

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Mr Colin Gonsalves, Sr. Adv. with Ms Amiy Shukla, Adv.

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr Digvijay Rai, Adv. for R-1.

Ms Anjana Gosain, Adv. for R- 6 and 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

08.02.2013

CM No. 1456/2013 (Exemption)

Allowed subject to just exceptions.

WP(C) No. 754/2013

Issue notice.

Mr Digvijay Rai accepts notice on behalf of respondent no. 1. Ms Anjana Gosain accepts notice on behalf of respondent nos. 6 and 7.

**Let counter affidavit, if any, be filed within four weeks.
Rejoinder be filed before the next date.**

**List on 10.04.2013 with connected WP(C) No. 283/2013, in which
notice has already been issued.**

RAJIV SHAKDHER, J

FEBRUARY 08, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Ms Amiy Shukla, Adv.

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr Digvijay Rai, Adv. for R-1.

Mr Inderjit Singh, Adv. for R-2.

Mr Hainder Tiwari, R-5 in person.

Ms Anjana Gosain, Adv. for R-6and7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

12.02.2013

CM No. 1631/2013 (Stay)

Learned counsel for the petitioner says that she has instructions to withdraw the captioned application.

Accordingly, the application is dismissed as withdrawn.

RAJIV SHAKDHER, J

FEBRUARY 12, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Mr Colin Gonsalves, Sr. Adv. with Ms Amiy Shukla, Adv.

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr Digvijay Rai, Standing Counsel for R-1/AAI.

Mr Inderjit Singh, Adv. for R-2.

Mr H. Tiwari, General Secretary of R-5.

Ms Anjana Gosain, Adv. for R-6and7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

15.02.2013

CM No. 1759/2013

**This is an application filed seeking amendment of the writ
petition.**

Issue notice.

Mr Digvijay Rai accepts notice on behalf of respondent no.1. Mr Inderjit Singh accepts notice on behalf of respondent no. 2. Mr H. Tiwari, who is the general secretary of respondent no. 5, accepts notice on behalf of the said respondent. Ms Anjana Gosain accepts notice on behalf of respondent nos. 6 and 7.

Reply be filed within two weeks. Rejoinder, if any, be filed before

**W.P.(C) 754/2013 Page 1 of
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the next date.

List on 13.03.2013.

CM No. 1760/2013

Learned counsel for the petitioner/applicant says that even though the results have been declared on 08.02.2013, the same should not be given effect to for the reasons that the election has been vitiated. The basis on which the petitioner says the elections are vitiated are as follows:

(i) The ballot papers used in conducting the elections; revealed the identity of the voter, which violated the agreed guideline on the conduct of the election in issue. The election was concededly to be held by secret ballot. This point is sought to be established by the learned senior counsel for the petitioner, by drawing my attention to the sample ballot paper, which is appended at page 48 of the paper book. Mr Gonsalves says that, the top half of the ballot paper bears a perforation. He says that, both, above and below the perforation, a serial number is entered alongwith the signatures of the voter; which resulted in the voter?s identity being revealed.

(ii) It is also the contention of the petitioner/applicant that when, votes were cast at various polling centres, including the Rajiv Gandhi Bhawan, at Safdarjung Airport, a register was maintained to mark attendance of the voters. Mr Gonsalves says that, the attendance was marked by the voter by appending his signatures on the register against his name. It is stated that, this exercise also resulted in revealing

the identity of the voter, as not only were the signatures of the voter taken but also the ballot number was entered in the said register alongside the signature of the voter.

(iii) It is also the case of the petitioner/applicant that, as per the guideline

W.P.(C) 754/2013 Page 2 of
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framed for conducting the elections, the successful trade union, was required to obtain a simple majority of total number of valid votes polled. Alliances, if any, with another trade union, had to take place prior to the withdrawal of the nominations if, the votes cast in favour of the alliance partner were to be taken into account, to determine, whether the simple majority mark had been reached. It is the case of the petitioner that the trade union, which has been declared successful, i.e., respondent no. 2, secured a total of 5376 votes. The total votes polled were 10,800/- and, therefore, according to the petitioner/ applicant, a simple majority was not reached by the said respondent as it has not obtained the simple majority mark, which in this case, required 5400 votes being cast in favour of the successful trade union.

Issue notice.

Mr Digvijay Rai accepts notice on behalf of respondent no.1. Mr Inderjit Singh accepts notice on behalf of respondent no. 2. Mr H. Tiwari, who is the general secretary of respondent no. 5, accepts notice on behalf of the said respondent. Ms Anjana Gosain accepts notice on behalf of respondent nos. 6 and 7.

Reply be filed within four weeks. Rejoinder, if any, be filed before the next date.

Respondent no. 1 shall, in the meanwhile, retain the ballots cast in the election. Respondent no. 1 shall also bring to court, for the moment, the register maintained at the Rajiv Gandhi Bhawan, Safdarjung Airport, for the purposes of the election. The other registers shall be taken into custody and be kept safely by the said respondent till further orders of this court.

In the meanwhile, no further effect shall be given to the election

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**results. In case of any emergency, which requires holding of a meeting,
the concerned trade union, i.e., respondent no.2 shall move to court.**

List on 13.03.2013.

RAJIV SHAKDHER, J

FEBRUARY 15, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Mr Colin Gonsalves, Sr. Adv. with Mr Juno Rahman, Adv.

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr K.K. Rai, Sr. Adv. with Mr Digvijay Rai, Standing Counsel for R-1/AAI.

Mr Dinesh Agnani, Sr. Adv. with Mr Inderjit Singh, Adv. for R-2.

Mr H. Tiwari, General Secretary of Respondent no. 5 in person.

Ms Anjana Gosain, Adv. for R- 6 and 7.

Mr Nitin Ahlawat and Mr Amit Sharma, Adv. for Respondent.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

13.03.2013

CM No. 3149/2013 (condonation of delay)

The captioned application has been filed to seek condonation of delay in filing reply to CM No. 1759/2013. The delay is of five days.

Learned senior counsel for the petitioner says that he does not oppose the prayer made in the captioned application.

For the reasons given in the application and given the fact that there is no opposition, the same is allowed and the delay is condoned. The reply to the said CM be formally taken on record. The application is disposed of.

W.P.(C) 754/2013 Page 1 of 3

CM No. 1759/2013 (for amendment)

This is an application for amendment. The prayer made in the application is to allow the amendments as sought for in paragraph 8 of the captioned application. Though the prayer made is not properly framed, as paragraph 8 not only refers to the amendments made in the writ petition but also refers to the pleadings made in the said application from paragraphs 2 to 7.

Learned counsels for the non-applicants/respondents submit that notwithstanding the lack of proper form, they would not raise this technical objection as the amendment has been sought at the very initial stage.

Accordingly, the application is allowed.

The petitioner would be entitled to incorporate the averments made in paragraphs 2 to 7 adverted to in the captioned application and the prayers referred to therein, i.e., in paragraph 8. Let an amended writ petition be filed within two weeks from today. It is made clear that the petitioner shall ascribe separate paragraph numbers to the paragraphs now sought to be incorporated, so that, the respondents are in a position to respond to the same effectively and without much difficulty.

Counter affidavit(s), if any, to the amended writ petition be filed within one week of the service of the amended writ petition. Rejoinder, if any, be filed before the next date of hearing.

CM No. 1760/2013

Mr Agnani, learned senior counsel, who appears for respondent no. 2, and is presently the successful union, says that the last part of the order dated 15.02.2013 be modified by the court, as it is creating an impediment in W.P.(C) 754/2013

Page 2 of 3

the day-to-day working of the union. It is submitted that, they are not able to take their issues before the management in view of the order passed by this court.

It is made clear that the order dated 15.02.2013 won't come in the way of the day-to-day functioning of respondent no. 2-union. In case there is a major policy issue, which is sought to be negotiated with the management of the AAI, a prior notice will be given to the petitioner, who would then be at liberty to move the court. The order dated 15.02.2013 is modified to that extent.

WP(C) No. 754/2013

The date of hearing fixed in the matter, i.e., 10.04.2013, is cancelled.

List on 25.07.2013.

RAJIV SHAKDHER, J

MARCH 13, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Ms. Amiy Shukla, Advocate

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondents

Through: Mr. K.K. Rai, Sr. Advocate with Mr. Digvijay Rai, Advocates for R-1/AAI

Mr. Debashish Ajnani, Sr. Advocate with Mr. Inderjit Singh, Advocate for R-2

Ms. Anjana Gosain and Ms. Pushpa Jhuraney, Advocates for R-6 and 7

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

09.04.2013

CM No.4263/2013 (for directions)

In this application, the contention of the applicant / petitioner is broadly that, the Airport Authority of India (AAI) i.e., respondent no.1, should not deduct the subscription from salaries of members of the recognized Union. It is in this context that stay of the implementation of the order/circular dated 25.03.2013 is sought.

The learned counsel for respondent no.1 states that if any person has objection to the deduction, he may write to AAI and the said deduction will thereafter not be carried out.

In view of the statement made on behalf of respondent no.1, the learned counsel for the petitioner says that the captioned application be disposed of. It is ordered accordingly. Respondent no.1, however, will give due publicity to the order so that members are made aware of the same.

RAJIV SHAKDHER, J

APRIL 09, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Mr. Colin Gonsalves, Senior Adv.

with Ms. Amity Shukla, Advocates.

versus

AIRPORT AUTHORITY OF INDIA AND ORS Respondent

Through: Mr. K.K. Rai and Mr. Divijay Rai,

Advocates for R-1.

Mr. Dinesh Agnani, Senior Adv.

with Mr. Inderjit Singh, Advocates

for R-2.

Ms. Anjana Gosain, Adv. for R-6 and 7.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

10.05.2013

CM No.5486/2013

This is an application which, in effect, seeks to review of order dated 9.4.2013 passed by this Court in CM No.4263/2013.

To be noted on 9.4.2013, the contention of the petitioner before this Court was that respondent No.2 should not deduct subscription from the salaries of members of unions and, in that context, sought stay of the circular dated 25.3.2013.

It is noticed in the order of 9.4.2013 that respondent No.1, on that date, took the stand that if any person had an objection to the deduction being made, he was free to write to the Airport Authority of India (AAI) and thereupon the deduction would not be carried out.

W.P.(C) 754/2013 page 1 of 2

Accordingly, in view of the said statement of respondent No.1, the counsel for the petitioner submitted before me that the captioned application could be disposed of. It is also indicated in the said order that respondent No.1 would give due publicity to the order passed so that the members are made aware of this aspect.

Mr. Rai, who appears on advance notice qua the captioned application, says that due publicity has been given.

Mr. Gonsalves, learned senior counsel for the petitioner, seeks to place reliance on Guideline 9 to contend that deductions can be made from members of only recognised union and that too only upon receiving written consent/authorisation from individual employee. He also refers to Section 7(1) and 7(2) (kkk) of the Payment of Wages Act, 1936 for this purpose.

According to me, the prayer made for recall of the order dated 9.4.2013 does not lie since the effect of the order is that anyone, who has any objection to the deduction, can write to AAI and thereafter no deduction will be made by AAI.

As noticed above, CM No. 4263/2013 was disposed of with the counsel for the petitioner being satisfied with the directions issued on that day, i.e., 09.04.2013.

The application is, accordingly, dismissed.

RAJIV SHAKDHER, J

MAY 10, 2013

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 754/2013

INDIAN AIRPORTS KAMGHAR UNION Petitioner

Through: Mr. Colin Gonsalves, Sr. Adv. with

Ms. Amiy Shukla, Advocate

versus

AIRPORT AUTHORITY OF INDIA AND ORS. Respondents

Through: Mr. K.K. Rai, Sr. Advocate with Mr.

Digvijay Rai, Advocate for AAI/R-1

Mr. Dinesh Agnani, Sr. Adv. with

Mr. Inder Jit Singh, Adv. for R-2

Mr. Sujit Kumar Mishra, Adv. for

R-3 to 5/Unions

Ms. Anjana Gosain, Advocate for

UOI/R-6 and 7

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

O R D E R

25.07.2013

Mr. Sujit Kumar Mishra, Advocate, enters appearance and accepts notice on behalf of Airport Authority Karamchari Union (respondent No. 3), Rashtriya Shoshit Kamghar Union (respondent No. 4), Airport Authority of India Mazdoor Sangh (respondent No. 5). He states that he shall be filing his Vakalatnama on behalf of these respondents within two weeks from today. He states that the reply to the petition which has been filed on behalf of respondent No. 5 be taken on record. He further states that another reply has been filed on behalf of respondent No. 4. The same is not on record.

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Counsel to check up the same with the Registry and have the same placed on record after removing the objections, if any. A copy of the replies filed on behalf of respondent Nos. 4 and 5 be also supplied to counsel for the petitioner as well as the remaining respondents. He further states that he does not wish to file any separate reply on behalf of respondent No. 3 and that he adopts the reply filed on behalf of respondent No. 5 for this purpose.

Counsel for the petitioner states that a rejoinder to the reply of respondent No. 5 has been filed. The same is not on record. Let the same be traced and placed on record within one week from today, after removing the objections, if any. A copy of the rejoinder be also given to counsel for all the respondents.

The relevant records concerning the observers which are stated to have been appointed by the Chief Labour Commissioner, and in particular, the report of the Regional Labour Commissioner, Mr. Srivastava, from Hyderabad, for the conduct of the elections in question, be also kept available on the next date of hearing. The said record may be produced by the respondents through a responsible officer of sufficient seniority.

It would be open to the counsel for the petitioners to go through and inspect the said records brought in Court on the next date before the matter is taken up.

List on 12th December, 2013.

Dasti.

SUDERSHAN KUMAR MISRA, J.

JULY 25, 2013

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