

16 *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353

41 (2004) 3 SCC 514 : 2004 SCC (L&S) 476

(*iii*) who has the authority to dismiss;

(*iv*) who can take disciplinary action;

(*v*) whether there is continuity of service; and

(*vi*) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in *Bengal Nagpur Cotton Mills case*[14], *International Airport Authority of India case*[15] and *Nalco case*[16].

66. In the present set of appeals, it is an admitted fact that HCI is a wholly-owned subsidiary of Air India. It has been urged by the learned counsel for the appellants that this Court should pierce the veil and declare that HCI is a sham and a camouflage. Therefore, the liability regarding the appellants herein would fall upon Air India, not HCI. In this regard, it would be pertinent to elaborate upon the concept of a subsidiary company and the principle of lifting the corporate veil.

67. The Companies Act in India and all over the world have statutorily recognised subsidiary company as a separate legal entity. Section 2(47) of the Companies Act, 1956 (for short "the 1956 Act") defines "subsidiary company" or "subsidiary", to mean a subsidiary company within the meaning of Section 4 of the 1956 Act. For the purpose of the 1956 Act, a company shall be, subject to the provisions of sub-section (3) of Section 4, of the 1956 Act, deemed to be subsidiary of another. Sub-section (1) of Section 4 of the 1956 Act further imposes certain preconditions for a company to be a subsidiary of another. The other such company must exercise control over the composition of the Board of Directors of the subsidiary company, and have a controlling interest of over 50% of the equity shares and voting rights of the given subsidiary company.

68. In a concurring judgment by K.S.P. Radhakrishnan, J., in *Vodafone International Holdings BV* v. *Union of India*[42], the following was observed: (SCC pp. 712-13, paras 257-58)

"*Holding company and subsidiary company*

* * *

257. The legal relationship between a holding company and WOS is that they are two distinct legal persons and the holding company does not own the assets of the subsidiary and, in law, the management of the business of the subsidiary also vests in its Board of Directors. …

258. Holding company, of course, if the subsidiary is a WOS, may appoint or remove any Director if it so desires by a resolution in the general body meeting of the subsidiary. Holding companies and

14 *Bengal Nagpur Cotton Mills* v. *Bharat Lal*, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16

15 *International Airport Authority of India* v. *International Air Cargo Workers' Union*, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257

16 *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353

42 (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867

subsidiaries can be considered as single economic entity and consolidated balance sheet is the accounting relationship between the holding company and subsidiary company, which shows the status of the entire business enterprises. Shares of stock in the subsidiary company are held as assets on the books of the parent company and can be issued as collateral for additional debt financing. *Holding company and subsidiary company are, however, considered as separate legal entities, and subsidiary is allowed decentralised management. Each subsidiary can reform its own management personnel and holding company may also provide expert, efficient and competent services for the benefit of the subsidiaries*." (emphasis supplied)

69. *Vodafone case*[42] further made reference to a decision of the US Supreme Court in *United States* v. *Bestfoods*[43]. In that case, the US Supreme Court explained that as a general principle of corporate law a parent corporation is not liable for the acts of its subsidiary. The US Supreme Court went on to explain that corporate veil can be pierced and the parent company can be held liable for the conduct of its subsidiary, only if it is shown that the corporal form is misused to accomplish certain wrongful purposes, and further that the parent company is directly a participant in the wrong complained of. Mere ownership, parental control, management, etc. of a subsidiary was held not to be sufficient to pierce the status of their relationship and, to hold parent company liable.

70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of *Salomon* v. *Salomon & Co. Ltd.*[44] Lord Halsbury LC, negating the applicability of this doctrine to the facts of the case, stated that: (AC pp. 30 & 31)

> "[a company] must be treated like any other independent person with its rights and liabilities [legally] appropriate to itself … whatever may have been the ideas or schemes of those who brought it into existence."

Most of the cases subsequent to *Salomon case*[44], attributed the doctrine of piercing the veil to the fact that the company was a "sham" or a "façade". However, there was yet to be any clarity on applicability of the said doctrine.

71. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in *Ben Hashem* v. *Ali Shayif*[45]. The six principles, as found at paras 159-64 of the case are as follows:

> (*i*) Ownership and control of a company were not enough to justify piercing the corporate veil;

42 *Vodafone International Holdings BV* v. *Union of India*, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867

43 141 L Ed 2d 43 : 524 US 51 (1998)

44 1897 AC 22 : (1895-99) All ER Rep 33 (HL)

45 2008 EWHC 2380 (Fam)

(*ii*) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;

(*iii*) The corporate veil can be pierced only if there is some impropriety;

(*iv*) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;

(*v*) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and

(*vi*) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.

72. The principles laid down by *Ben Hashem case*[45] have been reiterated by the UK Supreme Court by Lord Neuberger in *Prest* v. *Petrodel Resources Ltd.*[46], UKSC at para 64. Lord Sumption, in *Prest case*[46], finally observed as follows: (AC p. 488, para 35)

"*35*. I conclude that there is a limited principle of English law which applies when a person is under an existing legal obligation or liability or subject to an existing legal restriction which he deliberately evades or whose enforcement he deliberately frustrates by interposing a company under his control. The court may then pierce the corporate veil for the purpose, and only for the purpose, of depriving the company or its controller of the advantage that they would otherwise have obtained by the company's separate legal personality. The principle is properly described as a limited one, because in almost every case where the test is satisfied, the facts will in practice disclose a legal relationship between the company and its controller which will make it unnecessary to pierce the corporate veil."

73. The position of law regarding this principle in India has been enumerated in various decisions. A Constitution Bench of this Court in *LIC* v. *Escorts Ltd.*[47], while discussing the doctrine of corporate veil, held that: (SCC pp. 335-36, para 90)

"*90*. … Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one

45 *Ben Hashem* v. *Ali Shayif*, 2008 EWHC 2380 (Fam)
46 (2013) 2 AC 415 : (2013) 3 WLR 1 : 2013 UKSC 34
47 (1986) 1 SCC 264

concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc."

74. Thus, on relying upon the aforesaid decisions, the doctrine of piercing the veil allows the court to disregard the separate legal personality of a company and impose liability upon the persons exercising real control over the said company. However, this principle has been and should be applied in a restrictive manner, that is, only in scenarios wherein it is evident that the company was a mere camouflage or sham deliberately created by the persons exercising control over the said company for the purpose of avoiding liability. The intent of piercing the veil must be such that would seek to remedy a wrong done by the persons controlling the company. The application would thus depend upon the peculiar facts and circumstances of each case.

75. Having considered the relevant judicial decisions and the well-established and settled principles, it would be appropriate to revert back to the controversy as found in the present factual matrix. In the present reference, this Court is required to ascertain whether workmen, engaged on a casual or temporary basis by a contractor to operate and run a statutory canteen on the premises of a factory or corporation, can be said to be the workmen of the said factory or corporation.

76. It has been noticed above that workmen hired by a contractor to work in a statutory canteen established under the provisions of the 1948 Act would be the said workmen of the given factory or corporation, but for the purpose of the 1948 Act only and not for all other purposes. Therefore, the appellant workmen, in the present case, in light of the settled principles of law, would be workmen of Air India, but only for the purposes of the 1948 Act. Solely by virtue of this deemed status under the 1948 Act, the said workers would not be able to claim regularisation in their employment from Air India. As has been observed in *Indian Petrochemicals case*[9], the 1948 Act does not govern the rights of employees with reference to recruitment, seniority, promotion, retirement benefits, etc. These are governed by other statutes, rules, contracts or policies.

77. To ascertain whether the appellants herein would be entitled to other benefits and rights such as regularisation, this Court would have to apply the test of employer-employee relationship as noticed hereinabove. For the said purpose, it would be necessary to refer to the memorandum of association and the articles of association of HCI to look into the nature of the activities it undertakes. The objects of HCI, as provided under its memorandum of association, inter alia, include the following:

(*i*) To carry on the business of hotel, motel, restaurant, café, tavern, flight kitchen, refreshment room and boarding and lodging, housekeepers, licensed victuallers, etc.;

(*ii*) To provide lodging and boarding and other facilities to the public;

9 *Indian Petrochemicals Corpn. Ltd.* v. *Shramik Sena*, (1999) 6 SCC 439 : 1999 SCC (L&S) 1138

(*iii*) To purchase, erect, take on lease or otherwise acquire, equip and manage hotels;

(*iv*) To establish shops, kitchens, refreshment rooms, canteens and depots for the sale of various food and beverages.

78. The objects incidental or ancillary to the main objects include, inter alia:

"(5) To carry on any business by means of operating hotels, etc. or other activity which would tend to promote or assist Air India's business as an international air carrier."

79. It can be noticed from the above, that the primary objects of HCI have no direct relation with Air India. It is only one of the many incidental or ancillary objects of HCI that make a direct reference to assisting Air India. The argument that HCI runs the canteen solely for Air India's purpose and benefit could not succeed in this light. HCI has several primary objects, which include the running of hotels, motels, etc., in addition to establishing shops, kitchens, canteens and refreshment rooms. Air India only finds mention under HCI's ancillary objects. It cannot be said that the memorandum of association of HCI provides that HCI functions only for Air India. Nor can it be said that the fundamental activity of HCI is to run and operate the said statutory canteen for Air India.

80. As regards HCI's articles of association, it is stated therein that HCI shall be a wholly-owned subsidiary of Air India and that its share capital shall be held by Air India and/or its nominees. Furthermore, the said articles included provisions whereby Air India controls the composition of the Board of Directors of HCI, including the power to remove any such Director or even the Chairman of the Board. Further, Air India has the right to issue directions to HCI, which the latter is bound to comply with. In this regard, it may be contended that Air India has effective and absolute control over HCI and that therefore the latter is merely a veil between the appellant workmen and Air India. We do not agree with this contention.

81. In support of the above we find that nothing has been brought before this Court to show that such provisions in the articles of association are either bad in law or would impose some liability upon Air India, in terms of calling the appellants to be its own workers. In our view, the said articles are not impermissible in law. It is our considered opinion that the doctrine of piercing the veil cannot be applied in the given factual scenario. Despite being a wholly-owned subsidiary of Air India, Respondent 1 and Respondent 2 are distinct legal entities. The management of business of HCI is under its own Board of Directors. The issue relating to the appointment of the Board of Directors of HCI by Air India would be a consequence of statutory obligations of a wholly-owned subsidiary under the 1956 Act.

82. The present facts would not be a fit case to pierce the veil, which as enumerated above, must be exercised sparingly by the courts. Further, for piercing the veil of incorporation, mere ownership and control is not a sufficient ground. It should be established that the control and impropriety by Air India resulted in depriving the appellant workmen herein of their legal

rights. As regards the question of impropriety, the Division Bench of the High Court of Delhi in the impugned order dated 2-5-2011[2], noted that there has been no advertence on merit, in respect of the workmen's rights qua HCI, and the claim to the said right may still be open to the workmen as per law against HCI. Thus, it cannot be concluded that the controller "Air India" has avoided any obligation which the workmen may be legally entitled to. Further, on perusal of the memorandum of association and articles of association of HCI, it cannot be said that Air India intended to create HCI as a mere façade for the purpose of avoiding liability towards the appellant workmen herein.

83. Therefore, the only consideration before this Court is the nature of control that Air India may have over HCI, and whether such control may be called effective and absolute control. Such control over HCI would be required to be established to show that the appellant workmen were in fact the employees of Air India.

84. It may be noticed again that *Nalco case*[16] dealt with a similar issue. In that case, the Court had observed that the day-to-day functioning of the school as set up by the appellant therein was not under Nalco, but under a Managing Committee therein. Further, the said Managing Committee was a separate and distinct legal entity from Nalco, and was solely responsible for recruitment, disciplinary action, termination, etc. of its staff. The Court, therefore, had held that the respondents therein could not be said to be employed by Nalco.

85. In the present case, HCI is a separate legal entity incorporated under the 1956 Act and is carrying out the activity of operating and running of the given canteen. The said articles of association of HCI, in no way give control of running the said canteen to Air India. The functions of appointment, dismissal, disciplinary action, etc. of the canteen staff, are retained with HCI. Thus, the exercise of control by HCI clearly indicated that the said Respondent 2 is not a sham or camouflage created by Respondent 1 to avoid certain statutory liabilities.

86. Reference was also made by the learned counsel for the appellants to certain documents such as minutes of meetings, etc. to show that Air India was exercising control over HCI in matters relating to transfer of workmen in the canteen, rates of subsidies, items on the menu, uniforms of the canteen staff, etc. On a perusal of the said documents, it is found that the said matters were, again, in the nature of supervision. In fact, most of these were as a consequence of the obligations imposed under the 1950 Rules. Air India, being the entity bearing the financial burden, would give suggestions on the running of the canteen. Furthermore, in light of complaints, issues or even suggestions raised by its own employees who would avail the said canteen services, Air India would put forth recommendations or requests to ensure the redressal of said complaints or grievances. As regards discussions over

2 *Balwant Rai Saluja* v. *Air India Ltd.*, (2011) 180 DLT 396

16 *National Aluminium Co. Ltd.* v. *Ananta Kishore Rout*, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353

uniforms, prices, subsidies, etc., it may be noted that the same are obligations under the 1950 Rules as applicable to Air India.

87. In our considered view, and in light of the principles applied in *Haldia case*[12], such control would have nothing to do with either the appointment, dismissal or removal from service, or the taking of disciplinary action against the workmen working in the canteen. The mere fact that Air India has a certain degree of control over HCI, does not mean that the employees working in the canteen are Air India's employees. Air India exercises control that is in the nature of supervision. Being the primary shareholder in HCI and shouldering certain financial burdens such as providing with the subsidies as required by law, Air India would be entitled to have an opinion or a say in ensuring effective utilisation of resources, monetary or otherwise. The said supervision or control would appear to be merely to ensure due maintenance of standards and quality in the said canteen.

88. Therefore, in our considered view and in light of the above, the appellant workmen could not be said to be under the effective and absolute control of Air India. Air India merely has control of supervision over the working of the given statutory canteen. Issues regarding appointment of the said workmen, their dismissal, payment of their salaries, etc. are within the control of HCI. It cannot be then said that the appellants are the workmen of Air India and therefore are entitled to regularisation of their services.

89. It would be pertinent to mention, at this stage, that there is no parity in the nature of work, mode of appointment, experience, qualifications, etc., between the regular employees of Air India and the workers of the given canteen. Therefore, the appellant workmen cannot be placed at the same footing as Air India's regular employees, and thereby claim the same benefits as bestowed upon the latter. It would also be gainsaid to note the fact that the appellants herein made no claim or prayer against either of the other respondents, that is, HCI or Chefair.

90. In terms of the above, the reference is answered as follows: the workers engaged by a contractor to work in the statutory canteen of a factory would be the workers of the said factory, but only for the purposes of the 1948 Act, and not for other purposes, and further for the said workers, to be called the employees of the factory for all purposes, they would need to satisfy the test of employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers.

91. In view of the above, while answering the referral order[1], we dismiss these appeals. No order as to costs. Ordered accordingly.

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12 *Haldia Refinery Canteen Employees Union* v. *Indian Oil Corpn. Ltd.*, (2005) 5 SCC 51 : 2005 SCC (L&S) 593

1 *Balwant Rai Saluja* v. *Air India Ltd.*, (2013) 15 SCC 85