Steel Authority of India Case: Contract Labour Abolition or Regularisation

The emergence and rapid growth of temporary or contingent labour has been one of the marked characteristics of the labour scenario all over the world in recent times. The result has been a systematic dismantling of the formal work force and invariable substitution of the same with what we know as contract labour. The system of contract labour has always been used as a catalyst to exploit the workforce, keep them divided and place them in a more vulnerable position.1 With the ushering of era of globalisation and the demand for "flexibility", it became imperative that the production and distribution process be decentralized to the utmost level possible. In this zeal to achieve competitiveness in the market the basic rights of the workforce have been compromised.

1. For a more detailed analysis of the emergence of the temporary labour force and the reasons connected therewith see H. Lane Dennard & Herbert R. Northrup, "Leased Employment: Character, Numbers and Labour Law Problems," 28 Ga. L. Rev. 683 (1994). Another striking characteristic of the temporary workforce is its relatively unorganized character that is they lack the most important tool in the hand of the labour, that is, collective bargaining. It might be pertinent to recall Baxi’s observation on the distinction between organized and unorganized labour. He says that the distinction between the two is an ideological construct and like many other political and juridical distinctions reflects the power of ideology and ideology of power. He points out that where there is power there is resistance and it is only with respect to latter that the organized and unorganized labour differ. Further he observes that even for the organized labour, "the rule of law has to run subservient to the rule by capital". See Upendra Baxi, "‘Unorganized’ Labour? Unorganized Law?", in Labour Law, Work and Development (1996).
In India the parent labour enactment, the Industrial Disputes Act 1947 did not explicitly deal with the contract labour. Till the decision of the Supreme Court in *Standard Vacuum Refining Co. of India Ltd v. Their Workmen* the workmen could not raise industrial disputes relating to contract labour. This case also recognized the power of the Industrial Tribunals to order the abolition of contract labour system in appropriate cases.\(^2\)

The absence of adequate legal regulation in this regard prompted the 1\(^{st}\) Labour Commission to suggest the enactment of the Contract Labour (Regulation and Abolition) Act, which was then in the form of a bill. The Contract Labour (Regulation and Abolition) Act was finally passed in the year 1970.\(^5\) Ever since its enactment the legislation has been a constant source of litigation and among them the *Steel Authority of India & Others v. National Union Waterfront Workers and Others* decision is certainly a landmark and perhaps the most controversial judicial pronouncement.

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3. *Id.* at p.952.
4. Hereinafter referred to as the Contract Labour Act. Baxi identifies different techniques of weakening the unorganized labour, two of which can be readily applied in the case of the Contract Labour Act. The first is that the "law as an articulation of state power" arrives late and the second is that when it arrives, the transformation of the material conditions of the "disorganized" labour is not expeditiously accomplished. See Baxi, *supra* n.1 at p. 4.
5. For a detailed description of the events leading to the passing of this enactment see the judgment of the Supreme Court in *BHEL Workers Association, Haridwar v. Union of India* (1985) 1 S.C.C. 630. For a brief overview of the legislation and its salient features see the opinion of Sawant, J., in *Gujarat Electricity Board, Ukai v. Hind Mazdoor Sabha*, A.I.R. 1995 S.C. 1893. It might be interesting to note here that this kind of summarising of the legislation at hand and reproducing the statement of object and reasons has been a characteristic of almost all judgments in this field including the opinion of Quadri, J., in the case under review.
Facts and issues

The SAIL case was referred to the Constitutional Bench because of the inconsistency of the decisions given by the Supreme Court in other cases on similar issues. The appellants, in the case under review were engaged in the manufacture of steel in many states in India. The appellants had entrusted the work of handling goods in their stockyards to contractors after calling for tenders in that regard. The first respondent in this case is a union representing the cause of over 350 contract workers engaged in the appellant's stockyards in Calcutta. The Government of West Bengal by notification under Section 10 (1) of the Contract Labour Act prohibited the employment of contract labour in the stockyards of the appellants in 1989. On the request of the appellants this notice was kept in abeyance by the Left Front Government till 1994. Meanwhile, the respondent union approached the High Court of Calcutta seeking a direction to quash the notification that kept the prohibition notification in abeyance, which was allowed by the Court and it ordered that the contract labour be absorbed as regular labour within six months of the judgment that was given in 1994.

7. A.I.R. 1997 S.C. 645, hereinafter referred to as the Air India case. The bench in this case consisted of K Ramaswamy, BL Hansaria and SB Majmudar JJ. The concurring judgments were delivered by Ramaswamy and Majmudar JJ.

8. The bench consisted of BN Kripal, MB Shah, Ruma Pal, KG Balakrishnan and SSM Quadri, JJ.

9. The judgment of the Court discusses the facts in relation to the Steel Authority of India only. A total of sixteen petitions were clubbed together in the present case. The relief given also has been therefore varying in each of them. Interestingly, most of the petitioners have been public sector undertakings or government companies. This has been the trend in most of the cases dealing with abolition of contract labour, for example Bharat Heavy Electricals Limited, Air India, Southern Railways, Oil and Natural Gas Corporation, Food Corporation of India, Tamil Nadu State Electricity Board and Hindustan Steel Works. This trend was observed and was lamented by the Supreme Court in Gujarat Electricity Board, Ukai v. Hind Mazdoor Sabha, A.I.R. 1995 S.C. 1893 at p.1922.
The appellants challenged the prohibition notification and this was dismissed by the High Court as result of which the appellants knocked the doors of the Supreme Court.

The Court enlisted the following three major issues:

- What is the true and correct import of the expression “appropriate Government” as defined in s. 2(1) (a) of the Contract Labour Act?

- Whether the notification issued by the Central Government under Section 10 (1) of the Contract Labour Act is valid and applies to all Central Government Companies?

- Whether automatic absorption of contract labour working in the establishment of the principle employer as regular employees follows on a valid issuance of notification under the aforesaid provision of law?\(^\text{10}\)

### Appropriate Government

The Contract Labour Act, through Section 10\(^\text{11}\) confers the power of abolition of contract labour upon the ‘appropriate government’, which is defined in Section 2 (a). The definition of ‘appropriate government’ was amended in 1986\(^\text{12}\) and is now divided into two parts. The first part

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10. The Court in the present case overruled the *Air India* decision as regards the first and the third issues.

11. Section 10(1) reads: ‘Notwithstanding anything contained in this Act, the appropriate government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.’

12. The relevant portion of the amended section reads: “...in relation to any establishment pertaining to any industry carried on by or under the authority of the Central Government ...the Central Government”. The amended section has been reproduced by Quadri, J., in *SAIL, supra* n. 6 at p. 21.
declares that in relation to an establishment in respect of which the appropriate government is the Central Government under the Industrial Disputes Act 1947\(^\text{13}\), the appropriate government shall be the Central Government and in relation to any other establishment it shall be the State Government. In both the unamended and the new provisions the phrase under scrutiny is "carried on by or under the authority of the Central Government".

The Court in the *SAIL* case gave emphasis on the literal and common law construction of the aforesaid phrase. Justice Quadri held that since the language of the statute is express and clear there is no need to abandon this well settled rule of interpretation.\(^\text{14}\) He applied the common law test of principal-agent to determine authority and control. This private law approach to a social welfare legislation like the Contract Labour Act has to be compared with the earlier approach of the Court in the *Air India* case. Justice Ramaswamy in his opinion had evolved the public law test for determining the correct import of the term "appropriate government". This was expressly overruled in the *SAIL* case. The Court in *SAIL* said that though there was a distinction\(^\text{15}\) between private law and public law,

13. S. 2 (a) (i) declares the Central Government as the appropriate government in cases where the industry is carried on by or under the authority of the Central Government. It further gives a list of establishments for which the Central Government is the appropriate government. It is a kind of residual clause, wherein if the enquiry that the appropriate government is the Central Government fails, then the appropriate government is the State Government.

14. While dismissing the claim to discard the literal rule of interpretation and to take on a more dynamic public law interpretation of the phrase, the learned judge notes that "to accept that contention, in our view, would amount to abandoning a straight route and oft-treaded road in an attempt to create a pathway in the wilderness which can only lead astray". See *supra* n. 6 at p. 23.

15. The judgment quotes from Sir Harry Woolf’s Second Harry Street Lectures delivered at the University of Manchester on 19\(^{\text{th}}\) February 1986. The Court said that the distinction would arise only as regards the nature of remedy claimed and not in the context of interpretation. *Ibid.*
there was no rule of interpretation that required the Court to adopt different standards of construction while applying private and public law.\textsuperscript{16}

In \textit{Air India}, the Court had invoked the so called Article 12 jurisprudence in the labour context. The Supreme Court had in a number of earlier cases expanded the applicability of fundamental rights by enlarging the scope of “other authorities” in Article 12 of the Constitution.\textsuperscript{17} The Court had evolved the ‘agency and instrumentality test’\textsuperscript{18} to determine the nature of the establishment in order to subject them to the same

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\item\textsuperscript{16} See supra n. 6 at p. 23. It is difficult to understand why the Court chose to be bound by the words of the statute, given that it is an established rule of interpretation that a social welfare legislation could be liberally interpreted in favour of the targetted class and also that words and phrases in a legislation must be construed in the context that they occur.
\item\textsuperscript{18} The ‘agency and instrumentality test’ is attributed to Justice Mathew’s concurring opinion in \textit{Sukhdev Singh v. Bhagatram}, (1975) 1 S.C.C. 421, wherein he laid down parameters for determining the character of public institutions. Also see MP Jain, “The Legal Status of Public Corporations and their Employees”, 18 J.L.I.I. (1968). Ramaswamy, J., in \textit{Air India} case rightly points out that the interpretation given by Mathew, J., is of special significance “ taking away the State action from the clutches of moribund jurisprudence; it set on foot forward march under public law interpretation”, supra n. 7 at p. 659.
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restrictions in field of constitutional or administrative law as the government itself. In *Air India*, this jurisprudence was rightly put to use to determine the appropriate government and the Court therein refused to be bound by common law principles of principal-agent. It is submitted that the tests which were laid down to determine ‘agency and instrumentality’ are comprehensive enough to establish ‘authority’ also and that the Court took the correct view of law.¹⁹ The Court in *SAIL* failed to appreciate this and chose to be bound by common law principles.²⁰ But the Court failed to lay down any specific standard while taking the common law route and only noted that “such authority may be conferred either by statute or by virtue of relationship of principal and agent or delegation of power and this has to be ascertained by the facts and circumstances of each and every case.”²¹ While departing from the public law exposition in *Air India*, the Court in *SAIL* chose to reaffirm the principles laid down in previous decisions of the Court that were overruled in *Air India*.²² It is indeed

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¹⁹ These include determining deep and pervasive of the government, nature of functions carried on by the establishment, financial assistance and control, share capital held by the government, lenary control of overall functions, etc. See the opinion of Krishna Iyer, J. in *Som Prakash Reiki v. Union of India* (1981) 1 S.C.C. 449.

²⁰ The inability, rather utter failure of common law principles in the field of labour law has been adequately demonstrated in ‘Temporary Employment and the Imbalance of Power’, 109 Harv. L. Rev. 1647 (1996).

²¹ *Supra* n. 6 at p. 32.

²² The Court reaffirmed the narrow view taken in *Heavy Engineering Mazdoor Union v. State of Bihar*, (1969) 1 S.C.C. 765, wherein the Court had adopted the ‘principal agent test’. This view was followed in *Hindustan Aeronautics Ltd v. Workmen*, (1975) 4 S.C.C. 679, *Rashtriya Mill Mazdoor Sangh v. Model Mills*, 1984 Supp S.C.C. 443 and *Food Corporation of India Worker’s Union v. Food Corporation of India*, (1985) 2 S.C.C. 294. [this is the only case that has arisen under the Contract Labour Act]. Ramaswamy, J., in *Air India* had earlier observed that the decision in the *Heavy Engineering* case was based on a concession given by the counsels appearing in that case (*supra* n. 7 at p. 657), but this view is aptly rebutted by Quadri, J., in *SAIL, supra* n. 6 at p. 29.
difficult to comprehend this refusal to enter into public law jurisprudence, given that the Court’s endeavour through activism has been to infuse life into social welfare legislations using the backdrop of the Preamble of the Constitution and Part IV which talk about Directive Principles of State Policy. The question being posed here is that, how are the provisions of Part IV going to be of any help, if the Court is going to ignore public law discourses while interpreting labour legislations? Additionally, a closer look at the definition of the ‘appropriate government’ in Section 2 of the Industrial Disputes Act 1947 would reveal that the Central Government is the appropriate government with regard to certain establishments that have been declared as an agency or instrumentality of the State.

For the aforesaid reasons, it is submitted that the Court’s decision as regards the first issue is not well founded in law nor are the reasons for the conclusion convincing enough.

Validity of the Section 10 Notification

It has been pointed out that under Section 10 of the Contract Labour Act, the onus of abolishing contract labour lies with the appropriate government, which it can exercise by issuing a notification in the official

23. The provisions of Part IV of the Constitution have been invoked by Ramaswamy, J., in his interpretations in Air India. He remarks that “such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of egalitarian social order would be frustrated and Constitutional goal defeated”, supra n. 7 at p. 659.

24. The Oil and Natural Gas Corporation Limited and the Life Insurance Corporation were held to be ‘State’ within the scope of Article 12 in Sukhdev Singh v. Bhagatram, (1975) 1 S.C.C. 421. Even after ONGC was constituted as a company under the Companies Act, 1956 the Central Government remains as the appropriate government. The International Airport Authority was declared as an instrumentality of the state in RD Shetty v. International Airport Authority of India, A.I.R. 1979 S.C. 1628. A similar body the Airports Authority of India finds mention in the list of establishments that have the Central Government as the appropriate government.
gazette after it has consulted the Central Board or as the case may be the State Board. The latter half of the provision provides that the Government shall before issuing a notification have to consider the prevailing conditions of work, benefits provided for contract labour and other relevant factors. Therefore, the section makes it mandatory that the government consider the relevant factors before a notification is issued in this regard. In the case at hand, an omnibus notification abolishing contract labour in all establishments where the Central Government was the appropriate government was issued. It was urged that such a notification was ex facie contrary to the postulates in Section 10. The Court scrutinized the notification and rightly upheld this contention. It observed that the Central Government had not adverted to the essentials of Section 10 except the requirement of consultation and did not consider the Section 10 (2) factors in each of the establishment. As such the Court held that there was no proper exercise of discretion and struck down the notification as ultra vires the enactment.

**Absorption on Abolition**

The focal point and the most controversial aspect of law decided by the Court in this case was with regard to the status of the contract labour, once the contract labour system stands abolished in an establishment. It may be noted that this case lays down the law in regard to automatic absorption only in cases of abolition under Section 10. The law relating to absorption as a consequence of non compliance with

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25. Section 10(2) (a) to (d) sets out some of these factors. These are, whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in that establishment, whether it is perennial nature, that is to say, it is of sufficient duration having regard to the nature of the industry, trade etc, whether it is done ordinarily through regular workmen in that establishment and whether it is sufficient to employ considerable number of whole time workmen etc.

26. *Supra* n. 6 at p. 35.
Sections 7\textsuperscript{27} and 12\textsuperscript{28} is still governed by the decision in \textit{Deena Nath v. National Fertilizers Limited}.\textsuperscript{29} The Court in \textit{Deena Nath} had held that the only remedy for non compliance with Sections 7 and 12 were the penal provision under Sections 25 and 26, and that there is no consequent absorption of contract labour.

Let us now proceed to briefly summarize the arguments relating to automatic absorption as a consequence of abolition by notification under Section 10. It was contended before the Court, that the Contract Labour Act at no instance created a direct relationship between the principal employer and the contract labour and that the principal employer came into picture only when the contractor failed to perform his duties.\textsuperscript{30} The attention of the Court was also drawn to the fact that prior to the enactment of the Contract Labour Act, neither the Rege Committee in 1946, nor the National Labour Commission in 1969 had recommended automatic absorption of contract labour.\textsuperscript{31} It was also pointed out that the automatic

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\item Section 7 provides that every principal employer employing contract labour shall register with the registering officer in the prescribed manner.
\item Section 12 mandates that no contractor shall employ contract labour except under and in accordance with a license granted in that behalf by the licensing officer.
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\textsuperscript{27} Section 7 provides that every principal employer employing contract labour shall register with the registering officer in the prescribed manner.

\textsuperscript{28} Section 12 mandates that no contractor shall employ contract labour except under and in accordance with a license granted in that behalf by the licensing officer.

\textsuperscript{29} (1992) 1 S.C.C. 695. In \textit{Air India} the Court did raise doubts about the validity of the law laid down in \textit{Deena Nath} and commented that such a decision “falls foul of the Constitutional trinity”, though it did not expressly overrule the decision in \textit{Deena Nath, supra} n. 7 at p. 680. \textit{Deena Nath} was decided by a division Bench whereas \textit{Air India} was decided by a bench of three judges. Whereas, the judgment in \textit{SAIL} comes only in the context of abolition and absorption and not otherwise.

\textsuperscript{30} \textit{Supra} n. 6 at p. 36.

\textsuperscript{31} See the submissions of learned Senior Counsel T.R. Andhyarujina at p. 37, It was further contended that had it been the intention of the legislature to seek automatic absorption in case of abolition, thereby establishing a direct link between the principal employer and contract labour, Section 10 would have been worded differently and a judicial order in this regard would be

(f.n. contd. on next page)
absorption policy would run into trouble in regard to public enterprises, where there are fixed service rules and special provisions are made in regard to SC, ST and other backward classes. This by far seems to be the most far reaching consequence of ordering automatic absorption.

On the other hand, it was argued that anybody who worked in the premises of or under the control or authority of the principal employer should be treated as workmen of the principal employer.33 It was contended that the contractor merely acted as an agent of the principal employer and that his actions bind the principal employer. Therefore it was a logical conclusion, that on abolition of the relationship between the contract labour and contractor the relationship between the principal employer and the labour get matured.34

Additionally it was argued that under the Specific Relief Act, a contract of employment could not be enforced specifically, much less can a new contract of employment between the principal employer and the contract labour be created by the Court.

Reliance was placed on the definition of 'workman' under Section 2 (i), which excludes an outworker, a person to whom any articles and materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer when it is not carried out in premises not being under the control of the principal employer, id. at p.38. This contention was rejected by the Court by relying on Hussainbhai v. Alath Factory Thozhilali Union, (1978) 4 S.C.C. 257 and Shivanandan Sharma v. Punjab National Bank, A.I.R. 1955 S.C. 404. The Court rejected the contention that a combined reading of the definition of a 'workman', ‘contract labour’ and ‘establishment’ would show that the legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such a relationship, supra n. 6 at p.59.

The argument was that the abolition was intended to remove the contractor form the picture and not the workers. Heavy reliance was placed on the

32. Id. at p. 35
33. Id. at p. 35
34. (f.n. contd. on next page)
It was urged that the Court should take an interpretation that would further the goals set forth in Part IV of the Constitution rather than one which would defeat the same by rendering the workers without any means of livelihood. Attention was also drawn to the fact that the remedy provided in the Gujarat Electricity Board case was inadequate and a ‘teasing illusion’.

The Court finally decided and rightly so that in case of abolition under Section 10, there cannot be automatic absorption of labour. The Court said that the only relief could be the principal employer shall give preference to the erstwhile contract labour (if otherwise found suitable) while employing fresh regular workmen.

Then the question arises as to the livelihood of workmen and the non availability of an immediate relief. It is submitted that the only way out of this problem (given the reluctance of the legislature to respond), is opinion of Justice Majmudar in Air India, wherein he opined that the entire purpose of abolition was to improve the condition of the contract labour and not to render them workless. It was his considered opinion that, no express provision is required for the absorption of contract labour because it is implicit in the nature of relationship of a principal employer and the contract labour, supra n. 7 at p. 686.

35. Here again the approach of Justice Ramaswamy in Air India was relied upon, wherein the learned judge does invoke constitutional principles and pointed out to the fact that the right to livelihood enshrined in Article 21 of the Constitution would stand violated if absorption were not provided for, supra n. 7 at p. 679.

36. See supra n.31. It might be interesting to observe that Justice Majmudar, who was on the bench in Gujarat Electricity Board case which suggested the remedy of the direct workmen of the principal employer approaching the industrial adjudicator, criticised the same in his opinion in Air India. He observes: “I wholly agree with Brother Ramaswamy in his view that the scheme envisaged in Gujarat State Electricity Board’s case is not workable and to that extent the said judgment cannot be given effect to”, supra n. 7 at p. 686-87.

37. Supra n 6 at p. 63. The Court also held that any questions of fact, as to nature of employment should be gone into by the ‘industrial adjudicator’ only. See also Municipal Corporation of Greater Mumbai v. K V Shramik Sangh, (2002) 4 S.C.C. 609.
for the regular workers to espouse their case under the Industrial Disputes Act 1947 before or after abolition, with a demand to regularise the workmen.38

**Conclusion**

In conclusion, the case under review is an excellent example of how the judiciary has to encounter difficult choices, especially when it comes to labour matters. The legislature often puts the onus on the judiciary to make tough choices as this one, when it is common knowledge that the judiciary cannot come up with a comprehensive solution to such problems. This is the state even after the judiciary has made repeated pleas to the legislature, drawing its attention to the lacunae in the law and asking for law reforms.

It is submitted that given the constraints (both legal and otherwise) the verdict of the Court in the *SAIL* case cannot be treated as a rubbish. It is also evident from a perusal of the judgment that the learned judge has displayed familiarity with all issues concerned and also demonstrated adequate legal scholarship. However, in certain aspects especially with regard to the rejection the public law construction of ‘appropriate government’ the reasoning does not sound convincing enough.

It may be emphasised here that there needs to be a shift from trying to find solutions to modern day labour problems within the framework of common law and a need to reorient the labour discourse in the direction of public law jurisprudence. This will indeed go a long way in resolving long standing legal issues as these.

**K. Parameshwar***

38. It must be kept in mind that in case the dispute is raised before abolition, then the demand is not in terms of abolition but only in terms of regularization. To this extent, the remedy in *Gujarat Electricity Board* case could be beneficial.

* Final Year student of law at the National Academy of Legal Studies and Research University of Law, Hyderabad. The author wishes to thank Prof. Vasanthi for her comments on the paper. The author can be contacted at parameshwar@gmail.com.