

SUPREME COURT OF INDIA

Interglobe Aviation Ltd.

Vs.

N.Satchidanand

C.A.No.4925 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

04.07.2011

JUDGMENT

R.V.Raveendran, J.,

SLP (Civil) No.21108 of 2010

1. Leave granted. Heard.

2. The appellant, an aviation company operating an air carrier under the name and style of IndiGo Airlines has filed this appeal aggrieved by the judgment of the Andhra Pradesh High Court dated 31.12.2009 dismissing its writ petition challenging the decision of the Permanent Lok Adalat for Public Utility Services, Hyderabad, dated 18.9.2009 awarding Rs.10,000 as compensation and Rs.2,000 as costs to the respondent herein. Facts found to be not in dispute

3. The respondent and eight others were booked to travel on Indigo flight No.6E-301 from Delhi to Hyderabad on 14.12.2007 scheduled to depart at 6.15 a.m. The respondent reached the airport, obtained a boarding pass and boarded the flight at around 5.45 a.m. Due to dense fog, bad weather and poor visibility at Delhi airport the flight was delayed. An announcement was made that the flight was unable to take off due to dense fog and poor visibility, and that the flight will take off as and when a clearance was given by ATC. As appellant was a 'low cost carrier' neither snacks nor beverages were offered. However sandwiches were offered for sale and the respondent purchased a sandwich by paying Rs.100. Around 11.15 a.m. an announcement was made that flight No. 6E-301 was cancelled and the passengers were given the following options: (a) refund of air fare; or (b) credit for future travel on IndiGo; or (c) rebooking onto an alternative IndiGo flight at no additional cost. As an extension of the third option, willing passengers were permitted to undertake the journey on the next flight, by combining the said flight (Flight No.6E-301) with the next flight (Flight No. 6E-305) which was scheduled to depart at 12.15 p.m., subject to improvement in weather conditions and clearance by Air Traffic Control ('ATC' for short).

4. As the same aircraft was to be used for the combined flight, several of the passengers including respondent took the third option, and opted to continue the journey on the combined flight, by the same aircraft by remaining on board. Several other passengers, who opted for refund of their airfare or obtaining credit for future travel or for re-booking on subsequent flights of their choice, left the aircraft.

5. In view of the cancellation of flight No.6E-301 and the DGCA regulations prescribing maximum duty hours for the crew, the crew of 6E-301 was replaced by the fresh crew of flight No.6E-305. Even the combined flight No.6E 305 could not take off on schedule as the ATC did not give the clearance. Several announcements were made about the delay on account of inclement weather conditions and the piling up of delayed flights queuing for take off. In the meanwhile on account of cancellation of flights and delaying of several flights, the airport was getting overcrowded and congested. As a consequence, the airport authorities advised the flights which had completed boarding but had not taken off for want of ATC clearance, not to send back the boarded passengers to the airport lounge, but retain them in the aircraft itself, as the airport was not capable of handling the additional load. The respondent and some other passengers, who had opted for travel in the combined later flight by the same aircraft, protested about the delay and demanded lunch/refreshments as they were held up inside the aircraft. Each of the affected passengers, including the respondent, was provided with a sandwich and water, free of cost around noon time. A further offer of free sandwiches was made around 3.00 p.m. However as vegetarian sandwiches were exhausted, the second offer by the crew was of chicken sandwiches. Respondent and others, who declined chicken sandwiches, were offered biscuits and water free of cost. Finally the ATC clearance was given at 4.20 p.m. and the flight departed at 4.37 p.m. and reached Hyderabad around 7 p.m.

6. When the flight reached Hyderabad, the respondent and some other passengers were detained at the Hyderabad Airport for more than an hour in connection with an enquiry by the Security Personnel of IndiGo, in regard to a complaint by the on-board crew that they had threatened and misbehaved with the air hostesses when the flight was delayed.

The complaint and the response

7. The respondent filed a complaint against the appellant before the Permanent Lok Adalat for Public Utility Services, claiming a compensation of Rs.Five lakhs for the delay and deficiency in service resulting in physical discomfort, mental agony and inconvenience. The respondent listed the following reasons for the claim:

“(a) confinement to the aircraft seat from 5.45 a.m. (time of boarding) to 4.37 p.m. (time of departure of flight) for nearly 11 hours leading to cramps in his legs;

(b) failure to provide breakfast, lunch, tea in the aircraft in spite of the fact that the respondent was detained in the aircraft for eleven hours (from 5.45 a.m. to 4.37 p.m.) before departure;

(c) failure to provide access to medical facilities to the respondent who was a diabetic and hyper tension patient;

(d) illegal detention from 7 p.m. to 8.30 p.m. at Hyderabad airport upon a false complaint by the crew of the aircraft;

(e) inability to celebrate his birthday on 15.12.2007, on account of the traumatic experience on the earlier day, apart from being prevented from attending court on 14.12.2007 and being prevented from attending office till 19.12.2007.”

8. The respondent contended that the airlines failed to take necessary care of the passengers and failed to act reasonably by not resorting to the remedial steps in regard to following matters:

“(a) In view of the foggy conditions and inclement weather, instead of issuing boarding passes, the passengers should have been asked to wait in the airport lounge itself until the weather/visibility improved, so that they could have had breakfast and lunch in the airport restaurant without being confined to the aircraft for a total period of eleven hours;

(b) When the flight could not take off due to bad weather for a long time (nearly eleven hours), the appellant ought to have brought back the passengers from the aircraft to the terminal so that they could have avoided confinement to their narrow seats in the aircraft and at the same time had access to breakfast and lunch, proper toilet facilities, if necessary, medicines;

(c) Though the appellant was a low cost carrier with no provision for serving food, in the extraordinary circumstances of detention of the passengers in the aircraft for 11 hours (before departure), it should have provided breakfast and lunch of their choice and beverages, free of cost, on board.

(d) The respondent being a diabetic and hyper-tension patient was required to have timely meals and medicines, which he was denied. Though a free sandwich was provided around 12.30 p.m., at around 3.00 p.m. when second round of free snacks were offered, he was offered a chicken sandwich which he could not accept being a vegetarian. Offering a few biscuits with water as an alternative was wholly insufficient.

(e) Since the toilets were being constantly used by the cooped up passengers in the aircraft for several hours, and as there was no proper air circulation, the air was unbreathable apart from the foul smell from the toilet leading to nausea and dizziness.
“

9. The appellant resisted the claim of the respondent on the following grounds :

“(a) The Permanent Lok Adalat at Hyderabad had no jurisdiction to entertain the complaint. Having regard to the jurisdiction clause in the contract of carriage, only the courts at Delhi had jurisdiction. Any complaint or case had to be filed only at Delhi.

(b) The delay was for reasons beyond the control of the airlines and its employees, due to dense fog and bad weather. As the visibility dropped to less than around 15 meters, flights could not take off and the consequential congestion at the airport led to further delay. Even after the fog had cleared, the Air Traffic Control clearance for take off was given only at 4.20 p.m. The delay was not on account of any negligence or want of care or deficiency in service on the part of the airlines, but due to bad weather conditions and want of ATC clearance, which were beyond the control of the airlines and therefore it was not liable to pay any compensation.

(c) The respondent was given the option of either re-booking in a different flight, or receive the refund of the airfare, or continue the journey in the same aircraft by taking the next combined flight to depart as per ATC clearance. The respondent opted for continuing the journey in the combined flight and he stayed in the aircraft. If he had opted for re-booking or refund, he could have left the aircraft by 12.00 Noon.

(d) The respondent did not disclose his alleged physical condition (about diabetes and hyper tension) either at the time of purchasing the ticket or during the period he was on board. If he was suffering from any ailment he ought to have given advance notice or ought to have accepted the offer for rebooking or refund and left the aircraft as was done by several other passengers.

(e) Being a flight operated by a low cost carrier, the appellant did not have any provision to serve any food or beverages. Only sandwiches and some other snacks were available on sale basis. In spite of it, in view of the delay, arrangements were made for supply of free sandwiches and water, once around 12.30 p.m. and again around 3.00 p.m. The toilets were also functional all through the period. Thus there was no deficiency in service or want of care on its part.

10. In regard to the detention of respondent at Hyderabad Airport, the appellant submitted that the respondent and some of his fellow passengers became agitated and furious when the announcement regarding cancellation of flight No.6E 301 was made and started abusing and misbehaving with the crew using extremely vulgar and threatening language; that the respondent also threw the biscuits offered, at one of the crew members; and that a complaint was made against the respondent and other members by the crew and consequently when the flight reached Hyderabad there was an inquiry by appellant's Assistant Manager (Security). It was further submitted that during enquiry, the crew decided not to press the matter in the interests of customer relations and to avoid unnecessary complications; and therefore, even

though CISF personnel advised that a written complaint may be given in regard to the misbehaviour, a written complaint was not given and the respondent and others were permitted to leave. The allegation of wrongful confinement and harassment was thus denied.

11. The Permanent Lok Adalat, by award dated 18.9.2009 held that it had territorial jurisdiction. It further held that the delay was due to poor visibility and bad weather conditions, reasons beyond the control of the appellant. It further held: (a) though the claim of the respondent that he was confined in the aircraft without providing food was not established, and though the airlines being a low cost carrier, was not bound to provide any food to its passengers, as the passengers were detained in the aircraft for long, not providing food of passenger's choice caused inconvenience and suffering to the passengers; (b) though there was no evidence to show that the respondent had notified the airlines that he was a diabetic and it was not possible to hold the airlines responsible in any manner, the fact that he suffered on account of being a diabetic could not be ignored; and (c) though the relevant rules might not have permitted the passengers who had boarded the aircraft to return to the airport lounge, in view of the unduly long delay, the rules should have been relaxed and the airlines was under a moral duty to take the passengers to the lounge and keep them there till the flight was permitted to take off and failure to do so was inexcusable. The Permanent Lok Adalat did not examine the grievance regarding wrongful confinement at the Hyderabad airport for an hour and half stating that criminal offences were not within its purview. The Permanent Lok Adalat held that there was laxity and deficiency in service on the part of the appellant and consequently awarded Rs.10000 as compensation and Rs.2500 as costs.

12. The said decision of the Permanent Lok Adalat was challenged by the appellant by filing a writ petition. The High Court dismissed the writ petition by the impugned judgment dated 31.12.2009. In regard to jurisdiction the High Court held as follows:

"Most of the passengers, who took tickets or most of the passengers who buy tickets in Indigo counters seldom, read the terms and conditions regarding jurisdiction of Court in case of disputes. In such a situation, the jurisdiction aspects of the contract between IndiGo and passenger must receive liberal approach by the Courts or else the consumerism would be at peril."

The High Court did not interfere with the award of the Permanent Lok Adalat on the following reasoning:

"Whatever be the reason and whatever be the justification, for Indigo in not operating Flight 6E-301 as per schedule, it certainly caused inconvenience to the passenger who is admittedly a diabetic patient. Therefore, he should at least receive nominal damages for the deficiency of service. This was what was precisely done by learned Permanent Lok Adalat in an unexceptional manner. We do not see any strong reason to exercise our extraordinary jurisdiction to find fault with the same."

13. The said order is under challenge in this appeal by special leave. On the contentions urged the following questions arise for consideration:

“(i) Whether the Permanent Lok Adalat at Hyderabad did not have territorial jurisdiction?”

(ii) When a flight is delayed due to bad weather, after the boarding of passengers is completed, what are the minimum obligations of an air carrier in particular a low cost carrier, to ensure passenger comfort?

(iii) When there is delay for reasons beyond the control of the airlines, whether failure to provide periodical lunch/dinner or failure to take back the passengers to the airport lounge (so that they can have freedom to stretch their legs, move around and take food of their choice) can be termed as deficiency in service or negligence?

(iv) Whether the award of compensation of Rs.10,000/- with costs calls for interference?

Re: Question (i) : Jurisdiction of Permanent Lok Adalat”

14. The Indigo Conditions of Carriage, containing the standard terms which govern the contract between the parties provide as follows: "All disputes shall be subject to the jurisdiction of the courts of Delhi only." The appellant contends that the ticket related to the travel from Delhi to Hyderabad, the complaint was in regard to delay at Delhi and therefore the cause of action arose at Delhi; and that as the contract provided that courts at Delhi only will have jurisdiction, the jurisdiction of other courts were ousted. Reliance was placed on ABC Laminart v. A.P. Agencies [1989 (2) SCC 163] where this court held:

"So long as the parties to a contract do not oust the jurisdiction of all the Courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the Court. If under the law several Courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be a proper jurisdiction under the law, their agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand, the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy.From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other Courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other Courts should avoid exercising jurisdiction, As regards construction of the ouster clause when words like 'alone', 'only', 'exclusive' and the like have been used there

may be no difficulty. Even without such words in appropriate cases the maxim 'expressio unius est exclusio alterius' -expression of one is the exclusion of another may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."

15. The 'exclusive jurisdiction clause', as noticed above is a standard clause that is made applicable to all contracts of carriage with the appellant, relating to passengers, baggage or cargo anywhere in the country, irrespective of whether any part of the cause of action arose at Delhi or not. If for example a passenger purchases a ticket to travel from Mumbai to Kolkata, or Chennai to Hyderabad, which involved travel without touching Delhi and if such ticket was purchased outside Delhi, obviously the Delhi courts will not have territorial jurisdiction as no part of the cause of action arises in Delhi. As per the principle laid down in ABC Laminart, any clause which ousts the jurisdiction of all courts having jurisdiction and conferring jurisdiction on a court not otherwise having jurisdiction would be invalid. It is now well settled that the parties cannot by agreement confer jurisdiction on a court which does not have jurisdiction; and that only where two or more courts have the jurisdiction to try a suit or proceeding, an agreement that the disputes shall be tried in one of such courts is not contrary to public policy. The ouster of jurisdiction of some courts is permissible so long as the court on which exclusive jurisdiction is conferred, had jurisdiction. If the clause had been made to apply only where a part of cause of action accrued in Delhi, it would have been valid. But as the clause provides that irrespective of the place of cause of action, only courts at Delhi would have jurisdiction, the said clause is invalid in law, having regard to the principle laid down in ABC Laminart. The fact that in this case, the place of embarkation happened to be Delhi, would not validate a clause, which is invalid.

16. There is another reason for holding the said clause to be invalid. A clause ousting jurisdiction of a court, which otherwise would have jurisdiction will have to be construed strictly. In this case, we are concerned with a clause which provides that all disputes shall be subject to the jurisdiction of the courts at Delhi only. But in this case, the respondent did not approach a "court". The claim was filed by the respondent before a Permanent Lok Adalat constituted under Chapter VI-A of the Legal Services Authorities Act, 1987 ('LSA Act' for short). Section 22C provides that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for settlement of the dispute. When the statement, additional statements, replies etc., are filed in an application filed before it, the Permanent Lok Adalat is required to conduct conciliation proceedings between the parties, taking into account, the circumstances of the dispute and assist the parties in their attempt to reach an amicable settlement of the dispute. If the parties fail to reach an agreement, the Permanent Lok Adalat is required to decide the dispute. The Permanent Lok Adalats are authorized to deal with and decide only disputes relating to service rendered by notified public utility services provided the value does not exceed Rupees Ten Lakhs and the dispute does not relate to a non- compoundable offence. Section 22D provides that the Permanent Lok Adalat shall, while conducting the conciliation proceedings or deciding a dispute on merit under the LSA Act, be guided by the principles of

natural justice, objectivity, fair play, equity and other principles of justice and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. Section 22E provides that every award of the Permanent Lok Adalat shall be final and binding on the parties and could be transmitted to a civil court having local jurisdiction for execution. Each and every provision of Chapter VIA of LSA Act emphasizes that is the Permanent Lok Adalat is a Special Tribunal which is not a 'court'. As noted above, Section 22C of the LSA Act provides for an application to the Permanent Lok Adalat in regard to a dispute before the dispute is brought before any court and that after an application is made to the Permanent Lok Adalat, no party to the application shall invoke the jurisdiction of any court in the same dispute, thereby making it clear that Permanent Lok Adalat is distinct and different from a court. The nature of proceedings before the Permanent Lok Adalat is initially a conciliation which is non-adjudicatory in nature. Only if the parties fail to reach an agreement by conciliation, the Permanent Lok Adalat mutates into an adjudicatory body, by deciding the dispute. In short the procedure adopted by Permanent Lok Adalats is what is popularly known as 'CON-ARB' (that is "conciliation cum arbitration") in United States, where the parties can approach a neutral third party or authority for conciliation and if the conciliation fails, authorize such neutral third party or authority to decide the dispute itself, such decision being final and binding. The concept of 'CON-ARB' before a Permanent Lok Adalat is completely different from the concept of judicial adjudication by courts governed by the Code of Civil Procedure. The Permanent Lok Adalat not being a 'court', the provision in the contract relating to exclusivity of jurisdiction of courts at Delhi will not apply.

17. The appellant next contended that even if the jurisdiction clause is excluded from consideration, only courts and tribunals at Delhi will have jurisdiction as the cause of action arose at Delhi and not at Hyderabad. The appellant contended that the respondent boarded the flight at Delhi and the entire incident relating to delay and its consequences took place at Delhi and therefore courts at Delhi alone will have jurisdiction. This contention is wholly untenable. The dispute was with reference to a contract of carriage of a passenger from Delhi to Hyderabad. The ticket was purchased at Hyderabad and consequently the contract was entered into at Hyderabad. A part of the cause of action also arose at Hyderabad as the respondent clearly alleged as one of the causes for claiming compensation, his illegal detention for an hour and half at the Hyderabad Airport by the security staff of the appellant when the flight landed. Therefore the courts and tribunals at Hyderabad had jurisdiction to entertain the claims/disputes. Section 22B provides that permanent Lok Adalats shall be established for exercising jurisdiction in respect of one or more public utility services for such areas as may be specified in the notification. It is not disputed that the Permanent Lok Adalat for public utility services, Hyderabad was constituted for the area of Hyderabad and transport services by way of carriage of passengers by air is a public utility service. Therefore we hold that the Permanent Lok Adalat at Hyderabad had jurisdiction to entertain the application against the appellant.

18. One of the reasons assigned by the High Court to hold that Permanent Lok Adalat at Hyderabad had jurisdiction was that the term in the IndiGo conditions of carriage that only courts at Delhi will have jurisdiction should be ignored as most of the passengers buying tickets from IndiGo may not read the terms and conditions regarding jurisdiction of courts

and therefore, the court should adopt a liberal approach and ignore such clauses relating to exclusive jurisdiction. The said reasoning is not sound. The fact that the conditions of carriage contain the exclusive jurisdiction clause is not disputed. The e-tickets do not contain the complete conditions of carriage but incorporate the conditions of carriage by reference. The interested passengers can ask the airline for a copy of the contract of carriage or visit the web-site and ascertain the same. Placing the conditions of carriage on the web-site and referring to the same in the e-ticket and making copies of conditions of carriage available at the airport counters for inspection is sufficient notice in regard to the terms of conditions of the carriage and will bind the parties. The mere fact that a passenger may not read or may not demand a copy does not mean that he will not be bound by the terms of contract of carriage. We cannot therefore, accept the finding of the High Court that the term relating to exclusive jurisdiction should be ignored on the ground that the passengers would not have read it.

19. We may also at this juncture refer to the confusion caused on account of the term Permanent Lok Adalat being used to describe two different types of Lok Adalats. The LSA Act refers to two types of Lok Adalats. The first is a Lok Adalat constituted under Section 19 of the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The second is a Permanent Lok Adalat established under section 22B(1) of LSA Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. The word Permanent Lok Adalat should refer only to Permanent Lok Adalats established under section 22B(1) of the LSA Act and not to the Lok Adalats constituted under section 19. However in many states, when Lok Adalats are constituted under section 19 of LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also called as Permanent Lok Adalats even though they do not have adjudicatory functions. In *LIC of India vs. Suresh Kumar - 2011 (4) SCALE 137*, this court observed: "It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed". The said decision refers to such a 'Permanent Lok Adalat' organized under section 19 of the Act and should not be confused with Permanent Lok Adalats constituted under section 22B(1) of the Act. To avoid confusion, the State Legal Services Authorities and the High Courts may ensure that Lok Adalats other than the Permanent Lok Adalats established under section 22B(1) of the Act in regard to public utility services, are not described as Permanent Lok Adalats. One way of avoiding the confusion is to refer to the Lok Adalats constituted under section 19 of the Act on a regular or permanent basis as 'Continuous Lok Adalats'. Be that as it may.

Re : Question (ii) to (iv) Low cost carrier vis-a-vis full service carrier

20. The appellant is a low cost carrier. It is necessary to bear in mind the difference between a full service carrier and a low cost carrier, though both are passenger airlines. Low cost carriers tend to save on overheads, operational costs and more importantly on the services provided. Low cost carriers install the maximum number of seats possible in their aircraft, and attempt to operate the aircraft to optimum levels and fill the seats to capacity. The passengers, who prefer to travel on budget fares, when opting for low cost carriers know fully well that they cannot expect from them, the services associated with full service

carriers. From the passenger's view point, the important difference between the two classes of airlines lies in the on-board service offered to them by the airlines. While full service carriers offer several services including free food and beverages on board, low cost carriers offer the minimal 'no-frills' service which does not include any free food or beverages except water. But the fact that an airline is a low cost carrier does not mean that it can dilute the requirements relating to safety, security and maintenance. Nor can they refuse to comply with the minimum standards and requirements prescribed by the Director General of Civil Aviation ('DGCA' for short). The fact that it offers only 'no-frills' service does not mean that it can absolve itself from liability for negligence, want of care or deficiency in service. Both types of carriers have clauses either excluding or limiting liability in respect of certain contingencies. The disclaimers by low cost carriers will be more wider and exhaustive when compared to full service carriers. DGCA and other authorities concerned with licensing low cost carriers, shall have to ensure that the terms of contract of carriage of low cost carriers are not unreasonably one sided with reference to their disclaimers. This becomes all the more necessary as the terms of contract of carriage are not incorporated in the tickets that are issued and usually passengers, who purchase the tickets, will not be able to know the actual terms and conditions of contract of carriage unless they visit the website of the airline or seeks a copy of the complete terms of contract of carriage. All that is required to be noted in the context of this case is that travel by a low cost carrier does not mean that the passengers are to be treated with any less care, attention, respect or courtesy when compared to full service carriers or that there can be dilution in the minimum standards of safety, security or efficiency. Relevant statutory provisions and DGCA directives

21. The Carriage of Air Act, 1972 gives effect to the convention for unification of certain rules relating to international carriage by air, and amendments thereto, to non-international carriage by air. Section 8 provides that the Central Government may by notification in the official gazette apply the rules contained in the first schedule to the Act and any provision of section 3 or section 5 or section 6 to such carriage by air, not being international carriage by air, as may be specified in the notification, subject, however, to such exceptions, adaptations, modifications as may be so specified. Notification No.SO.186E dated 30.3.1973 issued under section 8 of the Act applies to sections 4, 5 and 6 and the rules contained in the second schedule to the Act to all carriages by air (not being an international carriage) and also modified several rules in the second schedule to the Act apart from amending sections 4 and 5 and omitting section 6 of the Act. Chapter III of the Second Schedule to the said Act relates to "liability of the carrier" and clause 19 thereof (as amended by Notification No.SO.186(E) dated 30.3.1973 issued under section 8(2) of that Act) is extracted below:-

"19. In the absence of a contract to the contrary, the carrier is not to be liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo."

22. Rule 134 of the Aircraft Rules 1937 provides that no person shall operate any scheduled air transport services except with the permission of the Central Government. Rule 133A of the said Rules provides that the special directions issued by the Director General of Civil Aviation ('DGCA' for short) by way of circulars/notices to aircraft owners relating to operation and use of aircraft shall be complied with by the persons to whom such direction is

issued. The Director General of Civil Aviation, Govt. of India, issued a circular No.8/2007 dated 5.12.2007, containing the guidelines for Aircraft operations during Low Visibility Conditions (Fog management) at IGI Airport, Delhi which were applicable on the relevant date (14.12.2007). Clauses 31, 32, 35 and 36 thereof are extracted below :

"31) Airlines shall augment their ground staff and position them at the airport with proper briefing for handling various passenger facilitation processes in co-ordination with the other airport agencies.

32) Airlines shall inform their passengers of the delay/rescheduling/cancellation of their flights in through mobile/SMS/other communication mean to avoid congestion at the airport.

35) Airlines shall ensure progressive boarding of the passengers out of security hold area in order to avoid congestion in the security hold. Passenger after check-in shall be made to proceed for security by the airlines after ensuring that the flight is ready to depart/is on ground. If delayed, after boarding, appropriate facilitation to be given by Airlines on board.

36) The Airlines, particularly LCC shall provide facilitation in terms of tea/water/snacks to the passenger of their delayed flights. The coupon scheme extended by DIAL may be availed by airlines for the passenger facilitation purpose."

[emphasis supplied]

Other directives referred by way of comparison

23. We may, by way of comparison also refer to the following provisions of the subsequent circular/CAR (Civil Aviation Requirements) dated 6.8.2010 issued by DGCA in regard to the facilities to be provided to passengers by airlines due to denied boarding, cancellation or delays in flights, which came into effect from 15.8.2010.

"Introduction x x x 1.4 The operating airline would not have the obligation to pay compensation in cases where the cancellations and delays have been caused by an event(s) of force majeure i.e. extraordinary circumstance(s) beyond the control of the airline, the impact of which lead to the cancellation/delay of flight(s), and which could not have been avoided even if all reasonable measures had been taken by the airline. Such extraordinary circumstances may in particular, occur due to political instability, natural disaster, civil war, insurrection or riot, flood, explosion, government regulation or order affecting the aircraft, strikes and labour disputes causing cessation, slowdown or interruption of work or any other factors that are beyond the control of the airline. 1.5 Additionally, airlines would also not be liable to pay any compensation in respect of cancellations and delays clearly attributable to Air Traffic Control (ATC), meteorological conditions, security risks, or any other causes that are beyond the control of the airline but which affect their ability to operate

flights on schedule. Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft or several aircraft on a particular day, gives rise to a long delay or delays, an overnight delay, or the cancellation of one or more flights by that aircraft, and which could not be avoided even though the airline concerned had taken all reasonable measures to avoid or overcome of the impact of the relevant factor and, therefore, the delays or cancellations.

x x x

x x x

x x x

3.4 Delay in Flight

3.4.1 The airlines shall provide facilities in accordance with Para 3.6.1 (a) if the passenger has checked in on time, and if the airline expects a delay beyond its original announced scheduled time of departure or a revised time of departure of:

- a) 2 hours or more in case of flights having a block time of up to 2 = hrs; or
- b) 3 hours or more in case of flights having a block time of more than 2 = hrs and up to 5 hours; or
- c) 4 hours or more in case of flights not falling under sub-para (1) and (b) of Para 3.4.1.

3.4.2. When the reasonably expected time of departure is more than 24 hours, after the scheduled time of departure previously announced, the airline shall provide facility to the passengers in accordance with the provisions of para 3.6.1(b) hereunder.

3.4.3 An operating airline shall not be obliged to adhere to Para 3.6 if the delay is caused due to extra ordinary circumstances as defined in Para 1.4 and Para 1.5 which could not have been avoided even if all reasonable measures had been taken.

x x x x x x x x x

3.6 Facilities to be offered to Passengers 3.6.1 Passengers shall be offered free of charge the following:

- a) Meals and refreshments in relation to waiting time.
- b) Hotel Accommodation when necessary (including transfers). 3.6.2 Airlines shall pay particular attention to the needs of persons with reduced mobility and any other person (s) accompanying them. 3.8 General 3.8.1 The airlines shall display their policies in regard to compensation, refunds and the facilities that will be provided by the airline in the event of denied boardings, cancellations and delays on their respective websites as part of their passenger Charter of Rights. Passengers shall be

fully informed by the airlines of their rights in the event of denied boarding, cancellations or delays of their flights so that they can effectively exercise their rights provided at the time of making bookings/ticketing, they have given adequate contact information to the airline or their agents. The obligation of airlines to fully inform the passenger(s) shall be included in ticketing documents and websites of the airlines and concerned third parties (GDS and travel agents) issuing such documents on airlines' behalf. "

(emphasis supplied)

24. We may also refer to Regulation (EC) No.261/2004 of the European Parliament and of the Council, establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, to know the European standards. Clause (17) of the preamble thereto provides thus :

"(17) Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions."

(emphasis supplied)

Article 6 deals with delay, Article 8 deals with reimbursement and Regulation 9 deals with passengers' right to care. We extract below the relevant regulations :

"Article 6 (Delay)

1. When an operating air carrier reasonably expects a flight to be delayed beyond its scheduled time of departure:

(a) for two hours or more in the case of flights of 1,500 kilometres or less; or

(b) for three hours or more in the case of all intra-Community flights of more than 1,500 kilometres and of all other flights between 1,500 and 3,500 kilometres; or

(c) for four hours or more in the case of all flights not falling under (a) or (b), Passengers shall be offered by the operating air carrier:

(i) the assistance specified in Article 9(1)(a) and 9(2); and

(ii) when the reasonably expected time of departure is at least the day after the time of departure previously announced, the assistance specified in Article 9(1)(b) and 9(1)(c); and

(iii) when the delay is at least five hours, the assistance specified in Article 8(1)(a).

2. In any event, the assistance shall be offered within the time limits set out above with respect to each distance bracket. Article 8 (Right to reimbursement or re-routing)
xxxx Article 9 (Right to care)

1. Where reference is made to this Article, passengers shall be offered free of charge:

(a) meals and refreshments in a reasonable relation to the waiting time;

(b) hotel accommodation in cases where a stay of one or more nights becomes necessary, or where a stay additional to that intended by the passenger becomes necessary;

(c) transport between the airport and place of accommodation (hotel or other).

2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails."

(emphasis supplied)

Liability for damages for delay

25. Rule 19 of Second Schedule to Carriage by Air Act, makes it clear that the carrier is not liable for damage occasioned by delay in the carriage by air of passengers. The position would be different if under the contract, the carrier agrees to be liable for damages. On the other hand, the IndiGo Conditions of Carriage categorically state that the carrier will not be liable to pay any damages for delays, rescheduling or cancellations due to circumstances beyond the control of IndiGo. There is no dispute that in this case, the delay was for reasons beyond the control of the carrier. The guidelines show that the operating air carrier would not be liable to pay compensation to a passenger, in respect of either cancellation or delays attributable to meteorological conditions (weather/fog etc.,) or air traffic control directions/instructions, which are beyond the control of the air carrier. The Permanent Lok Adalat recorded a finding of fact that delay was due to dense fog/bad weather and want of ATC clearance due to air traffic congestion, which were beyond the control of the air carrier and as a consequence rightly held that the air carrier was not liable for payment of any compensation for the delay as such. We may note this was the position as on the date of the incident (14.12.2007) and even subsequently, after the issue of the guidelines dated 6.8.2010 by the DGCA.

Liability to provide facilitation during delay

26. The issue of responsibility for delay in operating the flight is distinct and different from the responsibility of the airline to offer facilitation to the passengers grounded or struck on board due to delay. If the obligation to provide facilitation to the passengers is legally recognized, either based on statutory requirements or contractual obligations or recognized conventions, failure to provide the required minimum facilitation may, depending upon the facts of the case, amount to either breach of statutory/contractual obligation, negligence,

want of care or deficiency in service on the part of the operating airline entitling the passengers for compensation.

27. We may consider whether there was any such obligation to provide facilitation to passengers by the appellant on 14.12.2007. As per the DGCA's guidelines dated 5.12.2007 which were in force on 14.12.2007, there was such obligation on the part of the carrier. Clause 35 provided if the flight is delayed, after boarding, appropriate facilitation has to be given by the Airlines on board. Clause 36 provides that the Airlines, even low cost carriers, had to provide facilitation in terms of tea/water/snacks to the passengers of their delayed flights.

28. Under the CAR circular dated 6.8.2010 which came into effect on 15.8.2010, in the event of delays attributable to air traffic control or meteorological conditions, the operating Airlines shall have to offer to the passengers free of cost, meals and refreshment in relation to waiting time, vide clause 3.6.1(a) read with clause 3.4.1. Facilitation of passengers who are stranded after boarding the aircraft on account of delays is an implied term of carriage of passengers, accepted as an international practice, apart from being a requirement to be fulfilled under DGCA's directives. Such facilitation which relates to the health, survival and safety of the passengers, is to be provided, not only by full service carriers, but all airlines including low cost carriers. This obligation has nothing to do with the issue of liability or non-liability to pay compensation to the passengers for the delay. Even if no compensation is payable for the delay on account of bad weather or other conditions beyond the control of the air carrier, the airline will be made liable to pay compensation if it fails to offer the minimum facilitation in the form of refreshment/water/beverages, as also toilet facilities to the passengers who have boarded the plane, in the event of delay in departure, as such failure would amount to deficiency in service. At the relevant point of time (14th December 2007), in the event of delay, passengers on-board were to be provided by the air carriers, including low cost carriers, facilitation by way of snacks/water/tea apart from access to toilet. [Note: The facilitation requirement was subsequently revised and upgraded with effect from 15.8.2010 as "adequate meals and refreshments" due during the waiting period].

29. We may at this juncture refer to the decision of this Court in *Ravneet Singh Bagga vs. KLM Royal Dutch Airlines*¹, wherein the distinction between a deficiency in service and negligence is brought out. This Court held:

"6. The deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it. The complainant has, on facts, been found to have not established any willful fault, imperfection, shortcoming or inadequacy in the service of the respondent. The deficiency in service has to be distinguished from the tortuous acts of the respondent. In the absence of deficiency in service the aggrieved person may have a remedy under the common law to file a suit for damages but cannot insist for grant of relief under the Act for the alleged acts of commission and omission

attributable to the respondent which otherwise do not amount to deficiency in service..... If on facts it is found that the person or authority rendering service had taken all precautions and considered all relevant facts and circumstances in the course of the transaction and that their action or the final decision was in good faith, it cannot be said that there had been any deficiency in service. If the action of the respondent is found to be in good faith, there is no deficiency of service entitling the aggrieved person to claim relief under the Act. The rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of bonafide, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service."

Effect of IndiGo Conditions of Carriage on the liability for facilitation

30. The next question is whether the exclusion clause in the IndiGo Conditions of Carriage can absolve liability to provide facilitation to passengers affected by delay. The relevant clause in the Indigo conditions of carriage is extracted below :

"Flight Delays, Reschedule or Cancellations IndiGo reserves the right to cancel, reschedule or delay the commencement or continuance of a flight or to alter the stopping place or to deviate from the route of the journey or to change the type of aircraft in use without incurring any liability in damages or otherwise to the Customers or any other person whatsoever. Sometimes circumstances beyond IndiGo's control result in flight delays, reschedule or cancellations. In such circumstances, IndiGo reserves the right to cancel, reschedule or delay a flight without prior notice. Circumstances beyond IndiGo's control can include, without limitation, weather; air traffic control; mechanical failures; acts of terrorism; acts of nature; force majeure; strikes; riots; wars; hostilities; disturbances; governmental regulations, orders, demands or requirements; shortages of critical manpower, parts or materials; labour unrest; etc. IndiGo does not connect to other airlines and is not responsible for any losses incurred by Customers while trying to connect to or from other airlines. If an IndiGo flight is cancelled, rescheduled or delayed for more than two/three hours (depending on the length of the journey), a Customer shall have to right to choose a refund; or a credit for future travel on IndiGo; or re-booking onto an alternative IndiGo flight at no additional cost subject to availability.

X X X X X X X X

Please note that in the event of flight delay, reschedule or cancellation, IndiGo does not provide compensation for travel on other airlines, meals, lodging or ground transportation."

(emphasis supplied)

31. The said exclusion clause no doubt states that in the event of flight delay, IndiGo would not provide any "meals". But it can apply to passengers who have not boarded the flight and who have the freedom to purchase food in the airport or the freedom to leave. It will not apply to passengers who are on board and the delay in the flight taking off, denies them access to food and water. In the extra-ordinary situation where the passengers are physically under the complete care and control of the airline, as it happens when they have boarded the aircraft and have no freedom to alight from the aircraft, the duty of the airlines to protect and care for them, and provide for basic facilitation would prevail over any term of the contract excluding any facilitation (except where the carrier itself cannot access food due to emergency situations). No public utility service can say that it is not bound to care for the health, welfare and safety of the passengers because it is a low cost carrier. At all events, the said clause in question stood superseded, in so far as flights taking off from IGI Airport, Delhi, having regard to the guidelines relating to Aircraft operations during low visibility conditions at IGI Airport, Delhi, which provide that all airlines including low cost carriers shall provide facilitation in terms of tea/water/snacks to the passengers of delayed flights. (The DGCA directives in force from 15.8.2010 clearly provide that passengers shall be offered free of cost meals and refreshment in relation to the waiting time). What we have stated above is with reference to the passengers on board, in delayed flights which have not taken off. Subject to any directives of DGCA to the contrary, the exclusion clause will be binding in normal conditions, that is, during the flight period, once the flight has taken off, or where the passenger has not boarded. What was the period of delay?

32. The respondent's complaint is about the inordinate delay of eleven hours after boarding. The question is whether there was a delay of nearly eleven hours, as contended by the respondent. It is true that the respondent was confined to the aircraft for nearly eleven hours on account of the delay. But a careful examination of the facts will show that the delay in a sense was not of 11 hours (from 5.35 a.m. to 4.37 p.m). The respondent first took flight No.6E- 301 which was scheduled to depart at 6.15 a.m. and boarded that flight at 5.45 a.m. When that flight was unduly delayed on account of the bad weather around 11.15 a.m. the said flight was cancelled and was combined with subsequent flight No.6E-305 due to depart at 12.15 p.m. When flight No.6E-301 was cancelled all its passengers were given the option of refund of the fare or credit for future travel or re-booking on to an alternative Indigo flight. Because the delayed flight was combined with the subsequent flight and the same aircraft was to be used for the subsequent flight that was to take off at 12.15 p.m., the respondent and some others, instead of opting for refund of the air fare or re- booking on a subsequent flight, opted to continue to be in the aircraft and took the combined flight which was scheduled to depart at 12.15 p.m. subject to ATC clearance. In so far as flight No.6E-301 is concerned, after a delay of about five hours it was cancelled and the passengers could have left the aircraft as many did. If the respondent continued to sit in the aircraft, it was because of his voluntary decision to take the later flight which was a combination of flight No.6E-301 and 6E-305 which was due to depart at 12.15 p.m. (subject to ATC clearance) and that was delayed till 4.37 p.m. Therefore the delay in regard to the combined flight which was due for departure at 12.15 p.m. was four hours and twenty minutes.

33. The respondent was offered the choice of refund of fare, credit for a future travel on IndiGo or rebooking in a subsequent IndiGo flight. The third option was further extended by giving the option to remain on board by taking the subsequent combined flight using the same aircraft subject to ATC's clearance. The respondent consciously opted for the third choice of continuing in the combined flight and remained in the aircraft. Therefore, the stay of eleven hours in the aircraft was a voluntary decision of the respondent, as he could have left the aircraft much earlier around 11.00 a.m. by either opting to obtain refund of the air fare or by opting for credit for future travel or by opting for an IndiGo flight on a subsequent day. Having opted to remain on board the respondent could not make a grievance of the delay, or non-availability of food of his choice or medicines. Whether the airline failed to provide facilitation to respondent?

34. It is not in dispute that during the initial period of delay, when it was not known that there would be considerable delay, the respondent purchased a sandwich in the normal course. When flight No.6E-301 was cancelled and combined with the subsequent flight No.6E-305, the on-board passengers including respondent who opted to continue in the flight were offered snacks (sandwiches) and water free of cost, around 12 noon. As the combined flight (No.6E-305) was also delayed, a second free offer of sandwiches and water was made around 3 p.m. But the second time, what was offered to respondent was a chicken sandwich and as the respondent who was a vegetarian refused it, he was offered biscuits and water, instead. It is not the case of the respondent that toilet facilities were denied or not made available. In the circumstances, the appellant being a low cost carrier, the facilitations offered by it, were reasonable and also met the minimum facilitation as per the DGCA guidelines applicable at the relevant point of time.

35. In the absence of prior intimation about the preference in regard to food and in emergency conditions, the non-offer of a vegetarian sandwich in the second round of free snacks cannot be considered to be a violation of basic facilitation. While the dietary habits or religious sentiments of passengers in regard to food are to be respected and an effort should be made to the extent possible to cater to it, in emergency situations, non-offer of the preferred diet could not be said to be denial of facilitation, particularly when the airline had no notice of passengers' preference in food. In fact, the appellant being a low cost carrier, there was also no occasion for indicating such preferences. We however note that in the subsequent DGCA guidelines which came into effect from 15.8.2010, the facilitation to be provided has been appropriately upgraded by directing that the delayed passengers are to be provided with meals and refreshment as and when due depending upon the period of delay.

36. There is nothing to show that respondent requested for any treatment or medicines during the period when he was on board. He had also not notified the Airlines that he was a patient suffering from an ailment which required medication or treatment. Therefore, the respondent could not expect any special facilitation, even if his condition would have added to his physical discomfort on account of delay. Whether respondent is entitled to compensation for detention at Hyderabad?

37. The next question that arises for consideration is whether the appellant is liable to compensate the respondent for the detention for nearly one and half hours after disembarkation at Hyderabad. The appellant's version is that respondent started abusing and misbehaving with the crew members using vulgar and threatening language, that he threw the biscuits offered on a crew member, that he was detained for the purpose of enquiry by the Assistant Manager of the appellant at Hyderabad on the complaint of the crew members, but to avoid unnecessary complications and good customer relations, the crew members decided not to give written complaint and therefore he was permitted to leave after some time. The respondent's version is that the complaint by the crew was false and this was proved by the fact that they did not give a written complaint. There is no evidence as to what transpired and the two versions remained unsubstantiated. But the undisputed facts show he was asked to remain in view of a complaint by the crew, that CSIF personnel stated that unless there was written complaint, no action could be taken, that the crew did not give written complaint and the respondent was permitted to leave after about an hour of disembarkation. On the facts and circumstances this cannot be termed to be unnecessary or deliberate harassment by the airlines. While the airlines ought to have been sensitive to the travails of the passengers who were cooped up in the aircraft for more than thirteen hours without adequate food or other facilities, the airlines also could not ignore any complaint by the crew about any unruly behaviour of any passenger. Be that as it may. In this case neither the Permanent Lok Adalat, nor the High Court has recorded any finding of wrongful or vexatious detention or harassment. Therefore the question of awarding compensation under this head also does not arise. Whether the appellant is liable to pay damages?

38. The Permanent Lok Adalat has held that when there was an inordinate delay after completion of boarding, the airlines had a moral duty, irrespective of rules and regulations, to take back the passengers to the airport lounge by obtaining necessary approvals from the airport/ATC authorities and keep the passengers in the lounge till the clearance for the flight to take off was given and failure to do so was an unexcusable and unbecoming behaviour on the part of the airline. We agree that the carrier should take steps to secure the permission of the Airport and ATC authorities to take back the passengers who had already boarded to the airport lounge when there was an inordinate delay. But the assumption that the rules and regulations had to be ignored or without the consent and permission of the airport and ATC authorities, the airline crew ought to have taken back the passengers to the airport lounge, is not sound. The admitted position in this case is that the airlines made efforts in that behalf, but permission was not granted to the airlines to send back the passengers to the airport lounge, in view of the heavy congestion in the airport. The airport and the ATC authorities are not parties to the proceedings. If permission was not granted for the passengers to be taken to the airport lounge, the airlines cannot be found fault with. Therefore, the observation that failure to take the passengers to the airport lounge was unexcusable and unbecoming behaviour on the part of the airlines, was not warranted on the facts and circumstances of the case.

39. The High Court has justified the award of damages on the ground that as appellant did not operate IndiGo flight No.6E-301 as per schedule and caused inconvenience to a passenger who is a diabetic patient, he was entitled to nominal damages for deficiency in

service. Where the delay is for reasons beyond the control of the airlines as in this case due to bad weather and want of clearance from ATC, in the absence of proof of negligence or deficiency in service the airlines cannot be held responsible for the inconvenience caused to the passengers on account of the delay. The justification for damages given by the High Court does not find support either on facts or in law. Conclusion

40. There can be no doubt that the respondent, like any other passenger forced to sit in a narrow seat for eleven hours, underwent considerable physical hardship and agony on account of the delay. But, it was not as a consequence of any deficiency in service, negligence or want of facilitation by the appellant. Consumer fora and Permanent Lok Adalats can not award compensation merely because there was inconvenience or hardship or on grounds of sympathy. What is relevant is whether there was any cause of action for claiming damages, that is whether there was any deficiency in service or whether there was any negligence in providing facilitation. If the delay was due to reasons beyond the control of the airline and if the appellant and its crew have acted reasonably and in a bona fide manner, the appellant cannot be made liable to pay damages even if there has been some inconvenience or hardship to a passenger on account of the delay.

41. If a flight had remained on tarmac without taking off, for eleven hours, after boarding was completed, and if permission was refused to send the passengers to the Airport lounge, the Airport and ATC authorities have to be blamed for requiring the passengers to stay on board. Normally if the aircraft has remained on tarmac for more than two or three hours after boarding is closed, without the flight taking off, the passengers should be permitted to get back to the airport lounge to get facilitation service from the airline. Whenever there is such delay beyond a reasonable period (say three hours), the passengers on board should be permitted to get back to the airport lounge. If for any unforeseen reason, the passengers are required to be on board for a period beyond three hours or more, without the flight taking off, appropriate provision for food and water should be made, apart from providing access to the toilets. Congestion in the airport on account of the delayed and cancelled flights can not be a ground to prevent the passengers on board from returning to the airport lounge when there is a delay of more than two hours after completion of boarding. While the guidelines issued by the DGCA cover the responsibilities of the airlines, DGCA and other concerned authorities should also specify the responsibilities of the airport and the ATC authorities to ensure that no aircraft remains on tarmac for more than three hours after the boarding is closed and that if it has to so remain, then permit the passengers to return to the airport lounge from the aircraft, till the aircraft is ready to take off. DGCA shall also ensure that the conditions of carriage of all airlines in India is in consonance with its Civil Aviation Directives.

42. In view of our findings, this appeal is allowed. The order of the Permanent Lok Adalat affirmed by the High Court awarding damages and costs to the respondent is set aside and the application of respondent for compensation is rejected. We place on record, our appreciation for the assistance rendered by Shri V. Giri, senior counsel, as amicus curiae.

¹(2000) 1 SCC 0066