CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU

ORIGINAL APPLICATION NO.170/000339 TO 342/2016

DATED THIS THE 27TH DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH …MEMBER(J)
HON'BLE SHRI C.V. SANKAR …MEMBER(A)

1.Mani G,
Aged about 47 years,
S/o Late Gopal Krishnan Nair.P,
Semi Skilled
No.41, Sriram Nagari,
1st Cross new extension,
Murugeshpalaya, HAL Post,
Bangalore-560 017.

2.Nagaraj L.R,
S/o Ramanna L.H,
Aged about 40 years,
Semi Skilled,
Lokkandahalli (V & P)
Hoskote Taluk,
Bangalore (Rural Dist)-562114.

3.Rajashekhar Khanapur
S/o Late Ramanna
Aged about 41 years
Skilled ITI Turner
#G 190, 6th Main,
HAL old Township,
V imanapura Post,
Bangalore-560017.

4.Venkatasubbiah.B,
S/o Late Subbaiah.B.V,
Aged about 38 years,
Semi Skilled,
#463, 5th Main, BDA Flats,
Domlur, Bangalore-560 071. ..Applicants.

(By Advocate Shri U. Panduranga Nayak)

Vs.

1. The Director,
The Managememnt of National Aerospace Laboratories,

Kodihalli Campus,
Bangalore-560017.

2. The Managing Director,
M/s Naltech Private Ltd.,
T.S. Building, Kodihalli,
Bangalore-560017. …Respondents

(By Standing Counsel Shri K. Ananda for R-1)

O R D E R (ORAL)

HON'BLE DR.K.B.SURESH …MEMBER(J)

Heard. Shri M.V. Rao, learned counsel for the respondents submits that the matter is covered by our order in OA.No.106/2011 dated 03.11.2011, which we quote:

"O R D E R

(V. AJAY KUMAR, MEMBER(J)

This OA has been filed seeking the following reliefs:

(i) *For a declaration that the action of the respondents in terminating the services of the applicant w.e.f. 3.1.2011 without any written order or prior notice by taking back his identity card and entry pass as arbitrary and illegal and to reinstate him with consequential benefits.*

(ii) *For a direction on the respondents to consider his representations dated 3.2.2011 and 31.1.2011 for his reinstatement with consequential benefits.*

(iii) *For a direction on the respondents to consider him for regularization of his serviced as per the representation dated 3.12.2010 vide Annexure s A/15 and A/16 in the interest of justice and equity.*

1. *The applicant submits that he was appointed appointed as Technician ITI Welder in the year 2000 with the Respondent- National Aerospace Laboratories, Bangalore, on contract basis and was posted at the Accustic Test Facility, and continued in service till 3.1.2011. He further submits that the nature of work performed by the applicant was gas cutting, welding, maintenance activities relating to accustic tests on Space, Aircrafts and launch of vehicles, etc.*

2. *The applicant states that he has completed Pre-University Education in the year 1984 after completion of his SSLC. He completed ITI training in the year 1995 and obtained National Council for Vocational Training Apprentice Certificate in the year 1999. He underwent training in KSRTC as Sheet Metal Worker and he belongs to Scheduled Caste.*

3. *The applicant submits that the respondents terminated his service w.e.f. 3.1.2011 without any written or prior notice. He submits that since he had been working on contract basis with the Respondent- National Aerospace Laboratories since 2000 till the date of his illegal termination, he is entitled for reinstatement and also for regularization of his service.*

4. *In support of his case, the applicant has filed his certificates in respect of his educational qualifications and he has also filed Attendance Registers for the months of February 2000 to December, 2002 of a Company called NALYECH Private Ltd., who are having work contract with the Respondent- National Aerospace Laboratories, Bangalore. At Annexure A/9 another contract firm to the same effect called Viskaan Associates has been filed. Exhibits A-10 to A-14 are the experience certificates issued by National Aerospace Laboratories and the orders of extension of period of engagement of the applicant from time to time, etc.*

5. *The respondents filed a detailed reply denying the allegations of the applicant and submitted that the 2nd Respondent, NAL, is a constituent unit of Respondent No.1-CSIR. The permanent work of the Laboratory carry out regular research and development work of the Establishment. In addition to it, the Respondent No.2 establishment also may undertake sponsored projects depending upon the programmes for the Government and other institutions, which are time-bound programmes. In order to execute the said sponsored projects, the 2nd Respondent enters into contract with several licensed contractors to provide additional manpower for the projects. The said projects are partly temporary in nature and the employment of the temporary work will come to an end with the completion of the project. There is no privity of contract, direct or indirect, between the Respondents and the workmen of the contractors. There is no employer and employees relationship between them.*

6. *The respondents further submit that the applicant has been working on contract basis since 2000 in the Respondent No.2 Establishment under different contract agencies, such as NALTECH Private Limited, Cleanway Management Services, Viskaan Associates and Bee Gee Facility Services. The Attendance Register produced as Annexure A-7 indicates the fact that the applicant is an employee of NALTECH Private Limited, which is one of the con tract Agency. Annexure A-8 and A-9 also clearly depicts that payment and bonus are paid to the applicant by the contract Agency. Further, Annexure A-13 also clearly states that the applicant's work is for a specific period only.*

7. *The respondents submit that the applicant has never been appointed by the respondents and he was only working in the projects of the respondents as contract employee, that too, employed by certain private contract firms only. In view of the same, the applicant is neither entitled for reinstatement nor regularization of service in the hands of the respondents and prayed for dismissal of the O.A.*

8. *It is to be seen that the averments made by the applicant and the various annexures to the application clearly reveal that the applicant though working in the various projects of the Respondent-NAL, but was never appointed or engaged directly by NAL. Further, the applicant was never paid either wages or any other benefits by the Respondents-NAL at any point of time. On the other hand, the documents reveal that the applicant was engaged by certain private contract firms for the purpose of executing certain programmes for the Respondent-NAL, on contract basis. In this view of the matter, we find no merit in the submission made by the applicant in the O.A. The various judgments relied on by the applicant's counsel are of no held to the case of the applicant.*

9. *It is also not the case of the applicant that he has undergone any process of selection conducted by the Respondent-NAL before his initial engagement or that his name was sponsored by any Employment Exchange or that any order of appointment/engagement on contract basis has been issued by the NAL or his wages were being paid by NAL.*

10. *In the circumstances and for the aforesaid reasons, the O.A. is dismissed for being devoid of any merit. No order as to costs"*

2. Thereafter the matter was taken up in challenge in review to the Hon'ble High Court in WP.No.451542/2012, which was disposed of vide order dated 01.10.2013, which we quote:

"THIS W.P. COMING ON FOR PRELIMINARY HEARING, THIS DAY, N KUMAR J., MADE THE FOLLOWING:

O R D E R

This writ petition is filed challenging the order passed by the Central Administrative Tribunal, dismissing the application filed by the petitioner, as being devoid of any merits.

2. The case of the petitioner was, he was appointed as a Technician ITI Welder in the year 2000 with the respondent – National Aerospace Laboratories, Bangalore, on contract basis and was posted at the Acoustic Test Facility and continued in service till 3.1.2011. The nature of work performed by him was gas cutting, welding maintenance activities relating to acoustic tests on spares aircrafts and launch of vehicles, etc. His services came to be terminated with effect from 3.1.2011, without any written order or notice. Therefore, he approached the Tribunal for a declaration that his termination is illegal and for reinstatement and for regularization of his services.

3. The respondents, after service entered appearance and denied all the allegations in the application. It was their specific case there was no privity of contract, direct or indirect, between the respondents and the workmen and the contractors. There was no employer and employee relationship between them. The applicant has been working on contract basis since 2000 in Respondent No.2 establishment, under different contract agencies. As they have not appointed him and he was only working in the projects of the respondent as a contract employee, that too employed by certain private contract firms only, is neither

entitled for reinstatement nor regularization of services in the hands of the respondents. Therefore, they prayed for dismissal of the application.

4. On considering the rival contentions, the Tribunal was of the view that the petitioner was never appointed or engaged directly by the respondents. He was never paid any wages or any benefits by them. He was engaged by certain private contract firms. Therefore, the Tribunal did not find any merit in the said application. Accordingly, they dismissed the petition. Aggrieved by the said order, the present writ petition is filed.

5. The learned counsel for the petitioner assailing the impugned order, contends, from the material on record, it is clear that the petitioner is a workman. He was employed by a contractor in the establishment of the respondent. Respondent is the principal employer though contractors are the immediate employers of the petitioner. Therefore, the question for consideration is, "Whether the workman could have been terminated in the manner it is being done in violation of the statutory provisions contained in the Industrial Disputes Act?"

Further, the question was the arrangement under which he was working was a sham transaction in order to overcome the provisions of the Industrial Disputes Act. Strictly speaking, it was not a service matter. It was a labour matter. Though the workman committed the mistake of approaching the Tribunal, the Tribunal ought to have seen whether it had jurisdiction to decide the service conditions of the workman and whether he was a public service in order to cloth the Tribunal with jurisdiction. He submits there is a mistake apparent on the face of the record. The order requires to be set aside and the petitioner – workman should be reserved the liberty to agitate his rights in an appropriate manner, in accordance with law.

6. The learned counsel appearing for the respondents submits if the petitioner is a workman, it is the Industrial Disputes Act which is applicable and certainly not the provisions of the Administrative Tribunal Act. However, he submits that there is no cause for interference with the order passed by the Tribunal. It is open to the petitioner to agitate his rights in an appropriate forum.

7. In the light of what is stated above, we are of the view, having regard to the averments made in the application, the nature of work he was discharging and the mode of his employment, it is clear that he was not a public servant and therefore, the provisions of the Administrative Tribunal Act had no application. In that view of the matter, we deem it appropriate to set aside the order passed by the Tribunal and reserve liberty to the petitioner to approach the forum created under the Industrial Disputes Act for adjudication of his rights if any. The time spent in prosecuting this matter both before the Tribunal and this Court shall stand excluded and on the ground of limitation, his claim shall not be thrown out. In that view of the matter, we pass the following order:

Writ petition is allowed. Impugned order is hereby set-aside. Liberty is reserved to the petitioner to approach the competent forum for adjudication of his rights. If and when he approaches the forum, such an authority shall proceed to hear the case and pass an order on merits in accordance with law, without going into the question of limitation and without being in any way influenced by the impugned order and the order passed by this Court."

3. Learned counsel for the applicant, on the other hand urges us to look through the order in WP.No.9974/2006 dated 07.01.2015, which we quote:

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India praying to quash the award dated 30.12.2005 passed by the Court of Industrial Tribunal, Bangalore in Industrial Dispute No.37/2001 vide Annexure-A.

The writ petition having been heard and reserved for judgment, this day, CHIEF JUSTICE pronounced the following:

C.A.V. JUDGMENT

1. The petitioner, management of National Aerospace Laboratories (NAL), has challenged the award dated 30-12-2005 of the Industrial Tribunal, Bengaluru in I.D.No.37/2001, directing regularization of services of 24 workmen from the date of reference, with appropriate pay scales.

2. The petitioner is stated to be a constituent unit of the Council of Scientific and Industrial Research (CSIR), New Delhi which is registered under the Societies Registration Act, 1860 and actively engaged in research and development work in science and technology area of aerospace. The petitioner is stated to be undertaking sponsored projects of the Government and other public and private institutions on commercial basis. Regular employees of the petitioner are stated to be governed by the pay-scales and other service conditions of the CSIR, while another category of contract employees were employed to work in various projects alongside the regular employees, but with meager salary and without the security of service. Petitioner claims to have entered into a contract with Respondent No.2 company NALTECH, for supply of such additional manpower in compliance with the provisions of the Contract Labour (Regulation and Abolition) Act, 1970.

3. Upon failure to reach a settlement in conciliation proceedings, Respondent No.1 – union, espousing disputes related to contract employees in private and public companies and autonomous bodies, raised a dispute on behalf of 67 contract workers in the establishment of the petitioner and sought regularization of their services. Government of Karnataka, referred the dispute on 24-04-2001 to Industrial Tribunal, Bangalore, under section 10(1)(c) of the Industrial Disputes Act, 1947 ('ID Act' for short) with the terms of reference as under:

"(1) Whether the Engineering and General Workers union is justified in demanding (complaining) that the Management of M/s National Aerospace Laboratories Bangalore establishment has not made the services of 67 persons, working as contract labour permanent, although they have been discharging work of permanent nature?

(2) If not, what relief the said contract workmen are entitled to?"

(Above is the translation of the original in Kannada, which is agreed by the counsel to be correct translation.)

4. Before the Tribunal, Respondent No.1 – union claimed that the workmen in question were employed by the petitioner since 1994 to 1996 or 1997 in technical posts and were discharging continuously the duties of permanent and perennial nature, were shifted to new projects after completion of old ones and that Respondent No.2-company, NALTECH was floated by the petitioner establishment itself, subsequently, as an artificial intermediary, only to circumvent the law and exploit the labour. The union claimed that the workmen had gained and acquired skills, knowledge and experience in their respective jobs and continued to serve the petitioner establishment with legitimate expectation that their services would be regularized and they would be absorbed.

5. The Tribunal, after examination of witnesses and arguments of parties, including impleaded second party respondent (b), NALTECH, has made the impugned award dated 30-12-2005 directing NAL to regularize services of 24 of the remaining workmen. By the time the award was made, only 19 workmen were continuing in service and whose rights were left to be adjudicated. Respondent No.2 – NALTECH has supported the contentions of the petitioner before the Industrial Tribunal and claimed that the workmen concerned were contract employees supplied on temporary basis for specified projects and specified periods as required by the petitioner.

6. Learned senior counsel Mr.S.N.Murthy appearing for the petitioner – company NAL, firstly contended that the impugned award dated 30-12-2005 has to be set aside by this Court in its extraordinary jurisdiction, as the petitioner establishment is a research facility and not an 'industry' for the purposes of section 2(j) of the ID Act. He relied upon the objects of CSIR as reflected in its memorandum of association and stated that they are clearly related to research and development and that NAL was only involved in the design of prototypes. He contended that the annual reports of NAL only reflected the external cash flow and that NAL was not making any profits as an organization. He placed reliance on the observation of the Supreme Court in Physical Research Laboratory v. K.G. Sharma [AIR 1997 SC 1855] where it was held that Physical Research Laboratory, a public trust registered under the Bombay Public Trust Act, 1950 was purely involved in research activity and not producing and distributing services which were intended or meant for satisfying human wants and needs, and hence not an 'industry.'

7. Mr.V.R.Datar, learned counsel for Respondent No.1 – union contended that petitioner – company is an industry as per the interpretation of section 2(j) of the ID Act by virtue of the Supreme Court judgment in BWSSB v. A.Rajappa and others [(1978) 2 SCC 213]. He pointed out that according to the certificate of registration of NALTECH (Ex.M-15) under the Contract Labour (Regulation and Abolition) Act, nature of work of the workmen has been described as: 'to conduct research and development /fabrication of scientific & tech. projects" and the license issued to NALTECH, (Ex.M-18) clearly stated that the license is 'to commercialise and market the technologies developed by NAL and to aid the research and development programmes", which would show that the petitioner company was involved in commercial activities albeit in the area of research and development. He further contended that the Industrial Tribunal has given findings based on evidence and reasoning that NAL is an industry and the same ought to be upheld.

8. Having regard to the contentions of both parties, it is first necessary to examine the scope of the definition of 'industry' in the context of research institutions as held by the

Supreme Court in BWSSB v. A Rajappa (supra), wherein Krishna Iyer, J held at para 113 :

"Does, research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, parascientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries."

9. The Industrial Tribunal has taken into consideration the test of 'nature of activity' endorsed in the decision of the Andhra Pradesh High Court in National Remote Sensing Agency v. Additional Tribunal-cum-Additional Labour Court, Hyderabad, and others (2002) 95 FLR 786; where it was held that even discharge of government functions may amount to an industrial activity. The Tribunal has also taken into consideration the objects for which CSIR has been established, the annual report of NAL, and from the statistical summary and examination of witness in that behalf, it has been noticed that the petitioner company is not only involved in research work, but also undertakes sponsored projects, and is also undertaking commercial activities. On that basis the Tribunal has found that the petitioner company is an 'industry' for the purposes of section 2(j) of the ID Act.

10.The case of Physical Research Laboratories (supra) is distinguished from the present case as research institution in that case was found to be engaged purely in research work, as observed in para 12 of the judgment:

"12. PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the Universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner.

Thus, it is clear that an organization which is predominantly involved in research and development can also be within the purview of the definition of 'industry' owing to industrial and commercial nature of its activity and petitioner –company being such an organization, the finding of the Tribunal has to be upheld.

11. Learned senior counsel Mr.S.N.Murthy further contended for the petitioner that appropriate government for the purposes of this dispute was in fact, the Central Government and the reference by Government of Karnataka was not legal. He argued that though CSIR was registered under Societies Registration Act, it was carried on under the authority of the central government. He pointed out relevant rules and bye-laws of the CSIR and its Memorandum of Association, to contend that in terms of Rule 3 of the 'Rules and Regulations and Bye-Laws of Council of Scientific and Industrial Research' ('CSIR Rules' for short), the Prime Minister of India was ex-officio President, Minister in-charge of the ministry/department dealing with CSIR was the Vice-President and minister in-charge of finance and industry along with the members of the Governing Body and Chairman of the advisory board constituted the society i.e., CSIR.
Learned senior counsel relied upon the following observations of the Supreme Court.

a.In Steel Authority of India Ltd. and others v. National Union Waterfront Workers (2001) 7 SCC 1
"39. .... To hold that the Central Government is "the appropriate Government" in relation to an establishment, the court must be satisfied that the particular industry in question is carried on by or under the authority of the Central Government. If this aspect is kept in mind it would be clear that the Central Government will be the "appropriate Government" under the CLRA Act and the ID Act provided the industry in question is carried on by a Central Government company/an undertaking under the authority of the Central Government. Such an authority may be conferred, either by a statute or by virtue of relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises. But, if it is not so, the question that arises is whether there is any conferment of authority on the government company/ any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case."

b. In Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others (2002) 5 SCC 111, the issue whether CSIR is an instrumentality or agency of state and as such 'State' within the meaning of Article 12 of the Constitution was dealt with and answered in affirmative.

c. In HAL v. Hindustan Aeronautical Canteen Kamgar Sangh and Others (2002) 5 SCALE 178, it was held that HAL is an undertaking of the central government and it is the central government which exercises full control over the same, and the issuance of license by state government under the Contract Labour Act is not sufficient criteria to conclude that the 'appropriate government' was the State Government and further held that for HAL, Central Government would be the appropriate government.

12. Per contra, learned counsel Mr.V.R.Datar appearing for respondent No.1 –union contended that the finding of the Supreme Court in Pradeep Kumar Biswas (supra) was only pertaining to the meaning and interpretation of Article 12 of

the Constitution vis-à-vis CSIR and was not conclusive of whether CSIR was working under the authority of the Central Government. He contended that the tests for determination of 'authority' for the purposes of being 'State' under Article 12 are different from those required to be applied for Section 2(a) of the ID Act, as envisaged in Steel Authority of India (supra). He contended that CSIR and its units are separate and independent entities, distinctly different from any department of the Central Government and they are not working under the direct authority of the Central Government.

13. Mr.V.R.Datar referred to decision of the Supreme Court in Tata Memorial Hospital Workers Union v. Tata Memorial Centre and Another AIR 2010 SC 2943 regarding determination of 'appropriate government' under section 2(a) of the ID Act, and emphasized the following observations :

"47. As far as an industry 'carried on by the Central Government' is concerned, there need not be much controversy inasmuch as it would mean the industries such as the Railways or Post and Telegraph, which are carried on departmentally by the Central Government itself. The difficulty arises while deciding the industry which is carried on, not by but 'under the authority of the Central Government'. Now, as has been noted above, in the Constitution Bench Judgment in Steel Authority of India Limited (AIR 2001 SC 3527 : 2001 AIR SCW 3574) (supra), the approach of the different Benches in four earlier judgments has been specifically approved and the view expressed in Air India (AIR 1997 SC 645 : 1997 AIR SCW 430) (supra) has been disagreed with. The phrase 'under the authority' has been interpreted in Heavy Engineering (supra), to mean 'pursuant to the authority' such as where an agent or servant acts under authority of his principal or master. That obviously cannot be said of a company incorporated under the Companies Act, as laid down in Heavy Engineering Mazdoor Union case (AIR 1970 SC 82) (supra). However, where a statute setting up a corporation so provides specifically, it can easily be identified as an agent of the State. The Judgment in Heavy Engineering Mazdoor Sangh observed that the inference that a corporation was an agent of the Government might also be drawn where it was performing in substance governmental and non-commercial function. The Constitution Bench in Steel Authority case (AIR 2001 SC 3527 : 2001 AIR SCW 3574) (supra) has disagreed with this view in para 41 of its judgment. Hence, even a corporation which is carrying on commercial activities can also be an agent of the state in a given situation. Heavy Engineering Judgment is otherwise completely approved wherein, it is made clear that the fact that the members or directors of corporation are entitled to call for information, to give directions regarding functioning which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. The fact that entire capital is contributed by the Central Government and wages and salaries are determined by it, was also held to be not relevant.

"48 to 49. ……"

"50. The propositions in Steel Authority are to be seen on this background viz. that merely because the government companies/corporations and societies are discharging public functions and duties that does not by itself make them agents of the Central or the State Government. The industry or undertaking has to be carried under the authority of the Central Government or the State Government. That authority may be conferred either by a statute or by virtue of a relationship of principle and agent, or delegation of power. When it comes to conferring power by statute, there is not much difficulty. However, where it is not so, and whether the undertaking is functioning under authority it is a question of fact. It is to be decided on the facts and circumstances of each case.

"51. <u>Application of these tests to the facts of the present case.</u>

As far as the facts of the present case are concerned, as can be seen from the submissions of the parties, the determination of the question as to which Government is the appropriate Government for the first respondent - establishment, will depend upon two issues -
(1) How is the property of the first respondent vested? and
(2) Whether the control and management of the Hospital and the Research Centre is independently with the first respondent?"

14. Mr.V.R.Datar pointed out from the rules and bye-laws of CSIR as a society, that though the Society has members from the ministry, its governing body was independent from the authority of the central government. As per section 16 of the Societies Registration Act, 1860, management of the affairs of a society is entrusted by the rules and regulations, to its Governing Body and according to Rule 29 of CSIR Rules the governing body is mainly constituted of scientists and eminent industrialists with only one ex-officio member, Secretary to Government of India for financial matters. By alluding to powers and functions of the Governing Body enumerated in Rules 42 to 48, learned counsel pointed out the apparent self–administration and autonomy of CSIR.

Mr.V.R.Datar submitted that by Rule 53, powers of the Director of NAL were delineated, making him responsible for managing the affairs of the National Laboratory as per decisions of the Management Council. He further stated that vide Rules 65 and 66, Management Council of the individual National Laboratories, as in the present case, was completely free of central government supervision and was an independent entity empowered to administer, control and manage its own affairs and environs including writing off losses, recommending resource allocation for its R&D activities, approving contracts, licensing IPR, constituting its selection and assessment committees for all technical staff, etc. Further, the funds of the Society as per Rule 54, though consisting of grants made by the Government, is not dependent on the budgetary allocation charged to the Consolidated Fund of India, thereby bringing it outside the authority of Central Government. It was the contention of respondent No.1 – union that even the CSIR –society is a mere policy laying body and does not directly exercise control over working of the constituent organizations. In view of the above it was submitted by learned counsel Mr.V.R.Datar that, petitioner – NAL is an employer who is independent and distinct from the Central Government, not in any way working as an agent of the Central Government.

15. The Tribunal has relied upon judgment of the Apex Court in Heavy Engineering Mazdoor Union v. State of Bihar and Others 1970 SCR (1) 995 where it was held in the context of determination of 'authority of Central Government' that :

"The company so incorporated derives its powers and functions from and by virtue of its memorandum of association and its articles of association. Therefore, the mere fact that the entire share capital of the respondent-company was contributed by the Central Government and the fact that all its shares are held by the President and certain officers of the Central Government does not make any difference. The company and the shareholders being, as aforesaid, distinct entities the fact that the President of India and certain officers hold all its shares does not make the company an agent either of the President or the Central Government"

Thus, though CSIR-Society has the Hon'ble Prime Minister and others as its members, the Society itself does not derive any power under the authority of Central Government,

but the Governing body is empowered to make arrangements and enter into agreements even with the Government of India,
indicating that CSIR is a distinct entity and working not under the authority of Central Government.

16. Applying the tests laid down in the recent decision of Tata Memorial Hospital Workers Union (supra), regarding control and management of the employer establishment, if powers are derived from its articles of association and exercised independently, Central Government's authority cannot be inferred. In Steel Authority (supra), it is clearly held that whether an establishment is working under the authority of Central Government or not, is a question of fact to be decided on the facts and circumstances of each case. The CSIR Rules pointed out by learned counsel Mr.V.R.Datar clearly indicate that all the authority was vested in the Governing body of the CSIR – society and the Management Council of each of the National Laboratories and they undertake public and private projects and function on commercial lines. The material on record shows that petitioner – NAL is an autonomous establishment in charge of its own affairs, and not an agent or entity working under the authority of the Central Government. Therefore, the second main argument of the petitioner also fails.

17. Learned senior counsel Mr.S.N.Murthy further contended for the petitioner that, if the claim of the workmen to have worked directly under the petitioner were to be accepted, as per section 14 of the Administrative Tribunals Act, 1985, and notification dated 31-10-1986 issued thereunder, jurisdiction of industrial tribunals to entertain disputes was barred and that Central Administrative Tribunal alone had jurisdiction to address the grievances of the respondent No.1–union in the present matter. It was however pointed out by Mr.V.R.Datar learned counsel for respondent No.1–union that, as per section 28 of the Administrative Tribunals Act, the jurisdiction of industrial tribunals was saved and made concurrent with that of the Central Administrative Tribunal in matters falling under the Industrial Disputes Act. Section 28 of the Administrative Tribunals Act, 1985 reads as under:

"28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution.—On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except—
(a) the Supreme Court; or
(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,
shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

18. The Administrative Tribunals Act has been enacted to provide a forum for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed in public services and posts in connection with the affairs of the Union of India or of a State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto. A bare reading of the provision of Section 28 indicates that the power of the Industrial Tribunal is saved by this provision, and disputes arising under the ID Act may be referred to Industrial Tribunal

by the appropriate government for adjudication. In the context of Sections 14 and 28 of the Administrative Tribunals Act, the Supreme Court has held in Telecom District Manager and Others v. Keshab Deb (2008) 8 SCC 402, that an employee who claims himself to be a workman will have a right of election in the matter of choice of forum between the CAT and Industrial Tribunal. Hence, contention for the petitioner that Central Administrative Tribunal has exclusive jurisdiction over the dispute by virtue of section 14 of the Administrative Tribunals Act, 1985 is not sustainable.

19. Another argument reiterated for the petitioner was with regard to the status of the workmen concerned as contract employees and their having no right to regularization in the service of NAL. It was submitted that the petitioner was getting sponsored projects and NAL was assigned particular work packages for the execution of which NAL would enter into contract with the contractors for supplying manpower. There was no contract or employer and employee relationship between the petitioner and the workmen concerned, according to the submission. Elaborating on that argument it was also submitted that the contract workers were not involved in any core activities of NAL and were engaged only for doing routine jobs for particular projects. The workmen were not directly selected and appointed by the petitioner; they were not paid wages directly by the petitioner and their ESI and PF contributions were also made by the contractor. It was further submitted that such workmen were carrying out the work assigned to them under the control and supervision of the contractor, while the heads of division only verified if the work was done according to the specifications. The petitioner relied upon the following observations made by the Apex Court in Haldia Refinery Canteen Employees Union & others v. M/s. Indian Oil Corporation Ltd., and others [AIR 2005 SC 2412).

> *"15. No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management.*
>
> *16. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. ..."*

The above observations were made in the context of the workmen being treated as employees of the contractor where the factory of the employer was governed by the provisions of the Indian Factories Act, 1948 and the canteen where the workmen were employed was a statutory canteen established to fulfill the requirement of the Factories Act.

20. The following observation of the Apex Court in General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lal and Another. [(2011) 1 SCC 635] was also referred for the following observations made therein :

"12. The expression "control and supervision" in the context of contract labour was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union, [(2009) 13 SCC 374] thus: (SCC p.388, paras 38 -39)

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

"39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor." "

21. As against the above arguments for the petitioner, it was submitted for the respondent-union that the Tribunal has in the impugned award, after elaborate discussion of the evidence on record, arrived at the finding of fact that the workmen were working under the petitioner on full time basis along with their regular employees without being supervised by the contractor. It was submitted that the workmen concerned have actually and continuously worked for the petitioner and the findings of fact based on evidence are not even alleged to be perverse. In fact, it was proved before the Tribunal by documentary evidence that the contract system adopted by the petitioner was a façade and a sham arrangement, according to the submission. Ex.M-18 on the record is the licence obtained by NALTECH on 28.11.1997 from the office of the Assistant Labour Commissioner, Bangalore and it was in force till 27.11.1998 and thereafter renewed from year to year till 2005. That licence clearly stipulated that, "this licence is for doing the work of: to commercialize and market the packages developed by NAL and to aid the research and development programmes in the establishment of the Director, NAL. ..."

As for the contractors, the licence given on 24.10.2002 to Sri E.Mohan Raju (Ex.M-19) was for "doing the work of developing prototypes and preparation of moulds, lay-up, vaccum bagging component and Associated works at ACDDivision at NAL, Bangalore." Another licence for one more year was given on 25.11.2003 which was renewed in 2004 to expire on 24.11.2005. As against that, when the petitioner offered a work package for fabrication of 60 spars on 05.11.2005 to M/s. Comat System Solutions (P) Ltd., it was given with the condition, inter alia stipulating that,

"2.2 Manpower – We found the following 40 persons (5 Engineers and 35 Diploma/III) referred in your quotation are found suitable to our requirement".

These 40 persons named in the work package (Ex.M-20) included many of the workmen concerned, signifying the fact that they were selected and appointed to work for the petitioner, under its contract with another contractor. It is significant to note that the petitioner could not adduce any evidence for having registration of itself as a principal employer in respect of the period 1996-1997 and after November 2002. These facts on record supported the submission that arrangement of principal employer and contractor was only a subterfuge to deny to the workmen their status and benefits due to regular employees of the petitioner. All such oral and documentary evidence having been duly considered and elaborately discussed by the Tribunal, it was submitted that the finding of fact in the impugned award did not call for any interference. Learned counsel Mr. Datar

relied, in that context, upon the following observations of the Apex Court in Bhuvnesh Kumar Dwivedi v. M/s. Hindalco Industries Ltd. (AIR 2014 SC 2258):

"18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with the factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. …."

22. It was contended by the petitioner before the Tribunal that all project works were time bound and appointment of the workmen concerned, made through the contractors, was co-terminus with the duration of the projects. However, the Tribunal has, on the basis of the material on record found that Mohan Raju, the contractor for NAL since September 2002 had admitted to have not terminated the services of any workmen at the completion of any project, nor had he issued
any letters regarding shifting of workmen from one project to another. As noted by the Tribunal it was admitted by M.W-3, Company Secretary for NALTECH, respondent No.2 herein that the workmen concerned were working in NAL prior to 1997 when NALTECH issued appointment letters to them as also, by Mohan Raju (M.W.2) licensed contractor since 24-10-2002 that he was unaware if the workmen were working for NAL prior to his becoming a contractor. Based on the letters of appointment issued in favour of two of the workmen, produced as Ex.W.30 & 31, it was noted by the Tribunal that NALTECH had been informed by the Director of NAL that the services of the persons mentioned in those letters were required, on contract basis and that it showed that the management had found them suitable and hence made the specific request for their appointment. As regards the supervision exercised over the workmen, the Tribunal found that these workmen were working alongside regular workmen and that their supervision was found to have been done by NAL itself. In the light of these observations it was concluded by the Tribunal that the workmen were actually working for NAL and that the contracts were a mere façade, artificially created by the petitioner.

23. Even as the issue of recruitment rules and procedure for appointment under the petitioner was additionally raised before the Tribunal, it was further elaborated to submit that regularization of the workmen concerned would amount to permitting back-door entry and permanent appointment without following the recruitment rules and process of selection prescribed therein. It was submitted for the petitioner that, as held in Secretary, State of Karnataka and others v. Uma Devi and others [AIR 2006 SC 1806], an appointment for a post in Government service or in the service of its instrumentalities can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. It is however, in the context of Articles 14, 16, 39(d) and 226, that the Apex Court went on to observe:

"43. ……. This classical position continues and a mandamus could not be issued in favour of the employees directing the Government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent".

It needs to be noted here that Uma Devi (supra) was not dealing with matters arising out of the operation of or adjudication undergone under the provisions of the ID Act. And

besides that, the Apex Court still made the following pertinent order in para 44, for the respective State Governments concerned:

"44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071], R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

24. Learned counsel for the petitioner, however, extended his argument by submitting a memo, after conclusion of the arguments, to submit that the pay scales are prescribed for direct permanent recruits, for whom minimum required
qualifications are prescribed and the workmen concerned would not meet the requirements of minimum qualifications with necessary percentage of marks. Per contra, it was submitted for the respondent workmen that the judgment in Umadevi (supra) would not apply in a case where an industrial dispute is raised and referred under the statutory provisions of the ID Act, as the Tribunal to which the dispute is referred is duty bound to make an award which would be final and binding on the parties. As recently held by the Apex Court in Civil Appeal Nos.10353-10354/2014 (dated 18.11.2014), the Industrial and Labour Courts are not denuded of their powers to order permanency of the workers who have been victims of unfair labour practice on the part of the employer under Item 6 of Schedule IV to the ID Act.

25. It emerges from the guarantees and ideals enshrined in the Constitution in the form of Directive Principles of State Policy and the goal of social and economic justice laid out in its Preamble, that they ought to be guiding principles for justice delivery by the Courts and Tribunals. The underlying aim and object of adjudication of an industrial dispute is, in effect, dispensation of social and economic justice and translating fundamental rights as well as directive principles
into some tangible relief. As held in State of Bombay v. Hospital Mazdoor Sabha, [(1960) 2 SCR 866], by Gajendragadkar.J, regarding understanding the scope of
industry, trade and business:

"11. ..... Industrial adjudication has necessarily to be aware of the current of socio-economic thought around; it must recognise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to
assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinnaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisations. ....."

As held in Basti Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 88, by V.Kishna Iyer.J, :

"22. ……Industrial Jurisprudence does not brook nice nuances and torturesome technicalities to stand in the way of just solutions reached in a rough and ready manner. Grim and grimy life-situations have no time for the finer manners of elegant jurisprudence. …."
Thus, the process of industrial adjudication is an onerous task being guided by the constitutional mandates and aiming at settlement of the industrial dispute on a fair and just basis, tested on the touchstone of social and economic justice. When an industrial dispute is raised, it is a commotion to be pacified by dispensing justice. In such adjudication, not just the right to equality and other constitutional guarantees, but the aims and ideals of the Constitution enter into the consideration.

26. An analysis of the constitutional scheme shows that, by its very preamble, the Constitution is dedicated to securing to all citizens, social and economic justice. By virtue of Article 37, the principles contained in Part IV are fundamental in the governance of the country. Dr.B.R.Ambedkar said before the Constituent Assembly in this context that:

"…In my judgment the Directive Principles have a great value for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution without any directions as to what our economic ideal or as to what social order ought to be, we deliberately included the directive principles in our Constitution. …"

It is the duty of the Courts to apply directive principles in interpreting the Constitution and the laws. As held by the Supreme Court in U.P. State Electricity v. Harishankar Jha 1978 (4) SCC 16, the injunction that the Directive Principles are fundamental in the governance of the country, means that while the Courts are not free to direct making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy, and this command of the Constitution must be ever present in the minds of the Judges when interpreting statutes which concern themselves directly or indirectly with the matters set out in the Directive Principles.

27. Article 38 of the Constitution requires the State to strive to promote welfare of the people by securing and protecting, as effectively as it may, a social order in which social and economic justice may inform all the institutions of the national life and, in particular, to minimize inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities amongst individuals and groups. Article 39 requires the State to direct its policy towards securing for every citizen the right to an adequate means of livelihood and to see that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Article 41 requires the State within its limitation to make effective provisions for securing the right to work and Article 42 requires making of provisions for securing just and humane conditions of work. Article 43 requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, work, a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. Article 51-A makes it a fundamental duty of every citizen to abide by the Constitution and to respect its ideals, to follow the noble ideals which inspired our

freedom struggle, to promote harmony, to develop humanism and to have compassion for all living creatures.

28. These aims and ideals, coupled with a duty to follow them, are cast in the Constitution to keep them constant and above the vicissitudes of political ideology and economic policy. When an industrial adjudicator having the power to transcend contractual conditions of service entertains an industrial dispute, he exercises the judicial power of the State and endeavours to secure for the industrial workers "work, a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure", within the limitations laid down by law and binding precedents. The jurisdiction of an Industrial Tribunal, therefore, is expansive and creative and not restricted to only enforcing or interpreting the contract of service or the extant legal provisions and it is not fettered by the limitations of contracts and can even involve extension of existing agreement or the making of a new one, or in general, creation of new obligations or modification of old ones. If the employment of a portion of the workforce on casual/ temporary/ irregular basis is in violation of the express provisions of the ID Act or if it amounts to unfair labour practice on the part of the employer, such illegality or unfair labour practice must come to an end with the adjudication. Particularly, if the practice of employing workmen on a casual or temporary basis through a sham arrangement were permitted, it would amount to licence to exploit and would fly in the face of every constitutional aim, ideal, edict and obligation referred hereinabove.

29. In the above facts, after confirming the factual finding that the arrangement of contract labour by the petitioner was a sham, the next logical conclusion would be that the workmen concerned were in fact employed for nearly a decade or, by now, longer, for and by the petitioner, and the object of not making regular appointments in a legal manner was to continue such workmen without conferring upon them any status and privileges of regular workmen and without undertaking the process of regular recruitment. That would obviously amount to an unfair labour practice which may not strictly be punishable but which would as well not be countenanced in adjudication of an industrial dispute. As observed earlier, the adjudicator of industrial disputes is also guided by the spirit of constitutional edicts and cannot allow an employer to take benefit of his own wrong in employing, for a fairly long period, a set of its workforce as contract labourers, bypassing its own recruitment rules and procedure for selection, resulting into obvious discrimination and an unjust inequality. As tritely summed up by Shri. Vithalbhai B Patel in his "Law on Industrial Disputes" [Lexis Nexis, 4th Edition (2014), Volume I, §4.12] at page 141 regarding the principle of social justice:

"It, therefore, endeavours to resolve the competing claims of employers and employees by finding a solution which is just and fair to both parties with the object of establishing harmony between capital and labour, and good relationship. The ultimate object is to see that industrial disputes are settled by industrial adjudication on principles of fair play and justice."

30. The very fact that the workmen concerned herein were actually named for being employed under a new contract only for carrying out a work package (Ex.M-20) clearly proved that the petitioner chose and wanted many of the workmen concerned to work on their projects. It is unbecoming and unfair on the part of the management to set up a technical defence in an industrial dispute with the workmen, who were chosen by the management to work for them for years on end, that they would not have fulfilled the requirements of qualification under their recruitment rules. Therefore, the last-ditch

attempt at depriving the workmen concerned of their legitimate claim for status and full wages and benefits at par with the regular employees, has to be spurned. It has however also to be mentioned in fairness to the petitioner that they have agreed to the list of the workmen concerned, which was submitted as an annexure to the submissions of the respondent, in so far as it gives in a tabulated form, the posts which each of the workmen should have been holding and the pay-scale to which each such workmen would have been entitled as on the date of reference, if their demand were to be accepted. That table is reproduced hereunder for ready
reference and avoiding any further litigation or complication.

TABLE

SL.NO. (In the order of Reference)	NAME	DATE OF JOINING	QUALIFICATION	ELIGIBLE POST ON THE DATE OF REFERENCE	APPLICABLE SCALE OF PAY IN NAL AS ON DATE OF REFERENCE (VTH PAY COMMISSION)
67	Rama Prasanna	01/09/1994	DME	Junior Technical Asst. Grade III (1)	4,500-125-7,000
19	Ratnakar B	01/10/1996	DME	Junior Technical Asst. Grade III (1)	4,500-125-7,000
31	Paranthaman N	18/09/1997	DME	Junior Technical Asst. Grade III (1)	4,500-125-7,000
36	Basavaraju S M	12/11/1997	DME	Junior Technical Asst. Grade III (1)	4,500-125-7,000
3	Arul Kumar A	01/08/1994	ITI (Fitter trade)	Support Staff Grade II (1)	3050-75-3950-80-4590
8	Gunakara B	10/12/1995	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590
12	Omprakash Swamy	01/01/1996	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590
17	Gangaraju	08/02/1996	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590

18	Srinivas P	03/07/1996	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590
63	Suresh Reddy	31/12/1996	ITI (Welder)	Support Staff Grade II (1)	3050-75-3950-80-4590
23	Rammanna Gundad	04/04/1997	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590
61	Mahanthappa	04/04/1997	ITI (Fitter)	Support Staff Grade II (1)	3050-75-3950-80-4590
21	Parthiban	14/07/1997	ITI (Fitter)	Support Staff Grade II (1)	3050-75-3950-80-4590
34	Raghu H L	01/08/1997	ITI (Machinist)	Support Staff Grade II (1)	3050-75-3950-80-4590
32	Eshwarappa S	01/08/1997	NAC	Support Staff Grade II (1)	3050-75-3950-80-4590
4	Chandrashekar R	01/09/1994	SSLC	Support Staff Grade I (1)	2550-55-2660-60-3250
2	Krishnappa B M	01/09/1994	SSLC (Fail)	Support Staff Grade I (1)	2550-55-2660-60-3250
62	Prabhakaran D	16/09/1994	SSLC	Support Staff Grade I (1)	2550-55-2660-60-3250
39	Mani S	28/08/1998	SSLC	Support Staff Grade I (1)	2550-55-2660-60-3250

31. In the facts and circumstances discussed hereinabove, the petition is dismissed with the consequential additional directions that the workmen concerned shall be treated at par with regular employees in their eligible posts as per the above table and paid the difference of wages and benefits from the date of reference. The arrears due to the workmen as on the date of the impugned award from the date of reference shall be paid

with interest at the rate of 9% per annum. The arrears on account of difference of wages for the period subsequent to the date of the award shall be capitalized at the end of each year and shall be paid with 9% interest per annum from the date of the end of each such year. The payment of interest on arrears of difference of wages from the date of the award is necessary and justified by the fact of inflation and constantly corroding purchasing power of money. Besides that, withholding of the benefits due to the workmen since the impugned award has to be duly compensated. There is no order as to costs."

4. But then, thereafter it was apparently taken up to the Hon'ble Apex Court in SLP.No.13880/2015, which was dismissed vide order dated 24.09.2015. Therefore, the decisions canvassed by these judgments have become final. Therefore the question is, **how far these decisions are applicable to NAL and its employees?**

5. Apparently. The applicant is only a contractor appointed employee, which may have no primafacie connection with NAL, as it is. Even though under the relevant Labour Regulations, NAL can be considered as principal employer, but to what extent the principal employer will be bound to protect the interest of the employees is the question. Since the matter has many aspects to it, we had looked into the matter and found that from the very beginning employees were brought in randomly without any specific parameters and it caused huge and great loss to the public exchequer. We hold, that without any doubt, after examining this matter in great detail, that the performance of NAL and these employees had been minimal, to say the least.

6. If we had passed an order to regularise those employees, it will be a great crime against the nation and greater public interest. We refuse to do so. But the applicant that 19 people have been regularised. One mistake will not make matters right. For multiplicity of reasons the application cannot lie. But one reason is that one contractor has appointed certain employees on his own. The employees are bound by the orders of the contractor and it has come in proof that the contractor

and his employees have also failed. Therefore, we hold that the OA lacks merit. Dismissed.

7. At this point of time, learned counsel for the applicant pressurised us to look into our order passed in OA No.1477/2014 on 14.12.2015, which we quote:

> DR. K.B. SURESH, MEMBER (J):
>
> Heard. The learned counsel for the respondent brings in the notion of an outsourced car driver who may later claim to be a central government employee which notion had not been agreed to by an earlier Bench on a different ground that similarly situated people were not selected through the employment exchange and for this reason it cannot be presumed that they were selected by the respondent in any way. It had gone up to the Hon'ble High Court and Hon'ble High Court felt that the remedy of the applicant would lie only in the industrial Tribunal and not in service Tribunal as the nexus between them and government is not established yet but then the Hon'ble Apex Court in many cases held that whenever issues arise we must lift the corporate veil to see what lies underneath, therefore, we had called for the agreement between the alleged contractor and the respondent. The contractor name itself is very significant. It is M/s. Aircraft Design and Engineering Services Private Limited which is registered with the address of HAL 2nd stage, Bangalore has been significantly shown. We had gone through the various aspects of the agreement. It is exactly a mirror reflection of the work to be done by the respondents and nothing else starting from aircraft design of Saras and C-NM5, product support of HANSA-3 and the pending design and Saras- PT3 and conversion of Saras PTI to Saras PT – 1N and other technical services which had a mirror reflection of respondents work having handed over midway. It is also mentioned in paragraph 1 that the contractor will execute the work at the CSIR, NAL premises, all the basic facilities will be provided by the NAL who is the respondent. The progress of the job will be reviewed periodically by the Director or any of the Project Directors or any of the authorized person and then the more significant in paragraph 2 the contractor will also assist in the design and fabrication of test rigs, jigs and fixtures and other items. The contractor vide paragraph 3 is to engage experienced aircraft designers, engineers and technical staff required during different phases of this project. Therefore in effect the contractor is doing everything except sweeping the floor which is to be done by NAL. This mirror reflection of work will therefore point out only one thing that the labour laws of this country are being circumvented by a devious strategy and nothing else. The employees are thus doing only the work which will normally be done by NAL and therefore NAL will be the principal employer, without any doubt.
>
> 2. Now, we do not know under what premise has the contractor taken on its employees but then according to paragraph 5 of the agreement since the contractor has to base the progress on the milestone certified by the Programme Director we must assume that a proper selection process would have been undergone to select the best possible among the possible persons to be employed. It is also said in paragraph 8 that the contractor person will adhere to the normal working hours of the NAL and will be bound by the

security regulations of NAL. If they have to work overtime, permission has to be taken from the authorized official of the NAL.

3. For employing anybody the contractor will submit details of names, parentage, residential address, age etc. of the person deployed in the NAL premises and for them NAL will issue temporary photo identity card and temporary biometric cards.

4. In paragraph 8 it is said that the contractor will be responsible for EPF Act, ESI Act, Workmen Compensation Act and the contractor will keep NAL indemnified for any breach, that is the crux of the issue. To avoid the labour laws implementation through a devious methodology this contract was thought of which is an exact mirror reflection of the work done by NAL and nothing else. The contractor is doing all the other jobs except sweeping the floor, therefore, there cannot be any doubt that in reality the employees are NAL employees alone. The Constitution of India in Directive Principles stipulate that there cannot be exploitation of human labour. The devious methodology adopted by NAL, therefore, is not correct ethically, morally or legally, it is particularly so as in accordance with paragraph 14 of the agreement the contractor will have to hand over to the concerned Project Director all design, drawings, work sheets and other documents prepared or collected during the work. It must be noted that these are the intellectual property of contractor alone and NAL has no right to it unless NAL is the entire controlling entity. This establishes only that NAL is the controlling authority and none else. That being so there cannot be any doubt that NAL is the principal employer and the contractor is only a namesake brought in to avoid the contractual and other liabilities which the NAL will have to shoulder.

5. This matter Shri M.V. Rao, learned counsel for the respondents, asserts is covered by the Hon'ble High Court judgment but then the Hon'ble Apex Court in Hussain Bhai reported in 1978 4 SCC 257 had clearly held that it is the principal employer who must bear the burden, but then since NAL is a very important component of national enhancement we would like them to have a period of consideration even though this order is issued today and copy will be issued to Shri M.V. Rao, learned counsel for the respondents, to facilitate further discussion we will expect NAL to come out with a proper decision on accommodation of these employees.

6. A copy of this order shall be issued to the learned counsel for the respondents. Post on 21.12.2015.

8. That matter relates to payment of EPF and ESI, which as per statutory regulation, must be paid by the principal employer. Therefore the distinction between the principal employer being ultimately responsible for the welfare of the employees for the work done in his office premises is within the regulation. Regulation means, that by regulation, employee attains a statute, it is not part of

contract. It is an attainment of statute. That the statute requires more elements with compliance with the contract and that element is not specifically present here, because these are only the employees of the contractor and we have found after distinction and continued search that employees have not benefitted the institution in any way. In fact it has done great impediment to the national welfare. There is no ground. OA dismissed.

9. At this point, learned counsel for the applicant makes a statement that 19 employees of the same contractor have been absorbed by NAL and with the instance of the NAL only. But then, one illegality cannot be cited for equalisation under Article 14, It was clearly illegal or for some specific purpose, employees wanted their services. Since they are not in the party array, we do not want to say anything on the subject.

10. Learned counsel for the applicants submits to us that the applicants have been working for more than 14 years at the same place. Therefore, we will make a regulation that the applicants cannot be substituted by another contract employees. But the OA is dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

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Annexures referred to by the Applicants in OA No.170/00339-342/2016

Annexure A1 : Experience certificate of 1st applicant
Annexure A2 : Certificate of Competence.
Annexure A3 : Salary slips of the 1st applicant
Annexure A4 : Bank statements of 1st applicant.
Annexure A5 : Experience certificate of 2nd applicant
Annexure A6 : Salary slips from Feb 2000 to Dec 2000, Jan 2014 to Oct 2015.
Annexure A7 : Bank statements of 2nd applicant.
Annexure A8 : Experience certificate of 3rd applicant issued in July 2010.
Annexure A9 : Salary slips of the 3rd applicant from Mar 2000 to Nov 2001, Mar2007 to Mar 2008 and Jan 2014 to Oct 2015.
Annexure A10 : Bank statements of 3rd applicant till date.
Annexure A11 : Experience certificate of 4th applicant issued in June 2005.
Annexure A12 : Extension of contract issued to 4th applicant in Jan 2002.
Annexure A13 : Salary slips from Jan 2014 to Oct 2015.
Annexure A14 : Bank statements from Sept 1996 to July 1999 & Jan 2014 to Nov 2015.
Annexure A15 : Attendance from April 2003 to March 2005.
Annexure A16 : Attendance from January 2014 to October 2015.

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