

(1990) 08 DEL CK 0004

In the Delhi High Court

Case No : Civil Writ Appeal No. 637 of 1988

Air India

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Air Corporations Act, 1953 — Section 13B, 7

Citation : (1991) 43 DLT 17 : (1991) 62 FLR 441 : (1991) LabIC 451

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : F.S. Nariman, N.S. Shetty, M.P. Barucha, R.N. Karanjawal, Ashish Wad, V.S. Rekha, V.K. Makhija, Indira Jaising, Manjari Dingwaney, Jitendra Sharma and P. Gaur, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The challenge is to this writ petition is to the applicability of the Industrial Employment (Standing Orders) Act, 1946 to Air India.

(2) The petitioner Corporation was incorporated under the provisions of Air Corporation Act, 1953. Section 45 of the said Act, inter alia, enables the Corporation to frame regulations. According to section 45, as it originally stood, the regulations could be framed only with the previous consent of the Central Government. Subsequently, Section 45(2) was amended and it is no longer necessary to obtain; previous consent of the Central Government except that it was still necessary to obtain the government's prior consent in relation to making of the regulations with regard to the terms and conditions of service of officers and other employees of the Corporation, other than the Managing Director and officers of any other categories referred to in section 44.

(3) In pursuance of the powers u/s 45(2)(b) service regulations were, for the first time, notified by the petitioner vide notification published in the Gazette of 5th December 1959. These service regulations had been framed with the prior

approval of the Central Government and then superseded by a fresh set of regulations framed and published in the Gazette of India of 19th October, 1963.

(4) Some time prior to the year 1983, the Deputy Chief Labour Commissioner, New Delhi, (respondent No. 2), initiated proceedings under the 1946 Act for certification of the Standing Orders under the said Act. It was the case of the petitioner before second respondent that 1946 Act was not applicable. The petitioner, however, vide letter dated 2nd February 1983 was required to show cause why legal action should not be taken for violation of the 1946 Act. It was under these circumstances that the petitioner submitted draft standing orders. The representative of the petitioner attended the proceedings before the second respondent and again contended that the said Act was not applicable. Vide order dated 3rd August 1983 the second respondent did not accept the preliminary objection and he came to the conclusion that the 1946 Act was applicable. The second respondent thereafter started proceedings in connection with certification of the standing orders and the standing orders were finally certified vide order dated 31st January 1986.

(5) An appeal was filed against the aforesaid order and once again an objection was raised regarding the applicability of the said Act. Vide order dated 17th March 1988, the appellate authority overruled, the preliminary contentions raised off behalf of the petitioner. It is thereafter that the present writ petition has been filed. During pendency of the writ petition, operation of the standing orders has been stayed.

(6) It is contended by learned counsel for the petitioner that in view of the specific provisions of section 45 of the Air Corporation Act, 1946 Act does not apply. According to the learned counsel, the scheme of the Act clearly shows that the intention of the Legislature was that it is only the regulations which should be applicable to the employees and not the standing orders. In support of this contention, it was urged that originally all the regulations made u/s 45 required the prior concurrence of the Central Government but after its amendment, it is only regarding regulations framed u/s 45(2)(b) that prior concurrence is required. Learned counsel submits that this is a special provision and Therefore the provisions of the Standing Orders Act, 1946 would have no application. It is also contended that the petitioner is under legal obligation to comply with the directions of the Central Government. It is the Central Government which has granted approval to the regulations which have been made and, furthermore, u/s 34 the Central Government can issue directions, from time to time, and the Corporation is under an obligation to carry them out. The learned counsel submitted that if there are any directories which are issued contrary to the standing orders, then the petitioner would be in quandary because, on the one hand, it will have to comply with the directions issued u/s 34, while, on the other hand, it would be obliged to comply with the terms of the standing orders.

(7) We see no difficulty in the applicability of the 1946 Act in the present case. It has been held by the Supreme Court in the case of The U.P. State Electricity

Board and another v. Hari Shanker Jain and others, Air 1979 S C 65,(1) that 1946 Act was a special Act. In that case, the Court was concerned with the powers which had been given to frame regulations under the Electricity (Supply) Act, 1948. It was an Act later in point of time than the Standing Orders Act 1946. A contention had been raised before the Supreme Court that the regulations framed under the Electricity (Supply) Act, 1948 would override the provisions of the Standing Orders Act. Repelling this contention, the Supreme Court observed that the Standing Orders Act was a special Act while the Electricity (Supply) Act was a general Act. It further observed that the Standing Orders Act would apply and not the Electricity (Supply) Act. In that case, however, the notification had been issued u/s 13B of the 1946 Act and, Therefore, those regulations fell outside the purview of the Standing Orders Act. The aforesaid decision is clearly applicable to the present case. Section 45 is similar to section 79 of the Electricity (Supply) Act, 1948. It is true that u/s 79, the approval of the Central Government is not required whereas it is necessary to obtain prior approval of the Central Government u/s 45(2)(b) but this, in our opinion, would not oust the applicability of the Standing Orders Act. The necessity to obtain prior approval will not make the Air Corporation Act a special Act. The special Act has necessarily to be the Standing Orders Act because that deals with a specific problem, namely, promulgation of Standing Orders with regard to a section of employees of the petitioner. It is to be borne in mind that the Standing Orders Act does not apply to those employees of the petitioner who do not come in the category of "workman" Therefore, the necessity of the previous approval of the Central Government -would mean that with regard to promulgation of the regulations for the employees other than "workmen" Central Government's approval has to be obtained The fact that Air Corporation Act was not to be regarded as obliterating the applicability of Standing Orders Act is also evident from section 7 of the Air Corporation Act.

(8) Section 7(1) of Air Corporation Act, inter alia, provides that it shall be the function of the Corporation to provide safe, efficient, adequate transport services. Sub-section (2) gives, the Corporation powers to do a number of acts and sub-section 2(1) states that it has the power to take all steps as may be convenient or necessary or incidental to the exercise of any powers for discharging any function or duty conferred or imposed on it by this Act. One of the powers which has been conferred by this Act is the power u/s 45 to frame regulations. Sub; section (3) of section 7, which is important, provides that nothing contained in section 7 shall be construed as authorising the disregard by the Corporation of any law for the time being in force. This clearly shows that any action which may be taken by the Corporation has to be in conformity with the laws of the land. For example, the Corporation cannot frame rules and regulations without the consent of the Central Government, which have the effect of being contrary to the other laws of the land, like Bonus Act, Gratuity Act etc. Similarly, the regulations which are framed have to be in conformity with Standing Orders Act 1946.

(9) We do not find that approval of the Central Government granted u/s 45(2)(b) is an impediment in" the applicability of the 1946 Act. It is true that the Central Government has granted approval to the regulations which have been framed but those regulations deal with not only the workmen but also with other categories of employees who are not covered by the Standing Orders Act. Merely because the Central Government has granted approval to the regulations, including those regulation"s which deal with the workmen, cannot mean that the Standing Orders Act would cease to apply. To the extent that the Central Government has granted approval to the regulations dealing with the workmen, the exercise would be regarded as being without authority of law. Because section 45(2)(b) does not enable the petitioner to frame regulations in connection with the workmen, who are to be governed by the Standing Orders Act, the framing of those regulations and the approval thereof, would be regarded as non est. Similarly, any direction"s issued by the Central Government u/s 34 in so far as they are contrary to the Standing Orders Act, would have to be ignored by the Corporation.

(10) We, Therefore, have no hesitation in coming to the conclusion that the Standing Orders Act is applicable in the present case and the Air Corporation Act does not apply to the petitioner.

(11) It was then contended that the regulations having been notified, this Court must construe them as having been notified, section 13B of the Standing Orders Act. Section 13B reads as follows :

"13B.Act not to apply to certain industrial establishments. -Nothing in this Act shall apply to an industrial establishment in so far as the workmen employed, therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification. Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised .Leave Rules, Civil Service Regulations, Civilians in defense Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by. the appropriate Government in the Official Gazette, apply."

If the appropriate Government notifies in the Official Gazette the service regulation"s, then there can be no doubt that the Standing Orders Act would not be applicable. We are in agreement with the contentions on behalf of the petitioner that if a proper notification is made, then it is not necessary that in the notification itself reference need be made to section 13B itself. In this behalf, reliance is placed on the judgment of the Karnataka High Court in the case of K.V.R. Shetty v. Secretary to Government, Home Department and others, 1980 (LLJ)265. In that case a notification was issued by the Governor under the Karnataka State Road Transport Corporations Servants (Conduct and Discipline) Regulations. 1971. That notification was not stated to have been made u/s 13B but it was still contended that the said notification should be construed as having been issued u/s 13B. This contention was upheld and it was, Therefore, held that the Standing Orders Act did not apply.

(12) In the present case, the aforesaid decision can be of little assistance to the petitioner. One of the important requirements of Section 13B is that the notification must be issued by the appropriate Government. It is not in dispute that the appropriate Government in the present case is the Central Government. The notification, however, has been issued by Air India and not by the Central Government. This being so, the said notification cannot be regarded as having been issued u/s 13B.

(13) It is also contended, and in our opinion rightly, by the learned counsel for the respondent that Air India itself did not regard the said notification as having been issued u/s 13B. It is for this reason that the petitioner had been seeking exemption u/s 14 of the 1946 Act. If the regulations were to be regarded as having been issued u/s 13B, then there would have been no necessity of seeking exemption u/s 14. Furthermore, the appropriate Government namely, the Union of India, in the affidavit filed before us in the present writ petition have clearly taken the stand that the Standing Orders Act applies and they had taken into consideration the contention of the petitioner with regard to section 13B. Therefore, when the appropriate Government itself states that the Standing Orders Act applies, it means that it has not exercised its jurisdiction u/s 13B.

(14) The government did not grant exemption u/s 14 and this also indicates that there was never the intention of the Central Government to exempt the petitioner from the applicability of 1946 Act.

(15) Before concluding, we may also refer to a statement made on the floor of Parliament by the then Minister of Tourism and Civil Aviation, Mr. Khursheed Alam Khan in answer to a starred question whether the model rules have been adopted by the Indian Airlines and Air India or not. It was stated by the Hon'ble Minister in his reply on 3rd May 1983 that Air India and Indian Airlines have proposed amendments to the existing service regulations to bring them in line with model conduct rules and that these regulations would apply to the employees other than the workmen under the 1946 Act. It was further stated that Air India, with regard to workmen, had framed draft Standing Orders and had submitted them for certification. This clearly shows that the government always were of the view that 1946 Act applied to the petitioner. For the aforesaid reasons, this writ petition is dismissed with costs.