

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL NO. 2 OF 2010 with I.A. No. 08 of 2012

[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 Shri Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Mumbai International Airport Pvt. Ltd (MIAL) ... Appellant

Versus

AERA & Anr. ... Respondents

Appearances : Mr. Sakya Singh Chaudhary with Mr. Rahul Singh , Advocates for
the Appellant
Mr. Atul Nanda, Sr. Advocate with Ms. Rameeza Hakeem ,
Mr. Naresh Kaushik, Ms. Amita Kalkal and Ms. Aditi Gupta,
Advocates for Respondent No. 1

ORDER

2nd May, 2012

Learned counsel for the parties requests for time for doing the needful in terms of our earlier order. The determination of final tariff be completed as early as practicable but not later than four months. I.A. stands disposed of accordingly.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL NO. 3 OF 2010 with I.A. No. 03 of 2012

[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 Shri Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

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

Versus

AERA & Anr. ... Respondents

Appearances : Mr. Gopal Jain with Ms. Smriti Mishra, Ms. Garima Sharma,
Mr. Ankur Sood and Ms. Chitra, Advocates for the Appellants
Mr. Atul Nanda, Sr. Advocate with Ms. Rameeza Hakeem ,
Mr. Naresh Kaushik, Ms. Amita Kalkal and Ms. Aditi Gupta,
Advocates for Respondent No. 1

ORDER

2nd May, 2012

The application has become infructuous as the order has already been passed. I.A. stands disposed of.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL NO. OF 2012 with I.As

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order No. 28/2011-12 dated 08.11.2011 passed by the Airports Economic Regulatory Authority of India]

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Federation of Indian Airlines ... Appellant

Versus

AERA & Anr. ... Respondents

Appearances : Mr.Amit Kapur with Ms. Poonam Verma and Ms. Divya Chaturvedi, Advocates for the Appellant
Mr. Atul Nanda, Sr. Advocate with Ms. Rameeza Hakeem ,
Mr. Naresh Kaushik, Ms. Amita Kalkal and Ms. Aditi Gupta,
Advocates for Respondent No. 1
Mr. Atul Sharma, with Mr. Milanka Chaudhary, Mr. Abhishek Sharma, Ms. Garima Sharma, Advocates for Respondent No. 2

O R D E R

2nd May, 2012

This is an appeal filed under Section 18(2) of the Airports Economic Regulatory Authority of India Act,2008 (in short the "Act"). The appeal is required to be preferred within thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the party preferring the appeal. It is provided in the proviso the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

The appellant has filed an application for condonation of delay in filing the appeal. It is stated that the subject matter of appeal is the ad-hoc levy of Development Fee (DF) of Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger by the Delhi International Airport Pvt. Ltd. (DIAL) at IGI Airport,

New Delhi to bridge the funding gap of Rs. 1230.27 crores as on 1.12.2011 which has arisen in the project cost of DIAL. The levy was ordered to commence w.e.f. 1.12.2011 and at present is estimated to continue for a period of 18 months upto May, 2013 (stage 1). Certain other directions were also given.

In the application for condonation of delay, it was submitted that in the impugned DF order respondent No. 1 had tentatively had dealt with project cost, in C.P. No. 32/2011-12 issued by the Authority. It is therefore stated that it was not clear to the applicant that authority has finalized the project cost as claimed by DIAL. It was under the impression that Authority in the impugned DF order has tentatively accepted various components in the project cost and will determine the final cost at a later stage i.e. at the time of determination of tariff. Basically, it is stated that the appellant was under the impression that the project cost was tentatively arrived at. It is indicated that the applicant was deliberating on draft response to the CP No. 32 of 2011-12 and then the aspect of enhanced project cost in the impugned DF order came to the fore and it was noticed that the authority is treating the project cost as final for determination of aeronautical tariff as well. On 15.2.2012 the appellant submitted its response to the CP No. 32 of 2011-12. It took about a month's time to reach a consensus amongst the member airlines to challenge the impugned DF Order on 26.3.2012. The appeal was finalized and therefore there was delay in filing the appeal.

Preliminary objection on behalf of R-2 DIAL has been filed. It has been stated that the appellant has not come with clean hands and though actual delay is much longer the appellant has tried to mislead this Forum by wrongly stating that it was less than two months. The delay of about two months i.e. 14.11.2011 to 3.1.2012 is included to justify on the basis that the appellant was under the impression that the project cost has only been tentatively arrived at. This explanation is clearly untenable as in the impugned order nowhere stated that the project cost arrived at is a tentative one. It has been further stated that though there is a controversy that the appellant is a stakeholder, the Authority thus considered every objection raised by the appellant.

It is not disputed that the appellant has filed several appeals before this Forum, in addition to Writ Petitions filed by the Hon'ble High Court and Hon'ble Supreme court respectively. There is nothing on record as suggested by the appellant that there was tentative fixation of project cost. It could not be pointed out to us by the learned counsel for the appellant which part of the impugned order gives an impression "tentative project cost". For condonation of delay sufficient cost has to be shown. Sufficient cause is an expression which is found in various statutes. It has to be construed liberally in keeping with its ordinary dictionary meaning as adequate or enough. Whether explanation offered would constitute sufficient cause or not will depend upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in each case. Though Courts should not reject the case in a casual manner when the factual scenario shows that averments justifying the delay are not bona fide, the same can be rejected. There is substance in the stand of R-2 that the appellant could not have gathered any impression about the fixation being the tentative in view of its continued challenge before the various Forum.

Above being the position, we are not satisfied that there is sufficient cause of delay in filing the appeal. The appeal stands dismissed on the ground of limitation.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL NO. OF 2012 with I.A. No. /2012

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order No. 28/2011-12 dated 08.11.2011 passed by the Airports Economic Regulatory Authority of India]

CORAM

Hon'ble Dr. Justice Arijit Pasayat
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Consumer Online Foundation ... Appellant

Versus

AERA & Anr. ... Respondents

Appearances : Mr. Anurag Sharma with Mr. Prashant Kumar and Mr. Joseph Pookkatt, Advocates for the Appellant.
Mr. Atul Nanda, Sr. Advocate with Ms. Rameeza Hakeem ,
Mr. Naresh Kaushik, Ms. Amita Kalkal and Ms. Aditi Gupta,
Advocates for Respondent No. 1
Mr. Atul Sharma, with Mr. Milanka Chaudhary, Mr. Abhishek Sharma, Ms. Garima Sharma, Advocates for Respondent No. 3

O R D E R

2nd May, 2012

This is an appeal filed under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 (in short the "Act"). The appeal is required to be preferred within thirty days from the date on which a copy of the direction or order or decision made by the Authority is received by the party preferring the appeal. It is provided in the proviso the Appellate Tribunal may entertain any appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal within that period.

The appellant has filed an application for condonation of delay in filing the appeal. It is stated that the subject matter of appeal is the ad-hoc levy of Development Fee (DF) of Rs. 200/- per embarking domestic passenger and Rs. 1300/- per embarking international passenger by the Delhi International Airport Pvt. Ltd. (DIAL) at IGI Airport, New Delhi to bridge the funding gap of Rs. 1230.27 crores as on

1.12.2011 which has arisen in the project cost of DIAL. The levy was ordered to commence w.e.f. 1.12.2011 and at present is estimated to continue for a period of 18 months upto May, 2013 (stage 1). Certain other directions were also given.

In the application for condonation of delay, it was submitted that in the impugned DF order respondent No. 1 had tentatively dealt with project cost, in C.P. No. 32/2011-12 issued by the Authority. It is therefore stated that it was not clear to the applicant that authority has finalized the project cost as claimed by DIAL. It was under the impression that Authority in the impugned DF order has tentatively accepted various components in the project cost and will determine the final cost at a later stage i.e. at the time of determination of tariff. Basically, it is stated that the appellant was under the impression that the project cost was tentatively arrived at. It is indicated that the applicant was deliberating on draft response to the CP No. 32 of 2011-12 and then the aspect of enhanced project cost in the impugned DF order came to the fore and it was noticed that the authority is treating the project cost as final for determination of aeronautical tariff as well. On 15.2.2012 the appellant submitted its response to the CP No. 32 of 2011-12. It took about a month's time to reach a consensus amongst the member airlines to challenge the impugned DF Order on 26.3.2012. The appeal was finalized and therefore there was delay in filing the appeal.

Preliminary objection on behalf of R-2 DIAL has been filed. It has been stated that the appellant has not come with clean hands and though actual delay is much longer the appellant has tried to mislead this Forum by wrongly stated that it was less than two months. The delay of about two months i.e. 14.11.2011 to 3.1.2012 is included to justify on the basis that the appellant was under the impression that the project cost has only been tentatively arrived at. This explanation is clearly untenable as in the impugned order it is nowhere stated that the project cost arrived at is a tentative one. It has been further stated that though there is a controversy that the appellant is a stakeholder, the Authority thus considered every objection raised by the appellant.

It is not disputed that the appellant has filed several appeals before this Forum, in addition to Writ Petitions filed by the Hon'ble High Court and Hon'ble Supreme court respectively. There is nothing on record as suggested by the appellant that there was tentative fixation of present cost. It could not be pointed out to us by the learned counsel for the appellant which part of the impugned order gives an impression "tentative project cost". For condonation of delay sufficient cause has to be shown. Sufficient cause is an expression which is found in various statutes. It has to be construed liberally in keeping with its ordinary dictionary meaning as adequate or enough. Whether explanation offered would constitute sufficient cause or not will depend upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in each case. Though Courts should not reject the case in a casual manner when the factual scenario shows that averments justifying the delay are not bona fide, the same can be rejected. There is substance in the stand of R-2 that the appellant could not have gathered any impression about the fixation being the tentative in view of its continued challenge before the various Forum.

Above being the position, we are not satisfied that there is sufficient cause of delay in filing the appeal. The appeal stands dismissed of on the ground of limitation.

[Dr. Arijit Pasayat]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member