AIRPORTS ECONOMIC REGULATORY AUTHORITY APPELLATE TRIBUNAL
NEW DELHI

APPEAL NO. 01 OF 2013

[Under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 against the order No. 32/2012-13 dated 15.01.2013 passed by the Airports Economic Regulatory Authority of India]

CORAM

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

Hon'ble Shri Rahul Sarin
Member

Hon'ble Mrs. Pravin Tripathi
Member

In the matter of :

Business Aircrafts Operators Association
T-15, 2nd Floor, Green Park Main,
NEW DELHI – 110 016. **... Appellant**

- Versus -

1. **Mumbai International Airport Private Limited,**
   Office of the Airport Director,
   Terminal 1-B, CSI Airport,
   MUMBAI – 400 099.

2. **Airports Economic Regulatory Authority**
   Through its Secretary,
   AERA Building,
   Administrative Complex,
   Safdarjung Airport,
   NEW DELHI – 110 003. **... Respondents**

Appearances : **Shri Percieval Billimoria with Shri Sharan Thakur, Ms. Roopali Singh and Shri Utpal Kant, Advocates for the Appellant.**

Shri Krishnan Venugopal, Senior Advocate with Shri Sakya Singha Chaudhuri, Shri Gautam Chawla and Shri Shantanu Singh, Advocates for Respondent No. 1/ MIAL.

Shri Atul Nanda, Senior Advocate with Shri Naresh Kaushik, Ms. Rameeza Hakeem and Shri Priyadarshi Gopal, Advocates for Respondent No. 2/AERA.

ORDER OF THE BENCH DELIVERED BY HON'BLE MEMBER, SHRI RAHUL SARIN

This is an appeal filed under Section 18(2) of the Airports Economic Regulatory Authority of India Act, 2008 (hereinafter referred to as "the Act") challenging a part of the order No. 32/2012-13 dated 15.01.2013 passed by the Airports Economic Regulatory Authority of India (AERA) in exercise of its power under Section 13(1) of the Act. The challenge is limited to the extent of the "parking charges for unauthorized overstay" by General Aviation Aircrafts who were given parking slots at the Mumbai International Airport. In effect, the challenge is not to the entire Multi Year Tariff (MYT) order passed by the AERA vide their order dated 15.01.2013.

2. The Appellant i.e. Business Aircraft Operators Association (BAOA) is a non-profit organization registered under the Societies Regulation Act, 1860 set up with an objective of fostering close co-operation between its members for mutual benefit and growth of the industry in General Aviation. BAOA comprises of 60 members out of which 32 are corporate members and 14 are associate members from India. Besides, it also has 13 associate members from abroad and 1 individual member.

3. Respondent No. 1 is Mumbai International Airport Limited (MIAL), a joint venture between GVK led consortium with 74%

equity and Airports Authority of India with 26% of equity incorporated for modernizing and upgrading the Mumbai International Airport.

4. It is pertinent to mention that the Appellant in the same case had already approached this Tribunal vide its Application No. 01/2012 under Section 18(1) of the Act and this Tribunal passed an order dated 07.12.2012 "that *Status Quo* as per the AAI Circular be maintained".

5. That, being aggrieved by our order dated 07.12.2012, Respondent No. 1 also had approached this Tribunal vide its I.A. No. 30/2012 for recalling/vacation of the order dated 07.12.2012. On this I.A., the Tribunal passed the order on 13.12.2012 that :

> ***"the AERA should decide the matter finally as early as possible but not beyond 15th January, 2013. In case, it is not possible to keep that schedule, then AERA would at least consider passing some interim orders. We advise AERA to adhere to the time schedule, as strictly as possible. We, however, clarify that this order should not be read as an expression for necessity of passing of an order otherwise. In view of the Safety issues involved in the matter, we hope that the proper authorities would take appropriate action to avoid overcrowding of aircrafts. If the necessity is felt on account of any safety issue, the MIAL has the liberty to move for interim orders."***

6. Subsequent to the above directions passed by this Tribunal, AERA, Respondent No. 2, issued an order dated 15.01.2013, which is challenged in the present appeal.

7. Aggrieved by the order of AERA dated 15.01.2013, the Appellant has come up in the instant appeal with Prayers (a) to admit the present Appeal; (b) to set aside the impugned order dated 15.01.2013; (c) to declare that the said penal parking charges imposed and levied retrospectively by Respondent No. 2 are void and illegal; and (d) any other relief.

8. It is further pertinent to mention that along with this Appeal, the Appellant had also filed three Interlocutory Applications vide I.A. No. 02/2013 for stay; I.A. No. 03/2013 for refund of penal parking charges and I.A. No. 04/2013 for exemption from filing the certified copy of the impugned order, before the Tribunal with the prayers :

(i) to stay the impugned order dated 15.01.2013 during the pendency of the instant Appeal;

(ii) to direct Respondent No. 2 (AERA) to refund the penal parking charges already collected from the Appellant and other operators; and

(iii) to exempt the Appellant from filing the certified copy of the impugned order, respectively for the different Interlocutory Applications.

The IAs were considered and disposed of vide order dated 24th January, 2013 which reads as follows :

> ***"Shri Krishnan Venugopal, learned counsel appearing on behalf of Mumbai International Airport Pvt. Ltd. (MIAL) accepts notice. He seeks two weeks time to file a reply. Issue notice to R-2 (AERA) with the direction to file its reply, if any, within two weeks. The rejoinder, if any, shall be filed within one week thereafter.***
>
> ***2. For the present, it is not necessary for us to pass any orders on the Injunction prayers excepting that the charges which have been collected from 1st July, 2012 upto 15th January, 2013 which have been directed to be suffered by the Appellant and its members shall be deposited in a separate account. An undertaking shall be given to this Court that in case, finally the Court holds against the alleged retrospective operation of the Order, then all those amounts shall be returned with 9% interest per annum to the extent accrued to MIAL. This undertaking shall be given within one week from today. All future payments made shall be subject to further orders in this Appeal."***

9. Before we turn to the contentions of the Appellant and the submissions made before us by both sides, it will be useful to recount the brief facts of the case.

10. MIAL by letters dated 11.05.2011 and 18.06.2011 requested AERA for approval of their proposal to impose parking charges for general aircraft with a view to discourage misuse of restricted parking facilities by general aviation aircraft for

unauthorized overstay. However, as MIAL had not submitted its Multi Year Tariff Proposal (MYTP), AERA vide letter No. AERA/20010/MIAL-GA/2009-10/840 dated 07.07.2011 informed MIAL that AERA was unable to consider the matter in a piecemeal manner and advised MIAL to submit its MYTP and if so desired, to include the said proposal of parking charges for General Aviation Aircrafts as part of such MYTP.

11. AERA thereafter received representations from companies owning Business Jets protesting against charges being levied by MIAL for overstayal at parking bays. AERA sought a report from MIAL who intimated by their letters dated 19.07.2012 and 04.08.2012 that, in order to ensure safety at the Airport, it had to resort to such charges and to discourage unauthorized stay of Non-Mumbai based General Aviation Aircrafts. It also presented a note dated 23.08.2012 on levy of such charges on General Aviation Aircrafts setting out therein the reasons and scheme for levy of such charges. The Appellant too preferred a representation dated 01.08.2012 in this regard.

12. Thereafter, AERA issued Consultation Paper No. 22/2012-2013 on the Aeronautical Tariff for CSI Mumbai Airport dated 11.10.2012 and incorporated each of the above views, proposed the imposition of charges and further published the rate card as proposed by MIAL as Tentative Decision No. 31.

13. Comments were called for on the above Consultation Paper by 12.11.2012 which deadline was also extended to 26.11.2012 at the request of stakeholders. A stakeholders' meeting was also held on 29.10.2012 at which detailed discussions were held with 62 stakeholders. Neither the Appellant nor its members attended this meeting. The Appellant filed an appeal before this Tribunal under Section 18(1) of the Act against MIAL's letter dated 02.07.2012. This Tribunal vide its order dated 07.12.2012 ordered *status quo*. To this, MIAL being aggrieved filed an application for recalling/vacation of the order dated 07.12.2012. This Tribunal disposed of the matter by order dated 13.12.2012.

Pending the above Consultation Process, AERA had received responses from 26 stakeholders in response to the proposals contained in Consultation Paper No. 22, which were uploaded on the website of the Authority. While the Appellant itself did not respond, three general aviation aircraft owners and members of the Appellant (i) Zee News Limited (ii) Ashley Aviation Limited (iii) Jupiter Aviation Services (Pvt.) Ltd. submitted their responses on AERA's Consultation paper re General Aviation parking charges. After the Tribunal's order dated 13.12.2012, the Appellant also submitted one representation dated 27.12.2012.

14. AERA after taking into consideration the stakeholders comments representations of the Appellant and meetings held with the Appellant by the impugned order dated 15.01.2013 decided toapprove the General Aviation charges (including charges for parking beyond the stipulated time) for parking beyond normal period of 48 hours w.e.f. 01.07.2012 subject to any stay or decision of this Tribunal. Subsequently, the Appellant being aggrieved has filed the present Appeal on 21.01.2013 challenging the aforesaid order dated 15.01.2013 passed by AERA to the extent that it imposed such parking charges.

15. Learned senior counsel appearing on behalf of the appellant fervently urged before us that the impugned order is ultravires as it is contrary to the provisions of the State Support Agreement (SSA) and Operation, Management and Development Agreement (OMDA) as well as Section 13(1) of the Act and, therefore, needs to be set aside. It was also strongly contended before us that as AERA in its consideration, has failed to comply with the principles of natural justice, the matter be remanded back for reconsideration thereon. Learned senior counsel for the appellant fortifies his stand on the basis that as MIAL has always contended that the enhanced parking charge is not a revenue generation instrument but it is meant only for ensuring de-

congestion, they should have no objection for remand and reconsideration thereof.

16. The grounds given for remand and reconsideration of the matter were based on the non-compliance of principles of natural justice. In particular, it had been specifically urged that no reasons or explanations have been provided by AERA for its decisions. It merely has rubber stamped MIAL's tariff proposal and without examining the premises put forth by MIAL that the enhanced parking charge is essential for de-congestion. It was also urged that as far as de-congestion and safety measures were concerned, it was the responsibility of the Director General, Civil Aviation (DGCA) to decide such issues. It was further urged that the submissions of the appellant were not considered by AERA and the opportunity of personal hearing, requested by them, was denied.

17. Before we take-up the contentions raised before us by the appellant, it will be necessary to consider as to what is the specific order passed by AERA which is impugned before us. AERA, in its main tariff order, has passed Decision No. XX which reads as follows :

> **"XX. a. The Authority decides that chargers for parking of General Aviation aircrafts (including charges for parking beyond the stipulated time) are charges in respect of provision of aeronautical service namely,**

parking of aircraft at an airport, hence it is an aeronautical charge and is to be determined by the Authority under the Section 13(1)(a) of the AERA Act.

XX.b. The Authority decides to consider revenue from charges for parking of General Aviation aircrafts (including charges for parking beyond the stipulated time) as aeronautical revenue.

XX.c. The Authority decides to approve the General Aviation charges for parking the aircrafts beyond the normal period of 48 hours with effect from 01.07.2012 subject to any stay or decision of Appellant Authority.

XX.d. The Authority determines the charges for parking of General Aviation aircrafts for parking beyond the stipulated time as part of tariff/rate card.

The Schedule of charges for unauthorized overstay has been given as under :

Sl. No.	**Aircraft Type**	**Charges for unauthorized Overstay Per Hour (Rs.)**
1	Airbus 319 – 115	15000
2	ERJ 190 – 100 ECJ Lineage 1000	11000
3	Global Express XRS BD700 - 1A-10	9000
4	Gulfstream G V	8000
5	Global 5000 Model BD700 – 1A11	8000
6	Falcon 900 EX	4500
7	Challenger CL – 600 – 2B16 (CL-604)	4500
8	Challenger 605	4500
9	Falcon 2000 EX Easy	4000

10	BD 100-1A10 Challenger 300	4000
11	Hawker Beechcraft 4000	4000
12	Falcon 2000	3000
13	Gulfstream – 2000	3000
14	Hawker 800XP	3000
15	Hawker 850XP	3000
16	HS7	3000
17	HS125 700 D	2500
18	Gulfstream G-100 (Astra SPX)	2000
19	Learjet 60 XR	2000
20	Cessna Citation 560 XL5	2000
21	Beech 1900-D	1600
22	Cessna Citation 550 Bravo	1400
23	Hawker 400 XP- (400A)	1400
24	Beechcraft Super King Air B300	1400
25	Cessna 525A	1200
26	Cessna Citation 556	1200
27	Super King Air B 200	1200
28	Premier 1 A 390	1200
29	PIAGGIO P-180 Avanti II	1000
30	Pilatus PC12/45	1000
31	Beechcraft King Air C-90B	1000
32	King Air C-90 A	1000
33	Beechcraft Super King Air B200	1000

At this stage, it would be relevant to consider the plea of the Appellant that the parking charges have been increased 50 times in terms of the impugned order. This position appears to be incorrect as clarified by AERA as well as MIAL. The position in brief is that, for the first two hours, no parking charges are levied. Thereafter, for upto 100 MT – Rs. 13.23 per MT and above 100 MT – Rs. 1323/- + Rs. 17.52 MT per hour in excess of 100 MT [which is the usual parking charges as per the impugned order dated 15.01.2013]. It is significant to note that this charge is not challenged by the Appellants. This applies usually upto a maximum period of 48 hours for a domestic flight and 72 hours

for an international flight. Thus the schedule of overstayal charges applies only when a General Aviation aircraft remains parked in the slotted parking beyond a period of 48 hours for the domestic flight and beyond 72 hours for an international flight. It was further clarified by MIAL that in terms of the impugned order dated 15.01.2013, the overstayal charges beyond the permitted period amounts to only about 12 to 16 times of the parking charges fixed. It may also be noted that overstayal charges for a majority of GA aircrafts is in the range of Rs. 4000 – 1000 per hour as the higher charges of upto Rs. 11000 – 15000 are applicable only to airbus and other planes which are very few in number and belong to big corporate houses.

18. The mainstay of the contentions of the appellant is that AERA was bound by the provisions of SSA as well as OMDA. The SSA contains the basic guidelines for fixation of tariff as given in Schedule -I. It was their contention that from the fourth year onward, tariff will be set by the Authority/Govt. of India as per the principles set out in the Schedule-I of SSA. This matter was gone into a considerable detail and the relevant provisions of the SSA were discussed in detail. It will be useful to consider Clause 3 GOI SUPPORT, which reads as follows :

> ***"3.1.1 GOI's intention is to establish an independent airport economic regulatory authority (the "Economic Regulatory Authority"), which will be responsible for certain aspects of regulation (including regulation of Aeronautical***

Charges) of certain airports in India. GOI agrees to use reasonable efforts to have the Economic Regulatory Authority established and operating within two (2) years from the Effective Date. GOI further confirms that, subject to Applicable Law, it shall make reasonable endeavours to procure that the Economic Regulatory Authority shall regulate and set/re-set Aeronautical Charges, in accordance with the broad principles set out in Schedule 1 appended hereto. Provided however, the Upfront Fee and the Annual Fee paid/payable by the JVC to AAI under the OMDA shall not be included as part of costs for provision of Aeronautical Services and no pass-through would be available in relation to the same."

19. From a perusal of the above, it is evident that the GOI Support herein extends to Govt. of India agreeing to make "reasonable endeavours" to procure that AERA shall regulate and set/re-set aeronautical charges in accordance with the broad principles set out in the Schedule-I. It is important to note that this was also "Subject to Applicable Law". In so far as the Applicable Law is concerned, it is the statutory duty of AERA to fix tariffs in terms of Section 13(1)(a) of the Act, which also refers to concessions offered by the Central Govt. among the other considerations set forth. A considerable debate also ensued as to whether Schedule – I of SSA comprising the basic principles of the tariff fixation is a concession in terms of Section 13(1) of the

Act. The debate was purely of an academic nature because the present dispute is only related to the fixation of charges for overstayal of the permitted period of parking at the Airport. It was clear from the perusal of Schedule I of SSA that fixation of charges for overstayal period was not covered at all. In the instant case, when there is no allegation against the fixation of parking charges under the impugned order dated 15.01.2013, the question of application of basic principles of tariff fixation in terms of the basic principles set out in Schedule-I cannot arise for fixation of tariff for the overstayal period. When no challenge has been made in respect of the tariff determined for the parking charges by the same order, it stands to reason that no challenge can now be raised for the tariff determined for the overstayal period alone.In any case, it is the function of AERA to perform its statutory duty to determine tariffs in terms of Section 13(1)(d) of the Act. The basic principles given in Schedule I of SSA can at best be regarded as guidelines. This observation is founded on the specific language of Clause 3.1.1 which provides that Govt. of India agrees to make "reasonable endeavours" which are further "subject to Applicable Law", to procure AERA to set/re-set Aeronautical Charges.

20. Another forceful contention of the appellant was that as the basic principle set out in the SSA for tariff termination was of cost recovery basis, the fixation of enhanced charges for

overstayal period beyond the permitted period should also be on that basis only. Further clearly, fixation of upto 50 times, the charges for overstayal period cannot be termed to be in consonance with the principles for tariff determination set out in the SSA. We find no merit in this contention. It has been brought on record that the main objective for enhanced parking charges for overstayal period is in the form of the disincentive or deterrent charge for ensuring de-congestion in the specified parking area for GA aircrafts at the Airport. It was brought to our notice that congestion was caused on account of unauthorized overstay by GA aircrafts which may have led to collisions/incidents which were four in number in 2011 and three in 2012.

21. Learned senior counsel appearing on behalf of MIAL was at great pains to point out that at the Mumbai International Airport, there was a severe land constraint and only restricted space was available for parking for GA aircraft. This was in turn challenged by the learned senior counsel for the Appellant who said that, in accordance with the approved Airport Plan, other space was available for parking but that was not utilized by MIAL. Be that as it may, during the detailed discussions, it transpired that this is a matter between MIAL and DGCA, the Sector Regulator, to determine as to what space is available for parking and to earmark the same. It is neither AERA or this

Tribunal which can go into such a question in the face of the fact that there was only restricted space available for parking for GA aircrafts. It was only inevitable that MIAL was constrained to take steps for monitoring the parking of aircrafts and take suitable steps for de-congesting the parking areas in the interest of safety. This task became even more eminent because DGCA clearly indicated in the response to AERA that it is for the Airport Operator to monitor that there is no congestion in the parking of the GA Aircraft in the parking bays earmarked for the purpose. It was made clear by the DGCA that DGCA does not monitor parking of such aircraft.

22. When viewed in the light of these facts and circumstances, we find that no error has been made by AERA in determining the enhanced parking charges for the overstayal period. In any case, this element is not covered under the basic principles specified in the SSA. In the light of this conclusion, therefore, we are unable to accept the contention of the appellant that the determination of enhanced tariff parking charges for the overstayal period by AERA is ultravires or illegal for non-compliance with the principles of tariff fixation set out in the SSA.

23. Next we now turn to the contention of the appellant that the impugned order be remanded for reconsideration as AERA has failed to comply with the principle of natural justice

and the provisions of Section 13(4) of the Act. Section 13(4) enjoines the Authority to ensure transparency while exercising its powers and discharging its functions, inter alia , -

(a) by holding due consultations with all stake-holders with the airport;
(b) by allowing all stake-holders to make their submissions to the authority; and
(c) by making all decisions of the authority fully documented and explained.

24. A specific allegation has been made by the appellant that in terms of Section 13(4)(b) of the Act, the submissions made by the appellant vide their representations to AERA dated 01.08.2012 and 27.12.2012 have not been taken into consideration. Further their requests for personal hearing thereon also have not been acceded to. It was further submitted that the representation of 27.12.2012 finds no mention in the impugned order and their representation was ignored merely on the ground that it was submitted after the extended period of 26.11.2012 for furnishing stakeholders' comments.

25. The Consultation process adopted by AERA envisaged that on the publication of the Consultation Paper on 11.10.2012 that stakeholders' comments would be received upto 12.11.2012. Thereafter, at the request of stakeholders, this period was extended upto 26.11.2012. The stakeholders' consultation meeting was also convened on 29.10.2012 inwhich 62

stakeholders were present. Neither the appellant nor its members attended this stakeholders' meeting. The appellant also did not choose to furnish their comments within the extended period. The assertion of the appellant now is that they had submitted their representation on 27.12.2012 after this Tribunal's order dated 13.12.2012 is of no avail as they clearly failed to participate in the consultation process which was duly provided for and, in fact, at stakeholders' request, additional time was also granted. On this account, therefore, the contention of the appellant that their representations were not considered and no personal hearing was granted cannot be accepted as a formal and notified stakeholders Meeting was also held on 29.10.2012 which was attended to by a large number of stakeholders. In accordance with the procedure as laid down under Section 13(4) of the Act, it cannot be asserted that there is a right of personal hearing for a stakeholder. Neither it is a requirement under the rules of natural justice that a personal hearing is an essential ingredient for an opportunity of being heard. In the instant case, we are clear that the established procedure of consultation was duly adopted and followed. No claim of right of personal hearing can be entertained after that procedure has been duly complied with and completed. The learned counsel for the MIAL specifically raised this issue and asserted that as the Appellant did not participate in the consultation process and nor gave any counter to the tentative

decisions regarding the proposed charges in the consultation paper even under the extended deadline, and that the Appellant is now precluded from raising the contention that the opportunity of being heard has been denied to them. It was further asserted that no prejudice has been caused to them by the lack of personal hearing as the Appellant failed to avail of the opportunity duly provided to them. The Appellant is, therefore, now precluded from raising specific plea of failure of natural justice. We find merit in this view. A similar stand was also taken by the learned senior counsel for the AERA as adequate opportunity was accorded to all stakeholders to submit written submissions and participate in the consultation meetings before the AERA. It was further pointed out by the learned senior counsel for MIAL that the written representations of the Appellant dated 01.08.2012 and 27.12.2012 along with discussions of personal meetings held between AERA and BAOA, the appellant, on 07.08.2012, 22.08.2012 and 06.09.202 have been duly recorded in detail in the impugned order.In view of the conceptus of the given facts and circumstances of the instant case, we are convinced that no case of denial of opportunity of being heard is made out by the Appellant.

26. We now turn to the plea raised by the Appellant that there has been a non-application of mind by AERA in passing the impugned order dated 15.01.2013. AERA has not provided any

reasoning or explanations in its decision but have merely accepted proposals of MIAL without any application of mind. This was strongly contested by the learned senior counsel for the MIAL and AERA.

27. After going through the detailed order as contained in Para 24 under the Treatment of Parking Charges for General Aviation Aircrafts, the learned senior counsel for the MIAL stressed that clear and cogent reasons have been given in the order and it is futile to raise the plea of non-application of mind in view of the detailed considerations and reasons given in the impugned order. It was specifically pointed out that in determining enhanced charges for unauthorized overstay, AERA had considered many factors including – power for levy of such charges, objections raised by various stakeholders and the basis for determination of such charges.

28. Thereafter, after determining the justification for the levy of enhanced parking charges for overstayal period, AERA also considered in detail the issue of rates to be prescribed for such overstayal period. Although in the consultation paper dated 11.10.2012, evidence-based feedback from stakeholders in relation to the proposed rates was also called for, the Appellant did not provide any such feedback. The Appellant did not submit any evidence-based feedback on the rates proposed in the Tentative Decision No. 31 as per the Consultation Paper. It

merely stated that the rates can be a reasonable multiple of the normal charges on the analogy of premium parking. This contention was not accepted by AERA on the ground that enhanced parking charges for the overstayal period beyond the permitted period cannot be compared to premium parking where a specific convenient location is allotted for premium parking on a higher charge basis which is clearly not a charge for overstaying. In any case, the mere suggestion that the overstayal charges be a reasonable multiple of the normal charge cannot render the charges proposed as unreasonable in the absence of any evidence establishing the proposed rates to be unreasonable. Furthermore even when during the submissions of the Appellant, this question was posed to the Appellant as to what were the reasonable charges according to them, no answers were provided. After detailed consideration, AERA determined that purely from an economic perspective, the parking charges for parking beyond the authorized period should be commensurable with the cost associated with the alternative of travelling 'to and fro' from the usual station. Emphasis was also placed by the learned senior counsel for MIAL on the principle laid down by the Hon'ble Supreme Court in the case of ***M.J. Swami V/s. State of Karnataka reported in (1995) 6 S.C.C. 289***, wherein it was held that an order of an Authority need not contain detailed reasons like a court order. This was also followed by the Hon'ble Supreme Court in ***West Bengal***

Electricity Regulatory Commission V/s. C.E.S.C. ***reported in (2002) 8 S.C.C. 715***.

29. On this question, however, the learned senior counsel for AERA raised the plea that as the exercise of Authority of determination of a tariff is in the nature of a legislative function, the principles of natural justice have no application in the present case. For this purpose, he relied upon the position of law settled by the Hon'ble Supreme Court in ***Saraswati Industrial Syndicate Ltd. V/s. Union of India, reported in (1974) 2 S.C.C. 630***. It was held therein that :

> ***"Price fixation is more in the nature of a legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that a rule of natural justice has not been followed in fixing the price. Nevertheless, the criterion adopted must be reasonable."***

The Hon'ble Supreme Court in the case of ***Ashoka Soap Factory V/s. M.C.D. reported in (1993) 2 S.C.C.*** **37,** reiterated this position when it held that :

> ***"29. Apart from that the fixation of tariff is a legislative function and the only challenge to the fixation of such levy can be on the ground of un-reasonableness or arbitrariness and not on demonstrative grounds in the sense that the reasons for the levy of charge must be disclosed in the order imposing the levy or disclosed to the court, so long as it is based on objective criteria."***

On the basis of these rulings, the learned senior counsel for AERA, laid considerable emphasis on the position of law that as determination of tariff is a quasi-legislative function, the principles of natural justice would not apply in the present case of determination of tariff for aeronautical service. It was also stressed that the plea of the Appellant based on the provisions of Section 13(4) of the Act is untenableas that Section only provides the procedural requirements to be complied with by AERA in order to ensure transparency. Be that as it may, it is evident that even in the exercise of a legislative or quasi-legislative function, the test of reasonableness and compliance of the prescribed procedure by law needs to be strictly followed. At this juncture, while we take note of the strong assertions made by the learned senior counsel for AERA, we do not find it necessary to give a finding on this issue in the given conceptus of facts and circumstances of the case. We leave this question open to be determined at an appropriate occasion.

30. From a scrutiny of the order, it becomes apparent that AERA had taken into account the given facts and circumstances before determining the enhanced parking charges for the overstayal period. On the basis of the above, it was stressed by the learned senior counsel for the MIAL and AERA that AERA fixed the enhanced charges for unauthorized overstayal period after being satisfied on the question of enhanced parking charges being part of parking charges and thus could be determined as

aeronautical service. AERA was also satisfied on the question of the need and necessity for determining the charges on account of ensuring de-congestion which could lead to safety concerns. Although the appellant had asserted that enhanced charges for unauthorized overstayal period were of the order of 50 times of the normal charges for parking, it was clarified that as per the impugned order, these charges were only of the order about 12 to 16 times of theparking charges. Further, after the publication of the Consultation Paper wherein the proposed charges were given and evidence-based feedback on the charges was called for, these charges were neither controverted nor alternate charges ever provided by any of the stakeholders or the Appellant. In the face of these circumstances, therefore, it cannot be stated that the charges determined as enhanced parking charges for overstayal period by AERA can be deemed to be unreasonable.

31. It was further pointed out that the reasonableness of the charges were also gone into by AERA and it was duly considered that the impact of these charges have already led to reduction of overstayal period. On the basis of the considerations in the impugned order and the submissions made before us, we are convinced that the contentions of the non-application of mind by AERA in passing the impugned order are not borne out in the facts and circumstances of the present case.

32. The learned senior counsel for the Appellant also raised the issue regarding the jurisdiction of AERA to determine matters which relate to safety concerns. It was contended that enhanced charges for overstayal period amount to a penal charge as the ground of de-congestion would raise safety concerns. This would clearly be beyond the jurisdiction of AERA as only DGCA was the authority to determine such issues. This contention was refuted by the learned senior counsel appearing on behalf of MIAL. It was pointed out that the ambit of a Regulator is much wider and is of a plenary nature. The Regulator derives its ambit from the colour and content of the object of the Legislation. For this, he relied on the judgement of Hon'ble Supreme Court in the matter of Hon'ble Supreme Court in the case of ***C.O.A.I. Vs. Union of India reported in (2003) 3 S.C.C. 186***. He further relied on another judgement of Hon'ble Supreme Court in the matter of ***C.P.P. & ORS. V/s. C.E.R.C. & Ors. reported in (2007) 8 S.C.C. 197*** for the principle that in order to ensure grid discipline, the Electricity Regulator has power to raise the charges for maintaining and proper functioning of a grid. He also relied on a judgement in ***K. Ramanathan V/s. State of Tamil Nadu reported in (1985) 2 S.C.C. 116*** for the principle that the Regulator has plenary powers over the entire subject which is regulated upon.

33. The learned senior counsel for the Appellant distinguished the judgement in the case of *C.P.P. & Ors. V/s. C.E.R.C. & Ors. (supra)*, from the facts and circumstances of the present case by

pointing out that whereasC.E.R.C. is a Regulator for the electricity sector and thus enjoys plenary power to regulate the grid but in the instant case, AERA had no such power because it was only a Regulator forsetting tariffs and the Sectoral Regulator for aviation sector was DGCA and not AERA.It is evident that in the aviation sector, the Regulator is indeed DGCA and not AERA. However, for the purpose of determination of enhanced charges for overstayal of parking permissions granted, it needs to be examined as to whether it falls within the ambit of an aeronautical charge or not. If it is beyond doubt that the parking charges of GA aircrafts falls within the ambit of an aeronautical charge which is to be determined by AERA. It naturally follows that enhanced parking charges for overstayal period beyond the permissibleperiod in the parking slot accorded will also be deemed to be an aeronautical charge to be so determined by AERA. In this view of the matter, it falls to reason that the parking charges as well as enhanced parking charges for overstayal period are clearly within the ambit of the determination of tariffs for aeronautical services, to be determined by AERA. It is true that overstayal of GA aircrafts beyond permitted period in the parking slot did lead to congestion which may have led to collisions/incidents, which raised safety concerns. DGCA, the Sectoral Regulator in aviation sector when it considered this aspect clearly indicated to AERA that it is for the Airport Operator to monitor the parking of GA

aircrafts and to ensure de-congestion. This is premised on the fact that it is only the Airport Operator which operates and maintains the facility and accords the permission for the parking slot and, therefore, it is only the Airport Operator which can monitor and maintain the safe operations of the parking areas. In this view of the matter, it is clear that the charges for parking as well as enhanced charges for parking beyond the permitted period are clearly aeronautical charges only. The object of the enhanced charges was clearly to provide a disincentive or a deterrence against congestion. This was evidently within the functions of the Airport Operator as well as a requirement of the DGCA.

34. In conclusion, we find that AERA has correctly determined that the enhanced parking charges for the overstayal period beyond the permitted parking period was essentially an aeronautical charge, the determination for which was within the ambit of AERA. In determining the tariff for the said overstayal period, the procedure prescribed in terms of Section 13(4) of the Act has been duly complied with and followed. The rates fixed for the overstayal cannot be deemed to be unreasonable as they amount to 12-16 times of the normal parking charges in terms of the impugned order. In the given conceptus of the facts and circumstances of the present dispute, no case of non-compliance of the principles of natural justice has been made out.

35. In the light of the above discussion, we find no merit in this appeal and the same is, therefore, dismissed. Accordingly, Interim injunction order dated 24.01.2013 stands vacated.

Pronounced in open Court on this 23rd day of July, 2014.

[Justice V.S. Sirpurkar]
Chairman

[Rahul Sarin]
Member