

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 27 of 2013

IN

Appeal No. of 2013

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order dated 15.01.2013 passed by the Airports Economic Regulatory Authority India)

CORAM

Hon'ble Mr. Justice V.S. Sirpurkar
Chairman

Hon'ble Shri Rahul Sarin
Member

Hon'ble Ms. Pravin Tripathi
Member

In the matter of :

International Air Transport Association (IATA)

... Appellant

Versus

AERA & Ors. (MIAL/AAI/MoCA)

... Respondents

Appearances : **Mr. M.L. Lahoty, Senior Advocate with Shri Nishant Menon and Mr. Prince Pawaiya, Advocates for the Appellant.**

Shri Atul Nanda, Senior Advocate with Shri Naresh Kaushik and Ms. Rameeza Hakeem, Advocates for Respondent No.1/ AERA.

Shri Sakya Singha Chaudhari with Shri Gautam Chawla, Advocates for Respondent No. 2/MIAL.

Shri Sukumar Pattjoshi, Senior Advocate with Ms. Amrita Panda, Advocates for Respondent No. 3/ AAI.

Ms. Anjana Gosain, Advocate for Respondent No. 4/UOI(MoCA).

ORDER

19th September, 2013

This is an application for condonation of delay. There is a towering delay of 150 days in filing the appeal. Initially, a blunt affidavit was filed. The affidavit or the application, as the case may be, did not contain explanations of 150 days' delay. It is a trite law of limitation that even a day's delay has to be explained.

Unfortunately, nothing was done. We, therefore, gave another opportunity to the appellant to file a fresh affidavit. Now the fresh affidavit has been filed and the ground for delay stated therein is that there are too many members of the appellant Association i.e. around 240 airlines, and that it was very difficult to contact each and every member. Therefore, normally the delay occurred. It is an admitted position that the order under challenge was passed on 15.01.2013 by the Airports Economic Regulatory Authority (AERA) and on the next day, the order was available on the website. The appellant admits this fact in para 7 of the affidavit. In para 8 thereof, it is stated that the appellant commenced consultations with its members, scattered all over the globe through its usual consultation channels, to decide as to whether the appellant should file an appeal against the impugned order or not. It is then pointed out that there was a meeting of the members operating in India on 29.01.2013 and they decided to file the appeal. From 29.01.2013, the matter went into oblivion and it took the first week of February, 2013 to seek necessary approvals. Then, the matter was still perpetrated till 21.03.2013 when the approval was said to have been received from the members for filing the appeal. Therefore, the appeal was decided to be filed even after about two months of passing of the impugned order dated 15.01.2013. Then we would have expected the appeal to be filed in some good time. However, the appellant seems to have got in touch with its lawyers and in order to assist the lawyers with the preparations of the appeal, the appellant analysed the impugned order including discussions with

their finance and accounts team etc.. We wonder as to why was this necessary, particularly when the appellant has taken full part in the consultation process before the AERA. Then, a sweeping statement has been made to the following effect :

“This exercise being quite complicated consumed the entire months of April and May, 2013.”

2. We wonder as to why should two months have been taken for discussing the grounds with the concerned lawyers. It is then reiterated that the inputs were given to the counsel only in May, 2013 and then, the drafting of appeal commenced. What we wonder is on this fact that this drafting was ready by the last week of June, 2013. Then, the draft appeal was reviewed and then, fresh comments were given so it took the period from July 3 to July 5, 2013. Even thereafter, it was not certain as to who was to put the signature in the appeal, which exercise was ultimately completed on 14.07.2013 and then on 16.07.2013, the appeal came to be filed.

3. In the process, there is towering delay of five months. Shri Lahoty, learned senior counsel for the appellant, tried to persuade us on the ground that there are 240 member-airlines of the appellant Association and it is very difficult to manage and to contact each and every member. We wonder as to why was that necessary. If there were so many airlines, who were members of this Association, then the appellant was good enough to take its own decision. After all, the Association is not run like United Nations Organisation, where some of the members have VETO

powers. Unfortunately, nothing of that sort has been pointed out by the learned senior counsel for the appellant.

4. It is provided in the Act that an appeal, which is filed, is required to be disposed of within 90 days and, if not, the reasons for the delay have to be provided by this Tribunal. The delay of 150 days becomes all the more crucial.

5. Shri Lahoty also speaks of prejudice to be caused to the international Air Lines. It is pointed out by the other side, more particularly by the learned counsel appearing for MIAL, who is opposing the application for condonation of delay, that as many as, 20 international airlines have already filed the appeal through an organization or the otherwise. The statement is not controverted.

6. Under the circumstances, we do not find any justification for this towering delay of 150 days and would choose to reject this application.

7. The application for condonation of delay is rejected and hence the appeal also stands rejected on that ground.

[Justice V.S. Sirpurkar]
Chairman

[Rahul Sarin]
Member

[Pravin Tripathi]
Member