the same he tendered an unqualified apology for the delay that had taken place in his Department but unfortunately the Division Bench did not accept his unqualified apology merely because he had stated in Court that the payment was the responsibility of the treasury and therefore, he was not responsible. That was because he had drawn upon the cheque and it was then the responsibility of the treasury to clear it. That was not a statement on the basis of which his unconditional apology deserved to be rejected. It is also pertinent to note that he did not raise a technical objection that the contempt application could not have been initiated after the expiry of the period prescribed by Section 20 of the Act. In fact he took prompt action to ensure that the order of the Court was complied with in letter and spirit immediately after he took charge and learnt about the inaction on the part of his predecessor. We, therefore, fail to understand how he could be hauled up for contempt in the above circumstances.

2. In the result, we allow this appeal, set aside the order of conviction and sentence and direct that the fine, if not passed on to the original petitioner should be refunded to him. No notice of the impugned order should be taken so far as his service record is concerned. There will be no order as to costs.

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(BEFORE K. RAMASWAMY, B.L. HANSARIA AND S.B. MAJMUDAR, JJ.)

AIR INDIA STATUTORY CORPORATION AND OTHERS .. Appellants;

Versus

UNITED LABOUR UNION AND OTHERS .. Respondents.

Civil Appeals No. 15535 of 1996 with Nos. 15536-37, 15532-34 of 1996†, decided on December 6, 1996

A. **Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 2(1)(a) (as stood before and after Amendment Act 14 of 1986) — 'Appropriate Govt.' in relation to an establishment pertaining to an industry "carried on by or under authority of Central Govt." — Principles laid down for determination of — Interpretation should be based on public law principles and not on common law principles — Statutory corporation involving public element, even though carrying on commercial activities, held, would be an industry carried on by or under authority of Central Govt. — Element of deep and pervasive Govt. control not the sole criterion — Activities of such corporation are amenable to Parts III and IV of the Constitution and must be just, fair and reasonable and must be guided by public interest in exercise of public power — Appellant Air India Statutory Corporation initially a statutory authority under International Airports Authority of India Act, 1971 but later due to change in law and in order to be in tune with open economy, it becoming a company registered under Companies Act — Held, in respect of the appellant-**

† From the Judgment and Order dated 28-4-1992 of the Bombay High Court in A. No. 146 of 1990

establishment Central Govt. would be the appropriate Govt. under S. 2(1)(a), as it stood before as well as after the 1986 amendment — Industrial Disputes Act, 1947, S. 2(a)(i) — Constitution of India, Arts. 12, 19(1)(g), 298 — Words and phrases — "Appropriate government", "control"

B. **Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Object — Act being a social welfare measure, its provisions should be interpreted in the light of public law principles — Constitution of India, Arts. 14, 15, 21, 38, 39, 43-A, 39-A, 46, 51-A**

C. **Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Ss. 10 and 2(1)(a) (as it stood before and after Amendment 14 of 1986) — On the basis of recommendations of Central Advisory Board Notification dated 9-12-1976 issued under S. 10 by Central Govt., being the appropriate authority under S. 2(i)(a) for abolition of contract labour system in appellant's establishment — Having once done so, held, Central Govt. denuded of its power to accept subsequent recommendations of another Committee for not abolishing contract labour system in appellant's establishment**

D. **Interpretation of Statutes — Social welfare legislation — Providing socio-economic empowerment to workers and poor class — Its provisions should be construed in the light of public law principles instead of private or common law principles**

The appellant initially was a statutory authority under the International Airport Authority of India Act, 1971 and on its repeal by the Airports Authority of India Act, 1994 was amalgamated with National Airport Authority under single nomenclature, namely, IAAI. The IAAI was reconstituted as a company under the Companies Act, 1956. The appellants engaged as contract labour the respondent union's members for sweeping, cleaning, dusting and watching of the buildings owned and occupied by the appellant. The appellant had obtained on 20-9-1971 a certificate of registration from Regional Labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on 9-12-1976 prohibiting "employment of contract labour on and from 9-12-1976 for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishments in respect of which the appropriate government under the said Act is the Central Government". Regional Labour Commissioner (Central), Bombay by letter dated 20-1-1972 informed the appellant that the State Government was the appropriate Government under the Act. Therefore, by proceedings dated 22-5-1973 the Regional Labour Commissioner (Central) had revoked the registration. By Amendment Act 46 of 1982, the Industrial Disputes Act, 1947 was made applicable to the appellant and was brought on the statute-book specifying the appellant as one of the industries in relation to which the Central Government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect from 21-8-1982. The Act was amended bringing within its ambit the Central Government as appropriate Government by Amendment Act 14 of 1986 with effect from 28-1-1986. Since the appellant did not abolish the contract system and failed to enforce the Notification of the Government of India dated 9-12-1976, the respondents filed writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the buildings owned or occupied by the appellant-establishment with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or

otherwise. The writ petition was allowed by a Single Judge on 16-11-1989 directing that all contract workers be regularised as employees of the appellant from the date of filing of the writ petition. Preceding thereto, on 15-11-1989, the Government of India referred to the Central Advisory Board known as Mohile Committee under Section 10(1), which recommended to the Central Government not to abolish the contract labour system in the aforesaid services. By the impugned judgment the Division Bench of the High Court dismissed the appeal. Similar was the fate of other appeals. Dismissing the appeals

Held :

The Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation, altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than the words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth. Preamble of the Constitution, as its integral part, is designed to realise socio-economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio-economic justice assured in the Preamble, Articles 14, 15 and 21 and the Directive Principles of the Constitution. The poor, the workman and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them, these are fundamental facets of life. To make the rights enshrined in Articles 14, 15, 21, 38, 39, 43-A and 46 as also the fundamental duties under Article 51-A meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount interest of the community is essential. Article 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are *sentinel on the qui vive* of the rights of the people, in particular the poor. The judicial function of a court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspective, without doing violence to the language. 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 an egalitarian social order be frustrated and constitutional goal defeated. (Paras 14 and 15)

In the context of the definition of 'appropriate govt.' in Section 2(1)(*a*) of the Contract Labour (Regulation and Abolition) Act it must be remembered that the Constitution adopted a mixed economy and control over the industry in its establishment, working and production of goods and services. After recent

liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution. The word "control", therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives. (Para 25)

In this context the following principles emerge:

(1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

(2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

(3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19(2), it is an instrumentality or agency of the State.

(4) The State is a service corporation. It acts through its instrumentalities, agencies or persons — natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.

(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law, principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

(8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, Memorandum of Association or bye-laws or Articles of Association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions. (Para 26)

It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions should satisfy the basic law requirements of Article 14. The public law interpretation is the basic tool of interpretation in that behalf relegating common law principles to purely private law field. (Para 27)

The two-Judge Bench in *Heavy Engineering case* narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14. It is true that in *Hindustan Machine Tool, R.D. Shetty* and *Food Corpn. of India cases* the ratio of *Heavy Engineering case* formed the foundation. In *Hindustan Machine Tool case* there was no independent consideration except repetition and approval of the ratio in *Heavy Engineering case*. It is to reiterate that *Heavy Engineering case* is based on concession. In *R.D. Shetty case*, the need to dwell in depth into this aspect did not arise but reference was made to the premise of private law interpretation which was relegated to and had given place to constitutional perspectives of Article 14 which is consistent with the view stated above. In *Food Corpn. of India case* the Bench proceeded primarily on the premise that warehouses of the Corporation are situated within the jurisdiction of different State Governments which led it to conclude that the appropriate Government would be the State Government. (Para 28)

Heavy Engineering Mazdoor Union v. *State of Bihar*, (1969) 1 SCC 765 : (1969) 3 SCR 995, *overruled*

Hindustan Aeronautics Ltd. v. *Workmen*, (1975) 4 SCC 679 : 1975 SCC (L&S) 377; *Workers' Union* v. *Food Corpn. of India*, (1985) 2 SCC 294 : 1985 SCC (L&S) 456; *Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489 : (1979) 3 SCR 1014, *explained*

Ramana Dayaram Shetty v. *International Airport Authority of India*, (1979) 3 SCC 489 : (1979) 3 SCR 1014; *Managing Director, U.P. Warehousing Corpn* v. *Vijay Narayan Vajpayee*, (1980) 3 SCC 459 : 1980 SCC (L&S) 453 : (1980) 2 SCR 773, *Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : (1981) 2 SCR 79; *Rajasthan SEB* v. *Mohan Lal*, (1967) 3 SCR 377 : AIR 1967 SC 1857 : (1968) 1 LLJ 257; *Praga Tools Corpn.* v. *C.V. Imanual*, (1969) 1 SCC 585 : (1969) 3 SCR 773; *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101; *Som Prakash Rekhi* v. *Union of India*, (1981) 1 SCC 449 : 1981 SCC (L&S) 200 : (1981) 2 SCR 111, *Manmohan Singh Jaitla* v. *Commr., Union Territory of Chandigarh*, 1984 Supp SCC 540 : 1985 SCC (L&S) 269; *P.K. Ramachandra Iyer* v. *Union of India*, (1984) 2 SCC 141 : 1984 SCC (L&S) 214; *A.L. Kalra* v. *Project and Equipment Corpn. of India Ltd.*, (1984) 3 SCC 316 : 1984 SCC (L&S) 497; *Central Inland Water Transport Corpn. Ltd.* v. *Brojo Nath Ganguly*, (1986) 3

SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103; *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243; *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*, (1990) 3 SCC 280; *LIC of India* v *Consumer Education & Research Centre*, (1995) 5 SCC 482, *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91, *considered*

Sukhdev Singh v. *Bhagatram Sardar Singh*, (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619, judgment of Mathew, J., *affirmed*

Rashtriya Mill Mazdoor Sangh v. *Model Mills*, 1984 Supp SCC 443 : 1985 SCC (L&S) 154, *referred to*

Shrisht Dhawan v. *Shaw Bros.*, (1992) 1 SCC 534; *Khawaja* v. *Secy. of State for the Home Deptt.*, (1983) 1 All ER 765 : 1984 AC 74 : (1983) 2 WLR 321, HL; *R.* v. *Secy. of State for the Home Deptt., ex p Khawaja*, (1982) 1 WLR 625 : (1982) 2 All ER 523, *cited*

The appropriate Government is the Central Government from the inception of the Act. The notification published under Section 10 on 9-12-1976, therefore, was in exercise of its power as appropriate Government. So it is valid in law. There is no substance in the contention that the relevant factors for abolition of the contract labour system in the establishment of the appellant was not before the Central Advisory Board before its recommendation to abolish the contract labour system in the establishment of the appellant. The minutes of the Board do show and the unmistakable material furnished do indicate that the work in all the establishments including those of the appellants, is of perennial nature satisfying all the tests engrafted in Section 10(2) of the Act. Accordingly, on finding the work to be of perennial nature, it had recommended and the Central Government had considered and accepted the recommendation to abolish the contract labour system in the aforesaid services. Having abolished it, the Central Government was denuded of its power under Section 10(1) to again appoint the Mohile Committee to go once over into the selfsame question and the recommendations of the latter not to abolish the contract labour system in the above services and the acceptance thereof by the Central Government are without any legal basis and, therefore, non est. (Para 29)

E. **Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 10 — Abolition of contract labour — Effect — Held, direct relationship of employer and employee is established between the erstwhile principal employer and the contract labour whereby the employer becomes obliged to absorb the workers — Therefore, reference of dispute regarding their absorption under S. 10 of ID Act not required — Industrial Disputes Act, 1947, S. 10**

F. **Labour Law — Contract Labour (Regulation and Absorption) Act, 1970 — S. 10 — Abolition of contract labour system in an establishment — On principal employer's failure to absorb the erstwhile contract labourers, held, High Court and Supreme Court in exercise of powers under Arts. 226 and 32 can properly mould the relief and direct the appropriate authority to act in accordance with the law and submit report to the court for giving proper relief accordingly**

G. **Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 10 — Abolition of contract labour system in an establishment — Consequently absorption of the workmen — Held, they can be absorbed in the last grade — Normally they should be absorbed from the date of their initial engagement — In case of any need for retrenchment principle of 'last come first go' should be applied**

Suggested Case Finder Search Text (*inter alia*) :

contract labour abolition

H. **Constitution of India — Art. 226 — Judicial review — A basic feature of the Constitution — Scope of High Court's jurisdiction — Public law remedy — Extends besides prerogative writs to issue of any order or direction "for any other purpose" — High Courts therefore under a constitutional duty to enforce the law by appropriate directions and mould the relief in accordance with law — The legal right sought to be enforced may be founded upon a contract or a statute or an instrument having force of law — Action of the authority must fall under public law, either a statutory enactment or an executive action of the State or its instrumentality — However, distinction between public law and private law now getting obliterated — Public Law**

I. **Constitution of India — Arts. 14 & 21 — Right to work — Though not a fundamental right, but after employment to a post or office, be it under the State, its instrumentality, juristic person or private entrepreneur, an employee must be dealt with as per public element and in public interest assuring him equality under Art. 14 and all concomitant rights emanating therefrom — Service Law — Employment — Continuance of**

Suggested Case Finder Search Text (*inter alia*) :

right near (work or employment)

Held :

The Act does not provide total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. So long as the contract labour system continues, the principal employer is enjoined to ensure payment of wages to the contract labour and to provide all other amenities envisaged under the Act and the Rules including provisions for food, potable water, health and safety and failure thereof visits with penal consequences. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the employer from committing breach of the provisions of the Act and to put an end to exploitation of the labour and to deter him from acting in violation of the constitutional right of the workmen to attain decent standard of life, living wages, right to health etc. When the appropriate Government finds that the employment is of perennial nature etc. contract system stands abolished, thereby, it intended that if the workmen were performing the duties of the post which were found to be of perennial nature on a par with regular service, they also require to be regularised. The Act did not intend to denude them of their source of livelihood and means of development, throwing them out from employment. The Act is a socio-economic welfare legislation. Right to socio-economic justice and empowerment are constitutional rights. Right to means of livelihood is also a constitutional right. Right to facilities and opportunities are only part of and means to right to development. Without employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. (Paras 57, 58 and 37)

Dena Nath v. *National Fertilisers Ltd.*, (1992) 1 SCC 695 : 1992 SCC (L&S) 349, *overruled*

Gujarat Electricity Board, Thermal Power Station v. *Hind Mazdoor Sabha*, (1995) 5 SCC 27 : 1995 SCC (L&S) 1166, *partly overruled*

D.K.V. Prasada Rao v. *Govt. of A.P.*, (1983) 2 An WR 344 : AIR 1984 AP 75; *Munn* v. *People of Illinois*, 24 L Ed 77 : 94 US 113 (1876); *Horatio J. Olcott* v. *County Board of Supervisors of Fond Du Lac County*, 21 L Ed 382 : 83 US 678 (1872); *John O. Graham, Commr., Deptt. of Public Welfare, State of Arizona* v. *Carmen Richardson*, 29 L Ed 2d 534 : 403 US 365 (1971); *Grace Marsh* v. *State of Alabama*, 90 L Ed 265 : 326 US 501 (1945); *Republic Aviation Corpn.* v. *National Labour Relations Board*, 324 US 793 : 89 L Ed 1372 (1944); *Georgia Railroad & Banking Co.* v. *James M. Smith*, 128 US 377 : 32 L Ed 174 (1888); *German Alliance Insurance Co.* v. *Ike Lewis*, 58 L Ed 1011 : 233 US 389 (1913), *Gammon India Ltd.* v. *Union of India*, (1974) 1 SCC 596 : 1974 SCC (L&S) 252, *referred to*

All essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood. Though, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. Democracy offers to everyone as a doer, an exerter and developer and enjoyer of his human capacities, rather than merely as a consumer of utilities. In a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose. (Para 50)

Kesavananda Bharati v. *State of Kerala*, (1973) 4 SCC 225 . 1973 Supp SCR 1; *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1; *Minerva Mills Ltd* v *Union of India*, (1980) 3 SCC 625 : (1981) 1 SCR 206 : AIR 1980 SC 1789; *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746; *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545 . AIR 1986 SC 180, *State of Maharashtra* v *Chandrabhan Tale*, (1983) 3 SCC 387 : 1983 SCC (Cri) 667 : 1983 SCC (L&S) 391 : AIR 1983 SC 803; *Consumer Education and Research Centre* v. *Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604 . (1995) 1 Scale 354; *D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165; *State of Karnataka* v. *Ranganatha Reddy*, (1977) 4 SCC 471 : (1978) 1 SCR 641; *Sanjeev Coke Manufacturing Co.* v. *Bharat Coking Coal Ltd.*, (1983) 1 SCC 147 : (1983) 1 SCR 1000; *State of T.N.* v. *L. Abu Kavur Bai*, (1984) 1 SCC 515 : (1984) 1 SCR 725; *Murlidhar Dayandeo Kesekar* v. *Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549, *R. Chandevarappa* v. *State of Karnataka*, (1995) 6 SCC 309; *Peerless General Finance and Investment Co. Ltd.* v. *Reserve Bank of India*, (1992) 2 SCC 343; *D.K. Yadav* v. *J.M.A. Industries Ltd.*, (1993) 3 SCC 259 . 1993 SCC (L&S) 723, *Dalmia Cement (Bharat) Ltd.* v. *Union of India*, (1996) 10 SCC 104 : JT (1996) 4 SC 555; *Bandhua Mukti Morcha* v. *Union of India*, (1984) 3 SCC 161 . 1984 SCC (L&S) 389; *C.E.S.C. Ltd.* v. *Subhash Chandra Bose*, (1992) 1 SCC 441 : 1992 SCC (L&S) 313, *P.G. Gupta* v. *State of Gujarat*, 1995 Supp (2) SCC 182 : 1995 SCC (L&S) 782 : (1995) 30 ATC 47; *Shantistar Builders* v *Narayan Khimalal Totame*, (1990) 1 SCC 520; *Chameli Singh* v. *State of U.P.*, (1996) 2 SCC 549; *LIC of India* v. *Consumer Education & Research Centre*, (1995) 5 SCC 482, *relied on*

Though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under Section 10(1) of the Act, in a proper case, the Court as *sentinel on the qui vive*

is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as *sentinel on the qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law. (Paras 65 and 59)

The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication is gradually getting marginalised and obliterated. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. (Paras 60 and 61)

LIC of India v. *Consumer Education & Research Centre*, (1995) 5 SCC 482; *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1; *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1 : AIR 1975 SC 2299; *LIC* v. *Escorts Ltd.*, (1986) 1 SCC 264; *M.C. Mehta* v. *Union of India*, (1987) 1 SCC 395 : 1987 SCC (L&S) 37; *Calcutta Gas Co. (Proprietary) Ltd.* v. *State of W.B.*, AIR 1962 SC 1044 : 1962 Supp (3) SCR 1; *Mulamchand* v. *State of M.P.*, AIR 1968 SC 1218 : 1968 Mah LJ 842; *State of W.B.* v. *B.K. Mondal & Sons*, AIR 1962 SC 779; *New Marine Coal Co. (Bengal) (P) Ltd.* v. *Union of India*, (1964) 2 SCR 859 : AIR 1964 SC 152; *Gujarat State Financial Corpn.* v. *Lotus Hotels (P) Ltd.*, (1983) 3 SCC 379; *Mahabir Auto Stores* v. *Indian Oil Corpn.*, (1990) 3 SCC 752; *Shrilekha Vidyarthi* v. *State of U.P.*, (1991) 1 SCC 212 : 1991 SCC (L&S) 742; *Gillick* v. *West Norfolk and Wisbech Area Health Authority*, 1986 AC 112 : (1985) 3 All ER 402 : (1985) 3 WLR 830, HL; *Roy (Dr)* v. *Kensington and Chelsea and Westminster Family Practitioner Committee*, (1992) 1 AC 624 : (1992) 1 All ER 705 : (1992) 2 WLR 239, HL; *R.K. Panda* v. *Steel Authority of India*, (1994) 5 SCC 304 : 1994 SCC (L&S) 1078; *Standard-Vacuum Refining Co. of India Ltd.* v. *Workmen*, (1960) 3 SCR 466 : AIR 1960 SC 948 : (1960) 2 LLJ 233; *Security Guards Board for Greater Bombay and Thane Distt.* v. *Security & Personnel Service (P) Ltd.*, (1987) 3 SCC 413 : 1987 SCC (L&S) 239; *Sankar Mukherjee* v. *Union of India*, 1990 Supp SCC 668 : 1991 SCC (L&S) 456 : AIR 1990 SC 532; *National Federation of Rly. Porters, Vendors & Bearers* v. *Union of India*, 1995 Supp (3) SCC 152 : 1995 SCC (L&S) 1119; *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691; *Unni Krishnan, J.P.* v. *State of A.P.*, (1993) 1 SCC 645; *Comptroller & Auditor General of India* v. *K.S. Jagannathan*, (1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1, *considered*

Therefore, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class

'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, Grade IV employees on a regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishments. Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. Therefore, there is no impediment in the way of the appellants to adopt the above procedure. The award proceedings as suggested in *Gujarat Electricity Board case* are beset with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under Section 10 of the ID Act. The workmen, on abolition of contract labour system have no right to seek reference under Section 10 of ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compel the workmen to remain at the mercy of the principal employer. (Para 66)

Gujarat Electricity Board, Thermal Power Station v. *Hind Mazdoor Sabha*, (1995) 5 SCC 27 : 1995 SCC (L&S) 1166, *criticised and partly overruled*

The High Court under Article 226 of the Constitution would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated Section 12 of the Act and the appellants have violated Section 7 of the Act. In the judgments under appeal, the High Court has directed to absorb the services of the workmen from the date of the judgment. The respondent-Union did not challenge it. Therefore, the benefit to the employees of the respondent-Union cannot be granted from the date of abolition of contract labour system. Therefore, directions of High Court to regularise their services with effect from the respective dates of the judgments of the High Court with all consequential benefits are upheld. (Para 66)

Per Majmudar, J. (concurring)

The question is whether after abolition of contract labour system, the contract labourers who were earlier having regulatory protections would be rendered *persona non grata* and would be thrown out from the establishment and told off the gates? Then in such a case the remedy of abolition of contract labour would be worse than the disease and it has to be held that the legislature while trying to improve the lot of erstwhile contract labourers who are doing work of perennial nature for the principal employer and are doing work which is otherwise to be done by regular workmen had really left them in the lurch by making them lose all the facilities available to contract labour on the establishment as per Chapter V and desired them to wash their hands off the establishment and get out and face starvation. It is axiomatic that if they continued to be contract labourers their wages would have been guaranteed under Section 21 of the Act with an obligation on the principal employer to pay them if the contractor fails to discharge his obligation in connection with payment of wages. Wages are the livelihood of a workman and his large number of dependants. If on abolition of contract labour system, contract labour itself is to be abolished, it would cause economic ruin and economic death to contract labourer and his

dependants for amelioration of whose lot order under Section 10 is to be passed. That obviously cannot be the scope, ambit and purport of Section 10 of the Act. When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labour system in the establishment gets abolished on fulfilment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanishes and along with him vanishes the term "principal employer". Unless there is a contractor agent there is no principal. Once the contractor intermediary goes the term "principal" also goes with it. Then remain out of this tripartite contractual scenario only two parties — the beneficiaries of the abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other who is no longer their principal employer but necessarily becomes a direct employer for these erstwhile contract labourers. Implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. It is difficult to appreciate the contention that the contractor might have employed a number of workmen who may be in excess of the requirement and, therefore, the principal employer on abolition of the contract labour may be burdened with excess workmen. The very condition engrafted in Section 10(2)(*d*) shows that while abolishing contract labour from the given establishment, one of the relevant considerations for the appropriate Government is to ascertain whether it is sufficient to appoint considerable number of whole-time workmen. Even otherwise there is an inbuilt safety valve in Section 21 of the Act which enjoins the principal employer to make payment of wages to the given number of contract workmen whom he has permitted to be brought for the work of the establishment if the contractor fails to make payment to them. It is, therefore, obvious that the principal employer as a worldly businessman in his practical commercial wisdom would not allow the contractor to bring larger number of contract labour which may be in excess of the requirement of the principal employer. On the contrary, the principal employer would see to it that the contractor brings only those number of workmen who are required to discharge their duties to carry out the work of the principal employer on his establishment through, of course, the agency of the contractor. In fact the scheme of the Act and regulations framed thereunder clearly indicate that even the number of the workmen required for the given contract work is to be specified in the licence given to the contractor. Consequently, the aforesaid apprehension projected on behalf of the principal employer is more imaginary than real. Even apart from that, after the absorption of the erstwhile contract workmen by the principal employer on abolition of contract labour system under Section 10, it is always open for the employer as an entrepreneur, in an appropriate case, if the excess working staff is not found to be required by him to retrench such excess staff in accordance with law by following the provisions of the Industrial Disputes Act, 1947. But that has nothing to do with the moot question as to what is the fate of erstwhile contract labour on abolition of contract labour system under the provisions of Section 10 of the Act. I, therefore, wholly agree with Brother Ramaswamy, J. in his view that the scheme envisaged by *Gujarat Electricity Board case is* not workable and to that extent the said judgment cannot be given effect to. (Para 69)

Gujarat Electricity Board, Thermal Power Station v. *Hind Mazdoor Sabha*, (1995) 5 SCC 27 : 1995 SCC (L&S) 1166, *partly overruled*

Engagement of contract labour has been found to be unjustified by a catena of decisions of this Court. When the work is of perennial nature and instead of

engaging regular workmen, the system of contract labour is resorted to, it would only be for fulfilling the basic purpose of securing monetary advantage to the principal employer by reducing expenditure on work force. It would obviously be an unfair labour practice and is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. Such a system was tried to be put to an end by the legislature by enacting the Act but when it found there are certain activities of establishment where the work is not of perennial nature then the contract labour may not be abolished but still it would be required to be regulated so that the lot of the workmen is not rendered miserable. The real scope and ambit of the Act is to abolish contract labour system as far as possible from every establishment. Consequently, on abolition which is the ultimate goal, the erstwhile regulated contract labour cannot be thrown out of establishment as tried to be submitted on behalf of the management taking resort to the express language of Section 10 of the Act. Such a conclusion reached by the two-member Bench in *Dena Nath case*, flies in the face of the very scope and ambit of the Act and frustrates the very scheme of abolition of contract labour envisaged by the Act. Such a conclusion, with respect, cannot be countenanced, as it results in a situation where relatives of the patient are told by the operating surgeon that operation is successful but patient has died. (Para 70)

Dena Nath v. *National Fertilisers Ltd.*, (1992) 1 SCC 695 : 1992 SCC (L&S) 349, *overruled*

R.K. Panda v. *Steel Authority of India*, (1994) 5 SCC 304 : 1994 SCC (L&S) 1078, *explained* and *distinguished*

J. **Constitution of India — Art. 38 and Preamble — Social Justice — Concept and its scope in relation to workman**

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity. (Para 42)

Social justice, equality and dignity of person are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage. (Para 42)

The concept of social justice embeds equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. (Para 43)

R-M/ATCG/17226/SL

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The Judgments of the Court were delivered by

K. RAMASWAMY, J. (*for himself, Hansaria and Majmudar, JJ.*)— Leave granted.

2. These appeals by special leave arise from the judgment of the Division Bench of the Bombay High Court dated 28-4-1992 made in Appeal No. 146 of 1990 and batch. The facts in appeal arising out of SLP No. 7417 of 1992, are sufficient to decide the questions of law that have arisen in these appeals. The appellant initially was a statutory authority under International Airport Authority of India Act, 1971 (for short "IAAI Act") and on its repeal by the Airport Authority of India Act, 1994 was amalgamated with National Airport Authority (for short "the NAA") under single nomenclature, namely, IAAI. The IAAI is now reconstituted as a company under the Companies Act, 1956.

3. The appellants engaged, as contract labour, the respondent union's members, for sweeping, cleaning, dusting and watching of the buildings owned and occupied by the appellant. The Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act") regulates registration of the establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour. The Act had come into force from 5-9-1970. The appellant had obtained on 20-9-1971 a certificate of registration from Regional Labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on 9-12-1976 prohibiting "employment of contract labour on and from 9-12-1976 for sweeping, cleaning, dusting and watching of the buildings owned or occupied by the establishments in respect of which the appropriate government under the said Act is the Central Government". However, the said prohibition was not to apply to "outside cleaning and other maintenance operations of multi-storeyed buildings where such cleaning or maintenance cannot be carried out except with specialised experience". It would appear that the Regional Labour Commissioner (Central), Bombay, by letter dated 20-1-1972 informed the appellant that the State Government is the appropriate Government under the Act. Therefore, by proceedings dated 22-5-1973 the Regional Labour Commissioner (Central) had revoked the registration. By Amendment Act 46 of 1982, the Industrial Disputes Act, 1947 (for short "the ID Act") was made applicable to the appellant and was brought on the statute-book specifying the appellant as one of the industries in relation to which the Central Government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect from 21-8-1982. The Act was amended bringing within its ambit the Central Government as appropriate Government by Amendment Act 14 of 1986 with effect from 28-1-1986.

4. Since the appellant did not abolish the contract system and failed to enforce the notification of the Government of India dated 9-12-1976, the respondents came to file writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the buildings owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or otherwise. The writ petition was allowed by the learned Single Judge on 16-11-1989 directing that all contract workers be regularised as employees of the appellant from the date of filing of the writ petition. Preceding thereto, on 15-11-1989, the Government of India referred to the Central Advisory Board known as Mohile Committee under Section 10(1), which recommended to the Central Government not to abolish the contract labour system in the aforesaid services. Under the impugned judgment dated 3-4-1992, the learned Judges of the Division Bench dismissed the appeal. Similar was the fate of other appeals. Thus these appeals by special leave.

5. Shri Ashok Desai, the learned Attorney General, Shri Andhyarujina, the learned Solicitor General, appearing for the Union of India and the appellant respectively, contended that the term "appropriate Government" under Section 2(1)(*a*) of the Act, as on 9-12-1976, was the State Government. The appellant was not carrying on the business as an agent of the Central Government nor the Central Government was its principal. This Court, in *Heavy Engineering Mazdoor Union* v. *State of Bihar*[1] (for short the "*Heavy Engineering case*"), had interpreted the phrase "the appropriate Government" and held that the Central Government was not the appropriate Government under the ID Act. The ratio therein was followed in *Hindustan Aeronautics Ltd.* v. *Workmen*[2] and *Rashtriya Mill Mazdoor Sangh* v. *Model Mills*[3] and *Workers' Union* v. *Food Corpn. of India*[4]. It is thus a firmly-settled law that the appropriate Government was not the Central Government until the Act was amended with effect from 28-1-1986. Therefore, the view of the High Court that the appropriate Government is the Central Government is not correct in law. The learned Attorney General further argued that the interpretation of this Court in *Heavy Engineering case*[1] has stood the test of time and the parties have settled the transaction on its basis. It would, therefore, not be correct to upset that interpretation. The learned Solicitor General contended that the notification published by the Central Government under Section 10 of the Act on 9-12-1976 was without jurisdiction. The Advisory Board independently should consider whether the contract labour in each of the aforestated services should be abolished taking

1 (1969) 1 SCC 765 : (1969) 3 SCR 995
2 (1975) 4 SCC 679 : 1975 SCC (L&S) 377
3 1984 Supp SCC 443 : 1985 SCC (L&S) 154
4 (1985) 2 SCC 294 : 1985 SCC (L&S) 456

into consideration the perennial nature of the work, the requirement of number of employees in the respective specified services in the establishment of the appellant. The Advisory Board had not adverted to the prescribed criteria of Section 10(2) to the appellant's establishment. The Mohile Committee after detailed examination, had recommended to the Central Government not to abolish the contract labour system in the aforesaid services. It was contended that the notification dated 9-12-1976 is without authority of law or, at any rate, is clearly illegal; and so the direction by the High Court to enforce the offending notification is not correct in law. It was further contended that, after the Amendment Act had come into force from 28-1-1986, the Central Government being the appropriate Government, had accepted the recommendation of the Mohile Committee of not abolishing the contract labour system. The notification dated 9-12-1976 no longer remained valid for enforcement. The High Court, therefore was not right in directing the appellant to enforce the notification. Alternatively, it was contended that even assuming that the notification is valid and enforceable, it would be effective only from January 1986. However, by abolition of contract labour system, the workmen would not automatically become the employees of the appellant. In *Dena Nath* v. *National Fertilisers Ltd.*[5] this Court had held that the High Court, in exercise of its power under Article 226, has no power to direct absorption of the contract labour as its direct employees. The impugned judgment was expressly disapproved in *Dena Nath case*[5]. Therefore, its legality has been knocked off its bottom. It was further contended that the Act, on abolition of the contract labour system, does not envisage to create direct relationship between the principal employer and the contract labour. The erstwhile contract labour have to seek and obtain industrial award under the ID Act by virtue of which the appellant would be entitled to satisfy the Industrial Court that there was no need to absorb all the contract labour but only smaller number is required as regular employees. On recording finding in that behalf, the Industrial Court would make his award which would be enforceable by the workmen. This Court in *Gujarat Electricity Board, Thermal Power Station* v. *Hind Mazdoor Sabha*[6] had pointed out the lacuna in the Act and given directions of the manner in which the industrial action has to be taken on abolition of the contract labour system. The High Court, therefore, was not right in its direction that the workmen require to be absorbed in the respective services of the establishment of the appellant. It is also contended that the appellant, though initially was a statutory Corporation under the IAAI Act, on its abolition and constitution as a company, is entitled to regulate its own affairs on business principles and the direction for absorption would lead to further losses in which it is being run. The learned Solicitor General has, therefore, submitted a scheme under which its subsidiary, namely, Air Cargo Corporation would take the workmen and absorb them into service, subject to the above regulation. It has to consider as to how many of the contract

5 (1992) 1 SCC 695 · 1992 SCC (L&S) 349
6 (1995) 5 SCC 27 : 1995 SCC (L&S) 1166

labour require to be absorbed. Prescription of qualification for appointment was necessary; the principle of reservation adopted by the Central Government requires to be followed; their names require to be called from Employment Exchange. The workmen should be absorbed on the principle of "last come first go" subject to their fitness, qualifications and probation etc.

6. Shri K.K. Singhvi and Mrs Indira Jaising, learned Senior Counsel and A.K. Gupta, learned counsel for the respondents, contended that the appellant is an industry carrying on its business of Air Transport Services. Prior to the IAAI Act, it was under the control of Civil Aviation Department, Government of India; after the IAAI Act, the appellant has been carrying on its industry by or under the authority of the Central Government. The relevant provisions in the IAAI Act would establish the deep and pervasive control the Central Government has over the functions of the appellant. Whether the appellant is an industry carrying on business by, or under the authority of the Central Government, must be determined keeping in view the language of the statute that gave birth to the Corporation, and the nature of functions under the IAAI Act etc. The appellant's working system under the IAAI Act and the control the Central Government is exercising over the working of the industry of the appellant do indicate that right from its inception the appellant has been carrying on its business, by or under the authority of the Central Government. Rightly understanding that legal position, the Central Government had referred the matter to the Central Advisory Board under Section 10(1) of the Act and on the basis of its report had issued the notification dated 9-12-1976 abolishing the contract labour system in the aforestated services. Therefore, it is valid in law. The Bench in *Heavy Engineering case*[1] narrowly construed the meaning of the phrase "the appropriate Government" placing reliance on the common law doctrine of "principal and agent". The public law interpretation is the appropriate principle of construction of the phrase "the appropriate Government". In view of internal evidence provided in the IAAI Act and the nature of the business carried on by the appellant by or under the control of the Central Government, the appropriate Government is none other than the Central Government. In particular, after the development of law of "other authority" or "instrumentality of the State" under Article 12 of the Constitution, the ratio in *Heavy Engineering case*[1] is no longer good law. In *Hindustan Aeronautics Ltd.*[2] and *Food Corpn. of India*[4] cases, this Court had not independently laid any legal preposition. *Food Corpn. of India case*[4] was considered with reference to the regional warehouses of the FCI situated in different States and in this functional perspective, this Court came to the conclusion that the appropriate Government would be the State Government.

7. This Court in *Sukhdev Singh* v. *Bhagatram Sardar Singh*[7]; *Ramana Dayaram Shetty* v. *International Airport Authority of India*[8]; *Managing*

7 (1975) 1 SCC 421 : 1975 SCC (L&S) 101 : (1975) 3 SCR 619
8 (1979) 3 SCC 489 : (1979) 3 SCR 1014

Director, U.P. Warehousing Corpn. v. *Vijay Narayan Vajpayee*[9]; *Ajay Hasia* v. *Khalid Mujib Sehravardi*[10] — wealth of authorities — had held that settled legal position would lend aid to interpret the phrase "appropriate Government" in public law interpretation; under the Act the Central Government is the appropriate Government to take a decision under Section 10 of the Act to abolish the contract labour system. It is further contended that the Central Government, after notifying abolition of contract labour system is devoid of power under Section 10(1) to appoint another Advisory Board to consider whether or not to abolish the same contract labour system in the aforesaid services in the establishments of the appellant. The recommendation of the Mohile Committee and the resultant second notification were, therefore, without authority of law. The two-Judge Benches in *Dena Nath*[5] and *Gujarat Electricity Board*[6] *cases* have not correctly interpreted the law. After abolition of the contract labour system, if the principal employer omits to abide by the law and fails to absorb the labour worked in the establishments of the appellant on regular basis, the workmen have no option but to seek judicial redress under Article 226 of the Constitution. Judicial review being the basic feature of the Constitution, the High Court is to have the notification enforced. The citizen has a fundamental right to seek redressal of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The High Court, therefore, was right to dwell into the question and to give the impugned direction in the judgment. The workmen have a fundamental right to life. Meaningful right to life springs from continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life. When they were engaged as contract labour and were continuously working in the establishments of the appellant, to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour so long as the work is available in the establishment. When work is of perennial nature and on abolition of contract labour system, they are entitled, per force, to be absorbed on regular basis transposing their erstwhile contractual status into that of an employer-employee relationship so as to continue to eke out their livelihood by working under the employer and be entitled to receive salary prescribed to that post. Thereby, they became entitled to be absorbed without any hiatus with effect from the date of abolition. If any action is needed to be taken thereafter against the employee, it should be only in accordance with either the statutory rules or the ID Act, if applicable. In either event, the right to absorption assures to the workmen the right to livelihood as economic empowerment, right to social justice and right to dignity of person which are the concomitants of social democracy. These facets of constitutional rights guaranteed to the workmen as their Fundamental Rights should be kept in view in interpreting the expression "appropriate Government" and the duty of the appropriate Government enjoined under Section 10(1) of the Act and

9 (1980) 3 SCC 459 : 1980 SCC (L&S) 453 : (1980) 2 SCR 773
10 (1981) 1 SCC 722 : 1981 SCC (L&S) 258 : (1981) 2 SCR 79

other regulatory provisions in relation to the employment of the workmen. Therefore, the view in *Dena Nath case*[5] is not correct in law and requires to be overruled.

8. There is no hiatus in the operation of the Act on abolition of the contract labour system under Section 10. The object and purpose of the Act are twofold. As long as the work in an industry is not perennial, the Act regulates the conditions of the workmen employed through the contractor registered under the Act. The services of the workmen are channelised through the contractor. The principal employer is required to submit the number of workmen needed for employment in its establishment who are supplied by the contractor, an intermediary; but the primary responsibility lies upon the principal employer to abide by the law; the violation thereof visits with penal consequences. The Act regulates systematic operation. Wages to the contract labour should be paid under the direct supervision of the principal employer. The principal employer is enjoined to compel the contractor to pay over the wages and on his failure, the principal employer should pay and recover it from the contractor/intermediary. The principal employer alone is required to provide safety, health and other amenities to ensure health and safe working conditions in the establishment of the principal employer. This would clearly indicate the pervasive control the principal employer has over the contract labour employed through intermediary and regulation of the work by the workmen during the period of service. On advice by the Board that the work is of perennial nature etc. and on being satisfied of the conditions specified under Section 10(2), the appropriate Government takes a decision to abolish the contract labour and have the decision published by a notification. It results in abolition of the contract labour. Consequently, the linkage of intermediary/contractor is removed from the operational structure under the Act. It creates direct connection between the principal employer and the workmen. There is no escape route for the principal employer to avoid workmen because it needs their services and the workmen are not meant to be kept in the lurch. The words "principal employer" do indicate that the intermediary/contractor is merely a supplier of labour to the principal employer. On effacement of the contractor by abolition of the contract labour system, a direct relationship between the principal employer and the workmen stands knitted. Thereby the workman becomes an employee of the principal employer and it relates back to the date of engagement as a contract labour. The details of the workmen, the requirement of the work force, duration of the work etc. are regulated under the Act and the Rules. The Act, the Rules and statutory forms do furnish internal and unimpeachable evidence obviating the need to have industrial adjudication; much less there arises any dispute. There is no machinery for workmen under the ID Act to seek any industrial adjudication. If any industrial adjudication is to be sought, it would be only by a recognised union in the establishment of the appellants who are unlikely to espouse their dispute. Therefore, the methodology suggested in *Gujarat Electricity Board case*[6] by another Bench of two Judges, apart from

being unworkable and incongruous, is not correct in law. On abolition of the contract labour, the principal employer is left with no right but duty to enforce the notification, absorb the workmen working in the establishment on contract basis transposing them as its regular employees with all consequential rights and duties attached to a post on which the workman working directly under the appellant was entitled or liable. The Act gave no option to pick and choose the employees at the whim of the principal employer. The view of the High Court, therefore, is correct to the extent that the notification should be enforced with effect from the date of abolition, namely, 9-12-1976. The subsequent amendment with effect from 28-1-1986 is only a recognition of and superimposition of pre-existing legal responsibility of the Central Government as the appropriate Government. It does not come into being only from the date the amendment came into force. Consequently, the workmen, namely, the members of the respondent-Union must be declared to be the employees with effect from the respective dates on which they were discharging their duties in the respective services of the appellant's establishments either as sweeper, duster, cleaner, watchman etc. The view, therefore, of the High Court to the extent that they should be absorbed with effect from the date of the judgment of the learned Single Judge, is not correct in law. Therefore, to do complete justice, direction may be given to absorb the workmen with effect from the date of abolition, i.e., 9-12-1976 under Article 142 of the Constitution.

9. The respective contentions would give rise to the following questions:

1. What is the meaning of the word "appropriate Government" under Section 2(1)(*a*) of the Act.
2. Whether the view taken in *Heavy Engineering case*[1] is correct in law?
3. Whether on abolition the contract labour are entitled to be absorbed; if so, from what date?
4. Whether the High Court under Article 226 has power to direct their absorption; if so, from what date?
5. Whether it is necessary to make a reference under Section 10 of the ID Act for adjudication of dispute *qua* absorption of the contract labour?
6. Whether the view taken by this Court in *Dena Nath*[5] and *Gujarat Electricity Board case*[6] is correct in law?
7. Whether the workmen have got a right for absorption and, if so, what is the remedy for enforcement?

10. Section 2(1)(*a*) of the Act defines "appropriate Government" to mean —

> "2. (1)(*a*)(*i*) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;
>
> (*ii*) in relation to any other establishment, the Government of the State in which that other establishment is situated."

11. Prior to the Amendment Act 14 of 1986, the definition was as under:

"2. (1)(*a*) "Appropriate Government" means—

(1) in relation to—

(*i*) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(*ii*) any establishment of any railway, Cantonment Board, major port, mine or oilfield, or

(*iii*) any establishment of a banking or insurance company,

the Central Government,

(2) in relation to any other establishment the Government of the State in which that other establishment is situated."

12. Section 2(*a*)(*i*) of the ID Act defines "appropriate Government" thus:

"2. ... unless there is anything repugnant in the subject or context,—

(*a*)'appropriate Government' means,—

(*i*) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government ..."

and Indian Airlines and Air India Corporation established under Section 3 of the Air Corporation Act, 1953 are enumerated industries under Amendment Act 46 of 1982 which came into force with effect from 21-8-1984.

13. In *Heavy Engineering case*[1] industrial dispute was referred under Section 10 of the ID Act by the State Government of Bihar to the Industrial Tribunal for its adjudication. The competency of the State Government was questioned by the Mazdoor Union contending that the appropriate Government to refer the dispute was the Central Government. The High Court negatived the contention and had upheld the validity of reference. On appeal, a Bench of two Judges had held that the words "under authority of" mean pursuant to the authority, such as an agent or a servant's acts under or pursuant to the authority of its principal or master. The Heavy Engineering Company cannot be said to be carrying on its business pursuant to the authority of the Central Government. Placing reliance on common law interpretation, the Bench was of the opinion that the Company derived its powers and functions from its Memorandum and Articles of Association. Though the entire share capital was contributed by the Central Government and all the shares were held by the President and officers of the Central Government were in charge of the management, it did not make any difference. The Company and the shareholders are distinct entities. The fact that the President of India and certain officers hold all its shares did not make the Company an agent either of the President or of the Central Government. The power to decide how the Company should function; the power to appoint Directors and the power to determine the wages and salaries payable by the Company to its employees, were all derived from the

Memorandum of the Company and Articles of Association of the Company and not by reason of the Company being the agent of the Central Government. The learned Judges came to that conclusion on the basis of concession and on private law of principal and agent and as regards a company registered under the Companies Act, on the basis of the power of internal management. In *Hindustan Aeronautics Ltd. case*[2] the learned Judges merely followed the ratio of *Heavy Engineering case*[1]. It further concluded that the enumeration of certain statutory Corporations in the definition would indicate that those enumerated Corporations would come within the definition of "appropriate Government" without any further discussion. In *Rashtriya Mill Mazdoor Sangh case*[3] a Bench of three Judges, while interpreting Section 32(*iv*) of the Payment of Bonus Act, 1965 considered the purpose of the expression "under the authority of any department of the Central Government for purpose of payment of bonus". The meaning and scope of the expression "industry carried on by or under the authority of any department of the Central Government", was examined and it was held that the industrial undertaking retains its identity, personality and status unchanged though in its management, the Central Government exercised the power to give a direction under Section 16 and the management is subjected to regulatory control. It is seen that the above decision was reached in the context in which the payment of bonus was to be determined and paid to the employees by the department. In *Food Corpn. of India case*[4] a Bench of two Judges was to consider whether the regional office of the Food Corporation of India and the warehouses etc. were an "establishment" within the meaning of Section 2(*i*)(*e*) of the Act and whether FCI is an industry carried on by or under the authority of the Central Government. Following the aforesaid three decisions, it was held that a bare reading of the definition would indicate that the "establishment" defined under the Act means inter alia any place, any industry, trade, business, manufacture, warehouse, godown or the place set up by the Corporation where its business is carried on. Though for the purpose of industrial disputes the Central Government is an appropriate Government in relation to Food Corporation of India, its establishments at various places are not under the control of the Government of India. Therefore, appropriate Government under the Industrial Disputes Act is the State Government. In that behalf, the learned Judges, undoubtedly, relied upon *Heavy Engineering case*[1]. It would thus be seen that the construction adopted on the phrase "appropriate Government" under the ID Act was considered with reference to its functional efficacy. The *Heavy Engineering case*[1] as held earlier, had proceeded on common law principles and the concession by the counsel.

14. As noted, the appellant, to start with, was a statutory authority but pending appeal in this Court, due to change in law and in order to be in tune with open economy, it became a company registered under the Companies Act. To consider its sweep on the effect of *Heavy Engineering case*[1] on the interpretation of the phrase "appropriate Government", it would be necessary to recapitulate the Preamble, Fundamental Rights (Part III) and

Directive Principles (Part IV) — trinity setting out the conscience of the Constitution deriving from the source "We, the people", a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity, are assured to every citizen in a socialist, democratic Bharat Republic. The Constitution, the Supreme law heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience. Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than the words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth. Preamble of the Constitution, as its integral part, is designed to realise socio-economic justice to all people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workman realises socio-economic justice assured in the Preamble, Articles 14, 15 and 21 and the Directive Principles of the Constitution.

15. The Founding Fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic. The State under Article 38 is enjoined to strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39(*a*) provides that the State shall direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood; clause (*d*) provides for equal pay for equal work for both men and women; clause (*e*) provides to secure the health and strength of workers. Article 41 provides that within the limits of its economic capacity and development, the State shall make effective provision to secure the right to work as fundamental with just and humane conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of

living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the workman and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and humane conditions of work, to a living wage, a decent standard of life, education and leisure. To them, these are fundamental facets of life. Article 43-A, brought by the 42nd Constitution (Amendment) Act, 1976 enjoins upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 46 gives a positive mandate to promote economic and educational interests of the weaker sections of the people. Correspondingly, Article 51-A imposes fundamental duties on every citizen to develop scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the individual entrepreneur and the paramount interest of the community is essential. Article 39-A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are *sentinel on the qui vive* of the rights of the people, in particular the poor. The judicial function of a court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspective, without doing violence to the language. 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 an egalitarian social order would be frustrated and constitutional goal defeated.

16. Keeping this broad spectrum in view, let us consider whether the interpretation given in *Heavy Engineering case*[1] is consistent with the scheme and spirit of the Constitution. In *Rajasthan SEB* v. *Mohan Lal*[11], a Constitution Bench, comprising the learned Judges who formed the Bench in *Heavy Engineering case*[1], considered the issue of interpretation and Bhargava, J. speaking on behalf of the majority, had held that "other authority" within the meaning of Article 12 of the Constitution need not necessarily be an authority to perform governmental functions. The expression "other authority" is wide enough to include within it every authority created by a statute on which powers are conferred to carry out governmental functions or the "functions under the control of the

11 (1967) 3 SCR 377 · AIR 1967 SC 1857 : (1968) 1 LLJ 257

Government". It is not necessary that some of the powers conferred be governmental sovereign functions to carry on commercial activities. Since the State is empowered under Articles 19(1)(*g*) and 298 to carry on any trade or business, it was held that the Rajasthan State Electricity Board was "other authority" under Article 12 of the Constitution. The significance of the observation is that an authority under the control of the State need not carry on governmental functions. It can carry on commercial activities. At this juncture, it is relevant to keep at the back of our mind, which was not brought to the attention of the Bench which decided *Heavy Engineering case*[1], that Article 19(2) of the Constitution grants to the State, by clause (*ii*) thereof, monopoly to carry on, by the State or by a corporation owned or controlled by the State, any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise. The narrow interpretation strips the State of its monopolistic power to exclude citizens from the field of any activity, to carry on any trade, business, industry or service, total or partial. A reverse trend which would deflect the constitutional perspective was set in motion by the same Bench in *Praga Tools Corpn.* v. *C.V. Imanual*[12], 24 days prior to the date of decision in *Heavy Engineering case*[1]; in which it was held in main that writ under Article 226 would not lie against a company incorporated under Companies Act and the declaration that dismissal of the workmen was illegal, given by the High Court was set aside. But the operation of the above ratio was put to stop by the Constitution Bench decision in *Sukhdev Singh* v. *Bhagatram*[7]. In that behalf, the interpretation given by Mathew, J. in a separate but concurrent judgment is of vital significance taking away the State action from the clutches of moribund common law jurisprudence; it set on foot forward march under public law interpretation. Mathew, J. had held that the concept of State had undergone drastic change. It cannot be conceived of simply as a cohesive machinery wielding the thunderbolt of authority. The State is a service corporation. It acts only through its instrumentalities or agencies of natural and juridical person. There is a distinction between State action and private action. There is nothing strange in the notion of the State acting through a corporation and making it an agency or instrumentality of the State with an advent of the welfare State. The framework of the civil service administration became increasingly insufficient for handling new tasks which were often of a specialised and highly technical character. Development of policy of public administration, through separate corporations which would operate largely according to business principles and were separately accountable though under the Memorandum of Association or Articles of Association become the arm of the Government. Though their employees are not civil servants, it being a public authority and State Corporation, therefore, is subject to control of the Government. The public corporation, being a corporation of the State, is subject to the constitutional limitation as the State itself. The governing power, wherever located, must be subject to the fundamental constitutional limitations. The

12 (1969) 1 SCC 585 : (1969) 3 SCR 773

Court, therefore, had laid the test to see whether the Corporation is an agency or instrumentality of the Government to carry on business for the benefit of the public. Thus, the ratio in *Praga Tools case*[12] that no writ would lie against the Corporation is no longer a good law. Though Corporation is not a statutory body, as it is not an authority, it is an instrumentality of the State.

17. In *Ramana Dayaram Shetty* v. *International Airport Authority of India*[8] this Court had held that due to expansion of welfare and social service functions, the State increasingly controls material and economic resources in the society involving large-scale industrial and commercial activities with their executive functions affecting the lives of the people. It regulates and dispenses special services and provides large number of benefits. When the Government deals with the public, it cannot act arbitrarily. Where a corporation is an instrumentality or agency of the Government, it would be subject to the same constitutional or public law limitation as the Government. The limitations of the action by the Government must apply equally when such actions are dealt with by corporations having instrumentality element with public and they cannot act arbitrarily. Such a functioning cannot enter into relationship with any person it likes at its sweet will. Its action must be in conformity with some principle which meets the test of reason and relevance. Therefore, the distinction between a statutory corporation and the company incorporated under the Companies Act was obliterated.

18. In *Managing Director, U.P. Warehousing Corpn.* v. *V.N. Vajpayee*[9] Chinnappa Reddy, J. in his separate but concurrent judgment laid down the relevant principles. The Government establishes and manages large number of industries and institutions which have become biggest employer and there is no good reason why the Government should not be bound to observe the equality clause of the Constitution in a matter of employment and its dealings with its employees; why the Corporation set up or owned by the Government should not equally be bound and why instead such Corporation would become citadels of patronage and arbitrary action. Such a distinction perhaps would mock at the Constitution and the people; some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him the protection of Articles 14 and 16. Independence and integrity of the employees in the public sector should be secured as much as the independence and integrity of the civil servants. It was, therefore, held that a writ would lie against the warehousing corporation.

19. In *Ajay Hasia* v. *Khalid Mujib Sehravardi*[10] a Constitution Bench was to consider whether a society registered under the J&K Societies Registration Act would be a State under Article 12 of the Constitution amenable to the reach of the writ jurisdiction. The Constitution Bench laid the following tests to determine whether the entity is an instrumentality or agency of the State: (1) if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the

corporation is an instrumentality or agency or Government; (2) where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character; (3) it must also be a relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected; (4) existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality; (5) if the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government; (6) specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference of the corporation being an instrumentality or agency of Government. In *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*[13] it was held that the State has a deep and pervasive control over the functioning of the society and, therefore, is an agency of the State. In *Som Prakash Rekhi* v. *Union of India*[14] it was held that the settled position in law is that any authority under the control of the Government of India comes within the definition of a State. Burma Shell Oil Co. was held to be an instrumentality of the State though it was a government company. The authority in administrative law is a body having jurisdiction in certain matters of public nature. Therefore, the ability conferred upon a person by law is to alter his case by his own will directed to that end. The rights, duties and liabilities or other legal relations, either of himself or other person must be present to make a person an authority. When the person is an agent or functions on behalf of the State, as an instrumentality, the exercise of the power is public. Sometimes, the test is formulated by asking whether the corporation was formed by or under the statute. The true test is not how it is founded in legal personality but when it is created, apart from discharging public functions or doing business as the proxy of the State, whether there is an element of ability in it to effect the relations by virtue of power vested in it by law. In that case, it was held that the above tests were satisfied and the company was directed to pay full pension.

20. In *Manmohan Singh Jaitla* v. *Commr., Union Territory of Chandigarh*[15] it was held that an educational institution receiving 95% of the grants-in-aid from the Government is "other authority" under Article 12 of the Constitution. It was, therefore, held that the termination of the service without enquiry was without jurisdiction. Dismissal from service without enquiry was declared illegal under Article 226. In *P.K. Ramachandra Iyer* v. *Union of India*[16], ICAR, a Society registered under the Societies Registration Act, was held an adjunct of the Government of India. It was

13 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : AIR 1991 SC 101
14 (1981) 1 SCC 449 : 1981 SCC (L&S) 200 : (1981) 2 SCR 111
15 1984 Supp SCC 540 : 1985 SCC (L&S) 269
16 (1984) 2 SCC 141 : 1984 SCC (L&S) 214

financed by the Government of India. Its budget was voted as part of the budget of the Ministry of Agriculture. It was held that it was State under Article 12 and was amenable to jurisdiction under Article 32 of the Constitution. The Project and Equipment Corporation of India which is a subsidiary owned by the State Trading Corporation was held by this Court in *A.L. Kalra* v. *Project and Equipment Corpn. of India Ltd.*[17] to be an agency of the Government within the meaning of Article 12 of the Constitution of India. In *Central Inland Water Transport Corpn. Ltd.* v. *Brojo Nath Ganguly*[18] a government company incorporated under the Companies Act was held to be an instrumentality or agency. In this case, this Court construed the Fundamental Rights under Articles 14 to 17, the Directive Principles under Articles 38, 41 and 42, the Preamble of the Constitution and held that the River Steam Navigation Co. Ltd. was carrying on the same business as the corporation was doing. A scheme of arrangement was entered into between the corporation and the company. They were managed by the Board of Directors appointed and removable by the Central Government. It was, therefore, held that it was an agency or instrumentality of the State under Article 12. In that behalf this Court pointed out that the trade or business activity of the State constitutes public enterprise; the structural forms in which the Government operates in the field of public enterprise are many and varied. They may consist of governmental department, statutory body, statutory corporation or government companies etc.; immunities and privileges possessed by bodies so set up by the Government under Article 298 are subject to Fundamental Rights and Directive Principles to further the State policy. For the purpose of Article 12, the Court must see necessarily through the corporate veil to ascertain behind the veil the face of instrumentality or agency of the State. If the instrumentality or agency of the State has assumed the garb of a governmental company, as defined in Section 3(7) of the Companies Act, it does not follow thereby that it ceases to be an instrumentality or agency of the State. Applying the above test, it was held that Inland Water Transport Corporation was State.

21. When its correctness was doubted and its reference to the Constitution Bench was made in *Delhi Transport Corpn. case*[13] while holding that Delhi Road Transport Authority was an instrumentality of the State, it was held that employment is not a bounty from the State nor can its survival be at their mercy. Income is the foundation of any Fundamental Rights. Work is the sole source of income. The right to work becomes as much fundamental as right to life. Law as a social machinery requires to remove the existing imbalances and to further the progress serving the needs of the Socialist Democratic Republic under the rule of law. Prevailing social conditions and actualities of the life are to be taken into account to adjudge the dispute and to see whether the interpretation would subserve the purpose of the society.

17 (1984) 3 SCC 316 : 1984 SCC (L&S) 497

18 (1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103

22. In *Lucknow Development Authority* v. *M.K. Gupta*[19] the question was whether a Government Authority is amenable to the regulation of Consumer Protection Act. It was held in paras 5 and 6 that a Government or a semi-Government body or local authority are amenable to the Act as much as any other private body rendering similar service. This is a service to the society and they are amenable to public accountability for health and growth of society, housing construction or building activities, by private or statutory body rendering service within the meaning of Section 2(1)(*o*) of the said Act. In *Star Enterprises* v. *City and Industrial Development Corpn. of Maharashtra Ltd.*[20] it was held that the State or its instrumentality entering into commercial field must act in consonance with the rule of law. In para 10, it was held that judicial review of administrative action has become expansive and its scope is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive as the State has descended into the commercial field and joint public sector undertaking has grown up. The State action must be justified by judicial review, by opening up of the public law interpretation. Accordingly, it was held that the action of the company registered under the Companies Act was amenable to judicial review.

23. In *LIC of India* v. *Consumer Education & Research Centre*[21], it was held that in the contractual field of State action, the State must act justly, fairly and reasonably in public interest commensurate with the constitutional conscience and socio-economic justice; insurance policies of LIC, terms and conditions prescribed therein involve public element. It was, therefore, held (in SCC para 23, at p. 498) that every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element that becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element, to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions. They must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. At p. 501, in para 28 (SCC), it was held that though the dispute may fall within the domain of contractual obligation, it would not relieve the State etc. of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of public character, invariably in every case, irrespective of there being any other right or obligation. An additional contractual obligation cannot divest the claimant of the guarantee under

19 (1994) 1 SCC 243
20 (1990) 3 SCC 280
21 (1995) 5 SCC 482

Article 14 of non-arbitrariness at the hands of the State etc. in any of its actions.

24. In *G.B. Mahajan* v. *Jalgaon Municipal Council*[22] it was held that in interpretation of the test of reasonableness in Administrative Law, the words "void" and "voidable" found in private law area are amenable to public law situations and: (SCC p. 109, para 38)

> "... carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words 'reasonable', reasonableness etc.".

In *Shrisht Dhawan* v. *Shaw Bros.*[23] (SCC at p. 553, para 20) the private law principle of fraud and collusion in Section 17 of the Contract Act was applied to public law remedy and it was held that: (SCC pp. 553-54, para 20)

> "... fraud in public law is not the same as fraud in private law. Nor can the ingredients which establish fraud in commercial transaction be of assistance in determining fraud in Administrative Law. It has been aptly observed by Lord Bridge in *Khawaja* v. *Secy. of State for the Home Deptt.*[24] that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation to statutory law".

In *Khawaja case*[24] it was held:

> "Despite the wealth of authority on the subject, there is nowhere to be found in the relevant judgments (perhaps because none was thought necessary) a definitive exposition of the reasons why a person who has obtained leave to enter by fraud is an illegal entrant. To say that the fraud 'vitiates' the leave or that the leave is not 'in accordance with the Act' is, with respect, to state a conclusion without explaining the steps by which it is reached. Since we are here concerned with purely statutory law, I think there are dangers in introducing maxims of the common law as to the effect of fraud on common law transactions and still greater dangers in seeking to apply the concepts of 'void' and 'voidable'. In a number of recent cases in your Lordships' House it has been pointed out that these transplants from the field of contract do not readily take root in the field of public law. This is well illustrated in the judgment of the Court of Appeal in the instant case of *Khawaja*[25] (WLR at p. 630; All ER at p. 527) where Donaldson L.J. spoke of the appellant's leave to enter as being 'voidable ab initio', which I find, with respect, an impossibly difficult legal category to comprehend."

Thus, the limitations in private law were lifted and public law interpretation of fraud was enlarged.

25. It must be remembered that the Constitution adopted a mixed economy and control over the industry in its establishment, working and

22 (1991) 3 SCC 91

23 (1992) 1 SCC 534

24 (1983) 1 All ER 765 · 1984 AC 74 · (1983) 2 WLR 321, HL

25 *R* v *Secy of State for the Home Deptt, ex p Khawaja*, (1982) 1 WLR 625 : (1982) 2 All ER 523

production of goods and services. After recent liberalised free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial productions. Even some of the public corporations are thrown open to the private national and multinational investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents, juristic persons, corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution. The word "control", therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

26. From the above discussion, the following principles would emerge:

(1) The constitution of the corporation or instrumentality or agency or corporation aggregate or corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

(2) If it is a statutory corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

(3) In commercial activities carried on by a corporation established by or under the control of the appropriate Government having protection under *Articles 14 and 19(2)*, it is an instrumentality or agency of the State.

(4) The State is a service corporation. It acts through its instrumentalities, agencies or persons — natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.

(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law, principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

(8) The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or

instrumentality or persons is by or under the control of the appropriate Government.

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, Memorandum of Association or bye-laws or Articles of Association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

27. It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions should satisfy the basic law requirements of Article 14. The public law interpretation is the basic tool of interpretation in that behalf relegating common law principles to purely private law field.

28. From this perspective and on deeper consideration, we are of the considered view that the two-Judge Bench in *Heavy Engineering case*[1] narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article 14. It is true that in *Hindustan Machine Tool*[2], *R.D. Shetty*[8] and *Food Corpn. of India*[4] *cases* the ratio of *Heavy Engineering case*[1] formed the foundation. In *Hindustan Machine Tool case*[2] there was no independent consideration except repetition and approval of the ratio in *Heavy Engineering case*[1]. It is to reiterate that *Heavy Engineering case*[1] is based on concession. In *R.D. Shetty case*[8], the need to dwell in depth into this aspect did not arise but reference was made to the premise of private law interpretation which was relegated to and had given place to constitutional perspectives of Article 14 which is consistent with the view we have stated above. In *Food Corpn. of India case*[4] the Bench proceeded primarily on the premise that warehouses of the Corporation are situated within the jurisdiction of different State Governments which led it to conclude that the appropriate Government would be the State Government.

29. In the light of the above principles and discussions, we have no hesitation to hold that the appropriate Government is the Central Government from the inception of the Act. The notification published under Section 10 on 9-12-1976, therefore, was in exercise of its power as appropriate Government. So it is valid in law. The learned Solicitor General is not right in contending that the relevant factors for abolition of the contract labour system in the establishment of the appellant was not before the Central Advisory Board before its recommendation to abolish the contract labour system in the establishment of the appellant. The learned Attorney General has placed before us the minutes of the Board which do show and the unmistakable material furnished do indicate that the work in all the establishments including those of the appellants, is of perennial nature satisfying all the tests engrafted in Section 10(2) of the Act. Accordingly, on finding the work to be of perennial nature, it had recommended and the Central Government had considered and accepted the recommendation to abolish the contract labour system in the aforesaid services. Having abolished it, the Central Government was denuded of its power under Section 10(1) to again appoint insofar as the above services of the Mohile Committee to go once over into the selfsame question and the recommendations of the latter not to abolish the contract labour system in the above services and the acceptance thereof by the Central Government are without any legal base and, therefore, non est.

30. The next crucial question for consideration is whether the High Court was right in directing enforcement of the Notification dated 9-12-1976 issued by the Central Government. Before adverting to that aspect, it is necessary to consider the relevant provisions of the Act.

31. The constitutionality of the Act was challenged in *Gammon India Ltd.* v. *Union of India*[26] on the touchstone of the Fundamental Rights given by Articles 14, 15, 19(1)(*g*) and of Article 265. The Constitution Bench elaborately considered the provisions of the Act and had held that the Act in Section 10 empowers the Government to prohibit employment of contract labour. The Government, under that section, has to apply its mind to various factors, before publishing the notification in the Official Gazette prohibiting employment of contract labour in any process, operation or other work in any establishment. The words "other work in any establishment" were held to be important. The work in the establishment will be apparent from Section 10(2) of the Act as incidental or necessary to the industry, trade, business, manufacture or occupation that is carried on in the establishment. The Government before notifying prohibition of contract labour work which is carried on in the establishment, will consider whether the work is of a perennial nature in that establishment or work is done ordinarily through regular workmen in that establishment. The words "work of an establishment" which are used in defining workmen as contract labour being employed in or connected with the work of an establishment indicate that the

26 (1974) 1 SCC 596 : 1974 SCC (L&S) 252

work of the establishment there is the same as work in the establishment contemplated by Section 10 of the Act. The contractor undertakes to produce a given result for the establishment through contract labour. He supplies contract labour for any work of the establishment. The entire site is the establishment and belongs to the principal employer who has a right of supervision and control; he is the owner of the premises and the end product and from whom the contract labour receives its payment either directly or through a contractor. It is the place where the establishment intends to carry on its business, trade, industry, manufacture, occupation after the construction is complete. Accordingly, the constitutionality of the Act was upheld.

32. The appalling conditions of contract labour who are victims of exploitation have been engaging the attention of various committees for a long time and in furtherance of the recommendations, the Act was enacted to benefit, as a welfare measure, the contract labour. Various welfare measures, viz., provisions for canteens, restrooms, facilities for supply of drinking water, latrines, urinals, first-aid facilities and amenities for the dignity of human labour, are in larger interests of the community. Legislature is the best Judge to determine what is needed as the appropriate conditions for employment of contract labour. The legislature is guided by the needs of the general public in determining the reasonableness of such requirements under the Act and the rules made thereunder. Suffice it would, for the purpose of this case, to concentrate on the definition of "contract labour" under Section 2(*b*), "contractor" under Section 2(*c*), "establishment" under Section 2(*e*), "principal employer" under Section 2(*g*), "wages" under Section 2(*h*) and of "workman" under Section 2(*i*). Under Section 2(*c*), "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor. "Establishment", under Section 2(*e*), means any office or department of the Government or a local authority, or any place where any industry, trade, business, manufacture or occupation is carried on. "Principal employer", under Section 2(*g*), means, in relation to any office or department of the Government or a local authority, the head of that office or department of such other officer as the Government or the local authority, as the case may be, may specify in this behalf; and in a factory, it means the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named; in a mine, it means the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named; and in any other establishment, any person responsible for the supervision and control of the establishment, is the principal employer. "Workman", under Section 2(*i*), means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms

of employment be express or implied, but does not include any such person categorised in clauses (*a*) to (*e*) which are not relevant for the purpose of this case.

33. Every principal employer of an establishment under the Act is enjoined under Section 7 to apply for registration and have it registered thereunder. The registration is subject to the revocation under Section 8 on fulfilment of certain conditions enumerated therein. The effect of non-registration is enumerated in Section 9 in the mandatory language that no principal employer shall employ contract labour in the establishment after the specified period. Section 12 enjoins similar obligations on the contractor for registration, with mandatory language, that from the appropriate date, no contractor to whom the Act applies, shall undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer. Licence is granted under Section 13 and revocation, suspension and amendment thereof have been provided in Section 14 with which we are not concerned in this case. The welfare measures mandated in Chapter V be complied with by every establishment. Under Section 21, every principal employer shall nominate his representative to be present at the time of disbursement of wages by the contractor and the contractor should be responsible for payment of wages to every such workman. Representative of the principal employer should ensure and certify that wages were paid in the prescribed manner. In case of default committed by the contractor in paying wages within the prescribed period or for short payment, the principal employer should ensure payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor in his establishment. He is empowered to recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

34. Section 10 prohibits employment of contract labour with a non obstante clause. The appropriate Government, after consultation with the Central Advisory Board or, as the case may be, State Board, prohibit, by notification published in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment. Before issue of any such notification, the appropriate Government is enjoined to have regard to the conditions of work and benefits provided for the contract labour in the establishment and other relevant factors, such as — (*a*) 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 the establishment; (*b*) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (*c*) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and (*d*) whether it is sufficient to employ considerable number of whole-time workmen. Section 20 makes it mandatory to provide the amenities of welfare and health facilities enjoined in Sections 16 to 19. The

expenses incurred in that behalf may be recovered, by the principal employer, from the contractor. The penalty for non-compliance is provided in Sections 23 and 24 of the Act. Offences by companies are dealt with under Section 25. For the prosecution of non-cognizable offences, complaint is to be laid with previous sanction of the Inspector in writing. Section 27 prescribes limitation for laying prosecution.

35. Rules have been prescribed in that behalf for effective enforcement of the Act. Forms and terms and conditions of licence have been prescribed in Rules 21 to 25. Chapter V of the Central Rules deals with welfare and health of the contract labour. Chapter VI deals with payment of wages to the workmen and the manner of payment has also been provided therein. Form III referred to in Rule 18(3) envisages, among others, name and address of the principal employer, type of business, etc., total number of workmen directly employed, name and address of the contractor, nature of work in which contract labour is to be employed on any day, maximum number of contract labour to be employed on any date, probable duration of employment of contract labour etc. The licence issued in Form IV under Rule 21(1) indicates the particulars envisaged in Form III. Form XIII under Rule 75 requires information as to the list of workmen employed by the contractor and also to be specified, the name and surname of the workman, Sl. No., age and sex, father's/husband's name, nature of employment, designation, permanent home address of the workman, date of commencement of employment, signature/thumb impression of workman, date of termination of employment, reasons for termination. Certificate of completion of the work has been provided in Form XV as per Rule 77. Form XVII as per Rule 78(1)(*a*)(*i*) is Register of Wages and provides the particulars, apart from other details, number of days worked, units of work done, daily rate of wages/piece rate etc. Register of Wages-cum-Muster Roll is prescribed in Form XVIII referred to in Rule 78(1)(*a*)(*i*) and requires details in particular as to daily attendance, units worked, designation/nature of work, total attendance, units of work done, overtime wages etc.

36. It would thus be seen that before the Central or State Advisory Board advises the appropriate Government under Section 10(1) on the issue whether or not to abolish the contract labour system, it has before it all the relevant factual material and the appropriate Government, after the receipt and consideration of the recommendations and the material, then takes decision.

37. The pivotal question for consideration is: On abolition of the contract labour by publication of a notification in the Gazette under sub-section (1) of Section 10, what would be the consequences? It is seen that so long as the contract labour system continues, the principal employer is enjoined to ensure payment of wages to the contract labour and to provide all other amenities envisaged under the Act and the Rules including provisions for food, potable water, health and safety and failure thereof visits with penal consequences.

38. The 42nd Constitution (Amendment) Act, 1976, brought explicitly in the Preamble socialist and secular concepts in sovereign democratic republic of Bharat with effect from 3-1-1977. The Preamble was held as part of the Constitution in *Kesavananda Bharati* v. *State of Kerala*[27]. The provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic form of Government, secular character of the Constitution, separation of powers, dignity and freedom to the individual are basic features and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution. In *S.R. Bommai* v. *Union of India*[28] it was held that the Preamble of the Constitution is the basic feature. Either prior to 42nd Constitution (Amendment) Act, or thereafter, though the word "socialist" was not expressly brought out separately in the main parts of the Constitution, i.e., in the Chapters on Fundamental Rights or the Directive Principles, its seedbeds are right to participation in public offices, right to seek consideration for appointment to an office or post; right to life and right to equality which would amplify the roots of socialism in democratic form of Government; right to equality of status and of opportunity, right to equal access to public places and right to prohibition of discrimination read with right to freedoms, protective discrimination, abolition of untouchability, its practice in any form a constitutional offence, as guaranteed in Parts III and IV, i.e., Fundamental Rights and Directive Principles which to every citizen are Fundamental Rights. In *Minerva Mills Ltd.* v. *Union of India*[29], the Constitution Bench had held that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the egalitarian social order. Right to life enshrined in Article 21 means something more than survival of animal existence. It would include the right to live with human dignity [vide *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*[30] (AIR para 3); *Olga Tellis* v. *Bombay Municipal Corpn.*[31] and *Delhi Transport Corpn.* v. *D.T.C. Mazdoor Congress*[13] (AIR paras 223, 234 and 259).] Right to sustenance allowance during suspension was held in *State of Maharashtra* v. *Chandrabhan Tale*[32] (AIR para 20) to be a part of right to life. Right to means of livelihood and the right to dignity, right to health, right to potable water, right to pollution-free environment and right to education have been held to be a part of right to life. Social justice has been held to be fundamental right in *Consumer Education and Research Centre* v. *Union of India*[33] (Scale at p. 375). The Directive Principles in our Constitution are forerunners of the UNO Convention on Right to Development as inalienable

27 (1973) 4 SCC 225 : 1973 Supp SCR 1
28 (1994) 3 SCC 1
29 (1980) 3 SCC 625 : (1981) 1 SCR 206 : AIR 1980 SC 1789
30 (1981) 1 SCC 608 : 1981 SCC (Cri) 212 : AIR 1981 SC 746
31 (1985) 3 SCC 545 : AIR 1986 SC 180
32 (1983) 3 SCC 387 : 1983 SCC (Cri) 667 : 1983 SCC (L&S) 391 : AIR 1983 SC 803
33 (1995) 3 SCC 42 : 1995 SCC (L&S) 604 : (1995) 1 Scale 354

human right and every person and all people are entitled to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights, fundamental freedoms would be fully realised. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need for fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are embedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, has to create just social order, remove the inequalities in social and economic life and socio-economic disabilities due to which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilised democratic set-up so that every individual would strive constantly to rise to higher levels. Dr Ambedkar, in his closing speech in the Constituent Assembly on 25-11-1949, had lucidly elucidated the meaning of social and political democracy. He stated that it means a way of life which recognises liberty, equality and fraternity as the principles of life. They are not to be treated as separate items in a trinity. They form an integral union. One cannot divorce one from the other; otherwise it would defeat the very purpose of democracy. Without equality, liberty would produce supremacy of the few over the many; equality without liberty would kill the initiative to improve the individual's excellence, political equality without socio-economic equality would run the risk of democratic institutions suffering a setback. Therefore, for establishment of a just social order in which social and economic democracy would be a way of life inequalities in income should be removed and every endeavour be made to eliminate inequalities in status through the rule of law.

39. The word "socialism" was brought into the Preamble and its sweep elaborately was considered by this Court in several judgments. It was held that the meaning of the word "socialism" in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through the rule of law as its basic structure. In *Minerva Mills Ltd. case*[29], the Constitution Bench had considered the meaning of the word "socialism" to crystallise a socialistic State securing to its people socio-economic justice by interplay of the Fundamental Rights and the Directive

Principles. In *D.S. Nakara* v. *Union of India*[34] another Constitution Bench had held that the democratic socialism achieves socio-economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide a decent standard of life to the working people and especially to provide security from the cradle to the grave. The less equipped person shall be assured a decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centres of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfilment of goal, every State action, whenever taken, must be directed and must be so interpreted as to take the society towards that goal. Dr V.K.R.V. Rao, one of the eminent economists of India, in his *Indian Socialism — Retrospect and Prospect* has stated that equitable distribution of the income and maximisation of the production is the object of socialism under the Constitution to solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. He also stated that to bring about socialism, deliberate and purposive action on the part of the State, in regard to production as well as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about. Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the Constitution, a reality. It must also bring about, apart from distribution of income, full employment as also increase in the production. In *State of Karnataka* v. *Ranganatha Reddy*[35] a Bench of nine Judges of this Court, considering the nationalisation of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the commonhood. The principle embodied in Article 39(*b*) of the Constitution is one of the essential directives to bring about the distribution of the material resources. It would give full play to the distributive justice. It fulfils the basic purpose of restructuring the economic order. Article 39(*b*), therefore, has a social mission. It embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good. In *Sanjeev Coke Manufacturing Co.* v. *Bharat Coking Coal Ltd.*[36] another Constitution Bench interpreted the word "socialism" and Article 39(*b*) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalisation of mining was to distribute nation's resources. In *State of T.N.*

34 (1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165
35 (1977) 4 SCC 471 : (1978) 1 SCR 641
36 (1983) 1 SCC 147 : (1983) 1 SCR 1000

v. *L. Abu Kavur Bai*[37] the same interpretation was given by another Constitution Bench upholding nationalisation of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

40. In *Consumer Education & Research Centre* v. *Union of India*[33] a Bench of three Judges (to which one of us, K. Ramaswamy, J., was a member) had to consider whether right to health of workers in the Asbestos industries is a fundamental right and whether the management was bound to provide the same? In that context, considering right to life under Article 21, its meaning, scope and content, this Court had held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in Article 21, does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

41. Right to health and medical care to protect health and vigour, while in service or after retirement, was held a fundamental right of a worker under Article 21, read with Articles 39(*e*), 41, 43, 48-A and all related constitutional provisions and fundamental human rights to make life of the workman meaningful and purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence for breadwinning for himself and his dependants, should not be at the cost of the health and vigour of the workman.

42. The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and liveable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly

37 (1984) 1 SCC 515 : (1984) 1 SCR 725

growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury to ward off distress and to make their life liveable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage.

43. In a developing society like ours, steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc. are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. It was accordingly held that right to social justice and right to health are Fundamental Rights. The management was directed to provide health insurance during service and at least 15 years after retirement and periodical tests for protecting the health of the workmen.

44. In *LIC of India* v. *Consumer Education & Research Centre*[21], considering the Life Insurance Corporation's right to fix the rates of premium, this Court had held that the authorities or private persons or industry are bound by the directives contained in Part IV and the Fundamental Rights in Part III and the Preamble of the Constitution. The right to carry on trade is subject to the directives contained in the Constitution, the Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Socio-Economic Justice. Social security is a facet of socio-economic justice to the people and a means to livelihood. In

Murlidhar Dayandeo Kesekar v. *Vishwanath Pandu Barde*[38] (to which two of us, K. Ramaswamy and B.L. Hansaria JJ., were members), the question arose whether the alienation of the lands assigned to Scheduled Tribes was valid in law. In that context considering the Preamble, the Directive Principles and the Fundamental Rights including the right to life, this Court had held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim of the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by the community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilised living, capacity to secure social status and culture to keep good health. The welfare State, therefore, should take positive measures to assist the community at large to act in collective responsibility towards its members and should take positive measure to assist them to achieve the above. It was, therefore, held thus: (SCC pp. 556-57, paras 12 and 14)

> "Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this Court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from 'all forms of exploitations'. Many a day have come and gone after 26-1-1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.
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> Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes, to fulfil the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation to make equality of status, dignity of person and equal opportunity a truism. The core of the commitment of the Constitution to the social revolution through rule of law lies in effectuation of the fundamental rights and directive principles as supplementary and complementary to each other. The Preamble,

38 1995 Supp (2) SCC 549

fundamental rights and directive principles — the trinity — are the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and tribes and to distribute material resources of the community to them for common welfare etc."

45. It was accordingly held that right to economic empowerment is a fundamental right. The alienation of assigned land without permission of competent authority was held void.

46. In *R. Chandevarappa* v. *State of Karnataka*[39] (to which two of us, K. Ramaswamy and B.L. Hansaria, JJ., were members) this Court was to consider whether the alienation of government lands allotted to the Scheduled Castes was in violation of the constitutional objectives under Articles 39(*b*) and 46. It was held that economic empowerment to the Dalits, Tribes and the poor as a part of distributive justice is a Fundamental Right; assignment of the land to them under Article 39(*b*) was to provide socio-economic justice to the Scheduled Castes. The alienation of the land, therefore, was held to be in violation of the constitutional objectives. It was held thus citing from *Murlidhar Dayandeo Kesekar case*[38]: (SCC p. 313, para 8)

> " 'In fact, the cumulative effect of social and economic legislation is to specify the basic structure. Moreover, the social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes.'
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> The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Articles 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly it was held that refusal to permit alienation is to effectuate the constitutional policy. The alienation was declared to be void under Section 23 of the Contract Act being violative of the constitutional scheme of economic empowerment to accord equality of status, dignity of persons and economic empowerment."

47. It was further held that providing adequate means of livelihood for all the citizens and the distribution of the material resources of the

39 (1995) 6 SCC 309

community for common welfare, enable the poor, the dalits and the tribes, to fulfil the basic needs to bring about the fundamental change in the structure of the Indian society. Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and Fundamental Right as a part of right to life to make political democracy stable. Socio-economic democracy must take strong roots and become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and the tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is an indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the public good which is based on justice that would guide the people when questions of economic and social policy are under consideration. In *Peerless General Finance and Investment Co. Ltd.* v. *Reserve Bank of India*[40] (SCC at p. 389 para 55), this Court had held that stability of the political democracy hinges upon socio-economic democracy. Right to development is one of the important facets of basic human rights. Right to self-interest is inherent in right to life. Mahatma Gandhi, the Father of the Nation said that "every human being has a right to live and, therefore, to find the wherewithal to feed himself and where necessary to clothe and house himself". In *D.K. Yadav* v. *J.M.A. Industries Ltd.*[41] the question was whether the workman for absence in service for 7 days can be removed without an enquiry. In that context a Bench of three Judges had held thus: (SCC p. 269, para 12)

> "Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious contents of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness."

48. In *Dalmia Cement (Bharat) Ltd.* v. *Union of India*[42] a Bench of three Judges (to which one of us, K. Ramaswamy, J., was a member) was to consider the constitutionality of Jute Packing Material Act, 1987. The law was made to protect the agriculturists cultivating jute and jute products. In that context it was held thus: (SCC pp. 115-121, paras 11-22)

> "The agriculturists have fundamental rights to social justice and economic empowerment. The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing

40 (1992) 2 SCC 343
41 (1993) 3 SCC 259 : 1993 SCC (L&S) 723
42 (1996) 10 SCC 104 : JT (1996) 4 SC 555

justice — social, economic and political — equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word 'justice' envisioned in the Preamble is used in a broad spectrum to harmonise individual right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realisation of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-economic life of the community without bringing about any corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community keeping pace with the realities of ever-changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble *implies equality consistent with the competing demands between distributive justice with those of cumulative justice.* Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-being and morality. Establishment of priorities of liberties is a political judgment.

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Law is the foundation on which the potential of the society stands. Law is an instrument for social change as also defender for social change.

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Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status — social, economic and political.

* * *

Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consists of diverse principles essential for the orderly growth and development of personality of every citizen. Justice

is the generic term and social justice is its facet, dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. from handicaps, penury, to ward them off from distress and to make their lives liveable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In paragraph 19, it was further elaborated that social justice is one of the disciplines of justice which relates to the society. What is due cannot be ascertained by an absolute standard which keeps changing depending upon the time, place and circumstances. The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc. are languishing. It aims to secure dignity of their person. It is the duty of the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embeds equality to flavour and enlivens the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in result.

* * *

Social and economic justice in the context of our Indian Constitution must, therefore, be understood in a comprehensive sense to remove every inequality and to provide equal opportunity to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic values between men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rule of law dynamic.

The Fundamental Rights and the Directives are, therefore, harmoniously interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the Court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., social and economic justice provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.

Social justice, therefore, forms the basis of progressive stability in the society and human progress. Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast. Law, therefore, must seek to serve as a flexible instrument of socio-economic

adjustment to bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature and the Judiciary. ... The court, therefore, must strive to give harmonious interpretation to propel forward march and progress towards establishing an egalitarian social order."

The validity of the Act was accordingly upheld.

49. It is already seen that in *D.T.C. case*[13] this Court had held that right to life to a workman would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition and mercy of the employer. Income is the foundation to enjoy many Fundamental Rights and when work is the source of income, the right to work would become as such a fundamental right. Fundamental Rights can ill afford to be consigned to the limbo of undefined premises and uncertain application. In *Bandhua Mukti Morcha* v. *Union of India*[43] this Court had held that the right to life with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the people. In *Olga Tellis case*[31] this Court had held that the right to livelihood is an important facet of the right to life. Deprivation of the means of livelihood would denude life itself. In *C.E.S.C. Ltd.* v. *Subhash Chandra Bose*[44] it was held that the right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. The right to live with human dignity at least with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment — social, cultural and intellectual — without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. In *LIC case*[21] a Bench of two Judges had held that right to economic equality is a fundamental right. In *Dalmia Cement (Bharat) Ltd. case*[42], right to economic justice was held to be a fundamental right. Right to shelter was held to be a fundamental right in *Olga Tellis case*[31]; *P.G. Gupta* v. *State of Gujarat*[45]; *Shantistar Builders* v. *Narayan Khimalal Totame*[46]; *Chameli Singh* v. *State of U.P.*[47] etc.

50. It would, thus, be seen that all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is a means to development and source to earn livelihood. Though, right to

43 (1984) 3 SCC 161 : 1984 SCC (L&S) 389
44 (1992) 1 SCC 441 : 1992 SCC (L&S) 313
45 1995 Supp (2) SCC 182 : 1995 SCC (L&S) 782 : (1995) 30 ATC 47
46 (1990) 1 SCC 520
47 (1996) 2 SCC 549

employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency, instrumentality, juristic person or private entrepreneur, it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. The democracy offers to everyone as a doer, an exerter and developer and enjoyer of his human capacities, rather than merely as a consumer of utilities, as stated by Justice K.K. Mathew, in his *The Right to Equality and Property under the Indian Constitution* at pp. 47-48. These exercises of human capacity require access to the material resources and also continuous and sufficient intake of material means to maintain human energy. Lack of access to the material resources is an impediment to the development of human personality. This impediment, as a lack of access to means of labour, if we take labour in its broadest sense of human resource, requires removal only under the rule of law. To the workmen, right to employment is the property, source of livelihood and dignity of person and a means to enjoy life, health and leisure. Equality, as a principle of justice, governs the distribution of material resources including right to employment. Private property ownership has always required special justifications and qualifications to reconcile the institution with the public interest. It requires to thrive and, at the same time, be responsive to social weal and welfare. St. Thomas Acquinas, in his *Selected Political Writings* (1948 Edn.) at p. 169, has stated that the private rights and public needs are to be balanced to meet the public interest.

> "The common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession, but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement, and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural law, but is an addition to it, devised by human reason. If, however, there is such urgent and evident necessity that there is clearly an immediate need of necessary sustenance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person's goods, either openly or by stealth. Nor is this strictly speaking fraud or robbery."

Property is a social institution based upon an economic need in a society organised through division of labour, as propounded by Dean Roscoe Pound in his *An Introduction to Philosophy of Law* (1954 Edn.) p. 125, at p. 129. M.R. Cohen in his *Property and Sovereignty* (13 Cornell Law Quarterly p. 8 at 12) had stated that "the principle of freedom of personality certainly cannot justify a legal order wherein a few can, by virtue of their legal monopoly over necessities, compel others to work under degrading and brutalising condition". If there is no property or if one does not derive fruits and means of one's labour, no one would have any incentive to labour in the

broader sense. Social progress receives setback without equality of status, fraternity would not be maximised. Edward Kent in his *Property, Power and Authority*, Prof. Herald Laski in his *Congress Socialist* dated 11-4-1936, had stated that "those who know the normal life of the poor will realise enough that without economic security, liberty is not worth living". Brooklyn Law Review p. 541 at p. 547 has stated that: "In modern translation, public officers and others who promulgate policies designed to increase unemployment or to deny or diminish benefits to the poor are accountable for the consequences to free human personality." It would, thus, be clear that in a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

51. Mahatma Gandhi, the Father of the Nation, in his book *Socialism of My Concept*, has said thus:

> "To a people famishing and idle, the only acceptable form in which God can dare appear is work and promise of food as wages. God created man to work for his food, and said that those who ate without work were thieves. Eighty per cent of India are compulsory thieves half the year. Is it any wonder if India has become one vast prison?"

Again, he stressed:

> No one has ever suggested that grinding pauperism can lead to anything else than moral degradation. Every human being has a right to live and, therefore, to find the wherewithal to feed himself and, where necessary, to clothe and house himself.... In a well-ordered society the securing of one's livelihood should be, and is found to be the easiest thing in the world. Indeed, the test of orderliness in a country is not the number of millionaires it owns, but the absence of starvation among its masses.
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> Working for economic equality means abolishing the eternal conflict between capital and labour. It means the levelling down of the few rich in whose hands is concentrated the bulk of the nation's wealth on the one hand, and the levelling up of the semi-starved, naked millions on the other. A non-violent system of Government is clearly an impossibility so long as the wide gulf between the rich and the hungry millions persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor labouring class nearby, cannot last one day in a free India in which the poor will enjoy the same power as the richest in the land. A violent and bloody revolution is a certainty one day, unless there is voluntary abdication of riches and the power that riches give a sharing them for the common good."

52. Pandit Jawaharlal Nehru, the architect of social and economic planned democracy, in his "*Independence and After That*" (Collection of Speeches 1946-49) Publication Division, Government of India, 1949 Edn. at

page 28, had stated that social equality in the widest sense and equality of opportunity for everyone, every man and woman must have the opportunity to develop to the best of his or her ability. However, merit must come from ability and hard work and not because of caste or birth or riches. Social equality would develop the sense of fraternity among the members of a social group where each would consider the other as his equal, not higher or lower. A society, which does not treat each of its members as equals, forfeits its right of being called a democracy. All are equal partners in the freedom. Everyone of our ninety-four hundred million people must have equal right to opportunities and blessings that freedom of India has to offer. To bring freedom in a comprehensive sense to the common man, material resources and opportunity for appointment be made available to secure socio-economic empowerment which would ensure justice and fullness of life to workmen, i.e., every man and woman. In *Beyond Justice* by Agnes Heller at p. 80, on the distribution of material goods, she has stated about distributive justice thus:

> "The distribution of material goods had always been of concern in images and theories of justice, but, even when the issue was given the highest importance, it was subjected to and understood within a general theory of justice, and addressed within the framework of a complete socio-political concept of justice. As we have seen, in the prophetic concept of justice the misery of the poor called for divine retribution, since alleviating misery was believed to be a matter not of optional charity but of moral duty. To neglect this duty was to sin, to breach the divine laws. Plato proposed the abolition of private property for the caste of guardians in order to make the Republic as a whole just. Aristotle, who coined the term 'distributive justice', recommended a relative equality of wealth — neither too much nor too little, but 'medium wealth' — as a condition of the good life of the good citizen and the good city. Even Rousseau, the most egalitarian philosopher in respect of distribution, subjected the solution of this problem to the general patterns of a socio-political concept of justice.
>
> Locke did not completely break with this longstanding tradition either. As we have seen, he contributed to the emergence of the concept 'retributive justice' rather than 'distributive justice'. However, he had already presented a sophisticated theory legitimizing inequality in property ownership, a theory deriving property from work. I have mentioned that Locke did not support the idea 'to each according to his entitlement' for he put 'entitlement' into the 'to each' category, whereas the 'according to' category was defined by 'work' (mixing work and nature). But Locke never claimed that entitlement was the main issue, let alone the only issue of justice.
>
> Hume is undoubtedly the founding father of that branch of socio-political justice now called 'distributive'. He even claimed that property and property alone is the subject-matter of justice. He asserted too that retribution (negative sanctions) in the suspension of justice for the sake

of social utility: 'When any man, vein in political society, renders himself by his crimes, obnoxious to the public, he is punished by the laws in his goods and person; that is, the ordinary rules of justice are, with regard to him, suspended for a moment... .'

Hume also deduced justice from 'public utility'. Inequality in property ownership is just because it is useful. We can imagine two cases — and extreme cases — where property (inequality in property ownership) qua justice loses its social usefulness: the situation of absolute abundance and the situation of absolute scarcity. In the former, property is useless, redundant because, if all needs can be satisfied, we are beyond justice. In the latter situation property rules are violable, thus justice must be suspended. Yet we live in a situation of limited abundance (or limited scarcity). This is why property qua justice is useful. Thus in Hume the concept 'justice' reduces to the idea 'to reach according to his property entitlement'; all other uses of the notion 'justice' are seen as relating to the 'suspension of justice' (although the term 'equity' can remain relevant in these other contexts).

Hume, an extremely sincere man, did not shirk from facing proposals alien to his own. He stated, nature is so liberal to mankind, that, were all her presents equally divided among the species, and improved by art and industry, every individual would enjoy all the necessaries, and even most of the comforts of life.... It must also be confessed, that, wherever we depart from this equality, we rob the poor of more satisfaction than we add to the rich...."

53. Justice K.K. Mathew in his *Democracy, Equality and Freedom*, at p. 55 has, therefore, stated that the single most important problem in constitutional law for years to come in this country will be how to implement the Directive Principles and at the same time give full play to the Fundamental Rights. It is only by implementing the Directive Principles that distributive justice will be achieved in the society. Justice, as Aristotle said, "is the bond of men in society" and "States without justice" are, as St. Augustine said, "robber-bands".

54. In *Kesavananda Bharati case*[27] Jaganmohan Reddy, J. had held that: (SCC p. 640, para 1161)

> "What is implicit in the Constitution is that there is a duty on the Courts to interpret the Constitution and the laws to further the Directive Principles which under Article 37, are fundamental in the governance of the country."

The majority had held in favour of the way for the implementation of the Directive Principles under the rule of law. Justice Palekar, in particular had laid emphasis on social and economic justice to make Fundamental Rights a reality.

55. Coming to the meaning of "regulation" under the Act, in *Black's Law Dictionary* (6th Edn. at p. 1286) the word "regulation" is defined as "the act of regulating; a rule or order prescribed for management or government; a

regulating principle; a precept. Rule or order prescribed by superior or competent authority relating to action of those under its control". In *Corpus Juris Secundum*, (Vol. 76) at p. 612, it has been stated that the power to regulate carries with it full power or the thing subject to regulation and in the absence of restrictive words, the power must be regarded as plenary or the interest of public. It has been held to contemplate or employ the continued existence of the subject-matter. In *Craies on Statute Law*, (7th Edn.) at p. 258, it is stated that if the legislation enables something to be done, it gives power at the same time "by necessary implication, to do everything which is indispensable for the purpose of carrying out the purposes in view". In *D.K.V. Prasada Rao* v. *Govt. of A.P.*[48], a Division Bench of the Andhra Pradesh High Court, (to which one of us, K. Ramaswamy, J., was a member) had to consider the question elaborately whether the power to regulate the Cinematograph Act and the Andhra Pradesh Cinematograph Regulation would include power to fix rates of admission to the cinema/theatres. Though there was no specific power under the Act or the Regulation to fix rates of admission, it was held at p. 360 that "power to regulate would include power to fix the rate of admission into the cinema/theatres". Lord Justice Hale of England about three centuries ago in his treatise *De Portibus Moris* reported in Harg Law Tracts 78 had stated that "when the private property is affected with a public interest, it ceases to be 'juris privati' only and it becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large; and so using it, the owner grants to the public an interest in that use, and must submit to be controlled by the public for common good". This statement was quoted with approval by the Supreme Court of United States of America in 1876 in the leading judgment, *Munn* v. *People of Illinois*[49]. Chief Justice Waite dealing with the question whether the legislature can fix the rates for storage of grains in private warehouses by a statute of 1871 when its interpretation had come up for consideration of right to property and its enjoyment and of the public interest, it was held that: (L Ed p. 86)

> "Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the innkeeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office', these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very 'gateway of commerce', and take toll from all who pass. Their business most certainly 'tends to a common charge' and is become a thing of public interest and use."

Therein, there is a specific observation which is apposite to the facts in this case. It was held that the statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel the owners to grant the public an interest in their property, but the Act declares

48 (1983) 2 An WR 344 : AIR 1984 AP 75
49 24 L Ed 77 : 94 US 113 (1876)

their obligations, if they use it in the particular manner. It is immaterial whether the plaintiffs therein had built their warehouses and established their business before the regulation was made. It was held that after the regulation has come into force, they are enjoined to abide by the regulation to carry on the business. This Court had approved the ratio in *Prasada Rao case*[48]; when it was followed by Karnataka High Court against which an appeal came to be filed and the power to regulate rates of admission into cinema/theatres was upheld by this Court.

56. In *Horatio J. Olcott* v. *County Board of Supervisors of Fond Du Lac County*[50] (L Ed at p. 388), the Supreme Court of United States of America had held that whether the railroad is a private or a public one, the ownership thereof is not material that the owners may be private company but they are compellable to permit the public to use their works in the manner in which such work can be used. In *John O. Graham, Commr., Deptt. of Public Welfare, State of Arizona* v. *Carmen Richardson*[51] the question was whether the respondent alien in Arizona will be denied of welfare benefits offending 14th Amendment to the American Constitution. Interpreting 14th Amendment, the Supreme Court of United States of America had held that the word "person" in the context of welfare measures encompasses lawfully resident aliens as well as citizens of the United States and both citizens and aliens are entitled to the equal protection of the laws of the State in which they reside. The power to deny the welfare benefit was negated by judicial pronouncement. In *Grace Marsh* v. *State of Alabama*[52] when the appellant was distributing pamphlets in privately owned colony, he was convicted of the offence of trespass on Alabama Statute. On writ of certiorari, the Supreme Court of United States of America deciding the right to pass and repass and the right of freedom of expression and equality under 14th Amendment, had held by majority that the Corporate's right to control the inhabitants of the colony is subject to regulation but the ownership does not always mean absolute denomination. The more an owner, for his advantage, opens up his property in use by public in general, the more do his right become circumscribed by statutory and constitutional rights of those who use it. The conviction was in violation of Ist and 14th Amendment. In *Republic Aviation Corpn.* v. *National Labour Relations Board*[53] the owner of privately held bridges, ferries, turnpikes and railroads etc. may operate them as freely as a farmer does his farm, but when it operated privately to benefit the public, their operation is essentially a public function. It was subject to State regulation. The Supreme Court, therefore, had held that when the rights of the private owners and the constitutional rights require interpretation, the balance has to be struck and the Court would, mindful of the fact that the right to exercise liberties safeguarded by the Constitution

50 21 L Ed 382 : 83 US 678 (1872)
51 29 L Ed 2d 534 : 403 US 365 (1971)
52 90 L Ed 265 : 326 US 501 (1945)
53 89 L Ed 1372 · 324 US 793 (1944)

lies at the foundation of free government by free men, in all cases weigh the circumstances and appraise the reasons in support of the regulations of the rights etc. It was accordingly held that for interpretation of the rights of the private owner vis-à-vis constitutional rights, it is but the duty of the Court to weigh the balance and to consider the case in the backdrop. In *Georgia Railroad & Banking Co.* v. *James M. Smith*[54] it was held that in the absence of any provision in the charter, legislature has power to prescribe rates when the property is put to public use and the statute was held to be constitutional. In *German Alliance Insurance Co.* v. *Ike Lewis*[55] per majority it was held that a business may be as far as affected with a public interest as to permit legislative regulation of its rates and charges, although no public trust is imposed upon the property and although public may not have a legal right to demand and receive service.

57. It is true that in *Dena Nath case*[5], a Bench of two Judges was to consider the question whether or not the persons appointed as contract labour in violation of Sections 7 and 12 of the Act should be deemed to be direct employees of the principal employer. The Bench on literal consideration of the provisions, had concluded that the Act merely regulates conditions of service of the workmen employed by a contractor and engaged by the principal employer. On abolition of such contract labour altogether by the appropriate Government neither the Act nor the rules provide that labour should be directly absorbed by the principal employer. It was, therefore, concluded that the High Court exercising the power under Article 226 of the Constitution cannot give direction for absorption. True, Court cannot enquire into and decide the question whether employment of contract labour in any process operation or any other work in establishment should be abolished or not and it is for the appropriate Government to decide it. The Act does not provide total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The Preamble of the Act furnishes the key to its scope and operation. The Act regulates not only employment of contract labour in the establishment covered under the Act and its abolition in certain circumstances covered under Section 10(2) but also "matters connected therewith". The phrase "matters connected therewith" gives clue to the intention of the Act. We have already examined in detail the operation of the provisions of the Act obviating the need to reiterate the same once over. The enforcement of the provisions to establish canteen in every establishment under Section 16 is to supply food to the workmen at the subsidised rates as it is a right to food, a basic human right. Similarly, the provision in Section 17 to provide restrooms to the workmen is a right to leisure enshrined in Article 43 of the Constitution. Supply of wholesome drinking water, establishment of latrines and urinals as enjoined under Section 18 are part of basic human right to health assured under Article 39 and right to just and

54 32 L Ed 174 : 128 US 377 (1888)
55 58 L Ed 1011 : 233 US 389 (1913)

humane conditions of work assured under Article 42. All of them are fundamental human rights to the workmen and are facets of right to life guaranteed under Article 21. When the principal employer is enjoined to ensure those rights and payment of wages while the contract labour system is under regulation, the question arises whether after abolition of the contract labour system those workmen should be left in the lurch denuding them of the means of livelihood and the enjoyment of the basic fundamental rights provided while the contract labour system is regulated under the Act? The Advisory Committee constituted under Section 10(1) requires to consider whether the process, operation and other work is incidental to or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment, whether it is of a perennial nature, that is to say, whether it is of substantive duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment, whether it is done ordinarily through regular workmen in the establishment or an establishment similar thereto, whether it is sufficient to employ considerable number of whole-time workmen. Upon consideration of these facts recommendation for abolition was made by the Advisory Board for the appropriate Government to examine the question and take a decision in that behalf. The explanation to Section 10(2) provides that when any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. It would thus give indication that on the abolition of the contract labour system by publication of the notification in the Official Gazette, the necessary concomitant is that the whole-time workmen are required for carrying on the process, operation or other work being done in the industry, trade, business, manufacture or occupation in that establishment. When the condition of the work which is of perennial nature etc., as envisaged in sub-section (2) of Section 10, thus are satisfied, the continuance of contract labour stands prohibited and abolished. The concomitant result would be that source of regular employment becomes open.

58. What would be the consequence that ensue from abolition is the question. It is true that we find no express provision in the Act declaring the contract labour working in the establishment of the principal employer in the particular service to be the direct employees of the principal employer. Does the Act intend to deny the workmen to continue to work under the Act or does it intend to denude him of the benefit of permanent employment and if so, what would be the remedy available to him. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. In this behalf, the *Gujarat Electricity Board case*[6], attempted, by interpretation, to fill in the gap but it also fell short of full play and got beset with insurmountable difficulties in its working which were not brought to the attention of the Bench. With due respect, such scheme is not within the spirit of the Act. As seen, the object is to regulate the contract labour so long as the contract labour is not perennial. The labour is required to be paid the prescribed wages and are provided with other

welfare benefits envisaged under the Act under direct supervision of the principal employer. The violation visits with penal consequences. Similarly, when the appropriate Government finds that the employment is of perennial nature etc. contract system stand abolished, thereby, it intended that if the workmen were performing the duties of the post which were found to be of perennial nature on a par with regular service, they also require to be regularised. The Act did not intend to denude them of their source of livelihood and means of development, throwing them out from employment. As held earlier, it is a socio-economic welfare legislation. Right to socio-economic justice and empowerment are constitutional rights. Right to means of livelihood is also a constitutional right. Right to facilities and opportunities are only part of and means to right to development. Without employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. The Division Bench in *Dena Nath case*[5] has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. The operation of the Act is structured on an inbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. *Gujarat Electricity case*[6], being of the coordinate Bench, appears to have softened the rough edges of *Dena Nath*[5] *ratio*. The object of the Act is to prevent exploitation of labour. Section 7 and Section 12 enjoin the principal employer and the contractor to register under the Act, to supply the number of labour required by the principal employer through the contractor; to regulate their payment of wages and conditions of service and to provide welfare amenities, during subsistence of the contract labour. The failure to get the principal employer and the contractor registered under the Act visits with penal consequences under the Act. The object, thereby, is to ensure continuity of work to the workmen in strict compliance of law. The conditions of the labour are not left at the whim and fancy of the principal employer. He is bound under the Act to regulate and ensure payment of the full wages, and also to provide all the amenities enjoined under Sections 16 to 19 of the Act and the rules made thereunder. On abolition of contract labour, the intermediary, i.e., contractor, is removed from the field and direct linkage between labour and principal employer is established. Thereby, the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified. If the interpretation in *Dena Nath case*[5] is given acceptance, it would be an open field for the principal employer to freely flout the provisions of the Act and engage workmen in defiance of the Act and adopt the principle of hire and fire making it possible to exploit the appalling

conditions in which the workmen are placed. The object of the Act, thereby gets rudely shattered and the object of the Act easily defeated. Statutory obligations of holding valid licence by the principal employer under Section 7 and by the contractor under Section 12 is to ensure compliance of the law. *Dena Nath*[5] *ratio* falls foul of the constitutional goals of the trinity; they are free launchers to exploit the workmen. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the employer from committing breach of the provisions of the Act and to put an end to exploitation of the labour and to deter him from acting in violation of the constitutional right of the workmen to attain decent standard of life, living wages, right to health etc.

59. The Founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as *sentinel on the qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, a constitutional duty to enforce the law by appropriate directions. The right to judicial review is now a basic structure of the Constitution by a catena of decisions of this Court starting from *Indira Nehru Gandhi* v. *Raj Narain*[56] to *Bommai case*[28]. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law.

60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In *LIC* v. *Escorts Ltd.*[57] this Court (in SCC para 102, p. 344) had pointed out that the difficulty will lie in demarcating the frontiers between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact-situation that this Court held that there was no need to state

56 1975 Supp SCC 1 : AIR 1975 SC 2299
57 (1986) 1 SCC 264

reasons when the management of the shareholders by resolution reached the decision. This Court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitations as held in *M.C. Mehta* v. *Union of India*[58].

61. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority needs to fall in the realm of public law — be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in *Calcutta Gas Co. (Proprietary) Ltd.* v. *State of W.B.*[59] (AIR para 5) that if the legal right of a manager of a company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In *Mulamchand* v. *State of M.P.*[60] this Court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the State had derived benefit under the void contract. The same view was reiterated in *State of W.B.* v. *B.K. Mondal & Sons*[61] (AIR at p. 789) and in *New Marine Coal Co. (Bengal) (P) Ltd.* v. *Union of India*[62]. In *Gujarat State Financial Corpn.* v. *Lotus Hotels (P) Ltd.*[63] a direction was issued to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In *Mahabir Auto Stores* v. *Indian Oil Corpn.*[64] contractual obligations were enforced under public law remedy of Article 226 against the instrumentality of the State. In *Shrilekha Vidyarthi* v. *State of U.P.*[65] contractual obligations were enforced when public law element was involved. Same judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillick* v. *West Norfolk and*

58 (1987) 1 SCC 395 : 1987 SCC (L&S) 37
59 AIR 1962 SC 1044 : 1962 Supp (3) SCR 1
60 AIR 1968 SC 1218 · 1968 Mah LJ 842
61 AIR 1962 SC 779
62 (1964) 2 SCR 859 : AIR 1964 SC 152
63 (1983) 3 SCC 379
64 (1990) 3 SCC 752
65 (1991) 1 SCC 212 : 1991 SCC (L&S) 742

Wisbech Area Health Authority[66] wherein the House of Lords held that though the claim of the plaintiff was negatived but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Roy (Dr)* v. *Kensington and Chelsea and Westminster Family Practitioner Committee*[67] the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr Roy was sought to be curtailed. In *LIC* v. *Consumer Education and Research Centre*[21] this Court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated.

62. In writ petition filed under Article 32 of the Constitution of India, the petitioners, in *R.K. Panda* v. *Steel Authority of India*[68] contended that they had been working in Rourkela Plant of the Steel Authority of India for periods ranging between 10 and 20 years as contract labour. The employment was of perennial nature. The non-regularisation defeated their right to a job. The change of contractors under the terms of the agreement will not have any effect on their continuing as a contract labour of the predecessor contractors. The respondent contended that due to modernisation of the industry, the contract labour are likely to be retrenched. They were prepared to allow the contract labour to retire on voluntary basis or to be absorbed for local employment. A Bench of three Judges of this Court had held that the contract labour were continuing in the employment of the respondent for last 10 years, in spite of change of contractors, and hence they were directed to be absorbed as regular employees. On such absorption, their inter se seniority be determined, department or job-wise, on the basis of continuous employment; regular wages will be payable only for the period subsequent to absorption and not for the period prior thereto. Such of those contract labour in respect of whom the rate of wages have not been fixed, the minimum rate of wages would be payable to such workmen of the wages of the regular employees. The establishment was further directed to pay the wages. If the staff is found in excess of the requirement, the direction for regularisation would not stand in their way to retrench the workmen in accordance with law. If there arises any dispute as regards the identification of the contract labour to be absorbed, the Chief Labour Commissioner, Central Government, on evidence, would go into that question. The retrenched employees shall also be entitled to the benefit of the decision. The 10-year period mentioned by the Court would count to calculate retrenchment benefits. This ratio is an authority for several propositions. In spite of there being no report by the Advisory Board under

66 1986 AC 112 : (1985) 3 All ER 402 : (1985) 3 WLR 830, HL
67 (1992) 1 AC 624 : (1992) 1 All ER 705 : (1992) 2 WLR 239, HL
68 (1994) 5 SCC 304 : 1994 SCC (L&S) 1078

Section 10(2) and no prohibition under Section 10(1), the Act was enforced and this Court directed to absorb them within the guidelines laid down in the judgment. This ratio also is an authority for the proposition that the jurisdiction of the Court under Article 32, pari materia with Article 226 which is much wider than Article 32 "for any other purpose" under which suitable directions are required to be given based on factual background. Therein the need to examine the correctness of *Dena Nath*[5] *ratio* did not arise nor is it a case of abolition of contract labour. So, its reference appears to be a statement of laying the law in *Dena Nath case*[5].

63. Prior to the Act coming into force, in *Standard-Vacuum Refining Co. of India Ltd.* v. *Workmen*[69], a Bench of three Judges of this Court had held that the contract labour, on reference under Section 10 of the ID Act was required to be regularised, after the industrial disputes were adjudicated, under Section 2(*k*) of the ID Act. Since the workmen had substantial interest in the dispute, it was held that the direction issued by the Tribunal that contract labour should be abolished was held just in the circumstances of the case and should not be interfered with. In other words, this Court upheld the jurisdiction of the Tribunal after deciding the dispute as an industrial dispute and gave direction to abolish the contract labour. The power of the Court is not fettered by the absence of any statutory prohibition.

64. In *Security Guards Board for Greater Bombay and Thane Distt.* v. *Security & Personnel Service (P) Ltd.*[70] the question as regards absorption of security guards employed in any factory or establishment etc. under the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981 had come up for consideration. It was held that the exemption under Section 23 is in regard to the security guards employed in the factory or establishment or in any class or classes of fabricating factory's establishment. The corelationship of the security guards or classes of security guards who may be exempted from the operation of the Act is with the factory or establishment or class or classes of factories or establishments in which they work and not with the agency or agent through and by whom they were employed. In other words, the ratio of that case is that it is not material as to through which contractor the employee came to be appointed or such labour came to be engaged in the establishment concerned. The direct relationship would emerge after the abolition of contract labour. In *Sankar Mukherjee* v. *Union of India*[71] the State Government exercising the power under Section 10 of the Act prohibited employment of contract labour in cleaning and stacking and other allied jobs in the brick department. Loading and unloading of bricks from wagons and trucks was not abolished. Writ petition under Article 32 of the Constitution of India was filed. A Bench of three Judges of this Court had held that the Act requires to be construed liberally so as to effectuate the object of the Act. The

69 (1960) 3 SCR 466 : AIR 1960 SC 948 : (1960) 2 LLJ 233

70 (1987) 3 SCC 413 : 1987 SCC (L&S) 239

71 1990 Supp SCC 668 : 1991 SCC (L&S) 456 : AIR 1990 SC 532

transportation of bricks to the factory and their loading and unloading are continuous processes; therefore, all the jobs are incidental to or allied to each other. All the workmen performing these jobs were to be treated alike. Loading and unloading jobs and the other jobs were of perennial nature. Therefore, there was no justification to exclude the job of loading and unloading of bricks from wagons and trucks from the purview of the Notification dated 9-2-1980. Thus, this Court had given direction to abolish the contract labour system and to absorb the employees working in loading and unloading the bricks which is of perennial nature. In *National Federation of Rly. Porters, Vendors & Bearers* v. *Union of India*[72] a Bench of two Judges, to which one of us (K. Ramaswamy, J.) was a member, was to consider whether the Railway Parcel Porters working in the different railway stations were contract labour for several years. When they filed writ petition, the Central Assistant Labour Commissioner was directed to enquire and find out whether the job is of a permanent and perennial nature and whether the petitioners were working for a long period. On receipt of the report, with findings in favour of workers, the Bench had directed the Railway Administration to regularise them into the service. This case also is an authority for the proposition that in an appropriate case the Court can give suitable directions to the competent authority, namely, Central Labour Commissioner to enquire and submit a report. The perennial nature of the work and other related aspects are required to be complied with before directions are given under Sections 10(1) and 10(2) of the Act. On receipt of the report, the Court could mould the relief in an appropriate manner to meet the given situation. In *Praga Tools case*[12] this Court held that mandamus may be issued to enforce duties and positive obligation of a public nature even though the persons or the authorities are not public officials or authorities. The same view was laid in *Andi Mukta Smarak Trust* v. *V.R. Rudani*[73] and *Unni Krishnan, J.P.* v. *State of A.P.*[74] In *Comptroller & Auditor General of India* v. *K.S. Jagannathan*[75] this Court held that a mandamus would be issued to implement Directive Principles when Government have adopted them. They are under public obligations to give preferential treatment implementing the rule of reservation under Articles 14 and 16(1) and (4) of the Constitution. In *LIC case*[21], directions were issued to frame policies accessible to common man.

65. Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under Section 10(1) of the Act, in a proper case, the Court as *sentinel on the qui vive* is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted.

72 1995 Supp (3) SCC 152 : 1995 SCC (L&S) 1119

73 (1989) 2 SCC 691

74 (1993) 1 SCC 645

75 (1986) 2 SCC 679 : 1986 SCC (L&S) 345 : (1986) 1 ATC 1

66. It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, we are of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workman in the best manner favourable to the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between the principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class 'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, Grade IV employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishments. Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. Therefore, there is no impediment in the way of the appellants to adopt the above procedure. The award proceedings as suggested in *Gujarat Electricity Board case*[6] are beset with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under Section 10 of the ID Act. The workmen, on abolition of contract labour system have no right to seek reference under Section 10 of the ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. It would be difficult for them to work out their right. Moreover, it is a tardy and time-consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compel the workmen to remain at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned Judges, the remedy carved out in *Gujarat Electricity Board case*[6] would be unsatisfactory. The shortcomings were not brought to the attention of this Court. So, that part of the direction in *Gujarat Electricity Board case*[6] is not, with due respect to the Bench, correct in law. The *Dena Nath case*[5], as

held earlier, has not correctly laid down the law. Therefore, it stands overruled. Moreover, the Bombay High Court has correctly held that the a High Court under Article 226 of the Constitution would direct the principal employer to absorb the contract labour, after its abolition, even though some of the contractors have violated Section 12 of the Act and the appellants have violated Section 7 of the Act. In the judgments under appeal, the High Court has directed to absorb the services of the workmen from the date of the judgment. The respondent-Union did not challenge it. We are, therefore, b constrained not to grant the benefit to the employees of the respondent-Union from the date of the abolition of the contract labour system. We, therefore, uphold the direction issued by the High Court to regularise their services with effect from the respective dates of the judgments of the High Court with all consequential benefits. Before concluding, we express our deep appreciation for the valuable assistance given by all the learned counsel c in the appeals.

67. The appeals are accordingly dismissed, but, in the circumstances, without costs.

S.B. MAJMUDAR, J. (*supplementing**) — I have gone through the lucid and erudite judgment prepared by learned Brother Ramaswamy, J. I wholly concur with what has been held therein. I endorse each and every conclusion d to which my learned Brother Ramaswamy, J. has reached. However, as the fate of erstwhile contract labour on abolition of contract labour system under the provisions of Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 has always raised a vexed question before the High Courts and before this Court, I have thought it fit to pen my observations on this question. It is true that a Bench of two Judges of this Court to which I e was a party in the case of *Gujarat Electricity Board, Thermal Power Station* v. *Hind Mazdoor Sabha*[6] in the light of earlier judgment of two Judges' Bench of this Court in the case of *Dena Nath* v. *National Fertilisers Ltd.*[5] had to soften the rigour of the latter decision, by trying to evolve a locus poenitentiae for contract labourers on abolition of their contract labour from the establishment. But on further consideration it is found, as rightly held by f Brother Ramaswamy, J., that such a scheme would not be workable. Under the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "the Act") twin methodology had been adopted by the Legislature. In the first instance, it sought to regulate contract labour employed in any establishment wherein such labour was not of a perennial nature but had to be regulated so that the right to life available to workmen g as per Article 21 would not be rendered illusory. Various welfare measures have been provided by the Act in connection with such regulations. The contract workers who are engaged by the contractor for the benefit of the principal employer are brought within the beneficial sweep of Chapter V of the Act. Section 16 deals with provision of canteens for such workmen.

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* **Ed.**: As per the certified copy, Majmudar, J. has also signed the main judgment by Ramaswamy, J.

Section 17 deals with restrooms. Section 18 enjoins the contractor employing such contract labour in connection with work of such establishment to provide sufficient supply of wholesome drinking water as well as sufficient number of latrines and urinals of the prescribed types and washing facilities. Section 19 enables such contract labour to get first aid facilities to be provided in the establishment. Section 20 imposes on the principal employer liability to discharge the obligations regarding providing of amenities as laid down by Sections 16, 17, 18 and 19 for the benefit of the contract labour employed in the establishment, if the contractor defaults in his duties. Section 21 enjoins the principal employer to see to it that proper wages are paid to such contract labour and to nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages as laid down by Section 21. Sub-section (4) of Section 21 makes the principal employer liable to pay such wages to the contract labourers if the contractor fails to make payment of their wages, and then to recover the same from the contractor. Chapter VI deals with penalties and procedure for enforcement of these welfare measures for the benefit of the contract labourers who are brought within the regulatory sweep of the Act. This is one facet of the Act. The other object of the Act is to abolish the contract labour system. In cases where the contract labour is employed on a work which is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in the establishment of the principal employer, as per Section 10(2) of the Act, once conditions laid down therein are satisfied, the appropriate Government on the report of the Advisory Board has to abolish contract labour system from such process, operation or other work in an establishment. The conditions for undertaking such an exercise by such Government in connection with the establishment of principal employer are laid down by Section 10(2) clauses (*a*) to (*d*). These conditions clearly indicate that the work which the contract labourers are doing is of a perennial nature and is incidental to or necessary for the industry, trade, business, manufacture or occupation carried on in that establishment and it is otherwise done ordinarily through regular workmen in that establishment or an establishment similar thereto and it is sufficient to employ considerable number of whole-time workmen. Once these conditions are established, on the basis of the report of the Advisory Board concerned, it is an obligation of the appropriate Government to abolish such contract labour system prevailing in the given process or operation in the establishment.

69. Now the moot question is as to what happens after such prohibition. It is obvious that prior to abolition, the contract labour doing work of perennial nature on the establishment of principal employer had the advantage of regulatory provisions found in Chapter V and these provisions were given teeth by the legislature in Chapter VI by providing for penalties and procedure for imposition of sanctions by prosecution. The question is whether after abolition of contract labour system, the contract labourers who

were earlier having regulatory protections would be rendered *persona non grata* and would be thrown out from the establishment and told off the gates. Then in such a case the remedy of abolition of contract labour would be worse than the disease and it has to be held that the legislature while trying to improve the lot of erstwhile contract labourers who are doing work of perennial nature for the principal employer and are doing work which is otherwise to be done by regular workmen had really left them in the lurch by making them lose all the facilities available to contract labour on the establishment as per Chapter V and desired them to wash their hands off the establishment and get out and face starvation. It is axiomatic that if they continued to be contract labourers their wages would have been guaranteed under Section 21 of the Act with an obligation on the principal employer to pay them if the contractor fails to discharge his obligation in connection with payment of wages. Wages are the livelihood of a workman and his large number of dependants. If on abolition of contract labour system, contract labour itself is to be abolished, it would cause economic ruin and economic death to contract labourer and his dependants for amelioration of whose lot order under Section 10 is to be passed. If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of the establishment lock, stock, and barrel, it would amount to throwing the baby out with the bath water. That obviously cannot be the scope, ambit and purport of Section 10 of the Act. It has to be kept in view that contract labour system in an establishment is a tripartite system. In between contract workers and the principal employer is the intermediary contractor and because of this intermediary the employer is treated as principal employer with various statutory obligations flowing from the Act in connection with regulation of the working conditions of the contract labourers who are brought by the intermediary contractor on the principal's establishment for the benefit and for the purpose of the principal employer and who do his work on his establishment through the agency of the contractor. When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labour system in the establishment gets abolished on fulfilment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanishes and along with him vanishes the term "principal employer". Unless there is a contractor agent there is no principal. Once the contractor intermediary goes the term "principal" also goes with it. Then remain out of this tripartite contractual scenario only two parties — the beneficiaries of the abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other who is no longer their principal employer but necessarily becomes a direct employer for these erstwhile contract labourers. It was urged that Section 10 nowhere provides for such a contingency in express terms. It is obvious that no such express provision was required to be made as the very concept of abolition of a contract labour system wherein the work of the contract labour is of perennial nature for the establishment and which otherwise would have been

done by regular workmen, would posit improvement of the lot of such workmen and not its worsening. Implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the erstwhile contract-workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under Chapter V prior to the abolition of such contract labour system. Though the legislature has expressly not mentioned the consequences of such abolition, but the very scheme and ambit of Section 10 of the Act clearly indicates the inherent legislative intent of making the erstwhile contract labourers direct employees of the employer on abolition of the intermediary contractor. It was contended that the contractor might have employed a number of workmen who may be in excess of the requirement and, therefore, the principal employer on abolition of the contract labour may be burdened with excess workmen. It is difficult to appreciate this contention. The very condition engrafted in Section 10(2)(*d*) shows that while abolishing contract labour from the given establishment, one of the relevant considerations for the appropriate Government is to ascertain whether it is sufficient to appoint considerable number of whole-time workmen. Even otherwise there is an inbuilt safety valve in Section 21 of the Act which enjoins the principal employer to make payment of wages to the given number of contract workmen whom he has permitted to be brought for the work of the establishment if the contractor fails to make payment to them. It is, therefore, obvious that the principal employer as a worldly businessman in his practical commercial wisdom would not allow the contractor to bring larger number of contract labour which may be in excess of the requirement of the principal employer. On the contrary, the principal employer would see to it that the contractor brings only those number of workmen who are required to discharge their duties to carry out the work of the principal employer on his establishment through, of course, the agency of the contractor. In fact the scheme of the Act and regulations framed thereunder clearly indicate that even the number of the workmen required for the given contract work is to be specified in the licence given to the contractor. Consequently, the aforesaid apprehension projected on behalf of the principal employer is more imaginary than real. Even apart from that, after the absorption of the erstwhile contract workmen by the principal employer on abolition of contract labour system under Section 10, it is always open for the employer as an entrepreneur, in an appropriate case, if the excess working staff is not found to be required by him to retrench such excess staff in accordance with law by following the provisions of the Industrial Disputes Act, 1947. But that has nothing to do with the moot question as to what is the fate of erstwhile contract labour on abolition of contract labour system under the provisions of Section 10 of the Act. As rightly observed by Brother Ramaswamy, J. in his judgment, the scheme envisaged in the *Gujarat Electricity Board case*[6] is not workable as the existing workmen may not espouse the cause of erstwhile contract workmen who were aspiring

to get employment on regular basis and even if they espouse their cause the litigation itself would be spread over a number of years and in the meantime the erstwhile contract labourers and their dependants would starve. I, therefore, wholly agree with Brother Ramaswamy, J. in his view that the scheme envisaged by *Gujarat Electricity Board case*[6] is not workable and to that extent the said judgment cannot be given effect to.

70. Before parting with this judgment, it has to be appreciated that engagement of contract labour has been found to be unjustified by a catena of decisions of this Court. When the work is of perennial nature and instead of engaging regular workmen, the system of contract labour is resorted to, it would only be for fulfilling the basic purpose of securing monetary advantage to the principal employer by reducing expenditure on work force. It would obviously be an unfair labour practice and is also an economically short-sighted and unsound policy, both from the point of view of the undertaking concerned and the country as a whole. Such a system was tried to be put to an end by the legislature by enacting the Act but when it found there are certain activities of establishment where the work is not of perennial nature then the contract labour may not be abolished but still it would be required to be regulated so that the lot of the workmen is not rendered miserable. The real scope and ambit of the Act is to abolish contract labour system as far as possible from every establishment. Consequently, on abolition which is the ultimate goal, the erstwhile regulated contract labour cannot be thrown out of establishment as tried to be submitted on behalf of the management taking resort to the express language of Section 10 of the Act. Such a conclusion reached by the two-member Bench in *Dena Nath case*[5], flies in the face of the very scope and ambit of the Act and frustrates the very scheme of abolition of contract labour envisaged by the Act. Such a conclusion, with respect, cannot be countenanced, as it results in a situation where relatives of the patient are told by the operating surgeon that operation is successful but patient has died.

71. So far as the judgment of the three-member Bench of this Court in *R.K. Panda* v. *Steel Authority of India*[68] is concerned, it is true that in para 6 of the Report in the last four lines it is observed while referring to *Dena Nath case*[5] that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provide that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer, but that is not the ratio of the decision of the said three-member Bench. It has only referred to what *Dena Nath case*[5] decided. It is also required to be noted that the question which has been posed for our consideration is as to what is the fate of the erstwhile contract labour on abolition of contract labour system in the establishment under Section 10 of the Act. Such a question had not come up for consideration before this Court in *R.K. Panda case*[68]. Therefore, it could not be urged that the ratio of *Dena Nath case*[5] was approved by the three-member Bench in *R.K. Panda case*[68]. In the latter case no abolition was directed by the appropriate Government

under Section 10 of the Act. It was a case in which the contract labourers were claiming to be absorbed directly by the principal employer without there being any order under Section 10. Consequently, the question with which we are concerned in the present case did not fall for consideration of the Bench in *R.K. Panda case*[68] nor had the Bench decided that question one way or the other. I, therefore, respectfully concur with the view taken by Brother Ramaswamy, J. on the scope and ambit of Section 10 of the Act and hold that on abolition of contract labour system from any establishment under Section 10 of the Act by the appropriate Government the logical and legitimate consequences thereof will be that the erstwhile regulated contract labour covered by the sweep of such abolition for the activities concerned would be entitled to be treated as direct employees of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished.

(1997) 9 Supreme Court Cases 446

(BEFORE K. RAMASWAMY AND D.P. WADHWA, JJ.)

UNION OF INDIA .. Appellant;

Versus

R.V. SWAMY ALIAS R. VELLAICHAMY .. Respondent.

Civil Appeal No. 2679 of 1997†, decided on March 31, 1997

A. **Constitution of India — Art. 226 — Appreciation of evidence — Impermissibility — Where the Government, after considering the evidence found that there was neither any proof of issuance of warrant against the claimant as a proclaimed offender nor was there any proof of actual sentence, and consequently rejected his claim to Freedom Fighters' Pension, held, the High Court could not, placing reliance on the certificates issued by other freedom fighters or on any Government publication, direct the grant of Freedom Fighters' Pension to the claimant — Freedom Fighters — Pension — Freedom Fighters' pension (Paras 9 and 10)**

B. **Freedom Fighters — Pension — Need for laying down of appropriate clear guidelines by the Government for freedom fighters who issue certificates of eligibility to persons claiming Freedom Fighters' Pension, emphasised as several such matters were coming up before the Supreme Court (Para 11)**

Mukund Lal Bhandari v. *Union of India*, 1993 Supp (3) SCC 2; *Union of India* v. *Mohan Singh*, (1996) 10 SCC 351, *relied on*

R. Thangavelu v. *Govt. of India*, (1994) 1 MLJ 628, *referred to*

Appeal allowed H-M/T/17768/S

Suggested Case Finder Search Text (*inter alia*) :

(freedom near fighter*) pension

† From the Judgment and Order dated 3-1-1996 of the Madras High Court in W.P No 11957 of 1994