

(1991) 12 DEL CK 0064
In the Delhi High Court
Case No : C.W.P. No. 3422 of 1989

Indian Airlines

APPELLANT

Vs

Airlines Cabin Crew Assn. and Others

RESPONDENT

Date of Decision : 13-12-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 18(3)

Citation : (1994) 2 LLJ 587

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : Atul Sharma and K.B. Sawhney, for the Appellant; S.L. Hans and Sangeetha Chaudhry, for the Respondent

Judgement

S.C. Jain, J.—Indian Airlines, petitioner herein, by way of this writ petition under Article 226 of the Constitution of India has challenged the reference made by the Ministry of Labour, Government of India, for adjudication of an alleged industrial dispute between the petitioner and Airlines Cabins Crew Association, respondent 2 herein. As per the case of the petitioner, its employees are represented by Air Corporation Employees Union, hereinafter referred to as ACEU, which is recognised by the petitioner to be the sole bargaining agent in respect of various service conditions of various categories of employees including cabin crew and flight steward. As per the case of the petitioner, a settlement was signed by ACEU and the petitioner on October 5, 1987 in conciliation in respect of terms and conditions of service of the workmen including that of cabin crew. On May 8, 1987, the ACEU submitted a charter of demands to the petitioner in respect of terms and conditions of service of various categories of employees of the petitioner including the category of cabin crew. The petitioner entered into the agreement with ACEU and memo of understanding was signed on December 4, 1988 in full and final settlement of the charter of demands. The currency of this settlement was till August 31, 1990. The agreement in the form of memorandum of understanding also covered the categories of cabin crew, which categories are alleged to be represented by respondent 2. The said agreement is binding on

various categories of employees of the petitioner including the category of cabin crew. As per the case of the petitioner, the aforesaid agreement was implemented and almost all the cabin crew have taken benefit of the said agreement. The agreement with ACEU which also includes the demands concerning the cabin crew is just, fair and reasonable and the same stands implemented by virtue of action of the individual cabin crew members having accepted the terms thereof. It has been further pleaded that respondent 2 raised an industrial dispute on September 12, 1988, by giving a strike notice at the time when the terms and conditions of service of cabin crew were governed by subsisting settlement signed on October 5, 1987 by ACEU during conciliation with the petitioner. On the basis of the strike notice, dated September 12, 1988, conciliation proceedings were held by respondent 4 which ended in failure and thereafter a reference was made vide letter, dated September 14, 1989, of 34 demands raised by respondent 2 on the management of Indian Airlines to be adjudicated upon by the Central Industrial Tribunal at Delhi. According to the petitioner, before the reference was made, the petitioner had already entered into a settlement with ACEU on July 21, 1989. Reference made by respondent 1 vide order, dated September 14, 1989, is illegal, unjustified and unfair. No industrial dispute exists between the petitioner and the cabin crew members. Barring a few cases, almost all the cabin crew members have accepted the on-account payment in terms of the said agreement entered into between the management of the petitioner, and the ACEU. As per the case of the petitioner overwhelming cabin crew members by their individual action have accepted the terms of the settlement thereby nullifying the effect of the strike notice dated September 12, 1988, given by respondent 2.

2. Respondent 2 i.e., the Airlines Cabin Crew Association denied the averment made by the petitioner in the writ petition and pleaded, inter alia, that ACEU is not duly and validly registered union to represent the cabin crew of Indian Airlines and, Therefore, is barred from representing workmen under Sub-section 2(q) of Section 2 of the Industrial Disputes Act, 1947. Respondent 2, i.e., Airlines Cabin Crew Association represents overwhelming cabin crew who are its members. The alleged settlement signed by the petitioner on October 5, 1987 in conciliation pertains to the period from 1981 to 1985 and respondent 2 served notice on March 29, 1988 terminating the said settlement. It is further stated that respondent 2 raised charter of demands, dated November 24, 1987, regarding wages and service conditions with effect from October 1, 1985. New wage settlement has already been signed in July 1989 which replaces the settlement of October 5, 1987. The terms and conditions in the wage settlement of July 1989 have been specifically excluded from the reference before the Central Industrial Tribunal. It has been denied that the memorandum of understanding signed on December 4, 1980 is in full and final settlement of the charter of demands of ACEU. As per own letter of the petitioner addressed to ACEU certain point regarding the service conditions of cabin crew, like career, promotion, rationalisation of working hours, will remain to be discussed and to be

examined separately. Respondent 2 further stated that the memorandum of understanding, dated December 4, 1988, is not full and final settlement as alleged. The terms and conditions of the settlement, dated July 21, 1989, have been specifically excluded from the terms of reference before the Tribunal and, Therefore, the reference before the Tribunal is legal and justified. Earlier settlement pertains only to the issues like demands for basic pay, DA, HRA, CCA and these issues have been specifically excluded from the reference in dispute.

3. From the record it is apparent that there are two trade unions, i.e., Air Corporation Employees Union, in short ACEU, which is recognised by the management of the Indian Airlines Corporation and the other is Airlines Cabin Crew Association (respondent 2). Both these unions allege to represent the case of various employees of the petitioner Corporation. The Airlines Cabin Crew Association however alleges that it is a separate union to look after the demand of cabin crew. It is also on record that the petitioner corporation has been entering into settlements with ACEU with respect to demands of employees of various categories of the petitioner Corporation including demand of cabin crew also. Air Corporation Employees Union (ACEU) entered into a settlement in respect of pay-scales and other conditions of service of employees of Indian Airlines Corporation and award was passed in terms of that settlement. Afterwards the said union made a demand in respect of conditions of service of the employees including cabin crew. The Airlines Cabin Crew Association challenged the right of ACEU in entering into a settlement in respect of conditions of service of cabin crew by filing a writ petition before Bombay High Court. It was ruled that when majority of the cabin crew have accepted the settlement and received benefits under the settlement then it will be binding on the cabin crew and a group of employees cannot oppose the settlement and claim as not binding on them. Merely because a few cabin crew have some objection to the settlement entered into between Airlines and ACEU it cannot be ignored when the majority has accepted it and taken advantage of the same.

4. Counsel for respondent 2 contended that the impugned reference contains 34 demands and that those demands which have been settled earlier by the management by entering into settlement with ACEU have been specifically excluded and, Therefore, the impugned reference cannot be said to be illegal. According to the learned counsel, earlier settlement refers only to the demands of basic pay, DA, CCA and HRA and they do not form part of the demands which have been referred to the Central Industrial Tribunal for adjudication.

5. There is no dispute regarding the legal proposition that the settlement arrived at during the course of the conciliation proceedings may be last word on the subject which is covered by the settlement, but it cannot seal the fate of the union or the workmen thereby preventing them from raising any disputes in future which were neither visualised at the time of the settlement nor covered by the terms of settlement. The sanctity of the settlement is confined to the terms of the settlement which has been signed and sealed between the parties. But the

concept of sanctity of settlement u/s 18(3) of the Industrial Disputes Act cannot be extended to cover disputes or demands made on behalf of the workmen which are not specifically covered by such a settlement. A bare perusal of Section 18 of the Act would show that whereas a settlement arrived at in the course of conciliation proceedings is binding on-

(i) all the parties to the industrial dispute;

(ii) where a party referred to in Clause (i) is an employer, his heirs, successors, or assigns in respect of the establishment to which the dispute relates; and

(iii) where a party referred to in Clause (i) is comprised of workmen, all persons who were employed in the establishment or part of the establishment as the case may be to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part.

6. In this case, the settlement arrived at between the management and the ACEU in the course of conciliation proceedings or otherwise is binding on the petitioner and the workmen employed in the establishment of the petitioner or part thereof including cabin crew as most of them have already taken benefit out of them. As per the case of respondent 2 itself, the settlement arrived at is binding but the settlement relates to demand of basic pay, DA, HRA, CCA and, Therefore, these issues have been specifically excluded from the impugned reference.

7. The record shows that the charter of demands submitted by respondent 2 on behalf of the crew members contains 34 demands, and some of them are those which are subject of the settlement between the management and ACEU and that the settlement is binding upon the management as well as upon the employees including the cabin crew, because most of them have accepted the benefit out of it and now they cannot come forward and say that the terms of settlement is not binding upon them. However, those demands which have not been settled earlier have rightly been referred to by the Government for adjudication to the Central Industrial Tribunal and to that effect all such demands can be looked into by the Industrial Tribunal.

8. In these circumstances, I hereby accept this writ petition only to the extent that those demands which have already been settled shall not form part of the reference and only those demands which have not been settled, shall form part of the reference to the Industrial Tribunal who shall proceed to decide those demands in accordance with law. Writ Petition is partly allowed. No order as to costs.