AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL NO. 3 OF 2010

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order dated 20.05.2010 passed by the Airports Economic Regulatory Authority of India]

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Delhi International Airport Private Ltd. (DIAL) ... Appellant

Versus

AERA & anr. ... Respondents

Appearances : Mr. Gopal Jain and Mr. Ankur Sood, Advocates for the Appellants
Mr. Atul Nanda, Sr. Advocate with Ms. Rameeza Hakeem , Advocate for Respondent No. 1
Mr. Amit Kapoor with Ms. Poonam Verma, Advocates for Respondent No. 3

O R D E R

11th May, 2011

We have heard the learned counsel for the appellant and the respondents. Challenge in this appeal is to the order dated 20th May, 2010 passed by the Airport Economic Regulatory Authority of India (in short the "Regulatory Authority"). The order has been described as order No. 3 of 2010-11. The subject matter of consideration by the Regulatory Authority was 10% increase in aeronautical charges as requested by the Delhi International Airport Private Limited (in short the "DIAL") and Mumbai International Airport Pvt. Ltd. (in short the "MIAL").

2. On perusal of the impugned order, we find that the Regulatory Authority has taken note of various stands of the parties and has in paragraph 9 summarized its opinion. There is no independent discussion on the various stands of the parties. In a case of this nature, it was imperative for the Regulatory Authority to indicate reasons in short of its conclusions.

3. Mere mention that it has considered the rival stands is not sufficient.

4. The necessity of giving reason by a body or authority in support of its decision came up for consideration before the Hon'ble Supreme Court in several cases. Initially the Court recognized a sort of demarcation between administrative orders and quasi judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of the Court in A.K. Kriapak Vs. Union of India (1969) 2 SCC 262.

5. In Keshav Mills Co. Ltd. Vs. Union of India (1973), the Court approvingly referred to the opinion of Lord Denning in R. V. Gaming Board for Great Britain, ex p Benaim (1970) 2 Q 13 417 and quoted him as saying "that heresy was scotched in Ridge Vs. Baldwin" (1964) AC 40.

6. The expression "speaking order" was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of the writ of certiorari, referred to orders with errors on the fact of the record and pointed out that an order with errors on its face, is a speaking order. (See pp. 1878-97, Vol.4, Appeal Cases 30 at 40 of the Report).

7. The Hon'ble Supreme Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the "inscrutable face of a sphinx".

8. In Siemens Engg. and Mfg. Co. of India Ltd. V. Union of India (1976) 2 SCC981, the Court held that it is far too well settled that an authority in making an order in exercise of its quasi-judicial function, must record reasons in support of the order it makes. The learned Judges emphatically said that every quasi-judicial order must be supported by reasons. The rule requiring reasons in support of a quasi-judicial order is, the Court held, as basic as following the principles of natural

justice. And the rule must be observed in its proper spirit. A mere pretence of compliance would not satisfy the requirement of law.

9. In Kranti Associates Private Limited and Another Vs. Massood Ahmed Khan and Anr. (2010) 9 SCC 496 inter alia held as follows:-

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process than it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

In that case, order of the National Consumer Disputes Redressal Commission dated 04.04.2008 gave some reasons in its finding. The reasons, inter alia, are as under:-

> "We have gone through the orders of the District Forum and the State Commission, perused the record placed before us and heard the parties at length. The State Commission has rightly confirmed the order of the District Forum after coming to the conclusion that the petitioner and the builder, Respondents 3 and 4 have colluded with each other and hence, directed them to compensate the complainant for the harassment caused to them."

The Hon'ble Court held that the same was not sufficient compliance of the requirement to record reasons.

10. Therefore, without expressing any opinion on the merits of the case we set aside the impugned order and remit the matter to the Regulatory Authority to pass a reasoned order after grant of opportunity to the parties for hearing and to place further materials, if any. The exercise shall be undertaken within a period of ten weeks. If the Regulatory Authority requires any material to be produced it is but imperative that the same shall be supplied by the appellant. We note the stand of Mr. Nanda that a final determination has to be done in each case.

(Dr. Justice Arijit Pasayat)
Chairman

(Pravin Tripathi)
Member