

(2013) 11 BOM CK 0140

In the Bombay High Court

Case No : Writ Petition Nos. 331, 419, 1088, 1168, and 1606 of 2013 and Writ Petition (L) Nos. 277 and 2677 of 2013 and W.P. No. 1805 of 2012

Air India Employees Union

APPELLANT

Vs

Air India Ltd.

RESPONDENT

Date of Decision : 30-11-2013

Acts Referred:

Citation : (2013) 11 BOM CK 0140

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.S. Sanklecha, J.—These petitions are fallout of a merger of Indian Airlines Limited and Air India Limited which was done to make the national carrier more competitive and profitable in the context of open sky policy of the Government of India. This amalgamation gave rise to various issues relating to compensation, harmonization and rationalization of the wages/salaries of the employees coming into amalgamated company from the amalgamating companies. To achieve the above object, an expert committee was appointed to decide and suggest the measures to integrate the employees of the two merged entities including bringing about pay parity between them. The report of the expert committee viz. Justice Dharmadhikari Committee report has been accepted and is being implemented by the merged entity namely Air India Limited. These petitions have been filed challenging the implementation of Justice Dharmadhikari Committee report on various grounds including non-observance of the procedure prescribed under the law to bring about any change in service conditions of the employees/workmen of the merged entity viz. Air India Limited.

Writ Petition No. 2699 of 2012 filed by Air India Office (sic Officers) Association v. Union of India and Writ Petition No. 2600 of 2013 by Sohail Masood v. Union of India were also a part of the present group of the petitions. However, these two petitions were de-tagged from this group as they have been filed by the Officers

of Air India Limited.

This group of petitions has been filed by the workmen as defined under the Industrial Disputes Act, 1947 (the I.D. Act) against the Union of India and Air India Limited. Therefore, the two petitions filed by officers would be dealt with separately as different considerations would apply.

2. The above group of petitions being disposed of by this order can be broadly classified into two categories:

(a) Writ Petition (L) No. 277 of 2013, Writ Petition No. 419 of 2013 and Writ Petition No. 216 of 2013 have been filed by different Associations of Workmen in Engineering Services department whose services have been transferred from Air India Limited to Air India Engineering Services Limited. The same set of workmen had earlier challenged their transfer from Air India Limited to Air India Engineering Services Limited. This Court by Judgment dated 2nd April, 2013 passed in Writ Petition No. 2457 of 2013 and other connected petitions had negated the challenge. Therefore, though these petitioners are no longer employees of Air India Limited, their petitions are being heard as a part of the group for the reason that in Paragraph 49 of the order dated 2nd April, 2013, this Court has recorded the submission made on behalf of Union of India to the effect that all the benefits, privileges and facilities given to secure the interests of employees of Air India Limited would be extended to the employees of Air India Engineering Services Limited whose services were transferred from Air India Limited; and

(b) All the other petitions in the group have been filed by Associations of Workmen who continue to work with merged entity Air India Limited.

3. The common issue raised in all the petitions is:

Whether Air India Limited can alter the Pay Scale, Designation, Seniority etc., i.e. conditions of service as provided in the fourth schedule of the I.D. Act, 1947 on the basis of the recommendation of Justice Dharmadhikari committee without following the due procedure of law as provided u/s 9-A of the ID Act, 1947.?

4. As the issue arising in all these petitions are similar, for the sake of convenience, we set out the facts from Writ Petition No. 1606 of 2013 which are as under:

(a) The members of the petitioner-union are technical and non-technical employees working with erstwhile Air India Limited which is now a part of a merged/amalgamated (transferee entity) called Air India Limited;

(b) The erstwhile Air India and Indian Airlines were formed as statutory corporations under the Air Corporations Act, 1953. The erstwhile Air India operated flights to foreign lands while the erstwhile Indian Airlines operated in the domestic sector with a few destinations in neighbouring countries;

(c) On 29th August, 1960, the Government of Maharashtra issued a notification

under clause (b) of the proviso to section 9-A of the I.D. Act notifying the following regulations:

- (i) The Air India International Employees" Service Regulations;
- (ii) The Indian Airlines Corporation (Flying Crew) Service Rules;
- (iii) The Indian Airlines Corporation (Aircraft Engineering Department) Service Rules; and
- (iv) The Indian Airlines Corporation (Employees other than Flying crew and those in the Aircraft Engineering Department) Service Rules (the notified regulations).

As a result of the above the employers of workmen governed by notified regulations were exempted/excepted from the giving any notice to its workmen of change in conditions of service.

(d) In 1993, liberalized sky policy was introduced by the respondent-Union of India. This resulted in private air lines also being allowed to compete with the erstwhile Air India Corporation and Indian Airlines Corporation;

(e) In their desire to prevent exodus of its employees to private sector from the erstwhile Indian Airlines and Air India a Productivity Linked Incentives (PLI) Scheme was introduced by both the erstwhile Corporations;

(f) On 29th January, 1994, the Air Corporation Act, 1953 was repealed by Air Corporations (Transfer of Undertaking and Repeal) Act, 1994 (Repeal Act, 1994). By virtue of this Repeal Act, 1994, the erstwhile statutory corporations of Air India and Indian Airlines were transferred to companies by the same name viz. Air India Limited and Indian Airlines Limited under the Companies Act, 1956. The terms and conditions of services of the employees/workmen then working with the two Corporations were protected by the Repeal Act, 1994;

(g) On 13th December, 1995, 5th May, 1996 and 31st May, 1996 the petitioner-Union signed several Agreements/Settlements with Air India Ltd. regarding pay fixation, terms and conditions of service etc.;

(h) On 18th July, 1996, a new wage agreement was arrived at/settled between the petitioner Union and Air India Limited for the period 1st January 1997 to 31st December, 2006;

(i) On 22nd August, 2007, the Government of India passed an order sanctioning the Scheme of Amalgamation of Air India Limited and Indian Airlines Limited into transferee entity National Aviation Corporation of India (NACIL)). This order was passed under sections 391-394 of the Companies Act, 1956. On 24th September, 2010, the NACIL was renamed as Air India Limited;

(j) In the meantime, being conscious of the losses being incurred by the merged entity the Government of India appointed SBI Capital Markets Limited to examine the financial restructuring of Air India Limited. Thereafter, with the assistance of the SBI Capital Markets Limited the management of Air India

Limited formulated the Turn Around Plan (TAP) and Financial Restructuring Plan (FRP) with an underlying strategy to improve the financial position of the Air India Limited. Further, Air India Limited also appointed Deloitte Touche Tohmatsu India Pvt. Ltd. to review the TAP and FRIP. On 11th February, 2011, the Deloitte Touche Tohmatsu India Pvt. Ltd. submitted its report on the review of the TAP and FRP of Air India Limited;

(k) Thereafter the Group of Ministers of Government of India appointed a Group of Officers of the Finance Ministry to examine the TAP and FRP of Air India Limited and submit its report. The Group of officers in its report observed that the staff cost of Air India Limited was highest in the industry both in terms of number of employees per air craft as well in terms of costs per employee. Therefore, it suggested a review of the allowances and perks being given by Air India Limited to its employees. It was pointed out by the respondents that the accumulated losses till 2012 of Air India Limited were to the extent of Rs. 30 crores. On 12th April, 2012 the Union Cabinet of the Government of India had approved the TAP & FRP for Air India Limited with the objective of reviving it This would entail infusion of funds aggregating to Rs. 49,500/crores. However, this infusion of funds was subject to the transferee entity Air India Limited reaching the milestones as provided in the TAP and FRP;

(l) During the above process sometime in March, 2011, Air India Limited requested the Government of India to constitute an independent committee of external experts to examine various issues relating to compensation, harmonization, level mapping, parity/rationalization of wages/salaries and other allowances amongst the different categories of employees at various levels. This was necessary as its employees were drawn from the erstwhile Air India Limited and Indian Airlines Limited so as to formulate uniform wage policy/service conditions for the transferee entity Air India Limited;

(m) On 11th May, 2011, the Government of India set up a committee under the Chairmanship of Mr. Justice D.M. Dharmadhikari (Retired Judge of Supreme Court). The terms of reference to the Justice Dharmadhikari Committee were to examine the principle of integration across various cadres, determination of seniority, examine on the principle of pay/wages rationalization/restructuring between all employees of the erstwhile airlines and to suggest harmonized working conditions in the light of cost neutrality principle. All the above to bring them in line with the best airline practices;

(n) On 31st January, 2012, Justice Dharmadhikari Committee submitted its report to the Government of India. The report recommended various measures to bring about integration of the employees of the two merged entities i.e. erstwhile Indian Airlines Limited and Air India Limited. The Committee suggested/recommended that PLI (Productivity Linked Incentives) should be replaced by PRP (Profit/Productivity Related Pay). The revised pay should be such that all allowances other than Dearness allowance should not be in excess of 50% of the basic wages. The Government of India then set up three member committee to

look into the Dharmadhikari's Committee report and also record a time schedule for its implementation;

(o) The petitioners by their letter dated 28th June, 2013 to the Executive Director of Air India Limited raised objections to the recommendations made by Justice Dharmadhikari's Committee. In particular, objection was in respect of fixing of inter se seniority of different cadres and requested that the same may not be enforced on its members;

(p) On receipt of the report of the three member Committee, a cabinet note was prepared. The note of the cabinet recorded the fact that implementation of the Dharmadhikari Committee will result in an aggregate saving of Rs. 320 crores per annum (Rs. 200 crores in respect of licenced category and Rs. 120 crores in respect of non licenced category). The above note was approved by the cabinet on 22nd February, 2013. These recommendations of Dharmadhikari Committee after approval of the cabinet are now being implemented by Air India Limited;

(q) We find that pending the approval of Justice Dharmadhikari report by the Cabinet on 22nd February, 2013, the transferee entity Air India Ltd. has issued two staff Notifications dated 22nd January, 2013 and 23rd January, 2013 providing/seeking to make ad hoc payments of arrears of salary from July to September, 2012 and October and November, 2012 respectively. Mention of the above two staff notifications are made in Writ Petition No. 1088 of 2013 filed by Indian Commercial Pilots Association. The above two Notifications provide that non licenced category would be paid 75% of the difference between revised salary and amount i.e. Cost to Company (CTC) as per Justice Dharmadhikari Committee report and the actual salary. The lay over and flying allowance payable to the Cabin crew would also be 75% of the amounts payable. Besides the other licenced categories such as Air Craft Technicians Service Engineer were also to be paid it arrears ad hoc at 75% of their applicable entitlement. Both the Notifications provided that these ad hoc payments were being made pending final implementation of the Justice Dharmadhikari Committee report and the same will be adjusted against the final payments to be made. It is submitted on behalf of the petitioners in Writ Petition No. 1088 of 2013 that the present payments are still being made on the above basis.

5. All these petitions have been filed by Associations/Union of Workmen challenging the implementation of the Justice Dharmadhikari Committee report by Air India Limited without following the procedure provided in section 9-A of the I.D. Act. It is the petitioners' case that directions issued in pursuance of the Dharmadhikari Committee report result in change of conditions of service as specified in the Schedule IV to the I.D. Act.

6. Mr. R.A. Dada, Senior Counsel, Mr. J.P. Cama, Senior Counsel, Mr. Anand Grover, Senior Counsel, Ms. Jane Cox, Mr. A.S. Peerzada and Mr. B. D'souza appearing for the petitioners support the petitions on the following grounds:

(a) The implementation of the Dharmadhikari Committee Report by Air India

Limited amounts to change in conditions of service of the petitioners" workmen as specified in fourth schedule of the I.D. Act. It is urged that this change in conditions of service to their prejudice is in breach of statutory requirement of section 9-A of the I.D. Act. The condition of service of the petitioner-workmen in respect of matters specified in the fourth schedule of the I.D. Act had been arrived at under diverse settlements and awards. Therefore, such unilateral change in conditions of service is not sustainable in law;

(b) The scheme of arrangement/amalgamation of erstwhile Indian Airlines Limited and Air India Limited by an order dated 28th August, 2007 was an order allowing the scheme of amalgamation specifically on the condition that the transferee entity will abide by the settlement arrived at between the erstwhile Companies (transferor entities) and its unions. Further, it was on the assurance that the service conditions of the workmen would not be changed to their detriment that the scheme of amalgamation was sanctioned. Thus Air India Limited is estopped from changing the conditions of service of its workmen to the prejudice of the workmen;

(c) The Settlements arrived at between the erstwhile Air India Limited and Indian Airlines Limited with their respective employees will continue to hold the field notwithstanding their merger into the transferee entity Air India Limited. This is in the view of the fact that section 18(3)(c) of the I.D. Act provides that settlements/awards arrived earlier in point of time will be binding upon the successor-employer;

(d) It was further submitted that even when a Settlement/Award between the petitioner union and the erstwhile Air India Limited and Indian Airlines Limited were to come to an end by efflux of time, yet the settlement/award arrived at earlier would continue to be binding and in operation till a new settlement is arrived at or an award is passed by the Tribunal. This was in view of the clear provision in section 19(2) of the I.D. Act; and

(e) The notification dated 29th August, 1960 issued by the State of Maharashtra under clause (b) of the proviso to section 9-A of the I.D. Act in case of employees who are governed by notified regulations will not apply in view of the fact that all these notified regulations were issued under the Air Corporation Act, 1953 which itself was repealed in 1994. Consequently, as these notified regulations have ceased to exist the notification dated 29th August, 1960 are also not enforceable.

7. Mr. Kevic Setalwad, learned Additional Solicitor General for the Union of India and Mr. Girish Kulkarni Counsel for the Air India Limited while opposing the petitions made the following submissions:

(a) The decision of the Government of India as reflected in decision of cabinet dated 22nd February, 2013 which is being implemented by Air India Limited cannot be interfered with in writ jurisdiction as the same is a policy decision. This decision on matter of policy has been taken by the Government of India in

supervening public interest and only in order to save Air India Limited from being wound up;

(b) The petitioners are all workmen. Air India Limited has been consistently incurring losses. In these circumstances, the petitioners have no legal right to seek writ of mandamus in respect of allowances and emoluments in complete disregard to the factual reality of consistent losses of Air India Limited leading to a real threat of it facing winding up proceedings under the Companies Act, 1956;

(c) Air India Limited is only implementing the decision of the expert body namely Justice Dharmadhikari Committee as contained in its report on issues of pay scale and allowances of its employees. On the above facts this Court may not interfere with the implementation of the expert report of Dharmadhikari Committee in its writ jurisdiction;

(d) The order of the Central Government dated 22nd August, 2007 sanctioning the scheme of amalgamation/merger of erstwhile Indian Airlines Limited and Air India Limited under sections 391 to 394 of the Companies Act has the force of law. Therefore, the order/scheme of amalgamation can only be modified by the Company Court u/s 392 of the Companies Act, 1956 and it is not open to the petitioner to seek modification of the order of the scheme allowing the amalgamation of erstwhile Indian Air Lines Limited and Air India Limited. In fact, Clause 3.13(a) of the scheme of amalgamation entitles the transferee entity to change the service conditions of its workmen per applicable law. The petitioners are by this petition seeking to modify the scheme of amalgamation and this cannot be permitted. Further section 9 of the Repeal Act, 1994 specifically empowers the Central Government to issue orders/directions. Thus, the decision of the Government of India in issuing directions to implement the report in terms of Article 165 of Articles of Association of Air India Limited read with clause 3(13) (a) of Scheme of Amalgamation is a change of service conditions in accordance with law as permitted by the Scheme of Amalgamation;

(e) Section 9-A of the I.D. Act would have no application to the present facts for the reason that on 29th August, 1960, the Appropriate Government i.e. State Government had issued a notification under clause (b) of the proviso to section 9-A of the Act. Consequently the notified regulations would not require giving of any notice of change in terms of section 9-A of the Act; and

(f) In any event, the issue whether Notification dated 29th August, 1960 issued by the State of Maharashtra under Clause(b) of the proviso to section 9-A of the I.D. Act is still in force or has it lapsed on account of repeal of the Air Corporation Act, 1953 is an issue which is pending before the National Industrial Tribunal. In the above circumstances, it is not open to the petitioners to nullify the issue before the Tribunal by seeking directions on the same aspect from this Court. In view of the above, it is submitted that the petitions should not be entertained.

8. We have considered the rival submissions. The crux of the dispute between the parties is whether in the facts of this case section 9-A of the I.D. Act is at all

applicable. It is very clear that section 9-A of the I.D. Act is applicable whenever an employer seeks to change the conditions of service of any workman in respect of matters referred to in the fourth schedule to the I.D. Act. This section prohibits any change in conditions of service unless notice of at least 21 days of proposed changes in conditions of service is given in the prescribed manner to the workmen. The exceptions provided to the above requirement in section 9-A of the I.D. Act is in present facts applicable only when the change is effected by virtue of settlement/award or when the appropriate Government has issued a notification notifying the rules/regulations under clause (b) of the provisions to section 9-A of the I.D. Act.

9. For the sake of convenience we are reproducing herewith section 9-A of the LD. Act.

9-A. Notice of change.--No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any (settlement or award); or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply.] or

(c).....

10. It is not seriously disputed before us that as a consequence of implementation of the Justice Dharmadhikari Committee report there would be a change in the conditions of service in respect of matters referred to in the fourth schedule to the I.D. Act in these bunch of cases. However, it is the contention of the respondent that section 9-A of the I.D. Act is not applicable for the reason that the State Government i.e. State of Maharashtra which was the appropriate Government had issued a notification dated 29th August, 1960 in terms of clause (b) of the proviso to section 9-A of the I.D. Act notifying the regulations. All the notified regulations were framed under the provisions of Air Corporation Act, 1953. In 1994, the Repeal Act 1994 repealed the Air Corporations Act, 1953. It is urged by the petitioners that as the parent Act viz. Air Corporations Act, 1953 under which the notified regulations were framed was repealed, the notified

regulations also cease to exist. In fact it was submitted that this issue is no longer res integra as this very issue was considered by the Supreme Court in *Air India Vs. Union of India and others*, The Apex Court held that if subordinate legislation framed under the parent Act is to survive then the repealing statute must say so in so many words. The Apex Court held that on coming, into force of the Repeal Act, 1994 with effect from 29th January, 1994 the Regulations made under the Air Corporations Act, 1953 would also come to an end. The Court also observed that section 8 of the Repeal Act, 1994 which seeks to protect the conditions of existing employees on that date does not apply to employees who joined the erstwhile Indian Airlines Limited or Air India Limited after 1994 Repeal Act came into force. In the above circumstances, the Apex Court held that the notified regulations ceased to be effective from January, 1994. Consequently it must follow that the notification dated 28th August, 1960 issued by the State Government would also cease to exist as the notified regulations themselves cease to exist. The above decision has been followed by the Apex Court in the matter of *Indian Airlines Ltd. Vs. Prabha D. Kanan*, wherein it has held that *Indian Airlines Flying Crew Services Regulations* (one of the notified regulations) has ceased to be effective on the repeal of the Air Corporations Act, 1953 as the regulations were framed thereunder.

11. The respondents contest the submission on the ground that the very issue whether or not regulations issued under Air Corporations Act, 1953 are still in force post the Repeal Act has been referred to a Larger Bench by the Apex Court on 11th December, 2006 in *India Airlines v. Union of India*, SLP (Civil) No. 22330-" 331/2005. However, no decision has yet been rendered by the Larger Bench nor the decision of the Apex Court in *Air India Vs. Union of India and others*, and in *Indian Airlines Ltd. Vs. Prabha D. Kanan*, has been stayed. The respondents submitted that in any case the above decisions of the Apex Court being relied upon by the petitioner did not decide upon the validity of the notification and therefore, do not apply.

12. We note that once the Apex Court holds that on repeal of the Air Corporations Act, 1953 the regulations framed thereunder cease to exist, it must follow the notification dated 29th August, 1960 cannot apply. Therefore, we are bound by both the above decisions of the Supreme Court and must hold that Notification dated 29th August, 1960 issued by the State of Maharashtra under clause (b) of the proviso to section 9-A of the I.D. Act is not in force as the notified regulations have ceased to exist.

13. In the alternative, the respondents relied upon the following decisions to contend that section 9-A of the I.D. Act is not applicable and therefore, no notice of change of service conditions is required to be given:

- (a) *B.J. Shetty and others Vs. Air India Limited and another*,
- (b) *Air India Cabin Crew Association and others Vs. Air India*,
- (c) *Indian Pilots Guild and Others Vs. Union of India (UOI) and Others*,

(d) Air India Cabin Crew Association v. Air India Corporation, in Appeal No. 157/1974.

(e) Air India Cabin Crew Association v. Air India Corporation, in Miscellaneous Application No. 281 of 19784 dated 4th July, 1974,

(f) Indian Airlines v. Union of India 2006 DLT 505 and

(g) Air India Cabin Crew Association Vs. Union of India (UOI), Ministry of Labour, Air India Limited and Mr. V.A. Ferreira, Executive Director - HRD and IFS, Air India Limited, NITC,

We find that all the aforesaid decisions at (a) to (f) were rendered prior to the decision of the Apex Court in Indian Airlines v. Prabha D. Kanan (supra) (2006) which followed the decision of the Apex Court in Air India v. Union of India, (supra) 1995. In that view of the matter the decisions relied upon by the respondents cannot be considered to be good law. So far as the decision at (g) above is concerned, though the same was rendered after the decision of the Supreme Court in the matter of Prabha D. Kanan (supra), yet the decision has not been considered. Therefore, it was rendered per incuriam and is not good law. In view of the above we hold that section 9-A of the I.D. Act is applicable to the present facts as the Notification dated 19th August, 1960 is not in force.

14. It was next contended by the respondents that the change in conditions of service of the workmen is a decision taken at the highest level of the Government by the Cabinet on 22nd February, 2013. The decision is a policy decision. It is submitted that a policy decision is not to be interfered with and in support various decisions were cited. There can be no dispute that in respect of policy decision of the Government this Court would be loath to interfere. However, even if we accept the aforesaid submission as stated (without examining it on merits) that change in conditions of service in the present facts is a policy decision, yet the implementation of a policy decision by the State has necessarily to be in compliance with statutory requirement of law. In this case the statutory requirement is of giving of notice in terms of section 9-A of the I.D. Act. Taking of a policy decision does not absolve the Executive from complying with the legislative enactment. This alone ensures that there is no arbitrariness in the decision making and implementation process. This is a basic postulate of the rule of law. Consequently, the respondent-Air India Limited cannot absolve itself of its obligation u/s 9-A of the I.D. Act to issue notice of change in the conditions of service to its workmen of atleast 21 days before effecting any change.

15. It is next contended by the respondents that once the scheme has been sanctioned under section, 391 to 394 of the Companies Act, 1956 then any modification of the scheme can only be done u/s 392 of the Companies Act, 1956. It is contended by the petitioners" that the order dated 22nd August, 2007 permits the Central Government to issue directions to the merged entity for the proper implementation of the scheme (See Para 35(b)(vii) of the order dated

22nd August, 2007). However, the scheme itself provides an assurance that the conditions of service of the employees in the transferee company will not be less favourable to those being enjoyed by the employees/workmen of the transferor company on the effective date of the scheme of amalgamation. Thus, in the present case we do not find that the petitioners have sought any change in the scheme or the order which allowed the amalgamation/merger of Air India Limited and Indian Airlines Limited. In fact, if at all, the petitioners are only seeking to enforce the representation made under the scheme that there would be no change in the conditions of service of the workmen to their prejudice. In any case any change in the conditions of service in future has to be in accordance with the applicable law. In this case the applicable law is section 9-A of the I.D. Act which the Air India Limited is required to comply with. Therefore, we find no substance in this objection by the respondents.

16. It was next contended that no notice u/s 9-A of the I.D. Act is required to be given to the workmen as the power is being exercised in terms of clause 3.13(a) of the Scheme of Amalgamation read with section 9 of the Repeal Act, 1994 which permits the Central Government to issue directions/orders to the transferee entity Air India Limited. We find that even if the change of service conditions has been issued in terms of the above provision, the same does not do away with the necessity of following the mandate of section 9-A of the Act. Further, it is submitted that the directions have been issued by the Central Government to Air India Limited in terms of Article 77 of the Constitution. Article 77 of the Constitution deals with making of rules for the convenient transaction of business of the Government and can have no application where directions are being issued to an entity which is separate and distinct from the Government of India as in this case. Therefore, reliance upon Article 77 of the Constitution of India is misplaced and has no application to the present facts.

17. During the course of the arguments before us, the respondents also submitted that the settlements arrived at between the petitioner-Unions and the erstwhile Indian Airlines Ltd. and Air India Limited had expired by lapse of time. Thus there is no settlement/award which was effective. In the circumstances, it was no longer obligatory on the respondents to give any notice of change in conditions of service to its workmen u/s 9-A of the I.D. Act.

18. The petitioner in response drew attention to section 19(2) of the I.D. Act which provides that a settlement shall be binding for such period as is agreed upon by the parties and if no period is mentioned therein then for a period of 6 months. However, the settlement/award arrived at would continue to be binding even after the expiry of the minimum period mentioned therein of six months, in the absence of any period and until two months have expired after the date on which the notice in writing of an intention to terminate the settlement is given by one of the parties to the agreement. Therefore, even if the settlement has come to an end by lapse of time as provided in the settlement/award yet by virtue of section 19(2) of the I.D. Act the same would continue to be binding. The Apex

Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, has inter alia observed as under:

Once the earlier contract is extinguished and fresh conditions of service are created by the award or the settlement the inevitable consequence is that even though the period of operation and the span of binding force expire, on the notice to terminate the contract being given, the said contract continues to govern the relations between the parties until a new agreement by way of settlement or statutory contract by the force of an award take its place. If notice had not been given, the door for raising an industrial dispute and the fresh conditions of service would not have been legally open. With action u/s 9-A, section 10(2) or (6) the door is ajar for disputes being raised and resolved. This, in short is the legal effect not the lethal effect of invitation to industrial trial of strength with no contract of service or reversion to an absolute and long ago "dead" contract of service.

19. We note that the Court in the above case observed that even if a settlement/award ceases to be effective as an award/settlement, yet it would continue to be in force as a contract between the parties. Therefore, the fact that the settlement/award has come to an end by efflux of time as provided in the award yet it would still continue to operate as arising out of contract. Thus any change in the terms and conditions have to meet rigour of section 9-A of the I.D. Act. Thus, we do not find any substance in the above objection.

20. The respondents also submitted that the settlement/award was arrived at not between the transferee entity Air India Limited but by its predecessor and the petitioner-unions. Consequently, such a settlement/award is not binding upon the transferee entity Air India Limited. We find that a complete answer to the above submission is provided u/s 18(3)(c) of the I.D. Act which inter alia provides that when settlement has been arrived at between the employer and its workmen, the same shall be binding not only on all the parties to the dispute but also upon the heirs and successor of the employers i.e. erstwhile Air India Limited and Indian Airlines Limited in this case. In view of the above, the transferee entity Air India Limited would continue to be bound by the settlement/award arrived at between its predecessor Air India Limited and Indian Airlines Limited with the petitioner-unions. Therefore, we do not find any substance in-the above submissions.

21. It was next contended that the issue arising herein namely whether regulations framed under the Air Corporations Act, 1953 continue to apply to the employees of the merged entity i.e. Air India Limited has already been referred to National Industrial Tribunal for its opinion. Therefore, the petition should not be entertained and the National Industrial Tribunal be allowed to rule on the issue of whether the Notification dated 29th August, 1960 u/s (b) of the provisions to section 9-A of the I.D. Act is still in force. Both the sides advanced arguments before us at great length as to the applicability/inapplicability of Notification dated 29th August, 1960 even after the repeal of the Air Corporation

Act, 1953. We have considered the submissions of both the sides on the above issue and ruled on the issue at paras 11 to 13 hereinabove. We have held following the decisions of the Apex Court in *Air India (1995)* (supra) and *Prabha D. Kanan (2006)* (supra) that the Notification dated 29th August, 1960 is not in force. Therefore, the issue before the National Industrial Tribunal stands concluded in favour of the petitioners by virtue of this decision.

22. In view of the above, we are of the view that notice u/s 9-A of the I.D. Act should be given by Air India Limited to the petitioner-unions of the change in conditions of service in the prescribed manner. Thereafter, it is for the unions to accept the same or agitate in respect thereof by raising a dispute. In case a dispute is raised, which seems likely, the same would be resolved under the I.D. Act on its merits. However, the above issue to be resolved may take sometime, Therefore, the issue to be considered is what relief, if any, is to be granted in the meantime. We have noted the fact that the merged entity Air India Limited would possibly be wound up unless further funds to the extent of Rs. 49,120 crores are infused. Therefore, keeping in view the peculiar condition of Air India Limited and also the desire of Unions to reach an amicable settlement and not to adopt an attitude which would result in the transferee entity Air India Limited being wound up and the workmen losing their jobs, it would be in the fitness of things that pending the resolution of the dispute by the Industrial Tribunal or earlier the petitioners-workmen would be entitled to receive and would continue to have the same service benefits i.e. emoluments etc. as is being received by them today. This position would continue till the resolution of the likely dispute, if raised by the Workmen-Unions on the service of notice u/s 9-A of the I.D. Act.

23. Before parting we may point out that so far as the Writ Petition Lodging No. 2717/2013, Writ Petition No. 419/2013 and Writ Petition No. 1168/2013 are concerned these very associations had filed petitions challenging the de-hiving of the Engineering Department of Air India Ltd. to Air India Engineering Services Ltd. This Court dealt with the above challenge in its order dated 2nd April, 2013 in Writ Petition No. 2457 of 2012 along with other petitions. In the order dated 2nd April, 2013 it was recorded that the merged entity Air India Limited as well as Government of India has specifically made a statement before the Court that the petitioners therein would continue to have the same service conditions as they would have had if they had continued in Air India Limited. This was an undertaking given. It was on the basis of the aforesaid representation/undertaking that this Court by its order dated 3rd April, 2013 upheld the action of the respondents de-hiving the Engineering Department of Air India Limited to Air India Engineering Services Ltd. It is in the above circumstances that the petitioners in the three petitions are aggrieved by the action of the respondents. By this order it is directed that even if they are no longer employees of Air India Limited, their present employers viz. Air India Engineering Services Ltd. will issue notice of change in service conditions to the petitioners u/s 9-A of the I.D. Act. Therefore, the issue raised for our consideration as framed in Paragraph 5 above is answered in the negative i.e. Air India Limited cannot alter the conditions of

service as provided in the forth Schedule of the LD. Act, 1947 without following the procedure prescribed in section 9-A of the I.D. Act, 1947.

Accordingly, the petitions are allowed in the above terms with no order as to costs.