

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL No. 08/2013

(Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order dated 01.02.2013 passed by the Airports Economic Regulatory Authority of India)

CORAM

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

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Airline Operators Committee, Chennai
V/s.

...Appellant

AERA & Ors. (AAI/DGCA/MCA)

.... Respondents

Appearances :

Ms. Syed Amber and Ms. Sarika Gandhi, Advocates for Ms. Neelam Rathore, Advocate for the Appellant.

Mr. Atul Nanda, Senior Advocate with Mr. Naresh Kaushik & Ms. Rameeza Hakeem, Advocates for R-1/AERA

Shri Sukumar Pattjoshi, Senior Advocate with Ms. Amrita Panda, Advocate for R-2/ AAI

Ms. Anjana Gosain, Advocate for UOI (MoCA)

ORDER

26th September, 2013

List the matter for hearing on **13th November, 2013**. As prayed, four weeks' time is granted to respondent No. 4 to file its reply.

(Justice V.S. Sirpurkar)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL No. 09/2013
(with IA No.17 & 18 of 2013)

(Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order No.25/2012-13 dated 29.10.2012 passed by the Airports Economic Regulatory Authority of India)

CORAM

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

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

M/s. Shell MRPL Aviation Fuels & Services Pvt. Ltd.

...Appellant

V/s.

AERA & Anr. (Indian Oil Skytanking Ltd.)

.... Respondents

Appearances :

Mr. Divjyot Singh with Ms. Surbhi Popli and Ms. Saudamini Sharma,
Advocates for the Appellant.

Mr. Atul Nanda, Sr. Advocate with Mr. Naresh Kaushik, Ms. Rameeza
Hakeem & Ms. Priyadarshi Gopal, Advocates for R-1/AERA.

Mr. Alok Kumar & Mr. Arun Kumar, Advocates for R-2/ IOSL.

ORDER

26th September, 2013

This is an application for condonation of delay. The reported delay in filing the appeal is 74 days. It is provided in the Act that every appeal should be disposed of within 90 days from the date of filing the same. In the wake of that, this delay is undoubtedly towering. The reasons given in the application for the delay in filing the appeal are as under :

1. That the appellant did not have any knowledge of the order passed by the AERA. We refuse to believe this for the simple reason that the orders passed by AERA are put on their

website and we also refuse to believe that the appellant did not have access to the AERA website and could not note the order, which was published on the website as early as on 22nd November, 2012. The contention raised in the application is that the appellant came to know about the passing of the order by AERA only because of the notice sent by respondent No. 2 to it for claiming the charges which have been held retrospectively as per the order passed by the AERA. Thus the first contention raised is incorrect.

2. The second contention raised is that the only issue between the appellant and respondent No. 2, is that of retrospective charges and that the appellant would be left with no remedy. In case the retrospectivity is upheld, the appellant will not be able to recover any charges from the airlines who get the supply of fuel from the appellant through respondent No. 2. It so happens that respondent No. 2 is a carrier of the fuel upto the aircrafts while the appellant is a supplier of the fuel. The case of the appellant appears to be that respondent No. 2 charges it for the service that it provides, and that those charges are recovered by the appellant from the concerned airlines. So far so good. If that happens, then, it will always be open for the appellant to recover its charges from the concerned airlines. Learned counsel for the appellant says that some of the airlines are not under contract and do not

have subsisting contracts any more. That may be so but that does not mean that the appellant cannot proceed against them for recovery of its dues as he has been charged by respondent No. 2 for transporting the fuel including the into plane services rendered by it. The appellant may seek his remedy elsewhere, including the civil court.

3. The third contention raised in the application is that there was nobody to sign the appeal and there was no authorization to anybody. We refuse to believe this as every company must have somebody to undertake or sign on behalf the company to initiate action for filing the appeal. The reason given in the application that the authorization came only in the month of March, 2013 also appears to be far-fetched.

In short, we are not convinced with the merits of the contentions made in the application for condonation of delay and the same is, therefore, dismissed. In that view, Appeal No. 09/2013 also, being time-barred, is dismissed.

(Justice V.S. Sirpurkar)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member

AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL

APPEAL No. 10/2013
(with IA No.19 & 20 of 2013)

(Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order No.26/2012-13 dated 29.10.2012 passed by the Airports Economic Regulatory Authority of India)

CORAM

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

Hon'ble Mr. Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

M/s. Shell MRPL Aviation Fuels & Services Pvt. Ltd.
V/s.

...Appellant

AERA & Anr. (Bharat Star Services Pvt. Ltd.)

.... Respondents

Appearances : Mr. Divjyot Singh with Ms. Surbhi Popli and Ms. Saudamini Sharma, Advocates for the Appellant.
Mr. Atul Nanda, Sr. Advocate with Mr. Naresh Kaushik, Ms. Rameeza Hakeem & Ms. Priyadarshi Gopal, Advocates for R-1/AERA.
Mr. Alok Kumar & Mr. Arun Kumar, Advocates for R-2/ BSPL.

ORDER
26th September, 2013

This is an application for condonation of delay. The reported delay in filing the appeal is 74 days. It is provided in the Act that every appeal should be disposed of within 90 days from the date of filing the same. In the wake of that, this delay is undoubtedly towering. The reasons given in the application for the delay in filing the appeal are as under :

1. That the appellant did not have any knowledge of the order passed by the AERA. We refuse to believe this for the simple reason that the orders passed by AERA are put on their website and we also refuse to believe that the appellant did

not have access to the AERA website and could not note the order, which was published on the website as early as on 22nd November, 2012. The contention raised in the application is that the appellant came to know about the passing of the order by AERA only because of the notice sent by M/s. Indian Oil Skytanking Limited, one of the respondents in another appeal on similar issue filed by this appellant being Appeal No. 09/2013, for claiming the charges which have been held retrospectively as per the order passed by the AERA. Thus the first contention raised is incorrect.

2. The second contention raised is that the only issue between the appellant and respondent No. 2, is that of retrospective charges and that the appellant would be left with no remedy. In case the retrospectivity is upheld, the appellant will not be able to recover any charges from the airlines who get the supply of fuel from the appellant through respondent No. 2. It so happens that respondent No. 2 is a carrier of the fuel upto the aircrafts while the appellant is a supplier of the fuel. The case of the appellant appears to be that respondent No. 2 charges it for the service that it provides, and that those charges are recovered by the appellant from the concerned airlines. So far so good. If that happens, then, it will always be open for the appellant to recover its charges from the concerned airlines. Learned counsel for the appellant says

that some of the airlines are not under contract and do not have subsisting contracts any more. That may be so but that does not mean that the appellant cannot proceed against them for recovery of its dues as he has been charged by respondent No. 2 for transporting the fuel including the into plane services rendered by it. The appellant may seek his remedy elsewhere, including the civil court.

3. The third contention raised in the application is that there was nobody to sign the appeal and there was no authorization to anybody. We refuse to believe this as every company must have somebody to undertake or sign on behalf the company to initiate action for filing the appeal. The reason given in the application that the authorization came only in the month of March, 2013 also appears to be far-fetched.

In short, we are not convinced with the merits of the contentions made in the application for condonation of delay and the same is, therefore, dismissed. In that view, Appeal No. 10/2013 also, being time-barred, is dismissed.

(Justice V.S. Sirpurkar)
Chairman

(Rahul Sarin)
Member

(Pravin Tripathi)
Member