

**Equivalent Citation:****IN THE HIGH COURT OF DELHI**

W.P. (C) No. 6376/2011

Decided On: 01.09.2011

Appellants: **Bangalore International Airport Ltd.****Vs.**Respondent: **Union of India (UOI) and Ors.****Hon'ble Judges/Coram:**

Rajiv Sahai Endlaw, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Gopal Subramaniam and Rajiv Nayyar, Sr. Advs., Ankur Chawla, Pallavi Langar and Shiv Shankar, Advs.

For Respondents/Defendant: Anjana Gosain and Koplina Kaur, Advs. for R-1, Atul Nanda, Sr. Adv., Rameeza Hakeem, Naresh Kaushik, Rajat Brar and Ankit Jain, Advs. for R-2 and Captain Kapil Chaudhari, Legal Director of R-2

**Subject: Civil****Acts/Rules/Orders:**

Airports Economic Regulatory Authority of India Act, 2008 - Section 13, Airports Economic Regulatory Authority of India Act, 2008 - Section 17, Airports Economic Regulatory Authority of India Act, 2008 - Section 18, Airports Economic Regulatory Authority of India Act, 2008 - Section 31

**Case Note:**

**Civil - Maintainability of appeal - Order passed dismissing appeal filed preferred by the Petitioner - Hence, present petition filed - Held, it was stated that the intent of the Petitioner was not to disobey the directions issued under Section 13 of the Airports Economic Regulatory Authority of India Act, 2008 and the controversy was as to whether the information submitted was complete or not - It was further stated that an application in this regard has already been moved before the Appellate Tribunal in Appeal No. 7/2011 but had not been taken up for consideration as yet - Petition disposed of.**

**JUDGMENT****Rajiv Sahai Endlaw, J.**

1. The challenge in the writ petition is to the order dated 11th May, 2011 of the Appellate Tribunal under the Airports Economic Regulatory Authority of India Act, 2008, dismissing the Appeal No. 2/2011 preferred by the Petitioner as not maintainable.

2. The said appeal had been preferred by the Petitioner against the Order No. 13/2010-11 dated 12th January, 2011 passed by Airport Economic Regulatory Authority constituted under the said Act.

3. The senior counsel for the Petitioner has contended that Section 17(b) and section 18 of the

Act permit apples against "any" order/direction/decision of the Authority and thus the Appellate Tribunal is in error in holding the appeal to be not maintainable.

4. However, the Order No. 13/2010-11 dated 12th January, 2011 is but a stage/step in the process of ultimate fixation of tariff by the Authority. Upon it being put to the senior counsel for the Petitioner as to how the challenge to the successive stages in the decision making process can be entertained and which if entertained would not allow the final decision to be made and that the challenge if any has to be to the final decision only, the senior counsel for the Petitioner has fairly stated that the Petitioner would be satisfied if it is clarified by this Court that all pleas as taken by the Petitioner in the challenge to the Order 13/2010-11 dated 12th January, 2011 would be available to the Petitioner against the challenge if any required to the final order or to any subsequent order. It is further informed that in pursuance to the order No. 13/2010-11 dated 12th January, 2011, an Order No. 14 has already been passed by the Authority and which is subject matter of the challenge before the Appellate Tribunal in appeal No. 7 of 2011 which is being considered by the Appellate Tribunal.

5. The senior counsel for the Respondent appearing on advance notice has stated that in fact it was so observed by the Appellate Tribunal also while disposing of the appeal No. 2/2011 as not maintainable vide order dated 11th May, 2011 (supra). He has also fairly stated that he has No. objection to it being clarified that the dismissal of the appeal No. 2/2011 would not be construed as the grounds/pleas taken therein being not available to the Petitioner in challenge to any subsequent decision in furtherance to the Order No. 13/2010-11 dated 12th January, 2011.

6. It is clarified accordingly.

7. The senior counsel for the Petitioner has however drawn attention to the notice dated 16th August, 2011 to show cause issued by the Authority to the Petitioner for non compliance of directions issued in pursuance to the Order No. 13/2010-11 dated 12th January, 2011 (supra). It is contended that once the challenge to Order No. 13/2010-11 dated 12th January, 2011 is open, the Petitioner cannot be threatened with fines and prosecution for non compliance of any consequent direction.

8. Notice dated 16th August, 2011 to show cause has been issued for alleged failure of the Petitioner to submit information. The Authority under Section 13 of the Act is entitled to call for any information. The Authority in the process of fixation of tariff has called for information from the Petitioner. Merely because the challenge to Order No. 13/2010-11 dated 12th January, 2011 is open, would not mean that the Petitioner is not required to furnish the information. The senior counsel for the Petitioner has also stated that the intent of the Petitioner is not to disobey the directions issued under Section 13 and the controversy is as to whether the information submitted is complete or not. It is further stated that an application in this regard has already been moved before the Appellate Tribunal in Appeal No. 7/2011 but has not been taken up for consideration as yet.

9. I may notice that the Appellate Tribunal has vide order in Appeal No. 7/2011 has already directed the Petitioner to, without prejudice to its rights and contentions, submit the information.

10. The senior counsel for the Petitioner on instructions states that the Petitioner desires time till 15th September, 2011 to submit the remaining information sought.

11. The senior counsel for the Respondent vehemently objects, stating that sufficient time has already been granted to the Petitioner.

12. However, to put finality to the matter, it is deemed expedient to grant time till 15th September, 2011 to the Petitioner to submit to the Respondent the balance information / particulars sought. Subject to the Petitioner furnishing the information by the said date, No. fine shall be imposed and No. prosecution shall be initiated against the Petitioner.

13. I may also record the submission of the senior counsel for the Respondent as to the maintainability of this petition. It is contended that owing to the provision of appeal under Section 31 of the Act, the writ remedy is not available. However, in view of the above, it is not necessary to deal with the said contention. Suffice it is to clarify that merely because this petition has been entertained, would not prevent the Respondent from taking the said plea in any further proceedings.

The petition is disposed of in terms of above. No. order as to costs.

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