C.E.S.C. Ltd. Etc v Subhash Chandra Bose And Ors.

Supreme Court of India

Writ Petition No.: 3197-98 of 1988

Decided on: 15 November 1991

Citations: 1992 AIR 573; 1991 SCR Supl. (2) 267; MANU/SC/0466/1992

Bench: Ranganath Misra (CJ), MM Punchhi, K Ramaswamy (JJ)

Judgment

Ranganath Misra, CJ:-

1. I have had the advantage of perusing the draft judgments prepared by my learned brethren Punchhi and Ramaswamy, JJ. While Justice Punchhi has gone by the literal construction of the statute, brother Ramaswamy has tried to find out the spirit of the legislation and with a view to conferring the benefit on the workmen, has adopted a construction different from the reported decision of this Court.

2. I agree with Justice Punchhi that the appeals should be dismissed and the judgment of the Division Bench should be sustained. At the same time, 1 would like to add that the legislative intention should have been brought out more clearly by undertaking appropriate legislation once this Court took a different view in the decision referred to in brother Punchhi's judgment. The legislation is beneficial and if by interpretation put by the Court the intention is not properly brought out it becomes a matter for the legislature to attend to.

3. PUNCHHI, J. The sole question which falls for determination in these appeals is, whether on the facts found, the right of the Principal employer to reject or accept work on completion, on scrutinizing compliance with job requirements, as accomplished by a contractor, the immediate employer, through his employees is in itself an effective and meaningful "supervision" as envisaged under Section 2(9) of the Employees' State Insurance Act, 19,;8 (for short the Act)? The said provision, as it stood at the relevant time, is set out below, as is relevant for our purpose:-"2(.9') - 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

(i) who is directly employed by the principal employer on any work of, or inciden- tal or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or

establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

4. The Calcutta Electricity Supply Corporation (India) Ltd., hereinafter referred to as the C.E.S.C. engages various contractors to carry out work of excavation, conversion of overhead electric lines and laying of underground cables under public roads, as well as for repair and maintenance of the aforesaid works. Subhash Chandra Bose & some others, the private respondents herein, were given such contracts, terms and conditions in respect of each were reduced to writing. They would be adverted to at the appropriate time common as they are to all. The C.E.S.C. was on notice alerted by the Regional Director of the Employees State Insurance Corporation (for short 'E.S.I.C.') by means of communication dated 26August, 1975 that the employees whose wages were being paid through such a contractor would fall within the scope of Section 2(9) of the Act and for reasons and details mentioned in the communication. Thereupon the C.E.S.C. on its part engaged in correspondence with the Association of Electrical Contractors of Eastern India, a representative body of the contractors who are parties respondents herein, requiring them to comply with the provisions of the said Act immediately or else it will deduct a lumpsum of 7% from their bills. The Association questioned the move and strongly refuted such obligation. After indulging in some correspondence on the subject, the C.E.S.C. started making deductions from their bills on account of contribution to the Employees State Insurance Fund on and from 1984 continued deducting till 1985 at the rate of 10%. Some more correspondence ensued, but in vain.

5. The electrical contractors then moved the High Court of Calcutta on December 6, 1985 by means of a writ petition under Article 226 of the Constitution against the E.S.I.C. and its officers as also the C.E.S.C. as well as the Union of India so as to have the entire basis of the demand and deductions from bills annulled. It was the categorical stand of the writ petitioners that for carrying out their contracts they were not supervised by the C.E.S.C., the principal employer, and they were carrying out works allotted to them at sites outside the factory establishment of the C.E.S.C. Claiming that their employees did not come within the definition of the term 'employee' in Section 2(9) of the Act, they required of the High Court to determine this jurisdictional fact and issue the asked for writ, direction or order appropriate in the case to have it nipped in the bud. The matter was entertained by the High Court and was heard on affidavits. The dispute necessarily centered round as to whether the C.E.S.C. exercised any supervision while the contracts were being executed, and as to whether the terms thereof, assuming that they were

faithfully observed amounted to work being carried out under the supervision and gaze of the C.E.S.C. The respective parties put in supportive affidavits to their respective stands. A learned Single Judge of the High Court, when seized of the matter, on March 23, 1984, passed an interim order, giving leave to the C.E.S.C. to respond to the notice issued by the E.S.I.C. and avail of the opportunity of being heard as required by law, and till then stayed the realisation of the contribution. The matter was then thrashed by the Regional Director of the E.S.I.C., who on March 30, 1985, passed an order under Section 45-A of the Act holding that the C.E.S.C. was liable to pay Rs. 16,21,564.05 on account of contribution to the Employees State Insurance in respect of employees of its contractors and asked it to pay the same within the time allotted. This order of the Regional Director of the E.S.I.C. gave legitimacy to the deductions from the bills of the private electrical contractors already made by the C.E.S.C. But since it was otherwise aggrieved of the foisting of the obligation, it moved another writ petition of its own under Article 226 of the Constitution against the E.S.I.C. and others claiming that it was not obliged to demand contributions on account of insurance in respect of the employees of the electrical contractors. These two writ petitions were heard together and were dismissed by a learned Single Judge of the High Court on January 11, 1986. The learned Single Judge construed the contracts between the electrical contractors and the C.S.E.C., whereunder the contractors were obliged to supervise on their own the work undertaken, so as to hold that in the facts and circumstances of the case the ultimate supervision was that of the E.S.I.C. and hence the Act was applicable. The learned Single Judge also took the view that the Act being a beneficial piece of legislation, enacted for the protection and benefit of workers, required liberal interpretation, as was held by this Court in *M.G. Beedi Works v. Union of India*, AIR 1974 SC 1952, and then proceeded to hold that the contractors as supervisors were in the nature of agents of the C.E.S.C., the principal employer.

6. The learned Single Judge also took the view that since ultimate energising of the transmission lines was invariably effected by the C.E.S.C. after proper checks were effected for laying of cables or other maintenance work, that step by itself was ‘supervision’ so as to attract the provisions of the Act. Such finding was based on the fact that even though the agreement specified that work was to be done under the supervision of the electrical contractor, the C.ES.C. retained the ultimate power of supervision and in fact did supervise the work executed by the contractors. It is then that the learned Single Judge abruptly comes to the conclusion that the principal employer could not escape liability for the works of his contractors, as the latter was acting as the agent of the principal, and in sense continued the view of the Regional Director of the E.S.I.C. Two appeals were filed against the dismissal of the two writ petitions before the Division Bench of the High Court who, after re-considering the matter, reversed the learned Single Judge, which has given cause for these appeals by special leave and the poser of the question

mentioned at the outset.

7. Now it is noteworthy that the Regional Director of the E.S.I.C. drew deductions of facts in his impugned order dated March 30,1985 in this manner:

"The job which is performed by these employees engaged through the contractors was principally maintenance and distribution of electricity generated by the C.E.S.C. and also consumers' service. It was conceded during the course of hearing that after the work entrusted to such contractors was completed, it was subject to checking by C.E.S.C. for compliance with their job specifications and the work related to the main business of the C.E.S.C. It cannot therefore be argued that merely because such a job was performed outside the factory premises as stated, it did not concern the C.E.S.C. The definition of the term 'premises' includes such work site where the job of the factory is being done. 1 cannot agree therefore with the argument that such job was not done for the factory and/or that there was no supervision of the C.E.S.C. over such job. It could not but be a fact that C. E. S. C. was executing its own job through the agency of the contractors engaged by them. The C.E.S.C's contention that they have acted upon the guidelines as provided in the letter dated 26.8.75 does not hold good as the letter dated 26.8.75, Annexure E, issued by the Regional Director of E.S.I. Corporation does not hold good as the said letter only contained broad guidelines regarding provisions of the E.S.I. Act and the truth has to be ascertained from the realities of the situation. [underlining ours]

8. In place thereof the Division Bench of the High Court taking stock of the admitted facts opined as follows: "There is no dispute that respondent no.4 (ESIC) is the principal employer in respect of the said work and that the appellants (electrical contractors) are the immediate employers of the said employees in connection with the said work. There is no dispute that the employees of the appellants are not directly employed by the respondent no.4 (ESlC). There is also no dispute that the employees of the appellants (electrical contractors) do not carry out the aforesaid work either in the premises or the factory or establishment of respondent no. 4 (E.S.I.C.). It is also not disputed that the work which is carried out by the employees of the appellants (electrical contractors) can be stated to be work ordinarily part of the work of the respondent no.4 (ESIC) or preliminary or incidental to such work. The only dispute appears to be whether there is any supervision of the employees of the appellants (electrical contractors) by the respondent no.4 (E.S.I.C.) or its agents." [bracketing ours]

9. Commenting on the impugned order of the Regional Director of the E.S.I.C. dated March 30, 1985 afore-extracted, the Division Bench observed as follows: "It has not been found by the respondent no.2 (Regional Director) as a fact that in carrying out the aforesaid work the employees of the appellants are under the supervision of the respondent no.4 or its agents. All that has been found is that after the works, which are entrusted to the appellants are completed, the same are checked by the respondent no.4. From the aforesaid it is obvious that it has not been found by the ESI Authorities that there is actual supervision by the respondent no.4 or its agents of the aforesaid works, which are performed by the employees of the appellants. All that has been found is that after the aforesaid work is completed the respondent no.4 checks the same. In our view, checking of a work after the same is completed and supervision of the same while the same is being performed are entirely different. Checking of a work after its completion is always done in every case by the person who ordered the same to be done so that the work can be finally accepted and payment made therefor. After the work is completed, a further checking cannot mean or imply any or any further supervision."

10. Vehemently was it urged on behalf of the appellants that the High Court fell in error in giving a restricted meaning to the word 'supervision' occurring in Section 2(9) of the Act and in taking out the final act of rejection or acceptance of work from the purview of that word. Strong reliance was placed on a decision of this Court in *Royal Talkies v. E.S.I.C*, [1979] 1 SCR 80, to project that this Court has spelled out that the main aim of the Act was to insure all employees in factories or establishments against sickness and allied disabilities, but the funding to implement the policy of insurance was by contribution from the employers and the employees. In the same breath it was observed that since the benefits belong to the employees and are intended to embrace as extensive a circle as is feasible, the social orientation, protective purpose and human coverage of the Act were important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety. Reliance also was placed on *Regional Director, E.S.I.C, Trichur v. Ratnanuja Match Industries*, [1985] 2 SCR 119 in which it was ruled that beneficial legislation such as the Act is to receive a liberal interpretation. The Court yet ruled that it could not travel beyond the scheme of the statute and extend the scope of it on pretext of extending statutory benefits to those not covered by the scheme of the statute. The Act being not meant for universal coverage, the negatives in the Act, one of them being that the Act did not apply to factories or establishments with less than 20 employees, was taken into account to rule that liberal construction would not go to hold a partner to be an employee as he would be a person who would not answer the definition.

11. A judgment of this Court in *M/s. P.M. Patel & Sons & Others v. Union of India & Ors*., [1986] 1 SCC 32 rendered in the context of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was pressed into service on behalf of the appellants to contend that when rolled beedis, prepared

by the worker elsewhere, were placed for acceptance or rejection, conforming to the standards envisaged by the manufacturers, that in itself was held constituting an effective decree of supervision and control. The benefit of the said Act was extended to beedi workers employed through contractors and the question arose whether such workers came within the definition of 'employee' in Section 2(f) of the said Act. The definition of the word 'employee' provided that it shall include any person employed by or through a contractor, in or in connection with work of the establishment, which words were held wide enough to include work performed elsewhere than the factory itself, including the dwelling house of a home worker, as also that the manufacturing operation, simple as it was, performed by illiterate workers, young and old, subjecting to rejection and acceptance, was by itself an effective degree of supervision and control, establishing the relationship of master and servant.

12. In whatever manner the word 'employee' under Section 2(9) be construed, liberally or restrictedly, the construction cannot go to the extent of ruling out the function and role of the immediate employer or obliterating the distance between the principal employer and the immediate employer. In some situations he is the cut-off. He is the one who stumbles in the way of direct nexus being established, unless statutorily fictioned, between the employee and the principal employer. He is the one who in a given situation is the principal employer to the employee, directly employed under him. If the work by the employee is conducted under the immediate gaze or overseeing of the principal employer, or his agent, subject to other conditions as envisaged being fulfilled, he would be an employee for the purpose of section 2(9). Thus besides the question afore-posed with regard to supervision of the principal employer the subsidiary question is whether instantly the contractual supervision exercised by the immediate employer (the electrical contractors) over his employee was exercised, on the terms of the contract, towards fulfilling a self obligation or in discharge of duty as an agent of the principal employer. P.M Patel's case can also be no help to interpret the word 'supervision' herein. The word as such is not found employed in Section 2(1) of The Employees Provident Fund and Miscellaneous Provisions Act, 1952 but found used in the text of the judgment. It appears to have been used as a means to establish connection between the employer and the employee having regard to the nature of work performed. But what has been done in Patel's case cannot ipso facto be imported in the instant case since the word 'supervision' in the textual context requires independent construction. In the ordinary dictional sense "to supervise" means to direct or over-see the performance or operation of an activity and to over-see it, watch over and direct. It is work under eye and gaze of someone who can immediately direct a corrective and tender advice. In the textual sense 'supervision' of the priucipal employer or his agent is on 'work' at the places envisaged and the word 'work' can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the

Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidently, or occasionally, while the work is in progress, so as to scrutinise the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act. It is the consistency of vigil, the proverbial 'a stitch in time saves nine'. The standards of vigil would of course depend on the facts of each case. Now this function, the principal employer, no doubt can delegate to his agent who in the eye of law is his second self, i.e., a substitute of the principal employer. The immediate employer, instantly, the electrical contractors, can by statutorily compulsion never be the agent of the principal employer. If such a relationship is permitted to be established it would not only obliterate the distinction between the two, but would violate the provisions of the Act as well as the contractual principle that a contractor and a contractee cannot be the same person. The E.S.I.C. claims establishment of such agency on the terms of the contract, a relationship express or implied. But, as is evident, the creation or deduction of such relationship throws one towards the statutory scheme of keeping distinct the concept of the principal and immediate employer, because of diverse and distinct roles. The definition is well drawn in Halsbury's Laws of England (Hailsham Edition) Vol. 1 at page 193 as follows:

"An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master and is bound to conform to all reasonable orders given to him in this course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject to its exercise to the direct control and supervision of the principal". This statement of law was used with approval by this Court in AIR 1977 SC 1677 titled as *The Superintendent of post Offices etc. etc. v. P.K. Rajamma* etc. etc. Now coming to the subsidiary question the High Court took up one particular contract dated January 20,1984 between one of the electrical contractors and the C.E.S.C. The material portion thereof is as follows:

"The said contract relates to laying of new underground cables and conversion of overcad mains and service to underground system at Barrackpore Trunk Road between Paikpare Junction to D.F. 1/6 and from Baranagar P/T to D.FI/67. Please note that you will have to provide competent supervision while carrying out the work in accordance with the provisions of the Indian Electricity Rules, 1956. You will also have to provide adequate watch and ward arrangement for the safe custody of the materials till such time and complete installation is handed over to us. You will be required to insure against theft and

pilferage of all materials while held in your site godown".

13. The obligation embodied, as is plain, is for the electrical contractor to provide competent supervision while carrying out the work. The electrical contractor is otherwise a licensee under the Indian Electricity Act and the Rules made thereunder and the conditions of his licence read as follows:

"Mr./Messrs. Eastern Engineers & Constructions is/are hereby authorised to carry out electrical installation work in the State of West Bengal. This licence is issued subject to the compliance with the conditions set out on the reverse, and also to the continued compliance with the conditions set out in Regulation 24 of the Regulations under Rule 45(1) of the Indian Electricity Rules, 1956.

(1) All electrical installation work coming within the purview of Rule 45 (1) of the Indian Electricity Rules, 1956 undertaken by the holder of this licence, shall be carried out under the direct supervision of a person holding a valid certificate of competency...

(2) The holder of this licence shall maintain a register of supervision and workmen in the form below and shall produce the register for inspection on demand by an Electrical Inspector or other person authorised in this behalf the Licensing Board.

(3) On the completion of any electrical installation work coming within purview of rule 45(1) of the Indian Electricity Rules, 1956, a test report in the form prescribed by the Board shall be submitted by the holder of this licence to the Secretary. The report shall be signed by the supervisor under whose supervision the work has been carried out, and countersigned by the holder of this licence, who shall be wholly responsible for the due execution of the work.

(4) If the holder of this licence ceases to be in possession of a valid supervisor's certificate of competency, ceases to retain in his said employment at least one supervisor holding valid certificate of competency, this licence shall be invalid.

(5) If the holder of this licence accepts an employment under any other firm or person for the purpose of carrying out or supervising any electrical installation work coming within the purview of rule 45(1) of the Indian Electricity Rules, 1956 this licence shall be invalid and the holder shall return the same to the Secretary for cancellation.

14. The terms and conditions of the licence postulate the licensee to carry out the installation work of the kind mentioned under the direct supervision of a person holding a valid certificate of competency. For that purpose the licensee shall maintain a register of supervision. Such register is open to inspection on

demand by an electrical inspector or other person authorised in this behalf by the Licensing Board. On completion of the installation work of the kind mentioned, a test report shall be submitted by the licensee to the Secretary, which report shall first be signed by the supervisor under whose supervision the work had been carried out and then countersigned by the licensee who shall be wholly responsible for the due execution of the work. The licence further enjoins the licensee either to retain a valid supervisory certificate of competency or keep one such person retained in his employment failing which the licence can be invalidated. Same is the position if the licensee accepts employment under any other firm or person for the purpose of carrying out supervision any electrical installation work of the kind mentioned. In that situation, the license is to be returned to the Secretary for cancellation.

15. On the conjoint reading of the contract with the C.E.S.C. and the terms and conditions of the licence, assuming the terms were to be faithfully obeyed, could it otherwise be held that the C.E.S.C. could appoint the electrical contractor as its agent to have the work carried out under the latter's supervision, in place of C.E.S.C. As is evident, the contract relates to laying of new underground cables, conversion of overhead mains and service and maintenance to the underground system. The work being highly sophisticated in nature, requiring special skill and expertise, is given by the C.E.S.C. to the contractor on the condition that the latter will have to provide competent supervision while the work progresses, in accordance with the provisions of the Indian Electricity Rules, 1956, which, in the larger interest of the electrical network and community and its safeguards, require an electrical contractor obtaining a licence to carry out electrical installation work of the kind mentioned. Then the Rules obligate him to take in his services a person holding a valid certificate of competency under whose direct supervision the work is required to be carried out, and on completion its final report being first signed by the supervisor supervising the work and then countersigned by the holder of the licence, who will be responsible for the due execution of the work. The licence is capable of being rendered invalid or liable for cancellation due to non-employment of a supervisor given in the terms and conditions. Even if, the terms of the contract and the terms and conditions of the licence, the first being at the behest of the C.E.S.C and the second being at the behest of the Government of West Bengal, be suggested to be complementing each other, still these cannot be so interplayed to mean that an agency, express or implied, has been created by the C.E.S.C. in favour of the electrical contractor appointing him to supervise work as envisaged under Section 2(9) of the Act, and thus to have established a direct link between the employee and the C.E.S.C. to the exclusion of the electrical contractor.

16. Section 182 of the Indian Contract Act, 1872 defines "agent" as a person employed to do any act or to represent another in dealing with third person, the person for whom such act is done, or is so represented is called the "principal". Section 184 of the said Act further provides that as between

principal and the third person any person may become an agent so as to be responsible to his principal. Now it is to be understood that the agent has an identity distinct from his principal in one sense and a fictional identity with his principal in the other. The agreement nowhere amalgamates the identity of the electrical contractor with that of the principal (C.E.S.C) by undertaking to provide adequate supervision for the purposes of the Act, on behalf of the C.E.S.C. The agreement no doubt provides that the electrical contractor would provide adequate supervision while carrying on with the work, the purpose dominant is to safeguard obtaining quality work and safety safeguards, and to conform to the provisions of the Electricity Supply Act. To the Division Bench of the High Court it was obvious that the Regional Director of the E.S.I.C. had nowhere found that there was actual supervision, either by the C.E.S.C or its duly appointed agents, over works which were performed by the employees of the electrical contractors. checked by the C.E.S.C. and then accepted. Checking of work after the same is completed and supervision of work while in progress is not the same. These have different perceptions. Checking of work on its completion is an activity, the purpose of which is to finally accept or reject the work, on the touchstone of job specifications. Thereafter, if accepted, it has to be paid for. Undisputably electrical contractors had to be paid on the acceptance of the work. This step by no means is Supervision exercised. Neither can it be the terminating point of an agency when the interests of the so called principal and the so called agent become business-like. Besides, the High Court has found that the work done by employees was under the exclusive supervision of the electrical contractors or competent supervisors engaged by them trader the terms of the contract and the licence. By necessary implication supervision by the C.E.S.C. or its agents stood excluded. Supervision rested with persons holding valid certificates of competency for which a register of supervision was required under the licence to be maintained. Under the contracts, the electrical contractors cannot in one breath be termed as agents of the C.E.S.C., undertaking supervision of the work of their employees and innately under the licence to have beforehand delegated that function to the holder of the certificate of competency. Thus we hold that on the terms of the contract read with or without the terms of the licence, no such agency, factually or legally, stood created on behalf of the C.E.S.C. in favour of the electrical contractors, and none could be, as that would violate the statutory scheme of distinction well marked under Section 2(a) of the Act. The supervision taken was to fulfil a contractual obligation simplicitor and we leave it at the level.

17. Thus on both counts, the principal question as well as the subsidiary question must be answered against the ESIC holding that the employees of the electrical contractors, on facts and cricumstances, established before the Division Bench of the High Court, do not come in the grip of the Act and thus all demands made towards ESI contribution made against the C.E.S.C. and the electrical contractors were invalid. We affirm the view of the High Court in that regard. The appeals are accordingly dismissed. In the circumstances, however, we make no order as to costs.

18. K. RAMASWAMY, J: From the midst of personal warmth I am enjoying with my learned brethren, I have to cool off from the discomfortable breeze generated by the draft judgment of brother Punchhi, J., given my anxious reflections of its consequences and with due respect, I express my inability to fail in line with.

19. The Employees' State Insurance Act 34 of 1948 (for short 'the Act') seeks to serve the twin objects namely, social security i.e. medical benefits in case of sickness, maternity and employment injury and other matters relating thereto and to augment the efficient performance of the duty. The respondents (immediate employers) had contracts with the Calcutta Electricity Corporation (India) Ltd. (for short 'the Corporation'), the Principal employer, to carry out excavation, erection of overhead electric lines and laying of underground cables beneath public roads as well as their repairs and maintenance. The Act enjoins the employer to contribute his 50% share towards medical reimbursement with a proportionate cut from the wages of the employees and to debit it to the Employees' State Insurance Corporation fund to render medical assistance etc. to the employees. In consequence there would be cut, to the extent of 10% or as may be specified from time to time, in the "profit packet" of the immediate employers. For some time, it was complied with but late assailed their liability under Art. 226 of the Constitution. The conflagration of the claims between the immediate employers and their employees gave rise to the lis. The immediate employers arming themselves with independent contractor's clout summon the services of the "gramarian" and tells him that "our contracts with the Corporation are bilateral untrammelled by routine supervision or agency with the Corporation under s. 2(9) of the Act and tell us whether your "golden rule" does not apply to us? Like Shylock, are we not entitled to prevent inroad into our profit pocket not even a farthing from minimal of 10%, though the workman may give us efficient service on receiving medical treatment?" The employees request the social engineer to sharpen his forensic skills of his instruments to provide them social security from health and occupational hazards fastening a part of the liability on the immediate employers whom they serve. Whether the social engineer would avoid unjust result like Portia’s judgment? Whether the words in the contract would be masters by golden rules? Whether the words "Supervision" or "agent" in s.2(9) of the Act would be so construed or adopted by purposive approach as to do what justice and equity required ? The result of the combat between the grammarian and the social engineer would provide the answer to these searching questions.

20. Before adverting to angle into their perceptions, it is of utility to keep abreast the brass facts that lie in a short compass. The Corporation had from the State Govt. Licensor, licence under s.3 of the Indian Electricity Act 9 of 1910 (for short the 'Electricity Act') to generate, transmit and supply electrical energy to the consumers of the area. The Corporation is enjoined to erect electric supply lines and also overhead lines, service lines, under- ground cables through which energy is to be supplied to the either distributing main or immediately from the suppliers' premises etc. It entered into contracts with the

respondents to lay undergound cables, to erect overhead lines, their repairs and maintenance and for execution thereof employed their own employees. The Elecricity Act empowers the Corporation as licensee, under s. 12 thereof, to open and break up the soil etc. and lay down electricity supply lines and other works, repair, alter or remove the same and do all other acts necessary for due supply of energy. It also empowers under Sec. 13 to execute new works in compliance of that section. Under Sec. 14 & 15 it is empowered alteration of the pipes or wires. Sec. 10 empowers a licensee to place any overhead lines along or across any street etc. Sec. 20 empowers the licensee or "any person duly authorised by a licensee" to enter upon any premises, at reasonable time on prior intimation to the occupier of any premises or land etc. upon which the electricity supply line or other works have been lawfully placed for the purpose of (a) inspecting, testing, repairing or altering the electricity supply, lines meters, fittings, works and apparatus for the supply of energy belonging to the licensee etc. Thus, the Corporation, as a licensee, is ordinarily and as an integral scheme, to execute the works or duly authorise on its behalf any other person to execute any of the works enumerated herinbefore or inspection, repair, testing or alteration of the works and maintenance thereof.

21. A conjoint reading of s. 3 (2) (b) of the Electricity Act and Clause (1) (a) of the Schedule shows that the licensee is required to show to the "satisfaction of the State Government that the Corporation is in a position to fully and efficiently discharge the duties and obligations imposed upon him by the licence throughout the area of the supply. On its failure, the State Govt. under s. 4 (1) (c) (i) is entitled to revoke the licence. In terms of s. 15(1) "the duly authorised persons" of the licensee is to operate under the Act to lay new electric supply lines or other works etc. Equally Clause V (1) of the Schedule provides to lay down distributing mains for public lighting of any street on a requisition made by two or more owners of occupiers of the premises. The Indian Electricity Rules, 1956 (for short 'the Rules') made under s. 37 of the Electricity Act provides the procedure in this regard. Rule 36 adumberates handling of electric supply line apparatus only "by authorised person" who is required to take safety measures "approved by the electrical Inspector", appointed under s. 36 of the Electricity Act. Sub-rule (2) of Rule 36 provided thus: "No person shall work on any live electric supply line or apparatus and no person shall assist such person on such work, unless he is authorised in that behalf and takes the safety measures approved by the Inspector".

22. Rule 45 provides precautions to be taken by electrical workmen, suppliers etc. Unless electrical contractor, licensed in this behalf by the State Govt., appoints a person holding a certificate of competency and a permit in this behalf issued or recognised by the State Govt., the contractor shall not be entitled to undertake any installation work etc. Rule 51 provides certain safety measures to be taken to the satisfaction of the Inspector so as to prevent danger. Rule 64 requires an authorised person to carry out the acts mentioned therein subject to the supervision provided in Clause (b) thereof by the Electrical

Inspector. Rule 123(4) speaks of examination of flexible cables by authorised persons and Rule 125(8) enjoins that all apparatus to be operated only by those persons who are authorised for the purpose. It could, thus, be seen that the Corporation as a licensee is empowered and enjoined to lay the works production, transmission and distribution of electrical energy to the consumers within the area of supply. It is also authorised to entrust, any person authorised by it in this behalf, to perform the duties of the licensee under the Act and the Rules. The contractor in turn appoint a qualified supervisor to have works executed and maintained or repaired, subject to inspection and supervision by the Electrical Inspector of the State Govt. The primary duty and responsibility is that of the Corporation as the Principal employer to have the works etc. executed, repaired and maintained through its employees. It duty authorises the contractor to have these works done, repaired or maintained, on its behalf, though the media of contract. The question emerges whether the respondents are not immediate employers executing the works etc. under the supervision of the Principal employer or as its agents ? From the above backdrop of statutory operation, the scope of s. 2(9) is to be gauged which reads thus:- "2(9) - 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elswhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) Whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service ."

23. It encompasses employees employed for wages in or in connection with the work of a factory or establishment to which the Act applies (i) who are directly employed by the principal employer or (ii) employed by or through "an immediate employers"; and whose services are temporarily lent or let on hire to the principal employer by the person with whom the person is entered into a contract of service. Clause 2(9)(ii) (applicable to the facts on hand) in turn attracts a person employed by or through an immediate employer as an employee of the principal employer provided the following conditions are satisfied, namely, (1) the immediate employer employs an employee on the premises of the factory or establishment of the principal employer;

(2) "or under the supervision of the principal employer"; (3) this agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried out in or incidental to the purpose of the factory or establishment. Clauses (i) and (iii) of s. 2(9) are inapplicable to the facts.

24. Article 25(2) of Universal Declaration of Human Rights, 1948 assures that everyone has the right to a standard of living adequate for the health and well being of himself and of his family including medical care, sickness, disability ,Art. 7(b) of the International Convention on Economic, Social and Cultural Rights, 1966 recognises the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular, safe and healthy working conditions. Article 39(e) of the Constitution enjoins the State to direct its policies to secure the health and strength of workers. The right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Art.21. The health and strength of a worker is an integral fact of right to life. The aim of fundamental rights is to create an egalitarian society to free all citizens from coercion or restrictions by society and to make liberty available for all. Right to human dignity, development of personality, social protection, right to rest and leisure as fundamental human rights to common man mean nothing more than the status without means. To the tillers to the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers the civil and political right are 'mere cosmetic' rights. Socio-economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life. The Universal Declaration of Human Rights, International Conventions of Economic, Social and Cultural Rights recognise their needs which include right to food, clothing, housing, education, right to work, leisure, fair wages, decent working conditions, social security, right to physical or mental health, protection or their families as integral part of the right to life. Our Constitution in the Preamble and Part IV reinforce them compendiously as socioeconomic justice, a bed-rock to an egalitarian social order. The right to social and economic justice is thus fundamental right.

25. In World Labour Report - 2, at Chapter 9 (Safety and Health) it is stated that "in every three minutes somewhere in the world one worker dies and in every second that passes at least three workers are injured". In India on an average every day 1100 workers are injured and three are killed "in industrial establishments" vide (Lawyer Oct. 1987 page 5). In the 26th I L.O. Convention held in Philadelphia in April 1944, recommendation No. 69 laid down norms for medical care for workers. In October 1943, the Government of India appointed Health Survey and Development Committee known as Sir Joseph Bhore Committee, which laid emphasis on "Preventive Schemes". I.L.O. Asian Regional Conference held in Delhi in 3947, resolved that in very scheme for medical care in any Asian country the need for the prevention of disease and the improvement of the general standard of health must be considered as of

almost importance. The Act had culminated in its birth of these recommendations providing in a limited area social security to the employees from health and occupational hazards.

26. The term health implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensure stable man power for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful economic, social and cultural life. The medical facilities are, therefore, part of social security and like gilt edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on grounds of sickness, etc. Health is thus a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Arts. 22 to 25 of the Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural Rights, and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative constitutional goal whose realisation requires interaction by many social and economic factors. Just and favourable condition of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuse the workmen to render efficient service, which is a valuable asset for greater productivity to the employer and national production to the State. Yet in the report of the Committee on Labour Welfare, 1969 in paragraph 5. 77of Chapter 5, reveals that, private employers generally feel that this burden shall not be cast upon them." The Act aims at relieving the employees from health and occupational hazards. The interpretation calls for in this case is of the meaning of the meanings 'supervision' and 'agent' in s.2(9) (ii) of the Act. The legal interpretations is not an activity sui generis. The purpose of the enactment is the touch-stone of interpretation and every effort would be to give effect to it. The judge acts as a vehicle of communication between the authors and the recipients. The end result is to promote rule of law and to enliven social order and humane relations.

27. In *Senior Electric Inspector & Others v. Laxmi Narayan Chopra & Ors*., [1962] 3 SCR 146 at p. 156, K. Subba Rao, J. (as he then was) for unanimous Court held thus: "In a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an

interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them." In *M. Pentiah & Ors. v. Muddala Veermallappa & Ors.,* [1961] 2 SCR 295 at p. 313 in a separate but concurrent judgment, Sarkar, J. held

"Where the language of a statue, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be but upon it which modifies the meaning of the word, and even the structure of the sentence". This court approved the ratio *in Seaford Court Estates Ltd. v. Asher*, [1949] 2 All E.R. 155 at 164, Denning, L.J. who said, "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament ... and then he must supplement the written word so as to give "force and life" to the inten- tions of the legislature ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

28. I conceive it my duty, therefore, so read the new Act, unless I am prevented by the intractability of the language used, as to make it carry out the obvious intention of the legislature". In *Massachusetts Bonding & Insurance Co. v. United States of America*, 352 U.S. 128 ed 2d 189; Frankfurther, J., speaking per himself, joined by Reed, Clark, and Brennan, JJ. held at headnotes 8 & 9 thus:

"On more than one occasion, but evidently not frequently enough, Judge Learned Hand has warned against restricting the mean of a statute to the meaning of its "plain" words. There is no surer way to misread any document than to read it literally..." Of course one begins with the words of a statute to ascertain its meaning, but one does not end with them. The notion that the plain meaning of the words of a statute defines the meaning of the statute reminds one of T.H. Huxley's gray observation that at times "a theory survives long after its brains are knocked out." One would suppose that this particular theory of statutory construction had had its brains knocked out *in Boston Sand & Gravel C.v. United States*, [278 US 41, 48, 73 Led 170, 177, 49 S Ct 52]: “The words of this legislation are as plain as the Court finds them to be only if the 1947 amendment is read in misleading isolation. An amendment is not a repeal. An amendment is part of the legislation it amends. The 1947 amendment to the Federal Tort Claims Act of 1946 must be read to harmonise with the central purpose of the original Act. The central purpose of the original Act was to allow recovery against the United States on the basis and to the extent of recoveries for like torts committed by private tortfeasors in the State in which the act or omission giving rise to the claim against the United States occurred. The 1947 amendment filled the gap, a very small gap, that was disclosed in the scheme formulated by the 1946 Act".

29. In *Atma Ram Mittal v. Ishwar Singh Punia*, [1988] 4 SCC 284, this Court held that the purpose of interpretation in a social amelioration legislation is an imperative irrespective of anything else. It was further held that the contents, subject matter, the effects and consequences or the spirit and reason of the law shall be taken into account. The words must be construed with the imagination "of purpose behind them". (emphasis supplied) Therefore, in an attempt to construe the provisions of the statute construction, as a balancing wheel, should be meaningful so as to make the statute workable and not to render it futile or sterile. Whenever strict interpretation of the statute gives rise to unjust situation or results, the Judges can ensure their good sense to remedy it by reading words in, if necessary, so as to do what Parliament would have done had they had the situation in mind. The meaning of the same words in a statute may be mended in the labyrinth of interpretation and may be enlarged or restricted in order to harmonise them with the legislative intention of the entire statute. The spirit of the statute would prevail over the literal meaning. The jurisprudence and principle, therefore, in such a situation, would be the contextual interpretation to subserve the constitutional scheme and to alongate the legislative purpose, harmonising the individual interest with the community good so as to effectuate social transformation envisioned in the preamble of the Constitution.

30. Let me, therefore, consider the ambit of the word 'supervision' under s.2(9) (ii) of the Act. In Webster Comprehensive Dictionary (International Edition) the word 'supervision' has been defined at page 1260 in Vol. II as "authority to direct or supervise", supervise means - have a "general oversight of'. "In Corpus Juris Secundum", Vol 83 at page 900 it is stated that The word "supervision" is not of the precise import and when not limited by the context is broad enough to cover more than one subject. It implies oversight and direction, and does not necessarily exclude the doing of all manual labour, but may properly include the taking of an active part in the work". "Supervision" is defined as meaning "the act of overseeing or supervising; having general oversight of, especially as an officer vested with authority; inspection; oversight; superintendence." The Words and Phrases, Permanent Edition, Vol. 40A defines that the "Supervision" means oversight, an act of occupation of supervision; inspection. "Supervision" is an act of overseeing or supervision; having general oversight of, especially as an officer vested with authority; inspection; oversight; superintendence, "Control" is the act of superintending; care and foresight for purpose of directing and with authority to direct; power or authority to check or restrain; restraining or directing influence; regulating power. Contract of employment to "supervise" construction of power plant, steam distribution system held to require time and attention to work needed to see that it was properly and promptly done, regardless of number of hours spent there on. The word "supervision" is not one of precise import and is broad enough to require either supervisor's constant presence during work supervised or his devotion thereto if only time necessary to see that it complies with contract specifications, advise as to details, prepare necessary sketches and drawings, etc. In *Owen*

v. Evans & Owen (Buuilders) Ltd., [1962] 1 Weekly Law Reports 933 the Court of Appeal was called upon to consider the meaning of the words "immediate supervision" under Building (Safety, Health and Welfare) Regulations, 1948. Whether the presence of the supervisor is necessary at all times? It was held no. Ormerod, L.J. held that in each case the question must be decided how much supervision is required in the circumstance of the case being considered? If every move was fraught with danger, then clearly supervision of the most constant kind would be demanded, and the supervisor must be there all the time. On the other hand, there may be certain parts of the work, if not the whole of it, which do not give rise to any foreseeable danger, and in those circumstances it may well be that the intention of the regulation is that supervision need not be so strict. Upjohn, L.J., as he then was, while agreeing held that the real question is whether there was supervision for the purposes of the regulation and was that a proper or adequate supervision? The regulations are formulated for the protection of the workman, but, at the same time, they must be given a practical effect. The degree of supervision must entirely depend upon the task, and it cannot mean that there must always be a constant supervision throughout. There may be times during a demolition failing within regulation 79(5) where a particular operation is a dangerous one. That cannot always be avoided, and it may be that the danger is such that the supervisor must give a constant supervision during that time. But there will be other times where the particular operation is a simple one, involving no danger to a building labourer. Then the supervisor may properly go away and perform other tasks. He may answer to the telephone or supervise other groups. All depends on the fact of each case.

31. In *Regional Director, E.S.I.C v. South India Flour Mills (P) Ltd*. (1986) 69 FJR 77, this Court held that the definition of the term 'employee' under s.2(9) of the Employees' State Insurance Act, 1948 is "very wide and includes within it any person employed on any work incidental or preliminary to or connected with the work of a factory or establishment". Any work that is conducive to the work of the factory or establishment or that is necessary for the augmentation of the work of the factory or establishment will be incidental or preliminary to or connected within the work of the factory or establishment. The casual employees shall also be brought within it and held that they are entitled to the benefits under the Act. The casual labour employed to construct additional buildings for expansion of the factory were held to be employees under the Act. It was also held that the Act is a piece of social security legislation enacted to provide for certain benefits to the employees in case of sickness, etc. It was further held that the endeavour of the Court should be to interpret the provisions liberally in favour of the persons for whose benefits the enactment has been made. This Court upheld the view taken by A.P., Karnataka and Punjab and Haryana High Courts in *A. P. State Electricity Board v. Employee's State Insurance Corporation, Hyderabad*, [1977] 51 FJR 171 AP; *Regional Director, Bangalore v. Davangere Cotton Mills*, (1977) 2 L.L.J. 404 and *E.S.I.C, Chandigarh v. Oswal Woollen Mills Ltd.,*

(1980) 57 F.J.R. 171 (P & H) (F.B.). that casual employees are employees within the meaning of the term "employee" defined in s.2(9) of the Act.

32. In *Birohichand Sharma v. First Civil Judge, Nagpur & Ors.,* [1961] 3 SCR 161 this Court considered whether the piece rate worker is a worker within the meaning of s.2(1) of the Factories Act, 1948. The facts found were that there was no fixed hours. They made payment to the work done at piece rate. It was open to the workmen to absent from work without leave. They were not given any specific work, but the management had "the right to reject" (emphasis supplied) the Bidis prepared by them, if the Bidis do not come upto the proper standard. On those facts, it was held "the right of rejection is a supervision" connecting the work and the employment. Accordingly it was held them to be workmen. The same ratio was followed in *D.C. Dewan Mohideen Sahib & Sons v. The Industrial Tribunal Madras*, [1964] 7 SCR 646. In *Nagpur Electric Light & Power Co. Ltd. v. Regional Director, E.S.I.C* [1967] 3 SCR Reprint 92, the employees employed outside the factory or establishment as Cable Jointer. Mistri, Lineman, Coolies and Vanman for inspection of lines, digging the pits, erection, distribution and service -line were held to be employees within the meaning of s.2(9) (i) of the Act. *In Kirloskar Pneumatic Co. Ltd. v. Employees' State Insurance Corporation*, [1987] 70 F JR 199 a division Bench of the Bombay High Court, speaking through my learned brother P.B. Sawant, J., as he then was, also took the same view and held that the employees engaged for repairs, site clearing, construction of buildings, etc. of the principal employer are employees within the meaning of s.2.(9) of the Act. In *Royal Talkies, Hyderabad & Ors. v. Employees State Insurance Corporation*, [1979] 1 SCR 80, interpreting s.2(9) (ii) of the Act, this Court held that the Cycle Stand or Canteen are for better amenities to the customers and improvements of business in Cinema. The appellant, as the owner, leased out the Cycle Stand and Canteen under instrument of leases to the contractors, who employed their own employees to run the Canteen and the Cycle Stand. It was held that vis-a-vis the employees of the Contractors, the cinema owner was held to be the principal employer. It was further held that it is enough if the employee does some work which is ancillary, incidental or has relevance or linked with the job of the establishment, amenities or facilities to the cine goers has connection with the work of the establishment. The employees of the Canteen and the Cycle Stand were held to have been employed in connection with the work of the establishment. The case *M/s P.M. Patel & Sons & Ors. v. Union of India & Ors.,* [1986] 1 SCC 32 though arose under the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the principle laid therein applies on all fours to the facts of the case. The appellants therein were engaged in the manufacture and sale of Bidis. The work of rolling Bidis was entrusted to the contractors who in turn got the work prepared at workers homes, after obtaining materials either directly from the manufacturer or through the contractors. The contractors treated the workers as their own employees and get their work done at the workers' premises or contractors' premises. It was contended that the workers

engaged by the contractors were not their workmen under that Act. This Court by a Bench of three Judges negatived their contention and held that in the context of conditions and the circumstances in which the home workers or manufacturer go about their work including receiving of raw materials, rolling of Bidis at home and delivering them to the manufacturer subject to the right of rejection, there is sufficient evidence of the requisite "degree of control and supervision" for establishing relationship of master and servant between the manufacturer and the home workers. This ratio does support the conclusion that a connecting link between the finished product and the work of the establishment is sufficient; neither the manner of actual performance of the duties decisive nor the actual control or the supervision of the work a material ingredient. Incidental connection with the ultimate business activities of the manufacturers and right to rejection is the control and would be the balancing wheel to attract the provisions therein. The extended purposive construction was applied to give effect to the social security provided under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. In *Superintendent of Post Office v. P.K, Rajamma*, [1977] 3SCR 678 the question was whether the extra departmental agents serving in Post and Telegraph Department were agents or held civil post within the meaning of Art. 31112) of the Constitution. This Court while holding that they held civil post attracting Art.311(2) of the Constitution approved the passage from Halsbury's Laws of England (Hailsham edition) of the distinction between agents, servants or independent contractors. The contractual relation therein inter se does not apply to the tacts of this case.

33. The Act does not give its own definition of the word "supervision". Therefore, it must be construed in the context the ultimate purpose the Act aims to serve and the object behind the Act, i.e. to extend sickness benefits and to relieve the employee from occupational hazards consistent with the constitutional and human rights scheme. Under the Electricity Act and the Rules, the Corporation, licencee, is enjoined to perform the acts and duties contemplated thereunder to lay overhead lines, underground cables, their repairs and maintenance thereof, etc. It authorised, under the contract, the immediate employer to perform, on its behalf, those acts and duties. The immediate employer would get the work done through their employees employed for that purpose. It is not a sporadic work but a constant and on going process, so long as the licencee generates, transmits and supplies electrical energy to the consumers of their supply area. Had the principal employer performed those acts and duties through its employees, indisputably their employees would be covered under the Act, though the work was got done at highways or at places other than the factory or the establishment. When the principal employer authorises the respondents as its contractors under contracts the need for constant supervision is obviated relegating that function to its immediate employers. Otherwise the need for contracts would be redundant. The Corporation retained, under the contract, the power of acceptance or rejection of the work done or super- vision effected in maintenance of the work got done by the immediate employer,

subject to over all supervision by the Electrical Inspector, on behalf of the State Government. The supervision in the I,act situation is not the day to day supervision but legal control, i.e. right to accept or reject the work done or maintenance effected. The exercise of right of acceptance or rejection is the supervision as envisaged in the contract between the principal employer and the immediate employer. It would supply the needed unifying or connecting thread between the constitutional creed of social justice i.e. social security under the Act and supervision of the acts or duties by the principal employer vis-a-vis the employees of the immediate employer under the contract who ultimately perform them on behalf of the principal employer. Undoubtedly in a bilateral contract between the corporation and the respondents qua their rights and liabilities under the contracts, strict interpretation of the words engrafted therein, be of paramount relevance and call for attention as per Contract Act. But in the context of the statutory interpretation of "supervision" under the Act of the works undertaken under the contract, the interest of the workmen or the welfare schemes for the employees under the Act interposed and call attention to and need primacy. In its construction the courts must adopt contextual approach to effectuate the statutory animation, namely, social security. The literal interpretation would feed injustice in perpetuity denying to the employees of sickness benefit etc. under the Act which should be avoided, lest the purpose of the Act would be frustrated.

34. The contention that the respondents being independent contractors are not agents of the licencee, corporation, is also devoid of force. It is seen that under ss. 15 & 20 etc. and the relevant rules the authorisation given by the corporation through the media of the contracts enabled the respondents to step into its shoes to do the acts or perform the duties under the Electricity Act and Rules which are ordinarily of the Corporation. The contract is an authorisation to do those acts on behalf of the principal employer. The application of the golden rule to the word "agency" under the Indian Contract Act between the respondents and the corporation, perhaps, does not encompass agency in strict sense under the Act. But public policy of the Act, the constitutional and human right's philosophy to provide social security to protect the health and strength of the workers must be kept at the back of the mind to construe the word "agent" under s.2(9) (ii) of the Act, in contradistinction with the bilateral stipulations under the contract. In this regard public policy interposes and plays a vital role to read into the contracts the extended meaning of agency to bring about connecting links between the respondents and the licencee corporation. Lest the contract, if intended to deny welfare benefits to workmen, would be opposed to public policy and would become void under s.23 of the Indian Contract Act. Such an intention would be avoided by reading into the contract the extended meaning of agency but not fiduciary. Chitty on Contrac; is, 26th Edition, in paragraph 2502 at page 4 stated of the use of the terms agent and agency. Some persons who describe themselves or are described by others as agents are not really such in any legal sense of the word, but rather independent merchants, dealers, consultants or

intermediaries. Others may be agents in the sense that they owe the internal duties of the agent to his principal (mainly the fiduciary duties)... The substance of the matter prevails over the form and the use of the words "agent" or "agency ", or even a denial that they are applicable, is not conclusive that any particular type of relationship exists. (emphasis supplied). In A.G. Guest Anson's Law of Contract. 26th Edition, at page308 it is stated that the application of cannons of 'public policy to particular instances necessarily varies with the progressive development of 'public opinion and morality, but, as Lord Wright has said extra-judicially: Public policy like any other branch of the common law ought to be, and I think is, governed by the judicial use of precedents... If it is said that rules of public policy have to be moulded to suit new conditions of a changing world, that is true; but the same is true of the principles of the common law generally.' In *Prenn v. Simmonds*, 1971 (1) Weekly Law Reports 1381 (H.L.) Lord Wilberforce laid the rule that in construing a written agreement evidence of negotiations or of the parties' intentions ought not to be received by the court, and that evidence should be restricted to evidence of factual background known to the parties at or before the date of the contract, including evidence of the "genesis" and objectively the "aim" of the transaction.

35. The contractors, respondents, knew at the date of the agreements that the Corporation, as Principal employer, is under statutory obligation to execute or keep executed the works and keep them repaired and mainrained as an integral activity of generation, transmission and distribution of the electrical energy to the consumers within their area of supply. On authorisation, the respondents executed and kept executing the works and repairs or kept them repaired and the maintenance thereof effected through their employees, which in law is on behalf of the Corporation, principal employer. The genesis and aim of the transaction was to act on behalf of the Corporation. The agency of the respondent with the Corporation, thus, springs into being. The prohibition of the qualified supervisors, while in service of the respondents, to disengage themselves with third parties in terms of the contract was only to extract unstinted and exclusive devotion to duty and no further. It stands as no impediment to construe that the respondents are agents to the Corporation as immediate employers.

36. Accordingly I hold that the employees working under the respondent perform their duties in execution of the works, repairs and maintenance thereof in connection with the generation, transmission and distribution of the electrical energy by the Corporation ficensee. The Corporation is the Principal employer. The respondents, immediate employers execute the work etc. under the supervision of the Corporation as its agents. Their employees, in law, work under the supervision of the principal employer, corporation. They are covered under s.2.(9) (ii) of the Act entitling them to the sickness benefits, etc. envisaged therein and the respondents are liable to make their contribution to the Employees Insurance Fund.

The appeals are accordingly allowed. The writ appeal Nos. 16 & 438/86 and matter No.1650 of 1985 dated April 4, 1988 in the Calcutta High Court stand dismissed confirming the order of the learned single Judge dated December 11, 1986, but in the circumstances parties are directed to bear their own costs.

V.P.R. Appeals dismissed.