* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 7th January, 2011

% Judgment Pronounced on: 4th March, 2011 + W.P.(C) 8004/2010

Federation of Indian Airlines & Ors. ..... Petitioners Through: Mr.Mukul Rohtagi and Mr. N.K.

Kaul, Sr. Advocates with Mr.Buddy

A. Ranganathan, Mr.Bhuvan Mishra,

and Mr. Samar Kachwha, Advocates.

versus

Union of India & Ors. ..... Respondents Through Mr. Gopal Subramanium, Solicitor

General and Mr.A.S. Chandhiok,

ASG with Ms.Anjana Gosain and

Mr.Sandeep Bajaj, Advocates and

Mr. Alok Shekhar, Director for

Respondent Nos.1,2,3 and 8

Mr. Sudhir Chandra, Sr. Advocate

with Mr. Atul Sharma, Mr. Ravi

Varma, Mr.Akhil Sibal, Mr. Abhishek

Sharma and Mr. Sarojananda Jha,

Advocates for Respondent Nos.4 and

6.

Dr. A.M. Singhvi, Sr. Advocate with

Mr. Ankur Chawla, Mr. Ashish Jha

and Ms. Pallavi Langar, Advocates

for Respondent Nos. 5 and 7.

Mr. Ram Jethmalani, Sr. Advocate

with Mr. Ankur Chawla, Mr. Ashish

Jha, Ms. Pallavi Langar and Mr.Karan

Kalia, Advocates for Respondent

No.9.

W.P.(C) 8004/2010 Page 1 of 96 Mr. Rajiv Nayar, Sr. Advocate with

Mr. Gaurav Duggal, Ms. Niti

Sudhakar and Ms. Monali Dutta,

Advocates for Respondent Nos. 10

and 11.

Mr. R.K. Mehta with Mr. Virender

Mehta, Mr.P.K. Ray and Mr. Kunal

Mehta, Advocates for Respondent

No.12.

Mr. Rajiv Nayar, Sr. Advocate with

Mr. Amit Mahajan and Mr. Shashi

Shekhar, Advocates for Respondent

No.13.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes DIPAK MISRA, CJ

Invoking the inherent jurisdiction of this Court under Article 226 of the Constitution of India, the petitioners have prayed for declaring the circulars AIC No: 7/2007 dated 28.9.2007, AIC No: 15/2008 dated 31.12.2008, AIC No: 6/2009 dated 30.6.2009, AIC No:13/2009 dated 31.12.2009, AIC No:3/2010 dated 2.6.2010 and the Regulations, namely, Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2007 (for short 2007 Regulations) as ultra vires the provisions of The Aircraft Act, 1934 (for short the 1934 Act), The W.P.(C) 8004/2010 Page 2 of 96 Aircraft Rules, 1937 (for short the 1937 Rules) and The Airports Authority of India Act, 1994 (for short the 1994 Act) and also ultra vires Articles 14 and 19(1)(g) of the Constitution of India and further to issue a writ of certiorari for quashment of the same.

THE FACTUAL EXPOSITION AND THE STAND OF THE

PETITIONERS

2. The petitioner No.1, Federation of Indian Airlines, is a society registered under the Societies Registration Act, 1860 comprising all the airline carriers which include the other writ petitioners. It is involved in promoting and diffusing useful knowledge on the aviation industry in India and represents the aviation industry before the concerned authorities for the purpose of resolving the issues and challenges faced by the said industry. The petitioner Nos.2, 4, 6, 8, 10 and 12 are companies incorporated under the Companies Act, 1956 and are engaged in the business of providing scheduled air transport services. As an integral part of their business, they operate airlines under the brand names SpiceJet, IndiGo, GoAir, Jet Airways (including Jet Konnect), Jet Lite, Kingfisher (include Kingfisher Red), etc. The petitioner Nos.3, 5, 7, 9, 11 and 13 are shareholders and / or directors of their respective companies.

3. As set forth, the business of running the airlines consists, inter alia, of owning and / or operating airplanes and provision of ground handling W.P.(C) 8004/2010 Page 3 of 96 facilities in relation thereto all of which are undertaken by the personnel dedicated for the said purpose. Though there are outsourced personnel engaged by various airlines for the same purpose, yet the choice of whether to outsource and to whom had been left to the option of the concerned airlines.

4. The airlines, like the petitioners, are involved in providing self-ground handling service and even if they are undertaking ground handling services through third parties, each airline has the right to conduct self-ground handling services. Ground handling constitutes an integral and inalienable part of any airlines business and it is one of the main and unique, selling proposition of the airlines differentiating the services provided by one particular airline from their competitors. The ground handling services are aimed at providing a hassle free experience to the passengers and are akin to providing hospitality services. Some of the airlines provide self-ground handling services themselves while some airlines sub-contract the same to the airports or a handling agent or to another airline. The said exercise is carried out by an airline after careful consideration of numerous factors including the capability and competency of the agency to provide ground handling services, the cost impact, the suitability of the business model and the reputation and standard maintained in the industry. The purpose of the said agents are monitored by the airlines by strict service level agreements W.P.(C) 8004/2010 Page 4 of 96 bearing, amongst others, financial implications in case of failure to meet the agreed standards of service.

5. It is the experience of the petitioners that undertaking ground handling services themselves have enabled them to maintain the quality, cost and efficiency, level of performance and also helped in providing comfort and satisfaction to the passengers. The decision to undertake the ground handling services, which includes ramp handling and traffic handling, by themselves or to outsource is a business decision intrinsic to their business model and the airlines have the liberty to do so. The ramp handling includes cabin services like cleaning the plane, replenishing the supplies and consumables, etc. and traffic handling services include guiding the aircraft into and out of the parking position, refilling of fresh water tanks, air conditioning, luggage handling by belt loaders and baggage carts, passenger stairs (used instead of aerobridges or air stairs), wheel chair lifts, providing check-in counter services, gate arrival and departure services and airline lounges, etc. In this regard, reference has been made to the circular AIC No:3/2010 dated 2.6.2010 issued by the Director General of Civil Aviation laying down the specific components of the ground handling operations. It is contended that as per the said circular, the private airlines are given permission only to be involved in ground handling activities where passenger interface is required.

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6. As set forth in the petition, if the said circular is given effect to, the airline operators can only undertake very negligible activities and many activities intrinsically connected with the business cannot be undertaken

by the operators. It is averred that since the inception of civil aviation in India, the majority of the member airlines of the petitioner No.1 have been providing self-ground handling services or sub-contracting it to an airport or handling agent or another airline who can satisfy the specific tailor-made requirements of an individual airline. The ground handling services have the statutory recognition, as is noticed from the notification issued by the Director General of Civil Aviation (DGCA) while granting permit to operate scheduled passengers air transport services.

7. It is put forth that the aforesaid requirement is one of the pre- conditions for the grant of a licence and regard being had to the same, the petitioners have invested huge amounts of money in employing people on its rolls and creating the necessary and highly capital-intensive infrastructure to undertake the ground handling services efficiently to cater to the airlines operations.

8. As set forth, on 18.10.2007, the Airports Authority of India (AAI) notified its 2007 Regulations. Prior to that, a circular dated 28.9.2007 was issued by DGCA for the airports of Delhi, Mumbai, Hyderabad, Bangalore, W.P.(C) 8004/2010 Page 6 of 96 Chennai and Kolkata though the airports at Delhi, Mumbai, Hyderabad and Bangalore are not managed by the AAI. It is contended that the 2007 Regulations ex facie cannot apply to such airports. A reference has been made to an order dated 21.8.2009 issued by the Bureau of Civil Aviation Security (BCAS) vide AVSEC order No.3/09 stipulating, inter alia, to the effect that several security functions mentioned therein would have to be carried out by the airline security personnel themselves and not by any ground handling agency. The DGCA by the circular dated 2.6.2010 extended the last date for the airline operators to conduct self-ground handling to 31.12.2010.

9. It is averred that the said circular dated 2.6.2010 prevents / prohibits the airlines to provide ground handling services where there is no passenger interface. It is contended that the said circular could not have been issued by the said authority in the absence of an amendment of the ground handling Regulations 2007 as there is a complete dichotomy between the circular and the 2007 Regulations in the field.

10. The impugned circulars and Regulations have been assailed on the ground that the said circulars / Regulations run counter to Rule 92 of the 1937 Rules. It is contended that the DGCA has no authority to issue the impugned circulars and that the said circulars have been issued in utter disregard of the provisions of the 1934 Act, the 1994 Act and the Rules and W.P.(C) 8004/2010 Page 7 of 96 Regulations made thereunder. It is further contended that the circulars have been issued without any application of mind, as an incurable dichotomy exists between the Regulations and the circulars. It is urged that the circulars are absolutely arbitrary, unreasonable, discriminatory and, hence, offend Article 14 of the Constitution of India; that the circulars / regulations violate the individual airlines and their shareholders fundamental right to practise any profession or to carry on any occupation, trade or business as enshrined under Article 19(1)(g) of the Constitution of India and do not meet the test of reasonableness enshrined under Article 19(6) of the Constitution of India; that the circulars do not in any way remotely suggest for enhancement of security; and that the applicability of the circulars / Regulations is immensely vague and the same are also not in accord with the Acts and the Regulations.

11. It is contended that while the circulars / Regulations permit ground handling facilities to either an airport operator or the National Aviation Company Ltd. or their joint venture, similar facility is denied to the airline operators as a result of which the discrimination gets writ large, inviting the frown of Article 14 of the Constitution of India and that the circulars / Regulations admit to endow the National Aviation Co. Ltd. with an unprecedented and unwarranted benefit at the cost of the petitioners despite the fact that the National Aviation Company Ltd. is a competitor of the W.P.(C) 8004/2010 Page 8 of 96 petitioners in the airline business and, hence, such conferment of benefit is completely unjustified and arbitrary. It is further contended that the impugned circulars / Regulations virtually make it impossible for the petitioners to undertake their licensed activities at the six airports out of many as a consequence of which they would have to abandon their own operations in the said six airports and eventually only restrict their operation to the remaining airports resulting in tremendous and immensurable decrease in their business activity.

12. It is urged that the plea of security is a subterfuge to paralyze the operational aspects of the petitioners inasmuch as at various sensitive airports, the petitioners are legally permitted to carry out the ground handling facilities and further private players have been allowed to carry out the ground handling facilities; and that the segregation of ground handling into those involving passenger interface and not involving passenger interface is wholly unreasonable and unworkable as both have to be operated in complete harmony and coordination, but the said aspect has not been taken into consideration by the authorities issuing the circulars and, therefore, the new policy, if implemented, would result in retrenchment of ground service personnel, idling of assets and would further put the reputation and goodwill of the airlines in jeopardy since such a service is an insegregable facet of running of the business.

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13. It is contended that the circulars and Regulations have made a maladroit effort to overturn the level playing field that is required to be maintained between the National Aviation Company Ltd. and the private airlines and such an activity is contrary to any commercial policy. It is contended that in the international field, in many an airport in United States of America, United Kingdom and Australia, the airline operators are permitted to provide self-ground handling service in both ramp and terminal side operations but the same has been denied to the private airline operators as per the impugned circulars in the garb of security though it is basically incorrect. It is put forth that the circulars fundamentally transgress the basic facet of Rule 92 of the 1937 Rules as it totally demolishes the concept of competitive environment which is impermissible in the face of the said Rule. It is urged that as a result of the issuance of the notifications, the airlines would be compelled to avail of the services either from the National Aviation Company Ltd. or the airport operator who would, in turn, demand monopolistic charges as there is no provision for any kind of checks and balances.

14. It is advocated that the circulars in actuality do not achieve any significant enhancement of security inasmuch as the airlines had been involved in the ground handling business for a number of years and have acquired considerable expertise and there are immense protective guidelines W.P.(C) 8004/2010 Page 10 of 96 with regard to the ground handling facility carried out by the petitioners and their staff have been trained in the said regard and at no point of time it has been pointed out that there has been any security lapse. It is put forth that if the circulars have been issued to protect the security in the country, then there is no justification to restrict it to six airports in the metropolitan cities since security threat is more grave at some other airports and thus, the whole intention of the circular is to oust the petitioners from operating the ground handling facility. It is averred that the basic purpose of the circular is to give more mileage to the airport operators / owners in the guise of security and, hence, it is basically a cavil between the commercial interest of the petitioners and that of the private operators which smacks of total arbitrariness; that the airlines are responsible for the security of their equipment including aircraft, etc. and, therefore, it is extremely unreasonable to expect, on one hand, the airline operators to be responsible for the security of their own equipment and on the other, prevent them from undertaking ground handling services which also ensures the security of their equipment and thereby an anomalous situation has been introduced betraying all norms of rationality and reasonability.

15. It is further stated that the security aspect in respect of the ground handling services is subject to the control of BCAS clearances and, hence, the same cannot be a ground to deprive the petitioners of the said business W.P.(C) 8004/2010 Page 11 of 96 facility which is an inseparable facet of their business. It is contended that the ramp handling as well as passenger handling are an inalienable part of an airlines operations and cost effect and are also connected with on-time performance, efficient turnaround time and utilization of the aircraft which are dependent on factors like time, security, efficiency and effective handling of passengers and their baggage at the airport and the same cannot be and should not be handed over to a third party. It is asserted that if any loss or damage is caused to the luggage, the individual airline operators will still be held liable, whereas, by virtue of operation of the impugned circulars, they are not permitted to conduct the ground handling facility and such a situation would be contrary to the Carriage by Air Act, 1972 and various rules framed thereunder. It is contended that the private owners or the proposed independent ground handling operators would require to recruit the same staff who are now working on behalf of the

airline operators and thereby the security scenario would not improve but there would only be a diversion of business interest.

THE STANCE IN OPPOGUNATION BY THE RESPONDENT NOS. 1 AND 2

16. A counter affidavit has been filed by the respondent Nos.1 and 2 contending, inter alia, that prior to 2007, ground handling at Indian airports was done under the 2000 Regulations and all scheduled airlines were W.P.(C) 8004/2010 Page 12 of 96 permitted to undertake ground handling services. At a later stage, ground handling of flights at the Indian airports became a matter of grave concern against the backdrop of international terrorism which witnessed hijacking of Indian Airline passengers, carrying shoe bombs, liquid explosives, etc. The respondents thought it prudent to consider the practice adopted in several other countries for civil aviation safety and security by restricting ground handling services to only the airport authority and the national carrier and their subsidiaries excluding all private agencies and self-handling airlines. Apart from the aspect of safety, certain other aspects, namely, minimum equipment which lies in the operational area, optimal utilization of equipment and personnel deployed, ground flight safety and minimum number of people operating equipment on the airside and a choice of world class operators for airlines at affordable prices in a competitive environment were also kept in view. It is put forth that Delhi and Mumbai airports have been restructured through joint ventures entered into by the airport authority and regard being had to the factum of restructuring, the concerned authorities were of the view that ground handling services, being an important element of service standards to be complied by the airport operators as laid down in Schedule 3 of the Operation Management and Development Agreement (OMDA) signed with the JVCs, should be a restricted activity and self-handling of flights by all airlines except Air India should not be allowed. The ground handling policy was reviewed by the W.P.(C) 8004/2010 Page 13 of 96 Cabinet Committee on Security (CCS) in its meeting held on 1.2.2007 wherein, the issues of security and aviation safety, achieving world class ground handling services, clarity on ground handling, etc. were approved. The ground handling policy allowed the entities to undertake ground handling services at all metropolitan airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad. The policy was notified by the Regulation of 2007 on 18.10.2007 in respect of AAI airports and by the DGCA vide AIC dated 28.9.2007 for other airports. The policy came into effect from the date of its notification, except to the extent of the exit of non- entitled entities, which was scheduled for 1.1.2009.

17. It is asseverated that a representation was received from the airlines through the petitioner No.1 on 6.11.2008 raising certain issues and regard being had to the concern shown, time was extended till 30.6.2009. During the said period, the respondent No.1 undertook an exercise to consult other stakeholders, including the airlines and airport operators, in order to understand and accordingly redress the concerns. The petitioner No.1 made another representation to the respondents on 5.6.2009 almost at the end of the extended time period fixed for the exit of non-entitled entities and after examination of the said representation, time was extended by another six months, i.e., upto 31.12.2009. In order to finalize the views on the issues raised by the airlines and the petitioner No.1, the answering respondents W.P.(C) 8004/2010 Page 14 of 96 collected the details of the number of employees engaged in ground handling activities working directly on the rolls of the individual domestic airlines (excluding Air India) and outsourced / sub-contracted through the other agencies and the details of the equipment employed for ground handling by these airlines at all the six major airports. The manpower employed by the various airlines in the six metropolitan airports has been brought on record as Annexure R-1/5. It is put forth that the total number of 15,954 persons were employed by the five domestic airlines excluding Air India at the six metro airports out of which 6210 were direct employees on the rolls of these airlines and the rest are outsourced to other sub-contractors. With regard to the assertions made in the petition pertaining to business facilities and interest, it is averred that the airlines would require some additional time for phasing out the ground handling equipments and also to create a proper exit policy for the manpower employed by them and accordingly, certain amendments in the Regulations issued in the year 2007 were proposed which was considered by the CCS in its meeting held on 14.12.2009 and it was approved in the last Regulations, namely, the 2007 Regulations. It was decided that no further time would be given beyond 31.12.2010 and all necessary steps should be taken to implement the approved ground handling policy by that

date. Thereafter, no further representation on the ground handling policy was received by the respondents. In pursuance of the above decision, the DGCA issued the AIC No.3/2010 dated 2.6.2010 in succession W.P.(C) 8004/2010 Page 15 of 96 to the AIC 07/2007 dated 28.9.2007 and amendment to the 2007 Regulations was issued on 2.12.2010. The BCAS vide its AVSEC order No.05/2009 dated 29.10.2009 had made the airlines responsible for certain activities relating to security, like the security of the aircrafts, security of catering items, etc. which otherwise are part of the ground handling activities. It is put forth that BCAS would be required to amend the AVSEC order No.03/2009 dated 21.8.2009 in order to bring it in tune with the decision of the CCS.

18. It is the stand in the return that the powers of the respondent No.2 emanate from Section 5A of the 1934 Act read with clause (m) of sub- section 2 of Section 5 and by no figment of imagination it can be said that the power does not vest with the said authority. Reference has been made to Rules 90 and 92 of the 1937 Rules to justify the action taken by the authorities. Reliance has been placed on Section 42 of the 1994 Act as the source of power. It is urged that a policy decision has been taken by the Government keeping in view the security and safety of the aircraft operators at the airports and in order to achieve economies of scale for proper utilization of resources and thereby to provide world class standardized services in ground handling operations and the said power which vests with the Government does not run counter to any Act or Rules and is not arbitrary. It is contended that the ground handling policy has been in force W.P.(C) 8004/2010 Page 16 of 96 since the year 2007 but not given effect to because of the representations submitted by the petitioners from time to time. It is put forth that except the domestic carriers, most of the other airlines are already carrying out their ground handling operations through the designated ground handling agencies as is evident from the information available in Annexure R-1/1. The ground handling services are an important element of the service standards to be complied by the airport operators as laid down in Schedule 3 of the OMDA signed by the JVCs at Delhi and Mumbai airports (Annexure R-1/2) and the airport operators are expected to enter into agreements with the selected ground handling agencies in order to ensure the prescribed services standards. The airlines would still have the right of choice from the selected ground handling concessionaries as the said circular and regulations allow for a minimum of two ground handling agencies in addition to the national carrier (Air India). That apart, the domestic airline operators are still permitted to do self-handling at the non-metro airports. The main spirit of the circulars and regulations is to extend better and uniform services with adequate safety and security and the policy has been amended to allow the airlines to carry out the ground handling functions in relation to passenger interface. It is pleaded that extensions were granted to the petitioners from time to time to allow the airlines adequate time to create a proper exit policy for the manpower employed by them but no effective steps have been taken to redress the problems.

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19. It is contended that Rule 92 has been totally misunderstood and misinterpreted by the petitioners. As per the said Rule, the airlines operators have been allowed to engage the services of any ground handling service provider at the airport without any restriction, subject to permission and security clearance by the Central Government to provide such services. The circular that has been brought into force permits three entities, namely, Aviation Company of India Limited or its subsidiary or joint venture to handle the ground handling operations at all the airports. The airlines can avail the ground handling services from any of the above entities under separate contract in respect of their outsourced agent. That apart, they have not been denied their right to carry on their trade or business, but reasonable restrictions on such activities is necessary in view of the present security situation in India and the world over. Therefore, there is no violation of Articles 14, 19(1)(g) & 19(6) of the Constitution of India. The Regulations in no way transgress the 1937 Rules as the same has been issued on the basis of power vested under the Rules read with the provisions contained in the 1994 Act. It is set forth that there is no discrimination since the respondent No.1 is concerned with the safety and security of the airports and regard being had to certain aspects, the ground handling service has been taken away from the airline operators and the same, being a matter of policy having a purpose, is not arbitrary or unreasonable. Justification has been W.P.(C) 8004/2010 Page 18 of 96 given about the volume of air traffic, the issue of aviation and safety in metro airports. Emphasis has been laid on the circular AVSEC order

No.05/2009 dated 29.10.2009 whereby the BCAS has made the airlines responsible for certain activities pertaining to security. THE STAND POINT OF THE RESPONDENT NO.3

20. A return has been filed by the respondent No.3, namely, AAI stating, inter alia, that the respondent has selected certain bidders subject to obtaining of security clearance from BCAS, Department of Central Government. It is put forth that licence for northern region has been granted to the consortium comprising M/s. Thai Airport Ground Services Bangkok, Thailand, M/s. Star Consortium Aviation Services Pvt. Ltd., Kolkata and M/s. Skyline Mercantile Pvt. Ltd., Kolkata. The lead member is M/s Thai Airport Ground Services, Bangkok. It is also averred that the licence for western region has been granted to the consortium comprising M/s National Aviation Services, WLL Kuwait, M/s National Aviation Services India Pvt. Ltd., Mumbai and M/s DJ Aviation Services Pvt. Ltd., Mumbai. The lead member is M/s National Aviation Services, WLL Kuwait. It is put forth that the licence for southern region has been granted to the consortium between M/s Bhadra International India Ltd. and M/s NOVIA International Consulting Aps Denmark. The lead member is M/s NOVIA International Consulting Aps. Denmark. It is also put forth that the licence for Chennai W.P.(C) 8004/2010 Page 19 of 96 and Kolkata airports has been granted to the consortium between M/s Bhadra International India Ltd. and M/s NOVIA International Consulting Aps Denmark. The lead member is M/s. NOVIA International Consulting Aps. Denmark.

21. It is set forth that the ground handling services are a very sensitive part of an activity of airlines and keeping in view the security factor and to streamline the ground handling service, the Regulations and the circulars have been brought into force. The airline operator, in terms of the 2007 Regulations, can undertake ramp handling and traffic handling as mentioned in Regulation 2(e)(i) and (ii) through their bonafide whole time employees at all airports other than the six airports and, hence, it cannot be said that they would be out of business. That apart, only a division of services has been created keeping the national security in view. The threat perception cannot be totally marginalized to foster the business interest of the petitioners and, therefore, framing of a comprehensive policy was the warrant and the same has been accordingly done. The airlines have been permitted to handle till the interface of passengers and, thereafter, it has to be done by the agency chosen, as per the Legislation, Regulations and circulars, by the competent authority. In terms of Rule 92 of the 1937 Rules, the Central Government has the power to ensure security and safety while granting ground handling services. The 1994 Act confers immense powers on the respondent and W.P.(C) 8004/2010 Page 20 of 96 accordingly, the Regulations have been framed and the circulars have been issued and there is no transgression of the Act or the Rules. The policy decision taken by the authorities has a rationale and the restrictions imposed are reasonable for the reason that the CCS which is the highest executive authority on national security has approved the said policy and in any case, there cannot be any compromise with the security of the nation. The airline operators, who were carrying out the ground handling services, were outsourcing the same and a review was done and the policy was amended and the policy, by no stretch of imagination, can be said to be arbitrary or capricious.

THE POSITION ASSERTED BY THE PRIVATE RESPONDENTS

22. Affidavits have been filed by the private respondents supporting the stand of the Union of India and the statutory authorities. It is also asserted in certain replies that, internationally, ground handling services are considered to be an extremely specialized state of the art services undertaken at airports which are carried on by trained manpower with requisite expertise to operate the equipments. Various examples have been given about the position at other international airports. A stand has also been taken that the writ petition deserves to be thrown overboard on the ground of delay and laches inasmuch as the 2007 Regulations is challenged in the year 2010 and that too, after making series of representations to abide by the same. Immense W.P.(C) 8004/2010 Page 21 of 96 emphasis has been laid on the decision taken by BCAS under Ministry of Civil Aviation to highlight that, on the basis of security, the decision has been taken and, therefore, the spacious plea that security has been used as an excuse to safeguard the commercial interest of the private respondents is absolutely erroneous. A similar stand has been taken in the Bombay High Court by Gulf Air Employees Association and others against the Government of India and others challenging the circular dated 28.9.2007 to

the extent that restricting ground handling services by excluding self- handling is illegal but the said challenge did not find favour with the Bombay High Court which dismissed the writ petition vide order dated 21.4.2009 stating, inter alia, that the petitioners therein had no locus standi to challenge a policy decision of the Government and if any workman related issue is in dispute, it is open for the affected party to raise a dispute before the appropriate legal forum. Consequent to the privatization of airports, the responsibility of management, maintenance and operations lies with the airport operator, and various authorities have prescribed stringent quality parameters which the airport operators have to mandatorily adhere to and, hence, a holistic scheme has been brought out which cannot be said to be arbitrary or unreasonable.

THE STANCE IN THE REJOINDER

23. A rejoinder affidavit has been filed by the petitioner No.1 to the W.P.(C) 8004/2010 Page 22 of 96 counter affidavit filed on behalf of the respondent Nos.4 to 7, 9, 10, 11 and

13. Apart from stating what has been set forth in the writ petition, it is contended that the airport operators, as have stated earlier, would absorb the airline employees. The equipment and security clearance would remain the same and, thus, there would only be a change of employer. But in actuality, there is no change in the security status. The consequence of the aforesaid arrangement would create a monopoly in favour of the airport operators and eventually, a multiple ground handling agency would create chaos and anarchy. The outsourcing by the airline operators on certain aspects does not confer a right on the policy makers to create a monopoly in favour of the private respondents.

24. It is further stated that the stand in the return that there is an adjudicatory method about the charges by the Airport Economic Regulatory Authority is not a justifiable reason for all airlines to necessarily undertake ground handling services through the nominated service providers. There is no reason why the airline operators should be made to abandon their freedom to contract on their own with a service provider of their choice or to have their own employees. If the arrangement is introduced, the petitioners who have invested as airline operators would be required to pay to the service providers despite the infrastructure having been created by them. It is put forth that the 2007 Regulations still hold the field which completely W.P.(C) 8004/2010 Page 23 of 96 bars the airlines from undertaking self-handling of any sort at Chennai and Kolkata airports and, thus, an incurable anomaly has been brought into existence. Reliance has been placed on the BCAS circulars to highlight that the same permits the airline operators to undertake ground handling activities even through a ground handling agency. But the DGCA circulars seek to prevent the airline operators from undertaking ground handling activities themselves.

25. It is also urged that the circular dated 2.6.2010 enables the cargo airlines to do self-ground handling activities while the passenger airlines are not permitted to carry out the same which tantamounts to discrimination. The contradictions in the circulars issued by the various authorities have been pointed out. Emphasis has been laid on how security is not the main reason but a subterfuge inasmuch as there is a complete contradiction between the security requirements and the ground handling circulars / regulations. The stance that the circulars / regulations have been issued to streamline the ground handling operations is far from being true and the same really requires to be keenly studied and deeply scrutinized to avoid any kind of anomaly.

26. It is set forth that the petitioners, as on today, are fully equipped with specialists and professionals; that they have the potential and the power to optimize ground handling operations as a consequence of which they are low W.P.(C) 8004/2010 Page 24 of 96 cost carriers and are able to offer low fares; and that there is no justification to deprive the airline operators of self-ground handling. The exclusion of the airline operators from self-ground handling invites the frown of Article 14 of the Constitution of India being totally arbitrary.

27. It is contended that the impugned circulars and regulations have been issued under Section 5A of the 1934 Act and not under any other provision as the power does not flow from any other enactment, provisions or

rules. The outsourcing of ground handling staff cannot be utilized against the petitioners as they maintain the security standards and further it is an inseparable part of their own business model which results in smooth operation of the airlines. The writ petition is not hit by the doctrine of delay and laches as the impugned circular was issued in September 2007 and the petitioners were consistently representing before the governmental authorities as a result of which the implementation was deferred till 2.6.2010 when the DGCA came out with the modified circular and, therefore, the challenge is within a reasonable period of time.

28. Before we proceed to record the submissions of the learned counsel for the parties, we think it appropriate to refer to the series of circulars issued by the authorities and the Regulations that have been framed to govern the field.

W.P.(C) 8004/2010 Page 25 of 96 THE SERIES OF CIRCULARS THAT HAVE COME INTO THE

FIELD OF OPERATION

29. The circular dated 19.2.2007 issued by the Bureau of Civil Aviation provides for instructions on deployment of ground handling agencies at the airports. It finds mention therein that the Bureau has found a number of ground handling agencies which are working at the airports in the country without prior security clearance and background checks and in view of the current surcharged security environment in the country and threat to civil aviation from terrorist outfits, induction of private ground handling agencies into the airports without proper background checks, security clearance from the appropriate authority and authorization by the AAI/Airport Operator may lead to serious security and legal problems. In the said circular, certain instructions have been given which we think it apposite to reproduce: "(i) No ground handling agency shall be allowed to work at the airport in future by the Airport

Operator, Aircraft Operator or any other agency

which has legitimate functions at the airport,

unless prior security clearance is obtained from the BCAS.

(ii) As per the Ground Handling Regulations 2000 dated 17.1.2000, the AAI/Airport Operator may

issue a license only after security clearance from the BCAS to such ground handling agencies on

prescribed terms and conditions and eligibility

criteria for ground handling agencies and the

number of such agencies to be appointed at each

airport shall be determined keeping in view the

safety, security, demand, available infrastructure, land and other relevant considerations to be laid

W.P.(C) 8004/2010 Page 26 of 96 down by the AAI in accordance with the Section 5

of the AAI Ground Handling Regulations (2000).

(iii) Aircraft operator shall enter into contract with the ground handling agencies only after prior security clearance to these entities from the BCAS and

approval from the AAI/Airport Operator.

(iv) In case AAI/Airport Operator or Aircraft Operator intend to appoint a new ground handling agency, the details of such agency is required to be sent to BCAS alongwith the profile of such company at least 3 months in advance so that the background check of the ground handling agency can be done by the BCAS through IB and local police.

(v) Background check in respect of the ground handling agencies working in the airports is necessary. Therefore, AAI/Aircraft Operator shall send the details of the each existing ground handling company, already engaged by them for ground handling functions alongwith the company profile and address, telephone numbers etc. of Board of directors and management so that the necessary action could be taken by the BCAS to get the antecedents verified of such agencies. In case any company comes to adverse notice, the same shall not be allowed to work at the airport and shall be liable to be removed from the airport. (vi) Security related functions as specified by the BCAS in the National Civil Aviation Security Programme and amended from time to time shall not be entrusted to the ground handling agencies by the AAI Airport and Aircraft Operators.

(vii) Airport Entry Permits to employees of the ground handling agencies shall not be issued by the BCAS unless they have completed the BCAS prescribed Aviation Security Awareness programme, their background check has been completed and there is

no adverse report against them."

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30. The DGCA on 28.9.2007 issued a circular being Sl. No.7/2007 for grant of permission for providing ground handling services at airports other than those belonging to the AAI. Clause 1.1 of the said circular defines "ground handling" to mean:

(i) Ramp handling, which includes the activities specified in Annexure A;

(ii) Traffic handling, which includes the activities as specified in Annexure B; and

(iii) Any other activities specified by the Central Government to be a part of either ramp handling or traffic handling.

31. Clauses 1.2, 1.3, 1.4 and Clause 2(A) on which emphasis has been laid are required to be reproduced. They read as under: "1.2 In accordance with the Airports Authority of India (General Management, Entry for Ground Handling

Services) Regulations, 2000, an airline operator

may carry out ground handling services at an

airport either by itself or engage the services of any of the following, namely:

(i) Airports Authority of India

(ii) Air India or Indian Airlines; and

(iii) Any other agency licensed by the Airports

Authority of India.

1.3 The Airports Authority of India (General

Management, Entry for Ground Handling

Services) Regulations, 2000, have been made

under Section 42 of the Airports Authority of India Act 1994 and thus are applicable to the airports

managed by the Airports Authority of India. With

W.P.(C) 8004/2010 Page 28 of 96 the restructuring of certain airports and

development of a few Greenfield airports in the

private sector, it has become imperative for the

Central Government to lay down the eligibility

criteria for various agencies to undertake ground

handling services at non-AAI airports. The number of such agencies to be permitted at each

airport is also to be determined by the Government having regard to all the relevant factors such as

demand for such services, available infrastructure and competitive environment, without compromising the safety and security aspects.

1.4 Rule 92 of the Aircraft Rules, 1937 provides that the licensed public aerodromes shall, while

providing ground handling services themselves

ensure a competitive environment and allow the

ground handling service providers permitted by the Central Government to provide ground handling

services at such aerodromes without any

restriction. These ground handling service

providers shall, however, be subject to security

clearance of the Central Government. As such, it

is for the Central Government to decide the

agencies who can provide ground handling

services at various aerodromes and also the

eligibility criteria for such service providers.

2 It has been decided by the Central Government that with immediate effect, the following entities shall be eligible to undertake ground handling

services at airports other than those belonging to the Airports Authority of India:

(A) All metropolitan airports, i.e., the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore

and Hyderabad

(i) The airport operator itself or its Joint

Venture (JV) partner;

(ii) Subsidiary companies of the national carrier i.e. National Aviation Company of India

W.P.(C) 8004/2010 Page 29 of 96 Ltd. or their joint ventures specialized in

ground handling services. Third party

handling may also be permitted to these

subsidiaries or their JVs on the basis of

revenue sharing with airport operator subject

to satisfactory observance of performance

standards as may be mutually acceptable to

the airport operator and these companies;

and

(iii) Any other ground handling service providers selected through competitive bidding on

revenue sharing basis by the airport operator

subject to security clearance by the

Government and observance of performance

standards as may be laid down by the airport

operator.

Note : A minimum of two ground handling service

providers shall be authorized at these airports in addition to the subsidiaries of National Aviation

Company of India Ltd."

[Emphasis supplied]

32. Clause 2(B) relates to other airports. Clause 4 deals with "Security Protocol" which is as follows:

"4. Security Protocol

4.1 Bureau of Civil Aviation Security may impose such restrictions as may be necessary in this behalf on grounds of security.

4.2 All concerned agencies as specified in paragraph 2 hereinabove shall be required to follow the

instructions issued by BCAS as contained in

Annexure C or as may be altered / substituted /

modified or amended from time to time.

4.3 Further, all concerned agencies, besides complying with the above, shall also be required to follow the W.P.(C) 8004/2010 Page 30 of 96 provisions contained in the Aircraft Act, 1934 and the rules made thereunder and directions, orders

and circulars issued from time to time."

33. The said circular stipulated that the same was to come into force w.e.f.1.1.2009. In Annexure A appended to the said circular, ramp handling, aircraft servicing, aircraft cleaning, loading and unloading, cargo handling services and security are mentioned. In Annexure B, traffic handling is the genus and it includes as its species terminal services, flight operations, surface transport and security.

34. By Circular No. AIC Sl.No.15/2008 issued by the Joint Director General of Civil Aviation on 31.12.2008, the grant of permission for providing ground handling services at airports other than those belonging to the AAI has been amended. The amended clause provides that the policy shall come into force with immediate effect. The airline operators or any other ground handling service providers not covered by the said policy shall not be allowed to undertake self-handling or third party handling with effect from 01 July, 2009 or till further orders, whichever is earlier.

35. Circulars to the similar effect being Circular No. AIC Sl. No. 06/2009 and Circular No. AIC Sl. No. 13/2009 were issued on 30.6.2009 and 31.12.2009 restricting self-ground handling or third party handling by airline operators not covered by the policy with effect from 1.1.2010 and 1.1.2011 W.P.(C) 8004/2010 Page 31 of 96 respectively.

36. The DGCA on 2.6.2010 issued a circular being AIC Sl. No.3/2010 for grant of permission for providing ground handling services at airports other than those belonging to the AAI amending its earlier circular dated 28.9.2007 on the same issue. An additional clause (C) is added to para 2 and para 7 has been amended. The additional provision is reproduced hereunder: "(C) Additional Provisions :

The provisions contained in (A) and (B) above shall be subject to the following:

(i) All private airlines, including foreign airlines, may undertake self handling in respect of "passenger

and baggage handling activities at the airport

terminals" and "traffic service including the

passenger check-in", which require passenger

interface, at all airports.

(ii) All cargo airlines, which have their own cargo aircrafts, may undertake self handing in their hub airports.

(iii) Foreign airlines / private independent ground handing service providers not be permitted self

ground handling / ground handling at joint user

Defence airfields."

37. The amended para 7 is reproduced as under:

"7. Coming into force

7.1 This policy shall come into force with immediate effect.

7.2 The time limit for exit of non-entitled entities shall W.P.(C) 8004/2010 Page 32 of 96 be 31st December, 2010."

THE RELEVANT REGULATIONS

38. The Airports Authority of India vide notification dated 17.1.2000, in exercise of the powers conferred by Section 42 of the 1994 Act with the previous approval of the Central Government, framed a set of Regulations, namely, the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000. The Regulations 3 to 5 being relevant are reproduced below:

"3. An operator or carrier may either carry out ground handling services at an airport by itself or engage the services of any of the following:

(i) Airports Authority of India

(ii) The two national carriers Air India & Indian Airlines

(iii) Any other handling agency licensed by the

Airports Authority of India.

4. Entry into and remaining in the movement area / terminal building at any airport / civil enclave for providing ground handling services or for

operating any vehicle or other equipment shall be

restricted to:

(a) the operator or the owner of aircraft(s) or his bonafide whole time employees or any of the

designated agency under Regulation 3 authorised

by it for handling its own aircrafts;

(b) any other Operator or Agency who or which has been specially permitted in writing by the

Authority to undertake ground handling activities

W.P.(C) 8004/2010 Page 33 of 96 through their bonafide whole time employees;

(c) the bonafide whole time employees of National Carriers or any of the designated agencies under

Regulation 3 authorised by them;

(d) the bonafide whole time employees of Airports Authority of India or a designated agency

authorised by it.

5. The Board of AAI will lay down terms and

conditions (including financial consideration),

eligibility criteria for ground handling agency

(both financial and technical) and number of such

agencies to be appointed at each airport keeping in view the safety, security, demand, available

infrastructure, land and other relevant consideration."

39. On 18.10.2007, in exercise of power conferred under Section 42 of the 1994 Act, a set of Regulations, namely, Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations 2007 was issued in supersession of the 2000 Regulations. Regulation 1(3) provides that the Regulations shall apply to all airports and civil enclaves managed by the Airports Authority of India. In the dictionary, clauses 2(b), 2(e), 2(f) and 2(i) have been laid emphasis upon and, hence, they are reproduced below: "2(b) "Authority" means the Airports Authority of India constituted under sub section (1) of Section 3 of

the Airports Authority of India Act, 1994 (55 of

1994);

2(e) "Ground Handling" means

(i) ramp handling and will include activities or specified in the Schedule I to these regulations.

W.P.(C) 8004/2010 Page 34 of 96 (ii) traffic handling and will include activities as specified in the Schedule II to the regulations.

(iii) any other activity designated by the Chairperson to be a part either or ramp handling or traffic

handling.

2(f) "Joint Venture Company" means a company

established with the objective of providing ground handling services at an airport and includes its

subsidiary.

2(i) "national Carriers" means any airline or carrier by the Government of India, Ministry of Civil

Aviation."

40. Regulation 3 deals with ground handling services at the airports and Regulation 4 deals with restrictions on entry into airports. To have a complete picture, Regulation 3 is reproduced below: "3. Ground handling services at airport (1) A carrier may carry out ground handling services at

metropolitan airports, that is, the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and

Hyderabad, by engaging the services of any of the

following namely:

(i) Airports Authority of India or its Joint Venture Company.

(ii) subsidiary companies of the national carrier, that is, National Aviation Company of India Limited or

its Joint ventures specialized in ground handling

services;

Provided that third party handling may be permitted to these subsidiaries or their Joint Ventures on the basis of revenue sharing with the Authority subject to satisfactory observance of performance of performance standards as W.P.(C) 8004/2010 Page 35 of 96 may be mutually acceptable to the Authority and these companies;

(iii) any other ground handling service provider selected through competitive bidding on revenue

sharing basis, subject to security clearance by the Central Government and observance of

performance standards.

(2) At all other airports, in addition to the entitles specified in sub regulation (1) of regulation 3, self handling may be permitted to the airlines,

excluding foreign airlines.

(3) All concerned agencies shall ensure that the state of the art equipment are used and best practices

are followed.

(4) Airlines or entities presently involved in ground handling which are not governed by these

regulations shall not be permitted to undertake self handling or third party handling with effect from

the first day of January, 2009."

41. Schedule I to the Regulations deals with Ramp Handling, Aircraft Servicing, Aircraft Cleaning, Loading / Unloading, Cargo Handling Services and Security. Schedule II deals with Traffic Handling whereunder Terminal Services, Flight Operations, Surface Transport and Representational Services find mention.

SUBMISSIONS:

42. Mr. Mukul Rohtagi and Mr. N.K. Kaul, learned senior counsel appearing for the petitioners, have advanced the following proponements: W.P.(C) 8004/2010 Page 36 of 96 (a) The 2007 circular, which is purported to have been issued under Section 5A of the 1934 Act, travels beyond the provision and clearly contravenes the statutory mandate as Section 5A is made applicable to a limited sphere but the authority concerned has travelled beyond the said sphere / arena as a consequence of which it is sensitively susceptible. A circular for direction can be issued in respect of any of the matters specified in clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc), (h), (i), (m) and (qq) of sub-section (2) of Section 5 and all of them must pertain to the satisfaction of interest relating to the security of India or for securing the safety of aircraft operation and both the exercise of the power and the satisfaction qua security have to be specified in reading in juxtaposition but the same not being the case at hand, the circular is unsustainable.

(b) The circular No.7/2007 issued by the DGCA is in transgression of Rule 92 of the 1937 Rules inasmuch as there is no power under Rule 92 by which the said authority is entitled to prohibit the airlines from conducting self-ground handling.

(c) The circulars / regulations are violative of Article 19(1)(g) of the Constitution of India as the airlines, by virtue of the same, have been deprived of doing the intrinsic part of their business of running an airline. The compulsion of having to undertake the ground handling activities under the aegis of the airport operators is an unreasonable W.P.(C) 8004/2010 Page 37 of 96 restriction on the rights of the petitioners to carry on a fundamental and intrinsic part of their business and wherever any unreasonable restriction is imposed, the

same is to be declared ultra vires. (d) The 2007 Regulations make a differentiation between private airlines undertaking ground handling on one hand and private third party agency selected by private airport operators undertaking ground handling for private airlines on the other which is not an acceptable classification as there is no intelligible differentia and no rational nexus between the objects sought to be achieved and the result which is ultimately achieved.

(e) The 2007 Regulations are absolutely arbitrary and discriminatory inasmuch as they do not take note of the consistent policy which was prevalent for long and recognized by the 2000 Regulations. The Regulations have failed to take note of the fact that ground handling is an activity which distinguishes performance and efficiency-wise one airline operator from the other and to destroy the said arrangement is wholly impermissible, more so, when the Regulations permit other competitors to do the ground handling as a consequence of which total commercial chaos is likely to be ushered in and further the same brings in an anomalous situation which creates a dent in the equality spectrum. The introduction of the 2007 Regulations is an anathema to the entire concept of privatization of airline industry and the exclusion W.P.(C) 8004/2010 Page 38 of 96 of the petitioners to handle the majority of air traffic in India is arbitrary and unreasonable.

(f) The AAI Regulations 2000 allowed all the airlines to conduct self- ground handling facilities including outsourcing which was permitted by the AAI. The 2007 Regulations run counter and are in conflict with the statutory requirement contained in Rule 134 read with Schedule 11 of the 1937 Rules. That apart, the conditions of the licence are statutory in nature and any intervention in the same would violate the statutory framework.

(g) The Regulations and the circular project a picture of contradiction and disharmony inasmuch as the Regulations cover four airports whereas the circular covers six airports. That apart, the airports at Kolkata and Chennai, which are not managed by private airport owners, could not have been covered and same goes to show that there has been a total non-application of mind. The circular, as a policy, smacks of arbitrariness and unreasonableness as it creates a dent in the integral part of airline operation which includes ground handling facility and further does not take note of the fact that Rule 92 of the 1937 Rules is required to be read in conjunction with Rule 134.

(h) The segregation of ground handling into those involving passenger interface and those not involving passenger interface is unreasonable and unworkable as both the activities have to be carried out in W.P.(C) 8004/2010 Page 39 of 96 complete harmony and coordination and if a discord and dissonance is brought in, an unworkable situation would crop up which is not conceived in law.

(i) The 2000 Regulations permitted ground handling service and though the Regulations and circulars were introduced in the year 2007, yet they were not given effect to regard being had to their non-workability and practical difficulties and further, when the petitioners were brought into the fray of airline business by grant of a licence with conditions precedent incorporated therein that they have to carry on the ground handling services and made huge investment on that score, they had a legitimate expectation that they should be carrying on the business as a whole, but a bifurcation in a maladroit manner by the authorities nullifies their legitimate expectation which has the sanction of law.

43. Mr.Gopal Subramanium, learned Solicitor General appearing for the Union of India, has proponed the following contentions: (i) The regulations and the circulars do not transgress any of the provisions of the 1934 Act or the Rules framed thereunder and, in fact, are in accord with the provisions contained in Section 5A of the 1934 Act and Section 12A of the 1994 Act. The restrictive interpretation placed by the petitioners on Section 5A does not W.P.(C) 8004/2010 Page 40 of 96 commend acceptation and defeats the legislative intendment. (ii) The security aspect has been the paramount gravamen for making a uniform policy which is well controlled in view of the fact that it has become absolutely essential to have access to latest technologies and management techniques in the matter of security protocol. It is a matter of fact that Indian Aviation is a target of international terrorism which makes it imperative on the part of the authorities to take control of

ground handling of flights because the said activity requires the presence of maximum number of personnel in sensitive areas of airports.

(iii) The circular No.7/2007 was issued by the DGCA stipulating that the airports ground handling facilities would be handled by the airport operator itself or its joint venture partner; subsidiary companies of the national carrier, i.e., Air India / Indian Airlines or their joint venture or third party handling provided that they are selected through competitive bidding and on revenue sharing basis and subject to security clearance by the Government of India and the said circular has been issued under Rule 133A of the 1937 Rules and there is no conflict / discord between the rule and the circular. (iv) The proponement that a monopoly has been created in favour of all the private operators is sans substratum since Regulation 3 of the 2007 Regulations clearly stipulates that the ground handling service at W.P.(C) 8004/2010 Page 41 of 96 airport can be carried out by AAI or it joint venture company or subsidiary companies of the national carrier, i.e., National Aviation Company India Ltd. or its joint ventures specialized in ground handling services. That apart, the Regulation also permits any other ground handling service provider selected through competitive bidding on revenue sharing basis subject to security clearance by the Central Government and observance of performance standards. On a careful reading of the language employed in the Regulations, it is clear as crystal that the airline operator is not totally prohibited to carry out the ground handling services if he satisfies the conditions enumerated therein.

(v) The attack that the security measure is a subterfuge is totally without any substance since the Bureau of Civil Aviation Security, on 21.8.2009, has clearly stated that certain aircraft operations cannot be mixed with ground handling activities and there has to be a protocol. In this regard, the Cabinet, in its meeting held on 29.12.2009, has decided to bifurcate, to give certain privileges to the private airline operators in respect of ground handling services, into two parts. Keeping in view the security measures, the grievance of the petitioners centering around its commerce and commercial interest alone is unacceptable. The stand of the petitioners that their right under Article 19(1)(g) is affected is not correct as the restriction that W.P.(C) 8004/2010 Page 42 of 96 has been placed is a reasonable restriction as it pertains to the security of the country which is indubitably in the interest of the general public. The nature of activity or the business carried out by the petitioners has to be viewed in a substantive manner and the safety of the citizens can never be marginalized for the interest of individual airline operators and the safety measures for the collective at large cannot be marginalized for the sake of interest of the individual airline operators.

(vi) The policy framed by the Respondent, Union of India, on an appropriate scrutiny, does withstand the scanning on the anvil of Article 14 of the Constitution of India as it does not smack of arbitrariness and is not unguided. The claim that there has been irrational classification between the airline operators and the airport operators, on one hand, and the cargo operators, on the other, has no legs to stand upon inasmuch as they are a class apart and there is an intelligible differentia between the two classes and, thus, the equality clause in its essential conceptuality does not get attracted. (vii) The dichotomy that has been highlighted by the petitioners that the Regulations cover four airports whereas the circulars cover six and that the Regulations could not have covered all the six in view of the language employed "managed by AAI" does not stand to reason in view of the language employed under Section 12A of the 1994 Act W.P.(C) 8004/2010 Page 43 of 96 which has to be interpreted on a broad canvass.

44. Dr.A.M. Singhvi, learned senior counsel appearing for the respondent Nos.5 and 7, has advanced the following submissions: (i) The interpretation placed by the learned counsel for the petitioners on Section 5A of the Act is totally unacceptable as an effort has been made to read the provision in a fragmented manner which is not permissible. The said provision has to be contextually and conceptually interpreted regard being had to the four facets, namely, textual language power, boundaries of the power, targets which are required to be addressed to and the proper exercise of power. (ii) The proponement by the petitioners to read in any case with the satisfaction of the security of India and with the clauses that have been enumerated earlier is a composite manner is impermissible. The term in any case has to be understood in a broader expanse and it can cover any matter where the security of India or safety of aircraft operator is a necessity and is not required to

have nexus with the clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc), (h), (i), (m) and (qq) of sub-section (2) of Section 5.

(iii) The interpretation placed on Rule 92 of the 1937 Rules is an adroitly artificial one inasmuch as what is provided in the said Rule is that an airline operator can engage, without any restriction, any of the ground W.P.(C) 8004/2010 Page 44 of 96 handling service provider permitted by the Central Government and the said Rule does not convey that the airline operator has the legal right to carry out self-ground handling service. The Regulations and the circulars harmoniously co-exist. The stand that the 2007 Regulations is vitiated by including certain airports which are managed by the AAI though they are not so managed does not improve the case of the petitioners as the circulars issued by the DGCA under Section 5A and the Regulations framed under the 1994 Act harmoniously co-exist, and as long as they lawfully co-exist the question of declaring any one of them ultra vires does not arise and further, any action taken under the same cannot be flawed. (iv) The 2007 Regulations and the circulars reinforce each other and there is no conflict.

(v) The submission to claim a right of ground handling services is basically fallacious as the petitioners are confused between ground handling services and self-handling services.

(vi) The stand that there could not have been a variation of the statutory licence is not tenable as the licence has to be governed and controlled by the subsequent circulars and Regulations.

(vii) The claim based on the foundation of licence is speculative and lacks challenge as no right is created. That apart, if the terms and conditions of the licence are studied with deep ken, it is revealed that W.P.(C) 8004/2010 Page 45 of 96 it made a stipulation for minimum requirement for grant of permit to operate scheduled passengers, air transport services and the same can always be changed. Moreso, keeping in view that the privatization of airports not being in the horizon, the same was subject to change in policy, unless it is unreasonable, arbitrary or capricious. (viii) An airline operator who comes into the fray of business has to adjust himself with the system of corporate structuralism and cannot claim a vested right for self-ground handling service.

45. Dr. Singhvi, learned senior counsel appearing for the Respondent Nos. 5 and 7, to buttress his submissions, has placed reliance on the decisions rendered in Lalu Prasad Yadav v. State of Bihar, (2010) 5 SCC 1, Union of India v. Venkatesan S. & Anr., (2002) 5 SCC 285, Madhya Pradesh Ration Vikreta Sangh Society & Ors. v. State of Madhya Pradesh, (1981) 4 SCC 535, Sarkari Sasta Anaj Vikreta Sangh Tehsil Bemitra & Ors. v. State of Madhya Pradesh, (1981) 4 SCC 471, State of Orissa & Anr. v. Radheyshyam Meher & Ors., (1995) 1 SCC 652, Hindustan Zinc Ltd. v. Andhra Pradesh State Electricity Board & Ors., (1991) 3 SCC 299, Association of Industrial Electricity Users v. State of A.P. & Ors., (2002) 3 SCC 711, M/s Bajaj Hindustan Ltd. v Sir Shadi Lal Enterprises Ltd. & Anr., (2011) 1 SCC 640 and an unreported decision in Dilip Ranadive & W.P.(C) 8004/2010 Page 46 of 96 Anr. v. Union of India & Ors., W.P. No. 516/2008 by the High Court of Bombay.

46. Mr. Sudhir Chandra, learned senior counsel appearing for the respondent Nos. 4 and 6, has submitted thus:

(i) The circulars issued by the DGCA under Section 5A of the 1934 Act has a nexus with Section 2(gc) and, therefore, it cannot be said to be beyond the provisions mentioned in reference to Section 2 in Section 5A.

(ii) Rule 92 of the 1937 Rules does not create a right. Quite apart from that, to appreciate the validity of the circulars, Sections 2(b), 2(d), 2(nn) and 12A of the 1994 Act have to be kept in view. (iii) The policy formulated by the Union of India has two aspects, namely, safety and security and, therefore, it cannot be termed as arbitrary. (iv) The incorporation of Kolkata and Chennai airports in the Regulations stands on a different footing and, hence, there is no incompatibility between the circulars and the Regulations.

(v) The safety and security measures which have been provided by the expert body cannot be adjudged by the court in exercise of power of judicial review as there is no manageable judicial standard.

47. Mr.Rajiv Nayar, learned senior counsel appearing for the respondent Nos. 10, 11 and 13, submitted that the writ petition be thrown overboard on W.P.(C) 8004/2010 Page 47 of 96 the ground of delay and laches and acquiescence. It is contended by him that the petitioners have only asked for time from 2007 to get into the changed mode and in fact at their request, extension was granted thrice. After consuming time, they have challenged the circulars and the Regulations which is impermissible. It is urged by him that there has already been formalization of agreement as a result of which they have spent huge sums of money keeping in view that the right of self-ground handling services has been conferred on them.

48. Mr.Ram Jethmalani, learned senior counsel appearing for the respondent No.9, resisting the contentions canvassed by the learned counsel for the petitioners, submitted that the petitioners are absolutely unsure on what grounds they are assailing the Regulations or the circulars. The learned senior counsel has taken us through the pleadings to highlight that they suffered from vagueness and on the vagueness of pleadings, the constitutional validity of the Regulations or the circulars should not be dealt with. It is urged by him that in the present state of affairs in the country, the paramount concern is security and when the Regulations and the circulars have been issued on the foundation or edifice of security, the same cannot be brushed aside on the basis of individual financial interest of the petitioners. The challenge on the ground that the right to carry on business has been interfered with without justifiable reason does not merit consideration W.P.(C) 8004/2010 Page 48 of 96 inasmuch as their right to carry on business has not been affected and, in fact, the ground handling facilities have been regulated. The learned senior counsel would further submit that even the petitioners can enter into the fray by satisfying the conditions envisaged in the Regulations and the circulars but they intend to maintain their monopoly and carry on their outsourcing having scant regard for the security of the country. It is put forth by him that Section 5A of the 1934 Act, which has been amended, is the repository of power which authorizes the competent authority to issue circulars and the circulars being in consonance with the provision cannot be declared ultra vires. He has placed reliance on the decision rendered in Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304.

49. Mr.P.K.Ray, learned counsel appearing for the respondent No.12, while supporting the submissions made by the learned counsel for the other co-respondents, contended that the petitioners do not have unfettered right to carry on the ground handling service and if the data of employment is scrutinized, it is vivid that they really do not avail the manpower by direct employment but outsource them to a large extent and, hence, the submission that their rights are infringed is bereft of any substance. THE CORE ISSUES

50. Though we have enumerated the submissions in detail to appreciate the controversy in completeness, yet it is thought seemly to concretize the W.P.(C) 8004/2010 Page 49 of 96 core issues and dwell upon the same. In our considered opinion, the core issues that really emanate for consideration can be put into the following compartments:

(a) Whether the writ petition is to be thrown overboard on the ground of delay and laches?

(b) Whether the circulars issued by the DGCA in exercise of power under Section 5A of the 1934 Act are unsustainable being violative of the restrictions imposed in the provision itself and ultra vires Rule 92 of the 1937 Rules and further, as a policy decision, are unreasonable, capricious and arbitrary?

(c) Whether the licences granted in favour of the petitioners being statutory, the terms and conditions incorporated therein could not have been curtailed by the respondents by way of bringing in such circulars or Regulations and whether the doctrine of legitimate expectation gets attracted to protect the rights of the petitioners as far as the ground handling services are concerned?

(d) Whether there is a dichotomy between the circulars and the Regulations and, if so, which would prevail or can they, in the obtaining factual matrix, harmoniously co-exist?

W.P.(C) 8004/2010 Page 50 of 96 (e) Whether the circulars and the Regulations suffer from the vice of discrimination inasmuch as the petitioners, the airline operators, the private respondents and the airport operators, have been put in different categories without any intelligible differentia or any object to achieve and hence, play foul of Article 14, or invite the frown of Article 19(1)(g) of the Constitution infringing the rights of the petitioners to carry on the business, or are the restriction imposed reasonable?

(f) Whether the 2007 Regulations are in conflict with Rule 134 read with Schedule 11 of the 1937 Rules and, therefore, do not withstand scrutiny?

51. First we shall deal with the aspect of whether the writ petition is hit by the doctrine of delay and laches. It is submitted by Mr.Nayar, learned senior counsel, that though the circular was issued in the year 2007, yet the petitioners, instead of challenging the same, sought the intervention of the Union of India to keep it in abeyance and also for giving effect to the same and, therefore, the assail to the said circular in 2011 should not be entertained. In our considered opinion, after the circular came into force, a Regulation has been framed and that apart, when we have heard the parties at length, we are not inclined to throw the writ petition over board on the W.P.(C) 8004/2010 Page 51 of 96 ground of delay and laches. Accordingly, the aforesaid submission, being sans substance, stands repelled.

52. The next aspect that arises for consideration is whether the circulars could have been issued by the DGCA in exercise of power under Section 5A of the 1934 Act and also in transgression of Rule 92 of the 1937 Rules. That apart, it is to be tested whether the circulars, as policy decisions, are to be regarded as arbitrary and unreasonable. Section 5A was brought in the statute book and was substituted by Act 44 of 2007. The said provision, being differently interpreted by both the sides, is required to be reproduced in toto:

"5A. Power to issue directions. - (1) The Director- General of Civil Aviation or any other officer specially empowered in this behalf by the Central Government may, from time to time, by order, issue directions, consistent with the provisions of this Act and the rules made thereunder, with respect to any of the matters specified in [clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc)], (h), (i), (m) and (qq) of sub-section (2) of section 5, to any person or persons using any aerodrome or engaged in the aircraft operations, air traffic control, maintenance and operation of aerodrome, communication, navigation, surveillance and air traffic management facilities and safeguarding civil aviation against acts of unlawful interference], in any case where the Director-General of Civil Aviation or such other officer is satisfied that in the interests of the security of India or for securing the safety of aircraft operations it is necessary so to do.

(2) Every direction issued under sub-section (1) shall be complied with by the person or persons to whom such direction is issued]."

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53. Sub-section 2 of Section 5 especially clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc)], (h), (i), (m) and (qq) which have been referred to in Section 5A being relevant are reproduced below:

"(aa) the regulation of air transport services, and the prohibition of the use of aircraft in such services except under the authority of and in accordance with a licence authorizing the establishment of the service;

(b) the licensing, inspection and regulation of

aerodromes, the conditions under which aerodromes may be maintained and the prohibition or regulation of the use of unlicensed aerodromes;

(c) the inspection and control of the manufacture, repair and maintenance of aircraft and of places where aircraft are being manufactured, repaired or kept; X X X X (e) the conditions under which aircraft may be flown, or may carry passengers, mails or goods, or may be used for industrial purposes and the certificates, licences or documents to be carried by aircraft;

(f) the inspection of aircraft for the purpose of enforcing the provisions of this Act and the rules thereunder, and the facilities to be provided for such inspection;

(g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft;

(ga) the licensing of persons engaged in air traffic control

(gb) the certification, inspection and regulation of communication, navigation and surveillance or air traffic management facilities;

(gc) the measures to safeguard civil aviation against acts of unlawful interference;

W.P.(C) 8004/2010 Page 53 of 96 (h) the air-routes by which and, the conditions under which aircraft may enter or leave [India], or may fly over [India], and the places at which aircraft shall land; (i) the prohibition of flight by aircraft over any specified area, either absolutely or at specified times, or subject to specified conditions and excpetions;

X X X X (m) the measures to be taken and the equipment to be carried for the purpose of ensuring the safety of life; X X X X (qq) the prohibition of slaughtering and flaying of animals and of depositing rubbish, filth and other polluted and obnoxious matter within a radius of ten kilometers from the aerodrome reference point;"

54. It is submitted by the learned senior counsel for the petitioners that Section 5A of the 1934 Act has to be given a restricted interpretation and, in fact, the circulars had to be in accord with the sub-sections mentioned therein and further, the security aspect has to have nexus only with the postulates mandated in the aforesaid provisions and cannot travel beyond the said periphery. It is urged that mere compliance of the provisions alone would not suffice the security facet. In essentiality, it is propounded that both the aspects have to be read cumulatively and not in isolation.

55. The stipulations engrafted in Section 5A are to be contextually understood. The text and context have to go hand in hand. In this regard, we may refer with profit to certain decisions in the field. In Poppatlal Shah v. State of Madras, AIR 1953 SC 274, the Apex Court, while adverting to W.P.(C) 8004/2010 Page 54 of 96 the concept of construction of a provision, has opined that it is a settled rule of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself.

56. In State of W.B. v. Union of India, AIR 1963 SC 1241, it has been ruled that it is the duty of the court to ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; the court must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

57. In RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424, it has been opined that the interpretation is best which makes the textual interpretation match the contextual. Chinnappa Reddy, J., in his inimitable style, noted the signification of such an interpretation: "33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted.

With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute- maker, provided by such context, its scheme, the

sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these W.P.(C) 8004/2010 Page 55 of 96 glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

58. In Union of India v. Alok Kumar, (2010) 5 SCC 349, while dealing with the concept of contextual interpretation, their Lordships have opined thus:

"The rule of contextual interpretation requires that the court should examine every word of the statute in its context, while keeping in mind the Preamble of the statute, other provisions thereof, pari materia statutes, if any, and the mischief intended to be remedied. Context often provides a key to the meaning of the word and the sense it carries."

59. Keeping in view the aforesaid pronouncements in the field, we are required to see whether the authority concerned is empowered to issue directions for the purpose of giving effect to the provisions of Section 5(2) only when security aspect is inherently involved. For the aforesaid interpretation, the learned senior counsel for the petitioners would lay emphasis on the words "in any case" to convey that the said words really have the character of condition precedent.

60. In the case of Lalu Prasad Yadav (supra), the term "in any case" came for interpretation and in that background, their Lordships construed the W.P.(C) 8004/2010 Page 56 of 96 said words to be of widest amplitude. The question that arose in the said case was with regard to the interpretation of Section 378 of the Code of Criminal Procedure wherein sub-section (1) of Section 378 Cr.P.C. has been used but there is a fetter in the said sub-section itself. In that context, their Lordships observed as follows:

"45. ..The phrase "in any case" in sub-section (1) of Section 378, without hesitation, means "in all cases", but the opening words in the said Section put fetters on the State Government in directing appeal to be filed in two types of cases mentioned in sub-section (2)."

61. While dealing with the issue whether the State of Bihar had the competence to file an appeal from the judgment passed by Special Judge, CBI, their Lordships, while interpreting Section 378(1) of the Cr.P.C., held as follows:

"54. In our opinion, the legislature has maintained a mutually exclusive division in the matter of appeal from an order of acquittal inasmuch as the competent authority to appeal from an order of acquittal in two types of cases referred to in sub-section (2) is the Central Government and the authority of the State Government in relation to such cases has been excluded. As a necessary corollary, it has to be held, and we hold, that the State Government (of Bihar) is not competent to direct its Public Prosecutor to present appeal from the judgment dated December 18, 2006 passed by the Special Judge, CBI (AHD), Patna."

62. The said decision has been commended to us to highlight that in any case does not always mean in all cases. In the obtaining context, as we read the provision, the language employed in Section 5A is really of wide W.P.(C) 8004/2010 Page 57 of 96 amplitude. It deals with operation of aerodrome, surveillance, safeguarding civil aviation. What is argued on behalf of the petitioners is that in the interest of the security of India or for securing the safety of aircraft operations, Section 5A has to have insegregable nexus with one of the provisions contained in Section 5(2) of clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc)], (h), (i), (m) and

(qq) and further the directions can be issued in respect of the same only if the security measure is involved. On a reading of the provision on the bedrock of contextual interpretation, the said submission does not deserve acceptation. We are inclined to think that the words in any case are to be construed to cover all categories of cases where the interest of security of India or securing the safety of aircraft operation is involved. The same cannot be restricted or constricted to the provisions of Section 5(2) which find mention therein. In this regard, we may also fruitfully refer to Section 4A of the Act which reads as under: "4A. Safety oversight functions. The Director-

General of Civil Aviation or any other officer specially empowered in this behalf by the Central Government shall perform the safety oversight functions in respect of matters specified in this Act or the rules made

thereunder."

63. We have referred to the said provision as the same is of immense importance regard being had to the security facet. In this context and backdrop, if Section 5A is understood only in the light of sub-section (2), it would not only be unpurposive but also fundamentally defeat the essential W.P.(C) 8004/2010 Page 58 of 96 purpose. That is not the legislative intent. Quite apart from the above, the clauses which find mention in the provision should also not be narrowly constructed. Mr.Sudhir Chandra, learned counsel for the respondent Nos.4 and 6 has placed heavy reliance on clauses (b), (ga) and (gc) mainly on the words regulations of aerodromes, traffic control and safeguard of civil aviation. The said terms, as we perceive, have to be given wider connotation, for constricted understanding and application would tantamount to fragmented interpretation. Thus, the inevitable conclusion is that where the interest of security of India or safety of aircraft operation is concerned, the competent authority under Section 5A can issue directions and the impugned circulars meet the tests enshrined in Section 5A. That apart, the process of interpretation should adhere to the basic principle that it is the duty of the court to see the legislative intent and its purposeful implementation. The two principles the test of intendment and the test of purpose cannot be marginalized. That apart, on a studied appreciation the circular deals with security which has nexus with broader context of the things that find mention in 2(b), 2(ga), 2(gc) and (m) of Section 5(2). Ergo, the submission that the same travels beyond the restrictions inherent in the provision stands repelled.

64. The next limb of the said submission is that the circulars run counter to Rule 92 of the 1937 Rules. In this regard, we think it appropriate to have W.P.(C) 8004/2010 Page 59 of 96 a survey of the relevant Rules. Rule 3 of the 1937 Rules deals with definitions and interpretation. Sub-rule (2) of Rule 3 deals with aerodrome. Sub-rule (3) of Rule 3 which has been brought into the Act on 22.9.2009 defines aerodrome operator. Sub-rules (2) and (3) of Rule 3 are as follows: "(2) "Aerodrome" means any definite or limited ground or water area intended to be used, either wholly or in part, for the landing or departure of aircraft, and includes all buildings, sheds, vessels, piers and other structures thereon or appertaining thereto;

(3) "Aerodrome operator" means a person,

organization or enterprise responsible for operation and management of an aerodrome."

65. Part XI of the 1937 Rules deals with aerodromes. The said rules have been incorporated in the Rules on 2.11.2004. Rule 78 deals with licensing of aerodromes. Rule 79 provides for the qualifications of licensee. Rule 80 deals with the procedure for grant of licence. Rule 90 provides for entry into public aerodromes. Rule 92 deals with ground handling services. The said Rule, being relevant for the present purpose, is reproduced in entirety: "92. Ground Handling Services. The licensee shall, while providing ground handling service by itself, ensure a competitive environment by allowing the airline

operator at the airport to engage, without any restriction, any of the ground handling service provider who is permitted by the Central Government to provide such services:

Provided that such ground handling service

provider shall be subject to the security clearance of the Central Government."

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66. Relying on the aforesaid Rule 92, it is contended that an airline operator has an indefeasible right to provide the ground handling service itself or engage, without any restriction, any ground handling service provider to prevent unfair competitive environment. It is urged that by virtue of the circulars coming into force, the right to ground handling service by the airline operator is taken away and, therefore, the circulars run counter to Rule 92 despite Rule 92 being in the Rules.

67. The basic test is to determine whether a rule to have effect must have its source of power which is relatable to the rule making authority. Similarly, a notification must be in accord with the rules, as it cannot travel beyond it. In this context, we may refer with profit to the decision in General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav, AIR 1988 SC 876 wherein it has been held that before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void.

68. In Additional District Magistrate (Rev.), Delhi Administration v. Shri Ram, AIR 2000 SC 2143, it has been held that it is a well recognized principle that conferment of rule making power by an Act does not enable W.P.(C) 8004/2010 Page 61 of 96 the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

69. In B.K. Garad v. Nasik Merchants Co-op. Bank Ltd., AIR 1984 SC 192, it has been held that if there is any conflict between a statute and the subordinate legislation, the statute shall prevail over the subordinate legislation and if the subordinate legislation is not in conformity with the statute, the same has to be ignored.

70. In Ashok Lanka v. Rishi Dixit, (2005) 5 SCC 598, it has been laid down that although the State may delegate its power to an administrative authority, yet such a delegation cannot be made in relation to the matters contained in the rule-making power of the State. The matters which are outside the purview of the Rules only could be the subject-matter of delegation in favour of the authority. Their Lordships have further opined that a subordinate legislation must be framed strictly in consonance with the legislative intent.

71. In Dilip Kumar Ghosh v.Chairman, AIR 2005 SC 3485, their Lordships have expressed the view that it is well settled principle of law that circular cannot override the rules occupying the field and if there is a clash between the Rule and the circular, the circular has to be treated as non est. W.P.(C) 8004/2010 Page 62 of 96

72. In Punjab Water Supply and Sewerage Board v. Ranjodh Singh, AIR 2007 SC 1082, their Lordships have observed that a Scheme under Article 162 of the Constitution of India would not prevail over the statutory rule. Their Lordships have further clearly held that any departmental letter or executive instruction cannot prevail over the statutory rule.

73. The language employed in Rule 92, if appositely appreciated, refers to licensee which means the airport operators who can do the ground handling themselves. It further postulates that the airport operator has to ensure a competitive environment and the same can only be done by the airport operator and not by the airline operator. The said interpretation also gathers support if its date of introduction, i.e., 5.11.2004 is taken note of, for the simon pure reason that the rule was amended after the concept of privatization of the airport was introduced.

74. The submission of the petitioners is that an absolute right is inherent with the airline operator. The said argument is not acceptable as there is a distinction between an airport operator and an airline operator. In fact Rule 92 confers no right of self-handling on the airline operators like the petitioners.

75. The impugned circular, as is manifest, ensures a competitive environment. The said Rule also stipulates that such ground handling W.P.(C) 8004/2010 Page 63 of 96 service provider shall be subject to security clearance of the Central Government. Hence, the emphasis is on competitive environment and security clearance. The airport operator itself or by its joint venture partner, the subsidiary companies of the national carrier, i.e., National Aviation Company of India Ltd. or their joint ventures specialized in ground handling services or any other ground handling service providers selected through competitive bidding on revenue sharing basis by the airport operator subject to security clearance has been made eligible to undertake ground handling services at all metropolitan airports, namely, the airports at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad. On a scrutiny of the same, the circulars allow the airline operator to form a joint venture and compete to perform ground handling service. Thus, we are unable to accept the submission that the circulars run counter to Rule 92 of the 1937 Rules for there is a basic fallacy in that submission as the petitioner have conceived to have an indefeasible right to have been conferred on them for ground handling service which the language employed in the Rule does not so convey.

76. The next aspect that requires to be delved into is whether the circulars, as a policy decision, are arbitrary, unreasonable and nullify the legitimate expectation of the petitioners and, hence, invite the frown of Article 14 of the Constitution. In this context, we think it apt to refer to certain authorities W.P.(C) 8004/2010 Page 64 of 96 as to under what circumstances and on what grounds a policy decision can be assailed in a court of law and the role of a court in that regard.

77. In P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India, (1996) 5 SCC 268, it has been held that when the executive is satisfied that change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down the new policy. The court would prefer to allow free play to the Government to evolve the policy regard being had to the public policy.

78. In Rustom Cavasjee Cooper v. Union of India AIR 1970 SC 564, it has been held that it is obligatory for the Court to consider the relative merits of the different political theories or economic policies but the Court will not sit in appeal over the policy of Parliament in enacting a law.

79. In Premium Granties and another v. State of Tamil Nadu AIR 1994 SC 2233, while dealing with the power of the Court to interfere with the policy decision, the Apex Court has expressed that it is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.

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80. In M.P. Oil Extraction and another v. State of M.P. and others (1997) 7 SCC 592, it has been held that in matters of policy decision, the scope of judicial review is limited and circumscribed. The Apex Court has further held thus:

"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was

subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipsi dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary

and founded on mere ipsi dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India." [Emphasis supplied]

81. In Bajaj Hindustan Ltd (supra) the Apex Court has held thus: "41. The power to lay policy by executive decisions or by legislation includes power to withdraw the same unless it is by mala fide exercise of power, or the decision or action taken is in abuse of power. The W.P.(C) 8004/2010 Page 66 of 96 doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The Court leaves the authority to decide its full range of choice within the executive or legislative power. In matter of economic policy, it is settled law that the court gives a large leeway to the ex3ecutive and the legislature. Granting licences for import or export is an executive or legislative policy. The Government would take diverse factors for

formulating the policy in the overall larger interest of the economy of the country. When the Government is

satisfied that change in the policy was necessary in the public interest it would be entitled to revise the policy and lay down a new policy."

[Emphasis added]

82. In Radheyshyam Meher (supra), the issue that arose before the Apex Court was whether the High Court was justified in interfering with a policy decision of the Government. After referring to the facts, in paragraph 3 of the decision, the Court took note of the fact that the whole purpose of the policy and the advertisement to hold a medical store inside the hospital premises was to make medicines available to the patients day and night and even at odd hours. In that context, their Lordships ruled thus:

6. In the aforesaid background the question arises whether, in the absence of any rule or regulation to the contrary, can the power of the State be abridged on the basis of an individual interest of certain trader, even to the extent of restricting the State's capacity to advance larger public goods. It can hardly be disputed that the consideration of availability of the medicines to the patients should be the uppermost consideration as

compared to the right of a person to derive income and make profits for his sustenance by running a medical W.P.(C) 8004/2010 Page 67 of 96 store for the reason that the medical stores are primarily meant for the patients and not the patients for the medical stores or those who run the same. The submission of the respondents that if a medical store is opened within the campus of the hospital, the same will jeopardise their interest adversely affecting their business and that they will not be able to sustain themselves could not be a valid ground to disallow the appellants to open a shop within the hospital campus. Undoubtedly, the opening of a medical store within the hospital campus will provide a great facility to the patients who may not be having any attendant of their own in the hospital for their assistance at odd hours in the event of an emergency to go out to purchase the medicines. There may be patients having an attendant who may not find it convenient or safe to go out of the campus to purchase the medicines in the night hours. In these facts and circumstances the paramount consideration should be the convenience of the patients and protection of their interest and not the hardship that may be caused to the medical store keepers who may be having their shops outside the hospital campus. Thus the intention of the appellants to open a medical store within the hospital campus is to salvage the difficulties of the patients admitted in the hospital and this object of the appellants has direct nexus with the public interest particularly that of the patients and, therefore, the High Court should not have interfered with the decision of the State Government to settle the holding of a medical store in the Hospital premises."

[Emphasis supplied]

83. In Hindustan Zinc Ltd. (supra), the question that emanated was with regard to the justifiability of the hike in the electricity tariff. The Apex Court, after referring to Wades Administrative Law (6th edn., p.424 and p.426) and various decisions in the field with regard to the concept of arbitrariness and discriminatory impact, concurred with the view taken in Kerala State Electricity Board v. S.N. Govinda Prabhu & Ors., AIR 1986 W.P.(C) 8004/2010 Page 68 of 96 SC 1999 which followed the decision in Shri Sitaram Sugar Co. Ltd. v. Union of India & Ors., (1990) 3 SCC 223 and held thus: "The surplus generated by the Board as a result of revision of tariffs during the relevant period cannot be called extravagant by any standard to render it arbitrary permitting the striking down of the revision of tariffs on the ground of arbitrariness. We have already indicated that it is not also discriminatory as was the view taken in Govinda Prabhu, (1990) 3 SCC 223. It has been pointed out on behalf of the Board that the Board's action is based on the opinion of Rajadhyaksha Committee's

Report submitted in 1980 and the formula of fuel cost adjustment is on a scientific basis linked to the increase in the fuel cost. This is a possible view to take and, therefore, the revision of tariffs by the Board does not fall within the available scope of judicial review."

[Underlining is ours]

84. In Ugar Sugar Works Ltd. v. Delhi Administration and others, (2001) 3 SCC 635, their Lordships opined that the Courts, in exercise of their power of judicial review, the court ordinarily does not interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc.

85. In State of U.P. and another v. Johri Mal, (2004) 4 SCC 714, while dealing with the limited scope of judicial review, the Apex Court has laid down the following guidelines

"The limited scope of judicial review, succinctly put, is: (i) Courts, while exercising the power of judicial review, do not sit in appeal over the decisions of administrative bodies.

W.P.(C) 8004/2010 Page 69 of 96 (ii) A petition for a judicial review would lie only on certain well-defined grounds.

(iii) An order passed by an administrative authority exercising discretion vested in it, cannot be interfered in judicial review unless it is shown that exercise of discretion itself is perverse or illegal.

(iv) A mere wrong decision without anything more is not enough to attract the power of judicial review; the supervisory jurisdiction conferred on a Court is limited to seeing that the Tribunal functions within the limits of its authority and that its decisions do not occasion miscarriage of justice.

(v) The Courts cannot be called upon to undertake the government duties and functions. The court shall not ordinarily interfere with a policy decision of the State. Social and economic belief of a Judge should not be invoked as a substitute for the judgment of the legislative bodies."

86. In State of NCT of Delhi and another v. Sanjeev alias Bittoo, (2005) 5 SCC 181, it has been held that the power of judicial review can be exercised in respect of administrative action if the authority acts in total disregard of norms and exercises power which is in excess or abusive of discretionary power. If irrelevant considerations are taken into account, the same would become amenable to judicial review.

87. In Binny Ltd. and another v. V. Sadasivan and others, (2005) 6 SCC 657, it has been held that a writ of mandamus or the remedy under Article 226 is pre-eminently a public law remedy and it is available against a

body or person performing a public law function and is not generally available as a remedy against private wrongs. It is used for enforcement of various rights W.P.(C) 8004/2010 Page 70 of 96 of the public or to compel public/statutory authorities to discharge their duties and to act within their bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties

88. In State of Punjab and ors. v. Ram Lubhaya Bagga and others (1998) 4 SCC 117, the Apex Court has expressed the view that the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it is arbitrary or violative of any constitutional, statutory or any other provision of law.

89. Their Lordships have further opined that it would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits.

90. From the aforesaid pronouncement of law, it is clear as day that it is not within the domain of the Courts nor within the scope of judicial review to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether a better public policy could evolve. A policy is not to be struck down merely because a different policy could have been fairer, wiser or more logically acceptable. The Courts can only interfere if W.P.(C) 8004/2010 Page 71 of 96 the policy framed is absolutely capricious, not informed by reasons whatsoever, totally arbitrary and is found ipse dixit offending the basic requirement of Article 14 of the Constitution of India.

91. As the present policy lays emphasis on security to appreciate the steps taken for security, we think it apt to reproduce the order No.03/2009 dated 21.8.2009 issued by the Bureau of Civil Aviation Security in exercise of powers conferred by Section 5A of the Aircraft Act, 1934 read with para 4 of the DGCA Circular No.9/1/2002-IR dated 28.9.2007 and Regulations 6 and 7 of the 2007 Regulations. By virtue of the said order, the Commissioner of Security (BCAS), for the purpose of securing the safety of aircraft operations has directed certain activities pertaining to aircraft operations to be treated as Aircraft Operators Aviation Security Functions. They are:

"i) Access control to the aircraft.

ii) Aircraft security search / security check during normal as well as bomb threat situation.

iii) Screening of registered / unaccompanied baggage, cargo, mail and company stores etc.

iv) Surveillance of screened baggage till acceptance at check in counters.

v) Security control of the checked baggage from the point it is taken into the charge of aircraft operator till loading into aircraft.

vi) Passengers baggage reconciliation / identification. W.P.(C) 8004/2010 Page 72 of 96 vii) Security of baggage tag, boarding cards and flight documents.

viii) Security of mishandled / unaccompanied / transit / transfer baggage.

ix) Secondary checks at ladder point of aircraft. x) Security of catering items from pre-setting stage till loading into aircraft.

xi) Security control of express cargo, courier bags, cargo, company stores, parcels, mail bags and

escorting from city side up to aircraft.

xii) Receiving carriage and retrieval of security removed articles.

xiii) Any other security functions notified by the Commissioner from time to time."

92. Thereafter, the order provides as follows:

"2. Despite the fact that the above activities are carried out on ground at the airports, keeping in view the AVSEC requirements under the current surcharged

security scenario, these AVSEC functions cannot

be mixed up with other ground handling activities, and these AVSEC functions shall not be allowed

by an aircraft operator / airport operator to be

undertaken by a Ground Handling Agency.

3. The above mentioned security functions shall be carried out by the concerned airlines security

personnel who possess all competencies required

to perform their duties and are appropriately

trained and certified according to the requirements of the approved Security Programme of respective

Aircraft Operator and the National Civil Aviation

Security Programme of India.

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4. Foreign airlines may enter into agreement with Indian Air carriers having international operation from that airport only after specific approval from the BCAS in each case.

5. As approved by Ministry of Civil Aviation (GOI) vide letter no.AV-24013/004/2007-AAI dated 20th

March, 2008, the in-line screening of hold baggage to be transported by an aircraft operator from the airports in India, shall be carried out by trained and BCAS certified screeners of respective airport

operator or NACIL or their JV at airports having

in-line baggage inspection System.

6. Screening and security control of Cargo

consignments may also be undertaken by trained

and BCAS certified screeners of Regulated Agents

approved by the BCAS in accordance with the

instructions issued by the BCAS from time to time.

7. The responsibility for all security related functions shall be with the airlines concerned. For this

purpose, a security coordinator shall be designated by the respective airlines at each airport from

where they shall have operations.

8. This order supersedes all instruction (except BCAS Cir No.4/2007) on the subject and shall come into

force with immediate effect. Violation of this

order will attract legal action under Section 11A of the Aircraft Act, 1934."

[Underlining is ours]

93. The contention of the learned counsel for the petitioners is that the security facet has been introduced as a subterfuge to curtail the commercial interests of the petitioners and gradually destroy their existence. Per contra, the submission of the learned Solicitor General is that strong steps have been taken to regulate, protect and oversee the security measures regard being had W.P.(C) 8004/2010 Page 74 of 96 to the global phenomena and the security lapses that have taken place at the airports. The factum of security cannot be gone into by court of law and more so when specific aspects have been dwelled upon and delved into by the Bureau of Civil Aviation Security. The security of a country is paramount. It is in the interest of the nation. There is no question of any kind of competition between the commercial interest and the security spectrum. The plea that in the name of security the commercial interest of the petitioners is infringed or abridged does not merit consideration and in any case this Court cannot sit in appeal over the same. The individual interests of the petitioners must yield to the larger public interest. Judged by these parameters and the authorities which we have referred to hereinabove that lay down the test under Article 14 and the role of Court while dealing with policy decisions of the State, we do not remotely perceive the same to be arbitrary or unreasonable. It cannot be said that it is not based on well defined grounds. The very purpose is perceptible and does not suffer from the vice of unreasonableness. Therefore, we hold that the circular, as a policy decision, is not arbitrary and unreasonable to invite the frown of the said limb of Article 14 of the Constitution.

94. The next aspect which we shall advert to whether the circular as a policy decision destroys the legitimate expectation of the petitioners. The submission of the learned counsel for the petitioners is that when they came W.P.(C) 8004/2010 Page 75 of 96 into the business and were granted licence as airline operators, it was a mandatory requirement to have the self-ground handling service and, hence, now they cannot be deprived of the said benefit. In this context, we may note with profit what has been said in Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499:

" The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."

In the said decision, it has been further laid down as follows: " even if substantive protection of such expectation may be denied or restricted. A case of legitimate

expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfil. The protection is limited to that extent and a judicial review can be within those limits. But as discussed above a person who bases his claim on the doctrine of legitimate expectation, in the

first instance, must satisfy that there is a foundation and thus has locus standi to make such a claim. In

considering the same several factors which give rise to such legitimate expectation must be present. The

decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision "

95. Learned counsel appearing for the petitioners have also submitted that when a change of policy takes place, it cannot totally brush aside the W.P.(C) 8004/2010 Page 76 of 96 legitimate expectations of the persons who were the beneficiaries of the earlier policy. In this regard, we may fruitfully refer to Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors., (2005) 1 SCC 625, while dealing with the concept of legitimate expectation and a change in policy, their Lordships referred to the decision in Union of India v. Hindustan Development Corporation, AIR 1994 SC 988 and eventually expressed the view thus:

"While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness." [Emphasis added]

96. In Punjab Communications Ltd. v. Union of India, (1999) 4 SCC 727 it has been ruled that the more important aspect is whether the decision- W.P.(C) 8004/2010 Page 77 of 96 maker can sustain the change in policy by resort of Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change and whether the public interest overrides the substantive legitimate expectation of individuals will be for the decision- maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court.

97. In Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381, it has been opined that a legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation.

98. From the aforesaid exposition of law, there can be no trace of doubt that though the doctrine of legitimate expectation has its relevance in administrative law, yet the same is subject to change of rule or a policy decision and the policy decision is required to be tested on Wednesbury principle. The present change of policy is neither unreasonable nor malafide to warrant interference by this Court in exercise of power of judicial reviw.

99. The next issue pertains to whether the circulars invite frown of Article 14 of the Constitution since there is no reasonable classification based on W.P.(C) 8004/2010 Page 78 of 96 any intelligible differentia and there is no rational nexus between the objects sought to be achieved. To substantiate the said submission, it has been urged with immense vehemence by the learned counsel for the petitioners that the airport authorities have been put in different categories and have been deprived of self-ground handling service whereas others have been extended the benefit. Elaborating the same, it is urged that the circulars permit the joint venture company

or the joint venture companies of National Aviation Company Ltd. and any other ground handling service provider selected through competitive bidding on revenue sharing basis but the petitioners have been deprived. On a perusal of the 2007 circular implementation of which has been deferred from time to time by various circulars defines ground handling to permit third party handling to the subsidiaries or their joint ventures of the Airports Authority of India or joint venture companies. Learned Solicitor General submitted that there is no embargo on the part of the petitioners to enter into a joint venture and carry out the ground handling services. It is his further proponement that ground handling service does not mean self-ground handling service by the airline operator. That apart, it is contended by learned Solicitor General that the petitioners are airline operators who were carrying on ground handling service stand on a different class altogether then the Airports Authority of India or it joint venture companies or any third party which are subsidiaries on the basis of revenue sharing with the Authority subject to satisfactory W.P.(C) 8004/2010 Page 79 of 96 observance of purpose of standards as may be mutually acceptable to the authorities and their companies. In essence, the contention is that to sustain the security there has been a restriction and the ground handling services has been given not to any airline operator but to the Airports Authority of India or its joint venture company or the subsidiary companies of National carrier that is the National Aviation Company Ltd. or its joint ventures specialized in ground handling service. In this context, we may usefully refer to the decision in Madhya Pradesh Ration Vikreta Sangh Society (supra), the question that arose before the Apex Court was whether the Madhya Pradesh Foodstuffs (Civil Supplies Public Distribution) Scheme, 1981 formulated by the State Government under sub-clause (d) of Clause (2) of the Madhya Pradesh Foodstuffs (Distribution) Control Order, 1960 introducing a new scheme for running of individual fair price shops by agents to be appointed under a Government scheme giving preference to cooperative societies in replacement of the earlier scheme of running such fair price shops through retail dealers appointed under clause 3 of the Order of 1960 was violative of Articles 14 and 19(1)(g) of the Constitution of India. In that context, their Lordships referred to the decision in R.D. Shetty v. International Airport Authority of India & Ors., AIR 1979 SC 1628 which has laid down the principle that if a governmental action disclosed arbitrariness, it would be liable to be invalidated as offending Article 14 of the Constitution, but taking into consideration the wider concept, their Lordships held as follows: W.P.(C) 8004/2010 Page 80 of 96 "The wider concept of equality before the law and the equal protection of laws is that there shall be equality among equals. Even among equals there can be unequal treatment based on an intelligible differentia having a rational relation to the objects sought to be achieved. Consumers' cooperative societies form a distinct class by themselves. Benefits and concessions granted to them ultimately benefit persons of small means and promote social justice in accordance with the directive principles. There is an intelligible differentia between the retail dealers who are nothing but traders and consumers' cooperative societies. The position would have been different if there was a monopoly created in favour of the later. The scheme only envisages a rule of preference. The formulation of the scheme does not exclude the retail traders from making an application for appointment as agents."

100. In this regard, it would not be out of place to refer to the concept of classification as laid down in the locus classicus, i.e., Ram Krishna Dalmia and Ors. v. Shri Justice S.R. Tendolkar and Ors., AIR 1958 SC 538, in the said decision the Apex Court laid down many a principle pertaining to class legislation and also the presumption of constitutionality. Looking at the role of a court while dealing with the presumption of constitutionality, the two principles which are relevant for the present purpose are reproduced below: "(e) that in order to sustain the presumption of

constitutionality the Court may take into consideration matters of common knowledge, matters of common

report, the history of times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the

existing conditions on the part of a Legislature are to be resumed, if there is nothing on the face of the law or the W.P.(C) 8004/2010 Page 81 of 96 surrounding circumstances brought to the notice of the Court on which

the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

101. Judged on this score, we are inclined to think that while making the distinction, emphasis has been laid on a joint venture with Airports Authority of India or its subsidiary company with security concept added to it. In our considered opinion that is the condition precedent. It is uniformly applicable to all concerned. The petitioners are not debarred from constituting a joint venture company or carrying on the self-ground handling services by the mode provided. Thus, that satisfies the concept of intelligible differentia and it is well nigh impossible to accept the contention that there is a classification which does not reflect any intelligible differentia and destroys the equality clause enshrined under Article 14 of the Constitution of India.

102. The next limb of the said issue pertains to whether the 2007 circular violates Article 19(1)(g) of the Constitution as the said creates a bar to carry on the business. To bolster the said submission, learned counsel for the petitioners would submit that the ground handling service is an insegregable facet of the airline operation and the Union of India cannot take away many spheres of ground handling service and leave a few to the petitioners which W.P.(C) 8004/2010 Page 82 of 96 are trouble facing areas. Mr. Rohtagi and Mr. Kaul, learned senior counsel appearing for the petitioners would contend that a piquant situation has been ushered in since the interface at the airports would be carried on by the airline operators as a consequence of which the operations would face the wrath of the passengers whereas the other wings which would handle ground handling services would not face the same. This, according to them, creates a total dent in carrying out the business and, hence, it offends Article 19(1)(g) of the Constitution. Per contra, Mr.Gopal Subramanium, learned Solicitor General appearing on behalf of the Union of India submitted that the Article 19(1)(g) is not absolute and subject to Article 19(1)(6) of the Constitution the State can make any law imposing reasonable restrictions in the interests of general public.

103. In Madhya Pradesh Ration Vikreta Sangh Society (supra) while dealing with challenge to the scheme under Article 19(1)(g) the Apex court has opined thus:

"10. The constitutionality of the impugned scheme is also challenged as abridging Article 19(1)(g) of the Constitution. The short answer to the challenge is that the scheme in no way infringes the petitioners' right to carry on their trade in foodgrains. They are free to carry on business as wholesale or retail dealers in foodgrains by taking out licences under the Madhya Pradesh

Foodgrains (Licensing) Order, 1964. There is no

fundamental right in any one to be appointed as an agent of a fair price shop under Government Scheme."

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104. In Bishambhar Dayal Chandra Mohan v. State of U.P., (1982) 1 SCC 39, the Apex Court has held that:

"32 The fundamental right to carry on trade or

business guaranteed under Article 19(1)(g) or the

freedom of inter-State trade, commerce and intercourse under Article 301 of the Constitution, has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no

protection of the rights themselves unless there is a measure of control and regulation of the rights of each individual in the interests of all. Whenever such a conflict comes before the Court, it is its duty to harmonise

the exercise of the competing rights. The court must balance the individual's rights of freedom of trade under Article 19(1)(g) and the freedom of inter-State trade and commerce under Article 301 as against the national interest. Such a limitation is inherent in the exercise of those rights.

33. Under Article 19(1)(g) of the Constitution, a

citizen has the right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law imposing reasonable restrictions under Clause (6). The principles underlying in clauses (5) and (6) of Article 19 are now well settled and ingrained in our legal system in a number of decisions of this Court, and it is not necessary to burden this judgment with citations. The expression "reasonable restriction" signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed W.P.(C) 8004/2010 Page 84 of 96 in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

[Emphasis supplied]

105. In Municipal Corpn., Ahmedabad v. Jan Mohammed, AIR 1986 SC 1205, the Apex Court has held that in considering the validity of the impugned law imposing prohibition on the carrying on of a business or a profession, the Court must attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved.

106. In Deepak Theatre v. State of Punjab, 1992 Supp (1) SCC 684, their Lordships ruled that the Article 19(1)(g) of the Constitution accords fundamental rights to carry on any profession, occupation, trade or business, but would be subject to reasonable restrictions on the exercise of the said right imposed by a law, in the interest of the general public.

107. In Om Prakash v. State of U.P., (2004) 3 SCC 402, the Apex Court articulated that the term "reasonable restriction" as used in Article 19(6) is a highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal, just, fair, moral or conscionable to the facts and circumstances brought before the court.

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108. In Reliance Energy Ltd. & Anr. v. Maharashtra State Road Development Corporation Ltd. & Ors., (2007) 8 SCC 1, their Lordships, after referring to the decision in I.R. Coelho v. State of T.N., (2007) 2 SCC 1, dwelled upon concepts like "opportunity", "level playing field", "globalization", commitment to the rule of law", "reasonableness" and "judicial review" and held as follows:

"Article 14 of the Constitution embodies the principle of "non-discrimination". However, it is not a freestanding provision. It has to be read in conjunction with rights conferred by other articles like Article 21 of the Constitution. The said Article 21 refers to "right to life". In includes "opportunity". In our view, as held in the latest judgment of the Constitution Bench of nine Judges in I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1, Article 21/14 is the heart of the chapter on fundamental rights. They cover various aspects of life. "Level playing field" is an important concept while construing Article 19(1)(g) of the Constitution. It is this doctrine which is invoked by REL/HDEC in the present case. When Article 19(1)(g) confers fundamental right to carry on business to a company, it is entitled to invoke the said doctrine of "level playing field". We

may clarify that this doctrine is, however, subject to public interest. In the world of globalization, competition is an important factor to be kept in mind. The doctrine of "level playing field" is an important doctrine which is embodied in Article 19(1)(g) of the Constitution. This is because the said doctrine provides space within which equally placed competitors are allowed to bid so as to subserve the larger public interest."

109. Keeping the aforesaid decisions in view, it is requisite to see whether the circular is hit by the aforesaid constitutional provision. On a careful W.P.(C) 8004/2010 Page 86 of 96 scrutiny, it is perceivable that the certain ground handling services have been taken away from the petitioners on the ground of security measures. We have already reproduced the security measures in the earlier part of our decision while relating to why such a policy decision was warranted. There can be no iota of doubt that the national security is in the interest of general public and public order. It cannot be said that the petitioners had an indefeasible right to do the entire ground handling service solely because they were granted security clearance by the Central Government. One is required to apply the test of immediate and direct impact, level playing field which is subject to public interest, the nature of restriction regard being had to the concept of excessive postulates or stipulation of conditions. In the case at hand the ground handling service has been bifurcated. The sphere of operation that has been restricted pertains to the field of security. The authorities have taken the stand of larger public interest. The level playing field has to succumb to the same. It is to be kept in mind that the concept of reasonable restriction strikes a balance between an individual right to carry on his business or trade or profession and the larger public interests on the other. The right of the petitioners to carry out the function of airline operators has not been taken away. What has been taken away is a part of ground handling service which is in the realm of security. Thus, we are unable to accept the submission that the restriction that has been imposed goes beyond the requirement of the interests of the general public and / or W.P.(C) 8004/2010 Page 87 of 96 excessive in nature. On the contrary, it satisfies the doctrine of balance which is a basic facet of Article 19(1)(g) of the Constitution of India. Therefore, we repel the challenge to the circular on this score.

110. The 2007 circular states that with the restructuring of certain airports and development of a few Greenfield airports in the private sector, it has become imperative for the Central Government to lay down the eligibility criteria for various agencies to undertake ground handling services at non- AAI airports. In the said circular reference has been made to all metropolitan airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad. In the Regulations dated 18.10.2007 in paragraph 3, it has been mentioned that the said Regulations shall apply to all airports and civil enclaves managed by the AAI. Regulation (2)(b) defines authority to mean the Airports Authority of India constituted under sub-section (1) of Section 3 of the 1994 Act. Regulation 3 deals with ground handling service at airports. It postulates that a carrier may carry out ground handling services at metropolitan airports that is the airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad. It is urged by Mr. Rohtagi, learned senior counsel for the petitioners that in Regulation 2 it is postulated that the Regulation shall apply to all airports managed by the AAI. It could not have included Chennai and Kolkata airports which are not managed by the AAI but by the private airport operators. Mr. Gopal W.P.(C) 8004/2010 Page 88 of 96 Subramanium, learned Solicitor General would contend if Section 12A of the 1994 Act is read in conjunction with Rule 133A it would be quite clear that the words "managed by" is of wide import and include all the six airports. Dr. Singhvi, learned senior counsel appearing on behalf of respondent Nos. 5 and 7, per contra, would contend that the circulars and the Regulations do not compete with each other as they cover different fields and, therefore, they can harmoniously exist and, hence, there is no necessity to delve into the issue whether two other airports which are not covered by the AAI would have any bearing on the lis. At this juncture, we may refer to the decision in Mr.Dilip Ranadive & Anr. (supra), wherein the High Court of Bombay has held thus:

27. Being so, the respondents are justified in

contending that the grievance of the petitioners that the regulations issued on 18th September, 2007 is devoid of substance. The regulations specifically relates to the airports managed by the Airport Authority of India whereas the circular applies to all the airports other than belonging to the Airport Authority of India, and hence there is no question of one superseding the another and both are to be read harmoniously. In this regard,

the stand of the respondent No. 1 which is also clear to the effect that the regulation does not supersede circular and that therefore the EOI cannot be said to be ultra vires. The same is the stand of the respondent No. 2 in their affidavit where it has been stated that the circular dated 28th September, 2007 is independent of the regulations of 2000 and, therefore, there is no question of supersession the circular by the Regulations.

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111. We concur with the aforesaid view, for we perceive that in the 2007 Regulations, there is no mention that the 2007 circular has been superseded. That apart, the Regulation No.3 mentions six airports. Regulation 1(3) refers to that Regulations shall apply to all airports managed by the AAI. It can be stated with profit by abundant caution the Regulation includes the two airports which are not managed by the private airport operators and the same does not take away the impact of the circular. Thus, they can harmoniously co-exist. As we are inclined to think that they can harmoniously co-exist, there is no justification on our part to dwell upon the issue that has been urged by learned Solicitor General for Union of India that the words "managed by" need not be narrowly considered and has to be read with in conjunction with Section 12A of the 1994 Act and the Rule 133A of the 1937 Rules.

112. The next ground of attack, especially to the validity of 2007 Regulations, is that it is in conflict with Rule 134 read with Schedule XI of the Rules. Rule 134 reads as follows:

"134. Air Transport Services (1) No person shall

operate any scheduled air transport service from, to, in, or across India except with the permission of the Central Government, granted under and in accordance with and subject to the provisions contained in Schedule XI: Provided that any person already permitted and

operating scheduled air transport service before

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Rules, 1994, or any successor to such person under section 3 of the Air Corporation (Transfer of Undertaking and Repeal) Ordinance, 1994 (Ord.4 of 1994), may

continue operation of such services subject to the provisions of sub-rule (1A).

(1A) The Central Government may, with a view to

achieving better regulation of air transport services and taking into account the need for air transport services of different regions in the country, direct, by general or special order issued from time to time, that every operator operating any scheduled air transport service shall render service in accordance with the conditions specified in such order including any condition relating to their due compliance.

(2) The Central Government may permit any air

transport undertaking of which the principal place of business is in any country outside India to operate an air transport service from, to or across India in accordance with the terms of any agreement for the time being in force between the Government of India and the

Government of that country, or, where there is no such agreement, of a temporary authorization by the

Government of India.

(3) No air transport service, other than a scheduled air transport service or an air transport service, to which the provisions of sub-rule (1) or (2) apply, shall be operated except with the special permission of the Central

Government and subject to such terms and conditions as it may think fit to impose in each case."

113. On a bare perusal of the said Rule, it is quite vivid that no one can operate any scheduled air transport from, to, in, or across India except with the permission of the Central Government, granted under and in accordance with and subject to the provisions contained in Schedule XI. It is also luculent that every operator operating any scheduled air transport service W.P.(C) 8004/2010 Page 91 of 96 shall render service in accordance with the conditions specified in the order passed by the Central Government including any condition relating to their due compliance. Schedule XI deals with grant of permission to operate scheduled air transport services. Clause 5 provides that every application for grant of permit is to be made to the Director General. There is prescription for the format and the fees. Clause 8 stipulates how the Director General shall consider the application for permit and any representation made in respect thereof. Sub-clause (2) of Clause 8 provides the guidelines for the disposal of the application. It reads as follows:

"(2) For the disposal of the application, the Director- General shall consider, in particular

(i) whether having regard to the applicants

experience and financial resources and his ability to provide satisfactory equipment, organisation and staffing arrangements, and having regard also to any

contravention in respect of aircraft operated by him of the provisions of the Aircraft Act, 1934 (22 of 1934), and the rules made thereunder, the applicant is competent and a fit and proper person to operate aircraft on scheduled air transport services;

(ii) the provisions made or proposed to be made

against any liability in respect of loss or damage to persons or property which may be incurred in connection with the aircraft operated by the applicant;

(iii) the existing or potential need or demand for the scheduled air transport service applied for;

(iv) in the case of any scheduled air transport service proposed, the adequacy of any other air transport service already authorized under rule 134.

W.P.(C) 8004/2010 Page 92 of 96 (v) the extent to which any scheduled air transport service proposed would be likely to result in wasteful duplication of or in material diversion of traffic from any air transport service which is being or is about to be provided under a permission issued under rule 134. (vi) any capital or other expenditure reasonably

incurred or any financial commitment or commercial agreement reasonably entered into, in connection with the operation of aircraft on air transport service by any person (including the applicant);

(vii) if the tariffs for the proposed scheduled air transport services are reasonable; and

(viii) any objections or representations made in

accordance with the provisions of this schedule or any other law in force."

114. Clause 11 provides that the grant of permit shall not be construed as in any way absolving any person from the obligation of complying with the provisions of the Aircraft Act, 1934 or with the Rules made thereunder or with any other statutory provisions. The Director General of Civil Aviation vide Annexure P-7 dated 1.3.1994 has issued the guidelines for minimum requirements for grant of permit to operate schedule passenger air transport services. The introduction to the same reads as follows: "1. INTRODUCTION

Sub-rule 1 of Rule 134 of the Aircraft Rules, 1937 specifies that no person shall operate any scheduled air transport service from, to, in, or across India except with the permission of the Central Government, granted under and in accordance with and subject to the provisions of Schedule XI of the Aircraft Rules. This Civil Aviation Requirement contains the minimum airworthiness,

operational and other general requirements for grant of W.P.(C) 8004/2010 Page 93 of 96 permit for Scheduled air transport operations. This CAR is issued under provisions of Rule 133A of the Aircraft Rules, 1937. These requirements are complimentary to the requirements of ICAO Annex 6 Part I, as applicable to scheduled operations."

115. Rule 133A occurs in Part XIIA which deals with Regulatory Provisions. Rule 133 is the only Rule which occurs in the said part. It deals with directions by Director-General. Clause 3 of the Civil Aviation Requirements stipulates the eligibility requirements. Clause 3.2.6 reads as follows:

"3.2.6 adequate ground handling facilities and staff for preparation of load and trim sheet, flight dispatch and passenger / cargo handling. The staff should have

undergone the training and checks as specified by

DGCA."

116. It is contended that the same is a condition precedent which has been provided in the Rule. The Schedule being a part of the Rule, the Regulation cannot travel beyond the said Rule. It is worth noting that the Regulation has been issued under Section 42 of the 1994 Act which authorizes the competent authority to make Regulations. Sub-section (2)(h) of Section 42 reads as follows:

(h) securing the safety to aircraft, vehicles and persons using the airport or civil enclave and preventing danger to the public arising from the use and operation of aircraft in the airport of civil enclave"

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117. As is manifest from the aforesaid provisions, Rule 134 does not vest any right on the airline operator for any ground handling service. The Civil Aviation requirements have been formulated by the Director General of Civil Aviation. Clause 3.2.6 shows that an airline operator must have ground handling facilities and staff for preparation of load and trim sheet, flight despatch and passenger / cargo handling and further postulates that the staff should have undergone the training and checks as specified by DGCA. The same is the minimum requirement for grant of permit. The DGCA who has been conferred the power under Section 42 has framed the Regulations. The Civil Aviation Requirements only laid down the condition for fixing the eligibility criteria. That did not vest any kind of inalienable right with the petitioners. The Regulations have given more emphasis on security impact. In any case, merely because an eligibility criteria has been fixed, that does not mean the same cannot be changed. The eligibility criteria for grant of permit of ground handling facilities were laid down. It is obligatory on the part of the airline operator to provide the ground handling facility, if the authority so directs. When the condition has been altered, that by no stretch of imagination, would vitiate the Regulations issued under Section 42 on the foundation that it violates Rule 134 of the Rules. We perceive no justification in such a stand. Therefore, we repel the aforesaid submission advanced by the learned counsel for the petitioners. W.P.(C) 8004/2010 Page 95 of 96

118. In view of our aforesaid premised reasons, we do not find any substance in any of the proponements that have been canvassed on behalf of the petitioners and consequently we perceive no merit in the writ petition and accordingly the writ petition and all the interim applications stand dismissed. There shall be no order as to costs.

CHIEF JUSTICE

MANMOHAN, J

MARCH 4, 2011

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