



# INTERNATIONAL JOURNAL OF ADVANCE RESEARCH, IDEAS AND INNOVATIONS IN TECHNOLOGY

ISSN: 2454-132X

Impact factor: 4.295

(Volume3, Issue3)

Available online at [www.ijariit.com](http://www.ijariit.com)

## Regularisation of Contract Labour

Arun Sasi

National University of Study and Research in Law, Ranchi

[advarunsasi@gmail.com](mailto:advarunsasi@gmail.com)

---

**Abstract:** *There are many benefits for permanent employment and hence sometimes the triangular relationship is used as a ruse to conceal the employer's identity as the real employer, to deny the employer-employee relationship and deprive workers of the benefits of a permanent employment. The court's order regularization of Contract Labour in case the contract is found to be a ruse to deny permanency to the Contract Labour. There is substantial ambiguity pertaining to the standards for regularization and test courts used to see if the contract is a sham. This Article tries to address this ambiguity*

**Keywords:** *Contract Labour, Regularization, Sham, Camouflage.*

---

### 1. INTRODUCTION

Contract Labour is a triangular relationship involving three parties i.e., the principle employer, the contractor and the contract labourer. There are many benefits for permanent employment and hence sometimes the triangular relationship is used as a ruse to conceal the employer's identity as the real employer, to deny the employer-employee relationship and deprive workers of the benefits of a permanent employment. There is no provision for regularization of contract labour in case the contract is used as a sham or camouflage to deprive the benefits of permanent employment, under the Contract Labour (Regulation & Abolition) Act, 1970. The remedy for contract labourers who claim that there exist an employer-employee relationship lies in Industrial Disputes Act 1947, whereby which they can raise an industrial dispute for securing appropriate service conditions from the principal employer on the footing that the workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute, the workmen are required to establish that the so-called labour contract (between Principle Employer and Contractor) was a sham and was only a camouflage to deny them their legitimate dues.<sup>1</sup> The Supreme Court has held that in the case of regularization, the contract labour can raise an industrial dispute against the principle employer because the management had a community of interest with the contractor's employees, and the management could grant relief to the contract labourers.<sup>2</sup> The implication of regularization has also been looked into by the courts. It was observed by the Jharkhand High Court that direction by the labour court for regularization will be to the effect that such workmen will be given preference in the matter of regular employment as and when employer desirous to employ regular workmen<sup>3</sup>.

The most difficult conundrum in contract labour regime is what factors would make a contract between a contractor and the principal employer being endorsed a camouflage and a smokescreen. The perception, by and large, is considered a question of fact and is established on a case to case basis.<sup>4</sup> This ambiguity has created an atmosphere of trepidation in the establishments employing contract labour in the country. Judiciary also has been all at sea about a formula which should be applied uniformly to the said situation.

### 2. Tests for Determining Nature of Contract

Over the years it has dabbled with many tests mostly based on tests of the employer-employee relationship of other common law jurisdictions, to analyze whether the contract is sham or camouflage. Each of these tests needs to be understood before exploring individual factors which can lead to an order of regularization.

---

<sup>1</sup> Gujarat Electricity Board, Thermal Power Station, Ukai, Gujar v. Hind Mazdoor Sabha & Ors 1995 SCC (5)27

<sup>2</sup> Standard Vaccum Refining Co of Ltd v. Its Workmen, (1980) 2LLJ 633(SC)

<sup>3</sup> B.C.C. Ltd. v. Presiding Officer, Central Government Industrial Tribunal, 2004 (I) CLR 842 (Jhar HC) (DB)

<sup>4</sup> R.K. Panda v. Steel Authority of India, (1994) II CLR 402 (S.C.)

## 2.1 Supervision and Control

Globally, Supervision and Control is considered as critical elements in a master-servant relationship. As per Halsbury's Laws of England, "Whether or not, in any given case, the relation of master and servant, exists is a question of fact; but in all cases the relation imports the existence of power in the employer not only to direct what work the servant is to do but also the manner in which the work is to be done."<sup>5</sup>

Black's Law Dictionary,<sup>6</sup> an authoritative legal source, defines the Master-Servant relationship as:

*"The relation of master and servant exists where one person, for pay or other valuable consideration, enters into the service of another and devotes to him his personal labor for an agreed period. The relation exists where the employer has the right to select the employee, the power to remove and discharge him and the right to direct both what work shall be done and the manner in which it shall be done."*

As early as in 1957 the Supreme Court in the case of, **Dhrangadhra Chemical Works Ltd. v. State of Saurashtra**,<sup>7</sup> adopted this position and observed that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. This position has been reiterated by the Supreme Court in a plethora of other cases and held that control and supervision by the principal employer are the most important factor in determining an employer-employee relationship.<sup>8</sup>

This test was first laid down in 1881 by the Queen's Bench Division of the British High Court in the case of **Yewens v Noakes**.<sup>9</sup> Lord Justice Bramwell who gave the judgment observed, "...a servant is a person who is subject to the command of his master as to the manner in which he shall do his work."

The idea was that if a person was being told how to do his work, he was an employee. This is an outdated test for two main reasons. Firstly, the present workforce is far more skilled workforce than in the 1800s, and many contract employees are expected to work without specific instructions, using their skill and expertise. Secondly, every contract labourer who comes to work for the principal employer would be working under some supervision or control of the principal employer. Bearing these drawbacks of the test in mind, the Supreme Court in the case of **Shining Tailors v. The Industrial Tribunal**<sup>10</sup> observed that supervision and control test was more suited to an agricultural society prior to Industrial Revolution and during the last few decades, the emphasis in the field has shifted and no longer rests exclusively or strongly on the question of control.

The Supervision and Control test has created more confusion than it solves, the level of supervision and control required to form a master-servant relationship is a question of contention which exist to this day.

## 2.2 Economic Control

Tests for Employer-Employee relationship has evolved over time and in many jurisdictions like the United Kingdom, the supervision and control test has given way to economic reality test. The Privy Council in the decision of **Montreal Locomotive Works Ltd v Montreal and A.G. for Canada**<sup>11</sup> rejected control as a decisive test. It said that it might still be a factor pointing towards employment but it cannot be the sole determining factor. It went on to decide, that the fundamental test is economic reality test. In **Hussainbhai v. Alath Factory The hilal Union**,<sup>12</sup> the Supreme Court adopted this test and observed that economic control is the critical test which would determine whether the contract is a sham. It was held by the court that;

*"The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. ..."*

<sup>5</sup> LORD HAILSHAM OF MARYLEBONE (EDITOR), HALSBURY'S LAWS OF ENGLAND 112 (4<sup>th</sup>ed. Vol. 22 1998)

<sup>6</sup> HENRY BLACK, BLACK'S LAW DICTIONARY 975 (6<sup>th</sup>ed 1994).

<sup>7</sup> A.I.R 1957 S.C. 274.

<sup>8</sup> General Manager(OSD), Bengal Nagpur Cotton Mills Rajnandgaon v. Bharat Lal 2011 LLR 113(SC), Indian Oil Corporation vs. Employees State Insurance Corporation 2008 LLR 1070(Delhi HC), Indian Iron and Steel Co Ltd(Buranpur Works, Buranpur) v. State of West Bengal 2011 LLR 771(Cal HC)

<sup>9</sup> (1881) 6 QBD 530

<sup>10</sup> 1983 Lab. IC 1509

<sup>11</sup> [1947] 1 D.L.R. 161.

<sup>12</sup> (1978) 4 SCC 257

### 2.3 Twin Test

Some courts have tried to marry economic control and supervision and control tests. In **Bengal Nagpur Cotton Mills v. Bharat Lal**,<sup>13</sup> it was observed by the court that two of the well-recognized tests to find out whether the contract labourers are the direct employees of the principal employer are:

- (i) Whether the principal employer pays the salary instead of the contractor; and;
- (ii) Whether the principal employer controls and supervises the work of the employee.

### 2.4 Integration

This test was first developed in the case of **Stevenson Jordon and Harrison, Ltd. v. MacDonald and Evans**,<sup>14</sup> by Lord Denning. This approach attempts to find if the service being provided by the worker is performed as an integral part of the business, or done on behalf of the business but not integrated into that business.

This test was adopted by the Supreme Courts, in the case of **Ram Singh v. Union Territory Chandigarh**<sup>15</sup>, it was observed by the court that, In determining the relationship between employer and employee, no doubt, "control" is one of the important tests but is not to be taken as the sole test. In determining the relationship between employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take multiple pragmatic approaches weighing up all the factors for and against an employment instead of going by the sole "test of control". An integrated approach is needed. "Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are - who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the "mutual obligations" between them.

### 2.5 Many Decisive Factors

As early as in 1924 along with Control many other important indicators were considered by common law courts to determine the employer-employee relationship. In **Performing Right Society Ltd v Mitchell and Booker (Palais de Danse) Ltd**,<sup>16</sup> the court considered the following factors which would indicate an employer-employee relationship;

- Regular hours of work
- Fixed period of 'employment'.
- Place of work dictated
- Exclusivity of service demanded.
- Right to summarily dismiss for the breach of any reasonable instructions or requirement.
- Continuous, dominant and detailed control on every point,

The practice of determination of the relationship by the court involves weighing up the factors which point to the existence of a relationship of employer/employee and balancing them against the factors which point to the existence of a relationship of engaged/independent contractor. In other words, the courts examine the totality of the situation between the parties in order to reach a conclusion.

Similarly in India, Apex court in the case of **Workmen of Nilgiri Coop. Mkt. Society Ltd. v. the State of T.N.**<sup>17</sup> observed that the control test and the organization test, are not the only factors which can be said to be decisive. With a view to eliciting the answer, the Court is required to consider several factors which would have a bearing on the result:

- (a) Who is the appointing authority;
- (b) Who is the paymaster;
- (c) Who can dismiss; \
- (d) How long alternative service lasts;
- (e) The extent of control and supervision;
- (f) The nature of the job e.g. whether it is professional or skilled work;
- (g) Nature of establishment;

---

<sup>13</sup> (2011) 1 SCC 635

<sup>14</sup> 1952] 1 TLR 101

<sup>15</sup> (2004) 1 SCC 126

<sup>16</sup> [1924] 1 KB 762

<sup>17</sup> (2004) 3 SCC 514

(h) The right to reject.

## **6. Due control**

The Supreme Court observed in the case of **Dharangadhara Chemical Works Ltd vs the State Of Saurashtra**,<sup>18</sup> that the correct method of determining an employer- employee relationship, would be to consider whether having regard to the nature of the work there were due control and supervision by the employer.

### **2.6 Complete Supervision and Control test**

In **National Aluminium Co. Ltd. v. Ananta Kishore Rout & Ors**,<sup>19</sup> National Aluminium Company Limited (NALCO) had established two schools for the benefit of the wards of its- employees. These schools are known as Saraswati Vidya Mandir (SVM) and located at NALCO Nagar in Angul district and at Damandjodi in Koraput district, Orissa. Management of these schools was in the hand of Saraswati Vidya Mandir (SVS) which is affiliated to Vidya Bharati Akhila Bharatiya Sikhya Sansthan. It also provided necessary infrastructures, such as land, building, furniture, library, laboratory equipment and other assets. The said schools were unaided private schools. On 15th May, 1985, NALCO entered into two separate but identical agreements for the aforesaid schools with the Central Chinmoy Mission Trust, Bombay (in short, CCMT) where under the NALCO entrusted the management of the schools on a contract basis to CCMT and the schools were called Chinmay Vidyalaya. These Agreements acknowledged the fact that the two schools have been established by the NALCO and to start and run those schools, it had approached CCMT. The Agreements further stipulated terms and conditions on which CCMT was to run and manage these schools. As per the requirements of the Statute governing school education, every school is required to constitute a Managing Committee. Accordingly, these Agreements also provided that the powers to establish, maintain and manage the schools shall vest in the Managing Committee consisting of seven members. Out of these seven members, four were the nominees of CCMT and three persons were nominated by the NALCO. Chairman, Vice-Chairman, and Secretary-cum-correspondent were to be the nominees of CCMT. NALCO was also to provide quarters at its own cost for teachers and staff members of the schools. NALCO also agreed to provide residential accommodation to every employee in due course. Significantly, the employees of the schools were to be treated at par with NALCO employees so far as the medical, consumer co-operative, club and similar facilities are concerned. NALCO also agreed to meet the revenue deficit, appointments are made by the Managing Committees of the schools, it is on the recommendation of the Selection Committee of which the authorities of NALCO are the members. Further, since the inception of the school, an officer in the rank of General Manager of NALCO has been functioning as the President of the Managing Committee, and an officer in the rank of Chief Manager/DGM (Personal Admn.), and the DGM (Finance) are the other two members. That apart, the building furniture/fittings and all necessary paraphernalia for the running of the schools is provided by and is the responsibility of NALCO. Even the finances are provided by NALCO the financial budget is approved by the Board of Director of the NALCO. NALCO even fixes the tuition fee. No transaction of the schools can be made without the approval of DGM (Finance), NALCO which includes the expenditure with regard to the salary component, provident fund, medical reimbursement, leave travel concession, festival advance, increments, etc. Teaching and non-teaching staff of the schools are allotted with residential quarters by the NALCO.

The employees of the schools approached the Orissa High Court, for a declaration that they are the employees of NALCO and be treated as such. The High Court considering the degree of control directed the regularization of the employees. On appeal, the Supreme Court observed that there may be some element of control of NALCO because of the reason that its officials are nominated to the Managing Committees of the schools. Such provisions are made to ensure that schools run smoothly and properly by the society. It also becomes necessary to ensure that the money is appropriately spent. However, this kind of 'remote control would not make NALCO as the employer of these worker and further observed that the proper approach would be to ascertain whether there were complete control and supervision and as the Managing Committee which is a separate legal entity was regulating the affairs of the school, there was no Complete Supervision and Control.

### **2.7 Effective and Absolute Control**

The Apex Court raised the standard slightly higher in the case of **Balwant Rai Saluja v. Air India Ltd.**<sup>20</sup> The case pertained to the employees of the Hotel Corporation of India, which is a Government Company incorporated under the Companies Act, it is a wholly owned subsidiary of Air India and its entire share capital is held by Air India and its nominee. Air India controls the composition of the Board of Directors and appoints Directors in consultation with the Government of India. The power to remove the Directors from office before the expiry of the term is vested with Air India, in consultation with the Government of India, so also the power to fill up the vacancies caused by death, resignation, retirement or otherwise. General management of the Corporation is vested in the hands of the Managing Director. Notwithstanding that, Air India is conferred with the power to issue such directions or instructions as it may think fit in regard to the finances and the conduct of the business and affairs of the Corporation. Duty has been cast upon the Corporation to comply with and give effect to such directions and instructions. The main objects for which the Corporation is incorporated are large and include carrying the business of hotels, motels, restaurants, cafés, kitchens, refreshment rooms, canteens and depots etc. in general and its incidental and ancillary objects are establishments of catering and opening hotels,

---

<sup>18</sup> 1957 AIR 264

<sup>19</sup> (2014) 6 SCC 756

<sup>20</sup> (2014) 9 SCC 407



which would tend to promote or assist in Air India's business as an international air carrier. Chef Air Flight Catering is one of the units of the Corporation.

The workmen working in Air India Ground Services Department Canteen, raised an industrial dispute and the competent Government made a reference to the Central Government Industrial Tribunal as to whether the demand of the workmen employed by Chef Air to provide canteen service to be treated as deemed employees of the management of Air India.

The CGIT held that the workmen were employees of Air India and therefore their claim was justified. Furthermore, the termination of services of the workmen during the pendency of the dispute was held to be illegal. Single Judge of the High Court of Delhi set aside and quashed the CGIT's award and held that the said workmen would not be entitled to be treated as or deemed to be the employees of the Air India. The Division Bench of the High Court of Delhi found no error in the order passed by the

Single Judge of the High Court. The appeal was dismissed by the Division Bench confirming the order of the learned Single Judge who observed that the responsibility to run the canteen was absolute with the HCI and that the Air India and the HCI shared an entirely contractual relationship. Therefore, the claim of the appellants to be treated as employees of the Air India and to be regularized was rejected by the learned Single Judge. On an appeal there was a difference of opinion between two Judges of the division bench of the Supreme Court and the appeal was placed before a full bench. The Full Bench observed that;

*"The mere fact that the Air India has a certain degree of control over the HCI, does not mean that the employees working in the canteen are the Air India's employees. The Air India exercises control that is in the nature of supervision. Being the primary shareholder in the HCI and shouldering certain financial burdens such as providing the subsidies as required by law, the Air India would be entitled to have an opinion or a say in ensuring effective utilization of resources, monetary or otherwise. The said supervision or control would appear to be mere to ensure due to the maintenance of standards and quality in the said canteen.... to be called the employees, they would need to satisfy the test of an employer-employee relationship and it must be shown that the employer exercises absolute and effective control over the said workers."*

## **2.8 Factors Contributing to Regularization**

Over the years many factors have been declared in isolation or in combination by the courts as constituting supervision and/or control. The ensuing ambiguity in the subject has made many employers paranoid, making them spend considerable time and money in ensuring that no element of control or supervision exists in their contract labour management practices. Many a time such paranoia has resulted in many unhealthy practices for the Principle Employer. All these factors which have been declared as constituting supervision and control have to be scrupulously analyzed to understand what would lead to a contract being declared sham bogus or camouflage.

### **(i) Supervisor**

To supervise the work means to watch-over, direct a corrective step, and tendering of advice.<sup>21</sup> Who should supervise the work of the Employer Contract Labour is one of the most common dilemma of a Principle who engages contract labour. The CLRA Act does not make it mandatory that supervisors should be deployed for supervision of contract labour. Application for License<sup>22</sup> requires an agent or manager to be present in the worksite. The exact reason for the presence of the agent or manager and his/her role is not envisaged in the statute or rules. Generally, some of the workers double as a supervisor or on the insistence of the Principle Employer supervisors are deployed by the contractor. The legal status of these supervisors are ambiguous as they are excluded from the definition of workman envisaged under the CLRA Act by Section 2(1)(i)(B).<sup>23</sup> They do not have any right whatsoever envisaged in the Act, but it is a widespread practice that they are included in the muster roll and hence the principle employer has an additional burden. The issue of primary supervision and secondary supervision has been highlighted in many judgments. In many cases like **General Manager (P&A), Hindustan Petroleum Corporation Ltd.v. General Secretary, General Employees Association**<sup>24</sup>, the court have held that when the contractor's employees were supervised by the principal employer the contract shall be deemed as sham, bogus and camouflage. The evidence the court relied on was that contractor's supervisors were not present in the premises during working hours of contractor's employees. This position of the Bombay High Court is not entirely accepted by the Supreme Court. Apex Court made a difference between job contract and manpower supply contract in the case of **International Airport Authority of India v. International Air Cargo Workers' Union**<sup>25</sup>, as under:

*"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. 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 an employee, who chooses whether the worker is to be assigned/allotted to the principal employer or otherwise. In short, a 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*

<sup>21</sup> National India Rubber Works Ltd v. Employees State Insurance Corporation, through its Regional director M.P. 2007 LLR 838 (MP HC)

<sup>22</sup> Form iv in central rules

<sup>23</sup> As per the Section 2(1)(i)(B)

<sup>24</sup> 2010 LLR 957 (Bom HC)

<sup>25</sup> (2009) 13 SCC 374

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 the contractor”.

Hence from a practical perspective, there is a stark difference between manpower supply and job contracts. This difference makes it a structural difficulty as both manpower and job contract are treated equally under CLRA Act.

**(ii) Recruitment**

In many cases including **Ram Singh v. Union Territory, Chandigarh**,<sup>26</sup> Supreme court has observed that selection of contract labour is an element of control. But ultimately the contract labourers too are working for the principal employer and the question whether principle employer has a say in the recruitment of the contract labour has been explicitly answered by the Supreme Court in **Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd**<sup>27</sup>, wherein it was observed by the court that the principle employer has the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability, etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract and it does not make the contract labour employees of the principle employer. The ultimate say of whether one person should be recruited in his rolls should be with the Contractor.

**(iii) License**

It was observed by various courts that mere registration and issue of a license under the Contract Labour Act does not make a contract genuine<sup>28</sup>. The critical question was whether non-licensing or non-renewal of licenses would entail a case of regularization. High Courts of Karnataka<sup>29</sup>, Madras<sup>30</sup>, Gujarat<sup>31</sup> and Bombay<sup>32</sup> had held that when the contractor did not possess a license under the CLRA Act his employees will be treated the employees of the principal employer. But Supreme Court has held that non-registration of an establishment by the principle employer or non-renewal of license by the contractor would not entail regularization but is only a procedural irregularity.<sup>33</sup>

**(iv) Record Keeping**

As per Chapter vii of the Contract Labour central rules, most of the records like Register of persons employed, Employment Card, Service Certificate, Muster Roll, Wages Registers, Deduction Register and Overtime Register are to be maintained by the contractor. It also prescribes that

- (1) All registers and other records required to be maintained under the Act and rules shall be maintained complete and up-to-date, and, unless otherwise provided for, shall be kept by an officer or the nearest convenient building within the precincts of the workplace or at a place within a radius of three kilometers.
- (2) Such registers shall be maintained legibly in English and Hindi or in the language understood by the majority of the persons employed in the establishment.
- (3) All the registers and other records shall be preserved in original for a period of three calendar years from the date of last entry therein.
- (4) All the registers, records, and notices maintained under the Act or rules shall be produced on demand before the Inspector or any other authority under the Act or any person authorised in that behalf by the Central Government.
- (5) Where no deduction or fine has been imposed or no overtime has been worked during any wage period, a ‘nil’ entry shall be made across the body of the register at the end of the wage period indicating also in precise terms the wage period to which the ‘nil’ entry relates, in the respective registers maintained in Forms XX, XXI, and XXIII respectively

The problem is most of the time contractors does not maintain records or registers properly due to lack of manpower nor maintain an office within prescribed radius. This creates a lot of confusion as records and registers are necessary for tracking contract labour movement inside the premises of the factory, to check and ensure their attendance, to calculate their wages and other benefits, ensure health and safety etc. As the principal employer is liable for all the aforementioned it’s a widespread practice that some records are issued and maintained by the Principal Employer. The question is whether record keeping tantamount to control,

---

<sup>26</sup> (2004) 1 SCC 126,

<sup>27</sup> AIR 2005 SC 2412.

<sup>28</sup> Coimbatore Cement Works Union v. Management of A.C.C Ltd 2000 LLR 478 (Mad Hc), The Management of Ashok Hotel v. Their workmen, 2013 LLR 352(Del HC)

<sup>29</sup> Loading and Unloading Workers Union v. Food Corporation of India (1986) (2) SLR 454,

<sup>30</sup> The Workmen of Best & Crompton Industries Ltd. v. The Management of Best & Crompton Engineering Ltd., Madras and Ors., (1985) (1)Lid 492

<sup>31</sup> Food Corporation of India Workers Union v. Food Corporation of India and Others (1990) 61 FLR 253

<sup>32</sup> United Labour Union and Others v. Union of India and Others, (1990) 60 FLR 686

<sup>33</sup> Dena Nath & Others vs. National Fertilisers & others, 1992 LLR 46..

In Haldia Refinery Canteen Employees Union and Another v. Indian Oil Corporation Ltd.&Others, 2005 11 LLJ.it was observed by the Supreme Court that when the contractor has been made responsible for maintenance of registers and records, his employees will not be absorbed by the principal employer and hence by implication observing that record keeping tantamount to control.

**(v) Continuous Service**

Mere engagement of the contract labour for a long time does not become a ground of regularization.<sup>34</sup> If the contract labour works under different contractors in the same establishment continuously then it can be considered as a sham and camouflage. In R.K. Panda vs Steel Authority Of India<sup>35</sup> it was observed by the Supreme Court that contract workers who had been initially engaged through contractors but have been continuously working with the respondent for a long time on different jobs assigned to them in spite of the replacement and change of the contractors, shall be absorbed by the respondent. The way in which the establishments try to circumvent this position is by ensuring proper documentation of termination and re-employment, and also by creating an artificial cooling off period between employments under different contractors. This is all the more important for the industrial establishment in remote areas as the workforce locally available would more or less remain the same and every contractor who is an engaged recruit from these existing pools, hence such establishments are always under a risk.

**(vi) Same and Similar**

Merely because the contract labourer and payroll employees perform a same or similar job does not amount to a case of regularization. As per Rule 25 (v) of the Contract Labour Central Rules 1971 the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work. In U.P. Rajya Vidyut Utpadan Board & ... vs U.P.Vidyut Mazdoor Sangh 2010 LLR 453, it was observed by the court that nature of work, duties, and responsibilities attached thereto are relevant in comparing and evaluating as to whether the workmen employed through contractor perform the same or similar kind of work as the workmen directly employed by the principal employer. The degree of skill and various dimensions of a given job have to be gone into to reach a conclusion that nature of duties of the staff in two categories is on par or otherwise. Often the difference may be of a degree. It is well settled that nature of work cannot be judged by the mere volume of work; there may be qualitative difference as regards reliability and responsibility.”

**(vii) Canteen**

Canteen has been one area in which there have been serious regularization issues. Section 46 of the Factories Act, 1948 requires the establishment of canteens in factories employing more than two hundred and fifty workers. Most of the establishments outsource this task being outside its core competency. The critical question was whether the canteen employees employed by the contractor are to be treated as the employees of the company only for the purpose of Act 1948 or for all the other purposes. Supreme Court in a plethora of cases held that the outsourced canteen workers will only be employees of the establishment for the purpose of Factories Act. <sup>36</sup>

**(viii) Gate Pass/Identity Card**

As per Rule 72 of the Contract Labour Central Rules, the contractor has the responsibility to issue an employment card.<sup>37</sup> The rules do not speak about gate entry cards or permits but the question whether gate pass can be issued by principle employer has been an issue which bothers the principle employer. In some cases, issuing of gate passes have been found to contribute to control. <sup>38</sup>

This is a difficult situation for the principal employer as gate pass is the only way to restrict unauthorized entry into the premises and in establishments with biometric entry, the contractor should also be given operating rights into the system.

**(ix) Disciplinary Action**

It has been held in a plethora of cases that the right to take disciplinary action is a critical element of control.<sup>39</sup> The principal employer can initiate action against the contractor for any of the act or omission of its contract labour, including requesting the contractor for withdrawing any of the contract labourers.

---

<sup>34</sup> Bharatiya Kamkar Sena vs. Udhe India Ltd, 2008 LLR 344.

<sup>35</sup> 1994 SCC (5) 304

<sup>36</sup> Indian Petrochemicals Corpn. Ltd. v. Shramik Sena, (1999) 6 SCC 439, Balwant Rai Saluja, Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd., (2005) 5 SCC 5 Karnataka v. KGSD Canteen Employees' Welfare Assn.,(2006) 1 SCC 567 , Balwant Rai Saluja & Anr... appellant(s) v. Air india ltd. & or (2014) 9 SCC 407

<sup>37</sup> As per Rule 74 Employment Card.—(i) Every contractor shall issue an employment card in Form XIV to each worker within three days of the employment of the worker.

(ii) The card shall be maintained upto date and any change in the particulars shall be entered therein.

<sup>38</sup> Ashok kumar Verma & ors. Vs. Container Corporation of India & ors. 219 (2015) DLT 378, Sesa Goa Limitd.

<sup>39</sup> National Aluminium Co. Ltd. v. Ananta Kishore Rout & Ors. , (2014) 6 SCC 756, Haldia Refinery Canteen Employees Union v. Indian Oil Corpn. Ltd., (2005) 5 SCC 51

**(x) Settlement**

It has been held in some cases that direct settlement of principle employer with the contract labour denotes, employer-employee relationship. It was held by the Andhra Pradesh High Court, in Karri Pothu Raju and Ors. vs National Thermal Power Corpn,<sup>40</sup> that signing as a party will be considered as a control but a tripartite agreement in which the principle employer sign as a witness cannot be.

**(xi) Termination**

It has been held in a plethora of cases that right to terminate a contract labourer is an element of control.<sup>41</sup> The termination rights of the contract labour entirely vests with the contractor.

**(xii) Payment of Wages**

Subsection 4 of Section 21 provides that in the event of a default on the part of the contractor to make payment of wages to the labour employed, the principal employer may need to step in and make good such payment or shortfall.<sup>42</sup> But in a plethora of cases reimbursement of wage' was considered a sign of control by the Principle Employer which can make the contract sham and lead to regularization.<sup>43</sup>

Supreme Court subsequently considered the issue; In Haldia Refinery Canteen Emps. vs M/S. Indian Oil Corporation Ltd.(Para 15) it was observed the court that if the contractor is made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours, payments made to the contractor will not amount to mere reimbursement of salary.

---

<sup>40</sup> (1998) III LLJ 896 AP

<sup>41</sup> Ibid 56

<sup>42</sup> Section 21(4) reads” In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labor employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor”.

<sup>43</sup> Indian Petrochemicals Corpn. Ltd. v. Shramik Sena, 1999 SC 6 SCC 439, VST Industries Ltd vs VST Industries Workers Union 2001 SC 1 SCC 298