IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 25752 of 2013 (T)

PETITIONER:

IATA AGENTS ASSOCIATION OF INDIA,(IAAI)
REPRESENTED BY ITS PRESIDENT MR.BIJI EAPEN,
IAAI BHAVAN, 39/4012-K & L, KARIMPATTA ROAD,
PALLIMUKKU, COCHIN-16.

BY SRI.P.RAVINDRAN,SENIOR ADVOCATE
ADV.SRI.M.R.SABU

RESPONDENTS:
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1. THE DIRECTOR GENERAL OF CIVIL AVIATION,
TECHNICAL CENTRE, OPP. SAFDARJUNG AIRPORT,
NEW DELHI-110 003.

2. GOVERNMENT OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF CIVIL AVIATION, NEW DELHI-110 003.

*ADDL.R3 & R4 IMPLEADED

*Addl.R3. LUFTHANSA GERMAN AIRLINES,
12TH FLOOR, DLF BUILDING NO.10, TOWER B,
DLF CITY PHASE II, DURGAON, HARYANA,
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
MS.SARIKA GANDHI.

*ADDL. R3 IS IMPLEADED AS PER ORDER DATED 02/09/2014 IN IA.NO. 12186/2014.

*Addl.R4. AUSTRIAN AIRLINES,
12TH FLOOR, DLF BUILDING NO.10, TOWER B,
DLF CITY PHASE II, DURGAON, HARYANA,
REPRESENTED BY ITS AUTHORISED REPRESENTATIVE
MS.MANJARI GAUBA.

*ADDL. R4 IS IMPLEADED AS PER ORDER DATED 02/09/2014 IN IA.NO. 12240/2014.

R1 & R2 BY ADV. SRI.T.SANJAY, CGC
ADDL.R3 & R4 BY ADV. SRI.MADHU RADHAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-01-2015, THE COURT ON 31-03-2015 DELIVERED
THE FOLLOWING:

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WP(C).No. 25752 of 2013 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE JUDGMENT IN W.P.NO.16551/09 DATED 13.07.2009

EXT.P2 TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 5.3.2010

EXT.P3 TRUE COPY OF THE LETTER DATED 23.7.2010 TO THE DIRECTOR SOUTH ASIA

EXT.P3(A) TRUE COPY OF THE LETTER DATED 2.8.2010 TO THE GENERAL MANAGER BRITISH AIRWAYS

EXT.P3(B) TRUE COPY OF THE LETTER DATED 21.7.2010 TO THE GENERAL MANAGER SINGAPORE AIRLINES

EXT.P4 TRUE COPY OF THE COMMUNICATION DATED 12.06.2012

EXT.P5 TRUE COPY OF THE OBJECTION DATED 14.6.2012

EXT.P6 TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE IST RESPONDENT DATED 16.6.2012.

EXT.P7 TRUE COPY OF THE ORDER OF THE IST RESPONDENT DATED 13.07.2012

EXT.P8 TRUE COPY OF THE COMMUNICATION DATED 06.07.2012.

EXT.P9 TRUE COPY OF THE COMMUNICATION DATED 12.07.2012

EXT.P10 TRUE COPY OF THE ORDER OF THE IST RESPONDENT DATED 17.12.2012

EXT.P11 TRUE COPY OF THE INTERIM ORDER DATED 18.2.2013 IN W.A.275/2013

EXT.P12 TRUE COPY OF THE SUPREME COURT ORDER IN CIVIL APPEAL NO.8771/12 DATED 23/01/2013

EXT.P13 TRUE COPY OF THE GOVERNMENT ORDER DATED 16/9/2013 ALONG WITH THE COVERING LETTER

EXT.P14 TRUE COPY OF THE REPRESENTATION DATED 10.10.2013

EXT.P15 TRUE COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT DATED 10/12/2013

EXT.P16 TRUE COPY OF THE COMMUNICATION DATED 29/08/2007

EXT.P17 TRUE COPY OF THE REPRESENTATION DATED 10/02/2014

RESPONDENT(S)' EXHIBITS

EXT.R3(1) TRUE COPY OF THE POWER OF ATTORNEY DATED 13/6/2013

WP(C).NO.25752/2013

EXT.R3(2) TRUE COPY OF THE ORDER DATED 27TH NOVEMBER 2012 PASSED BY THIS HON'BLE COURT IN WP(C).NO.21908/2011 AS AVAILABLE IN KERALA LAW JOURNAL

EXT.R3(3) TRUE COPY OF THE FINAL ORDER DATED 12/2/2014 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE IN WRIT PETITION NOS.38249/2013 AND 32308/2013

EXT.R4(1) TRUE COPY OF THE POWER OF ATTORNEY DATED 31/8/2010

EXT.R4(2) TRUE COPY OF THE ORDER DATED 27TH NOVEMBER 2012 PASSED BY THIS HON'BLE COURT IN WP(C).NO.21908/2011 AS AVAILABLE IN KERALA LAW JOURNAL

EXT.R4(3) TRUE COPY OF THE FINAL ORDER DATED 12/12/2014 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE IN WRIT PETITION NOS.38249/2013 AND 32308/2013

EXT.R3(A) TRUE COPY OF THE POWER OF ATTORNEY DATED 19/1/2010

EXT.R3(B) TRUE COPY OF THE POWER OF ATTORNEY DATED 31/8/2010

EXT.R3(C) TRUE COPY OF THE ORDER DATED 28TH JULY 2011 PASSED BY 1ST RESPONDENT

EXT.R3(D) TRUE COPY OF THE CERTIFIED COPY JUDGEMENT DATED 27/11/2012 PASSED BY THIS HON'BLE COURT

EXT.R3(E) TRUE COPY OF THE CERTIFIED COPY OF JUDGMENT DATED 12/2/2014 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA

EXT.R3(F) TRUE COPY OF THE CERTIFIED COPY JUDGMENT DATED 1/5/2012 PASSED BY THE HON'BLE HIGH COURT OF KARNATAKA

EXT.R3(G) TRUE COPY OF THE RESOLUTION 810i

EXT.R3(H) TRUE COPY OF THE LETTER DATED 29/5/2009

EXT.R3(I) TRUE COPY OF THE LETTER DATED 8/6/2009

EXT.R3(J) TRUE COPY OF THE RESPONSE DATED 12/6/2009

EXT.R3(K) TRUE COPY OF THE REPRESENTATION DATED 24/8/2009 SUBMITTED BY THE 3RD RESPONDENT.

/TRUE COPY/

P.S.TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.25752 of 2013

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Dated this the 31st day of March, 2015

J U D G M E N T

This writ petition is filed by an association of travel agents seeking implementation of Ext.P13 order passed by the Government of India, Ministry of Civil Aviation.

2. The Civil Aviation Industry in India is regulated by the Aircraft Act, 1934 and the Rules made thereunder, apart from the International Conventions relating to operation of Airlines. This writ petition pertains to the claim of “commission charges” by the agents from Air Transport Operators.

3. The case of the petitioner is that payment of commission to travel agents is a statutory obligation. It is further submitted that in Ext.P13, the Government

of India upheld the claim of travel agents to claim for 'commission charges or transaction charges' and therefore, the Government of India is bound to implement the direction in Ext.P13.

4. Thus, it is necessary to understand the nature of the claim of the petitioner in terms of the Statute. The Aircraft Rules 1937 define tariff as follows:

> “Rule 3(54A): 'Tariff' means any fare, rate or charge collected by an air transport undertaking for the carriage of passengers, baggage or cargo, including the commission payable to the agents, and the conditions governing such fair, rate or charge.”

5. Rule 135(2A) of the Aircraft Rules also enumerates different components of tariff. These definitions, accorded in the statutory provisions, would indicate that the commission payable to the agents will also form part of definition of tariff.

6. The agents who works in the Airline Industry have no right referable under the Act or Rules to claim relationship with the Civil Aviation Authority or with

the Air Transport Operators. Therefore, the question is whether the agents do have a right to claim any commission charges or any other fees from the Airline Industry. In fact, in another writ petition filed by the petitioners herein as W.P.(C).No.21908/2011, this issue was decided by this Court. The said judgment is reported in [2013 (1) KLJ 55]. Therein, this Court, by a very detailed judgment elaborated the relationship of the travel agents with the Airline Industry. In para.26 of the judgment, this Court held as follows:

> “26. Yet another aspect to be considered is that, the nature of service rendered by the travel agents in the Airline industry has undergone a major change after the introduction of 'web ticketing'. Almost all the Airlines operating today are having online ticket booking systems and the role of the travel agents has been changed mostly as travel advisers or to perform such other tasks, which is stated as being compensated by the Airlines to an appropriate extent, subject to the terms agreed in between. It is all the more open to the customers to go for online

booking without the intervention of the travel agents and it is open for the Air Transport Operators to issue tickets accordingly, subject to satisfaction of the requirements under the relevant rules. It is also open for the travel agents to appropriate the prescribed charges towards 'Transaction Fee', as agreed between the Principal and the Agent, for facilitating the service and there is no basis for any apprehension that the customers will not effect the said payment; more so when the 'Tariff' and such other charges permitted to be collected are to be displayed in the web site of the Air Transport Operators and also in the office of the travel agents. <u>In any view of the matter, the petitioners cannot claim payment of 'Commission' as a matter of right, in so far as no provision of law does require any such instance, nor does it prescribe any minimum or maximum rate. For the same reason, the challenge raised by the petitioner against Exts.P13 and P14 in W.P.(C) No.17408/2012 also fails</u> and it is held accordingly.” (*emphasis supplied)*

It is in the light of the above judgment, the scope of implementation of Ext.P13 order passed by the Ministry of Civil Aviation has to be examined. Ext.P13 order arises out of an appeal filed by the Federation of Indian Airlines challenging Circular No.9/76/2012-IR dated 17/12/2012 issued by the Office of the Directorate General Civil Aviation (for short, "DGCA") restricting on charging of transaction fee by Airlines since the same violates the provisions of Rule 135 of the Aircraft Rules. The Government of India passed the following order:

> "It is clearly stated here that the term 'Commission', 'Transaction Fees', 'Convenience Fees' or any other terms used for the purpose means the same i.e. payment of remuneration to the intermediaries for the services rendered by them and therefore, all these terms are treated as 'Commission', mentioned in the existing Rule 135 of Aircraft Rules, 1937 as a part of tariff to be determined by airlines. All these forms of levy of fees as remuneration to the intermediaries for the services rendered by them for issuing tickets to passengers on behalf of the airlines are permissible under the existing rules provided these are shown as part of Tariff within the

definition of Tariff and no amount will be collected from the consumers over and above this.”

Further, Rule 135(1) requires airlines to determine tariff which by definition includes commission. Rule 135(2) requires airlines to display a 'single consolidated fare' and give its break-up also for consumer's benefit. It is clear that the statutory position under Rule 135 clearly requires airlines to determine tariff in accordance with law, including commission payable to agents. The existing law also requires airlines to display total fare and its components.

However, it is made very clear that as per the rules, DGCA cannot lay down quantum of commission payable by airlines to agents. It is entirely up to the airlines to take a decision in this regard in consultation with intermediaries taking in to account various commercial factors such as the market conditions, the cost of the intermediary's establishments, etc.& statutory definition of 'tariff'.”

7. The above order also clearly indicates that transaction fee or commission is left to be worked out

between Air Transport Operators and intermediaries. The appellate order also do not indicate that the agents can claim any commission charges or transaction fee as a matter of right. It is to be noted that the prescription of tariff and commission as the components of tariff, contemplated under the statutory provisions, are intended only to ensure transparency and to avoid any oligopolistic practice in Airline Industry by fixing excessive or predatory tariff.

8. The Airline Industry, except to the regulatory mechanisms, operates purely in a private domain on contractual terms. The duty of the Airlines to publish tariff by showing the components of commission or transaction fee as the case may be, does not create by itself a right for the agents to claim transaction fee. Thus, the implementation of Ext.P13 does not arise in a sense that it has to be worked out mutually between Air Transport Operators and intermediaries. This Court cannot interfere in a matter which outrides public law remedy as the relationship between the Air Transport

Operator and the intermediaries cannot be subjected to judicial review under Article 226 of the Constitution. Further there is no challenge against the order passed by the Government leaving the matter to be worked out between the Airline Industry and the intermediaries. Thus, the writ petition is dismissed. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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