

CWP No.18628 of 2015(O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.18628 of 2015 (O&M)
Date of decision:24.09.2015**

Federation of Indian Airlines and others ...Petitioners

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.M.L.Sarin, Senior Advocate, with
Mr. Nitin Sarin and Mr. Ritesh Aggarwal, Advocates,
for the petitioners.

Mr. Arun Gosain and Mr. Varun Issar, Advocates, for
Mr. Chetan Mittal, Asstt. Solicitor General of India,
for respondent No.1.

Mr. Jagdish Manchanda, Advocate,
for respondent Nos.3 and 4.

Mr. Rajansh Thukral, Advocate,
for respondent No.7.

Mr. V. Ramswaroop, Addl. A.G., Punjab.

Mr. P.P.Chahar, DAG, Haryana.

Rakesh Kumar Jain, J.

Petitioner No.1 is a society comprising of major scheduled air operators of India (airlines), whereas petitioners No.2, 4, 6, 8 and 10 are the companies engaged in the business of providing Scheduled Air Transport Services and petitioners No.3, 5, 7 and 9 are the Shareholders/Directors of the respective companies. Respondent No.2-Directorate General of Civil

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Aviation (hereinafter referred to as the “DGCA”) is the apex regulatory body of the Ministry of Civil Aviation (hereinafter referred to as the “MoCA”), tasked with the responsibility to implement, control and supervise the air-worthiness and related aspects of the aviation industry in India. Respondent No.3-Airports Authority of India (hereinafter referred to as the “AAI”) is a statutory body under the Airports Authority of India Act, 1994 (hereinafter referred to as the “Act”), who owns and manages the Airports in the country as the lands of all airports in the country vest with the said authority. Respondent No.4-Chandigarh International Airport Limited (hereinafter referred to as the “CHIAL”) is a joint venture company of the AAI, the State of Punjab through GMADA and the State of Haryana through HUDA, as all the three have agreed to operate and maintain the Chandigarh International Airport under the auspices of AAI. Respondent No.7-Air India Air Transport Services Ltd. (hereinafter referred to as the “AIATSL”) is a public sector undertaking and a subsidiary of M/s Air India Limited, engaged in the business of providing ground handling services.

The petitioners have challenged the validity of letter dated 04.06.2015 (Annexure P-19); e-mail dated 01.07.2015 (Annexure P-20) and email dated 28.07.2015 (Annexure P-21) collectively (hereinafter referred to as the “impugned communications”) as per which the CHIAL has required all the petitioner-airlines to contact AIATSL to undertake their ground handling functions and by the award letter dated 04.06.2015, the CHIAL has refused to allot any space in the Chandigarh International Airport to any of the airlines to undertake ground-handling activities. Therefore, through

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the impugned communications, the CHIAL has sought to coerce the petitioners-airlines to carry out their ground handling operations at Chandigarh International Airport exclusively through respondent No.7-AIATSL.

The brief history in regard to provision of ground handling services is that the the Aircrafts Act was enacted in the year 1934 for the regulation of aircraft and aviation related services in India and the Aircrafts Rules, 1937 were subsequently notified in which Rule 92 provides for the ground handling services, which reads thus:

“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 are 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.”

The Central Government also notified the International Airport Authority of India (General Management, Ground Handling of Air Transport Services) Regulations, 1984, followed by the National Airports Authority (General Management, Entry for Ground Handling of Air Transport Services) Regulations, 1989 and, thereafter, the Civil Aviation Requirement, Section-3-Air Transport, Series 'C', Part II dated 01.03.1994, which was effective forthwith w.e.f. 01.03.1994 in regard to minimum requirement of grant of permit to operate scheduled passenger air transport services, in which the 'scheduled air transport service' has been defined as *“an air transport service undertaken between the same two or more places*

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and operated according to a published time table or with flights so regular or frequent that they constitute a recognizably systematic series, each flight being open to use by members of the public". It is also provided in Clause 3.2.6 thereof that adequate ground handling facilities and staff for preparation of load and trim sheet, flight despatch and passenger/cargo handling shall also be provided by the scheduled air transport service and the staff should have undergone the training and checks as specified by DGCA.

In the year 1994-95, in supersession of the International Airports Authority of India and the National Airports Authority, the Airports Authority of India was created under Section 3 of the Act. Section 42 of the Act empowers the AAI to make regulations not inconsistent with the Act which are necessary or expedient for the purpose of giving effect to the provisions of the Act. The aviation industry was privatized in India in the year 1995 onwards and several private sector airports were established and private airline operators were given licenses/permits to undertake scheduled air operations. The AAI, in exercise of its power under Section 42 of the Act, formulated the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations, 2000 (hereinafter referred to as the "Regulations of 2000"), which allowed the private scheduled air operators to undertake self-ground handling or undertake the same through the airport operator or through the AAI. Clause 3 of the Regulations of 2000 reads as under:-

"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.”

The ground handling is also defined in Regulation 2(e) of the Regulations of 2000 to mean (i) ramp handling and will include activities or specified in Annexure A to the Regulations; (ii) traffic handling and will include activities as specified in Annexure B to the Regulations; and (iii) any other activity designated by the Chairman to any part either of ramp handling or traffic handling. The activities being carried out in the case of 'ramp handling' and 'traffic handling' are also defined and reproduced as under:-

“RAMP HANDLING

1. AIRCRAFT HANDLING

- 1.1 Attendance
- 1.2 Marshalling
- 1.3 Parking
- 1.4 Starting
- 1.5 Safety Measure
- 1.6 Mooring of Aircraft

2. AIRCRAFT SERVICING

- 2.1 Liaison for fuelling and defueling
- 2.2 Liaison with suppliers for Replenishing of oil and other fluids.
- 2.3 Cabin Equipment
- 2.4 Routine & Non-Routine services
- 2.5 Cooling and Heating

3 AIRRAFT CLEANING

- 3.1 Exterior cleaning
- 3.2 Interior cleaning
- 3.3 Toilet services

3.4 Water services

4. **LOADING/UNLOADING**

4.1 Load/unload passenger baggage.

4.2 Transshipment of passenger baggage

4.3 Operation of Loading or Unloading equipment

4.4 Position and removing of passenger stairs/bridges

4.5 Emplane or Deplane Passengers

4.6 Break on Make up of baggages

4.7 Bussing of passengers or crew

4.8 Bulk loading or unloading of baggage

5. **CARGO HANDLING SERVICES**

5.1 Load and off load, export, import and transshipment cargo from the aircraft.

5.2 Mail handling services.

5.3 Operate or provide or arrange essential equipment for handling of cargo.

5.4 Transshipment of cargo

5.5 Palletisation or containerization of cargo

5.6 Break or Make up of cargo container or unit load device

5.7 Bulk loading or unloading

6. **SECURITY**

6.1 Watch & ward of registered baggage or cargo or aircraft and handling equipment.

6.2 Aircraft security or inspection in transit

6.3 Security or Surveillance for ladders point check.

6.4 Security for catering items.

Explanation: Security Services by agencies under Regulations 3 will be subject to BCAS clearance.

Note: To undertake any other work with the prior approval of the Authority under the said Regulations.”

“TRAFFIC HANDLING

1. **TERMINAL SERVICES**

1.1 Handling documents and load control

1.2 Passenger and baggage handling at the airport terminal

1.3 Cargo handling services at the airport terminals.

- 1.4 Mail handling services at the airport terminal
- 1.5 Traffic services at the airport terminal including passenger check in

2. FLIGHT OPERATIONS

- 2.1 Inform the carrier of any known project affecting the operational services and facilities made available in its aircraft in the areas of responsibility.
- 2.2 Flight preparation at the airport of departure.
- 2.3 Flight preparation at a point different from the airport of departure.
- 2.4 In-flight assistance.
- 2.5 Post flight activities.
- 2.6 In flight re-dispatch
- 2.7 Communication system associated with Ground Handling.
- 2.8 Material handling

3 SURFACE TRANSPORT

- 3.1 Arrangements for the transportation of passengers or baggages and cargo between airport and city or other agreed points.
- 3.2 Arrangements for passengers or crew transport together with their baggage between airport and city or other agreed points.

4. REPRESENTATIONAL SERVICES

- 4.1 Liaison with local authorities.
- 4.2 Information to interested parties, movement of carrier aircraft.
- 4.3 Disbursement of payment on behalf of the carriers at all airports.
- 4.4 Supervision and administration services.

5. SECURITY

- 5.1 Registered baggage X ray scan check (baggage and cargo).
- 5.2 Surveillance or vigilance for registered baggage at baggage make up or break up area of the airport.
- 5.3 Baggage identification/watch and ward of registered baggage.

Explanation: Security Services by agencies under Regulations 3

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will be subject to BCAS clearance.

Note: To undertake any other work with the prior approval
of the Authority under the said Regulations.”

On 19.02.2007, the Bureau of Civil Aviation Security (hereinafter referred to as the “BCAS”) issued a Circular No.4/2007 on deployment of ground handling agencies at the airports, which only provided that as per the Regulations of 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 the 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 down by the AAI in accordance with Section 5 of the AAI Ground Handling Regulations-2000.

The DGCA issued a Circular No.7/2007 dated 28.09.2007 relating to the grant of permission for providing ground handling services at airports other than those belonging to the AAI.

On 18.10.2007, the AAI notified the Airports Authority of India (General Management, Entry for Ground Handling Services) Regulation, 2007 (hereinafter referred to as the “Regulations of 2007”), which were applied to all airports and civil enclaves managed by the AAI. ‘Civil Enclave’ is defined in Rule 2(d) of the Regulations of 2007 which means “*the area, if any, allotted at an Airport belonging to any armed force of the Union, for use by the persons availing of any air transport service from such airport for the handling of baggage or cargo by such service,*

and includes land comprising of any building and structure on such area”.

The CHIAL is a 'civil enclave'. Insofar as the ground handling is concerned, it is the same which has been defined in the Regulations of 2000, but in the Regulations of 2007, the “ground handling services at airport” and the “restrictions on entry into airports” are provided in Regulations 3 and 4, which are reproduced, being relevant to the present lis:-

“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 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 entities 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.

- 4. Restrictions on entry into airports---** Entry into and remaining in the movement area or terminal building and at any airport and civil enclave for providing ground handling services or for operating any vehicle or other equipment shall be restricted to:
- (a) the airline or owner of aircraft or his bonafide whole time employee or any of the agencies referred to in sub-regulation (1) of regulation 3;
 - (b) any other carrier or agency who or which has been specifically permitted in writing by the Authority to undertake ground handling activities through their bonafide whole time employees;
 - (c) the bonafide whole time employees of the Authority or Joint Venture Company or the designated agency authorized by it.”

The BCAS, in exercise of powers conferred by Section 5A of Aircraft Act, 1934 delegated to it vide Government of India, Ministry of Civil Aviation Notification No.1797 dated July 3, 1997, read with para 4 of DGCA Circular No.9/1/2002-IR dated 28.9.97 and Regulations 6 and 7 of the Regulations of 2007, also issued an order No.03/2009 dated 21.08.2009 on the subject of Security Functions to be carried out by aircraft operators and for the purpose of securing the safety of aircraft operations, directed that the following activities pertaining to aircraft operations shall be treated as Aircraft Operators Aviation Security Functions (AVSEC functions):-

- “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.
- 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.”

It also provided 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.”

“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.”

It is alleged that the Regulations of 2007 was challenged by the petitioners on 26.11.2010 before the Delhi High Court in W.P.(C) No.8004/2010 on the ground that they are being prevented from self ground-handling at the metro airports. The writ petition was admitted on 03.11.2010. The AAI issued a notification in exercise of its powers conferred by Section 42 of the Act to make amendment in the Regulations of 2007 by the regulations called “Airports Authority of India (General Management, Entry for Ground Handling Services) Amendment Regulations, 2010” (hereinafter referred to as the “Regulations of 2010”) and Section 3(4) of the Regulations of 2007 was substituted as under:-

“(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, 2011:

Provided that all private airlines including foreign airlines, may undertake self handling in respect of passenger and baggage handling activities at the airport terminals and traffic services including the passenger check-in which require passenger interface, at all airports:-

Provided further that all Cargo airlines, which have their own cargo aircrafts, may undertake self handling in their hub airports:-

Provided also that the foreign airlines and private independent ground handling service providers not be permitted self ground handling or ground handling at joint user Defence airfields.”

Thereafter, in the pending writ petition, the Delhi High Court passed an order on 23.12.2010, which is reproduced as under:-

“Hearing resumed and concluded.

Before we proceed to state order reserved, Mr. Mukul Rohtagi and Mr. Neeraj Kishan Kaul, learned senior counsel for the petitioners submitted that there should be a protective order because eventually the writ petition would be rendered infructuous inasmuch by the impugned policy the ground handling business will be taken away from the petitioners who are Airline Operators and given to the others.

It is worth noting, vide Annexure P-9 dated 21st August, 2009, which is a document from Bureau of Civil Aviation Security (Ministry of Civil Aviation) Government of India, certain activities have been mentioned which are to be treated as Aircraft Operators Aviation Security Functions. They read as follows:-

- (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.
- (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.

It is submitted by Mr. Gopal Subramaniam, learned Solicitor General for the Union of India that the competent authority of the Union of India is deliberating on the same and in any case from 01st January, 2011, the same shall be handled by the Union of India through its agencies. It is clearly put forth by the learned Solicitor General that the responsibilities shall not be given to any of the private respondents till the matter is finalized. Be it noted, the learned Solicitor General submitted that the security protocol shall be finalized on or before 31st January, 2011. We have noted the same as it was so submitted by the learned Solicitor General but we are not going to advert to the same except the factum that the same shall be managed by the Union of India or its agencies from 01st January, 2011.

As we have already concluded the hearing and would be deliberating on the issues and pronounce the judgment as expeditiously as possible, we would like to pass an interim order to the effect that the writ petitioners shall continue to carry on the rest of the self handling services barring the thirteen aspects which have been stated hereinabove as suggested and conceded to by the learned Solicitor General for Union of India.

Needless to say, the present interim direction/arrangement is without prejudice to the contentions raised at the bar from all parties to the lis. It needs no special emphasis to state that all Airline Operators are at liberty to enter into such agreements with the ground services providers or the Airport Operators, if so advised.

Order reserved.

Order dasti under signatures of Court Master.”

However, an application appears to have been moved on 31.12.2010 by the AAI before the Delhi High Court in the pending writ petition, in which the following order was passed on 31.12.2010:-

“CM No. /2010

1. Application be numbered.
2. W.P.(C) No.8004/2010 challenging the ground handling policy pertaining to domestic and international airports in India as also the Ground Handling Regulations 2007 stands reserved for decision as per order dated 23.12.2010.
3. Till decision was pronounced, an interim order of even date stands recorded and as per which the statement of the learned Additional Solicitor General for Union of India has been recorded to the effect that with effect from 1.1.2011, work pertaining to the 13 security related functions listed in the order would be taken over by the Union of India and executed through its agencies.
4. By way of this application our attention is drawn to the fact that due to unexpected security threats not in contemplation as of 23.12.2010 it is becoming difficult to depute trained security personnel; requirement being stated to be 10000, request made is to relieve the Union of India of its statement that with effect from 1.1.2011 work relating to the 13 listed functions qua ground handling at the airports would be taken over by the Union of India.
5. The Registry has informed us that the main file is in the chamber of the Hon'ble Judges who have reserved decision.
6. We direct that till 7.1.2011, status quo would be maintained. The application be listed before the Bench as per roster on 7.1.2011.
7. Learned Additional Solicitor General assures us that Union of India would take necessary steps to ensure that the personnel of the petitioners required to execute the ground handling work pertaining to the 13 security persons (also) are issued necessary documents (Airport Entry Permits) for doing the needful.”

Ultimately, the judgment was reserved on 07.01.2011 and the

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following order was passed:-

“This Court on 23rd December, 2010, after completing the hearing, had passed an interim order and thereafter reserved the judgment.

On 31st December, 2010, an application forming the subject matter of CM No.22244/2010 was filed wherein the order of status quo was directed to be maintained till today.

Having heard learned counsel for the parties, it is directed that the order of status quo shall remain in force till the date of judgment.

The application stands disposed of.

Judgment reserved.”

The Division Bench of the Delhi High Court, however, finally dismissed the writ petition by a detailed order dated 04.03.2011, which is also reported as **Federation of India Airlines and others vs. Union of India and others**, 2012(7) R.C.R. (Civil) 3215.

The petitioners have challenged the said order before the Apex Court by way of SLP (Civil) No.7764 of 2011, in which the initial order was passed on 04.04.2011, which reads as under:-

“Issue notice.

All the respondents have entered appearance and waive further notice.

Counter to be filed in two weeks and rejoinder, if any, to be filed by 23rd April, 2011.

The petitioner Airlines shall be entitled to renewal of passes of their ground handling staff subject to their entering into an MoU with any ground handling agency without prejudice.

List for consideration of other interim prayers on 25.04.2011.”

There is another order available on record dated 05.05.2011

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passed by the Apex Court, which reads as under:-

“List for final disposal in July, 2011.

Status quo as on date to continue till then.”

This order is followed by another order dated 20.07.2012, which reads as under:-

“Post on 04.09.2012.

Interim order to continue in the meantime.”

The stand of the petitioners is that the interim order is still in continuation and the main SLP is still pending before the Apex Court.

It is further alleged that the meeting of the officials of the CHIAL was held on 11.03.2015 with the representatives of the petitioner-airlines in relation to the space requirement etc. in the new terminal, which was proposed to be inaugurated on 11.09.2015. On 26.03.2015, the CHIAL asked all the airlines to specify their space requirement at the proposed new terminal at Chandigarh International Airport. On 30.03.2015, all the airlines specified their space requirements. On 04.06.2015, CHIAL specified its award of space requirements to the airlines but on 01.07.2015, the CHIAL wrote to the airlines that it has awarded the ground handling contract to the AIATSL and asked the airlines to contact the AIATSL to avail ground handling facilities at the Chandigarh International Airport, though till date all the airlines are continuing to self-handle their flights under the Regulations of 2007 as the Chandigarh International Airport is a non-metro civil enclave. On 28.07.2015, CHIAL wrote to the airlines regarding the allotment of space at the Chandigarh International Airport and again mandated that the ground-handling would be provided by respondent

No.7 and the airlines which follow 1GHA policy would be permitted.

The petitioners represented on 19.08.2015 to the AAI against the proposed move of the CHIAL but on 01.09.2015, one of the petitioner-airlines received an email from respondent No.7 informing them that respondent No.7 has been offered exclusive right of ground handling at Chandigarh International Airport by the AAI and were asked to discuss the terms of ground handling with it and also orally threatened the petitioner-airlines that the Airport Entry Permits (AEPs) of their ground handling staff, which are currently valid till the 2nd week of September, 2015, shall not be extended beyond the said expiry date as only respondent No.7 would be allowed to undertake ground handling functions for all the airlines operating at the CHIAL. It is also alleged that after the opening/inauguration of the new terminal, which was scheduled for 11.09.2015, all the existing operations in the existing terminal shall be shifted to the new building. Hence, the present petition has been filed.

The petition has been contested primarily by respondents No.3, 4 and 7 who have filed their separate replies. It is averred in the reply filed by respondents No.3 and 4 that they have already awarded the contract for ground handling services to the AIATSL to facilitate the airlines for ground handling services at Chandigarh International Airport after the start of operations. It is also alleged that respondent No.7 is a subsidiary company of the Air India and the work has been awarded to them in accordance with the regulations and the petitioners cannot be allowed to handle the ground handling services at their own or through their contractors, agents etc.

without any *bona fide* whole time employees because they are only concerned with the security of the airport as well as the passengers. The Chandigarh International Airport is situated along with the Defence Enclave as there is only one wall between Chandigarh International Airport as well as the defence area. The 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.

It is further alleged that the Delhi High Court, in its judgment, has also referred to 13 security aspects which have been laid down by the BCAS. It is also submitted that the vires of Regulations of 2007 have already been upheld by the Delhi High Court and it has not curtailed right of any airline as well as not binding the airline to get ground handling facility from AIATSL as it is specified in the letter Annexure P-20 that the airline which complies with AAI's 1GHA Policy shall only be permitted to carry out ground handling service at their own with their bonafide whole time employees.

In response to the objections raised by the petitioners that there is no 1GHA policy, respondents No.3 and 4 have alleged that the 1GHA policy is the Regulations of 2007.

As a matter of fact, the sum and substance of the reply filed by respondents No.3 and 4 is that they have no objection if the ground handling services are offered by the airlines to their whole time employees and not through outsourcing agencies.

In the reply filed by respondent No.7, similar stand has been taken that in terms of Regulation 4(a) of the Regulations of 2007, only bona fide whole time employees can seek entry in the airport or remain there. It is alleged that respondent No.7, being a subsidiary company of the Air India, has rightly been engaged for the ground-handling services and accordingly, the contract of ground-handling services has already been awarded to it to facilitate the airlines for the ground handling services at the CHIAL.

The petitioners have filed their rejoinder to both the written statements filed by respondents No.3, 4 and 7 separately. It is averred that the decision of the Delhi High Court is not applicable to the facts and circumstances of the present case because there, the petitioners had challenged the prohibition of self ground handling of their planes at the six metropolitan airports, whereas the Regulations of 2007 do not bar the airlines from self-handling of the ground handling services at the non-metropolitan airports like Chandigarh and despite dismissal of the writ petition, the self-handling is being carried out by all the private airlines at all the airports across the country. Moreover, the Supreme Court, where the matter is pending for adjudication, has already granted *status quo*, meaning thereby, the ground handling is to be carried by the airlines through their whole time employees and outsourced agencies.

It is also averred that nothing has been mentioned either in the Regulations of 2007 or in the Regulations of 2010 that the self-handling must only be through whole time *bona fide* employees. It is only the

Security Circular dated 21.08.2009 issued by the BCAS which mandated that 13 security functions must be carried out by all the airlines only through their whole time employees, which cannot be applied to the other ground handling services. It is pertinent to mention that all the airlines are carrying out these 13 security functions only through their whole time employees and not through any ground handling service provider.

It is further averred that in Clause 4 of the Regulations of 2007, the word “or” has been used and not the word “and” with regard to ground handling services, which has been mis-interpreted by the respondents.

It is further averred that the critical security issues at the airport, including checking of baggage and frisking of passengers, are dealt with by the government agencies i.e. Central Industrial Security Force (CISF) and other concerned official security agencies. The airlines are involved only in other security related activities like ensuring that the passengers are boarding the right aircraft but in any case, any airline before deploying the ground handling staff, will have to take prior clearance from the BCAS and other government agencies. The Photo Identity Cards required to enter the airport premises are issued only after each and every employees antecedents are checked by these agencies and satisfactorily cleared. It is averred that a large number of staff has already been trained by the airlines to perform ground handling duties while obtaining the scheduled operators permit, subject to most stringent security checks, they have invested huge amount of capital in acquiring and maintaining their fleet and the airlines will continue to be responsible for vital security

functions. It is alleged that implementation of the impugned circulars/communications will result into divided responsibility and overlap of security. It is also averred that the Chandigarh International Airport is a new airport and no ground handling facilities are working on behalf of the airlines and in fact it is not a new airport but a new terminal at the old airport as the terminal is only a part of the airport. In this regard, the petitioners have also referred to the communication made by the respondents in which they have mentioned that the airport has a new terminal. Almost somewhat similar replication has been filed to the reply filed by respondent No.7. The petitioners have also filed miscellaneous applications bearing CM No.12362-63-CWP of 2015 in order to place on record the document Annexure P-24. The applications are allowed and the said document is taken on record. It is a communication of the AAI dated 14.09.2015 on the subject of operationalization of New Terminal Building of Chandigarh Airport w.e.f. 05.10.2015 and respondent No.7 has been asked to place all the equipments and services by 25th of September 2015 by 1100 hrs. and that the final trial run will be conducted at 1500 hrs. at New Terminal Building.

In the backdrop of the aforesaid pleadings, the issue involved is as to whether the petitioner-airlines can be denied self ground handling services at the non-metro airports?

Counsel for the petitioners has submitted that the petitioners are conducting Scheduled Air Transport Services unlike private carriers and self-handling the ground handling services at all the airports across the

country. The ground handling services are ramp-handling and traffic-handling, as per Annexure `A' and Annexure `B' appended to the Regulation of 2000 or any other activity designated by the Chairman to any part either of ramp-handling or traffic-handling. As per Clause 3 of the Regulations-2000, the ground handling services were given to an operator or carrier to be carried out by itself or by engaging the services of AAI, Air India, Indian Airlines or any other handling agency licensed by the AAI. It is also submitted that there was a paradigm shift in the Regulations-2007 in Clause 3 when the airports were divided into two categories of “metropolitan airports” and “all other airports”. Six airports located at Delhi, Mumbai, Chennai, Kolkata, Bangalore and Hyderabad were designated as metropolitan airports and the ground handling services on these airports of a carrier were allowed to be carried out by engaging services of any of the three entities, namely, AAI or its Joint Venture Company, the subsidiary companies of the national carrier i.e. National Aviation Company of India Limited or its joint ventures specialized in ground handling services and 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. The ground handling services at all other airports has been allowed to be carried out by a carrier by self-handling excluding the foreign airlines, in addition to three entities mentioned in Regulations 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Regulations of 2007. It is further submitted that the respondents are relying upon Regulation 4 of the Regulations of 2007 which provides that the entry

into and remaining in the movement area or terminal building and at any airport and civil enclave for providing ground handling services or for operating any vehicle or other equipment shall be restricted to the airline or owner of aircraft or his *bonafide* whole time employee or any other agencies referred to in Regulations 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Regulations of 2007. It is submitted that the word chosen and used in Regulation 4(a) of the Regulations of 2007 is “or”, which cannot be connected with the whole time *bonafide* employees of the airlines for all sort of ground handling services.

It is further submitted that all the 13 security functions, prescribed by the BCAS, shall be provided only through the whole time employees of the petitioner-airlines and rest of the ground handling services is being provided and may be provided through outsourced service providers. In this regard, he has referred to an order dated 23.12.2010 passed by the Delhi High Court wherein the Solicitor General of India for the Union of India has made a statement that the competent authority of the Union of India is deliberating on the issue of 13 security functions, known as Aircraft Operators Aviation Security Functions and the same shall be handled by the Union of India through its agencies w.e.f. 01.01.2011. On the basis of that statement made by the Solicitor General of India, the Delhi High Court barred the 13 aspects and ordered that the petitioners shall continue to carry on the rest of the self-handling.

However, on 31.12.2010, the Delhi High Court passed an order that the Union of India has made a request that it is difficult to train 10000

personnel for conducting the aforesaid 13 security functions and the Union of India may be relieved from its statement made on 23.12.2010. It is submitted that in that background, the Division Bench of the Delhi High Court ordered to maintain *status quo* till 07.01.2011, which means that the entire ground handling remained in the hands of private airlines including that of 13 security functions. It is also argued that the order of *status quo* was allowed to continue till the final decision and after the Regulations of 2007 were upheld by the Delhi High Court, the matter is subjudice before the Supreme Court, where again the order of *status quo* has been passed, which is still continuing.

Learned counsel for the petitioners has submitted that the impugned communications are violative of Articles 14 and 19(1)(g) of the Constitution of India being discriminatory, irrational and arbitrary and violative of fundamental right to practice of any trade or business and fail on the test of reasonableness.

Learned counsel for the respondents, however, have submitted that the Regulations of 2007 have already been upheld by the Delhi High Court on the basis of which the impugned communications have been issued inasmuch as the work contract has already been given to respondent No.7, therefore, it cannot be challenged in this petition. It is also submitted that keeping in view the security of the airport, the ground handling services cannot be given to the petitioner-airlines to be carried out through service providers except for the bonafide whole time employees.

I have heard learned counsel for the parties and perused the

available record with their able assistance.

The AAI formulated the Regulations of 2000, applicable to all airports and civil enclaves managed by it in which Regulation 3 provides that the operators or carriers may either carry out ground handling services at an airport by itself or engage the services of the Airports Authority of India or the two national carriers Air India & Indian Airlines or any other handling agency licensed by the Airports. Ground handling constitutes an integral and inalienable part of an airline, aimed at providing hassle free experience to its passengers which is more or like providing hospitality services. Some airlines provide self ground handling while some airlines sub-contract the same to the ground handling agencies or to the other airlines. The ground handling services undertaken by an airline itself enables it to maintain the quality, level of performance and helping it in providing comfort and satisfaction to its passengers but it is subject to some security concerns and hence, it was provided by the BCAS in its Circular No.4/2007 that no ground handling agency either by the the airport operator or any other agency would be allowed to work without prior security clearance from the BCAS.

Ultimately, Regulations of 2000 were superseded by the Regulations of 2007 in which Regulation 3(1) provides for the ground handling services at the six metropolitan airports by engaging the services of any of the three entities, namely, (i) Airports Authority of India or its Joint Venture Company established with the objective of providing ground handling services at an airport including its subsidiary; (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 may be mutually acceptable to the AAI and these companies; and (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.

Apparently, Regulation 3(1), in which there are three entities under sub-regulations (i), (ii) and (iii), does not talk of self ground handling by the airlines at the six metropolitan airports. However, Regulation 3(2), which pertains to “all other airports” but for the metropolitan airports, provides that in addition to the entities specified in Regulation 3(1), self handling may also be permitted to the airlines but for the foreign airlines. The word “self handling” has appeared in Regulation 3(2) pertaining to “all other airports” which excludes the metropolitan airports. It is pertinent to mention here that the Chandigarh International Airport is not a metropolitan airport but falls within the definition of “all other airports”. Regulation 3(3) further provides that the concerned agencies shall ensure that the state of the art equipment are used and ‘best practices’ are followed. Regulation 3(4) further provides that airlines or entities presently involved in the ground handling which are not governed by these regulations shall not be permitted to undertake self handling or third party handling with effect from

01.01.2009, which is not the case in hand because the petitioner-airlines are governed by the Regulation of 2007.

Insofar as Regulation 4 which put restrictions on entry into airports is concerned, it only says that the entry into and remaining in the movement area or terminal building, which means the building or area used for embarkation or disembarkation or processing of passengers, at any airport and civil enclave for providing ground handling services or for operating any vehicle or other equipment shall be restricted to (a) the airline or owner of aircraft or his bonafide whole time employee or any of the agencies referred to in Regulation 3(1); (b) any other carrier or agency who or which has been specifically permitted in writing by the AAI to undertake ground handling activities through their bonafide whole time employees; and (c) the bonafide whole time employees of the Authority or Joint Venture Company or the designated agency authorized by it.

The only objection raised by the respondents is that it has been specifically mentioned in Regulation 4 of the Regulations of 2007, with regard to restriction on entry at airport, that the entry to civil enclave for providing ground handling services or for operating any vehicle or any equipment shall be restricted to the bonafide whole time employees of the airlines and the petitioners cannot be allowed to handle the ground handling facility at their own or through their contractors, agents etc., without any bonafide whole time employees.

However, Regulation 4 of the Regulations of 2007, on the basis of which respondent No.3 and 4 have issued the impugned

communications, even provides that the entry into and remaining in the movement area or terminal building at any airport and civil enclave for the purpose of providing ground handling services or any vehicle or any equipment shall be restricted to (i) the airline or owner of aircraft or his bonafide whole time employee; (ii) any other carrier or agency who or which has been specifically permitted in writing by the AAI to undertake ground handling activities through their bonafide whole time employees; and (iii) the bonafide whole time employees of the AAI or Joint Venture Company or the designated agency authorized by it.

From a conjoint reading of Regulations 3(2), 4(b) and 4(c) of the Regulations of 2007, it is apparent that the self-handling is permitted to the airlines at an airport other than the metropolitan airports and the entry is restricted to the bonafide whole time employees, whether they are of the airline or the ground handling agencies, duly authorized by the AAI to undertake ground handling activities. It does not talk that the bonafide whole time employees for all sort of ground handling services, except 13 AVSEC functions delineated by the BCAS, shall be of the airline itself but in essence the entry is restricted to the bonafide whole time employees of the ground handling service provider agency, duly permitted in writing by the AAI to undertake ground handling activities.

There is no doubt that the Regulations of 2007 have been upheld by the Delhi High Court wherein the issue was with regard to ground handling services only at the metropolitan airports. Thus, even if the Regulations of 2007 have been upheld, it would not work against the

interest of the petitioner-airlines as it has been specifically provided in Regulation 3(2) of the Regulations of 2007 that at “all other airports” other than the metropolitan airports, self-handling is permitted to the airlines in addition to the entities specified in Regulation 3(1)(i), 3(1)(ii) and 3(1)(iii) and not only by these entities, which means that there is no bar of self-handling by an airline at an airport other than the metropolitan airports and Regulation 4(b) and 4(c) permit entry of the bonafide whole time employees of an airline or a ground handling agency/service provider which has been specifically permitted in writing by the AAI to undertake ground handling activities.

Thus, the action of respondents No.3 and 4 in handing over the contract to respondent No.7 for the entire ground handling services, depriving the petitioner-airlines to self-handle their ground handling services even with their own bonafide whole time employees is patently illegal, arbitrary, unreasonable and contrary to Regulation of 2007 itself. Even otherwise, despite the Regulations of 2007, which came into being in the year 2007, the petitioner-airlines have been self handling their ground handling services across the country at “all other airports” and even at the metropolitan airports, though on the basis of the interim order of *status quo* passed by the Apex Court.

Insofar as the 13 AVSEC functions are concerned, the BCAS, vide its AVSEC Order No.03/2009, clearly mandated that the AVSEC functions cannot be mixed up with other ground handling activities and the AVSEC functions shall not be allowed by an aircraft operator/airport

operator to be undertaken by a Ground Handling Agency and 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. It is further provided that the responsibility for all security related functions shall be with the airlines concerned and for this purpose, a security coordinator shall be designated by the respective airlines at each airport from where they shall have operations.

It is candidly considered by learned counsel for the petitioners that all the aforesaid 13 AVSEC functions, specified by the BCAS, are being handled by the bonafide whole time employees of the petitioner-airlines who have been certified according to the required security programmes and none of these 13 AVSEC functions are being handled or mixed up with the other ground handling services being handled by the ground handling agencies.

It is also not denied by the respondents that the practice of self-handling of the ground handling services by the airlines has been continuing even at the metropolitan airports, may be because of the order of the Supreme Court.

Thus, in view of the aforesaid discussion, the contract alleged to have been given by the AAI to respondent No.7-AIATSL for entire ground handling services at the new terminal of the Chandigarh International Airport, ousting the petitioner-airlines to self-handle their

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ground handling services, is held to be illegal, arbitrary, unreasonable, unconstitutional and hence, the impugned communications (Annexures P-19, P-20 and P-21) are hereby set aside. However, it is made clear that the AVSEC functions, specified by the BCAS, shall be performed by the bonafide whole time employees of the petitioner-airlines and the other ground handling services can be outsourced by the petitioner-airlines from the ground handling agencies, specifically permitted in writing by the AAI to undertake ground handling activities through their bonafide whole time employee.

The writ petition is thus allowed accordingly, though without any order as to costs.

September 24, 2015
vinod*

(Rakesh Kumar Jain)
Judge