

(1981) 01 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 44 of 1981

Air India Cabin Crew Association and others

APPELLANT

Vs

Air India

RESPONDENT

Date of Decision : 23-01-1981

Acts Referred:

Air Corporations Act, 1953 — Section 7, 9
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 9A, 9B

Citation : (1981) 2 LLJ 306

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

1. This petition questions the legality and validity of the action taken by the respondent-Air India reducing with effect from Flight A1-115 of 4th January, 1981 the cabin crew complement on its B-747 flights from its pre-existing total of nineteen members to eighteen members, vide circular dated 3rd January, 1981 (exhibit D to the petition).

2. Hearing in extenso the rival submissions of the respective counsel and going through the petition, reply and rejoinders as also the reported and unreported judgments cited before me, I am of the view that this is not a case warranting interference under Art. 226 of the Constitution. Indeed, grant of any relief herein is beset with many difficulties.

3. At the outset and as rightly urged on behalf of the respondent-Air India, the question of deployment and or reduction of cabin crew complement as also the matter of standard force and or pattern of crew scheduling are matters essentially and basically partaking the character of management functions. It is not a matter of industrial adjudication. Though effort was made to challenge this position, the same by now stands beyond the pale of controversy not only by virtue of awards and settlements under the Industrial Disputes Act (hereinafter the Act) but also by binding decisions of this Court. Mr. Justice Khosla's Award

dated 10th February, 1966 held that.

"..... the final determination of the standard force must rest with the management".

Mr. Justice Mahesh Chandra's subsequent Award dated 25th February, 1972 published in the Central Government Gazette on 25th March, 1972 - extract whereof appears at Ext. A to the petition - specifically reiterates the aforesaid position. Why, even the settlement dated 6th October, 1972 which took place during the pendency in the Supreme Court of two special leave petitions (one by the union and the other by the management) - challenging Mr. Justice Mahesh Chandra's Award - extract whereof is annexed at Ext. B to the petition - also categorically states :

"..... the final decision will be taken by the Chairman and the Managing Director and their decision on Crew Complement or any modification in : he equipment shall be final and binding on the union".

This position stands further reiterated by judgment dated 4th July, 1974 by Mr. Justice Rege in Miscellaneous Petition No. 281 of 1974, in which judgment Rege, J., held as follows :

"..... It cannot be disputed that the operation of flights in different sectors on a particular pattern and the consequential scheduling of the crew is purely a managerial function which the respondents are enjoined to perform in discharge of several duties and functions imposed upon them under the Air Corporations Act, viz., to provide safe, efficient, adequate, economical and properly co-ordinated air transport services".

And still further :

"... As I have pointed out above, operation of flight on a particular pattern is managerial function and the petitioners cannot acquire a right therein by usage or otherwise".

The decision of Rege, J., was confirmed by a Division Bench (Malvankar and Sawant JJ.) of this Court which, by its judgment dated 26th, 27th, and 30th September and 1st October, 1974, dismissed Appeal No. 157 of 1974 against the said decision. The question is thus no longer res integra. It stands concluded. Reopening thereof is not permissible in the instant proceedings.

4. It is, however, contended on behalf of the petitioners that reduction of the cabin crew complement amounts to change in the conditions of service within the meaning of S. 9A read with the Fourth Schedule of the Act and, therefore, cannot be effected without notice of change. This contention has no force because under S. 9B of the Act, it is open to the appropriate Government to exempt an industrial establishment from the provisions of S. 9A and in this case, the Government has in fact, by notification dated 29th August, 1960, exempted Air India from the said provisions. Section 9A. Therefore, has no application. That

apart, and even assuming that S. 9A can be invoked, even so, the aforesaid contention must fail because under proviso (b) to that very section, no notice of change is necessary where the the workmen likely to be affected thereby are persons to whom rules/regulations that may be notified in that behalf by the appropriate Government apply. In the present case, the Government has notified Air India Employees" Service Regulations which apply to the workmen herein. In either view of the matter, therefore, there is no necessity of any notice of change under S. 9A of the Act. Moreover, contentions similar hereto were raised by this very Association-petitioner No. 1 herein before Rege, J., deciding Miscellaneous Petition No. 81 of 1974 as also before Malvankar and Sawant, JJ., in appeal, being Appeal No. 157 of 1974 therefrom. Both the Courts rejected the said contentions. In the circumstances, it is too late in the day to seek to re-open and reargue the same contentions again.

5. The learned counsel for the respondent urged that the basic test under S. 9A being that the workmen are likely to be affected and that not being the case here, the contention based on S. 9A must, on this ground also, fail. In support thereof, reliance was placed on a ruling of the Supreme Court in Hindustan Lever Ltd. Vs. Ram Mohan Ray and Others, which reads as follows :

"..... It must be remembered that the 4th Schedule (to the Act) relates to conditions of service for change of which notice is to be given and S. 9A requires the employer to give notice under that section to the workmen likely to be affected by such change. The word "affected" in the circumstances could only refer to the workers being adversely affected ..."

It is not, however, necessary to go into and consider this submission because I am satisfied that S. 9A has no application to the instant case firstly, because of the exemption notification already referred, to and secondly, because of the Air India employees service regulations being covered by proviso (b) to the said section.

6. Contention next urged on behalf of the petitioners is to the effect that the agreement of 10th February, 1978 (exhibit C to the petition) precludes the management from reducing the cabin crew complement. Now, it cannot be gainsaid that this writing of 10th February, 1978 under heading "Record Note" is not a "settlement" as understood by S. 2(p) of the Act which defines the same read with Rule 62 of the rules under the Act. Of course, lacunae in that behalf will not make the record note an agreement illegal or invalid. The said note must, however, be construed in the proper context and background and given its appropriate signification accordingly.

7. Mr. Justice Khosla's Award, while declaring that the final determination of the aforesaid force must rest with the management has, thereafter, recorded the managements willingness to "consult". This position stands re-affirmed by Mr. Justice Mahesh Chandra's Award. The settlement of 6th October, 1972 (pending the special leave petitions in the Supreme Court) permitted a "recommendation"

in the aforesaid behalf but emphasised and reiterated that the "final decision" would be taken by the Chairman and the Managing Director whose decision on crew complement "shall be final and bindings on the union". The crux of the matter, therefore, is willingness to consult and consultation. It must, in this context, be held in all fairness that the record note Ext. C was the record of this willingness to consult and actual consultation. That the said consultation resulted in the said record note is, indeed, a fortuitous circumstance. Even in the absence of the said note, the management would have been perfectly within its rights to take its final decision in the matter of crew complement which decision would have been binding on the union and the workmen. In these circumstances, the said note cannot be elevated to any higher legal status. It embodies the final result of the process of consultation initiated at that time. At the present time also, the management did consult the union In fact and despite urgency, as many as nine meetings were held to discuss this and other points. Ultimately, the union not having effectively responded and having indicated an unfortunate attitude of prolongation and delay resulting in continued (purported on this item itself to be Rs. 70,00,000 per annum) losses to the corporation, the management had to take an expeditious decision in the matter.

8. It was next urged that this decision was bad because reduction in the cabin crew complement was agreed to be made effective conditional upon and concurrent with change in the galley equipment, alteration in meal service procedures and meal schedules, introduction of trolley service, abolition of service on short sectors, payment of productivity allowance, etc., vide paragraph 5, page 7 of the rejoinder. This contention also is without any merit. It is significant to not that such a contention carrying importance of its own finds no place at all in the petition. It is reflected for the first time in the rejoinder. It is clearly an afterthought. This is further seen from the fact that Ext. D to the petition itself, and correctness whereof is nowhere challenged in the petition, records as follows

"In the late evening of the said day (2-1-1981). They met the Dy. H.D., who impressed on them the urgent need to introduce 747 flights with upper deck configuration as everyday's delay meant a considerable additional expenditure and loss of revenue to the Corporation. After some discussion despite being assured that discussions could be continued after the introduction of the reduced crew complement, the representatives of the Association stated that they would have to first clarify certain points in the draft understanding and then discuss the same with their Committee members, after which, they would positively contact the Director of personnel & Industrial Relations on Saturday, 3rd instant and finalise the understanding so that the reduced complement of cabin crew could be introduced with effect from the midnight of January 3, 1981".

Now, there could have been no question of the reduced complement of cabin crew being introduced with effect from the midnight of 3rd January, 1981 and if that was to be decided conditionally upon and con-currently with several other

changes and alterations because the alleged other changes and alterations were in their very nature not possible to be introduced and effected almost overnight. The petitioners are now obviously trying to overreach this situation by introducing altogether new factors for the first time in the rejoinder and raising, on that basis, a new contention of fact. The same is without substance and is rejected.

9. The contention of increase in workload has also no merit therein. It is pertinent to note that from the cabin crew complement of nineteen members, only one is reduced and that too not of any air hostess who is perhaps the most important from workload point of view but of only a Flight purser. Again, this reduction also is presently only in Zone D which has only eight-six seats as compared to one hundred and twelve seats in Zone C and one hundred and twenty-three seats in Zone E.

This reduction in regard to cabin crew complement can have no worthwhile effect on safety aspects because it is the operating crew and not the cabin crew which has a direct nexus with safety. Still further, as averred in the affidavit in reply on behalf of the respondents :

"The alleged complaint of increase in workload is really not a correct one. As shown in the statement annexed hereto and marked Ext. No. 2 as against a cabin crew complement of 18 (against which complaint is now made for 747 aircraft), 11 other well-known international airlines have cabin crew of lesser numbers. In fact in British Airways where the 1st class seats are substantially more than the present 1st class seating of 747 of Air India and with an upper deck seating the cabin crew complement is only 15. In fact, in most airlines other than Air-India there is a reduction of the crew complement when the actual number of passengers is less than a certain number; this does not operate so far in Air-India.

Air - India operates and has been in operating all its flights including what are known as high density routes and low density routes. Even on those sectors and flights where the passenger load factor is less than 50 per cent the Corporation, unlike other international airlines, carries the full complement of cabin crew without any impairment of their other conditions of service or allowances. The average passengers load factor on 747 aircraft of the respondent is 60 per cent.

In addition, although the agreement with the Association provides for 50 flying hours of work per month the cabin crew actually fly on an average for 35 hours per month. Contention aforesaid on workload is also, therefore, without substance and is rejected.

10. Reference was also made to two rulings of the Supreme Court, viz., (a), Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , and particularly paragraphs 22, 23 and 30 thereof and (b) Om Prakash v. Union of India, . The observations in the said cases do not, however, have much relevance to the question arising in the present petition and do not help the petitioners in

resolving the same in their favour. It would not be proper to rely on observation divorced from the context in which they are made and seek to apply them to a set of facts and circumstances altogether different as in the present case.

11. It is also contended that the impugned decision is arbitrary. Reliance in support thereof was placed on *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , with particular reference to some of the observations extracted below.

"Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement

"The Government is still the Government when its facts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual."

"How, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitation as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance."

"This rule also flows directly from the doctrine of equality embodied in Art. 14. It is now well-settled as a result of the decisions of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , that Art. 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that the State action and must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : It must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legal as well as philosophically an essential element of equality or non-arbitrariness is projected by Art. 4 and it must characteristic every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into otherwise with a third party, but its action must conform to some standard or more which is rational and non-discriminatory."

The learned counsel for the respondent did not, as indeed he could not, dispute the aforesaid position. Indeed, the position envisaged by the aforesaid observations cannot be disputed either by the respondent or even by this Court. The observations extracted aforesaid are binding on all. Question, in this case. However, still survive as to whether the action of the respondent in the instant case can be termed as arbitrary and unfair or is the action rational and not

discriminatory ? Is the action guided by any extraneous or irrelevant considerations or is it governed by reasonableness ? Facts and circumstances in the present case clearly indicate just the reverse of arbitrariness Action here is fair and reasonable. It is just It is also in the proper exercise of management function. It is taken in the best interest of effecting savings. The estimated expenditure by way of allowances, hotel accommodation, etc, over every one member of the cabin crew on overseas flight is approximately Rs. 1,00,000 per year. Reduction of one member would result in a saving of approximately Rs. 70,00,000 per year. There is no good reason to reject this judgment of the respondent-Corporation. Consequently, if the respondent can legitimately effect this saving, its action in that behalf can, with no justification, be called arbitrary. On the contrary, it is not only entitled but indeed bound to effect such saving having regard to the provisions of Ss. 7 and 9 of the Air Corporations Act enjoining upon the respondent to carry out its functions and duties on economical lines and business principles, implicit wherein would be the concept inter alia of financial viability. In the face of the mounting costs of petroleum products and increasing deficits, every legitimate step effecting economy and savings would be not arbitrary, not unjust or irrational but reasonable, just and proper.

12. It may not be out of place to note that this very Association petitioner No. 1 herein had offered the same spirit of delay and non-co-operation to the respondent when, in the year 1974, the respondent sought to effect a change in the flight pattern, i.e., from slip system or slip pattern to temporary base pattern which was yet another aspect relating to cabin crew and management function. Malvankar and Sawant, JJ., hearing Appeal No. 157 of 1974 have, in their judgment, detailed the correspondence in that behalf observing :

"..... the appellants were not prepared to consider the proposal made by the respondents unless certain other outstanding issues like equipment and galley modification, etc., alleged to have been agreed to by the management were implemented".

And further :

"It would thus be seen that since the true definite proposals were made by the respondents to the appellants on 21st February, 1974 till 31st March, 1974 for a period of more than one month, in spite of the repeated requests of the respondents, the appellants did not make any concrete proposals regarding the introduction of the slip system."

History appears to be repeating itself because same and similar indeed has been the attitude of the petitioners here in the present case as was their attitude in the year 1974 in the aforesaid case. One only hopes that industrial peace which is an urgent need of the times is not marred by agitations such as are reflected in the present petition.

13. In the result, this petition fails and the same dismissed.