IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 25.01.2022	Delivered on 11.03.2022

CORAM:

THE HONOURABLE MR.**JUSTICE V.PARTHIBAN**

W.P. No.25568 of 2021

Air Corporation Employees Union (Regn No. 3905)
Rep by its President C.Udayashankar
having office at
Air India Ltd, Airlines House
Meenambakkam
Chennai – 27. ... Petitioner

Vs

1 Union of India
Rep by the Secretary
Ministry of Civil Aviation
Rajiv Gandhi Bhavan
Safdarjung Airport
New Delhi - 110 003.

2 Air India Ltd
Rep by its Chairman and Managing Director
Airlines House
113 Gurudwara Rakabganj Road
Sansad Marg Area
New Delhi - 110 001.

3 The General Manager (Personnel)
Southern Region
Air India Ltd Airlines House
Meenambakkam Chennai - 27.

4 Talace Pvt Ltd
Rep by its Managing Director
Army and Navy Building
148 MG Road

Opp to Kala Ghoda, Fort,
Mumbai – 400001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus forbearing the respondents 1 2 and 4 from proceeding further with the process of disinvestment of the stake of the Government of India in Air India Ltd without taking appropriate measures to protect the terms and conditions of service and the rights of the employees of Air India Ltd represented by the petitioner union and covered by the recommendations contained in the report dated 10.2.2020 of the bilateral committee constituted under notification bearing Ref No.HPD02/130 issued by the Director (Personnel) Air India post disinvestment in consultation with the petitioner union and without addressing the issues raised by the petitioner union in their representation dated 9.8.2021 to the Director (Personnel), Air India Limited and settling all the pending dues of the members of the petitioner union.

For Petitioner ... Ms.Vaigai,
Senior Counsel,
for Ms.Ramapriya Gopalakrishnan

For Respondents ... Mr.Tushar Mehta,
Solicitor-General of India,
Assisted by Mr.R.Sankaranarayanan,
Additional Solicitor-General of India,
for Mr.M.Karthikeyan,
for the first respondent

Mr.N.G.R.Prasad,
for Mr.K.Srinivasamurthy,
for respondents 2 and 3

Ms.Anuradha Dutt
for Mr.R.Bhardwaja Ramasubramaniam,
for the fourth respondent

O R D E R

The facts and circumstances that gave rise to the filing of the writ petition are stated hereunder:

(a) The petitioner is a registered trade union, claim to represent over 5000 employees of Air India Ltd. and the erstwhile Indian Airlines. The petitioner union has its registered office at Safdarjung Airport, New Delhi and four regional offices, with its southern regional office being located in Chennai. The petitioner union claims to be an independent union with no political affiliation. The union has been espousing the cause of its workers in the transport industry for over five decades and its members include cabin crew, aircraft equipment operators, drivers, instructors, supervisors, assistants, peons, helpers, safaiwalas and security staff. The women employees account for about 40% of the membership of the petitioner union. It also claims to be the largest recognized trade union in Air India Ltd.

(b) The second respondent herein is a company wholly owned by the Government of India. It is a State airline, providing domestic as well as international air transport services, and has been recognized as national carrier of

India. The company Air India has its subsidiaries viz., Air India Engineering Services Ltd. (AIESL), Air India Airport Service Ltd. (AIASL), engaged in ground handling activities in airports, baggage checking, passenger handling etc., Air India Express Ltd. (AIXL) which operates as low cost carrier to Gulf and South East Asia, Airline Allied Service Ltd. (AASL), operates domestic transportations in India and Jaffna and Hotel Corporation of India Ltd runs the Centaur Hotels.

(c) Although in the preamble portion of the affidavit it has been elaborately stated about the enacting of Air Corporations Act, 1953 and the subsequent Air Corporations (Transfer of Undertaking and Repeal) Act, 1994 and the formation of Air India and Indian Airlines and the amalgamation of Indian Airlines with Air India Ltd. in November 2010 etc. , but those details may not be necessary for adjudication of the present dispute before this Court.

(d) The grievance of the petitioner union herein is that in January, 2020, the first respondent, the Government of India, decided to disinvest its 100% stake in Air India Ltd., the second respondent. After a decision was taken to

disinvest of its 100% stake in the company, bids were invited from potential buyers during the year 2020. In the process of disinvestment, in September, 2021, the Government issued an order notifying the transfer of capital assets of Air India Ltd to Air India Assets Holding Ltd (AIAHL) for the sale of its stake in Air India. In October, 2021, it transpired that the fourth respondent private limited company viz., Talace Private Ltd emerged as successful bidder. The fourth respondent appeared to have quoted INR 18,000 crore as against the reserved price fixed at INR 12,906 Crore.

(e) On 11.10.2021, a letter of intent was issued by the first respondent to the fourth respondent company and subsequently on 25.10.2021, a Share Purchase Agreement (hereinafter referred to as 'the SPA') was signed between Government of India and the fourth respondent company on 25.10.2021. The handing over of the second respondent company to the fourth respondent company was slated to be completed by December, 2021.

(f) In the process of handing over of Air India Ltd to the fourth respondent company, several issues regarding the status of employees and their job security needed to be

sorted out, as the nature of their employment was being transformed from public sector to a private sector on taking over by the new management, after completion of the process of disinvestment. With a view to seek certain clarifications touching upon various issues concerning the continued employment of the employees represented by the petitioner union and other trade unions, the representatives of the employees had a meeting with the Minister of Civil Aviation on 20.01.2020, during course of the disinvestment process. After the meeting, the following day, i.e. on 21.01.2020, a notification was issued on behalf of Air India Ltd constituting a committee consisting of three general managers and the representatives of six unions/ associations to look into the human resources issues of the employees in the wake of the disinvestment of the company.

(g) According to the petitioner union, the committee has submitted its report on 10.02.2020, inter-alia recommending as follows:

> *(a) Revision of pay scale: Revision of pay scale as per the 3rd PRC (Pay Revision Committee for PSEs) recommendations of 2007 should be effected before disinvestment and notional fitment should be given*

from 01/01/2017.

(b) Job security: Job security should be provided to all employees till they reach the age of superannuation. Alternatively, a Voluntary Retirement Scheme (VRS scheme) on the Gujarat pattern should be provided to all employees regardless of number of years of service rendered/ remaining.

(c) Leave encashment: Leave encashment as due must be paid to all employees before disinvestment. The licensed cadre of employees should have the option to transfer all their accumulated leave or part thereof to the new employer.

(d) Gratuity: Gratuity payable till the date of disinvestment should be settled prior to the disinvestment. Continuity of service to be maintained for quantifying the gratuity with the new employer.

(e) Provident Fund: The total fund available in an individual employee account with the Trust should be transferred to the EPFO.

(f) Medical benefits The existing medical schemes should continue for serving as well as retired employees or better facilities should be provided.

(g) Passage facilities Passage facilities to be continued to serving as well as retired employees on the basis of the Air India passage policy dated

27th March 2017 and IATA Resolution 788.

(h) Arrears salary flying allowance: Arrears of salary and flying allowance to be paid to cabin crew as per the order of the Hon'ble Supreme Court. Wage arrears of employees of the erstwhile Indian Airlines for the period from 01.01.1997 to 31.12.2006 should be paid as per the award of the arbitrator.

(i) Colony Accommodation Air India colony accommodation should be retained by the employees till they reach the age of superannuation.

(j) Reservation Reservation for SC/ST/OBC category employees in recruitment and promotion should continue."

(h) While matters stood thus, the petitioner union, in order to ensure that the service conditions, rights and entitlement of the employees of the company are protected as a consequence of the disinvestment in favour of the fourth respondent, has been repeatedly making representations to the Ministry of Civil Aviation and the management of Air India. According to them, the last of the representations was submitted on 09.08.2021, requesting the authorities concerned for their earnest addressal of

various issues deeply concerning the employees, as a consequence of the change in their status. In the representation, the following issues have been raised for the attention of the authorities concerned, as nutshelled and stated in the affidavit.

"(a) job security till the age of 58 years;

(b) wage revision on the basis of the 3rd PRC recommendations;

(c) frozen D.A

(d) rectification of anomalies in the basic pay of cabin crew among cadres in the same grade plus their basic pay to be revised in line with other employees

(e) stagnation of employees in the officer cadre (grade-9) even after serving the organization for more than 20 years

(f) status of 25% Productivity Linked Incentive (PLI) arrears and possible payment time

(g) encashment of Sick leave and Privilege Leave before disinvestment

(h) medical benefit for serving and retired employees post disinvestment

(i) passage benefits of serving and retired employees post disinvestment

(j) introduction of a VRS scheme

(k) immediate repayment of pending flying

allowance (25% deducted from flying and other related allowances and shortfall)

(l) Cross fleet training: Training all crew in all fleets as per the recommendations of the Justice Dharmadhikari Committee

(m) clarification about the transfer of funds from the AIPEF Trust and the IAEPF Trust to the EPFO."

(i) While the above issues were pending clarification, on 08.10.2021, the Secretary of Ministry of Civil Aviation held a press conference and announced certain benefits that would be offered to the employees of Air India pursuant to the share transfer to the fourth respondent company. The benefits that were announced in the press conference are reproduced, as stated in the affidavit herein below:

"(i) Job protection for one year from the date of closing the transaction;

(ii) Voluntary retirement scheme for separation benefits to be offered for any employee to be retrenched from the second year onwards;

(iii) Gratuity benefits and PF benefits as per the law of the land;

(iv) Post retirement medical benefits;

(v) Dues as per the report of the Justice Dharmadhikari."

(j) The associations, particularly the petitioner Union herein, being not satisfied with the offer by the Secretary, Ministry of Civil Aviation, and also after learning about the contents of the SPA dated 25.10.2021 regarding their conditions of service, has expressed its displeasure against the manner in which the disinvestment process was being expedited, without ensuring the genuine concerns of the employees who have been employed by Air India Ltd. for a number of years and whose interests were being sidelined in the bargain. According to the petitioner, a number of representations have been addressed repeatedly, pointing out that the Government of India has been rushing through the process of disinvestment in a non-transparent manner, without adopting due consultative process with the workmen represented by the trade unions, who would be the ultimate losers in the process of disinvestment, if their interests were going to be ignored and neglected.

(k) According to the Union, there are important issues like continued grant of medical benefits, as enjoyed by the employees during their employment under the second respondent company, both serving and retired, passage

rights, and the housing accommodation provided to the employees. The employees who were in occupation of the quarters provided by the company were particularly affected by the direction to hand over the vacant quarters within six months, in terms of the SPA dated 25.10.2021. The housing accommodation belonging to Air India is stated to be not part of the transfer and therefore, the employees cannot occupy the quarters any more after the transfer was effected. Apart from this, there were several other issues which were the bone of contention by the workers as against the present transfer of management in favour of the fourth respondent private enterprise.

2. In the above factual backdrop, the present writ petition has been filed seeking issuance of a Writ of Mandamus to direct the Government of India to protect the terms and conditions of service and the rights of the employees of Air India Ltd as covered by the recommendations contained in the Bilateral committee's report dated 10.02.2020 and also to direct the Government to address the issues raised by them in the representation dated 09.08.2021.

3. Ms.Vaigai, learned Senior Counsel appearing for the petitioner union,

after reiterating the above facts briefly, would straightaway draw the attention of this Court to the notification dated 21.01.2020 issued by the Director, Personnel Air India Ltd., the second respondent herein. The notification is in regard to the appointment of a committee as a consequence of the meeting of unions/associations with the Hon'ble Minister for Civil Aviation on the previous day, i.e. 20.01.2020. Accordingly, a committee has been constituted to look into the human resource issues of the employees in the wake of disinvestment of Air India Ltd. The committee consisted of the following officials and representatives of the Pilot association and the unions:

> "Consequent to the meeting of Unions/Associations with the Hon'ble Minister of Civil Aviation on 20th January 2020, a Committee comprising of the following is hereby constituted to look into the HR issues of the employees in the wake of disinvestment of Air India Limited.
>
> "1) Mr. Ashwani Sehgal ... General Manager-Personnel, HQ
> 2) Ms. Meenakshi Kashyap ... General Manager-IR, HQ- Coordinator
> 3) Mr Manoj Kumar ... General Manager-Finance HQ
> 4) Capt Praveen Keerthi ... General Secretary, Indian Commercial Pilots Association
> 5) Capt Harishankar ... President, Indian Pilots Guild
> 6) Mr. Sanjay Lazar ... General Secretary All India Cabin Crew Association
> 7) Mr. C Udaya Shankar ... President, Air Corporation's Employees Union
> 8) Mr. Parag Ajgaonkar ... Working President. Air India Employees' Union
> 9) Mr. M.P. Desai ... Vice President, Aviation Industry Employees Guild"

4. According to the learned Senior Counsel, the committee had been constituted specifically to address all the issues concerning the employees and to reach a clarity on the concerns expressed by the unions/associations representing various categories of employees. The committee, after due consultation as a consequence of the meetings held with representatives of the unions/associations in January and February, 2020, submitted its report on 10.02.2020, detailing its suggestions for addressing the issues for discussion and finalization. The report has formulated and outlined ten issues as part of the consultative process to be taken forward in the disinvestment process. The issues and the suggestions as contained in the report as tabulated, is reproduced hereunder:

S. No	***Issues***	***Suggestions***
1	*Revision of pay scale in terms of the 3rd PRC before disinvestment as per DPE Guidelines*	*It was suggested by the Committee representatives that the 3rd PRC should be effected before disinvestment with notional fitment wef 01.01.2017 as the last wage revision for all employees was done w.e.f. 01.01.1997 Thereafter based on the Justice Dharmadhikari committee report, pay-scales were harmonized in the merged entity. As no salary revision has been carried out for Al employees. In view of the above, it is felt that request should be considered favorably.* *A proposal in line with the wage revision undertaken in Airport Authority of India would be submitted to MoCA for consideration.*
2	*Job security to be provided to all permanent employees of the company till*	*The issue was deliberated upon and it was felt by the Committee representatives that Job Security must be provided to all employees till their age of superannuation. This is because the last induction of permanent employees was carried out in 2011-2012, particularly in Pilots and Cabin*

S. No	Issues	Suggestions
	their retirement/ superannuation	Crew cadre. It was therefore felt that for employees in the younger age bracket, job security is also important till the age of superannuation. Alternatively, a Voluntary Retirement Scheme on Gujarat pattern should be provided to all employees regardless of years of service rendered/remaining
3	Leave encashment	The payment of leave encashment as due on date must be made to all employees before disinvestment option to be given to licenced categories of employees to transfer all accumulated leave/part thereof to the new employer.
4	Gratuity	Option 1 The amount of gratuity payable to the employees for service rendered in AIL till the date of disinvestment to be settled prior to disinvestment. However, the continuity of service for the purpose of qualifying for gratuity with the new employer should be maintained as also Basic Pay and VDA be protected for calculation of gratuity at the time of retirement based on which the gratuity amount has been calculated on the date of disinvestment. Option 2 The Government must transfer the amount due to all the employees on account of gratuity as on the date of disinvestment to the Commissioner appointed under the Payment of Gratuity Act 1972 to safeguard the amount and the amount should be paid to each individual employee on the date of their separation/superannuation. For the period of service rendered post disinvestment, the new entity shall be responsible for payment of gratuity for the years of service rendered with him with protection of basic and DA not less than what they were drawing on the date of disinvestment, treating their service as continuous and without any break. Option 3 For the purpose of calculation of an amount of gratuity, the service rendered pre and post disinvestment should be treated as continuous engagement and basic + VDA drawn at the time of disinvestment should be protected for the purpose. Further, a suitable clause to be incorporated in Share Purchase agreement that new employer will be responsible for payment of the entire amount of gratuity. In case of his failure to fulfil this obligation, the Government shall stand as guarantor, to pay the amount of the same to

S. No	Issues	Suggestions
		employees.
5	*Provident fund*	*In the case of provident fund the total fund available against an individual employee account with the Trust to eb transferred to EPFO Any deficit with regard to this transfer to be borne by the GOI*
6	*Medical Benefits/ Medical Benefit scheme*	*The existing medical schemes or higher facilities to continue in the present form for both the serving as well as retired employees*
7	*Passage facilities*	*Passage facilities to be continued to the serving as well as retired employees based on the existing Air India Passage Policy dated 27 March 2017 and as per IATA Resolution 788.*
8	*Arrears*	*Payment of all arrears must be paid along with interest in line with the Hon'ble Supreme Court order* *(a) arrears of 25% of salary and flight allowances along with interest as ordered by Hon'ble Hon'ble Supreme Court to be paid before 17.03.2020 i.e the last date of submission of EOI The worksheets of calculation of arrears payable to each individual employee should be shared with the employees concerned by 15.02.2020.* *(b) Wage arrears effective 1.1.1997 for employes of e/w IAL for the period 1.1.1997 to 31.12.2006 and interest on the arrears to be paid on similar lines as ordered by the arbitrator int eh case of All India Aircraft Engineers and IATA.* *(c) All other arrears as listed in the Minutes of the meeting held on 27.01.2020 and 30.01.2020*
9	*Colony accommodation*	*Air India colony accommodation in all regions wherever provided should continue to be retained by the employees till their superannuation*
10	*Reservation*	*Reservation for SC/ST/OBC in promotion and recruitment to continue.*

5. The learned Senior Counsel would strongly place reliance on the recommendations of the report dated 10.02.2020 by drawing the attention of this Court to each and every issue, which according to her, has not really fructified into action when SPA was eventually signed on 25.10.2021. The so

called assurance given by the first and second respondents, at the time of the constitution of the committee dated 21.01.2020, and the consultation that had taken place during January and February 2020, had not been fulfilled ultimately. She had referred the final report, outlining the suggestions/ recommendations in response to multiple concerns raised on behalf of the unions/associations on various aspects of conditions of service.

6. The learned Senior Counsel would submit that as per the recommendations of the bilateral committee report dated 10.02.2020, job security must be provided to all the employees till they attain the age of superannuation. It was specifically recorded in the recommendation that the induction of permanent employees was carried out during the period 2011-12, particularly in pilots and cabin-crew cadre and therefore, it was felt that for employees in the younger age bracket, job security was also important till the age of superannuation. Alternatively, a voluntary retirement scheme on the Gujarat Pattern should be provided to all the employees regardless of years of service, rendered/remaining. According to the learned Senior Counsel, the above aspect is the most vital of all other apprehensions, as job security is the uppermost concern of all the employees, more than any other demand. Unfortunately, as it turned out in the SPA dated 25.10.2021, job security after the takeover of management is guaranteed only for a period of one year

without any alternative offer of voluntary retirement scheme on the Gujarat pattern.

7. Likewise, the learned Senior Counsel has pointed out and insisted various benefits particularly with reference to medical benefit scheme, passage rights, colony accommodation etc. should continue unhindered. The recommendations as provided in the report dated 10.02.2020 have been given a go-bye. So are other benefits like payment of gratuity, provident fund, leave encashment and arrears of wage revision from 01.01.1997 etc. In the teeth of not implementing the recommendations of the bilateral committee dated 10.02.2020, in terms of the ten encapsulated issues, the petitioner union is constrained to approach this Court for its intervention.

8. As regards the job security is concerned, the learned Senior Counsel would underscore the fact that in terms of service regulations/standing orders as applicable to Air India Ltd, the employees are entitled to continue in service until they attain the age of superannuation. But if their job security is curtailed only up to a year, in view of the new dispensation coming into force, as per clauses contained in the SPA dated 25.10.2021, it would be in contravention of the principle of legitimate expectation. The employees who have entered service with the second respondent had hoped to serve the

company till they attain the age of superannuation and therefore curtailment of their continuance amounted to unilateral change of conditions of service, and in the absence of any prior notice, such curtailment cannot be countenanced in law. Moreover, the termination of service would also amount to snatching away their livelihood protected under Article 21 of the Constitution of India.

9. The learned Senior Counsel would also submit that the variation and change of various conditions of service like medical benefits, colony accommodation, wage revision, leave encashment and other issues, without addressing the same in a transparent manner smacked of arbitrariness, unreasonableness. The action of the first respondent on the whole is to be construed as tainted with lack of fairness and justness, contravening Articles 14, 16 and 21 of the Constitution of India. She also laid due emphasis on the fact that depriving the employees of a decent housing and also varying their medical benefits to their detriment as enjoyed by them hitherto also amounted to offending Article 21 of the Constitution of India. The learned Senior Counsel then proceeded to refer to a few decisions in her support which are as under:

(a) Balco Employee's Union (Regd) vs. Union of India and ors. (2002 (2) SCC 333):

(i) The learned Senior Counsel would draw the attention of this Court to paragraphs 52, 55, 58 and 60, which are extracted hereunder:

> *"52. Even though, the employees have no right to be heard before the decision to disinvest takes place nevertheless it is the case of the Respondent that the workers had been fully informed about the process of disinvestment through an ongoing dialogue. In this connection, it is pertinent to note that the BALCO Employees Union had filed Writ Petition No. 2249 of 1999 against the Union of India before the Delhi High Court in relation to proposed disinvestment wherein the following order was passed on 3rd August, 1999 :-*
>
> > *"It is stated by Dr. Singhvi, learned counsel, on instructions from Mr. Madan Lal, President of the Petitioner that challenge to the policy of disinvestment in Respondent No. 5 company is not pressed. It is further stated that whenever the final decision is to be taken by the Respondents affecting the interests of the workers, the same be intimated with two weeks' advance notice to the Petitioners by the Respondents.*
> >
> > *As far as the protection of the interests of the workers is concerned, the relief being premature cannot be entertained and the petition to this extent would be liable to be rejected.*

Mr. Rawal, learned Additional Solicitor General states that if any decision relating to the interests of the employees/ workers is taken by the Respondents, two weeks' prior notice of the same will be given to the Petitioners.

In view of the above, the petition is disposed of with liberty to the Petitioners to approach the Court in the event of any decision adverse to the interest of the employees/ workers being taken.

Petition disposed off accordingly".

....

55. We are satisfied that the workers' interests are adequately protected in the process of disinvestment. Apart from the aforesaid undertaking given in the Court, the existing laws adequately protect workers' interest and no decision affecting a huge body of workers can be taken without the prior consent of the State Government. Further more, the service conditions are governed by the certified orders of the company and any change in the conditions thereto can only be made in accordance with law. The demands made by the employees of BALCO were considered by the IMG in its meeting held on 25th January, 2001 and the issues emanating therefrom were placed by the Department of Disinvestment before the Cabinet Committee on Disinvestment which held its meeting on 1st February, 2001. A note containing the comments of the Ministry of Mines which was endorsed by the IMG of the Cabinet Committee on Disinvestment was forwarded by the

Minister of Mines, Government of India to Shri Tara Chand Viyogi, President, M.P. Rashtriya Mazdoor Congress. The said note, apart from setting out reasons for disinvestment of BALCO, also refers how the interest of the employees of BALCO has been protected in the process of disinvestment. This note states:-

"Regarding employees, adequate provisions have been made in Share Holders' Agreement (SHA) as follows :-

"Recital H

Subject to Clause 7.2, the Parties envision that all employees of the Company on the date hereof shall continue in the employment of the Company.

Clause 7.2 (e) It shall not retrench any part of the labour force of the Company for a period of one (1) year from the Closing Date other than any dismissal or termination of employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law; and

Clause 7.2 (f) Subject to the sub-clause (e) any restructuring of the labour force of the company shall be implemented in the manner recommended by the Board and in accordance with all applicable laws. The SP in the event of any reduction of the strength of its employees shall, ensure that the Company offers its employees an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary retirement scheme offered by the company on the date of this agreement;"

It may be mentioned that as per the provisions contained in the I.D. Act, BALCO will remain an industrial establishment even after the disinvestment and all the provisions of I.D. Act will automatically apply to BALCO.

In an organised sector, the issues of job security, wage structure, perks, welfare facilities, etc., of the workmen are governed by bipartite/tripartite agreements. These agreements are in the nature of "settlement" under the I.D. Act. Even after the disinvestment, the BALCO management will be required to enter into bipartite/tripartite agreements with the workmen through unions, and, the terms and conditions in the agreement would be always governed by the practices and procedures applicable under collective bargaining. It is a fact that any agreement between two or more parties is based on the principles of mutual consent. Hence, the consent of the management to better service conditions, etc., would certainly depend on the achievement of the productivity and production targets by the workers from time to time.

Regarding providing social security to the BALCO employees at par with government employees, it is to be noted that as a matter of principle, no industrial establishment has any right to be compared with a government establishment. Hence the issue of guaranteeing the social security of the BALCO employees at par with the employees of the Government establishments may not be possible any time before or after the disinvestment.

So far as employees' stock options and a lock-in period for the investor are concerned, there is a provision in the documents pertaining to the proposed strategic sale, for giving upto 5 per cent of the equity to employees, and for a lock-in period of three years.

Regarding guaranteeing that there will be no closure of any establishment of the company for a minimum period of 10 years, it is to be noted that the "Closure" of any undertaking of an Industrial Establishment of the kind of BALCO is governed by Section 25(O) of Chapter V-B of the I.D. Act, by virtue of which BALCO management before or after disinvestment is not free to close down any part of the BALCO at their sweet will. The closure is governed by the law of the land and under the existing provisions of I.D. Act, "genuineness and adequacy of the reasons stated by the employer" and "the interests of the general public and all other relevant factors" has to be examined by the appropriate government, and, for doing so the government give a reasonable opportunity of hearing to the employer and workmen and the persons interested in such closure. It means that unless and until the appropriate Government grants permission, the BALCO management will not be competent to close down any undertaking of the company even after disinvestment. So there are protections available under the Act against arbitrary closure of any undertaking of the BALCO after disinvestment.

The unions desire that the prospective buyer should disclose its plans for investment/modernisation of BALCO

after disinvestment. As a matter of fact, at the time of submitting financial bids the prospective buyers are expected to submit the business plan as well. But perhaps in such commercial ventures, given the changing market conditions, the business plan submitted by prospective buyers may not be enforceable under law.

The trade unions desire that all listed demands should be accepted and put in the form of a written agreement between the government and the representatives of recognised unions before finalising any agreement with the prospective buyers. In fact, the Government and BALCO are two different legal entities. The Government is disinvesting its 51% equity in the BALCO. Under law, no enforceable agreement may be entered between the Government and the workmen of BALCO as any such agreement will not have force of law. In order that an agreement has the force of law, it should be a written agreement between employer and workmen. The Government is not the employer of the workmen employed in BALCO. As such, any such agreement is neither desirable nor necessary and not enforceable".

58. Our attention was invited to the decision in the National Textile Workers' Union and Others vs. P.R. Ramakrishnan (supra) where at page 245, Bhagwati, J. (as he then was) had observed that in deciding whether the Court should wind up a company or change its management, the Court must take into consideration not only the interests of the shareholders and creditors but also amongst

other things, the interests of the workers. The workers must have an opportunity of being heard for projecting and safeguarding their interests before winding up Order is passed by the Court. It was contended that similarly before a policy decision is taken, and also in the execution thereof, as the interests of the workers is going to be affected, the petitioning workers herein have a right to be heard. There can be no doubt that in judicial proceedings where rights are likely to be affected, principles of natural justice would require the Court to give a hearing to the party against whom an adverse or unfavourable Order may be passed. It was in relation to the winding up proceedings which were pending before a Court that this Court in National Textiles Workers Union case held that they had a right to be heard. The position, in the present case, is different. No judicial or quasi-judicial functions are exercised by the Government when it decides, as a matter of policy, to disinvest shares in a Public Sector Undertaking. While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company. The decision in National Textiles Workers Union case can, therefore, be of no assistance to the petitioner.

60. As a result of disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has

changed. The employees continue to be under the company and change of management does not in law amount to a change in employment."

(ii) The above paragraphs have been relied upon by the learned Senior Counsel for the reason that the Hon'ble Supreme Court has gone into the merits of the disinvestment agreement therein and found that the workers' interest were adequately protected in the process of disinvestment. The Court was also satisfied by the undertaking given that the existing laws adequately protect workers' interest and no decision affecting the huge body of workers can be taken without the consent of the State Government. The Court, in that case, found that there cannot be any change in the conditions without following the due process of law and only on being satisfied that the workers' interest were fully protected, the Court finally did not interfere with the disinvestment decision of the Government's 51% stake in BALCO, in favour of a private enterprise.

(iii) According to the learned Senior Counsel, as far as the case on hand is concerned, there is no such assurance that the conditions of service cannot be varied or changed to the disadvantage of the workmen and in the absence of any such written guarantee, the unilateral disinvestment decision without consulting the huge workforce cannot be allowed to proceed further.

(b) Balco Captive Power Plant Mazdoor Sangh and Another vs. National Thermal Power Corporation and Others (2007(14) SCC 234):

(i) The learned Senior Counsel would particularly place reliance on paragraphs 29, 31 and 35 of the decision which are extracted hereunder:

> *"29.NTPC being an undertaking of the Government of India and an instrumentality of State is under constitutional obligation to act fairly with its employees, particularly, the posts which were advertised from 1986 till 1988 were not in existence in BALCO as the BCPP was not fully commissioned. In those circumstances, NTPC was not justified in inserting clause 14 in the appointment letters and obtaining undertakings from the selectees.*
>
> *...*
>
> *31.The materials placed clearly show that clause 14 referred to above is against public policy and contrary to Section 23 of the Indian Contract Act as well as violative of Article 14 of the Constitution of India for the reason that undue influence was exercised by NTPC management and the selected candidates to accept the terms and conditions stipulated therein. By virtue of the aforesaid clause 14, as pointed out earlier, the status of these public servants have been sought to be changed which is again violative of Article 14. In Mahavir Auto Store and Others vs. IOC and Others, (1990) 3 SCC 752, this Court has observed in para 18 that even in the field of public law, the persons affected should be taken into confidence.*
>
> *...*

35.The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrary and violative of Article 14. As pointed out earlier, in the case on hand, the employees are neither party to tripartite agreement nor they have been heard before changing their service condition. Therefore, the action of the management is violative of Article 14 of the Constitution of India. Similar view has been taken by this Court in H.L. Trehan and Others vs. Union of India and Others, (1989) 1 SCC 764. In para 11 of the judgment, this Court observed as under:

> *"11. .... It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The*

impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."

(ii) The learned Senior Counsel would draw the attention of this Court to the above succinct observations of the Supreme Court categorically holding that when the service condition has been sought to be changed, the persons affected should be taken into confidence, as the State is under constitutional obligation to act fairly with its employees. The Court has also drawn reference to its earlier decision reported in *1989(1) SCC 764* in the matter of *H.L.Trehan vs. Union of India*, holding that there cannot be any deprivation or curtailment of any existing right enjoyed by a Government servant without complying with the rules of natural justice and if such right is to be curtailed without compliance with the natural justice, the same would offend Article 14 of the Constitution of India.

(iii)The learned Senior Counsel would submit that this is exactly the issue in this case where the Government of India has gone about unilaterally changing the conditions of service drastically detrimental to the interest and the rights of the employees. The Government of India is under constitutional obligation to explain to this Court on the aspect of fairness in action while entering into SPA dated 25.10.2021 with the fourth respondent, dealing with the rights of the employees, in the bargain.

(c) All India ITDC Workers' Union and ors. vs. ITDC and others, 2006(10) SCC 66:

(i) The learned Senior Counsel drew the attention of this Court to paragraph 16, extracted below:

> *"16.Mr. M.L. Bhat, learned Senior Counsel reiterated the submissions in the Court and Mr. Jayant Nath, learned Senior Counsel reiterated the contentions raised in the writ petition at the time of hearing. After inviting our attention to the prayer in the respective writ petition, they also invited our attention to the order passed on 13.12.2001 by the High Court directing maintenance of status quo regarding service conditions of Class III and IV employees of Hotel Agra Ashok. The said interim order was extended up to the next date of hearing. Our attention was also drawn to the share purchase agreement clause 9.4 in Article 9 which reads thus:*
>
> *9.4 The Purchaser will cause the Company to continue to employ all the regular employees of the Unit which have been transferred to the Company on the terms and conditions that shall not be inferior to the terms and conditions as applicable to the regular employees on the date of transfer of the Unit including with respect to the voluntary retirement scheme applicable to the Company as per the guidelines of the Department of Public Enterprises, if any, and terms set out in agreements entered into by ITDC in relation to such regular employees with staff/workers unions/associations. The Purchaser further*

covenants that it shall cause the Company to ensure that:

(i) the services of the regular employees will not be interrupted.

(ii) the terms and conditions of service applicable to the regular employees will not in any way be less favourable than those applicable to them immediately on the date hereof.

(iii) it shall not retrench any of its regular employees for a period of one year from the Closing Date other than any dismissal or termination of regular employees from their employment in accordance with the applicable staff regulations and standing order of the Company or applicable law.

(iv) in the event of retrenchment of regular employees, the Company shall pay the regular employees such compensation as is required under applicable labour laws on the basis that the service of the regular employees have been continuous and uninterrupted. Provided further, that no retrenchment of an Employee would be undertaken unless the affected Employee is given benefits which are higher of (a) the voluntary retirement scheme applicable to the Company as per the guidelines of the Department of Public Enterprises as of the date hereof and (b) the benefits/compensation required to be statutorily given to an employee under applicable law.

(v) the Company will only undertake dismissal or termination of the services of the employees on account of

disciplinary action in accordance with the applicable staff regulations.

(vi) in respect of contract employees the terms and conditions of the relevant contracts shall be fully observed by the Company and the Purchaser shall keep Government and ITDC indemnified against damages, losses or claims resulting on account of the Company failing to observe any of the terms and conditions of such contracts."

(ii) The above case has been relied upon for the reason that although the Hon'ble Supreme Court in that case has unequivocally held that the policy decision taken to disinvest ITDC Hotels cannot be interfered with, as the same was not in any manner contrary to the law of the land and no judicial review was permissible, yet, the Court was, as a matter of fact, satisfied with the terms of the SPA which guaranteed job security and the terms and conditions of service not undergoing any material change less favourable than those applicable to the employees before the disinvestment. On being satisfied with the protection of the interest of the employees, the Court refused to interfere with the policy decision of the Government.

(iii) After referring to the above decision, the learned Senior Counsel would also draw the attention of this Court to another facet of apprehension, regarding the applicability of Gujarat pattern of VRS. In this regard, the

learned Senior Counsel referred to the Office Memorandum issued by the Government of India, dated 20.07.2018, containing the consolidated guidelines on VRS/Voluntary Separation Scheme, applicable to Central Public Sector Enterprise. The learned Senior Counsel would particularly draw the attention of this Court to paragraph 2 of the O.M., which is reproduced hereunder:

> *"2.CPSEs which are financially sound and can sustain a scheme of VRS on their own surplus resources may devise and implement variants of the existing VRS. However, in no case shall the compensation exceed 60 days salary for each completed year of service or the salary for the number of months of service left, whichever is less. Salary for the purpose of VRS shall consist of basic pay and DA only and no other element. Further, in case of marginally profit/loss making, as well as sick and unviable units, the option of the Gujarat pattern of VRS or Department of Heavy Industry Pattern (of VSS) shall be available to the employees, if management of CPSE desires so."*

(iv) Below the said paragraph, the Gujarat pattern has been explained. But, for the purpose of adjudication in this case, the same need not be referred to herein. The applicability of Gujarat pattern of VRS would come into force should the fourth respondent decide to retrench the employees, and the said Gujarat pattern was part of the recommendation made by the bilateral committee dated 10.02.2020. However, even this assurance does not find a

place in terms of the relevant clause as incorporated in the SPA dated 25.10.2021. According to the learned Senior Counsel, every recommendation or assurance that was given out has ultimately been given a go-bye and not incorporated in the SPA. In such circumstances, this Court's intervention has been sought, before it became too late for its consideration. She would therefore implore this Court to seek clarification from the Government in response to the genuine concerns raised by the Union representing the large work force.

10. In response to the notice issued in the matter, Mr.M.Karthikeyan, learned Standing Counsel, has entered appearance for the first respondent. Initially, Mr.Shankar Narayanan, learned Additional Solicitor-General appeared in the matter, assisted by the Standing Counsel for Union of India. Later on, the learned Solicitor-General of India Mr.Tushar Mehta appeared on behalf of the first respondent. Mr.N.G.R.Prasad entered appearance for the second and third respondents Air India Ltd and Ms.Anuradha Dutt, entered appearance for the fourth respondent Talace Pvt. Ltd.

11. The learned Additional Solicitor-General during his initial appearance impressed upon this Court, the policy decision of the Government taken in larger public interest, as the second respondent was a sinking

company but remained afloat due to the fact that the Government of India injected hundreds of crores of rupees. Therefore, the Government was left with no choice except to go for disinvestment of 100% of its stake in the larger interest of protecting public interest, employees' interest and the interest of the prestigious national carrier.

12. At the time of entertaining the writ petition, certain interim directions were issued by this Court to maintain status quo in regard to withdrawal of any medical benefits and the benefit of colony accommodation enjoyed by the employees concerned. Later on, detailed counter-affidavits have been filed on behalf of the respondents 1 to 3.

13. Subsequently, Mr.Tushar Mehta, learned Solicitor-General of India appeared for the Government of India and made his submissions elaborately as under:

(a) The learned Solicitor-General began by submitting that the Government of India has so far infused more than Rs.One Lakh Crore to keep the company afloat, as, for several years, the company had been incurring losses year after year. The Government, over a period of time, was unable to infuse more money into the sinking company and

it had no choice except to off-load its 100% shares in order to save the company. Therefore, an economic policy decision became imperative. After taking into consideration all aspects, particularly with reference to the interest of (i) consumers; (ii) tax payers' money and (iii) employees, decision to transfer its shares was found to be the best remedial solution in the overall circumstances. The decision was taken after weighing several other options on the issue.

(b)The learned Solicitor-General would then submit that the bilateral committee constituted was intended to go into various issues concerning the service conditions of the employees in the process of change in management, after the completion of disinvestment process. The committee met on a few occasions and formulated certain areas of concern, and various suggestions were put-forth in the report dated 20.02.2020. The report as such are not to be mistaken as recommendations, as contended by the learned Senior Counsel appearing for the petitioner but they are mere suggestions to be taken forward while bargaining with the potential buyer.

(c)According to the Solicitor-General, the suggestions

that emanated from the report were indeed part of the bargaining process and ultimately, after elaborate consultation and deliberations, SPA was negotiated and finalised on 25.10.2021. In the agreement, all the areas of concerns of workmen have been adequately addressed, and also their interests have been sufficiently protected. The apprehensions expressed by the union against the SPA, are unfounded and misplaced, in the light of the detailed reply by the Government of India as incorporated in the counter-affidavit.

(c) The learned Solicitor-General would draw the attention of this Court to the contents of counter-affidavit filed on behalf of the Government of India and the same would allay various apprehensions expressed on behalf of the petitioner union. With a view to elucidate the steps that have been taken to safeguard the interests of the employees in the SPA, the learned Solicitor-General would draw the attention of this Court to paragraphs 13 to 15 of the counter-affidavit. According to him, each and every concern of the employees has been met, addressed and if only the employees appreciated the relevant clauses as contained in

the SPA, they cannot be said to have any legitimate grievance at all, questioning the fairness in action taken by the Government of India. In paragraph 13 of the counter-affidavit, clause 12 of the SPA is reproduced and the same is extracted hereunder:

> *(a) "The Company and/or AIXL shall not remove or retrench any part of the Employees for a period of 1 (one) year from the Closing Date other than termination or dismissal of the Employees for cause in accordance with applicable staff regulations and standing orders or applicable Law. For avoidance of doubt it is hereby clarified that this provision shall not restrict the Company and/or AIXL from accepting any resignation by Employee(s).*
>
> *(b) Subject to Clause 12.1(a), any restructuring of the labour force by the Company and/or AIXL shall be implemented*
>
> *in accordance with applicable law.*
>
> *(c) In the event of any removal or retrenchment of the Employee(s) by the Company and/or AIXL after the expiry of the period set out in Clause 12.1(a), for a period of 1 (one) year from the expiry of the said period, the SP and the Principals shall ensure that the Company and/or AIXL, as the case may be, shall offer to such Employee(s) voluntary retirement, on terms no less favourable than Maximum Benefits, prior to the Company and/or AIXL, as the case may be, removing or retrenching such Employee(s).*
>
> *(d) for a period of 1 (one) year from the Closing Date, the Company and/or AIXL shall ensure*

that they shall not change the terms of the employment including seniority and compensation of the Employees in any manner that may adversely impact the Employees other than as per organization structure.

(e) the Company and/or AIXL are compliant with applicable Laws and contractual terms, if any, in treatment of contractual employees (fixed term contract employees).

(f) the Company and AIXL shall provide gratuity benefits and provident fund benefits to the employees in accordance with applicable Law.

(g) the Company and AIXL shall grant passage rights and medical benefits to the Employees in accordance with industry practice and industry norms.

(h) the Company shall continue to honour the arrangement with the Employees and the Life Insurance Corporation of India for administrating the existing Air India and Indian Airlines Employees' Self Contributory Superannuation Pension Fund Trust.

(i) "on and from the Closing Date, the Company and AIXL, as the case may be, shall be solely responsible for remitting provident fund contributions for all existing and future employees of the Company...."

(j) "On or prior to the Closing Date, the Company and the Government shall undertake reasonable endeavours to ensure that the Employee Arrears are paid to the respective employees by the Company."

II "On or prior to the closing date, the gov and the company shall undertake reasonable endeavours to regiser the company under the EPF Act and transfer all investment held under PF trust tothe EPFO.

III The Company shall, and the Principals and the SP shall ensure that the Company shall within 3 (three) months of the Closing Date adopt an employee stock option scheme ("ESOP Scheme"), with terms and conditions that are market standard for companies, which gives all Employees, as of the Closing Date, the right to purchase at a future date, upto an aggregate of 3% (three percent) of the Purchaser Shares acquired by the SP ("ESOP Shares"), at an exercise price which shall not be higher than 1/3rd (one-third) of the Per Share Purchase Consideration, without any specific limits entitlement on account of designation (and in the event the options are oversubscribed, the entitlements shall be reduced pro-rata for all Employees, who have exercised the option), which options shall vest in the Employees on expiry of 1 (one) year period from the date of the grant of such option (without any performance conditions), giving the Employees a period of not less than 1 (one) month to exercise such option after vesting ("Exercise Period")."

IV "The SP Principal shall, for period of (one) year post the Closing Date, use their best endeavour cause the Company: (a) to provide job adequate opportunities to scheduled caste/ scheduled tribe, persons with disability and socially disadvantaged categories of the society; and (b) to ensure that in

the event of reduction in the strength of the employees of the company scheduled castes/scheduled persons with disability and socially disadvantaged categories of the the society, are retrenched/terminated last"

"Post-retirement Benefits: The Government agrees and that the liability with respect to medical benefits to be made available to the retired employees of the Company and/or AIXL, as of the Closing Date, and their spouses and to the Eligible Employees and their spouses, post their retirement from the Company and/or AIXL, shall be the obligation of the Government."

(d) Apart from the above clarification, in paragraphs 14 and 15 of the counter-affidavit, it was also explained about the decision taken in regard to the residential quarters occupied by the employees and also extension of medical facilities to the serving employees, which are also extracted hereunder:

"14. It is humbly submitted that in respect of residential quarters occupied by the employees of Air India, Ministry of Civil Aviation vide its letter dated 21.08.2021 had inter alia intimated the decision of AISAM as under:

"Al Employees may continue to stay at the residential colonies of the company post disinvestment for a period of six months or till the property is monetized whichever is earlier.

Appropriate binding legal and other arrangement including financial disincentives should be formulated to enable prompt vacation of the properties by the employees."

Further, the Housing Colonies of the Respondent-Company will not be transferred to the new buyer (4th Respondent) and will be transferred to a Special Purpose Vehicle i.e. Air India Asset Holding Limited (AIAHL). Hence, the Ministry of Civil Aviation, vide its communication dated 29.09.2021, had informed the steps to be adopted for vacation of colonies and that an undertaking has to be obtained from all the allottees of colonies that they would vacate the staff quarter allotted to them within the prescribed time frame i.e. six months from the disinvestment or till the properties are monetized, whichever is earlier.

The Government had initiated the action well in advance in order to provide adequate time for the employees to make alternate arrangements.

15. It is humbly submitted that, regarding medical facilities, AISAM during its meeting dated 09.08.2021, deliberated upon this issue and it was decided that the medical benefits for the retired and specified categories of prospective retirees' beneficiaries may be provided through Central Government Health Scheme (CGHS), which provides facility similar to existing Air India Scheme. The eligible employees will be all existing retired employees and their spouses, all existing employees who would attain the superannuation age of 58 years on date of closing of transaction and retire from privatised Air India and all the existing employees who would attain 55 years or above or

would complete 20 years of continuous service on the date of closing of transaction and retire from the privatised Air India. However, as far as existing employees are concerned, it has been decided that the medical benefits of said employees will be taken care of by the new Employer as per standard prevalent practices in the industry keeping in view the specific clauses of the Share Purchase Agreement."

(e) While referring to paragraphs 13, 14 and 15 of the above, the learned Solicitor-General would submit that these clarifications are provided to this Court only to satisfy its conscience as to how the Government of India has been extremely earnest and fair in protecting the overall interests of the employees who have been, as a matter of fact, employed in a sinking company. The policy of disinvestment though taken in larger public interest but in the bargain, the employees stood greatly benefited by the change of management, as there could be hope of revival and rejuvenation of the company under the new management.

(f) The learned Solicitor-General would submit that as far as the benefit of voluntary retirement scheme to be offered in the event of the fourth respondent deciding to

downsize its staff strength, the Gujarat pattern, which has been insisted upon by the petitioner, may not be applicable to the present case, since Air India Ltd became a sick and unviable company. For such companies, the Gujarat pattern is available only if the management of the Central Public Sector Enterprises desires so. He would in this regard clarify that the office memorandum dated 20.07.2018 providing for applicability of Gujarat pattern of VRS is not compulsorily applicable to sick and unviable units of public sector enterprise and more so in this case, such benefit can never stated to be applicable, once the company loses its character as Central Public Sector Enterprise, after take over of the company by the fourth respondent. The office memorandum therefore would have no application to the companies in private sector.

(g) However, even the said apprehension appears to be not founded on genuine basis as could be seen from sub-paragraph (c) of paragraph 13 of the counter-affidavit, wherein it has been stated that in case of any removal or retrenchment of employees, there will be offer of voluntary retirement on terms no less favourable than maximum

benefits, prior to the company's takeover. As a matter of fact, this aspect has been clarified in the notes of submissions filed on behalf of the Union of India which has been pointed by the learned Solicitor-General. According to him, it has been specifically incorporated in the SPA on the aspect of offer of VRS as under:

> *"3.Despite VRS being at the discretion of employer and post disinvestment of AI, AI not being subject to the DPE Circular, Government as an employee safeguard by way of contractual arrangement has obligated the privatised AI to provide VRS to its employees in the 2nd year of disinvestment, in case of removal/retrenchment of employee in the 2nd year, on terms no less favourable than Maximum Benefits (definition provided below). The VRS will be provided on terms that are the highest of the DPE guidelines or applicable law.*
>
> *4.The following definition of Maximum Benefit has been provided in the SPA:*
>
> *"Maximum benefits" means the employment benefits which are highest of: (i)the voluntary retirement scheme as provided by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India, under the Office Memorandum "Consolidated Guidelines*

on Voluntary Retirement Scheme (VRS/ Voluntary Separation Scheme (VSS)" dated July 20, 2018, as modified, reenacted or replaced; (ii) the terms of the voluntary retirement scheme of the Company and AIXL as of the closing Date; and (iii) the benefits available to the employees under applicable Laws at the time of termination or retrenchment".

(h) After clarifying various apprehensions expressed on behalf of the petitioner association, in an effort to appeal to the conscience of this Court, the learned Solicitor-General would then proceed to raise the issue as to the maintainability of the writ petition, in the first place. According to the him, a writ of Mandamus would not lie, as in this case, in the absence of enforceable right to seek issuance of the prerogative writ from this Court. The writ petition is entirely premised on the bilateral committee's report dated 20.02.2020. The report has come up with a few suggestions, which, as stated earlier, are to be used as bargaining chips with the potential buyer in order to get the best price and also to protect the best interest of the workers. The suggestions made in the committee's report do

not become enforceable recommendations and in such circumstances, the writ petition itself cannot be stated to be maintainable.

(i)Further, it is a major and important economic policy decision of the Government of India towards saving the national carrier from becoming completely defunct. In the run-up to the final decision, discussions were held at several levels and through several stages and eventually only one option became viable to the Government, viz. complete disinvestment, in the overall interest of all the stakeholders. In matters of policy decisions taken in the interest of the public at large, and in the interest of the industry, the Courts have consistently refused to interfere. The Courts have uniformly held that judicial review is impermissible against the policy initiatives of the Government unless such policy decisions are against any law or *ex-facie* arbitrary or unconstitutional.

(j) In respect of the above contention, the learned Solicitor-General would proceed to refer to the landmark judgment of the Hon'ble Supreme Court rendered on the subject matter of *lis* herein, reported in *2002 (2) SCC 333,*

(Balco Employee's Union (Regd) vs. Union of India and ors.). The said decision has also been referred to by the learned Senior Counsel for the petitioner for a different reason.

(k) The learned Solicitor-General would draw extensively the attention of this Court to paragraphs 46 to 51, 54 to 61, 67, 87,91, 93 to 95 and 98 which are extracted hereunder:

> *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.

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, (1976) 2 SSC 844, 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, [1994] 81 Comp. Cases at page 389, 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 I.D. 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".

51.The aforesaid observations, in our opinion, enunciates the legal position correctly. The policies of the Government ought not to remain

static. With the change in economic climate, the wisdom and the manner for the Government to run commercial ventures may require reconsideration. What may have been in the public interest at a point of time may no longer be so. The Government has taken a policy decision that it is in public interest to disinvest in BALCO. An elaborate process has been undergone and majority shares sold. It cannot be said that public funds have been frittered away. In this process, the change in the character of the company cannot be validly impugned. While it was a policy decision to start BALCO as a company owned by the Government, it is as a change of policy that disinvestment has now taken place. If the initial decision could not be validly challenged on the same parity of reasoning, the decision to disinvest also cannot be impugned without showing that it is against any law or mala fide.

...

54.We find that in the shareholders agreement between the Union of India and the strategic partner, it is provided that there would be no retrenchment of any worker in the first year after the closing date and thereafter restructuring of the labour force, if any, would be implemented in a manner recommended by the Board of Directors of the company. The shareholders Agreement further mandates that in the event reduction in the

strength of its employees is required, then it is to be ensured that the company offers its employees an option to voluntarily retire on terms that are not in any manner less favourable than the Voluntary Retirement Scheme offered by the company on the date of the arrangement. Apart from the conditions stipulated in the shareholders agreement, Shri Sundaram, learned Senior Counsel on behalf of the company has stated in the Court that it will not retrench any worker(s) who are in the employment of BALCO on the date of takeover of the management by the strategic partner, other than any dismissal or termination of the worker(s) of the company from their employment in accordance with the applicable staff regulations and standing orders of the company or other applicable laws. We record the said statement.

55.We are satisfied that the workers' interests are adequately protected in the process of disinvestment. Apart from the aforesaid undertaking given in the Court, the existing laws adequately protect workers' interest and no decision affecting a huge body of workers can be taken without the prior consent of the State Government. Further more, the service conditions are governed by the certified orders of the company and any change in the conditions thereto can only be made in accordance with law. The demands

made by the employees of BALCO were considered by the IMG in its meeting held on 25th January, 2001 and the issues emanating therefrom were placed by the Department of Disinvestment before the Cabinet Committee on Disinvestment which held its meeting on 1st February, 2001. A note containing the comments of the Ministry of Mines which was endorsed by the IMG of the Cabinet Committee on Disinvestment was forwarded by the Minister of Mines, Government of India to Shri Tara Chand Viyogi, President, M.P. Rashtriya Mazdoor Congress. The said note, apart from setting out reasons for disinvestment of BALCO, also refers how the interest of the employees of BALCO has been protected in the process of disinvestment. This note states:

"Regarding employees, adequate provisions have been made in Share Holders' Agreement (SHA) as follows :

"Recital H

Subject to Clause 7.2, the Parties envision that all employees of the Company on the date hereof shall continue in the employment of the Company.

Clause 7.2 (e)

It shall not retrench any part of the labour force of the Company for a period of one (1) year from the Closing Date other than any dismissal or

termination of employees of the Company from their employment in accordance with the applicable staff regulations and standing orders of the Company or applicable Law;

Clause 7.2 (f) Subject to the sub-clause (e) any restructuring of the labour force of the company shall be implemented in the manner recommended by the Board and in accordance with all applicable laws. The SP in the event of any reduction of the strength of its employees shall, ensure that the Company offers its employees an option to voluntarily retire on terms that are not, in any manner, less favourable than the voluntary retirement scheme offered by the company on the date of this agreement;

It may be mentioned that as per the provisions contained in the I.D. Act, BALCO will remain an industrial establishment even after the disinvestment and all the provisions of I.D. Act will automatically apply to BALCO.

In an organised sector, the issues of job security, wage structure, perks, welfare facilities, etc., of the workmen are governed by bipartite/tripartite agreements. These agreements are in the nature of "settlement" under the I.D. Act. Even after the disinvestment, the BALCO management will be required to enter into bipartite/tripartite agreements with the workmen

through unions, and, the terms and conditions in the agreement would be always governed by the practices and procedures applicable under collective bargaining. It is a fact that any agreement between two or more parties is based on the principles of mutual consent. Hence, the consent of the management to better service conditions, etc., would certainly depend on the achievement of the productivity and production targets by the workers from time to time.

Regarding providing social security to the BALCO employees at par with government employees, it is to be noted that as a matter of principle, no industrial establishment has any right to be compared with a government establishment. Hence the issue of guaranteeing the social security of the BALCO employees at par with the employees of the Government establishments may not be possible any time before or after the disinvestment.

So far as employees' stock options and a lock-in period for the investor are concerned, there is a provision in the documents pertaining to the proposed strategic sale, for giving upto 5 per cent of the equity to employees, and for a lock-in period of three years.

Regarding guaranteeing that there will be no closure of any establishment of the company for a minimum period of 10 years, it is to be noted that

the "Closure" of any undertaking of an Industrial Establishment of the kind of BALCO is governed by Section 25(O) of Chapter V-B of the I.D. Act, by virtue of which BALCO management before or after disinvestment is not free to close down any part of the BALCO at their sweet will. The closure is governed by the law of the land and under the existing provisions of I.D. Act, "genuineness and adequacy of the reasons stated by the employer" and "the interests of the general public and all other relevant factors" has to be examined by the appropriate government, and, for doing so the government give a reasonable opportunity of hearing to the employer and workmen and the persons interested in such closure. It means that unless and until the appropriate Government grants permission, the BALCO management will not be competent to close down any undertaking of the company even after disinvestment. So there are protections available under the Act against arbitrary closure of any undertaking of the BALCO after disinvestment.

The unions desire that the prospective buyer should disclose its plans for investment/ modernisation of BALCO after disinvestment. As a matter of fact, at the time of submitting financial bids the prospective buyers are expected to submit the business plan as well. But perhaps in such

commercial ventures, given the changing market conditions, the business plan submitted by prospective buyers may not be enforceable under law.

The trade unions desire that all listed demands should be accepted and put in the form of a written agreement between the government and the representatives of recognised unions before finalising any agreement with the prospective buyers. In fact, the Government and BALCO are two different legal entities. The Government is disinvesting its 51% equity in the BALCO. Under law, no enforceable agreement may be entered between the Government and the workmen of BALCO as any such agreement will not have force of law. In order that an agreement has the force of law, it should be a written agreement between employer and workmen. The Government is not the employer of the workmen employed in BALCO. As such, any such agreement is neither desirable nor necessary and not enforceable".

56.From the aforesaid recital of facts, it is clear that safeguarding the interests of the workers was one of the concerns of the Government. Representations had been received from the Trade Union leaders and effort was made to try and ensure that the process of disinvestment did not adversely affect the workers.

57.Even though the employees of the company may have an interest in seeing as to how the company is managed, it will not be possible to accept the contentions that in the process of disinvestment, the principles of natural justice would be applicable and that the workers, or for that matter any other party having an interest therein, would have a right of being heard. As a matter of good governance and administration whenever such policy decisions are taken, it is desirable that there should be wide range of consultations including considering any representations which may have been filed, but there is no provision in law which would require a hearing to be granted before taking a policy decision. In exercise of executive powers, policy decisions have to be taken from time to time. It will be impossible and impracticable to give a formal hearing to those who may be affected whenever a policy decision is taken. One of the objects of giving a hearing in application of the principles of natural justice is to see that an illegal action or decision does not take place. Any wrong order may adversely affect a person and it is essentially for this reason that a reasonable opportunity may have to be granted before passing of an administrative order. In case of the policy decision, however, it is impracticable, and at times

against the public interest, to do so, but this does not mean that a policy decision which is contrary to law cannot be challenged. Not giving the workmen an opportunity of being heard cannot per se be a ground of vitiating the decision. If the decision is otherwise illegal as being contrary to law or any constitutional provision, the persons affected like the workmen, can impugn the same, but not giving a pre-decisional hearing cannot be a ground for quashing the decision.

58.Our attention was invited to the decision in the National Textile Workers' Union and Others vs. P.R.Ramakrishnan (supra) where at page 245, Bhagwati, J. (as he then was) had observed that in deciding whether the Court should wind up a company or change its management, the Court must take into consideration not only the interests of the shareholders and creditors but also amongst other things, the interests of the workers. The workers must have an opportunity of being heard for projecting and safeguarding their interests before winding up Order is passed by the Court. It was contended that similarly before a policy decision is taken, and also in the execution thereof, as the interests of the workers is going to be affected, the petitioning workers herein have a right to be heard. There can be no doubt that in judicial proceedings where rights are likely to be affected, principles of

natural justice would require the Court to give a hearing to the party against whom an adverse or unfavourable Order may be passed. It was in relation to the winding up proceedings which were pending before a Court that this Court in National Textiles Workers Union case held that they had a right to be heard. The position, in the present case, is different. No judicial or quasi-judicial functions are exercised by the Government when it decides, as a matter of policy, to disinvest shares in a Public Sector Undertaking. While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company. The decision in National Textiles Workers Union case can, therefore, be of no assistance to the petitioner.

59.In this connection, we approve the following observations of the Karnataka High Court in Prof. Babu Mathew and Others vs. Union of India and Others, [1997] 90 Company Cases 455 where the Court while dealing with disinvestment upto 49% of the government's holding in a public sector company observed at page 478 as follows:

"Any economic reform, including disinvestment in PSEs is intended to shake the system for public good. The intention of disinvestment is to make PSEs more efficient and

competitive and perform better. The concept of the public sector and what should be the role of the public sector in the development of the country, are matters of policy closely linked to economic reforms. While it is true that any policy of the Government should be in public interest, it is not shown how prior consultation with employees of a PSE before disinvestment is a facet of such public interest."

60.As a result of disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the company and change of management does not in law amount to a change in employment.

61.Apart from the fact that it will not be open to a Court to consider whether there has been a gross failure to evolve a comprehensive package towards implementation of the policy on disinvestment, as was contended by the Advocate-General of Chhattisgarh, it is not possible to accept the said contention as being, in fact, correct. In the process of disinvestment, it is evident that the Central Government was aware of the interests of the workers and employees as a class. It was precisely for this reason that safeguards were

inserted in the Share Holders Agreement. These terms, which have been referred to were incorporated in the agreement after the demands of the BALCO employees were considered by the IMG in its meeting on 25th January, 2001 and thereafter the same were considered by the Cabinet Committee on Disinvestment on 1st February, 2001.

67.It was contended by the learned Advocate General that the whole process lacked transparency. We are not able to appreciate this contention. The disinvestment of BALCO commenced with the recommendation by the Disinvestment Committee in its second Report suggesting that the Government may disinvest BALCO. It is by global advertisement that the global Adviser and the strategic partner was chosen. At every stage, the matter was looked into by the IMG and ultimately by the Cabinet Committee on Disinvestment. The system which was evolved was completely transparent. It was made known. Transparency does not mean the conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known. Persons who are to decide are not arbitrarily selected or appointed. Here we have the selection of the global adviser and the strategic

partner through the process of issuance of global advertisement. It is the global Adviser who selected the valuer who was already on the list of valuers maintained by the Government. Whatever material was received was examined by high Power Committee known as the IMG and the ultimate decision was taken by the Cabinet Committee on Disinvestment. To say that there has been lack of transparency, under these circumstances, is uncharitable and without any basis.

87.Lastly, we need only to refer to the following observations in the majority decision in Narmada Bachao Andolan case (supra) at page 763.

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The

role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from

being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision".

91.This writ petition has been filed under Article 32 of the Constitution by BALCO challenging various show causes notices issued to them by authorities in the State of Chhattisgarh. In our opinion, it will not be appropriate for this Court to entertain the challenge to the said show cause notices in this petition. The petitioners have adequate remedy open to it under the Acts under which the notices had been issued and, in appropriate case, can approach the High Court under Article 226 of the Constitution. This writ petition is thus not entertained as alternative remedy is available to the petitioner.

93.Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the

Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.

94.Thus, apart from the fact that the policy of disinvestment cannot be questioned as such, the facts herein show that fair, just and equitable procedure has been followed in carrying out this disinvestment. The allegations of lack of transparency or that the decision was taken in a hurry or there has been an arbitrary exercise of power are without any basis. It is a matter of regret that on behalf of State of Chattisgarh such allegations against the Union of India have been made without any basis. We strongly deprecate such unfounded averments which have been made by an officer of the said State.

95.The offer of the highest bidder has been accepted. This was more than the reserve price which was arrived at by a method which is well recognised and, therefore, we have not examined the details in the matter of arriving at the valuation figure. Moreover, valuation is a question of fact and the Court will not interfere in matters

of valuation unless the methodology adopted is arbitrary [see Duncans Industries Ltd. vs. State of U.P. and Others, (2000) 1 SCC 633].

98.In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."

(l)According to the learned Solicitor-General, the above decision of the Hon'ble Supreme Court is a complete answer to the challenge made in the present writ petition. According to him, though there is no legal obligation cast upon the Government to afford detailed opportunity to the workmen in case of policy decision, as held by the Hon'ble Supreme Court, yet, there have been a consultative process with the workmen and their representatives and a bilateral committee was put in place and deliberations were manifestly carried on and only after taking note of their concerns, the SPA dated 25.10.2021 had been entered into with the fourth respondent company. Every facet of the

grievance of the workmen has been addressed earnestly, scrupulously and the Government of India has taken exhaustive efforts to ensure that the employees' varied interests are protected to the maximum, in the bargain.

(m) The learned Solicitor-General has drawn reference to several important and succinct statements made in the above decision by the Hon'ble Supreme Court, which would be specifically referred to in the later part of the judgment, when this Court would be discussing the rival contentions with reference to various other case-laws. Before concluding his arguments, a summary of written submissions has been filed, clarifying each aspect of the apprehension raised on behalf of the petitioner union herein. A detailed tabulated statement has been incorporated in the summary of written submissions wherein every ground or apprehension or concern raised on behalf of the petitioner union has been addressed and clarified. Reference to the tabulated statement would be drawn at the appropriate place in the decision as this Court proceeds along with its judicial discourse.

(n) Along with the written summary of submission, a

compilation of the judgments has also been circulated on behalf of the Union of India. The compilation contains as many as 12 judgments, touching upon various aspects of legal principles that are under consideration of this Court in the present writ petition. The learned Solicitor-General has not referred to those decisions for the sake of brevity, being the soul of wit, as according to him, the decision in *Balco Employee's Union (Regd) vs. Union of India and ors. (2002 (2) SCC 333),* read with detailed clarifications as enumerated in paragraph 13 of the counter-affidavit, and reiterated in the summary of written submissions would be sufficient enough to hold that the writ petition is devoid of merits.

(o)The relevant decisions as contained in the compilation circulated along with the written summary of submissions would also be referred to infra.

(p)The learned Solicitor-General has finally wrapped up his arguments by discreetly, yet rightly, submitting that there are other legal issues raised in the counter-affidavit as to the maintainability of the writ petition but those issues are not pursued or needed to be raked up, as sufficient facts

with supportive materials have been presented on behalf of the Government, appealing to the conscience of this Court and hence, there is no necessity to press the maintainability issues as raised in the counter-affidavit. The learned Solicitor-General would therefore submit that the writ petition is bereft of any substance and prayer for Mandamus would not lie in the facts and circumstances of the case.

14. By way of reply, the learned Senior Counsel Ms.Vaigai, would fairly admit that after the filing of the summary of written submissions on behalf of the Union of India, several of the concerns and apprehensions expressed by the workmen have been clarified. According to her, the clarity on several issues like job security, VRS, payment of Provident Fund, Gratuity etc. was not forthcoming from the Government, forcing the petitioner union to approach this Court.

15. In response to the submissions advanced on behalf of the Union of India by the learned Solicitor-General and on taking note of the detailed clarifications as provided in the tabulated column in the counter-affidavit as well as in the summary of written submissions, on behalf of the petitioner, a written submissions came to be filed dated 27.01.2022. As a matter of fact, in

paragraph 26 of the notes, it is stated that the Government's written submissions provided clarifications that are not found in the counter-affidavit and a request is made to incorporate those clarifications in the final order of this Court. In view of the statement made on behalf of the petitioner, this Court has to take it that in regard to the issues which have been clarified, the petitioner union may not have any misgiving, at least for the present. Therefore, to that extent, the adjudication of the dispute herein is to be confined only to three areas of concern, as agitated by the learned Senior Counsel in her reply.

16. Confined areas of concern as emerged in the final lap towards the conclusion of the arguments are only in relation to right to colony accommodation, passage rights and medical benefits. While focusing her reply arguments only on these three aspects, the learned Senior Counsel has also come up with a strong plea of Section 9A of the Industrial Disputes Act, 1957 (for short, the 'I.D. Act') not being followed in the matter. Although specifically there is no mention of the provision in the grounds or in the affidavit filed in support of the writ petition but in the course of her reply, objection has been vehemently advanced. The legal issue has been raised in response to the stand of the Government of India that there is no change in the employment of the employees but it is only a share pattern which has undergone the change.

According to her, since the employer is stated to remain the same, it is mandatory on the part of the employer to have recourse to Section 9A before effecting any change in the service conditions of its employees.

17. As stated above, although this ground has not been specifically raised in the affidavit filed in support of the writ petition, except broadly stating that no notice was issued to the employees before changing their service conditions, yet when a legal objection is raised as lethal as the present one contending notice under Section 9A has not been resorted to, this Court inevitably will have to address the objection also, as part of its judicial discourse.

18. According to the learned Senior Counsel, in regard to the three benefits which had been outlined as above, viz., colony accommodation, passage rights, medical facilities, admittedly, changes have been effected, altering the rights of the employees hither to enjoyed by them, as clarified by the Government itself, in which case, the issuance of notice under Section 9A of the I.D. Act becomes mandatory. Without notice, there could be no change of the existing service conditions enjoyed by employees. In this regard, the learned Senior Counsel would place heavy reliance on a judgment of the Hon'ble Supreme Court in *LIC of India vs. D.J.Bahadur and others, (1981(1) SCC*

315). The relevant paragraphs and the observations of the Hon'ble Supreme Court would be referred to later in the order.

19. According to the learned Senior Counsel, presently, accommodation has been provided to a substantial number of employees in Air India colonies. Notices have been issued to the employees directing them to vacate the colonies, for the purpose of monetizing the property in terms of the present policy of the Government. According to her, with the present house rent allowance payable at the rate of 30% of the basic way, the employees cannot get a decent accommodation, as the wages had not been revised since 2007. The employees continued to draw their basic wages in terms of unrevised wages for more than 15 years and the HRA payable at 30% of the basic pay would be too frugal to get decent accommodation. In these circumstances, directing the employees to vacate the company provided accommodation without complying with mandatory procedure contemplated under Section 9A of the I.D. Act is illegal and liable to be interfered with.

20. As regards the passage rights enjoyed by the employees, the facilities have been part of the service benefits for both serving and retired employees for years together and as such benefit has now been sought to be altered in terms of Clause 12(g) of the SPA. In terms of the new arrangement,

the company would give passage rights to the employees in accordance with the industrial practice and industrial norms, which means that there is going to be a change in the facilities hitherto enjoyed by the employees.

21. So is the medical benefit scheme that had been made available to the serving and retired employees under the medical benefit schemes of Air India Ltd. Here again, clause 12(g) of the SPA states that medical benefits would be extended in accordance with the industrial norms, indicating withdrawal of the existing medical benefit scheme. According to the learned Senior Counsel, the employees are to be covered under Central Government Health Scheme (CGHS) which included the retired employees. Such variation in the grant of medical benefits cannot come into force without following the procedure prescribed under Section 9A of the I.D. Act.

22. The substance of the reply argument by the learned Senior Counsel hovered around the above three benefits and in that context, she strongly pleaded violation of the mandatory provision viz., Section 9A of the I.D. Act. According to her, on this ground alone, this Court can interfere with the present decision of the Government before it became too late. Apart from the LIC case, one another reference has been drawn in the written submissions to a decision reported in *Film Factory Workers Union vs. Government of India (2016*

SCC Online MAD 10100). The learned Judge of this Court has held that the company cannot vary the conditions of service of workmen even if it feels bound by the government's directives, except in accordance with the procedure under the I.D. Act.

23. The above reference made in the context of application of Section 9A of the I.D. Act in the written statement is not found factually in the order passed by the learned Single Judge in the order in W.P.Nos.24460, 24355 and 25491 of 2013 dated 29.11.2016 (*Film Factory Workers Union vs. Government of India*). This Court does not also find any reference to Section 9A of the I.D. Act. The judgment was rendered in the context of the sanctity of the settlements entered with by the parties under the provisions of the I.D. Act. In the writ appeal judgment dated 21.06.2018, in W.A.Nos.1370, 1371 and 1372 of 2017 against the order, the Division Bench merely confirmed the decision of the learned Single Judge by dismissing the appeals. In any event, the decision of the Single Judge as well as the Division Bench was rendered in a completely different context and this Court does not think that the same would have any value addition to the case of the petitioner union with reference to Section 9 of the I.D.Act.

25. As regards the general proposition as to whether notice has to be

given or not before effecting changes, the following two decisions have been referred to in the written arguments:

(i) *H.L.Trehan and ors. vs. Union of India and ors (1989 (1) SCC 764);*

(ii) BALCO Captive Power Plant Mazdoor Sangh and ors. vs. NTPC and ors, (2007 (14) SCC 234).

26. In ***H.L.Trehan's case***, the Hon'ble Supreme Court has upheld the view of the High Court which quashed the circular permitting the change in working conditions of the employees on the ground that no opportunity was given to the employees concerned and the same amounted to violation of principles of natural justice. The Supreme Court upheld the decision, agreeing with the conclusion of the High Court.

27. In ***BALCO Captive Power Plant Mazdoor Sangh***, in paragraph 35 of the judgment has held that Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrariness and violative of Article 14 of the Constitution. The Supreme Court has, in fact, extracted the relevant finding of its earlier decision in ***H.L.Trehan***.

Paragraph 35 reads as under:

"35.The Government or its instrumentality cannot alter the conditions of service of its employees and any such alteration causing prejudice cannot be effected without affording opportunity of pre-decisional hearing and the same would amount to arbitrary and violative of Article 14. As pointed out earlier, in the case on hand, the employees are neither party to tripartite agreement nor they have been heard before changing their service condition. Therefore, the action of the management is violative of Article 14 of the Constitution of India. Similar view has been taken by this Court in H.L. Trehan and Others vs. Union of India and Others, (1989) 1 SCC 764. In para 11 of the judgment, this Court observed as under:

"It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case

before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."

28. The learned Senior Counsel would submit that as the employer remaining the same, as per the counter-affidavit, and the stand taken by the Union of India, notwithstanding disinvestment of 100% stakes by the Government, the service conditions with reference to the three facilities (housing, passage and medical) cannot undergo any prejudicial change without following the due process of law as contemplated under Section 9A of the I.D. Act or in terms of Article 14 of the Constitution of India. Therefore, the learned Senior Counsel urged this Court to intervene on the limited aspects of protecting the above rights or facilities alone.

29. Mr.N.G.R. Prasad, learned counsel for the second and third respondents Air India Ltd would submit that the policy decision has been taken by the Union of India and as such, being a Government company, it is bound by the decision. Therefore, the learned counsel would submit that the company shares the same perspective as that of the Government of India and therefore, the submission made on behalf of the first respondent would hold good for the second and third respondents as well.

30. On behalf of the fourth respondent, Ms.Anuradha Dutt appeared and the learned counsel would submit that the fourth respondent has no particular say in the matter at this stage, as the bone of contention is between the respondents 1 and 2 on the one hand and the employees on the other. However, the learned counsel would add that in pursuance of the SPA dated 25.10.2021, all legal formalities have been completed and the second respondent company has been taken over by the new management. By virtue of the take over, the second respondent has become a private sector company and it is no more under the yoke of the Union Government.

31. Heard Ms.Vaigai, learned Senior Counsel for the petitioner, Mr.Thushar Mehta, learned Solicitor-General, Mr.Shankaranarayanan, learned Additional Solicitor-General for the first respondent Union of India, Mr.N.G.R.Prasad, learned counsel for the second and third respondents and Ms.Anuradha Dutt for the fourth respondent. This Court has perused the pleadings and the materials placed on record. This Court has also bestowed upon its critical consideration of the case laws cited and relied upon and the written submissions presented by the parties.

32. As a precursor to the pleonastic discussion that is to follow hereunder, this Court has to clarify that the prayer in the writ petition is only

for the issuance of a Writ of Mandamus seeking a negative direction of forbearance. In the face of the limited scope of the relief framework, this Court need not traverse too deep into the validity of various clauses as contained in the SPA dated 25.10.2021. The petitioner herein has not challenged *per se*, any of the clauses concerning the change, variation, alteration of the service conditions as incorporated in the SPA. The writ petition has been instituted with a prayer as sought, principally or wholly intended to obtain certain assurances towards protection of certain terms and conditions of service, enjoyed by the employees under the public sector management of Air India Ltd.

33. In the course of the arguments, exchange of pleadings and also filing of the written submissions particularly on behalf of the first respondent Union of India, in unmistakable terms clarity emerged on the larger contentious scenario. This fact has also been acknowledged fairly by the learned Senior Counsel for the petitioner union. Although initially several issues were sought to be raised for adjudication and consideration of this Court, after the clarifications by the Union of India, as reflected in the counter-affidavit first, second bolstered by a detailed tabulated statement incorporated in the summary of written submissions, the scope of the dispute has been narrowed and whittled down to only three areas of concern, as stated above.

34. The entire focus of attention of this Court is now on the subsisting areas of concern/apprehension and the legal objections raised on that account. As a matter of fact, when the arguments were concluded, the take over of the second respondent company by the fourth respondent was complete and the entire gamut of issues that have been placed for consideration has become *fait accompli,* a postmortem exercise though, it became however necessary to deal with certain contentions raised on behalf of the employees and for the sake of providing clarity on the claim of vested rights by the employees vis-a-viz the action of disinvestment and its impact on the services conditions. Albeit the takeover, certain concerns expressed on behalf of the employees cannot be brushed aside or disregarded on the basis of the adage, “their goose was already cooked”.

35. This Court in exercise of its exalted constitutional jurisdiction is duty bound to address the concerns raised on behalf of the employees touching upon their rights, claims and the obligations of the employer with reference to the relevant statutory framework and the legal principles evolved by the Courts on the subject-matter.

36. In consideration of the constricted scope of the judicial review, the following issues arise for incisive examination:

(i)Whether the employees are entitled to notice or opportunity or a pre-decisional hearing in the face of the decision being taken by the Government towards advancing larger public interest as a consequence of its economic policy initiative or not?

(ii)Whether Section 9A of the I.D. Act, 1957 can be pressed into service in the matter of change of management through disinvestment process or not as in the present case?

(iii) Whether in the facts and circumstances of the case, it can be held that due opportunity had been afforded to the employees before the SPA dated 25.10.2021 was signed and implemented or not?

(iv)Whether conditions of service of the employees, in particular, with reference to their claim towards medical benefit scheme, passage rights, colony accommodation can said to be undermined and taken away, ruffling the judicial conscience or not?

As a corollary to the above examination, whether the action of disinvestment with reference to the constricted areas of concern could be held as arbitrary, offending Articles 14 and 21 of the Constitution of India or not?

37. On the above framework of consideration, this Court would like to refer to the materials and the relevant case laws before the discussion reaches its homestretch for its final conclusion.

38. As far as the first issue is concerned, what strikes the Court instantly is the comprehensive ruling of the Hon'ble Supreme Court in ***Balco Employees' Union vs. Union of India (2002(2) SCC 333)***. The Court has made extensive observations while dealing with a similar controversy. In paragraph 47 of the judgment, in matters concerning economic decisions of the Government, particularly in regard to the disinvestment policy, the employees have no right to demand a hearing or consultation prior to the decision. The Supreme Court went further and held that merely because of the protection guaranteed under Articles 14 and 16 of the Constitution of India, does not mean that the Government had to give workers prior notice of hearing before a decision is taken to disinvest. The Court also held that principles of natural justice would have no application in such matters and observed that transparency in such mattes does not mean conducting of the Government business while sitting in the cross-roads in public. Transparency would require the manner in which the decision is taken is made known. This particular observation of the Supreme Court would be a fitting answer to the contentions raised on behalf of the petitioner union that there was lack of transparency in the process of evolving

disinvestment process and its ultimate implementation. In fact, such contention is also not factually sustainable as this Court would be referring to the bilateral committee's deliberations and its report, infra.

39. From the entire reading of the above judgment, it could be seen that the Supreme Court has unequivocally held that there is no right of pre-hearing that could be claimed by the employees in matters of large economic policy decision by the Government like disinvestment in public sectors. The Courts have recognized larger public interest involved in such policy decisions and have consistently held that judicial review in such matters is almost impermissible except when the decision is stated to be smacked of total arbitrariness, unconstitutional or illegal. The judicial efforts have been directed towards protecting such policy decisions of the Government in not interfering with such decisions when the same are put to challenge. In that context, the Supreme Court has dismissed several challenges assailing such policy shift, at the instance of the employees.

40. In fact, on behalf of the first respondent, a compilation of decisions was circulated. Almost in similar circumstances like Balco's case, the Supreme Court has reiterated its view in the decision reported in *All India ITDC Worker's Union vs. ITDC and ors. (2006(10) SCC 66),* referring its earlier decision (***Balco***)

extensively. The consistent views expressed therein would be appreciated in the following paragraphs reproduced: (paragraphs 23 to 27, 32 to 39, 44 and 45).

> *"23.We have given our thoughtful consideration to the rival submissions made by the respective counsel appearing for the respective parties. In our opinion, the present writ petitions filed by the employees merit to be dismissed since disinvestment was a policy decision of the Government of India. This Court also has held that the said policy decision should be least interfered with in judicial review and that the government employees have no absolute right under Articles 14, 21 and 311 of the Constitution of India and that the Government can abolish the post itself. In the present case, the petitioners are not government servants and are merely employees of a public sector undertaking. This apart, the service conditions of the petitioners are being protected under the new management on the disinvestment of the Hotel and the fact that other hotels are also in an advanced stage of disinvestment in pursuance of the policy decision taken by the Government of India for disinvestment of the hotel units. We see no reason to interfere with the aforesaid decision. In case ultimately the petitioners are aggrieved by any aspect of terms of reference and formalisation*

of agreement and completion of disinvestment it is always open to the petitioners to approach the courts for redressal of their grievances.

24.We have already extracted clause 9.4 of the share purchase agreement dated 7-2-2002 in paragraphs supra. In our view, the decision of the Government of India to divest the property was a policy decision which was not in any manner contrary to the law of the land. Similar policy decision of the Government of India to disinvest 51% of its shareholding in Bharat Aluminium Company Limited referred to as BALCO was challenged before this Court and this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court rejected the contention that the sale of the shares of the Government of India in BALCO was legal (sic illegal) and the employees of BALCO have ceased to be employees of a government company. However, it is stated that the service conditions of the employees were not affected by the transfer of the shares.

25.We have also carefully perused the scheme. It is evident from the scheme itself that all the employees were to be retained as stipulated in the transfer documents on the same terms and conditions of service for 1 year and they were entitled for payment of gratuity and provident fund as per the then existing scheme. The terms and conditions of service applicable to the employees

were not in any way be less favourable than those applicable to them immediately on the date thereof. The relevant provisions of the transfer documents relating to disinvestment of Hotel Agra Ashok are being reproduced herein below:

Clause 3.2(d) of the Scheme of Arrangement reads as follows:

"With effect from the appointed date, all employees of the transferor engaged in the transferred undertaking shall become the employees of the transferee on the terms and conditions on which they are engaged as on the appointed date by the transferor without any interruption of services as a result of this Scheme. The transferee agrees that the services of all such employees with the transferred undertaking up to the appointed date shall be taken into account for purposes of all retirement benefits to which they may be eligible in the transferor on the appointed date."

26. In view of the above, we are of the opinion that the apprehension of the employees is baseless and is liable to be rejected.

27.It is also pertinent to notice that ITDC has not participated in the disinvestment process as the same was carried out by the Ministry of Disinvestment, Government of India. The safeguards regarding the service conditions of the employees have been duly provided in the transfer document i.e. demerger scheme and share purchase agreement. This Court also in BALCO Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] held that the employees of the company registered under the Indian Companies Act do not have any

vested right to continue to enjoy the status of the employee of an instrumentality of the State.

....

32. It is also beneficial for us to refer to the judgment of BALCO Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] by which this Court has dealt with the scope of the judicial review in such economic policy decisions. This Court held as follows: (SCC pp 355, 362 & 381-82, paras 34, 47, 92-93 & 98)

"34. Applying the analogy, just as the court does not sit over the policy of Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not. …

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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. …

***

92. 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 mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. …

***

98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

33. In the instant case, the Government has acted on advice of experts before taking a decision to disinvest its shares in ITDC Limited. Even thereafter, through a fair and transparent process as detailed in the reply affidavit of the Union of India, the Government has ensured that it has got the best price for its shares. It is also pertinent to notice that the Government has not received any

other higher offer. The contention of the learned Senior Counsel for the writ petitioners that the price is less has not been supported by any documentary evidence. In similar situation, this Court has observed in BALCO Employees' Union case [(2002) 2 SCC 333] as follows:

"65. … It is not for this Court to consider whether the price which was fixed by the Evaluation Committee at Rs 551.5 crores was correct or not. What has to be seen in exercise of judicial review of administrative action is to examine whether proper procedure has been followed and whether the reserve price which was fixed is arbitrarily low and on the face of it, unacceptable.

66. … When proper procedure has been followed, as in this case, and an offer is made of a price more than the reserve price then there is no basis for this Court to conclude that the decision of the Government to accept the offer of Sterlite is in any way vitiated."

34. The very same contention raised by the employees in the instant case was raised by the employees of BALCO when the Government of India disinvested its majority shares in BALCO. This Court rejected the contention that the sale of the shares of the Government of India in BALCO was legal (sic illegal) as the employees of BALCO have ceased to be employees of a government company. It was, inter alia, observed as follows:

"47. … 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 its change of status. …

48. … 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 v. Des Raj Sangar [(1976) 2 SCC 844 : 1976 SCC (L&S) 336] 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."

35. We may also usefully refer to the decision of the Madras High Court in Southern Structurals Staff Union v. Southern Structurals Ltd. [(1994) 81 Comp Cas 389 (Mad)] wherein the Madras High Court held as follows:

"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. … 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."

36. In the case of BALCO [(2002) 2 SCC 333], as well as in the present case, the Government of India has ensured that the interest of the workmen is fully protected. As in BALCO [(2002) 2 SCC 333], the

shareholder agreement between the Government of India and the purchaser has been reproduced in the reply affidavit filed on behalf of the Union of India in Transfer Case No. 73 of 2002.

37. We may also place on record the submission made by learned Senior Counsel Mr Rakesh Dwivedi that the Government of India cannot have any objection to a direction to the Hotel Yamuna View Private Limited to float a VRS keeping in view its obligation under para 9.4(iv) of the share purchase agreement in terms of the office memo dated 5-5-2000.

38. A perusal of paras 23, 24, 54, 55 and 56 of the judgment of this Court in BALCO [(2002) 2 SCC 333] would indicate that the above protection of the workers' interest in similar circumstances has been held by this Court to be adequate and lawful. This Court in para 55 has observed as follows:

"55. We are satisfied that the workers' interests are adequately protected in the process of disinvestment. Apart from the aforesaid undertaking given in the Court, the existing laws adequately protect workers' interest and no decision affecting a huge body of workers can be taken without the prior consent of the State Government. Furthermore, the service conditions are governed by the certified orders of the Company and any change in the conditions thereto can only be made in accordance with law."

39. Further, as per the demerger scheme, all the liabilities relating to the transferred undertaking up to the date of transfer were taken over and were to be discharged by the transferee.

Thus, the transferee is liable to pay all the liabilities and dues (including gratuity) to the employees on the same terms and conditions of service which were applicable to the employees in the Hotel, including the benefits related to the tenure of service in the Hotel up to the date of transfer. As far as the provident fund of the employees is concerned, the PF accounts of the employees of the Hotel in ITDC PF trust were transferred by the trust to the new accounts of the employees concerned in the Regional Provident Fund Commissioner after the completion of formalities under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

44.For the foregoing reasons, we hold that there is absolutely no merit or substance in the contentions raised by learned Senior Counsel for the petitioners. The writ petitions are, therefore, liable to be dismissed and the policy decision taken by the Government of India to transfer the Hotel Agra Ashok to M/s Mohan Singh and Yamuna View Private Limited cannot be assailed at the instance of the employees.

45.The writ petitions are accordingly dismissed, however, there will be no order as to costs. In view of the disposal of the writ petitions, the transfer petitions are also disposed of accordingly."

The High Courts of Delhi, Bombay and Madras followed the legal principles laid down by the Hon'ble Supreme Court in matters of policy decision of the

Government, and sapiently, quite discernibly refrained from interfering in such matters. The decisions which have been referred to in the compilation filed on behalf of the first respondent are noted hereunder for the sake of record:

(i) All India Idbi Officers Association vs. Union of India and ors., 2018 SCC Online Delhi 13248 (Special Leave Petition filed against the Division Bench order was dismissed by the Hon'ble Supreme Court vide SLP (C) No.1553/2019).

(ii) Federation of all Maharashtra Petrol Dealers Association vs. Union of India, 2020 SCC Online Bom 2623

(iii) Airport's Authority Employees Union vs. Union of India, 2014 SCC Online Mad 10195,

(iv) Southern Structurals Staff Union vs. Management of Southern Structurals Ltd (1994 SCC Online Mad 174).

41. The specific observations of the High Courts are not referred to herein in order to avoid needless prolixity with surfeit of references to state the obvious. This is more so when the policy which culminated in the SPA dated 25.10.2021 itself is not under challenge in this writ petition. Therefore, the observations and the reasons put-forth in those judgments need not find a place in this judgment.

42. The law as laid down by the Hon'ble Supreme Court viz., that employees have no right to demand prior opportunity or notice or hearing when economic polices advancing larger public interest are sought to be implemented. The learned Senior Counsel for the petitioner has drawn the attention of this Court to two decisions which appear to be striking a different chord apparently inconsistent with the legal principle as laid down in Balco's case (2002(2) SCC 333), followed by the All India I.T.D.C. Workers' Union case, 2006(1) SCC 66). One of the earliest decisions reported is *H.L. Trehan and Others vs. Union of India and Others, (1989) 1 SCC 764*, which was referred to supra wherein the High Court has quashed the circular impugned therein on the ground that no opportunity was given to the employees before their service conditions came to be altered. The High Court found that such circular was in violation of the principles of natural justice and quashed the same. The matter travelled upto the Apex Court and the top Court upheld the view taken by the High Court. That was a converse case where, after the taking over of the management by the Government of India, circulars were issued, changing the service conditions. In that context, the High Court held that changes had been done without notice to the employees. This view had been upheld by the Supreme Court and the judgment was rendered entirely on the factual context of that case. In any event, the observation in that case cannot be construed as a statement of law. The decision was confined only to the factual matrix of

that case. Subsequently, three Judge Bench of the Supreme Court in ***Balco's case (2002(2) SCC 333)*** had considered the issue threadbare and exhaustively laid down a clear and unequivocal statement of law on the subject. The compendious and trailblazing observations of the Hon'ble Supreme Court in the judgment will be culled out as clincher for setting at rest the controversy herein in the later portion of the order.

43. Now coming to the subsequent decision relied upon by the learned Senior Counsel reported in *Balco Captive Power Plant Mazdoor Sangh and Ors. vs. National Thermal Power Corporation and ors. (2007(14) SCC 234)*. In *Balco Captive Power Plant* the Supreme Court has held that there cannot be any alteration to conditions of service without affording opportunity of pre-decision hearing, and the absence of such opportunity would amount to arbitrary exercise of power and violative of Article 14 of the Constitution of India.

44. As a matter of fact, the Hon'ble Supreme Court has quoted the views of its earlier decision in *H.L.Trehan*. The decision was rendered by two Judge's Bench and those observations were made in the context of challenging certain clauses of the agreement in the run-up to the transfer of the public sector undertaking to private management. After elaborately going into the facts, an

observation was made in paragraph 35 of the judgment. As emphasized above, this is not a case where the policy as such, is under the judicial scanner of this Court. What is prayed for is only a Writ of Mandamus towards ensuring the protection of their existing rights with reference to certain benefits. Whether there is any enforceable right available at all in this case is also an integral part of consideration of this Court, which issue will be dealt with later. But as far as the observation of the Supreme Court in this case is concerned, it is confined only to the facts of that case. From a reading of the judgment, this Court could gather that the Supreme Court in the said decision affirmed the law laid down in ***Balco Employee's Union*** and ***All India ITDC Worker's Union*** decision but distinguished on facts. Therefore, the observations made in the decision cannot be pitched-forked into this adjudication, as a statement or law.

45. The quintessence legal principle viz., law of the land as on date is that an economic policy decision in furtherance of larger public interest cannot be subjected to judicial audit habitually or routinely merely on the ground that there was no opportunity of hearing afforded to the employees. Therefore, it is too late in the day to stall the process of disinvestment merely on such slippery challenge.

In such view of the matter, the first issue as framed by this Court stands

answered against the petitioner.

46. Now embarking on the second issue as to whether the employees are entitled to pre-decision hearing or notice in terms of Section 9A of the I.D. Act and non-compliance with the mandatory provision contemplated therein vitiate the entire process of disinvestment and the final decision, followed by its implementation or not? This Court would like to first examine the factual scenario before deciding the legal dimension to the applicability or non-applicability of Section 9A in the facts and circumstances of the case. Though it is the case of the petitioner union that some of the suggestions which found place in the report of the bilateral committee dated 10.02.2020 had not been carried through in the final SPA, nonetheless when the concerns were addressed and clarified eventually in the counter-affidavit and more so, in the written submissions filed on behalf of the Government. Majority of the apprehensions stood allayed. Therefore, the aspect of no notice given to the employees before the SPA was finalized appeared to be a misplaced contention and cannot, therefore, be countenanced in law.

47. On this aspect, this Court without any hesitation would hold that the employees, though are to be taken into confidence while formulating policy concerning them, their right to hear cannot be stated to be sacrosanct or

inviolable when such right is juxtaposed to a monumental economic policy decision of the Government, taken to advance larger public interest and also in the interest of all the stakeholders. In such paramount scenario, all other class rights are to be subordinated to such policy overarch. This is not to mean that the rights of employees can be trampled upon mercilessly, arbitrarily, opposed to fair play and good conscience. The judicial review in such matters ought to be oriented towards balancing the paramount public interest and the interest of the employees and in such consideration even if this Court finds any infraction in complying with any statutory provisions, public interest must be allowed to prevail. Every abridgment of right cannot vitiate the policy decision of the Government taken with a professed view, advancing larger public interest.

48. As regards the specific legal objection taken by the learned Senior Counsel for the petitioner, that notice under Section 9A of the I.D. Act is mandatory with reference to the alteration of service conditions on three facilities enjoyed by them viz., housing, passage and medical, this Court would like to refer to two decisions strongly relied upon on this aspect.

Section 9A of the I.D. Act reads as under:-

> *"9A. Notice of change.- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any*

matter specified in the Fourth Schedule, shall effect such change,--

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

(b) within twenty-one days of giving such notice: Provided that no notice shall be required for effecting any such change--

(a) where the change is effected in pursuance of any 1[settlement or award]; or*

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

49. From the above reading of the provision, it is clear that issuance of notice is not an option should there be any change or altering of conditions of service enjoyed by the workmen, as delineated in the fourth schedule in the

Act. The Courts have held that compliance of the section is mandatory. Indisputably, the issues raised herein on behalf of the petitioner union are covered under the schedule.

50. While reinforcing the application of the above provision, the learned Senior Counsel has placed heavy reliance on a decision of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. D.J.Bahadur and ors, (1981 (1) SCC 315)***. This Court's attention has been drawn to paragraphs 42, 52, 57 and 59, which are extracted hereunder:

> **"42.** Again, a Bench of four Judges in the Indian Oil Corporation case [South Indian Bank Ltd v. A R Chacko, AIR 1964 SC 1522 : (1964) 5 SCR 625 : (1964) 1 LLJ 19; 26 FJR 64] reiterated the same principle in the context of Section 9-A of the ID Act although the court did not specifically advert to Chacko case [Sathya Studios v. Labour Court, (1978) 1 LLJ 227 (Mad HC)] . In the Indian Oil Corporation case [South Indian Bank Ltd v. A R Chacko, AIR 1964 SC 1522 : (1964) 5 SCR 625 : (1964) 1 LLJ 19; 26 FJR 64] the question turned on the management seeking to effect changes in the service conditions of the workmen. The court made observations which have pertinence to the non-extinguishment of the contract of service until a negotiated or adjudicated substitution comes into being. Fazal Ali, J. speaking for the Bench observed: [(1976) 1 SCC 63]
>
> "In the circumstances, therefore, Section 9-A of the Act was clearly applicable and the non-

compliance with the provisions of this section would undoubtedly raise a serious dispute between the parties so as to give jurisdiction to the tribunal to give the award. *If the appellant wanted to withdraw the Assam compensatory allowance it should have given notice to the workmen, negotiated the matter with them and arrived at some settlement instead of withdrawing the compensatory allowance overnight.*"

(emphasis added)

This ruling shows (a) that unilateral variation by the management is an exercise in futility, and (b) an award or settlement must take the place of the contract sought to be varied. We have a similar situation in the present case vis-a-vis the notice under Section 9-A and the ruling in the Indian Oil case [South Indian Bank Ltd v. A R Chacko, AIR 1964 SC 1522 : (1964) 5 SCR 625 : (1964) 1 LLJ 19; 26 FJR 64] is a helpful guide.

52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity, not absolutes — so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infrastructure for investigation into, solution of and adjudication

upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission — the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such, are beyond the orbit of and have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

57. What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful coexistence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible

solution. It is difficult for me to think that when the entire industrial field, even covering municipalities, universities, research councils and the like, is regulated in the critical area of industrial disputes by the ID Act, Parliament would have provided an oasis for the Corporation where labour demands can be unilaterally ignored. The general words in Sections 11 and 49 must be read contextually as not covering industrial disputes between the workmen and the Corporation. Lord Haldane had, for instance, in 1915 AC 885 (891) [Watney Combe Reid & Co. v. Berners, 1915 AC 885 : 84 LJ KB 1561 : 113 LT 518] observed that:

"General words may in certain cases properly be interpreted as having a meaning or scope other than the literal or usual meaning. They may be so interpreted where the scheme appearing from the language of the legislature, read in its entirety, points to consistency as requiring modification of what would be the meaning apart from any context, or apart from the general law."

To avoid absurdity and injustice by judicial servitude to interpretative literality is a function of the court and this leaves me no option but to hold that the ID Act holds where disputes erupt and the LIC Act guides where other matters are concerned. In the field of statutory interpretation there are no inflexible formulae or foolproof mechanisms. The sense and sensibility, the setting and the scheme, the perspective and the purpose — these help the Judge navigate towards the harbour of true intendment and meaning. The legal dynamics of social justice also guide the court in statutes of the type we are interpreting. These plural

considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now.

59. Whatever be the powers of regulation of conditions of service, including payment or non-payment of bonus enjoyed by the employees of the Corporation under the LIC Act, subject to the directives of the Central Government, they stem from a general Act and cannot supplant, subvert or substitute the special legislation which specifically deals with industrial disputes between workmen and their employers. In this view, other questions, which have been argued at length and considered by my learned Brother, do not demand my discussion. The High Court was right in its conclusion and I affirm its judgment. I, therefore, direct the Corporation to fulfil its obligations in terms of the 1974 settlements and start negotiations, like a model employer, for a fair settlement of the conditions of service between itself and its employees having realistic and equitable regard to the prevailing conditions of life, principles of industrial justice and the directives underlying Part IV of the Constitution."

51. The Hon'ble Supreme Court while considering the interplay of two enactments viz., LIC Act and I.D. Act, held that LIC Act cannot or substitute a special legislation governing the service conditions of their employees. That

was a case where bonus was being paid and the benefit of which had been enjoyed by the workmen for a particular period of time. When payment of pension was sought to be altered by the employer LIC, the issue went up to the Supreme Court and in that case, the Supreme Court held that compliance with Section 9A was mandatory and that was a case of alternation of conditions of service simplicitor, presented before the Supreme Court for interference.

52. But the case herein is not all that pure and simple for application of Section 9A, as a matter of course. Whether Section 9A could be extended to a situation like the present one on the one hand and on the other, whether from the materials and pleadings placed on record, it could be stated to have been complied with, will be dealt with as under.

53. The second decision relied on by the learned Senior Counsel is in the case of *Film Factory Workers Union, rep. By its General Secretary vs. Government of India, Department of Heavy Industries, (2016 SCC Online MAD 10100)*.

54. The learned Judge of this Court in the above case has held that the settlement arrived at between the workmen and the employer was sacrosanct and the same could be replaced or substituted only by another negotiated

settlement and it cannot be replaced by any Government directives, even though the company involved therein was wholly owned by the Government of India. The said view of the learned Single Judge has been confirmed in W.A.No.1370 to 1372 of 2017. The reliance placed on the said decision, as stated earlier, may not be of any significant value addition to the case of the petitioner herein on the aspect of application of Section 9A of the I.D. Act.

55. This Court, at the outset, would like to clarify that the issue of non-compliance with Section 9A was brought up only by way of a reply to the case of the first respondent. This ground has not been specifically spelt-out in the affidavit filed in support of the writ petition. Although it has been generally stated that no notice has been given prior to the SPA dated 25.10.2021, nonetheless, it was mentioned with reference to Articles 14 and 21 of the Constitution of India. When the counter was filed, followed by written submissions by the first respondent Union of India, where a specific plea has been taken and canvassed by the learned Solicitor-General that there is no change of employment, and only change in the share pattern, the petitioner herein clung to the plea of violation of Section 9A of the I.D. Act. The setting up of the challenge on the said plea in the last leg of arguments appear to be a desperate attempt by the Union to persuade this Court to interfere, being pushed to precipice of despondency, literally forced to flog the dead horse.

56. When the above issue was raised, the learned Solicitor-General has submitted that Section 9A would have no application in the case where there is change of management only and the employer and the employees remain the same. The section never envisaged its application in such a situation. The said contention in the opinion of this Court has considerable force for more than one reason. In a disinvestment process, when the character of the company being transformed from public to private sector and during the process of such transformation, it is inconceivable that section 9A could be pressed into service. When the management is sought to be changed by disinvestment, the question would arise, who is to give notice under Section 9A; is it Air India Ltd, who is handing over its control and management in favour of the fourth respondent private company or is it the fourth respondent, who is taking over the reins of the company.

57. Firstly, the erstwhile Air India management were to give notice, they are no more in-charge of the company as on date or at least on paper, after the SPA was entered into between them and the takeover process was set in motion and it was handed over thereafter. As far as the fourth respondent is concerned, the statutory duty to comply with Section 9A has not arisen yet. During the transitional stage, the affairs concerning the service conditions of

the employees though chalked out in the SPA were in a state of limbo and in such circumstances, the question of application of Section 9A would in either case not arise.

58. Secondly, it is not a simple case of alteration of service conditions warranting compliance with the Section 9A of the I.D. Act. It is change of management. The scope and ambit of the section cannot be stated to cover a situation like the present one when the employer remains the same and so is the employment of the workmen, but the management of the company is different due to handing over of the company after the disinvestment by the first respondent Union of India in favour of a private company, the fourth respondent herein. The right to notice under Section 9A of the I.D. Act would accrue only when the conditions of service get altered in the changed dispensation but not during its transitional stage.

59. Thirdly, supposing this Court were to hold that notice under Section 9A was mandatory before effecting some changes in the service conditions, which management should issue is the complex issue which can never find an answer. The erstwhile employer, Government of India, which owned the company cannot be stated to be the employer anymore and it cannot, therefore, issue notice under Section 9A. As far as the fourth respondent is

concerned, it has stepped into the shoes of the first respondent in managing the second respondent and it cannot also be stated to be responsible for the change of service conditions because the relationship between the employees and the new management has hardly come into existence during the transformation time. In such nebulous state of affairs, Section 9A would have no application and its scope and reach could not be stated to be extended to a situation like the present one.

60. Moreover, the policy decision as duly emphasized by the learned Solicitor-General was taken inter-alia for serving the best interest of the employees. Therefore, to put spokes on the economic policy wheel of change initiated by the Government and complaining of non-compliance with Section 9A could be self-defeating. Advancing arguments as to the mandatory nature of compliance with Section 9A of the I.D. Act in the extraordinary situational framework would only undermine collective interest of the employees, as a whole. The spirit of the provision is that the workers ought not to suffer by any unilateral or arbitrary action of the management. When the decision taken to protect their interest along with the interest of other stakeholders, including public at large, it would injudicious and imprudent to insist on compliance with the provisions pedantically and steadfastly.

61. Further, as repeatedly observed in ***Balco's*** case by the Hon'ble Supreme Court, and also in the case of ***IDTC Worker's Union***, the Supreme Court has categorically held that the employees were not entitled to notice in the face of economic policy decision of the Government, particularly in matters of disinvestment, when decisions were taken in the larger national public interest. In such circumstances, the application of Section 9A should be read down to uphold the policy decision of the Government taken in the national interest. Such decisions need to be tested on the touchstone of Article 14 of the Constitution of India, more than any statutory provision. In this case, the decision taken by the Government, as rightly contended by the learned Solicitor-General, is not only to advance larger public interest but also to protect employees' interest, as well as the consumer's interest. A mere procedural non-compliance with a provision cannot be allowed to affect all the stakeholders in the country.

62. In this connection, this Court would like to draw reference to the fact that more than INR One lakh Crore has been infused into the sinking company. The Government was duty bound to salvage the irretrievable situation. As a matter of fact, by disinvestment, the company would continue to remain afloat and tax payer's money is saved from being injected into the sinking company. It is a rather win-win situation for both the Government as

well as the second respondent company and in that view of the matter, the petitioner union cannot be allowed to play up the non-compliance with Section 9A of the I.D. Act in order to upset or scuttle the changeover and the mutation.

63. To sum up, Section 9A of the I.D. Act would have no application in this case for all the reasons stated above. Therefore, the second issue is also answered against the petitioner.

64. Be that as it may, even assuming that there are changes in the conditions of service in regard to certain facilities enjoyed by employees viz., housing, passage and medical benefits, bilateral committee was constituted and the views of the employees were heard, discussed, deliberated and finally, a decision was taken. Therefore, it cannot be gainsaid that the employees were not heard at all. The fact that the employees' representatives were part of the bilateral committee constituted on 21.01.2020 could always be construed as a notice under Section 9A of the I.D. Act or an opportunity afforded to the employees for airing their grievances and views, in fulfilment of the test of reasonableness as contemplated in Article 14 of the Constitution of India. In that view of the matter, it cannot be stated that the spirit of Section 9A has not been complied with nor it can be complained of, offending

Article 14 of the Constitution of India. The scope of the said section is only to give an opportunity to the employees to present their views in case of change in their conditions of service. In this case, factually, it was demonstrated that the employee's representatives were part of the bilateral committee which went into various issues concerning the service conditions of the employees across the spectrum and a detailed report has also been submitted vide report of the committee dated 10.02.2020. The suggestions were taken forward to extent possible and the same were incorporated in the SPA dated 25.10.2021. The details of the entitlement of the employees under various heads have been extracted in the tabulated statement and incorporated in this order.

65. In the said circumstances, the objection as to the non-compliance with Section 9A in respect of three areas, where, according to the learned Senior Counsel, conditions of service enjoyed by the employees are now sought to be altered to their disadvantage is untenable and cannot be countenanced in law. In view of the participation of the representatives of the employees belonging to all categories in the bilateral committee's deliberations and discussion, it cannot be contended that no opportunity of hearing was extended to the employees before finalising the SPA dated 25.10.2021.

66. Therefore, the answer to the third issue inevitably is same as in the case of the other two issues.

67. Be that as it may, on the factual consideration of the present case whether it can be held that employees had not been taken into confidence at all before the takeover of the management materialized, is the issue to be decided. As a matter of fact, the learned Senior Counsel appearing for the petitioner herself has drawn the attention of this Court to the bilateral committee which came to be constituted, vide notification dated 21.01.2020 and that notification was a sequel to the meeting with the Hon'ble Minister of Civil Aviation on the previous day. The committee consisted of three high level officers of the management two office bearers representing the pilots' side and four office bearers of the employees, representing across all categories. The mandate of the committee was to meet regularly and submit its report within the stipulated time therein.

68. The committee after deliberations has come out with suggestions on 10.02.2020 and a report to that effect was made known. This Court's attention has been drawn to the report. In fact, the learned Senior Counsel has focused her complete attention on the said report as the basis for issuance of the Writ of Mandamus. At the initial stage, the learned Senior Counsel raised strong

objection to the manner in which the Union of India was rushing through the process of handing over, as a result of the SPA, without implementing the recommendations of the report. But when certain clarifications emanated during the course of the hearing, allaying the apprehensions of the employees, as responded by the Government with pellucidity on the status of the employees under new dispensation, initial vehemence shown, eventually gave-in in the overall appreciation and the understanding of the likely scenario.

69. The learned Solicitor-General clarified that the report merely contains the suggestions which emanated from various discussions, and the suggestions were intended to be guiding factors for the ultimate negotiation with the potential buyers. As a matter of fact, the learned Solicitor-General also argued that the report which contained mere suggestions may not give an enforceable right for the petitioner union to seek issuance of a Writ of Mandamus. This Court though in agreement with the submissions made by the learned Solicitor-General on this aspect, yet, in the larger legal narrative, is not inclined to non-suit the petitioner union on that score.

70. In the above factual backdrop, can it still be said that the grievances of the employees were not taken into account for consideration before arrival of the final policy decision. The answer can only be a plain 'NO'. As could be

seen from the report, all the areas of concern of the employees under the ten heads had been part of the consultative process, culminating in the suggestions. These suggestions have been taken forward and to the extent possible, they have been incorporated in the SPA, as could be seen in the tabulated statement incorporated in the written submissions filed on behalf of the Union of India.

71. It is appropriate and relevant that the tabulated statement, as contained in the written submissions is reproduced in this order. As repeatedly emphasized by the learned Solicitor-General *de-hors* the legal objections, the endeavour is more to appeal to the conscience of this Court as a conscience-keeper and the guardian of the Constitution. The clarifications and protection of the rights and of the workmen to the maximum extent possible have been demonstrated in the statement tabulated herein below:

S.No.	***Demands by the petitioner union***	***Status under the SPA***
1	***Revision of Pay Scale:*** *Revision of pay scale as per the 3rd PRC recommendation of 2007 should be affected before disinvestment and notional fitment should be given from 01.07.2017*	*AI did not meet the requisite criteria to implement the pay revisions and thus the same were not implemented in the past*
2	***Job Security:*** *Job security should be provided to all employees till they reach the age of superannuation. Alternatively, a voluntary retirement scheme (VRC Scheme) on the "Gujarat*	*Partially accepted.* *Job security for the first year after closing followed by an obligation on bidder to give VRS in case it*

S.No.	Demands by the petitioner union	Status under the SPA
	Pattern" should be provided to all employees regardless of number of years rendered/remaining	*proposes to remove or retrench employees in the second year*
3	***Leave encashment:*** *Leave encashment as due must be paid to all employees before disinvestment. The licensed cadre of employees should have the option to transfer all their accumulated leave or part thereof to the new employer.*	*Otherwise provided.* *Leave encashment is an obligation of AI as a separate legal entity and is recorded as a liability in the books of AI and payable when employee retires/resigns/ terminated*
4	***Gratuity****: Gratuity payable till the date of disinvestment should be settled prior to the disinvestment. Continuity of service to be maintained for quantifying the gratuity with the new employer*	*Partially accepted.* *Bidder, AI and AIXL have an obligation to provide gratuity benefits in accordance with applicable law. It is an obligation of AI as a separate legal entity and is recorded as a liability in the books of AI and payable when employee retires/ resigns/ terminated.*
5	***Provident fund****: The total fund available in an individual employee account with the trust should be transferred to the EPFO.*	*Accepted*
6	***Medical benefits****: The existing medical schemes should continue for serving as well as retired employees or better facilities should be provided.*	*Partially accepted.* *1.Bidder, AI and AIXL have an obligation provide medical benefits to the permanent employees in accordance with industry practice and industry norms.* *2.Government has undertaken the obligation to medical benefits to be made available to:* *(a) all retired permanent employees of AI, as of the 'closing date' and their spouses; and* *(b)the 'eligible employees' of AI (who have attained 55 years of age or above or have completed 20 years of service as of closing date) and their spouses, post their retirement from AI.*
7	***Passage facilities****: Passage facilities*	*Partially accepted.*

S.No.	Demands by the petitioner union	Status under the SPA
	to be continued for serving as well as retired employees on the basis of the AI passage policy dated 27.03.2017 and IATA resolution 788	*Bidder, AI and AIXL have an obligation grant passage rights to the permanent employees in accordance with industry practice and industry norms.*
8	***Arrears of salary and flying allowance**: arrears of salary and flying allowance to be paid to cabin as per the order of the Hon'ble Supreme Court. Wage arrears of employees of the erstwhile Indian Airlines for the period from 01.01.1997 to 31.12.2006 should be paid as per the award of the arbitrator.*	*Since the matter is sub-judice, it is not specifically addressed in the SPA, AI as an independent legal entity will continue to be bound by its independent legal obligations, including any outcome of the ongoing litigation*
9	***Colony accommodation**: AI colony accommodation should be retained by the employees till they reach the age of superannuation.*	*Partially accepted.* *Employees to continue to have possession (a) for 6 months from closing; or (b) monietization of py, whichever is earlier*
10	***Reservation**: reservation for SC/ST/ OBC category employees in recruitment and promotion should continue*	*Partially accepted.* *Bidder obligated to use best endeavours for the first year after closing to cause AI to provide adequate job opportunities to scheduled caste/scheduled tribe, persons with disability and socially disadvantaged categories of the society.*

72. From the above exhaustive clarification to each and every area of concern, it cannot be gainsaid that the interests of the employees have been bartered away unilaterally, unjustly and arbitrarily. In column Nos.6 and 7, as regards medical benefits and passage rights, the status under SPA has been clarified. The medical benefits are stated to continue in accordance with

industry practice and industry norms. And so is the passage rights. As far as housing is concerned, it was submitted on behalf of the Government of India that only a fraction of the employees were in accommodation and majority of the workmen/employees in lieu of colony accommodation had been compensated with admissible HRA. Once the employees are entitled to HRA in lieu of housing accommodation, the employees cannot raise the issue as a grievance, calling for interference of this Court on this account.

73. In the light of the revelations of the status under SPA with reference to each one of the demands by the employees, this Court is fully convinced that the employees' interests have been protected to the hilt in the given situation. The Government appeared to have taken every care not to jettison the interests of its employees, leaving them in the lurch, in the bargain. Considering the fact that Air India Ltd prior to the disinvestment initiative was a sinking company, a fortuitous transformation has happened for their own good. In the opinion of this Court, various conditions of service under the SPA are the best that the Government could wrangle out from the fourth respondent towards ensuring protection of the employees' interest. Therefore, the employees conjecturing they have been treated unfairly and unjustly is misplaced and misconceived.

74. In the conspectus of the above narrative, this Court would have no hesitation to hold that at the end of the day, the Government handed out a fair, reasonable, just and equitable package to the employees. In that view of the matter, the final and the last issue is answered to the effect that the Court's conscience has been satisfied on the fairness in action.

75. In the above prolix discourse, this Court finds there are no enforceable rights calling for its intervention. A prayer for the issuance of a Writ of Mandamus seeking negative direction, pre-supposes a presumption of everything wrong with the disinvestment process. It is too late in the day to draw any such presumption after signing of the SPA dated 25.10.2021. Further, with the Mandamus prayer, the so called recommendations as contained in the report dated 10.02.2020 is incapable of being enforced in the teeth of the SPA coming into force, unchallenged.

76. In order to round-off and consummate the judicial discourse, it is imperative to draw reference to a few pithy observations of the Hon'ble Supreme Court as clincher, hereunder:

> *"(i)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.

(ii)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.

(iii)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.

(iv)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.

(v)If the disinvestment process is gone through without contravening any law, then the normal consequences as a result of disinvestment must follow.

(vi)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.

(vii)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".

(viii)From the aforesaid recital of facts, it is clear that safeguarding the interests of the workers was one of the concerns of the Government. Representations had been received from the Trade Union leaders and effort was made to try and ensure that the process of disinvestment did not adversely affect the workers.

(ix)Even though the employees of the company may have an interest in seeing as to how the company is managed, it will not be possible to accept the contentions that in the process of disinvestment, the principles of natural justice would be applicable and that the workers, or for that matter any other party having an interest therein, would have a right of being heard.

(x)Not giving the workmen an opportunity of being heard cannot per se be a ground of vitiating the decision. If the decision is otherwise illegal as being contrary to law or any constitutional provision, the persons affected like the workmen, can impugn the same, but not giving a pre-decisional hearing cannot be a ground for quashing

the decision.

(xi)While it may be fair and sensible to consult the workers in a situation of change of management, there is, however, in law no such obligation to consult in the process of sale of majority shares in a company.

(xii)As a result of disinvestment of 51% of the shares of the company, the management and control, no doubt, has gone into private hands. Nevertheless, it cannot, in law, be said that the employer of the workmen has changed. The employees continue to be under the company and change of management does not in law amount to a change in employment.

(xiii)Transparency does not mean the conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken is made known."

An all encompassing answer to the challenge in this writ petition.

77. The learned Senior Counsel lastly submitted that the first respondent has provided certain clarifications in their written submissions which may be incorporated in the order of this Court. According to the learned Senior Counsel, in terms of the clarification, the conditions of service will be continued or changed only in accordance with law. The clarification and the

status under the SPA as prescribed in the tabulated statement has already been extracted supra and there is no need to reaffirm the position by this Court, specifically herein. As far as the statement or assurance that condition of service will be continued or changed only in accordance with law is not an undertaking or commitment. It is inviolable mandate of the rule of law dictated by the constitutional governance. Any decision concerning the service conditions would obviously be taken within the framework of the existing laws on the subject. In case of any infraction, deviation or violation of any existing laws, the employees always have a recourse to judicial mechanisms. This Court therefore need not assume any advisory role in emphasizing the sacrosanct legal position as every private or public entity is mandated to act in accordance with law.

78. On the whole, this Court finds that the writ petition is devoid of merits and substance and the same is accordingly dismissed. No costs. Consequently, W.M.P.Nos.26989, 26990, 26992, 26993, 28920 and 28921 of 2021 are closed.

11.03.2022

Index: Yes/no
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To

1 The Secretary
Ministry of Civil Aviation
Safdarjung Airport
New Delhi - 110 003.

2 The Chairman and Managing Director
Airlines House
113 Gurudwara Rakabganj Road
Sansad Marg Area
New Delhi - 110 001.

3 The General Manager (Personnel)
Southern Region
Air India Ltd Airlines House
Meenambakkam Chennai - 27.

V.PARTHIBAN, J.

(tar)

Pre-delivery order in

W.P. No.25568 of 2021

11.03.2022