

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 23rd December, 2015

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W.P.(C) 5820/2007

C.N.S. OFFICER'S GUILD (REGD)

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Ashish Dixit & Mr. Sandeep
Chatterjee, Advs.

Versus

**CHAIRMAN , AIRPORT AUTHORITY
OF INDIA & ORS.**

..... Respondents

Through: Mr. Digvijay Rai & Mr. Syed Hassan
Taher, Advs. for R-1 to 3.
Mr. Anjana Gosain, Adv. for UOI.
Mr. Abhinav Vasisht, Sr. Adv. with
Mr. S.M. Sundaram & Mr. K.V.
Balakrishnan, Advs. for R-6.

AND

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CONT.CAS(C) 746/2014

CNS OFFICERS GUILD (REGISTERED)

..... Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Ashish Dixit & Mr. Sandeep
Chatterjee, Advs.

Versus

Y.P.GAUTAM

..... Respondent/Alleged Contemnor

Through: Mr. Abhinav Vasisht, Sr. Adv. with
Mr. S.M. Sundaram & Mr. K.V.
Balakrishnan, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

W.P.(C) 5820/2007

1. On 30th October, 2015, the following order was passed in W.P.(C) No.5820/2007:

“1. The petitioner, claiming to be an Association of Communication, Navigation and Surveillance Officers of the respondent Airport Authority of India (AAI) has filed this petition, (i) seeking a mandamus to the respondent AAI to treat the petitioner Association at par with other Cadre Based Officers’ Association of the respondent AAI and to provide to the petitioner Association the same facilities as respondent AAI is providing to the other such Associations; and, (ii) seeking mandamus to the respondent AAI to formulate policy for recognition of Association and for interaction with the same.

2. After hearing the senior counsel for the petitioner Association to some extent it transpires, (i) that though earlier there was only one Association of all Officers of the respondent AAI but now there are several Cadre Based Associations; (ii) none of the said Associations has been granted recognition by the respondent AAI; and, (iii) the grievance of the petitioner Association is that while the other Associations are provided office infrastructure and immunity from transfer of their office bearers, no such facilities have been provided to the petitioner Association.

3. It has been enquired from the senior counsel for the petitioner Association as to how the petitioner can be granted any relief by this Court without the petitioner Association establishing a right under the Rules & Regulations of respondent AAI to the said right / facility. It has been put to him, how, merely because the respondent AAI, contrary to its Rules & Regulations or without there being a right in any such Association to any of the said facilities has been granting the same, would entitle the petitioner Association to a relief to which it does not have a right and the only order which can be passed is a direction to the respondent AAI to deny the said facilities to other Associations also.

4. The senior counsel for the petitioner Association has then argued that it is for this reason only that the petitioner Association has claimed the second of the aforesaid reliefs, for commanding the respondent AAI to formulate the policy for recognition of Association and for interaction with the same. On further enquiry as to what is the liability of the respondent AAI to grant such recognition, attention is

drawn to Office Memorandum dated 9th November, 1993 of the Department of Personnel & Training (DOPT), Government of India in this regard contending that the said Office Memorandum / Notification is applicable to respondent AAI also.

5. The counsel for the respondent AAI however states that the aforesaid Office Memorandum does not apply to the respondent AAI.

6. The senior counsel for the petitioner Association has however shown the Transfer Policy of AAI, Clause 10(b) of the General Guidelines whereunder exempts from transfer office bearers of recognised Union / Association. It is argued that since the Guidelines refer to recognised Union / Association, there has to be a recognised Union / Association. Attention in this regard is also invited to the reply of the respondent AAI to the RTI query to the effect that there is no recognised Association.

7. The counsel for the respondent AAI states that the Guidelines aforesaid do not provide for recognition by respondent AAI.

8. The senior counsel for respondent no.6, claiming to be a Multi Cadre Association of the Officers of respondent AAI states that respondent No.6 was recognised by the erstwhile Ministry of Civil Aviation before the time the respondent AAI was constituted and the respondent AAI has continued the said recognition. It is further contended that the petitioner is in fact a splinter association and the respondent no.6 is being conferred the facilities as a recognised Association.

9. It however transpires that the respondent AAI is conferring the facilities aforesaid besides on the respondent no.6 to some other Officers' Association also.

10. The Executive Director (HR) of the respondent AAI is directed to file an affidavit stating:-

- A. Whether it is abiding by the recognition policy of the Ministry of Civil Aviation and if so whether any of the Associations are continued the said recognition and if so under what Policy / Guideline.
- B. On what basis the other Associations which have been conferred certain facilities have been conferred the same.
- C. What is the criteria for recognising an Association.

11. The said affidavit be filed on or before 20th November, 2015 and the said Officer to also endeavour to remain present in the Court on the next date of hearing so that further clarifications if any required can be sought.

12. List on 1st December, 2015.”

2. Thereafter the proceedings were adjourned from time to time and on 16th December, 2015, the following order was passed:

“1. This order is in continuation of the earlier order dated 30th October, 2015.

2. The respondent Airport Authority of India (AAI) has in compliance therewith filed an affidavit (dated 11th December, 2015).

3. The senior counsel for the petitioner, the senior counsel for the respondent no.6 and the counsel for the respondent AAI have been heard further with respect to the affidavit filed.

4. On the conclusion of the hearing the counsel for the respondent AAI seeks time to obtain instructions, whether in the light of what has transpired today the respondent AAI is willing to make any concession or an order should be passed in the petition.

5. List on 23rd December, 2015.”

3. Today, the counsel for the respondent Airport Authority of India (AAI) states that following decision has been taken by the respondent AAI on 18th December, 2015 “that apart from the above 06 associations no further recognition will be granted to any of the association except if situation emerges, recognition will be granted with the order of the Hon’ble Court.” The six associations referred to are the following:

- (i) Airports Authority Officer’s Association (AAOA) – This Association is representing officers of CNS – Operation and Maintenance & other officers (i.e. the respondent no.6 herein).

- (ii) Aeronautical Communication Officer's Association (ACOA) – This Association is representing officers of Communication Cadre.
- (iii) Air Traffic Controller's Guild (ATC) Guild – This Association is representing officers of ATC Cadre.
- (iv) Airports Authority of India Engineer's Guild – This Association is representing officers of Engineering cadre.
- (v) International Airports Authority of India Officer's Association (IAAIOA) – This Association is representing officers of erstwhile International Airports Authority of India (International Airport Division).
- (vi) Airports Authority of India Scheduled Caste and Scheduled Tribes Welfare Association – This Association is a welfare association for the cause of reservation in employment etc.

and it is recorded therein that the aforesaid six Associations were in existence at the time of formation of AAI on 1st April, 1995 with the merger of the erstwhile International Airport Authority of India and the National Airport Authority.

4. The respondent AAI in the affidavit dated 11th December, 2015 filed in these proceedings had stated that there was no policy for recognition of any officers Association in the AAI and that the same was prerogative of the management of AAI which takes into consideration that there should be no two Associations for one cadre and also considers the adverse effect and complications which may arise in such a case, as smooth functioning of the AAI is the prime concern.

5. It is thus evident that the recognition granted to the aforesaid six Associations is not in accordance with any Policy for recognition and it is for the first time now that a decision has been taken that those six Associations only should be recognized and no application for recognition of any other Association be entertained.

6. I have thus enquired from the counsel for the respondent AAI whether not the aforesaid amounts to AAI having merely post facto approved what was done in the past without any policy and / or basis and what is the reasons for AAI to have taken such a decision.

7. The senior counsel for the respondent no.6 has responded to the aforesaid query by contending that the decision now taken is nevertheless a Policy; he reiterates that the petitioner, a splinter group of the respondent no.6, is disgruntled upon being unsuccessful in the elections. It is further contended that a large number of members claimed by the petitioner are also the members of the respondent no.6 and other five Associations. It is yet further contended that 87% of the members of the respondent no.6 association are of the same cadre which the petitioner seeks to represent. Yet another argument is that the only purpose of the petitioner in filing this petition is to avail of the benefit of non transferability accorded by the respondent AAI to office bearers of the recognized Association. It is contended that the rest of the controversy is factual which cannot be entertained in a writ jurisdiction and if the petitioner or its members has / have any grievance with respect to the management and control of the respondent no.6 Association, the remedy thereagainst is before the Civil Court.

8. I am of the view that AAI, which qualifies as a State within the meaning of Article 12 of the Constitution of India, ought not to take decisions as it has communicated today, off the cuff and without following any parameters or guidelines. It may be highlighted that on 30th October, 2015, when the hearing was commenced, the stand of the respondent AAI was that respondent AAI does not accord recognition to any of the Association. Only upon senior counsel for the petitioner demonstrating that recognition is implicit in according non transferability to office bearers of the recognized association, has the whole exercise begun. The same demonstrates the fickleness of the stand taken by the respondent AAI.

9. It was the stand of the respondent AAI on 30th October, 2015 that it does not grant recognition to any Association. Thereafter, the stand in the affidavit dated 11th December, 2015 was that AAI has no policy for recognition of any officers Association and the same is the prerogative of the management of AAI. Upon it being put to counsel for AAI during the hearing on 16th December, 2015, how the matter of recognition of officers Association can be left to the prerogative of management of AAI, without any guiding parameters and factors and which prerogative was likely to change, from time to time and with change in management and that no such unguided discretion, capable of misuse and partisan application could be vested in the management, today i.e. after barely two days, a decision is taken to accord recognition to existing Associations and not accord recognition to any other Association. The only reasons, recorded in the two sheets of office notings of arriving at such a decision handed over in Court today and taken on record are, i) the said six Associations being in existence

at the time of formation of Association on 1st April, 1995; ii) all the cadres are being represented by Association of each cadre; iii) there being thus no need for consideration of any other Association for recognition; and, iv) the practicability of implementation of a policy, if framed.

10. However, the aforesaid office notings also record, i) that recognition to AAI Engineer's Guild was granted in 2004 i.e. after AAI was framed on 1st April, 1995; the same is justified by recording that it represents majority section of Engineering employees working in the erstwhile National Airports Division; ii) that notwithstanding the fact that Airport Authority Officers Association (AAOA) i.e. the respondent no.6 herein and Aeronautical Communication Officer's Association (ACOA), as their names suggest, are to represent all officers of AAI, other cadre based Associations of officers were recognized; the only explanation therefor is that they were representing various issues to the management on day to day affairs.

11. The office notings aforesaid also record that CNS Officers are being represented by AAOA and ACOA and that there has been mushroom growth among the associations in the CNS cadre.

12. All the aforesaid show the reasons for which the decision dated 18th December, 2015 has been taken to be faulty and a hap-hazard approach to the issue under consideration and the AAI/its predecessors having acted in an ad-hoc fashion in the past. There is no explanation; a) why, if AAOA represents all officers, other associations of officers were granted recognition; b) if cadre based associations of officers are to be recognized viz. of Aeronautical Communication Officers, Air Traffic Controllers, Engineers, why there can be no Association of the Communication,

Navigation and Surveillance (CNS) officers; this is more so as CNS Officers, as per office nothings supra also are represented not by one but two Associations i.e. AAOA & ACOA and when neither is stated to be exclusively representing CNS officers; c) even if CNS officers are represented by other Associations, why they cannot have a recognised Association representing exclusively their issues just like Scheduled Caste and Scheduled Tribes Welfare Association does; d) what poses impediments in practicability of implementation of Policy, if were to be framed.

13. In the absence of any policy/guidelines for recognition, it is also not known, i) representing what percentage of officers of a cadre qualifies the Association for recognition; ii) whether there are only that many cadres in AAI, Association of Officers of which are recognised; iii) which cadres are likely to have common issues, to be entitled to be clubbed together for forming an Association for recognition; iv) what procedure the management of AAI follows in the event of difference of opinion in the members of Association; v) when can AAI revoke the recognition; vi) why, majority of members of a recognised Association if form a new Association, are not entitled to stake a claim for recognition.

14. In the absence of any Policy/Guidelines for recognition, the aforesaid uncertainties will persist and the possibility of, AAI, though according recognition to Association of its officers as a prerequisite of a model employer and for smooth and uninterrupted operations, failing to achieve the said purpose, by ending up hobnobbing with office bearers of Associations which do not represent majority or negotiating with office bearers of a multi cadre Association and which office bearers are partisan to a particular cadre

and to the prejudice of another cadre. All these difficulties/uncertainties can be obviated by having a policy.

15. Supreme Court, in ***Balmer Lawrie Workers' Union Vs. Balmer Lawrie & Co. Ltd.*** 1984 (Supp) SCC 663 though in the context of labour and trade unions noted, that where there are multiple unions seeking to represent workmen, a concept of recognised union must be developed in the larger interest of industrial peace and harmony and clothing it with power of sole bargaining agent with exclusive right to represent workmen. It was further noted that union which represents the largest number of workmen working in the undertaking must acquire the status as recognised union as that would be in tune with the concept of industrial democracy. Again, in ***Food Corporation of India Staff Union Vs. Food Corporation of India*** 1995 Supp (1) SCC 678 it was noted that collective bargaining is the principal *raison d'etre* of the trade unions and that when there are more than one trade unions, the question as to with whom the employer should negotiate or enter into bargaining assumes importance, because if the trade union claiming this right be one which has as its members minority of the workmen/employees, the settlement, even if any arrived between the employers and such a union, may not be acceptable to the majority and may not result in industrial peace. A Division Bench of the High Court of Madras also in ***MRF United Workers Union Vs. Government of Tamil Nadu*** MANU/TN/2254/2009 emphasised the desirability to have a truly independent and representative union of workmen to represent their cause. It was observed that a management may think that a leadership of a particular trade union is militant, yet even such a union when it obtains a recognised

status, it has to act within the four corners of law and discipline. It was held that where the number of workmen is very large it is also in the interest of the management to have a truly representative collective bargaining agent to represent the workmen so that the management can discuss with it the problems governing the production and industrial peace and the decisions arrived at will have to be accepted by all the workmen. It was yet further held that however the question as to who should be representative of the workmen has to be decided by the workmen themselves and cannot be left to the management that it will recognise a particular union which it considers to be representative of the workmen. The Division Bench further held that Article 19(1)(c) of the Constitution of India recognises the right to form Association and once there are multiple Associations there has to be a recognised Association. Mention may also be made of ***Automobile Products of India Employees' Union Vs. Association of Engineering Workers, Bombay*** (1990) 2 SCC 444 where also it was held that recognition or de-recognition of union is not a matter which concerns only the contesting unions or their members but a matter of utmost importance to the interest of all workmen and to the industry and to the society in general.

16. A perusal of office nothings supra also shows that the decision reached on 18th December, 2015 (in the absence of ED (HR) who was on tour) was perhaps guided by an erroneous impression that this Court, in the hearing on 16th December, 2015 had given an option to AAI to either frame a Policy on recognition or to take a decision not to recognise any new Association, when in fact on 16th December, 2015, the hearing was on lines aforesaid. It was after such issues were raised that the counsel for AAI had

sought time to take instructions whether AAI instead of suffering a direction to frame a Policy was willing to concede that a Policy on recognition is required and will be framed. This Court never suggested or gave an option to AAI to regularise what was done (in the past) on ad hoc basis.

17. I find a Division Bench of High Court of Gauhati, in ***Tripura Government Employees Vs. State of Tripura*** (1996) III LLJ 725 to have held that though the power which the State Government exercises for recognition of an employees' Association is an administrative function but the same cannot be exercised in an arbitrary manner and has to be on the basis of specific guidelines. It was further held that in the absence of specific guidelines, very serious results may ensue in as much as it cannot be ruled out that the State as an employer may sometimes for various reasons prefer one Association over the other. It was yet further held that the State Government also has to consider continuance of recognition, in case it is found that the Association previously recognised no longer meets the criteria for recognition.

18. I am therefore of the opinion that once the respondent AAI is according recognition to Associations of its officers, AAI should lay down specific parameters therefor and only upon satisfaction that an Association fulfils the same, should recognition be accorded. In the matter of recognition, the principle of 'first to be recognized', cannot be applied.

19. As far as the contention of the senior counsel for the respondent no.6, that the disputes are factual, is concerned, even if it were held to be so, without knowing as to against what parameters / tests of recognition, the dispute is to be resolved, no purpose would be served in relegating the

petitioner or the disputes as to the management and control of the respondent no.6 Association to the Civil Court as well.

20. I am sure, other public sector undertakings would be having Rules and parameters for such recognition. The counsel for the respondent AAI though does not deny the same states that not all public sector undertakings have laid down the parameters for recognition. However, on enquiry, whether they without any parameters recognize any Association, the counsel states that he would not be able to make a statement on that aspect.

21. The writ petition is thus disposed of with a direction to the AAI to, on or before 30th September, 2016, frame Policy and / or Guidelines *inter alia* containing Parameters for according recognition to Associations of its officers and publish the same widely and to thereafter proceed to determine which of the Associations including the aforesaid six Associations and the petitioner and others if any, which apply for recognition, fulfill the parameters prescribed and to proceed to accord recognition within a reasonable time frame.

22. Till then, the benefits already extended to the aforesaid six Associations be continued and the petitioner Association be allowed to interact with the management of AAI and be supplied with the communications and circulars generated apropos to the meeting of respondent AAI with other Associations, as already directed vide order dated 1st March, 2013.

No costs.

CONT.CAS(C) 746/2014

23. The senior counsel for the alleged contemnor states that he has instructions to state that the alleged contemnor tenders unconditional apology.

24. Accepting the said apology and with a view to maintain bonhomie between the parties, it is not deemed appropriate to proceed further with the contempt petition which is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

DECEMBER 23, 2015

‘gsr’..