

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 30.08.2011

Coram:-

The Hon'ble Mr. Justice T.RAJA

Writ Petition No.7809 2011
& M.P. Nos.2 to 4 of 2011

1. All India Aircraft Engineers'
Association (Regd) No.539/1991
Office at Air India Ltd,
Engineering Complex,
Begumpet Airport,
Hyderabad-500 016.
Represented by its General
Secretary Mr.Y.V.Raju.

2. All India Aircrafts Engineers'
Association,
Represented by its Regional
Secretary Mr.S.Surendranath,
Chennai Region,
I.S.C. Hangar, Meenambakkam,
Air India Ltd.,
Chennai 600 027. Petitioners

vs.

1. M/s.Air India Limited
(Formerly National
Aviation Company of India
Limited (NACIL),
(a Central Government corporation),
rep. by its Chairman and
Managing Director, Corporate
Office at Air India Building
Nariman Point, Mumbai 400 021.

2. Executive Director
(industrial relation),
Air India Ltd.,
113, Gurudwara Rakabqung Road,
New Delhi 110 001.

3. Committee of Experts Constituted
by Air India Board,
represented by its Chairman
Mr. Justice D.N.Dharmadhikari (Retd),
Safdarjung Airport, New Delhi. ... Respondents.

Petitions under Article 226 of the Constitution of India for the relief as stated therein.

For petitioners : Mr.R.Subramanian,
Senior counsel for Ms.S.Hemalatha

For respondents : Mr.N.G.R.Prasad
for RR1 & 2
R3 No appearance

O R D E R

The petitioner-All India Aircraft Engineers' Association seeks for issuance of a writ of certiorari to call for the records of the proceedings in Ref. No.ED(IR)/RO/7111, dated 26.05.2010, in and by which, the 2nd respondent - Executive Director (Industrial Relation), New Delhi, de-recognized the petitioner's Association, and to quash the same.

2. Learned Senior Counsel for the petitioner submits that as a result of the impugned order, dated 26.05.2010 passed as a coercive and victimising measure, the office of the petitioner-Association was locked and sealed and the entire documents kept in the office also could not be made use of by the petitioner. As there was no prior show cause notice, the respondent, by issuing the impugned order, abdicated his duties to act fairly and to follow the procedural obligation of giving a show cause notice, thereby, there is a clear violation of Section 9A of the Industrial Disputes Act relating to 'Notice of change' and consequently, much prejudice has been caused to all the members of the petitioner-Union. Further, the respondent-authority unilaterally repudiated the settlement reached in the year 1960, adversely prejudicing the collective bargaining power of the petitioner-Union. It is further contended that sealing the premises of the petitioner's office is not only unilateral and arbitrary but also offends the petitioner's guaranteed rights under Article 19 of the Constitution of India for forming a Union of their choice.

2-A. Relying upon an order, dated 28.01.2011, passed by the Delhi High Court in WP (Civil) 4299/2010, learned senior counsel

would submit that, in the said writ petition, ACEU (Air Corporations Employees Union) challenged a similar order issued without a show cause notice as in the present case, and the Delhi High Court, by holding that the said impugned order, de-recognizing the ACEU is bad in law as it was passed without any show-cause notice to the petitioner and without affording the petitioner an opportunity of being heard, interfered with the said order by treating the very impugned order as a show cause notice issued to the petitioner with a direction to the respondent to pass a reasoned order after giving a hearing to the petitioner within the time frame as mentioned therein. Learned Senior Counsel pleads that this Court also may adopt the same reasoning and conclusions as arrived at by the Delhi High Court in the above mentioned order, as otherwise, the petitioner-Association would be put to great hardship.

3. Opposing the said prayer, Mr.NGR.Prasad, learned counsel appearing for the respondents would submit that no basis or cause of action has arisen from the impugned order so as to prefer the present writ petition before this High Court at Madras inasmuch as the impugned order, dated 26.05.2010, de-recognizing the petitioner-Association has been addressed to the General Secretary, All India Aircraft Engineers Association, Begumpet, Hyderabad-16, by the Executive Director (Industrial Relations) at New Delhi. According to him, when the Registered Office of the petitioner-Association is situated at Hyderabad and the impugned order emanated from the authority at New Delhi, this Court at Madras has no territorial jurisdiction to entertain this Writ Petition.

3-A. Further, he submitted that Section 22 of the ID Act prescribes that without giving notice of strike to the employer, that too within 6 weeks before the strike, no person employed in a public utility service shall call for flash and sudden illegal strike. The sudden and flash strike resorted to by the petitioner-Association caused incalculable harm not only to the name and reputation of the respondent company but also irreparable financial loss. The petitioner-company was constrained to file a suit for declaration and injunction against the petitioner in C.S. (OS) No.1089 of 2010 before the Delhi High Court, seeking for a declaration that the ongoing strike resorted to by the petitioner-Association and another association as illegal, and for a permanent injunction against the striking Union from continuing with the illegal strike, and by order dated 26.05.2010, the Delhi High Court, taking serious notice of the illegal strike, restrained the petitioner-Association from continuing with their flash strike. The recognition or de-recognition being purely a private arrangement between parties under the Code of Discipline

which does not have any statutory force and further, it being the prerogative of the Management to recognize/de-recognize a Union, the action on the part of the 2nd respondent in passing the impugned order to de-recognize the petitioner-Association for violation of Sec.22 of the Act cannot be found fault with. Further, before the said order was passed, the petitioner was given a reasonable opportunity to remove its records from the premises. As a matter of fact, due to the sudden and flash strike, that too without any cause or notice, resorted to by the petitioner-Association, the reputation of the Airlines is damaged to a considerable extent not only in the country but also amongst foreigners. Therefore, it is not at all open for the petitioner-Association to plead any violation of the principles of natural justice on the part of the respondent/airlines. It is stated that as against the order passed by the Delhi High Court, treating similar impugned order as that of a show cause notice, in the SLP filed by the 2nd respondent before the Supreme Court, stay has been granted and therefore, no relief can be sought for based on the order passed by the other High Court in a similar proceeding. So submitting, learned counsel reiterated that, at any rate, the writ petition is liable to be rejected on the sole ground that the writ petitioner has wrongly approached this Court without even verifying the aspect of territorial jurisdiction.

4. I have carefully considered the rival submissions advanced on either side.

In this case, prima facie, the 2nd respondent having his registered Office at New Delhi, issued the impugned order, de-recognizing the petitioner-Association whose Head Office is situated at Hyderabad. Admittedly, it is not the case of the petitioner before this Court by way of pleading in the affidavit that the impugned order in any way affects its office, if any, at Chennai. Therefore, it may not be proper for this Court to delve into the various submissions including operation of Section 22 of the ID Act as advanced before this Court except to harp upon the point of territorial jurisdiction which alone is sufficient to deal with this writ petition. The argument advanced by the learned Senior Counsel appearing for the petitioner that consequent to the impugned order passed, addressed to the General Secretary of the petitioner-Association at Hyderabad, the Branch Office of the petitioner at Chennai has also been closed down cannot be appreciated, because, as said earlier, nowhere in the entire pleadings, it is averred or whispered that the 2nd respondent has in fact also initiated such action against the petitioner's Branch Office at Chennai. Therefore, when no cause of action has arisen enabling the petitioner to invoke the territorial jurisdiction of this Court and the dispute is

admittedly between the parties in New Delhi and Hyderabad, this Court having its seat at Chennai cannot interfere with the order impugned. Suffice it for this Court to point out that this Writ Petition cannot be entertained by this Court for want of territorial jurisdiction and for that reason, it is not for this Court to touch upon any of the issues raised for consideration. Consequently, the writ petition fails and it is dismissed for want of jurisdiction. No costs. Connected Miscellaneous Petitions are closed.

To-day, soon after pronouncing Judgment in this case, Mr.R.Subramanian, learned Senior Counsel appearing for the petitioners, by bringing to the notice of this Court, an Order, dated 16.8.2011, passed by the Delhi High Court in LPA.No.163 of 2011, submitted that when the respondents have already taken a decision to re-recognise the Air Corporation Employees' Union, therefore, on the basis of such decision, the Writ Petition may be allowed.

2. In regard to the said submission, it is made clear that, if the respondents have in fact considered or they are considering the case of the petitioners for re-recognition of the Petitioner-Union viz., Air Corporation Employees' Union, the course open for them is only to approach the respondents Corporation for appropriate relief, but, a blanket order as sought for cannot be granted by this Court. Therefore, for the reasons mentioned in the judgment pronounced, the Writ Petition fails and it is dismissed for want of jurisdiction.

Sd/-
Asst.Registrar.

/true copy/

Sub Asst.Registrar.

JI.

To

1. The Chairman/MD,
M/s.Air India Limited
(Formerly National
Aviation Company of India
Limited (NACIL),
(a Central Government corporation),
Corporate
Office at Air India Building
Nariman Point, Mumbai 400 021.

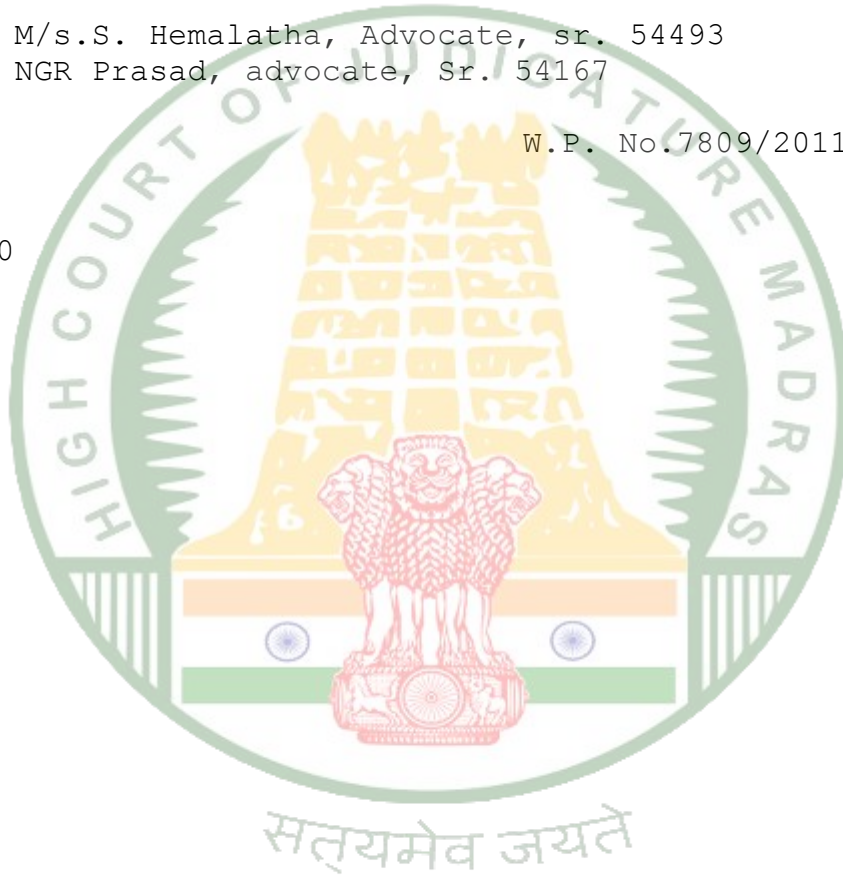
2. Executive Director
(industrial relation),
Air India Ltd.,
113, Gurudwara Rakabqung Road,
New Delhi 110 001.

3. Mr. Justice D.N.Dharmadhikari (Retd),
The Chairman,
Committee of Experts Constituted
by Air India Board, Safdarjung Airport, New Delhi.

1 cc to M/s.S. Hemalatha, Advocate, sr. 54493
1 cc to NGR Prasad, advocate, Sr. 54167

W.P. No.7809/2011

VD (CO)
kk 11/10



WEB COPY