

ORDER

WHEREAS an industrial dispute existed between (1) M/S. Kolaghat Thermal Power Station Under WBPDC, Kolaghat, Mecheda, Purba Medinipur - 721137 & (2) Tara Engineering, Vill. - Kharisha, P.O. - Kolaghat, Purba Medinipur and their seven workmen (1) Shri Asish De Chowdhury, S/O. Late Sibnath Dey Chowdhury, Vill.- Monoharchawk, P.O. & P.S. - Contai, Purba Medinipur-721401, (2) Madan Mohan Paria, S/o Late Bhutnath Paria, Village-Coat Sauri, P.O.- Jamua Sankarpur, Purba Medinipur-721427, (3) Bablu Basu, S/o Late Haripada Basu, Village-Padumbasan, P.O. Tamluk, Purba Medinipur-721636, (4) Sudhasan Ghata, S/o. Late Ramapada Ghata, Village Dharinda, P.O. Tamluk, Purba Medinipur-721656, (5) Chinmoy Tripathi, S/o. Late Bikram Chandra Teripathi, Village- Kusi, P.O. - Neradeul, P.S. Keshpur, Paschim Medinipur-721260, (6) Prithranjan Panda, S/o. Shri Ranjan Panda, Village- Kusi, P.O. - Neradeul, P.S. Keshpur, Paschim Medinipur- 721260 & (7) Ananta Kumar Mula, S/o. Late Haripada Mula, Village-Manua, P.O. - Sachingachi, P.S. Kolaghat, Purba Medinipur-721154, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

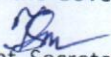
AND WHEREAS the 2nd Labour Court, Kolkata has submitted to the State Government its Award dated 30.12.2024 in Case No. VIII - 85/2014 on the said Industrial Dispute Vide e-mail dated 10.01.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,


Assistant Secretary


to the Government of West Bengal

No. Labr/ 105 /1(12)/(LC-IR)/ 22015(15)/75/2019

Date : 21-01-2025

Copy with a copy of the Award forwarded for information and necessary action to :-

1. M/S. Kolaghat Thermal Power Station Under WBPDC, Kolaghat, Mecheda, Purba Medinipur - 721137.
2. Tara Engineering, Vill. - Kharisha, P.O. - Kolaghat, Purba Medinipur.
3. Shri Asish De Chowdhury, S/O. Late Sibnath Dey Chowdhury, Vill.- Monoharchawk, P.O. & P.S. - Contai, Purba Medinipur-721401.
4. Madan Mohan Paria, S/o Late Bhutnath Paria, Village-Coat Sauri, P.O.- Jamua Sankarpur, Purba Medinipur-721427.
5. Bablu Basu, S/o Late Haripada Basu, Village-Padumbasan, P.O. Tamluk, Purba Medinipur-721636.
6. Sudhasan Ghata, S/o. Late Ramapada Ghata, Village Dharinda, P.O. Tamluk, Purba Medinipur-721656.
7. Chinmoy Tripathi, S/o. Late Bikram Chandra Teripathi, Village- Kusi, P.O. - Neradeul, P.S. Keshpur, Paschim Medinipur-721260.
8. Prithranjan Panda, S/o. Shri Ranjan Panda, Village- Kusi, P.O. - Neradeul, P.S. Keshpur, Paschim Medinipur-721260.
9. Ananta Kumar Mula, S/o. Late Haripada Mula, Village-Manua, P.O. - Sachingachi, P.S. Kolaghat, Purba Medinipur-721154.
10. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
11. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata - 700001.
12. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 105 /2(3)/(LC-IR)/ 22015(15)/75/2019

Date : 21-01-2025

Copy forwarded for information to :-

1. The Judge, 2nd Labour Court, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 10.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

THE SECOND LABOUR COURT, KOLKATA

IN THE MATTER OF

Application No. VIII-85-14 Under Section 10 R/W 2A OF Industrial Dispute Act, 1947

OF

-
1. SHRI ASISH DE CHOWDHURY, S/O. LATE SIBNATH DEY CHOWDHURY, VILL.- MONOHARCHAWK, P.O. & P.S. – CONTAI, PURBA MEDINIPUR-721401.
 2. MADAN MOHAN PARIA, S/O LATE BHUTNATH PARIA, VILLAGE-COAT SAURI, P.O.- JAMUA SANKARPUR, PURBA MEDINIPUR-721427
 3. BABLU BASU, s/O Late HARIPADA BASU, VILLAGE-PADUMBASAN, P.O. TAMLUK, PURBA MEDINIPUR-721636.
 4. SUDHASAN GHATA, S/O. LATE RAMAPADA GHATA, VILLAGE DHARINDA, P.O. TAMLUK, PURBA MEDINIPUR-721656.
 5. CHINMOY TRIPATHI, S/O. LATE BIKRAM CHANDRA TERIPATHI, VILLAGE- KUSI, P.O. – NERADEUL, P.S. KESHPUR, PASCHIM MEDINIPUR-721260.
 6. PRITHRANJAN PANDA, S/O. SHRI RANJAN PANDA, VILLAGE- KUSI, P.O. –NERADEUL, P.S. KESHPUR, PASCHIM MEDINIPUR- 721260.
 7. ANANTA KUMAR MULA, S/O. LATE HARIPADA MULA, VILLAGE-MANUA, P.O. – SACHINGACHI, P.S. KOLAGHAT, PURBA MEDINIPUR-721154.

VERSUS

01. M/S. . KOLAGHAT THERMAL POWER STATION UNDER WBPCL, KOLAGHAT, MECHEDA, PURBA MEDINIPUR- 721137.

.....ALLEGED
PRINCIPAL EMPLOYER

02. TARA ENGINEERING, VILL. – KHARISHA, P.O. – KOLAGHAT, PURBA MEDINIPUR
-

Appearance

MR/MRS ~~Rananeesh Guha Thakurta~~, LD Advocate for the Applicant.

MR/MRS ~~Ranjoy De~~, LD Advocate for the Opposite party I

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ON REFERENCE OF DISPUTE BY APPROPRIATE GOVERNMENT ON POINTS:-

1. *Whether the contract between M/s.Kolaghat Thermal Power Station (KTPS) under West Bengal Power Development Corporation Ltd. (WBPDL), Mecheda, Purba Medinipur and its contractor, M/s Tara Engineering is Sham in respect of the employment of the workmen i) Sri Ashis Dey Chowdhury, ii) Sri Madan Mohan Paria, iii) Sri Bablu Basu, iv) Sri Sudhashan Ghata, v) Shri Chinmoy Tripathi, vi) Sri Prithi Ranjan Panda, vii) Sri Ananta Kumar Mula?*
2. *If so, whether the demand of workmen for regularization through absorption in KTPS under WBPDL is justified?*
3. *What relief, if any, are the workmen entitled to?*

PROCEDURE ADOPTED IN DEALING WITH THE CASE	<p>Karnataka state Road Corporation Vs SmtLakshidevamma and another (2001)5 SCC 433</p> <p><i>Locus cassisus</i>on the point that strict rules of evidence and procedure shall not govern the proceedings under the Industrial Dispute Act,1947.</p>
BINDING NATURE OF AWARD	Dispute being raised individually, shall only bind the parties herein(Section 18 of the Industrial Dispute Act)
COMPLAINCES	Copies of award be submitted to appropriate government for publication.(Section 15 of theIndustrial Dispute Act) .

CASE LAWS FURNISHED BY THE PARTIES.

THE APPLICANT

CITATION
GUJRAT ELECTRICITY BOARD , THERMAL VS HIND MAJDOOR SABHA 1995 AIR 1893
ASHIS DEY CHOWDHARY VS STATE OF WEST BENGAL 2014(3)CHN (CAL)364
GUJRAT AGRICULKTURAL UNIVERSITY VS RATHUD LABOR BECHAR AND OTHERS
GM .ONGC SHILCHAR VS ONGC CONTRACTUAL WORKERS UNION 2008 -II-LLJ-1071(SC)

THE OPPOSITE PARTY

CITATION
CHAIRMAN CUM MANAGING DIRECTOR , ENNORE PORT TRUST VS V. MANOHARAN AND OTHERS (2018)3 SCC 612
OSHIAR PRASAD AND OTHERS VS EMPLOYERS IN RELATION TO MANAGEMENT OF SUDMDIH COAL WASHERY
M/S MMTCLTD VS THE LD FOURTH INDUSTRIAL TRIBUNAL AND OTHERS 2014 SCC CAL 17668
BHARAT COKING COAL LTD , DHANBAD, JHARKHAND (2015)4 SCC 71 .,
, BHARAT HEAVY ELECTRICALS LIMITED VS MAHENDRA PRASAD JHAKMOLA (2019)13 SCC 82
SUBANSIRI LOWR H E PROJECT CONTRACT BASIS WORKERS UNION AND ORS VS NATIONAL HYDROELECTRIC POWER CO LTD (2020)4 GAUHATI LAW REPORTS 33 ,
PANTHER SECURITY SERVICE (P) LTD. V. EPFO (2021) SUPREME COURT CASES 193
MUNICIPAL CORPN. OF GREATER MUMBAI V. K. V. SHRAMIK SANGHA 609(2002) SUPREME COURT CASES 609
STATE OF UP VS JALBIR SINGH (2005)5SCC
CEMENT CORPORATION OF INDIA LTD VS PRESIDING OFFICER 2009 SCCONLINE PAND H 11751

PRESENT: MISS SREEJITA CHATTERJEE

JO CODE ; WB001252

DATE OF AWARD :30 .12.2024

- 1) **EXORDIUM:** The eternal paradox and truth of differences that arise in industrial establishments , justify themselves to an attempt to decipher actual relations between the parties and in the process, steps are taken to do away finally with questionings because they are so often declared insoluble by primary attempts of conciliation ,that they can be only be dissolved by references to industrial adjudicators.

This is one such reference of dispute u/s 10(1)(B)(d) of the Industrial Dispute Act 1947 , preferred by the Appropriate Government that is State of West Bengal , though its true subject is determination of status of contract labourer/ workman and his relation with Principal Employer.

The gist of reference runs as follows;-

1. Whether the contract between M/s.Kolaghat Thermal Power Station (KTPS) under West Bengal Power Development Corporation Ltd. (WBPDCCL), Mecheda, Purba Medinipur and its contractor, M/s Tara Engineering is Sham in respect of the employment of the workmen i) Sri Ashis Dey Chowdhury, ii) Sri Madan Mohan Paria, iii) Sri Bablu Basu, iv) Sri Sudhashan Ghata, v) Shri Chinmoy Tripathi, vi) Sri Prithi Ranjan Panda, vii) Sri Ananta Kumar Mula?

2.If so, whether the demand of workmen for regularization through absorption in KTPS under WBPDCCL is justified?

3.What relief, if any, are the workmen entitled to?

This is offered to the court in the form of;-

- a) A decision on whether the contract between M/S Kolaghat Therman Power Station under WBPDCCL (WEST BENGAL POWER DEVELOPMENT CORPORATION LIMITED) Mechedaand its ContractorM/S TARA ENGINEERING is sham in respect of workmeni) Sri Ashis Dey Chowdhury, ii) Sri Madan Mohan Paria, iii) Sri Bablu Basu, iv) Sri Sudhashan Ghata, v) Shri Chinmoy Tripathi, vi) Sri Prithi Ranjan Panda, vii) Sri Ananta Kumar Mula.
- b) Consequent inference on justification of regularization through absorption .

- 2) **REFERENCE VIS -A-VIS-RELIEF;**The basic precints of legal prudence in industrial references , in its broadest connotation and it seems,its inevitable and ultimate parameters ,manifests itself in the idea that search for truth in such cases must be decided strictly on the anvil of points of reference.

However ,the prayer of the applicant/ workman in his written statement runs as follows;-

“ In the aforesaid premise, it is therefore humbly prayed before Your Honour would be graciously be pleased to pass an award holding interalia that the contract between the Principal employer and the Contractor is totally sham, illegal and unjustified and direct the Principal Employer to regularize the services of the workman through absorption from the date of their respective joining and also direct the release of all the financial benefits immediately consequent upon such absorption and pass such other orders or orders as your Honour many deem fit and proper”

The premise pronounces upon itself decision on the following ; -

- a) Declaring the contract as sham ,
- b) Regularization and absorption ,
- c) Equal pay for the work.

- 3) **RELIEF TO BE CONFINED TO REFERENCE** ;A patent comparison of the terms of reference and the prayers of the applicant suggest that the prayers are at once in contradiction and affirmation of higher relief in reference to the terms of reference. It is trite and there seems to be little objection to a further step in series that the relief in such cases prayed by the workmen must present themselves and be planted in the precincts of reference.This is deducible from catena of decisions including **Oshiar Prasad and Others VS Employers in relation to Management of Sudmdih coal washery ofM/S Bharat Coking coal ltd , Dhanbad, Jharkhand (2015)4 SCC 71 .**

Therefore, the reference is the highest that such cases can envisage and pleadings and prayers manifest themselves as its forms and cannot traverse beyond such reference, unless there is a specific plea for additional issues over and above reference , which appears none in the present case.

Hence, in view of the settled legal position , in this voyage of unearthing the status of workman in the case in hand , the matters shall be confined within the limits of reference ,of which the main apple of discord seems to be the genuinity of contract of service or conversely whether the contract between M/S Kolaghat Therman Power Station under WBPDCCL (WEST BENGAL POWER DEVELOPMENT CORPORATION LIMITED) Mechedaand its Contractor M/S TARA ENGINEERING is sham in respect of the above named workmen.

The purpose of this reference shall be to quell the differences in respect of the status of workman which in turn would call for determination of the relation of employer and employee between the parties.

4)FACTS OF THE CASE AND EVIDENCES ON BEHALF OF THE PARTIES

4.1)FACTS BY THE APPLICANT:The facts of this caseby the applicant germane to this issuein brief is that they are the deep tube pump operators working continuously without break from different dates 1981 onwards under various artificial intermediers at the Kolaghat Township.

It is averred that the nature of the work of OP NO1 is divided into Plant area and Township circle. The workmen under the Principal Employer do the same work in the plant area which the workmen in the instant case are discharging in the Township circle. But they have not been accorded the same status to that of the workmen in the plant area. It is so in spite of the fact that they have much higher qualifications in comparison to the others.

It is further averred that the principal employer had requisitioned large tracts of land for setting up of the project which was acquired by the government of West Bengal for the construction and running of the said project. One of the land losers had nominated her husband, Ananth Kumar Moola, as one of the workmen under reference, as against the benefit under the land losers scheme but despite all this the workers have suffered all these years.

It is further added that the workmen have been continuously discharging their duties under the artificial contractors who have been introduced by the Principal Employer with a view and motive to deny the workmen their entire benefits from regular employment which is a sham contract. It is submitted that since their joining they have been discharging duties under various difficult situations the workmen and providing water to the cross section of the society which will not survive out of water scarcity if the job is stopped for a particular day. Hence their job is regular and perennial in nature.

It is submitted that the Kolaghat Township, which are operated under the aegis of the principal employer for the purpose of providing potable drinking water to the inhabitants of the said township, had employed workmen for engagement of specific category who were duly authorised and provided gate passes by the principal employer.

It is submitted that the principal employer has all along inserted and inducted artificial intermediaries or contractors and slotted workmen under the artificial intermediaries. The present dispute arose at the time when Taraengineering was the intermediary ranging from period between 1st June 2010 to 31st July 2014.

The differences resulted in several representations to the West Bengal State Electricity Board, who, despite the receipt of the same, did not redress the genuine prayers for which the applicants were constrained to file an application under article 226 of the Constitution before the Hon'ble High Court at Calcutta, praying for regularisation by way of absorption to the permanent posts of West Bengal State Electricity Board. The said petition was disposed of with some orders in favour of the workmen against which an application was preferred before the Hon'ble division bench and finally before the Hon'ble Supreme Court, which was disposed of in the terms that the workmen are granted liberty to approach the concerned authority. In the meantime, a meeting was called for by the office of secretary of principal employer where it was proposed that the workmen would be absorbed into regular employment. Without implementation of the said order, the principal employer went up to the Supreme Court.

In terms of the liberty granted to the workmen by the Hon'ble Supreme Court, they preferred an application before the Labour Commissioner, Government of West Bengal, praying for immediate intervention and regularisation of the employees under the principal employer by absorption to permanent posts as deep tube well pump operator. The conciliation officer took a decision and communicated to the workmen requesting them to approach the State Advisory Contract Labour Board. However the said decision of the conciliation officer was turned down by an order on 6th March 2014 by Honbl High Court, Calcutta directing the conciliation machinery to complete conciliation and issue appropriate orders of reference.

It is submitted that in the meantime the workmen were nearing the age of superannuation. They have been denied all the benefits of regular workmen in spite of being continuously and perennially employed in the thermal power station.

Hence they pray for the relief in terms of the prayer as quoted above.

4.2) The above averments were reiterated in the Written affidavit in chief filed in the following words , by the witnesses tendered by applicant.

Some of the affirmations are relevant for the purpose of this adjudication. .

*Relevant portion of Affidavit in chief of **P. W. 1 ANANTA KUMAR MULA** , Applicantis quoted in following terms ;-*

'Paragraph 8 of the written affidavit in chief suggests that 'the workmen work under different situations and are indispensable for running the said pumps as a cross-section of the society would suffer from drinking and the job being performed by the petitioners is a regular job and perennial in nature.'

Paragraph 9 suggests that 'principal employer has divided the acquired area as Plant area and Township area and regular workmen of the principal employer do the same work as the workmen while working at the plant area but the workmen under reference working at Township circle are not being accorded the same status.'

Paragraph 16 states that 'the workmen are working in the services of the principal employer from different dates of 1980 onwards till date without any break of service and then artificial intermediary has been put in between the contractor only with a view to deny the workmen direct employment in the principal employer and the said arrangement is only a camouflage and artificial one at that and sham.'

Paragraph 17 suggests that 'principal employer controls the services of the workmen since the date of the joining which will be appear from various documents and representations as made by the workmen ...'

Paragraph 21 states 'workmen are working regularly continuously and perennially directly on the instructions of the officers principal employer and various contractors have been crafted as artificial intermediaries only with a specific objective of denying the workmen their rightful dues and regularisation of service which is nothing but a sham contract.'

P.W.2 SRI CHINMOY TRIPATHI /APPLICANT was another workman whose written chief suggests the following ;- .

'Paragraph 4 states that 'the principal employer has all along inserted and inducted artificial intermediaries namely contractors and slotted the workmen including me to work under them.'

Paragraph 7 suggests that he has 'rendered services continuously and perennially in the services are principal employer without any iota of blemish and any complaints whatsoever since the date of my joining.'

Paragraph 8 suggests that 'the interjection of artificial intermediaries that is contractor in between the principal employer and the workmen is nothing but a well designed to make of subterfuge to avoid liabilities under the various labour welfare statutes.'

Paragraph 9 shows that 'all the workmen are receiving much less amount than the regular workmen are principal employer despite working in similar conditions and in a job which is regular and perennial in nature and different contractors were mere paper trappings to show that workmen were employed at the said contractor.'

4.3)FACTS BY THE OP; Per Contra OP NO1 repudiated the above averments on the count that the reference is not maintainable and suffers from infirmity of law.

The OP deny and deprecate all the above averments of applicant .

It is the specific intention that the contractor is a person who undertakes to produce a given result for the establishment and not a supply of goods and articles of manufacture. Contractors cannot be termed as artificial intermediaries when their contract is genuine. The genuine contract cannot transfer such contractors into intermediaries and contentions are baseless.

It is submitted that no contractor has been introduced in between the principal employer and workman to deny their entire benefits of regular employment. The principle of equal pay for equal work has no applicability in the facts and circumstances of the present case.

It is their plea that there is no ground for drawing an analogy with regular workmen of the plant area. There is no employer-employee relationship and the concerned work one were not appointed against any sanctioned post. The contract of employment is genuine between the contractor and the contract labourers and the principal employer is not concerned in it .

The workmen and other plant area cannot be accorded the same status as the workmen and the Township area. If the job is analysed in the context of types of elements that is repetitive element, occasionally element, constant element, variable element, manual element, machine element governing element and foreign agreement, it would appear that such contentions are totally misconceived.

The prayer for regularisation through absorption is also totally misconceived in view of the observation of constitutional bench in Secretary, State of Karnataka and other sources vsUmadevi. It is further stressed that the labour court and the industrial tribunal's do not have the jurisdiction to abolish a contract labour

Hence the plea of the applicant is liable to be dismissed.

One Witness namely, CHANCHAL KUMAR SINGH was examined as O.P NO 1 .

OPNO 2 HAS FAILED TO APPEAR IN THIS CASE AND THUS THE CASE IS FIXED EXPARTE AGAINST HIM.

4.4) EXHIBITSFOR THE APPLICANT

SL. NO.	EXHIBIT NO	NATURE OF DOCUMENT
01	1	Photocopy of memoranda dt. 09.08.1982 and 08.09.1982
02	2	Photocopy of Circular dt. 11.01.1083
03	3	Photocopy of Scales of Pay of Pump Attendant of Principal Employer in 1984.
04	4	Photocopy of Field Memo dt. 23.11.1983, 30.03.1984
05	5	Photocopy of Duty Chart
06	6	Photocopy of Memo Dt. 04.03.1985, 13.10.1985, 03.01.1986, 09.08.1986.
07	7	Photocopy of Work Order dt.16.09.1988, 03.1997.
08	8	Photocopy of Register of Wages for November, 1990 and May, 1994.
09	9, 10 and 11	Photocopy of Extract of Note sheets, Bill and Statement of workmen
10	12	Photocopy Representation dt. 30.04.1991 and 14.10.1993
11	13	Photocopy of Register of Wages in 1993
12	14	Photocopy of Movement Schedule of pump operators dt. 01.08.1997.
13	15	Photocopy of Notice dt. 2201.2002
14	16	Photocopy of Representation dt. 21.02.2015, 25.08.2006, 05.10.2013 and 24.10.2013 to the Principal Employer.
15	17	Photocopy of Sample Pay-slip showing wages in 2005.
16	18	Photocopy of Judgement as passed in C.O. No. 8497(W) of 1991 on 07.04.1999.
17	19	Photocopy of Judgement as passed in M.A.T No. 2243 of 1999 On 14.12.2004.
18	20	Photocopy of Order as passed in Civil Appeal No. 2863 of 2006 on 21.4.2010.
19	21	Photocopy of Representation to the Labour Commissioner, Govt. of West Bengal dt. 19.12.2011
20	22	Photocopy of Conciliation Memo dt. 03.07.2012
21	23	Copy of Clarification dt. 03.09.2012
22	24	Photocopy of Memo. Dt. 24.12.2012 as issued by ALC, Govt. of W.B.
23	25	Photocopy of Conciliation Memos
24	26	Photocopy of List of Workmen
25	27	Photocopy of List of Contractors.
26	28	Photocopy of Documents relating to Individual workman, Sri Asish De Chowdhury such as his H.S. Certificate, NSSN Form, Certificates for different dates-08.05.1979, 31.06.81,21.12.82,-2Nos, 27.01.1987, 14.03.1988, 24.04.1990, 22.02.1991, Wage Slips, P.F. Slip.
27	29	Photocopy of Documents relating to individual workman, Sri Madan Mohan Paria—School Certificate, Identity Card as issued by the Principal Employer. Certificates for different dates 07.08.1979, 25.03.1982 and 25.03.1991. Wage Slip.
28	30	Photocopy of Documents relating to individual workman, Sri Bablu Basu—Transfer Certificate, Identity Card, P.F Statement of accounts, NSSN Form, Certificates dated 05.10.1981, 01.06.1985, 25.03.1991, Wage Slips
29	31	Photocopy of Documents relating to individual workman, Sri Sudhashan Ghata— Identity Card as issued by the Principal Employer. Certificates dated 31.06.1981, 20.09.1982, 19.09.1984, 05.08.1985, 27.02.1987, 28.11.1987, 25.03.1991.

30	32	Photocopy of Documents relating to individual workman, named Sri Chinmoy Tripathi— Higher secondary Certificate, Identity Card as issued by the Principal Employer. Certificates dated 20.09.1982 and 30.09.1982. Wage Slip., P.F. Slip, P.F. Accounts Statement.
31	33	Photocopy of Documents relating to individual workman, named Sri Prithirajan Panda— Higher secondary Certificate, Identity Card as issued by the Principal Employer. Certificates dated 20.09.1982 , 30.09.1982 Wage Slip., P.F. Slip, P.F. Accounts Statement.
32	34	Photocopy of Documents relating to individual workman, named Sri Ananta Kumar Mula— School Final Certificate, Certificate of Honour as issued by the Government of West Bengal, Notice dated 11.12.1981, Identity Card as issued by the Principal Employer. Notice Dt. 12.01.1984 together with proforma for land losers, Office order dt. 03.12.1984, Land loser certificate dt. 20.03.1986 and certified information for the month of September, 1997, Wage Slip, P.F. Statement of accounts, Employment card, Certificates dated 26.08.1982, 30.01.1986, 27.01.1987, 30.11.1987 and 28.11.1990...

4.5) EXHIBITS FOR THE OPW-1

SL. No.	EXHIBIT NO.	NATURE OF DOCUMENTS
1	A	Photocopy of Tender Notice.(Containing 8 pages)
2	B	Photocopy of Nomination & Declaration Form (Containing 14 pages),
3	C	Photocopy of duty chart of Pump Operator at KTPS(containing 5 pages)
4	D	Photocopy of Pay Register (Containing 4 pages)
5	E	Photocopy of Combined Challan (Containing 2 pages)
6	F	Photocopy of Fit Certificate (Containing 9 pages)
7	G	Photocopy of Tender Notice (Containing 9 pages).
8	H	Photocopy of Licence (Containing 2 pages)

5) GIST OF THE POINTS OF DIFFERENCE: It seems from the above averments that the main points of contention of the applicants are ;-

- i) That the applicants are employees of the Town ship circle of the electricity plant. There are similar employees directly under the principal employer and performing the same duties in the plant area. The later receive higher benefits inspite of lesser or equal qualification to that of the applicants.
- ii) The applicants are directly employed under the principal contractors against some sanctioned posts and on lifting the veil, it shall be apparent that various intermediaries are only subterfuge and thus contract is sham.
- iii) The work of the applicants are regular and perrenial in nature and not intermittent .
- iv) Thus they pray for equal pay for equal work and consequent absorption .

It is pertinent to note here that admittedly all the workman have presently attained the age of superannuation and thus their prayer for absorption doesn't hold good any further .

The main averments of the OP appear to be;-

- i) The contract of employment is genuine and the contractors are persons who have undertaken to produce desired results on behalf of these applicant workmen. .
- ii) The employees at the plant area cannot be equated with the Town ship circle. The former are directly employed and later through intermediaries.
- iii) The town ship area is not directly concerned with the generation of electricity and thus it is not associated with the core activities . It is the plant area and its employees who are employed directly.
- iv) In the above plea , the prayer of equal pay for equal work and absorption is imaginary.
- v) The present reference is not strictly maintainable in view of Contract Labour (Regulation and Abolition) Act,1970 .

- 6) **MAINTANIBILITY OF THE REFERENCE:** At the outset, whether the present reference is tenable in law in terms of Section 10 of the the Contract Labour (Regulation and Abolition) Act,1970 ,is a subject of rudimentary discussion. The decision on this count calls for refrence of certain laws and judicial pronouncements, before directly leaping into the subject.

The Act governing the relationship of Principal employer vis-à-vis the contract labourer is largely covered by the Contract Labour (Regulation and Abolition) Act,1970 . The Act , though not a complete code, invests power on certain authorities to decide on the point of status of workman . It is not explicit on the point though it is inferred **from Workmen of Dimakuchi Tea Estate VS The Management of Dimakuchi Tea Estate (1958)SCR 1156 and Standard vacuum Refining Co of India Ltd Vs Its Workmen and Others (1960)3 SCR446**), that industrial adjudicators are generally invested with jurisdiction to investigate into status of workmen, unless the jurisdiction is expressly taken away by its expressed provisions.

The Contract Labour (Regulation and Abolition) Act,1970 has been placed on the book for two purposes that is to regulate the employment of contract labour and to provide for its abolition in certain circumstances and for matters connected therewith.

The relevant portion of statement of objects and reasons accompanying the bill requires to be considered;-

“1.....The question of its abolition has been under the consideration of government for long time. In the second five years plan, the planning commission met certain recommendations, namely,.... and the taking of studies to a certain extent of problem of contract labour, progressive abolition of the system and improvement of service conditions of contract labour where the abolition is not possible. The matter was discussed at various meetings of tripartite committees at which the state government also presented a general consensus of opinion was that the system should be abolished wherever possible and practicable and that in cases where the system should not be abolished altogether, the working conditions of contract labour should be regulated so as to ensure payment of wages and provisions of essential amenities

.....”

It is thus clear that Act doesnot contemplate the total abolition of contract labour but its abolition only in certain circumstances and to regulate the employment of contract labour in certain establishments. Parliament while realising the need for abolishing the contract labour system in certain circumstances also felt the need to continue it in other circumstances by properly regulating the same.

The authorities empowered to abolish contract labour are squarely enumerated in the Act as follows;-

“10. Prohibition of employment of contract labour . -1) *Notwithstanding anything contained in this Act, the appropriate Government may , after consultation with the Central Board or , as the case may be, a State Board, prohibit, by notification in the official Gazette, employment of contract labour in any process, operation or other wor in any establishment.*

2)Before issuing any notification under Sub-sec. (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as –

(a) whether the process , operation or other work to 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 workman in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen.

Explanation.- If a question arises whether any process or operation or other work is of perennial nature the decision of the appropriate Government thereon shall be final.”

Thus, after coming into force of the operation of the ContractLabour (Regulation and Abolition) Act,1970, the authority to abolish the contract labour is vested exclusively with the appropriate government and it has to take its own decisions in accordance with Section 10 of the Act. **It is on this count the OP prays to this court that this reference is strictly not maintainable.**

In answer to the above contention of OP, it seems that it must be remembered that the authority to abolish contract Labour comes into play only where there exists a genuine contract . In other words , the dispute as to whether the labour contract is genuine or not , can be agitated by the workers and in such a case, and if so agitated , the industrial adjudicator has jurisdiction to examine the controversy. Therefore , if there is no genuine contract and the so-called contract is more camouflaged to hide the reality, the said provisions of Section 10 are inapplicable because it's a circumstances where the concerned workmen reason industrial dispute in belief that they should be deemed to be the employees of the principal employer and the court or the industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief. **The situation is different where the contract is genuine.**

If the industrial adjudicator arrives at the just decision that it is genuine, it seems that the judicial pronouncements indubitably lead to the conclusion that such a dispute, if espoused by direct workmen of the principal employer , can be kept pending by the industrial adjudicator and the workmen may be referred by him to appropriate government for abolition of the contract labour. If the appropriate government abolishes the contract labour, the industrial adjudicator can thereafter grant further relief claimed, that is the absorption of workmen of the erstwhile contracted , in the principal establishment .If however the appropriate government does not abolish the contract,

industrial adjudicator may reject the reference .However no industrial dispute can be raised directly by the workmen of the contractor either before or after the contract Labour is abolished by the appropriate government under Section 10 of the Act . This is deducible from **Vegolis PVT LTD VS The Workmen (1972)1SCR 673 ,Hussain bhai calicut vs The Alath Factory Thizhiali , Kazhikode and others (1978)4SCC 257, BHEL WorkersAssociation Hardwar and others Vs Union of India (1985)2SCR 611 , Catering cleaners of south railway Vs Union of India (1987)2 SCR 164 , Dena nath and others Vs NatinalFertiliser Ltd and others (1992)1 SCC 695 , R.K.Panda and others Vs Steel authorityof India Ltd (1994)5SCC 304 .**

It appears from the examination of the above case laws that there are following lines of opinion on this point:-

- a) That it is only the appropriate Government which has the authority to abolish genuine contract labour in accordance with the provisions of the said section and no industrial adjudicator has been invested with this authority.
- b) A dispute can be raised by the contract labourers who are the employees of principal contractor . This dispute can be espoused by the employees or direct workmen of the principal employer or raised either by the workman himself . Both the references are maintainable.
- c) When a dispute is raised as to whether the contract is sham or genuine, it is not a dispute for the abolition of contract labour and hence the provisions of Section 10 will not be a bar either to raising of such dispute or its adjudication.
When such a dispute is raised , the industrial adjudicator has to decide on its genuinenity.
- d) It is only when the industrial adjudicator arrives at the conclusion that the contract is sham that such an adjudication can be proceeded.
- e) If it appears that the contract is genuine, there are two courses depending upon the mode of reference in the sense that if the dispute was espoused by the direct workmen of the principal employer, the reference can be kept pending and adjudicator can direct the workmen to the appropriate government .**But a dispute raised by the directly by such workman has to be rejected in view of the fact that the said dispute is not an industrial dispute u/S 2(k) due to the absence of employer - employee relation ship between the parties .**

It is not therefore correct to say that the reference of an industrial dispute seeking to abolish contract is per se barred.

Turning to the case, present reference was not for abolition of contract labour but for a declaration that workmen were in law the employees of the OP No. 1 .The industrial adjudicator has undoubtedly no jurisdiction to abolish a genuine contract labour in view of Section 10 of the Act. However it is not correct to say , in view of the above discussions ,that reference for the abolition of the contract stands barred. It is the terms of the reference which will decide the jurisdiction of industrial adjudicator to entertain and decide the reference, depending upon whether the contract is genuine or sham.

Hence the cause is maintainable.

7) RELATIONSHIP OF EMPLOYER AND EMPLOYEE: Once maintainability is decided, the prime question of quest which surfaces is whether the contract between the *M/s.Kolaghat Thermal Power Station (KTPS) under West Bengal Power Development Corporation Ltd. (WBPDC), Mecheda, Purba Medinipur and its contractor, M/s Tara Engineering is Sham in respect of the employment of the workmen i) Sri Ashis Dey (Chowdhury), ii) Sri Madan Mohan Paria, iii) Sri Bablu Basu, iv) Sri Sudhashan Ghata, v) Shri Chinmoy Tripathi, vi) Sri Prithi Ranjan Panda, vii) Sri Ananta Kumar Mula?*

The test for determining this question is roughly adumbrated in the texts on the subject and this is recognized in various judicial precedents .

It is normally deducible that relationship of employer and employee doesn't exist between employer and contractor and laboureres under the contractor. It is generally a contract for employment and not a contract of employment. Where however , it is found from the documents and substance that the employer retains and assumes control over the means and method by which the contract is to be done, it may be said that there is a relation ship of employer and employee. In such a premise, the mere fact of formal employment of an contractor will not relieve the master of liability where the servant is in fact in his employment . This is the situation which suggests an inference that the contractor is created and operating as subterfuge . In such circumstance ,the employee will be reagarded as directly employed under principal employer. Whether the particular relationship is genuine or a camaflouge through an independent contractor is a question of fact , to be determined from the relationship , written terms of employment and the actual nature of employment.

In determining this issue , it follows from ancestry of cases that the prime factor is a “**control**”

The Industrial Law Third Edition by IT Smith and JC Wood has laid down the following as tests for determining the status ;-

*‘The prime factor is a “control” . It is one of the most importants tests though it is not the sole test to decide it. In determining the relationship all the relevant facts and circumstances are to be considered including the **terms and conditions** of the contract. A multiple pragmatic approach weighing up all the factors should be considered instead of the sole test of control. **Intergration test** is one of the relevant facts . It is applied in examining whether the person was fully intergrated into the employer's concern or remained apart and independent of it. . The other factors for consideration is -**who has the power to select and dismiss ,to pay the remuneration, deduct insurance contributions, , organize the work , supply tools and materials and what are the mutual obligations.***

Sometimes such contract might have incidence of indirect employment at the inception and a direct link at later course. In such cases, at what point of time a direct relation is established between the contract labourer and the principal employer , eliminating the contractor from the scene , is a matter which is to be established on the materials produced before the court, from the oral and documentary evidences.

The above tests can be enumerated thus ;-

- i) **Test of control**
- ii) **Intergration test**
- iii) **Terms and conditions of employment which are deciphered from following:-**

who has the power to select and dismiss or take disciplinary action , to pay the remuneration, deduct insurance contributions, , organize the work , supply tools and materials and what are the mutual obligations.

In cases of a subsequent relationship , at what point of time a direct relation is established between the contract labourer and the principal employer , eliminating the contractor from the scene , is a matter which is to be established on the materials produced before the court, from the oral and documentary evidences.

These are roughly the tests as inferred from Texts and judicial pronouncements on the subject namely **Oshiar Prasad and Others VS Employers in relation to Management of Sudmdih coal washery ,M/S MMTCLTD VS The 1d Fourth Industrial Tribunal and others 2014 SCC CAL 17668, Balwant Rai Saluja and anr VS Air India Ltd and others (2014) 9 SCC 407 , Bharat Coking coal ltd , Dhanbad, Jharkhand (2015)4 SCC 71 . , Bharat Heavy Electricals Limited vs Mahendra Prasad Jharkmola (2019)13 SCC 82, Subansirilowr H E Project Contract basis workers union and ors Vs National Hydroelectric Power Co Ltd (2020)4 Gauhati Law Reports 33,**

and mostintersistingly the case before Hoble High Court Calcutta which has given rise to this present reference titled as ASHIS DEY CHOWDHARY VS STATE OF WEST BENGAL 2014 (3) CHN(Cal) 364.

8)CERTAIN ADMITTED FACTS :Hence this court shall proceed to decide the issue of genuinity of contract in the anvil of the above tests.

At the outset, let it be noted that there are certain undisputed facts in the case. It seems from the facts that the area under thermal power plant is divided into two parts that is Plant area and the Township circle.The applicants are employed at the town ship circle. They are not under the direct employment of the Principal Employer that is **M/s.Kolaghat Thermal Power Station (KTPS) under West Bengal Power Development Corporation Ltd..**But they are placed under contractors.

It is not in dispute that all the applicants have already retired from their job. In the present premise, the decisions are invited on the point of genuinity of contract , which , if any , was in existence at one point in time when they were in employment.Hence ,the facts of this case are directed towards establishing the genuinity of the then contract between the principal employer , intermediaries appointed at various times and the applicants herein.

These areverred by the OP in written statement and the affidavit in chief of applicants ,(the reason for which they were quoted above) lends support to these contentions and are in essence admissions.

This court hastens to add here that the reference in this case calls upon this court to quell the differences and confines and restricts it only to the contractor namely “ Tara Engineering ” .

9)BURDEN OF PROOF :It is cardinal principle of law that one who alleges must prove the facts. Even under the industrial laws, it holds good. Thus, in **UP State Warehousing Corporation and Another VS Presiding officer and Another 2013, ILR 927** , it was observed ;-

“It is a settled law that the person who files a claim is required to prove his case. The industrial dispute was raised at the instance of the union and even though, the provisions of the Evidence Act is not applicable in the industrial proceedings, none the less, the burden of proof is upon the union and its workers to prove their claim before the labour court”.

In emerging thus, it is for the applicant to plead and prove the genuineness of contract.

10)EVIDENCES BY APPLICANT TO DISCHARGE HIS BURDEN OF PROOF: The applicant has tendered evidences in support of his case. Inference has to be deciphered from written statements , affidavit in chief, evidences oral and documentary.

Shorn of otiose details, the documents and evidences before this court and germane to the decision on the point of genuineness of the contract , are reproduced hereunder.

Written statement and written affidavit in chief are the reiteration of the facts of this case and stated above , hence not quoted to avoid a repetition.

Some extracts of cross-examination reproduced of PW1 ;-

“I am deposing on behalf of myself and other workmen.”

“this is the duty chart of pump operators dated for a 2012 it is marked this Exhibit C. The is survey register of power engineering which contains our names and we have received salary by putting our signature. It contains four pages. It is marked as Exhibit-D series .This is the PF contribution of Tara engineering containing two pages. It contains our names. It is marked as Exhibit-D series. These are papers for issuing show cause notice issued by Tara engineering and the reply of the concerned workmen . It contains nine pages it is marked as Exhibit- F-series. I have not filed any paper in order to show that there is any sanction post in West Bengal Power development Corporation for which we are working under the contractor. I have not filed any paper in order to show that any advertisement was published on behalf of West Bengal Power development Corporation for the work we are working under contractor. The appointment, salary and service conditions of

employees of Kolaghat thermal power station are controlled by West Bengal Power development Corporation.

*“I do not know whether or not our work as pump operator under the contractor has already been prohibited by any notification of the government order under Contract Labour(Regulation and Abolition Act). **We are working as pump operator in Township area under the contractor. It is true that the main work of thermal power station is to generate the electricity**There is a boundary wall around the factory of Kolaghat power generating plant. The township is situated outside the factory area. The water which we used to supply as pump operator under the contractor is not used by the factory. I do not know whether the contents of the written statement filed by the applicant or in the affidavit in chief on behalf of the applicants it has been mentioned that thermal power station has no license under the under Contract Labour(Regulation and Abolition Act)as principal employer or not. I cannot say whether it has been mentioned in the written statement or affidavit in chief filed on behalf of the applicants that whether the contractor has got any registration under underContract Labour(Regulation and Abolition Act or not. I cannot remember whether in the written statement and affidavit in chief filed by the applicants it has been mentioned that agreement entered into between the principal employer and the*

contractor is not valid. It is to show that Exhibit 26 bears the names and signatures of all the applicants. We have not filed any document in order to show that we have got any money in the head or account from the ...powerstation at any point in time. We have not filed any document in order to show that we have given any attendance in the attendance register of Kolaghat. “

“Kolaghat thermal power station deposited the PF in our names through contractor.

Exhibit 5 is tendered to the witness. The chart signed by the contractors and applicants. Exhibit 5 bears the name of the applicants as contract labourers.”

Relevant extract of Cross-examination of PW2 is reproduced hereunder;-

“ the witness replies that in this document in column six(Exhibit 32) it is written employment under contractor. It is true that the principal and main nature of the job of thermal power station is to generate electricity. It is true that I am not attached with the work of power generation.”

These are the relevant oral evidence.

Documentary evidences are already reflected in the list.

In light of these facts, the applicant seeks to discharge his onus .

11)APPLYING THE EVIDENCES TENDERED TO THE TESTS OF EMPLOYER- EMPLOYEE RELATIONSHIP :Applied to the facts herein, let each test be decided on the pedestal of the documents and evidences.

11.1)TEST OF CONTROL

Generally element of control can be decided from reference to the documents suggesting the persons who is actually making payment, who is exercising a control, who is in charge of daily exercise of job undertaken.

NOW TO THE FACTS.Some documents are required to be mentioned for the decision on this point.The duty chart marked as Exhibit5 seems be addressed to divisional engineer and name of applicants are recorded as operator and under Supervisor Bablu. Exhibit 7 is a work order of operation and maintenance of deep tube well addressed to an intermediary Sushil Chandra Malik ,by the superintendeng engineer , township circle. Exhibit 8 is wage register under the Contract labour (Regulation and Abolition Rules) 1970 wherein it is found that applicants herein have received their wages from contractor. The name of the Contractor is M/S Haque construction. Exhibit 10 is a letter of supply of 9 persons to act at KTPP addressed by contractor Sushil Chandra Mallick , under his pad as government contractor, to the divisional manager. Exhibit 11 is statement of workmen supplied at KTPP , against a work order by the contractor Sushil Chandra Mullick . This is under the later’s letter pad. Exhibit 13 is register of wages, reflecting the names of applicants as workmen and the contractor appears to be is M/S Haque Construction.Exhibit 26 seems to be a register of

workmen employed by Contract Labour Regulation and Abolition Central Rule 1970 under the contractor "BISWAS ENTERPRISE".

Out of the voluminous documents filed by the applicants, the above documents seem to be relevant here.

None of the parties have tendered any letter of appointment of the applicants, which could have suggested a direct inference. This could have been the primary document suggesting appointing authority, mutual rights and liabilities etc.

As the letter of appointment is not tendered, the next layer of documents relevant to this purpose and which would suggest an inference from the circumstances are salary or wage slips, documents of work distribution.

Exhibit 8, Exhibit 13 are extracts of wage register which shows payment to the applicants by the Contractors. The letter of supply of workmen addressed by contractor to the principal employer is Exhibit 10, followed by Exhibit 11. The salaries are received from their pads, as reflected from Exhibits 8, 13. Works are allotted to them under the letter heads of the Contractor as reflected from Exhibit 7. All these documents point to the fact that the workmen are requisitioned and working under the letter pad of the various contractors who was entrusted with the execution of the work, as reflected from Exhibit 10.

The letter pads suggest that the contractors are government contractors unlike the submissions of applicant that workmen are slated under artificial intermediaries. The wages and the salary slips suggest payment under their hand. There is not a single evidence on record suggestive of the fact the Kolaghat Thermal Power Plant had been exercising control over them.

Thus, the documents relied by the applicant are itself against his claim of subterfuge. It seems that from all these documents it is deciphered that at different times, the workmen named in the reference were placed under the contractors.

It is found from the above oral deposition of PW1 that 'the appointment, salary and service conditions of employees of Kolaghat thermal power station are controlled by West Bengal Power development Corporation....We have not filed any document in order to show that we have got any money in the head or account from the ... powerstation at any point in time. We have not filed any document in order to show that we have given any attendance in the attendance register of Kolaghat.'

The depositions sound contradictory.

In such a premise, it is deciphered from the documents and evidences that Principal Employer at the most, only controls and directs the work to be done by the contract labour. But the contractor, as employer, assigns the work as is apparent from work orders, and the ultimate supervision and control lies with the contractor. It is because the contractor assigns /sends the worker to work under the Principal Employer, the worker works under the Principal Employer. The primary control is with the contractor. The Principal Employer merely exercises a secondary control, at the utmost.

There is an affirmation in written affidavit coupled with the evidence on dock that the applicant had appeared in a written test against a sanctioned post. There is not a single document that the applicants were appointed or were placed under the direct control of the principal employer, against any sanctioned posts. Neither there is any document on the count nor there seems to be any document that their appointment was against any posts declared by the principal employer. It is important to quote here an observation of

Honbl Apex court in **MMTC LTD VS The Id Fourth Industrial Tribunal and others 2014 SCC CAL 17668** “ *Regularization per se requires existence of vacancies in an establishment to which regularization may be directed.*”. There appears to be none.

Hence the documents and evidences tendered and furthered donot indicate any element of control of the workman under the principal employer. The applicant has failed to show to this court any element of “control” by the principal employer.

This court is not unmindful of the fact that the applicants were placed under different contractors at various times and therefore this might draw an inference that the contractors are artificially placed.

In this regard this court is of the view that this is a industrial convenience. With passage of time and purely with view to safeguard the interests of workers, many principal employers, while renewing the contracts , insist that the new contractors shall retain the old employees. In fact such a condition is sometimes embedded in the contract itself..However such a clause in the contract is only inserted in the contract to protect the continuance of the source of livelihood of the contract labour. It cannot by itself give rise to the right of regularisation of employment of the principal employer. **This addresses the cavillings of the applicant that one contractor is seen to clear financial dues of entire service tenure of workmen** .Whether the contract labourers have become the employees of the principal employer in the course of time and whether the engagement and employment of the labourers through a contract is a mere camouflage or a smokescreen as urged, has to be established by the contract labourers on the basis of requisite material.If the contractors are artificial, there shall be documents in support thereof from which it can be shown that though there were several intermediaries, the principal contractor is “ controlling authority”. It cannot be inferred from retention of erstwhile labourers by the new contractors. This logic has been recognized in **R.K Panda And others VSSteel Authority of India Ltd,(1994)5SCC 304 .**

Further it is axiomatic that most of the contractors are Government contractors. The presence of government contractors as intermediaries in this industry, reaffirms the fact of practice of appointing contractors for execution of various work , in this given industry. Legality of such practice is a premise of the appropriate government and cannot form a subject matter of court’s decision in this present reference. **Dena nath Vs National Fertiliser (1992)1SCC 695** is an authority on the point that“*It is a matter for the decision of the government whether the employment of contract labour in any process or work should be abolished or not*”.

Gauged in the above factual and legal matrix , the conclusion is irresistible that no element of control by the principal employer at any point in time has been established .

11.2)TEST OF TERMS AND CONDITIONS IN DECIDING EXTENT OF CONTROL AND SUPERVISION FROM THE FOLLOWING INGRADIENTS;-

- a)who has the power to select and dismissor take disciplinary action
- b) to pay the remuneration,
- c) deduct insurance contributions, ,
- d) organize the work ,
- e) supply tools and materials and
- f) what are the mutual obligations.

POWER TO SELECT AND DISMISS OR TAKE DISCIPLINARY ACTION , PAY THE REMUNERATION, DEDUCT INSURANCE CONTRIBUTIONS, ORGANIZE THE WORK , SUPPLY TOOLS AND MATERIALS. (POINTS a to e)

Some of the discussions of this test has already been decided in the earlier test as it is found that the authority to pay remuneration, instruct work , organize work are with the contractors.

Power to select and dismiss rests with the authority who issues appointment. As it is found that appointment letter has not been tendered by any of the parties, which would be a direct evidence on the point , it had to be inferred from indirect references .

The documents by the applicant are silent on this point. Hence the documents by OP NO 1 will decide this test. It may be mentioned that all the documents tendered by OP NO1 are marked without any objection.

NOW TO THE FACTS.Exhibit A on behalf of the OP suggests the tender notice uinder which Tara engineering was invited , specifying schedule of work . There are documents setting out terms and conditions of engagement of contractors. Exhibit B is the nomination and decleration form of EPF suggesting “ signature of employer ...” as Tara engineering . Exhibit C is the duty chart of the aplicants under the hand of Tara engineering. Exhibit D is the register of wages under the contractor Tara Engineering . Exhibit E is the EPF under the establishment name and code of Tara engineering. Very interestingly, Exhibit F is a letter by one of the workmen (in vernacular) which suggests, in the third line, an admission by him that he is employed under the contractor. Exhibit H is the License granted in favour of the contractor under CLRA.

Thus it is found that even the monetary deposits in form of EPF , nomination and decleration form of EPF were made by the contractor. The name of the employer is reflected is also reflected as that of the contractor. The duty chart is reflected under their hand . All these documents filedby the OP suggest that **the power to select and dismiss ,to pay the remuneration, deduct insurance contributions, , organize the work , supply tools and materials are with the contractors.**

ELEMENT OF MUTUAL OBLIGATIONS(POINT f).

Some relevant regulatory provisions in the Contract Labour (Regulation and Abolition) Act 1970 ,would suggest the element of mutual obligations.

Section 12 of CLRA provides for licensing of contractors and states that no contractor shall undertake or execute any work through contract labour except under and in accordance with the license it sought to have obtained. It also provides that license issued must manifest such conditions including any particular condition of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate government may deem fit to impose in accordance with the rules, if any made under Section 35.

Section 13 provides for grant of licenses in prescribed format .Application for license has to contain the particulars regarding the location of the establishment nature of process operation or work for which the contract labour is to be employed in such particulars as may be prescribed. The licensing officer, on receipt of application has to make investigation and the license granted and it may be renewed for such time for such period and on such conditions as may be prescribed.

The provisions of the Act and the rules show, among other things, that every principal employer engaging contractor in the establishment, has to obtain for the purpose, registration certificate and licenses respectively from the authority under the act. The nature of work for which the contract labour is engaged, the maximum number of contract labour proposed to be engaged, the period for which such labour is to be employed, the names and addresses of the workmen so employed, have also to be furnished to that authority.

Thus, the license and registration documents are statutory documents depicting mutual obligations.

NOW TO THE FACTS. The parties are not in dispute on the point and there seems to be no denial by the applicant, of presence of valid registration and license though the cause was slightly raised at time in the course of submissions, as evinced from the evidence of the applicant in the following terms;-

“ I do not know whether the contents of the written statement filed by the applicant or in the affidavit in chief on behalf of the applicants it has been mentioned that thermal power station has no license under the contract labour regulation and abolition act as principal employer or not. I cannot say whether it has been mentioned in the written statement or affidavit in chief filed on behalf of the applicants that whether the contractor has got any registration under contract labour regulation and abolition act or not.”

The above evidence also doesn't state the non existence of such licenses or registration.

Exhibit G has been tendered by the OP to suggest a license for a certain tenure. Licenses are subject to renewal and there is no adversarial content in the entire gamut of evidence by the applicant that the license was not renewed. It is for the applicant to plead and suggest absence of such license or registration for the tenure relevant to the present reference, only in which case it would be a bone of contention and issue in dispute. OP cannot be called to place all documents in his power and possession except those which are relevant to issue. It seems that as this was never an apple of discord between the parties, and certificate of registration was not placed. The absence of license and registration cannot be readily inferred, specially when OP has tendered Exhibit G in support of his contention.

Be it mentioned in this regard that even in there is a violation of the provisions of Sections 7 and 12 of the Act, there is a penal provision in the Act. But that would not entail absorption or regularization of the employees of the principal contractor. The effect of non registration and non licensing of contractor can at the utmost attract penal provisions and this is inferred from the authority in **Dena nath Vs National Fertiliser (supra)**.

Hence all the above discussions suggest a control and supervision by the contractor.

11.3)INTERGRATION TEST

This test seeks to decide on the point whether the person was fully intergrated into the employer's concern or remained apart and independent of it.

The applicant has repeatedly pleaded the perennial nature of job. It seems that there is no justification for an industrial adjudicator to decide on the perennial nature of job as this is subject of decision of appropriate government u/S 10 the Contract Labour (Regulation and Abolition) Act, 1970. In other words, while arriving at the findings as to whether the contract is genuine or not, the industrial adjudicator doesn't promptly delve into those facts. It is though not prohibited to discuss on the issues as the contract may be genuine even where all those factors are present and the courts can record their findings on those points though it is not a necessary ingredient in the process of establishing employer-employee relationship.

Strangely, however, it appears from the written statements of the applicants that they have relied upon the plea of perennial nature of job etc , for a decision on genuinity of contract of labour. This is at once a contradiction of the purpose which is intended to be achieved in this reference . While the plea of genuinity can be decided solely from the contour of the contract between the parties , the plea of perennial nature of job etc are imported and pleaded, for the regularization and absorption , which falls within the domain of consideration of appropriate government and one of the ingredients in sub-section 2(a) to (d) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. That Section guides a decision of appropriate government into the decision of abolition and is not concerned with genuinity of contract or existence of employer-employee relationship .

There seems to be no plausible explanation by the applicant as to the reason of incorporation of this ingredient in their written statement.

To address the most perilous distortions and misleading imaginations on the admissibility of this plea into the present case , it appears in the judicial conscience of this court that the only count in which such plea can find substantiation , is this test of intergration.

The test of intergration is often overlapped with perennial nature of job. Only in a complete affirmation can all the multiform perspectives be harmonised . By the test of integration, the courts are required to decide on whether the person was fully intergrated into the employer's concern or remained apart and independent of it, thereby coincidentally touching upon that ingredient engrained U/S 10 of the Contract Labour (Regulation and Abolition) Act, 1970 .

NOW TO THE FACTS. It seems from the facts that the area under thermal power plant is divided into two parts that is Plant area and the Township circle . The applicants are employed at the Township circle. They are not under the direct employment of the Principal Employer . But they are under control of contractors.

The examination of PW1 dated 14.10.2015 is relevant and quoted hereunder ;-

“ it is true that the main work of Kolaghat Thermal power station is to generate electricity”

“wedonot supply water as pump operators to power generation system of factory “

“ we are working as the pump operator in the township area under the contractor... the towhship area is situated outside the factory area . the water which we used to supply as pump operator under the contractor is not used in factory . we used to supply water in township as drinking water “

Extract of cross examination of PW2 dated 7/4/15 suggests ;-

“ it is true that I was not attached with the work of power generation ”

“it is true that the principal and main nature of job of kolaghat thermal power station is to generate electricity”

Cross examination dated 15.03.2016 states ;-

“ I never worked within the boundary of factory premises”

The most relevant deposition is ;-

“We are working as pump operated in Township area under the contractor. It is true that the main work of thermal power station is to generate the electricityThere is a boundary wall around the factory of Kolaghat power generating plant. The township is situated outside the factory area. The water which we used to supply as pump operator under the contractor is not used by the factory”.

The above depositions in the cross examination of the witnesses are plain on the point that they were employed in the TownshipCircle ,which is outside the boundary of the plant area. The Plant Area is concerned with the main purpose of the industry that is generation of electricity while the Township Circle is associated with supplying water to the theTown ship and beyond the Plant area. There is no evidence to suggest that the Town ship area is intergrated into the Plant area. Rather the opposite seems to have surfaced from the evidence and admissions that it is located beyond the boundary of the plant area, and thus not integrated into it.

It thus emerges that the work of the applicants is not strictly associated with the main purpose of the industry and it somewhat covers a peripheral purpose , though the cause and importance of their work is not undermined.

Hence the test of intergration is strictly also not satisfied.

The tests and their conclusions can be encapsulated thus :-

NATURE OF TEST	INFERENCE
TEST OF CONTROL	Control rests with contractor
TEST OF ACTUAL SUPERVISION INFERED FROM <i>power to select and dismiss or take disciplinary action , to pay the remuneration, deduct insurance contributions, , organize the work , supply tools and materials and what are the mutual obligations.</i>	Rests with the contractor
TEST OF INTEGRATION	Workmen not integrated into the industry

12)SEQUITER:The rudimentary preoccupation of workman in his plea of relief under industrial jurisprudence, manifests itself in proof of the status of workman.This is offered to the courts through facts suggested in evidence. Once satisfied even apparently, Courts and Tribunal's cannot bid a pause at any given stage, without securing benefits of the legislation to its beneficiaries. However, if not shown, the accordance of this status is not complete and case falls to the ground like pack of cards,which is decided thus :-

POINT OF REFERENCE	OBSERVATION	INFERENCE
<i>Whether the contract between M/s.Kolaghat Thermal Power Station (KTPS) under West Bengal Power Development Corporation Ltd. (WBPDC), Mecheda, Purba Medinipur and its contractor, M/s Tara Engineering is Sham in respect of the employment of the workmen i) Sri Ashis Dey Chowdhury, ii) Sri Madan Mohan Paria, iii)Sri Bablu Basu, iv) Sri Sudhashan Ghata, v) Shri Chinmoy Tripathi, vi)Sri Prithi Ranjan Panda, vii) Sri Ananta Kumar Mula?</i>	The above discussions indubitably suggests absence of incorporation of artificial intermediaries . Rather the industry is seen to functions with Government contractors , for execution of job at Township area. There is thus no employer -employee relationship between the applicant and OPNI1 .	Contract is genuine.
<i>2.If so, whether the demand of workmen for regularization through absorption in KTPS under WBPDC is justified?</i>	In view the above, the question of regularization through absorption strictly is not a subject matter of decision of industrial adjudicator , in terms of Section 10 of Contract Labour (Regulation and Abolition) Act 1970 .	NA
<i>3.What relief, if any, are the workmen entitled to</i>	The dispute is not an industrial dispute u/S 2(k) due to the absence of employer - employee relation ship between the parties .	No such relief can be accorded .

IT IS ORDERED

The application under Section 10(1 B)(d) of the Industrial Dispute Act 1947 be and the same

Is hereby

REJECTED ON CONTEST without any orders as to cost, the dispute not being an industrial dispute within the meaning of **SECTION 2(K) OF THE Industrial Disputes Act ,1947.**

Let necessary compliances be made in terms of service of the copies to concerned Government authorities in terms of **Section 17AA of the Industrial Dispute Act ,1947.**

The case is hereby disposed off.

Note in the relevant register.

TYPED BY

(SREEJITA CHATTERJEE)
JUDGE

(SREEJITA CHATTERJEE)
JUDGE
SECOND LABOUR COURT,
KOLKATA
30.12.2024