G.M. ONGC, SHILCHAR

v.

ONGC CONTRACTUAL WORKERS UNION

(Civil Appeal No. 4755 of 2001)

MAY 16,2008

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Labour Laws – Industrial dispute – Employees claiming regularization – reference to Industrial tribunal on the question of regularization – Tribunal holding that the employees being the direct employees of the principal employer and not that of the contractor, entitled to regularization – Single Judge of High Court holding that workmen were employees of contractor, hence not entitled to regularization – Division Bench of High Court upholding the order of tribunal – On appeal, held: Workmen were entitled to regularization – Decision of the tribunal was not beyond the reference, as the real issue was status of workmen and not regularization simpliciter – Tribunal and Division Bench of High Court were justified in lifting the veil in order to determine the nature of employment– Contract Labour (Regularization and Abolition) Act, 1970.

The respondent-Union raised a dispute demanding regularization of the services of its members. The demand was opposed by the appellant-employer. Government made a reference to Industrial Tribunal. Tribunal held that the members of the Union were the employees of the appellant and hence their services were liable to be regularized. Appellant challenged the award. Single Judge of High Court held that the appellant was not obliged to regularize the services as the members of the Union were employees of the contractor and not of the appellant; and further held that the tribunal exceeded its jurisdiction by deciding beyond the reference. In writ appeal, Division Bench of High Court, setting aside the order of Single Judge upheld that of the Tribunal. Hence the present appeal.

A Dismissing the appeal, the Court

HELD: 1.1 In the light of the facts that have come on record there is no perversity or patent illegality in the Award of the Industrial Tribunal and on the contrary the Tribunal has minutely examined the evidence in arriving B at its decision. In this view of the matter, it was inappropriate for the Single Judge of High Court to have re-appraised the evidence and come to a different conclusion. [Para 9] [1232-C,D]

C 1.2 There are several observations which do suggest that a workman who has put in 240 days or is a contractual worker, is not entitled automatically to regularization. However, the present case is not one of regularization simpliciter such as in the case of an *ad-hoc* or casual D employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of the ONGC or the contractor and in the event that they were employees of the former, claim to be treated at par with other such employees. This was the basic issue on which the parties went to trial, E notwithstanding the confusion created by the ill-worded reference. The Division Bench has examined the evidence on this aspect and has endorsed the finding of the Industrial Tribunal. [Para 10] [1232-F-H, 1233-A,B]

F 1.3 The real issue was as to the status of the workmen as employees of the ONGC or of the contractor, and it having been found that the workmen were the employees of the ONGC they would ipso-facto be entitled to all benefits available in that capacity, and the issue of regu- G larization would, therefore, pale into insignificance. In this situation, the Industrial Tribunal and the Division Bench of the High Court were justified in lifting the veil in order to determine as to the nature of employment. [Para 13] [1236-G, 1237-A]

H

1.4 Even the ONGC had admitted that since 1988, there was no licensed contractor and that the wages were being paid through one of the leaders of the Union and one such contractor has been named. The Tribunal then opined that it appeared from the record that the named contractor himself was a workman and not a contractor, as he too was shown in the qcquittance roll to have received wages. [Para 13] [1236-E,F]

1.5 It is true that the reference prima facie does give the impression that it presupposes that the workmen were contractual employees and the only dispute was with regard to the regularization of their services. It is equally true that the reference appears to have been rather loosely worded but as observed by the Industrial Tribunal and the Division Bench, both parties were aware of the real issues involved in the light of the protracted litigation and the efforts made during conciliation proceedings. The Division Bench has, thus, rightly observed that it was open to the Industrial Tribunal to have lifted the veil so as to determine the nature of the employment and the dispute between the parties and for that purpose to look into the pleadings and evidence produced before it. [Para 16] [1237-E,F,G]

Sadhu Ram vs. Delhi Transport Corporation **AIR 1984 SC 1467** *R.K.Panda and Ors. vs. Steel Authority of India and Ors. (1994) 5 SCC 304 Delhi Cloth and General Mils Co. Ltd. vs. The workmen and Ors.* **AIR 1967 SC 469;** *U.P. State Electricity Board vs. Pooran Chandra Pandey* **(2007) 12 SCALE 304 – relied on**

Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel **(1997) 6 SCC 650;** *Trambak Rubber Industries Ltd. vs. Nashik Workers Union and Ors.* **(2003) 6 SCC 416;** *Seema Ghosh vs. Tata Iron and Steel Co.* **(2006) 7 SCC 722;** *State of Karnataka and Ors. vs. KGSD Canteen Employees' Welfare Association and Ors.* **(2006) 1 SCC 567;** *M.P. Housing Board and Anr. vs. Manoj Shrivastava* **(2006) 2 SCC**

A **702;** *Indian Drugs and Pharmaceuticals Ltd. vs. Workmen, Indian Drugs and Pharmaceuticals Ltd.* **2007(1) SCC 408,** *Gangadhar Pillai vs. Siemens Ltd.* **(2007) 1 SCC 533;** *Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh and Ors.* **(2007) 6 SCC 207;** *Secretary, State of Karnataka and Ors. vs.* B *Uma Devi(3) and Ors.* **(2006) 4 SCC 1– distinguished.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4755 of 2001

From the final Judgment and Order dated 24.12.1999 of C the Gauhati High Court in W.A. No. 269/1998

WITH

T.P. (C) No. 890-892 of 2007

Dushyant A. Dave, S.B. Sanyal, Rekha Pandey, Madhavi D Divan, Aniruddha Rajput, Sonmath Mukherjee, Manoj Goel, Shuvodeep Roy, Anil Kumar Tandale and Brij Bhusan for the Appearing Parties.

The Judgment of the Court was delivered by

E **HARJIT SINGH BEDI,J.** 1.This appeal after special leave arises out of the following facts:

2. The appellant, the Oil and Natural Gas Commission (hereinafter called the "ONGC") is engaged in the exploration for oil and natural gas. In 1997, the ONGC started its drilling F operations in the district of Cachar and for that purpose engaged a large number of staff in various fields, initially through contractors. These employees later formed the ONGC Contractual Workers Union (hereinafter called the "Union") which is the contesting respondent in this matter. The Union raised a dis- G pute demanding the regularization of the services of its members. This demand was resisted by the ONGC and on the failure of conciliation proceedings, the State Government made a reference to the Industrial Tribunal.

H 3. The parties before the Industrial Tribunal filed their plead-

ings and also recorded their evidence. The Tribunal in its award dated 11th July 1994, held that the members of the Union were indeed the employees of the ONGC and a direction was accordingly issued that their services be regularized in a phased manner with pay and other allowances, as permissible to regular employees. This award was challenged by the ONGC in the High Court on the ground that the members of the Union were employees of the contractors and not of the ONGC and as such there was no obligation on the part of the ONGC to regularize their services. The learned Single Judge accepted this submission and further observing that the Tribunal had exceeded its jurisdiction by deciding beyond the reference, allowed the writ petition. A Writ appeal was thereafter taken by the Union before the Division Bench of the High Court which, vide the impugned judgment dated 24th December 1999, reversed the findings of the learned Single Judge observing that the powers of the High Court while examining an award of a subordinate tribunal were not as if it were a Court of Appeal and that the learned Single Judge appeared to have fallen into a cardinal error in differing with the conclusions on facts drawn by the Industrial Tribunal. The Division Bench then noted that no workman or contractor had been examined to show the existence of any contract labour and that no clarification having been sought by the ONGC under section 10 of the Contract Labour (Regularisation & Abolition) Act 1970, the very basis for the employment of contract labour did not exist. The Division Bench also observed that there was no ambiguity with regard to the issues raised in the reference made by the State Government as the parties were fully aware as to its meaning and import. The writ appeal was accordingly allowed, the order of the learned Single Judge was set aside and the award of the Industrial Tribunal restored. The ONGC is before us in appeal.

4. At the very outset, Mr. Dushayant A. Dave, the learned senior counsel for the appellant has referred us to I.A. No.7/2007 to bring on record the present ground situation vis-à-vis the ONGC and the members of the respondent Union, and has

A pointed out that till the year 1999, only one Oil Company, the ONGC, owned by the Government of India had the exclusive right to prospect for oil, but to accelerate exploration, it had been decided as from that year, to throw the field open to National Oil Companies or private companies, Indian or foreign, by way of
B an open bidding process, with the result that the ONGC was no longer holding a monopoly in this regard. It has been submitted that as a result of this liberalization, a large number of companies besides the ONGC were now engaged in the exploration for oil and that it was imperative in this situation and changed
C scenario for the ONGC to make an attempt to reduce its work force and it had done so by introducing a voluntary retirement scheme with effect from 1999, which had resulted in a reduction of more than 3500. It has been highlighted that at the time of the filing of this appeal, about 400 and odd workmen had
D been involved but many had subsequently accepted voluntary retirement and the matter had been initially restricted to about 290 workmen, who in the light of the status quo order passed by this Court in these proceedings, had been receiving payments/service charges to the tune of Rs.7,22,000/- per month for the last 7 years which now totalled about seven crore al-
E though no work was being performed by them. It has been submitted that as a result of another Memorandum of Understanding signed on 24th January 2007, another 176 workmen or their legal heirs out of the 290 aforementioned, had opted out of the appeal and accepted voluntary retirement with the result that as
F of today, only about 70 or 80 workmen were associated with the Union in pursuing this appeal. It has accordingly been pleaded that to meet the latest situation and in the light of the above facts, the earlier scheme formulated by the ONGC for absorption of its workmen set out in the additional affidavit filed
G on 14th February 2001, be treated as withdrawn, though the offer with regard to the voluntary retirement scheme which has been accepted by the 176 workmen was still open to the present members of the Union. On facts, it has been argued that the findings of the Industrial Tribunal were erroneous and the learned
H Single Judge was, therefore, fully justified in setting aside the

award pursuant to its writ jurisdiction under Article 226 of the Constitution of India. Reliance for this argument has been placed on *Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel (1997) 6 SCC 650, Trambak Rubber Industries Ltd. vs. Nashik Workers Union & Ors. (2003) 6 SCC 416 and Seema Ghosh vs. Tata Iron & Steel Co. (2006) 7 SCC 722.* It has also been urged that a workman who had worked for 240 days or more could not claim regularization of services and that in any case, contractual workers were not entitled to regularization. In support of this submission, reliance has been placed on the *State of Karnataka & Ors. vs. KGSD Canteen Employees' Welfare Association & Ors. (2006) 1 SCC 567, M.P. Housing Board & Anr. vs. Manoj Shrivastava (2006) 2 SCC 702, Indian Drug & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. 2007(1) SCC 408, Gangadhar Pillai vs. Siemens Ltd. (2007) 1 SCC 533 and Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh & Ors. (2007) 6 SCC 207.* It has finally been contended that after the promulgation of the Contract Labour (Regularisation & Abolition) Act, 1970 regularization of contract labour was not permissible and in support of this plea, the learned counsel has relied on *Steel Authority of India Ltd. & Ors. vs. National Union Waterfront Workers & Ors. (2001) 7 SCC 1 and Secretary, State of Karnataka & Ors. vs. Uma Devi(3) & Ors. (2006) 4 SCC 1.*

5. Mr. Sanyal, the learned senior counsel has, at the very outset, pointed out that pursuant to the observations of this Court, the ONGC had made an offer for absorption of the workmen by way of an additional affidavit dated 14th February 2001 and the Union had been seriously inclined to accept that offer, but had sought some minor clarifications from the ONGC (which were not forthcoming) and on the contrary, the ONGC had moved I.A. No.7/2007 withdrawing the said offer and suggesting another voluntary retirement scheme which was not acceptable to the members of the Union. It has accordingly been pleaded that it was the ONGC which had been unfair in its dealings and that

despite the passage of almost 28 years, the workmen had not been able to get any substantial relief. It has also been submitted that the Industrial Tribunal was fully justified in delving into the facts of the case to see the nature of employment of the workmen i.e. as to whether they were employees of the ONGC or of the contractor, and the Tribunal having done so, the learned Single Judge was not justified in making a re-assessment on facts. For this argument, the learned counsel has relied on *R.K.Panda & Ors. vs. Steel Authority of India & Ors. (1994) 5 SCC 304* and Steel Authority of India Ltd. (supra). It has also been contended that the reference made undoubtedly did give an impression that the Union had accepted their status as contractual workers and were merely seeking regularization of their services but in the light of the pleadings of the parties, the evidence led before the Industrial Tribunal and the arguments raised by the learned counsel in all the fora, it was clear that the examination was not limited to this investigation but the broader question as to whether the members of Union were employees of the ONGC or of the contractors was the core issue and as the parties were fully aware of this basic fact, it was not open to the ONGC to contend that the reference was bad. It has further been highlighted that reliance by the appellant on Uma Devi's case was misplaced as this matter had been clarified and explained by this Court in *U.P. State Electricity Board vs. Pooran Chandra Pandey, (2007) 12 SCALE 304.*

6. We first take up Mr. Dave's arguments with regard to the propriety of the Division Bench entering into the facts of the case and upsetting the findings recorded by the Single Judge with regard to the nature of employment of the workmen. It has been submitted that the interference by the Division Bench was not called for in the light of the various judgments of the Supreme Court.

7. On the contrary, Mr. Sanyal has been at pains to point out that the Industrial Tribunal was in fact the sole fact finding authority and interference by the Single Bench of the High Court in its writ jurisdiction under Article 226 of the Constitution could

be justified only if the findings could be said to be perverse. He has relied upon several judgments of this Court including *Sadhu Ram vs. Delhi Transport Corporation AIR 1984 SC 1467* for this argument. It has also been submitted that there was no perversity in the Award of the Industrial Tribunal, and the Single Judge had, thus, impinged and transgressed into the jurisdiction of the Industrial Tribunal.

8. We have examined the arguments advanced by the learned counsel. This Court has held time and again that the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in *Trambak Rubber Industries Ltd.'s case (supra)* are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an Award of an Industrial Court on account of a patent illegality. In *Seema Ghosh's case (Supra)*, this Court observed that the High Court's interference under Articles 226 and 227 of the Constitution with an Award of the Labour Court was justified as the Award had been rendered contrary to the law laid down by this Court and as a measure of "misplaced sympathy", and was thus perverse. The other judgments cited by Mr. Dave lay down similar principles and need not be dealt with individually. It will be seen therefore that the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. On the contrary, Mr. Sanyal's reliance on *Sadhu Ram's case (supra)* is more appropriate to the circumstances herein. It has been observed as under:

> "The jurisdiction under Article 226 of the Constitution of India 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 re-adjudicate upon questions of fact decided by those tribunals. That the questions decided

A 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. B 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 C raised no demand with the management".

9. We are therefore of the opinion that in the light of the facts that have come on record we find no perversity or patent illegality in the Award of the Industrial Tribunal and on the contrary must appreciate that it has minutely examined the evidence D in arriving at its decision. In this view of the matter, it was inappropriate for the Learned Single Judge to have re-appraised the evidence and come to a different conclusion.

10. Mr. Dave has also laid great emphasis on the fact that in the light of several judgments of the Supreme Court there E was no inflexible right in a workman who had put in 240 days or more to have his/her services regularized and that contractual workers were in any case precluded from claiming this relief. Mr. Sanyal has, however, submitted that most of the workmen had joined in the year 1979 and 1984 and though they had two F orders in their favour, one of the Industrial Tribunal and the other of the Division Bench, they had not been able to enforce their rights in some cases for almost 30 years. We have accordingly chosen to deal with these issues together. There are several observations which do suggest that a workman who has put in G 240 days or is a contractual worker, is not entitled automatically to regularization. We, however, believe that the present case is not one of regularization simpliciter such as in the case of an ad-hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and H whether they were the employees of the ONGC or the contrac-

tor and in the event that they were employees of the former, a claim to be treated at par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference. The Division Bench has examined the evidence on this aspect and has endorsed the finding of the Industrial Tribunal. We also find that the observations in *R.K.Panda's case(supra)* are significant:

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

A adjudicate such disputes on the basis of the oral and documentary evidence produced before them."

Likewise in *Steel Authority of India's case (supra)* this is what the Court had to say:

B "An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because the industrial adjudication/court C ordered abolition of contract labour or because the appropriate Government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour D working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct E position as a fact at the stage after employment of contract labour stood prohibited; (iii) where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour F would indeed be the employees of the principal employer."

10. It was contended by Mr. Dave that this Court in *Uma Devi's case (supra)* has clearly opined that the contract or casual labour could not claim regularization and he has in particular emphasized that in the light of the admitted position that at G some stage, the workmen were indeed contract employees the ratio of the aforesaid was clearly applicable to the facts of the case. We, however, observe that the aforesaid decision was considered by another Bench of this Court in *Pandey's case (supra)* wherein it has been held that the ratio of any decision H

must be understood in the background of the facts of that case and that the case is only an authority for what it logically decides and what logically flows from it. *In Pandey's case (supra)* the question was as to whether casual employees working in the Electricity Board were entitled to regularization of their services. This is what the Division Bench had to say in paragraphs 16 and 17:

> "We are constrained to refer to the above decisions and principles contained therein because we find that often *Uma Devi's case (supra)* is being applied by Courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in *Bhavnagar University's case (supra)* and *Bharat Petroleum Corporation Ltd.'s case (supra),* a little difference in the precedential value of a decision. Hence, in our opinion, *Uma Devi's case (supra)* cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make *Uma Devi's case (supra)* inapplicable to the facts of that case.
>
> In the present case the writ petitioners (respondents herein) only wish that they should not be discriminated against vis-à-vis the original employees of the Electricity Board since they have been taken over by the Electricity Board "in the same manner and position". Thus, the writ petitioners have to be deemed to have been appointed in the service of the Electricity Board from the date of their original appointments in the Society. Since they were all appointed in the society because 4.5.1990 they cannot be denied the benefit of the decision of the Electricity Board dated 28.11.1996 permitting regularization of the employees of the Electricity Board who were working from before 4.5.1990. To take a contrary view would violate Article 14 of the Constitution. We have to read *Uma Devi's case (supra)* in conformity with Article 14 of the Constitution, and we cannot read it in a manner which will make it in conflict with Article 14. The Constitution is the

A supreme law of the land, and any judgment, not even of the Supreme Court, can violate the Constitution."

11. It will be seen therefore that each case has to be examined to a very large extent on its specific facts, and a universal yardstick should not be attempted.

B

12. In the instant case, on a consideration of material produced before it, the Tribunal came to the following conclusions:

(1) That there existed a relationship of master and servant.

C

(2) That there was no contractor appointed by ONGC.

(3) That the ONGC used to supervise and allot works to individual workers.

D (4) That the ONGC took disciplinary action and called for explanations from the workers.

(5) The workers were paid wages though they did not attend their duties due to Cachar Bandh and due to flood.

E

(6) The wages were paid direct to the workers by the ONGC and the acquaintance roll was prepared by the Management to make payment to the workmen".

13. It has also been observed that even the ONGC had F admitted that since 1988, there was no licensed contractor and that the wages were being paid through one of the leaders of the Union and one such contractor, Manik has been named. The Tribunal then opined that it appeared from the record that Manik himself was a workman and not a contractor as he too G was shown in the acquittance roll to have received wages. We find that the real issue was as to the status of the workmen as employees of the ONGC or of the contractor, and it having been found that the workmen were the employees of the ONGC they would ipso-facto be entitled to all benefits available in that capacity, and the issue of regularization would, therefore, pale into H

insignificance. We find that in this situation, the Industrial Tribunal and the Division Bench of the High Court were justified in lifting the veil in order to determine as to the nature of employment in the light of the judgments quoted above. We, therefore, find that the ratio of the judgment in *Uma Devi's case (supra)* would not be applicable and that the facts of *Pandey's case* are on the contrary more akin to the facts of the present one.

14. We are therefore of the opinion that in the light of the aforesaid observations, Mr. Dave's argument that the workmen being on a contractual, were not entitled to any relief, cannot be accepted and the large number of judgments cited by Mr. Dave, on this aspect, cannot be applied to the facts of the case.

15. We have also considered Mr. Dave's argument with regard to the nature of the reference. We re-produce the reference as made:

> "Whether the demand of the ONGC 'Contractual Workers' Union, Silchar on the management of ONGC, Cachar Project, Silchar for *regularization of the services of the contractual workers is justified.* If so, what relief are the workmen concerned entitled to?"

16. It is true that the underlined portion of the reference prima facie does give the impression that it presupposes that the workmen were contractual employees and the only dispute was with regard to the regularization of their services. It is equally true that the reference appears to have been rather loosely worded but as observed by the Industrial Tribunal and the Division Bench, both parties were aware of the real issues involved in the light of the protracted litigation and the efforts made during conciliation proceedings. The Division Bench has, thus, rightly observed that it was open to the Industrial Tribunal to have lifted the veil so as to determine the nature of the employment and the dispute between the parties and for that purpose to look into the pleadings and evidence produced before it.

17. In *Delhi Cloth & General Mils Co. Ltd. vs. The work-*

A *men & Others AIR 1967 SC 469,* this is what the Court had to say:

> "In our opinion, the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is
B so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the Management to show that the
C dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and
D that the true dispute was something else".

18. The pleadings in the present matter would show that the core issue before the Tribunal was with regard to the status of the employees as employees of the ONGC or of the contractor and that it was this issue simpliciter on which the parties
E went to trial. Mr. Dave's argument with regard to the decision of the Tribunal being beyond the reference, is to our mind, and in the circumstances, hyper technical. In this background, we feel that the judgments cited by Mr. Dave pertaining to regularization of contract labour are not applicable to the facts of the case.
F

19. We, thus, find no merit in the appeal, which is accordingly dismissed. In view of the judgment made in Civil Appeal No.4755/2001, these Transfer Petitions are rendered infructuous.

K.K.T. Appeal dismissed