

M/S. DELHI INTERNATIONAL AIRPORT PVT. LTD.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 7872 of 2011 etc.)

SEPTEMBER 15, 2011

[DALVEER BHANDARI AND DEEPAK VERMA, JJ.]

Contract Labour (Regulation and Abolition) Act, 1970 – ss. 10(1) and 12A – Issuance of Notification by the Central Government u/s. 10 (1) prohibiting employment of contract labour of trolley retrievals in the establishment of the Airport Authority of India (AAI) at the Indira Gandhi International Airport and Domestic Airport at Delhi – Delhi International Airport Private Limited (DIAL), private undertaking coming into existence after the issuance of the said Notification, taking over the Airports (Domestic and International) – Applicability of the said Notification to DIAL – Appropriate government for DIAL under the CLRAA and ID Act – Held: Central Government is the appropriate government for DIAL and AAI under the CLRAA and ID Act – Entire functioning of DIAL is fully dependent on the grant of permission by the Central Government – Thus, DIAL operates and functions under the authority of the Central Government – Central Government's notification was issued before Operation, Management, Development and Agreement (OMDA) was signed, by virtue of which DIAL stepped into the shoes of AAI – DIAL expressly assumed the 'rights and obligations associated with the operation and management of the airport' through OMDA – DIAL was transferred all of AAI's responsibilities at the airports except certain reserved functions which means that DIAL only had incomplete control, thus, DIAL was nothing more than a contractor for AAI establishment and was not a principal employer of an independent establishment – Thus, the said Notification, directed at AAI establishment, was equally

- A *binding on DIAL under the CLRAA – DIAL to abolish all contract labour as per the terms of the notification – In the interest of justice, DIAL directed to pay Rupees five lacs to each of the erstwhile workers of DIAL who were working for them as trolley retrievers till 2003 – Industrial Disputes Act,*
B 1947.

136 workers were employed by the contractor TDI Company to do the work of trolley retrieving at the Domestic and at the International Airport at Delhi in the year 1992. The workmen approached the Contract Labour Court seeking abolition of contract labour system and their absorption as regular employees. On 26th July 2004, the Central Government issued a Notification abolishing the contract labour system. Airports Authority of India (AAI) which had come into force challenged the notification. The High Court held that the present proceedings could not be proceeded with till the matter was resolved by the High Powered Committee (HPC) and as such the matter went to the HPC and the Notification was not given effect to. Meanwhile, the said 136 workers were removed from service in the year 2003 as the contract of TDI Company came to an end and a new contractor 'SH' came in its place. Thereafter, from 4th April 2006, a new private entity, Delhi International Airport Private Limited (DIAL) took over the Airports (Domestic and International). 136 workers filed a writ petition praying for their absorption in service as regular employees and for implementation of the Notification dated 26th July, 2004. The Single Judge of the High Court dismissed the writ petition holding that the establishment of AAI is no longer in existence and has changed and as such, the Notification dated 26th July, 2004 cannot be applied to the new entity DIAL and the appropriate government shall have to issue a fresh Notification. Indira Gandhi International Airport TDI Karamchari Union and Union of

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India filed separate LPA's. During pendency of the LPA's the Chief Labour Commissioner, Government of India passed an order holding that the appropriate government for DIAL is the Central Government and the documents and file relating to DIAL were sent to the Central Government. DIAL filed a writ petition. AAI filed another writ petition challenging the said notification. The Division Bench of the High Court held that in relation to airport, it is the Central Government which is the appropriate government for the purpose of CLRAA; and that DIAL is equally bound by the Notification dated 26th July, 2004 issued by the Central Government. The review petition filed by the Union of India was also disposed of. Aggrieved, DIAL, AAI and the Indira Gandhi International Airport TDI Karamchari Union filed the instant appeals.

The question which arose for consideration in these appeals are as to who is the appropriate government for DIAL under the CLRAA and ID Act; that whether the Notification dated 26th July, 2004 issued by the Central Government under Section 10 (1) of the CLRAA prohibiting employment of contract labour of trolley retrievals in the establishment of the Airport Authority of India at the Indira Gandhi International Airport and Domestic Airport at Delhi would be applicable to DIAL which only came into existence on 4th April, 2006.

Disposing of the appeals, the Court

HELD: 1.1. Section 2(a) of the Contract Labour (Regulation and Abolition) Act, 1970 makes it clear that the Central Government would be the "appropriate government" under CLRAA for any establishment for whom the Central Government is the "appropriate government" under the Industrial Disputes Act. Section 2(a) of the ID Act indicates that the Central Government is the "appropriate authority" in three relevant situations

A wherein both Airport Authority of India (AAI) and the air
transport service have been specifically incorporated
itself. Thus, if Delhi International Airport Private Limited
(DIAL) industry is carried on under the authority of the
Central Government, the dispute in question can be said
B 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 ID Act
and CLRAA. It may be pertinent to properly comprehend
the relevant statute. [Paras 33 and 34] [1145-F-H; 1146-
C A-D-E]

1.2. The AAI Act was constituted for the better
administration and cohesive management of airports and
civil enclaves whereas air transport services are operated
or are intended to be operated and of all aeronautical
D communication stations for the purpose of establishing
or assisting in the establishment of airports and for
matters connected therewith or incidental thereto. [Para
35] [1146-F-G]

E 1.3. It is clear from Section 12A 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
F have been enumerated in Section 12. Out of those
functions under Section 12A, 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,
G some functions of AAI were leased out to DIAL. DIAL
derives its authority from AAI and AAI derives its authority
from the powers given by the Central Government. In the
impugned judgment, the Division Bench clearly held that
AAI works "under the authority" of the Central
Government. [Paras 38, 39 and 40] [1147-H; 1148-A-B-E]

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1.4. A close reading of the objects and reasons indicates that the Central Government under Section 12A 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 12A, as the authority may deem fit. Some of its (AAI's) functions have been leased out to DIAL. This has been done under Section 12A(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. [Para 42] [1150-E-F]

1.5. 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." Preamble to Section 12A 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 Operation, Management, Development and Agreement (OMDA), responsibility for trolley collection services at the Indira Gandhi International Airport and the domestic airport. [Para 45] [1151-E-F]

1.6. 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 12A 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

A are 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”. [Para 50]
B [1153-A-C]

C 1.7. In case the Central Government had never granted permission, pursuant to Section 12A 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. The undertakings need not be government undertakings to have had authority conferred upon them. But the word “government” clearly modifies “company.” However, it cannot modify “undertaking,” for the phrase
D “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, “a question of fact which has to be ascertained on the facts and in the
E circumstances of each case.” In the facts and circumstances of these cases, it is abundantly clear that DIAL operates under the authority of the Central Government. [Paras 52, 53 and 54] [1153-G-H; 1154-D-E]

F 1.8. The functions and powers of DIAL in relation to the Delhi airports are traceable to Section 12A of the AAI Act. Without Central Government’s permission, AAI could not have delegated any power to DIAL. In other words, the functioning of DIAL at the Delhi airports itself was fully
G dependent on the approval of the Central Government. 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
H “DIAL functions under the authority of the Central Government”. [Para 55] [1154-F-H]

1.9. DIAL does not explain how having the State Government as the appropriate government - the only alternative under CLRAA and ID Act - would be any more conducive to privatization. The Central Government does not impede privatization any more than the State Government; after all, it was the Central Government that sought to encourage privatization through the AAI Act by incorporating Section 12A in the Act. [Para 56] [1155-B-C]

1.10. 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 functions to third parties, such as DIAL. AAI would need to obtain Central Government approval prior to making such a delegation under Section 12A 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 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. [Para 57] [1155-D-E]

1.11. DIAL expressly assumed the "rights and obligations associated with the operation and management of the airport" through OMDA. While Section 12A 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 12A 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

A 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
 B 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 26th July, 2004 is equally applicable to DIAL. Under the ID Act (and therefore, CLRAA), the third
 C situation in which the Central Government is the "appropriate Government" is "in relation to industrial disputes concerning air transport services." [Paras 58 and 59] [1155-G-H; 1156-A-C]

D 1.12. 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
 E liked the Court to believe. Trolleys at airports relate to air transportation- just as they relate to "a single flight or a series of flights." [Para 60] [1156-E]

F 1.13. 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. Thus, the "air transport service" concerns airline operators only. DIAL is not engaged in
 G 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
 H include the function of carrying people and goods through air by flights operated by it. As such, when AA-

es not perform such function then there is no question A
transfer of such functions to DIAL. [Paras 62 and 64]
156-H; 1157-C]

1.14. It is the duty of the authority to provide all air
nsport services at the airport, and if it is not the duty B
the authority to carry passengers and goods by air
rough flights, then by the appellants own logic, air
nsport service must mean more than the mere
rriage of passengers and goods by air through flights.
it did not, then there would be no reason that "air
nsport service" would be listed as a "duty of the C
uthority" under Section 12(2). This Section clearly
ndicates that it is the duty of the Authority to provide "air
nsport service", such duty does not mean that the
uthority provides such services itself. AAI is responsible
nder the AAI Act for providing air transport service D
ould not necessarily mean that DIAL also does so.
aras 65 and 66] [1157-E-F]

1.15. In the instant case, under Section 12A of the AAI
st all functions were given to DIAL except watch and E
rd function, air traffic service and civil enclaves. From
e provisions of OMDA, it was clear that all functions of
al barring reserved activities and all land except certain
rved out assets were given to DIAL. DIAL admitted that
al transferred to it all functions except those related to F
atch and ward, air traffic service and civil enclaves,
-ne of which could be considered as "air transport
rvice". That being the case, AAI must have transferred
duty to provide "air transport service" to DIAL and the
ntral Government must, therefore, be the appropriate
vernment for DIAL under the CLRAA and ID Act. [Para G
68] [1157-G-H; 1158-A-B]

1.16. Section 10(1) of the CLRAA permits the
ppropriate government" to "prohibit employment of H
ntract labour in any process, operation or other work

A in any establishment. The Central Government's 26th July, 2004 notification clearly forbade the "AAI establishment" from employing trolley retrievers as contract labour. [Para 69] [1158-D]

B 1.17. The provision s. 291)(e) makes it clear, the definition of "establishment" focuses either on (1) Place; or (2) Offices or departments of the Government or a local authority. The 26th July, 2004 notification must, therefore, have been directed at one of these types of establishments. [Para 72] [1159-C]

C 1.18. 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 the CLRAA is a place where the industrial, trade or business activity is carried on then it necessarily follows in the context of the instant case that it is the Delhi Airports which constitute the establishment of AAI and in turn the establishment of DIAL. 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. [Paras 73, 75] [1159-D-G; 1160-B]

1.19. DIAL while performing work on behalf of AAI, it is not performing work on behalf of AAI establishment. H 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. [Paras 78 and 79] [1160-G] A

1.20. 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. [Para 80] [1161-A] B

1.21. 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 the 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, the 26th July, 2004 notification, declared at AAI establishment, must also apply to DIAL. [Para 81] [1161-C] C

1.22. DIAL falls under AAI establishment. 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 the OMDA, then DIAL is presumably required to fulfil those obligations. Critical to this inference is the fact that the Central Government's 26th July, 2004 notification was issued before OMDA was signed. [Para 83] [1161-E-G] D E F G

1.23. In the impugned judgment, the Division Bench H

A 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-a-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 correctly observed that the obligation flowing from the notification under Section 10(1) CLRAA should continue to bind every private player that steps into the shoes of AAI. [Para 84] [1162-A-C]

2. The Central Government is the appropriate government for DIAL for the following reasons –

- D (i) DIAL could not have entered into a contract with AAI without approval of the Central Government according to the mandate of Section 12A of the AAI Act. It is abundantly clear that DIAL functions “under the authority” of the Central Government;
- E (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. DIAL works under the authority of the Central Government;
- F (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 would be breaching its statutory obligation and would be responsible for the consequences.
- G (iv) AAI is under an obligation to follow the
- H

directions of the Central Government and if DIAL has admittedly assumed those obligations through the OMDA, then DIAL is presumably also obligated to follow such directions. 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).

- (v) Clause 5.1 of the 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 the 26th July, 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.
- (vi) Holding the 26th July, 2004 notification inapplicable to DIAL would mean that the Government would have to issue separate notification 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.

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- A (viii) The privatization of the airports does not mean
that the “appropriate government” cannot be
the Central Government. The definition of
‘establishment’ in the CLRAA takes in its fold
purely private undertakings. Concerns about
B privatization are, therefore, unfounded.
- (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 transferred all of its responsibilities at
C 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 transferred its “air transport
D service” responsibilities to DIAL, the Central
Government must be held to be the appropriate
Government for DIAL.
- (x) The OMDA makes it clear that AAI maintains
ultimate responsibility for the airports. The fact
E 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 the
F CLRA Act further suggests that DIAL is
nothing more than a contractor for AAI
establishment. That being the case,
notification dated 26th July, 2004 directed at
AAI establishment must also apply to DIAL.
- G (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
H 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-a-vis* such private player must be repeated. But this interpretation would defeat the rights of the workmen which are meant to be protected by the CLRAA.

(xii) In the impugned judgment, the Division Bench of the High Court 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. [Para 85] [1162-D-H; 1163-A-H; 1164-A-H; 1165-A-B]

Steel Authority of India Limited & Others etc. etc. v. National Union Water Front Workers and Others etc. etc. (2001) 7 SCC 1 – relied on.

3.1. It is clear that the notification dated 26th July, 2004 was equally binding on DIAL under the CLRAA and, therefore, DIAL must abolish all contract labour as per the terms of the notification. [Para 86] [1165-C]

3.2. The Central Government notification dated 26th July, 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 regularized as regular employees of DIAL. DIAL replaced many of the workers with other trolley retrievers and it would be unrealistic to expect DIAL to regularize 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. [Para 87] [1165-D-E]

3.3. In view of the peculiar facts and circumstances

A of these cases directing DIAL to regularize 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, DIAL is directed to pay
Rupees five lacs to each of the erstwhile 136 workers of
B 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
C claim of back wages. This is in full and final settlement
of entire claims of erstwhile 136 workers of DIAL. [Para
88] [1165-G-H; 1166-A]

*Oil and Natural Gas Commission and Anr. vs. Collector
of Central Excise 1992 Suppl. (2) SCC 432; Gammon India
D Ltd. and Ors. v. Union of India (UOI) and Ors. (1974) 1 SCC
596: 1974 (3) SCR 665 – referred to.*

Case Law Reference:

E	1992 Suppl. (2) SCC 432	Referred to.	Para 7
	1974 (3) SCR 665	Referred to.	Para 14
	(2001) 7 SCC 1	Relied on.	Para 85

F CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7872 of 2011.

From the Judgment & Order dated 18.12.2009 of the High
Court of Delhi at New Delhi in W.P. (C) No. 139 of 2008.

WITH

G C.A. Nos. 7873, 7874, 7875, 7876, 7878-79 of 2011.

H P.P. Malhotra, ASG, R.F. Nariman, Dr. A.M. Singhvi,
Sudhir Chandra, Chander Udai Singh, Colin Gonsalves, Atul
Sharma, Saket Singh, Milanka Chaudhary, Sarojanand Jha,

DELHI INTERNATIONAL AIRPORT PVT. LTD. v. 1131
UNION OF INDIA & ORS.

Sunil Fernandes, Atul Sharma, Abhishek Sharma, Lalit Bhasin, A
Nina, Gupta Ratna Dhingra, Mudit Sharma, Bina Gupta, Tariq
Adeed, Alin Mahanta, Divya Jyoti (for Jyoti Mendiratta), Rachna
Joshi Issar Chetan Chawla, Samridhi Sinha (for Shreekant N.
Terdal) for the appearing parties.

The Judgment of the Court was delivered by B

DALVEER BHANDARI, J. 1. Leave granted in all the
Special Leave Petitions.

2. These appeals emanate from the judgment of the High C
Court of Delhi delivered in LPA No.38 of 2007, LPA No.1065
of 2007, Writ Petition (C) No.139 of 2008 and Writ Petition (C)
No.6763 of 2008 on December 18, 2009.

3.The short question which arises for consideration in D
these appeals is whether the Notification dated 26th July, 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 Airport Authority of India E
(for short, 'AAI') at the Indira Gandhi International Airport and
Domestic Airport at Delhi would be applicable to the Delhi
International Airport Private Limited (for short, 'DIAL') or not?

4.This judgment would decide these appeals preferred F
before this Court against the following Letters Patent Appeals
and Writ Petitions decided by the High Court:

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

This Letters Patent Appeal was filed against the judgment
of the learned Single Judge dated 28th November, 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 26th July, 2004 and for H

A absorption in service amongst other things. The learned Single
Judge took notice of the fact that from 4th April, 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
B was operating due to which the notification dated 26th July,
2004, prohibiting the engagement of contract labour in trolley
retrieval activity in the establishment of AAI at the Delhi Airports
could not automatically apply to the new entity, DIAL and a new
notification by the appropriate government would have to be
C issued.

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

D This Letters Patent Appeal was preferred by the Union of
India against the learned Single Judge's judgment dated 28th
November, 2006 passed in Writ Petition (C) No.15156 of 2008
on a very limited point of certain observation in the judgment.

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

AAI after getting permission of the High Powered
Committee to go ahead with the litigation challenged the
notification dated 26th July, 2004 by filing the said writ petition.

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

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

5. 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. B

BRIEF FACTS:

6. 136 workers were employed by the contractor M/s. TDI International Pvt. 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 Airport Authority Act, 1971 and the National Airport Authority Act, 1985. On 26th July, 2004 the Central Government accepted the recommendations of the Contract Labour Court and issued notification dated 26th July, 2004 abolishing the contract labour system. C D

7. This notification was challenged by AAI before the High Court of Delhi. Taking note of the ONGC judgment reported in *Oil and Natural Gas Commission and Another Vs. Collector of Central Excise* 1992 Suppl. (2) SCC 432 the High Court vide judgment dated 3rd February, 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. E F

8. Meanwhile, 136 workers who were engaged as Trolley retrievers by the contractor M/s. TDI International Private Limited working at the airport since 1992 were removed from service on 5th December, 2003 as the contract of M/s. TDI International Private Limited had come to an end and a new contractor G

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A 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 26th July, 2004.

B 9. The learned Single Judge of the High Court after hearing the parties including DIAL vide judgment dated 28th November, 2006 held that the establishment of AAI is no longer in existence and has changed. As such, the notification dated
C 26th July, 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.

D 10. 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.

E 11. During the pendency of these LPAs, an order dated 24th September, 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 22nd November, 2007 the documents and file
F 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
G matters together and passed the impugned order of 18th December, 2009.

H 12. The review petition was preferred by the Union of India which was decided on 12th March, 2010 by the High Court modifying para 61 of the impugned judgment. 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

(a) Who is the appropriate government for DIAL under the CLRAA and ID Act? This is the subject matter of SLP (C) No.369 of 2010 filed by DIAL. B

(b) Whether the notification dated 26th July, 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 4th April, 2006? This is the subject matter of SLP (C) No.377 of 2010 filed by DIAL. C
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13. We deem it appropriate to deal with the basic objects and reasons of passing the CLRAA. This Act was enacted with a view to abolish the contract 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. E
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14. The object of the Act was dealt with by this Court in the judgment of *Gammon India Ltd. and Others v. Union of India (UOI) and Others* (1974) 1 SCC 596 which reads as under:- G

“The Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The H

A 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
B 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 be extent contemplated by Section 10 of the Act. Section 10 of the Act deals with
C abolition while the rest of the Act deals mainly with regulation. The dominant idea of the 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.”

D 15. The Central Government will be the appropriate government under CLRRA for any establishment for whom the Central Government is the appropriate government under the ID Act. The main question arises for adjudication is whether the Central Government is the appropriate government for DIAL
E under the ID Act? Section 2 (a) of the ID Act deals with the appropriate government which reads as under:-

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

F (a) “appropriate government” means—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company
G [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 5A of the Dock Workers (Regulation

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of Employment) Act, 1948 (9 of 1948), or [the A
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 Employees' State Insurance Act, 1948 (34 B
of 1948), or the Board of Trustees constituted
under section 3A 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 C
5A and section 5B, respectively, of the Employees'
Provident Fund 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 D
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 E
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 F
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 G
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 H

A Reconstruction Bank of India Limited], [the 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
B insurance company,] a mine, an oil field,] [a
Cantonment Board,] or a [major port, 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
C 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]

D (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
E Government:

Provided that in case of a dispute between a
contractor and the contract labour employed through
the contractor in any industrial establishment where
F 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 workman—

H (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
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16. 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 ID Act and CLRAA. D
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17. In these appeals, the validity of the Notification dated 26th July, 2004 issued by the Central Government under Section 10(1) CLRAA was assailed by AAI and DIAL. It was also urged that the Notification dated 26th July, 2004 cannot bind DIAL. F
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18. It was further contended that DIAL is not an agent of AAI and DIAL cannot be considered as a ‘delegate’ of such an entity. It was also contended that an “establishment” in question is that of DIAL, wherever it conducts its business and H

- A that in relation to DIAL there has to be a separate Section 10 (1) notification issued by the Government of the NCT Delhi prohibiting the employment of contract labour in trolley retrieval work in the establishment of DIAL. According to DIAL, NCT Delhi is an "appropriate government" to issue the notification.
- B 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.
- C

19. The workers' union submitted that the notification dated 26th July, 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 labour in a job is *qua* the establishment and operates irrespective of any change in the principal employer as long as the process, operation or other work continues in that establishment. Alternatively, it 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, Development and Agreement (for short "OMDA"), the notification under Section 10 (1) CLRAA would bind it and for DIAL too the appropriate government would be the Central Government.
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20. It was also submitted that DIAL is providing an "air transport service", therefore, the appropriate government is the Central Government. The Central Government defended the notification of 26th July, 2004. It was submitted that adopting a contrary interpretation would defeat the objective and purpose of CLRAA. The Central Government submitted that DIAL is
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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 12A of the Airport 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, therefore, the Central Government is the appropriate government.

21. The Division Bench held that the notification dated 26th July, 2004 issued by the Central Government under Section 10(1) CLRAA is valid and binding on it. 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' under CLRAA is unambiguous. It is futile to seek recourse to 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 scheme of CLRAA and would defeat its object and purpose.

22. The Division Bench also held that it is inconceivable by virtue of Section 12A 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 CLRAA. This transfers all powers and functions and correspondingly the obligations under CLRAA by virtue of Section 12A of the AAI Act.

23. The Division Bench held that:

"...In fact OMDA makes an express reference to the AAI

A Act. Consequently, consistent with the observations of the
Supreme Court in the SAIL case, the exercise by DIAL of
the functions and powers of DIAL in relation to the Delhi
airports is traceable to Section 12A of the AAI Act and
therefore in relation to the Delhi airports the Central
B 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
C 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.

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

F 24. After examining the settled legal principles, the Division
Bench held that irrespective of whether the amendment to
Section 2(a) I.D. Act was later, the appropriate government for
the purposes of Section 10 CLRAA in the instant case
G continues to be the Central Government.

25. 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 :

H 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.”

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26. 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 12A(1) of the AAI Act are “air traffic services or watch and ward at airport and civil enclaves”. In other words, air traffic services and provision of watch and ward at the airport and civil enclaves remain with AAI, notwithstanding that it has entered into an agreement of OMDA with DIAL.

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27. 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 terms of Section 12A 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 recognized as essential services by virtue of Schedule 16 to the OMDA. This is what is relevant in determining whether trolley retrieval is also part of the services provided in the establishment. Therefore, notwithstanding whether DIAL is actually offering other kinds of air transport services, it is certainly meant to provide trolley retrieval services at the Delhi airports.

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28. The Division Bench also came to the categorical finding that for the purpose of establishment of Delhi airport, it

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A is the Central Government that continues to be the “appropriate government”. The Division Bench also came to the conclusion that in view of Section 12A of 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-a-vis* such private player has to be re-stated. That was never the intention of the legislature in enacting CLRAA and in particular Section 10 CLRAA. Such interpretation would defeat the rights of the workmen which are meant to be protected by the CLRAA.

D 29. 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 26th July, 2004 issued by the Central Government;

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

F “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.”

H 31. Two critical issues are raised by DIAL to suggest that the Central Government’s 26th July, 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 26th July, 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 establishment, a separate notification would have to be issued. These two issues will be addressed in its own turn.

**32. WHETHER THE CENTRAL GOVERNMENT IS THE
"APPROPRIATE GOVERNMENT"**

CLRAA Section 2(1) reads as follows:

(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;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situated.

33. In the definition itself given in Section 2(a), specific reference has been made to the Airport 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

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

B (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.

C (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.

D 34. 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 ID Act and CLRAA. It may be pertinent to properly comprehend the relevant statute.

F 35. 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.

G 36. 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:

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“air transport service” means any service, or any kind of remuneration, whatsoever, for the transport by air of persons, mail or any other things, animate or inanimate, whether such service relates to a single flight or series of flights; A

37. Section 12A of the AAI Act, which was inserted with effect from 1.7.2004, reads as under: B

“12A. *Lease by the authority.*- (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management or 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; C

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. D

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

(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. F

(4) The lessees, 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.” G

38. It is clear from Section 12A 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 H

- A 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 12A, some functions can be delegated on lease in the public interest or in the interest of better control and management of the airports.
- B 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.

- C 39. 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?
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40. In the impugned judgment, the Division Bench has clearly held that AAI works "under the authority" of the Central Government.

- E 41. 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

- F 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.
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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

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body under the International Airports Authority Act, 1971. A
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 similar treatment was required B
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 C
generate substantial revenues which accrue to the IAAI.
Revenues of the 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. The NAA has, therefore, not been able to D
generate adequate resources to meet the requirements of
development and modernization. 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 the IAAI
and the NAA, which the Bill seems to achieve. E

4. The salient features of the Bill are:-

(a) Constitution of a single unified Airports Authority F
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 Airport Authority in the said Airports
Authority of India.

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

(c) All licences, permits, quotas and exemptions H
granted to the International Airports Authority of India or the

A National Airports Authority be deemed to have been granted to the Airports Authority of India.

B (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.

C (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.

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

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

E 42. A close reading of the objects and reasons indicates that the Central Government under Section 12A 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 12A, as the authority may deem fit. Some of its (AAI's) functions have been leased out to DIAL. This has been done under F Section 12A(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.

G 43. 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 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.

44. 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?

45. 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." Preamble to Section 12A 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, responsibility for trolley collection services at the Indira Gandhi International Airport and the domestic airport.

46. 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

- A 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
- B 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
- C Government.”

47. The Constitution Bench of this Court in *Steel Authority of India Limited & Others etc. etc. v. National Union Water Front Workers and Others etc. etc.*, (2001) 7 SCC 1, popularly known as ‘SAIL’ case held:

D “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.”

E 48. 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 :

F “...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)

G 49. If the passage from SAIL’s case 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

H the terms of CLRAA and ID Act.

50. 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 12A 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 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."

51. 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. In the *SAIL* judgment, the Constitution Bench held as under :

"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."

52. In case the Central Government had never granted permission, pursuant to Section 12A 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. The Constitution Bench, in the *SAIL* judgment further observed as under :

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A "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
B created, no further question arises. But, if it is not so, the
question that arises is whether there is any conferment of
authority on the government/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 fact and
C in the circumstances of each case."

53. The undertakings need not be government
undertakings to have had authority conferred upon them. But
the word "government" clearly modifies "company." However,
it cannot modify "undertaking," for the phrase "government/any
D 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, "a question of fact which has
to be ascertained on the facts and in the circumstances of each
E case."

54. In the facts and circumstances of these cases, it is
abundantly clear that DIAL operates under the authority of the
Central Government.

F 55. In the impugned judgment, it was noted that "the
functions and powers of DIAL in relation to the Delhi airports
are traceable to Section 12A of the AAI Act." It is clear that
without Central Government's permission, AAI could not have
delegated any power to DIAL. In other words, the functioning
G of DIAL 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
H of the Central Government".

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

57. 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 functions to third parties, such as DIAL. Of course, AAI would need to obtain Central Government approval prior to making such a delegation under Section 12A 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.

58. DIAL expressly assumed the “rights and obligations associated with the operation and management of the airport” through OMDA. While Section 12A 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 12A 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

A 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
B 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 26th July, 2004 is equally applicable to DIAL.

C 59. 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."

D 60. 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
E 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."

F 61. On behalf of DIAL, it was submitted that "air transport services" as enumerated industry under 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.

G 62. 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
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it abundantly clear that "air transport service" concerns airline operators only. A

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

"It shall be the duty of the Authority to provide air traffic service and air transport service at any airport and civil enclaves." B

64. 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. C D

65. 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. E F

66. AAI is responsible under the AAI Act for providing air transport service would not necessarily mean that DIAL also does so.

67. In the instant case under Section 12A 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 has been given to DIAL. G H

A 68. 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 B the Central Government must, therefore, be the appropriate government for DIAL under the CLRAA and ID Act.

AAI and DIAL are not separate establishments, but even if they were, the 26th July, 2004 notification applies to DIAL anyway

C 69. Section 10(1) of the 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 26th July, 2004 notification clearly D forbade the "AAI establishment" from employing trolley retrievers as contract labour. The question, then, is whether DIAL is part of "AAI establishment" for purposes of the CLRAA?

E 70. 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 12A of the AAI Act. In support of this claim, DIAL contends that it has complete overall control and supervision over the Airport to the exclusion of AAI, and is F not an agent or delegate of AAI but is, rather, a separate and a new principal entity to whom the Central Government's 26th July, 2004 notification, even if otherwise valid, did not apply. The Single Bench apparently agreed, holding that G

"the notification itself has become irrelevant in view of the privatization of the airports and a new notification will have to be issued by the appropriate government.

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

“ ‘establishment’ means –

c) any office or department of the Government or a local authority, or B

d) any place where any industry, trade, business, manufacture or occupation is carried on.”

72. 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. The 26th July, 2004 notification must, therefore, have been directed at one of these types of establishments. C

73. 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 the CLRAA is a place where the industrial, trade or business activity is carried on then it necessarily follows in the context of the present case that it is the Delhi Airports which constitute the establishment of AAI and in turn the establishment of DIAL. D E F G

74. This Court in *SAIL*’s case held as under:

“It is thus evident that there can be plurality of establishments in regard to the Government or local H

A authority and also in regard to any place where any industry, trade, business, manufacture or occupation is carried on.”

B 75. 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.

C 76. It would be pertinent to refer to the definition of “contractor” in Section 2(1)(c) of CLRAA, which reads as under:

D “‘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.”

E 77. 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.

F “DIAL does not undertake to produce any result for AAI establishment. Instead, DIAL undertakes to produce result for its own establishment”

78. 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.

G 79. Further, all the independence DIAL does have, the AAI Act and OMDA make it clear that AAI maintains ultimate responsibility for the airport.

H 80. The question that has to be answered is who has

control of the entire establishment? 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. A
B

81. 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 the 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, the 26th July, 2004 notification, declared at AAI establishment, must also apply to DIAL. C

82. The fact that DIAL is a private entity is of no assistance to it. In *SAIL's* case, the Constitution Bench explicitly held that the definition of "establishment" in the CLRAA takes in its fold purely private undertakings. D

83. 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 the OMDA, then DIAL is presumably required to fulfil those obligations. Critical to this inference is the fact that the Central Government's 26th July, 2004 notification was issued before OMDA was signed. E
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84. The contention that DIAL would not also be bound by H

A the obligations of AAI establishment would once again lead to
absurd consequences. In the impugned judgment, the Division
B 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-a-*
C *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) CLRAA shall continue to bind every private
player that steps into the shoes of AAI.

85. 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
D government for DIAL for the following reasons –

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

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

(iii) The Central Government has given AAI
G 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.
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- (iv) AAI is under an obligation to follow the directions of the Central Government and if DIAL has admittedly assumed those obligations through the 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). A B
- (v) Clause 5.1 of the 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 the 26th July, 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. C D
- (vi) Holding the 26th July, 2004 notification inapplicable to DIAL would mean that the Government would have to issue separate notification every time AAI contracts with a third party. This would clearly violate the basic objects and reasons of CLRAA. E
- (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. F G
- (viii) The privatization of the airports does not mean that the "appropriate government" cannot be the Central H

A Government. According to the Constitution Bench judgment of this Court in the case of SAIL, the definition of 'establishment' in the CLRAA takes in its fold purely private undertakings...".Concerns about privatization are, therefore, unfounded.

B (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.
C 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) The 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 the CLRA Act further suggests that DIAL is nothing more than a contractor for AAI establishment. That being the case, notification dated 26th July, 2004 directed at AAI establishment must also apply to DIAL.
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(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
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establishment *via-a-vis* such private player must be repeated. But this interpretation would defeat the rights of the workmen which are meant to be protected by the CLRAA. A

(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. B

86. For the foregoing reasons, it is clear that the notification dated 26th July, 2004 was equally binding on DIAL under the CLRAA and, therefore, DIAL must abolish all contract labour as per the terms of the notification. C

87. We have no hesitation in coming to the conclusion that the Central Government notification dated 26th July, 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 regularized 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 regularize 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. D
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88. In view of the peculiar facts and circumstances of these cases directing DIAL to regularize 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 lacs 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 F
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A claim of back wages. This is in full and final settlement of entire claims of erstwhile 136 workers of DIAL.

B 89. 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.

C 90. 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.

N.J.

Appeals disposed of.