Delhi High Court
Baron International Airways vs Haj Committee on 12 April, 1996
Equivalent citations: 1996 IIAD Delhi 667, AIR 1997 Delhi 247, 62 (1996) DLT 255, 1996 (37) DRJ 273
Author: M Sharma
Bench: M Rao, M Sharma
JUDGMENT M.K. Sharma, J.

(1) This appeal is directed against the judgment and order date 2.1996 passed by the learned Single Judge dismissing the writ petition of the appellant seeking quashing of the letter of the respondent No.l dated 8.3.1996 where the respondent No.l informed the appellant/writ petitioner that the latter had not- compiled with Para 5(1) of the Letter of Intent dated 23.2.1996 and accordingly the old letter of Intent was no longer valid and also the letter dated 13.3.1996 whereby the respondent No.l asked the appellant to place aircraft by 14.3.1996 subject to certain conditions mentioned therein.

(2) Few facts relating to the present case are required to be set out for better appreciation of the issues raised in this appeal. The respondents in order to facilitate air passage to the intending Haj pilgrims to go to Jeddah and back to the country invited global bids in response to which the appellant submitted its bid in the month of October, 1995. After the bids were evaluated, the appellant was invited for negotiations in pursuance of which a formal Letter of Intent was issued to the appellant on 23.2.1996. In pursuance of the letter of negotiation, the respondents decided to inspect the aircrafts offered by the appellant and two other parties namely, M/s. Aviatran and American International Airways. Two inspection teams/Committees of two officers drawn from the Director General of Civil Aviation and Air India were constituted by the second respondent. These teams left India on 3rd and 4th March, 1996 in order to inspect the aircrafts offer (3) In the meantime, however, i.e. on 8.3.1996 the first respondent informed the appellant that the latter as not complied with Para 5(1) of the Letter of Intent dated 23.2.1996 as the aircrafts had not been made available for inspection and that accordingly the letter issued by the first respondent on 23.2.1996 was no longer valid. However, in pursuance of a letter of the appellant offering two Boeing 747 aircrafts in operation with Qatar Airways and the inspection being carried out in respect of one of such aircraft and finding the said to be well maintained a further opportunity was given to the appellant on 13.3.1996 asking the appellant to position their aircrafts by 14.3.1996 subject to certain conditions mentioned in the said letter. Being aggrieved by the aforesaid two letter dated 8.3.1996 and 13.3.1996, the appellant preferred the writ petition.

(4) The respondent No.1 contested the writ petition by filing a counter affidavit slating therein that the appellant through the writ petition was seeking for specific performance of an alleged agreement which had not fructified into an enforceable contract in the eyes of law. It was further stated that the Haj flight operations were scheduled to commence from 18.3.1996, but the appellant did not furnish any requisite performance guarantee, in absence of which it was not possible for the respondents to allow the appellant to carry on with the flight operations. It was also stated that the inspection carried out by the technical teams on behalf of the respondents gave reports of the highly unsatisfactory airworthiness of the aircrafts offered for inspection by the appellant. The further case of the respondent No.l in the counter affidavit was that the appellant had been seeking a claim as

Mobilization Advance which was never a part of tender conditions or the negotiations held between the parties.

(5) The learned Single Judge after hearing the parties by a detailed and well reasoned order dismissed the writ petition holding that since the appellant was unable to position the aircrafts in India by 14.3.1996 inspite of adequate notice on 10.3.1996 itself that the aircrafts had to be positioned in India by 14.3.1996, no fault could be found in the actions of the respondent in canceling the Letter of Intent issued in favour of the appellant. The learned Single Judge further held that although in accordance with the terms of Letter of Intent the appellant was required to furnish Performance Guarantee, yet it failed to furnish the same and, therefore, the appellant having failed to comply with the essential conditions of the Letter of Intent was not justified in calling in question the letter of first respondent dated 8.3.1996 and 13.3.1996.

(6) During the course of their submissions, the learned counsel for the parties drew our pointed attention to the terms and conditions of the Letter of Intent. On a close reading of the contents of the said terms and conditions of the Letter of Intent, it is revealed that the appellant was required to provide to the first respondent a Performance Guarantee as mentioned in Para 4 thereof which was to be released only after satisfactory completion of the contract. Another relevant Clause is Clause (5) which has some bearing on the facts and circumstances of the present case and accordingly the same is quoted hereunder:

IT is understood that this letter is only a required letter and doesn't constitute a charter agreement and the contract between the parties shall come into effect only on the execution of the said Charter Agreement. Further, this letter is subject to the following:-

1)All the aircraft offered and the maintenance facilities being found satisfactory on physical inspection. Aircrafts will be made available by you for inspection within 72 hours of the receipt of this letter.

2)Verification of authority from the operator(s)/owner(s) to M/s. Baron International Airways to offer the aircraft on lease to Charterer. The Baron International Airways shall furnish the necessary documentary evidence to this effect.

3)M/s. Baron International Airways acceptance to include the Lease Agreement the clauses contained in "Commitments to be obtained from the Lessor" a copy of which was provided to M/s. Baron International Airways.

4)M/s. Baron International Airways providing to the Charterer a Performance Guarantee as mentioned at Para 4 above.

5)As aircrafts have to be positioned in India by M/s. Baron International Airways we would request in our mutual interest and to ensure the smooth operation that M/s. Baron International Airways signs the duplicate copy of this letter as a token of acceptance of the above terms and conditions."

(7) We have given our indepth consideration to the relevant clauses of the aforesaid Letter of Intent and in view of the language used in the said Letter of Intent and also in view of the entire contents of the said letter read as a whole, it is apparent to us that the respondent No. 1, through the aforesaid Letter of Intent, did not intend to agree or do anything to give rise to a binding and concluded contract between the par-lies. It was, however, at an offer stage and could not be construed as a firm and concluded contract executed by the respondent with the appellant. The said letter reveals that only on complying with certain conditions mentioned therein, a Charter Agreement would be executed. In otherwords, the conditions precedent for the coming into force of a binding contract, had yet to be fulfillled.

(8) Subsequent to the issuance of the aforesaid Letter of Intent, the detailed inspection of the aircrafts offered by the appellant was to be carried out by the technical teams of Director General of Civil Aviation and Air India at Marana, LJ.S.A, at Dublin (Ireland) and at Doha, Qatar. After such inspection, the Committee prepared a detailed report of the inspection carried out, a copy of which is on record. It is revealed from the contents of the said report that the technical team- which went to Marana, U.S.A. at the request of the appellant could not carry out proper inspection inasmuch as the required aircrafts were not made available to the aforesaid team/Committee for inspection, by the appellant. It is further revealed from the said report of inspection that the appellant had promised to offer four aircrafts for inspection. However, when the inspection team reached Marana, U.S.A. for inspecting two of the aforesaid four aircrafts, the Boeing 747-143, Serial No. 19730and Boeing 747-200 Serial No. 20009 were not available for inspection. The representatives of thes appellant, however, it appears offered alternative Boeing 747 aircraft Serial No. 21141 and Serial No. 19748 for inspection. On inspection, the team found that the aircraft with Serial No. 19748 did not have two of the four engines felted and was being cannibalized. Even with regard to the other aircraft being Serial No. 21141, there was a dispute in between the representatives of the appellant and other parties. So far, the third aircraft offered by the appellant namely, Boeing 747-200 aircraft Serial No. 21575 was concerned, the same was also not available for inspection as the same was located at Dublin at that point of time and was undergoing maintenance check. The other aircraft being Boeing 747-212, Serial No. 21439 offered by the appellant for inspection was also not available for inspection. The appellant, however, offered other two Boeing 747 aircrafts of Qatar Airways for inspection. However, only one such aircraft was placed for inspection which was found to be well maintained. However, since the respondent No. 1 had taken full responsibility for Haj operations and there was to be no disruption in the flight schedules, the respondent No. I wanted assurance from the appellant that it would position the aircrafts and fulfilll other conditions. However, the records reveal that the appellant not only failed to place the aircrafts for inspection but also raised an issue with regard to claiming Mobilization Advance and on that pretext did not submit the Performance Guarantee Bond required to be submitted by it under the terms and conditions of the Letter of Intent.

(9) In view of the aforesaid detailed circumstances and also in view of the fact that the appellant failed to honour its obligations under the terms and conditions of the Letter of Intent, the respondent No.l took the steps of cancelling the Letter of Intent issued in favour of the appellant and requested M/s. American International Airways to place their aircrafts which were also incidentally inspected by the Expert Committee and were found to be suitable and airworthy for the purpose of

carrying the Haj pilgrims to their destination. In pursuance of the aforesaid, the said M/S. American International Airways already placed the aircrafts at the disposal of the respondent No.l in which pilgrims are being transported to Jeddah. Such operation with the help of the aircrafts placed by said M/s. American International Airways has started with effect from 20.3.1995. It is stated that apart from the aforesaid two aircrafts, Air India has also now been able to place their aircrafts at the disposal of the Haj Committee for the purpose of ferrying the pilgrims to Jeddah.

(10) In view of the facts appearing on record, it cannot be said that the decision making process of the respondent No.l in issuing the two impugned letters dated 8.3.1996 and 13.3.1996 and the steps taken by it for carrying out its obligation of transporting Haj pilgrims to Jeddah through the aircrafts placed at its disposal by M/s. American International Airways, are in any way illegal, arbitrary or irrational or that such decision making process was actuated by any malafide intention. As laid down by the Supreme Court in Tata Cellular Vs. Union of India reported in Air 1996 Sc 11 in exercising judicial review, the Court can not exercise the power of an Appellate Authority nor it has any power to substitute its own decision like an appellate authority. The Court can only examine and evaluate the facts relating to decision making process to find out if there be any illegality or arbitrariness in the same. The court would intervene only when it is found that the facts taken as a whole could not logically warrant the conclusion of the decision maker.

(11) The conditions that were set out in the Letter of Intent issued in favour of the appellant by respondent No. I were as follows:

I)Aircraft should be positioned/ mobilizing by March 14, 1996;

II)Aircraft should have airworthiness clearance from D.G.C.A./Air India;

III)Baron Airways should have clear authority to wet-lease the air- craft for charter operations;

IV)performance guarantee of 15% must be produced;

V)No mobilization advance will be payable since Chc has never paid this in the past."

(12) The facts discussed hereinabove would clearly show that none of the aforesaid conditions were complied with by the appellants. Besides, although no Mobilization Advance was payable by the respondent No. I to the appellant yet it appears that repeated requests were made by the appellant for payment of such Mobilization Advance which was absolutely contrary to the terms and conditions mentioned in the Letter of Intent. Under such circumstances, no reasonable person properly instructed in law could pass an order directing the respondents to arrive at a concluded contract with the appellant. The findings given by the learned Single Judge, therefore, appear to be legal and valid. There is thus no merit in this appeal and the same is accordingly dismissed, but, without any costs.