

- a power in quashing the criminal proceedings on the erroneous assumption that the ingredients of the offence alleged by the prosecution have not been made out. The High Court has also committed an error in assuming that with the materials available, the prosecution cannot end in conviction.

- b **34.** For the above reasons and in the light of the materials which we have discussed, we are unable to sustain the conclusion arrived at by the High Court. The impugned order quashing the criminal proceedings against Respondents 1-3 i.e. A-1 to A-3 in SC No. 175 of 2010 on the file of the 1st Additional Assistant Sessions Judge, Rajahmundry, arising out of PRC No. 14 of 2008 on the file of the IInd Additional Judicial Magistrate, First Class, Rajahmundry is set aside. The trial court is directed to proceed with the case against the respondents in accordance with law. The criminal appeal is allowed.

c **(2011) 12 Supreme Court Cases 449**

(BEFORE DR. DALVEER BHANDARI AND DEEPAK VERMA, JJ.)

DELHI INTERNATIONAL AIRPORT
PRIVATE LIMITED

.. Appellant;

Versus

- d UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeals No. 7872 of 2011[†] with Nos. 7873-76 and
7878-79 of 2011, decided on September 15, 2011

- e **A. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Ss. 10(1) and 2(1)(e) & (c) — Noti. dt. 26-7-2004 under S. 10(1) prohibiting contract labour for trolley retrievals in establishments of Airports Authority of India (AAI) and other specified airports — Held, applicable to AAI and DIAL**

- f — DIAL, a third party private lessee taking over overall management of Delhi airport from AAI — By applying (a) S. 2(a)(i), ID Act, (b) objectives and provisions of AAI Act, 1994 and Contract Labour Act, 1970, and (c) Operation, Management and Development Agreement (OMDA) (between AAI and DIAL), Central Government, held, is appropriate Government for both AAI and DIAL both under ID Act and 1970 Act and therefore Noti. dt. 26-7-2004 is applicable to AAI and DIAL — Central Government has control over AAI and AAI has control over DIAL — DIAL also operates under Central Government because statutory obligations and functions under S. 12-A, AAI Act, 1994 were transferred to DIAL under OMDA — Any undertaking, even a private undertaking like DIAL may operate under
g Central Government — It all depends on facts of each case — Hence, on present facts, DIAL must abolish all contract labour as per the terms of notification — Infrastructure Laws — Aircraft and Airports — Airports Authority of India Act, 1994, Ss. 12, 12-A, 3, Preamble and Statement of Objects and Reasons

[Paras 9, 13, 30 to 34, 47 to 50 and 70 to 72, 73(i) to (iv) & (xii) and 74]

- h

[†] Arising out of SLP (C) No. 369 of 2010. From the Judgment and Order dated 18-12-2009 of the High Court of Delhi at New Delhi in WP (C) No. 139 of 2008

B. Labour Law — Industrial Disputes Act, 1947 — S. 2(a)(i) — Central Government is appropriate Government for AAI and DIAL — Basis for, under ID Act, explained — Held, Central Government is appropriate Government for: (a) industries under authority of Central Government, (b) industrial disputes concerning AAI, and (c) industrial disputes concerning air traffic services (Paras 13 and 30) a

C. Infrastructure Laws — Aircraft and Airports — Airports Authority of India Act, 1994 — Preamble, Statement of Objects and Reasons and Ss. 12, 12-A, 3 and 2(g) — Transfer/Lease of statutory public functions of AAI to DIAL under OMDA — Implication of — Extent to which statutory obligations delegated or transferred thereby — (a) Objectives of 1994 Act, (b) implications of mandatory prior permission for lease/transfer under S. 12-A, (c) nature of statutory functions of AAI under S. 12, examined to determine — Held, DIAL's work "concerns" AAI — If DIAL does not perform its work properly or adequately, then AAI will be breaching its statutory obligation and would be responsible for the consequences — DIAL is presumably also obligated to follow directions of Central Government — A contrary interpretation would allow AAI to circumvent Central Government's exercise of authority over its work merely by contracting it out to third party (like DIAL as in present case) — Infrastructure Laws — Public-private partnerships — Extent of control of public authority concerned b

[Paras 32 to 34, 47 to 50 and 70 to 72, 73(i) to (iv) & (xii) and 74] c

D. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Preamble, Ss. 10(1), 2(1)(a), (c) & (e) and S. 35 — Objectives of 1970 Act, restated (Para 9) d

E. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 2(1)(e) — Definition of "establishment" under, held, includes private entities also [Paras 70, 72 and 73(xii)] e

The Central Government Notification dated 26-7-2004 under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 prohibited employment of contract labour of trolley retrievals in the establishment of the Airports Authority of India at the Indira Gandhi International Airport and Domestic Airport at Delhi. f

From 4-4-2006, a new private entity, Delhi International Airport (P) Ltd. (DIAL) took over the airports (domestic and international) by virtue of Operation, Management and Development Agreement (OMDA).

The broad issues in the present appeals were:

(a) Who is the appropriate Government for DIAL under the 1970 Act and the ID Act? g

(b) Whether the Notification dated 26-7-2004 is applicable to DIAL as it is issued by the Central Government which is not the appropriate Government for DIAL and, secondly, whether the notification that applies to the "establishment of AAI" will be applicable to the "establishment of DIAL" which only came into existence on 4-4-2006?

Disposing of the appeals, the Supreme Court held as above and below. h

Indira Gandhi Airport TDI Karamchari Union v. Union of India, 2010 LLR (SN) 214 (Del), affirmed

DELHI INTERNATIONAL AIRPORT (P) LTD. v. UNION OF INDIA 451

Oil and Natural Gas Commission v. CCE, 1992 Supp (2) SCC 432, referred to

SAIL v. National Union Water Front Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, followed

- a *Gammon India Ltd. v. Union of India*, (1974) 1 SCC 596 : 1974 SCC (L&S) 252, followed
SAIL v. National Union Water Front Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, followed

F. Labour Law — Industrial Disputes Act, 1947 — S. 2(a) — Specific listing of enumerated “industries” like Airports Authority of India (AAI) under — Implications — Such listing held, would not affect issue of whether those industries were also acting “under authority of Central Government” — Thus it is extremely unlikely that legislature intended that AAI may circumvent Central Government orders by contracting with private parties — Interpretation of Statutes — Basic rules — Mischief rule/Heydon’s rule — Applied [Paras 38 and 73(vii)]

- c **G. Interpretation of Statutes — Subsidiary rules — Anomaly, ambiguity, absurdity, hardship, redundancy, repugnancy — Reiterated, legislature is known to avoid tautology and redundancy [Paras 38 and 73(vii)]**

SAIL v. National Union Water Front Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, relied on

- d **H. Infrastructure Laws — Aircraft and Airports — Airports Authority of India Act, 1994 — S. 12-A — Privatisation of airports under — Nature and implications — S. 12-A privatisation held, (a) does not change meaning of “appropriate Government” under S. 2, ID Act and S. 2(1)(a) r/w S. (1)(e), 1970 Act, and (b) is in tune with policy of privatisation — Contract Labour (Regulation and Abolition) Act, 1970 — Ss. 10(1) and 2(1)(a) & (e) — Industrial Disputes Act, 1947 — S. 2(a) — Infrastructure Laws — Public-private partnerships — Public Sector — Privatisation [Paras 51, 52 and 73(viii)]**

SAIL v. National Union Water Front Workers, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, followed

- f **I. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Ss. 10(1) and 2(1)(e) & (c) — Noti. dt. 26-7-2004 under S. 10(1) prohibiting contract labour of trolley retrievals in establishments of Airports Authority of India (AAI) and other specified airports — Held, applicable to “air transport service” under S. 2(a), ID Act and 1970 Act — Trolleys at airports relate to air transportation, just as they relate to “a single flight or a series of flights” — Industrial Disputes Act, 1947, S. 2(a) [Paras 54, 59 and 73(ix)]**

- g **J. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 2(1)(e) — Definition of “establishment” under, held, applies to AAI — AAI having plurality of establishments — Effect of, considered to justify assertion that “establishment of AAI” is in turn “establishment of DIAL” — Further held, AAI cannot be considered a “local authority” — Constitution of India — Art. 12 — Infrastructure Laws — Aircraft and Airports — Airports Authority — Nature of (Paras 63 and 65)**

- h *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, relied on

K. Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — S. 2(1)(c) — Definition of “contractor” under — Nature and implications — AAI having overall control of airport, DIAL, held, meets definition of “contractor” under S. 2(1)(c), 1970 Act — OMDA makes it clear that AAI maintains ultimate responsibility for the airports [Para 73(x)] a

L. Deeds and Documents — Particular deeds and documents — Operation, Management and Development Agreement (OMDA) between AAI and DIAL — Cl. 5.1 — Interpretation — DIAL is required to fulfil obligations required to be fulfilled by AAI even if it is assumed that two are separate establishments — Rationale for, stated b

[Paras 71, 73(v), (vi) and (xi)]

M. Constitution of India — Art. 136 — Interference in labour matters — Relief — Moulding of relief — Contract labour — Regularisation of, as per valid and binding Noti. dt. 26-7-2004 of Central Government, being impracticable as workers concerned being replaced by new workers — Effect on relief — Considering that replaced workers would also have to be regularised (as per binding and valid notification) and that they cannot be made jobless, contractor directed to pay each of 136 erstwhile workers a sum of rupees five lakhs in lieu of their permanent absorption/reinstatement — Mode and manner of such payment also stated — Labour Law — Contract Labour (Regulation and Abolition) Act, 1970 — Ss. 10(1) and 2(1)(e) & (c) — Reinstatement/Back wages/Arrears — Reinstatement — Compensation in lieu of c

Held :

The Central Government Notification dated 26-7-2004 is clearly binding and applicable to DIAL. DIAL's obligation with regard to the contract labour in general is clear from the said notification. They are liable to be regularised as regular employees of DIAL. e
(Para 75)

However, DIAL has replaced many of the workers with other trolley retrievers and it would be unrealistic to expect DIAL to regularise the employment of their current trolley retrievers and member of the workers' union alike and inequitable to leave the current workers jobless so as to make room for erstwhile workers of DIAL. f
(Para 75)

Directing DIAL to regularise services of trolley retrievers who worked with DIAL till 2003 would be harsh, unrealistic and not a pragmatic approach. Therefore, in the interest of justice, it is proper to direct DIAL to pay rupees five lakhs to each of the erstwhile 136 workers of DIAL who were working for them as trolley retrievers till 2003 and in case any worker has expired, then his or her legal heirs would be entitled to the said amount. This compensation is paid to the workers in lieu of their permanent absorption/reinstatement with DIAL and their claim of back wages. This is in full and final settlement of the entire claims of the erstwhile 136 workers of DIAL. g
(Para 76)

DIAL is directed to pay the amount to these 136 erstwhile workers of DIAL within three months after proper verification. In case the amount, as directed, is not paid within the prescribed period, then it would carry interest at the rate of 12% per month from that point till the amount is paid. h
(Para 77)

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DELHI INTERNATIONAL AIRPORT (P) LTD. v. UNION OF INDIA 453
(Dr. Bhandari, J.)

Advocates who appeared in this case :

- a P.P. Malhotra, Additional Solicitor General, R.F. Nariman, Dr. A.M. Singhvi, Sudhir Chandra, Chander Udai Singh and Colin Gonsalves, Senior Advocates [Atul Sharma, Saket Singh, Milanka Chaudhary, Sarojanand Jha, Sunil Fernandes, Abhishek Sharma, Lalit Bhasin, Ms Nina Gupta, Ms Ratna Dhingra, Mudit Sharma, Ms Bina Gupta, Tariq Adeed, Ms Alin Mahanta, Divya Jyoti (for Ms Jyoti Mendiratta), Ms Rachna Joshi Issar, Chetan Chawla and Ms Samridhi Sinha (for Shreekant N. Terdal), Advocates] for the appearing parties.

- b **Chronological list of cases cited** **on page(s)**
1. 2010 LLR (SN) 214 (Del), *Indira Gandhi Airport TDI Karamchari Union v. Union of India* 453d, 455e
 2. (2001) 7 SCC 1 : 2001 SCC (L&S) 1121, *SAIL v. National Union Water Front Workers* 459h, 460b, 466a, 466c, 466f, 467a-b, 470f-g, 471f, 473b-c
 3. 1992 Supp (2) SCC 432, *Oil and Natural Gas Commission v. CCE* 454g-h
 - c 4. (1974) 1 SCC 596 : 1974 SCC (L&S) 252, *Gammon India Ltd. v. Union of India* 456b-c

The Judgment of the Court was delivered by

DR. DALVEER BHANDARI, J.— Leave granted in all the special leave petitions. These appeals emanate from the judgment of the High Court of Delhi delivered in *Indira Gandhi Airport TDI Karamchari Union v. Union of*

- d *India*¹ on 18-12-2009. The short question which arises for consideration in these appeals is whether the Notification dated 26-7-2004 issued by the Central Government under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (for short “CLRAA”) prohibiting employment of contract labour of trolley retrievals in the establishment of the Airports Authority of India (for short “AAI”) at the Indira Gandhi International Airport and Domestic Airport at Delhi would be applicable to Delhi International Airport (P) Ltd. (for short “DIAL”) or not?

e **2.** This judgment would decide these appeals preferred before this Court against the following letters patent appeals and writ petitions decided by the High Court:

- f (a) *Indira Gandhi International Airport TDI Karamchari Union v. Union of India*—LPA No. 38 of 2007

- g This letters patent appeal was filed against the judgment of the learned Single Judge dated 28-11-2006 in Writ Petition (C) No. 15156 of 2006. The workers’ union had preferred the writ petition for seeking implementation of the Notification of Prohibition dated 26-7-2004 and for absorption in service amongst other things. The learned Single Judge took notice of the fact that from 4-4-2006 a new private entity, DIAL had taken over the airports (domestic and international). Hence, at the airport, there was no longer any establishment of AAI existing but a new establishment of DIAL was operating due to which the Notification dated 26-7-2004, prohibiting the engagement of contract labour in trolley retrieval activity in the establishment of AAI at the Delhi airports could

h

1 2010 LLR (SN) 214 (Del)

not automatically apply to the new entity, DIAL and a new notification by the appropriate Government would have to be issued.

(b) *Union of India v. Indira Gandhi International Airport TDI a Karamchari Union*—LPA No. 1065 of 2007

This letters patent appeal was preferred by the Union of India against the learned Single Judge's judgment dated 28-11-2006 passed in Writ Petition (C) No. 15156 of 2006 on a very limited point of certain observation in the judgment.

(c) *Airports Authority of India v. Union of India*—Writ Petition (C) No. 6763 of 2008 b

AAI after getting permission of the High-Powered Committee to go ahead with the litigation challenged the Notification dated 26-7-2004 by filing the said writ petition.

(d) *Delhi International Airports (P) Ltd. v. Union of India*—Writ Petition (C) No. 139 of 2008 c

DIAL had preferred this writ petition challenging the Order of the Chief Labour Commissioner, Government of India dated 24-9-2007 by which the Central Government was held to be the "appropriate Government" for DIAL for the purposes of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act") and CLRAA. The Order dated 22-11-2007 of the Chief Secretary, Government of NCT of Delhi by which all documents concerning DIAL were directed to be shifted to the Central Government machinery was also impugned. d

3. Both the writ petitions of AAI and DIAL were heard and disposed of by the Division Bench of the High Court along with these LPAs by the impugned judgment. e

Brief facts

4. 136 workers were employed by the contractor, M/s TDI International (P) Ltd. to do the work of trolley retrieving at the domestic and at the international airport at Delhi in the year 1992. In view of the perennial nature of the work, the workmen approached the Contract Labour Court for abolition of contract labour system and for their absorption as regular employees. AAI came into force merging the International Airports Authority Act, 1971 and the National Airports Authority Act, 1985. On 26-7-2004 the Central Government accepted the recommendations of the Contract Labour Court and issued Notification dated 26-7-2004 abolishing the contract labour system. f

5. This Notification dated 26-7-2004 was challenged by AAI before the High Court of Delhi. Taking note of the ONGC judgment in *Oil and Natural Gas Commission v. CCE*² the High Court vide judgment dated 3-2-2005 held that the present proceedings cannot be proceeded with till the matter is resolved by the High-Powered Committee (HPC). Accordingly, the matter went to the HPC and the notification was not given effect to. g

- 6.** Meanwhile, 136 workers who were engaged as trolley retrievers by the contractor M/s TDI International (P) Ltd. working at the airport since 1992 were removed from service on 5-12-2003 as the contract of M/s TDI International (P) Ltd. had come to an end and a new contractor, Sindhu Holdings came in its place. These 136 members filed Writ Petition No. 15156 of 2006 before the learned Single Judge of the High Court of Delhi praying for their absorption in service as regular employees and for implementation of the Notification dated 26-7-2004. The learned Single Judge of the High Court after hearing the parties including DIAL vide judgment dated 28-11-2006 held that the establishment of AAI is no longer in existence and has changed. As such, the Notification dated 26-7-2004 cannot be applied to the new entity DIAL. The appropriate Government shall have to issue a fresh notification. Consequently, the writ petition filed by the said 136 workers stood dismissed by the learned Single Judge of the High Court.

- 7.** Indira Gandhi International Airport TDI Karamchari Union preferred LPA No. 38 of 2007 against the judgment of the learned Single Judge. The Union of India also preferred LPA No. 1065 of 2007 against the judgment of the learned Single Judge. During the pendency of these LPAs, an Order dated 24-9-2007 was passed by the Chief Labour Commissioner, Government of India holding that the appropriate Government for DIAL is the Central Government. By order dated 22-11-2007 the documents and file relating to DIAL were sent to the Central Government. These orders were challenged by DIAL in Writ Petition (C) No. 139 of 2008. After getting the permission, AAI filed another Writ Petition (C) No. 6763 of 2008 challenging the said notification on merit. The Division Bench of the High Court heard all these matters together and passed the impugned order of 18-12-2009¹. The review petition was preferred by the Union of India which was decided on 12-3-2010 by the High Court modifying para 61 of the impugned judgment.

- 8.** Against the impugned judgment of the Division Bench of the High Court, two appeals were preferred by DIAL and three by AAI and one by the Indira Gandhi International Airport TDI Karamchari Union. In these appeals, two broad issues that arise are:

- (a) Who is the appropriate Government for DIAL under CLRAA and the ID Act? This is the subject-matter of SLP (C) No. 369 of 2010 filed by DIAL.
- (b) Whether the Notification dated 26-7-2004 is applicable to DIAL as it is issued by the Central Government which is not the appropriate Government for DIAL and secondly whether the notification that applies to the “establishment of AAI” will be applicable to the “establishment of DIAL” which only came into existence on 4-4-2006? This is the subject-matter of SLP (C) No. 377 of 2010 filed by DIAL.

- 9.** We deem it appropriate to deal with the basic objects and reasons of passing CLRAA. This Act was enacted with a view to abolish the contract

¹ *Indira Gandhi Airport TDI Karamchari Union v. Union of India*, 2010 LLR (SN) 214 (Del)

labour under certain circumstances and to provide for better conditions of service to the labour. The business of providing contract labour is regulated as the contractor is required to obtain a licence and the principal employer is not entitled to engage a contractor without obtaining registration. The rules also contain detailed provisions to carry out the purposes of the Act. It is significant to note that the 1970 Act does not create any machinery or forum for the adjudication of any dispute arising between the contract labour and the principal employer of the contractor.

10. The object of the Act was dealt with by this Court in the judgment of *Gammon India Ltd. v. Union of India*³ which reads as under: (SCC pp. 600-01, para 14)

“14. The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, wherever possible and practicable, and where it cannot be abolished altogether, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provision of essential amenities. That is why the Act provides for regulated conditions of work and contemplates progressive abolition to the extent contemplated by Section 10 of the Act. Section 10 of the Act deals with abolition while the rest of the Act deals mainly with regulation. The dominant idea of Section 10 of the Act is to find out whether contract labour is necessary for the industry, trade, business, manufacture or occupation which is carried on in the establishment.”

11. The Central Government will be the appropriate Government under CLRAA for any establishment for whom the Central Government is the appropriate Government under the ID Act. The main question which arises for adjudication is: whether the Central Government is the appropriate Government for DIAL under the ID Act?

12. Section 2(a) of the ID Act deals with the appropriate Government which reads as under:

“**2. Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—

(a) ‘appropriate Government’ means—

(i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956), or the Employees’ State Insurance Corporation established under Section 3 of the

- a* Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5-A and Section 5-B, respectively, of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under Section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under Section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under Section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under Section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under Section 3, or a Board of Management established for two or more contiguous States under Section 16 of the Food Corporations Act, 1964 (37 of 1964), or *the Airports Authority of India constituted under Section 3 of the Airports Authority of India Act, 1994* (55 of 1994), or a Regional Rural Bank established under Section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Corporation of India Limited, National Housing Bank established under Section 3 of the National Housing Bank Act, 1987 (53 of 1987), or *an air transport service*, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port,
- e* any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or any corporation, not being a corporation referred to in this clause, established by or under any law made by Parliament, or the Central public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the Central Government, the Central Government, and
- f* (ii) in relation to any other industrial dispute, including the State public sector undertaking, subsidiary companies set up by the principal undertaking and autonomous bodies owned or controlled by the State Government, the State Government:
- Provided that in case of a dispute between a contractor and the contract labour employed through the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment.
- g* (aa) 'arbitrator' includes an umpire;
- (aaa) 'average pay' means the average of the wages payable to a
- h* workman—

(i) in the case of monthly paid workman, in the three complete calendar months,

(ii) in the case of weekly paid workman, in the four complete weeks, a

(iii) in the case of daily paid workman, in the twelve full working days, preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked;" b
(emphasis supplied)

13. Firstly, the Central Government is the "appropriate Government" in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government. Secondly, the Central Government is the "appropriate Government" in relation to industrial disputes concerning AAI. Thirdly, the Central Government is the "appropriate Government" in relation to industrial disputes concerning an air traffic service. Thus, if DIAL's industry is carried on "under the authority" of the Central Government, if the dispute in question can be said to concern AAI, or the dispute in question can be said to concern an "air transport service", then the Central Government is the "appropriate Government" both under the ID Act and CLRAA. c
d

14. In these appeals, the validity of the Notification dated 26-7-2004 issued by the Central Government under Section 10(1) of CLRAA was assailed by AAI and DIAL. It was also urged that the Notification dated 26-7-2004 cannot bind DIAL. It was further contended that DIAL is not an agent of AAI and DIAL cannot be considered as a "delegate" of such an entity. e

15. It was also contended 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(1) notification issued by the Government of the NCT of Delhi prohibiting the employment of contract labour in trolley retrieval work in the establishment of DIAL. According to DIAL, NCT of Delhi is an "appropriate Government" to issue the notification. DIAL also disputed that it did not carry on the "air transport service". It was 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. It is submitted that DIAL is performing its functions independently in its own establishment which is not that of AAI's. f
g

16. The workers' union submitted that the Notification dated 26-7-2004 clarified the position of DIAL. According to them, the definition of the term under CLRAA does not envisage multiple principal employers or establishments. It was submitted that the definition of an "establishment" under CLRAA is materially different from the definition of that term under the ID Act which envisages separation of establishments. For the purposes of CLRAA, it was submitted that the prohibition on employment of the contract h

- labour in a job is qua the establishment and operates irrespective of any
- a change in the principal employer as long as the process, operation or other work continues in that establishment. Alternatively, it was submitted that even if DIAL is taken to be the principal employer which has stepped into the shoes of AAI by virtue of Operation, Management and Development Agreement (for short “OMDA”), the notification under Section 10(1) CLRAA would bind it and for DIAL too the appropriate Government would be the
 - b Central Government. It was also submitted that DIAL is providing an “air transport service”, therefore, the appropriate Government is the Central Government.

17. The Central Government defended the Notification of 26-7-2004. It was submitted that adopting a contrary interpretation would defeat the objective and purpose of CLRAA. The Central Government submitted that
- c DIAL is operating under the authority of the Central Government. The industry that is carried on by DIAL by virtue of OMDA is relatable to the authority granted by Section 12-A of the Airports Authority of India Act, 1994 (55 of 1994) (for short “the AAI Act”). It was submitted that DIAL is rendering “air transport service” including emplaning and deplaning of passengers, handling of passengers’ luggage, booking of cargo, and,
 - d therefore, the Central Government is the appropriate Government.

18. The Division Bench held that the Notification dated 26-7-2004 issued by the Central Government under Section 10(1) of CLRAA is valid and binding on DIAL. The Division Bench in the impugned judgment held that the recourse to the ID Act for the purposes of understanding what is an “establishment” is misconceived since the definition of “establishment”
- e under CLRAA is unambiguous. It is futile to seek recourse to the ID Act to understand what is an “establishment” for the purposes of CLRAA. The Division Bench further held that the establishment is one and it cannot be divided into several small establishments where for one part the appropriate Government would be the Central Government and for the other part it would be the State Government. Such an interpretation would run counter to the
 - f scheme of CLRAA and would defeat its object and purpose.

19. The Division Bench also held that it is inconceivable by virtue of Section 12-A of the AAI Act, that only the functions and powers of AAI stand transferred and not the corresponding obligations. In fact, in terms of Clause 5.1 of OMDA, the statutory obligations under CLRAA which are that of AAI and its contractors also get transferred to DIAL. This transfers all powers and functions and correspondingly the obligations under CLRAA by
- g virtue of Section 12-A of the AAI Act.

20. The Division Bench held that:

- “... In fact OMDA makes an express reference to the AAI Act. Consequently, consistent with the observations of the Supreme Court in *SAIL case*⁴, the exercise by DIAL of the functions and powers of DIAL
- h in relation to the Delhi airports is traceable to Section 12-A of the AAI

4 *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

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 AAI. The authority of the Central Government is conferred by the statute itself. Therefore, it is not correct to contend that consequent upon OMDA, the establishment of AAI i.e. the Delhi airports ceased to be under the control of the Central Government. a

Therefore, the inescapable conclusion is that consistent with the observations in *SAIL case*⁴, the statute itself contemplates the Central Government to be the appropriate Government notwithstanding that there has been a privatisation of the management of the Delhi airports. By being brought within the ambit of Section 12-A 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 OMDA itself. If there was no provision like Section 12-A in the AAI Act, there could not have been an OMDA between AAI and DIAL.” b

21. After examining the settled legal principles, the Division Bench held that irrespective of whether the amendment to Section 2(a) of the ID Act was later, the appropriate Government for the purposes of Section 10 of CLRAA in the instant case continues to be the Central Government. c

22. 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;” d

23. The Division Bench further observed that 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 12-A(1) of the AAI Act are “air traffic service or watch and ward at airports and civil enclaves”. In other words, air traffic services and provision of watch and ward at the airport and civil enclaves remain with AAI, notwithstanding that it has entered into an agreement of OMDA with DIAL. e

24. The Division Bench further observed that 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 OMDA. Only “air traffic services and provision of watch and ward” are, in f

4 *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121 g

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- a terms of Section 12-A of the AAI Act to be retained by AAI as part of its functions. The Division Bench viewed that the trolley retrieval along with toilets and handling of baggage or car within the area of a “civil enclave” are recognised as essential services by virtue of Schedule 16 to 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 other kinds of air transport services, it is certainly
- b meant to provide trolley retrieval services at the Delhi airports.

- c **25.** The Division Bench also came to the categorical finding that for the purpose of establishment of Delhi airport, it is the Central Government that continues to be the “appropriate Government”. The Division Bench also came to the conclusion that in view of Section 12-A of the AAI Act, the obligation flowing from the said notification under Section 10(1) of CLRAA will continue to bind every private player that steps into the shoes of 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 restated. That was never the intention of the legislature in enacting CLRAA and in
- d particular Section 10 of CLRAA. Such interpretation would defeat the rights of the workmen which are meant to be protected by CLRAA.

26. The Division Bench of the High Court came to the following conclusions:

- (i) That in relation to airport, it is the Central Government which is the appropriate Government for the purpose of CLRAA;
- e (ii) DIAL is equally bound by the Notification dated 26-7-2004 issued by the Central Government;

27. The most useful starting point of analysis is Section 10 of CLRAA. Sub-section (1) reads as follows:

- “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.”
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- 28.** Two critical issues are raised by DIAL to suggest that the Central Government’s 26-7-2004 Notification directed at “AAI establishment” under the authority of Section 10(1) of CLRAA is inapplicable to DIAL. First, DIAL claims that the Central Government is not the appropriate Government to issue such notices to it. Second, DIAL claims that even if the Central Government was the appropriate Government, its 26-7-2004 Notification was directed at “AAI establishment” and AAI and DIAL are separate establishments. For the terms of the notice to be made applicable to DIAL
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- h establishment, a separate notification would have to be issued. These two issues will be addressed in their own turn.

Whether the Central Government is the “appropriate Government”

29. CLRAA Section 2(1) reads as follows:

“2. Definitions.—(1) In this Act, unless the context otherwise requires—

(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 situate;”

30. In the definition itself given in Section 2(a) of the ID Act, specific reference has been made to the Airports Authority of India constituted under the AAI Act and the air transport service. This provision makes it clear that the Central Government will be the “appropriate Government” under CLRAA for any establishment for whom the Central Government is the “appropriate Government” under the ID Act. The question which now arises for adjudication is whether the Central Government is the “appropriate Government” under the ID Act. According to DIAL, it is not an “appropriate Government”, therefore, it is imperative to analyse this provision.

31. Section 2(a) of the ID Act indicates that the Central Government is the “appropriate authority” in three relevant situations:

(i) The Central Government is the “appropriate authority” in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government.

(ii) The Central Government is the “appropriate Government” in relation to the industrial disputes concerning AAI.

(iii) The Central Government is the “appropriate Government” in relation to industrial dispute concerning air transport service.

Both AAI and the air transport service have been specifically incorporated in the section itself. Thus, if DIAL industry is carried on under the authority of the Central Government, the dispute in question can be said to concern AAI or if the dispute in question can be said to concern air transport service, then the Central Government is the appropriate authority both for the ID Act and CLRAA. It may be pertinent to properly comprehend the relevant statute.

32. The AAI Act was constituted for the better administration and cohesive management of airports and civil enclaves whereat air transport services are operated or are intended to be operated and of all aeronautical communication stations for the purpose of establishing or assisting in the establishment of airports and for matters connected therewith or incidental thereto. In Section 2 of the AAI Act, air transport service has been defined in Section 2(e) of the Act which is set out 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;”

- 33.** Section 12-A of the AAI Act, which was inserted with effect from 1-7-2004, reads as under:

a **“12-A. 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:

b 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.

c (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.”

d **34.** It is clear from Section 12-A that AAI may in public interest or in the interest of a better management of the airport, make a lease of the premises of the airport to carry out some of its functions under Section 12 as the Authority may deem fit. Detailed functions of the Authority have been enumerated in Section 12. Out of those functions under Section 12-A, some functions can be delegated on lease in the public interest or in the interest of better control and management of the airports. Consequently, in pursuance of the agreement with DIAL, some functions of AAI were leased out to DIAL. DIAL argued that not only its own industry is not carried on under the authority of the Central Government but further that not even AAI’s authority is carried on under the authority of the Central Government.

f **35.** It is relevant to mention that DIAL derives its authority from AAI and AAI derives its authority from the powers given by the Central Government. The question, of course, is whether DIAL works “under the authority” of the Central Government and therefore, whether the Central Government is the “appropriate authority” for DIAL? In the impugned judgment, the Division Bench has clearly held that AAI works “under the authority” of the Central Government.

g **36.** It would be relevant to recapitulate the Statement of Objects and Reasons for passing the AAI Act. The Statement of Objects and Reasons reads as under:

“Statement of Objects and Reasons

h 1. Until 1971, the Director General of Civil Aviation was entrusted with the responsibility not only of regulatory functions relating to civil aviation but also of construction and management of airports, air traffic control and air space management in the country.

2. Considering the need for heavy investments and operational flexibility required for construction and management of large airports, the International Airports Authority of India (IAAI) was constituted as an autonomous body under the International Airports Authority Act, 1971. Four international airports, namely, Delhi, Bombay, Madras and Calcutta were transferred to IAAI with effect from 1-4-1972; later, Trivandrum airport was also transferred to IAAI. In 1985, it was felt that a similar treatment was required for domestic airports and air traffic control and related services. Consequently, the National Airports Authority (NAA) was constituted under the National Airports Authority Act, 1985.

3. International airports are put to more intensive use and generate substantial revenues which accrue to IAAI. Revenues of NAA are much less buoyant because a number of its airports do not have any commercial air service whatsoever while many others have only infrequent operations. NAA has, therefore, not been able to generate adequate resources to meet the requirements of development and modernisation. To overcome this handicap and provide for closer integration in the management of airports and air traffic contract services in the country, it has been found necessary to merge IAAI and NAA, which the Bill seeks to achieve.

4. The salient features of the Bill are—

(a) Constitution of a single unified Airports Authority of India to control and manage both the national and international airports in the country and transfer and vesting of the undertakings of the International Airports Authority of India and National Airports Authority in the said Airports Authority of India.

(b) Repeal of the International Airports Authority of India Act, 1971 and the National Airports Authority Act, 1985.

(c) All licences, permits, quotas and exemptions granted to the International Airports Authority of India or the National Airports Authority be deemed to have been granted to the Airports Authority of India.

(d) Guarantees given for or in favour of the International Airports Authority of India or the National Airports Authority to continue to be operative in relation to the Airports Authority of India.

(e) Every officer or other employee of the International Airports Authority of India and the National Airports Authority, serving in its employment immediately before the appointed day, to become an officer or other employee, as the case may be, of the Airports Authority of India, with option to resign.

(f) Power of the Central Government to give directions to the Airports Authority of India.

5. The Bill seeks to achieve the aforesaid objectives.”

37. A close reading of the Statement of Objects and Reasons indicates that the Central Government under Section 12-A of the AAI Act has retained the power to give directions in the public interest or in the interest of better management to lease the premises of the airport to carry out some of its functions under Section 12-A, as the authority may deem fit. Some of its (AAI's) functions have been leased out to DIAL. This has been done under

- a Section 12-A(2) with the previous approval of the Central Government. On proper scrutiny of the provisions of the AAI Act, it is abundantly clear that the Central Government has control over AAI and AAI has control over DIAL.

- b **38.** DIAL claims that if AAI's industry was being carried out under the authority of the Central Government under Section 2 of the ID Act, there would have been no need for the legislature to separately include AAI as an "enumerated industry". Such reasoning would be seen on a plain reading of the phrase "under the authority of the Central Government", as DIAL itself has admitted that all these industries, on a cursory look, seem to be by or under the control of the Central Government. Further, this line of thinking would imply that none of the many industries enumerated in the ID Act can be held to act "under the authority of the Central Government". While this is conceivably the case, it may be more likely that the authors of the ID Act, in listing the enumerated industries, simply wanted to ensure that those industries were covered by the Act, without meaning to affect the separate issue of whether those industries were also acting "under the authority of the Central Government". Further, while it is fair to assume that the legislature attempts to avoid tautology, such canons are not necessarily dispositive. It is well-established canon of statutory construction that the legislature is known to avoid tautology and redundancy.

- d **39.** The crucial questions which need our adjudication are: whether DIAL works under the Central Government and whether the Central Government is the "appropriate Government" for DIAL?

- e **40.** The AAI Act was passed by the Central Government "to provide for the constitution of the Airports Authority of India" which was in turn charged with the "better administration and cohesive management of airports". The Preamble to Section 12-A of the AAI Act allows AAI to contract with third parties to perform some of AAI's functions (in the public interest or in the interest of better management of airports). It was this proviso which allowed AAI to assign some of its functions to DIAL through OMDA, like responsibility for trolley collection services at the Indira Gandhi International Airport and the domestic airport.

- f **41.** DIAL claims that if AAI's industry was being carried out under the authority of the Central Government under Section 2 of the ID Act, then there would have been no need for the legislature to separately include AAI as an "enumerated industry". On the one hand, this argument of DIAL is correct. On the other hand, however, such reasoning would seem to contradict a plain reading of the phrase "under the authority of the Central Government" as DIAL itself has admitted, "all these industries, on a cursory look seem to be by or under the control of the Central Government". Further, this line of thinking would imply that none of the many industries enumerated under Section 2 of the ID Act can be held to act "under the authority of the Central Government". While this is conceivably the case, it may be more likely that the framers of the ID Act, in listing the enumerated industries simply wanted to ensure that these industries were also acting "under the authority of the Central Government".
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42. The Constitution Bench of this Court in *SAIL v. National Union Water Front Workers*⁴, popularly known as *SAIL case* held: (SCC p. 28, para 39)

“39. ... Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises.”

43. AAI, a government undertaking has been created by a statute, to carry out the air transport industry on behalf of the Central Government. In the words of the AAI Act itself, the Act was created:

“... for the transfer and vesting of the undertakings of the International Airports Authority of India and the National Airports Authority to and in the Airports Authority of India so constituted for the better administration and cohesive management of airports and civil enclaves....” (Preamble)

44. If the aforementioned passage from *SAIL case*⁴ is to be taken at its face value, it would appear that AAI clearly functions “under the authority” of the Central Government, and that the Central Government is, therefore, the “appropriate Government” under the terms of CLRAA and the ID Act.

45. In the impugned judgment, the Division Bench correctly held that “the provisions of the AAI Act show that there is extensive control of the Central Government over the functioning of AAI”. Section 12-A reveals control of the Central Government on AAI. AAI has to obtain approval from the Central Government before delegating any of its functions to third parties, such as DIAL. This clearly indicates that the Central Government has complete control over AAI. Sections 2, 6 and 10 of the AAI Act are further examples of governmental reservations of authority. The Central Government retains its statutory control over AAI. In the impugned judgment, the High Court correctly came to the conclusion that “the authority of the Central Government is conferred by the statute itself”. In fact, in these cases, we are merely concerned with very limited controversy whether DIAL works under the authority of the Central Government or not? DIAL, of course, claims that it does not.

46. In *SAIL*⁴ judgment, the Constitution Bench held as under: (SCC p. 24, para 30)

“30. ... the phrase ‘any industry carried on under the authority of the Central Government’ implies an industry which is carried on by virtue of, pursuant to, conferment of, grant of, or delegation of power or permission by the Central Government to a Central Government company or other government company/undertaking. To put it differently, if there is lack of conferment of power or permission by the Central Government to a government company or undertaking, it would disable such a company/undertaking to carry on the industry in question.”

47. In case the Central Government had never granted permission, pursuant to Section 12-A of the AAI Act, DIAL would not be able to carry out functions at the Delhi airports. The entire functioning of DIAL is fully dependent on the grant of permission by the Central Government.

4 (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

48. The Constitution Bench, in *SAIL*⁴ judgment further observed as under: (SCC p. 28, para 39)

a “39. ... may be conferred, either by a statute or by virtue of the relationship of principal and agent or delegation of power. Where the authority, to carry on any industry for or on behalf of the Central Government, is conferred on the government company/any undertaking by the statute under which it is created, no further question arises. But, if
b it is not so, the question that arises is whether there is any conferment of authority on the government company/any undertaking by the Central Government to carry on the industry in question. This is a question of fact and has to be ascertained on the facts and in the circumstances of each case.”

49. The undertakings need not be government undertakings to have had authority conferred upon them. But the word “government” clearly modifies
c “company”. However, it cannot modify “undertaking”, for the phrase “government/any undertaking”. Thus, it would seem that any “undertaking”—even private undertakings, like DIAL—may function “under the authority” of the Central Government. Whether or not they do it, as the Constitution Bench noted, “is a question of fact which has to be ascertained on the facts and in the circumstances of each case”.

50. In the facts and circumstances of these cases, it is abundantly clear that DIAL operates under the authority of the Central Government. In the impugned judgment, it was noted that “the functions and powers of DIAL in relation to the Delhi airports are traceable to Section 12-A of the AAI Act”. It is clear that without the Central Government’s permission, AAI could not have delegated any power to DIAL. In other words, the functioning of DIAL
d at the Delhi airports itself was fully dependent on the approval of the Central Government. In other words, DIAL could not have received its contract with AAI without the Central Government’s approval. That being the case, by a plain reading of the phrase it seems that “DIAL functions under the authority of the Central Government”.

51*. It was argued on behalf of DIAL that “if the intent of Parliament was to make DIAL come under the authority of the Central Government then it would have militated against the basic objective of achieving privatisation”. DIAL, however, does not explain how having the State Government as the appropriate Government—the only alternative under CLRAA and the ID Act—would be any more conducive to privatisation. It is now clear that the Central Government does not impede privatisation any more than the State
e Government; after all, it was the Central Government that sought to encourage privatisation through the AAI Act by incorporating Section 12-A in the Act.

52. In case AAI and DIAL act under the authority of different governments it would bring about absurd results: AAI could simply circumvent potential Central Government orders by delegating various
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h ⁴ *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

* Ed.: Para 51 corrected vide Official Corrigendum No. F.3/Ed.B.J./66/2011 dated 12-12-2011.

functions to third parties, such as DIAL. Of course, AAI would need to obtain the Central Government approval prior to making such a delegation under Section 12-A of the AAI Act, but it nevertheless seems unlikely that the Central Government would intend to maintain authority over AAI's actions, while allowing actions performed by other entities on behalf of AAI, such as DIAL, to be carried out under the authority of the State Government. DIAL has made no suggestions as to why the Central Government might have intended such a result while drafting the AAI Act and CLRAA, and there is, therefore, little justification for coming to such a conclusion. a

53. DIAL expressly assumed the “rights and obligations associated with the operation and management of the airport” through OMDA. While Section 12-A of the AAI Act only notes that the “powers and functions” of AAI will be transferred to its lessors, it is “inconceivable that by virtue of Section 12-A the powers and functions of AAI will stand transferred and not the corresponding obligations”. If it was the “obligation” of AAI to follow valid directions of the Central Government by virtue of its status as an enumerated industry, and if DIAL has admittedly assumed those same obligations through OMDA, then DIAL is presumably also obligated to follow such directions. Again, a contrary interpretation would allow AAI to circumvent the Central Government’s exercise of authority over its work merely by contracting it out to third parties. It is abundantly clear that the Central Government is the appropriate Government qua DIAL and consequently the said Notification of 26-7-2004 is equally applicable to DIAL. b

54. Under the ID Act (and therefore CLRAA), the third situation in which the Central Government is the “appropriate Government” is “in relation to industrial disputes concerning air transport services”. The question for the purposes of this case, then, is whether the trolley retrieval services performed by DIAL are done “for the transport by air of persons, mail, or any other thing”. Clearly, trolley retrievers themselves are not physically transporting anything by air. However, it is entirely possible that the drafters of the AAI Act did not intend to restrict the coverage of this provision merely to pilots, stewardesses, and others engaged in the actual, physical transport of people and objects, as DIAL would have liked the Court to believe. Clearly, trolleys at airports relate to air transportation, just as they relate to “a single flight or a series of flights”. c

55. On behalf of DIAL, it was submitted that “air transport services” as enumerated industry under the ID Act replaced an earlier listing of “Indian Airlines” and “Air India”, two corporations clearly engaged in the actual physical transportation of individuals by air. At the time of amendment when private airline operators had started functioning and as “air transport service” they included all airline operators, private or public and the said industry was included as an enumerated industry. This makes it abundantly clear that “air transport service” concerns airline operators only. d

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56. Section 12(2) of the AAI Act reads as under:

- a “**12. (2)** It shall be the duty of the Authority to provide air traffic service and air transport service at any airport and civil enclaves.”

57. It may be relevant to mention that DIAL is not engaged in the business of operating an airline for carrying passengers and goods by air through flights. In fact, AAI is also not involved in this activity and Section 12 of the AAI Act which lists out the functions of AAI does not include the function of carrying people and goods through air by flights operated by it. As such, when AAI does not perform such function then there is no question of transfer of such functions to DIAL.

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- 58.** It is the duty of the Authority to provide all air transport services at the airport, and if it is not the duty of the Authority to carry passengers and goods by air through flights, then by the appellants’ own logic, air transport service must mean more than the mere carriage of passengers and goods by air through flights. If it did not, then there would be no reason that “air transport service” would be listed as a “duty of the Authority” under Section 12(2). This section clearly indicates that it is the duty of the Authority to provide “air transport service”, such duty does not mean that the Authority provides such services itself. AAI is responsible under the AAI Act for providing air transport service would not necessarily mean that DIAL also does so.
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- 59.** In the instant case under Section 12-A of the AAI Act all functions have been given to DIAL except watch and ward function, air traffic service and civil enclaves. From the provisions of OMDA, it is clear that all functions of AAI barring reserved activities and all land except certain carved out assets have been given to DIAL. DIAL has admitted that AAI has transferred to it all functions except those related to watch and ward, air traffic service and civil enclaves, none of which can be considered as “air transport service”. That being the case, AAI must have transferred its duty to provide “air transport service” to DIAL and the Central Government must, therefore, be the appropriate Government for DIAL under CLRAA and the ID Act.
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AAI and DIAL are not separate establishments, but even if they were, 26-7-2004 Notification applies to DIAL anyway

- 60.** Section 10(1) of CLRAA permits the “appropriate Government” to “prohibit employment of contract labour in any process, operation or other work in any establishment”. The Central Government’s 26-7-2004 Notification clearly forbade the “AAI establishment” from employing trolley retrievers as contract labour. The question, then, is whether DIAL is part of “AAI establishment” for the purposes of CLRAA?
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- 61.** DIAL contends that the establishment of AAI at the Indira Gandhi International Airport and Domestic Airport underwent a change and a new private entity in the form of the appellant DIAL established its establishment, after being granted a lease under Section 12-A of the AAI Act. In support of
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this claim, DIAL contends that it has complete overall control and supervision over the airports to the exclusion of AAI, and is not an agent or delegate of AAI but is, rather, a separate and a new principal entity to whom the Central Government's 26-7-2004 Notification, even if otherwise valid, did not apply. The Single Bench apparently agreed, holding that:

“the notification itself has become irrelevant in view of the privatisation of the airports and a new notification will have to be issued by the appropriate Government.”

62. To address these claims, it is important to analyse the definition of “establishment”. Section 2(1)(e) of CLRAA defines “establishment” as follows:

“2. (1)(e) ‘establishment’ means—

(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;”

As this provision makes it clear, the definition of “establishment” focuses either on (1) place; or (2) offices or departments of the Government or a local authority. 26-7-2004 Notification must, therefore, have been directed at one of these types of establishments.

63. On the one hand, AAI clearly cannot be considered a local authority as it is charged with managing airports throughout India. On the other hand, AAI also cannot be considered an “office or department of the Government”. The AAI Act makes clear that AAI must, in certain circumstances, obtain approval from the Central Government, thereby implying that AAI is not itself the Central Government. Therefore, “establishment” in this case cannot refer to “any office or department of the Government or a local authority”, it must refer to a “place where any industry, trade, business, manufacture or occupation is carried on”. The Division Bench in the impugned judgment held that the establishment for the purposes of 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.

64. This Court in *SAIL case*⁴ held as under: (SCC p. 34, para 51)

“51. ... It is thus evident that there can be plurality of establishments in regard to the Government or local authority and also in regard to any place where any industry, trade, business, manufacture or occupation is carried on.”

65. Accordingly, there could be multiple establishments at the airport. That being the case, the Division Bench's assertion that the establishment of AAI is in turn the establishment of DIAL must be justified.

⁴ *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

- 66.** It would be pertinent to refer to the definition of “contractor” in Section 2(1)(c) of CLRAA, which reads as under:
- “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;”**
- 67.** DIAL “undertakes to produce a given result”—trolley retrieval services, among other things—for AAI establishment through contract labour. To prove otherwise, DIAL would need to be able to assert the following, adopted from the CLRAA definition of “contractor” excerpted above:
- “DIAL does not undertake to produce any result for AAI establishment. Instead, DIAL undertakes to produce result for its own establishment.”**
- 68.** DIAL while performing work on behalf of AAI, it is not performing work on behalf of AAI establishment. Instead, it is merely working on behalf of its own establishment. Further, all the independence DIAL does have, the AAI Act and OMDA make it clear that AAI maintains ultimate responsibility for the airport. The question that has to be answered is who has control of the entire establishment?
- 69.** Noticing that air traffic services and security are the heart of the airport and also noticing the clauses of OMDA providing for overall supervision of DIAL by AAI, checking of accounts, step-in rights of AAI and so on, it must be concluded that AAI has overall control of the airport site. Admittedly, DIAL has been leased out the portion of AAI’s work, which DIAL only has incomplete control over as well as the fact that DIAL meets the definition of a contractor under CLRAA, further suggests that DIAL is nothing more than a contractor for AAI establishment. DIAL is not, in other words, a principal employer of an independent establishment. That being the case, 26-7-2004 Notification, declared at AAI establishment, must also apply to DIAL.
- 70.** The fact that DIAL is a private entity is of no assistance to it. In *SAIL case*⁴, the Constitution Bench explicitly held that the definition of “establishment” in CLRAA takes in its fold purely private undertakings.
- 71.** This issue is fully settled by the foregoing analysis. From the analysis, DIAL falls under AAI establishment. For example, Clause 5.1 of OMDA, which notes that the “rights and obligations associated with the operation and management of the airport would stand transferred to” DIAL, would seem to suggest that orders given to AAI establishment would also apply to DIAL establishment, even if the two were, as DIAL claims, separate establishments. If AAI establishment is obligated to abolish contract labour and DIAL establishment (even if it is somehow separate) has assumed AAI establishment’s obligations through OMDA, then DIAL is presumably required to fulfil those obligations. Critical to this inference is the fact that

4 *SAIL v. National Union Water Front Workers*, (2001) 7 SCC 1 : 2001 SCC (L&S) 1121

the Central Government's 26-7-2004 Notification was issued before OMDA was signed.

72. The contention that DIAL would not also be bound by the obligations of AAI establishment would once again lead to absurd consequences. In the impugned judgment, the Division Bench correctly observed that "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" must be repeated. This interpretation would defeat the rights of the workers, which are meant to be protected by CLRAA. The Division Bench has correctly observed that the obligation flowing from the notification under Section 10(1) of CLRAA shall continue to bind every private player that steps into the shoes of AAI. a
b

73. We have carefully heard the learned counsel for the parties and perused the written submissions filed by them. In our considered view, the Central Government is the appropriate Government for DIAL for the following reasons: c

(i) DIAL could not have entered into a contract with AAI without approval of the Central Government according to the mandate of Section 12-A of the AAI Act. In this view of the matter, it is abundantly clear that DIAL functions "under the authority" of the Central Government; d

(ii) AAI clearly acts under the authority of the Central Government and DIAL acts under the authority of AAI because of its contract with DIAL. Then it can be logically stated that DIAL works under the authority of the Central Government; e

(iii) The Central Government has given AAI responsibility for overseeing the airports. To fulfil its obligations, AAI contracted with DIAL. However, it is clear that DIAL's work "concerns" AAI, if DIAL does not perform its work properly or adequately, then AAI will be breaching its statutory obligation and would be responsible for the consequences. f

(iv) AAI is under an obligation to follow the directions of the Central Government and if DIAL has admittedly assumed those obligations through OMDA, then DIAL is presumably also obligated to follow such directions. Again, a contrary interpretation would allow AAI to circumvent the Central Government's exercise of authority over its work merely by contracting it out to third party (DIAL). g

(v) Clause 5.1 of OMDA specifically notes that the "rights and obligations associated with the operation and management of the Airport would stand transferred" to DIAL. If AAI was admittedly obligated to follow 26-7-2004 Notification and DIAL has assumed all of AAI's obligations, then DIAL must also be obligated to follow the notification. In other words, the notification issued by the Central Government is equally binding on DIAL. h

(vi) Holding 26-7-2004 Notification inapplicable to DIAL would mean that the Government would have to issue separate notification

- a every time AAI contracts with a third party. This would clearly violate the basic objects and reasons of CLRAA.
- (vii) The security of contract labour working for AAI envisaged, a law cannot be made to depend on the private sector. If the legislature had found it fit to specifically include AAI as an enumerated industry under the ID Act, it is extremely unlikely that it would have intended for AAI to be able to circumvent the Central Government orders by contracting with private parties.
- b (viii) The privatisation of the airports does not mean that the “appropriate Government” cannot be the Central Government. According to the Constitution Bench judgment of this Court in *SAIL*⁴, the definition of “establishment” in CLRAA takes in its fold purely private undertakings...”. Concerns about privatisation are, therefore, unfounded.
- c (ix) Under Section 12(2) of the AAI Act, AAI is obliged to provide air traffic service and air transport service at the airport. DIAL admits that AAI has transferred all of its responsibilities at the airports with the exception of certain reserved functions. Since industries concerning air transport service function under the authority of the Central Government, and since AAI has transferred its “air transport service” responsibilities to DIAL, the Central Government must be held to be the appropriate Government for DIAL.
- d (x) OMDA makes it clear that AAI maintains ultimate responsibility for the airports. The fact that DIAL was transferred only a portion of AAI’s work which DIAL only has incomplete control over as well as the fact that DIAL meets the definition of a contractor under CLRAA further suggests that DIAL is nothing more than a contractor for AAI establishment. That being the case, Notification dated 26-7-2004 directed at AAI establishment must also apply to DIAL.
- e (xi) The contention of DIAL that it would not be bound by the obligation of AAI establishment would lead to absurd consequences. The Division Bench in the impugned judgment has rightly pointed out that 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 via-à-vis such private player must be repeated. But this interpretation would defeat the rights of the workmen which are meant to be protected by CLRAA.
- f (xii) In the impugned judgment, the Division Bench of the High Court has correctly held that the obligation flowing from the said notification under Section 10(1) CLRAA should continue to bind every private player that steps into the shoes of AAI.
- g 74. For the foregoing reasons, it is clear that the Notification dated 26-7-2004 was equally binding on DIAL under CLRAA and, therefore, DIAL must abolish all contract labour as per the terms of the notification.
- h

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75. We have no hesitation in coming to the conclusion that the Central Government Notification dated 26-7-2004 is clearly binding and applicable to DIAL. DIAL's obligation with regard to the contract labour in general is clear from the said notification. They are liable to be regularised as regular employees of DIAL. DIAL has replaced many of the workers with other trolley retrievers and it would be unrealistic to expect DIAL to regularise the employment of their current trolley retrievers and member of the workers' union alike and inequitable to leave the current workers jobless so as to make room for erstwhile workers of DIAL.

76. In view of the peculiar facts and circumstances of these cases directing DIAL to regularise services of trolley retrievers who worked with DIAL till 2003 would be harsh, unrealistic and not a pragmatic approach, therefore, in the interest of justice, we deem it proper to direct DIAL to pay rupees five lakhs to each of the erstwhile 136 workers of DIAL who were working for them as trolley retrievers till 2003 and in case any worker has expired, then his or her legal heirs would be entitled to the said amount. This compensation is paid to the workers in lieu of their permanent absorption/reinstatement with DIAL and their claim of back wages. This is in full and final settlement of the entire claims of the erstwhile 136 workers of DIAL.

77. We direct DIAL to pay the amount to these 136 erstwhile workers of DIAL within three months after proper verification. In case the amount, as directed, is not paid within the prescribed period, then it would carry interest at the rate of 12% per month from that point till the amount is paid.

78. These appeals are accordingly disposed of in the aforementioned terms. In the facts and circumstances of these cases, we direct the parties to bear their own costs.

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(Record of Proceedings)

(BEFORE DR. M.K. SHARMA AND ANIL R. DAVE, JJ.)

STATE OF UTTAR PRADESH AND ANOTHER . . . Petitioners;

Versus

NARENDRA BAHADUR SINGH AND OTHERS . . . Respondents.

SLP (C) No. 19897 of 2004[†], decided on September 6, 2011

Service Law — Pension — Computation of — Past services rendered in different service cadres — Whether to be counted — Loss of lien/past service not protected — Respondent's lien in first department not maintained — Subsequent second appointment a fresh appointment and undisputedly a non-pensionable post — Third appointment was such as his past services were not protected — Held, hence respondent not entitled to benefit of past services for purpose of pension (Para 8)

Narendra Bahadur Singh v. State of U.P., CMWP No. 20703 of 1997 order dated 7-4-2003 (All), reversed

Appeal allowed

SB-D/48788/SL

[†] From the Judgment and Order dated 7-4-2003 in CMWP No. 20703 of 1997 of the High Court of Judicature of Allahabad