êjITEM NO.1A COURT NO.12 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3611 OF 2011
[Arising out of SLP(C) No.25041/2009]

CONSUMER ONLINE FOUNDTION Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

WITH
CIVIL APPEAL NO.3612 OF 2011
[Arising out of SLP(C) NO. 23541 of 2009]
CIVIL APPEAL NO.3613 OF 2011
[Arising out of SLP(C) NO. 29471 of 2009]
CIVIL APPEAL NO.3614 OF 2011
[Arising out of S.L.P.(C)11799 @ CC NO. 1066 of 2010]

Date: 26/04/2011 These Petitions were called on for judgment today.

For Petitioner(s) Mr. Prashant Kumar,Adv.
Mr. Anurag Sharma,Adv.
M/S. Ap & J Chambers,Adv.

Ms. Sumita Hazarika, Adv.

Mr. Partha Sil, Adv.

For Respondent(s) Mr. Dharmendra Kumar Sinha, Adv.

Ms. Sushma Suri, Adv.

M/S Law Associates & Co. ,Adv

M/S. "Coac", Adv.

Hon'ble Mr. Justice A.K. Patnaik pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice R.V. Raveendran and His Lordship.

Application for permission to file SLP in SLP [C] No.11799/2011 [CC No.1066/2010] is allowed and delay condoned.

Leave granted. Appeals are allowed in terms of the signed reportable judgment.

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I.A. No.3 in Civil Appeal No.3612/2011 arising out of S.L.P. (C) No.23541 of 2009 for impleadment stands rejected.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed reportable judgment is placed on the file)

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3611 OF 2011
[Arising out of S.L.P. [C] No.25041 of 2009]

Consumer Online Foundation, etc. ... Appellants

Versus

Union of India & Ors., etc. ... Respondents

WITH

CIVIL APPEAL NO.3612 OF 2011
[Arising out of S.L.P. [C] No.23541 of 2009],

CIVIL APPEAL NO.3613 OF 2011
[Arising out of S.L.P. [C] No.29471 of 2009]

AND

CIVIL APPEAL NO.3614 OF 2011
[Arising out of S.L.P. [C] No. 11799 of 2011]
[CC No.1066/2010]

J U D G M E N T

A. K. PATNAIK, J.

Application for permission to file SLP in SLP [C] No.11799/2011 [CC No.1066/2010] is allowed and delay condoned.

2. Leave granted.

3. These are appeals against the judgment and order

dated 26.08.2009 of the Division Bench of the Delhi High Court in public interest litigations upholding the validity of levy of development fees on the embarking passengers by the lessees of the Airports Authority of India at the Indira Gandhi International Airport, New Delhi and the Chhatrapati Shivaji International Airport, Mumbai.

Relevant Facts:

4. The Airports Authority of India Act, 1994 (for short

'the 1994 Act') came into force on 01.04.1995 and under Section 3 of the 1994 Act, the Central Government constituted the Airports Authority of India (for short 'the Airports Authority'). Section 12 of the 1994 Act enumerates the various functions of the Airports Authority. By the Airports Authority of India (Amendment) Act, 2003 (for short 'the Amendment Act of 2003'), Sections 12A and 22A were inserted in the 1994 Act with effect from 01.07.2004. The newly inserted Section 12A provides that the Airports Authority may make a lease of the premises of an airport to carry out some of its functions under Section 12 as the Airports Authority may deem fit. The newly inserted Section 22A of the 1994 Act provides that with the approval of the Central Government, the Airports Authority may levy on, and collect from, the embarking passengers at an airport, the development fees at the rate as may be prescribed. On

04.04.2006, the Airports Authority leased out the Indira Gandhi International Airport, New Delhi (for short 'the Delhi Airport') to the Delhi International Airport Private Limited (for short 'DIAL') and also leased out the Chhatrapati Shivaji International Airport, Mumbai (for short 'the Mumbai Airport') to Mumbai International Airport Private Limited (for short 'MIAL'). Section 22A of the 1994 Act was amended by the Airports Economic Regulatory Authority of India Act, 2008 (for short 'the 2008 Act') and the amended Section 22A provided for determination of the rate of development fees for the major airports under clause (b) of sub-section (1) of Section 13 of the 2008 Act by the Airports Economic Regulatory Authority (for short 'the Regulatory Authority'). The amended Section 22A was to take effect on and from the date of the establishment of the Regulatory Authority. The Government of India, Ministry of Civil Aviation, sent a letter dated 09.02.2009 to DIAL conveying the approval of the Central Government under

Section 22A of the 1994 Act for levy of development fees by DIAL at the Delhi Airport at the rate of Rs.200/- per departing domestic passenger and at the rate of Rs.1300/- per departing international passenger inclusive of all applicable taxes, purely on ad hoc basis, for a period of 36 months with effect from 01.03.2009. Similarly, the Government of India, Ministry of Civil Aviation, sent another letter dated 27.02.2009 to MIAL conveying the

approval of the Central Government under Section 22A of the 1994 Act for levy of development fees by MIAL at the Mumbai Airport at the rate of Rs.100/- per departing domestic passenger and at the rate of Rs.600/- per departing international passenger inclusive of all applicable taxes, purely on ad hoc basis, for a period of 48 months with effect from 01.04.2009. The levy of development fees by DIAL as the lessee of the Delhi Airport was challenged in Writ Petition No. 8918/2009 by Resources of Aviation Redressal Association. The levy of development fees by DIAL and MIAL as lessees of the Delhi and Mumbai Airports were challenged in Writ Petition No. 9316 of 2009 and Writ Petition No. 9307 of 2009 by Consumer Online Foundation. The Writ petitioners contended inter alia that such levy of development fees under Section 22A of the 1994 Act can only be made by the Airports Authority and not by the lessee and that until the rate of such levy is either prescribed by the Rules made under the 1994 Act or determined by the Regulatory Authority under the 2008 Act as provided in Section 22A of the Act before and after its amendment by the 2008 Act, the levy and collection of development fees are ultra vires the 1994 Act. The Division Bench of the High Court, after hearing, held that there was no illegality attached to the imposition of development fees by the two lessees with the prior approval of the Central Government and dismissed the writ petitions by the impugned judgment and order.

Conclusions of the High Court:

5. In the impugned judgment and order, the High Court held that under sub-section (1) of Section 12A of the 1994 Act, the Airports Authority is empowered to lease an airport for the performance of its functions under Section 12 and such a lease is a statutory lease which enables the lessee to perform the functions of the Airports Authority enumerated in Section 12. The High Court further held that sub-section (4) of Section 12A provides that the lessee who has been assigned some functions of the Airports Authority under sub-section (1) shall have "all" the powers of the Airports Authority necessary for the performance of such functions in terms of the lease and use of the word "all" indicates that the lessee would have each and every power of the Airports Authority for the purpose of discharging such functions including the power under Section 22A to levy and collect development fees from the embarking passengers. The High Court took the view that development fee though described as fee in Section 22A is more akin to a charge or tariff for the facilities provided by the Airports Authority to the airlines and passengers. The High Court came to the conclusion that the exercise of the power to levy and collect development fees under Section 22A was not dependent on the existence of the rules and, therefore, this power can

be exercised even if the rules have not framed prescribing the rate of development fees under Section 22A (before its amendment by the 2008 Act). In coming to this conclusion, the High Court relied on the decisions of this Court in U.P. State Electricity Board, Lucknow v. City Board, Mussorie & Ors. [(1985) 2 SCC 16], Mysore Road Transport Corporation v. Gopinath Gundachar Char [AIR 1968 SC 464] and Sudhir Chandra Nawn v. Wealth- Tax Officer, Calcutta & Ors. [1969 (1) SCR

108].

Contentions on behalf of the appellants:

6. Mr. Fali S. Nariman, learned senior counsel, leading the arguments on behalf of the appellants, made these submissions:

(i) The conclusion of the High Court that the power under Section 22A to levy and collect the development fees from the embarking passengers can be exercised without the rules is erroneous because the language of Section 22A of the 1994 Act prior to its amendment by the 2008 Act makes it clear that development fees could be levied and collected from the embarking passengers at the airport "at the rate as may be prescribed" and the fees so collected are to be credited to the Airports Authority and are to be regulated and utilized "in the prescribed manner". Unless, therefore,

the statutory rules are made prescribing the rate at which such fees are to be collected and prescribing the regulation and manner of the utilization of development fees, the power under Section 22A cannot be exercised. After the amendment by the 2008 Act, Section 22A(ii) provides that the development fee to be levied on and collected from the embarking passengers at major airports, such as the Delhi Airport and the Mumbai Airport, would be at the rate as may be determined under Clause (b) of sub-section (1) of Section 13 of the 2008 Act. The Regulatory Authority has been established by notification dated 12.05.2009 and unless the rate of development fees is determined by the Regulatory Authority under Clause (b) of sub-section (1) of Section 13 of the 2008 Act, the same cannot be levied and collected from the embarking passengers at the two major airports. The determination of the rate of development fees to be

levied at the two major airports under Clause (b) of sub-section (1) of Section 13 of the 2008 Act by the Regulatory Authority of India is still pending and the impugned levy of development fees by DIAL and MIAL are, therefore, ultra vires.

(ii) The purposes for which the development fees are to be levied and collected are indicated in clauses (a), (b) and (c) of Section 22A of the 1994 Act and these are:

(a)funding or financing the costs of upgradation, expansion or development of the airports at which the

fees is collected, or

(b)establishment or development of a new airport in lieu of the existing airport, or

(c)investment in the equity in respect of shares to be subscribed by the Airports Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the existing airport or advancement of loans to such companies or other persons engaged in such activities.

Under the 1994 Act, it is only the Airports Authority which can carry out these three purposes and not the lessee of the Airports Authority under Section 12A of the 1994 Act and, therefore, the lessee can have no power to levy and collect the development fees from the embarking passengers. He argued that the conclusion of the High Court in the impugned judgment and order, that under sub-section (4) of Section 12A of the 1994 Act, the lessee having been assigned some of the functions of the Airports Authority has all the powers of the Airports Authority necessary for the performance of such functions in terms of the lease including the power to levy development fees under Section 22A of the 1994 Act, is therefore not correct. He referred to the various provisions of the Operation, Management and Development Agreement (for short ‘OMDA’) and the State Support Agreement

executed between the Airports Authority and DIAL/MIAL to show that the power to levy development fees from the

embarking passengers have in fact not been assigned by the Airports Authority to DIAL/MIAL.

Reply on behalf of the Union of India:

7. Mr. Gopal Subramanium, learned Solicitor General appearing for the Union of India, made these submissions:

(i) Section 12A of the 1994 Act begins with a non-obstante clause and it empowers the Airports Authority to lease the premises of an airport to a third party to carry out some of its functions under Section 12 of the 1994 Act and in exercise of this power the Airports Authority and the DIAL and the Airports Authority and MIAL have entered into agreements in respect of the leases and the Airports Authority has delegated some of its functions to DIAL and MIAL in respect of the Delhi Airport and Mumbai Airport respectively. A reading of the lease agreements (OMDA) would show that the functions of operation, maintenance, development, design, construction, up-gradation, modernization, finance and management of the airports are to be carried out by the two lessees. If DIAL and MIAL have to carry out these functions under the lease agreement to develop, finance, design, construct, modernize, operate, maintain, use and regulate the use of the airports by the third party, they must have power to determine, demand, collect and retain appropriate charges from the users of the

airports.

(ii) Section 22A of the 1994 Act permits the Airports Authority after previous approval of the Central Government to levy on and collect from embarking passengers at an airport development fees. Accordingly, after the lease of the two airports by the Airports Authority to DIAL and MIAL,

the Central Government has conveyed its approval in the two letters dated 09.02.2009 and 27.02.2009 to DIAL and MIAL for levy of development fees by DIAL and MIAL respectively from the two airports. Such approval conveyed by the Central Government is entirely in accordance with Section 12A of the 1994 Act. In view of sub-section (4) of Section 12A of the 1994 Act providing that a lessee who has been assigned any of the functions of the Airports Authority would have all the powers of the Airports Authority necessary for the performance of such function in terms of the lease, the power of the Airports Authority to levy the development fees has also been rightly assigned to DIAL and MIAL. A reading of the two approval letters would show that various conditions and safeguards have been incorporated in the approval letters to protect the interest of the public and to provide rigorous checks with regard to the manner in which DIAL and MIAL can deal with the fees collected by them and it will be clear from the approval letters that the fees can be utilized only for the purpose mentioned in Section 22A of the 1994 Act.

(iii) The purposes mentioned in clauses (b) and (c), namely, "development of a new airport" and "a private airport" respectively relate to the very airport in respect of which the lease is executed and fees are collected, as it would be clear from the expression "in lieu of the airport referred to in clause (a)". It is significant that Section 12A and Section 22A of the 1994 Act were both introduced by the same Amendment Act of 2003.

(iv) Though Section 22A of the 1994 Act, before its amendment by the 2008 Act provided that for levy of development fees "at the rate as may be prescribed" and for regulation and utilization of the development fees "in the prescribed manner", the absence of the rules prescribing the rate of development fees or the manner of regulation and

utilization of development fees will not render Section 22A ineffective. The legal proposition that absence of rules and regulations cannot negate the power conferred on an authority by the legislature is settled by decisions of this Court in Orissa State (Prevention & Control of Pollution) Board v. Orient Paperdd Mills & Anr. [(2003) 10 SCC 421], U.P. State Electricity Board, Lucknow v. City Board, Mussorie & Ors. (supra), Kerala State Electricity Board v. M/s S.N. Govinda Prabhu & Bros. & Ors. [(1986) 4 SCC 198], Surinder Singh v. Central Government & Ors. [(1986) 4 SCC 667] and Mysore Road Transport Corporation v. Gopinath

Gundachar Char (supra).

(v) The arguments advanced by Mr. Nariman on behalf of the appellant regarding the amendment of Section 22A of the 1994 Act by the 2008 Act were not raised before the High Court and the foundation for such a plea has also not been laid in the special leave petition. In any case the approval granted by the Central Government to DIAL and MIAL to levy the development fees for a period of three years would not be rendered automatically inoperative on the enactment of the 2008 Act amending Section 22A of the 1994 Act and therefore DIAL and MIAL continue to have the right to collect the development fees by virtue of the approvals granted by the Central Government which are saved by Section 6 (c) of the General Clauses Act, 1897 despite the amendment of Section 22A by the 2008 Act. The decisions of this Court in Jayantilal Amrathlal v. Union of India [(1972) 4 SCC 174], S.L. Srinivasa Jute Twine Mills (P) Ltd. v. Union of India & Anr. [(2006) 2 SCC 740] and M/s. Gurcharan Singh Baldev Singh v. Yashwant Singh & Ors. [(1992) 1 SCC 428] support this contention.

(vi) Section 2 (n) of the 2008 Act defines "service provider" as any person who provides aeronautical services "and is eligible to levy and charge user development fees

from the embarking passengers at any airport and includes the authority which manages the airport". This provision

expressly indicates that under the 2008 Act also the entity managing the airport is eligible to levy and collect the development fees. The 1994 Act and the 2008 Act provide a statutory framework for the modernization and improvement of the aviation infrastructure of the country and should be interpreted in a harmonious manner so that they complement each other rather than conflict with each other. The Regulatory Authority constituted under the 2008 Act has already issued a public notice dated 23.04.2010 which would show that it has permitted DIAL to continue to levy the development fees at the rate of Rs.200/- per departing domestic passenger and at the rate of Rs.1,300/- per departing international passenger with effect from 01.03.2009 on an ad hoc basis pending final determination. The Court should not therefore interfere with the levy and collection of the development fees by DIAL and MIAL at this stage.

Reply on behalf of MIAL and DIAL:

8. Mr. Harish N. Salve, learned senior counsel, and Dr. Abhishek Singhvi, learned senior counsel, appeared for MIAL and DIAL and made these submissions:

(i) The challenge of the appellant to the levy and collection of airport development fees by the lessees of the two airports is based on a misconception that development

fees is in the nature of a tax and can be levied strictly in accordance with Section 22A of the 1994 Act, only by the Airports Authority and not by the lessee. Development fees is not really a tax but charges levied and collected by the lessee for development of facilities for the use of the

airport. The lessees, which are non-government companies, have established the utility in a public-private partnership, and do not require a statutory authorization or permission to recover such charges by way of development fee, from the passengers using the airport and the lessees do not require the support of the statutory provision of Section 22A for levy and collection of development fees. Section 11 of the 1994 Act mandates that the Airports Authority would discharge its functions on business principles and Section 12 of the 1994 Act enumerates the functions of the Airports Authority and as the Airports Authority in the discharge of its functions provides different facilities, it is entitled to collect charges for such facilities as per contractual arrangements with those who use the facilities. These charges are really in the nature of consideration from persons using the facilities provided by the Airports Authority. The nature of these charges for the facilities provided by an authority has been clarified by this Court in The Trustees of the Port of Madras v. M/s Aminchand Pyarelal & Ors. [(1976) 3 SCC 167], Mumbai Agricultural Produce Market Committee & Anr. v.

Hindustan Lever Limited & Ors. [(2008) 5 SCC 575], Union of India v. S. Narayana Iyer [(1970) 1 MLJ 19] and Union of India & Ors. v. Motion Picture Association & Ors. [(1999) 6 SCC 150]. As the facilities are in the nature of monopolies, the statute imposes regulations for the charges to prevent an abuse of monopolistic position and Sections 22 and 22A of the 1994 Act reflect such statutory curtailments of the rights of the owners of the facilities to recover sums from airlines and passengers. Hence, the right to recover charges is not based on Sections 22 and 22A but flows from the ownership of the facilities. What is determined, therefore, is the charges that would be contractually recovered from the users of the facilities as

was held in M/s Aminchand Pyarelal & Ors. (supra).

(ii) Section 22 of the 1994 Act identified the heads on which charges could be recovered. Section 22A, therefore, merely adds three more heads for which funds could be raised and this is akin to adding components of a tariff. Section 22A does not change the quality and character of the recovery of charges by the owners of the facilities from the users thereof. Section 22A does not also change the nature and character of what is recovered by an airport operator from its customers. The High Court was, therefore, right in coming to the conclusion in the impugned judgment that development fees under Section 22A of the 1994 Act was in the nature of a tariff.

(iii) Section 12A of the 1994 Act (a) recognizes statutorily the power of the Airports Authority to make a lease of the premises of an airport for the purpose of carrying out some of its functions under Section 12 and (b) transfers as it were to the lessee all the powers of the Authority. As will be clear from sub-section (4) of Section 12A of the Act, the lessee who has been assigned some functions of the Airports Authority under Section 12 of the 1994 Act has the power of the Airports Authority "necessary for the performance of such functions". The power to recover charges for the facilities at the airport in respect of which a lease is made, whether they be the charges under Section 22 or the charges under Section 22A are necessary for discharging of the functions of maintaining and upgrading the airports. Since sub-section (4) of Section 12A itself states that the lessee shall have "all" the powers of the Airports Authority, there is no warrant to take the view that the lessee shall not have the power of the Airports Authority under Section 22A to levy and collect development fees.

(iv) The functions which have been entrusted to the two

lessees, DIAL and MIAL, include the up-gradation and modernization of the airport including construction of new terminals and this will be clear from clause 2.1 titled "Grant of Function" and clause 8.3 titled "Master plan" of the OMDA. The relevant provisions of the State Support

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Agreement between the Airports Authority and the two lessees and in particular clauses 3.1 and 3.1A also deal with the recovery of such charges in the performance of the functions. It is for the discharge of these functions that development fees is levied and collected and the power to collect development fee has been passed on to the lessee under sub-section (4) of Section 12A of the 1994 Act.

(v) Rules prescribing the rate of development fees and regulation and the manner in which the development fees will be utilized as provided in Section 22A of the 1994 Act cannot curtail the power to levy and collect development fees under Section 22A of the 1994 Act. This proposition is settled by the decisions of this Court in Orissa State (Prevention & Control of Pollution) Board v. Orient Paperdd Mills & Anr. (supra), T. Cajee v. U. Jormanik Siem & Anr. (AIR 1961 SC 276), The Madras and Southern Maharatta Railway Company Limited v. The Municipal Council Bezwada [(1941) 2 MLJ 189] as approved by the Privy Council in its decision reported in AIR 1944 PC 71, Jantia Hill Truck Owners Association, etc. v. Shailang Area Coal Dealer and Truck Owner Association & Ors. [(2009) 8 SCC 492], Surinder Singh v. Central Government & Ors. (supra), Meghalaya State Electricity Board & Anr. v. Jagadindra Arjun [(2001) 6 SCC 446] and U.P. State Electricity Board, Lucknow v. City Board, Mussorie & Ors. (supra). Since the power to collect

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the development fee is already available to the Airports Authority or its lessees as part of its power to collect charges for the facilities, absence of a rule does not negate the power. The rule under Section 22A was to be made

not for purposes of conferring the power but to regulate the rate of development fees and manner of utilization of development fee as a check on such power.

(vi) After the 2008 Act and after the notification dated 31.08.2009 bringing the provisions of 2008 Act in Chapters III and VI into force w.e.f. 01.09.2009, the Regulatory Authority has jurisdiction under Section 13(1)(b) of the 2008 Act to determine the amount of development fees in respect of major airports, such as, Delhi and Mumbai Airports. The Regulatory Authority has already commenced its functions and has undertaken the process of final determination of development fee. Till the Regulatory Authority modifies the levy of development fees, the two lessees are entitled to collect development fees as per the two letters dated 09.02.2009 and 27.02.2009 of the Central Government conveying the approval to the lessees of the two airports. The contention of the appellant that the development fees cannot be recovered till such time as the Regulatory Authority determines the rate of development fees is misconceived. The contention of the appellant that the development fees can be utilized only for the purposes mentioned in Section 22A of the 1994 Act is also

misconceived. The approval letters of the Central Government show that the development fees can be utilized for the development of Aeronautical Assets which are Transfer Assets in terms of OMDA; and under the OMDA, these Transfer Assets shall revert to the Airports Authority on the expiry or early termination of OMDA. On a perusal of the three clauses enumerated in Section 22A of the 1994 Act, it is clear that depending on the functions assigned to the lessee, the corresponding powers to collect development fees for discharging the function also is passed on to the lessee under sub-section (4) of Section 12A of the 1994 Act. In other words, there is a clear nexus established between the

function so assigned and the power to collect the development fees.

Rejoinder on behalf of the appellants:

9. In rejoinder, Mr. Nariman made these submissions:

(i) Under Clause 13(i) of OMDA the lessee has undertaken to arrange for financing and/or meeting of all financial requirements through suitable debt and equity the contribution in order to comply with its obligation including development of the airport pursuant to the Master Plan and the Major Development Plans. Hence, there was no question of levy of development fees by the lessee for the purposes of development of the airport which has been leased out to the lessee. The airports belong to the Central

Government and the Airports Authority has leased out the airport premises to the lessee to manage the airport. Section 38 of the 1994 Act empowers the Central Government to temporarily divest the Airports Authority of the management of the airport and Section 39 of the 1994 Act empowers the Central Government to supersede the Airports Authority. The lessee, therefore, is not the owner of the airport and is consequently not empowered to charge development fess for the development of the airport. Only a limited right has been conferred on the private lessee under Section 12A of the 1994 Act to undertake some of the functions of the Airports Authority enumerated in Clause 2.1.1 of the OMDA read with Schedule 5 and Schedule 6 which enumerate the aeronautical services and non-aeronautical services respectively.

(ii) The levy under Section 22A of the 1994 Act is for the specific purposes mentioned in Clauses (a), (b) or (c) thereof and though termed as fees, it is really in the nature of a cess and therefore there need not be any direct co-relation between the levy of fees and the services

rendered as has been held by the High Court in the impugned judgment. In Vijayalashmi Rice Mills & Ors. v. Commercial Tax Officers, Palakot & Ors. [(2006) 6 SCC 763], this Court has also held that ordinarily a cess means a tax which raises revenue which is applied to a specific purpose. This Court has held in Commissioner of Income Tax, Udaipur,

Rajasthan v. Mcdowell and Company Ltd. [(2009)10 SCC 755] that the power to levy tax, duty, cess or fee can be exercised only under law authorizing the levy. Thus, cess is ultimately a compulsory exaction of money and must satisfy the test of Article 265 of the Constitution which declares that no tax shall be levied or collected without authority of law. This Court has also held in Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla & Ors. [(1992) 3 SCC 285] that the power of imposition of tax and/or fee must be very specific and there is no scope of implied authority for imposition of such tax or fee. This position of law has been reiterated by this Court in State of West Bengal v. Kesoram Industries Ltd. & Ors. [(2004) 10 SCC 201]. Section 22A of the 1994 Act was, therefore, enacted by the Amendment Act of 2003 to specifically empower the Development Authority to impose levy and collect development fees which is to be used for the specific purposes indicated in clauses (a), (b) and (c) of Section 22A of the 1994 Act and this power cannot be usurped by the lessee of the airport by treating it as charges for facilities.

(iii) The judgments relied on by the respondents in support of their contention that non-framing of rules do not negate the power to levy development fees under Section 22A of the 1994 Act have been rendered by this Court in the

context of enactments which are not pari materia with Section 22A of the 1994 Act. In Bangalore Water Supply &

Sewerage Board v. A. Rajappa & Ors. [(1978) 2 SCC 213], this Court has cautioned that the same words may mean one thing in one context and another in different context. This position of law has also been stated in Justice G.P. Singh's Treatise on Interpretation of Statutes, 12th Edition 2010 at pages 298-299. Hence, the judgments cited on behalf of the respondents are of no aid to interpret Section 22A of the 1994 Act which clearly provides that the development fees can be levied and collected at the rate prescribed by the rules and are to be regulated and utilized in the manner prescribed by the rules. In Mohammad Hussain Gulam Mohammad & Anr. v. The State of Bombay & Anr. [1962 (2) SCR 659], a Constitution Bench of this Court has held that since Section 11 of the Bombay Agricultural Produce Markets Act, 1939 provides that rules will prescribe the maxima and the fees fixed must be within the maxima, till such maxima are fixed by the rules, it would not be possible for the Market Committee to levy fees. Similarly, in Dhrangadhra Chemical Works Ltd. v. State of Gujarat & Ors. [(1973) 2 SCC 345], this Court has held that the framing of rules was a mandatory requirement enjoined by Section 60(a)(ii) of the Bombay Municipalities Act, 1901 before imposing a tax by a resolution passed at a general meeting.

(iv) The two letters dated 09.02.2009 and 27.02.2009 of the Government of India, Ministry of Civil Aviation, to DIAL and MIAL respectively can convey only the approvals of the Central Government under Section 22A of the 1994 Act for levy of development fees by DIAL and MIAL respectively but cannot authorize DIAL and MIAL to levy and collect development fees under Section 22A of the 1994 Act because under this provision the Airports Authority only has the power to levy and collect development fees and DIAL and MIAL have no such authority. The two letters dated 09.02.2009 and 27.02.2009 are not saved by Section 6 of the General

Clauses Act, 1897 because this provision does not protect any action taken under the authority of the letter.

(v) The public notice dated 23.04.2010 issued by the Regulatory Authority pertaining to levy of development fees by DIAL regarding the fees of Rs.200/- per departing domestic passenger and Rs.1300/- per departing international passenger on ad hoc basis is without jurisdiction as under the 2008 Act, the Regulatory Authority alone has the power to determine the rate of development fees in respect of major airports after following the procedure laid down in Section 13 of the 2008 Act. There is no public notice issued by the Regulatory Authority so far in respect of the Mumbai Airport. The levy and collection of development fees by DIAL and MIAL at the two airports are, therefore ultra vires and may be restrained by the Court.

Relevant Provisions of Law:

10. Section 12 of the 1994 Act as amended by the Amendment Act of 2003, Section 22 of the 1994 Act, Sections 12A and 22A inserted by the Amendment Act of 2003 with effect from 01.07.2004 and Section 22A as amended by the 2008 Act, which are relevant for deciding the questions raised before us by the parties, are extracted hereinbelow:-

> "12. Functions of the Authority.-- (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the Authority to manage the airports, the civil enclaves and the aeronautical communication stations efficiently.
>
> (2) It shall be the duty of the Authority to provide air traffic service and air transport service at any airport and civil enclaves.
>
> (3) Without prejudice to the generality of the provisions contained in sub-sections (1) and (2), the Authority may--
>
> (a) plan, develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves;

(aa) establish airports, or assist in the establishment of private airports by rendering such technical, financial or other assistance which the Central Government may consider necessary for such purpose. (Inserted by the Amendment Act of 2003)

(b) plan, procure, install and maintain navigational aids, communication equipment, beacons and ground aids at the airports and at such locations as may be considered necessary for safe navigation and operation of aircrafts;

(c) provide air safety services and search and rescue, facilities in co-ordination with other agencies;

(d) establish schools or institutions or centers for the training of its officers and employees in regard to any matter connected with the purposes of this Act;

(e) construct residential buildings for its employees;

(f) establish and maintain hotels, restaurants and restrooms at or near the airports;

(g) establish warehouses and cargo complexes at the airports for the storage or processing of goods;

(h) arrange for postal, money exchange, insurance and telephone facilities for the use of passengers and other persons at the airports and civil enclaves;

(i) make appropriate arrangements for watch and ward at the airports and civil enclaves;

(j) regulate and control the plying of vehicles, and the entry and exit of passengers and visitors, in the airports and civil enclaves with due regard to the security and protocol functions of the Government of India;

(k) develop and provide consultancy, construction or management services, and undertake operations in India and abroad in relation to airports, air-navigation services, ground aids and safety services or any facilities thereat;

(l) establish and manage heliports and airstrips;

(m) provide such transport facility as are, in the opinion of the Authority, necessary to the passengers traveling by air;

(n) form one or more companies under the Companies Act, 1956 or under any other law relating to companies to further the efficient

discharge of the functions imposed on it by

this Act;

(o) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act;

(p) perform any other function considered necessary or desirable by the Central Government for ensuring the safe and efficient operation of aircraft to, from and across the air space of India;

(q) establish training institutes and workshops;

(r) any other activity at the airports and the civil enclaves in the best commercial interests of the Authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to the Authority.

(4) In the discharge of its functions under this section, the Authority shall have due regard to the development of air transport service and to the efficiency, economy and safety of such service.

(5) Nothing contained in this section shall be construed as-

(a) authorizing the disregard by the Authority of any law for the time being in force; or

(b) authorizing any person to institute any proceeding in respect of duty or liability to which the Authority or its officers or other employees would not otherwise be subject.

22. Power of the Authority to charge fees, rent, etc.- The Authority may,-

(i) With the previous approval of the Central Government, charge fees or rent -

(a) for the landing, housing or parking of aircraft or for any other service or facility

offered in connection with aircraft operations at any airport, heliport or airstrip;

Explanation. - In this sub-clause "aircraft" does not include an aircraft belonging to any armed force of the Union and "aircraft operations" does not include operations of any aircraft belonging to the said force;

(b) for providing air traffic services, ground safety services, aeronautical communications and navigational aids and meteorological services at any airports and at any aeronautical communication station;

(c) for the amenities given to the passengers and visitors at any airport, civil enclave,

heliport or airstrip;

(d) for the use and employment by persons of facilities and other services provided by the Authority at any airport, civil enclave heliport or airstrip;

(ii) with due regard to the instructions that the Central Government may give to the Authority, from time to time, charge fees or rent from persons who are given by the Authority any facility for carrying on any trade or business at any airport, heliport or airstrip.

Inserted by the Amendment Act of 2003

12A. Lease by the authority.--(1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:

Provided that such lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.

(2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.

(3) Any money, payable by the lessee in terms of the lease made under sub- section (1), shall form part of the fund of the Authority and shall be credited thereto as if such money is the receipt of the Authority for all purposes of section 24.

(4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such function in terms of the lease.

Inserted by the Amendment Act of 2003

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

(a) funding or financing the costs of upgradation, expansion or development of the

airport at which the fees is collected; or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or

(c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

As amended by the 2008 Act

22A. Power of Authority to levy development
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fees at airports.-- The Authority may,--

(i) after the previous approval of the Central Government in this behalf, levy on, and collect from, the embarking passengers at an airport other than the major airports referred to in clause (h) of section 2 of the Airports Economic Regulatory Authority of India Act, 2008 the development fees at the rate as may be prescribed;

(ii) levy on, and collect from, the embarking passengers at major airports referred to in clause (h) of section 2 of the Airports Economic Regulatory Authority of India Act, 2008 the development fees at the rate as may be determined under clause (b) of sub-section (1) of Section 13 of the Airports Economic Regulatory Authority of India Act, 2008,

and such fees shall be credited to the Authority and shall be regulated and utilized in the prescribed manner, for the purposes of--

(a) funding or financing the costs of upgradation, expansion or development of the airport at which the fees is collected; or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a); or

(c) investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

Our conclusions with reasons:

11. The conclusion of the High Court in the impugned

judgment that the lessee of the airport has the power of the
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Airports Authority under Section 22A to levy and collect development fees from the embarking passengers by virtue of sub-section (4) of Section 12A of the Act is contrary to the legislative intent of the Amendment Act of 2003. On a perusal of Section 22A of the 1994 Act inserted by the Amendment Act of 2003, we find that the purposes for which the development fees are to be levied and collected from the embarking passengers at an airport are:

(a) funding or financing the costs of up-gradation, expansion or development of the airports at which the fees is collected, or

(b) establishment or development of a new airport in lieu of the airport referred to in clause (a), or

(c) investment in the equity in respect of shares to be subscribed by the Airports Authority in companies engaged in establishing, owning, developing, operating or maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

Though Airports Authority can utilize the fees levied by it, for all or any of these purposes mentioned in clauses (a), (b) and (c) of Section 22A, what can be assigned by the Airports Authority to a lessee under a lease entered into under Section 12A of the 1994 Act is the power to levy fees for the purposes mentioned in clause (a) of Section 22 A of
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the 1994 Act.

12. The functions of the Airports Authority under clause (aa) of sub-section (3) of Section 12 also inserted by the Amendment Act of 2003 to establish airports, or assist in the establishment of private airports by rendering such technical, financial or other assistance which the Central

Government may consider necessary for such purposes cannot be assigned to the lessee under Section 12A of the 1994 Act. The Amendment Act of 2003 which also inserted Section 12A therefore provides in sub-section (1) of Section 12A that the Airports Authority can make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out "some" of its functions under section 12 as the Airports Authority may, in the public interest or in the interest of better management of airports, deem fit. Obviously, "a lease of premises of an airport" as contemplated in sub-section (1) of Section 12A cannot include establishing an airport or assisting in establishment of private airports as contemplated in clause (aa) of sub-section (3) of Section 12 of the Act.

13. To enable the Airports Authority to perform its statutory function of establishing a new airport or to assist in the establishment of private airports, the legislature has thought it fit to empower the Airports Authority to levy and collect development fees as will be clear from clauses (b) and (c) of Section 22A of the 1994

Act. Such development fees levied and collected under Section 22A can also be utilized for funding or financing the costs of up-gradation, expansion and development of an existing airport at which the fees is collected as provided in clause (a) of Section 22A of the Act and in case the lease of the premises of an existing airport (including buildings and structures thereon and appertaining thereto) has been made to a lessee under Section 12A of the Act, the Airports Authority may meet the costs of up-gradation, expansion and development of such leased out airport to a lessee, but this can be done only if the rules provide for

such payment to the lessee of an airport because Section 22A says that the development fees are to be regulated and utilized in the manner prescribed by the Rules. Since the lessee of an airport cannot be assigned the function of the Airports Authority to establish airports or assist in establishing private airports in lieu of the existing airports at which the development fees is being collected, the lessee cannot under sub-section (4) of Section 12A have the power of the Airports Authority under Section 22A of the 1994 Act to levy and collect development fees. This is because sub-section (4) of Section 12A provides that the lessee can have all those powers of the Airports Authority which are necessary for performance of such functions as assigned to it under sub-section (1) of Section 12A in terms of the lease. Moreover, since we have held that the

function of establishment and development of a new airport in lieu of an existing airport and the function of establishing a private airport are exclusive functions of the Airports Authority under the 2004 Act, and these statutory functions cannot be assigned by the Airports Authority under lease to a lessee under Section 12A of the Act, the lease agreements, namely, the OMDA and the State Support agreement could not make a provision conferring the right on the lessee to levy and collect development fees for the purpose of discharging these statutory functions of the Airports Authority. We, therefore, do not think it necessary to refer to the clauses of the OMDA and the State Support Agreements executed in favour of the two lessees to find out whether the right of levying and collecting the development fees has been assigned to the lessees or not.

14. The High Court was not correct in coming to the conclusion in the impugned judgment that the development fees to be levied and collected under Section 22A of the 1994 Act is in the nature of tariff or charges collected by

the Airports Authority for the facilities provided to the passengers and the airlines. It will be clear from a bare reading of Sections 22 and 22A that there is a distinction between the charges, fees and rent collected under Section 22 and the development fees levied and collected under Section 22A of the 1994 Act. The charges, fees and rent collected by the Airports Authority under Section 22 are for

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the services and facilities provided by the Airports Authority to the airlines, passengers, visitors and traders doing business at the airport. Therefore, when the Airports Authority makes a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) in favour of a lessee to carry out some of its functions under Section 12, the lessee, who has been assigned such functions, will have the powers of the Airports Authority under Section 22 of the Act to collect charges, fees or rent from the third parties for the different facilities and services provided to them in terms of the lease agreement. The legal basis of such charges, fees or rent enumerated in Section 22 of the 2008 Act is the contract between the Airports Authority or the lessee to whom the airport has been leased out and the third party, such as the airlines, passengers, visitors and traders doing business at the airport. But there can be no such contractual relationship between the passengers embarking at an airport and the Airports Authority with regard to the up-gradation, expansion or development of the airport which is to be funded or financed by development fees as provided in clause (a) of Section 22A. Those passengers who embark at the airport after the airport is upgraded, expanded or developed will only avail the facilities and services of the upgraded, expanded and developed airport. Similarly, there can be no contractual relationship between the Airports

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Authority and passengers embarking at an airport for

establishment of a new airport in lieu of the existing airport or establishment of a private airport in lieu of the existing airport as mentioned in Clauses (b) and (c) of Section 22A of the 1994 Act. In the absence of such contractual relationship, the liability of the embarking passengers to pay development fees has to be based on a statutory provision and for this reason Section 22A has been enacted empowering the Airports Authority to levy and collect from the embarking passengers the development fees for the purposes mentioned in clauses (a), (b) and (c) of Section 22A of the Act. In other words, the object of Parliament in inserting Section 22A in the 2004 Act by the Amendment Act of 2003 is to authorize by law the levy and collection of development fees from every embarking passenger de hors the facilities that the embarking passengers get at the existing airports. The nature of the levy under Section 22A of the 2004 Act, in our considered opinion, is not charges or any other consideration for services for the facilities provided by the Airports Authority. This Court has held in Vijayalashmi Rice Mills & Ors. v. Commercial Tax Officers, Palakot & Ors. (supra) that a cess is a tax which generates revenue which is utilized for a specific purpose. The levy under Section 22A though described as fees is really in the nature of a cess or a tax for generating revenue for the specific purposes mentioned

in clauses (a), (b) and (c) of Section 22A.

15. Once we hold that the development fees levied under Section 22A is really a cess or a tax for a special purpose, Article 265 of the Constitution which provides that no tax can be levied or collected except by authority of law gets attracted and the decisions of this Court starting from The Trustees of the Port of Madras v. M/s Aminchand Pyarelal & Ors.(supra), cited on behalf of the Union of India and DIAL and MIAL on the charges or tariff levied by a service or

facility provided are of no assistance in interpreting Section 22A. It is a settled principle of statutory interpretation that any compulsory exaction of money by the Government such as a tax or a cess has to be strictly in accordance with law and for these reasons a taxing statute has to be strictly construed. As observed by this Court in Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla & Ors. (supra), it has been consistently held by this Court that whenever there is compulsory exaction of money, there should be specific provision for the same and there is no room for intendment and nothing is to be read or nothing is to be implied and one should look fairly to the language used. Looking strictly at the plain language of Section 22A of 1994 Act before its amendment by the 2008 Act, the development fees were to be levied on and collected from the embarking

passengers "at the rate as may be prescribed". Since the rules have not prescribed the rate at which the development fees could be levied and collected from the embarking passengers, levy and collection of development fees from the embarking passengers was without the authority of law. For this conclusion, we are supported by the Constitution Bench judgment of this Court in Mohammad Hussain Gulam Mohammad & Anr. v. The State of Bombay & Anr. (supra). In that case, the Court found that Section 11 of the Bombay Agricultural Produce Markets Act, 1939 provided that the market committee may levy market fees subject to the maxima as prescribed and the Court held that unless the State Government fixes the maxima by rule, it is not open to the committee to fix any fees at all. We are also supported by the decision of a three judges Bench of this Court which held in Dhrangadhra Chemical Works Ltd. v. State of Gujarat & Ors. (supra) that the mandatory provision in Section 60(a)(ii) of the Bombay Municipalities Act, 1901 requiring framing of rule for

imposition of tax not having been complied with, the imposition of tax was illegal. In Principles of Statutory Interpretation, 12th Edition, at Page 813, Justice G.P. Singh states:

> "There are three components of a taxing statute, viz., subject of the tax, person liable to pay the tax and the rate at which the tax is levied. If there be any real ambiguity in respect of any of these components which is not removable by reasonable construction, there

> would be no tax in law till the defect is removed by the legislature."

Thus, the rate at which the tax is to be levied is an essential component of a taxing provision and no tax can be levied until the rate is fixed in accordance with the taxing provision. We have, therefore, no doubt in our mind that until the rate of development fees was prescribed by the Rules, as provided in Section 22A of the 1994 Act, development fees could not be levied on the embarking passengers at the two major airports.

16. The High Court, in our considered opinion, was not correct in coming to the conclusion in the impugned judgment that the exercise of the power to levy and collect development fees under Section 22A was not dependent on the existence of the rules and, therefore, this power could be exercised even if the rules have not been framed prescribing the rate of development fees under Section 22A of the 1994 Act. The High Court has relied upon the decision of this Court in U.P. State Electricity Board, Lucknow v. City Board, Mussorie & Ors. (supra). In that case, the High Court was called upon to interpret Section 46(1) of the Electricity (Supply) Act, 1948, which provided that a tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf, be fixed from time to time by the Board. The High Court held that it only provides

that the Grid Tariff shall be in accordance with any regulations made in this behalf and that means that if there were any regulations, the Grid Tariff should be fixed in such regulations and nothing more and, therefore, the framing of regulations under Section 70(h) of the Act cannot be a condition precedent for fixing the Grid Tariff. The language of Section 22A of the 1994 Act is different. It clearly states that the Airports Authority may levy on and collect from the embarking passengers at the airport the development fees at the rate as may be prescribed. Hence, unless the rate is prescribed by the rules, the Airports Authority cannot collect the development fees.

17. The High Court has also relied on the decision of this Court in Mysore Road Transport Corporation v. Gopinath Gundachar Char (supra). In that case, the Court was called upon to interpret the provisions of the Road Transport Corporations Act, 1950. Section 45(1) of that Act provided that a Corporation may, with the previous sanction of the State Government, make regulations, not inconsistent with the Act and the rules made thereunder, for the administration of the affairs of the Corporation and in particular, providing for the conditions of appointment and service. The Court has held that in the absence of regulations framed under Section 45 laying down the conditions of service, the Corporation can still appoint officers or servants as may be necessary for the efficient

performance of its duties on such terms and conditions as it thinks fit and it cannot be held that unless such regulations are framed under Section 45, the Corporation would have no power to appoint officers and servants and fix the conditions of service of its officers and servants. From the language of Section 22A of the 1994 Act, on the other hand, we find that there is no room whatsoever for the Airports Authority to levy and collect any development fees

except at the rate prescribed by the Rules.

18. The High Court has also relied on the decision of this Court in Sudhir Chandra Nawn v. Wealth-Tax Officer, Calcutta & Ors. (supra). In that case, Section 7(1) of the Wealth Tax Act, 1957 was challenged as ultra vires the Parliament on inter alia the ground that no rules were framed in respect of the valuation of lands and buildings and this Court repelled the challenge and held that Section 7 only directs that the valuation of any asset other than cash has to be made subject to the rules and does not contemplate that there shall be rules before an asset can be valued and failure to make rules for valuation of a type of asset cannot therefore affect the vires of Section 7. In Section 22A of the 1994 Act, on the other hand, the levy or development fees was to be at the rate as prescribed by the Rules and hence could not be made without the rules. All other decisions starting from T. Cajee v. U. Jormanik Siem &

Anr. cited on behalf of the Union of India, DIAL and MIAL on this point are cases where the statutory power could be exercised without the rules or the regulations, whereas the power under Section 22A of the 1994 Act to levy development fees could not be exercised without the rules prescribing the rate at which development fees was to be levied.

19. Section 22A of the 1994 Act before its amendment by the 2008 Act specifically provided that the development fees may be levied and collected at the rate as may be prescribed by the rules. Hence, the rate of development fees could not be determined by the Central Government in the two letters dated 09.02.2009 and 27.02.2009 communicated to DIAL and MIAL respectively. Under section 22A of the 1994 Act, the Central Government has only the power to grant its previous approval to the levy and collection of the development fees but has no power to fix the rate at which the development fees is to be levied and collected from the embarking

passengers. Hence, the levy and collection of development fees by DIAL and MIAL at the rates fixed by the Central Government in the two letters dated 09.02.2009 and 27.02.2009 are ultra vires the 1994 Act and the two letters being ultra vires the 1994 Act are not saved by Section 6 of the General Clauses Act, 1897.

20. After the amendment of Section 22A by the 2008 Act with effect from 01.01.2009, the rate of development fees to be levied and collected at the major airports such as Delhi

and Mumbai is to be determined by the Regulatory Authority under clause (b) of sub-section (1) of Section 13 of the 2008 Act and not by the Central Government. The Regulatory Authority constituted under the 2008 Act has already issued a public notice dated 23.04.2010 permitting DIAL to continue to levy the development fees at the rate of Rs.200/- per departing domestic passenger and at the rate of Rs.1,300/- per departing international passenger with effect from 01.03.2009 on an ad hoc basis pending final determination under Section 13 of the 2008 Act. This public notice dated 23.04.2010 has been issued by the Regulatory Authority under the 2008 Act long after the impugned decision of the High Court upholding the levy and it has not been challenged by the appellants. Hence, the question of examining the validity of the said public notice dated 23.04.2010 issued by the Regulatory Authority pertaining to levy and collection of development fees by DIAL does not arise. But no such public notice has been issued by the Regulatory Authority under the 2008 Act pertaining to levy and collection of development fees by MIAL. Hence, MIAL could not continue to levy and collect development fees at the major airport at Mumbai and cannot do so in future until the Regulatory Authority passes an appropriate order under Section 22A of the 1994 Act as amended by the 2008 Act.

21. Having held that the levy and collection of

development fees by DIAL and MIAL at the rates fixed by the

Central Government in the two letters dated 09.02.2009 and 27.02.2009 are ultra vires the 1994 Act and that MIAL could not continue to levy and collect of development fees at the major airport at Mumbai without an appropriate order passed by the Regulatory Authority, the question is whether there is need to pass any consequential direction for refund of the development fees collected by DIAL and MIAL pursuant to the two letters dated 09.02.2009 and 27.02.2009 of the Central Government and the development fees levied and collected by MIAL after the amendment of Section 22A by the 2008 Act.

22. This Court has held in M/s Orissa Cement Ltd. v. State of Orissa (AIR 1991 SC 1676) that a finding regarding the invalidity of a levy need not automatically result in a direction for a refund of all collections thereof made earlier and that the Court has, and must be held to have, a certain amount of discretion to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way as to advance the interests of justice. In the facts of this case, the development fees have been collected by DIAL and MIAL on the basis of the two letters dated 09.02.2009 and 27.02.2009 of the Central Government from the embarking passengers at Delhi and Mumbai and these embarking passengers, from whom the development fees have been collected, cannot now be identified nor can they be traced for making the refund to them. Further there is

significantly no prayer for refund in any of the three writ petitions. However, it is necessary to ensure that the development fees levied and collected are utilized only for the specific purposes mentioned in Section 22A of the 1994 Act. In our considered opinion, interests of justice would be met if DIAL and MIAL are directed to account to the Airport Authority that the development fees so far levied

and collected by them have been utilized for the purposes mentioned in clause (a) of Section 22A of the 1994 Act.

Reliefs:

23. In view of the foregoing, we allow these appeals as follows:

(i) We hold that development fees could not be levied and collected by the lessees of the two major airports, namely, DIAL and MIAL, on the authority of the two letters dated 09.02.2009 and 27.02.2009 of the Central Government from the embarking passengers under the provisions of Section 22A of the 1994 Act.

(ii) We declare that with effect from 01.01.2009, no development fee could be levied or collected from the embarking passengers at major airports under Section 22A of the 1994 Act, unless the Airports Economic Regulatory Authority determines the rates of such development fee.

(iii) We direct that MIAL will henceforth not levy and collect any development fee at the major airport at

Mumbai until an appropriate order is passed by the Airports Economic Regulatory Authority under Section 22A of the 1994 Act as amended by the 2008 Act.

(iv) We direct that DIAL and MIAL will account to the Airports Authority the development fees collected pursuant to the two letters dated 09.02.2009 and 27.02.2009 of the Central Government and the Airports Authority will ensure that the development fees levied and collected by DIAL and MIAL have been utilized for the purposes mentioned in clause (a) of Section 22A of the 1994 Act.

(v) We further direct that henceforth, any development fees that may be levied and collected by DIAL and MIAL under the authority of the orders passed by the Airports Economic Regulatory Authority under Section

22A of the 1994 Act as amended by the 2008 Act shall be credited to the Airports Authority and will be utilized for the purposes mentioned in clauses (a), (b) or (c) of Section 22A of the 1994 Act in the manner to be prescribed by the rules which may be made as early as possible.

(vi) Nothing stated herein shall come in the way of any aggrieved person challenging the public notice dated 23.04.2010 issued by the Airports Economic Regulatory Authority in accordance with law.

(vii)The impugned judgment of the High Court is set aside

and the Writ Petitions filed by the appellants are allowed with these directions.

(viii)There shall be no order as to costs.

(ix) I.A. No.3 in Civil Appeal arising out of S.L.P. (C) No.23541 of 2009 for impleadment stands rejected.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
April 26, 2011.