IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.34307 OF 2022

All India Service Engineers Association
26, Rama Niwas, Teli Gully Cross Lane,
Andheri (East), Mumbai – 400 069 ....Petitioner

V/S

1 Union of India
Through the Ministry of Labour & Employment,
Shram Shakti Bhawan
Rafi Marg, New Delhi – 110 001
Through – Aaykar Bhavan,
Maharishi Karve Road,
New Marine Lines,
Mumbai – 400 020.

2 Union of India
Through the Ministry of Civil Aviation,
Through – Aaykar Bhavan,
Maharishi Karve Road,
New Marine Lines,
Mumbai – 400 020.

3 AI Engineering Services Ltd.
113, Airlines House,
Gurudwara Rakabganj Road,
New Delhi – 110 001.

4 AI Airport Services Ltd.
2nd Floor, GSD Building,
Air India Complex Terminal 2,
IGI Airport,
New Delhi – 110 037.

5 AI Asset Holding Ltd.
Indian Airlines Building, 113
Gurudwara Rakabganj Road,
New Delhi – 110 001

6 Air India Ltd.
Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi – 110 001. ....Respondents

…

WITH

WRIT PETITION (L) NO.34165 OF 2022

Air Corporation Employees Union
Western Region – Mumbai
Regional Office, Viman Bhavan OAP,
Santacruz (East), Mumbai – 400 029 ....Petitioner

V/S

1 Union of India
Through Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan
Rafi Marg, New Delhi – 110 001

2 Union of India
Through Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi – 110 003.

3 Air India Ltd.
Through its Chairman,
Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi – 110 001.

4 Air India Engineering Services Limited
Through its Chief Executive Officer,
Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi – 110 001.

5 AI Airport Services Limited,
Through CEO, 2nd Floor,
GSD Complex Terminal 2,
Indira Gandhi International Airport,
New Delhi – 110 037.

6 Air India Asset Holding Company Limited
Through Chairman & Managing Director,
Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi – 110 001 ....Respondents

…

WITH
WRIT PETITION (L) NO.34902 OF 2022

Aviation Industry Employees Guild
Old Airport, Santacruz (East),
Mumbai – 400 029. ....Petitioner

V/S

1 Union of India
Through Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
Rafi Marg, New Delhi =- 110 001

2 Union of India
Through Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi – 110 003.

3 Air India Ltd.
Through its Chairman,
Airlines House,
113, Gurudwara Rakabganj Road,
New Delhi – 110 001.

4 Air India Engineering Services Limited
Through its Chief Executive Officer,
Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi – 110 001.

5 AI Airport Services Limited,
Through CEO, 2nd Floor,
GSD Complex Terminal 2,
Indira Gandhi International Airport,
New Delhi – 110 037.

6 Air India Asset Holding Company Limited
Through Chairman & Managing Director,
Airlines House, 113,
Gurudwara Rakabganj Road,
New Delhi – 110 001 ....Respondents

...

Mr. Sanjay Singhvi, Senior Advocate with Ms. Rohini Thyagarajan for the Petitioner in WPL 34307 of 2022.

Mr. Mihir Desai, Senior Advocate i/b Mr. Mihir Joshi for the Petitioner in WPL 34165 of 2022.

Mr. Ashok Shetty a/w Ms. Rita K. Joshi and Mr. Swapnil Kamble for the Petitioner in WPL 34902 of 2022.

Mr. Anil Singh, Additional Solicitor General a/w Mr. Aditya Thakkar, Ms. Savita Ganoo a/w Mr. Pranav Thakkar, Ms. Smita Thakur for Respondent Nos.1 and 2 in WPL 34165 of 2022, WPL 34902 of 2022 and WPL 34307 of 2022.

Mr. Kevic Setalvad, Senior Advocate a/w Mr. Jehan, Ms. Sneha Prabhu, Mr. S.D. Shetty, Mr. Rakesh Singh & Ms. Heena Shaikh i/b M/s. M.V. Kini & Co. for Respondent Nos.3 to 5 in WPL 34307 of 2022 and for Respondent Nos.4 to 6 in WPL 34902 of 2022 and WPL 34165 of 2022.

Mr. Aditya Mehta a/w Mr. Vijay Purohit, Ms. Nikita Bangera, Mr. Samkit Jain, Mr. Faizan M. Mithaiwala, Mr. Mithil Shah i/b M/s. P & A Law Offices for Respondent No.6 in WPL 34307 of 2022 and for Respondent No.3 in WPL 34165 of 2022 and WPL 34902 of 2022.

…

CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

RESERVED ON : 02 MARCH 2023.
PRONOUNCED ON : 13 MARCH 2023.

JUDGMENT (per SANDEEP V. MARNE, J.):

1 Rule. Rule is made returnable forthwith. With consent of the learned Counsel for the parties, petitions are taken up for final hearing.

THE CHALLENGE

2 Air India Ltd., India's national carrier has been privatized through strategic disinvestment process by the Government of India. Its employees are facing eviction from their allotted accommodations and through their unions, had raised a demand for making a reference for industrial adjudication. That demand has met with rejection by the Central Government vide order dated 12th October 2022, which is the subject matter of challenge in the present petitions.

3 Petitions are filed by All India Service Engineers Association, Aviation Industry Employees Guild and Air Corporation Employees Union

(collectively referred to as **Petitioner Unions)** who represent employees working in Air India Limited (**AIL**), Air India Engineering Services Limited and Air India Airport Services Ltd (**Respondent Companies**). Though prayers made in the three petitions do not exactly match, the broad grievance of Petitioner unions are with regard to (i) Order dated 12th October 2022 declining to make reference to Central Government Industrial Tribunal (**CGIT**) (ii) changing of penal rent and damage rent (iii) deduction/withholding of Performance Linked Incentive (**PLI**) for non-vacation of accommodations.

FACTS

4 AIL was incorporated as a Government Company under the Companies Act, 1956. Air India Engineering Services Ltd. and Air India Airport Services Ltd. came to be incorporated as wholly owned subsidiaries of AIL for handling its engineering and ground handling departments. Several (but not all) employees of AIL and two subsidiary companies were allotted residential accommodations in accordance with provisions of Air India Housing Allotment Rules, 2017 (**Housing Allotment Rules**).

5. The Government of India approved plan for privatization of AIL. After grant of in-principle approval for strategical disinvestment of AIL, the Cabinet Committee on Economic Affairs constituted a body named Air India

Specific Alternate Mechanism (**AISAM**). With a view to monetise the assets of AIL, all the lands and properties of AIL were vested in newly formed company Air India Assets Holding Company Limited (**AIAHCL**). Thus, the lands and buildings in which the residential accommodations are situated became the property in ownership of AIAHCL. A decision was taken by AISAM to permit all employees of Respondent-companies to occupy residential accommodations for a period of six months post disinvestment or till property was monetized, whichever was earlier. Accordingly, letter dated 29th September 2021 was issued by the Ministry of Civil Aviation to the AIL conveying decision taken by AISAM for vacation of accommodations allotted to the servings and retired employees. In pursuance of the letter dated 29th September 2021, the Respondent Companies issued letters to their respective employees on 7/8th October 2021 intimating them the contents of the letter dated 29th September 2021.

6. The Joint Action Committee of Air India Unions filed strike notice with the Labour Commissioner on 13th October 2021 alleging that proposed action of eviction would amount to withdrawing privilege, which is a service condition incapable of being changed without following procedure prescribed under the Industrial Disputes Act,1947 (**ID Act**). On 27th January 2022, AIL was privatized by transfer of 100% shares to Talace Private Ltd.

On 26th May 2022, the employees were once again directed to vacate the accommodations by 26th July 2022. Majority of the employees either vacated the allotted accommodations or submitted undertakings to vacate the same. The conciliation proceedings commenced on account of issuance of strike notice.

7 Petitioners filed Writ Petition (L) Nos.19001 of 2022, 19171 of 2022 and 20338 of 2022 challenging the letters dated 7/8th October 2021 and 26/27th May 2022 which directed the employees to vacate residential accommodations and for implementation of Housing Allotment Rules by permitting the employees to occupy the accommodations till their retirements or rescission of services. During pendency of those Writ Petitions, failure report came to be submitted by the Conciliation Officer on 17th August 2022. By judgment and order dated 25th August 2022, a Division Bench of this Court disposed of those Writ Petitions holding that on account of submission of failure report, the protection envisaged under section 33(1)(a) of the ID Act was no longer available to the members of the Petitioner Unions. This Court permitted the members of the Petitioner Unions to occupy their respective allotted accommodations till 24th September 2022. The Government of India was granted liberty to take a decision whether to make a reference under section 10 of the ID Act by 15th September 2022.

8 The Government of India passed an order on 15th September 2022 refusing to make a reference under section 10 of the ID Act. That decision became subject matter of challenge in Writ Petition (L) Nos.30047 of 2022, 30213 of 2022 and 30244 of 2022. This Court, by its judgment and order dated 27th September 2022, set aside the decision contained in the communication dated 15 September 2022 by remitting the matter to the Central Government for fresh decision to be taken in accordance with law by 12th October 2022. The order declining reference was set aside essentially on account of failure on the part of the Central Government to record reasons in support of its decision. This Court extended the relief from eviction to the members of the Petitioner Unions till taking of decision by the Central Government. This Court took on record letter of Air India Engineering Services Ltd. which envisaged vacation of accommodations by 28th October 2022 and granted liberty to the Respondent Companies to initiate action for eviction in accordance with law after 28th October 2022. The Respondent Companies moved this Court on 28th September 2022 in disposed of Writ Petitions pointing out that the letter dated 27th September 2022 was merely an internal communication. By order dated 28th September 2022 this Court deleted paragraphs 18, 19 and 20 of the order dated 27th September 2022, thereby withdrawing the protection from eviction beyond 24th August 2022.

9 The Central Government thereafter passed order dated 12th October 2022 once again declining to make a reference to the Central Government Industrial Tribunal under section 10 of the ID Act *inter alia* holding that housing is not a term of employment and that therefore the demand cannot be considered as an industrial dispute. The order dated 12 October 2022 is subject matter of challenge in the present Petitions.

SUBMISSIONS

10 Appearing for Petitioners in Writ Petition (L) Nos.34307 of 2022 (All India Services Engineers Association), Mr. Singhvi, the learned senior advocate would submit that under section 2(k) of the ID Act, every dispute connected with the employment or non-employment or in terms of employment or with the condition of labour of employee is covered by the expression “industrial dispute”. That the finding recorded by the Central Government of housing not being a term of employment is factually and legally incorrect and that housing forms integral part of service conditions of members of Petitioner Unions. He would take us extensively through the Housing Allotment Rules to demonstrate that provision of housing forms terms of employment. Relying on Rule 22 of the Housing Rules, Mr. Singhvi would submit that every employee is entitled to occupy the accommodation till he dies, retires, resigns, or is discharged or terminated from services.

That right to occupy the accommodation is coterminous with continuation of service with Respondent Companies. Mr. Singhvi would further submit that assuming that that housing is not an existing term of employment, a demand for creation of new term of employment can also be covered by an industrial dispute. That therefore, mere absence of existing term employment would not automatically entail refusal of reference under section 10 of the ID Act. That the Tribunal is competent to decide the issue whether 'housing' is a term of employment or not.

11 Mr. Singhvi would further contend that the scheme of the ID Act is such that the Government has to satisfy itself only about existence of an industrial dispute. The dispute may be with regard to existing term of employment or about creation of a new right in favour of employees. So long as the Government is satisfied that the dispute exists, making of an order of reference is mandatory. The industrial adjudication involves creation of new terms of employment as well. Mr. Singhvi would further submit that leave and license Agreement which the employees of Respondent Companies are made to execute is required to be read with the Housing Allotment Rules. The employees did not have any choice but to sign on the dotted lines of leave and license agreement in proforma and the employees had no choice but to sign on the same.

12 Mr. Singhvi would further submit that the action of Respondent-Companies in levying penal rent is in violation of the Housing Allotment Rules and that the Central Government ignored this aspect while declining to make an order of reference. That the penal rent can only be levied in accordance with Rule 18(vi) of the Housing Allotment Rules. That AISAM has no jurisdiction, power or authority to decide quantum of penal rent in violation of the Housing Allotment Rules. That though the Housing Rules prescribed 'penal occupancy charges' to mean normal occupancy charges plus two times of the market rent, the AISAM directed the Respondent Companies to levy additional damage charges of Rs.10 lakhs and Rs.15 lakhs for accommodations at Delhi and Mumbai respectively. Rather than adopting the process of adjudication for determination of amount of penal rent, AISAM arbitrarily directed recovery of penal rent and damage charges from JDC arrears and any other financial benefits accruable to the employees. That despite existence of the industrial dispute, both with regard to proposed action of eviction as well as recovery of penal rent, the Central Government arbitrarily declined to make a reference without recording any cogent reasons. In support of his contentions.

13. I n support of his contentions, Mr. Singhvi would rely upon following judgments :

i) M.P. Irrigation Karmachari Sangh vs. State of M.P., [1985] 2 SCR 1019,

ii) Bharat Bank Limited vs. Employees of Bharat Bank Limited, 1950 SCC 470,

iii) Western India Automobile Association vs. The Industrial Tribunal, 1949 SCC 686 online ILR,

iv) Ram Avtar Sharma & Ors. vs. State of Haryana & Anr., AIR 1985 SC 915,

v) Telco Convoy Driverss Mazdoor Sangh & Anr. vs. State of Bihar & Ors., AIR 1989 SC 1565,

vi) Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr., (1986) 3 SCC 156.

14 Mr. Desai, the learned senior advocate appearing for Petitioners in Writ Petition (L) No.34165 of 2012 (Air Corporation Employees Union) would adopt the submissions of Mr. Singhvi. He would further submit that one of the demands taken into consideration in the failure report was withholding/deduction of PLI. Inviting our attention to para 16 of the judgment and order dated 27th September 2022, Mr. Desai would contend that this Court had adversely commented about ignorance of disputes/demand raised by Joint Committee regarding deductions of PLI amount effected by management while passing the earlier order dated 15th September 2022. That after being criticized by this Court, the Central Government was expected to at least deal with the issue of PLI deductions

while passing the impugned order dated 12th October 2022. However, the impugned order does not make even a reference to the disputes/demand about PLI deductions.

15 Mr. Desai would further contend that Respondent-Companies time and again assured this Court that they would resort to the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (**P.P. Act**) before taking any action for eviction. That section 7 of the P.P. Act envisages determination and recovery of amount of damage rent. That without resorting to the provisions of P.P. Act, the Respondent-Companies have unilaterally determined and recovered the amount of penal rent from several of serving and retired employees.

16 Mr. Shetty, the learned counsel appearing for Petitioners in Writ Petition (L) No.34902 of 2022 (Aviation Industry Employees Guild) would rely upon Agreement executed between the Indian Airlines Corporation and their workmen for the period 1st April 1960 to 31st March 1963 which includes housing evidencing that housing is an essential term of employment. That the Respondent-Companies being model employers, cannot be permitted to act arbitrarily. That the Respondent- Companies have already handed over/transferred the land in favour of AIAHCL and that therefore Respondent Companies have no *locus* to direct eviction of

Petitioners. That Respondents Companies have arbitrarily recovered amounts towards penal rent from JTC arrears. In support of his contentions Mr. Shetty would rely upon the following judgments:

i) Board of Trustees for the Port of Kolkata vs. Vijay Kumar Arya, 2009 SCC OnLine Cal 266,

ii) Saroj N. Patil vs. Nuclear Power Corporation of India Ltd., 2006 (4) Mh.L.J. 738,

iii) V. Veerarajan & Ors. vs. Government of Tamil Nadu, AIR 1987 SC 695,

iv) Gurmail Singh & Ors. vs. State of Punjab & Ors., (1991) 1 SCC 189,

v) Balram Gupta vs. Union of India & Anr., 1987 (Supp) SCC 228,

vi) State of Haryana & Ors. vs. Piara Singh & Ors., AIR 1992 SC 2130,

vii) Bhupendra Nath Hazarika & Anr. vs. State of Assam & Ors., (2013) 2 SCC 516,

viii) E.P. Royappa vs. State of Tamil Nadu & Anr., AIR 1974 SC 555,

ix) U.P. State Electricity Board vs. Pooram Chandra Pandey & Ors., 2007 (7) Supreme 374.

17 Mr. Singh, the learned Additional Solicitor General of India, appearing for Respondent Nos.1 and 2 in all the three Writ Petitions, would support the order passed by the Central Government declining to make an order of reference. He would submit that as on the date of disinvestment decision, AIL was under mounting debts and a strategic decision was taken to dis-

invest Central Government stake in AIL. That the disinvestment decision came to be challenged before the Delhi High Court, which came to be upheld by judgment and order dated 6th January 2022. That even the challenge set up by the employees with regard to their service conditions consequent to disinvestment has also been repelled by the Madras High Court. Mr. Singh would further submit that the order passed by this Court on 27th September 2022 contemplates only two conditions for declining the reference viz. a finding to the effect that no industrial dispute exists or is apprehend and that there are sufficient reasons for not making a reference. He would submit that both the stipulated conditions have been fulfilled while passing the impugned order.

18 Mr. Singh would further submit that housing has never been a term of employment for members of Petitioner Associations/Unions. He would place on record one of the appointment orders dated 12th March 1991 under which the concerned employee is promised payment of house rent allowance. That allotment of accommodation has not been an agreed condition of employment at any point of time. He would further submit that the members of Petitioner Association are entitled to claim only house rent allowance and they could never seek allotment of residential accommodation as a matter of right. That the number of employees

employed by the Respondent Companies far exceed the total number of accommodations available and that therefore it was never possible to offer accommodation to each employee. That the very fact that there were never sufficient accommodations for allotment of each employee would itself indicate that housing was never a term of employment.

19 Mr. Singh would then take us through the provisions of the Housing Allotment Rules and submits that Rule 1 itself makes it clear that housing is merely a welfare function and not a term of employment. Reference to Rule 5, Mr. Singh would contend that allotment of residential accommodation is not a matter of right and the same was to be done in accordance with the priority specified in Rule 5. He would then rely upon Rule 20 in support of his contention that allottees are mere licensees. That Housing Allotment Rules do not apply to each and every employee of the Respondent Companies and that the application of the same is restricted only to those who are in occupation of flats. He would then take us through the terms and conditions of the leave and license agreement to demonstrate that the allotment of accommodations has been done purely by way of a license, under which the employee agreed to vacate accommodations as and when called upon to do so. Lastly, Mr.Singh would submit that out of over 3,000 accommodations, most of them are already vacated. That only 410

employees continue to be in occupation of the respective accommodations, out of whom 238 employees have already submitted undertakings to vacate the same. This leaves only 142 employees who have not yet shown willingness to vacate the accommodations. He would therefore submit that for such miniscule number of employees, this Court ought not entertain the present Petitions especially when all the employees agreed to a package deal under which it was specifically agreed that the accommodations would be vacated upon disinvestment and such employees will be paid House Rent Allowance.

20 So far as the objection of non-consideration of dispute with regard to PLI is concerned, Mr. Singh would contend that withholding/deduction of PLI is a merely a consequential action and not a main dispute. Inviting our attention to the impugned order dated 12th October 2022, Mr. Singh would contend that the Central Government has taken into consideration the dispute regarding PLI as well holding that the same is merely a consequential action dependent on vacation on licensed premises. In support of his contentions, Mr. Singh would rely upon following judgments:

i) Master Marine Services (P) Ltd. vs. Metcalfe & Hodgkinson (P) Ltd. & Anr., (2005) 6 SCC 138,

ii) S.R. Tewari vs. Union of India & Anr., (2013) 6 SCC 602,

iii) Prem Kakar vs. State of Haryana & Anr., (1976) 3 SCC 433,

iv) Workmen vs. I.I.T.I. Cycles of India Ltd. & Ors., 1995 Supp (2) SCC 733,

v) Workmen of Sundaram Industries Ltd. vs. Sundaram Industries Ltd., 1997 (3) L.L.N. 346,

vi) Prabhakar vs. Joint Director, Sericulture Department & Anr., (2015) 15 SCC 1,

vii) Rahman Industries Private Ltd. vs. State of Uttar Pradesh & Ors., (2016) 12 SCC 420,

viii) Balco Employees' Union (Regd.) vs. Union of India & Ors., (2002) 2 SCC 333,

ix) Dr. Subramaian Swamy vs. Union of India & Ors., 2022 SCC OnLine Del 34,

x) C.M. Beena & Anr. vs. P.N. Ramchandra Rao, (2004) 3 SCC 595.

21 Mr. Setalvad, the learned senior advocate appearing for Respondent Nos.3, 4 and 5 in all three Writ Petitions would also oppose the Petitions. He would raise preliminary objection to the maintainability of the Petitions submitting that issue of vacation of residential accommodations stands concluded by judgment and order dated 25 August 2022 passed in Writ Petition (L) No.19001 of 2022, 19171 of 2022 and 20338 of 2022 in which the letters dated 29th September 2021, 7/8th October 2021 and 26/27th May 2022 were under challenge. That the said prayers stood determined by this Court by offering protection to the Petitioners from eviction up to 24th

September 2022. That therefore the Petitioners cannot be permitted to reagitate the issue of vacation of accommodations in the present Petitions. He would further submit that even otherwise prayer clause (d) sought in the present Petitions is otherwise outside the scope of order declining to make reference and under the garb of challenging the order dated 12th October 2022, Petitioners cannot be permitted to once again challenge letters dated 29th September 2021, 7/8th October 2021 and 26/27th May 2022.

22 Mr. Setalvad would then invite our attention to the leave and license agreement, which according to him is determinable by its very nature. That employees are merely licensees and have no right to occupy the accommodations. He would then rely upon the Housing Accommodation Rules in support of his contention the employees are liable to pay penal rent for overstay in the accommodations. That disinvestment is a policy decision and directions to vacate the accommodations is a part of such a policy decision, in which the Court should be loath in interference.

23 Mr. Setalvad would produce a chart showing position of occupation of accommodations by the employees to submit that out of 410 employees still in occupation, 238 employees have already submitted undertakings. He would submit that none of the Petitioner Unions have disclosed the names

of employees on whose behalf the Petitions are filed. That since most of the employees have already vacated the accommodations, it cannot be stated that all the members of Petitioner Union are aggrieved by the decision of the Respondents. In support of his contentions Mr. Setalvad would rely upon following judgments:

i) Air Corporation Employees Union vs. Union of India, 2022 SCC OnLine Mad 1121 : (2022) 2 LLJ 180.

ii) M/s. Avon Service Production Agencies (P) Ltd. vs. Industrial Tribunal, Haryana & Ors., (1979) 1 Supreme Court Cases 1,

iii) Bombay Union of Journalists & Ors. vs. The State of Bombay & Anr. AIR 1964 SC 1617,

iv) State of Madras vs. C. P. Sarthy & Anr. 1953 SCR 334 : AIR 1953 SC 53 : (1953) 1 LLJ 174,

v) Chandu Lal Etc. vs. Municipal Corporation of Delhi, ILR (1978) I Delhi 292,

vi) Hyderabad Metropolitan Development Authority (HMDA) and others vs. M/s. Hotel Malligi Pvt. Ltd., 2017 SCC OnLine Hyd 1,

vii) More Jeevan Yashwant and Others vs. Mumbai Municipal Corporation & Anr., 2017 SCC OnLine Bom 10101.

24 Mr. Mehta, the learned counsel appearing for Respondent No.6 (Air India Limited) in all three Petitions would adopt the submissions of

Mr. Setalvad. Additionally, he would raise preliminary objection about maintainability of the Petitions against AIL and would rely upon the judgment and order dated 20 September 2022 passed by Division Bench of this Court in ***R.S. Madireddy vs. Union of India*** *(WP No.1770 of 2011)* in which it is held that Writ Petitions would not be maintainable on account of privatization of AIL. Lastly, Mr. Mehta would contend that the land and buildings in which residential accommodations are located are already transferred in favour of Respondent No.5-Company (AIAHCL) and that the members of Petitioner Union, admittedly not being the employees of Respondent No.5-Company, have no right to occupy the accommodations which is now property of AIAHL.

REASONS AND ANALYSIS

25 Before adverting to the merits, we first proceed to decide the preliminary objections raised by Mr. Mehta about maintainability of the Petitions. It is contended that AIL, being privatized, is no longer amenable to writ jurisdiction of this Court. Reliance is placed on the judgment of this Court in ***R.S. Madireddy*** (supra) in which this Court held in para 74 as under:

> "**74.** The writ petitions, although maintainable on the dates they were instituted, have ceased to be maintainable by reason of privatization of AIL which takes it beyond our jurisdiction to issue a

> writ or order or direction to it. For the reasons discussed above, the writ petitions and the connected applications and chamber summons stand disposed of without granting any relief as claimed therein but with liberty to the petitioners to explore their remedy in accordance with law. No costs."

25 However, Petitioners have challenged order dated 12th October 2022 passed by the Central Government declining to make an order of reference. That order of the Central Government would undoubtedly be amenable to challenge before this Court in writ jurisdiction. Therefore, preliminary objection raised by Mr. Mehta with regard to maintainability of the present Petitions *qua* AIL deserves to be and is rejected.

26 Mr. Setalvad has also raised preliminary objection to prayers for challenge to the letters dated 29th September 2021, 7/8th October 2021 and 26/27th May 2022 on the ground that the said letters were already subject matter of challenge in Writ Petition (L) Nos.19001 of 2022 19171 of 2022 and 20338 of 2022. However, the main attack in the present Petitions is to the order dated 12th October 2022 declining to make an order of reference. Also, letters dated 29th September 2021, 7/8th October 2021 and 26/27th May 2022 are not specifically challenged in the present Petitions. The relief sought with regard to the said three letters is about their enforceability. In this regard, we reproduce prayer clause (d) in Writ Petition (L) No.34307 of 2022:

> "(d) Issue an appropriate direction or order directing the Respondent Union of India and Respondent Nos.3 to 6 to not act on the Directive dated 29" September 202 **(Annexure "L")** and the notices dated 7th/8th October 2021 and 26th/27th May 2022, **(Annexures "K" and "Q")**, till the Order of Reference is passed by the Respondent No.1 and, thereafter, until the completion of 4 weeks from when the concerned Tribunal, assumes charge over the Industrial Reference;"

27 We are mainly concerned with challenge to the order declining a reference to CGIT. Whether employees in occupation of accommodations deserve to be evicted and/or penal/damage rent can be levied are mere consequential issues dependent on decision of the main issue. We therefore, do not wish to delve further in the preliminary objection raised by Mr. Setalvad and proceed to examine challenge set up to the order dated 12th October 2022.

28 The short issue involved in the present Petitions is whether Central Government is justified in declining to make an order of reference in respect of disputes raised by Petitioner-Unions to CGIT for adjudication. Reference of disputes can be made under section 10 (1) of the ID Act which reads thus:

> **"10. Reference of Disputes To Boards, Courts or Tribunals.-** (1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,-
>
> (a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute, to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

29 Thus the appropriate Government can refer the dispute upon formation of an opinion that any 'industrial dispute' exists or is apprehended. The term 'industrial dispute' is defined in section 2(k) of the ID Act which reads thus:

> "**2**(k) **"industrial dispute"** means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

30 Thus, only such disputes which are connected with the employment or with non-employment or the terms of employment or with conditions of labour come within the ambit of the term 'industrial dispute'. It is therefore necessary for the appropriate Government to first determine whether the dispute sought to be raised by the employees is covered by the expression 'industrial dispute'.

31. In the present case, the Central Government has arrived at a finding that the dispute sought to be raised by the Petitioner- Unions cannot be referred for adjudication to CGIT as housing is not a term of employment. It would be appropriate to reproduce paras 5 to 8 of the order dated 12 October 2022:.

> "5. On perusal of the strike notice dated 13" October, 2021, it is clear that the demand made by the Joint Action Committee is in respect of the residential accommodation and the consequential action contemplated in the notice dated 5th October, 2021 for failure to comply. It is obvious that there are in total 3089 flats in the colonies. As of October, 2021 the flats that were occupied were only 1859 flats. Of the 1859 employees who were occupying the flats in October, 2021, 1303 have already given an undertaking agreeing to vacate their premises and agreeing to the consequences in case of failure to comply. Only 556 employees have not given the undertaking to vacate the flats nor vacated the flats.
>
> 6. On careful perusal of the aforementioned documents referred to in paragraph 4 more particularly the Appointment Letters, Leave and License Agreements, Undertakings executed, Housing Allotment Rules, it is apparent that the housing is not a term of employment. It appears that the employees are occupying the said residential accommodation as licensees on the basis of a Leave and License Agreement entered into by the Employees. The Employees have also given an Undertaking to vacate at the time of entering into the Leave and Licence Agreement.
>
> 7. Therefore, on a plain reading of the aforementioned documents it is apparent that the demand of the employees does not pertain to the terms of employment. The demand, in effect, is for continued housing which is not a term of employment. The actions proposed in the notice dated 5th October, 2021 are consequential actions dependent on the vacation of licensed premises which issue is not a term of employment. Since the demand is not within the purview of the terms of employment, the same cannot be considered an industrial dispute.

> 8. In view of above, the dispute is not fit to be referred to the CGIT for adjudication. Hence, the demand of the Union to refer the matter for adjudication to C.G.LT. is declined."

32 Thus, the Central Government has formed an opinion that housing is not a term of employment and that therefore the dispute sought to be raised is not an 'industrial dispute' capable of being referred for adjudication to CGIT.

33 This Court while setting aside the earlier order declining to make a reference dated 27th September 2022 *inter alia* held as under:

> **"14.** However the situation would be different when the appropriate Government declines a reference. In such a case, a decision has to be arrived at to the effect that either no industrial dispute exists or is apprehended, or that there are sufficient reasons for not making the reference to the Tribunal. However, such decision ought to bear the final conclusion arrived at by the appropriate Government and not a tentative conclusion. When a reference is declined, there is no question of the Tribunal considering the legality and validity of the relevant decision. But when the writ court is approached challenging the decision, it would be open to the court to closely scrutinize the order/decision declining the reference to ascertain whether all relevant and material facts were considered while such an order was made or the decision was taken. The very fact that the Central Government has reached only a *prima facie* satisfaction, on facts and circumstances, leaves room for doubt as to whether there are certain other material and relevant facts which the Central Government had left out consideration for which it restrained itself from expressing a decision, final and conclusive. We have been left guessing why "*prima facie"* was referred to in the decision."

34 The twin requirements of formation of opinion about non-existence of industrial dispute as well as recording of reasons for declining to make an order of reference are met with in the present Petitions. Now the only issue that remains is whether the reasons recorded for declining to make an order of reference are legally sustainable.

35 The Petitioner-Unions have strenuously submitted that housing forms an integral part of employment with the Respondent-Companies. There are two alternate submissions viz. that housing need not be a term of employment as definition of 'industrial dispute' envisages 'dispute connected with the employment'. The other alternate submission is that industrial adjudication involves not just enforcement of existing terms of employment but also creation of new terms of employment. We accordingly proceed to adjudicate the issue involved in the present Petitions based on the above submissions advanced by the Petitioner-Unions.

36 The first issue is whether housing is a term of employment of members of Petitioner-Unions. Reliance is placed by Petitioner-Unions on Housing Rules for the purpose of drawing an inference that housing is a term of employment. On the other hand, it is the contention of Respondents that the allottees are merely licensees in respect of accommodations and that housing is not provided to them as a term of employment.

37 It would be appropriate to reproduce some of the provisions of the Air India Housing Allotment Rules as under:

"**1. INTRODUCTION:**

These rules may be called the "Air India Limited (AIL) Housing Allotment Rules." These rules wil be applicable to Northem Region/Headquarter/Western Region/Eastem Region/Southern Region and shall come into force w.e.f, the date of issuance. Housing is main welfare function and as such the overall charge of Housin Rules will be under the purview o Executive Director, (Pers. & IR), Headquarters. However, Housing Colonies and other Housing locations, in the Regions will be under the purview of Regional Executive Directors for the purpose of administration, allotment and maintenance.

3. DEFINITIONS:
In rules unless the subject or context otherwise requires:

(i) **ALLOTMENT**: Means the grant of a licence by the company to occupy and use a residence or part thereof in accordance with the provision of these Rules,

(xi) **PENAL OCCUPANCY CHARGES:** Means sum of normal occupancy charges and two times the market rent.

(xiv) **UN-AUTHORISDED OCCUPATION:** Means the occupation by any person of the residence(s) after the authority under which he was allowed to occupy the residence has expired or has been determined for any reasons whatsoever.

5. PROCEDURE FOR ALLOTMENT:
(i) In case of Housing Colony allotment, list will be drawn up by Calling for option, from amongst eligible permanent employees. A list so formed will be approvey by Executive Director of the Region.

(ii) Allotment of fresh applicants would be as per the date of application on first come first serve basis. However, if the date of application is same, then request will be considered in terms of inter-se seniority. The applications so received will be placed at the bottom

of the operating list. Once applied shall be enouch, no fresh application for every year, only addition/deletion is to be made.

(iii) Three priority lists to be maintained as under:
(a) List for initial allotment
(b) List for change of flat within the same category
(c) List for up-gradation of flat on promotion to higher grade.

(iv) Employees will be offered flats as per their turn in the list. If an employee refuses allotment or does not reply within 15 days/or time specified in the offer letter, his name will be deleted from the list.
(v) Employees staying in Colony flats subsequent to their promotion to a higher grade shall apply for up-gradation in response to such notifications for the higher category of accommodation for which they are now eligible. Up-gradation will not be automatic. - A priority list will be maintained by the Regions separately for different type of flats based on date of application.

14. MARKET RATE:

The market rate will be as per notification of Directorate of Estates issued from time to time. The present market rate effective 01.01.2013 which has been notified is 45 times of normal licence fee in all Metropolitan Cities, except Mumbai, for A, B and C type flats, for D type and Asiad Village flats at Delhi is 55 times of the normal Licence Fee payable.
In Mumbai (Hyderabad Estate, Belvedere and Peddar Road) 120 times of nomal licence fee and rest of Mumbai for all types is 55 times of the normal Licence Fee payable.

17 LICENCE FEE:

Employees who are allotted housing accommodation by the Company will be charged licence fee at the following rates:

Type of Flats	Amount (in Rs.) (Per month)
A1 Type	260
A Type	380
B Type	420
Bx Type (Southern Region)	525
C Type	740

D Type		900
All executive flats located outside the colonies in		
Wester Region :	Pall Hill, Twin Towers – Venus Jupter & Prabha Devi, Altamount Road	1100
Southern Region :	Besant Nagar, Chennai	
Eastern Region :	Mulien Street, Golf Green, Middleton Street.	
New Delhi	Asiad Village	

The above flats will be under the purview of respective ED of the Region except Asiad Village flats, New Delhi which will be under the purview of Executive Director (Pers. & IR)

Additionally, no HRA will be paid to employees allotted accommodation by the Company. In the case of retired employees retaining the house during the post retirement contract, the existing deduction of last drawn HRA and Licence fee will continue.

20. GENERAL

(ii) It shall be clearly understood that the allottees, to whom residence is allotted, are only licensees and such allotment shall not confer on them any right or interest by way of lease or otherwise in the immovable property comprised in such residence and the right of the allottees in respect of the residence shall be a personal one and he/she shall have no right to transfer such allotment to any other person/persons or share the residence with others.

22. VACATION OF QUARTERS:

The allottee of the residence to the employee is consistent with and is dependant solely on his being in employment in the Company and therefore the moment the allottee dies, retires, resigns or is discharged from the services, terminated for any reason whatsoever or abandons the service or is otherwise made ineligible for the allotment of a residence or commits breach of the terms and conditions of the Rules herein contained, the allotment shall stand cancelled forthwith unless specifically permitted to retain the residence. Requests for retention shall be processed by respective Personnel Department.

24. APPEAL:

Appeals against the orders issued by the respective Personnel Deptt. except the proceedings of the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, shall be made to the respective Regional Executive Director/Executive Director (P & IR).

38 The provisions of Housing Rules, as quoted above, would indicate that allotment of accommodations is to be done in accordance with Rule 5 by drawing of list of optees as and when the accommodations become available. It is not that every employee is granted accommodation as a matter of right. The accommodation is to be allotted as per availability and priorities specified in Rule 5. Upon allotment of accommodation, payment of House Rent Allowances (HRA) is to be stopped. The Rules further make it apparent that allottee of the accommodation would merely be a licensee. Under Rule 22, though an employee is permitted to retain the accommodation during the tenure of his service, the Rules also make it clear that housing is merely a welfare function. Furthermore, the Housing Rules become applicable only after an accommodation is allotted and the rules essentially deal with the terms and conditions of occupation. The Housing Rules do not, by themselves, create or confer any right on the employees for allotment of accommodation.

39 The employees who are allotted residential accommodations have executed Leave and License Agreements in the prescribed format. Some of the relevant terms and conditions of such license agreements are as under:

> 1. I am merely a licencee at the Company's absolute will and pleasure in the said flat. The occupation by me of the said flat is by reason of the fact that I am in the service and employment of the Company and is merely by way of leave and Licence and shall not create any tenancy thereof between the Company and myself or give me any kind of estate, right or interest in the flat or create any relationship of land lord and tenant between the Company and myself, but such an occupation shall be deemed to be a licenced occupation of a servant of the employed.
>
> 3. I agree that the said quarters, and the allotment thereof to me shall be Subject to the provisions of the Public Premises (Eviction of Unauthoriseq Occupants}Act, 1958, and the Company will be entitled to invoke th, Provisions of the said Act against me and/or in respect of the flat.
>
> 4 I further agree that the Company or the competent authority shall have the right to require me, without assigning any reasons whatsoever ty temove myself and the persons staying with me in the said flat and my ond their belongings from the said flat without providing me with any alternative accommodation even during the continuance of my service with the Company and I agree and undertake to remove myself and other persons staying with me and mine and their belongings from the said flat when reauired to do so.
>
> 6 In the event of my failing to remove myself and other persons staying with me and my ond their belongings from the said flat, the Company will be entitled to remove me and all other persons staying with me and my and their belongings from the said flat at my risk and cost without in any woy rendering the Company liable for trespass, damages or otherwise and I agree that in case I fail to remove myself and other persons staying with me and my and their belongings from the flat after being required to do so, I shall be guilty of trespass and wrongful restraint.

The terms and conditions of licence agreements are appended to the same, and some of the relevant terms and conditions are as under:

> 5. The employee-Licencee will merely hove leave and licence of the Company to use and occupy the flat and nothing in these terms and conditions or in any correspondence with the Company shall be deemed to create any tenancy or sub-tenancy of any other kind of right with regard to the flat he is allowed to occupy or confer on the employee-Licencee any right whatsoever other than the leave and licence hereby given to use the flat as an employee of the Company. The employee-Licencee shall have any rights to exclusive possession of the flat allotted to his and he shall be deemed to be joint possession thereof with the Company.
>
> 14. Notwithstanding anything herein contained, the Company shall be entitled at any time to determine the licence by days notice without assigning any reason.

40 It is the case of the Petitioner-Unions that execution of Leave and License Agreement is merely a formality and that their rights and entitlements *qua* residential accommodations are essentially determined under and governed by the Housing Rules. On the contrary it is the contention of the Respondents that the Leave and License Agreements govern the occupation of accommodations.

41 Perusal of various terms and conditions of Leave and License Agreement would leave no matter of doubt that the employees have agreed that they are mere licensees in respect of allotted flats. The Respondent-

Companies have absolute right under the Leave and License Agreement to determine the same at any time without assigning any reason.

42 Mr. Singh has placed on record one of the appointment orders which reads thus:

> "Dear Sir,
>
> This has reference to the training you had with us. We have pleasure in informing you that you are appointed as Aircraft / Technician on probationary basis with effect from 31.01.1991 in the A.O.D. Division of Engineering Santa Cruz, on the following terms and conditions :-
>
> (i) You will be on probation for a period of six months from the date of your appointment as Aircraft / Plant Technician.
>
> (ii) Whilst on probation your basic pay and applicable allowances will be as follows :-
>
> | | | |
> |---|---|---|
> | a) Basic Pay | : | Rs. 1330/- per month |
> | b) Variable Dearness Allowances | : | At the applicable rate. |
> | c) Additional Pay | : | At the applicable rate. |
> | **d) House Rent Allowance** | **:** | **At the applicable rate.** |
> | e) City Compansatory Allowance | : | At the applicable rate. |
> | f) Technical Pay | : | Rs. 65.00 per month |
> | g) Kit Maint Allowance | : | Rs. 70.00 per month |
> | h) Survaillance / Productivity Allow. | : | Rs. 75.00 per month |
>
> (iii) If your work and conduct are found satisfactory, you will be confirmed at the end of your probationary period as Aircraft / Plant Technician the grade of Rs. 1330-30-1450-35-1555-50-2105-60-2285.

(iv) If your work and conduct during the probationary period are not found satisfactory, your services will be terminated in terms and conditions of service as laid down in the relevant rules regulations and orders as applicable.

(v) You will be governed by the terms and conditions of service as ladi down in the relevant rules regulations and orders as applicable.

(vi) In the terms of your contract, you will be required to serve in the Engineering Department of the Corporation for a minimum period of two years from the date of your appointment.

(vii) Unless covered by E. S. I. Scheme, (you will have to contact our welfare section to complete your E. S. I. Scheme formalities) you will be required to make contributions to the 'Medical Benefit Scheme' for families of Air-India Employees in India on completion of one year's continuous service.

2. As a token of your acceptance of the above terms and conditions of employment, you are requested to sign the attached Acceptance Form and return the same to us within 7 days of receipt of this letter; failing which our letter of offer will stand cancelled."

(emphasis ours)

The appointment order stipulates payment of Housing Rent Allowance, however, does not provide for allotment of residential accommodation.

43 Petitioners have not placed on record any material to show that provision of 'housing' is one of the terms of employment. On the contrary, perusal of the Housing Rules, Leave and License Agreement and order of appointment clearly suggests that 'housing' does not appear to a term of employment.

44 It is contended on behalf of the Petitioner-Unions that issue as to whether ‘Housing’ is a term of employment or not, ought not to have been decided by the Central Government while dealing with the issue of making an order of reference. That the said issue also could have been left for determination to the Industrial Tribunal. We are unable to agree. Unless the dispute sought to be raised is covered by the expression ‘industrial dispute’ under section 2(k) read with section 10 of the ID Act, there is no question of making an order of reference by the appropriate Government. Therefore, it would be necessary for the appropriate Government to first form an opinion as to whether the dispute sought to be raised comes within the ambit of the expression ‘industrial dispute’.

45 The next contention of the Petitioner-Unions is that the demand made by the employee need not be a term of employment as the definition of term ‘industrial dispute’ under section 2(k) of the ID Act takes within its ambit every dispute which is ‘connected with the employment’. Having held that the dispute raised by the Petitioners-Unions does not relate to term of employment, we fail to comprehend as to how the same can be held to be even the one connected with employment. While it would be too farfetched to hold that there is absolutely no connection between allotment of accommodations and employment of employees, it does not mean that

everything having even a remote connection with employment would also constitute an industrial dispute. To illustrate, schools are set up in colonies for children of employees. In such a school, right to admission of a child may be connected to employment, but that would not make dispute relating to admission of a child an industrial dispute. In the present case, right to retain accommodation is governed by stipulations of leave and license agreement. There is specific remedy under the PP Act. No right is created in favour of employee to seek allotment of accommodation. in these peculiar facts and circumstances of the present case as well as for other reasons which are discussed in paragraphs to fallow, we are unable to hold that the dispute relating to housing is capable of being termed as the one connected with employment.

46 The next submission advanced on behalf of the Petitioner-Unions is that even if it is assumed that housing is not the existing term of employment, the industrial adjudication involves even creation of new terms of employment. Reliance in this regard is placed on the judgment of the Apex Court in ***Bharat Bank Limited*** (supra). In which it is held in para 109 as under:

> "**109.** We would now examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In

> settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. **It can confer rights and privileges on either party which it con- siders reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace.** An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function."
>
> *(emphasis supplied)*

47 ***Bharat Bank Limited*** (supra) cannot be relied upon in support of proposition that something which was never a term of employment or has been consciously excluded as a term of employment, can be created through industrial adjudication. Some rights such as creation of new promotional avenues, payment of higher pay scale, etc. (though not existing term of employment) can still be created and conferred by the Industrial Tribunal through adjudication. These are conditions forming part of employment. Thus, what can essentially be created through industrial adjudication is new right forming part of terms of employment. However, provision of housing to employees or right to secure residential

accommodation is something which would clearly fall outside the scope of creation or conferment of new rights and privileges within the terms of employment. Also of relevance is the fact that the contention of creation of new term of employment is raised as an afterthought as in their strike notice or during the conciliation proceedings, Petitioner-Unions did not demand 'creation of new right' in the form of provision of housing accommodations. On the contrary what is demanded by them is 'existing right' to occupy the accommodations during period of their services. That right, if any, would be determined by terms of leave and license agreement. Therefore, reliance on the judgment of ***Bharat Bank Limited*** (supra) by Petitioner-Unions is of no avail.

48. Reliance is also placed by the Petitioner-Unions on the judgment of ***M.P. Irrigation Karmachari Sangh*** (supra). In that case, three demands were raised by the Trade Unions and while the State Government made an order of reference only in respect of the third demand, reference for first two demands was rejected on the ground of inability of the State Government to bear the additional burden as well as possibility of raising of similar demands by other employees. It is in this factual background that the Apex Court held that adjudication of demands made by workmen should be left to the Tribunal to decide. Thus, the two demands in respect of which reference

was rejected were not held to outside the terms of employment by the State Government but the reference was rejected on the ground of financial burden. The facts in the present case are entirely different where housing does not form term of employment and is governed by the stipulations of Leave and License Agreement. Therefore, reliance on the judgment of ***M.P. Irrigation Karmachari Sangh*** (supra) does not assist the case of the Petitioner-Unions.

49 Mr. Singhvi has also relied upon the judgment in ***Western India Automobile Association*** (supra) in which it is held that the industrial arbitration may involve extension of an existing Agreement or the making of new one or creation of new obligation. The judgment in ***Western India Automobile Association*** (supra) is in line with the view taken in ***Bharat Bank Limited*** (supra) which we have already distinguished. For the same reasons, the judgment in **Western India Automobile Association** (supra) is also distinguishable.

50 With a view to wriggle out of the stipulations under the Leave and License Agreement, reliance is placed on the judgment of the Apex Court in ***Central Inland Water Transport Corporation Limited*** (supra). In para 89 of the judgment, the Apex Court has held that the Court would not enforce

and would strike down an unfair and unreasonable contract or a clause in contract entered between parties who were not equal in bargaining power. The judgment is relied upon to contend that the employees are made to sign on dotted lines of proforma Leave and License Agreement, which cannot be considered as binding. Had provision for residential accommodation been a term of employment and if there was any right vested in employees to secure and retain the same during entire service career, courts would have been in a position to hold the clause in Leave and License Agreement empowering the Respondent-Companies to determine the same at its will without assigning any reason as unconscionable and unenforceable. However, we have already arrived at a conclusion that the employees do not have any right to secure accommodation or to retain the same. In fact, provision of residential accommodation is completely out of the terms of employment. However, we do not record any final view on the issue of enforceability of terms of leave and license agreement. In appropriate proceedings under the PP Act, the Petitioner-Unions and their members will be entitled to agitate this issue.

51 Mr. Singhvi has relied upon the judgments of the Apex Court in ***Ram Avtar Sharma & Ors.*** *(supra) and* ***Telco Convoy Drivers Mazdoor Sangh*** (supra) in support of his contention that an appropriate Government cannot

adjudicate a dispute under section 10 of the ID Act by usurping the Tribunal's jurisdiction. We are unable to hold that the Central Government has adjudicated upon the dispute. All that it has held is that 'housing' is not a term of employment for declining to make an order of reference. Therefore, reliance of the Petitioner-Unions on these judgments is of little assistance to their case.

52 Mr. Shetty has sought to rely upon the Agreement between Indian Airlines Corporation and Workmen enforceable during 1st April 1960 to 31st March 1963, in support of his contention that 'housing' is a term of employment. The following clause of the Agreement is relied upon:

> **"2. HOUSING:**
>
> The Corporation is alive to the hardship experienced by the staff in the matter of housing and have plans to build quarters initially for at least 25% of the employees during the third Five Year Plan period."

53 However, in para 4(xix) of the Petition wherein the Agreement is referred to, the Petitioner in Writ Petition (L) 34902 of 2022 has pleaded as under:

> "(xix) The Petitioner submits that even assuming without admitting that the assertion of Respondent No.1 in its impugned order dated 12.10.2022 that housing is not a term of employment is true, a perusal of the undertaking that were sought from the employees and which as per the impugned order, 1303 employees have signed,

clearly seeks to link the occupation of the said residential premises to the employment / service conditions of the employees. ..... “

54 Apart from the fact that an indirect admission is given to the effect that ‘housing’ is not a term of employment, it is nobody’s case that the Agreement pertaining to period 1st April 1960 to 31st March 1963 is still enforceable between the parties. Also, that Agreement is not executed by present Respondent-companies. Even otherwise the relevant stipulation of the Agreement does not create any right to seek housing accommodation but merely expresses that the Indian Airlines Corporation was alive to the hardship experienced by the staff in the matter of housing and had planned to build quarters atleast for 25% of the employees. Therefore, based on that Agreement, we are unable to hold that the housing is a term of employment.

55 Both Mr. Singh and Mr. Setalvad have submitted that making an order of reference is an administrative function and so long as it is established that such an administrative decision is supported by some material, this Court would be loath in interfering in such decision. Several judgments are relied upon by them in support of this contention. On the other hand, it is the contention of the Petitioner-Unions that the Central Government has transgressed its jurisdiction by virtually adjudicating upon the dispute while declining an order of reference. Though Mr. Singh and Mr. Setalvad are

justified in contending that making or declining an order of reference is essentially an administrative function, we have gone into the merits of that decision rather than avoiding doing so on the ground of limited scope of judicial review over administrative decision. Even after examining the merits of the reasons recorded for declining an order of reference, we are unable to hold that the reasons are totally unjustifiable. Therefore, since we have already gone into the merits of the decision of Central Government declining to make an order of reference, we feel it unnecessary to burden this judgment by referring to judgments relied upon by Mr. Singh and Mr. Setalvad stating the principle of law about limited scope of judicial review over administrative decisions.

56 It is also required to be borne in mind that disinvestment of Respondent-Companies is a strategic policy decision taken by the Central Government. That policy decision was a subject matter of challenge before the Delhi High Court in ***Dr. Subramanyam Swamy*** (supra) and challenge to the decision has been repelled.

57 The employees of Respondent-Companies mounted an independent challenge to the disinvestment decision before the Madras High Court in **Air Corporation Employees Union** (supra) on the ground that such

disinvestment was affecting service conditions of the employees. The judgment refers to constitution of a committee to look into the human resource issues of the employees in the wake of disinvestment of AIL. The Committee submitted a report on 10th February 2020 formulating and outlining 10 issues as a part of consultative process and made suggestions. 'Colony accommodation' was one of 10 issues, on which the Committee gave suggestions. The suggestions of the Committee with regard to Colony accommodation was as under:

S. No.	Issues	Suggestions
9	Colony accommodation	Air India colony accommodation in all regions wherever provided should continue to be retained by the employees till their superannuation

58 Thus, the grievance regarding retention of colony accommodations was specifically raised before the Madras High Court. On behalf of the Government of India, following clarification was placed before the Madras High Court regarding housing accommodations:

> "**74.** 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 endeavor 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
9	**Colony accommodation:** Al 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 pay, whichever is earlier.

59 After noting the above clarification, the Madras High Court held in para 75 to 78 of its judgment as under:

> "**75.** 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.
>
> **76.** 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.

> **77.** 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.
>
> **78.** 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."

60 Thus, the issue regarding right of employees to retain colony accommodations was specifically raised before the Madras High Court and after noting the relevant clauses in the Share Purchase Agreement (SPA) permitting retention of accommodations only for a period of six months, the Madras High Court held that employees' interests have been protected to the hilt in the given situation. It is further held that the Government handed over a fair, reasonable, just and equitable package to the employees of Respondent-Companies.

61 It would not be out of place here to reproduce para 27 of the Affidavit-in-Reply filed by AIL specifying the additional assistances and benefits accorded to the employees vacating colony accommodation:

> "27. By way of its Circular dated 22™ July 2022, the Respondent No. 6 has made an organisational announcement for extending the following assistances and benefits to the employees vacating the housing colony premises:
>
> a. Reimbursement of expenses upto one truckload for movement of household goods.
> b. Reimbursement of brokerage upto 1 month's rent.
> c. Reimbursement of expenses towards school admission of children.
> d. Reimbursement for two nights stay for the family vacating the premises. Hereto annexed and marked as Exhibit D is a copy of the Circular dated 22" July 2022 of the Respondent No. 6."

62 Since the issue with regard to right of the employees to occupy colony accommodations was already raised before the Madras High Court and has been dealt with in ***Air Corporation Employees Union*** (supra), it is highly doubtful whether the Petitioner-Unions can once again agitate the same. However, we do not wish to make any final observation in this regard at this stage and leave the issue open to be adjudicated in appropriate proceedings.

63 It is also required to be noted that the land and buildings in which the residential accommodations are located have now become properties of AIAHCL (Respondent No.5). Thus, the accommodations are no longer held by the three Respondent-Companies in which members of Petitioner-Unions were/are employed. Admittedly they are not employees of AIAHCL.

Therefore, whether members of Petitioner-Unions can continue to occupy properties of AIAHCL is another debatable issue, on which we do not wish to record any finding at this stage.

64 It is common ground that the accommodations in occupation of members of Petitioner-Unions are governed by the provisions of PP Act. It has time and again been assured both by the Central Government and also by Respondent-Companies, including AIAHCL that provisions of PP Act would strictly be adhered to before taking action for eviction. Thus, the employees who are in occupation of accommodations would not be entirely remediless even upon rejection of their demand for a reference. The Estate Officer in under the PP Act would conduct eviction proceedings, before whom employees would be entitled to demonstrate their alleged right to occupy the accommodations, by placing their interpretation on Housing Rules and terms and conditions of leave and license agreements. They have further remedy before the District Judge/Principal Judge of Bombay City Civil Court to challenge the order of Estate Officer. We leave all the contentions raised by Petitioner-Unions in the present Petitions about right of the employees to occupy residential accommodations open to be raised in proceedings under the PP Act.

65 One of the grounds strenuously urged before us for setting aside the impugned order dated 12th October 2022 is non-consideration of demand of deductions/stoppage of PLI. However, perusal of the impugned order shows that said demand has not been altogether ignored. The Central Government has treated the same as merely consequential action dependent upon vacation of licensed premises. We do agree with the said stand of the Central Government that deduction/stoppage of PLI is not an independent action and is resorted to only as a consequential action for non-vacation of residential accommodations by the employees. Therefore, it cannot be stated that the impugned order ignores the dispute with regard to PLI, much less the order can be set aside on that count.

66 Now we deal with the issue of levy of penal rent and damage charges in pursuance of the decision taken by AISAM as conveyed vide letter dated 29th September 2021. It is contended on behalf of Petitioner-Unions that levy of damage charges of Rs.15,00,000/- in Mumbai is in violation of the provisions of Housing Rules. However, prayers made in the Petitions do not indicate that there is any specific prayer for setting aside the decision of levy of penal rent or damage rent. The issue involved in the present Petitions is essentially about refusal to make an order of reference. Also an objection is raised on behalf of the Respondent-Companies that the issue

with regard to challenge to the letter dated 29th September 2021 has attained finality by way of judgment and order dated 25 August 2022 passed in Writ Petition (L) No.19001 of 2022, 19171 of 2022 and 20338 of 2022 wherein specific challenge was raised to letters dated 29th September 2021, 7/8th October 2021 and 26 May 2022. We however do not propose to decide the issue with regard to levy of penal rent and/or damages. The aspect of recovery of rent or damages in respect of public premises is dealt with under section 7 of the PP Act which provides as under:

"7. Power to require payment of rent or damages in respect of public premises.— (1) Where any person, is in arrears of rent payable in respect of any public premises, the estate officer may, by order, require that person to pay the same within such time and in such instalments as may be specified in the order.

(2) Where any person is, or has at any time been, in unauthorised occupation of any public premises, the estate officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such premises and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(2-A) While making an order under sub-section (1) or sub-section (2), the estate officer may direct that the arrears of rent or, as the case may be, damages shall be payable together with compound interest at such rate as may be prescribed, not being a rate exceeding the current rate of interest within the meaning of the Interest Act, 1978 (14 of 1978).

(3) No order under sub-section (1) or sub-section (2) shall be made against any person until after the issue of a notice in writing to the person calling upon him to show cause within seven days from the date of issue thereof, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the estate officer.

(3-A) If the person in unauthorised occupation of residential accommodation challenges the eviction order passed by the estate officer under sub-section 2 of section 3-B in any Court, he shall pay damages for every month for the residential accommodation held by him.

(4) Every order under this section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice."

67 We therefore leave the issue with regard to levy and recovery of penal rent and/or damage rent open to be decided in appropriate proceedings.

68. Also of relevance is the fact that only miniscule number of flats now remain to be occupied by some of the employees. As per the figures placed before us, the total number of flats is over 3000. Only 410 employees continue to be in occupation of accommodations, out of whom 238 employees have already submitted undertakings to vacate the same. Thus the petitions seem to be pressed to protect interest of only 142 employees who are yet to show willingness to vacate the accommodations. It is contended on behalf of the Petitioner-Unions that the undertakings given by employees are on account of threats of recovery of penal and damage rents and such undertakings should be ignored by this court. However, none of the Petitioner-Unions have given any details of the exact employees on

whose behalf the petitions are filed. In absence of any details and any challenge in pleadings to the figures put forth by Respondents, we are left with no option but to accept those figures. Monitisation of lands and properties of AIL is one of the essential terms of disinvestment process. If such small number of employees continue to hold on to the accommodations, the AIAHCL will not be able to monitise the land to reduce the burden of debt of AIL put on it. Ofcourse the right, if any, of employees to occupy the accommodations will be dependent on the terms and conditions of leave and licence agreements and we have left this issue open to be decided in appropriate proceedings. Those employees who wish to agitate their grievance with regard to alleged right to occupy the premises can do so in proceedings initiated under the PP Act.

69. Resultantly, we do not find any error in the Order dated 12th October 2022 declining to make an order of reference. Petitions are devoid of merits and deserve to be dismissed. All issues on merits of contentions with regard to alleged rights of employees to retain their accommodations are however left open to be decided in appropriate proceedings, uninfluenced by observations made in the present judgment. Petitions are accordingly dismissed. There shall be no orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.) **(ACTING CHIEF JUSTICE)**

70. At this stage, the learned Counsel for the Petitioners submit that the Respondents be directed to maintain status quo for a period of six weeks.

71. The learned Counsel for the Respondents opposed the said request.

72. As far as eviction is concerned, we have already observed that the Respondents would resort to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 which will take its own course.

73. As far as recovery of penal rent and/or damages is concerned, we have observed that the same would be governed by the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

74. It is submitted that the Respondents were restrained from recovering the penal rent and/or damages. The same shall continue for a period of two weeks from today.

75. Needless to state that on lapse of two weeks, the said protection also shall come to an end.

76. It is made clear that there is no prohibition for the Respondents to proceed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(SANDEEP V. MARNE, J.) **(ACTING CHIEF JUSTICE)**