

M.Anasuya and Others Vs. Neuclear Fuel Complex, Hyd. and Others

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Court : Andhra Pradesh

Decided On : Sep-25-2000

Reported in : 2000(6)ALD474; 2000(6)ALT598

Judge : B.S.A. Swamy, J.

Acts : Contract Labour (Regulation and Abolition) Act, 1970 - Sections 7, 10(1) and 12; [Minimum Wages Act, 1948](#); [Constitution of India](#) - Article 39D, 136, 226 and 309; [Administrative Tribunals Act, 1985](#)

Appeal No. : WP No. 29210 of 1998

Appellant : M.Anasuya and Others

Respondent : Neuclear Fuel Complex, Hyd. and Others

Advocate for Def. : Mr. R.S. Murthy, SC for Central Govt., Government Pleader for Labour and; Mr. M.V. Madhurima, Adv.

Advocate for Pet/Ap. : Mrs. N. Shoba, Adv.

Judgement :

ORDER

1. It is rather astonishing to note that senior officers working in the Neuclear Fuel Complex at Hyderabad, a constituent unit of Department of Atomic Energy, which is directly under the administrative control of the Hon'ble PrimeMinister, not only

violated the law of the land with impunity but also showed defiant attitude towards the orders passed by this Court apart from obtaining orders from this Court to the detriment of the working class by swearing in to false affidavits and misleading this Court without placing the real facts before this Court from time to time as per their convenience. Their actions can be summed up in one word i.e., they have no respect either for the law or for the truth leave apart the compliance of the commands of the Courts as declared by the apex Court as well as this Court. They are under the impression that King can do no wrong and the laws made by the Parliament are not applicable to them but someone else. Unfortunately, as these organisations happen to be the Government undertakings. Authorities constituted for the implementation of welfare Legislations like payment of Minimum Wages Act and the Employees Provident Fund are not bothered to visit these organizations or find out whether they are complying with the provisions of these Acts or not. In the result, every Act intending to safeguard the interests of the workmen from the unethical methods adopted by the employer remains a myth in these organisations and nothing but anarchy is prevailing in these organisations.

2. In fact, the issue raised in this writ petition is squarely covered by the judgment of mine in *Pola Satyanarayana and others v. Secretary, Government of India, Ministry of Labour*, : (2000) IILLJ 1278 AP . But, as the respondents argued the matter contancurously, I am forced to spend much time in hearing the arguments and pronouncing judgment to satisfy the ego of the officers.

3. The petitioners 37 in number filed this writ petition seeking writ of mandamus declaring the action of the respondent-management (1) in not absorbing the petitioners as regular employees, in not paying the pay and also in not extending other benefits on par with the regular employees of the respondent-management as illegal, arbitrary and consequently directing the respondents to absorb the petitioners as its regular employees and (2) prescribing proper scales of pay and other service conditions to the petitioners from the date of their initial appointment together with arrears of salary.

4. This Court, while admitting the writ petition, by order dated 22-10-1998, passed the following order WPMP No.35709 of 1998, which is as hereunder:

'If the petitioners are in service as on today, that position shall be maintained till further orders from the Court'

5. As per the version of the petitioners, the very next day i.e., on 23-10-1998, the respondents stopped petitioners 1 to 19 from attending to the work as sweepers in the manufacturing plant and administrative building. On that, the petitioners filed CC No. 1903 of 1998 but the same was dismissed by this Court on 17-8-1999 on the basis of a statement made by the respondents that the term of the contract, under whom they claimed to be working, expired on 10-10-1998 and that they were not in service on the date of interim orders passed by this Court.

6. The relief sought for in this writ petition is opposed by the respondent-management by raising frivolous and untenable contentions by placing reliance on the observations of the apex Court as well as this Court in support of their actions without applying their mind whether those observations can be of any help to the respondents in opposing the claim of the petitioners or not. In fact, in a 7-page counter affidavit filed on 17-12-1988, 5 pages deal with the ratio decidendi declared by the Supreme Court from time to time. This Court, by order dated 30-12-1998, in WVMP No.4182 of 1998, having noticed the fact that the Central Government, in exercise of its powers under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act'), issued notification on 9-12-1976 prohibiting the employment of contract labour on and from March, 1977 for sweeping, cleaning etc., in the Central Government offices, made the interim order absolute and directed the office to post the writ petition for final hearing on 19-1-2000 keeping in view the importance of the matter.

7. Before advertng to various objections raised by the respondent-management in opposing the relief, the factual background has to be stated for better appreciation of the case.

8. The respondent unit was established in Hyderabad in an extent of Ac. 1100.00 gifted by the State Government in 1971 which is now situated within the territorial limits of Kapra Municipality. The area comprises of manufacturing plants and administrative buildings covered by an inner compound wall guarded by the Central Industrial Security Force (hereinafter referred to as 'the area guarded by

CISF'). The residential colony constructed for the employees of the Department of Atomic Energy (DAE) including NFC Guest House and Chief Executive's quarters is in an extent of 260 acres of land apart from vegetation to maintain ecological balance. The entire land is encompassed by chain-linked fencing with gates at appropriate places for convenience of the occupants. The overall control including allotment of quarters vests in the Estate Officer who is an officer of the NFC administration as seen from the affidavit filed by the 1st respondent, dated 21-9-2000. But, unfortunately the respondent-management without deploying regular staff for cleaning of garbage, roads, water drains and residential buildings and also junglecutting, started getting the work done by engaging casual labourers.

9. While the things thus stood, the Central Government issued notification, dated 9-12-1976, referred to above prohibiting the employment of contract labour for sweeping, cleaning of buildings owned or occupied by the establishments controlled by the Central Government. Even then, the respondents followed unfair labour practice by continuing the work of sweeping done by casual labourers. In those circumstances, about 140 sweepers working in the premises of the 1st respondents' unit filed WP No.13281 of 1987 seeking regularisation of their services. This Court disposed of that writ petition on 6-6-1990 directing the Central Government to consider the request of the petitioners by taking into account the provisions of Section 10 of the Act and the rights accrued to them on prohibition of employment of contract labour as per Central Government notification.

10. Pursuant to the said judgment, the 1st respondent sent call letters to all the sweepers to appear for an interview and prepared a seniority list on the basis of the marks obtained by the sweepers in the interview without reference on their seniority. Questioning the said proceedings, those casual labourers filed OA No. 1009 of 1990 on the file of Central Administrative Tribunal (hereinafter referred to as 'CAT'). But, the Tribunal dismissed the said OA on the ground that the relief sought for by them was a premature one. Thereafter, on the basis of the seniority list prepared, the management issued posting orders to some of those employees. Aggrieved employees filed OA No.103 of 1991 and the CAT, having called for the records, categorically observed that there was no need to allot marks and, by order dated 30-8-1991, directed the respondent-management to prepare a seniority

list as per their entry into the service within two months. Thereafter, in the year 1992, the respondent-management absorbed only 31 sweepers and threw the rest of them out of employment. But, as these staff are hardly sufficient to attend to the work, they changed the modus operandi and started entrusting the work of sweeping to the contractors and to circumvent the provisions of the Act, they divided the work into two parts (1) sweeping in the premises guarded by CISF (2) sweeping and cleaning of area around the residential flats, public buildings, general installations, drains etc., collection/transportation and disposal of refuses as per the scope and specification of work. And the contractors are directed to attend to the work as per the directions of the engineer in-charge. It is not in dispute that petitioners 1 to 19 were engaged by the contractors to attend to these works within the premises guarded by CISF and petitioners 20 to 37 were working as sweepers outside the premises guarded by CISF i.e., DAE colony etc., as stated supra. It is also the case of the petitioners that except petitioners 16, 17, 18 and 19 who started working as contract labourers since 1995, all the others were working from 1993 onwards continuously. As the contractor was paying only Rs.45/- per day instead of Rs.65/- per day i.e., the standard scheduled rates payable under Minimum Wages Act, they seem to have made a representation to the Deputy Chief Executive of the plant. When their representation fell to the deaf ears of the management, they filed this writ petition. During the course of arguments, it also came to light that the management gave employment to petitioner No. 1 under a mistaken impression that if employment was given to her, the writ petition would be withdrawn. But that as it may, it is made clear that any relief, that is to be given in this writ petition, cannot be availed by the 1st petitioner in this writ petition.

11. To substantiate my view of the whole episode, a reference has to be made to some of the orders passed by this Court on the basis of the averments made by these respondents. Some casual labourers, questioning the termination of their service, filed WP No.11336 of 1983 and this Court dismissed the same basing on the averments made by the respondent in their counter stating that those petitioners were working only as casual labourers in the leave vacancies and they were never in regular employment of the Government and they had been allowed to work intermittently as and when required.

12. In OA No. 103 of 1991 filed by the casual labourers questioning the seniority list of sweepers prepared by the respondents on the basis of the marks obtained by them in the alleged interview, the respondent categorically stated:

'The contract labourers do not have right to be considered by regularisation as they were not engaged by the respondents complex directly. Regarding the abolition of Contract Labour, it is stated that there is no total ban on for engaging contract labour which is again falsehood.'

13. The above statements were made by the respondents after issuance of the notification by the Central Government on 9-12-1976 prohibiting employment of contract labour in Governmental offices for sweeping, cleaning, etc.

14. Next, in the contempt case No. 1903 of 1998 filed by the petitioners questioning the action of the respondents in terminating the services of petitioners 1 to 19 herein inspite of the orders of this Court, dated 22-10-1998, the respondents filed counter taking a new stand that the respondents have sprawling complex with large scale growth of vegetation, shrubs and bushes and the cleaning and maintenance of hygiene and become a stupendous task. The responsibility of sweeping etc., is vested with Kapra Municipality and they were being requested, time and again, to discharge these functions. In the absence of any such steps by the Municipality, this work was executed through a running rate contract for a period of a year from time to time. After filing of this writ petition, they approached Kapra Municipality requesting it to take up the work orally in the 1st week of December, 1998 and thereafter addressed a letter No.NFGC dated 19th December, 1998. It is useful to extract this letter:

'Please refer our discussions during the first week of December, 1998 on the above subject. As desired by you, the details showing the areas to be swept and the quantum of drains to be cleaned are furnished in the enclosed annexure. A copy of the drawing indicating the master plan of the DAE Housing Colony is enclosed.

You are therefore requested to arrange for sweeping and cleaning of these areas immediately as requested by us earlier, as the earlier contract for the above job

has already expired on 16-12-1998. I also request you to nominate a supervisor from your side to coordinate the work, in liaison with our Estate Management Section in the DAE colony. The details of payment to be made may please be communicated.

Thanking you.'

Basing on this letter, as per the counter filed by the Municipality the Municipal Council, in its resolution No.321, dated 5-1-1999, passed a resolution accordingly to take-up the work for Rs.36,840/- and entrusted the same to the Community Development Society which came into existence as per G.O. Rt. No.1103, MA., dated 12-12-1998, for upliftment of poor people who are below the poverty-line by entrusting the work such as NSD, UWEP etc., with an object of providing livelihood to the members of the society and without any profit motto subject to approval of the Government. Thereafter, it is the case of the respondents as well as Kapra Municipality that the sweeping work in the DAE housing colony is being attended by petitioners 20 to 37 who formed, themselves into Community Development Society. As on today, these petitioners are attending to sweeping, cleaning and other works referred to supra outside the plant area. As far as the plant area guarded by CISF is concerned, as per the version of the respondents they are getting the sweeping work done by deploying the Helpers (cosmetic) in the plant from the sanctioned strength as per the Office Order No. NFC/PAR-1/06/02/1213, dated 12-12-1998.

15. From the above narration of facts, it is evident that the 1st respondent's complex consisting of manufacturing plant and administrative buildings, residential colony, apart from public buildings, general installations, drains, roads within the area encompassed by a chain-linked fencing rested in the 1st respondent complex's unit and the over all control including allotment of quarters vests with the Estate Officer who is an officer of NFC administration. It is also evident that the regular staff appointed by them are not able to attend to the entire work in question. They initially started engaging about 140 casual labourers. When they approached the Court of law, absorbed 31 of them by throwing rest of them out of employment after second round of litigation and thereafter, resorted to contract

labour system since 1992-1993. When these people approached this Court for abolition of the contract labour and for their absorption, they terminated the services of these petitioners and directed the Municipality to take up the work on payment basis in the area not guarded by the CISF. It so happened that the Municipality entrusted the work to petitioners No.20 to 37 who formed themselves into a Community Development Society. Though the respondents stipulated that only 11 women and 5 men should be deployed to attend to the work, it is seen from the counter of the Municipality that all the petitioners herein are attending to the sweeping work and the payment received from the respondent complex is being shared by them. The above variations in the stand of the respondents, from time to time, are extracted in support of my view that the officers have no respect for truth or law.

16. Now let me examine the various contentions raised by the respondent unit in opposing the relief sought for by the petitioners in this writ petition.

17. In the 1st counter filed on 17-12-1998, the respondents categorically admitted that:

'The existing sanctioned work force of 140 was found to be inadequate and the functions also fell outside the sphere of cleaning, sweeping work inside the buildings of NFC and as such running contract with specific rates for each job was finalised and has not been renewed except one which is subsisting up to 16-12-1998'

18. From this, it is evident that the extra work force was needed to attend to the work of sweeping and cleaning the entire area apart from collection/transportation and disposal of refuses etc. But, instead of creating additional posts required, they started getting the work done through contract labour.

19. During the course of arguments, the senior officers of the 1st respondent unit started saying that their request for creation of new posts was being turned down by the Finance Department consistently and hence, they had no option except getting the work done through contract labour. When I directed him to file an affidavit to that effect, they did not advert this aspect. To test the correctness of the

contention, a reference has to be made to the Office Memorandum F.No.49014/2/86-Estt (C), dated 7-6-1988, Department of Personnel and Training , Ministry of Personnel, Public Grievances and Pensions, Government of India. The Central Government reviewed the policy of engagement of casual labour in view of the judgment of the Supreme Court, dated 17-1-1986, in Shri Sunder Singh and other v. Union of India and issued guidelines in matters of recruitment of casual workers on daily wage basis. The relevant clauses of memo are extracted here under:

'2(i) Persons on daily wages should not be recruited for work of regular nature.

(ii) Recruitment of daily wagers may be made only for work which is of casual or seasonal or intermittent nature or for work which is not of full time nature, for which regular posts cannot be created.

(viii) In case where it is not possible to entrust all the items of work now being done by the casual worker to the existing regular staff, additional regular posts may be created to the barest minimum necessary, with the concurrence of the Ministry of Finance.

(x) The regularisation of the services of the casual workers will continue to be governed by the instructions issued by this department in this regard. While considering such regularization, a casual worker may be given relaxation in the upper age limit only if at the time of initial recruitment as a casual worker, he had not crossed the upper age limit for the relevant post.

(xi) If a department wants to make any departure from the above guidelines, it should obtain the prior concurrence of the Ministry of Finance and the Department of Personnel and Training.

All the administrative Ministries/ Departments should undertake a review of appointment of casual workers in the offices under their control on a time bound basis so that at the end of the prescribed period, the following targets are achieved:

(a) All eligible casual workers are adjusted against regular posts to the extent such regular posts are justified.

(b) The rest of the casual workers not covered by (a) above and whose retention is considered absolutely necessary and is in accordance with the guidelines, are paid emoluments strictly in accordance with the guidelines.

(c) The remaining casual workers not covered by (a) and (b) above are discharged from service.'

20. In the next para, time limit was fixed for completing the review and, under Clause (c), the respondent unit has to review the appointment of casual labour within 6 months. In fact, each Ministry has to furnish quarterly statement indicating the progress of review. In Para 3, it is stated that there shall be no more engagement of casual workers for attending to work of a regular nature, particularly after the review envisaged above is duly completed. Each Head of the office should also nominate an officer who would scrutinise the engagement of each and every casual worker and the job for which he is being employed to determine whether the work is of casual nature or not.

21. From this, it is evident that no casual worker can be appointed in a work of regular nature and if the work that is being turned out by the casual labourers cannot be entrusted to the existing staff, the concerned department has to take steps to create additional posts to the existing cadre strength. Though, in the counter, the respondent started contending that the work of sweeping was not of perennial nature, during the course of the arguments, they admitted that the work was of regular nature. From the admission of the respondent, it is seen that the work of sweeping is being regular in nature and it cannot be got executed by casual labourers. They have not placed any material to prove that they had undertaken the review as directed in the above office memorandum and whether any proposals for creation of new posts were submitted by them or not. On the other hand, though the time for completing the review i.e., 6 months, was over, they continued about 140 persons as casual labourers till 1992 and they absorbed only 31 out of them as sweepers and threw the rest of them out of employment after the second round of litigation. Now from the counter, it is seen that they were

not able to get the work done with the sanctioned work force of 140 including the 31 sweepers that were absorbed in 1992. Thereafter, they switched over to the contract labour system in contravention of the notification, dated 9-12-1976, by dividing the work into two parts and getting the work of sweeping and other works of sanitation done through contractor by engaging labourers less than twenty for each work to circumvent the provisions of the Act.

22. It is not in dispute that, if the work in both the areas are taken together, they exceed the minimum number of labourers prescribed for application of the provisions of the Act. In fact, the same issue came up for consideration in Pola Satyanarayana's case wherein I held that the Air Port authority adopted dubious method of splitting the same work at different places in the Air Port itself and was entrusting the work to different contractors so that the contract labourers employed by each of the contractor does not exceed 20 in number who do not hold the licence as required under Section 12 of the Act as well as the terms of the contract only to defeat the provisions of the Act. Under the provisions of the Act, the entire establishment has to be treated as a single unit for application of the provisions of the Act but not department-wise as is being done by the respondent-Corporation in this case and, at any rate, the respondent cannot split up the same work in the same establishment, place-wise and entrust the work to different contractor to circumvent to provisions of the statute; and the entire procedure followed by the respondent is nothing but mala fide exercise of power. In this case also, the respondents have not persuaded me to take a different view, more so, in the light of their own admission in the additional affidavit filed on 20-9-2000 that the over all control of the entire area including the allotment of quarters vests with the Estate Officer. That apart, the Executive Engineer (Maintenance) working in Civil Engineering Division of NFC entered into rate contract with the contractor for sweeping work. Hence I hold that the respondent-management divided the work into two parts and entrusted the work to the contractors is nothing but mala fide exercise of the power and intended to give a go-bye to the provisions of the Act and the same cannot be countenanced in law.

23. When once it is held that the respondents cannot split up the work of sweeping into two parts and entrust to the contractors as if they are different contracts, which

is not in accordance with law, the necessary corollary that flows is that they are bound to follow the provisions of the Act and they cannot get the work of sweeping done through contract labour in view of the notification, dated 9-12-1997, issued by the Central Government.

24. Next, under Section 7 of the Act, any establishment which intends to get its works which are not perennial in nature done through the agency of a contractor, has to register its name as principal employer with the registering officer and then only it can get the work executed through the contractor who holds licence under Section 12 of the Act. It is the primary duty of the principal employer to see that the contractor will not commit default in matters of wage payment and that he complies with the provisions of all welfare Legislations apart from providing certain basic welfare amenities to the labourers working under him. If he fails to comply with any of these things, the principal employer is also liable for prosecution. Admittedly, in this case, none of the provisions of the Act were complied with, on the pretext that the labourers engaged by them are less than 20 in each work and as such the provisions of the Act are not made applicable.

25. In the light of the view taken by me supra that the entire establishment should be treated as a single unit and the same work in all the departments cannot be split up place-wise entrust the works to different contractors, the above contention of the respondents has to be rejected.

26. Nextly the respondents started contending, for the first time, in this writ petition that they have been paying property tax to the Kapra Municipality and the responsibility of sweeping etc., is vested with the Municipality and, in the absence of any steps taken by the Municipality, they are getting the work executed through a running rate contract for a period of one year from time to time. This contention is nothing but playing fraud on the Court by suppressing the real facts. On the subject 'levy of taxes by Municipalities on the properties of the Central Government', the Ministry of Works, Housing and Supply issued instructions, in its letter Nos.14(I)P 32/1 dated 10-5-1975 and 23 (13)/59, dated 4-8-1961. It is useful to extract the same hereunder:

'(i) In respect of isolated Central Government properties where all services are availed of by the Central Government in the same manner as in respect of private properties, the Central Government, will pay service charges equivalent to 75% of the property tax realised from private individuals.

(ii) In the case of large and compact colonies which are self sufficient with regard to services or where some of the services are being provided by the Central Government Department the service charges will be calculated in the following manner.

(a) In the case of colonies which do not directly avail of civil services within the areas and are self sufficient in all respects the payment of service charges will be restricted to 33-1/2% of the normal rate of property tax applicable to private properties.

(b) In respect of colonies where only a partial use of the service is made, service charges will be paid as 50% of the normal property tax rate.

(c) In respect of colonies where all the services normally provided by the Municipal body to the residents of other areas within its limits are being availed of service charges will be paid as 75% of the property tax rate realised from private individuals.

(iii) the next ratable value annual value for the propose of instructorsshall be 9% of the Capital value of the property concerned both in respect of residential and non-residential properties the capital value shall include the cost of acquiring.

(iv) the existing arrangements arrived at between the railway authorities or any Central Government departments and local bodies in respect of property tax service charges including the arrangements envisaged regarding Central Government properties in Calcutta and as regards the properties in Delhi will not be disturbed by this decision.'

From these instructions, it is seen that any colonies which do not directly avail civil services within the area and are self-sufficient in all respects, the payment of service charges is restricted to 33-1/2% on the normal rate of property tax. The

respondents themselves and the Kapra Municipality categorically admitted that the respondents have been paying only 33-1/2% of tax on the ground that they are not availing civil services from the Municipality. But, to the dismay of this Court, the respondents started contending that it is the duty and responsibility of the Kapra Municipality to provide civil amenities which is nothing but utter lie. After this writ petition was filed, from the letter addressed by them to the concerned Municipality on 19-12-1998 it is seen that they were literally begging the Municipality to take up sweeping work for them on payment basis as the unit was landing in troubles by getting the work done through casual labour as well as contract labour and, at the same time, they themselves were not in a position to provide hygienic conditions for the safety of the inmates in the residential colony. If it is the duty of the Municipality to maintain sanitation on the ground that the respondents unit is paying house tax, it is not known why they agreed, in their letter, dated 19-12-1998, to pay the service tax to the Municipality over and above the property tax paid by them. In fact, the Municipal Council, in resolution No.321, in its meeting held on 5-1-1999, agreed to take up the work and entrust the same to the Community Development Society on no-loss no-profit basis subject to the approval of the Government. Though the Municipality is attending to the work since 5-1-1991, till now they did not get the required approval from the Government. From the admission made by the respondents that it was paying only 33-1/2% of normal rate of property tax and the stand taken by the Municipality, in its counter dated 21-9-2000, that the Municipality is under no obligation to provide civil amenities and the work, they are doing at present, is at the request of the respondent but not as of duty and it entrusted the work to Community Development Society, it is clear that neither the Municipality nor the NFC is liable for any claims of the members of the CDS. In the light of the letters of the Ministry of Housing, admission made by the respondents and the stand taken by the Municipality, I have no hesitation to hold that they have sworn in to a false affidavit to get the writ petition of the petitioners dismissed by misleading this Court. Accordingly this contention is also rejected.

27. The next contention of the respondents, in this case, is that the respondents unit happens to be a Government Department any recruitment to be made should be in accordance with the rules framed under proviso to Article 309 of the

[Constitution of India](#) and any dispute with regard to service matters of the employees has to be agitated before the Central Administrative Tribunal and this Court cannot entertain any writ petition under Article 226 of the [Constitution of India](#). He placed reliance on some decisions of the Supreme Court as well as this Court including the case reported in N. ChandraKumar v. Union of India, 1997 (3) Supreme 147, wherein their Lordships of the Supreme Court held that the aggrieved party cannot directly approach the High Court without exhausting the statutory remedy provided under the [Administrative Tribunals Act, 1985](#). Absolutely there is no quarrel to the above proposition. But in this case the stand of the respondents is that the petitioners were never their employees and their engagement by the contractor is not within their knowledge and their control at any time. The said arrangement is out side the scope of notification issued by the Central Government on 9-12-1976. In the light of the above stand of the respondent, the question that falls for consideration in this writ petition is whether the action of the respondents in getting the work of sweeping, a prohibited category of employment through a contractor is in accordance with law?

28. In fact, the Supreme Court, in Civil Appeal No.1350 of 1986 and batch of appeals, categorically ruled that the contract labour cannot be considered as employed by the Railways. Though this issue was again raised in Union of India and others v. Subir Mukharji and others, : AIR 1998 SC2247 , the Supreme Court, without going into that question, opined that the directions contained in the order dated 13-3-1997 passed by the CAT are quite fair directing the Railways to absorb them as regular Group D employees bearing in mind the quantum of work available on perennial nature and subject to their fitness is fair in the facts of the case and for that reason their Lordships were not inclined to interfere with the impugned order in exercise of their jurisdiction under Article 136 of the [Constitution of India](#). Hence there is no force in this contention and the same is rejected.

29. Even assuming without admitting that the disputes relates to the service conditions of the employees of the respondents unit and a statutory remedy is provided under the [Administrative Tribunals Act, 1985](#), this Court cannot unsuit the petitioners on that ground in the peculiar facts and circumstances of the case i.e., continuous violations of the statutory provisions, defiance of the orders of the

Courts coupled with the fact that the respondents are switching over from one system to the other only with a view to deny regular scales of pay to the sweepers and other attendant benefits on par with regular employees in violation of principle of equal pay for equal work as enshrined in Article 39-D of the [Constitution of India](#) and at this belated stage I cannot direct the petitioners to approach the CAT for the relief and fight the litigation for two to three decades as the petitioners who are working as sweepers cannot carry on luxurious litigation with their monies while the officers of the unit will be fighting the litigation by squandering away tax payers money by engaging corporate lawyers. In fact the Supreme Court ruled on more than one occasion that refusal to exercise the power of judicial review under Article 226 of the [Constitution of India](#) on the ground of availability of alternative remedy is not a rule of thumb but it is a matter of convenience. Further the power of judicial review vested in the High Court under Article 226 of the [Constitution of India](#) is declared as basic structure of the Constitution. Hence I am inclined to exercise the power of judicial review vested in me under Article 226 of the Constitution. I rejected similar objection in Pola Satyanarayana's case by holding that the arm of the Court is long enough to reach injustice wherever it is found. The Court is sentinel in the quiver is to meet out justice in given facts of the case, by placing reliance on AIR India Statutory Corporation's case, : (1997)ILLJ 1113 SC . Accordingly this contention is also rejected.

30. The respondents next contended that the Court is not justified in enquiring the disputed questions of fact while exercising the power of judicial review under Article 226 jurisdiction. To my mind the only question that falls for consideration in this case would be whether the action of the respondents in getting the work of sweeping through contract labour is in accordance with law or not? Except this, the other contentions raised by the respondents that the petitioners were never employed by them directly nor their service particulars were available with them as they were engaged by the contractors to whom they have given the work on rate contract and are only intended to try to mislead the Court if possible and see that the relief is not given to the petitioners by this Court. I do not find any disputed questions of fact or of law in this case more so in the light of the notification referred to supra.

31. Lastly it is to be seen that this Court while admitting the writ petition by order dated 22-10-1998 directed the respondent to continue the petitioners if they are in service as on that date till further orders of the Court. In fact having received the said order the respondents filed vacate stay petition on 17-12-1998 and this Court by order dated 30-12-1999 made interim order absolute by dismissing the vacate stay petition. In spite of these orders the respondents did not allow the petitioners 1 to 19 to do the work. When a Contempt Case No.1903 of 1998 was filed, they filed counter in the following words:

'The averment to the effect that the petitioners were not allowed to enter into the premises from 23-10-1998 is baseless and untenable as the respondents have not renewed the contract beyond 10-10-1998 and there is no scope for utilisation of their services by the contractor within the premises in any manner after this date.' Though such a stand was not taken by the respondents in the affidavit filed in support of the vacate stay petition. Basing on these averments, the contempt case was dismissed. But they have not placed any evidence to show that the contract for the sweeping work in the area guarded by CISF was over on 10-10-1998. But, in the record, I could find a contract entered into by the respondents with one Lakshman on 2-7-1998 for sweeping work in the area not guarded by CISF for a period of five and half a months i.e., upto 16-12-1998 in proceeding No.NFC/EE/EM/72/1998 dated 2-7-1998. When the term of the contract for sweeping work outside the area guarded by CISF is extended in July, it is rather difficult to hold that they have not extended the contract for sweeping in the premises guarded by CISF on the same lines. In the absence of any documentary evidence to prove their case that the said contract came to an end on 10-10-1998, I find sufficient force in the contention of the petitioners that the respondents stopped the petitioners 1 to 19 now 2 to 19 only having come to know of the orders passed by this Court on 22-10-1998 i.e., on the very next day and they are getting the work done by deploying the regular helpers (cosmetic).

32. For the foregoing discussion, I have no manner of doubt whatsoever is holding that the entire procedure followed by the respondents management in getting the work of sweeping and cleaning the premises to maintain hygienic conditions not only in the premises guarded by CISF but outside the premises over which the

respondents' unit is exercising ownership right including the entrustment of work of Kapra Municipality is a mere camouflage and intended to circumvent the law of the land as well as the statutory provisions governing the employment of contract labour apart from violation of office memorandum dated 7-6-1988 and the same has to be declared as mala fide exercise of power and vitiated by several illegalities and the same has to be set at naught.

33. When once the action of the respondents in engaging the contract labour for the sweeping work in the premises of the respondent unit, a work of perennial nature is declared as illegal, intermediary contract vanishes and there exists a direct relationship of master and workmen between the petitioners and the respondent unit.

34. In the light of the findings recorded by me on various objections that were raised by the respondent the petitioners have to succeed in this writ petition and writ of mandamus shall issue to the respondents to take back the petitioners 2 to 19 as sweepers in the premises guarded by CISF and also to take further steps to regularise the services of the petitioners 2 to 37 in Group D posts for which they are entitled to, within a period of four weeks from the date of receipt of a copy of this order.

35. The petitioners have to get exemplary costs from the respondents for the unethical manner in which the officers of the respondent unit acted all through from the inception of the unit at Hyderabad but also in opposing the relief sought for in this writ petition by raising frivolous and untenable contentions.

36. In the result, the writ petition is allowed with costs. Advocate fee is fixed at Rs.5,000/-.