

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 17th March, 2016.**

+ **W.P.(C)No.283/2013**

AIRPORT AUTHORITY KARAMCHARI UNION Petitioner

Through: Mr. Sujeet K. Mishra, Adv.

Versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Anjana Gosain with Mr. Vishu Agrawal, Advs. for UOI.
Mr. K.K. Rai, Sr. Adv. with Mr. Digvijay Rai, Mr. Syed Hassan Bin Taher and Mr. Anshul Rai, Advs. for R-3/AAI.

AND

+ **W.P.(C) No.754/2013**

INDIAN AIRPORTS KAMGHAR UNION

..... Petitioner

Through: Mr. Colin Gonsalves, Sr. Adv. with Mr. Divya Jyoti Jaipurkar and Ms. Vinika Kino, Advs.

Versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr. K.K. Rai, Sr. Adv. with Mr. Digvijay Rai, Mr. Syed Hassan Bin Taher and Mr. Anshul Rai, Advs. for AAI.
Ms. Anjana Gosain with Mr. Vishu Agrawal, Advs. for UOI.
Mr. Dinesh Agnani, Sr. Adv. with Mr.

Inderjit Singh, Adv. for R-2.

AND

+ **W.P.(C) No. 6446/2013 & CM No.14039/2013 (for stay)**

INDIAN AIRPORTS KAMGHAR UNION **Petitioner**

Through: Mr. Colin Gonsalves, Sr. Adv. with
Mr. Divya Jyoti Jaipurkar and Ms.
Vinika Kino, Advs.

Versus

AIRPORTS AUTHORITY OF INDIA & ORS **Respondents**

Through: Mr. K.K. Rai, Sr. Adv. with Mr.
Digvijay Rai, Mr. Syed Hassan Bin
Taher and Mr. Anshul Rai, Advs. for
AAI.
Ms. Anjana Gosain with Mr. Vishu
Agrawal, Advs. for UOI.
Mr. Dinesh Agnani, Sr. Adv. with Mr.
Inderjit Singh, Adv. for R-3.

AND

+ **W.P.(C) No.5357/2015 & CM No.9671/2015 (for direction)**

**AIRPORTS AUTHORITY OF INDIA
WORKERS UNION** **Petitioner**

Through: Mr. Tarun Rana, Adv.

Versus

THE AIRPORT AUTHORITY OF INDIA & ORS**Respondents**

Through: Mr. K.K. Rai, Sr. Adv. with Mr.
Digvijay Rai, Mr. Syed Hassan Bin
Taher and Mr. Anshul Rai, Advs. for
AAI.

Mr. Dev P. Bhardwaj, Adv. for UOI.
Mr. Inderjit Singh, Adv. for R-4.
Mr. Sujeet K. Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All the four petitions concern the election of the recognised Trade Union of the respondent Airports Authority of India (AAI).
2. The petitions were entertained and pleadings have been completed. The counsels have been heard yesterday i.e. 16th March, 2016 and today.
3. The senior counsel for Indian Airports Kamghar Union (IAKU) has argued:
 - (i) that such election for recognising/electing the recognised Trade Union of AAI were held on 29th January, 2013;
 - (ii) that elections are to be held five yearly and the next election would be due in the year 2018;
 - (iii) that in the last election held on 29th January, 2013, the Airports Authority Employees Union (AAEU) was declared elected as the recognised (majority) union of the AAI;
 - (iv) that the victory of the AAEU was a marginal one; of all the 10,800 votes cast (out of the list of 11,621 voters), AAEU was found

to have polled 5376 votes and the IAKU was found to have polled 5210 votes;

(v) that the procedure followed for the election was flawed and did not maintain the secrecy of the ballot as was / is required to be maintained;

(vi) that though in accordance with the Memorandum dated 18th December, 1980 of the Office of the Chief Labour Commissioner (CLC), Govt. of India, the Returning Officer (RO) under whose supervision the election through secret ballot is to be conducted with the assistance of the management concerned, is required to be notified by the CLC (Central) but the same was not done;

(vii) that the ballot papers were also bearing the serial number as was provided on the counterfoil of the ballot papers and on which counterfoil the signatures of the voters were obtained;

(viii) that the voters were also asked to sign on a register and on which also the serial number of the ballot paper issued to each of the voters was entered;

(ix) that thus, on comparing the signatures of the voter on the counterfoil of the ballot paper or on the register with the identity of the

voter could be connected with the vote exercised by him / her;

(x) that W.P.(C) No.283/2013 was filed prior to the election, pointing out *inter alia* the aforesaid flaws in the election but the interim relief of stay of elections scheduled on 29th January, 2013 was denied vide order dated 24th January, 2013 therein but the outcome of the election was made subject to the final adjudication of the writ petition;

(xi) that W.P.(C) No.754/2013 has been filed seeking the relief of setting aside of the election held on 29th January, 2013;

(xii) that W.P.(C) Nos.283/2013 & 754/2013 also seek the relief of holding of a fresh election before the next election due on 29th January, 2018;

4. The counsel for the petitioner in W.P.(C) No.283/2013 concurred with the aforesaid arguments of the senior counsel for the petitioner IAKU.

5. Finding, that of the term of five years for which AAEU has been elected, more than three years are already over and the next election is due in January, 2018 and being of the view that even if the petitions were to succeed and fresh election were to be ordered, the said process may also take about six months time, I at the outset suggested that the petitions be disposed

of, subject to the arguments of the counsel for the respondents, by directing redressing the grievances urged for the next election due in January, 2018 and by ensuring that the said election is held immediately when it falls due and by issuing directions therefor.

6. The senior counsel for the AAI, the senior counsel for AAEU and the other appearing counsels were agreeable thereto, subject to their contentions with respect to appointment of the RO.

7. However, the senior counsel for IAKU was not agreeable thereto.

8. I further enquired from the senior counsel for IAKU, what is the basis for the apprehension that anyone would undertake the exercise of comparing the signatures on the counterfoil of the ballot papers or on the register with that of a particular workman / employee of AAI and thereafter be interested in finding out for which Trade Union that particular workman/employee exercised franchise/voted by connecting to the ballot polled. I further observed that ordinarily the signatures made by the voter on the counterfoil of the ballot paper and on the register, even if any maintained (which was denied by the counsels for AAI and AAEU), are not his / her exact signatures in the records of the respondent AAI and whether not there is a tendency to just put initials, inasmuch as it is not the case that the identity of the voter at

the time of casting of the vote was determined on the basis of his / her signatures. I further enquired whether not the said records i.e. the register, if any and the counterfoils of the ballot papers and the ballot papers are retained by the AAI and what would be the interest of the AAI in undertaking the said exercise. It was further enquired, whether not all the said records are destroyed after the election.

9. The senior counsel for IAKU only vaguely suggested that the AAEU, which has been elected, is in collusion with the AAI and is the favourite Trade Union of AAI and AAI is likely to give access to the AAEU of the said records and AAEU would be interested in finding out which workman / employee had voted for it and which had voted for its rival unions.

10. I am not satisfied on the aforesaid aspect. No pleadings have been shown to the said effect and there can be no presumptions to the effect aforesaid. Rather, I am informed that in the past, since 1992 when such elections were first held, IAKU has also been elected as the recognised (majority) union.

11. The senior counsel for AAI has referred to my order dated 15th January, 2016 in W.P.(C) No.198/2016 titled *Sunita Arora Vs. Delhi University*, relying on the judgment of the Division Bench of this Court in

S.D. Siddiqui Vs. University of Delhi 2006 (88) DRJ 504, laying down that if one wishes to challenge an election, he has to file an election petition if that is provided under the relevant statute or Rules, and if there is no such provision in any statute or Rule for challenge by an election petition, then one has to file a civil suit for this purpose and not a writ petition. It was contended that the petition is liable to be dismissed on this ground alone, relegating the petitioners to suit remedy.

12. It was also contended that the records aforesaid are destroyed. It was yet further argued that in holding the election on 29th January, 2013, the same procedure, as has been in vogue since 1992, was followed; that the Code of Conduct for holding the election was developed by consensus and the form of the ballot paper was vetted by all concerned including IAKU and IAKU cannot now seek setting aside of election on that ground and is estopped from claiming so. It was however stated that AAI has no objection to this Court issuing any direction for future elections to the extent of maintaining the secrecy of the ballot papers.

13. With respect to the claim for appointment of RO by the CLC (Central), it was contended that the CLC (Central) is to notify the RO only if jointly requested by all the parties concerned and since in the present case no

such joint request was made by the parties, IAKU cannot now raise an objection in this regard.

14. The other counsels appearing for the respondents including for the CLC, Government of India supported the aforesaid contentions.

15. I have in this regard perused the Memorandum dated 18th December, 1980 supra filed as Annexure P-8 to W.P.(C) No.283/2013; the same is as under:

“MEMORANDUM

Sub:- Determination of relative strength of unions operating in an establishment /industry in a local area, under the Central Sphere by Secret ballot.

1. As you are aware certain trade union Organizations have been representing to the Govt. for determination of relative strength of unions operating in an establishment by Secret Ballot System. A copy of the procedure, as evolved by this office and approved by the Ministry of Labour, is enclosed for information.

2. In order to conduct elections through secret ballot by the CIRM for establishments falling in the Central Sphere, the following instructions are issued to all field officers for their information and guidance.

3. On receipt of a request either from the management or from a union for the purpose of recognition of a union in an establishment, or in any industry in a local area, through Secret Ballot, the Ministry of Labour have to examine particulars of union (s) to consider their eligibility for recognition. For this purpose, the field officers of the CIRM are required to collect preliminary data, including:-

- i) *Consent of the management and of all the union (s) functioning in the establishment for holding secret ballot for the purpose;*
- ii) *Consent of both the management and of the union (s) for secret ballot to be conducted by the CIRM;*
- iii) *Undertaking from the management and also from the unions that they will accept the result of such secret ballot as binding for the purpose, and*
- iv) *Undertaking from the management that they will accord recognition on the basis of such verdict in secret ballot.*

4. *After examination of the preliminary data, the Ministry of Labour will advise the Chief Labour Commissioner (Central) to undertake necessary steps to determine the relative strengths of all the eligible unions. Thereafter, the CLC(C) will notify the Returning Officer under whose supervision the election through secret ballot will be conducted with the assistance of the management concerned. The CLC will fix the month of election while the actual date of election will be fixed by the Returning Officer.*

.....”

16. I may notice that the applicability of the aforesaid Memorandum to respondent AAI is also in dispute.

17. It was also the contention of the senior counsel for AAI that the dispute aforesaid is also an industrial dispute and the remedy of an industrial dispute before the Labour Court / Industrial Tribunal is available and the writ petition is not maintainable. Reliance in this regard was placed on ***Sir Edward Betham Beetham Vs. Trinidad Cement Ltd.*** (1960) 2 W.L.R. 77

(Privy Council) and which was relied upon by the High Court of Kerala in ***T.C.C. Thozhilali Union Vs. T.C.C. Ltd.*** (1982) 1 LLJ 425.

18. The senior counsel for AAI also referred to:

(I) ***Food Corporation of India Staff Union Vs. Food Corporation of India*** 1995 Supp. (1) SCC 678 where the Supreme Court laid down the norms and procedure to be followed for assessing the representative character of the trade unions by ‘secret ballot system’ and in Clause (xi) whereof it was prescribed that at the time of polling, the polling assistant will first score out the name of the employee / workman who comes for voting, from the master copy of the voters list and advise him thereafter to procure the secret ballot paper from the Presiding Officer and in Clause (xii) whereof it was prescribed that the Presiding Officer will hand over the ballot paper to the workman / employee concerned after affixing his signatures thereon and that the signatures of the workman / employee casting the vote shall also be obtained on the counterfoil of the ballot paper. It was thus contended that the procedure followed by the respondent AAI was inconsonance therewith;

(II) ***Workmen of Kampli Co-operative Sugar Factory Ltd. Vs.***

Management of Kampli Co-operative Sugar Factory Ltd. (1994) 1 LLJ 994 where the High Court of Karnataka held that the recognition of the union is not regulated by any statutory provision and that a union cannot enforce its so-called right of recognition against the management by a writ (the senior counsel for IAKU pointed out that the said case was in respect of a private company and thus has no applicability).

19. The senior counsel for IAKU in rejoinder contended that the availability of the alternative remedy, even if any of going to the Labour Court / Industrial Tribunal and / or of suit, is not a bar to the maintainability of a writ remedy. Reliance in this regard was placed on para 16 of *ABL International Ltd. Vs. Export Credit Guarantee Corporation of India Ltd.* (2004) 3 SCC 553 and on para 18 of *Real Estate Agencies Vs. State of Goa* (2012) 12 SCC 170. It was further contended that the ratio of *S.D. Siddiqui* supra followed in *Sunita Arora* supra is in relation to Delhi University Teachers' Association (DUTA) and would not be applicable to a body such as the AAI.

20. I remain of the opinion that the disputes as raised in W.P.(C) No.754/2013 and in W.P.(C) No.283/2013 entail several disputed questions

of facts which cannot be decided in writ jurisdiction. Though none has disputed that secrecy of ballot has to be maintained but whether the secrecy of the ballot has been compromised in the election held on 29th January, 2013 and for the reason whereof the said election needs to be set aside, is certainly a question of fact and without the said fact being unambiguously established, in writ jurisdiction, no direction for setting aside of the election can be issued. Nothing has been brought before me from which I can hold that it stands established that the secrecy of the ballot in the election held on 29th January, 2013 so stood compromised. The arguments of IAKU assume collusion between AAI and AAEU which was declared elected in the said election; it further assumes that AAI will give access to AAEU of all the records of the elections; it yet further assumes that on sifting of the said records and from the signatures on the register, if any and on the counterfoils, AAEU would be able to connect the vote polled to the voter and all of which is without any basis. It yet further assumes the effect of the secrecy of the ballot being compromised, when none who may have been effected thereby, is cited.

21. The relief thus of setting aside of the election held on 29th January, 2013 and of directing a fresh election to be held cannot be granted. Once it is

held that it cannot be granted, it would matter not that vide order on an application for interim relief the outcome of the election was made subject to the outcome of the writ petition. A writ petition which is found to be not maintainable in law would not become maintainable for the reason of such interim order.

22. I am however of the opinion that directions for maintaining the secrecy of the ballot and for meeting the grievance as urged in these petitions, for future elections, needs to be issued.

23. The counsel for CLC (Central), Government of India having admitted that an RO for holding the election for recognition of the majority Trade Union of the respondent AAI can be notified, if requested for by the respondent AAI and all the concerned unions, I am also of the opinion that for all future elections, an endeavour should be made to have the RO so notified from the CLC (Central). I can safely assume that all the concerned unions are present before this Court; since none has objected thereto, their consent can also be presumed.

24. I accordingly dispose of W.P.(C) Nos.283/2013 & 754/2013 by issuing the following directions for future elections for recognising the majority / recognised Trade Union of the respondent AAI:

(I) That all the requisite steps for maintaining the secrecy of the ballot be taken including by considering grievances as urged with respect to election held on 29th January, 2013 and by taking steps for securing the records of the election held and destruction thereof immediately after the minimum period, if any prescribed or requisite period for maintenance thereof for use / reference in dispute, if any with respect to the election;

(II) that the CLC (Central), Govt. of India be approached before the election for notifying the RO for conducting the election.

25. The senior counsel for IAKU with respect to W.P.(C) No.6446/2013 argued that IAKU therein is seeking a direction to the AAI for inviting IAKU also for consultations held with AAEU. It is contended that the IAKU, even if not recognised, has a right to be invited for and of participation in the said consultations.

26. The counsel for the petitioner in W.P.(C) No.5357/2015 states that the claim in his petition is also to the same effect.

27. I have immediately enquired that if Trade Unions which have not been elected / recognised as the majority Trade Union are also to be notified of the meetings to be held by AAI with the recognised / majority Trade Union and /

or if the respondent AAI, notwithstanding the said election and recognition, is obliged to deal with all the Trade Unions, what is the purpose of holding the election and of recognition.

28. The senior counsel for IAKU instead of answering the query raised states that it is so provided by AAI itself. He, in this regard, invites attention to:

(A) letter dated 30th November, 2011 of AAI to the Assistance Labour Commissioner (C) on the subject of request of IAKU for recognition of protected workmen, referring to the “code of discipline”;

(B) letter dated 8th February, 2013 of AAI to the General Secretary, AAEU also referring to the “code of discipline”;

(C) counter affidavit filed on 17th April, 2013 by AAI before the Central Government Industrial Tribunal / Labour Court at Hyderabad in I.O. No.40/2007 titled ***Indian Airports Kamgar Union Vs. Airport Authority of India*** also referring to the “code of discipline”;

(D) document filed as Annexure P-4 to W.P.(C) No.6446/2013 which is Annexure-II to some other document and is titled “Code of Discipline in Industry” and Clause 6 under the head “Criteria for

Recognition of Unions” whereof is as under:

“6) A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50% or more of the workers of that establishment, it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All workers who are not members of that union might either operate through representative union for the industry or seek redress directly.”

29. Attention is then again drawn to the result of the election held on 29th January, 2013 and it is shown that IAKU got more than 50% of the votes in Eastern, Western and Northern regions and in CATC, Allahabad, U.P. It is argued that though IAKU has been calling upon AAI to invite it for discussions but is not being so invited and a direction is required to be issued by this Court in this respect.

30. I have enquired from the senior counsel for IAKU as to what are the matters of purely local interest and the decision with respect thereto is taken at the local level and not at the central level.

31. It is replied that on a day-to-day basis, various issues keep on arising and the decision with respect thereto has to be taken in consultation with the union, even if not recognised as a majority union but which represents more

than 50% of the workmen in that area as otherwise it would prejudice the interest of the workers at a particular location. The example, only of fixation of duty roster is given (the counsel for AAI states that guidelines for preparation of duty roster are also prescribed at the central level and the local stations are bound to fix the duty roster as per the said guidelines. It is also stated that each region has around 25 airports and if it were to be held that local issues are to be sorted out at the local level, it cannot be region-wise but will have to be airport-wise, after finding out which union had majority at that particular airport). The senior counsel for IAKU has also referred to *Chairman, State Bank of India Vs. All Orissa State Bank Officers' Association* (2002) 5 SCC 669 where in the context of the State Bank of India (SBI) it was held that taking note of the possibility of multiple trade unions coming into existence in the industry, provisions have been made in the Rules conceding certain rights to non-recognised unions and that though such non-recognised unions may not have the right to participate in the process of collective bargaining with the management / employer over issues concerning the workmen/employees in general, do have the right to meet and discuss with the employer on issues relating to grievances of any individual member regarding his service conditions.

32. I am afraid, the aforesaid observations do not support what is being argued. The counsels for the respondents also concede that non-recognised unions can represent grievances of individual member. However, what the senior counsel for IAKU has argued is the right of non-recognised unions to participate in the discussions of the recognised trade union with the management of AAI and which does not find support from the said judgment. It also appears to have escaped the attention of the senior counsel that the judgment supra in *Chairman, State Bank of India Vs. All Orissa State Bank Officers' Association* was recalled in review, reported as *Chairman, State Bank of India Vs. All Orissa State Bank Officers' Association* (2003) 11 SCC 607. I am of the view that once the trade union is declared as a majority / recognised union, it represents all the workmen including those who made not have voted for it and cannot be representative of only those workmen who have supported it in such election. In fact, the said trade union is not even to know which workers supported it and which supported some other trade union. That is the very genesis of the secret ballot. Rather, I have pointed out to the senior counsel for IAKU that if it be the case of IAKU that a large number of the issues of the workmen require consideration and are to be resolved at a local level and only some at the

central level, IAKU should boot for a system in AAI of affording recognition at two levels, one at the local level and the other at the central level, with the trade unions being separately recognised for each location / area / region and a federation of recognised trade unions to represent the workmen centrally and which system appears to be in vogue in the Indian Railways Manual.

33. Though the senior counsel for IAKU during the hearing has also handed over copy of the judgment dated 11th December, 2007 of the Division Bench of the High Court of Madras in W.As. No.502-503/2005 titled ***The General Secretary, N.L.C. Labour and Staff Union Vs. N.L.C. United Workers Union*** but I am unable to decipher therefrom also any support for the contention raised by IAKU in this respect. The same is the position with respect to the judgment dated 12th June, 1996 of the Division Bench of the High Court of Andhra Pradesh in W.A. No.848/1994 titled ***Indian Airlines Ltd., New Delhi Vs. Indian Airlines Technical Assistants Union***.

34. The senior counsel for AAI has contended that (i) the document relied upon as ‘code of discipline’ which purports to be Annexure-II of some other document is not a complete document; and, (ii) the said ‘code of discipline’ has never been followed by AAI and dates back to the times before AAI started holding elections for recognising a trade union. Reliance was placed

on *Balmer Lawrie Workers' Union, Bombay Vs. Balmer Lawrie & Co. Ltd.*

1984 (Supp) SCC 663 observing that the recognised trade union is the sole bargaining agent for the workmen and recognising a trade union is in the larger interest of industrial peace and harmony and that the recognised trade union represents all the workmen. It was further argued that the relief which has been pressed is not the relief as has been claimed in these petitions. The reliefs which have been claimed in the petitions are of advancing all the same facilities, including of infrastructure, to non-recognised unions which AAI gives to the recognised trade union.

35. The senior counsel for AAEU also contends that even the election was not conducted on the basis of the 'code of discipline'. He also draws attention to para 15 of W.P.(C) No.6446/2013 and contended that on the filing of W.P.(C) No.6446/2013, W.P.(C) No.754/2013 had become infructuous. It is further argued that whenever IAKU was elected as the majority trade union, AAEU had made the same claim as IAKU is today making but the same was rejected.

36. I have enquired from the counsels for the petitioner in W.P.(C) Nos.6446/2013 & 5357/2015, whether at any time when they were elected as the majority trade union, any other trade union was afforded such

participation in discussions as is being sought herein. Both stated that they have no instructions in this regard. The counsels for the respondents categorically state that it has never been so.

37. The counsel for AAI unequivocally states that AAI has only one establishment and what IAKU is seeking has never been practised in the past.

38. The senior counsel for IAKU in rejoinder argued that AAI in the letters / counter affidavit earlier pointed out by him having itself referred to the 'code of discipline' cannot now deny the same.

39. I am of the view that the right claimed by IAKU during arguments, of participation in discussions at the local level has been claimed in vacuum, without pleading and disclosing as to what decisions are taken at local level and how representation therein only of the majority / recognised trade union is prejudicial. Moreover, it is not the case that the said practice has been in vogue. A stray reference by AAI in other context to 'code of discipline' cannot form the basis thereof. Even otherwise, the clause of 'code of discipline' on which reliance is placed, also entails participation only in handling of grievances of individual member and not of workers in general at the local level. The petitioners are misconstruing the said clause. I am

also of the view that once the concept of recognition of only one trade union as majority union is in vogue, no distinction can be made between those who are members of that union and those who are not members of that union. The trade union, upon its recognition, in the matter of representation of the workers vis-a-vis management, ought to represent and is expected to represent workmen/employees in general, without discriminating between those workmen/employees who may be its members and those workmen/employees who may be members of the rival trade union(s). Though not in the context of recognised trade union, it was so held in *Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Ltd.* (1991) 1 SCC 4 and *I.T.C. Ltd. Workers Welfare Association Vs. The Management of I.T.C. Ltd.* (2002) 3 SCC 411. The view taken by me is also in consonance with the *President Labour Organisation of HAL Vs. The Management of Hindustan Aeronautics Ltd.* MANU/KA/0297/2005. If at all the need is felt for different representation at local and at central levels, the same is to be redressed not by seeking a direction, as is sought in these petitions, but by representing for recognition of trade unions at multiple level.

40. No merit is thus found in W.P.(C) Nos.6446/2013 & 5357/2015 which are dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

MARCH 17, 2016

‘bs’..

(Corrected and released on 30th April, 2016).