

(2003) 11 DEL CK 0111
In the Delhi High Court
Case No : CWP No. 5248 of 2002

Raj Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-11-2003

Acts Referred:

Aircraft Act, 1934 — Section 2
Airports Authority of India Act, 1994 — Section 2
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10, 10(1), 10(2)
Industrial Disputes Act, 1947 — Section 2

Citation : (2003) 8 AD 425 : (2003) 108 DLT 314 : (2004) 1 LLJ 603 : (2004) 3 SLJ 428

Hon'ble Judges : Mukul Mudgal, J

Bench : Single Bench

Advocate : Colin Gonsalves, Vipin M. Benjamin and Aparna Bhat, for the Appellant; Kirtiman Singh, for Maninder Singh, for respondents 1 and 5, Raj Birbal and Ruchira Gupta for respondents 2 and 3 and Ajay Kapur, for the Respondent

Final Decision : Partly Allowed

Judgement

Mukul Mudgal, J.—During the final hearing of the petition, the parties agreed that the facts stated in the interim order dated 4th August 2003 may be made the factual basis for the present judgment. On behalf of Union of India it is stated that the statement of facts in the interim order is correct except to the extent that the order observes that the decision to abolish was not taken by the majority of the members and in respect of the visits of Shri Shah and Shri Sundaresan to the Delhi Airport.

This writ petition challenges the order dated 20th July, 1999 of the Central Advisory Contract Labour Board (hereinafter referred to as the CACLB) and the consequent order dated 18th April, 2002 of the Government of India declining to abolish the contract labour system at domestic and international airports qua the trolley retrievers. This writ petition is by the 115 trolley retrievers and 12

supervisors of the domestic and international airports at Delhi where some of the petitioners have been averred to be working from 1993. According to the petitioners, the trolley retriever system began in 1984 and is still continued. Even though some of the petitioners were working from 1993 they were given a fresh appointment letter in 1996. The chart (Annex P-1) annexed to the writ petition shows that the petitioners have started working from dates varying from 1993-1998. The petitioners have submitted that their prolonged functioning amounts to contract labour and the respondent No. 4 is the contractor within the meaning of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act). The petitioners are pleaded to be contract labour. The petitioners have in the alternative and without prejudice to the above plea submitted that the petitioners are the employees of respondent No. 1, Union of India and respondents 2 and 3.

2. The main thrust of the writ petition is that the nature of duration and the trolley retrieving work are such that the full time trolley retrievers can be made as permanent employees of respondents 1, 2 and 3. Due to disparity in the wage and service condition as compared to the permanent workers, the petitioner addressed a letter dated 13th April, 1994 to the Chief Labour Commissioner. Even though the petitioners work throughout the year continuously yet they do not get overtime for extra shifts and do not also get bonus & gratuity.

3. The petitioners have contended that the respondent's plea that the contract is not a labour contract and the contract was for advertising is a camouflage to mask the real nature of the petitioners' employment. The respondent No. 1 is Union of India through its Secretary, Ministry of Labour; respondent No. 2 is the Airport Authority of India through its Chief Executive, I.G.I. Airport, New Delhi; respondent No. 3 is the International Airport Authority of India, through its Chief Executive, I.G.I. Airport, New Delhi; respondent No. 4 is M/s T.D.I, International India Pvt. Ltd and the respondent No. 5 is the Central Advisory Contract Labour Board (in short the 'CACLB') through its Secretary, Jaisalmer House, New Delhi. The conditions of service of the petitioners and the work done by the petitioner is dictated by the officers of respondents 1, 2 and 3 who also do the overall supervision and control. The respondent No. 4 is a mere paper intermediary. Accordingly all the conditions set out in Section 10 of the Contract Labour Act are satisfied. The work is perennial and has gone on for three shifts a day for the last 20 years. The supervisors work for 90% time as trolley retrievers and for the rest of the time mark attendance of the workers. The fresh contract entered into by most of the petitioners is under cloud and the subject matter of an enquiry.

4. The petitioners aggrieved by the termination of services of some of the workmen also seeking their regularization, filed CWP No. 2425/1997 in this Court. On 17th May, 2001, the petitioners were directed by the learned Single Judge to approach the Government for notification u/s 10 of the Contract Labour Act. The said order of the learned Single Judge was upheld by the Division Bench. On 27th September, 1999, the Central Advisory Contract Labour Board

after protracted hearing declined to recommend the abolition of the Contract Labour System for trolley retrievers. By letter dated 18th April, 2002 the Government of India communicated the decision not to abolish the Contract Labour System for the trolley retrievers. The order dated 20th July, 1999 and 18th April, 2002 have accordingly been challenged in this writ petition.

5. The principal plea of the learned counsel for the petitioner is that :

(i) Section 10 of the Contract Labour Act lays down the conditions that ought to be satisfied for the contract labour system to be abolished namely

(a) The work must be essential/incidental

(b) The work must be perennial.

(c) Done ordinarily through regular workmen.

(d) Sufficient work to employ whole time workers.

(ii) A section 10 notification ought to have been issued by the Board as all four conditions set out above were satisfied.

(iii) The Board order dt. 20th July, 1999 and the Govt. order dated 18th April, 2002 are :

(a) Non speaking.

(b) Contrary to the record which shows Section 10 conditions satisfied.

(c) Perverse in as much as trolley retrieving is both essential/incidental.

(d) Vitiating as the condition precedent to the order i.e. the payment of wages on par has been withdrawn.

(iv) Had an abolition order (Section 10) been passed the workers would have a right of preference over other contract workers i.e. they would not be replaced by other contract workers. The main difference is that under Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], they had a right to absorption while under Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , they have a right to preference.

(v) The order which ought to be made is that status quo should continue and the contract workers should not be replaced by other non-permanent workers as long as the work remains to be done. The contractor may be changed but the workers should remain. The contract workers services may be terminated for misconduct.

6. The learned counsel for the petitioner in support of relief of status quo in respect of the existing workers, has submitted that on 27th March, 1996, the Order of the Central Advisory Contract Labour Board, declining to abolish contract labour was set aside by the Bombay High Court and the Central

Government was directed to constitute a Board within one month and status quo was granted in the meanwhile. Learned counsel for the petitioner has further relied upon an order of the Hon"ble Supreme Court dated 11th April, 1997 in SLP Nos. 4088-4093 of 1997 which directed status quo to continue while the Board decided the issue of abolition of contract labour. Learned counsel for the petitioner has also relied upon an order of the Gujarat High Court dated 9th September, 1998 in SCA No. 7027 of 1997.

7. It is submitted by learned counsel for the petitioner that one member, Shri Sankar Saha opined that supervision and control within the airport without trolleys would lead to chaos. He also referred to International Civil Aviation Organization (ICAO) Standards. Mr. L.R. Singh lodged a strong protest against the draft circulations as they were neither circulated nor approved by any Board meeting. It is also further submitted that the Board's final recommendations did not give any reason and in fact stated that two of the members have not accepted any conclusions and quite a few members did not furnish any comments. The conclusions have been arrived at without going into the majority or minority nature of such views and the recommendation which does not recommend the abolition of the contract labour in respect of the Trolley Retrieval Car-parking Counter Clerks in Airport Authority of India is challenged in this writ petition. Even in the impugned Order dated 18th April, 2002, the Central Government directed that the employment of the contract labour for trolley retrieval was not being prohibited provided the wages paid to the low category of employees in the respective establishments are paid to the contract labour. It is submitted that this direction for wages being on par was withdrawn on 24th February, 2003.

8. The learned counsel for respondents 2 & 3 has submitted, that the petitioners are working under respondent No. 4 and are not the employees of the respondent No. 2. Accordingly, no relief can be claimed against respondents 2 & 3, Airport Authority of India.

9. The learned counsel for respondents 2 & 3 also relied upon a judgment of the Andhra Pradesh High Court in 1989 FLR 689 to submit that conditions of engaging the petitioners cannot be imposed upon successive contractors. He has also stated that the learned Single Judge in WP (Civil) 2425/97 had declined on 17th May, 2001 to grant an interim order which order was upheld by the Division Bench.

10. The learned counsel for respondent No. 4 has submitted that the job of trolley retrieval is not perennial in nature and with the passage of time various modern techniques such as coin operated machines have been introduced. It is also submitted that the petitioners are employed by the respondent No. 4. Reliance has been placed on the Order of this Court dated 17th May, 2001 in CWP. No. 2452/97, declining interim relief. Reliance has also been placed on the status quo order in favor of the petitioners being varied in case they were guilty of insubordination and indiscipline. The operative portion of the said Order dated

17th May, 2001 passed by Hon"ble Dr. Justice M.K. Sharma is as under:-

"Accordingly, I am satisfied that no interim order, as sought for by the petitioners could be granted in this case except for observing that in case the contractor, namely, respondent No. 4 decides to continue the service of the petitioners till expiry of its contract, it shall be open to the said contractor to continue with the services of the persons mentioned at Sr. Nos. 1 to 130 in Annexure-A. In terms of the aforesaid observations and directions, this writ petition stands disposed of."

11. In so far as the recommendation of the Board dated 20th July 1999 is concerned, the following conclusions emerge:-

(a) that quite a few members of the Board did not offer any comments

(b) the Board arrived at a conclusion that the presumption is towards the broad consensus of opinion

(c) no reason was given for the recommendation of the abolition of the Contract Labour in respect of the Trolley Retrieval except that this was the view of the Board.

12. I am also of the view that as things stand at present on the Indian Airports the trolley retrieval work is essential for the successful functioning of the work due to the frequency of the flights. The work is perennial in nature and would normally be required to be done since there is sufficient work to employ full time workers.

13. The petitioner's case is that Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the Act) requires satisfaction of the following 4 conditions:-

"(a) The work must be essential/incidental.

(b) The work must be perennial.

(c) Done ordinarily through regular workmen.

(d) Sufficient work to employ whole time workers."

14. Reliance has also been placed by the petitioner on the order of the Bombay High Court dated 27th March, 1996 which held inter alias as under:-

"1. The Central Government will constitute a Central Advisory Board within one month to examine the question of abolition of contract labour in the establishment covered in all the writ petitions.

2. The Central Advisory Board will take a decision in accordance with law, more particularly after taking into consideration the observations made in this judgment. The Central Advisory Board will submit its recommendations within 3 months from the date the Central Government makes a reference to it.

3. The Central Government after receipt of the recommendations of the Central

Advisory Board will take a final decision within one month thereafter.

4. In the cases where the services of the employees of the contractors were protected under the orders of this Court, that protection will continue till the final decision of the appropriate Government as indicated above and for one month thereafter.

In other cases status quo in service as on today for the period mentioned in (4) above."

15. According to the petitioners qua the trolley workers the draft recommendations of the CACLB were as under:-

"19.6. We thus came to the last of the items covered by the Sundaresan Committee and these include trolley retrieval; Car parking counter clerks, operation, maintenance and repair of passenger baggage conveyor system, frisking of visitors and passengers and bush cutting. We are not considering the case of free porter service as this is reported to have since been discontinued. As for the operation, maintenance and repair of passenger baggage conveyor system, CACLB is of the view that it is an integral part of the operation of AAI and will have to be done by the regular employees of AAI, considering both the nature of operation and also the security angle. CACLB note the fact that these operations are within the security zone and of a nature where the passengers cannot be excluded from access to it. CACLB Therefore recommends that the day to day operation of the conveyor system must be through regular employees and Therefore recommends the abolition of contract labour system. However, should the present arrangements are part of a continuing contract with the equipment suppliers, then the present system can be allowed to continue till the contract is amended suitably to departmentalize the operation. The periodic maintenance and repair can, in the opinion of CACLB, be allowed to be continue on contract.

19.6.1. Unlike the above case, the case of trolley retrieval and car parking clerks is different in the opinion of CACLB. These are essentially facilities provided to the passengers and cannot be considered to be essential or even incidental to the operation of the AAI. CACLB Therefore does not recommend abolition of contract labour system in these tasks."

16. The petitioners have also referred to the following responses of various members to the draft recommendations:-

"(a) Kohli agreed-But no reasons given as per the following note:-

"I fully endorse the views of the Chairman in all the decisions/recommendations taken item wise thereof."

(b) L.R. Singh: He disagreed in the following terms:-

"My views are against this draft conclusions and not agree with this."

"I also suggest that a fresh committee be constituted to avoid any defective

decisions litigation in different courts in the country as well in the interest of industry and contract workers with specific time limit."

"My views are against the draft conclusions ...no such decision was taken (to circulate draft conclusions) ...It is not proper that draft conclusions have been circulated ...This is not a committee functioning ...The (draft) committee report has not been approved by any Board Meetings ...It is against the spirit of the statutory provisions of the Act."

(c) Nimbalkar: Offered no comments as under:-

"I have no comments to offer at this stage."

(d) Raj Kumar : No discussion qua trolley workers.

(e) V.S. Rao: Agreed but without any reasons.

(f) Sundaresan: Offered no comments.

(g) Balasundaram : Protested about procedure as under:-

"During the course of discussion in the last Board's meeting held on 28/4 & 29/4 1999, we have decided only on the question of granting permission/exemption to the establishment which were applied and approached for board approval for awarding the contract system. Accordingly, the Board Chairman directed the establishment which have approached for exemption provided the establishment are prepared to pay the minimum of the pay scale plus DA to the contract labour, what is applicable to a regular employee of the establishment concerned. This aspect was also concerned. This aspect was also agreed by the parties who were present on that day. Further, neither the Chairman or the Secretary advised themselves to send their remark/viewpoints on the question of Air India/Air Port Authority/Indian Airlines Corporation regarding abolition of Contract labour system. However in the draft conclusion, the Chairman recommended for minimum of the pay plus D.A. to the contract labourers who are going to be renewed in the contract system. The point issue involved in this connection, is that the contract workers have already gone to Courts and Apex Courts who also gave some directions and judgments. The committees constituted on these issues have also given some suggestions and recommendations for and against in certain items of jobs. Therefore, my submission is that the entire men who have gone to the Court be regularized as regular employees based on the qualification and service rendered as contract labour in the establishment concerned."

(h) Shankar Saha : Disagreed specifically with the recommendations by giving the following reasons:-

The work was essential by reference to International Civil Aviation Organization (ICAO) standards. The contract with the Airport and the contractor showed that supervision and control with the Airport ... without trolley there would be chaos "

Section 2(m) of the Airport Authority of India Act (AAI Act) shows that it is the duty of the Airport to provide transport facilities necessary for the passenger. He observed as under:-

"All the above show that the work of retrieving passenger trolleys, maintaining and guarding the trolley is an essential or necessary passenger service. The work is necessary because the passenger baggage as per the ICAO standards have to be transported by the AAI within the areas as indicated in the recommended standards and as per the AAI Act 1994 the AAI has to provide such transport facility as are in the opinion of the authority necessary to the passengers traveling by air."

5. He also referred to clause 6.32.1 of ICAO standards which is as under:-

"6.32.1 Sub Section IV Recommended Practice - The authorities responsible for international airports shall ensure that passengers can obtain assistance in the carriage of baggage to enable them to transfer baggage from baggage claim areas to points as close as possible to areas where surface transportation from the airport or between airport terminals is provided."

17. The petitioner has submitted that the following final recommendation of the Board dated 20th July, 1999 qua the trolley workers was non-speaking and indeed without any rational basis:-

"Both Shri Shankar Saha and Shri L.R. Singh have not accepted any conclusion.. quite a few members of the Board did not furnish any comments .. . Govt. members also did not furnish any comments ... without going into question of majority or minority .. the following conclusions have been arrived at by me .. page 191 (Part-I) onwards.

"(q) The Board does not recommend abolition of contract labour system in respect of jobs of Trolley Retrieval Car Parking counter clerks in Airport Authority of India."

18. It is further submitted that the decision to decline the prohibition of abolition of contract labour in trolley retrieval taken on 18th April, 2002 by the Union of India was coupled with an order that the wages paid to low category of the employees in the respective establishment are paid to contract labour. This decision was unilaterally withdrawn by an Order dated 4th February, 2003 when equal wages are sought from the Union of India by the counsel for the workmen. The petitioner placed reliance on the following decisions:-

1.

AH India Gen. Mazdoor Trade Union (Regd) v. Delhi Administration

2. Indian Airports Employees Union Vs Airport Authority of India & Ors. Writ Petition No. 2994 of 1

19. The stand of Union of India as per the plea of Shri Kirtiman Singh is that

even though the Union of India has accepted the recommendation of the Board it has also considered other relevant factors (though such factors are not specified) and unless and until the decision making process is flawed the Court can not sit in appeal in its writ jurisdiction over the recommendations of the Board. It is also submitted that no case for interference is made out particularly when the decision of the Division Bench of the Bombay High Court and Supreme Court in *Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others*, both related to interim orders granted where references were made before the Industrial Adjudicator and in previous writ petitions filed by the petitioners, no interim relief was granted.

20. The respondent No. 4 while submitting that no relief was claimed against it stated that the appointment of the petitioners was for a fixed term of 7 years, i.e., co-terminus with its contract or its extension starting from 1996, the year of the appointment letter issued in favor of the petitioners and no further employment could be claimed against them.

21. The position of law applicable has been settled by the decision of the Hon'ble Supreme Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, wherein in paragraph 68 & 125 it has been held as follows:-

"68. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labour in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub-section (1) of Section 10. It is a common ground that the consequence of prohibition notification u/s 10(1) of the CLRA Act, prohibiting employment of contract labour, is neither spelt out in Section 10 nor indicated anywhere in the Act. In our view, the following consequences follow on issuing a notification u/s 10(1) of the CLRA Act:

(1) contract labour working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with the contractor in regard to the contract labour comes to an end;

(3) no contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labour is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour;

(5) the contractor can utilise the services of the contract labour in any other establishment in respect of which no notification u/s 10(1) has been issued

where all the benefits under the CLRA Act which were being enjoyed by it, will be available.

(6) If a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the ID Act.

The point now under consideration is; whether automatic absorption of contract labour working in an establishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification there under. We shall revert to this aspect shortly.

125. The upshot of the above discussion is outlined thus:

"(1)(a) Before 28-1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein nominee, or (ii) any industry is carried on (a) by or under the authority of the Central Government, or (b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification u/s 10(1) of the CLRA Act prohibiting employment of contract labour in any process, operation or other work in any establishment has to be issued by the appropriate Government:

(1) after consulting with the Central Advisory Board or the State Advisory Board as the case may be, and

(2) having regard to

(i) conditions of work and benefits provided for the contract labour in the establishment in question, and

(ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9-12-1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned.

(4) We overrule the judgment of this Court in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], adjudication/any court including the High Court, for absorption of contract labour following the judgment in *Air India case* (supra) shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification u/s 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been imposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification u/s 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract

(7) labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the

workers at the time of their initial employment by the contractor and also relaxing the conditions as to academic qualifications other than technical qualifications."

22. The counsel for the AAI, Shri Birbal's submission that when an interim order for continuance could not be passed even after a declaration is made u/s 10(1) of CLRA, the prayer for such orders when the recommendations of the Committee and the Govt., u/s 10 are against the petitioner is valid. In my view the petitioner cannot be put in a position better than that they would have enjoyed if they had an order u/s 10(1) directing abolition of contract labour in respect of their vocation of trolley retrievers. The mandate of SAIL and in particular paragraph 125 is very clear and this Court in accordance with such position of law cannot grant such relief. The reliance on Bombay High Court's judgment dated 27th March, 1996 may not be sufficient because the judgment does not contain any reason why the interim order was granted and in any event interim orders were passed pending industrial adjudication in a time bound manner. Similarly the decision of the Hon'ble Supreme Court in Municipal Corpn., of Bombay's case (supra) arose when matters were referred for industrial adjudication which has not been sought by the petitioners as clarified by Shri Gonsalves. In the present case the petitioners have not prayed for industrial adjudication and the prayers in the writ petition are for quashing the order dated 20th July 1999 of the CACLB and the consequent order dated 18th April, 2002, passed by the Government of India. The other prayers are for production of relevant record and for absorption of all the petitioners as regular and permanent employees of respondents 2 & 3 with retrospective effect.

Consequently the Bombay High Court judgment though in respect of trolley workers is inapplicable.

23. In my view the order of the CACLB dated 27th September 1999, declining to recommend the abolition of the Contract Labour system for the trolley retrievers is unsustainable. The learned counsel for respondents 1 and 5 is right in submitting that in para 4 of letter dated 20th May, 1999 circulating draft conclusion sent by the Chairman, it was stated that if no response is received by 4th June, 1999 their assent will be presumed. It has also been brought on record that out of 18 members only 8 responded to the draft conclusions thereby by the presumption suggested in the letter dated 20.5.99 their assent could be assumed. It is also pointed out that only dissent was from L.R. Singh and Shri Shankar Saha. Thus I proceed on the basis that whether by presumptive assent or otherwise the decision was by the majority of the Board and the plea of the petitioner of the majority being an artificial one is not correct. Even if eight responses which were received to the draft conclusions are considered only two of the members specifically objected to the non inclusion of trolley retrievers. Thus even though the majority is presumptive and the method by which it has been arrived at is defective, this Court will proceed on the basis that the impugned order is that of the Board and the order will thus have to be examined

on merits. I had also recorded my prima facie conclusions in the interim order dated 4th August 2003 regarding trolley retrieves work as under:

"Upon considering the facts enumerated above, it is clear that prima facie it does appear that the trolley retrieval work is essential for a successful functioning of an airport since flights arrive and depart throughout the day. Furthermore since flights are arriving/departing almost throughout the day, the work appears to be perennial. There is no doubt that such a work would ordinarily would be done through regular workmen and thus there is sufficient work to employ full-time workers in view of the nature and extent of the work. Even under the judgment of Steel Authority of India Limited's case (supra), the workmen certainly have a right of preference over other contract workers who may be sought to be engaged. "

No plea was advanced during the final hearing which may have led me to alter my prima facie view as recorded above.

24. While it is not in doubt that the Board is not required to give a detailed judgment like reasoning for supporting its order, nevertheless it is required to collate and state brief reasons for its conclusions which do not appear in its impugned order. While assenting opinions are not required to be incorporated, yet at least the reasons for dissent given by L.R. Singh and Shankar Saha were required to be discussed or noted and at least some brief reason should have been given for differing from or overruling such dissent.

25. The conclusions in para 19.6 and para 19.6.1 of the draft conclusion extracted earlier clearly indicate that serious objections were taken to the procedure adopted by the Chairman. Even if these procedural objections were to be disregarded, the specific and detailed objection of Shri Shankar Saha qua trolley retrievers deserved to be noticed and reads as under :-

"Trolley Retrieval

With regard to this work the Draft Conclusions state : "These are essentially facilities provided to the passengers and cannot be considered to be essential or even incidental to the operation of the AAI....."

Whether the work of Trolley Retrieval is essential (i.e. necessary) or incidental to the operation of the AAI can be decided only by looking at the statute Airports Authority of India Act 1994 copy of the relevant portion "Functions of the Authority" is annexed hereto at Annexure A. It is also necessary to look at other relevant documents of authorities such as ICAO which determine what are the functions of the AAI.

1. In the AAI Act, 1994 the portions which are relevant in this context are :

a) At Chapter - III titled "Functions of the Authority" it is stated :

12(1) subject to the rules if any made by the Central Government in this behalf it shall be the function of the Authority to manage the airports, the civil enclaves

and the aeronautical communication efficiently.

b) Sub Section (2) it shall be the duty of the Authority to provide air traffic service and air transport service at any Airport and civil enclaves

c) Sub Section (3) without prejudice to the generality of the provisions contained in Sub-Section (1) and (2) the authority may :-

12(3)(m) provide such transport facility as are in the opinion of the authority necessary to the passengers traveling by air.

(d) Definitions of "Airport" and "Air Transport Services" are given at chapter-I Sub Section 2.

2(b) "Airport means a landing and taking off area for air-crafts usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in clause (2) Section 2 of the Aircraft Act 1934.

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

(e) According to the Oxford English dictionary the word Transport means : Convey from one place to another.

In the same dictionary the word "Convey" means carry, transport.

The document of the International Civil Aviation Organization (ICAO) titled " International Standards and Recommended Practices FACILITATION ANNEX-9 to the Convention of International Civil Aviation" at chapter 6. International Airports-Facilities and Services for Traffic, is a sub title: Airport Traffic Flow Arrangements. Under this, at point 6.19 and 6.32 respectively are the ICAO Recommendations in respect of outward passenger, crew, and baggage -i.e., on (departure) and in respect of inbound passengers, crew and baggage. (i.e. on Arrival). The two above mentioned points are reproduced below and the relevant pages are annexed at Annexure B.

6.19 Recommended Practice-Easy and frequent transportation should be available between airport terminal buildings as well a between designated remote parking facilities and airport terminal buildings.

6.321. The authorities responsible for international airports shall ensure that passengers can obtain assistance in the carriage of baggage to enable them to transfer baggage from baggage claim areas to points as close as possible to areas where surface transportation from the airport or between airport terminals is provided.

It is in fulfillment of these standards imposed by the ICAO that the Passenger Trolley has been introduced by the AAI to facilitate the transportation of the baggage of passengers on arrival and departure of flights.

The methods of dealing with passenger baggage within the airport premises at each point on arrival and departure has been dealt with in detail by the ICAO in the pages at the Annexure B hereto i.e. on arrival at the point of off loading the baggage from the aircraft, then shifting it to the conveyor belt system and further carriage of baggage from the baggage claim area to a point of surface transport at the Airport and vice versa on departure. In this context it is pertinent to note that the loaders at the point of the aircraft are regular workmen, the conveyor belt is operated and maintained by regular workmen, only on the next leg of passenger baggage carriage on trolleys, the concerned workers are on contract.

According to the submissions before us the work of carrying the passenger luggage was up to the year 1978 begin done by Indian Airlines loaders. IN the year 1978 the IAAI gave this job out on contract and contract loaders were employed. In the year 1982 the passenger trolley were introduced and in the place of loaders contract trolley retrievers were employed. The trolleys were all owned by the IAAI and the contractor a labour supplier, as the work is supervised and controlled by the Authority. Both the original regular loaders and the contract trolley retrievers were/are employed in three 8 hour shifts every day.

III. To show that Trolley Retrieval is a necessary passenger service most important to the AAI can also be seen from the contracts entered into by the AAI in respect of this work. Find annexed at Annexure C a contract in the year 1989. Points 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21 show that the workers are actually working directly under the supervision and control of the AAI, and the contract only is of a name lender.

IV. In the AAI document dated 24-25 August 1998 presented to the CACLB at Hyderabad dated 24, 25 August 1998, it is stated:

"Unless these (trolleys) are retrieved and deposited at appointed locations there would be chaos at the Airport".

The AAI is spending up to 6.94 crores of rupees on the maintenance of trolleys in the 5 international Airports during the contract period. This is indicated in the AAI letter dated 15.2.96 which was attached to the submission of the IAEU, annexure hereto at Annexure D.

All the above show that the work of retrieving passenger trolleys, maintaining and guarding the trolleys is an essential or necessary passenger service. The work is necessary because the passenger baggage as per the ICAO standards have to be transported by the AAI within the areas as indicated in the recommended standards and as per the AAI Act, 1994 the AAI has to provide such transport facility as are in the opinion of the authority necessary to the passengers traveling by air."

26. Thus Mr. Saha's note of dissent is detailed and supported by cogent reasons. He has also referred to relevant factors, such as, the Airport Authority of India

Act, 1994 (the Act), the International standards of International Civil Aviation Organization (ICAO) and its recommendations to support the abolition of contract system for trolley retrievers.

27. The order impugned does not even refer to the objections let alone deal with reasons given by Saha. Even the procedure evolved for arriving at the impugned finding is flawed. At least in some meeting of the Board specific objections of Saha should have been discussed. If not in a meeting, at least the views of Shri Shankar Saha should have been circulated to the other members. This has not been stated to have been done. It is possible that if other members had the benefit of the views of Saha they may have been persuaded to revise their views. In any event they were certainly entitled to be acquainted with such differing views. Thus even the procedure adopted for arriving at a final recommendation is arbitrary and violative of Article 14 and cannot be upheld.

28. Apart from taking into account the recommendations of the Board, the Hon'ble Supreme Court in SAIL judgment (supra) has clearly laid down that in addition the Government before passing an order u/s 10 has to give due regard to conditions specified u/s 10(2). The order of the Government dated 18th April, 2002 reads as follows:

"No. S-16014/250/2001-LW

GOVERNMENT OF INDIA

MINISTRY OF LABOUR

JAISELMER HOUSE, MANSINGH ROAD,

NEW DELHI 110 011

Dated : 18-4-2002

To,

Delhi Airport TDI Employees Union

5239, Ajmeri Gate,

Delhi 110 006.

Subject : Application from Delhi Airport TDI employees Union and others for issue of notification u/s 10 of THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 pursuant to orders of the High Court of Delhi dated 17.5.2001 in CWP No. 2425/95-regarding.

Sir,

I am directed to refer to the above subject and to say that the matter has already been considered in detail and pursuant to the recommendation of the Central Advisory Contract Labour Board in various jobs in the establishment of Air India, Airport Authority of India and Indian Airlines it has been decided by the

Central Government not to prohibit the employment of contract labour in the job of Trolley Retrieval AAI provided that the wages (consisting of basic + DA) paid to the lowest category of regular employees in the respective establishment are paid to the contract labour. A copy of this Ministry's letter No. U.23013/3/93-LW (Vol. II dated 16.11.99 is enclosed for ready reference.

Yours faithfully,

En: As above

(T.A. Srinivasan)

Under Secretary

Tel: 3389222"

29. There is no mention in the above order at all of the parameters indicated u/s 10(2) of the Act. This order clearly shows that it is based entirely on the recommendation of the CACLB and has not taken into account the other factors specified by Section 10(2) of the Act in accordance with the provision of law laid down by the Hon''ble Supreme Court in para 125 (2) of the said judgment. On this ground too the order dated 18th April, 2002 is not sustainable. Furthermore, the wage protection accorded in the said order was also subsequently withdrawn without any rational basis. Thus the impugned order of CACLB dated 20th July, 1999 cannot be sustained at all and has to be set aside in so far as it does not recommend abolition of contract labour for trolley retrievers.

30. Thus the recommendations of the CACLB dated 20th July, 1999 and the consequent Government order dated 18th April, 2002 based thereon are quashed and set aside only in so far as they decline to abolish contract labour for Trolley Retrievers. The CACLB is directed to reconsider the matter in accordance with law and by adopting a procedure which avoids the lacunae pointed out in this judgment. The CACLB will consider and take into account all relevant factors and comments of its member before passing its order. Since the limited issue which requires consideration is the abolition of contract labour for trolley retrievers in the light of materials already on record, the CACLB is directed to dispose of this issue not later than 31st December, 2003. The Government is directed to ensure the meetings of the CACLB and thereafter directed to act in accordance with law on the said recommendations within four weeks and not later than 31st January, 2004. Even if there have occurred changes in the composition of the committee, the factors on record including objections by the then/present dissenting members shall be given due consideration and duly dealt with.

31. This brings me to the question of the grant of interim relief sought by the petitioners pending the consideration by CACLB. While there is considerable substance in the plea of the petitioners/workmen that due to the long stint of more than 7 years for most of them, protection should be afforded, I am bound by the law laid down by the Hon''ble Supreme Court in SAIL as extracted above in para 21. Thus the remedy of the petitioners if notification is issued in their

favor is to seek industrial adjudication. If the industrial adjudicator finds the contract to be a mere camouflage the contract labour will become the employees of principal employer. In case the contract is found to be genuine and the notification qua a particular process operation or other work of the establishment issued and the principal employer in such establishment intends to employ in such process regular workers, preference shall be given to the erstwhile workmen as per SAIL judgment. The petitioners in view of the SAIL judgment (supra), Therefore, cannot be put into a better position than they would have enjoyed in case the notification have been issued in their favor. The reference to Municipal Corporation of Greater Mumbai (supra) case is not appropriate as industrial adjudication has not been sought by the petitioners as clarified by Mr. Gonsalves. However, it is clarified that in case recommendation for abolition of trolley retrieval is made and the Government issues an appropriate notification barring contract labour in trolley retrieval then the petitioners would be entitled to preference/regular employment in accordance with SAIL judgment and breaks, if any, in their employment shall not come in their way. It is also clarified that in case a notification sought for by the petitioners is issued and industrial adjudication sought thereafter by the petitioners interim orders may be sought as per the position of law laid down by the Hon''ble Supreme Court in Municipal Corporation of Greater Bombay Vs. K.V. Shramik Sangh and Others, . The petitioners'' present employment is governed by the position of law laid down in paras 68 & 125 of the SAIL judgment (supra). Any interim arrangement during the pendency of this writ petition which continued the employment of the petitioners will continue for a period of 4 weeks from today and subject to the law laid down in paras 68 and 125 of the SAIL judgment (supra) and the provisions of the Industrial Disputes Act.

In view of the foregoing reasons the writ petition is thus partly allowed in the above terms and stands disposed of accordingly.