

The Chief Commercial Manager, South ... vs G. Ratnam & Ors on 22 August, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2976, 2007 (8) SCC 212, 2007 AIR SCW 5419, 2007 LAB IC 4035, (2008) 1 SERV LJ 433, (2007) 58 ALL IND CAS 55 (SC), 2007 (10) SCALE 321, (2007) 4 SCT 197, (2007) 6 ANDH LD 11, (2007) 10 SCALE 321, (2007) 5 SERV LR 677

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Bench: H.K. Sema, Lokeshwar Singh Pantia

CASE NO.:

Appeal (civil) 5033 of 2003

PETITIONER:

The Chief Commercial Manager, South Central Railway, Secunderabad & Ors

RESPONDENT:

G. Ratnam & Ors

DATE OF JUDGMENT: 22/08/2007

BENCH:

H.K. Sema & Lokeshwar Singh Pantia

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 5033 OF 2003 W I T H CIVIL APPEAL NO. 5029 OF 2003 The Divisional Commercial Manager, South Central Railway, Secunderabad & Ors. Appellants Versus M. Subramanyam Devers Respondent A N D CIVIL APPEAL NO. 5031 OF 2003 Union of India & Ors. Appellants Versus M. Anjaneyulu Respondent Lokeshwar Singh Pantia, J.

1. These appeals by special leave filed by the Chief Commercial Manager, South Central Railway and Others appellants herein, are directed against the common judgment and order dated 4th day of September, 2002 passed by a Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition Nos. 1489/2002, 26165 and 25111/2001. By the impugned order, the High Court dismissed the writ petitions filed by the appellants against the order of the Central Administrative Tribunal [for short "the Tribunal"], Hyderabad Bench at Hyderabad. The Tribunal allowed the original applications of the respondents herein and quashed the orders of penalties imposed upon the respondents by the authority in departmental proceedings and further directed to reinstate the respondents in service.

2. These appeals are similar in nature and they involve identical questions of law and facts and, therefore, they are being decided by this common judgment.

3. The facts, which are not in controversy of the case, are set out below:-

C. A. No. 5031 of 2002:

4. M. Anjaneyulu, the respondent in C.A. No. 5031/2003, at the relevant time, was working as Head Train Ticket Examiner (HTTE) on Train No. 8561. On 26.11.1998, departmental trap was laid by the Vigilance Officer of the Railway by arranging a decoy passenger on Train No.8561 going from Vijayawada to Kazipet stations. In the process of the raid, the respondent was found having demanded more money against the EFT amount. The report of the investigating officer was submitted to the Railway Authority, who issued charge sheet against the delinquent. The articles of charges are as under:-

(i) That the said Shri M. Anjaneyulu has demanded and collected Rs. 200/- against the EFT amount of Rs.

128/- towards the conversion and reservation charges for providing SL class accommodation on two II Express Ticket Nos. 29059 and 39060. Thus, he failed to maintained absolute integrity, devotion to duty and acted in a manner of unbecoming of a Railway servant and violated Rule No. 3(1)(i)(ii) & (iii) of Rule No. 26 of Railway Services (Conduct) Rules, 1966.

(ii) While working as such in Train No. 8561 Express of 26.11.1988, he produced his railway cash as Rs. 803/- against his EFT earning of Rs. 767/- and thus he produced Rs. 36/- excess as an unaccounted cash. Thus, he violated Rule 3(1)(ii) and (iii) of Rule No. 26 of Railway Services (Conduct) Rules, 1966.

5. The Enquiry Officer conducted departmental Inquiry against the respondent-delinquent on the above said charges as per the provisions of the Railway Services (Discipline and Appeal) Rules, 1968 and held that both the charges were proved against the delinquent. He was found defaulting himself in discharge of the official duties. The Disciplinary Authority, having agreed with the Inquiry Report, imposed upon the respondent-delinquent penalty of reversion by two grades from HTTE to Ticket Examiner (TE). The Revisional Authority, after giving an opportunity of hearing to the respondent-delinquent vide order dated 25.02.2000, enhanced the penalty to removal from service of the respondent. Being aggrieved, the respondent filed an appeal before the Chief Commercial Manager, South Central Railway. The Appellate Authority, on consideration of the material on record, confirmed the order of penalty imposed upon the respondent by the Revisional Authority. Feeling aggrieved, the respondent filed O.A. No. 1339/2000 before the Tribunal below. C. A. No. 5029 of 2007:

6. M. Subramanyam Devers, respondent herein, was working as Travelling Ticket Examiner (TTE) in the year 1999. On 07.06.1999, when the respondent-delinquent was on duty on Train No. 752, Summer Special Express going from Secunderabad to Wadi, the Vigilance Officer laid departmental trap by deploying a decoy passenger. In the process of raid, the respondent was found defaulting himself in discharge of his official duties. As a result thereof, a charge sheet dated 24.8.1999 was issued against the respondent, which reads as under:-

(i) That the said Sri M. Subramanyam Devers has demanded and collected Rs. 100/- against the EFT amount of Rs. 89/- and again collected Rs. 100/- against the EFT amount of Rs. 89/- towards the conversion and reservation charges for providing SL class accommodation on two II Express Ticket Nos. 34623 and 34622. Thus he failed to maintain absolute integrity, devotion to duty and acted in a manner of unbecoming of a Railway servant and violated Rule No. 3(1)(i)(ii) & (iii) of Rule No. 26 of Railway Services [Conduct] Rules, 1966.

(ii) While working as such in Train No. 752, Summer Special on 7.6.1999 ex. SC to WD has produced his railway cash as Rs. 200/- against the EFT account of Rs. 178/- and got remitted to the Railway vide EFT No. 492236 of 7.6.99 is liable as per para 2429 of IRCM Vol.

II. Thus, Sri Subramanyam Devers, TTE/SC failed to maintain devotion to duty and acted in a manner unbecoming of a Railway servant and thus, violated Rule No. 3(1)(ii) and (iii) of Railway Services (Conduct) Rules, 1966.

7. In a departmental inquiry conducted under the Railway Services (Discipline and Appeal) Rules, 1968, the Inquiry officer found the above-said charges proved against the respondent. The Disciplinary Authority had accepted the Inquiry Report and imposed punishment of removal from service upon the respondent with immediate effect. The Appellate Authority, on consideration of the appeal filed by the respondent vide order dated 24.02.2000, confirmed the order of penalty imposed by the Disciplinary Authority. The respondent preferred a revision before the Revisional Authority, who on 14.08.2000 dismissed the said revision petition. Being aggrieved, the respondent filed O.A. No. 1349/2000 before the Tribunal.

C. A. No. 5033 of 2003:

8. In the year 1998, G. Ratnam, respondent herein, was working as HTTE. In a decoy departmental trap laid by the Vigilance Officer on 13/14.01.1998, the respondent was found lacking in discharge of his official duties. A charge memo dated 27.6.1998 containing the following two heads of charges was issued to the respondent.

(i) That the said Sri. G. Ratnam, HTTE/SL/BZA while working as such by 7225 Express from BZA GTL on 13/14.01.1998 has failed to maintain absolute integrity, devotion to duty and has committed the following irregularity in that. He has collected Rs.20/- excess from Sri N. Neelambaram for providing sleeper class reserved accommodation ex. BZA to BAY as detailed in the statement of imputations and thus collected unauthorized charges hence liable vide para 2430(a) of IRCM Volume II.

(ii) Thus Sri G. Ratnam, HTTE/SL/BZA has violated Rule 3(1)(i) & (ii) of Railway Services (Conduct) Rules, 1966. While working as such by 7225 Express from BZA-GTL on 13/14.01.1998 has failed to maintain absolute integrity, show devotion to duty and has committed the serious irregularity; in that he has produced Rs. 20/- excess in the Railway cash which was remitted to

Railways vide EFT No. 305379 of 13.1.1998 and thus liable vide para 2429(e) of IRCM Volume II. Thus Sri G. Ratnam, HTTE/SL/BZA has violated Rule 3(1)(i) & (ii) of Railway Services (Conduct) Rules, 1966.

9. The Railway Authority conducted departmental inquiry against the respondent in accordance with the provisions of the Railway Services (Discipline and Appeal) Rules, 1968 and during the said inquiry, the above-said charges were proved against the respondent. The Disciplinary Authority, having gone through the inquiry report vide order dated 26.05.1999, imposed a penalty of reduction to lower grade post of TTE upon the respondent with effect from 10.6.1999 for a period of one year with loss of seniority. It appears that no appeal has been preferred by the respondent against the order of the Disciplinary Authority. However, the Senior Divisional Personnel Officer, South Central Railway, Vijayawada Division appellant No. 3 herein under Rule 25 of the Railway Service (Discipline and Appeal) Rules, 1968 took suo motu revision and directed the respondent to show-cause why the penalty be not enhanced to removal from service. The respondent submitted his representation on 29.11.2001. On 05.01.2000, appellant No. 3 considered the representation of the respondent, modified and substituted the penalty to that of compulsory retirement of the respondent from service with effect from 20.01.2000. Being aggrieved, the respondent preferred O.A. No. 194/2000 before the Tribunal which came to be disposed of on 14.2.2000 with a direction to the respondent to prefer an appeal before the Chief Commercial Manager - Appellate Authority. The respondent accordingly filed an appeal. The Appellate Authority confirmed the penalty of compulsory retirement imposed by the Revising Authority upon the respondent. Being aggrieved, the respondent filed another O.A. No. 1773/2000 before the Tribunal.

10. The Tribunal below, by a common order, allowed the applications of the respondents on a technical ground holding that the departmental traps were not laid by the Vigilance Officers of the Railways in accordance with the provisions of the Indian Railways Vigilance Manual, 1996 and as a result of the defective investigations, orders of imposition of penalty upon the respondents by the Disciplinary Authority and the consequential orders of the Revisional Authority as well as the Appellate Authority are quashed.

11. The appellants, being aggrieved, filed three separate writ petitions in the High Court of Judicature, Andhra Pradesh at Hyderabad challenging the validity and correctness of the order of the Tribunal. The Division Bench of the High Court agreed with the order of the Tribunal and came to the conclusion that the investigating agency had conducted the departmental traps against the respondents in violation of the mandatory provisions as contained in paragraphs 704 and 705 of the Indian Railways Vigilance Manual, 1996. Non-compliance of the said provisions has vitiated the disciplinary proceedings and as a result thereof, the order of the authorities imposing penalty upon the respondents are held to be invalid and illegal.

12. Now, the Chief Commercial Manager, South Central Railway, the Divisional Railway Manager, South Central Railway, Vijayawada Division, the Senior Divisional Personnel Officer, South Central Railway, Vijayawada Division and the Senior Commercial Manager, South Central Railway, Vijayawada, are the appellants who have filed these appeals against the impugned judgment and order of the Division Bench of the High Court.

13. We have heard the learned counsel for the parties at length and examined the entire material on record. Mr. C.S. Rajan, learned senior advocate appearing on behalf of the appellants, contended that the High Court erred in holding paragraphs 704 and 705 of the Railway Vigilance Manual mandatory in nature. According to the learned counsel, the instructions contained in paragraphs 704 and 705 of the Vigilance Manual are in the nature of departmental instructions with no statutory force and these are in the nature of guidance to the Vigilance Officers for conducting investigation in departmental trap cases involving Railway employees and a non-compliance if any of such instructions, would not amount to vitiation of the entire departmental proceedings initiated against the respondents for their misconduct in terms of the Service Rules, therefore the judgment of the High Court upholding the order of the Tribunal is untenable and unsustainable.

14. Shri A. Subba Rao, the learned Advocate appearing on behalf of the respondents, on the other hand, vehemently contended that the order of the Tribunal as well as the final judgment of the High Court cannot be found faulted or perverse on any ground as the departmental proceedings initiated against the respondents on the basis of the defective investigation conducted by the Investigating Officer in violation of the mandatory provisions as provided in paragraphs 704 and 705 of the Vigilance Manual, 1996, had resulted prejudice to the respondents to defend themselves in the departmental proceedings. He submitted that the procedure as prescribed under the Vigilance Manual is backed by statutory force and non-adherence of the mandatory provisions by the Investigating Officer during the investigation of trap cases or departmental trap cases would amount to vitiation of the departmental proceedings based upon the defective reports of the investigating officer submitted to the Railway Authority against the respondents for their misconduct in discharge of their duties. Therefore, this Court will be slow to interfere in the judgment of the High Court.

15. In order to appreciate the respective contentions of the learned counsel for the parties, we think it appropriate at this stage to refer to the relevant provisions of paragraphs 704 and 705 of the Indian Railways Vigilance Manual, 1996, which read as under:-

"704. Traps

(i)

.

(ii)

(iii)

(iv) .. .

(v) When laying a trap, the following important points have to be kept in view:-

(a) Two or more independent witnesses must hear the conversation, which should establish that the money was being passed as illegal gratification to meet the defence that the money was actually received as a loan or something else, if put up by the accused.

(b) The transaction should be within the sight and hearing of two independent witnesses.

(c) There should be an opportunity to catch the culprit red-handed immediately after passing of the illegal gratification so that the accused may not be able to dispose it of.

(d) The witnesses selected should be responsible witnesses who have not appeared as witnesses in earlier cases of the department or the police and are men of status, considering the status of the accused. It is safer to take witnesses who are Government employees and of other departments.

(e) After satisfying the above conditions, the Investigating Officer should take the decoy to the SP/SPE and pass on the information to him for necessary action. If the office of the S.P., S.P.E., is not nearby and immediate action is required for laying the trap, the help of the local police may be obtained. It may be noted that the trap can be laid only by an officer not below the rank of Deputy Superintendent of Local Police. After the S.P.E. or local police official have been entrusted with the work, all arrangements for laying the trap and execution of the same should be done by them. All necessary help required by them should be rendered.

(vi) ..

(vii) ..

Para 705 Departmental Traps For Departmental traps, the following instructions in addition to those contained under paras 704 are to be followed:

(a) The Investigating Officer/Inspector should arrange two gazetted officers from Railways to act as independent witnesses as far as possible. However, in certain exceptional cases where two gazetted officers are not available immediately, the services of non-gazetted staff can be utilised.

All railway employees, particularly, gazetted officers, should assist and witness a trap whenever they are approached by any officer or Vigilance branch. The Head of Vigilance Branch detail a suitable person or persons to be present at the scene of trap. Refusal to assist or witness a trap without a just cause/without sufficient reason may be regarded as a breach of duty, making him liable to disciplinary action.

(b) The decoy will present the money which he will give to the defaulting officers/employees as bribe money on demand. A memo should be prepared by the Investigating Officer/Inspector in the presence of the independent witnesses and the decoy indicating the numbers of the G.C. notes for legal and illegal transactions. The memo, thus prepared should bear the signature of decoy, independent witnesses and the Investigating Officer/Inspector. Another memo, for returning the G.D. notes to the decoy will be prepared for making over the G.C. notes to the delinquent employee

on demand. This memo should also contain signatures of decoy, witnesses and Investigating Officer/Inspector. The independent witnesses will take up position at such a place where from they can see the transaction and also hear the conversation between the decoy and delinquent, with a view to satisfy themselves that the money was demanded, given and accepted as bribe a fact to which they will be deposing in the departmental proceeding at a later date. After the money has been passed on, the Investigating Officer/Inspector should disclose the identity and demand, in the presence of the witnesses, to produce all money including private, Railway and bribe money. Then the total money produced will be verified from relevant records and memo for seizure of the money and verification particulars will be prepared. The recovered notes will be kept in an envelope sealed in the presence of the witnesses, decoy and the accused as also his immediate superior who should be called s a witness in case the accused refuses to sign the recovery memo, and sealing of the notes in the envelope.

(c) XXX

(d) XXX

(e) XXX"

16. The Administrative Tribunal as well as the High Court, as noticed hereinabove, both, have held that the Instructions contained in paragraphs 704 and 705 of the Manual are mandatory in nature and their violation by the Investigating Agency in the process of laying traps against the respondents, have caused prejudice to the respondents to defend their cause in the departmental proceedings which were initiated against the respondents by the Authority on the basis of the defective and unfounded investigation reports prepared by the investigation officers.

17. We may, at this stage, point out that the Vigilance Manual which was first published in 1970 was revised in 1996 under which the departmental traps were laid against the respondents. The revised Vigilance Manual of 1996 has now been re-revised by the Indian Railways in the year 2006. Paragraph 306 in Chapter III of the Indian Railways Vigilance Manual, 2006 deals with trap cases by the C.B.I. Departmental trap cases, procedure and guidelines are prescribed in paragraph 307 (corresponding to paragraph 705 of the 1996 Manual). However, the present cases are covered and dealt with by the procedure and guidelines as contained in paragraphs 704 and 705 of the 1996 Manual.

18. We shall now examine whether on the facts and the material available on record, non-adherence of the instructions as laid down in paragraphs 704 and 705 of the Manual would invalidate the departmental proceedings initiated against the respondents and rendering the consequential orders of penalty imposed upon the respondents by the authorities, as held by the High Court in the impugned order. It is not in dispute that the departmental traps were conducted by the investigating officers when the respondents were on official duty undertaking journey on trains

going from one destination to another destination. The Tribunal in its order noticed that the decoy passengers deployed by the investigation officers were RPF Constables in whose presence the respondents allegedly collected excess amount for arranging sleeper class reservation accommodation etc. to the passengers. The transaction between the decoy passengers and the respondents was reported to have been witnessed by the RPF Constables. In the facts and circumstances of the matters, the Tribunal held that the investigations were conducted by the investigating officers in violation of the mandatory Instructions contained in paragraphs 704 and 705 of the Vigilance Manual, 1996, on the basis of which inquiries were held by the Enquiry Officer which finally resulted in the imposition of penalty upon the respondents by the Railway Authority. The High Court in its impugned judgment has come to the conclusion that the Inquiry Reports in the absence of joining any independent witnesses in the departmental traps, are found inadequate and where the Instructions relating to such departmental trap cases are not fully adhered to, the punishment imposed upon the basis of such defective traps are not sustainable under law. The High Court has observed that in the present cases the service of some RPF Constables and Railway staff attached to the Vigilance Wing were utilised as decoy passengers and they were also associated as witnesses in the traps. The RPF Constables, in no terms, can be said to be independent witnesses and non-association of independent witnesses by the investigating officers in the investigation of the departmental trap cases has caused prejudice to the rights of the respondents in their defence before the Enquiry Officers.

19. We are not inclined to agree that the non-adherence of the mandatory Instructions and Guidelines contained in paragraphs 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained.

20. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance organization and its role, Central Vigilance Commission, Central Bureau of Investigation, Investigation of Complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work etc. Paragraphs 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the

delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

21. It is well-settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such Instructions Statutory Rules which are justiciable in certain circumstances. In order that such executive instructions have the force of Statutory Rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against Government by a petition under Article 226 of the Constitution of India.

22. In *State Bank of Patiala v. S.K. Sharma* [1996] 3 SCC 364, this Court held that in a case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the stand point of substantial compliance. The order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee. The Court or the Tribunal should inquire whether:-

(a) the provision violated is of a substantive nature; or

(b) whether it is procedural in character?

23. It is by now well-settled that the purposes of departmental inquiry and of prosecution are two different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. Crime is an act of commission in violation of law or of omission of public duty. The departmental inquiry is to maintain discipline in the service and efficiency of public service. [see *Hindustan Petroleum Corporation v. Sarvesh Berry* (2005) 10 SCC 471]. In the cases on hand, no proceedings for commission of penal offences were proposed to be lodged against the respondents by the investigating officers. The Railway authority appointed enquiry officer to hold inquiry against the respondents for their misconducts in discharge of their official duty on the relevant day when vigilance officers laid departmental traps when the respondents were traveling on the above-said trains going from one destination to another destination. The enquiry officer held the inquiry strictly in accordance with the provisions of the Railway Service (Discipline and Appeal) Rules, 1968 in the presence of the respondents and finally found them guilty of misconduct on the basis of the evidence led before the enquiry officers. The disciplinary authority, on consideration of the inquiry reports and other material on record, imposed punishments upon the respondents in terms of the Service Rules. The respondents filed their revision petitions and the appeals before the Revisional Authorities and the Appellate Authority under the relevant service rules, which were duly

considered by the authorities.

24. On consideration of the foregoing facts and in the teeth of the legal aspect of the matter, we are of the view that the instructions contained in paragraphs 704 and 705 of the Vigilance Manual, 1996 are procedural in character and not of a substantive nature. The violation thereof, if any, by the investigating officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings initiated against the respondents on the basis of the complaints submitted by the investigating officers to the railway authorities. The instructions as contemplated under paragraphs 704 and 705 of the Manual have been issued not for the information of the accused in the criminal proceedings or the delinquent in the departmental proceedings, but for the information and guidance of the investigating officers.

25. For the reasons aforesaid, the impugned judgment and order of the High Court, upholding the orders of the Tribunal, is not legal and justified. It is set aside accordingly.

26. These appeals are allowed. Consequently, the Writ Petition Nos. 1489/02, 26165/2001 and 25111/01 filed before the High Court shall stand allowed. Parties to bear their own costs.

27. IA NO. 2 filed in CA No. 5033/2003.

We have heard Mr. Raj Kumar Gupta, Advocate appearing on behalf of All India Com. Railway Employees Sangharsh Samiti and others intervenors. Mr. Gupta has sought to support the order of the High Court upholding the order of the Tribunal. The appellants submitted before us written relevant events and legal submissions in these proceedings. It is submitted by the intervenors that in the year 2003 they had filed Writ Petition (C) No. 518/2003 under Article 32 of the Constitution of India before this Court mainly claiming to issue a writ of mandamus or any other writ or writs, order or orders, direction or directions upon the Government of India and Railway Authorities to obey/follow the mandatory provisions of paragraphs 704 and 705 of All India Vigilance Manual 1976 and to implement the judgment dated 4.09.2002 passed by the High Court of Judicature, A.P. in Writ Petition No. 1489/2002 (Union of India & Ors. v. M. Anjaneyulu & Anr.) [present C.A. No. 5031/2003]. The said writ petition came up for hearing before this Court on 28.11.2003 on which date the following orders came to be passed:-

"As prayed, permission to withdraw the petition is granted with liberty to move any appropriate application as may be advised for intervention in SLP(C) No .CC No.5912/2003."

During the hearing of the intervention application which was allowed by this Court on 24.02.2004, Mr. Raj Kumar Gupta has brought to our notice that some disputes raised by the intervenors in regard to the same subject matter are pending before the Central Administrative Tribunal as well as before the High Court of Andhra Pradesh for adjudication. In view of the pendency of the matters before the Tribunal and the High Court, we do not wish to embark upon the merits of the claims made by the intervenors in their case pending before the Tribunal and the High Court, which shall be decided on their own merits. The intervention application is accordingly rejected without

expressing any opinion on its merits.