
(2014) 08 DEL CK 0344

In the Delhi High Court

Case No : Writ Petition (C) 5532 of 2014 and CM 10986/2014

Kingfisher Airlines Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 1 CompLJ 147

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rajiv Nayar, Senior Advocate, Diwakar Maheshwari, Karun Mehta and Vinam Gupta, Advocates for the Appellant; Anil Soni, CGSC and Naginder Benipal, Advocates for the Respondent

Judgement

Vibhu Bakhru, J.—Issue notice. The learned counsel for the respondents accepts notice.

2. The controversy involved in the present petition is whether the petitioner should be allowed to be represented by an advocate in proceedings conducted by the respondent to determine whether the petitioner is a wilful defaulter. The petitioner further prays that the respondent may be directed to supply copies of documents, which are sought to be relied upon by the respondent for holding the petitioner as a wilful defaulter.

3. The learned counsel for the respondent submits that the Committee that has been constituted to consider the issue whether the petitioner is a wilful defaulter consists of Executive Director, Chairman, Managing Director and a General Manager. He states that none of the members of the said Committee is law graduate and, therefore, the petitioner should not be permitted a representation by an advocate. The learned counsel further submits that in addition to the petitioner the respondent is also proceeding against 81 other borrowers for declaring them as wilful defaulter. He submits that if the defaulting borrowers are permitted to be represented by advocates, the Committee would be severely

impeded in disposing of those cases.

4. I have heard the learned counsel for the parties. At the outset, the contention that since the Committee is not constituted by law graduates, the petitioner should be deprived of a representation through an advocate is not acceptable. It is settled law that in a case where a person is pitted against legally trained mind, denial of representation through a legal presentation would violate an essential principle of natural justice. This does not necessarily imply that where the adjudicating authority is not legally trained representation through a legal practitioner ought to be denied. The proceedings before the Committee ought not to be, necessarily, considered as adversarial. Undisputedly, an adverse decision by the Committee would be highly prejudicial to the interest of the petitioner and its directors and would have significant implications. In the given circumstances, while one can appreciate the effort of the respondent bank to expeditiously dispose of the matters. The idea of preventing adequate representation to the affected parties, for such disposal, is unacceptable. The right to be represented by a legal advocate is not an integral part of natural justice and it is not necessary that in all cases before domestic forums, representation through a legal practitioner should be permitted. However, the courts have always leaned towards allowing representation through legal practitioners to obviate any handicap that the person may feel in representing his case. In cases where adverse decision would have serious civil and pecuniary consequences, denial of representation through a legal practitioner may in given facts be violative of natural justice. Indisputably, the consequences of holding the petitioner as a wilful defaulter would be serious for the petitioner and the petitioner ought to be afforded adequate opportunity to present its perspective on the issue.

5. In my view, in the given facts of the case, the prayer for the petitioner to be represented by an advocate is liable to be allowed. It is also trite law that the material that is relied upon by any authority in arriving at a decision must be made available to the affected party. This is an integral part of the principles of natural justice that are enshrined in Article 14 of the Constitution of India. There is no justifiable reason why the same should be departed from in the present case.

6. The apprehension expressed by the learned counsel for the respondent that the petitioner is only seeking to delay the proceedings, can be allayed by fixing timelines. Accordingly, it is directed that the respondent shall provide the petitioners with copies of all documents that are relied upon by the respondent, if not already provided within a period of one week from today. The authorized representative of the petitioner alongwith an advocate and a senior advocate, if any, will be present in the office of the respondent bank at 10.30 AM on 22.09.2014. It is also clarified that the petitioners shall confine their oral submissions on that day to not more than six hours. The hearing will be concluded on 22.09.2014 itself. The petitioner is at liberty to file written submissions alongwith any documents that the petitioner wishes to rely upon

before the Committee on that date. The Committee shall thereafter take a decision whether the petitioner is a wilful defaulter.

7. The letter dated 21.08.2014 inasmuch as it communicates that the petitioner as well as its guarantors would be declared as wilful defaulters in absence of a reply within seven days, is set aside. The petition and the application are, accordingly, disposed of. Dasti.