

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE S RACHAIAH

WRIT APPEAL NO. 1637 OF 2024 (L-TER)

C/W

WRIT APPEAL NO. 1626 OF 2024 (L-TER)

WRIT APPEAL NO. 1985 OF 2025 (L-TER)



IN WA No. 1637/2024

BETWEEN:

1. WORKMEN OF M/S KARNATAKA MALLADI BIOTICS LTD.,
REPRESENTED BY SRI HANUMANTHU T,
GENERAL SECRETARY,
KARNATAKA MALLADI BIOTICS
EMPLOYEES UNION,
AGATAHALLI D B HALLI POST,
PANDAVAPURA TALUK,
MANDYA DISTRICT.

...APPELLANT

(BY SRI. N G PHADKE., ADVOCATE)

AND:

1. M/S KARNATAKA MALLADI BIOTICS LTD.,
NOW KNOWN AS EMBIO LTD.,
PLOT NO. 71-74,
TUBINAKERE INDL. AREA,
MANDYA - 571 402,
REPRESENTED BY ITS



MANAGING DIRECTOR.

...RESPONDENT

(BY SRI. J PRADEEP KUMAR., ADVOCATE)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR RECORDS IN WP No. 17692 OF 2018 (L-TER) AND ALLOW THIS APPEAL, AND SET ASIDE THE ORDER DATED 27.08.2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP No. 57049 OF 2015 (L-TER) C/W WP No.17692 OF 2018 (L-TER) IN THE INTEREST OF JUSTICE AND EQUITY, ETC.

IN WA NO. 1626/2024

BETWEEN:

1. SRI.HANUMANTHU T
OPERATOR,
AGED ABOUT 52 YEARS,
S/O THAMME GOWDA,
2. SRI. PRASANNA Y K
OPERATOR,
AGED ABOUT 56 YEARS,
S/O HANUMAIHAH ALIAS KARIPPA,
3. SRI. MAHESHA B V
HELPER,
AGED ABOUT 56 YEARS,
S/O VENKATE GOWDA,
4. SRI. HANUMESHA K C
OPERATOR,
AGED ABOUT 48 YEARS,
S/O CHIKKANNA
5. SRI LAKSHMI NARASHIMAIHAH
OPERATOR
AGED ABOUT 62 YEARS
S/O HOBHALAIHAH

6. HANUMANTHE GOWDA K.H.,
OPERATOR,
AGED ABOUT 55 YEARS,
S/O HANUMEGOWDA
7. SRI. THIMAPPA H T .,
OPERATOR,
AGED ABOUT 53 YEARS,
S/O THIMMAIAH
8. SRI. LINGAPPA
HELPER,
AGED ABOUT 54 YEARS,
S/O MARIGOWDA,
9. SRI. NARENDRA D .N
OPERATOR,
AGED ABOUT 53 YEARS,
S/O NARASIMHEGOWDA,
10. SRI. RAMESHA Y M
OPERATOR,
AGED ABOUT 50 YEARS,
S/O MADEGOWDA,
11. SRI. BASAVARAJ T P
OPERATOR,
AGED ABOUT 47 YEARS,
S/O PUTTEGOWDA,
12. SRI. RAVI N
HELPER
AGED ABOUT 50 YEARS,
S/O NAGAIAH,
13. SRI. VERANNARADHYA K.,
TECHNICAL (FITTER)
AGED ABOUT 58 YEARS,
S/O KUMARADHYA
14. SRI. RAVIKUMARA S .A
OPERATOR,
AGED ABOUT 51 YEARS,

S/O ANKEGOWDA,

15. SRI. PANCHALINGA K P.,
OPERATOR,
AGED ABOUT 49 YEARS,
S/O PANCHEGOWDA,
16. SRI. NAGARAJ
OPERATOR,
AGED ABOUT 56 YEARS,
S/O CHIKKAPUTTEGOWDA,
17. SRI. SHIVALINGEGOWDA,
OPERATOR,
AGED ABOUT 51 YEARS,
S/O H NINGEGOWDA,
18. SRI. KEMPEGOWDA,
HELPER,
AGED ABOUT 52 YEARS,
S/O SIDDAIAH
19. SRI. MALLESHA K M.,
HELPER,
AGED ABOUT 52 YEARS,
S/O MALLAIAH,
20. SRI. MANJU K.C.,
SR. OPERTOR,
AGED ABOUT 54 YEARS,
S/O CHOWDEGOWDA,
21. SRI. SHIVARUDRAPPA
JR. ASSISTANT
AGED ABOUT 57 YEARS,
S/O MADAPPA
22. SRI. PRASADA M P N
SR. ASST. (STORES)
AGED ABOUT 52 YEARS,
S/O K PURUSHOTHAM
23. SRI. BANDI GOWDA

- OPERATOR,
AGED ABOUT 62 YEARS,
S/O JAVAREGOWDA,
24. SRI. SHIVARAMU D K.,
OPERATOR,
AGED ABOUT 49 YEARS,
S/O KRISHNA
25. SRI. MANCHE GOWDA H.S.,
OPERATOR,
AGED ABOUT 50 YEARS,
S/O SIDDAPPA
26. SRI. SUBASH Y.S.,
HELPER,
AGED ABOUT 56 YEARS,
S/O LATE SHANAKARLINGEGOWDA,
27. SRI. CHANDRASHEKAR S.,,
OPEARTOAR,
AGED ABOUT 62 YEARS,
S/O ATE MALLEGOWDA,
28. SRI. KRISHNE GOWDA M.S.,
SR. OPERATOR,
AGED ABOUT 59 YEARS,
S/O SANNEGOWDA,
29. SRI. BASAVARAJA H .E
OPERATOR,
AGED ABOUT 52 YEARS,
S/O ERAIAH,
30. SRI. RAJANNA
OPERATOR,
AGED ABOUT 54 YEARS,
S/O CHIKKAJAVARAIAH,
31. SRI. NINGARAJA K
HELPER,
AGED ABOUT 50 YEARS,
S/O KALASHETTY

32. SRI. SHANBOG B.L,
TYPIST,
AGED ABOUT 64 YEARS,
S/O LAKSHMINARAYANA,
33. SRI. MAHESHA C
OPERATOR,
COMPRESSOR
AGED ABOUT 53 YEARS,
S/O CHANNAPPA,
34. SRI. BORE GOWDA
TECHNICAL (ELEC.)
AGED ABOUT 48 YEARS,
S/O LATE SIDDARAMARADHYA,
35. SRI. PUTTARAMARADHYA S
BOILER OPERATOR,
AGED ABOUT 62 YEARS,
S/O LATE SIDDARAMARADHYA,
36. SRI. SHVASHANKARA B.,
TECHNICIAN
AGED ABOUT 64 YEARS,
S/O BORAI AH
37. SRI. SHIVALINGIAH M.,
OPERATOR,
AGED ABOUT 51 YEARS,
S/O MADAI AH
38. SRI. RAMAIAH T.P.,
SR. OPERATOR,
AGED ABOUT 61 YEARS,
S/O PUTTAIAH
39. SRI BOREGOWDA S.,
OPERATOR,
AGED ABOUT 61 YEARS,
S/O SIDDEGOWDA,
40. SRI. PRASADA S .N

SR. TECHNCIAN (FITTER)
AGED ABOUT 51 YEARS,
S/O K.V MAHALINGA BHATTA

41. SRI. PUTTASWAMY Y .H.,
JR. ASSISTANT
AGED ABOUT 47 YEARS,
S/O LATE NATHAPPA ALIAS HANUMAIAH,
42. SRI. CHIKKASIDDEGOWDA
OPERATOR,
AGED ABOUT 49 YEARS,
S/O CHIKKA ANKEGOWDA,
43. SRI. SUNDARA H.C.,
HELPER,
AGED ABOUT 55 YEARS,
S/O CHIKKA BORAI AH,
44. SRI. LINGANNA
HELPER,
AGED ABOUT 62 YEARS,
S/O LATE NINGANNA,
MOGAIAH,
45. SRI. NAGARAJA D.T.,
HELPER,
AGED ABOUT 55 YEARS,
S/O THIMMEGOWDA, ALIAS ANNAIAH,
46. SRI. GIRIDHARA R.,
HELPER,
AGED ABOUT 55 YEARS,
S/O RAJANNA M.K.,
47. SRI. SIDDEGOWDA
OPERATOR
AGED ABOUT 54 YEARS
S/O SIDDGOWDA
48. SRI BALAVEDRA SIMON
SR. TECHNICIAN
AGED ABOUT 51 YEARS

S/O WILLION RAJ

49. SRI KRISHNAMURTHY S G
OPERATOR
AGED ABOUT 54 YEARS
S/O GOPALIAH
50. DECEASED GURUPRASAD S L
HELPER
REP BY SMT MANJUSHREE
AGED ABOUT 35 YEARS
W/O GURUPRASAD S L
51. DECEASED KUMARA J
HELPER
REP BY SMT H M MAMATHA
AGED ABOUT 49 YEARS
W/O OF KUMARA J
52. DECEASED NARASHIMAMURTHY S N
HELPER
REP BY SMT MANJULA
AGED ABOUT 49 YEARS
W/O NARASHIMAMURTHY S N
53. DECEASED SHIVARAJU
HELPER
REP BY SMT LAKSHMI DEVI
AGED ABOUT 39 YEARS
S/O SHIVARAJU
54. DECEASED SHIVARAJU K
SR. ASST. (ADMN)
REP BY SMT DHANALAKSHMI
AGED ABOUT 51 YEARS
W/O SHIVARAJU K
55. DECEASED THIMMAIAH
HELPER
REP BY SMT JAYAMMA
AGED ABOUT 63 YEARS
W/O THIMMAIAH

56. DECEASED VISHWANATH SHASTRY
SR. OPERATOR (COMPRESSOR)
REP BY SMT DEEPA VISHWANATH SHASTRY
AGED ABOUT 54 YEARS
W/O VISHWANATH SHASTRY

57. DECEASED BASAVARAJ B K
HELPER
REP BY SMT MANJULA K V
AGED ABOUT 47 YEARS
W/O BASAVARAJ B K

ALL ARE C/O SRI. HANUMANTHU T.,
GENERAL SECRETARY,
KARNATAKA MALLADI BIOTICS EMPLOYEES UNION
AGATAHALLI, D.B HALLI POST,
PANDAVAPURA TALUK
MANDYA DISTRICT

...APPELLANTS

(BY SRI. AVANI CHOKSHI., ADVOCATE)

AND:

1. M/S.KARNATAKA MALLADI BIOTICS LTD.,
NOW KNOWN AS EMBIO LTD.,
PLT NO.71-74, TUBINAKERE INDL. AREA,
MANDYA 571 402
REPRESENTED BY ITS MANAGING DIRECTOR
2. SHANKAR
AGED ABOUT 43 YEARS,
S/O MARIDEVAIAH
3. HANUMANTHAIHAH Y V
AGED ABOUT 41 YEARS,
S/O VENKATESH
4. SOMASHEKAR,
AGED ABOUT 43 YEARS,
S/O BASAVAIAH,
5. MANOHARAN

- AGED ABOUT 49 YEARS,
S/O RAJIAH,
6. SHANKARA Y.C.
AGED ABOUT 46 YEARS
S/O CHIKKALINGAIAH,
 7. SRI. MAYAPPA
AGED ABOUT 48 YEARS,
S/O MAYIGASHETTY
 8. SRI. SHANKAR Y.H.
AGED ABOUT 46 YEARS
S/O PIDEGOWDRU HANUMAIAH
 9. SRI. MAHADEVAPPA H.N.
AGED ABOUT 49 YEARS
S/O NINGAPPA
 10. SRI. VENKAPPA TALWAR
AGED ABOUT 42 YEARS,
S/O AYYAPPA TALWAR,
 11. SRI. SHIVAKUMAR SWAMY B
AGED ABOUT 57 YEARS,
S/O C. BASAVARAJAPPA,
 12. SRI. HANUMANTHA.Y.C.A
AGED ABOUT 48 YEARS,
S/O MOLLEKENCHANA DEVAIAH,
 13. SRI NARASHIMARAJU S C
AGED ABOUT 57 YEARS,
S/O CHIKKADASAHEGGADE,
 14. SRI NINGANNA.C
AGED ABOUT 48 YEARS,
S/O LATE CHIKKANNA
 15. SRI JAYAKUMARA Y S
AGED ABOUT 50 YEARS,
S/O SRINIVASAIAH,

16. SRI JOKEN SAGAYANATHAN
AGED ABOUT 60 YEARS,
S/O ANTONY,
17. SRI PUTTASWAMY Y M
AGED ABOUT 50 YEARS,
S/O MOTAIAH
18. SRI. SOMASHEKAR K
AGED ABOUT 42 YEARS,
S/O KEMPEGOWDA
19. SRI. MANJU
AGED ABOUT 43 YEARS,
S/O KARIYAPPA,
20. NAGARAJAMURTHY Y S
AGED ABOUT 48 YEARS,
S/O NINGAIAH
21. SRI YOGESHA Y M
AGED ABOUT 40 YEARS,
S/O MOTALINGEGOWDA
22. SRI MANJUNATHA D
AGED ABOUT 42 YEARS,
S/O DEVEGOWDA,
23. BHARATHI
AGED ABOUT 35 YEARS,
W/O LATE RAVI Y H
24. SRI NINGE GOWDA
AGED ABOUT 62 YEARS,
F/O LATE GOPALA Y N

Nos. 2 TO 25 ARE AT
C/O M/S KARNATAKA MALLADI BIOTICS,
EMPLOYEES UNION,
KALYANA BHAVANA BUILDING,
THYAGARAJA ROAD, MYSURU-570 023

25. K L CHANNAKESHA
S/O SHRI LINGEGOWDA
AGED ABOUT 54 YEARS,
RESIDING AT KALMANTIDODDI,
KERGODI HOBLI, MANDYA TALUK,
MANDYA DISTRICT, KARNATAKA-571 446
26. M SHIVARAJU
S/O MALLAIAH,
AGED 47 YEARS,
R/AT NO.766, DODDA ARASINAKERE
CHIKKAMARIGOWDA NAGAR,
CHIKKA ARASINAKERE HOBLI,
MADDUR TQ., MANDYA DISTRICT,
KARNATAKA-571 422

...RESPONDENTS

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR THE RECORDS IN WP NO.57049/2015 AND WP.No.17692/2018 AND ALLOW THIS APPEAL AND SET ASIDE THE ORDER DATED 27/08/2024 PASSED BY THE LEARNED SINGLE JUDGE IN WP NO.57049/2015, C/W 17692/2018, IN SO FAR AS THE APPELLANTS ARE CONCERNED, ETC.

IN WA NO. 1985/2025

BETWEEN:

1. SRI. SHANKAR
S/O MARIDEVAIAH
SINCE DECEASED
BY HIS WIFE SMT P ANITHA
W/O SHANKARA
AGED ABOUT 52 YEARS,
2. SRI HANUMANTHAIHAH Y V
S/O VENKATESH
AGE ABOUT 50 YEARS,
3. SRI SOMASHEKAR
S/O BASAVIAIAH
AGE ABOUT 51 YEARS,

4. SRI MANOHARAN
S/O RAJIAH
AGE ABOUT 55 YEARS,
5. SRI SHANKARA Y C
S/O CHIKKLINGAIAH
AGE ABOUT 53 YEARS,
6. SRI MAYAPPA
S/O MAYIGASHETTY
AGE ABOUT 58 YEARS,
7. SRI SHANKAR Y H
S/O PIDEGOWDRU HANUMAIAH
AGE ABOUT 55 YEARS,
8. SRI MAHADEVAPPA H N
S/O NINGAPPA
AGE ABOUT 59 YEARS,
9. SRI VENKAPPA TALWAR
S/O AYYAPPA TALWAR
AGE ABOUT 52 YEARS,
10. SRI SHIVAKUMAR SWAMY B
S/O C BASAVARAJAPPA
AGE ABOUT 66 YEARS,
11. SRI HANUMANTHA Y C
S/O MOLLEKENCHANA DEVAIAH
AGE ABOUT 55 YEARS,
12. SRI NARASHIMRAJU S C
S/O CHIKKADSAHEGGADE
AGE ABOUT 66 YEARS,
13. SRI NINGANNA C
S/O LATE CHIKKANNA
AGE ABOUT 57 YEARS,
14. SRI JAYAKUMARA Y S
S/O SRINIVASAIAH

AGE ABOUT 60 YEARS,
SINCE DECEASED
REPRESENTED BY HIS WIFE
SMT. A.S.PADHMA,
AGED ABOUT 51 YEARS

15. SRI JOKEN SAGAYANATHAN
S/O ANTONY
AGE ABOUT 69 YEARS,
16. SRI PUTTASWAMY Y M
S/O MOTAIAH
AGE ABOUT 59 YEARS,
17. SRI SOMASHEKAR K
S/O KEMPEGOWDA
AGE ABOUT 51 YEARS,
18. SRI MANJU
S/O KARIYAPPA
AGE ABOUT 53 YEARS,
19. SRI NAGARAJAMURTHY Y S
S/O NINGAIAH
AGE ABOUT 57 YEARS,
20. SRI YOGESHA Y M
S/O MOTALINGEGOWDA
AGE ABOUT 49 YEARS,
21. SRI MANJUNATHA D
S/O DEVEGOWDA
AGE ABOUT 52 YEARS,
22. SMT BHARATHI
W/O LATE RAVI Y H
AGE ABOUT 45 YEARS,
23. SRI NINGEGOWDA
F/O LATE GOPALA Y N
AGE ABOUT 72 YEARS,

APPELLANTS No.1-22

R/AT C/O M/S. KARNATAKA
MALLADI BIOTICS EMPLOYEES UNION,
KALYANA BHAVANA BUILDING,
THYAGARAJA ROAD,
MYSURU.

24. M SHIVARAJU
S/O SHRI MALLAIAH
AGE ABOUT 49 YEARS,
RESIDING AT DOOR NO 766
DODDARASINAKERE,
CHIKKAMRIGOWDA NAGARA,
CHIKKARASANIKERE HOBLI,
MADDUR TALUK
MANDYA DISTRICT , KARNATAKA 571422
25. K L CHANNAKESHA
S/O SHRI LINGEGOWDA
AGE ABOUT 56 YEARS
RESIDING AT KALMANTIDODDI
KERGODI HOBLI,
MANDYA TALUK
MANDYA DISTRICT, KARNATAKA - 571446

...APPELLANTS

(BY SRI. N.G.PHADKE., ADVOCATE)

AND:

1. M/S KARNATAKA MALLADI BIOTICS LTD.,
NOW KNOWN AS EMBIO LTD
POLT NO 71-74,
TUBINKERE INDUSTRIAL AREA
MANDYA - 571402
REP BY ITS MANAGING DIRECTOR
2. SRI GURUPRASAD S L
S/O K LINGAIAH
AGE ABOUT 50 YEARS,
3. SRI HANUMANTHU T
S/O THAMME GOWDA

AGE ABOUT 53 YEARS,

4. SRI PRSANNA Y K
S/O HANUMAIAH ALIAS KARIAPPA
AGE ABOUT 57 YEARS,
5. SRI MAHESHA B V
S/O VENKATEGOWDA
AGE ABOUT 57 YEARS,
6. SRI HANUMESHA K C
S/O CHIKKANNA
AGE ABOUT 49 YEARS,
7. SRI LAKSHMI NARASHIMAIAH
S/O HOBHALAIAH
AGE ABOUT 63 YEARS,
8. SRI HANUMANTHE GOWDA K H
S/O HANUMEGOWDA
AGE ABOUT 56 YEARS,
9. SRI THIMAPPA H T
S/O THIMMAIAH
AGE ABOUT 54 YEARS,
10. SRI KUMARA J
S/O JAVAREGOWDA
AGE ABOUT 58 YEARS,
11. SRI LINGAPPA
S/O MARIGOWDA
AGE ABOUT 55 YEARS,
12. SRI NARENDRA D N
S/O NARASIMHEGOWA
AGE ABOUT 54 YEARS,
13. SRI RAMESHA Y M
S/O MADEGOWDA
AGE ABOUT 51 YEARS,
14. SRI BASVARAJA T P

S/O PUTTEGOWDA
AGE ABOUT 48 YEARS,

15. SRI RAVI N
S/O NAGAI AH
AGE ABOUT 51 YEARS,
16. SRI VERANNARADHAYA K
S/O KUMARARADHYA
AGE ABOUT 59 YEARS,
17. SRI RAVIKUMARA S A
S/O ANKEGOWDA AGE ABOUT 52 YEARS,
18. SRI PANCHALINGA K P
S/O PANCHEGOWDA
AGE ABOUT 50 YEARS,
19. SRI NAGARAJ
S/O CHIKKAPUTTEGOWDA
AGE ABOUT 57 YEARS,
20. SRI NARASHIMAMURTHY S N
S/O LAKSHMINARAYANA
AGE ABOUT 61 YEARS,
21. SRI SHIVALINGEGOWDA
S/O H NINGEGOWDA
AGE ABOUT 52 YEARS,
22. SRI KEMPEGOWDA
S/O SIDDAIAH AGE ABOUT 53 YEARS,
23. SRI SHIVARAJU
S/O PUTTASHETTY
AGE ABOUT 52 YEARS,
24. SRI MALLESHA K M
S/O MALLAIAH
AGE ABOUT 53 YEARS,
25. SRI MANJUK C
S/O CHOWDEGOWDA

AGE 55 YEARS,

26. SRI SHIVARAJU K
S/O KARIAYIAH
AGE ABOUT 66 YEARS,
27. SRI THIMMAIAH
S/O HATTIGOWDA
AGE ABOUT 72 YEARS,
28. SRI SHIVARUDRAPPA
S/O MADAPPA AGE ABOUT 58 YEARS,
29. SRI PRASAD M P N
S/O PURUSHOTHAM K
AGE ABOUT 53 YEARS,
30. SRI BANDI GOWDA
S/O JAVAREGOWDA
AGE ABOUT 63 YEARS,
31. SRI SHIVARAMU D K
S/O KRISHNA
AGE ABOUT 50 YEARS,
32. SRI MANCHE GOWDA H S
S/O SIDDAPPA
AGE ABOUT 51 YEARS,
33. SRI SUBASH Y S
S/O SHANKARALINGEGOWDA
AGE ABOUT 57 YEARS,
34. SRI CHANDRASHEKAR S M
S/O LATE MALLEGOWDA
AGE ABOUT 53 YEARS,
35. SRI KRISHNEGOWDA M S
S/O SANNEGOWDA
AGE ABOUT 60 YEARS,
36. SRI BASAVARAJA H E
S/O ERAIAH

AGE ABOUT 53 YEARS,

37. SRI RAJANNA
S/O CHIKKAJAVARAIHAH
AGE ABOUT 55 YEARS,
38. SRI NINGARAJA K
S/O KALASHETTY
AGE ABOUT 51 YEARS,
39. SRI SHANBOG B L
S/O LAKSHMINARAYANA
AGE ABOUT 65 YEARS,
40. SRI MAHESHA C
S/O CHANNAPPA
AGE ABOUT 54 YEARS,
41. SRI BOREGOWDA
S/O JAVAREGOWDA
AGE ABOUT 49 YEARS,
42. SRI PUTTARAMARADHYA S
S/O LATE SIDDARAMARADHYA
AGE ABOUT 63 YEARS,
43. SRI SHIVASHANKAR B
S/O BORAIHAH
AGE ABOUT 65 YEARS,
44. SRI SHIVALINGAIAH M
S/O MADAIHAH
AGE ABOUT 52 YEARS,
45. SRI RAMAIAH T P
S/O PUTTAIAH
AGE ABOUT 62YEARS,
46. SRI BOREGOWDA S
S/O SIDDEGOWDA
AGE ABOUT 54 YEARS,
47. SRI PRASADA S N

S/O K V MAHALINGA BHATTA
AGE ABOUT 52 YEARS,

48. SRI PUTTASWAMY Y H
S/O LATE NATHAPPA ALIAS HANUMAIAH
AGE ABOUT 57 YEARS,
49. SRI CHIKKASIDDEGOWDA
S/O CHIKKA ANKEGOWDA
AGE ABOUT 50 YEARS,
50. SRI SUNDARA H C
S/O CHIKKA BORAI AH
AGE ABOUT 56 YEARS,
51. SRI LINGANNA
S/O LATE NINGANNA MOGAI AH
AGE ABOUT 63 YEARS,
52. SRI NAGARAJA D T
S/O LATE THIMMEGOWDA ALIAS ANNAIAH
AGE ABOUT 56 YEARS,
53. SRI GIRIDHARA R
S/O RAJANNA M K
AGE ABOUT 56 YEARS,
54. SRI VISHWANATH SASTRY
S/O K CHANDRASHEKARASASTRY
AGE ABOUT 60 YEARS,
55. SRI SIDDEGOWDA
S/O SIDDEGOWDA
AGE ABOUT 55 YEARS,
56. SRI BALAVENDRA SIMON
S/O WILLION RAJ
AGE ABOUT 52 YEARS,
57. SRI KRISHNAMURTHY S G
S/O GOPALAI AH
AGE ABOUT 55 YEARS,

58. SRI BASAVARAJ B K
S/O B KARIYAPPA
AGE ABOUT 58 YEARS,

R2-59 ARE R/AT C/O
M/S. KARNATAKA MALLADI BIOTICS
EMPLOYEES UNION,
KALYANA BHAVANA BUILDING,
THYAGARAJA ROAD MYSURU

...RESPONDENTS

(BY SRI. J.PRADEEP KUMAR., ADVOCATE FOR R1;
R25 IS SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER OF THE LEARNED SINGLE JUDGE DATED
27/08/2024 IN WP NO.57049/2015 AND CONSEQUENTLY
ALLOW THE WRIT PETITION, ETC.

THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 17.02.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE**
D K SINGH., PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE S RACHAIAH

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

The present batch of three Intra Court appeals have been
filed impugning the common judgment and order dated
27.08.2024 passed by the writ Court in W.P.No.57049/2015
connected with W.P.No.17692/2018.

2. The writ petitions were filed by the appellants-Workmen challenging the award dated 21.07.2015 passed by the Industrial Tribunal at Mysore in Reference No.156/2010. The Industrial Tribunal had held that laying-off the 84 workmen with effect from 22.06.2009 by the respondent-Establishment was not in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act' for the sake of brevity) and as the workmen had failed to establish that the management had employed more than 100 workers as on the date of declaring lay-off and retrenching 84 workers, the Labour Court has rejected the reference and held that the workmen were not entitled to any relief.

3. The learned Single Judge vide impugned judgment and order has been of the opinion that the security guards(17 in numbers) and 28 contract labours/casual workers working in the establishment during the relevant period cannot be termed as 'Workmen' under Section 2(s) of the ID Act.

4. For the purpose of computing the total number of workmen employed on an average per working day in the preceding 12 months, as contemplated under Section 25K of

the ID Act, only those who meet the definition of 'Workmen' under Section 2 (s) of the ID Act are to be considered.

5. The learned Single Judge has been of the opinion that in absence of any material to show that the security guards and the contract labourers were directly employed by the management, they cannot be treated as a 'workmen' under the definition of 'Workmen' under Section 2(s) of the ID Act so as to compute the total number of workmen under Section 25K of the ID Act. The learned Single Judge has also held that the burden of proof rested on the workmen to establish that more than 100 workmen were employed before declaring lay off, and the workmen failed to discharge this burden. An application filed by the workmen directing the respondent-management to provide the muster rolls cannot establish that the workmen had discharged the burden which was cast upon them to show that the respondent-management employed more than 100 workers. Additionally, no adverse inference can be drawn against the management for non-production of any document like attendance register. The learned single judge therefore, dismissed the writ petition vide impugned judgment and order, holding that the contract workers would not be considered as

the workmen under the definition of Section 2(s) of the ID Act as the workmen had failed to establish that the security guards were directly employed by the management. Consequently, as there were less than 100 workmen at the time of declaring lay-off, the Tribunal rightly rejected the reference and the learned Single Judge has dismissed the writ petition.

6. The only questions involved in present appeals are:
 - i. Whether the respondent-establishment had employed not less than 100 workmen in the factory on all the working days on an average per day for preceding 12 months i.e., from 05.08.2008 to 06.08.2009.
 - ii. Whether designating certain workmen as monthly-rated workmen, workmen on contract/casual basis and some workmen engaged as security guards and housekeeping personnel directly apart from hiring workmen from contractors come within the definition of workmen under Section 2(s) for the purpose of computing the total number of workmen working in the establishment for the preceding 12 months from 05.08.2008 to 06.08.2009.

- iii. If this Court is of the opinion that the respondent-establishment had employed more than 100 workmen in its factory on all the working days on an average per day for the preceding 12 months from 05.08.2008 to 06.08.2009 and as the respondent-establishment did not obtain permission from the concerned authorities while placing the workmen under lay-off with effect from 22.06.2009 or retrenching them later on 06.08.2009, and in the process had violated the mandatory provisions of Section 25 (m) and 25 (n) of the ID Act, what relief are the workmen would be entitled to?

7. The facts for the purpose of deciding the present appeals are stated as under:

- a. The respondent-management is in the business of manufacturing products against the orders placed by the pharmaceutical companies, utilizing raw materials provided by those customers. The respondent-establishment has been a profitable venture and has invested in various enterprises. The workers' union representing the workmen of the establishment had entered into three wage settlements, while the last wage settlement ended/expired on 31.03.2009. In view of the rising cost of living, the workmen submitted a charter of demands

before the management on 27.03.2009 to be considered with effect from 01.04.2009. The representatives of the management led by its General Manager had a discussion with the office bearers of the workers' union about the charter of demands and stated that they required additional time to discuss about charter of demands submitted by the workmen.

b. It is the case of the workmen that, in order to exert pressure on them, the management placed the counter-demand for reduction of wages by 20%. Subsequently, a meeting was held between the management and the workers' representative/union on 29.05.2009. The workmen further alleged that the Management threatened to resort to lay-offs, lock-out etc. Later, as an additional pressure tactic, the management introduced voluntary retirement scheme(VRS), to force the workmen to drop their demands. Having failed in all these tactics, the management laid-off most of the workmen with effect from 22.06.2009 and subsequently, retrenched 84 workmen in the first stage/phase. Later, additional workmen were retrenched and 17 others were ordered to be transferred to distant locations to make them succumb to the pressure and agree for VRS or quit the factory.

c. According to the workmen, the management had employed more than 100 workmen at the relevant point of time, calling them as monthly-rated workmen, contract workmen. Besides, the management had engaged number of other persons as security guards and housekeeping personnel. The management laid off the workmen from 22.06.2009 and subsequently retrenched 84 workmen or declared a lockout of the factory without obtaining prior permission from the competent authority or declaring lockout of the factory. It is submitted that the declaring lay-off from 22.06.2009 and for the retrenchment of 84 workers, the government had made a reference to the industrial tribunal in view of failure of conciliation proceedings. The Government vide order No.Kaa.E.107 IDM 2010 dated 28.05.2010 under Section 10(1)(c)/(d) of the ID Act referred the following disputes for adjudication:

"1. The Management of M/s. Karnataka Malladi Biotech Ltd., Tubinakere, Mandya District, has contended that the Junior Officers/Supervisors working in the factory do not fall under the definition of a "Workman"(or worker) under the industrial Disputes Act, 1947, even though more than 100

workers are employed and working, whether the action of the management in declaring a lay-off on 22.06.2009 without obtaining permission from the appropriate authority as per the rules, and subsequently retrenching 84 workmen on 06.08.2009, is justified/legal?

2. If it is not justified/legal, what relief/compensation are the workmen entitled to?

3. Whether the action of M/s. Karnataka Malladi Biotech Ltd., Tubinakere, Mandya District, in first declaring a lay-off and subsequently retrenching 84 workmen, citing reasons that raw material are unavailable and manufactured goods have accumulated in stock without being sold, is justified/legal?"

d. The workmen besides submitting that the lay-off was in violation of Sections 25M and 25N also submitted that the reasons assigned by the management to lay-off and retrenchment of 84 workmen were not true. The management prior to laying-off and retrenching the workmen got all the raw materials used and drugs manufactured which were packed and transported to its sister concern at Mahad in Maharashtra. Lay-off in the factory was pre-planned to clear all the existing goods

with malafide intention so as to exert pressure on the workmen to agree for withdrawal of charter of demands. Therefore, they submitted that the action of the respondent-Management in laying-off and retrenching the workmen without following mandatory provisions of the ID Act was illegal and unjust and sought a direction that the management should be directed to pay full wages from 22.06.2009 till their reinstatement into the service with all consequential benefits and costs.

8. On the other hand, the case of the management before the Industrial Tribunal was that the company was incorporated in May 1991 for manufacturing bulk drugs. The company had problem of tying-up funds for financing the project to set up at Mandya. Due to delay on the part of financial institutions in sanction of funds, commissioning of the plant got delayed. The management could carry on business only for 2 years from 1995 to 1997. As the management was not getting the funds from the financial institutions, it closed its operation from June 1997 to August 1998 and the operation was restarted in August 1998 with the support of an associate company, Emmellen Biotech Pharmaceutical Ltd., (EBPL). The operations were carried on at a very low capacity utilization and

the company incurred heavy losses during 1997-98, 1998-99. The bankers of the respondent-management had filed an application for recovery before the DRT, Bengaluru in January, 1999.

9. In the meantime, the company became sick company and made a reference under Section 15(1) of the Sick Industrial Companies (Spl. Provisions) Act 1985 under BIFR. The BIFR in August 1999 declared the company sick and the IDBI was appointed as Operating Agency. On 03.06.2003, BIFR sanctioned a scheme of rehabilitation of the company with the consent of all the lenders for payment of Rs.15 crores in 12 quarterly instalments. The company again suffered huge losses and accumulated losses increased to Rs.30.17 crores in September 2008 from Rs.23.50 crores during February 2007. In spite of loss incurred by the company, the workmen place before the management unreasonable charter of demands. Although the company was not in a position to fulfill any of the demands, in order to maintain good industrial relations, it had agreed to fulfill some of their demands. The management had initiated disciplinary proceedings against many indisciplined and erred workers. Thereafter, as a first step towards redressal of

situation, the management requested the workers to accept 20% reduction in the wages but the workers' union refused to accept reduction in wages. The management announced voluntary retirement scheme which was kept open from 08.06.2009 to 10.07.2009, but not a single workman opted for VRS. The company faced problem of non-availability of the raw materials for the products and accumulation of stock of products manufactured by the factory and exorbitant increase in the raw material prices. It had no option but to lay-off the workmen and supervisory staff from 22.06.2009 to 06.07.2009 as temporary measure and as no solution was found, the lay-off period was extended by 10 days i.e., from 07.07.2009 to 16.07.2009 and further extended from 17.07.2009 to 26.07.2009 and again from 27.07.2009 to 05.08.2009.

10. Since the respondent-management could not come out of the problem, retrenched 84 out of 92 workmen on 06.08.2009. At the time of laying-off the management, had engaged 92 workmen. They placed reliance on the register of attendance for the previous 12 months that which according to them would clearly indicate that the management had engaged

only 92 workers. The number of workers for the preceding 12 months never reached to 100.

11. The Tribunal held that initial burden was on the workmen to establish that there were more than 100 workers working with the management as on the date of declaring lay-off and retrenching 84 workmen. The Tribunal had held that while computing total number of workmen for the purpose of Section 25K of the ID Act, workers coming within the definition of Section 2(s) of the ID Act alone would be considered. Therefore, the Tribunal opined that the contract labourers would not be treated as direct employee of the management.

12. The Tribunal had held that on appreciation of the evidence of management coupled with documentary evidence in Ex.M1 to Ex.M40, it would be clear that on the date of declaring lay-off and retrenching 84 workmen, there were only **92 regular** workers in the factory. On examination of the attendance register from July-2008 to August 2009 in Ex.M5 to Ex.M31, the number of **regular employees** in the company never crossed 100. The Tribunal also drew an inference and held that if the contract/casual labours and security guards

were appointed as regular workmen in the said factory, their names should have been appeared in the attendance register. There was no material to treat the casual labourers, contract workers and the security guards as **regular workers** of the management. Their names did not find place in the attendance register. Therefore, they would not come within the ambit of Section 2(s) of the ID Act for the purpose of computing the total number of workers under Section 25 (k). The reference was therefore answered against the workmen and it was dismissed.

13. The learned counsel for the appellants-workmen has submitted that the learned Single Judge has failed to appreciate the wide and inclusive definition of 'workman' under Section 2(s) of the ID Act. Even the casual workers, contract labours and security personnel employed in connection with the establishment were liable to be included while computing the number of workmen under Section 25K of the ID Act. It is submitted that there was no dispute that the respondent-establishment had employed 92 permanent workmen, 17 security personnel and 28 contract/casual labours besides other ancillary workers and therefore, the total workforce exceeded

100 workmen. Even the management witness in his deposition MW.1 had stated as under:

*"It is true that I had appointed security people to look after Mandya Plant, apart from 92 workmen, the witness volunteers that they were not permanent workers and I say that they were on contract basis. Further, I say that even to this date some security people are looking after the Plant and Machinery at Mandya. I further say that they are looking after security matters, guarding the premises. But further stated that the names of security staff are not mentioned in Ex.M5 to M31. The names of contract workers are also not mentioned in the said documents. further the witness say occasionally required or if at all required or not mentioned.
..... It is true that one K. K. Satish and Nagraj were working in Mandya factory. Further, I say that I do not know whether they were Welder or Electrician respectively."*

14. The submission is that evidence of several workmen witnesses clearly established that the actual workforce strength and the Tribunal as well the learned Single Judge erred in discharging such evidence without proper justification.

15. The learned counsel for the appellants has also submitted the management deliberately withheld relevant employment records, despite the order dated 17.08.2012 passed by the Tribunal for production of the documents, including muster rolls, wage register, attendance registers of the contract labourers and other employment records. The submission is that the Tribunal as well as the learned Single Judge have incorrectly held that an adverse inference ought not to have been drawn against the management for non-production of the documents, despite the direction given by the Tribunal.

16. Once the evidence of 92 permanent workmen, security personnel and alleged contract/casual labourers was not in dispute and the workmen had laid the foundation of their case, non-production of the documents ought to have been held against the management and adverse inference should have been drawn.

17. It is submitted that the respondent-management exercised supervision, control and administrative authority over the security guards (17 in numbers) contract/casual labourers (28 in numbers). Section 2(s) does not state that a person

must be permanently employed to qualify as a "workman." A careful reading of the definition would reveal that any person employed in the industry to do manual, unskilled, skilled or technical, operational, clerical or supervisory work for hire or reward is a workman for the purposes of any proceedings under the ID Act. Temporary, casual or permanent status are not the terms used to determine whether a person comes within the definition of workman or not. It simply provides that if any person is employed in an industry to do manual, unskilled, skilled, technical, operational etc. work for hire or reward, he would be a workman for any proceedings under the Act.

18. The submission is that if one adds the number of security personnel and the contract/casual labourers to the 92 permanent workmen, it would be evident that the establishment had employed more than 100 workmen in the preceding 12 months prior to the date of lay-off as provided under Section 25K, the provisions of Chapter V-B of the ID Act would be applicable in the case of the establishment.

19. Section 25M provides that no workman whose name is borne on the muster rolls of an industrial establishment to

which Chapter V-B applies shall be laid-off by the employer except with the prior permission of the State Government or such authority as may be specified by the State Government by notification in the Official Gazette. Similarly Section 25N provides that no workman employed in any industrial establishment to which Chapter V-B applies. who has been in continuous service for not less than one year shall be retrenched by the employer unless the workman had been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice and prior permission of the appropriate Government or such authority has been obtained on an application made in his way.

20. It is undisputed that the respondent-management did not make any application for laying-off or retrenchment of the workmen. Therefore, the entire action of the respondent-management in laying-off the workmen and their retrenchment got vitiated.

21. Sub-section (7) of Section 25 N provides that where no application for permission under sub-section (1) of Section

25N is made, or where permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given.

22. It is submitted that the Industrial Tribunal and the learned Single Judge while interpreting the definition of workman under Section 2(s) of the ID Act, failed to draw an adverse inference against the respondent-management. The respondent-management deliberately withheld the relevant employment records including muster rolls, wage register, attendance register of contract/casual labourers and other employment records despite direction issued by the Tribunal. It is, therefore, submitted that the lay-off dated 22.06.2009, the retrenchment of 84 workers be held illegal as they were in violation of the mandatory provisions of Sections 25 M and 25 N of the ID Act and consequently, the respondent-management should be directed to pay wages to the workmen from the date of retrenchment till the date of reinstatement.

23. On the other hand, the learned counsel for the respondent has submitted that the Tribunal as well as the learned Single Judge have considered the evidence brought on record and upon proper appreciation of the evidence they have recorded the finding of fact that the respondent-management did not employ more than 92 workmen during the relevant period and therefore, Chapter V-B of the ID Act would have no application. It is further submitted that the management had produced attendance registers and employment records for the relevant period which would clearly establish that the workforce strength remained below the statutory threshold prescribed under Section 25 K of the Act (i.e., 100 workers) required for application of Chapter V-B of the ID Act.

24. It is submitted that the appellants had failed to produce any reliable documents or evidence to establish that the contract labourers, security personnels and casual workers were directly employed by the management. Except for oral assertions, nothing was brought on record to override the documentary evidence. The contract labourers and security personnel were not regular employees of the establishment, and therefore, they would not be treated as workmen in the

establishment for the purposes of Section 25 K of the ID Act. The management had justified reasons for resorting to lay-off and retrenchment, as the establishment had suffered severe financial losses, the production activities were adversely affected and there was shortage of raw materials. The accumulation of stock rendered operations economically unviable. It is further submitted that an adverse inference could not be drawn in absence of *prima facie* case established by the workmen. The management had substantially complied with the production of records and there was no deliberate suppression of the records from the Tribunal. It is further submitted that as the concurrent findings of fact should not be interfered by this Court, the writ appeal is liable to be dismissed.

25. We have considered the submissions of the learned counsel for the parties.

26. The facts are not much in dispute. There is no dispute that there were 92 regular workmen working in the establishment in 12 months preceding to the date of lay off. The only question is whether the security personnel (17 in number) and the contract/casual labours can be treated as

workmen under the definition clause i.e. Section 2(s) of the ID Act. The MW.1, has admitted that "he cannot say that during the period 2006 to 2009, he had employed some workmen through Efficient Security and Detective Bureau, Mysore; though he had appointed a few security people, they are not permanent workers and they are only on contract basis", the question is that since the security personnel have been directly appointed by the management and they were working under direct supervision, control and under the administrative authority, whether they would come within the definition of "workmen" under Section 2(s) or not?

27. When the workmen in their petition have specifically stated that as many as 28 workmen were appointed on contract basis for the period from 01.04.2007 to 31.03.2010, on month wise salary and wages and the salary was paid to them in their accounts maintained in the State Bank of India, Mandya Main Branch, and that the 17 others were employed as security guards by the management giving their details, the issue is whether they should be treated as the workmen within the ambit of Section 2(s) of the ID Act.

28. Section 2(s) of the ID Act reads as under:

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person."

29. From perusal of definition of workman as provided under Section 2(s), the concept 'regular employee is not employed in the definition as provided under Section 2 (s)'. Any person who is employed in an industry and he is paid wages/reward for performing manual, unskilled, skill, technical, operational, supervisory work for hire or reward is a workman. The nature of employment i.e., temporary or regular, is not relevant to mention whether a person employed in an industry is a workman or not? We are therefore of the considered view that the view taken by the learned Single Judge that except for 92 workmen the security guards and the other persons

employed on contract/casual basis were not workmen is not correct.

30. The Supreme Court in several pronouncements has explained the definition of "Workman" under Section 2(s) of the ID Act. Relevant extracts of few decisions are given hereunder in paragraphs 16 and 26 of **SUDARSHAN RAJPOOT V. U.P. SRTC, [(2015) 2 SCC 317]** it has been held as under:

"16. The respondent Corporation has neither produced documentary evidence nor showed before the Labour Court that the appellant workman was appointed on contract basis. The fact that he deposited Rs 2000 towards security amount with the respondent Corporation indicates that he was working as a driver on a permanent basis. In view of Schedule V, Item 10 of the ID Act, 1947 the respondent Corporation is prohibited from engaging the appellant workman as a badli, casual or temporary workman to work on permanent basis. The fact that he had been continuously working for more than 3 years and he had rendered more than 240 days of service as the driver in a calendar year until his termination order and yet he is being engaged on a contractual

basis in the respondent Corporation is statutorily prohibited. The same amounts to an unfair labour practice as defined under Section 2(ra) read with Section 25-T, which action of the Corporation is punishable under Section 25-U of the ID Act. This legal position is settled by this Court in Chief Conservator of Forests case [Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293 : 1996 SCC (L&S) 500] wherein it was held as under : (SCC pp. 302-03, para 22)

"22. ... In our opinion, it would be permissible on facts of a particular case to draw the inference mentioned in the second part of the item, if badlis, casuals or temporaries are continued as such for years. We further state that the present was such a case inasmuch as from the materials on record we are satisfied that the 25 workmen who went to the Industrial Court of Pune (and 15 to the Industrial Court, Ahmednagar) had been kept as casuals for long years with the primary object of depriving them of the status of permanent employees inasmuch as giving of this status would have required the employer to pay the workmen at a rate higher than the one fixed

under the Minimum Wages Act. We can think of no other possible object as, it may be remembered, that the Pachgaon Parwati Scheme was intended to cater to the recreational and educational aspirations also of the populace, which are not ephemeral objects, but par excellence permanent. We would say the same about environment-pollution-care work of Ahmednagar, whose need is on the increase because of increase in pollution. Permanency is thus writ large on the face of both the types of work. If, even in such projects, persons are kept in jobs on casual basis for years the object manifests itself; no scrutiny is required. We, therefore, answer the second question also against the appellants."

26. *In view of the aforesaid statement of law laid down by this Court after adverting to the powers of the Industrial Tribunal and the Labour Court as interpreted by this Court in the earlier decisions referred to supra, the said principle is aptly applicable to the fact situation of the case on hand, for the reason that the Labour Court recorded a finding of fact in favour of the workman that the termination of services of the appellant herein is not legal and valid and further*

reaffirmed the said finding and also clearly held that the plea taken in the order of termination that he was appointed on contract basis as a driver is not proved by producing cogent evidence. Further, we hold that even if the plea of the employer is accepted, extracting work though of permanent nature continuously for more than three years, the alleged employment on contract basis is wholly impermissible. Therefore, we have held that it amounts to an unfair labour practice as defined under Section 2(ra) of the ID Act, 1947 read with Section 25-T which is prohibited under Section 25-U, Chapter V-C of the ID Act, 1947. We have to hold that the judgment of the High Court in reversing the award is not legal and the same is set aside by us."

31. Similarly in **NEW INDIA ASSURANCE CO. LTD. V. A. SANKARALINGAM [(2008) 10 SCC 698]** at paragraphs 13, 14 and 18 it has been held as under:

"13. On the contrary, the preponderance of judicial opinion that a workman working even on a part-time basis would be entitled to benefit of Section 25-F of the Act is clear from the various judgments which we have referred to above. In Silver Jubilee Tailoring House case [(1974) 3 SCC 498 :

1974 SCC (L&S) 31] which is a judgment rendered by a three-Judge Bench of this Court, the question was as to whether the workers who were paid on piece-rate basis though working in the shop, were workmen in terms of Section 2(s) of the Act. That is what the Court had to say: (SCC p. 502, para 11)

"11. The question for decision was whether the agarias were workmen as defined by Section 2(s) of the Industrial Disputes Act of 1947 or whether they were independent contractors. The Court said that the prima facie test to determine whether there was relationship between employer and employee 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 employee is to do but also the manner in which he has to do the work. In other words, the proper test according to this Court is, whether or not the master has the right to control the manner of execution of the work. The Court further said that the nature of (sic) extent of the control might vary from business to business and is by its nature incapable of precise definition, that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that even the test of control over the manner of work is not one of universal application and that there are many contracts in which the master could not control the manner in which the work was done."

(emphasis supplied)

For arriving at this conclusion, the Supreme Court referred to various judgments of this Court

including Birdhichand Sharma case [AIR 1961 SC 644 : (1961) 3 SCR 161 : (1961) 2 LLJ 86] but distinguished the judgment in Shankar Balaji Waje case [AIR 1962 SC 517 : 1962 Supp (1) SCR 249] (rendered by two Hon'ble Judges) by observing that the workman who was claiming that status was not called upon to attend duties in the factory itself as he was permitted to take the tobacco from the factory owner and role the bidis at his residence at any time without any fixed hour of work and that there was absolutely no supervision of the so-called employer over his work. In conclusion, the Bench observed in Silver Jubilee Tailoring House case [(1974) 3 SCC 498 : 1974 SCC (L&S) 31] , SCC p. 510, para 37:

"37. That the workers are not obliged to work for the whole day in the shop is not very material. There is of course no reason why a person who is only employed part-time, should not be a servant and it is doubtful whether regular part-time service can be considered even prima facie to suggest anything other than a contract of service. According to the definition in Section 2(14) of the Act, even if a person is not wholly employed, if he is principally employed in connection with the business of the shop, he will be a 'person employed' within the meaning of the sub-section. Therefore, even if he accepts some work from other tailoring establishments or does not work whole time in a particular establishment, that would not in any way derogate from his being employed in the shop where he is principally employed."

(emphasis supplied)

14. *It will be seen from a perusal of the aforequoted passages that the observations made therein clearly suggest that a workman employed on a part-time basis but under the control and supervision of an employer is a workman in terms of Section 2(s) of the Act, and is entitled to claim the protection of Section 25-F thereof, should the need so arise. The fact that the workman was working under the control and supervision of the appellant employer is admitted on all sides. We also find that the preponderance of judicial opinion in the High Courts is also to this effect. As a sample we reproduce passages from two such judgments.*

18. *The question as to whether a part-time workman would be covered within the definition in Section 2(s) of the Act and whether he would be entitled to the benefit of continuous service under Section 25-B and the benefit of Section 25-F, is answered in favour of the respondent workman. The appeal is accordingly dismissed."*

32. Even otherwise the workmen had moved an application for production of the documents by the management which were exclusively in their possession including names of all the employees who were appointed on contract basis for the period from 01.04.2007 to 31.03.2010, 01.06.2008 to 31.03.2008 i.e. the security persons, the attendance and payment register of all the employees from 01.04.2007 to 31.03.2010 etc. and the tribunal directed to management by the order dated 17.08.2012 to produce documents and despite the specific direction, the management had failed to produce the documents. Therefore, we are of the view that since initial burden was discharged by laying the foundation that there were more than 100 workers employed by the establishment in the preceding 12 months before the date of lay-off, an adverse inference under Section 114 (g) of the Evidence Act, 1872, should have been drawn. Though strict rules of evidence are not applicable in the matters of industrial dispute but the principles of Evidence Act are applicable.

33. In **GOPAL KRISHNAJI KETKAR v. MOHAMED HAJI LATIF AND OTHERS [1968 SCC OnLine SC 63]** the Supreme Court has explained the presumption under Section

114(g) of the Evidence Act in paragraph-5 which is extracted hereunder:

"5. ... Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. In Murugesam Pillai v. Manickavasaka Pandara [44 IA 98, at p 103] Lord Shaw observed as follows:

"A practice has grown up in Indian procedure of those in possession of important documents or information lying by, trusting to the abstract doctrine of the onus of proof, and failing, accordingly, to furnish to the Courts the best material for its decision. With regard to third parties, this may be right enough — they have no responsibility for the conduct of the suit; but with regard to the parties to the suit it is, in Their Lordships' opinion, an inversion of sound practice for those desiring to rely upon a certain state of facts to withhold

from the Court the written evidence in their possession which would throw light upon the proposition.”

*This passage was cited with approval by this Court in a recent decision— Biltu Ram v. Jainandan Prasad [Civil Appeal No. 941 of 1965 decided on April 15, 1968***\$\$\$] . In that case, reliance was placed on behalf of the defendants upon the following passage from the decision of the Judicial Committee in Bilas Kunwar v. Desraj Ranjit Singh [42 IA 202, at p. 206] :*

“But it is open to a litigant to refrain from producing any documents that he considers irrelevant; if the other litigant is dissatisfied it is for him to apply for an affidavit of documents and he can obtain inspection and production of all that appears to him in such affidavit to be relevant and proper. If he fails so to do, neither he nor the Court at his suggestion is entitled to draw any inference as to the contents of any such documents.”

But Shah, J., speaking for the Court, stated:

“The observations of the Judicial Committee do not support the proposition that unless a party is called upon expressly to make an affidavit of documents and inspection and production of documents is demanded, the

Court cannot raise an adverse inference against a party withholding evidence in his possession. Such a rule is inconsistent with Illustration (g) of Section 114 of the Evidence Act, and also an impressive body of authority."

34. Similarly in **TOMASO BRUNO AND ANOTHER v. STATE OF UTTAR PRADESH [(2015) 7 SCC 178]** the Supreme Court in paragraphs 27 and 28 has held as under:

"27. As per Section 114 Illustration (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 Illustration (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of the Negotiable Instruments Act, where the court has no option but to draw a statutory presumption, under Section 114 of the Evidence Act, the court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 Illustration (g) of the Evidence Act depends upon the nature of fact required to be proved and its

importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

28. *The High Court held that even though the appellants alleged that the footage of CCTV is being concealed by the prosecution for the reasons best known to the prosecution, the accused did not invoke Section 233 CrPC and they did not make any application for production of CCTV camera footage. The High Court further observed that the accused were not able to discredit the testimony of PW 1, PW 12 and PW 13 qua there being no relevant material in the CCTV camera footage. Notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, the prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114 Illustration (g) of the Evidence Act that the prosecution withheld the same as it*

would be unfavourable to them had it been produced."

35. The specific names and details of the other workmen working in the establishment during the relevant period were given by the appellants-workmen besides 92 regular workmen. They moved an application for direction to the respondent-establishment to produce the documents in respect of those workers as these documents were in exclusive possession of the management. However, the management failed to produce those documents and therefore, the burden was shifted on the management to disprove the assumption of the workmen by producing the documents. As the management failed to produce the documents/records, an adverse inference should have been drawn against the respondent-establishment. Consequently, the finding recorded by both, Tribunal as well as the learned Single Judge are incorrect.

36. In light of the aforesaid discussion that there were 92 regular workers and there were 17 security guards employed by the management and they were casual workers who had worked there for 8 to 10 years before the date of lay-off, we are of the considered view that the respondent-

establishment had employed more than 100 workmen in preceding 12 months prior to the date of lay-off. Therefore, the establishment would come within provisions under Chapter V-B of the ID Act.

37. The establishment has not taken prior permission from the competent authority as provided under Section 25M before laying-off and retrenching the workmen and therefore, as provided under Section 25N(7) of the ID Act, they are entitled to relief. However, considering the financial position and long period since the Factory/establishment was closed in the year 2008 inasmuch as 18 long years have passed, we are of the view that the interests of justice should meet if we direct the respondent-management to pay a lump sum compensation of Rs.3,00,000/- to each retrenched workmen. Accordingly, we pass the following:

ORDER

- i. The writ appeals are allowed.
- ii. The impugned judgment and order passed by the learned Single Judge and as well as the Tribunal are set aside.

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- iii. We direct the respondent-management to pay a sum of Rs.3,00,000/- to each retrenched workmen within a period of eight(8) weeks from today.
- iv. No order as to costs.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

RKA