

HIGH COURT OF DELHI AT NEW DELHI

LPA 38/2007

Reserved on: November 12, 2009

Decision on: December 18, 2009

INDIRA GANDHI AIRPORT TDI

KARAMCHARI UNION

..... Appellant

Through Mr. Colin Gonsalves, Sr. Adv. with Mr.
Vipin M. Benjamin, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Sachin Dutta, Adv. for UOI.

Dr. A.M. Singhvi, Sr. Adv. with Mr. Saket Singh,
Mr. Harminder Singh, Mr. Mohit Gupta, Adv. for
DIAL.

Mr. V.P. Singh, Sr. Adv. with Ms. Anjana Gosain,
Adv. for AAI.

Mr. Ajay Kapur with Mr. M.P. Sahay, Adv. for R-
6.

LPA 1065/2007

UNION OF INDIA & ANR

..... Appellants

Through Mr. Sachin Dutta, Adv. for UOI.

versus

INDIRA GANDHI AIRPORT TDI KARAMCHARI

UNION & ORS

..... Respondents

Through Mr. Colin Gonsalves, Sr. Adv. with Mr.
Vipin M. Benjamin, Adv. for R-1.

Dr. A.M. Singhvi, Sr. Adv. with Mr. Saket Singh,
Mr. Harminder Singh, Mr. Mohit Gupta, Adv. for
R-3.

Mr. V.P. Singh, Sr. Adv. with Ms. Anjana Gosain,
Adv. for AAI.

Mr. Ajay Kapur with Mr. M.P. Sahay, Adv. for R-
5.

W.P. (C) 139/2008

DELHI INTERNATIONAL AIRPORT P.LTD Petitioner
Through Dr. A.M. Singhvi, Sr. Adv. with Mr.
Saket Singh, Mr. Harminder Singh, Mr. Mohit
Gupta, Advs.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Sachin Dutta, UOI.
Mr. Colin Gansalves, Sr. Adv. with Mr. Vipin M.
Benjamin, Adv. for R-4.

W.P.(C) 6763/2008

AIRPORTS AUTHORITY OF INDIA Petitioner
Through Mr. V.P. Singh, Sr. Adv. with Ms. Anjana
Gosain, Adv. for AAI.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Sachin Dutta, Adv. for UOI.
Mr. Colin Gansalves, Sr. Adv. with Mr. Vipin M.
Benjamin, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether reporters of the local newspapers be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

S. MURALIDHAR, J.

Introduction

1. These four cases arise out of the same facts and therefore are being disposed of by this common judgment. LPA No. 38 of 2007 is directed

against the impugned order dated 28th November, 2006 passed by the learned single Judge dismissing W.P.(C) No. 15156 of 2006 filed by the Appellant seeking a direction to the Respondent No. 2 Airport Authority of India (AAI) to forthwith take on duty the workers previously engaged in trolley retrieval at the Delhi Airports as permanent workers and to pay them wages accordingly. The further prayer in the said writ petition was that a direction should be issued to AAI to abolish the contract labour system in trolley retrieval at the Delhi Airports in terms of the Notification dated 26th July, 2004 issued by the Union of India, Respondent No.1 under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970 (CLRAA). LPA No. 1065 of 2007 is by the Union of India against the same judgment dated 28th November, 2006 passed by the learned single Judge dismissing W.P.(C) No. 15156 of 2006.

2. W.P.(C) No. 139 of 2008 is by the Delhi International Airport Private Limited (DIAL) challenging an order dated 24th September, 2007 passed by the Chief Labour Commissioner (Central) declaring the Central Government to be the appropriate Government for the airport establishment of DIAL under the CLRAA as well as the Industrial Disputes Act, 1947 (ID Act). It also challenges the consequential order dated 22nd November, 2007 passed by the Chief Secretary to the Government of the National Capital Territory of Delhi (GNCTD) transferring the industrial disputes and records/files

pertaining to the registration and licenses granted to DIAL to the office of the Regional Labour Commissioner (Central), New Delhi.

3. W.P. (C) No. 6763 of 2008 is by the AAI seeking the quashing of the Notification dated 26th July, 2004 issued by the Union of India under Section 10(1) CLRAA prohibiting the employment of contract labour in the job of trolley retrieval in the establishment of the AAI at Indira Gandhi International Airport and domestic airport at Delhi. It also seeks the quashing of the recommendation dated 6th February, 2004 made by the Central Advisory Contract Labour Board (CACLB) on the basis of which the aforementioned Notification dated 26th July, 2004 was issued by the Union of India.

Background facts

4. In 1992 around 136 workers were employed through a contractor for the work of trolley retrieval at the domestic and international airports at Delhi. In view of the perennial nature of the work, where they were employed on three shifts in a day, the workmen approached the CACLB for abolishing the contract labour system in trolley retrieval and for their absorption in AAI as regular employees. On 20th July, 1999 the CACLB made a recommendation declining to abolish the contract labour system in trolley retrieval in the Delhi airports. The above decision dated 20th July, 1999 was challenged by the Indira Gandhi Airport TDI Karamchari Union (the workers union) by

filing W.P. (C) No. 5248 of 2002. By a judgment dated 5th November, 2003 the learned single Judge of this Court quashed the recommendation dated 20th July, 1999 and directed the CACLB to reconsider the matter. In the course of the judgment it was clarified by the learned single Judge that in case a recommendation was made for the abolition of trolley retrieval and an appropriate notification was issued by the Central Government, then in terms of the judgment of the Constitution Bench of the Supreme Court in *Steel Authority of India Limited v. National Union Waterfront Workers (2001) 7 SCC 1* (hereafter ‘the *SAIL* case’), the workmen would be entitled to preference/regular employment in accordance therewith and the breaks, if any, in their employment shall not come in their way.

5. At this stage, it may be mentioned that the Union of India took a policy decision for privatization of airports in the country sometime in 2003. On 7th May, 2003 a Bill preceding the amendment to the Airport Authority of India Act, 1994 (AAI Act) was tabled in Parliament. It was stated that with a view to improving the standard of services and facilities at the airports and to bring them at par with international standards there was a need for infusion of private sector investments as also for restructuring of the airports. Since the AAI Act was applicable to all airports, significant private sector investments in the project of restructuring the airports would require an “effective legal framework within which the investor would feel safe and secure about their operational and managerial independent”. Accordingly,

the AAI Act was sought to be amended by insertion of Clause (aa) in sub-section (3) of Section 12 as well as new Section 12A to enable the AAI inter alia to “lease the above premises to private operators with the prior approval of the Central Government”. By the said amendment it proposed that some of the functions of the AAI can be assigned to lessees subject to the exception that at airports air traffic service or watch and ward and functions will continue to be provided by the AAI. The aforementioned amendments were brought about with effect from 1st July, 2004 by the passage of the AAI (Amendment) Act, 2003.

6. On 5th December, 2003 the services of the workers engaged in trolley retrieval in Delhi airports was terminated and fresh contract labourers were inducted through a new contractor. Meanwhile the CACLB, which included representatives of both the employers and the employees, reheard the remanded case and by a report dated 6th February, 2004 unanimously recommended the abolition of the contract labour system in trolley retrieval in the Delhi airports. The CACLB concluded that the work of trolley retrieval was incidental to the main function of the AAI. It had to be continued on a day to day basis and therefore was of permanent and perennial nature with sufficient duration. It was held that the respondents TDI International Private Limited (TDIPL), which had originally been engaged by AAI to provide the contract labourers and M/s Sindhu Holding Private Limited (SHPL) which was subsequently engaged by the AAI, were

‘contractors’ within the meaning of Section 2(c) of the CLRAA and their workers were ‘contract labour’ within the meaning of Section 2(b) CLRAA. The aforementioned recommendation dated 6th February, 2004 of the CACLB was accepted by the Union of India which issued the following Notification dated 26th July, 2004 under Section 10(1) of the CLRAA.

“Ministry of Labour and Employment

Notification

New Delhi, the 26th July, 2004

S.O. 848 (E) – In exercise of the powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, and having regard to the working conditions and benefits provided to contract labour and other relevant factors enumerated in Sub-section (2) of Section 10 of the said Act, hereby prohibits the employment of contract labour in the job of trolley retrieval in the establishment of the Airport Authority of India at Indira Gandhi International Airport and Domestic Airport at Delhi with effect from the date of publication of this notification in the Official Gazette.

[E.No.S-16014/60/2002-LW.(Vol.-II)]

Manohar Lal, Jt. Secy.”

7. SLP(C) No. 22424 of 2003 filed by the workers union against the judgment dated 5th November, 2003 was dismissed by the Supreme Court by its order dated 5th December, 2003. The workers engaged by the TDIPL were replaced by fresh workers of SHPL on the intervening night of 5th/6th

December, 2003. The workers belonging to the Appellant union were not allowed to continue.

8. AAI filed W.P. (C) No. 13953 of 2004 in this court challenging the Notification dated 26th July, 2004. The workers were not made party to the writ petition. An ex parte stay of the Notification was granted by this court on 23rd August, 2004. Subsequently, by a judgment dated 3rd February, 2005 the learned single Judge disposed of W.P. (C) No. 13953 of 2004 holding that the High Powered Committee (HPC), set up by the Central Government pursuant to the order passed by the Supreme Court in *Oil and Natural Gas Commission v. Collector of Central Excise 1995 Supp. (4) SCC 541*, had to grant permission to the AAI to litigate since the writ petition was against the Central Government. Accordingly the writ petition was disposed of by directing the AAI, the Union of India and the other Respondents to appear before the HPC on 15th February 2005. The HPC was to grant a hearing and pass orders within three months.

9. On 27th May 2005, the HPC passed an order recommending that the Ministry of Labour should keep the interest of workmen engaged by TDIPL in view and ensure to the maximum extent possible that these workers should be provided work either by SHPL, the new contractor, or by engaging more than one contractor for the international and domestic airports so that the workers who were engaged by TDIPL and whose services were not

engaged by the new contractor SHPL could be engaged by the other contractors. The CACLB was once again asked to look into the terms and conditions of the employment of the workmen by the contractors in the job of trolley retrieval.

10. The CACLB met on 30th /31st August, 2005 at Hyderabad to reconsider the question of abolition of contract labour in the work of trolley retrieval at the Delhi airports. The CACLB was of the view that it would be worthwhile for the parties to make a genuine effort to reach an understanding. The Chief Labour Commissioner (Central) also offered his services to bring about a settlement. On 27th /28th December, 2005 the CACLB gave one last chance to the management of AAI to take necessary steps and communicate the results of the deliberations by the end of the first week of February 2006 to enable the CACLB to take a decision at the next meeting. At the next meeting of CACLB held in Kolkata on 16th /17th February 2006, the status of the workers was again evaluated. The CACLB was asked by the AAI for more time and the matter was adjourned by two months.

11. In the meanwhile, the privatization of the Delhi airports took place and an agreement called the Operation, Management and Development Agreement (OMDA) dated 4th April, 2006 was entered into between AAI and DIAL which was a joint venture corporation (JVC) in which the AAI

held 26% shares and a group of companies held the balance 74%. This group, defined in the agreement as the “Prime Member” Group, included GMR Infrastructure Ltd. (31%), GMR Energy Ltd. (10%), Fraport AG Frankfurt Airport Services Worldwide (10%), Malaysia Airports (Mauritius) Pvt. Ltd. (10%). Other shareholders were GVL Investment Pvt. Ltd. (9%) and India Development Fund (3.9%). In terms of Clause 2.2.3 the JVC (i.e. DIAL) “shall undertake/provide aeronautical services and essential services at the Airport Site.” The term “Airport Site” was defined to mean “the underlying land forming part of the demised premises (as defined in the lease deed.” In terms of the Clause 5.1 of the OMDA from the effective date of the agreement “the rights and obligations associated with the operation and management of the Airport would stand transferred to the JVC, who shall be solely responsible and liable for the performance of all Aeronautical Services, Essential Services and all other activities and services as presently undertaken at the airport (other than Reserved Activities)”. The JVC was to perform “all existing contracts and agreements between AAI or any Relevant Authority and any third party as relatable to the Airport from the effective date, as if JVC was an original party to such contracts and agreements instead of AAI and towards this end shall perform all responsibilities, liabilities and obligations of AAI at JVC’s risk and cost (including payment obligations to counter parties)”. During the Transition Phase, AAI was to provide assistance to JVC on a best endeavour basis. The term “essential services” is defined to mean those services listed in Schedule 16 to the

OMDA which in turn specifies trolleys, toilets, passenger baggage handling and drinking water.

12. It requires to be mentioned that before the CACLB an argument was advanced that with the advent of privatization there was a change in the situation concerning the engagement of contract labour in trolley retrieval. This was considered and it was opined by the CACLB, in its meeting on 6th February 2004, that there would be nevertheless a demand for more labourers for trolley retrieval. When the case went before the HPC in terms of the order dated 3rd February 2005 of this Court, a similar argument was advanced. In the minutes of its meeting held on 27th May 2005, the HPC concurred with the CACLB and recommended that while issuing the notification under Section 10 (1) CLRAA, the central government should keep in view the interests of the workers engaged by TDIPL.

13. Meanwhile pursuant to the application made by DIAL to the Central Government for registration of the establishment under the CLRAA, a certificate dated 27th April, 2006 was issued to it under Section 7(2) CLRAA. By a letter dated 24th May, 2006 the AAI wrote to the Secretary, CACLB informing inter alia that DIAL had taken over the day to day operations, management, control and development of the IGI airport with effect from the intervening night of 2nd /3rd May, 2006. On 25th September 2006 the workers' union filed W.P. (C) No. 15156 of 2006 in this Court

seeking the reliefs as mentioned earlier. Immediately thereafter DIAL applied for and obtained a certificate of registration dated 8th November 2006 from the Government of the NCT of Delhi under the CLRAA.

14. By the impugned order dated 28th November, 2006 the learned single Judge dismissed the writ petition holding that the Appropriate Government in respect of DIAL would be the GNCTD and not the Central Government since Respondent No. 5 DIAL “is not a company working under the directions or control of the Central Government”. It was accordingly held that the notification dated 26th July, 2004 issued under Section 10(1) CLRAA “was not applicable to the Respondent No. 5 since it has not been issued in respect to the Respondent No. 5”. It is further noted by the learned Single Judge that the workers’ union had raised an industrial dispute under Section 10 of the ID Act contending that “a contract entered into between the Respondent No. 6 TDI International Pvt. Ltd. and the AAI was sham and camouflage and they should be regularized as permanent workmen of AAI”. It was observed that the present stand that the workmen were employees of AAI and that they should be directed to be absorbed by AAI or Respondent SHPL was contrary to the stand taken before the Industrial Tribunal. It was held that since AAI had been divested of and DIAL had taken over the management of the Delhi airports, and the notification dated 24th July 2006 issued by the Union of India had not been extended to DIAL, unless the GNCTD issued a fresh notification under Section 10 CLRAA, DIAL would

not be bound by the earlier notification. It was further observed that “although the trolley retrieval work has been shown as an essential function but the petitioner has failed to show any clause by which the liability has been foisted on the Respondent No. 5 to take the earlier contractor’s employees as its own employees”. LPA Nos. 38 and 1065 of 2007 are by the Workers’ Union and the Union of India respectively against the aforementioned judgment of the learned single Judge.

15. On 31st January 2007, the Deputy Chief Labour Commissioner issued an office memorandum stating that consequent upon AAI leasing out some of its Delhi airport’s function to DIAL, “AAI may be treated as Principal Employer and DIAL its agent so far as the Delhi Airport is concerned. Under the circumstances, Central Government will continue to be the Appropriate Government for the functions carried out by DIAL as an agent of AAI”. This was followed up by a letter dated 24th September 2007 written by the Union of India to DIAL stating that the appropriate Government with respect to the ID Act as well as the CLRAA was the Central Government. A communication to the same effect was addressed also to the Delhi Government on 28th September 2007. These have been challenged by the DIAL in its writ petition.

16. On 16th October 2007 the CACLB made a renewed recommendation for abolition of the contract labour system reiterating its earlier recommendation made on 6th February 2004 on the basis of which the impugned notification dated 26th July 2004 was issued by the Central Government. It recommended that “the Contract Labour System in the job of trolley retrieval in Delhi Airport should be abolished”. It is stated that in May 2008 despite the aforementioned observations, the AAI inducted fresh contract labourers at the domestic and international terminal in Delhi through a new contractor.

Submissions of counsel

17. We have heard Mr. Colin Gonsalves, learned senior counsel for the workers’ union in both appeals and the writ petitions. On behalf of the DIAL Mr. Sudhir Chandra, Senior Advocate, Mr. P.P. Rao, Senior Advocate and Dr. A.M. Singhvi, Senior Advocate appeared. Mr. V.P. Singh, learned Senior Counsel appeared for the AAI. Mr. Sachin Dutta, learned Advocate appeared for the Union of India.

18. The first issue raised concerns the validity of the Notification dated 26th July 2004 issued by the central government under Section 10 (1) CLRAA. AAI and DIAL have assailed the CACLB’s recommendations dated 6th February 2004, on the basis of which the aforesaid Notification was issued, on the ground that the CACLB ought to have awaited the completion of the process of privatization as by the date of its recommendation the AAI

Amendment Act had already been enacted by the Parliament having received the assent of the President on 7th September 2003. The other criticism is that a fresh evaluation was required to be undertaken by the CACLB after the remand to it of the entire case by the learned Single Judge. It is submitted that with the impending privatization of the airports in Delhi, the parameters for assessing whether there was justification for prohibiting contract labour in trolley retrieval work were likely to undergo a change and therefore the CACLB erred in opining to the contrary. It was generally submitted that there was non-application of mind to the specific requirements of Section 10 CLRAA by the central government since it was not supposed to mechanically accept the findings of the CACLB but make an independent assessment.

19. The next point raised is that in any event the Notification dated 26th July 2004 cannot bind DIAL. It has been contended by DIAL that one must look into the definition of “industrial establishment or undertaking” under Section 2(ka) of the ID Act under which different units of a larger industrial establishment may themselves be considered to be separate industrial establishments. It is submitted that the definition of ‘appropriate government’ in the ID Act as it was originally enacted, was ‘incorporated’ in the definition of ‘appropriate government’ with effect from 28th January 1986 and not merely ‘referred to’. Consequently, the subsequent amendment

with effect from 11th October 1995 to the definition of that term in Section 2 (a) of the ID Act to include the AAI as well as air transport service as specified industries would not affect the definition of ‘appropriate government’ under the CLRAA. It is further urged that under Section 2(j) of the ID Act “industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft, or industrial occupation or avocation of workmen. A reference is also made to Section 2(k) which defines “industrial dispute” to mean any dispute or difference between employers and workmen. It is submitted that in view of the definition of “appropriate government” under Section 2(1) (a) CLRAA, the definition of that term in Section 2 (a) of the ID Act would be relevant. It is submitted that under Section 2(a)(i) ID Act the “appropriate Government” in relation to any industrial dispute concerning the AAI constituted under Section 3 of the AAI Act, or an air transport service, is the Central Government. If the industry is carried on by or under the authority of the Central Government then and then alone can it be said that the appropriate government would be the Central Government and in all other cases it would be the State Government.

20. DIAL contends that it is not an agent of AAI. Further, since AAI is itself an *eo nomine* entity in terms of Section 2 (a) ID Act and an entity constituted under Section 3 of the AAI act, DIAL cannot be considered to be a delegate of such entity. The contention is that the “establishment” in question is that

of DIAL, wherever it conducts its business and that in relation to DIAL there has to be a separate Section 10 Notification issued by the Government of the NCT of Delhi prohibiting the employment of contract labour in trolley work in the establishment of DIAL. If the employer is not the AAI in a given case then there can be no industrial dispute concerning the AAI. The dispute, if at all, is between DIAL and its workmen and the AAI is not concerned at all. In other words, the contention is that the focus is not so much on the place to determine what is an establishment but whether there exists relationship of employer and employee with reference to the principal employer and the labour and whether, in the event of a dispute arising between them, the appropriate Government would be the Central Government or the State Government. Referring to the observations in the *SAIL* case, it is submitted that since DIAL is not an entity that carries on its industry “by or under the authority of the central government” and no such authority is in any event conferred by any statute, the appropriate government in relation to DIAL cannot be the central government. DIAL disputes that it is carrying on an air transport service. It is pointed out that DIAL is not required to and in fact does not have a licence issued to it under Rule 134 of the Aircraft Rules. DIAL says that it is performing its functions independently in its own establishment which is not that of AAI’s. Reliance is placed on the decision of the learned single Judge of the Kerala High Court in *Cochin International Airport Limited Vs. Regional Labour Commissioner 2009 (3) LLN 350*. It is submitted that only certain functions have been entrusted to

DIAL by the AAI by virtue of the OMDA and therefore recourse to Section 12 A of the AAI Act to justify the application of the Notification under Section 10 CLRAA to DIAL was not legally permissible.

21. It was contended by Mr. P.P. Rao, the second learned senior counsel appearing for the DIAL that in terms of proposition No. 6 in para 125 of the judgment in the *SAIL* case, AAI had the options of either continuing with the job of trolley retrieval by employing regular workmen, or give up the work of trolley retrieval forever or to sell or transfer the establishment along with the business including the job of trolley retrieval to another person. He contended that AAI had availed of the last mentioned option consistent with the object of the insertion of Section 12A in the AAI Act. He further contended that the notification dated 26th July 2004 remained suspended in terms of the judgment of *ONGC v. Collector of Central Excise (2004) 6 SCC 437* during the period when HPC was seized of the matter.

22. Dr. A.M Singhvi, the third learned Senior Counsel to appear on behalf of DIAL submitted, on instructions, that although DIAL had in its pleadings raised a preliminary objection as to the amenability of DIAL to the writ jurisdiction of this court under Article 226 of the Constitution of India, for the purposes of the present dispute DIAL was not pressing this point. He, however, reserved the right of DIAL to urge this point in any other dispute

that may arise in future and which does not form the subject matter of the present proceedings.

23. The workers' union countered the challenge to the validity of the Notification dated 26th July 2004, by relying on the minutes of the deliberations of the CACLB. It is pointed out that all of the contentions of the AAI were dealt with and cogent reasons given for recommending the prohibition of contract labour in trolley retrieval work in the Delhi airports. This was reiterated by the HPC. Consequently the Notification dated 26th July 2004 was unassailable. It is then submitted that in terms of the CLRAA it is AAI which continues to be the principal employer while DIAL is the contractor. It is contended that while individuals or entities may have control of different departments in an establishment, the definition of the term under the CLRAA does not envisage multiple principal employers or establishments. It is submitted that the definition of an 'establishment' under the CLRAA is materially different from the definition of that term under the ID Act which envisages separation of establishments. For the purposes of the CLRAA, it is submitted, the prohibition on employment of contract labour in a job is *qua* the establishment and operates irrespective of any change in the principal employer as long as the process, operation or other work continues in that establishment. Alternatively it is submitted that even if DIAL is taken to be the principal employer which has stepped into the shoes of AAI by virtue of the OMDA, the notification under Section 10 CLRAA would bind

it and for DIAL too the appropriate government would be the central government. Also, since DIAL is providing an air transport service, the appropriate government is the central government.

24. The stand of the central government is supportive of the workers' union. The validity of the Notification dated 26th July 2004 is defended on the basis of the deliberations of the CACLB and the HPC. It is categorical that the notification under Section 10 (1) CLRAA is qua the establishment and to the body under whose control and authority the establishment is run. In other words it is not qua the principal employer or contractor and even if either of them is replaced the continued application of the prohibitory notification is not affected. It is submitted that adopting a contrary interpretation would defeat the object and purpose of the CLRAA. The central government submits that DIAL is operating under the authority of the central government. The industry that is carried on by DIAL by virtue of the OMDA is relatable to the authority granted by Section 12 A of the AAI Act and that it was only pursuant to the said statutory provision that AAI could lease to a private entity certain functions of the AAI in terms of the OMDA. It is submitted that DIAL is rendering "air transport service" including emplaning and deplaning of passengers, handling of passengers' luggage, cargo booked etc and therefore the central government is the appropriate government.

Issues for determination

25. Among the issues the issues that arise for consideration are whether the Notification dated 26th July 2004 under Section 10 (1) CLRAA is valid and if valid, whether it is binding on DIAL; whether AAI, and in terms of the OMDA, DIAL, could be said to be the principal employer vis-à-vis the workers employed in trolley retrieval. The corresponding question is whether the workmen engaged by the contractors of DIAL can be said to be the contract labourers. The further issue concerns the remedies the workmen are entitled to be reemployed in the work of trolley retrieval on regular basis in the Delhi airports.

Validity of the Notification dated 26th July 2004

26. The challenge to the Notification dated 26th July 2004 issued by the central government under Section 10 (1) CLRAA is essentially on the ground that it does not account for the factors mentioned in that provision. These are indicated in sub-section (2) of Section 10 CLRAA as (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment; (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto and (d) whether it is sufficient to employ considerable number of whole-time workmen.

27. A perusal of the recommendations of the CACLB in its proceedings of 6th February 2004 shows that every one of the factors listed in Section 10 (1) CLRAA were deliberated upon. The reasons given by the CACLB, after considering the divergent submissions of the workmen and the AAI, are cogent. The CACLB did consider the possible impact of privatization on the work of trolley retrieval. It was correctly observed by the CACLB that neither the nature of the work was likely to change from being one of a perennial nature but even the volume of work would only increase with the increase in the number of flights and the number of passengers using the Delhi airports. The proceedings of the CACLB show that AAI contended before it that “as the use of trolleys varies depending on the traffic variance, it is not possible to engage a considered number of whole time workmen on regular basis. In future due to privatization / mechanization manpower may not be required. The present licensee is doing the work nearly with half of the number of workers than that of earlier licensee”. This was answered by the CACLB by observing that “even if the process is mechanized, from the date of its introduction, resort can be had to reduce manpower by way of retrenchment by adopting due process of law. As regards privatization, even if the work is transferred along with the operator to a private company, it does not make any material difference as the Central Government would continue to be the appropriate Government in respect of that private establishment”.

28. The HPC which subsequently considered the issue pursuant to the orders of this Court observed in its order dated 27th May 2005 noted the factual position that “the restructuring of Delhi (and Mumbai) airport is under active consideration of the Government of India. Already Kochi airport in the private sector is functional and Govt. has also granted approval for airport in the private sector at Hyderabad and also recently granted approval for airport in the private sector at Bangalore. Public-private participation in the ownership or management of Delhi (and Mumbai) airport is under consideration. Nevertheless, the Contract Labour (Regulation and Abolition) Act, 1970 is equally applicable for all kinds of undertakings, establishment / industries whether in the public, private or public / private ownership or management. In this context it is again necessary to refer to Section 10(2) (c) of the Act which does not appear to have been adequately examined by the Ministry of Labour before the issue of the notification in question”. The HPC further noted that “under Section 10(2) (b) CLRAA the work concerning retrieval of trolleys was certainly of a perennial nature although it may not be the core function of the AAI, it is a necessity for the passengers. With the increase in the number of flights and passengers, there was bound to be requirement of more trolleys and, therefore, increase in the work of trolley retrieval.” Consequently, the HPC recommended to the Ministry of Labour to keep the interest of the workmen engaged earlier by TDIPL in mind and that in the event that the Ministry of Labour was not in a

position to accept the HPC's recommendations "the Committee have no other option but to give clearance to AAI to challenge the notification before the Hon'ble Court".

29. Learned Senior Counsel for the AAI was unable to point out if any of the parameters in Section 10(2) (a) to (d) CLRAA were not attracted in the present case. The report of the CACLB is exhaustive and has considered all the factors. The Central Government has accepted the recommendations. There was no need to Central Government to again examine the reasons why there should be a prohibition of contract labour in the job of trolley retrieval. The AAI has been unable to show that any relevant material which ought to have been considered was not considered by the CACLB and further that if such material has been considered the CACLB it would have come to a different conclusion.

30. Judicial notice can be taken of the phenomenal rise in the number of flights emanating from and terminating at the Delhi airports and the corresponding increase in the number of passengers using the Delhi airports. We fail to understand how the policy of privatization could have brought about a change to these parameters. The factual position obtaining today vindicates the opinion of the CACLB that the work of trolley retrieval is of a perennial nature and was likely to increase in volume in the future. The fact that the amendment to the AAI Act was brought into force only with effect

from 1st July 2004, beyond the date of the CACLB's recommendation, negates the contention that the CACLB ought to have awaited the impending privatization of the Delhi airports before making a recommendation.

31. Having perused the order of the learned Single Judge by which the case was remanded to the CACLB, we find that the terms of the remand were indeed limited. The learned Single Judge in the judgment dated 5th November, 2003 reiterated the interim order dated 4th August, 2003 in which a prima facie opinion had been expressed that "it does not appear that trolley retrieval is essential for a successful functioning at the airport since arrived and depart through the day". Furthermore since flights are arrived depart work appears to be the work that would ordinarily be done through regular work and thus to employee full time workmen in view of the nature and extent of the work. It was further noticed that no plea was advanced during the final hearing it may have prima facie view as recorded above. Therefore in para 30, the learned single Judge ordered that "the recommendations of the CACLB dated 20th July, 1999 and the consequent Government order dated 18th April, 2002 based thereon quashed and set aside only insofar as they declined to abolish contract labour for Trolley Retrievers". Further it was directed that "since the limited issue which requires consideration is the abolishing of contract labour for trolley retrievers in the light of materials already on record, the CACLB is directed to dispose of this issue not later on 31st December, 2003". In view of the above mandamus of the learned Single

Judge, we fail to understand why CACLB was again required to re-examine the entire issue afresh as suggested by the DIAL.

32. For the aforementioned reasons, we find absolutely no merit in the writ petition filed by the AAI challenging either the recommendation dated 6th February 2004 of the CACLB or the notification dated 26h July, 2004 issued by the Central Government under Section 10 (1) CLRAA on that basis.

Is the notification under challenge qua the establishment?

33. To this Court, it appears that the running theme of the CLRAA concerns the activities in relation to an establishment. The prohibition of contract labour brought about by a notification under Section 10(1) is with reference to an establishment. This is obvious on a plain reading of Section 10 CLRAA which is as under:

“10. Prohibition of employment of contract labour –

- (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work **in any establishment.****
- (2) Before issuing any notification under sub-section (1) in relation to an establishment the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as –**
 - (a) whether the process, operation or other work is incidental to, or necessary for the**

industry, trade, business, manufacture or occupation **that is carried on in the establishment;**

- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on **in that establishment;**
- (c) whether it is done ordinarily through regular workmen **in that establishment or an establishment similar thereto;**
- (d) whether it is sufficient to employ considerable number of whole-time workmen.” (emphasis supplied)

34. It can be seen, therefore, that both in relation to Section 10(1) and Section 10(2) CLRAA it is the establishment which is the point of focus. The recourse to the ID Act for the purposes of understanding what an “establishment” is for the purposes of CLRAA is, in our view, misconceived. Since the definition of “establishment” under the CLRAA is unambiguous, it is futile to seek recourse to the ID Act to understand what an “establishment” is for the purposes of the CLRAA.

35. It is apparent that for the purposes of the present case it is the Delhi airports themselves that constitute the establishment of the AAI and later the DIAL for the purposes of the notification under Section 10 CLRAA. It is the work of trolley retrieval in such establishment that stands prohibited by virtue of the notification under Section 10 (1) CLRAA.

36. The key actors in the statutory scheme of the CLRAA are the principal employer, the contractor and the contract labourer. The key site is the establishment in which such contract labour is employed. That the three actors are described with reference to the establishment is plain from the definitions contained in Sections 2(1)(b), 2(1)(c) and 2(1)(g) CLRAA which read as under:

“2(1) (b) a workman shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of the principal employer;

2(1)(c) “contractor”, in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;

2(1)(g) “principal employer” means –

- (i) In relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,
- (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named,
- (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
- (iv) in any other establishment, any person responsible for the supervision and control of the establishment.”

Further “establishment” is defined under Section 2(1)(e) CLRAA to mean:

- “(i) any office or department of the Government or a local authority, or
- (ii) any place where any industry, trade, business, manufacture or occupation is carried on;”

Under 2(1) (i) CLRAA a “workman” has been defined to mean “any person employed in or in connection with work of any establishment”.

37. It is plain, therefore, that the establishment for the purposes of the CLRAA is a place where any industry, trade, business, manufacture or occupation is carried on and the contractor is also a person who undertakes to produce a given result “for the establishment”. A workman is also a person who is employed as “in or in connection with the work of an establishment”. The principal employer also is defined to mean in relation to an establishment “any person responsible for the supervision and control of the establishment”. If the establishment for the purposes of the CLRAA is a place where the industrial, trade or business activity is carried on then it necessarily follows in the context of the present case that it is the Delhi airports which constitute the establishment of AAI and in turn the establishment of DIAL.

Appropriate Government

38. Notwithstanding that the definition of “appropriate government” under Section 2(1)(a) CLRAA makes a reference to the ID Act, it has to be understood in the context in which those words are used. Where, in relation to an establishment, there is a dispute that arises between the employer and the employee such dispute would have to be referred by the Government to the Labour Court and if such Government happens to be the Central Government, then for the purposes of the CLRAA also the appropriate Government would be the Central Government. Thus an “establishment” for the purposes of Section 2(1)(a) CLRAA cannot possibly be several establishments as contemplated under the ID Act but one establishment. In the Delhi airports if there is a dispute between the employees of the AAI and the AAI, then there would be no manner of doubt that for resolution of such dispute the reference would have to be made to the Central Government.

39. Section 2(1) (a) CLRAA reads as under:

“2(1) (a) “appropriate government” means, -

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situated;”

Therefore the reference to the ID Act in Section 2(1) (a) of CLRAA is limited to understanding which is the appropriate government that can make a reference when there is a dispute between the regular employees of the

establishment of the AAI and the AAI. It is that government which will be the appropriate government in respect of that establishment for the purposes of Section 10 CLRAA as well. The establishment remains the same. It cannot be divided into several small establishments, where for one part the appropriate Government would be the Central Government and for the other parts it would be the State Government. Such an interpretation would run counter to the scheme of the CLRAA and would defeat its object and purpose.

40. The issue could be approached differently. Under Section 12A of the AAI Act, the functions and powers of the AAI stand transferred to DIAL by virtue of the lease of the airport to it by the agreement dated 4th April 2006. Section 12A of the AAI Act reads as under:

“12A. Lease by the authority – (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:

Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.

(2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.

(3) Any money, payable by the lessee in terms of the lease made under sub-section (1), shall form part of the fund of the Authority and shall be credited thereto as if

such money is the receipt of the Authority for all purposes of section 24.

(4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such function in terms of the lease.”

41. If the powers and functions of the AAI under Section 12A of the AAI Act stand transferred to the DIAL by virtue of the above section, which in turn gives the statutory basis for the transfer of powers and functions by virtue of the agreement dated 4th April 2006, then the corresponding statutory obligation also gets automatically transferred to the DIAL. It is inconceivable that by virtue of Section 12A the powers and functions of the AAI will stand transferred and not the corresponding obligations. In fact, in terms of Clause 5.1 of the OMDA the statutory obligations under the CLRAA which are that of the AAI and its contractors also get transferred to the CLRAA. This transfers all powers and functions and correspondingly the obligations under the CLRAA by virtue of Section 12A of the AAI Act.

42. A reference was made to the observations of the Supreme Court in para 46 of the decision in the *SAIL* case which read thus:

“We have held above that in the case of a Central Government company/undertaking, an instrumentality of the Government, carrying on an industry, the criteria to determine whether the Central Government is the appropriate Government within the meaning of the

CLRAA Act, is that the industry must be carried on by or under the authority of the Central Government and not that the company/undertaking is an instrumentality or an agency of the Central Government for purposes of Article 12 of the Constitution; **such an authority may be conferred either by a statute or by virtue of the relationship of principal and agent or delegation of power and this fact has to be ascertained on the facts and in the circumstances of each case.** In view of this conclusion, with due respect, we are unable to agree with the view expressed by the learned Judges on interpretation of the expression “appropriate Government” in *Air India Statutory Corpn. v. United Labour Union* (1997) 9 SCC 377. Point (i) is answered accordingly.” (emphasis supplied)

43. The above observations underscore the need to look to the AAI Act to ascertain if the authority on DIAL is conferred not merely by the OMDA but by statute. Section 12 A of the AAI Act is the source of DIAL’s power delegated to it under the OMDA by the AAI. In fact OMDA makes an express reference to the AAI Act. Consequently consistent with the observations of the Supreme Court in the *SAIL* case, the exercise by the DIAL of the functions and powers of the DIAL in relation to the Delhi airports is traceable to Section 12 A of the AAI act and therefore in relation to the Delhi airports the central government will continue to remain the appropriate government. Further, the provisions of the AAI Act show that there is extensive control of the Central Government over the functioning of the AAI. The authority of the Central Government is conferred by the statute itself. Therefore it is not correct to contend that consequent upon the

OMDA, the establishment of the AAI i.e. the Delhi airports ceased to be under the control of the Central Government.

44. Therefore, the inescapable conclusion is that consistent with the observations in the *SAIL* case, the statute itself contemplates the Central Government to be the appropriate Government notwithstanding that there has been a privatization of the management of the Delhi airports. By being brought within the ambit of Section 12A of the AAI Act, even the private actor i.e. DIAL has been brought within the ambit of the control and authority of the Central Government. In fact, there is an express reference to the AAI Act in the body of the OMDA itself. If there was no provision like Section 12A in the AAI Act, there could not have been an OMDA between AAI and DIAL.

45. There has been a considerable argument advanced on the basis of the judgment in the *SAIL* case where a reference was made to the definition of ‘appropriate Government’ as it stood before the amendment in 1986. In para 20 of the *SAIL* judgment it was noticed that prior to that amendment the function of appropriate Government was not a static one. It reads as follows:

“20. Addressing the definition of “appropriate Government”, it may be pointed out that clause (a) of Section 2(1) was substituted by the Contract

Labour (Regulation and Abolition) Amendment Act, 1986 with effect from 28.1.1986. Before the said amendment, the definition reads as under:

“2(1)(a) “appropriate Government” means, -

- (1) in relation to -
 - (i) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or
 - (ii) any establishment of any railway, cantonment board, major port, mine or oilfield, or
 - (iii) any establishment of a banking or insurance company, the Central Government,
- (2) in relation to any other establishment, the Government of the State in which that other establishment is situated;”

46. The amendment made in 1996 to Section 2(a) of the ID Act whereby the AAI was substituted for the International Airport Authority of India, did not make any difference to the decision that the Central Government continued to be the appropriate Government for the purposes of the airports.

47. Reference was made by counsel for the parties to the judgment dated 5th June 2008 of the Bombay High Court in Writ Petition No. 617/2007 (*Flamingo Duty-Free Shop Pvt. Ltd. v. Union of India*). There the question

was whether Mumbai International Airport Ltd. (MIAL) could have awarded
LPA Nos. 38-07, 1065-07 & WP(C) Nos.139-08 & 6763-08

the contract for a duty free shop to any third party and in that context whether it was amenable to the writ jurisdiction. The present context is entirely different. The petitioners here are seeking enforcement of the Section 10 CLRAA notification even vis-à-vis DIAL which stepped into the shoes of the AAI. Therefore DIAL is a proper and necessary party to the writ petition. Given the reliefs sought in the writ petitions by the workers' union and consequently in the appeals by them, no order adverse to DIAL can be passed without giving DIAL an opportunity of being heard. In any event, we do not think that the decision of the Mumbai High Court, the correctness of which is stated to be pending consideration of the Supreme Court, is helpful to DIAL in the present case.

48. The judgment dated 26th August 2009 of the Division Bench of this Court in *Resources of Aviation Redressal Association v. Union of India* (W.P. 8918 of 2008), recognises in the context of a challenge to the charging of airport/passenger tax by the DIAL, that “the lease under Section 12-A (1) (of the AAI Act) is thus a statutory lease which enables the lessee to perform the functions of the AAI enumerated in Section 12. In other words, there is a statutory assignment of the functions under Section 12 to the lessee.” Having asserted before this Court in the aforementioned case that it has stepped into the shoes of AAI in terms of the OMDA for the purposes of

collecting a passenger fee/tax, DIAL cannot be heard to say that it cannot be held to have taken over the statutory obligations of AAI.

Incorporation by reference?

49. Although extensive arguments were addressed by Mr. Sudhir Chandra to the effect that the ID Act was “incorporated” in the definition of appropriate Government under Section 2(1)(a) of the CLRAA and not merely “referred”, he later did not press this point. In any event, in the manner in which we have interpreted Section 2(1)(a) of the Act CLRAA it would make no difference even if one were to say that the subsequent amendment to the definition of the term ‘appropriate Government’ in the ID Act would not affect the definition under the CLRAA. In ***Maharashtra State Road Transport Corporation v. State of Maharashtra AIR 2003 SC 1909***, it was observed as under:

“11. The distinction between incorporation by reference and adoption of provisions by mere reference or citation is not too easy to highlight. The distinction is one of difference in degree and is often blurred. The fact that no clear-cut guidelines or distinguishing features have been spelt out to ascertain whether it belongs to one or the other category makes the task of identification difficult. The seminars associated with interpretation play their role to a limited extent. Ultimately, it is a matter of probe into legislative intention and/or taking an insight into the working of the enactment if one or the other view is adopted. The doctrinaire approach to ascertain whether the legislation is by incorporation or reference is, on ultimate analysis, directed towards that end. The distinction often pales into insignificance with the exceptions enveloping the main rule.”

50. In *Principles of Statutory Interpretation*, GP Singh, 10th Edn (2008), p 306 it is stated as under:

“It has further been observed that the rule that the repeal or amendment of an Act which is incorporated in a later Act has no effect on the later Act or on the provisions incorporated therein is subject to four exceptions: (a) where the later Act and the earlier Act are supplemental to each other, (b) where the two Acts are in *pari materia*, (c) where the amendment of the earlier Act if not imported in the later Act would render it wholly unworkable, and (d) where the amendment of the earlier Act either expressly or by necessary intendment also applies to the later Act.” (See: *State of Madhya Pradesh v. M.V. Narasimhan AIR 1975 SC 1835*)

When examined in light of the above settled legal principles, it appears to us that irrespective of whether the amendment to Section 2(a) ID Act was later, the appropriate Government for the purposes of Section 10 CLRAA in the instant case continues to be the Central Government.

Air Transport Service

51. The next contention to be dealt with is that DIAL is not undertaking an air transport service and therefore the appropriate government as far as DIAL is concerned cannot be the central government. A reference was made to the judgment of the Kerala High Court in *Cochin International Airport Limited v. Regional Labour Commissioner 2009 (3) LLN 350* to contend that the definition of ‘Air Transport Service’ in Section 2(e) of the AAI Act and in Rule 3(a) of the Aircraft Rules 1937 indicates that the services rendered by the Cochin International Airport Limited was not ‘Air Transport

Service’. DIAL’s submission is that the term ‘Air Transport Service’ is used in a generic sense and has to be distinguished from an establishment constituted under an Act. It is concerned with the actual transport by air or by cargo from one airport to another through provisioning of flights. It is stated that this is carried by a scheduled air transport services provider as defined under Rule 3(a) of the Aircraft Rules. A reference was made to Rule 134 of the Aircraft Rules where under an air transport service provider requires to be issued a licence. It is contended that since DIAL has only a licence under Rule 78 and not Rule 134 it is not providing an air transport service.

52. While there may be merit in the contention of the DIAL that it is not providing an air transport service, it still does not help it to wriggle out of the obligation under Section 12A of the AAI Act. A careful reading of the AAI would show that air traffic service has been defined under Section 2(d) to mean as under:

“2(d) “air traffic service” includes flight information service, alerting service, air traffic advisory service, air traffic control service, area control service, approach control service and airport control service”.

Section 2(e) ‘air transport service’ to mean as under:

“2(e) “air transport service” means any service, for any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other thing, animate or inanimate, whether such service relates to a single flight or series of flights.”

53. The definition of air transport service is certainly wider than air traffic service. This has to be seen also in the context of Section 2(i) which defines civil enclave to mean as under:

“2(i) “civil enclave” means the area, if any, allotted at an airport belonging to any armed force of the Union, for use by persons availing of any air transport services from such airport or for the handling of baggage or cargo by such service, and includes land comprising of any building and structure on such area.”

54. When the above definitions are read along with Section 1(3) of the AAI Act, it is plain that the AAI Act will apply to a civil enclave. It is clear that the handling of baggage or cargo by an air transport service would form part of the services provided in a civil enclave. The functions that have been excluded under Section 12A(1) are “air traffic services or watch and ward at airport and civil enclaves”. In other words, air traffic services and provision of watch and ward at the airport and civil enclaves remain with the AAI notwithstanding that it has entered into an OMDA with the DIAL. We find that the decision of the Kerala High Court does not notice the above provisions of the AAI Act. While the Air Traffic Rules envisage that all the licences for air and air traffic service would be issued separately, that by itself may not be determinative of whether trolley retrieval forms part of the services to be provided by DIAL in terms of the OMDA. Only ‘air traffic services and provision of watch and ward’ are, in terms of Section 12-A AAI

Act to be retained by AAI as part of its functions. In our view, trolley retrieval along with toilets and handling of baggage or cargo within the area of a 'civil enclave' are recognized as essential services by virtue of Schedule 16 to the OMDA. This is what is relevant in determining whether trolley retrieval is also part of the services provided in the establishment. Therefore, notwithstanding whether DIAL is actually offering the other kinds of air transport services, it is certainly meant to provide the trolley retrieval services at the Delhi airports.

55. We are, therefore, of the view that for the purposes of establishment of the Delhi airports it is the Central Government that continues to be the appropriate Government. The notification under Section 10(1) CLRAA will continue to govern the "establishment" of Delhi airports notwithstanding the privatization of the management of the airports by virtue of the agreement dated 4th April, 2006 between AAI and the DIAL. Consequently, we reject the contention of the DIAL that it is not bound by the notification under Section 10 CLRAA.

Does the Section 10 CLRAA Notification bind DIAL?

56. It is finally contended that a reading of the notification dated 26th July 2004 would show that it prohibits employment of contract labour in any process, operation and other work in the establishment of the AAI and not of

the Delhi airports themselves. It is contended by DIAL that it is not a mere contractor or agent of AAI, and after the OMDA, it is carrying on “its own industry in its own establishment at the international and domestic airports at Delhi.” It is submitted that the notification under Section 10 (1) CLRAA cannot automatically be made applicable to the establishment of DIAL. This submission, in our view, is wholly misconceived. It is not as if DIAL has its own establishment and is carrying on its activity in “its own establishment”. The establishment is that of the AAI which has been leased out to the DIAL subject to Section 12A of the AAI Act.

57. The key to understanding this issue is Section 12A of the AAI Act. It not only transfers the powers and functions but also the corresponding statutory obligations of the AAI. In fact, the OMDA also recognizes this position. Therefore, even if DIAL is at present not carrying on any activity in the establishment of the AAI i.e. in the Delhi airports, it cannot be possibly contended that it is not bound by the notification under Section 10 CLRAA. This flows logically from our earlier finding that the notification under section 10 CLRAA pertains to an establishment. At this cost of repetition, it is reiterated that the establishment remains unchanged. Section 10 CLRAA notification is relatable to such establishment. There may be any private players with whom an agreement like the OMDA could be entered into by the AAI in terms of Section 12A of the CLRAA. The obligation flowing from the notification under Section 10 CLRAA will continue to bind

every private player that steps into the shoes of the AAI even for some of its functions. Otherwise every time a fresh agreement is entered into, the entire process of getting a notification issued by the appropriate Government in relation to the same work of trolley retrieval and with the same establishment vis-à-vis such private player has to be re-started. That was never the intention of the legislature in enacting the CLRAA and in particular Section 10 CLRAA. Such interpretation would defeat the rights of the workmen which are meant to be protected by the CLRAA. We, accordingly, reject the submission as being without merit.

58. As far as the submission that the notification dated 26th July 2004 was impliedly stayed by this court, we are afraid that it proceeds on a misconception and an erroneous reading of the judgment of the Supreme Court in *ONGC*. The notification there was under the Central Excise Act and not under the CLRAA. The context in which that interim order was passed, therefore, was entirely different. In the instant case, there was no express suspension of the statutory notification dated 26th July 2004. In any event, there could not have been any automatic stay of the notification as is sought to be contended. Even in terms of the interim orders passed by this Court directing status quo to be maintained, Section 12A of the AAI Act, as interpreted by us, transferred not only the powers and functions but also a

corresponding statutory obligation under the CLRAA to DIAL. That position remained during the pendency of the present cases.

Conclusion

59. We accordingly set aside the impugned judgment dated 28th November 2006 passed by the learned Single Judge. We hold that DIAL is equally bound by the notification dated 26th July 2004 issued by the Central Government under Section 10 CLRAA prohibiting the employment of contract labour in the work of trolley retrieval in the Delhi airports.

60. The challenge raised by the DIAL to the clarification issued on 24th September 2007 by the Chief Labour Commissioner (Central) that the Central Government is the appropriate Government for the airport establishment is entirely without merit. We have already explained the reasons for our conclusion that in relation to the Delhi airports it is the Central Government which is the appropriate Government for the purposes of the CLRAA. Even for the purposes of ID Act it would be the Central Government which is the appropriate Government. Consequently, the consequential order dated 22nd November 2007 passed by the Chief Secretary, GNCTD also does not suffer from any illegality. The writ petition by DIAL challenging it is also, therefore, entirely without merit.

61. Once it has been held by this Court that the DIAL continues to be bound by the notification under Section 10 CLRAA, the question that next arises is the consequential order that requires to be passed. This is governed by the *SAIL* case. Clauses 5 and 6 of para 125 of the SAIL judgment require a determination of the issue whether the contract under which the workers were employed by the TDIPL is a sham or bogus one. It is apparent that there is already an industrial dispute raised in this regard. In terms of the judgment in *SAIL v. Union of India (2006) 12 SCC 233*, this issue is to be decided only by the industrial adjudicator. The outcome of that dispute will determine the ultimate reliefs that can be granted to the workmen in terms of the *SAIL* judgment.

62. Before concluding, we place on record the submission made by Dr. Singhvi that for the purposes of the present litigation, DIAL is not pressing the ground regarding its amenability to the writ jurisdiction under Article 226 of the Constitution. We clarify that notwithstanding the present judgment, the DIAL would be free to urge the point regarding its amenability to the jurisdiction of High Court under Article 226 of the Constitution in any other proceeding.

63. For the aforementioned reasons we hereby allow LPA Nos. 38 of 2007 and 1065 of 2007 and dismiss Writ Petition (C) Nos. 139 of 2008 and 6763

of 2008. Each of the Respondents in the two LPAs will pay to the Appellants Rs.10,000 each as costs within a period of four weeks.

S.MURALIDHAR, J

CHIEF JUSTICE

DECEMBER 18, 2009

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