

Delhi International Airport Ltd vs International Lease Finance Corp.& Ors on 17 March, 2015

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Bench: V. Gopala Gowda, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2932 OF 2015
(Arising out of SLP (Civil) No.27062/2013)

DELHI INTERNATIONAL AIRPORT LTD. ..Appellant

Versus

INTERNATIONAL LEASE FINANCE
CORPN. & OTHERS ..Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal has been filed against the impugned order dated 8.5.2013 passed by the High Court of Delhi in Writ Petition (Civil) No.7767/2012, wherein the Division Bench of the High Court allowed the writ petition filed by the respondent No.1. The issue falling for consideration is whether minutes of meeting can override statutory regulations.

3. The appellant is Delhi International Airport Limited, a joint venture and public partnership between GMR companies, Ministry of Civil Aviation, Fraport Germany and Eraman Malaysia. Appellant has been granted aerodrome licence by Director General Civil Aviation (DGCA) on 1.5.2008 and is a competent authority with respect to Delhi Airport responsible for upgradation, maintenance and operation of Delhi Airport. Appellant has been conferred power under Section

22(i)(a) of the Airport Authority of India Act, 1994 (short for 'AAI Act') to charge fees, rent etc. for the landing, housing or parking of aircraft. Respondent No.1 is a leasing company incorporated under laws of California, U.S.A, engaged in the business of leasing of aircrafts engines and related equipment.

4. Kingfisher Airlines (KAL) had been operating commercial airlines and unable to pay dues of various authorities. The scheduled airline licence of the 8th respondent-Kingfisher Airlines (KAL) was suspended due to non-payment of the parking, landing and housing charges in respect of the aircraft bearing registration No.VT-KFT which was previously registered to Kingfisher Airlines Limited (KAL) and leased to KAL by respondent No.1 were detained at Delhi Airport and subsequently got de- registered on 27.12.2012. Section 22 of the AAI Act provides for levy of landing, housing and parking charges at the Airport. These charges (amounting to a total of Rs.10,50,51,052.77 for all eight detained aircraft) and other statutory charges and dues (amounting to Rs.12,64,08,706.57 for all eight detained aircraft) attach to the aircraft and have to be discharged by the person in control of the aircraft is under Regulation 10. Other aircrafts of KAL lying at various airports also got detained at different airports due to non-payment of charges and subsequently deregistered.

5. Assailing the order of detention of the aircrafts belonging to respondent No.1 by Delhi International Airport Limited (short for 'DIAL'), Airport Authority of India (short for 'AAI') and Mumbai International Airport Limited (short for 'MIAL') and challenging vires Regulation 10 of the Airport Authority of India (Management of Airports) Regulations, 2003, respondent No.1 filed writ petition before the Delhi High Court.

6. During pendency of the writ petition, on 26.3.2013 a meeting was held regarding release of the aircrafts of respondent No.8 by the airport operators. The participants in the meeting included representatives of (a) Ministry of Civil Aviation (MCA), (b) Central Board of Excise & Customs (CBEC), (c) Director General of Civil Aviation (DGCA), (d) Airports Authority of India (AAI), (e) Delhi International Airport Pvt. Ltd. (DIAL), (f) Mumbai International Airport Pvt. Ltd. (MIAL). After detailed discussions various decisions were made. It was inter- alia decided that:-

"(i) DGCA shall, henceforth, seek views of concerned airport operators prior to deregistration of remaining KFA aircraft;

(ii) CBEC and DGCA shall reconcile list of remaining KFA aircraft registered with DGCA so as to confirm whether these aircrafts are purely under financial/operating lease or some of them are jointly owned by Lessor and KFA;

(iii) The concerned airport operators shall release all the de-

registered aircraft to the respective owners/lessors immediately so that these aircrafts can fly out of the country. They are at liberty to collect parking charges from the owners/lessors from the date of de-registration. In case any of these deregistered aircrafts are subject matter of any court case between the owners/lessors and the airport operator, then the airport would take action as per the

decision of the Court."

7. High Court of Delhi vide impugned order dated 8.5.2013 directed all the airports to release the aircrafts in terms of the above decision taken in the meeting held on 26.3.2013 on payment of parking charges up to 13.5.2013. Being aggrieved, the appellant-DIAL has preferred this appeal by way of special leave.

8. Mr. Gopal Jain, learned Senior Counsel appearing for the appellant submitted that the minutes of the meeting is in the nature of an executive decision and it curtails their statutory power to detain the aircrafts for non-payment of fees and said minutes of meeting cannot override Regulation 10 and other statutory regulations. It was submitted that the minutes of the meeting dated 26.3.2013 is not a general or a special order passed by the Central Government and does not have statutory force. Placing reliance upon *Shanti Sports Club & Anr. vs. Union of India & Ors.*[1] and *Sant Ram Sharma vs. State of Rajasthan & Ors.*[2], it was submitted that the government cannot amend or supersede statutory rules by administrative instructions and the High Court erred in directing release of the aircrafts in terms of the decision taken in the meeting held on 26.3.2013.

9. We have heard Mr. K. Radhakrishnan, learned Senior Counsel appearing for Union of India and Mr. Neeraj Sharma, learned counsel appearing for respondent No.1. We have carefully considered the rival contentions and perused the impugned order and material on record.

10. Section 22 (i)(a) of the AAI Act confers powers to charge fees, rent etc. for the landing, housing or parking of aircrafts. These charges for landing, housing and parking are fixed by Airport Economic Regulatory Authority (short for 'AERA') during the tariff determination procedure undertaken after extensive consultation with the stake holders. Section 42(2)(o) of the AAI Act empowers the authority to make regulations not inconsistent with the AAI Act and the Rules made thereunder generally for the efficient and proper management of the airport or civil enclave. It is relevant to refer to Regulation 42 which reads as under:-

"42.(1) The authority may make Regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such Regulations may provide for -.....

(o) generally for the efficient and proper management of the airport or civil enclave."

11. In exercise of the powers under Regulation 42 (2)(o), AAI notified the Airport Authority of India (Management of Airports) Regulations, 2003 (short for 'AAI Regulations'). In this appeal, we are concerned with Regulation 10 which reads as under:-

"10. Unless otherwise provided under the Act or by a general or special order in writing by the Central Government, the use of the movement area of Airport, by an

aircraft shall be subject to payment of such landing, parking or housing fees or charges as are levied by the Authority from time to time. In the event of non-payment of the requisite fee or charges, the Competent Authority shall have a right to detain or stop departure of the aircraft till the fees or charges are paid to Authority, which may include the current and accumulated dues."

12. 'Competent Authority' is defined in Regulation 3(8) which reads as under:-

"8. 'Competent Authority' means in relation to exercise of any power of the Authority, the Chairperson, and any member authorized by the Chairperson, Airport Director or Controller of Aerodrome or Incharge of any Airport or civil enclave or any other officer specified by the Chairperson in that behalf."

The appellant is the competent authority with respect to the Delhi Airport having been granted aerodrome licence from DGCA on 1.5.2008. Section 42 (2)(o) read with Section 22 of the AAI Act and Regulation 10 is a complete code with regard to the right of the airport operator to levy and ensure collection of dues including the right to detain or stop departure of the aircraft till the fees or charges are paid irrespective of the ownership of the aircraft. The charges and dues are attached to the aircraft. According to the appellant-DIAL, it has the right to detain or stop departure of aircrafts till the fees or charges in this case the landing, housing and parking charges are determined by AERA are paid and minutes of the meeting dated 26.3.2013 cannot override regulations.

13. Under Regulation 10, competent authority has the authority to detain the aircraft or stop departure of the aircraft "unless otherwise provided by the Act or by general or special order in writing by the Central Government". According to the appellant, under the Regulation, the appellant has the right to detain or stop an aircraft and minutes of the meeting dated 26.3.2013 is not a general or special order passed by the Central Government and it cannot override the powers of the Airport Authority of India under Regulation 10.

14. According to Union of India, Government has the sole prerogative to take a decision by virtue of Section 40 of the AAI Act and in the present case minutes of the meeting dated 26.03.2013 is the decision of the Central Government which is in accordance with law.

15. The High Court has mainly relied upon minutes of the meeting dated 26.3.2013. It has neither gone into the question whether the minutes of the meeting, where decision was taken by the Central Government in accordance with the provision of Section 40 of the AAI Act nor it had examined the vires of Regulation 10. The High Court had only referred to the minutes of the meeting and disposed of the writ petition, recording the statement of the learned counsel for the petitioner that the directions as per the minutes of the meeting are complied with. It has to be seen whether the minutes of the meeting dated 26.3.2013 would amount to a general order or special order passed by the Central Government and whether it would override the powers of the Airport Authority of India under Regulation 10.

16. Article 77 of the Constitution of India deals with the conduct of business of Government of India while Article 166 of the Constitution of India deals with the conduct of business of the Government of the State. All executive actions of the Government of India and the Government of a State are required to be taken in the name of the President or the Governor of the concerned State as the case may be.

17. Clause (1) of Article 77 of the Constitution of India provides that whenever executive action is to be taken by way of an order or instrument, it shall be expressed to be taken in the name of the President in whom the executive power of the Union is vested. Clause (2) of Article 77 of the Constitution of India provides that the validity of an order or instrument made or executed in the name of the President, and authenticated in the manner specified in the rules made by the President, shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

18. Under clause (3) of Article 77 of the Constitution of India, the President is to make rules for the more convenient transaction of government business and for the allocation of the same amongst ministers. A similar provision occurs in Article 166(3) empowering the Governors to make rules for the conduct of government business in the States. In all cases in which the President or the Governor exercises his functions conferred on him by or under this Constitution with the aid and advice of his Council of Ministers, he does so by making rules for more convenient transaction of business and for allocation among ministers of the said business in accordance with Articles 77(3) and 166(3) respectively. Further, the rules of business and allocation among ministers is relatable to Articles 53(1) and 154(1) that the executive power shall be exercised by the President or the Governor directly or through the subordinate officers. The President or the Governor means the President or the Governor aided and advised by the Council of Ministers. Neither Article 77(3) nor Article 166(3) provides for any delegation of power.

19. Under the Government of India (Transaction of Business) Rules, 1961, the government business is divided amongst the ministers and specific functions are reallocated to different ministries. Each ministry can therefore issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business. We may usefully refer to Government of India (Transaction of Business) Rules, 1961, as lastly amended by amendment dated 1.12.2014 made by the President in exercise of the provisions of sub-clause (3) of Article 77 of the Constitution of India for more convenient transaction of the business of the Government of India. Rule 3 provides that subject to certain exceptions made thereunder, all business allotted to a department under the Government of India (Allocation of Business) Rules, 1961 shall be disposed of by or under the general or special directions of the Minister in Charge. Further Rule 4 provides for Inter-Departmental Consultations. Rule 4(1) reads as under:-

"4 Inter-Departmental Consultations.-(1) When the subject of a case concerns more than one department, no decision be taken or order issued until all such departments have concurred, or, failing such concurrence, a decision thereon has been taken by or under the authority of the Cabinet."

Sub-clause (2) of Rule 4 which is very much relevant in instant case can be reproduced here for convenience:

"Unless the case is fully covered by power to sanction expenditure or to appropriate or re-appropriate funds, conferred by any general or special orders made by the Ministry of Finance, no department shall, without the previous concurrence of the Ministry of Finance, issue any orders which may-

involve any abandonment of revenue or involve any expenditure for which no provision has been made in the appropriation act;

...

..

Otherwise have a financial bearing whether involving expenditure or not;"

20. In *State of Sikkim vs. Dorjee Tshering Bhutia & Ors.*[3], it is observed as under:-

"14....The government business is conducted under Article 166(3) of the Constitution in accordance with the Rules of Business made by the Governor. Under the said Rules the government business is divided amongst the ministers and specific functions are allocated to different ministries. Each ministry can, therefore, issue orders or notifications in respect of the functions which have been allocated to it under the Rules of Business."

21. In *Gulabrao Keshavrao Patil & Ors. vs. State of Gujarat & Ors.*[4], it is held as under:-

"14...It would, therefore, be clear that the decision of a Minister under the Business Rules is not final or conclusive until the requirements in terms of clauses (1) and (2) of Article 166 are complied with. Before the action or the decision is expressed in the name of the Governor in the manner prescribed under the Business Rules and communicated to the party concerned it would always be [pic]open by necessary implication, to the Chief Minister to send for the file and have it examined by himself and to take a decision, though the subject was allotted to a particular Minister for convenient transaction of the business of the Government. The subject, though exclusively allotted to the Minister, by reason of the responsibility of the Chief Minister to the Governor and accountability to the people, has implied power to call for the file relating to a decision taken by a Minister. The object of allotment of the subject to a Minister is for the convenient transaction of the business at various levels through designated officers...."

22. In terms of Rule 3 the alleged decision taken pursuant to meeting dated 26.3.2013 should have been sanctioned by under the general or special directions of the Minister in Charge. Since in this

case, stakes of different departments headed by different ministries are concerned, the provision of Rule 4 would apply i.e. alleged decision should have been taken by the concerned committee of the Cabinet. Since, the alleged decision involves the financial bearing also, it should have all concurrence of Finance Department also. Apparently alleged minutes of the meeting purportedly stated to be an order in writing by Central Government and later communicated to all concerned, are not disposed of in pursuance of Rule 4 i.e. neither the decision was sanctified by Cabinet nor the concurrence of Finance Department was taken.

23. At this stage, it is apposite to consider the ratio laid down in MRF Limited vs. Manohar Parrikar & Ors.[5], wherein scope of Article 166 (3) was under consideration and observing that Rules of Business framed under Articles 166(3) and 77(3) are mandatory, this Court has held as under:-

"67.....In the case on hand, we are required to examine the contentions of the appellants on this issue with reference to the Business Rules framed by Governor of Goa under Article 166(3) of the Constitution of India.

68. Rule 7(2) of the Business Rules of the Government of Goa states, that, a proposal which requires previous concurrence of the Finance Department under the said Rule, but in which the Finance Department has not concurred, may not be proceeded with, unless the Council of Ministers has taken a decision to that effect. The wordings of this Rule are different from the provisions of Rule 9 of the Business Rules of Maharashtra and have to be read in context with the provisions of Rule 3 of the Business Rules of the Government of Goa which states that the business of the Government shall be transacted in accordance with the Business Rules. Under Rule 7(2) thereof, the concurrence of the Finance Department is a condition precedent.

69. Likewise, Rule 6 of the Business Rules states, that, the Council of Ministers shall be collectively responsible for all executive orders passed by any Department in the name of the Governor or contract made in exercise of the power conferred on the Governor or any other officer subordinate to him in accordance with the Rules, whether such orders or contracts are authorised by an individual Minister on a matter pertaining to the Department under his charge or as the result of discussion at a meeting of the Council of Ministers or otherwise. This Rule requires that an executive order issued from any Department in the name of the Governor of the State should be known to the Council of Ministers so as to fulfil the collective responsibility of the Council of Ministers.

70. Further, Rule 7 of the Business Rules requires that no Department shall without the concurrence of the Finance Department issue any order which may involve any abandonment of revenue or involve expenditure for which no provisions have been made in the Appropriation Act or involve any [pic]grant of land or assignment of revenue or concession, grant, lease or licence in respect of minerals or forest rights or rights to water, power or any easement or privilege or otherwise have financial implications whether involving expenditure or not.

71. From a combined reading of the provisions of Rules 7, 3 and 6 of the Business Rules of the Government of Goa the conclusion would be irresistible that any proposal which is likely to be converted into a decision of the State Government involving expenditure or abandonment of revenue for which there is no provision made in the Appropriation Act or an issue which involves concession or otherwise has a financial implication on the State is required to be processed only after the concurrence of the Finance Department and cannot be finalised merely at the level of the Minister-in-charge. The procedure or process does not stop at this. After the concurrence of the Finance Department the proposal has to be placed before the Council of Ministers and/or the Chief Minister and only after a decision is taken in this regard that it will result in the decision of the State Government. Therefore, the High Court has rightly rejected the arguments of the appellants herein based on the judgment of the Full Bench of the High Court.

72. The High Court has observed, that the Rules of Business are framed in such a manner that the mandate of the provisions of Articles 154, 163 and 166 of the Constitution are fulfilled. Therefore, if it is held that the non-compliance with these Rules does not vitiate the decisions taken by an individual Minister concerned alone, the result would be disastrous. In a democratic set-up the decision of the State Government must reflect the collective wisdom of the Council of Ministers or at least that of the Chief Minister who heads the Council. The fact that the decisions taken by the Minister alone were acted upon by issuance of notification will not render them decisions of the State Government even if the State Government chose to remain silent for a sufficient period of time or the Secretary concerned to the State Government did not take any action under Rule 46 of the Business Rules. If every decision of an individual Minister taken in breach of the Rules are treated to be those of the State Government within the meaning of Article 154 of the Constitution, the result would be chaotic. The Chief Minister would remain a mere figure head and every Minister will be free to act on his own by keeping the Business Rules at bay. Further, it would make it impossible to discharge the constitutional responsibility of the Chief Minister of advising the Governor under Article 163. Therefore, it is difficult to accept the contentions of the appellants that the Business Rules are directory.

73. We also subscribe to and uphold the view of the High Court that Business Rules 3, 6, 7 and 9 are mandatory and not directory and any decision taken by any individual Minister in violation of them cannot be termed as the decision of the State Government. We are fortified in our view by several decisions of this Court". (emphasis added)

24. From a combined reading of Rules 3, 4, 4(2) and in the light of the above decisions, the minutes of meeting which is to be converted as a general or special order in writing by the Central Government involving the abandonment of revenue or which has a financial implication on the Airports Authority of India which is under the control of Civil Aviation Ministry, it was required to proceed only after the concurrence of Finance Department. It cannot be finalized merely at the level

of officers/representatives of Civil Aviation, Central Board of Excise and Customs etc. After concurrence of the Finance Ministry, the minutes of the meeting ought to have been placed before the concerned minister as per the Rules of Business. Sanctification by the concerned ministry and the concurrence of Finance Department was a mandatory condition in order to hold the minutes of the meeting dated 26.3.2013 as "a general or special order in writing by the Central Government". In the absence of any such sanctification by the competent authority, in our view, mere minutes of the meeting would not give any indefeasible right to the appellant.

25. According to the second respondent (Union of India), the meeting had been convened in the backdrop of Cape Town Convention and Protocol i.e. the Convention on International Interests in Mobile Equipment which provides for the protection of the international interests in the aircrafts as well and India became signatory to this Convention on 31.3.2008. Union of India contends that in the meeting convened on 26.3.2013, it was decided that in order to honour the international obligations of India and to restore faith of international business community and investors, it was necessary to allow the aircrafts to be returned to the owners-lessors. Stand of UOI is that minutes of the meeting is the decision of the Central Government is in accordance with law and has the force of law. Such a decision involving financial implications must have been taken in terms of the constitutional scheme i.e. upon compliance of requirement of Article 77 of the Constitution. There is nothing on record to show that the minutes of the meeting had the concurrence of the Finance Department and was either confirmed or approved by the concerned minister and such directions were not shown to have been issued pursuant to any decision taken by a competent authority in terms of Rules of Business framed under Article 77 of the Constitution of India. The minutes of the meeting do not become a general or special order in writing by the Central Government unless the same was sanctified and acted upon by issuing an order in the name of the President in the manner provided under Article 77 (2) of the Constitution.

26. It is the further contention that the Central Government has the sole prerogative to take a decision to waive the right to detain the aircraft and in the present case, DIAL has waived its right by participating in the meeting and accepting the decision taken in the meeting. It was also submitted that the Central Government is empowered to take a unilateral decision in this regard and the appellant had not objected to the decision being made and thus precluded from raising any objections regarding the same. When the minutes of meeting were not sanctioned by the competent authority and in accordance with the mandatory requirement of Article 77(3) of the Constitution of India, the same cannot be put against the appellant.

27. In Haridwar Singh vs. Bagun Sumbrui and Ors.[6], this Court was dealing with the Business of Rules of the State of Bihar framed under Article 166 (3) of the Constitution of India wherein this Court held (pp.895-896 paras 14-16) as under:-

"14. Where a prescription relates to performance of a public duty and to invalidate acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, such prescription is generally understood as mere instruction for the guidance of those upon whom the duty is imposed (See Dattatreya Moreshwer Pangarkar vs. State of Bombay, AIR 1952

SC 181).

15. Where however, a power or authority is conferred with a direction that certain regulation or formality shall be complied with, it seems neither unjust nor incorrect to exact a rigorous observance of it as essential to the acquisition of the right or authority (see Maxwell, Interpretation of Statutes, 6th Edn., pp.649-650).

16.Further, Rule 10(2) makes it clear that where prior consultation with the Finance Department is required for a proposal, and the Department on consultation, does not agree to the proposal, the Department originating the proposal can take no further action on the proposal. The Cabinet alone would be competent to take a decision. When we see that the disagreement of the Finance Department with a proposal on consultation, deprives the Department originating the proposal of the power to take further action on it, the only conclusion possible is that prior consultation is an essential prerequisite to the exercise of the power...."

28. Unless the minutes of meeting resulted in a final decision taken by the competent authority in terms of Article 77(3) of the Constitution and the decision so taken is communicated to the concerned person, the same was not capable of being enforced by issuing a direction in a writ petition. Without going into the merits of the matter, High Court was not right in disposing of the matter in terms of the minutes of the meeting dated 26.3.2013 and the impugned order is liable to be set aside.

29. In the result, the impugned order is set aside and the appeal is allowed. The appellant is at liberty to invoke the bank guarantee furnished by the respondents. The appellant is also at liberty to recover the arrears of landing, parking or housing fees charges from the concerned respondents in accordance with law. No order as to costs.

.....J. (V. Gopala Gowda)J. (R. Banumathi) New Delhi;

March 17, 2015

[1] [2] (2009) 15 SCC 705

[3] [4] (1968) 1 SCR 111

[5] [6] (1991) 4 SCC 243

[7] [8] (1996) 2 SCC 26

[9] [10] 2010 (11) SCC 374

[11] [12] (1973) 3 SCC 889