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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.51 OF 1995

Cuttack, this the 23rd day of April 1998

Nimain Charan Malla and others Applicants

Vrs.

Union of India and another Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes .
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No .

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
23.4.98

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.51 OF 1995
Cuttack, this the 23rd day of April 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

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1. Nimain Charan Malla,
aged about 33 years,
son of late Pravakar Malla,
At-Dulupur,
PO-Babujang,
Via-Tendakura, Dist.Cuttack,
at present working as a Lab. Technician in the
office of the W.T.C. at Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
2. Biswambar Jena
aged about 30 years
son of late Banambar Jena,
At/PO-Kulashree, Via-Kasharda,
Dist.Cuttack,
at present working as Mechanical Worker
in the office of the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur,
Dist.Khurda.
3. Jagannath Das,
aged about 23 years,
son of Kinu Das,
At-Bajapur,
PO-Katana,
Dist.Kendrapara,
at present working as Mechanic in
the office of the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur,
Dist.Khurda.
4. Ashok Kumar Pradhan,
aged about 21 years,
son of Dhuleswar Pradhan,
At-Goti Rout Patna,
at present working as Lab.Maintenance Worker,
in the office of the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur,
Dist.Khurda.

Somnath Som.
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5. Debaraj Behera, aged about 21 years,
son of Gunanidhi Behera,
At-Patharagadia,
PO-Daruthenga, Via-Baranga,
Dists.Khurda,
at present working as a Worker in the office of
the W.T.C,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
6. Dillip Kumar Pradhan, aged about 33 years,
son of Adhikari Pradhan,
At-Birabandha,
PO/Dist.Khurda, at present working as a
Lab Technician in the office of the
W.T.C, At-Sailashree Vihar,
PO-Chandrasekharpur,
Dist.Khurda.
7. Sukadev Samal, aged about 29 years,
son of Adikanda Samal,
At-Bagalpur, P.O-Bagalpur,
Via-Anakia, Dist.Jagatsinghpur,
at present working as a Sweeper in the office of
the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
8. Bishnu Charan Das,
aged about 23 years,
son of late Ghanashyam Das,
At-Narada, P.O-Tunintir,
Dist.Khurda,
at present working in Office maintenance, Audit Section
in the office of the W.T.C,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
9. Ramakanta Samal,
aged about 26 years,
son of Dushasan Samal,
At/PO-Bhagabanpur,
Dist.Kendrapara, at present working as
Field Assistant, Deras Research Farm in
the office of W.T.C.E.R., At-Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
10. Taranisen Mangaraj,
aged about 22 years,
son of Bankanidhi Mangaraj, At/PO-Gadasanaput,
Via-Bajapur, Dist.Puri, at present working
as Field Assistant in the office of the W.T.C.,
At-Sailashree vihar, PO-Chandrasekharpur,
Dist.Khurda.

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11. Bharat Singh,
aged about 27 years,
son of Jogendra Singh,
At/PO-Mendhasal,
Via-Janla, Dist. Khurda,
at present working as Field Worker in the office of the
W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist. Khurda.
 12. Mihir Das, aged about 28 years
son of Krushna Chandra Das, At/PO-Mendhasal,
Via-Janla, Dist. Khurda, at present working
as Field Worker in the office of the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist. Khurda.
 13. Ramesh Biswal, aged about 20 years
son of Raghunath Biswal,
At/PO-Mendhasal,
Via-Janla, Dist. Khurda,
at present working as Field Worker in the office of the
W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
 14. Ajay Kumar Behera,
aged about 30 years,
son of Brajamohan Behera,
At-Balisukuri,
PO-Kishorenagar, Dist. Cuttack,
at present working as Field Assistant in the office of
the
W.T.C., At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
 15. Salila Kumar Behera,
aged about 29 years
son of Sridhara Behera,
At-Jagati,
PO-Bhotmundai, Dist. Jagatsinghpur,
at present working as Field Assistant in the office of
the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
 16. Ashok Chandra Rout, aged about 24 years
son of Dukhishyam Rout,
At-Sarada, P.O-Puranahat Sasan,
Dist. Cuttack, at present working as
Field Worker in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.

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17. Kusa Sethi, aged about 24 years,
son of Jagannath Sethi, At-Giringaput,
PO-Mendhasal, Dist. Khurda,
at present working as Field Worker & Watchman
in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
18. Kedar Behera, aged about 25 years
son of Digambar Behera,
At-Giringaput,
P.O-Mendhasal, Dist. Khurda,
at present working as Field Worker & Watchman in
the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist. Khurda.
19. Prafulla Kumar Mishra, aged about 27 years
son of Rabinarayan Mishra,
At-Dhiamanatir,
P.O-Alando, Dist. Jagatsinghpur, at present
working as Field Assistant in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandra-
sekharapur, Dist. Khurda.
20. Ajaya Kumar Samal,
aged about 34 years
son of Ratha Samal,
At-Keruna, P.O-Chhatrapada,
Via-Pritipur, Dist. Jajpur,
at present working as Field Assistant in the office
of the W.T.C., At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist. Khurda.
21. Prafulla Kumar Bardhan,
aged about 25 years,
son of Bijay Kishore Bardhan,
At-Mendhasal,
PO-Mendhasal, Dist. Khurda,
at present working as Field Worker,
in the office of the W.T.C., At-Sailashree Vihar,
PO-Chandrasekharpur,
Dist. Khurda.
22. Arun Kumar Baral,
aged about 24 years
son of Laxmidhar Baral, At-Pubashasan
P.O-Koushalyaganga, Dist. Puri,
at present working as Field Assistant in the office of
the W.T.C., At-Sailashree Viohar,
P.O-Chandrasekharpur, Dist. Khurda.

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23. Nabakishore Pradhan,
aged about 29 years
son of Damodara Pradhan,
At/PO-Mendhasal, Dist. Khurda,
at present working as Field Worker in the
office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
24. Narayan Behera, aged about 27 years
son of Raj Kishore Behera,
At-Haridamada
P.O-Mendhasal, Dist. Khurda,
at present working as Field Worker & Watchman in the
office of the W.T.C., At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist. Khurda.
25. Bijaya Kumar Behera, aged about 23 years
son of Daitari Behera
At/PO-Mendhasal,
Dist. Khurda, at present working as Field Worker &
Watchman &
Driver in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist. Khurda.
26. Aditya Kumar Nayak, aged about 29 years
son of Madhab Chandra Nayak,
At-Badabrahmapur, P.O-Mathakaragola,
Via-Bhuban, Dist. Dhenkanal,
At present working as Field Worker & Watchman
in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist. Khurda.
27. Niranjana Das
aged about 26 years
son of Digambara Das
At-Giringaput
P.O-Mendhasala,
Dist. Khurda, at present
working as Casual Worker in the office of the
W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur, Dist. Khurda.
28. Pramod Kumar Behera
aged about 24 years
son of Gouranga Behera
At-Giringaput
P.O-Mendhasal, Dist. Khurda,
at present working as Field Worker & Watchman in the
office
of the W.T.C., At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist. Khurda.

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29. Harihar Kalia,
aged about 25 years
son of Bhaskar Kalia,
At-Giringaput,
P.O-Mendhasal, Dist.Khurda,
at present working as Field Worker & Watchman
in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist.Khurda.
30. Arta Singh, aged about 26 years
son of Kalandi Singh,
At-Giringaput,
P.O-Mendhasal,
Dist.Khurda, at present working as Field
Worker in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.
31. Muralidhar Das
aged about 29 years
son of Digambar Das
At-Giringaput,
P.O-Mendhasal,
Dist.Khurda, at present working as
Field Worker in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.
32. Benudhar Nayak,
aged about 24 years
son of Anadi Charan Nayak
At-Giringaput
P.O-Mendhasal,
Dist.Khurda, at present working in the office of the
w.T.C. as Field Worker, At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist.Khurda.
33. Saraswatkee Dei, aged about 38 years
wife of Antaryami Jena
At/PO-Mendhasal,
Dist.Khurda, at present
working as Field Worker in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.
34. Muralidhar Jena,
aged about 20 years
son of late Antaryami Jena,

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- At/P.O-Mendhasal,
Dist.Khurda, at present working as
Field Worker in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.
35. Gour Rout, aged about 29 years
son of Dandapani Rout,
At/PO-Mendhasal, Dist.Khurda,
at present working as Field Assistant in the
office of the W.T.C.,
At-Sailashree Vihar,
PO-Chandrasekharpur, Dist.Khurda.
36. Habib Khan, aged about 24 years
son of Samir Khan,
At/PO-Mendhasal, Dist.Khurda,
at present working as Metrology Attendant
in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.
37. Baigani Dei,
aged about 32 years, wife of
Murali Behera,
At-Deras Research Farm,
P.O-Mendhasal, Dist.Khurda, at present working as
Field Worker in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.
38. Dumbi Herssa, aged about 26 years, son
of Das Herssa, At-Barapita,
P.O-Mendhasal,
Dist.Khurda, at present working as Field Worker
in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.
39. Mangulu Herssa, aged about 23 years
son of Gulka Herssa,
At-Barapita, P.O-Mendhasal,
Dist.Khurda,
At present working as Field Worker
in the office of the W.T.C.,
At.-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.

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40. Nitama Lagia,
aged about 30 years,
wife of Gardi Lagia,
At-Barapita, P.O-Mendhasal,
Dist.Khurda, at present working as Field Worker
in the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.
41. Gumi Dei, aged about 18 years,
daughter of Rama Bandra,
At-Barapita, P.O-Mendhasal,
Dist.Khurda, at present working as Field Worker
in the office of W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
Dist.Khurda.
42. Laxmidhar Behera, aged about 24 years
son of Kartik Behera
At-Haridamada, P.O-Mendhasal,
Dist.Khurda, a
at present working as Field Worker,
in the office of W.T.C., At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.
43. Sarathi Paikray,
aged about 20 years
son of Baikuntha Nath Paikray,
At-Haridamada
P.O-Mendhasal,
Dist.Khurda,
at present working as Field Worker &
Watchman in the office of W.T.C.,
At-Sailashree Vihar, P.O-Chandra-
sekharapur, Dist.Khurda.
44. Satya Sundar Samanta,
aged about 27 years
son of Sudarsan Samanta,
At-Haridamada
P.O-Mendhasal,
Dist.Khurda,
at present working as Field Worker in
the office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur,
Dist.Khurda.

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45. Banshidhar Behera
aged about 29 years
son of Narayana Behera
At-Jagati, P.O-Bhutmundai,
Dist.Jagatsinghpur,
at present working as Field Assistant in the
office of the W.T.C.,
At-Sailashree Vihar,
P.O-Chandrasekharpur, Dist.Khurda.
46. Prasanta Kumar Behera
aged about 22 years
son of Dhruba Charan Behera
At/PO-Mendhasal,
Dist.Khurda, at present working
as Field Assistant in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandra-
sekharpur, Dist.Khurda.
47. Sukanta Jena,
aged about 25 years, son of
Laxmana Jena,
At-Paikraypur,
P.O-Paikraypur,
Dist.Khurda, at present working as Field
Worker & Watchman in the office of the W.T.C.,
At-Sailashree Vihar, P.O-Chandrasekharpur,
dist.Khurda.
48. Dhuleswar Jena,
aged about 44 years
son of Baidhara Jena
At-Balabhadrapur,
P.O-Nuapada,
Dist.Khurda, at present
working as Field Assistant in the office of the W.T.C.,
At-Sailashree Vihar, P.O-
Chandrasekharpur, Dist.Khurda.

By the Advocates -

...Applicants

M/s A.K.Misra,
S.B.Jena, S.K.Das
B.B.Acharya,
J.Sengupta, A.K.Das

Vrs.

1. Union of India,
represented by the Director General,
Indian Council of Agricultural Research-cum-
Secretary to Govt. of India,
Ministry of Agriculture & Co-operation, Krishi Bhawan,
New Delhi-110 001.

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2. Project Director,
Water Technology Centre
for Eastern Region (ICAR),
At-Chandrasekharpur,
P.O-Bhubaneswar, Dist.Khurda Respondents

By the Advocate - Mr.Akhaya Kumar
Mishra,
Addl.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the forty-eight applicants have prayed for a direction to the respondents for regularisation and absorption of the petitioners within a stipulated period and to pay the petitioners equal pay for equal work and to abolish the practice of contract labour and recognise the petitioners as employees working directly under the principal employer.

2. The facts of this case, according to the applicants, are that under the Indian Council of Agricultural Research, whose Director General is respondent no.1, there is a Water Technology Centre for Eastern Region at Chandrasekharpur, Bhubaneswar. Project Director of the Water Technology Centre is respondent no.2. All the petitioners are working under the respondents and the posts held by them and their dates of appointment have been indicated in Schedule "A" in paragraph 4.15 of the petition. Originally all the petitioners were appointed by the respondents to work on daily wage basis. Subsequently,

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they adopted a practice of asking one of the employees to be a labour contractor and under him, keeping several workers in the guise of contractor's labourers. The system of contract labour introduced by the respondents is a myth. The applicants have drawn attention to various provisions of Contract Labour (Regulation and Abolition) Act, 1970 and have pointed out that if the petitioners are termed as contract labourers, their right to be considered for regular and permanent absorption will be seriously affected in view of the decision of the Hon'ble Supreme Court in the case of Gammon India Ltd. v. Union of India, (1974) 1 SCC 596. The petitioners have indicated that they are working continuously with a notional gap of one or two days. They are not being paid wages for the holidays. In paragraph 4.7 of the application it has been mentioned that the entire exercise of terminating the petitioners as contract labourers with one of them as a contractor is a myth. None of the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 is being observed. The works which the petitioners are doing are of perennial nature. The contractors have not been given licence under Act even though no contractor can function under the Act except under and in accordance with a licence issued by the

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licensing authority. It has been further submitted that one Gangadhar Panda, who was similarly placed as the petitioners, had earlier filed O.A.No.599 of 1994 before the Tribunal. In the counter to the O.A., the respondents indicated that as per instructions of I.C.A.R. (respondent no.1) for work of casual, seasonal or intermittent nature, workers are to be engaged through contractors as per the permission accorded by Central Labour Commission in their letter dated 4.12.1990. In the counter in that case, it was also averred that regular procedure has been followed in engaging the contractors for supplying labourers. Notice was given inviting tenders which were scrutinised through a Committee and agreement was made between the lowest bidder and the authority and thereafter the contractors were appointed. In that case, the respondents had challenged the averment of the petition that the employment of the petitioner was unilaterally changed as that of the contract labourer. The respondents had stated that the letter of I.C.A.R. for engaging contract labour is only for works which are purely casual or seasonal in nature. In the Certificate of Registration dated 4.12.1990 the nature of work in which contract labour is employed or to be employed has been mentioned as "land preparation, preparation of

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nursery, sowing interculture transplanting, weeding, irrigation, water application, harvesting, thrashing, cleaning and safe storage, maintenance and repair of farm structures and infrastructures, irrigation and drainage system, watch and ward of farm and farm products, petty construction covering water management research". The applicants' case is that the above recital shows that the work is not seasonal and temporary in nature. It is a work all the year round and as such, even according to the I.C.A.R.'s instructions, contract labour could not have been engaged. They have also stated that the notice inviting tenders was never given wide publicity in the local newspapers and the agreement is against the interest of the applicants. They have further stated that in the Central Rice Research Institute, which is another research organisation under respondent no.1 about 140 casual labourers similarly placed like the petitioners have been regularised. In view of this, deprivation of facility of regularisation to the petitioners is discriminatory and hit by Article 14 of the Constitution. In view of this, the applicants have come up with the aforesaid prayers. The applicants have also enclosed copy of certain labour contract agreements and the contractors' bills showing therein that the contractor himself, who is applicant no.1, is a labourer under the same contract for which he is the

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contractor and has received wages. This, according to them, goes to prove that the system of contract labour is a myth.

3. Respondents in their counter have opposed the prayers made in the application on the grounds that the applicants are not employees of the respondents and therefore, do not come within the purview of the Tribunal. There is no employer and employees relationship between the respondents and the applicants. The respondents have stated that at no point of time the petitioners were appointed to work under respondent no.2 on daily wage basis. The respondents have further stated that work is being done through contractor's labourers and the contractor is free to work himself as a labourer to supplement his income and respondent no.2 has no control over that. Supplying of labourers is the responsibility of the contractor. The respondents have stated that in strict compliance with Act of 1970 contract labour agreements have been executed and these agreements have also been duly approved by the office of Registration Officer. On the claim of the petitioners that the work is not seasonal or casual in nature, it is submitted by the respondents that this cannot be accepted in view of the fact that the Labour Commissioner has approved and certified the work to be such for which contract labour can be engaged. This shows that

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the work is casual and seasonal in nature. It is further stated that the works described in the contract agreement pertain to different research projects in the Water Technology Centre of Eastern Region farm. The research projects undertaken by the Scientists are purely ad hoc and seasonal ^{and} come to an end after submission of the final report on the research work and stoppage of the project. As most of the research works in the Centre are crop-related, these must be taken to be seasonal and casual in nature. The respondents have stated that under the Act of 1970 contractor is supposed to obtain a licence if he supplies more than nineteen labourers. But in this case none of the contractors ever supplied more than nineteen labourers and therefore, they are not required to obtain licence. The respondents have challenged the assertion of the applicant that various provisions of Act of 1970 with regard to payment of wages are not being complied with. The respondents have further stated that after the notice was issued inviting tenders for supply of labourers, some of the applicants have approached respondent no.2 and requested for engaging them as contractors and promised that they would supply labourers. They were told that they have to compete in the tenders and in case their tenders are competitive, their cases would be considered. Tender

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notice was issued and pasted in Farm premises and nearby locality, but this was torn out and some of the applicants came up with tenders. Accordingly, tenders were scrutinised by a Committee and agreements were made between the lowest tenderer and respondent no.2. Such agreement is in confirmity with the permission accorded by the Central Labour Commissioner in his order at Annexure R/4. The respondents have also stated that in accordance with Ministry of Finance letter dated 24.1.1961 and subsequent letters, extract of which has been given at Annexure-R/3, casual labourers recruited in an office without reference to Employment Exchange cannot be considered for appointment in regular establishment. On that ground also, the prayers of the applicants have been opposed by the respondents.

4. I have heard the learned lawyer for the applicants and Shri Akhaya Kumar Misra, learned Additional Standing Counsel appearing on behalf of the respondents and have also perused the records.

5. Learned lawyer for the applicants, in course of hearing, showed me a large number of registers from which it is clear that the person who is shown as a contractor also works as a labourer. This in any case has not been denied by the respondents in their counter. In the context of the above rival submissions of the learned counsels of both sides and the pleadings of the parties,

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the dispute in this O.A. falls within a small compass. The established legal position is that in case the applicants are contract labourers, then under Section 10 of Contract Labour (Regulation & Abolition) Act, 1970, the authority for abolition of contract labour system vests exclusively in the appropriate Government, in this case Government of India. No Court or industrial adjudicator can abolish contract labour. This has been settled in the decision of the Hon'ble Supreme Court in the case of Gujarat Electricity Board v. Hind Mazdoor Sabha, 1995 AIR SCW 2942.

The main point at issue in this case is whether the applicants are contract labourers or are engaged under the respondents and the system of contract labour put in place by the respondents is a camouflage or myth. The applicants have submitted that prior to coming into force of the so called contract labour, they were engaged directly under respondent no.2. This has been denied by the respondents in their counter. The applicants have not produced any documents or record in support of their contention that earlier they were engaged as daily wage casual labourers under the respondents. This contention, therefore, cannot be accepted as it is not supported by any evidence. Even granting that at some stages they were working directly under the respondents as casual labourers on daily wages,

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that will not be of any help in the prayer for their regularisation if it is found that later on they have become contractor's labourers and have willingly worked as contractor's labourers. Thus the next question which arises for consideration is whether the applicants are contractor's labourers or they are working as labourers under the respondents in the guise of contractor's labourers.

6. In support of their stand, the applicants have submitted that according to the direction of I.C.A.R., the contractor's labourers can be engaged only on works which are casual, seasonal and intermittent in nature. The stand of the applicants is that the works mentioned in the Certificate of Registration, which have been noted earlier, are of perennial nature and therefore, even under the direction of I.C.A.R., for performing these works contractor's labourers could not have been engaged.

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The first point to be noted in this connection is that the Central Labour Commissioner and the Registering Officer in Orissa have mentioned these as works for performance of which contractor's labourers can be appointed. Moreover, on a reference to the actual works mentioned which have been extracted in paragraph 4.13 of the petition it is seen that works like land preparation, preparation of nursery,

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sowing, interculture, transplanting, weeding, irrigation, water application, harvesting, thrashing, etc., are all agricultural operations and by their very nature these are seasonal. All crop-related works, i.e., works connected with growing of crops are seasonal in nature. To paraphrase the biblical injunction there is always a time to sow and a time to reap what has been sown. Other works like repair and maintenance of drainage and irrigation system, etc., are also seasonal in nature because drainage and irrigation system can be repaired and maintained only when these are dry, i.e., during the offseason. So from the very description of the nature of works done by the petitioners in their application itself, it does appear that these are seasonal in nature.

7. The third point is that this Water Technology Centre, whose Project Director is respondent no.2, is a research station under the I.C.A.R. and the respondents have averred in their counter that the research projects are terminated on completion of research works. In view of all the above, it is not possible to hold that the works done by the applicants are permanent in nature and are not seasonal and intermittent in nature.

8. The Hon'ble Supreme Court in the case of Gujarat Electricity Board (supra), while deciding that authority to abolish the contract labour is vested exclusively in appropriate Government, have made the

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following observations:

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".....However, it has to be remembered that the authority to abolish the contract labour under Section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and the so called contract is sham ~~contract~~ or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the concerned workmen raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer, the Court or the Industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief....."

In the above decision, the Hon'ble Supreme Court have referred to several cases like Standards Vacuum Refining Co. of India Ltd. v. Its Workmen, AIR 1960 SC 948, and Hussainbhai, Calicut v. The Alath Factory Thozhilali Union, Kozhikode, AIR 1978 SC 1410, where the same question was raised. In the Standards Vacuum Refining Co. of India Ltd. (supra), the workmen had raised an industrial dispute with regard to contract labour employed by the Company in cleaning-maintenance work at the refinery including the premises and plants belonging to it. The dispute was entertained by the Industrial Tribunal and even though the jurisdiction of the Tribunal was challenged, the Tribunal held that reference made to it is competent. On appeal, the Hon'ble Supreme Court have held that the dispute raised was an industrial dispute within the meaning of Industrial Disputes Act, 1947.

*Sanjay Kumar
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Hussainbhai, Calicut's case (supra) was again another case where the dispute was raised before the Industrial Tribunal. In R.K.Panda v. Steel Authority of India Ltd., (1994) 5 SCC 304, the contract labourers by filing a writ petition under Article 32 of the Constitution of India, claimed parity in pay with direct employees and also regularisation of the employment under the respondent Authority. The Hon'ble Supreme Court while dealing with the matter observed as follows:

"It is true that with the passage of time and purely with a view to safeguard the interests of workers, many principal employers while renewing the contracts have been insisting that the contractor or the new contractor retains the old employees. In fact such a condition is incorporated in the contract itself. However, such a clause in the contract which is benevolently inserted in the contract to protect the continuance of the source of livelihood of the contract labour cannot by itself give rise to a right to regularisation in the employment of the principal employer. Whether the contract labourers have become the employees of the principal employer in course of time and whether the engagement and employment of labourers through a contractor is a mere camouflage and a smokescreen, as has been urged in this case, is a question of fact and has to be established by the contract labourers on the basis of the requisite material. It is not possible for the High Court or this Court, while exercising writ jurisdiction or jurisdiction under Article 136 to decide such questions, only on the basis of the affidavits. It need not be pointed out that in all such cases, the labourers are initially employed and engaged by the contractor. As such at what point of time a direct link is established between the contract labourers and the principal

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employer, eliminating the contractor from the scene, is a matter which has to be established on material produced before the Court. Normally, the Labour Court and the Industrial Tribunal, under the Industrial Disputes Act are the competent fora to adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

From the above observations of the Hon'ble Supreme Court, it is clear that the applicants' claim that the so called labour contract is a sham and is only a camouflage to hide the real state of affairs which is that they are working directly under respondent no.2, is a matter which has to be adjudicated upon before the Industrial Tribunal. Under Section 28 of Administrative Tribunals Act, 1985, this Tribunal has no jurisdiction to entertain a dispute which is the subject-matter of Industrial Disputes Act, 1947. In view of the above, I hold that the applicants have not been able to make out a case for getting the reliefs prayed for by them.

9. In the result, therefore, the application is rejected. The applicants, if they are so advised, can move their prayer in the appropriate forum.

There shall be no order as to costs.

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VICE-CHAIRMAN