* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
#53

\+ **W.P.(C)8918/2009**

% Date of decision: 26th August, 2009

RESOURCES OF AVIATION REDRESSAL ASSN. ..... Petitioner
Through: Mr. Vinod Bobde, Sr. Adv. with
Mr. Arunabh Chouwdhury, Mr. A.L. Das,
Mr. Kashi Vishvesar, Advs.

versus

UOI & ORS. ..... Respondents
Through: Mr. Gopal Subramanyam, Solicitor
General, Mr. A.S. Chandhiok, Addl. Solicitor
General with Ms. Sweta Kakkad, Advs.
for Respondent No.1/UOI
Ms. Anjana Gosain, Ms. S. Fatima, Adv. for
Respondent No.2/AAI
Dr. A.M. Singhvi, Sr. Adv. with Mr. Atul Sharma,
Mr. Milanka Choudhary, Mr. Abhishek Sharma,
Advs. for R-3/DIAL

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

AJITPRAKASHSHAH,CHIEFJUSTICE (oral)

This petition is filed in public interest assailing the levy of airport development fee from outgoing passengers travelling from Indira Gandhi International Airport, New Delhi at the rate of Rs.200/- from domestic passengers and Rs.1300/- from international passengers for a period of three years. The development fee is being levied by the

respondent No.3 - Delhi International Airport Pvt. Ltd. ('DIAL' for short) with the prior approval of the Central Government under Section 22-A of The Airports Authority of India Act, 1994 ("the Act" for short). The petitioner is a society espousing the cause of air passengers embarking from Indira Gandhi International Airport, New Delhi. The Union of India is impleaded as respondent No.1. The respondent No.2 is the Airports Authority of India, a statutory authority constituted under section 3 of the Act. The respondent No.3 - DIAL is the lessee under section 12-A of the Act to whom the functions of operation, management, development, design, construction, upgradation, modernization, finance and management of Indira Gandhi International Airport, New Delhi have been granted exclusively by the respondent Nos. 1 and 2. The principal contention of the petitioner is that the impost is sans any authority of law and the respondent No.3 has no power or jurisdiction to levy or collect the airport development fee from outgoing passengers at both domestic and international airport. The levy and collection of airport development fee is thus ex-facie illegal and unconstitutional, being ultra vires Article 265 of the Constitution of India.

2. The challenge to the levy of airport development fee is based on the following three grounds:

i) That the law authorizes only the Airports Authority of India to levy development fee at a rate prescribed by the Central Government and the said power cannot be sub-delegated

to any person including respondent No.3;

ii) That the development fee is being levied although no additional service is being provided to the travelling public. The development fee is being appropriated by the respondent No.3 for the purposes which have no nexus with any service, much less any additional service being provided to the travelling public; and

iii) That section 22-A empowers the Airports Authority of India to levy and collect a development fee "at the rate as may be prescribed". The term "prescribed" is defined by section 2(n) of the Act as to mean "prescribed by rules made under this Act". The rule making power is contained in section 41. Rules have not been notified by the Central Government and in the absence of such rules, the levy and collection of development fee is illegal.

3. Counter affidavits have been filed on behalf of the Union of India and Airports Authority of India as well as respondent No.3-DIAL contending, *inter alia*, that the grounds raised by the petitioner for impugning the levy of development fee are misconceived and unsustainable in law. The levy of airport development fee by the respondent No.3 with prior permission of the Central Government is expressly permitted by the provisions of section 12-A read with section 22-A of the Act. The permission was granted upon a careful consideration of the matter and upon being satisfied that the

respondent No.3, for performance of the requisite functions under the Operation, Management and Development Agreement (OMDA), must have viable resources. Upon the materials furnished by the respondent No.3 and after consultation with the Airports Authority of India, the Union of India was satisfied that adequate factual basis existed to grant permission to the respondentNo.3 to levy a development fee in order to discharge the primary functions of upgradation, expansion, development as well as management which integral obligations were covenanted, both in the lease deed between the Airports Authority of India and respondent No.3, as well as in the OMDA. Furthermore, the approval has been granted subject to compliance by the respondent No.3 with the terms and conditions stated therein. The approval is time bound and has been granted for a limited period of 36 months with effect from 01.03.2009. The letter of permission also places an upper limit on the amount that may be collected by respondent No.3 as development fee. The petitioner has not challenged the approval granted by the Central Government vide its letter dated 9.2.2009. The element of quid pro quo is not essential for the levy under section 22-A as on a plain reading of section 22-A itself, it becomes clear that the levy is for the specific purposes mentioned in clauses (a), (b) and (c) thereof and the provision of services is not a prerequisite for exercise of power under section 22-A. The absence of rules under section 41 does not prevent the exercise of power under section 22A and the contention that the power under section 22-A cannot be exercised until rules are notified in terms of

section 41 is misplaced.

4. On behalf of the petitioner Mr. Vinod Bobde, learned senior counsel strenuously contended that a bare reading of the provisions of the Act makes it clear that no person or body other than the Airports Authority of India has the authority of law within the meaning of Article 265 of the Constitution to levy and collect the development fee. There is no provision in the Act empowering the Airports Authority of India to further delegate the power to levy and collect the fee to any other person or authority. There is no provision specifically authorizing exercise of the 'taxing power' by a private person or company in-charge of an airport as lessee under section 12-A of the Act. There are clear limitations to the powers that the lessee may exercise under section 12-A(4) of the Act and those are that the power must be necessary, not merely useful or convenient for performing the functions assigned and the power must not be a taxing or fiscal power. Relying upon the decisions in ***The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra T. Swamiar***, AIR 1954 SC 282 and ***Hingir-Rampur Coal Co. v. State of Orissa***, AIR 1961 SC 459, learned senior counsel contended that there is no generic difference between a tax and a fee as both are compulsory exactions of money by public authorities and in the absence of an express provision, a delegated authority cannot impose a tax or fee. In this connection, he relied upon a decision of the Supreme Court in ***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla,*** (1992) 3 SCC 285. Mr. Bobde further

contended that the fact that the monies are to be exacted from passengers leads to the inescapable interpretation that framing of rules by Central Government under section 41(2)(ee) as contemplated by section 22-A itself is a *sine qua non* or condition precedent for levying a fee. Therefore, in the absence of the rules the development fee cannot be recovered from the passengers. Mr. Bobde lastly contended that the development fee under section 22-A has no nexus with any service, much less any additional service being provided to the passengers. The essential characteristic of a fee is, therefore, absent and on this ground also, the levy and collection of the impugned development fee is liable to be struck down.

5. In reply, learned Solicitor General appearing for respondent Nos. 1 and 2 and Dr. A.M. Singhvi, learned senior counsel appearing for respondent No.3 submitted that a combined reading of Statement of Objects and Reasons of the Amendment Act 43 of 2003 as well as the Amendment Act itself indicates that the twin objective of the Legislature was to empower the Airports Authority of India to levy development fee at airports for funding or financing the cost of upgradation, expansion or development of airports for which the fee is collected and also to empower the lessee of an airport who has been entrusted with the function of funding or financing the cost of upgradation, expansion or development of the airport to have all the powers of the Airports Authority of India under section 22-A. The power to collect a development fee under section 22-A is necessary for the

lessee for performing its function in terms of the lease granted to the lessee under section 12-A(1). Thus, the respondent No.3, as the lessee of the Indira Gandhi International Airport by operation of section 12-A(4) read with section 22, has theauthority by law to collect development fee from the embarking passengers. There is, thus, no question of any delegation of power by the Airports Authority of India as the authorization is by the statute itself. It was further contended that it has been laid down time and again by the Supreme Court that it is not obligatory for framing of rules if the substantive provision itself empowers the levy. It was contended that the airport development fee is levied and collected at the airport for the purpose of funding or financing the costs of upgradation, expansion or development of the airport. It is not a fee for services rendered thereof as in the nature of charges under section 22 of the Act. Though termed as a 'fee', it is really in the nature of a cess and there need not be any direct correlation between the levy of fee and the services rendered.

6. In order to appreciate the controversy raised in this petition, it is necessary to consider the object and scheme of The Airports Authority of India Act, 1994. As can be seen from the Preamble of the Act, it has been enacted with a view to provide for the constitution of the Airports Authority of India for the better administration and cohesive management of the airports and civil enclaves and for matters connected therewith or incidental thereto. Section 3 of the Act provides for the constitution and incorporation of the Airports Authority

of India. Section 12 lays down the functions of the Airports Authority of India. Section 12(1) provides that it shall be the function of the Airports Authority of India to efficiently manage the airports, the civil enclaves and the aeronautical communication stations. Section 12(2) provides that it shall be the duty of the Airports Authority of India to provide air traffic service and air transport service at any airport and civil enclaves. Section 12(3) provides that without prejudice to the generality of the provisions contained in sub-sections (1) and (2), the Airports Authority of India may perform various functions stated thereunder including that prescribed under clause (a), namely, plan, develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves. Section 22 of the Act confers power on the Airports Authority of India to charge fees, rent etc. with the previous approval of the Central Government for various services and amenities provided by the Airports Authority of India. Amongst others, clause (c) of section 22 provides for the charge of fees for the amenities given to the passengers and visitors at any airport, civil enclave, heliport or airstrip. It appears that sometime in 2003, there was felt a need to improve the standard of services and facilities at the airports and to bring them at par with the international standards. To facilitate the process for such improvement, it was felt necessary to bring in the infusion of private sector investments as also for restructuring of airports. It was thought that this would speed up airport infrastructure development, improve managerial efficiency, increase local responsiveness and improve

service levels as well as, in turn, generally stimulate the economy by boosting tourism and trade. To achieve this purpose, the Airports Authority of India (Amendment) Act, 2003 (Act 43 of 2003) was enacted. It brought about the amendment to section 2 by insertion of clause (nn), insertion of new clause (aa) in section 12(3) and new sections 12-A and 22-A in the Act. These amendments were brought in to enable the Airports Authority of India to establish airports or assist in the establishment of private airports and also to lease the airport premises to private operators with the prior approval of the Central Government. By virtue of these amendments, some of the functions of the Airports Authority of India can also be assigned to lessees subject to the exception that air traffic services and watch and ward functions will continue to be provided by the Airports Authority of India.

7. The Statement of Objects and Reasons to the Amendment Act throws light on the Parliamentary intention and it reads as follows:

> "**Statement of Objects and Reasons**:- At present, the Airports Authority of India is a statutory organization under the administrative control of the Government of India, Ministry of Civil Aviation. It manages 94 civil airports and 28 civil enclaves at defence airports in the country.
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> 2. There is need to improve the standard of services and facilities at the airports to bring them at par with international standards. To facilitate the process for such improvement, there is need, both for the infusion of private sector investments as also for restructuring of airports. This will speed up airport infrastructure development, improve managerial efficiency, increase local responsiveness and improve service levels. It will, in turn, generally stimulate the economy by boosting tourism and trade. It has been

decided to undertake the task of restructuring the airports under the Airports Authority of India as well as to encourage private participation for the greenfield airports in the country. Since the Airports Authority of India Act, 1994 is applicable to all airports whereat air transport services are operated or are intended to be operated, significant private sector investments in such project require an effective legal framework within which the investors would feel safe and secure about their operational and managerial independence. To achieve these purposes, the Bill proposes to amend the various provisions of the said Act. The salient features of the Bill are as under:-

(i) It amends section 1 as well as section 2 of the Act to exclude the private airports from the purview of the Act except for certain limited purposes and to provide for definition of a private airport. The proposed amendment would also provide adequate comfort levels to enhance investors' confidence and to ensure a level playing field to private sector greenfield airports by lifting control of the Airports Authority of India except in certain respects.

(ii) It inserts new clause (aa) in sub-section (3) of section 12 and a new section 12-A in the Act. This amendment will enable the Airports Authority of India to establish airport or assist in the establishment of private airports and also to lease the airport premises to private operators with the prior approval of the Central Government. By this amendment, some of the functions of the Airports Authority of India can be assigned to lessees subject to the exception that air traffic services and watch and ward functions will continue to be provided by the Airports Authority of India.

(iii) It inserts section 22-A in the Act empowering the Authority, after the previous approval of the Central Government to levy on the embarking passengers at an airport the development fees to be credited to the Authority which shall be regulated and utilized in the prescribed manner for funding and financing the costs of upgradation, expansion or development of airports and for the establishment or development of new airports in lieu of existing airports and for the investment in the equity in respect of shares to be subscribed by the authority in

companies engaged in establishing, owning, developing, operating or maintaining private airports or advancement of loans to such companies or other persons engaged in such activities. This amendment will make the projects, relating to construction of greenfield airports, economically viable by such fee collection.

(iv) It also inserts a new Chapter V-A relating to eviction of unauthorized occupants, etc., of airport premises. It provides for the appointment of eviction officers and a Tribunal to obviate the menace of large scale encroachment and unlawful occupation of airport premises and to decide the cases relating thereto.

8. By the amendment, clause (nn) was inserted in section 2 which defines 'private airport' to mean an airport owned, developed or managed by –

(i) any person or agency other than the Authority or any State Government, or

(ii) any person or agency jointly with the Authority or any State Government or both where the share of such person or agency, as the case may be, in the assets of the private airport is more than fifty per cent.

9. In section 12, clause (aa) was inserted which reads as follows: "(aa) establish airports, or assist in the establishment of private airports, by rendering such technical, financial or other assistance which the Central Government may consider necessary for such purpose."

10. Section 12-A makes provision for lease by the Airports Authority

of India and reads as follows:

> "**12-A. Lease by the Authority**. – (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit.
>
> Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.
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> (2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.
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> (3) Any money, payable by the lessee in terms of the lease made under sub-section (1), shall form part of the fund of the Authority and shall be credited thereto as if such money is the receipt of the Authority for all purposes of section 24.
>
> (4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such functions in terms of the lease."

11. Section 22A of the Act empowers the Airports Authority of India to levy development fee and reads as follows :

> "22A. **Power of Authority to levy development fees at airports.** - The Authority may, after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport, the development fees at the rate as may be prescribed and such fees shall be credited to the Authority and shall be regulated and utilized in the prescribed manner, for the purposes of-

> (a) funding or financing the costs of upgradation, expansion or development of the airport at which the fee is collected; or
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> (b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or
>
> (c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

12. The purpose of the 2003 amendment was thus to have a new framework for the administration and management of airports in the country, wherein the Airports Authority of India would either assist a private initiative in re-developing existing airports or encourage and facilitate private initiative in establishment and development of greenfield airports. The various provisions of the Act will have to be interpreted in the above context.

13. In furtherance of the amended Act, as a part of public-private partnership initiative, the Union of India was considering involving of private sector as a partner in development and/or modernization and restructuring of Indian airports and for setting up world class international airports. The respondent No.3 - DIAL was established pursuant to such initiative for the development and/or modernization and restructuring of the Indira Gandhi International Airport, New Delhi. The respondent No.3 is a joint venture company, of which Airports Authority of India is a 26% shareholder. Pursuant to the execution of

various transaction documents including OMDA dated 04.04.2006, the respondent No.3 has been granted exclusive right and authority for performing the functions of operating, maintaining, developing, designing, constructing, upgrading, modernizing, financing and managing of the Indira Gandhi International Airport and to perform services and activities constituting the aeronautical services and non-aeronautical services. A State Support Agreement has also been executed between the Union of India and the respondent No.3, whereby the respondent No.3 has been authorized to recover certain fees including passenger services fees. Clause 2.1.2 of the OMDA spells out the rights of the respondent No. 3:

> "2.1.2 Without prejudice to the aforesaid, AAI recognizes the exclusive right of the JVC during the Term, in accordance with the terms and conditions of this Agreement to:
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> (i) develop, finance, design, construct, modernize, operate, maintain, use and regulate the use by third parties of the Airport;
>
> (ii) enjoy complete and uninterrupted possession and control of the Airport Site and the Existing Assets for the purpose of providing Aeronautical Services and Non-Aeronautical Services;
>
> (iii) determine, demand, collect, retain and appropriate charges from the users of the Airport in accordance with Article 12 hereto; and
>
> (iv) Contract and/or sub-contract with third parties to undertake functions on behalf of the JVC, and sub-lease and/or license the Demised Premises in accordance with Article 8.5.7."

14. Clause 8.3 of the OMDA provides that the JVC shall prepare a master plan for the airport setting out the proposed development for the entire airport, planned over a 20 year time horizon and Clause 8.3.7 provides that the JVC shall develop the airport in accordance with the then applicable master plan. The proposal of the respondent No.3 to levy the development fee at Indira Gandhi International Airport on the embarking passengers to be utilized for the purpose of funding and financing the cost of upgradation, expansion or development of the airport has been approved by the Central Government vide approval letter dated 9.2.2009 and the respondent No.3 has been authorized to levy and collect the airport development fee impugned in the writ petition.

15. Having considered the rival contentions of the parties, the principal question that falls for our consideration is whether the Act contains an express grant of power to a lessee to impose a development fee under section 22-A of the Act. In terms of section 12, the Airports Authority of India has been entrusted with the function of inter alia managing the airports and civil enclaves. In terms of section 12(3)(aa), the Airports Authority of India has, inter alia, the function of developing and establishing airports. Section 22-A empowers the Airports Authority of India to levy development fee for the purposes mentioned under clauses (a), (b) and (c) to section 22-A. The levy imposed by section 22-A is undoubtedly a fee. However, the question of *quid pro quo* is irrelevant to the levy under section 22-A since the

section embodies a statutory fee, the manner of utilization of which is directed by the Act itself. The levy is for the specific purposes mentioned in clauses (a), (b) and (c) of section 22-A and the provision of services is not a prerequisite for exercise of power under the provision. Further, though described as fee it is more akin to a charge or a tariff for the facilities provided by the Airports Authority of India. In order to carry out the functions enjoined upon it by the Legislature, the Airports Authority of India would require to establish facilities and those facilities would be used by airlines and airline passengers. The consideration from persons who use the facilities would flow from the ownership of the authority of the facilities. Where facilities are established in discharge of a statute, the authority is entitled to charge for such facilities as per contractual arrangements with those who use the facilities. The legal position is succinctly explained by a Division Bench of Madras High Court in ***Union of India v. S. Narayana Iyer***, (1970) 1 MLJ 19. In that case, a learned single Judge struck down the enhanced telephone tariff by holding that the tariff is a 'fee' and not a

'tax' governed by the principle of levy of 'fee' and applying the principle in ***Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra T. Swamiar*** (supra) and ***Hingir-Rampur Coal Co. v. State of Orissa*** (supra). M.Anantanarayanan, CJ speaking for the Bench pointed out that a rate or tariff of rates, imposed by a State-owned public utility corporation is not a fee in the restricted sense, for the element of *quid pro quo* cannot exhaust its content. Such a corporation, according to the judicial pronouncements, is entitled to

charge a tariff which would include a reasonable return on the 'Rate base', or the Mid-term Capital Investment. Such a corporation is equally entitled to make provision for expansion of capital or self-financing as it has been termed in the treatises, it is entitled to appropriate sums towards dividends for subsidies by Government, from General Revenues, if made, before the return is determined. After an extensive examination of the American and English cases, the Bench deduced various propositions in paragraph 25 of the judgment and propositions (3) and (4) which are material for our purpose are reproduced:

> "Proposition--(3) The charge made by such Public Utilities, in respect of the service or the supply concerned, is essentially a rate or a tariff of rates. It is important to notice that, as the State of Monopoly Characterising such Public utilities excludes competitive, fixation of prices, whether these Utilities are owned by Government or are private, the tariff is almost always determined by a process of delegated Legislation. The very concept of a rate brings in several distinctive features. It is not merely a 'fee' whatever the nomenclature, may be for it is not exhausted by the quid pro quo element though that is essential. On the other hand, the Department is entitled to a reasonable return on the ratebase, applying all refinements of the economic theory to the determination of this rate. The organization may be entitled to a reasonable return on investment, to part-appropriation of the surplus for capital expansion, and to the employment of all modern accounting techniques with regard to depreciation, reserve, sinking fund, etc. The quid pro quo element is also essential, if there is a monopoly, and the consumer is being deprived of the benefits of competition.
>
> Proposition--(4) For this reason, while the rate can be reasonable, it can never be extortionate or oppressive. The Department is not entitled to speculative profits, or to rates of return

> disproportionately high, as compared with returns on investments in other fields of economic activities then prevalent. The monopoly cannot be misused to fleece the consumer, served by the Utility; nor can the statistics be juggled with, in order to mask an undue profits-return in thin guises of reduction of return-percentage by artificial heads of appropriation or expenses."

16. The judgment of Madras High Court was confirmed by the Supreme Court in ***S. Narayan Iyer v. The Union of India and Another***, (1976) 3 SCC 428. The Court concluded as follows:

> "6. There are three principal reasons why the writ petition is incompetent and not maintainable and the appeal should fail. First, when any subscriber to a telephone enters into a contract with the State, the subscriber has the option to enter into a contract or not. If he does so, he has to pay the rates which are charged by the State for installation. A subscriber cannot say that the rates are not fair. No one is compelling one to subscribe. Second, telephone tariff is subordinate legislation and a legislative process. Under Indian Telegraph Act, Section 7 empowers the Central Government to make rules inter alia for rates. These rules are laid before each House of Parliament. The rules take effect when they are passed by the Parliament. Third, the question of rates is first gone into by the Tariff Enquiry Committee. The Committee is headed by non-officials. The tariff rates are placed before the House in the shape of budget proposals. The Parliament goes into all the budget proposals. The rates are sanctioned by the Parliament. The rates, therefore, become a legislative policy as well as a legislative process."

17. In a later judgment in ***The Trustees of the Port Trust of Madras v. Aminchand Pyarelal and Others***, AIR 1975 SC 1935, the Supreme Court considered the validity of the demurrage charges

imposed by the trustees of the port of Madras. Two questions arose for consideration before the Supreme Court. First, whether the scale of fees under which the appellants charge demurrage is void as being unreasonable and as being beyond their powers; and, if the answer to the first question is in the negative, whether the first respondent is liable to pay the demurrage claimed by the appellants. Reversing the judgment of the High Court, the Supreme Court held that the Board's power to frame the scale of rates and statement of conditions is not a regulatory power to order that something must be done or something may not be done. The rates and conditions govern the basis on which the Board performs the services mentioned in sections 42, 43 and 43-A. Those who desire to avail of the services of the Board are liable to pay for those services at prescribed rates and to perform the conditions framed in that behalf by the Board. Some of the services which the Board may perform are optional and if the importer desires to have the benefit of those services, he has to pay the charges prescribed therefor in the scale of rates. In such matters, where services are offered by a public authority on payment of a price, conditions governing the offer and acceptance of services are not in the nature of bye-laws. They reflect or represent an agreement between the parties, one offering its services at prescribed rates and the other accepting the services at those rates. As, generally, in the case of bye-laws framed by a local Authority, there is in such cases no penal sanction for the observance of the conditions on which the services are offered and accepted. If the services are not paid for, the

Board can exercise its statutory lien on the goods under section 51 and enforce that lien under section 56 of the Act; or else, the Board may take recourse to the alternative remedy of a suit provided for by section 62. Similar is the view expressed by their Lordships in ***Mumbai Agricultural Produce Market Committee and Another v. Hindustan Lever Limited and Others***, (2008) 5 SCC 575 and ***Union of India and Others v. The Motion Picture Association and Others***, (1999) 6 SCC 150.

18. Coming then to the question as to whether the lessee can exercise the power of the Airports Authority of India under section 12-A, at the outset, it is necessary to consider the implication of sub-section (1) of section 12 read with sub-section (4) of section 12. Sub-section (1) of section 12 begins with a non-obstante clause. It seeks to override the general scheme of the Act prior to its amendment. In terms of section 12-A(1), the Airports Authority of India is empowered to lease an airport for the performance of its functions under section 12. The lease under section 12-A(1) is thus a statutory lease which enables the lessee to perform the functions of the Airports Authority of India enumerated in section 12. In other words, there is a statutory assignment of the functions under section 12 to the lessee. Section 12-A(4) then provides that the lessee who has been assigned any function of the Airports Authority of India under sub-section (1) shall have all the powers of the said Authority necessary for the performance of such functions in terms of the lease. The use of the

word "all" indicates that Parliament intended that the lessee would have each and every power of the Airports Authority of India for the purpose of discharging such functions. The lessee steps into the shoes of the Airports Authority of India and is entitled to exercise "all powers of the Authority" as provided under the Act. Sub-section (4) thus clearly covers all the powers of the Airports Authority of India. There is no warrant to read down the words "all the powers" to exclude powers available to the Airports Authority of India under section 22 or section 22-A of the Act. It was not required to specifically include an express reference to the power to levy development fee under section 12-A(4) as it covers all the powers of the Airports Authority of India. Therefore, the argument of Mr. Bobde that there is no express grant of power by the Legislature has to be rejected. The argument of Mr.Bobde that there are inherent limitations on the exercise of power under section 12-A(4) of the Act is also without any merit. The lessee, who is required to discharge the requisite functions assigned to it by the Authority, has all the powers of the Authority "necessary for the performance of such functions". The section authorizes exercise of all powers of the Airports Authority of India which include the power to collect development fee, by a private person or company in charge of an airport as the lessee under section 12-A(1) of the Act. Therefore, there is no question of exercise of any implied power. A statute, as is well known, must be construed having regard to the legislative intent. The legislative intent in amending the Act was to facilitate the process of improvement of standard of services and facilities at the airports by

bringing in infusion of private sector investments as also for restructuring of airports. The Statement of Objects and Reasons specifically says that "…. significant private sector investments in such project require an effective legal framework within which the investors would feel safe and secure about their operational and managerial independence." If Mr. Bobde's contention is accepted, it would frustrate the whole governmental policy of promoting private initiative. Such an interpretation which would defeat the very object and purpose of the amendme0nt has to be avoided.

19. The decision relied upon by Mr. Bobde in ***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla and Others*** (supra) has no application to the facts of the present case. In that case, the imposition of development fee by regulation was struck down since the parent statute did not have any provision authorizing the levy of a fee. It was in that context that the Supreme Court held that there is no implied power to levy a fee. In contrast, in the present case, section 22-A of the Act contains an express provision for the levying of a development fee and in terms of section 12 and 12-A, the same must be read as being available to a lessee who steps into the shoes of the Airports Authority of India and has all the powers of the said Authority. As has been explained in the counter affidavit of the Union of India, it is entirely for the discharge of the functions cast upon the lessee that the development fee has been imposed. Thus, the power to impose the development fee for these

purposes was necessarily passed on to the lessee under section 12-A(4) of the Act. We may also mention that in a subsequent decision in ***State of U.P. v. Malti Kaul (Smt.) and Others***, (1996) 10 SCC 425, the Supreme Court has in para 14 distinguished its earlier decision in ***Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla*** (supra) as follows:

> 14. The High Court has relied upon the judgment of this Court in *Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla*. The said ratio has no application to the facts in this case. In that case, it was found as a fact that there was no express provision for levy and demand of the developmental charges. They sought to rely on the doctrine of *ejusdem generis* as a source to levy the development fee. The High Court has noticed that the authority under Section 19 has the heads enumerated in Sub-section (1) of Section 91 as the source of funds. This Court found that the doctrine of *ejusdem generis* cannot be applied to levy and charge of development fee."

The Supreme Court then proceeded to hold in para 16 as follows:

> "16. It is sought to be contended for the respondents by the learned counsel that there is no express provision and that neither Section 33 or Section 41 can be fallen back upon to levy development fee. It is true that express mention is not made either in Section 33 or Section 41; but when Section 14 and Section 56(2) are read together, it gives right and power to the sanctioning authority to impose a condition to the grant of sanction for execution of the plan in a development area by imposing the condition of either payment in advance towards the cost of the amenities or means of access etc. or give bank guarantee or mortgage the plot which is to be developed etc. as enumerated hereinabove. Therefore, the learned counsel is not right in contending that there is no provision under the Act to demand payment or bank guarantee towards the development charges of the amenities."

20. The next argument of Mr. Bobde that the absence of rules under Section 41(1)(ee) will preclude the exercise of powers under section

22-A is also without any merit. It has been held in a catena of decisions that where a statute confers power on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words, framing of the rules is not a condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. In this regard, a reference has been made to the decision of the Supreme Court in ***U.P. State Electricity Board, Lucknow v. City Board, Mussorie and Others***, (1985) 2 SCC 16, where the Supreme Court held as follows:

> "7. The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on sub-section (1) of Section 46 of the Act which provides that a tariff to be known as the Grid Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negatived the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be

> fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

21. A similar contention was rejected by the Supreme Court in ***Mysore Road Transport Corporation v. Gopinath Gundachar Char***, AIR 1968 SC 464, which was a case arising under the Road Transport Corporation Act, 1950. Under section 14 of that Act, a Road Transport Corporation was entitled to appoint officers and servants as it considered necessary for the efficient performance of its functions. Under section 34(1) of the Road Transport Corporation Act, 1950, the State Government had been empowered inter alia to issue directions to the Road Transport Corporation regarding recruitment, conditions of service and training of its employees. Under section 45(2)(c) of that Act, the Road Transport Corporation was empowered to make regulations regarding the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer, General Manager and the Chief Accounts Officer. Admittedly, no regulations had been framed under section 45(2)(c) of that Act. It was contended that the Corporation cannot appoint officers and servants referred to therein or make any provision regarding their conditions of service until such regulations were made. The Court rejected the said plea with the following observations:

> "The conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must

> conform to the directions, if any, given by the State Government under Section 34 and the regulations, if any, framed under Section 45(2)(c). But until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit."

22. Specifically in the context of tax legislation, in ***Sudhir Chandra Nawn v. WTO***, (1969) 1 SCR 108, the Supreme Court was concerned with Section 7(1) of the Wealth Tax Act and held as follows:

> "The plea that Section 7(1) of the Wealth Tax Act is ultra vires the Parliament is also wholly without substance. That clause provides:
>
> > 'Subject to any rules made in this behalf, the value of any asset, other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-Tax Officer it would fetch if sold in the open market on the valuation date.'
>
> It was urged that no rules were framed in respect of the valuation of lands and buildings. But Section 7 only directs that the valuation of any asset other than cash has to be made subject to the rules. It does not contemplate that there shall be rules before an asset can be valued. Failure to make rules for valuation of a type of asset cannot therefore affect the vires of Section 7."

23. In the result, in view of the foregoing discussion, we find that no illegality is attached to the imposition of development fee by the respondent No.3-DIAL with the prior permission/approval of the Central Government vide letter No. F.No. AV.24011/002/2008-AD dated 9.2.2009. The petition is dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

AUGUST 26, 2009
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