**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**
**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOS. 8446-8447 OF 2022**

**Kirloskar Brothers Limited** **…Appellant(s)**

**Versus**

**Ramcharan and Ors.** **…Respondent(s)**

**J U D G M E N T**

**M.R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.03.2018, passed by the learned Single Judge of the High Court of Madhya Pradesh at Indore in W.P. (S) No. 1083 of 2004 and the impugned judgment and order dated 12.11.2018 passed by the Division Bench of the High Court in W.A. (S) No. 813 of 2018, by which the High Court has dismissed the said appeal(s) preferred by the appellant herein – employer confirming the judgment and order passed by the Industrial Tribunal ordering reinstatement and directing that the concerned employees / workmen were the employees of the appellant –

principal employer, the principal employer – Kirloskar Brothers Limited has preferred the present appeals.

2. The case on behalf of the appellant – principal employer in a nutshell is as under:-

2.1 That respondent Nos. 1 to 6 herein were contractual labourers of the respondent No. 7, who was a contractor engaged by the appellant in terms of contract dated 22.04.1995, which was renewed from time to time, including on 01.08.1995. Upon entering into the contract, necessary compliances under Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as "CLRA Act") was completed by the appellant and the respondent No. 7 - contractor. The labour contract came to an end on 07.10.1996. Therefore, the services of the respondents were dispensed with by the contractor. Accordingly, the appellant filed a return under CLRA Act on 25.01.1997, which shows that the contract with the respondent No. 7 had come to an end.

2.2 According to the appellant, all statutory payouts, including the salary of the workmen were paid by the contractor since under the CLRA Act, the ultimate responsibility would be upon the appellant if these were not paid by the contractor. By letter dated 06.04.1996, the appellant

informed the contractor about deducting an amount of Rs. 7,224/- from the bill payable, for non-deposit of PF contribution for May, 1995.

2.3 That thereafter, the respondents approached the Labour Court praying inter alia that they were employees of the appellant, who have been orally terminated by the respondent No. 7 and sought to be re-instated in service. That the learned Labour Court vide judgment and order dated 14.03.2002, on appreciation of evidence returned a categorical finding that the Contractor had obtained license under the CLRA Act and that the contesting respondents were the employees of the contractor and not of the appellant.

2.4 That upon appeal, the learned Industrial Tribunal passed an order dated 05.02.2004, ordering reinstatement and holding that a contract labourer automatically becomes an employee of the principal employer. Thereafter, the Industrial Tribunal considered the definition of ‘employee’ and ‘employer’ as contained in Sections 2(13) and 2(14) of the Madhya Pradesh Industrial Relations Act, 1960 (hereinafter called as “MPIR Act”).

2.5 The judgment and order passed by the Industrial Tribunal has been confirmed by the learned Single Judge. The writ appeal filed

against the judgment and order passed by the learned Single Judge has been dismissed as not maintainable and hence the appellant has preferred the present appeals challenging the judgment(s) and order(s) passed by the learned Single Judge as well as by the Division Bench of the High Court.

3. Shri Anupam Lal Das, learned Senior Advocate has appeared on behalf of the appellant.

3.1 Shri Das, learned senior counsel has vehemently submitted that as such the contesting respondents herein were the employees employed by the respondent No. 7 – contractor. It is submitted that therefore and in the absence of a notification under Section 10 of CLRA Act and there being no allegations or findings with regard to the contract being a sham, the contesting respondents could not have been held to be employees of the appellant and not of the contractor.

3.2 It is submitted that neither Section 10 of the CLRA Act, nor any other provision in the Act, whether expressly or by necessary implication, provides for absorption of contract labour in the absence of a notification by an appropriate Government, namely, in the present case, the State Government, under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work

in any establishment. It is submitted that in the present case, admittedly, no notification under Section 10 of the CLRA Act has been issued. It is submitted that therefore, in the absence of a notification under Section 10 of the CLRA Act, which can only be passed by the appropriate Government, the Industrial Court could have given relief to the workmen only if they had claimed and proved by leading cogent evidence that the contract with the contractor was a sham. It is further submitted that in the present case, there was no such allegation or pleading or finding arrived at by any Court that the contract between the parties was a sham and not genuine. Heavy reliance is placed upon the decisions of this Court in the case of **Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors., (2001) 7 SCC 1** (paras 65, 108, 109, 120 and 125) and **International Airport Authority of India Vs. International Air Cargo Workers' Union and Anr. (2009) 13 SCC 374** (paras 36, 37 to 40, 53.13, 56).

3.3 It is further submitted on behalf of the appellant that in the present case, the Courts below were not justified in invoking the provisions of the MPIR Act as against the provisions of the CLRA Act, which is inconsistent in view of the provisions of Article 254 of the Constitution of India.

3.4 It is submitted that the learned Industrial Tribunal and the High Court have materially erred in coming to a conclusion that the contesting respondents were in the employment of the appellant despite there being not a single document to buttress the same. It is submitted that the only document filed by the contesting respondents was an ESI identity card, which did not even bear the name of the appellant herein. It is submitted that even the deduction of PF and/or PF contribution by the appellant may not go against the appellant. It is further submitted that on non-payment of the salary and/or PF contribution, it was the responsibility of the appellant to pay the same and thereafter to deduct the same from the amount due and payable to the contractor. Therefore, the payment of contribution by the appellant cannot be a ground to confer the employer-employee relationship between the appellant and the contesting respondents.

3.5 It is submitted that in the present case, none of the respondents had produced any appointment issued by the appellant nor were they given any benefits, uniform or punching cards, which were being provided to all regular employees of the appellant. The direct control and supervision of the respondents was always with the respondent No. 7 – contractor. It is submitted that therefore, the only conclusion based

upon the record would be that the contesting respondents were the employee of the contractor.

3.6 Making above submissions, it is prayed that the present appeals be allowed.

4. Having heard learned senior counsel appearing on behalf of the appellant and the material on record, it appears that the contesting respondents herein were the contractual labourers of the respondent No. 7 – contractor, who was a contractor engaged by the appellant in terms of the contract dated 22.04.1995, which was renewed from time to time. It is an admitted position in the present case that no notification under Section 10 of the CLRA Act has been issued by the State Government / appropriate Government, prohibiting the contract labour. It also appears that upon entering into the contract, necessary compliance under the CLRA Act was also completed by the appellant and the respondent No. 7 – contractor. On the labour contract coming to an end, the services of the contesting respondents were dispensed with by the contractor.

4.1 On going through the entire material on record, no documentary evidence was produced, by which it can be said that the contesting respondents were the employees of the appellant. There is no provision under Section 10 of the CLRA Act that the workers/employees employed

by the contractor automatically become the employees of the appellant and/or the employees of the contractor shall be entitled for automatic absorption and/or they become the employees of the principal employer. It is to be noted that even the direct control and supervision of the contesting respondents was always with the contractor. There is no evidence on record that any of the respondents were given any benefits, uniform or punching cards by the appellant.

4.2 Under the contract and even under the provisions of the CLRA, a duty was cast upon the appellant to pay all statutory dues, including salary of the workmen, payment of PF contribution, and in case of non-payment of the same by the contractor, after making such payment, the same can be deducted from the contractor's bill. Therefore, merely because sometimes the payment of salary was made and/or PF contribution was paid by the appellant, which was due to non-payment of the same by the contractor, the contesting respondents shall not automatically become the employees of the principal employer – appellant herein.

4.3 Even otherwise, as observed hereinabove, in the absence of a notification under Section 10 of the CLRA Act unless there are allegations or findings with regard to a contract being sham, private respondents herein, who are as such the workmen/employee of the

contractor, cannot be held to be employees of the appellant and not of the contractor. At this stage, the decision of this Court in the case of **Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors. (supra)** is required to be referred to. Following two questions fell for consideration before this Court:-

> A. whether the concept of automatic absorption of contract labour in the establishment of the principal employer on issuance of the abolition notification, is implied in Section 10 of the CLRA Act; and
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> B. whether on a contractor engaging contract labour in connection with the work entrusted to him by a principal employer, the relationship of master and servant between him (the principal employer) and the contract labour, emerges.

4.4 After considering various decisions of this Court on the point, in paragraph 125, it was concluded as under:-

> **"125.** *The upshot of the above discussion is outlined thus*:
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> (1)(*a*) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation

to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(*b*) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (*a*) of Section 2 of the Industrial Disputes Act; if (*i*) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (*ii*) any industry is carried on (*a*) by or under the authority of the Central Government, or (*b*) by a railway company; or (*c*) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(*a*) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and
(2) having regard to

(*i*) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(*b*) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or

court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in *Air India case* [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

> (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

4.5 Thus, as observed and held by this Court, neither Section 10 of the CLRA Act nor any other provision in the Act, expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or any other work in any establishment and consequently, the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. It has further been observed and held by this Court in the aforesaid decision that on issuance of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labour or otherwise, in case of an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has

been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefits thereunder.

4.6 In the present case, neither any notification under Section 10(1) of the CLRA Act has been issued prohibiting the contract labour, nor there are allegations and/or even findings that the contract is sham and bogus and/or camouflage.

4.7 In the case of **International Airport Authority of India Vs. International Air Cargo Workers' Union and Anr. (supra),** after considering the decision of this Court in the case of **Steel Authority of India Ltd. and Ors. Vs. National Union Waterfront Workers and Ors. (supra)**, it has been observed and held by this Court that where there is no abolition of contract labour under Section 10 of the CLRA Act, but the contract labour contends that the contract between the principal employer and the contractor is sham and nominal, the remedy is purely under the ID Act. It is further observed that the industrial adjudicator can grant the relief sought if it finds that the contract between the principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employee and that there is in fact a direct employment, by applying tests like: who pays the salary; who has

the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short, who has direct control over the employee. It is further observed that where there is no notification under Section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was a sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularise the services of the contract labour does not arise. It has further been observed in paragraphs 38 and 39 as under :-

> "**38.** The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.
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> **39.** The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the

> worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

4.8 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and in the absence of any notification under Section 10 of the CLRA Act and in the absence of any allegations and/or findings that the contract was sham and camouflage, both the Industrial Tribunal as well as the High Court have committed a serious error in reinstating the contesting respondents and directing the appellant – principal employer to absorb them as their employees. The parties shall be governed by the CLRA Act and relief, if any, could have been granted under the provisions of the CLRA Act and not under the MPIR Act.

5. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned judgment(s) and order(s) passed by the High Court in W.P.(S) No. 1083 of 2004 and W.A. No. 813 of 2018 as well as the judgment and order passed by the Industrial Tribunal are hereby quashed and set aside. The judgment and award passed by the Labour Court is hereby restored.

Present appeals are accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

…….J.
**[M.R. SHAH]**

NEW DELHI; …….J.
DECEMBER 05, 2022. **[HIMA KOHLI]**