WRIT PETITION NO. 4977 OF 1999.

PETITIONER : M/S Simplex Engineering and Foundry Works Ltd. Unit-III, Tedesara, Distt. Rajnangaon, M.P.

Versus.

RESPONDENTS : Pragatisheel Engineering Sharamik Sangh M.I.C. 1/5, HUDCO, Bhilai M.P. and Anr.

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IN THE HIGH COURT OF JUDICATURE AT MADHYA PRADESH,

BENCH AT JABALPUR.

WRIT PETITION NO. 477 /1999

PETITIONER : M/s. Simplex Engineering & Foundry Works Ltd., Unit III, Tedesara, Dist. Rajnandgaon, Madhya Pradesh.

: v e r s u s :

RESPONDENTS :

1. Pragatisheel Engineering Shramik Sangh, M.I.C. 1/5, HUDCO, Bhilai, M.P.
2. State Industrial Court, Bench at Raipur.
3. State of M.P. Through the secretary Deptt. of Labour, Bhopal.

PETITION UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA

01. **PARTICULARS OF THE PETITIONER :**

As shown above in the cause title.

02. **PARTICULARS OF THE RESPONDENTS :**

As shown above in the cause title.

03. **PARTICULARS OF THE ORDER AGAINST WHICH THE PETITION IS MADE :**

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JABALPUR.

DATED :- COUNSEL FOR THE PETITIONER.

The petition is against the Award dated 16.10.1999 passed in Reference No. 2/MPIR/96 - Annexure P-10 by the State Industrial Court, Bench at Raipur.

04. SUBJECT IN BRIEF :

By way of this petition, petitioner seek to challenge Award passed by the Industrial Court, Bench at Raipur dated 16.10.1999 in so far it direct the petitioner to make the payment of Rs. 20,000/- per worker, while denying the relief of reinstatement in the proceeding arising out of the reference made by Government of Madhya Pradesh.

05. DELAY IN FILING THE PETITION, IF ANY AND THE EXPLANATION FOR IT, IF ANY :

There is no delay in filing the petition.

06. FACTS OF THE CASE :

6.1 The petitioner are a public limited company and is in the business of engineering and foundry works. Of the many units, which the petitioner runs for its business, one unit is located at Rajnandgaon. The petitioner had

obtained registration as principal employer under the Contract Labour (Regulation) Act, 1970 and the said registration is in force till this day. Annexed hereto and marked as **ANNEXURE P-1** is the true copy of said registration of the petitioner as principal employer for ready reference by this Hon'ble Court. The petitioner started their industry in the year 1941 and in 1957 in Bhilai and Unit III at Rajnandgaon was started in the year 1987. During the journey of 58 long years the petitioner always had sweet and harmonious relations with the workers.

6.2 The contract labour is permissible for engineering industry as a result of which the petitioner used to and does engage contractors for doing job work. These contractors obtain the contractors' licence under the Contract Labour (Regulation) Act, 1970. The appointment of the contractor is qua a job of the petitioner and the workers employed by the contractor are under the control of the contractor. The petitioner only receives the end product from the contractor and is not concerned about the

work and the conduct of the workers employed by the contractor.

6.3 Consequent to the notice of change received in the year 1990, petitioner had negotiations with the union of workers, which did not result in any settlement. The matter was, thereafter, taken up in conciliation and during the conciliation proceedings the settlement was arrived at between the petitioner on one hand and the workers on the other in presence of the Assistant Labour Commissioner, Raipur. Under this settlement dated 14.3.1991 substantial financial benefits were made available to the workers. After the expiry of said settlement, which was for a period of four years, a fresh notice of change was received by the petitioner through the union of workers. By the agreement dated 30.7.1995, the petitioner and the union arrived at a settlement under which wages and financial benefits to the workers were again revised. The said agreement dated 30.7.1995 was for a period of 4 years and expired in June 1999. The petitioner would crave leave of this Hon'ble Court to refer to and rely upon the aforesaid

settlements during the course of haring, if necessary.

6.4 In or about December 1990 one Chattisgarh Mukti Morcha claiming to have members working in engineering industry in and around Raipur and the region nearby posed a serious threat to the industrial peace by various violent acts which it authored during that period. The said Chattisgarh Mukti Morcha, essentially a political outfit, started operating through the mechanism of trade unions and unleashed reign of terror. It forced workers of the petitioner as well as those employed by the contractors to go on strike.

6.5 The petitioner initially sent personal notices to its employees. The contractor employed by the petitioner whose workers had also proceeded on strike also issued notice to their respective workers. Since these notices failed to evoke any response from the workers public notices in newspapers were published calling upon the workers to resume their work. Copies of some of the notices which were published by the petitioner in the newspapers are annexed to this petition at

ANNEXURE P-2. While one worker Mr. Ramnath Deshmukh joined duty in response to these notices other employees of the petitioner did not respond to these public notices. Said Shri Ramnath Deshmukh still continues to work with the petitioner even today. It is submitted that upon considering of all the facts and circumstances, the petitioner had no other option but to resort to take legal steps by way of filing proceedings before the Labour Court, Rajnandgaon. It is submitted that upon considering of all the facts and circumstances, interim order dated 20.3.1991 was passed by Labour Court calling upon labours to join duty. Annexed herewith and marked as **ANNEXURE P-3** is the true copy of said order. It is submitted that thereafter the Labour Court upon hearing the parties refused to withdraw the interim order and advised the workers to resume duty vide its order dated 28.4.1993, a copy of which is annexed herewith for kind perusal of the Hon'ble Court and is marked as **ANNEXURE P-4.**

6.6 The terrorism spread by this Union which does not believe in the law of the land and always take law in their own hands. Due to this terrorism even the watchman found it

unsafe to remain at the factory gate and staff/workers were not sure that if they go on duty they will be back home alive. The Management was the main target of violence and one of its Technical Director Mr. Navin Shah who was the Incharge of production as so badly beaten by the mob to the extent that he became unconscious. Fearing that he had died, the Union leaders ran away from the spot and Mr. Navin Shah had to be hospitalised in Beech Candy Hospital, Bombay for 6 months before he could walk again.

The union - Chhattishgarh Mukti Morcha, decided to ignore the interim order by Hon'ble Labour Court and continued agitation. The workers were terrified and were not allowed to join duty. They continued their agitation even after the final order declaring strike as illegal was issued by the Labour Court.

6.7 The State of Madhya Pradesh by its order dated 26.2.1993 bearing NO. 6-1/93/16-9 was pleased to make a reference of the alleged disputes between the petitioner on one hand and its workers represented by Pragatisheel Engineering Shramik Sangh on the other under

the Madhya Pradesh Industries Relations Act, 1960, Act No. 27 of 1960 vide Section 51(A) to the Industrial Court, Madhya Pradesh, Raipur Bench, Raipur. Annexed hereto and marked as **ANNEXURE P-5** to this petition is the true copy of said order dated 26.2.1993 made by the State of Madhya Pradesh as aforesaid making reference of the alleged dispute between the petitioner and its workers represented by the Pragatisheel Engineering Shramik Sangh, Bhilai. It would be convenient to cull out at this stage the terms of reference made by the State of Madhya Pradesh by the said order of reference as follows :

"1. क्या वेतन एवं भत्तो के पुनरीक्षण का औचित्य है ? यदि हाँ तो वेतन, महंगाई एवं अन्य भत्तो की क्या योजना होना चाहिये एवं इस संबंध में नियोजक को क्या निर्देश दिये जाना चाहिए ?

2. क्या प्रतिवर्ष 15 दिन का आकस्मिक अवकाश, 10 दिन का त्यौहारी अवकाश तथा 30 दिने का चिकित्सा अवकाश दिये जाने का औचित्य है ? यदि हाँ तो इस संबंध मे- नियोजक को क्या निर्देश दिये जाना चाहिए ?

3. क्या संलग्न परिशिष्ठ में उल्लेखित एम्पलाईज का सेवा पृथकीकरण वैद्य एवं उचित है ? यदि नहीं तो इस सम्बन्ध में नियोजक का क्या निर्देश दिये जाना चाहिये ?

5.8 It is really not necessary to make reference to a prolonged litigation in the High Court of Madhya Pradesh questioning the validity of the reference by the petitioner suffice it to say that in the LPA bearing Nos. 155, 156, 162 and 163 of 1996 the Hon'ble High Court of Madhya Pradesh was pleased to make following operative order on 6.4.1999.

'1. Industrial Court order dated 31.5.1995 upholding the maintainability of reference and the writ court order dated 27.9.1996 affirming that order is upheld. In other words, the reference made by the Government to the Industrial Court is found in order and would not be subject to any further objection by the appellants.

2. Industrial Court at Raipur shall now proceed to decide the reference on merits as per law on hearing the parties.

3. Parties shall appear before the Industrial Court at Raipur on 10th May 1999 and thereafter Court shall take steps to ensure expeditious disposal of the reference within four months from this date. In case it is not possible for it to adhere to the prescribed schedule for some reason it shall approach the Division Bench of this Court at Indore for any further extension of time on cogent reasons.

4. Considering that this court had already ordered status quo viz-a-viz the present status of respondent-employees, Industrial Court interim order dated 12.10.1995 naturally had lost much of its shine in the process. Therefore, such status quo shall be maintained in respect of employees present status till any appropriate order is this regard are passed by the Industrial Court. However, if any of the employees had taken benefit of that order they shall continue to enjoy that benefit subject to the final outcome of the reference. This shall not, however, come in the way

of respondent-employee to approach the Industrial Court gain for any interim relief, if so advised and on so doing the Court shall examine and consider the prayer on hearing the parties and pass appropriate orders.

5. Mr. Mathur, LC for appellants in all fairness also appreciated that there was no need to press any challenge to the reference No. 4 which pertains to the power/jurisdiction of grant of interim relief by Industrial Court which otherwise enjoys that power.

6. Both parties shall of course be at liberty to take an appropriate remedy in case they feel aggrieved of the Industrial Court order.

7. Any observations made by successive Benches of this Court touching the substance and merit of the dispute between the parties shall have no bearing in the disposal of the reference by the Industrial Court which shall proceed in the matter uninfluenced by

any such observations, if any, and in accordance with law.'

It is after this order that the proceedings before the Industrial Court, Madhya Pradesh, Raipur Bench, Raipur started progressing. The Pragatisheel Engineering Shramik Sangh filed its settlement of claim claiming various reliefs dated 11.9.1995. The said settlement of claim was signed and verified by one Shri Sheikh Ansar claiming to be the Secretary of the Union. Annexed hereto and marked as **ANNEXURE P-6** is the true copy of the statement of claim filed by Party No. 1 to the reference - Pragatisheel Engineering Shramik Sangh, respondent herein. It is really not necessary to cull out exhaustively in detail all that was said in its statement of claim by the union as the copy is already enclosed to this petition to which reference shall be made by the petitioner during the course of hearing of the petition.

6.9 The petitioner filed its written statement to the said statement of claim being written statement dated 20.12.1995. Annexed hereto and marked as **ANNEXURE P-7** to this petition is the true copy of the written statement

filed by the petitioner to the statement of claim filed by Pragatisheel Engineering Shramik Sangh, Bhilai. The petitioner would crave leave of this Hon'ble Court to refer to and rely upon the averments made in the said written statement by the petitioner to oppose the claim made by the union.

6.10 The Pragatisheel Engineering Shramik Sangh examined one witness viz. Shri Kaushalram Sahu s/o. Chintaram Sahu. Annexed hereto and marked as **ANNEXURE P-8** is the true copy of the deposition of said Shri Kaushalram Sahu examined for and on behalf of the union. The petitioner examined six witnesses as its witness. Annexed hereto and collectively marked as **ANNEXURE P-9** is the true copy of compilation of the evidence adduced by the petitioner for ready reference by this Hon'ble Court. Various documents were filed by the petitioner before the Industrial Court to verify its claim that out of the workers listed in the annexure to the Reference, only three labourers were the employees of the petitioner and that the petitioner did not know about the persons, who were named in the said Annexure.

6.11 After hearing the parties the learned Raipur Bench of the Industrial Court of Madhya Pradesh by its Award dated 16.10.1999 was pleased to decline relief of reinstatement to persons named in the Annexure but directed that they be paid Rs. 20,000/- per worker by way of compensation. It also recorded a finding that it was not possible to answer the first and the second term of reference in favour of the Union. Annexed hereto and marked as **ANNEXURE P-10** is the copy of the Award dated 16.10.1999 made by the Industrial Court, Raipur Bench, Raipur in Reference NO. 2/MPIR ACT/96. Aggrieved by the Award directing payment of compensation of Rs. 20,000/- per worker, the petitioner seeks to challenge that part of the Award on following amongst other grounds :-

G R O U N D S

1] The impugned Award is ex-facie illegal and suffers from total non-application of mind on the part of the learned Industrial Court below and the same is, therefore, liable to be set aside.

2] The learned Industrial Court, Madhya Pradesh

has misdirected itself in coming to the conclusion that the petitioner was liable to pay compensation to each of the workers in Annexure @ Rs. 20,000/- per worker. The Award rendered by the learned Industrial Court is not supported by any material on record and is contrary to its own findings. The impugned Award is, therefore, vitiated and is liable to be set aside by this Hon'ble Court.

3] The learned Industrial Court ought to have seen and held that Reference made by the State of Madhya Pradesh was not a Reference in accordance with the provisions of the Madhya Pradesh Industrial Relations Act, 1960. It ought to have further seen and held that the order of the Full Bench did not deprive the Industrial Court from examining the legality of the order of reference which was itself without jurisdiction. It further ought to have been seen by the learned Industrial Court that question of its jurisdiction solely depended upon the answer to the question of legality of the order of Reference made by the State of Madhya Pradesh. In not seeing this the learned

Industrial Court committed grave error vitiating the Award impugned.

4] It ought to have been seen by the learned Industrial Court that all that the Full Bench of the High Court directed was that the parties would not waste time in agitating the question of legality of the order of Reference and would permit the Industrial Court to examine the dispute even on merits. It further ought to have been seen by the learned Industrial Court that the Full Bench of the Madhya Pradesh High Court did not preclude the Industrial Court from examining the legality and validity of the order of Reference made by the State of Madhya Pradesh. In not seeing this the learned Industrial Court has committed grave error vitiating the Award and, therefore, the same is liable to be set aside.

5] If the learned Industrial Court were to examine the legality of the order of Reference it would have necessarily recorded a finding that the order of Reference is utterly illegal inasmuch as various mandatory steps preceding making of a Reference under Section 5 of the Madhya Pradesh Industrial

Relations Act, 1960 were not taken the State Government before making a reference. The learned Industrial Court would have found that such an order of Reference must fall to ground for breach of mandatory requirements of the provisions of the Act. If the learned Industrial Court were to have record such a finding, it would have been compelled to hold that under the circumstances, it had no jurisdiction to adjudicate upon the dispute referred to it under the invalid order of reference. The learned Industrial Court has committed a grave error in short-circuiting the entire process by holding that the matter of legality of order of Reference was foreclosed on account of the order of the Full bench of the Madhya Pradesh High Court in the Letter Patents Appeal referred to above. In this view of the matter, the Award of the Industrial Court is illegal and liable to be set aside by this Hon'ble Court.

6] Even otherwise, the learned Industrial Court has recorded a finding of facts each of which is out and out erroneous vitiating the Award impugned and, therefore, the same is liable to be set aside.

7] The learned Industrial Court has extended the scope of reference while rendering the Award impugned. This also renders the Award made by the learned Industrial Court illegal and invalid. The same is, therefore, liable to be set aside.

8] The learned Industrial Court has in the impugned Award decided issues, which did not arise in the pleadings of the parties which is wholly without jurisdiction. The party union had claimed that the persons named in the Annexure to the Reference were the direct employees of the petitioner. Conspicuous by its absence was a plea that these persons were employed through the contractors and the modality of the contractors was merely a camouflage, contracts with them being sham and bogus. In the absence of such pleadings in the statement of claim by the party union no issue about genuineness or otherwise of the contract by the petitioner with various contractors arise for decision by the learned Industrial Court. The learned Industrial Court, however, recorded a finding that these contracts were merely a camouflage, sham and bogus documents. Such a finding is contrary to law and without jurisdiction rendering the

Award infirm and invalid. The impugned Award is, therefore, liable to be set aside.

9] It ought to have been seen by the learned Industrial Court while it was the case of the union that persons named in the Annexure were direct employees of the petitioner, it was the case of the petitioner in its written statement that except persons whose employment was admitted by the petitioner it did not know other persons named in the Annexure and if at all they were employees, they may have been the employees of the Contractor. It is, therefore, ought to have been seen by the learned Industrial Court that the union was under a obligation in law to prove its claim that the persons named in the Annexure to the order of Reference were the direct employees of the petitioner. This burden, has not been discharged by the union by adducing adequate evidence despite which the learned Industrial Court directs payment of compensation to all persons whose names appear in the Annexure to the Order of Reference. This in the humble submission of the petitioner, is utterly illegal and renders the Award wholly illegal.

10] While the learned Industrial Court rightly observed that it had jurisdiction to decide incidental and closely related matter concerning reference and that the union had to establish and substantiate the relationship of employee and the employer, the learned Industrial Court illegally proceeded to decide the matter after again holding that the union had failed to prove that persons whose names are mentioned in the list have been employed by the petitioner. Having recorded a finding that the employment of the persons named in the Annexure with the petitioner has not been proved, a finding that employer-employee relationship has not been established, the Industrial Court could not have proceeded to decide the matter as the inevitable inference of the finding recorded was that there was no industrial dispute required to be adjudicated upon by the Industrial Court. It ought to have been seen by the learned Industrial Court that for a industrial dispute to arise the dispute must be between the employee and the employer and in the absence of proof of employment of the persons named in Annexure to the Order of Reference, the Industrial Court ought to have held that it had no jurisdiction to proceed

with the matter on merit. In not doing this the learned Industrial Court has committed grave error vitiating the order impugned.

11] Although the learned Industrial Court below rightly held that it was a burden of party No. 1 to prove that the persons named in the Annexure to the Order of Reference were in the employment of the petitioner, it committed a gross error in drawing adverse inference against the petitioner in the face of the findings recorded by it that Party No. 1 the Union, had failed to discharge its burden to prove the employment of persons named in the Annexure to the Order of Reference. It ought to have been seen by the learned Industrial Court that though the Evidence Act may not apply to the proceedings before the Industrial Court *stricto-senso*, it does not mean that the relief could be granted to the party without adducing any evidence. It ought to have been seen and held by the learned Industrial Court below that unless the party which suffers from the burden of proving the fact, discharges its burden of proving that fact, the burden to rebut the evidence of such party does not really shift to his/its adversary. It,

therefore, ought to have been seen by the learned Industrial Court below that having recorded a finding that the respondent union having utterly failed in discharging its burden of proving the factotum of employer/employee relationship between the petitioner on one hand the persons named in the Annexure to the Order of Reference on the other, there was really no occasion to draw adverse inference against the petitioner by a process of reasoning which in itself was self defeating besides being infirm and contrary to the provisions of the law. In not seeing this the learned Industrial court has committed grave error vitiating the Award impugned. The Award impugned is, therefore, liable to be set aside by this Hon'ble Court.

12] It ought to have been seen by the learned Industrial Court that at no point of time had the petitioner admitted that persons named in the Annexure which were not admitted to be employees of the petitioner were the employees of the contractors engaged by the petitioner. It further ought to have been seen by the learned Industrial Court that all that the petitioner had said in its written statement was that except persons whose employment was admitted by the petitioner all

other persons named in the Annexure to the Order of Reference may have been employed by the contractors engaged by the petitioner about which the petitioner had no knowledge. Admittedly, it ought to have been seen by the learned Industrial Court that the contractors engaged by the petitioner were not parties to the Reference nor had the respondent union moved the Industrial Court to implead the contractors as party respondents to the proceedings after acquainting itself with the defence of the petitioner. Under the circumstances, it ought to have been seen and held by the learned Industrial Court that there was absolutely no material on record to record a finding that persons named in the Annexure to the Order of Reference were, in fact, and in reality engaged by the contractors who were in turn were engaged by the petitioner for doing job work. The findings by the Industrial Court below on a infirm claim of adverse inference that the employees were the employees of the contractors for whom the petitioner is liable, is to say the lest, out and out illegal and unsustainable in law. Such a finding is, therefore, liable to be set aside by this Hon'ble Court.

13] As pointed out hereinabove the learned Industrial Court enlarged the scope of Reference which it was incompetent to do by examining the legality and validity as also the genuineness of the contracts entered into by the petitioner with the contractors when, in fact, firstly no such issue could arise on the pleadings of the parties and secondly because even if it were to arise it could not be said to be incidental or subsidiary issue to the issues referred by the Order of Reference. It is a settled law that jurisdiction of the Industrial Court under the labour legislation such as Madhya Pradesh Industrial Relations Act, 1960 springs from an Order of Reference and the Industrial Court has no jurisdiction to enlarge the scope of Reference. By the Award impugned the learned Industrial Court below has incompetently enlarged the scope of Reference rendering the entire Award illegal. The Award by the Industrial Court is, therefore, liable to be set aside.

14] Reading of the Award made by the learned Industrial Court gives one a feeling that the Industrial Court had assumed that the

petitioner had admitted employment of the persons named in the Annexure to the Order of Reference by the contractors who were engaged by the petitioner for doing job work. The entire approach of the learned Industrial Court is misplaced and misconceived rendering the conclusions recorded by it out and out erroneous. This has vitiated the Award and same is, therefore, liable to be set aside.

15] It ought to have been seen by the learned Industrial Court below that engagement of contractor was not prohibited by the Government by issuing required notification in Engineering and Foundry Industry. In the absence of any prohibition, it was absolutely competent for the petitioner to engage contractors for getting its work done through them. It further ought to have been seen by the learned Industrial Court that the petitioner had itself got registered as principal employer under the provisions of the Contract Labour (Regulation) Act, 1970 and such of the contractors who engaged more than 20 employees and some others had also obtained licence of contractor under the provisions of the Contract Labour (Regulation) Act, 1970. In any event, if

there was any infraction of the provisions of the Contract Labour (Regulation) Act, 1970 either by the principal employer or by the contractor, it is a settled law that such infraction could not bring about the relationship of employer-employee between the principal employer and the employees of the contractor which is non-existent. The learned Industrial Court committed grave error in not seeing this which has rendered the Award invalid and illegal. The Award is, therefore, liable to be set aside by this Hon'ble Court.

16] The perversity of the approach of the learned Industrial Court is apparent from its observation that as the petitioner has not examined the contractors to prove that they have employed persons is sufficient to give rise to an inference that the persons were employed by the petitioner itself. It ought to have been seen by the learned Industrial Court that the petitioner was not, even taking into consideration that the proceedings were in the nature of industrial dispute, required to rebut the fact which was not proved by the first party viz. the union. The impugned Award is infirm and invalid in

this view of the matter and the same is, therefore, liable to be set aside. The learned Industrial Court ought to have taken into consideration the fact that conjuncture and surmises nor suspicion can substitute itself for a sound process of evaluation of evidence by which process alone conclusion of facts are required to be recorded by a judicial and/or quasi-judicial Tribunal.

17] It ought to have been seen by the learned Industrial Court that when the employee himself ceases to report for duty there is no question of retrenchment and/or termination. It was abundantly proved before the learned Industrial Court below that the employees had proceeded on illegal strike. It was also proved before the learned Industrial Court below that the petitioner had made every attempt by inviting the workers to report back to duty which attempt evoke no response. It was further proved before the learned Industrial Court that, despite the fact that the Labour Court had given interim direction to workers to report for duty, the workers did not report back on duty. It further ought to have been seen by the learned Industrial Court that the Labour Court had

also declared the strike of the employees to be illegal. Despite this, it ought to have been seen by the learned Industrial Court below, that the workers did not report back on duty. It ought to have been seen by the learned Industrial Court below that no evidence was led before the Industrial Court to show that the employees desired to join duty but were prevented from joining the duty either by the petitioner and/or by the concerned contractors if at all any of the persons named in Annexure to the Order of Reference were employed by the contractors. Assuming though not admitting that the learned Industrial Court was right in recording every finding, there was really no occasion for it to Award compensation to the workers which clearly amounted to putting premium on the illegal conduct of the employees. It ought to have been seen by the learned Industrial Court below that compensation could be only for a wrong committed by a party to the other party and no compensation could be paid to workers who had not proved that they were prevented from resuming their duties. The learned Industrial Court failed to distinguish between case of abandonment of service and

that of termination/retrenchment as a result of which the Award impugned is vitiated and is liable to be set aside by this Hon'ble Court.

18] The learned Industrial Court has failed to take into account provisions of the Contract Labour (Regulation) Act, 1970 as interpreted by this Hon'ble Court as well as the Hon'ble Supreme Court rendering the Award impugned illegal and invalid. The Award is, therefore, liable to be set aside.

19] It ought to have been seen by the learned Industrial Court below that the title of the Annexure to the Order of Reference read as 'List of persons suspended' whereas in the Reference the workers were alleged to have been deprived of their work. The learned Industrial Court ought to have held that different parts of the reference were incompatible with each other making the Reference itself illegal and invalid.

19] The learned Industrial Court has fixed followed characteristics for determining the contractors' workers as petitioner's employees :

a] That power is being supplied by the petitioner.

b] The drinking water is provided by the petitioner.

c] Raw material is provided by the petitioner.

d] Drawings are supplied by the petitioner.

e] Contractors' workers enter into the factory by same gate as factor workers.

f] Contractors' workers work in the premises of the petitioner.

g] Contract has not been awarded by open tender/is not published by the petitioner.

h] Machines are provided by the petitioner.

I] The finished goods, finally handed over to the petitioner, if above point is taken for consideration.

All the above noted points are basic requirement, for getting the job executed under contract labour without raw material and just by providing the facilities mentioned above will not make the contractor's employees as the employees of the Principal employer. Therefore, this finding is illegal and needs to be set aside.

20] Viewed from any angle the Award impugned is infirm and invalid and the same is liable to be quashed and set aside by this Hon'ble Court.

5.12 The petitioner submits that it has a prima-facie case in its favour both on facts as well as in law and there is every likelihood of the petition being finally allowed by this Hon'ble Court. The petitioner has accordingly prayed for interim relief.

5.13 The petitioner submits that it has not filed any petition either before this Hon'ble Court or any other court in the instant matter any time before.

P R A Y E R

It is, therefore, prayed that this Hon'ble Court be pleased to :-

i. by writ of mandamus or any other suitable writ, order or direction quash and set aside the Award dated 16.10.1999 made by the learned Industrial Court, Madhya Pradesh, Raipur Bench, Raipur in Reference NO. 2/MPIR ACT/96.

ii. by suitable order, interim in nature, stay the effect, operation and implementation of the Award dated 16.10.1999 made by the learned Industrial Court, Madhya Pradesh, Raipur Bench, Raipur in Reference NO. 2/MPIR ACT/96 during the pendency of this petition.

iii. grant any other relief which this Hon'ble court deems fit and proper in the facts and circumstances of the case.

iv. allow the petition with cost.

Jalablpur.

Dated :

PETITIONER

COUNSEL FOR THE PETITIONER