Airport's Authority Employees' Union Vs Union of India

Court: Madras High Court

Date of Decision: Nov. 7, 2014

Acts Referred: Airports Authority of India Act, 1994 â€" Section 11, 12A, 12A, 12A(2), 22A
Constitution of India, 1950 â€" Article 12, 14, 16, 19(1)(g), 226
Industrial Disputes Act, 1947 â€" Section 9A

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

M.M. Sundresh, J.
The members of the petitioner Union are the employees of the respondent Nos. 2 to 4. This writ petition has been filed

by the petitioner challenging the document by which a request for qualification for operation, management and transfer of Chennai Airport through

Public Private Partnership was issued by respondent No. 2.

2. Brief facts:-

To decide the issues, both of fact and law, a narration of background facts is necessary.

2.1. The Task Force on Financing Plan for Airports during the Twelfth Plan Period was constituted by the Planning Commission under the

Chairmanship of Sri B.K.Chaturvedi, Member, Planning Commission to prepare and recommend a Financing Plan for the Twelfth Plan period.

The following is the constitution of the Task Force:

""(i) Shri B.K.Chaturvedi, Member, Planning Commission Chairperson

(ii) Secretary, Ministry of Civil Aviation

(iii) Secretary, Department of Economic Affairs

(iv) Adviser to Deputy Chairman, Planning Commission

(v) Chairman, Airports Authority of India.""

2.2. The Task Force in its recommendations identified potential projects that could be implemented through Public Private Partnership (PPP). The

following observations of the Task Force are apposite:

""a) The next challenge for Airports Authority of India (AAI) would be to ensure their management and upkeep at a level commensurate with the

high quality of these terminals. Moreover, the potential for non-aeronautical revenues from car-parking, cargo facilities, hostels, passenger

amenities, shopping, etc., cannot be fully harnessed by AAI due to the inherent constraints of a public sector entity. The anticipated shortfall in non-

aeronautical revenues is bound to lead to higher passenger and aeronautical charges.

b) Problems related to monitoring and supervision of the large number of sub-optimal service contracts being awarded by AAI could also be

eliminated if a single PPP concession for operation and maintenance of the entire airport is granted to an experienced and competent entity.

c) After making large investments in these airports, AAI would need to generate considerable revenues from non-aeronautical services and to

make air travel affordable.

d) AAI would also need to generate significant revenues from these metro airports in order to invest in development of new airports.""

2.3. With reference to Airport at Chennai, the Task Force made the following recommendations:

""5.1.10 Recommendations:

""The Task Force recommends that the operation and maintenance of the entire airport, including air side and city side facilities at Chennai and

Kolkata airports may be awarded to the private sector through a PPP Concession. While structuring this arrangement, it should be ensured that the

interests of AAI employees are fully protected. To start with, Chennai airport could be awarded within the next four months followed by Kolkata

airport soon thereafter."" In pursuant to the recommendations of the Task Force on Financing Plan for Airports for Twelfth Plan period, an Inter-

Ministerial Group (IMG) was constituted under the Chairmanship of Secretary, Ministry of Civil Aviation on 5.6.2013 to evolve and recommend

an appropriate model for achieving the desired objective of operation and management of Chennai airport with private participation. The following

is the constitution of IMG:

""(i) Secretary, Ministry of Civil Aviation ... Chairman

(ii) Secretary, Department of Economic Affairs or his representative not below the rank of Joint Secretary ... Member

(iii) Secretary, Planning Commission or his representative not below the rank of Joint Secretary ... Member

(iv) Secretary, Department of Legal Affairs or his representative not below the rank of Joint Secretary ... Member

(v) Chairman, Airports Authority of India

... Member

(vi) Joint Secretary, Airport Division, MoCA

... Convenor""

A Bird"s Eye view of the Request for Qualification:-

2.4. The recommendations made were accepted by respondents 1 to 4. Accordingly, the Request for Qualification has been issued by respondent

No. 2. The bidding process consists of two stages, the first stage is the qualification stage and the later is the bid stage. At the end of the first stage,

a short-listed seven pre-qualified applications would be made eligible for participation to the second stage of the bidding process. At the second

stage, the request for proposals will be issued. The request for qualification document also contains an indicative project cost of Rs. 1200 Crores,

which is an estimated cost keeping mind the investments to be made by the successful bidder on

i) Construction of a new domestic terminal

ii) Construction of a parallel taxi track and re-carpeting of the main runway

iii) Modification of the old terminal binding

iv) Connectivity of Metro Rail

v) Construction of Common user Cargo Terminal

vi) Construction of multi level car park.""

The scope as well as cost may be modified at the bid stage and the investment is expected to be made within 3 to 5 years in accordance with the

details to be provided. It further envisages that the cost would be met by a financial grant from Airport Authority of India and the bids would be

decided on the basis of the lowest financial grant required by the bidder for implementing the project or who offer to pay the premium in the form

of revenue share to the authority for award of the construction.

The bidders will be called upon to submit the financial offers. During the bid stage, the bidders shall examine and carry out at their cost such studies

as may be required for submitting their respective bids. A draft conditional agreement would be provided as part of bidding document by the

authority. The premium shall constitute the sole criteria for evolution of the bids and the project shall be awarded to the bidder quoting highest

premium. Under Clause 1.2.10 of the Request for Qualification, the Concessionaire shall be required to protect the interests of employees

deployed by Airports Authority of India at Chennai airport in a manner to be specified in the Concession Agreement.

Subsequent Action of the Board:-

2.5. Thereafter, the Board respondent No. 2 considered the status report which was placed before the 156th Board meeting held on 19.9.2013

and passed a resolution accordingly. By a subsequent resolution dated 18.12.2013, the progress of the entire status of the project was noted.

Facts governing the petitioner:-

2.8. In the meanwhile, the petitioner Union raised dispute before the Conciliation Officer. A decision was made to go on with en masse casual

leave. Subsequently, a letter was given to that effect by the petitioner to the 2nd respondent by which informed the decision to defer the en masse

casual leave proposed to be taken on 21.6.2013. In view of the en masse casual leave having been cancelled by the petitioner, the Industrial

Dispute was treated as closed and accordingly it was disposed of by the proceedings of the Deputy Chief Labour Commissioner (Central),

Chennai (dated 1.7.2013). The petitioner Union gave a strike notice pursuant to which a letter was sent by the Regional Labour Commissioner

(Central), New Delhi requesting the petitioner not to resort to direct action during the pendency of the conciliation, which was fixed on 19.6.2013.

After giving a representation on 10.9.2013 a notice for agitation was issued by the petitioner on 16.09.2013 against the privatisation. The Deputy

Chief Labour Commissioner (C) HQ, New Delhi directed the parties for hearing on the conciliation proceedings scheduled to be held on

3.10.2013. Thereafter, by the proceedings dated 3.10.2013, it was adjourned to 6.11.2013. The petitioner sent another letter to the 2nd

respondent on 18.10.2013 raising a serious objection to the Request For Qualification (RFQ) issued.

Parliament Committee:-

2.9. A study was made by the Parliamentary Committee over the proposed public private participation and accordingly a detailed report was

presented to the Honourable Chairman, Rajya Sabha as well as the Honourable Speaker of Lok Sabha on 20.11.2013.

2.10. As the respondents 1 to 4 have refused to resile from their earlier decision, the petitioner has approached this Court making challenge to the

Request for Qualification issued on 3.9.2013 with consequential prayer to direct respondents 1 to 4 not to proceed with the privatisation of the

Chennai Airport.

3. Submissions of the Petitioner:-

Mr. V. Prakash, learned Senior Counsel appearing for the petitioner submitted that no formal order has been passed by the 1st respondent by way

of a policy decision. The Board of 2nd respondent has not been consulted. The impugned decision is contrary to Section 9A of the Industrial

Disputes Act with particular reference to Sl. No. 10 and 11 of Schedule IV, as it would likely to lead towards retrenchment. The decision would

create two sets of employees, one from the proposed successful bidder and the other the existing employees, who are the members of the

petitioner Union. The decision of the 2nd respondent is ultra vires the provisions of Airports Authority of India Act, 1994. The 2nd respondent

cannot exercise the power under Section 12-A of the Act. Section 12-A merely deals with the lease of the premises. Therefore, the functions of

the 2nd respondent cannot be delegated. Relevant materials have not been taken into consideration before evolving the policy decision. The

construction is already completed. The report of the Parliamentary Committee has not been taken into consideration. The decisions relied upon by

the respondents on the scope and ambit of Section 12-A of the Act cannot be applied to interpret the said provision, as they have been rendered

in different context. While interpreting the provisions, a literal and purposive construction is required to be made on the principle governing

interpretation of statutes. The decision has been made on malafide and extraneous considerations. In support of his submissions, learned Senior

Counsel made reliance upon the following decisions:

""(1) Workmen of The Food Corporation of India Vs. Food Corporation of India,

(2) Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,

(3) Grid Corporation of Orissa Ltd. and Others Vs. Eastern Metals and Ferro Alloys and Others,

(4) M/s. Lokmat Newspapers Pvt. Ltd. Vs. Shankarprasad,

(5) Tata Cellular Vs. Union of India, ;

(6) Consumer Online Foundation, etc. Vs. Union of India (UOI) and Others, etc., ;

(7) Delhi International Airport Pvt. Ltd. Vs. Union of India (UOI) and Others, ;

(8) The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, and

(9) Centre for Public Interest Litigation Vs. Union of India (UOI) and Another, "".

4. Submissions of the respondents:-

Mr. G. Rajagopalan, learned Additional Solicitor General appearing for respondents No. 1, 2 and 7 and Mr. Vijayanarayanan, learned Senior

Counsel appearing for respondent No. 3 made the following submissions:

The writ petition as filed is not maintainable on law and facts. The petitioner, being a Union consisting of employees of respondents 2 to 4 cannot

question the policy decision. All the high dignitaries have taken part in the decision making process including the Honourable Prime Minister, eight

cabinet Ministers, two Ministers of State and other important personalities. The constitution of the Task Force and the Inter Ministerial Group

would make it very clear about the conscious decision taken. The decision has been taken by taking into consideration of the relevant materials by

the 1st respondent in consultation with respondents No. 2 to 4. The Board of 2nd respondent has been consulted and it is also monitoring the

progress. The interest of the petitioner has been taken into consideration in the impugned document itself. Even otherwise, it is open to the

members of the petitioner Union to work out their remedy in the manner known to law if so aggrieved by any proposed action. The writ petition as

filed is premature. Since the power under Section 12-A of the Airports Authority of India Act, 1994 is yet to be exercised by respondents No. 2

to 4 as well as the 1st respondent. The entire process is at the threshold stage. The report of the Parliamentary committee would be considered at

the appropriate time. A subsequent report would not nullify the earlier decision taken. At the best, it can be a material to be considered at the

appropriate time. It is incorrect to state that under Section 12-A, the 2nd respondent does not have a power to lease out a part of the premises for

the purpose of carrying out any of the functions mentioned in Section 12. The restriction is only with reference to the proviso to Section 12-A and

subject to the approval by the 1st respondent. Under Section 40 of the Act, the 1st respondent can issue directions, which the 2nd respondent is

duty bound to comply and follow. As there is no difference of opinion between respondent Nos. 1 and 2, the petitioner cannot challenge a policy

decision taken. The power of judicial review over a policy decision is very limited. There is no illegality involved. The cost arrived is tentative and

subject to further change. It also depends upon the project to be submitted by the respective bidders. Therefore, no interference is required. In

support of their contentions, the learned counsels relied on the following judgments:

""(1) BALCO Employees Union (Regd.) Vs. Union of India and Others, ;

(2) Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others,

(3) Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others,

(4) M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others,

(5) Lieutenant (Mrs.) India Kumari Kartiayoni Vs. The Maha Nideshak, Raksha Mantralaya, Shastra Sena Chikitsa Seva, New Delhi-I and

others,

(6) Delhi Science Forum and others Vs. Union of India and another,

(7) P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others,

(8) Krishnan Kakkanth Vs. Government of Kerala and ohters,

(9) Principal, Madhav Institute of Technology and Science Vs. Rajendra Singh Yadav and Others,

(10) Union of India Vs. Kannadapara Sanghatanegala Okkuta & Kannadigara, ((2002) 10 SCC 226);

(11) Union of India (UOI) and Another Vs. International Trading Co. and Another,

(12) Reliance Airport Developers Pvt. Ltd. Vs. Airports Authority of India and Others,

(13) Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,

(14) Delhi Development Authority, N.D. and Another Vs. Joint Action Committee, Allottee of SFS Flats and Others,

(15) State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh,

(16) Bajaj Hindustan Ltd. Vs. Sir Shadi Lal Enterprises Ltd. and Another, and

(17) State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, .""

5. Discussion:-

5. 1. Maintainability of the Writ Petition:-

5.1.1. Service Conditions:-

a) A perusal of the documents filed and the averments in the affidavit would show that the primary concern of the petitioner is that by the proposed

policy its members would be adversely affected. A perusal of the impugned document would show that Clause 1.2.10 specifically mandates

Concessionaire who shall be required to protect the interests of the employees deployed by Airports Authority of India at Chennai Airport in a

manner to be specified in the Concession Agreement. Therefore, sufficient protection has been given under the impugned document. There is no

contra material to infer that such protection would not find a place in the Concession Agreement. A proposed injury, as foreseen by the petitioner,

is in the realm of speculation and therefore does not warrant any adjudication at this stage. There is always a presumption in favour of a proposed

action by an administrative authority. If the members of the petitioner or the petitioner itself feel aggrieved, it is well open to them to take

appropriate action in the manner known to law at the relevant stage. Furthermore, the said ground cannot be a factor to test the policy decision.

b) The issue raised is also no longer res integra. Considering the same, this Court in Southern Structurals Staff Union Vs. Management of Southern

Structurals Ltd. and another, held as follows:

""14. The argument that the employees of this Government company are Government servants is plainly untenable. They do not hold any civil

posts. Their employer is not the Government. The Government does not appoint them; has no disciplinary jurisdiction over them; and has no

power to dismiss or remove them from service. The Government is not liable to pay their salaries or to provide them with work. The employees of

the company are employed by a juristic person - the company registered under the provisions of the Companies Act. The claims of the employees

can only be against the employer company and not its shareholders, even if the shareholder is the Government and the bulk of the shares are held

by the Government. That employees of the Government companies do not hold civil posts and are not entitled to invoke Article 311 of the

Constitution is well-settled by the decision of the Supreme Court in the case of Aggarwal (S.L.) (Dr.) v. Hindustan Steel Ltd., (1970-II-LLJ-499)

. The words ""other authorities"" in Article 12 of the Constitution, however broadly interpreted, does not erase the juristic personality of the

Government company.

15. The submission that in order to enable the employees to invoke Article 14 or Article 16 and to approach the High Court or the Supreme Court

directly by invoking Article 226 or Article 32, the Government is bound to retain its ownership of the bulk of the shares in this company forever is

devoid of any force.

16. The protection of Article 14 is available to all and is not confined to employees of the State. The limitations placed by Article 16 on the State

with regard to employment under the State is not intended to compel the State to provide employment under it to all who seek such employment or

retain all persons presently in its service in order to enable such persons to claim the benefit of Article 16.

17. Employment under the State is not a precondition for approaching the High Court or the Supreme Court. All industrial workers have a right to

approach the Labour Court or Industrial Tribunals for adjudication of their rights subject to the limitations contained in the Industrial Disputes Act.

Like all citizens industrial workers also have the right to approach civil courts for redressal of their wrongs. The decisions rendered by the civil,

labour and industrial courts or tribunals are open to challenge before the High Court and the Supreme Court in appropriate proceedings. Actions

of the Government or other authorities performing any public duty are amenable to correction in proceedings under Article 226. By reason of the

disinvestment, employees do not lose their right to seek redressal through courts for any wrongs done to them.

18. The employees have no vested right in the employer company continuing to be a Government company or ""other authority"" for the purpose of

Article 12 of the Constitution of India. Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with

the employees having commenced work under a private employer and while on the verge of losing employment, being rescued by the State taking

over the company, the employees cannot claim any right to decide as to who should own the shares of the company. The State which invested of

its own volition, can equally well disinvest. So long as the State holds the controlling interest or the whole of the shareholding, employees may claim

the status of employees of a Government company or ""other authority"" under Article 12 of the Constitution. The status so conferred on the

employees does not prevent the Government from disinvesting; nor does it make the consent of the employees a necessary precondition for

disinvestment.

19. Public interest is the paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve

the productive unit and the jobs of those employed therein, the Government can, in the public interest, with a view to reducing the continuing drain

on its limited resources, or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilising the

funds needed for running the Government, disinvest from the public sector companies. Article 12 of the Constitution does not place any embargo

on an instrumentality of the State or ""other authority"" from changing its character.

. .....

21. As observed by the Supreme Court of India in the case of Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others Vs. Union of India

(UOI) and Others, :

The right to pursue a calling or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of

employment. If the workers are retrenched, consequent upon and on account of the sale, it will be open to them to pursue their rights and remedies

under the industrial laws. But the point to be noted is that the closure of an establishment in which a workman is for the time being employed does

not by itself infringe his fundamental right to carry on an occupation which is guaranteed by Article 19(1)(g) of the Constitution. Supposing a law

was passed preventing a certain category of workers from accepting employment in a fertilizer factory, it would be possible to contend then that

the workers have been deprived of their right to carry on an occupation. Even assuming that some of the workers may eventually have to be

retrenched in the instant case, it will not be possible to say that their right to carry on an occupation has been violated. It would be open to them,

though undoubtedly it will not be easy, to find other avenues of employment as industrial workers. Article 19(1)(g) confers a broad and general

right which is available to all persons to do work of any particular kind and of their choice. It does not confer the right to hold a particular job or to

occupy a particular post of one''s choice. Even under Article 311 of the Constitution, the right to continue in service falls with the abolition of the

post in which the person is working. The workers in the instant case can no more complain of the infringement of their fundamental right under

Article 19(1)(g) than can a Government servant complain of infringement on the termination of his employment on the abolition of his post. The

choice and freedom of workers to work as industrial workers is not affected by the sale. The sale may, at the highest, affect their locus, but it does

not affect their locus to work as industrial workers.

22. The petitioners'' right to work as industrial workers is not affected by the proposed disinvestment. Disinvestment does not mean automatic

closure of the company. One of the objects of disinvestment, as stated by the respondents, is to bring in a dynamic and capable entrepreneur who

can run the company on a sound commercial basis. Even if the company were to be closed, the petitioners would be governed by the provisions

relating to closure under the Industrial Disputes Act. In the event of some of the workmen being retrenched, such retrenchments would also be

governed by the provisions of the industrial law. As observed by the Supreme Court, though it may not be easy to find alternate employment,

nevertheless, the rights of the petitioner to work as industrial workers in any other industry is not in any way affected even if the company or the

industry is closed. Therefore, the argument based on article 19(1)(g) of the Constitution is misconceived.''''

c) Quoting the above said decision with approval, the Supreme Court of BALCO Employees Union (Regd.) Vs. Union of India and Others, , was

pleased to hold as follows:-

''''48. Merely because the workmen may have protection of Articles 14 and 16 of the Constitution, by regarding BALCO as a State, it does not

mean that the erstwhile sole shareholder viz., Government had to give the workers prior notice of hearing before deciding to disinvest. There is no

principle of natural justice which requires prior notice and hearing to persons who are generally affected as a class by an economic policy decision

of the Government. If the abolition of a post pursuant to a policy decision does not attract the provisions of Article 311 of the Constitution as held

in State of Haryana Vs. Shri Des Raj Sangar and Another, , on the same parity of reasoning, the policy of disinvestment cannot be faulted if as a

result thereof the employees lose their rights or protection under Articles 14 and 16 of the Constitution. In other words, the existence of rights of

protection under Articles 14 and 16 of the Constitution cannot possibly have the effect of vetoing the Government''s right to disinvest. Nor can the

employees claim a right of continuous consultation at different stages of the disinvestment process. If the disinvestment process is gone through

without contravening any law, then the normal consequences as a result of disinvestment must follow.

49. The Government could have run the industry departmentally or in any other form. When it chooses to run an industry by forming a company

and it becomes its shareholder then under the provisions of the Companies Act as a shareholder, it would have a right to transfer its shares. When

persons seek and get employment with such a company registered under the Companies Act, it must be presumed that they accept the right of the

directors and the shareholders to conduct the affairs of the company in accordance with law and at the same time they can exercise the right to sell

their shares.

50. A similar question came up for consideration before Madras High Court. In Southern Structurals Limited, the State of Tamil Nadu had

acquired over 99% of shares and the company had become a government company. It had incurred losses over the years and the government then

decided to disinvest from the company. This decision was challenged by the Company"s employees by filing a Writ Petition in the Madras High

Court. It was contended on their behalf that in the event of disinvestment being effected, the employees of the State Government would lose

valuable rights including the protection of Articles 14 and 16 of the Constitution and a right to approach the Court under Articles 32 and 226.

Repelling this contention in Southern Structurals Staff Union Vs. Management of Southern Structurals Ltd. and another, , the High Court held as

follows :-

The submission that in order to enable the employees to invoke Article 14 or Article 16 and to approach the High Court or the Supreme Court

directly by invoking Article 226 or Article 32, the Government is bound to retain its ownership of the bulk of the shares in this company forever is

devoid of any force. The protection of Article 14 is available to all and is not confined to employees of the State. The limitations placed by Article

16 on the State with regard to employment under the State is not intended to compel the State to provide employment under it to all who seek

such employment or retain all persons presently in its service in order to enable such persons to claim the benefit of Article 16. Employment under

the State is not a precondition for approaching the High Court or the Supreme Court. All industrial workers have a right to approach the Labour

Court or Industrial Tribunals for adjudication of their rights subject to the limitations contained in the Industrial Disputes Act. Like all citizens

industrial workers also have the right to approach civil courts for redressal of their wrongs. The decisions rendered by the civil, labour and

industrial courts or tribunals are open to challenge before the High Court and the Supreme Court in appropriate proceedings. Actions of the

Government or other authorities performing any public duty are amenable to correction in proceedings under article 226. By reason of the

disinvestment, employees do not lose their right to seek redressal through courts for any wrongs done to them. The employees have no vested right

in the employer company continuing to be a government company or ""other authority"" for the purpose of article 12 of the Constitution of India.

Apart from the fact that the very status claimed by the employees in this case is a fortuitous occurrence with the employees having commenced

work under a private employer and while on the verge of losing employment, being rescued by the State taking over the company, the employees

cannot claim any right to decide as to who should own the shares of the company. The State which invested of its own volition, can equally well

disinvest. So long as the State holds the controlling interest or the whole of the shareholding, employees may claim the status of employees of a

government company or ""other authority"" under article 12 of the Constitution. The status so conferred on the employees does not prevent the

Government from disinvesting; nor does it make the consent of the employees a necessary precondition for disinvestment. Public interest is the

paramount consideration, and if in the public interest the Government thought it fit to take over a sick company to preserve the productive unit and

the jobs of those employed therein, the government can, in the public interest, with a view to reducing the continuing drain on its limited resources,

or with a view to raising funds for its priority welfare or developmental projects, or even as a measure of mobilising the funds needed for running

the government, disinvest from the public sector companies. Article 12 of the Constitution does not place any embargo on an instrumentality of the

State or ""other authority"" from changing its character"". Therefore, this Court is of the considered view that a policy decision cannot be challenged

by the petitioner on the ground that his members would be affected.

5.1.2. Challenge to the policy decision:-

a) A policy decision by a competent authority would not come within the purview of a judicial review. The Courts are required to adopt a dignified

reluctance in such matters. It should resist itself from embarking upon a venture over decision reached on a consideration of relevant materials by

experts. A policy decision can only be challenged on the ground of illegality, as being contrary to law or any constitutional provision. The document

itself gives a detailed mechanism. The policy has been clearly enunciated in the document. The actual terms would find a place only in the

Concessionaire Agreement.

b) Though the learned Senior Counsel appearing for the petitioner submitted that substantial construction is already over and therefore the further

amount mentioned in the document is totally unnecessary, learned counsel for respondent '' Airports Authority of India submitted that further

constructions are proposed. The document also provides for methodology with several options with reference to the revenue sharing and the

payment. The agreement also depends upon various factors. Therefore, such a policy decision cannot be challenged in the eye of law. In this

connection, it is appropriate to refer to the following passages of the Supreme Court in BALCO Employees Union (Regd.) Vs. Union of India and

Others, , wherein it was held as under:

""46. It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry

as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy

at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more

logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with

economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on

economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts

would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to ""trial and error"" as long as

both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO

is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is

conducting its business, inasmuch as its policy decision may have an impact on the workers" rights, nevertheless it is an incidence of service for an

employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having

the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example,

apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot

make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government

employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the

Constitution, can claim a superior or a better right than a government servant and impugn it"s change of status. In taking of a policy decision in

economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects

into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of

hearing or consultation prior to the taking of the decision.

c) The Supreme Court in the case of Villianur Iyarkkai Padukappu Maiyam Vs. Union of India (UOI) and Others, has held as under:-

""167. In the matter of policy decision and economic tests the scope of judicial review is very limited. Unless the decision is shown to be contrary

to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the State. The court cannot

examine the relative merits of different economic policies and cannot strike down the same merely on ground that another policy would have been

fairer and better.

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the

shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is

committed in the execution of the policy or the same is contrary to law or malafide, a decision bringing about change cannot per se be interfered

with by the court.

169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy

is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely

because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of

economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision,

right to ""trial and error"" as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the

appropriate forum is Parliament and not the courts.

170. Normally, there is always a presumption that the Governmental action is reasonable and in public interest and it is for the party challenging its

validity to show that it is wanting in reasonableness or is not informed with public interest. This burden is a heavy one and it has to be discharged to

the satisfaction of the court by proper and adequate material. The court cannot lightly assume that the action taken by the Government is

unreasonable or against public interest because there are large number of considerations, which necessarily weigh with the Government in taking an

action.""

d) In the case on hand, this Court do not find any illegality involved either on facts or on law. It is a specific stand of the 1st respondent that it has

evolved a policy decision to have public private partnership. This has been done in consonance with the 2nd respondent. The progress has also

been taken note of in the subsequent resolutions of the Board. Though the Parliamentary Committee has submitted its report to both the Houses,

the said report, being a piece of material, it cannot be the sole basis to hold that the policy decision evolved earlier is liable to be interfered.

Perhaps, it is a material, which the 1st respondent might take into consideration at the appropriate time while exercising the power under Section

12-A. Therefore, the reliance made upon the said document, which do not have any statutory prescription, cannot be accepted. The very

constitution of Task Force and Inter Ministerial Group would nullify the agreements of the petitioner. Hence, the impugned decision, being one of

policy, the same cannot be challenged and this Court also finds no illegality in it.

5.1.3. Stage of the case:-

Submissions have been made by the learned counsels for the respondents stating that the writ petition is liable to be dismissed as it is premature.

The learned counsel submitted that the power under Section 12-A is yet to be exercised by the respondents 1 and 2. In other words, the bidding

process is yet to begin. After the entire process is over, by following the procedure as contemplated in the impugned document, respondents No. 1

to 4 will have to exercise the power under Section 12-A of the Act. Such a situation has not come. Though the said submission of the learned

counsel for respondents appears to be correct, it can only be applied to the exercise of power under Section 12-A by respondents No. 1 and 2

alone. Inasmuch as the petitioner is questioning the policy decision of respondents No. 1 to 4 in adopting the public private partnership, this Court

is of the view that the writ petition cannot be dismissed as premature. Accordingly, this Court holds that the writ petition as filed is not premature

insofar as the challenge made to the policy decision is concerned.

5.2. Provisions contained in the impugned document:

5.2.1. As discussed above, the impugned document is an exhaustive one. It delineates a comprehensive procedure. It starts with a ""disclaimer"".

It is not an agreement and is neither an offer nor invitation by the 2nd respondent to the prospective applicants. It is only a document, which

provides for information to the interested parties in the formulation of their application for qualification. Clause 1.1.1 deals with the indicative

clause. It has been estimated keeping in view of the investment required by the Concessionaire. The relevant clauses of the document read as

under:

""1.1.1 The Airports Authority of India (the ""Authority"") is engaged in the development and operation of airports to provide a high level of

services to support the unprecedented growth in air traffic. The authority has constructed a new terminal building and other aeronautical

infrastructure at Chennai at a cost of about Rs. 2,000 crore (Rupees two thousand crore). The Authority has now decided to undertake operation,

management and development of the Chennai airport (the ""Project"") through Public-Private Partnership (the ""PPP"") on Operate, Manage and

Transfer (the ""OMT"") basis, and has decided to carry out the bidding process for selection of a private entity as the bidder to whom the Project

may be awarded on the terms to be specified in an Operation, Management and Transfer Agreement (the ""OMTA""). The successful bidder shall

be responsible for operating, managing and developing the Chennai airport (the ""Airport"") which shall include the air side and city side. Details

regarding Chennai Airport are available at the Authority''s website www.aai.aero. Brief particulars of the Project are as follows:

Name of the Airport Scope of Project Indicative Project Cost (in Rs. Cr.) Chennai Airport Operation, Management and 1,200 Development of

Chennai Airport The indicative cost of Rs. 1,200 (Rupees one thousand two hundred) crore has been estimated keeping in view the investment

required to be made by the Concessionaire on (i) construction of a new domestic terminal, (ii) construction of a parallel taxi track and re-carpeting

of the main runway 07-25, (iii) modification of old International Terminal Building, (iv) connectivity of metro-rail, (v) construction of common user

cargo terminal, and (vi) construction of multi-level car park. However, this scope and cost may be modified at the Bid Stage. The aforesaid

investment is expected to be made within a period of three to four years in accordance with the details to be provided at he Bid Stage. The

Authority intends to pre-qualify and short-list suitable Applicants (the ""Bidders"") who will be eligible for participation in the Bid Stage, for

awarding the Project through an open competitive bidding process in accordance with the procedure set out herein.

1.1.2 The selected Bidder, who is either a company incorporated under the Companies Act, 1956 or undertakes to incorporate as such prior to

execution of the concession agreement (the ""Concessionaire"") shall be responsible for operation, management and development of the Project

under and in accordance with the provisions of a long â€‹ term concession agreement (the ''Concession Agreement"") to be entered into between the

Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.

1.1.3 The Authority has recently completed construction of a new terminal building and other aeronautical works at Chennai. The selected bidder

would be responsible for, operation, management and development of the entire Airport comprising airside and city side areas, including

upgradation of the facilities in accordance with the Concession Agreement. It is estimated that further development works to be undertaken by the

Concessionaire are likely to cost about Rs. 1,200 crore (Rupees one thousand two hundred crore) which the Concessionaire is expected to invest

before the 3rd (third) anniversary of COD (the ""Scheduled Completion Date"").

1.1.4 Indicative capital cost of the Project (the ""Estimated Project Cost"") will be revised and specified in the Bidding Documents of the Project.

The assessment of actual costs, however, will have to be made by the Bidders.""

5.2.2. Under Clause 1.1.3, it is estimated that the further developmental works to be undertaken by the Concessionaire are likely to cost about Rs.

1200 Crores. As discussed earlier, Clause 1.2 gives about a Brief description of the Bidding Process. There is nothing arbitrary in the said

provisions. This Court also does not find any malafides as seen from the said provisions. On the contrary, the provisions clearly indicate that the

project shall be awarded to the bidder quoting the highest premium. Therefore there is no illegality, arbitrariness or malafides in the impugned

document warranting the exercise of the power of judicial review.

5.3. The Airports Authority of India Act, 1994:-

5.3.1. The functions of the Authority viz., respondent No. 2, are mentioned under Section 12 under Chapter III of the enactment. In discharge of

these functions, the Authority shall act, so far as may be, on business principles as authorised by Section 11. Section 12(1) and (2) speaks about

function and duty of the authority. These are mandatory functions and duties as the enactment uses the word ""shall"". Under Section 12(3), the

authority may undertake the functions mentioned therein without prejudice to the generality of the provisions contained in sub-sections (1) and (2).

Under Section 12-A, the authority viz., respondent No. 2 in the public interest or in the interest of better management of airports, is authorised to

make a lease of the premises of the Airport. Such a power can be exercised for the purpose of carrying out some of its functions under Section 12.

Therefore, what is required under Section 12-A is that the decision will have to conform to the public interest or the interest of better management

of Airports. The proviso to section 12-A mandates that a lease by an authority shall not affect the functions under Section 12 with respect to air

traffic service or watch and ward at airports and civil enclaves. At present, we are not concerned with the proviso to section 12-A. As per section

12-A(2), no lease under sub- section (1) shall be made without the previous approval of the 1st respondent. This stage has not come. However,

the learned Senior Counsel appearing for the petitioner submitted that under Section 12-A there is no power that is available to the 2nd respondent

to lease out any function. In other words, what the learned Senior Counsel contends is that a lease can be with reference to the area inclusive of

building and structure but not to the functions. This Court is afraid that such a contention is anathema of the principle governing the interpretation of

a statute.

5.3.2. Though the submission of the learned Senior Counsel for the petitioner that a literal, harmonious and purposive construction and

interpretation is to be given, by applying the said principle, the Court cannot give a different meaning to a provision. While interpreting the

provision, the object and rationale behind it will have to be taken into consideration. Such a provision will have to be read as a whole. Section 12-

A deals with the lease by an authority of the premises of an Airport for the purpose of carrying out some other functions under Section 12.

Therefore, the object of Section 12-A is to give lease for the sole purpose of carrying out some of the functions under Section 12. In other words,

functions under Section 12 can be done by a third party and for that purpose, the premises of an Airport can be leased out. Such an exercise of

power is subject to the proviso as well as sub-clause (2) of section 12-A. Section 12-A will have to be read harmoniously in consonance with

Section 12.

5.3.3. Considering the scope and ambit of Section 12-A, the Supreme Court in Delhi International Airport Pvt. Ltd. Vs. Union of India (UOI) and

Others, , has held as follows:

""34. It is clear from Section 12-A that AAI may in public interest or in the interest of a better management of the airport, make a lease of the

premises of the airport to carry out some of its functions under Section 12 as the Authority may deem fit. Detailed functions of the Authority have

been enumerated in Section 12. Out of those functions under Section 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, 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.

. ....

37. 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 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.''''

. .....

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

51. 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.''''

5.3.4. Though the learned Senior Counsel for the petitioner submitted that the issue involved in the above said decision is different, and therefore it

has no application, as we are primarily concerned with the scope and ambit of Section 12-A, the interpretation of the said provision would govern

the case. However, this Court is of the view that the decision of the Supreme Court relied upon by both the counsels in Consumer Online

Foundation, etc. Vs. Union of India (UOI) and Others, etc., has got no application as it deals with the power of the lessee under Section 22-A of

the Act to levy and collect development fees.

5.3.5. A perusal of the counter affidavits filed by the 1st respondent as well as the 2nd respondent would show that the impugned decision has

been made by both the authorities after considering the relevant materials. Furthermore, under Section 40, the 1st respondent has got ample power

to issue directions. The 2nd respondent is bound to carry out the directions of the 1st respondent in discharge of functions and duties under the

Act. The documents available before this Court would show that there is no difference of opinion between the respondents 1 and 2. After all, as

rightly observed by the Supreme Court in Delhi International Airport Pvt. Ltd. Vs. Union of India (UOI) and Others, , the object and the rationale

behind Section 12-A is to pave way for the private participation.

5.4. Malafide: Though the learned Senior Counsel appearing for the petitioner submitted that the impugned decision is born out of malafides. It is

settled law that the person, who alleges malafides, will have to establish the same. This Court does not find any malice either in fact or law on the

part of respondents 1 to 4. Therefore, the said submission made is also rejected.

6. Conclusion:-

In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions also stand dismissed.