HIGH COURT OF GUJARAT (*D.B.*)

STEEL AUTHORITY OF INDIA LIMITED
Versus
GUJARAT MAZDOOR PANCHAYAT

Date of Decision: 18 September 2003

Citation: 2003 LawSuit(Guj) 529

Hon'ble Judges: J M Panchal, A M Kapadia

Eq. Citations: 2004 2 CLR 275, 2004 1 GLR 729, 2004 2 LLJ 970, 2004 106 FJR 145

Case Type: Special Civil Application; Special Civil Application

Case No: 10225 of 1996; 2643 of 1997

Subject: Constitution, Labour And Industrial

Editor's Note:
Contract Labour (Regulation & Abolition) Act, 1970 - Sec 2(3) & 10 - Industrial Disputes Act, 1947 - Sec 2(s) & (10) - Constitution of India, 1950 - Art 226, 227 - Workmen employed in stockyard are doing work of unloading materials arriving by rail/road - Through Gujarat Mazdoor Panchayat served a demands Notice - Asking SAIL to treat workers employed in stockyard located as its employees and make payment of wages on that basis - It is always open to workmen to place material before industrial adjudicator to show that the contract between principal employer and the contract labourer is sham or not genuine - Claim declaration that they were always the employees of the principal employer and are entitled to appropriate Service conditions - Under Art 226 of Constitution High Court will not interfere with weighing of evidence led before the Tribunal as High Court wee sitting in appeal - Merely because more than one view is possible on evidence led before tribunal the writ Court would not be justified to interfere with the findings recorded by tribunal - Petitioner has not impleaded Industrial Tribunal as one of respondents in petition nor claimed any relief as such against Industrial Tribunal - This Conduct on party in not Impleading Industrial Tribunal as one of respondents in petition and not claiming any specific relief against tribunal would indicates that the writ petitioner has chosen to approach the High Court under Art 227 of Constitution - Held, No Substance in this petition

Acts Referred:
Constitution Of India Art 227, Art 226
Industrial Disputes Act, 1947 Sec 10, Sec 2(s)
Contract Labour (Regulation And Abolition) Act, 1970 Sec 10, Sec 2(j)

Final Decision: Petition dismissed

Advocates: K S Nanavati, Nanavati Associates, R Venkataraman, Bhushan B Oza, Girish C Patel

Cases Cited in (+): 10
Cases Referred in (+): 32

J. M. PANCHAL, J.

[1] By instituting Special Civil Application No. 10225 of 1996 under Arts. 226 & 227 of the Constitution, Steel Authority of India Limited ["S.A.I.L." for short] has prayed to issue a writ of certiorari to quash award and order dated November 8, 1996 rendered by the Industrial Tribunal, Ahmedabad, in Reference (I.T.) No. 190 of 1993, by which S.A.I.L. is directed to treat 160 workmen working in the stockyard located at Kaligam, Sabarmati, Ahmedabad as its permanent employees, and pay them salary, dearness allowance and other benefits as per the Rules and Regulations of the Company from the date of making of the reference i.e. from July 31, 1993.

> Special Civil Application No. 2643 of 1997 is filed by Gujarat Mazdoor Panchayat under Arts. 226 & 227 of the Constitution, wherein prayer made is to declare that the workmen employed in the stockyard located at Kaligam, Sabarmati, Ahmedabad are entitled to salary, dearness allowance and other benefits as per Rules and Regulations of S.A.I.L. from January 1, 1980 with 18% interest on the arrears to be paid to the workmen and not from July 31, 1993 as directed by the Industrial Tribunal. As both the petitions are directed against common award and order dated November 8, 1996, rendered by the Industrial Tribunal in Reference (I.T.) No. 190 of 1993, this Court proposes to dispose of them by this common judgment.

[2] Steel Authority of India Limited is a Government of India Enterprise. It is a Government Company registered under the provisions of the Companies Act, 1956. It is engaged in production and marketing of iron and steel items, such as, angles, bars, coils, wires, rods, looms, billets, iron girders etc. The company has its steel manufacturing plants at Bokaro, Rourkela, Bhilai, Alloy Steel Plant at Durgapur, stainless steel plant at Salem and subsidiaries at Burnpur, Bhadravati and Chandrapura.

[3] The Central Marketing Organization, which is the marketing unit of S.A.I.L., markets the products manufactured at various steel plants. In order to cater to the demands of its customers, the Central Marketing Organization has established network of stockyards where it receives materials produced by the plants and after receiving the same, stores it and sells the same to its customers. One such stockyard is located at Kaligam, Sabarmati, Ahmedabad.

[4] The workmen employed in the stockyard are doing work of unloading the materials arriving by rail/road, sorting them out, stacking in the yard and loading the same in the trucks brought by the customers when sale is effected. All the handling operations as also stacking are done as per the stipulations of stacking plans, handling and storage guidelines laid down by S.A.I.L. and other instructions issued by stockyard incharge. In the stockyard, 160 labourers are employed and they work in three shifts, duration of each shift being of 8 hours. Cranes, tools and tackles, equipments etc. required to efficiently handle the expected cargo in the yard are also supplied by the Company and they are being operated by labourers. The workers employed in the stockyard are members of Gujarat Mazdoor Panchayat, which is the sole bargaining agent on behalf of the workmen employed at S.A.I.L.'s stockyard located at Kaligam, Sabarmati, Ahmedabad.

[5] The case of S.A.I.L. is that having regard to the liberalised imports as well as competition from private sectors and unsteady supply of materials from manufacturing plants, it is not in a position to maintain regular, systematic or permanent labour force for its handling operations carried out at stockyards, and enters into a contract with a handling contractor capable of handling iron and steel materials at the stockyard, who engages his own labourers and handles steel materials on the terms and conditions stipulated in the contract. What is maintained by S.A.I.L. is that the contract, inter alia, stipulates that the handling contractor has to comply with the provisions of the Contract Labour (Regulations and Abolition) Act, 1970 ("the Act" for short), Minimum Wages Act etc. and there is no privity of contract, direct or indirect, between S.A.I.L. and labourers engaged by the contractor. On the other hand, the claim of Gujarat Mazdoor Panchayat is that workmen are working in the stockyard of S.A.I.L. since years and as (i) they are doing work of S.A.I.L. which is permanent in nature, and (ii) without those workers, whole activity in the stockyard is bound to come to a standstill, the workers are, in reality, employees of S.A.I.L. and are entitled to receive basic wages, dearness allowance etc. as per the scales applicable to other employees of S.A.I.L. What is asserted by the Panchayat is that though the concerned workmen are shown on the rolls of dubious intermediaries i.e. contractors, the so-called contractors are not independent nor concerned workmen perform the work of contractors and the

contractor being a name lender and a facade brought in by the Company, the workers are entitled to be treated as employees of S.A.I.L.

[6] Therefore, Gujarat Mazdoor Panchayat served a demand notice dated March 21, 1992 asking S.A.I.L. to treat workers employed in stockyard located at Kaligam, Sabarmati, Ahmedabad as its employees and make payment of wages etc. on that basis. However, there was no response from S.A.I.L. The Panchayat, therefore, raised an industrial dispute and approached the competent authority under the provisions of the Industrial Disputes Act, 1947 ("the I.D. Act" for short) demanding that the workers employed in the stockyard located at Kaligam be treated as employees of S.A.I.L. Thereupon, conciliation proceedings were initiated and reply dated June 26, 1993 was submitted by S.A.I.L. refuting the claim advanced by the Panchayat. During the pendency of conciliation proceedings, tender notice dated July 20, 1993 was issued by S.A.I.L. for appointment of handling contractor. The tender submitted by Bardhan & Company (Handling) Contractors Private Limited. ("Bardhan & Co." for short) was accepted on September 27, 1993 and work contract was issued on October 16, 1993. However, formal contract was executed by Bardhan & Co. on October 23, 1993, though strangely stamp-paper for the same was purchased on January 3, 1994. The handling contract with Bardhan & Co. was for a period of 4 1/2 years. Bardhan & Co. had obtained licence under the Act on December 17, 1993, which was valid for one year regarding which intimation was communicated to the registering authority under the Act by S.A.I.L. on October 22, 1993.

[7] On failure of conciliation proceedings, following dispute was referred to the Industrial Tribunal, Ahmedabad, by the Deputy Commissioner of Labour, Ahmedabad vide order dated July 31, 1993 under Sec. 10 of the I. D. Act, for adjudication :

> "Whether the workmen shown below should be treated as permanent workmen from the day they are working in Steel Authority of India Ltd., Kaligam yard and whether they should be paid wages, dearness allowance and other allowances as per the rules of the company from that date?"

[8] On behalf of the concerned workmen, statement of claim at Exh. 6 was filed by the President of Gujarat Mazdoor Panchayat. In the statement, it was mentioned that the concerned workmen were/are working in Kaligam yard since years and were/are doing work of unloading, separating and stacking materials at different places as well as work of loading the same in trucks of customers of S.A.I.L. It was claimed in the said statement that the above-referred to works are permanent in nature and without these activities, business of Company would come to a standstill. It was further mentioned therein that all these works/activities would continue so long as the stockyard is in existence, and that concerned workmen were/are doing the job manually and also with

cranes, tools etc. supplied by S.A.I.L. The case pleaded in the statement of claim was that the iron material was/is coming for sale to the yard from different manufacturing plants of S.A.I.L. through trains and trucks, and that all types of materials were/are separated and stacked at different places in the stockyard as per stacking plan as well as handling and storage guidelines laid down by S.A.I.L. Further, it was stated in the statement of claim that the workmen were/ are also doing the work of loading materials in the trucks and trailers brought by the customers from the stockyard and that the work of stockyard is going on in three shifts i.e. round the clock. As per the claim advanced in the statement of claims, names of concerned workmen were not mentioned in the Registers of S.A.I.L., but were mentioned in the Registers of dubious intermediaries i.e. contractors engaged by S.A.I.L. What was asserted was that, in fact, the work which the concerned workmen were/are performing, was/is not of the contractor nor for the benefit of the contractor, but the contractor being a dubious intermediary, a make-believe trapping, a name lender and facade brought in by S.A.I.L. with the sole motive of exploiting the concerned workmen, the workmen were entitled to be treated as employees of S.A.I.L. After referring to the tests laid down by the Supreme Court to ascertain whether the contractor employed by principal employer was sham and bogus, it was pleaded in the statement of claim that having regard to continued employment of workmen concerned in the stockyard under the control and supervision of S.A.I.L., and other factors, the workmen should be regarded as employees of S.A.I.L. By filing statement of claim, Gujarat Mazdoor Panchayat prayed the Industrial Tribunal to render an award declaring that the concerned workmen working in the stockyard of S.A.I.L. located at Kaligam were/are permanent workmen of S.A.I.L. from the date they were working in the stockyard and entitled to basic pay, dearness allowance and other allowances as per the Rules and Regulations of the said Company.

[9] On service of summons, S.A.I.L. filed reply at Exh. 9 and contended, inter alia, that having regard to the liberalised imports as well as competition from private sectors and unsteady supply of materials from manufacturing plants, it was/is not in a position to maintain regular, systematic or permanent labour force for its handling operations carried out at the stockyard, and had entered and enters into a contract with handling contractor capable of handling iron and steel materials at the stockyard, who engages his own labourers and handles steel materials on the terms and conditions mentioned in the contract, and therefore, the workmen employed in the stockyard are not entitled to the declaration sought for in the statement of claim. It was averred in the written statement that S.A.I.L. pays amount to handling contractor per tonne and as there is no privity of contract between the workers engaged by handling contractor and S.A.I.L., the reference should be dismissed. According to S.A.I.L., the wages of concerned workmen were/are paid by the handling contractor/s

as per terms and conditions determined between the handling contractor and the workmen with which S.A.I.L. has no concern whatsoever and, therefore, reliefs claimed should be denied to the workmen. What was pleaded in the written statement was that officers of S.A.I.L. are signing Salary Register of the concerned workmen only as a witness and as the work which is being performed by workmen is not of a permanent nature, reliefs claimed should be denied to the workmen. It was also pointed out in the written statement that the handling contractor regularly sends returns to the Labour Officer, deducts provident fund from the wages payable to the workmen as well as deposits the same in the accounts of the workmen, and therefore, the demands made in the statement of claim should not be granted.

[10] S.A.I.L. produced five documents vide list Exh. 25 in support of its case pleaded in the written statement. They were : (i) original contract dated October 23, 1993 entered into with Bardhan & Co., (ii) statement of terms of the contract dated August 20, 1993, (iii) guidelines to be complied with by the handling contractor, (iv) a xerox copy of the registration certificate issued to the handling contractor, and (v) a xerox copy of labour licence granted under the provisions of the Act. In support of the reference, Gujarat Mazdoor Panchayat examined Dhanu Prasad Ram Ajor at Exh. 10; whereas in support of averments made in the written statement, S.A.I.L. examined Rajeshsing Shyamkishoresing, who was manager of Bardhan & Co. at Exh. 20 and M. Narayan Pillai, an officer of S.A.I.L., at Exh. 22.

[11] On the basis of (i) statement of claim, (ii) written statement filed by S.A.I.L., (iii) documentary evidence produced by S.A.I.L., (iv) oral evidence adduced by the parties, and (v) arguments advanced on behalf of the parties, four issues for determination were framed by the Tribunal. They were : (i) whether tools with which concerned workmen work and the place of yard belong to the Company? (ii) whether contractor Bardhan & Co. has recruited the concerned workmen? (iii) whether Steel Authority of India Ltd. proves that the contract of Bardhan & Co. is legal? and (iv) whether the concerned workmen are entitled to get salary, dearness allowance and other benefits which are being given to other permanent workmen of the Company?

[12] On critical analysis of the evidence adduced by the parties, the Industrial Tribunal held that it was proved that Kaligam Yard is of the ownership of S.A.I.L. After referring to the xerox copy of the Registration Certificate produced at Exh. 30, the Tribunal noticed that during the period from May 19, 1973 to May 18, 1975, Ratansing and Madanlal Sharma were awarded handling contracts, but no particulars were produced by S.A.I.L. to indicate as to whether, thereafter, any contract for handling materials received at the stockyard was entered into with any handling contractor, or whether the Company itself was taking the work of loading and unloading materials from the concerned workmen. The Industrial Tribunal deduced that the concerned workmen

were not recruited/ employed by Bardhan & Co. and were rendering services in the stockyard since years. The Industrial Tribunal further deduced that concerned workmen were/ are serving under the supervision, control and direction of S.A.I.L. since years. The Tribunal noticed that the reference of the dispute was made to the Tribunal on July 31, 1993, after which handling contract was entered into by S.A.I.L. with Bardhan & Co. on October 23, 1993, for which stamp paper was purchased on January 3, 1994, but there were no signatures or seals of any officers of S.A.I.L. on the agreement, and therefore, the handling contract was fabricated to deprive the workmen concerned of their lawful rights. The Tribunal further found that the term of the handling contract with Ratansing and Madanlal Sharma was over in the year 1975, but no evidence was adduced by S.A.I.L. to establish that it had entered into contract with any other handling contractor for carrying out handling operations after 1975, which indicated that S.A.I.L. itself was taking work of loading and unloading from the concerned workmen since years and that concerned workmen were entitled to declaration that they were permanent workmen of S.A.I.L. In view of the above-referred to conclusions, the Tribunal by award and order dated November 8, 1996 has held that the concerned workmen working in the stockyard located at Kaligam, Sabarmati, Ahmedabad, are permanent workmen/employees of S.A.I.L., and has directed S.A.I.L. to pay salary, dearness allowance and other benefits to them as per the rules and regulations of the Company from July 31, 1993, giving rise to the abovenumbered two petitions.

[13] Mr. K. S. Nanavati, learned Senior Advocate of the petitioner Company, argued that if the contract is sham and bogus and/or not genuine, the workmen of the so-called contractor can raise an industrial dispute for declaring that they were always employees of the principal employer, and for claiming appropriate service conditions, but if the industrial adjudicator comes to a conclusion that the contract is not sham and is genuine, the reference will have to be rejected. After emphasising that while recording findings of facts, the Tribunal has not considered material evidence, and reached conclusions on the manifest misreading of evidence, it was argued that a writ of certiorari should be issued as conclusions reached are perverse. The learned Counsel contended that not only the evidence on record namely, different clauses of contract between the petitioner and Bardhan & Co. are not considered, but wrong test is applied while deciding the reference and as findings recorded on jurisdictional facts have been reached unreasonably and arbitrarily, the matter should be remanded to the Tribunal for a fresh consideration after setting aside the impugned award. What was argued was that evidence of witness of Bardhan & Co. and that of S.A.I.L. would indicate that all the workmen were serving under supervision, control and direction of Bardhan & Co., since years, and therefore, the reference should have been dismissed. The learned Senior Advocate of the petitioner contended that Dhanu Prasad Ram Ajor, who is

examined by the respondent No. 1, has admitted in his evidence that at the time when he joined the service, Mangadhram was the contractor and after Mangadhram, Nebrus was the contractor, after which, Intercity and New Maha Gujarat were the contractors, and thereafter, Nitex came as contractor and then Western Caterers, Durga Crane Company, Shri Chand Rolling Mills, Bhatia Company, R. C. Gupta and Bardhan & Co. were the contractors, which indicates that right from the beginning, genuine contract system was in existence, and therefore, the reference should have been dismissed. According to the learned Senior Advocate of the petitioner, declaration made by the Tribunal to the effect that concerned workmen working in the stockyard located at Kaligam, Sabarmati, Ahmedabad, are permanent workers of S.A.I.L., is based on the finding that labour contract between the petitioner and Bardhan & Co. was fabricated and as the said finding is perverse, the award of the Tribunal should be set aside. The learned Senior Advocate urged that evidence on record indicates that after issuing tender notice for appointment of handling contractor, Bardhan & Company (Handling) Contractors Private Limited was appointed as handling contractor and as the said contract was neither sham nor bogus, the declaration made by the Tribunal that the workmen working in the stockyard of S.A.I.L. located at Kaligam, Sabarmati, Ahmedabad, are permanent workmen of S.A.I.L. deserves to be set aside. It was emphasised that it is an undisputed position that tender submitted by Bardhan & Co. was accepted by S.A.I.L. in the year 1993 and in cross-examination of the witness examined by the petitioner, it was nobody's case that the contract with Bardhan & Co. was fabricated or that Bardhan & Co. had started work as contractor in the year 1994, and therefore, the declaration, which is essentially based on the finding that the contract with Bardhan & Co. was fabricated, should be set aside. The learned Senior Advocate of the petitioner referred to the averments made in the written statement filed by the petitioner to the Statement of Claim, for emphasising the fact that permanent workmen of S.A.I.L. are doing office work, clerical work and supervisory work whereas the concerned workmen employed in the stockyard are doing work of loading and unloading materials, which is not being performed by the regular employees of S.A.I.L., and therefore, the workmen employed in the stockyard are not entitled to declaration that they are permanent employees of S.A.I.L. What was asserted was that the evidence on record establishes the facts, namely, that : (a) wages are being paid to the workmen employed in the stockyard by the contractor, (b) Pay Register is being maintained by the contractor, (c) the contractor has to prepare bill in terms of the workmen engaged by him, (d) the contractor regularly sends returns to the Labour Officer as required by law, (e) Presence Register is maintained by the contractor, (f) the contractor regularly deducts provident fund from salary of the workmen and deposits the same in the accounts of workmen, which in turn indicate that the workmen working in the stockyard of S.A.I.L. are workmen of the contractor appointed by S.A.I.L., but not of S.A.I.L. and, therefore, the petition should be

accepted. The learned Senior Advocate of the petitioner pleaded that the fact that the workmen concerned were working in the stockyard since years is of little importance inasmuch as workmen were continued in service in view of directions issued by the High Court in Special Civil Application Nos. 8007 of 1990 and 8167 of 1990 wherein prayers for abolition of labour contract system and referring the matter to the Advisory Body constituted under the Act for opinion are made, and therefore, the said factor which is relied upon by the Tribunal while making the declaration in favour of the concerned workmen, should not be given undue importance by this Court. After referring to the provisions of Sec. 2 of the Act, it was contended by the learned Senior Advocate of the petitioner that it is presupposed that the employees will be working in the place belonging to principal employer, and therefore, the fact that the concerned workmen were working in the place belonging to S.A.I.L. should not have been overemphasised by the Tribunal while answering the reference. What was maintained was that the tests laid down in Sec. 10(2) of the Act which are relevant for abolition of contract system cannot be taken into consideration while determining whether the contract is sham or bogus and as the Tribunal has taken into consideration those tests for coming to the conclusion that the labour contract entered into between S.A.I.L. and Bardhan & Co. was not genuine, the award impugned in the petition should be set aside.

According to the learned Senior Advocate of the petitioner, the fact that tools were made available to the workmen for discharging their duties is of little consequence inasmuch as the same were made available for a price to the contractor, and therefore, the award which is based on irrelevant considerations should be set aside. Commenting upon the finding recorded by the Tribunal to the effect that there was control and supervision of S.A.I.L. over the work performed by the concerned workmen in the stockyard, it was emphasised that the nature of the work performed is such which needs supervision and giving of instructions by S.A.I.L., and therefore, it should not have been taken into consideration while answering the reference. The learned Senior Advocate emphasised that burden of proof is on the workmen to establish that they are not employees of independent contractor engaged by S.A.I.L., but they are, in fact, employees of S.A.I.L. and as the concerned workmen have failed to discharge burden of proof, the petition should be allowed by setting aside the impugned award. After exhaustively reading over the award impugned in the petition, it was stressed that what has weighed with the Tribunal in granting the declaration in favour of the concerned workmen is that the contractor and S.A.I.L. have violated the provisions of the Act and the Rules, which cannot be taken into consideration as one of the relevant factors for deciding the issue, whether the contract is sham or genuine, and therefore, the petition should be accepted. It was argued that the dispute, namely, whether the

employees employed by the labour contractor should be treated as employees of S.A.I.L. was, in fact, not referred to the Tribunal for adjudication and as the relevant evidence could not be produced by S.A.I.L. to establish that, in fact, concerned workmen employed in the stockyard were employees of the contractor and that the labour contract entered into between S.A.I.L. and the labour contractor was genuine, the matter should be remanded to the Tribunal for fresh adjudication after giving opportunity to the parties to lead evidence in support of their respective cases. The learned Senior Advocate of the petitioner referred to : (a) two petitions namely, Special Civil Application Nos. 8007 of 1990 and 8167 of 1990 wherein the respondent No. 1 has prayed for abolition of contract system and to refer the matter to the Advisory Body constituted under the Act for its opinion, (b) settlement under Sec. 2(P) of the Industrial Disputes Act, 1947, arrived at between Bardhan & Co. and the respondent No. 1 in the matter of wages and other Service Conditions of the workmen employed in the stockyard, (c) communication dated December 2, 1995 addressed by Bardhan & Co. to S.A.I.L. indicating that licence under the Act was renewed up to October 22, 1996, (d) communication dated October 22, 1993 addressed by S.A.I.L. to the Registering Officer under the Act stating that Bardhan & Company (Handling) Contractors Private Limited, were appointed as new handling contractor with effect from October 22/23, 1993, and requesting the Registering Officer to amend the Registration Certificate duly incorporating particulars of the new contractor mentioned therein, (e) intimation dated October 16, 1993 given by Bardhan & Co. to the Branch Manager of S.A.I.L. conveying that the charge of the stockyard located at Kaligam, Sabarmati, Ahmedabad, would be taken over on October 23, 1993, (f) terms and conditions of the contract for handling iron and steel materials at the stockyard entered into between S.A.I.L. and the contractor, (g) Inter Office Memo issued by S.A.I.L. indicating payment made to handling contractor, M/s. Bhatia Crane, and (h) Memorandum of Settlement under Section 2(P) of the Industrial Disputes Act, 1947 arrived at between Shree Durga Crane Company and the General Secretary of the respondent No. 2 produced on record of Special Civil Application No. 10225 of 1996, and pleaded that as the contract labour system adopted by S.A.I.L. is genuine, the declaration made by the Tribunal to the effect that the concerned workmen working in the stockyard located at Kaligam, Sabarmati, Ahmedabad, are permanent workmen of S.A.I.L. should be quashed or in the alternative, the matter should be remanded for fresh consideration by the Tribunal. In support of abovereferred to submissions, the learned Senior Advocate placed reliance on the decisions in : (a) Syed Yakoob v. K. S. Radhakrishnan, & Ors., AIR 1964 SC 477 : 1964 (5) SCR 64, (b) Vegoils Pvt. Ltd. v. The Workmen, AIR 1972 SC 1942, (c) M/s. Raza Textiles Ltd., Rampur v. The Income-tax Officer, Rampur, AIR 1973 SC 1362, (d) R. K. Panda & Ors. v. Steel Authority of India & Ors., 1994 (5) SCC 304,

(e) Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha & Ors., AIR 1995 SC 1893, (f) Achutananda Baidya v. Prafullya Kumar Gayen & Ors., 1997 (5) SCC 76, (g) Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors., AIR 1999 SC 2577, (h) Steel Authority of India Ltd. & Ors. v. National Union Water Front Workers & Ors., AIR 2001 SC 3527 (Paragraphs 100 & 105), (i) Pramukh Sampadak, Marathi Vishwakosh, Wai & Ors. v. Dhairyasheel S. Phalke & Ors., 2001 Lab. I.C. 2587, (j) Hari Shankar Sharma & Ors. v. Artificial Limbs Manufacturing Corporation & Ors., 2002 (1) SCC 337, (k) Municipal Corporation of Greater Mumbai v. K. V. Shramik Sangh & Ors., 2002 (4) SCC 609, and (l) Trambak Rubber Industries Ltd. v. Nashik Workers Union & Ors., 2003 (6) SCC 416.

[14] Mr. R. Venkataramani, learned Senior Advocate of the respondent No. 1, contended that the award impugned does not suffer from any infirmity warranting interference by the Court in a petition filed under Art. 226 of the Constitution, and therefore, the same should be upheld. According to the learned Senior Advocate of the respondent No. 1, the Industrial Tribunal has acted within the confines of the reference as well as considered all the evidence adduced by the parties, and as the Tribunal has neither shut out the parties from leading evidence nor has omitted to consider the evidence led before it, the petition should be dismissed more particularly when scope of issuance of writ of certiorari, as explained by the Supreme Court in Syed Yakoob v. K. S. Radhakrishnan, & Ors., AIR 1964 SC 477 : 1964 (5) SCR 64, is limited. After emphasising that it is well settled that High Court under Art. 226 will not interfere in weighing of the evidence led before the Tribunal as if High Court is sitting in appeal, it was argued that a finding of fact cannot also be challenged on the ground that relevant and material evidence adduced before the Tribunal was insufficient and inadequate to sustain the finding and, therefore also, the petition should be dismissed. According to the learned Senior Advocate of the respondent No. 1, the Tribunal considered the four issues merely with a view to recording finding and answering the reference, and therefore, the plea that issues dealt with by the Tribunal are irrelevant or misconceived should not be entertained by this Court while exercising powers under Art. 226 of the Constitution. The learned Senior Advocate of the respondent No. 1 explained that the four issues or questions which have been framed by the Tribunal can be comprised into a single proposition as to whether the concerned workmen were employed by the contractor or by the petitioner, and this question having been answered in favour of the concerned workmen on appreciation of oral as well as documentary evidence adduced by the parties before the Tribunal, the petition should not be accepted. The learned Senior Advocate of the respondent No. 1 emphasised that the finding of the Tribunal on the genuineness of contract entered into between the labour contractor and S.A.I.L. is unassailable, and therefore, the petition should be dismissed. After explaining that it is true that, initial, burden of proof to prove the fact that the concerned workmen are

workmen of S.A.I.L. and not of contractor rested upon the workmen, it was pointed out that by their claim statement and oral evidence, the concerned workmen have established that they were never recruited by any of the contractors or they were ever under control and supervision of the so-called contractor including Bardhan & Co., and therefore, the finding reached by the Tribunal that the concerned workmen, were in fact, employees of S.A.I.L. deserves to be upheld. It was argued that the best evidence in the form of execution of genuine contract from the beginning as well as employment record was not produced by the writ petitioner before the Tribunal, and therefore, the writ petitioner is not entitled to claim that the award impugned in the petition is liable to be set aside as the concerned workmen had failed to discharge burden of proof lying on them. What was maintained was that it is well settled that once the parties have led evidence understanding the nature of the case to be met, and the Court has recorded findings on the basis of evidence led, the question of burden of proof becomes academic in nature, and should not be made a ground by this Court for setting aside the impugned award. It was asserted by the learned Senior Advocate of the respondent No. 1 that there is no merits in the submission that in view of materials now sought to be pressed into service before this Court, the matter should be remanded to the Tribunal because nothing prevented the writ petitioner from producing these materials before the Tribunal and power to remand available under the provisions of Order XLI, Rule 25 of the Code of Civil Procedure, 1908 should be exercised sparingly and not for the purpose of fresh adjudication or to enable the writ petitioner to fill up gap in evidence. The learned Senior Advocate of the respondent No. 1 took strong objection to the reliance placed by the learned Senior Advocate of the petitioner on the documents produced for the first time along with petition, and contended that the additional materials should not be taken on record or looked into by this Court as looking into the said materials is opposed to principles of fairness. It was pointed out that it would be improper for this Court to criticise the award of the Tribunal with reference to the materials/documents produced for the first time along with the petition as the Tribunal had no occasion or opportunity to deal with those documents, and the Court while exercising powers under Art. 226 of the Constitution should not permit the petitioner to rely upon additional material in support of the plea that the concerned workmen were workmen of the labour contractor. In the alternative, it was argued that even if additional materials are considered by the Court, none of these materials advances the case of the writ petitioner to the effect that the concerned workmen were the workmen of the contractor inasmuch as due execution of document dated October 23, 1993 would not depend upon any other material anterior in point of time put in by the parties who have no concern with the execution of the document dated October 23, 1993, and therefore, the petition should be dismissed. It was argued that it would be absurd to test the validity and genuineness of the document dated October 23, 1993 allegedly executed between Bardhan & Co. and S.A.I.L., on the basis

of settlement between the respondent No. 1 and Bardhan & Co., and therefore, the plea based on 2(P) Settlement should not be accepted by the Court. The learned Senior Advocate of the respondent No. 1 contended that a mere physical presence of the alleged contract prior to October 23, 1993 cannot lead to the conclusion that the contract between S.A.I.L. and Bardhan & Co. was genuine or bona fide more so when Bardhan & Co. had not employed the concerned workmen at all, and therefore, the petition based on additional evidence should be dismissed. The learned Senior Advocate stressed that the writ petitioner has not demonstrated either before the Tribunal or before this Court that owing to the genuine requirement of labour contract, the workmen in question were always engaged as contract labourers through the contractors to whom contracts were given from time to time, and therefore, mere drawing of a formal instrument being of no consequence, the award impugned in the petition should be upheld. In support of his submissions, the learned Senior Advocate has placed reliance on the decisions in (a) Management of Bihar Khadi Gramodyog Sangh, Muzffarpur v. State of Bihar & Ors., 1977 Lab. IC 466, (b) The Co-operative Tea Society Limited v. Plantation Workers Union, 1977 (II) LLJ 16, (c) Husainbhai, Calicut v. Alath Factory Thezhalali Union, Kozhikode, 1978 (37) FLR 136 : AIR 1978 SC 1410 : 1978 Lab. IC 1264, (d) AIR 1978 SC 581, (e) Shaw Wallace & Company Ltd. v. First Industrial Tribunal, W.B. & Ors., 1986 Lab. IC 2030, (f) Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat v. Hind Mazdoor Sabha & Ors., 1995 (5) SCC 27, (g) Standard Vacuum Refining Company of India Limited v. Their Workmen & Anr., AIR 1996 SC 1948, (h) Steel Authority of India Ltd. & Ors. v. National Water Front Workers & Ors., AIR 2001 SC 3527.

[15] Mr. Girish Patel, learned Senior Advocate of the respondent No. 2, pleaded that neither any jurisdictional error is committed by the Tribunal nor any patent error of law on the face of record is committed by the Tribunal in granting declaration in favour of the concerned workmen nor the findings which are based on appreciation of evidence are perverse nor the findings recorded are irrational or unreasonable, and therefore, the scope of interference with the award of the Tribunal in a petition under Art. 226 of the Constitution being limited, the petition should be dismissed. After emphasising few basic principles of approach, which the High Court should adopt while examining validity of the award of the Industrial Tribunal, such as (a) the entire purpose of the industrial adjudication of industrial dispute is industrial peace and harmony, (b) the Tribunal has wider powers than the ordinary Civil Court, (c) Court's approach should be to uphold the Tribunals' awards as far as possible and not to upset it by searching some loopholes here and there or on some ordinary lapses or technical errors, (d) industrial disputes are between two unequal parties out of which Management has its resources, information, expertise etc. whereas workers who are merely wage earners have no resources, no access to informations etc., (e) industrial law is always

concerned with the substance of the matter and not with the form and the Tribunal is, therefore, concerned with the real relations between the parties and not mere paper arrangements, (f) the Tribunal has to consider all materials on record brought before it by the parties having regard to the principles of broad probabilities, (g) Courts should have holistic approach to the Tribunal's award not merely piecemeal and should look to the award as a whole in its totality to find out the true picture, (h) the Parliament has conferred exclusive jurisdiction upon Industrial Tribunal to decide all the questions of industrial disputes including its own jurisdiction to the exclusion of all other Courts, and (i) limited scope of interference in a petition under Arts. 226 & 227 of the Constitution, it was argued that the petition which lacks merits should be dismissed. The learned Senior Advocate of the respondent No. 2 pointed out that though it is well settled that the award of the Tribunal can be challenged under Arts. 226 and/or 227 or both, choice is with the petitioner, but the question, whether the petitioner has chosen to approach High Court under Art. 226 or 227 of the Constitution should be decided with reference to the pleadings as well as by finding out, whether the Tribunal, which should have been impleaded as party in a petition under Art. 226, is impleaded as party or not, and as the petitioner has failed to implead the Tribunal as party, instant petition should be treated as having been filed under Art. 227 of the Constitution, which should be dismissed having regard to the limited scope of interference available to High Court. According to the learned Senior Advocate of the respondent No. 2, the only materials before the Tribunal were : (i) charter of demand dated March 21, 1992, (ii) Company's reply dated June 26, 1993, (iii) Reference dated July 31, 1993, (iv) Statement of claim filed by the respondent No. 1, (v) reply of the Company, (vi) evidence of three witnesses, and (vii) five documents produced by S.A.I.L., and after considering all these materials and the submissions advanced on behalf of the parties, the Tribunal has recorded the findings namely, (a) 160 workers are concerned in the dispute, (b) these workers have been working since many years and few of them even more than 20 years, (c) the Company is working in three shifts round the clock for 24 hours, (d) workers have remained the same, but the contractors have been changed from time to time, (e) work is of permanent and perennial nature and not merely contingent, occasional or temporary, (f) work of loading and unloading is integral and essential part of the business of the company and without this work, the company cannot sell its products, (g) company has continued to engage a substantial number of workers and not merely two or three or four workers, (h) though there is a reference in the evidence to the contractors coming and going, the company has not given any details about them either in oral evidence or by way of documents, (i) all the important aspects, namely, the yard place, the tools, the materials to be handled, the supervision and guidance, the detailed instructions etc. belong to the company, (j) there is supervision and control of S.A.I.L. over the concerned workmen, (k) the workmen concerned are not engaged by the contractors, (1) neither the company nor the

contractor has brought any evidence whatsoever to show the position of the workmen immediately before the so-called Bardhan and Co., contractor, etc., and these findings based on appreciation of evidence should not be set aside by the Court. After submitting that the tests or criteria, for deciding whether the concerned workmen are the workmen employed by the contractor or S.A.I.L., are; (a) the traditional control test, (b) all factors to be cumulatively considered, and (c) the organisation test, i.e. to which organisation the workers belong, it was argued that correct tests having been applied by the Tribunal, the award rendered by it should be upheld by the Court. The learned Senior Advocate emphasised that instant petition having been filed essentially under Art. 227 of the Constitution, no new evidence should be permitted to be led more particularly when the award or judgment of adjudicatory authority is before the Court. It was pleaded that the writ petitioner has tried to bring totally new evidence on record of the petition, but the new evidence never formed part of the record of the Tribunal at any stage, and therefore, the new documents sought to be relied upon should not be taken into consideration by the Court. In the alternative, it was argued that even if additional materials sought to be relied upon by the petitioner are considered, the same do not advance the case pleaded by the petitioner inasmuch as demand for abolition of the contract labour system made in two writ petitions does not debar the concerned workmen from raising the dispute before the Tribunal that the concerned workmen are the direct employees of the S.A.I.L. and the contract system, if any, is merely a facade nor 2(P) settlement debars the union from contending that the workers are the real employees of S.A.I.L. and not of the contractor. It was explained that once the so-called contractor was sought to be brought on paper, the workers were induced by way of safety and precautions to secure their terms and conditions of service with the contractors, but that does not exclude their right to contend that they are really the workers of S.A.I.L., and therefore, 2(P) settlement is of little consequence. The learned Senior Advocate of the respondent No. 2 contended that no ground is made out by the writ petitioner to interfere with the well-reasoned declaration made by the Tribunal that the concerned workmen are the workmen of S.A.I.L., and therefore, the petition should be dismissed with costs. In support of his submissions, the learned Senior Advocate placed reliance on the decisions, (a) Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & Anr., AIR 1963 SC 786, (b) Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Khozhikode, AIR 1978 SC 1410, (c) Mohd. Yunus v. Mohd. Mustaqim & Ors. AIR 1984 SC 38, (d) Sadhu Ram v. Delhi Transport Corporation, AIR 1984 SC 1467, (e) Gujarat Mineral Development Corporation v. Presiding Officer, Labour Court & Ors. 1986 (1) GLR 410, (f) Umaji Keshao Meshram & Ors. v. Smt. Radhikabai & Anr., AIR 1986 SC 1272, (g) Catering Cleaners of Southern Railway v. Union of India & Anr., AIR 1987 SC 777, (h) Kendriya Karamchari Sahkari Grih Nirman Samiti Ltd. & Anr. v. The New Okha Industrial Development Authority & Ors., AIR 1988 SC 1, (i) Calcutta Port Shramik

Union v. The Calcutta River Transport Association & Ors., AIR 1988 SC 2168, (j) Sankar Mukherjee & Ors. v. Union of India & Ors., AIR

1990 SC 532, (k) Gujarat Mazdoor Panchayat v. State of Gujarat & Ors.,

1991 (2) GLR 1354, (1) Gujarat Electricity Board, Thermal Power Station, Ukai v. Hind Mazdoor Sabha & Ors., AIR 1995 SC 1893, (m) Food Corporation of India Workers' Union v. Food Corporation of India & Anr., 1996 (9) SCC 439, (n) Secretary, Haryana State Electricity Board v. Suresh & Ors., AIR 1999 SC 1160, (o) Indian Petrochemicals Corporation Ltd. & Anr. v. Shramik Sena & Ors., AIR 1999 SC 2577, (p) Municipal Corporation of Greater Mumbai v. K. V. Shramik Sangh & Ors., 2002 (4) SCC 609, and (q) M/s. Bharat Heavy Electrical Limited v. State of U.P. & Ors., 2003 (6) SCC 528 : 2003 AIR SCW 3469.

[16] This Court has considered the arguments advanced by all the three learned Senior Advocates at length and in great detail, as well as documentary and oral evidence adduced by the parties before the Tribunal and also the documents forming part of Special Civil Application No. 10225 of 1996. Though, several decisions have been cited at the Bar for guidance of the Court, the Court does not propose to deal with all of them in detail and burden unnecessarily the judgment which is otherwise also lengthy because the question posed for consideration of the Court has to be decided with reference to the facts and circumstances as emerging from the record of the case.

[17] The position of law, which emerges from the reported decisions of the Supreme Court, is that workmen working under a contractor are entitled to raise a demand that they should be declared as workmen of the principal employer. It is always open to the workmen concerned to place materials before the industrial adjudicator to show that the contract between the principal employer and the contract labourer is sham or not genuine, and claim declaration that they were always the employees of the principal employer and are entitled to appropriate service conditions. When such a dispute is raised, it is not a dispute for abolition of labour contract. Hence, the provisions of Sec. 10 of the Act will not bar either the raising, or the adjudication, of such a dispute. When such a dispute is raised, industrial adjudicator has to decide whether the contract is sham or genuine. It is only if adjudicator comes to a conclusion that the contract is sham, then he will have jurisdiction to adjudicate the dispute. If however, he comes to a conclusion that the contract is genuine, he will have to dismiss the reference and may refer the workmen to the appropriate Government for abolition of contract labour under Sec. 10 of the Act.

In the light of abovereferred to principles of law, the dispute raised in the petition will have to be considered by this Court. However, before resolving the dispute raised in the petition, it would be relevant to advert to oral evidence adduced by the parties before the Tribunal.

[18] Mr. Dhanu Prasad Ram Ajor was examined by the respondent No. 1 at Exh. 10. He has stated in his evidence that he is working in the stockyard of S.A.I.L. since 18 years and that, in all, 160 workers are employed. According to him, the workmen are doing the work of loading, unloading, shifting, stacking, sorting, etc. of materials belonging to the company, which are received from Rourkela, Bokaro, Durgapur, Bhilai, etc. by rail/road. The witness has explained that the yard belongs to S.A.I.L. and electrical poles erected therein also belong to S.A.I.L. and S.A.I.L. pays electricity bill. It is also stated by him that tracks on which racks arrive in the yard belong to the company and the office building situated in the yard also belongs to S.A.I.L. The witness has mentioned that the goods received are sold from the stockyard and that the workmen after unloading the goods from the rack, load the same again in trucks belonging to the consumers after sale is effected. The witness has also claimed that after unloading of the goods from wagons, the same are stacked at the places as instructed by the officers of S.A.I.L. The witness has claimed that the goods are being stacked and kept either at the bottom or at the top as per instructions of Superintendent of S.A.I.L. It is further mentioned by him that Superintendent of S.A.I.L. decides as to which goods should be kept where, and accordingly, the goods are stacked. According to this witness, after sale is effected, the company, i.e. S.A.I.L., issues instructions in writing and as per those instructions, goods are required to be loaded in a particular truck. The witness has mentioned in the evidence that each worker has to work for eight hours a day in the yard of S.A.I.L. and the yard continues its activities for 24 hours. According to this witness, provident fund of the workers concerned is being deducted from the year 1980 and there are some workers, who are rendering services before he joined the service. The witness has mentioned that Mangadhram was the contractor when he joined the service, after which Nebrus was appointed as contractor and thereafter, Intercity was the contractor, after which, Nitex came as contractor and then, Western Retainers, Durga Crane Company, Shri Chand Rolling Mills, Bhatia Company, R. C. Gupta and Bardhan & Company came as contractors. What is asserted by him is that though the contractors have been changed from time to time, workers have remained the same. The witness has stated that the workers do not know as to when contractors are changed. It is also asserted that there are workers in the plants of S.A.I.L. who perform the same duties as are being performed by the workmen in the stockyard located at Kaligam. The witness has claimed that the workmen working in the stockyard were not paid wages, allowances, other benefits, etc. which were paid to the workers discharging same duties in the

plants of S.A.I.L. What is emphasised by the witness examined by the respondent No. 1 is that if the workmen stop work in the stockyard, S.A.I.L. cannot sell the goods. It is also mentioned by this witness that there are many cranes in the yard, and they are also being operated by the workmen employed in the stockyard.

In cross-examination, the witness has stated that the contractor pays salary to the workmen, but the amount of salary is made available to the contractor by S.A.I.L. It is further stated by the witness that the contractor deposits provident fund amount and contributory provident fund of the employer, and muster roll is of S.A.I.L., but Pay Register and Presence Register are of the contractor. According to this witness, the contractor carries out the work of loading and unloading the goods of S.A.I.L. The witness has denied the suggestion made by the petitioner that there was no supervision of S.A.I.L. on the work of contractor. In cross-examination, the witness has maintained that the workers stack goods as instructed by Superintendent of the company, and further claimed that there are about 10 to 12 Superintendents of S.A.I.L. discharging duties in the stockyard. What is asserted by the witness in cross is that though S.A.I.L. has given the work contract, the entire work is being carried out under the supervision of Superintendents of S.A.I.L.

[19] On behalf of Bardhan & Co., Mr. Rajeshsing Shyamkishoresing was examined at Exh. 20. He claimed that he was Manager of Bardhan & Co. since 1993 and that S.A.I.L. had accepted tender of Bardhan & Co. in respect of handling of materials at the stockyard located at Kaligam. This witness has mentioned that according to the agreement with S.A.I.L., loading and unloading of materials is to be done by Bardhan & Co., and that Bardhan & Co. was paid at the rate of Rs. 57-00 per ton. After stating that about 150 workmen are engaged for the entire work, it is claimed by the witness that salary to the workers was paid by Bardhan & Co. and even Presence Register was maintained by Bardhan & Co. The witness has further claimed that provident fund was also deducted from the monthly salary of the workmen and that Bardhan & Co. was supervising the work of the workmen.

In cross-examination, the witness admitted that the workmen were working in the stockyard prior to 1993, and that provident fund of the employees was deducted before Bardhan & Co. had started deducting the same from the wages payable to the employees. The witness further stated that Bardhan & Co. was given old code numbers of the employees which were issued by the Office of Provident Funds. It is explained by this witness that the workmen were working when Bardhan & Co. entered into an agreement with S.A.I.L. and Bardhan & Co. had merely shown the workmen on its record. The witness has also admitted in his cross-examination that S.A.I.L. decides as to how the goods are to be stacked, and that the workers have to work as per instructions of the Superintendent of S.A.I.L. The witness has

explained in his cross that the goods, which are sold by S.A.I.L., are delivered from the yard at Kaligam and that the workers load the goods in trucks. What is stated by him is that Bardhan & Co. had not taken with it the workers employed in the stockyard after expiry of the contract with S.A.I.L. and that Bardhan & Co. had nothing to do with the workers after term of the contract was over. This witness has in no uncertain terms admitted that Bardhan & Co. had not engaged 150 workers employed at the stockyard, and he had no knowledge as to when P.F. Account Number was given to the concerned workman.

[20] Mr. M. Narayan Pillai was examined by S.A.I.L. at Exhibit 22. His evidence would indicate that he is serving in S.A.I.L. since 27 years as Senior Supervisor. The witness has stated in his evidence that the goods coming from outside are received in the yard and handling contract for the goods is executed by S.A.I.L. According to this witness, the contract in respect of handling of goods was executed with Bardhan & Co. and that the workers working in the yard are the workers of Bardhan & Co. and that Bardhan & Co. pays salary to the employees. According to this witness, Bardhan & Co. is deducting provident fund amount from the pay of concerned worker and the company has no control or supervision over the concerned workers.

In cross-examination, he admitted that he was not working in the yard and that he was not knowing the concerned workers. He further stated that he had no personal knowledge about working of the concerned workers. What is stated by this witness in the cross-examination is that after the goods are received in the stockyard, the concerned workers place the goods at different places as per the instructions of the Director of S.A.I.L. He also admitted that S.A.I.L. provides tools and tackles to the workers. It was also admitted by him that some of the workers were working in the yard for more than 20 years and that though the contractors were changed, the workers were not changed.

In the light of the above evidence, the question posed for consideration of this Court will have to be answered.

[21] The factors which may establish that a contract between the principal employer and the labour contractor is a mere paper arrangement or an eyewash or a camouflage or a ruse or a facade or a name lender are : (i) activities/ business of the principal employer, (ii) genuine need or requirement of engaging contract labour, (iii) length of continuous and uninterrupted service of workmen, (iv) nature of work done by workmen, i.e. whether the work is perennial in nature or intermittent, (v) who has, in fact, supplied the labour force to the principal employer, meaning thereby, whether the services of the workmen were made available to the principal employer by the labour contractor after making recruitment, (vi) extent of supervision and control of the

workmen by principal employer, (vii) whether the workers do the labour work to produce goods or service for business of the principal employer, and (viii) whether the provisions of the Act relating to registration and licence etc. are complied with. The plea that the industrial adjudicator cannot take into consideration the factors mentioned in Clauses (a) to (d) of Sec. 10(2) of the Act to arrive at the finding as to whether the labour contracts are genuine or not cannot be accepted in view of the principles laid down in Gujarat Electricity Board v. Hind Mazdoor Sabha (supra) at page 67, Paragraph 59.

[22] As observed earlier, the stockyard of S.A.I.L. is located at Kaligam, Sabarmati, Ahmedabad. The stockyard is established in order to cater to the demands of customers of S.A.I.L. At the stockyard, materials produced by the plants of S.A.I.L. are received, which are unloaded, sorted out, stacked and again loaded in the trucks brought by the customers when sale is effected. The handling operations including stacking are carried out with the help of cranes, tools, tackles, equipments, etc. as per stacking plans provided by S.A.I.L. Thus, the main activities/business of the principal employer being carried out at the stockyard is to receive materials from the plants, load them, unload them and sell them.

[23] As far as genuine need or requirement of engaging contract labour is concerned, it is found that all important things/aspects for the purpose of carrying out activities/business of the principal employer at the stockyard such as place of work, tools needed for doing the work, materials to be handled, supervision and guidance, detailed instructions, stacking plans, etc. belong to S.A.I.L., and the evidence does not show that the contractor had brought any of these things after the contract was entered into. No evidence could be led either by S.A.I.L. or by the witness of Bardhan & Co. to establish that the contractor had brought to the company the labour, materials, tools, place of work, facilities, etc. Under the circumstances, a question would naturally arise as to which role was/is being played by the contractor. Except producing a copy of the contract, no better particulars could be furnished by the contractor or S.A.I.L. regarding role played by the contractor. All the important duties such as unloading of materials, sorting them out, shifting of the same, stacking, reloading, etc. are being performed by the workmen. The alleged physical presence of the contractor on the scene is of no consequence when no evidence is led to indicate the work which a contractor was performing pursuant to contract. It is well to remember that the case of the writ petitioner in the written statement was that having regard to liberalised imports as well as competition from private sectors and unsteady supply of materials from manufacturing plants, it is not in a position to maintain regular, systematic or permanent labour force for its handling operations carried out at the stockyard and it enters into a contract with a handling contractor who is capable of

handling of iron and steel materials at the stockyard, who engages his own labourers and handles steel materials on the terms and conditions stipulated in the contract. However, the evidence of witness examined by S.A.I.L. does not establish that there is unsteady supply of materials from manufacturing plants nor it is established that S.A.I.L. is not in a position to maintain regular, systematic or permanent labourers for its handling operations carried out at the stockyard nor it is established that the contractor engages its labourers and handles steel materials. Having regard to these circumstances, this Court is of the firm view that the writ petitioner has failed to demonstrate either before the Tribunal or before this Court that owing to genuine requirement of engaging contract labour, the workmen in question were always engaged as contract labourers through the contractor to whom independent duties were assigned from time to time. Thus, the genuine need or requirement of engaging contract labour is not established by the writ petitioner.

[24] As far as length of continuous and uninterrupted services of the employees working in the stockyard is concerned, it is established beyond doubt that the workers are working since years and some of the workers are rendering services since more than 25 years because evidence of the worker examined on behalf of the respondent No. 1 would indicate that he himself had put in service of 18 years when his evidence was recorded on November 13, 1995 and that there were other workers who were working in the stockyard before he joined the service. The fact that the workers concerned are employed in the stockyard since years is not in dispute and is almost admitted. In order to disprove the claim of the workers that they are employed in the stockyard since years, no evidence worth the name could be adduced by S.A.I.L. nor any particulars could be furnished indicating as to which worker was employed by whom and when. Thus, the fact that the workers concerned were/are employed in the stockyard since years stands well established.

[25] As far as nature of work done by the workmen is concerned, the evidence of Dhanu Prasad indicates that activity in the stockyard goes on round the clock and that each worker has to work for eight hours a day. This means that the stockyard functions in three shifts. The facts that each worker works for eight hours and that there are three shifts in the stockyard are admitted by the witness examined by Bardhan & Co. Though, it is claimed by the witness of S.A.I.L. that workers work in two shifts, it is relevant to bear in mind that the said witness had no personal knowledge about the working of the concerned workmen and that the said witness had not worked in the yard at all. Therefore, his assertion that the workers work in two shifts is of no consequence. The evidence of the witness examined by the respondent No. 1 as well as that of the witness examined by Bardhan & Co. would indicate that the nature of work done by the workers is perennial and permanent in nature and not intermittent at

all. As observed earlier, no evidence could be led by the writ petitioner to establish that because of unsteady supply of materials from manufacturing plants, the labourers were requisitioned intermittently as and when there was work. Therefore, there is no manner of doubt that the nature of work is perennial and not intermittent.

[26] As far as engagement of labourers for doing the work of unloading materials, sorting them out, shifting, etc. is concerned, no evidence is adduced by the writ petitioner to establish that the labourers were engaged by the labour contractors such as, Mangadhram, Nebrus, Intercity, Nitex, Western Retainers, Durga Crane Company, Shree Chand Rolling Mills, Bhatia Company, R. C. Gupta Company and Bardhan & Co.. If the labourers had been engaged by the contractors, the labourers would have been required to leave the job as well as place of work, i.e. stockyard, and would have joined another place of work as and when directed by their master/masters. The terms and conditions of service of labourers stipulated by contractors and accepted by the labourers are not brought on record of the case. The witness of Bardhan & Co. has in terms, admitted that the workers concerned were working in the stockyard before the contract was entered into by S.A.I.L. with Bardhan & Co., and Bardhan & Co. was not concerned with the workmen after the period of contract was over. The evidence on record does not establish that the workmen concerned were recruited by the labour contractors and, thereafter, their services were made available to the writ petitioner. The writ petitioner claims that the workmen are not its employees whereas Bardhan & Co. has claimed that it has no concern whatsoever with the workmen. Naturally, therefore, a question would arise as to who is the employer of the workmen. It is nobody's case that the workmen are self-employed workmen. The writ petitioner could not lead any evidence to show that at the time when the reference was made, an independent handling contractor was appointed who had recruited the workmen. During the pendency of reference, the contract with Bardhan & Co. had come to an end by efflux of time. No evidence could be led by the writ petitioner that after exit of Bardhan & Co. from the scene, another handling contractor was appointed, who had recruited the workmen concerned. Thus, in absence of relevant evidence, the workmen concerned will have to be regarded as employees of the writ petitioner. The claim that the workers have been continued in the stockyard pursuant to directions given by the High Court in the two petitions filed by the workmen, has no substance because the petitions were filed in the year 1990 for protection of service conditions of labourers, but the labourers have been continued in the stockyard at least since 1977. Further, the claim of the witness examined by the respondent No. 1 that the contractors have been changed from time to time, but the workers have remained the same is not demonstrated to be untrue by the writ petitioner. Thus, the fact that the labour contractor has, in fact, supplied labourers by making recruitment to the principal employer is not established at all.

[27] As far as supervision or control over the workmen by the principal employer is concerned, this Court finds that identifying mark of the servant is that he should be under the control or supervision of the employer in respect of the details of work. The question whether there is control or supervision of the principal employer over the workmen or not should be ascertained by finding out as to who is entitled to tell the employee the way in which he has to do work upon which he is engaged. The control includes power to decide things to be done, the way in which it will be done, the means employed in doing it, the time and the place where it shall be done etc. All these aspects of control must be considered for deciding whether right exists in a sufficient degree to make one party the master and the other his servant. The evidence of Dhanu Prasad, who is examined as witness by the respondent No. 1, would indicate that the workers have to unload, sort out, shift, stack, reload the materials as per the instructions of the Superintendents of the writ petitioner. Even the witness of Bardhan & Co. has, in terms, admitted that the workers have to work as per the instructions of the Superintendents of S.A.I.L. If handling contract is entered into with an independent contractor and handling plans are supplied by the writ petitioner, one fails to understand as to why the Superintendents engaged by the writ petitioner should supervise and instruct the workers as to how they should perform their work. The presence of 10 to 12 Superintendents of S.A.I.L. in the stockyard coupled with duty performed by them and instructions given to the workers would indicate that the workmen employed in the stockyard are under control and supervision of the writ petitioner.

[28] So far as the question whether the workers do labour to produce goods or service for the principal employer is concerned, this Court finds that all the major activities of the principal employer carried out at the stockyard are done through the workmen employed. The work of loading and unloading is essential and integral part of business of writ petitioner and without this work, the writ petitioner cannot sell its products. The evidence on record would show that if the labourers stop doing work in the stockyard, the activity in the stockyard would come to a grinding halt. The workers unload, sort out, shift, stack, reload the materials received, for and on behalf of the principal employer and not for the labour contractor. Under the circumstances, there is no manner of doubt that the workmen concerned do the labour work to produce goods or service for business of the principal employer. So far as compliance of the provisions of the Act is concerned, no evidence could be adduced by the writ petitioner to establish that Bardhan & Co. and before that all other contractors had complied with the provisions of the Act. This factor by itself may not be determinative, but is a relevant circumstance, which can be considered along with other factors.

[29] If a cumulative effect of above-referred to factors is taken into consideration, it becomes at once evident that the presence of intermediate contractor with whom alone the workers have immediate or direct relationship, ex-contractu, is of no consequence when on lifting or piercing veil, one discovers that so-called contract of handling entered into with the contractor is a ruse, a facade and a name lender and that the real employer of the workmen is the writ petitioner and not the immediate contractor.

Though,, instant case will have to be decided with reference to the facts and circumstances as emerging from the evidence led by parties, reference to some of the judgments relevant on the point would not be out of place. In Hussainbhai, Calicut (supra), a number of workers were engaged to make ropes within factory, but those workmen, according to the petitioner, were hired by contractors, who had executed agreements with the petitioner to get such work done. Therefore, it was contended that the workmen were not workmen of the petitioner, but the contractors' workmen. The Supreme Court indicated true test with brevity and stated that where a worker or group of workers labours to produce goods or services and these goods or service are for the business of another, that other is, in fact, the employer. What is laid down by the Supreme Court is that the person on whose behalf a worker or a group of workers labours to produce goods or services has economic control over the workers' subsistence, skill and continued employment and the presence of intermediate contractors with whom alone the workers have immediate or direct relationship, ex-contractu, is of no consequence when on lifting veil or looking at the conspectus of factors governing employment, one discerns the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, and not the immediate contractor. What is emphasised by the Supreme Court is that Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industries, the local conditions and the like may be resorted to after ascertaining the true relationship between the parties. Applying these principles to the facts of the present case, this Court finds that the award of the Tribunal impugned in the petition is perfectly in consonance with the principles enunciated by the Supreme Court.

Further, in Union of India & Ors. v. Subir Mukharji & Ors., 1998 (2) SLR 718, the respondents, who were labourers of M/s. Bandel Handling Porters Co-operative Society Limited, were working under agreement dated November 22, 1994. Thus, there was already a society of which the respondents happened to be members and being members, they had been supplied by M/s. Bandel Handling Porters Co-operative Society Limited for doing the work for Eastern Railway. It was found that the work which the respondents had been doing was of perennial nature. The

Central Administrative Tribunal, after considering the evidence on record, had given directions to Union of India and others to absorb the labourers as their employees. The Supreme Court has held that having regard to the quantum of work available on perennial basis, the direction given by the Central Administrative Tribunal was not liable to be interfered with.

Again in M/s. Bharat Heavy Electrical Limited v. State of U.P. (supra), it was found that gardeners engaged through contractor were looking after lawns and parks inside factory premises campus and residential colony of the company and their work was supervised by employee of the company. It was also noticed that attendance of gardeners was recorded by another employee of the company. The Supreme Court while upholding the award of the Labour Court declaring gardeners as employees of the company, has held that the gardeners were employed with the company to work in its premises. The Supreme Court has applied "control" test and held that though the work of gardeners was not integral part of industry of the company that would not make them any the less employees of the company. What is relevant to notice is that in Paragraph 12 of the reported decision, the Supreme Court has held that the case of Hussainbhai, Calicut (supra) is neither dissented from nor diluted by the decision of the Supreme Court in Steel Authority of India Ltd. v. National Union Waterfront Workers, 2001 (7) SCC 1, and the Court has, in fact, relied upon the said decision for the purpose of granting relief to the gardeners.

[30] Applying the principles laid down by the Supreme Court in the above quoted decisions to the facts emerging from the record of the case, this Court finds that a correct approach has been adopted by the Tribunal while adjudicating the dispute referred to it and as it has acted within its domain, the same cannot be interfered with in instant petition.

[31] The plea that writ of certiorari as claimed by the writ petitioner should be issued because evidence on record has not been considered by the Tribunal and the findings have been reached contrary to or without considering and appreciating oral evidence, and after applying wrong tests, has no substance nor the contention that the findings of jurisdictional facts have been reached unreasonably and arbitrarily by ignoring various clauses of the contract between the writ petitioner and the contractor, and therefore, the petition should be allowed, can be accepted. It is relevant to notice that only materials before the Tribunal were; (a) charter of demand dated March 21, 1992 made on behalf of the workmen, (b) writ petitioner's reply dated June 26, 1993 to the same, (c) reference dated July 31, 1993, (d) statement of claim filed by the respondent No. 1, (e) written statement of the writ petitioner, (f) oral evidence of Dhanu Prasad on behalf of the respondent No. 1, (g) oral evidence of witness of

Bardhan & Co., (h) oral evidence of witness of the writ petitioner, (i) original contract dated October 23, 1993 entered into with Bardhan & Co., (j) statement of terms and conditions of contract dated October 23, 1993, (k) guidelines to be complied with by handling contractor, (1) xerox copy of a registration certificate issued to the handling contractor, and (m) xerox copy of labour licence granted under the provisions of the Act. On the basis of the above-referred to materials and the submissions advanced at the Bar, the Tribunal has recorded the findings namely; (i) 160 workers are concerned in the reference, (ii) the workers are doing the work in the stockyard since many years and few of them even more that 20 years, (iii) the company is working in three shifts round the clock, (iv) the workers have remained the same though the contractors have changed from time to time, (v) the work is of permanent and perennial nature and it is neither intermittent nor contingent nor occasional nor temporary, (vi) the work of loading and unloading is integral and essential part of the business of the writ petitioner and without this work the writ petitioner cannot sell its products, (vii) the writ petitioner has continued to engage substantial number of workers and not mere two or three or four workers, (viii) all the important aspects, namely, yard, place, tools, materials to be handled, guidance, detailed instructions, etc. belong to S.A.I.L., and (ix) the workers concerned are not engaged by the contractor.

[32] Above-referred to findings are pure findings of facts reached by the Tribunal after appreciating evidence and, normally, the same cannot be interfered with in a petition, which is essentially filed under Art. 227 of the Constitution.

As noted earlier, by filing instant petition under Arts. 226 & 227 of the Constitution, the petitioner has claimed writ of certiorari to quash the impugned award of the Tribunal. Therefore, it would be instructive to refer to the scope of jurisdiction to issue a writ of certiorari. This question has been considered by a five-Judge Constitution Bench of the Supreme Court in Syed Yakoob v. Radhakrishnan, (supra). In that case, a notification, calling for applications for the grant of two-stage carriage permits for the route Madras to Chidambaram was issued by the State Transport Authority under the Motor Vehicles Act, 1939. Several applications were received. The authority had granted the first permit to one of the applicants and for the second, it was decided to call for fresh applications. The appellant, as also a number of other applicants, had appealed to the State Transport Appellate Tribunal. The Tribunal had confirmed the grant of the first permit and as regards the second, it had allowed the appeal of the appellant and directed that it should be granted to him. Thereupon, the respondent No. 1 had moved the High Court under Art. 226 of the Constitution for the issue of a writ of certiorari and the learned single Judge, who had heard the matter, had held that the Appellate Tribunal had overlooked relevant considerations and allowed irrelevant considerations to prevail.

So holding, the learned single Judge had made the rule absolute. A Letters Patent Appeal was preferred by the appellant. The Division Bench had affirmed the order of the learned single Judge on the ground that the Appellate Tribunal had overlooked material considerations in favour of the respondent No. 1, and dismissed the appeal. The appellant had thereupon approached the Supreme Court by way of Special Leave and contended that in issuing the writ of certiorari, the High Court had exceeded its jurisdiction under Art. 226 of the Constitution. While allowing the appeal, the Supreme Court has made following pertinent observations in Paragraph 7 of the reported judgment :-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or Tribunals : these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of

certiorari can be legitimately exercised {vide Hari Vishnu Kamath v. Ahmad Ishaque, 1955 (1) SCR 1104 : AIR 1955 SC 233); Nagendra Nath v. Commr. of Hills Division, 1958 SCR 1240 : (AIR 1958 SC 398) and Kaushalya Devi v. Bachittar Singh, AIR 1960 SC 1168."

Again, the scope of writ petition challenging award of Labour Court filed under Art. 226 of the Constitution came to be considered by the Supreme Court in Sadhu Ram v. Delhi Transport Corporation (supra). Therein, Sadhu Ram was a probationer bus conductor whose services were terminated by Delhi Transport Corporation. On failure of conciliation proceedings, dispute, namely, whether termination of services of Shri Sadhu Ram was illegal and unjustified and if so, what directions were necessary, was referred to the Labour Court. On behalf of management, a contention was raised that the workman had not raised any demand with the management, and therefore, there was no industrial dispute. The Labour Court had overlooked the contention, and after considering the merits, had directed the management to reinstate the workman with full back wages. Thereupon, the management had invoked the jurisdiction of High Court of Delhi under Art. 226 of the Constitution. The High Court had gone into a learned discussion on what was an industrial dispute, but the Supreme Court was of the opinion that it was an entirely unnecessary exercise. The High Court had forgotten the basic fact that the Labour Court had given findings on facts and quashed the award. The workman had approached the Supreme Court under Art. 136 of the Constitution. While allowing the appeal, the Supreme Court has held as under :

"3. We are afraid the High Court misdirected itself. The jurisdiction under Art. 226 of the Constitution is truly wide but, for that very reason it has to be exercised with great circumspection. It is not for the High Court to constitute itself into an appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind qualitatively different from ordinary civil disputes and to readjudicate upon questions of fact decided by those Tribunals. That the questions decided pertain to jurisdictional facts does not entitle the High Court to interfere with the findings on jurisdictional facts which the Tribunal is well competent to decide. Where the circumstances indicate that the Tribunal has snatched at jurisdiction, the High Court may be justified in interfering. But where the Tribunal gets jurisdiction only if a reference is made, and it is therefore, impossible ever to say that the Tribunal has clutched at jurisdiction, we do not think that it was proper for the High Court to substitute its judgment for that of the Labour Court and hold that the workman had raised no demand with the management. ..."

[33] The relevant observations made by the Supreme Court in the above quoted two decisions make it evident that a limited jurisdiction is available to High Courts while

considering the question, whether a writ of certiorari, as claimed by the writ petitioner, can be issued. Under Art. 226 of the Constitution, High Court will not interfere with weighing of evidence led before the Tribunal as if the High Court were sitting in appeal. A finding of fact cannot also be challenged on the ground that relevant materials and evidence adduced before the Tribunal was insufficient or inadequate to sustain the findings recorded by the Tribunal. The adequacy or sufficiency of evidence and the inferences to be drawn from the evidence are the exclusive domain of the Tribunal and the same cannot be agitated before the writ Court. This is so because the Tribunal is constituted under Special Legislation to resolve the dispute of a kind qualitatively different from ordinary civil disputes. This is also so because the Tribunals are not bound by strict Rules of evidence. Merely because more than one view is possible on the evidence led before the Tribunal, the writ Court would not be justified to interfere with the findings recorded by the Tribunal. Of course, if the findings recorded by the Tribunal are perverse or irrational or arrived at by ignoring materials on record or arbitrary or contrary to the principles of natural justice, the same can be interfered with by the High Court in a petition under Art. 226 of the Constitution wherein certiorari is claimed. However, in instant case, this Court finds that all oral and documentary evidence adduced by the parties is considered by the Tribunal and findings of facts have been rendered. The finding of the Tribunal on the genuineness of the contract between S.A.I.L. and Bardhan & Co. is only one aspect of the controversy, whether workmen were ever employees of the contractors or were always employed by S.A.I.L. The Tribunal has not reached the conclusion regarding direct employment by S.A.I.L. of these workmen only on the basis of finding relating to the document in question, but has taken into consideration cumulative effect of facts proved. It would be uncharitable to criticise the Tribunal on this score. It is true that burden of proof to prove the fact rests upon a person who asserts existence of the same, and there is no manner of doubt that primary burden of proof to prove that the workmen concerned were employees of S.A.I.L., was on the workmen. However, both by way of their claim statement and oral evidence, the workmen have established that they were never recruited by any of the contractors and were under control and supervision of S.A.I.L. The Tribunal has considered the evidence led by the writ petitioner, and reached a conclusion in Paragraph 13 of the impugned award that the concerned workmen were/are serving under the supervision, control and direction of S.A.I.L. The best evidence that could have been produced, viz. employment record, could not be produced by the writ petitioner before the Tribunal. Further, when the evidence of witness of Bardhan & Co. was recorded before the Tribunal, the term of contract with Bardhan & Co. was over. No evidence was led by the writ petitioner before the Tribunal to show that new handling contractor was appointed to handle the materials received at the stockyard and that the contractor had recruited the workmen concerned. Therefore, it is incorrect to say that the burden of proof has not been discharged by

the workmen concerned. Moreover, it is well settled that once the parties have led evidence understanding the nature of the case to be met, and the Court has recorded the findings on the basis of evidence led, the question of burden of proof becomes academic. As observed by the Supreme Court in Mohd. Shahnavaz Akhtar & Anr. v. 1st A.D.J., Varanasi & Ors., 2002 (9) SCC 375, jurisdiction under Art. 226 of the Constitution does not include re-appreciation of evidence and on that basis dislodge the finding of fact recorded by the Tribunal. The findings which have been recorded by the Tribunal are such which could have been reasonably arrived at, properly thought out and logical. Under the circumstances, the findings recorded by the Tribunal and final conclusion based thereon are not liable to be interfered with in instant petition.

[34] The plea that the documents produced along with the petition should be taken into consideration while answering the question, whether the workmen concerned are employees of S.A.I.L. or not, cannot accepted. The learned Senior Advocates appearing for the respondents have rightly contended that this is a petition which is essentially filed under Art. 227 of the Constitution, wherein legality of the award of the Tribunal declaring that the workmen employed in the stockyard located at Kaligam, Ahmedabad, are workmen of S.A.I.L., is under challenge. It is now well established that the award of the Tribunal can be challenged by an aggrieved party, both under Art. 226 or 227 of the Constitution or under both the Articles. However, choice is with the aggrieved party. Whether aggrieved party has chosen to approach the High Court under Art. 226 or 227 has to be ascertained not only from the pleadings, but also from the fact, whether the Tribunal whose award is challenged is impleaded as one of the necessary parties in the petition. In Udit Narain Singh Malpaharia (supra) the Supreme Court has ruled that the Tribunal is not a necessary party where the petition is filed under Art. 227 of the Constitution, but the Tribunal is a necessary party if the petition is filed under Art. 226 of the Constitution and appropriate reliefs are claimed. Here, in instant case, the petitioner has not impleaded the Industrial Tribunal as one of the respondents in the petition nor claimed any relief as such against the Industrial Tribunal. This conduct on the part of the writ petitioner in not impleading the Industrial Tribunal as one of the respondents in the petition and in not claiming any specific relief against the Tribunal would indicate that the writ petitioner has chosen to approach the High Court under Art. 227 of the Constitution. Therefore, the documents produced by the writ petitioner along with the petition cannot be taken into consideration while answering the question posed for consideration. Further, what is claimed is writ of certiorari and the writ of certiorari means calling of record of subordinate authority and rendering decision by the High Court after considering the materials placed before the authority. The documents which are sought to be relied upon by the writ petitioner in the petition does not form part of record of the Tribunal. Under the circumstances, writ of certiorari cannot be issued on the basis of document sought to be produced and

relied upon by the writ petitioner. Moreover, the Tribunal had no opportunity to deal with the documents which are sought to be produced and relied upon by the writ petitioner. These documents never formed part of record of the Tribunal at any stage. Though the documents sought to be relied upon are prior in point of time to the date of reference, none of them was produced by the writ petitioner before the Tribunal. The High Court would not be justified in setting aside the award of the Tribunal on the basis of new documents sought to be produced for the first time in the writ petition. This would be simply unfair to the Tribunal, and does not advance the cause of justice. Therefore, no relief can be granted to the writ petitioner on the basis of new documents sought to be produced and relied upon for the first time in instant petition.

[35] Even if it is assumed for the sake of argument that the High Court must take into account the documents which are produced by the writ petitioner along with the petition in order to do substantial and complete justice between the parties, this Court is of the opinion that the materials now sought to be pressed into service, do not advance the case of the writ petitioner to the effect that the workmen were employed by independent contractors, and were not the employees of S.A.I.L. The question whether execution of document dated October 23, 1993 between the writ petitioner and Bardhan & Co. is sham or bogus or not intended to be acted upon or facade cannot depend upon any other material anterior in point of time put in by the parties who have no concern with the execution of document dated October 23, 1993. It is always open to the workmen to prove that the document between the writ petitioner and Bardhan & Co. was never acted upon. The Dictionary meaning of word "sham" is 'good in appearance, but false in fact'. The word "sham" is defined by lexicographers as 'false, counterfeit or pretended'. The word "sham" means "acts done or documents executed by the parties to the 'sham' which are intended by them to give to third party or to the Court the appearance of creating between the parties, legal rights and obligation different from the actual legal rights and obligations, if any, which the parties intended to create". By leading cogent and reliable evidence, the workmen have established that they are working since long and were never recruited by any handling contractor appointed by the writ petitioner, and were doing the work under control and supervision of the writ petitioner. Therefore, the new materials sought to be relied upon cannot have the effect of obliterating the relevant evidence adduced by the workmen before the Tribunal. So far as the two writ petitions are concerned, therein a demand is made for abolition of contract labour system. Mere filing of the writ petitions by union praying for abolition of contract labour system would not debar the union from praying that the workers be declared direct employees of S.A.I.L. or from claiming that the contract system if at all exists is merely sham. The scope of the dispute which was referred to the Tribunal and the two petitions filed by the union is different and distinct. Further, settlement between the Gujarat Mazdoor Panchayat and

Bardhan & Co. would not preclude the union from contending that the workers are really employees of the company and not of the contractor. There is no manner of doubt that once the so-called contractor, Bardhan & Co., was sought to be brought on paper, the workers might have been induced by way of safety and precautions to secure better terms and conditions of service, to enter into 2(P) settlement with Bardhan & Co., but that by itself will not exclude their right to contend that they are really workers of S.A.I.L. and not of the contractor. Thus, even if additional material sought to be produced and relied upon by the writ petitioner is taken into consideration, the writ petitioner is not entitled to the relief claimed in the petition nor award rendered by the Tribunal is liable to be set aside.

[36] The plea that the wrong test is applied which amounts to misdirection in law whereas findings on jurisdictional facts have been reached unreasonably and arbitrarily and, therefore, the matter must be remanded to the Tribunal with liberty to the parties to lead fresh or further evidence in support of their respective cases, cannot be accepted. It is well to remember that the reference of dispute was made to the Tribunal in July 1993 and S.A.I.L. had filed its reply at Exh. 9 on September 21, 1995. Thereafter, the writ petitioner had produced five documents along with list, Exh. 25, which were; (i) original contract dated October 23, 1993 entered into between the writ petitioner and Bardhan & Co., (ii) statement of terms of the contract dated August 20, 1993, (iii) guidelines to be complied with by the handling contractor, (iv) a xerox copy of the registration certificate issued to the handling contractor, and (v) a xerox copy of labour licence granted under the provisions of the Act. What is noticed by this Court is that evidence of witness of the respondent No. 1 was recorded on February 28, 1996 whereas that of witness of Bardhan & Co. was recorded on July 2, 1996 and the evidence of witness of the writ petitioner was recorded on July 23, 1996, but at no point of time, the documents sought to be relied upon were produced by the writ petitioner before the Tribunal. For the purpose of adjudicating the dispute referred to it, the Tribunal had raised four issues for consideration on the basis of (i) statement of claim, (ii) written statement filed by S.A.I.L., (iii) documentary evidence produced by S.A.I.L., (iv) oral evidence adduced by the parties, and (v) arguments advanced on behalf of the parties. Both the parties had understood the nature of the case to be met and had led evidence in support of their respective contentions. It is not the case of the writ petitioner that any evidence was shut out by the Tribunal. The party to a petition under Art. 226 of the Constitution is not entitled to get an order of remand to cover up deficiencies due to complete laches of that party. The writ petitioner cannot be allowed to fill in gaps or lacunae in the evidence which are due to omissions by it. Further, an order of remand without coming to a conclusion that the decision of the Tribunal is wrong and it is necessary to set aside the decision of the Tribunal, is not permissible. Remanding the matter to the Tribunal for a fresh decision would permit

the writ petitioner to fill in gaps or lacunae in the evidence on record, which cannot be done at such a belated stage. It is well settled that condition precedent for exercising power of remand is, a finding by appellate or revisional or supervisory Court that the judgment or order or award is erroneous on fact or law and, therefore, liable to be reversed or set aside. So long as that finding has not been arrived at, there is no scope for the appellate or supervisory Court to reverse or set aside judgment or award of the trial Court or that of Tribunal and as a consequence thereof, remanding the matter for a fresh disposal. This Court has come to the conclusion that well-reasoned award rendered by the Tribunal is just, and not liable to be set aside by this Court. Therefore, the prayer for remand made by the writ petitioner cannot be accepted.

[37] The net result of the above discussion is that this Court does not find any merit in Special Civil Application No. 10225 of 1996, and the same is liable to be dismissed.

[38] Mr. R. Venkataramani, learned Senior Advocate appearing with Mr. Bhushan B. Oza, learned Advocate of the petitioner in Special Civil Application No. 2643 of 1997, has stated at the Bar that Special Civil Application No. 2643 of 1997 be dismissed as not pressed. Therefore, Special Civil Application No. 2643 of 1997 is also liable to be dismissed in view of the statement made by the learned Senior Advocate of the petitioner.

[39] For the foregoing reasons, both the petitions fail, and are dismissed. Rule issued in each petition is discharged. Interim relief, if any, granted in Special Civil Application No. 10225 of 1996 shall stand vacated. There shall be no order as to costs.