SUPREME COURT OF INDIA

Chairman Managing Director, India Airlines

Vs.

Binod Kumar Sinha

C.A.No.1458 of 1994

(S. Rajendra Babu and Doraiswamy Raju JJ.)

04.10.2001

JUDGMENT

Rajendra Babu, J.

1. These appeals arise out of an order made by the High Court of Calcutta in writ petition Nos. 488/1993 and 489/1993 filed in the High Court challenging the validity of Regulation 13(b), substituted by notification No. S.O. 134/(E) dated March 15, 1993, of the Indian Airlines Employees (Aircraft Engineering Department) Service Regulations, 1959 [for short the Regulations], which provides that no employee shall resign from employment of the Corporation without giving six months notice in writing to the Corporation of his/her intention to resign with provision for Managing Director of the Corporation to dispense with or reduce the period of notice on medical grounds or other special circumstances. A further proviso being to the effect that Corporation may refuse to accept termination if the same is sought to avoid disciplinary action contemplated or taken and a circular No AIC/3/93 dated February 25, 1993 was issued by the Director General of Civil Aviation (DGCA) by which a condition was added in relation to Air Taxi operator to the effect that no Air Taxi operator shall employ anyone already serving any of the national carriers, namely, Air India, Indian Airlines, Vayudoot and Pawan Hans without obtaining a No Objection Certificate from the employer with whom they are working.

2. The writ petitions were filed by a Commander Pilot working under the Indian Airlines Corporation. He had been offered the post of Commander Pilot under M/s Damania Travels but on account of Regulation 13(b) and circular No AIC/3/93 dated February 25, 1993 the respondent could not join the new post immediately which had placed an embargo on his employment and thus he sought for an interim order. A learned Single Judge of the High Court held that the matter cannot be effectively decided without the presence of M/s Damania Travels, namely, the writ petitioners prospective employer, and M/s Damania Travels was directed to be added as a party. Even thereafter the learned Single Judge refused to grant the interim order. The respondents preferred appeals against the said order of the learned Single Judge but on noticing that it would be more appropriate to dispose of the main matter itself, the Division Bench of the High Court disposed of the writ petitions along with

the appeals arising out of the refusal to grant the interim orders thus necessitating these appeals by special leave. Original Regulation 13(b) provided that a Pilot could resign from his service after giving 30 days notice or offering one months basic pay to the employer in lieu of the said 30 days notice . However, in view of the substitution of Regulation 13(b) by notification No. S.O. 134/(E) dated March 15, 1993, the respondent offered to quit the post but the appellant-Airlines did not allow the release of the respondent. The High Court examined in great detail the scope of the provisions of the Air Corporations Act, 1953 [hereinafter referred to as the Air Corporations Act] and the Rules framed thereunder with reference to the Regulation in question.

3. The High Court discussed various aspects of the matter, however, it did not deal with the challenge to the validity of Regulation 13(b), as such. Even after very careful examination of the order of the High Court, we do not find any discussion or consideration on the question of validity of Regulation 13(b) in the entire order, except to allow the writ petitions in their entirety. When the contentions put forth on behalf of the parties or the arguments put forth by the learned Counsel on this aspect were not considered by the High Court, much less any reasons given in the order, we do not think, the High Court could have quashed the said Regulation. We do not wish to express any opinion on the validity or otherwise of the said Regulation inasmuch as the same has not been considered by the High Court in the impugned order, except observing that the High Court has not considered the same or decided the matter. Thus the relief granted by the High Court in quashing Regulation 13(b) shall stand set aside. The question whether the Regulation 13(b) is valid or otherwise is kept open to be considered in a proceeding that may arise hereafter. We are doing so particularly in view of the fact that the respondents who obtained the relief at the hands of the High Court have remained ex parte in these proceedings. We had to request Shri V.R. Reddy, the learned Senior Advocate, to assist the Court as Amicus Curiae, who has made very valuable contribution to the debate and we are beholden to him. The relevant portion of the Circular AIC/3/93 dated February 25, 1993, as substituted, reads as follows : No Air Taxi Operator shall employ anyone already serving any of the national Carriers, namely, Air India, Indian Airlines, Vayudoot and Pawan Hans without obtaining a No Objection Certificate from the employers with whom they are working.

4. They shall further submit to DGCA a monthly return on pilots/engineers employed by them in a specified proforma. On behalf of the respondents it was contended before the High Court that : (1) The directions contained in the impugned amendment of AIC No. 24 of 1990 by AIC No. 3 of 1993 dated February 25, 1993 is ultra vires the powers of the DGCA inasmuch as neither Section 5 nor Section 5A of the 1994 Act nor sub-rule 3 of Rule 134 of the *Aircraft Rules, 1937* confers any such power to issue any such directions since the impugned AIC No. 3 of 1993 is a direction upon the Air Taxi Operator not to employ one serving any of the national carriers including Indian Airlines without obtaining a No Objection Certificate from the employer and such direction was not given under any of the statutory provision which were identified as the source of power by the Government. (2) The embargo placed on the employees of the national carriers does not have any nexus with the safety of the Aircraft operation and safety of Aircraft operation units normal connotation would relate to the technical/mechanical safeguards for safe Aircraft operation.

5. The safety of Aircraft operation has no relevance to Airtransport Services and the DGCA cannot exercise any power under Section 5A to give a direction in relation to Airtransport Services. (3) At any rate, the direction contained in AIC No. 3 of 1993 is unconstitutional and void as it offends Article 14 of the Constitution as no guidelines are provided for withholding or granting No Objection Certificate; (4) The impugned circular interferes with the freedom of a person to engage himself in any work which he chooses and insistence upon obtaining No Objection Certificate would amount to compelling a person to work under an employer which would amount to forced labour or begar which is violative of Article 23 of the Constitution. Further, such imposition would affect Article 21 of the Constitution which includes the right to livelihood which connotes not merely animal existence but leading a life with dignity; (5) The impugned circular is violative of Article 19(1)(g) of the Constitution which enables a citizen to carry on any occupation of his choice and that right can be subjected only to reasonable restrictions and such reasonable restrictions can be made only by law; (6) The impugned circular is also violative of Article 16 of the Constitution which provides equality in the matter of public appointment and the impugned circular has arbitrarily selected a class of citizens, that is, those who are serving in the Indian Airlines, among other national carriers, have to obtain No Objection Certificate before leaving Indian Airlines to join Air Taxi Operators. However, there is no such embargo on other persons who are serving in foreign airlines or in a Government Corporation and who want to join Air Taxi Operators. The High Court is impressed with each one of these contentions in allowing the writ petitions.

6. The learned Additional Solicitor General contended that the Air Craft Act provides for control of operation of aircraft and Section 5(1) thereof imposes a duty on the Central Government to secure the safety of aircraft operations and this Section enables the Central Government to make rules for the purpose of fulfilling the said objects or duty; that Section 5(2) of the said Act sets out various specific instances for exercise of powers under Section 5(1) in order to effectively fulfil the duty of care imposed on the Central Government under the said provision for securing the safety of Aircraft operations; that under Aircraft Rules, Rule 134 has been framed and sub-rule (3) thereof provides that air transport service shall be operated only with special permission of the Central Government and subject to such terms and conditions as it may think fit to impose in each case; that Section 18 of the Air Corporations Act reserved scheduled air transport services to the Indian Airlines Corporation and Air India Corporation and the addition of sub-para XIV in para 9 to the AIC No. 24 of 1990 is an instance of exercise of power under Section 5A of the said Act; that a duty is cast on the Government to provide safe, efficient, adequate, economical and properly co-ordinated air transport services so as to secure that the air transport services are developed to the best advantage and in particular secure that the services are provided on reasonable charges; that in obedience to the said duty enshrined in Section 7 of the Air Corporations Act, Indian Airlines is required to and does provide air transport services all over the country including far flung and uneconomical sectors as well inasmuch as Indian Airlines as a public carrier is required by law to provide its services which are not only safe, efficient and adequate but have also to be economical, properly co-ordinated and charged with reasonable fares it cannot conduct itself like a private taxi operator in disregard of its social obligations

so clearly spelt out and mandated in Section 7 of the Air Corporations Act; that in the very nature of things, therefore, the Indian Airlines must equip itself with trained and efficient manpower vital for discharge of its obligations in law and the Air Corporations Act, therefore, provides for certain terms and conditions in relations to officers and other employees who can be appointed in the Corporations under Section 8 of the Air Corporations Act; that Regulation 13 has been framed in exercise of powers conferred by clause (b) of sub-section (2) of Section 45 of the Air Corporations Act as a measure of safeguard. He, therefore, strongly contended that the view taken by the High Court is incorrect. Shri V.R. Reddy, learned Senior Advocate appearing as Amicus Curiae, supported the view taken by the High Court and elaborated the various facets of the matter which are not very clear from the judgment of the High Court by reference to the provisions of the Air Craft Act, the Air Corporations Act and the pleadings and relevant enunciation of law made by this Court. Rules can be framed under Section 5 of the Air Craft Act and the Aircraft Rules [for short the Rules] have been framed. Rule 134 thereof provides as under :- 134.

7. Air Transport Services- (1) Except as provided in the *Air Corporations Act, 1953* (27 of 1953) it shall not be lawful for any person other than the Corporation or their associates to operate any scheduled air transport service from, to, in, or across India: Provided that the Central Government may, in accordance with and subject to the provisions contained in Scheduled XI, permit any person to operate any scheduled air transport service, not for the time being operated by the Corporations or their associates. (2) The Central Government may permit any air transport undertaking of which the principal place of business is in any country outside India to operate an air transport service from to, or across India in accordance with the terms of any agreement for the time being in force between the Government of India and the Government of that Country, or, where there is no such agreement, of a temporary authorization by the Government of India. (3) No air transport service, other than a scheduled air transport service or an air transport service, to which the provisions of sub-rule (1) or (2) apply, shall be operated except with the special permission of the Central Government and subject to such terms and conditions as it may think fit to impose in each case. Under Rule 133A of the Rules the DGCA is empowered to issue notices to the Aircraft Owners and Maintenance Engineers and special directions not inconsistent with the Air Craft Act or the Rules relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India. In the present case, permits have been granted to operate scheduled air transport services within India in terms of Rule 134 referred to above and such permits provide as under: The validity of this Permit is subject to compliance with all the relevant rules, regulations and also the conditions appended hereto and any additional conditions which may be imposed by the Government or the Director General from time to time. Breach of any of the rules, regulations or conditions shall render this Permit liable to suspension/cancellation. [emphasis supplied] Permits have been issued under Rule 134 of the Rules subject to the conditions imposed therein and one of the conditions is that such additional conditions which may be imposed by the Government or DGCA from time to time, as is clear from the permit itself.

8. The condition now imposed by the impugned circular can be traced to this empowerment available under the said permit. If the permit itself enables the Government or DGCA to

impose the conditions, it is very difficult to envisage that such power will have to be traced to any other provision of the Air Craft Act or the Rules. However, the arguments advanced on the other side is that the condition imposed in the impugned circular does not subserve the purposes of the enactment nor falls within its scope. We may state that the power has been exercised by the Government in framing Rule 134 which enables the operation of an air transport service by an undertaking other than the scheduled air transport service or a foreign air transport service and that special permission of the Central Government is subject to such terms and conditions as it may think fit to impose in each case. And one of those conditions is as is referred to earlier enabling the DGCA to impose appropriate conditions. Therefore, it is difficult to accept the arguments that the impugned circular has been issued without any power or authority under the Air Craft Act or the Rules.

9. All arguments addressed in this behalf ignore this factual aspect and hence the findings recorded by the High Court to the contrary are not well founded. The validity of Rule 134 of the Rules is not in challenge. What is in challenge is only circular No. AIC/3/93 dated February 25, 1993 issued by the DGCA. Rule 134(1) debars any person other than the Corporation for operating Air Transport Service, while Rule 134(3) provides that the permits can be granted subject to certain terms and conditions and those terms and conditions, in turn, include a condition of further terms and conditions being imposed by the Government or DGCA. The objective of Rule 134 is not only based on the Air Craft Act but also on various provisions of the Air Corporations Act. The Air Corporations Act provides for establishment of Air Corporations to facilitate the proper, economic and efficient services and the function of the Corporations is to provide safe, efficient, adequate, economical and properly co-ordinated air transport services whether internal or international or both and the Corporations shall so exercise their powers as to secure that the air transport services are developed to the best advantages and that the services are provided at reasonable charges. Rule 134(1) in carrying at these objectives clearly debars any person other than a Corporation or its associates to operate any scheduled air transport service. While Rule 134(3) makes other air transport services being permitted subject to conditions to be imposed by Government or DGCA to which we have already adverted to. If the effect of clause (1) of Rule 134 is borne in mind it cannot be said that these objectives are out of place in interpreting the effect of sub-rule (3) of Rule 134.

10. Viewed from that angle, we think, the circular in question falls within the scope of the enactment and the Rules made therein. Now, what needs to be examined is whether the circular issued offends any of the provisions of the Constitution or such embargo has any nexus with the safety of the air craft operation and has any relevance to the air transport services. The arguments on behalf of the writ petitioners are based on Articles 14, 19(1)(g), 16, 21 and 23 of the Constitution only with reference to the implication arising out of the embargo imposed upon the employees of the national carriers that they cannot resign from employment except after a notice of six months as provided for in Regulation 13(b) framed under the Air Corporations Act. If in violation of such conditions, employees of the national carriers can leave their employment and join the employment in any other air service is a matter affecting the operation of the air carriers and, therefore, to give effect to that objective underlying Regulation 13(b) if the circular is issued, we cannot term it to be invalid. If the

provision of Regulation 13(b) is valid in law and in violation of which an employee seeks to join employment with an air taxi operator, the restriction in the circular cannot be an infringement of his rights arising under Articles 14, 16, 19(1)(g), 21 and 23 of the Constitution.

11. The argument to the contrary is far-fetched because an employee when joins service is subject to certain terms and conditions of service and he cannot quit the employment without giving requisite notice to the employer. But what should be the duration of a reasonable notice in such circumstances is a matter to be decided in each case depending upon the exigencies, needs or necessities and the essentiality of the service concerned. In the present case, no such exercise has been done by the High Court to find out whether Regulation 13(b) is valid or not. When validity or scope of that Regulation has not been examined, the impact of the Regulation on the circular also could not be examined. The High Court completely went off the track in examining the broad questions arising under Articles 14, 16, 19(1)(g), 21 and 23 of the Constitution. If a person is in employment he is certainly subject to certain terms and conditions and he can quit his employment under those terms and conditions only which cannot be stated to be violative of Articles 14, 16, 21 and 23, much less Article 19(1)(g) of the Constitution unless on examination such conditions are held invalid.

12. The argument that the embargo is only upon the Air Taxi Operators and not upon other employers is misconceived because there is no material to indicate as to what is the position in relation to each one of these other organisations is and whether any permit as contemplated under Rule 134 is granted to them or not and when the direction is issued only to such permit holders as falling within the scope of Rule 134(3) forming a separate class and that class alone is subject to the present treatment cannot be violation of Article 14. We are also not impressed with the view taken by the High Court that the negative covenant of not being employed would be attracted in a case of this nature because during employment certainly an obligation can be placed upon an employee that he shall not be employed by any other organisation or institution and it neither offends Article 19(1)(g) nor the provisions of the Contract Act. Hence, none of the reasons set forth by the High Court are tenable and, therefore, the order made by the High Court needs to be set aside. Further we must notice that during the pendency of these proceedings *Air Corporations (Transfer of Undertakings and Repeal) Act, 1994* (Act 13 of 1994) has come into force and we have not examined the scope of the impact of the repeal of the Air Corporations Act upon the scope of circular in question since at the time of the issue of the circular and at the time when the High Court considered the matter, the said enactment had not come into force.

13. The appeals are allowed accordingly. No costs.