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

RESERVED ON: 03.01.2018
PRONOUNCED ON: 02.02.2018

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LPA 446/2016, CM APPL.28738-28739, 46287/2016, 31616-31617 & 37057/2017

AERO CLUB OF INDIA PVT. LTD & ANR.Appellants

Versus

UNION OF INDIA AND ORS. Respondents

LPA 447/2016, CM APPL.28744-28745, 46288/2016 & 37061/2017

AERO CLUB OF INDIA PVT. LTD & ANR.Appellants

Versus

UNION OF INDIA AND ORS. Respondents

Appearance: Mr. Sidharth Luthra, Sr. Adv. with Mr. Raghavendra Mohan Bajaj, Mr. Kumar Vaibhav and Mr. Krishna Datta Multani, Advs. for appellant No.2.

Ms. Anjana Gosain and Ms. Rabiya Thakur, Advocates for R-1 in LPA Nos.446/2016 & 447/2016.

Mr. Rajesh Gogna and Ms. Vipra Bhardwaj, Advocate for R-1/UOI in LPA No.447/2016.

Mr. Digvijay Rai, Ms. Chetna Rai and Mr. Pulkit Tyagi, Advocates for R-2 & 3 with Mr. Puneet Gupta, APD, SAP (AAI), Mr. Raama Sharma, AM (Comm), AAI, Ms. Bhavya, Manager (Law), AAI and Mr. Akanya, AM (Law), AAI.

Mr. Nitin Goyal with Mr. Prateek Bansal, Advs. for Delhi Flying Club in LPA No.446/2016.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J.

Facts:

1. The present appeal was preferred originally by the Aero Club of India Ltd. (hereafter “Appellant No. 1” or “ACI”) and the Delhi Flying Club Ltd. (hereafter “Appellant No. 2” or “DFC”). Both challenged the judgment and order of the single judge in writ proceedings (W.P.(C) 11160/2015). DFC is a company limited by guarantee established in 1928 whose objective is the promotion of aviation in India. However, it is admitted that since 2001 the DFC no longer conducts any flying activities. It occupies the premises of the Safdarjung Airport (hereafter “Premise”) on the basis of licence agreements originally executed by the Director General of Civil Aviation (DGCA). In 1986 with enactment of the Airports Authority of India Act (hereafter “the Act”) and the creation of Airports Authority of India (hereafter “AAI”) for administration and regulation of airports, the latter became licensor of the premises.

2. Before creation of the AAI, the DFC was paying a nominal rate of rent of ₹1/- per annum and with ancillary payments amounted to a monthly licence fee of ₹1079/-. After the creation of the AAI, the

DFC was asked to give an undertaking that it would pay the market rate of rent for residential accommodation (letter dated 23.03.1987). DFC represented several times to AAI and other government agencies to maintain their rent at ₹1/- per annum. In terms of a letter dated 05.05.1987, the AAI agreed to maintain the rent of ₹ 1/- per annum. However, in 1996 the rent was increased to ₹65,511/- per month (letter dated 02.01.1996). In accordance with a board meeting held on 21.02.2007, AAI made a resolution to charge a nominal rate of rent (10% of normal rate of service) on all Category 1 Flying clubs (which the DFC is classified as). DFC was informed of charges to be levied on Category 1 flying clubs by letter dated 12.04.2007. At the time the present proceedings began, all license agreements between the DFC and the AAI had expired and the arrears in licence fee due to the AAI amount to ₹8,30,31,076/-.

3. In a letter dated 09.10.2012 the Under Secretary of the Union Ministry of Civil Aviation (hereafter “MCA”) requested the Chairman, AAI to keep DFC’s dues in abeyance until the Union formulated a policy with respect to private flying clubs. In this regard the Union of India (hereafter “Union”) is a respondent in the present proceedings. On 19.11.2012 the AAI issued a letter to its Airport Directors informing them that dues from Category 1 flying clubs would be kept in abeyance until further notice. Subsequently, on 05.08.2015 the AAI made a demand that the DFC clear its dues and a show cause notice dated 20.11.2015 was issued to the DFC by the Eviction Officer (hereafter “EO”) as to why the DFC should not be

evicted from the premises. The actions of the respondents were challenged in the writ petition.

4. The single judge noted that the two issues to be adjudicated were whether a letter written by the Central Government to AAI amounted to a direction under Section 40 of the Act and whether the decision to initiate proceedings, (taken by AAI) was discriminatory. Upon consideration of the materials on record and after analyzing them in the context of Section 40, it was held that there was no direction by the Central Government. As regards the other question, it was held that once the court holds that there is no legal infirmity in the state or agency's action, its mere omission to take similar action against other defaulters, does not afford any ground for intervention, either in equity or in law.

Contentions of DFC

5. The DFC avers, and its senior counsel, Mr. Siddharth Luthra, argues that the letter dated 09.10.2012 by the Union requesting AAI to keep the recovery of dues in abeyance until a policy was framed (on flying clubs), is binding on the AAI. It is submitted that the letter dated 09.10.2012 by the MCA constitutes a "direction" within the meaning of Section 40 of the Act, and thus the AAI cannot take action contrary to the binding directions issued by the UoI. Thus, DFC argues that the actions taken by the AAI and the third respondent in demanding dues and issuing the show case notification are illegal. Mr. Luthra argued that the letter dated 09.10.2012 constitutes a 'policy decision'. It is submitted that not every policy decision needs to be

approved by the Union Cabinet and the power of framing a policy compelled the AAI to act in accordance with the letter dated 09.10.2012. This restrained it from recovering all of DFC's dues until the Union framed an appropriate policy. It is contended the UoI seeks to frame a policy which will lay to rest the dispute and end the alleged arbitrariness of the AAI in raising bills against licence agreements.

6. It is further submitted by DFC that given the letter dated 09.10.2012 and the letter dated 19.11.2012 which directed AAI and its employees to keep the dues of the Category 1 flying clubs in abeyance, it was bound by these decisions. Reliance in this regard is placed on *Mohindar Singh Gill v Chief Election Commissioner, New Delhi* (1987) 1 SCC 405 where the Supreme Court held that a government authority cannot rely on an *ex post* explanation of an order to act in a manner contrary to that order. DFC also submits that it carries on social activities that will be adversely affected if they are evicted from the Premises. In this regard it is emphasized that DFC conducts educational courses in aircraft maintenance and flying (through the use of simulators) for which it has DGCA approval; it has course enrolments till 2020.

7. The Union had submitted in the writ petition that the letter dated 09.10.2012 was a request to the Chairman of AAI to keep the order of recovery of charges in abeyance till the UoI framed an appropriate policy on the matter. It is submitted that no direction was given to the AAI within the meaning of Section 40 of the Act and AAI being the competent statutory authority to both set the rate of rent and to

proceed against arrears (in conjunction with Respondent No. 3), it was at liberty to do so.

8. The AAI submits that it alone and not MCA frames the policy with regard to the fixation of licence fee. It is further submitted that the letter dated 09.10.2012 by the Under Secretary of the MCA to the Chairman of the AAI was a request to place the matter before the AAI's Board and resolve the said matter. Reliance is placed on *Delhi International Airport Ltd. v International Lease Finance Corp.*(2015) 8 SCC 446 to establish that the letter dated 09.10.2012 is not a direction in the absence of approval by the competent authority. The AAI urges that there exists no conflicting policy of the Union in this regard. Thus, the decision of the AAI to charge a nominal rate (10% of the normal rate of service) at the 107th Board Meeting (held on 21.02.2007) was valid, and the subsequent show cause notice dated 20.11.2015 is also valid.

9. The respondents also highlight that DFC's flying activities have ceased since 2001; only training activities currently carried out use simulators. These equipments can be placed on any property and do not require the expansive space provided on the Premises. It is also alleged that the premises are used for commercial activities.

Reasoning and Decision:

10. The rights claimed by the DFC with respect to the premises are unquestionably as a licensee. The AAI is licensor. Further, the license originally granted to the DFC expired long ago. Arrears of payment are due to AAI which, in conjunction with EO it has sought to recover.

The question therefore is whether the letter dated 09.10.2012 amounts to a direction by the Union to the AAI within the meaning of Section 40 of the Act. If it does AAI would have been bound to keep in abeyance the dues owed by the DFC and the subsequent show cause notice and eviction notice would be legally indefensible. However, if the letter is not a direction, the AAI's orders are valid. It is pertinent to examine both Section 40 of the Act, the contents of the letter dated 19.11.2012 and the contents of the letter dated 19.11.2012:

“40. Power of the Central Government to issue directions: (1)
Without prejudice to the foregoing provisions of this Act, the Authority shall in the discharge of its functions and duties under this Act, be bound by such directions in writing to it from time to time.

Provided that the Authority shall, as far as practicable be given opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not shall be final.

(3) The Central Government may, from time to time, issue directions to the Authority regarding the discharge of any functions to it under clause (e) of sub-section (3) of Section 12 and the Authority shall be bound to comply with such directions.”

The letter dated 09.10.2012 of MCA reads as follows:

*“F.No.AV.22011/02/2012-AAI
Ministry of Civil Aviation
Govt. of India

‘B’ Block, R.G. Bhawan

S.J. Airport, New Delhi

Date: 09.10.2012

To,

*The Chairman,
Airports Authority of India,
'A' Block, R.G. Bhawan,
S.J. Airport, New Delhi.*

*Subject: Lease Charges from Flying Training
Institutes / Flying Clubs*

Sir,

I am directed to forward herewith a copy of this Ministry's D.O. letter No. A.V. 29011/20/2012 DG dated 01.10.2012 on the above subject and to say that AAI in its Board meeting held in 2008 had passed a resolution to charge 10% of commercial rates as lease charges from the Flying Training Institutes / Flying Clubs registered as education societies and operation on no-profit-no-loss basis and usual commercial rates from the Flying Training Institutes / Flying Clubs which are running as private companies and operating on a commercial basis.

2. In this context, AERO Club of India and its members clubs have represented to the Ministry that, they were in the past exempted from payment of license fee, landing, housing, parking and route navigation facility charge (RNFC) and the affiliated flying clubs were on a Re.1/- lease for the land provided to them being non-commercial and non-profit making institutions.

3. The request of the AERO Club of India and its member clubs was considered by SECY. (CA) keeping in view the requirement of Flying Clubs for training purposes and it has been proposed to request the Chairman, AAI to consider the request of the Flying Clubs to keep in order of recovery of charges in terms of the AAI Board resolution of 2007 in abeyance till finalisation of the policy of the Ministry regarding

prescribing eligibility criteria for Flying Clubs for availing the facility of nominal rates for various charges payable to AAI.

4. *Secy. (CA) has desired that the matter should get placed before the AAI Board and get resolved.*

Yours faithfully,

Sd.

(Syed Imran Ahmed)

Secretary to the Govt. of India

Tele: 24616025

Enclosures: as above

For Information: PPS to JS(A) ”

The letter of 19 November 2012 (of AAI) reads as follows:

“November 19, 2012

*“Regional Executive Director
Airports Authority of India
Northern/Eastern/Western/Southern/North-Eastern
Region
DELHI/KOLKATA/MUMBAI/CHENNAI/GUWAHATI
Airport Director
Airports Authority of India
Chennai / Trivandrum Airport
CHENNAI / TRIVANDRUM*

*Sub: Levy of charges by AAI on Flying Clubs / Flying
Training Institute*

Sir,

Reference may please be made to this office letter of even number dated 13.03.2012 and 29.05.2012 on the above subject.

In this regard it has been decided to keep the order of recovery of outstanding dues from Category I Flying Club in abeyance till further orders.

This issues with the approval of the Competent Authority,

Yours faithfully,

Sd.

(B.C. DAS)

GENERAL MANAGER (LM)

- 1. Shri Syed Imran Ahmed Under Secretary,
MCA, R.G. Bhawan, New Delhi:*
- 2. Director General Civil Aviation; Opp Safdarjung
Airport, New Delhi*
- 3. President Aero Club of India, Safdarjung Airport,
New Delhi.*

*With respect to Ministry's letter no. AV 22011/01/2012-
AAI dated 09.10.2012 :*

11. In deciding whether the letter dated 09.10.2012 amounts to a direction under Section 40 of the Act, the single judge first examined the wording of the letter in question. Here, two points must be noted: (1) the letter merely requests the Chairman of the AAI to consider the requests of the flying clubs. This is clear from the sentence, "it has been proposed to request the Chairman, AAI to consider the request of the Flying Clubs to keep in order of recovery of charges in terms of the AAI Board resolution of 2007 in abeyance till finalization of the policy." (2) It is clear from the letter dated 09.10.2012 that the MCA wished the matter regarding dues from Category 1 flying clubs to be placed before the Board of the AAI, for the Board to resolve the

matter. This is clear from the sentence, “Secy. (CA) has desired that the matter should get placed before the AAI Board and get resolved.”

12. The single judge also examined the proviso of Section 40 of the Act. The proviso to that section requires that, when a direction is passed by the Central Government with respect to the functions and duties of the AAI under the Act, the latter would be given an opportunity to express its views on the directions in question. In the present case, no such views were expressed by the AAI despite the alleged direction amounting to a significant (albeit temporary) loss of revenue for the AAI.

13. This reasoning also finds support in the decision of the Bombay High Court in the case of *S. Magala v Airport Authority* 2014 SCC Bom 909. In that case, the Department of Personnel & Training of the Ministry of Personal, Public Grievances & Pensions (DoPT) had passed a memorandum applicable to all Ministries and Departments. Clause (c) of the said Memorandum stated that women employees having mentally challenged children were entitled to two years leave. The AAI, while implementing other clauses of the DoPT Memorandum, did not implement clause (c). The Petitioner, a female employee having a mentally challenged child, contended that the AAI, being a public-sector undertaking was bound to implement the DoPT Memorandum. It was contended that the DoPT Memorandum constituted a policy of the Central Government and the AAI was bound to adopt the same under Section 40(1) of the Act. The Bombay

High Court held that the Memorandum did not constitute a direction within the meaning of Section 40, noting:

“The proviso, therefore, makes it amply clear that the prior to any direction to be given by the Central Government in respect of the question of policy, respondent No.1 is to be given an opportunity to express its views. These events have not taken place and the process of implementation of DoPT OM can only be considered mandatory after the Central Government issues such directions on the question of such policy. Not having done so, the petitioner appears to have proceeded on the basis of a misconception that the provisions of DoPT OM were applicable without having verified from the authority competent to sanction leave or other Human Resource personnel.”

As the single judge noted, there was no communication or expression of views made by the AAI to the UoI subsequent to the letter dated 09.10.2012. In the absence of such views, the letter dated 09.10.2012 cannot be seen as a direction under Section 40(1) of the Act.

14. In *Narendra Kumar v Union of India* AIR 1989 SC 2138 the Supreme Court examined the power of guidelines issued to ensure sufficient security for the issue of debentures was taken. The guidelines were passed without statutory authority and the Court noted:

“...because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the

circumstances of any particular fact or law situation warrants the same.”

15. It is useful also recollect *Banatwala and Company v L.I.C. of India* (2011) 13 SCC 446 where the Court examined Section 21 of the Life Insurance Corporation Act, 1956. Section 21 is broadly analogous to Section 40 of the Act and reads as follows:

“21. Corporation to be guided by the directions of the Central Government: *In the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest as the Central Government may give to it in writing; and if any question arises whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final.”*

Guidelines were issued by the Central Government to regulate rent increase by public authorities; those guidelines stated that all public undertakings should review all pending cases before the Estate Officer or Courts with reference to the guidelines and withdraw any eviction proceedings against genuine tenants. It was contended that the LIC as a public undertaking had to follow these guidelines; they were directions under Section 21. The Court disagreed however, stating:

“The guidelines dated 30.5.2002 are not directions under section 21 of the LIC Act.”

“It is relevant to note that the purpose of these guidelines is to prevent arbitrary use of powers under the Public Premises Act. The relevance of the guidelines will depend upon the nature of guidelines and the source of power to issue such guidelines. The source of the right to apply for determination of

standard rent is the Rent Control Act, and not the guidelines.”

16. The Supreme Court has also held that the minutes of a meeting without approval or affirmation are not binding, in *Delhi International Airport Ltd.* (supra). In 2013 a decision was taken by several delegates of the Central Government regarding the release of aircrafts which were being detained at airports due to non-payment of dues. It was contended that the minutes of this meeting (dated 26.3.2013) was an order passed by the Central Government carrying statutory force. The Court noted that in exercise of powers under Section 42(2)(o) of the Airports Authority of India Act, Delhi International Airport Ltd. was the designated competent authority to grant aerodrome licences. The Court noted:

“Regulation 10 is a complete code with regard to the right of the airport operator to levy and ensure collection of dues including the right to detain or stop departure of the aircraft till the fees or charges are paid irrespective of the ownership of the aircraft.” (¶13)

“From a combination of Rules 3, 4, 4(2) and in the light of the above decisions, the minutes of meeting which is to be converted as a general or special order in writing by the Central Government involving the abandonment of revenue or which has a financial implication on the Airports Authority of India which is under the control of the Civil Aviation Ministry it was required to proceed only after the concurrence of the Finance Department. It cannot be finalised merely at the level of officers/representatives of the Civil Aviation, Central Board of Excise and Customs, etc. After concurrence

of the Finance Ministry, the minutes of the meeting ought to have been placed before the Minister concerned as per the Rules of Business. Sanctification by the Ministry concerned and the concurrence of the Finance Department was a mandatory condition in order to hold the minutes of the meeting dated 26-3-2013 as “a general or special order in writing by the Central Government.” In the absence of any such sanctification by the competent authority, in our view, mere minutes of the meeting would not give any indefeasible right to the appellant.” (¶24)

17. Before proceeding further, it is also useful to note that Section 12A of the Act empowers the AAI to lease out the premises of airports under its power as it deems fit. It would be beneficial in the current case to reproduce Section 12A, which reads as follows:

“12A (1) Notwithstanding anything contained in this Act, the Authority may, in the public interest or in the interest of better management of airports, make a lease of the premises of an airport (including buildings and structures thereon and appertaining thereto) to carry out some of its functions under section 12 as the Authority may deem fit:

Provided lease shall not affect the functions of the Authority under section 12 which relates to air traffic service or watch and ward at airports and civil enclaves.

(2) No lease under sub-section (1) shall be made without the previous approval of the Central Government.

(3) Any money, payable by the lessee in terms of the lease made under sub- section (1), shall form part of the fund of the Authority and shall be credited

thereto as if such money is the receipt of Authority for all purposes of section 24.

(4) The lessee, who has been assigned any function of the Authority under sub-section (1), shall have all the powers of the Authority necessary for the performance of such functions in terms of the lease”

18. The impugned judgment held that the Act was enacted to constitute the AAI, transfer the vesting of undertakings of the International Airports Authority of India and the National Airports Authority of India to the AAI and to ensure the better administration and cohesive management of airports (Statement of Objects and Reasons). In light of this, and a reading of Section 12, it is clear that it is the AAI and not the MCA that is the competent authority with statutory authority to regulate and collect license fees from licensees on its premises.

19. The Allahabad High Court has noted that the exercise of statutory power prevails over the exercise of administrative orders. Clause 10-C of the Imports (Control) Order, 1955 empowered the Chief Controller of Imports and Exports to issue directions regarding the sale of such imported goods which could not be utilized by the licensee for the purpose of which they were imported. The Government of India had also issued some directions under its administrative powers relating to this matter. The High Court in *N.P. & A. v Union of India* AIR 973 All 102 noted that:

“It is settled law that a rule framed in the exercise of statutory power prevails over administrative orders on the subject. Rule 10-C has been framed in

exercise of powers conferred on the Central Government by Sections 3 and 4-A of Imports and Exports (Control) Act, 1947. Rule 10-C gives power to the Controller to pass such orders as he may think fit, in respect of sales of imported items which are not utilised by the licensee. The scope of that power cannot be curtailed by referring to administrative instruction of the nature [issued by the Government of India]”

“A perusal of this rule makes it plain that the Controller while exercising powers under this Rule, is not bound by the conditions contained in paragraph 94 of the administrative instructions. He may pass an order directing the sale of the goods to any person whom he thinks.”

Therefore, even in the event that the letter dated 09.10.2012 constitutes administrative communication by the Secretary, MCA, the AAI is free under the statutory power to regulate license fees under Section 12 of the Act to take action as it sees fit.

20. Similar observations were made by the Supreme Court in several cases. In *Purtabpore Company Limited v Cane Commission of Bihar* (1969) 1 SCC 308, the Court noted that the imposition of the Chief Minister’s opinion on the Cane Commissioner, who was a statutory authority was impermissible. The Court noted:

“The power exercisable by the Cane Commissioner under cl. 6(1) is a statutory power. He alone could have exercised that power. While exercising that power he cannot abdicate his responsibility in favour of anyone--not even in favour of the State Government or the Chief Minister. It was not proper for the Chief Minister to have interfered with the functions of the Cane Commissioner.”

The Court further noted that executive officers entrusted with statutory duties cannot abdicate their personal judgment in the face of orders by superiors, unless provided in statute:

“The executive officers entrusted with statutory discretions may in some cases be obliged to take into account considerations of public policy and in some context the policy of a Minister or the Government as a whole when it is a relevant factor in weighing the policy but this will not absolve them from their duty to exercise their personal judgment in individual cases unless explicit statutory provision has been made for them to be given binding instructions by a superior”

21. The importance of not having higher or unrelated authorities interfere in the exercise of statutory power by the relevant competent authority to the rule of law in the Country was highlighted by the Supreme Court in *Joint Action Committee of Airline Pilots Association of India v Director General of Civil Aviation* (2011) 5 SCC 435. The Court noted that:

“It is a settled legal proposition that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the Statutory Authority. In a democratic set up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision making authority and be prepared to give way to carry out commands having no sanctity in law. Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal.”

“The legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.”

22. When adjudicating upon whether or not the Chief Minister has any role to play in the allotment of Stage Carriage Permits, the Supreme Court held that the Chief Minister’s actions were in derogation of statutory provisions. The application for grant of permit under the Motor Vehicles Act had to be filed before an authority under the same Act. The Court in *Pancham Chand v State of Himachal Pradesh* (2008) 7 SCC 117 stated:

“S. 72 empowers the Regional Transport Authority to grant stage carriage permit in respect of any route or the area specified in the application[...] The State, although, have a general control but such control must be exercised strictly in terms of Art. 162 of the Constitution of India. Having regard to the nature and the manner of the control specified therein, it may lay down a policy. Statutory authorities are bound to act in terms thereof, but per se the same does not authorize any Minister including the Chief Minister to Act in derogation of the statutory provisions. [...] All governmental orders must comply with the requirements of a statute as also the constitutional provisions.”

23. The Supreme Court has also examined Section 43-A of the Motor Vehicles Act, 1939 which permitted the State Government to issue orders and directions of a general character as it considered necessary for the purposes of road transport. Section 64-A of the same

legislation also allowed the State Government to call for records of quasi-judicial proceedings passed by officers under the Motor Vehicles Act. In determining the scope of the power conferred on the State Government in these two provisions, the Supreme Court in *Raman and Raman Ltd. v State of Madras* AIR 1959 SC 594 stated:

“The words used in Section 43-A are very wide. It says that the State Government may issue orders and directions of a general character in respect of any matters relating to road transport. Divorced from the context and setting in which the new section appears, it may comprehend any orders or directions of a general character in respect of road transport; if so construed, it would not only subvert the other provisions of the Act but also would be vulnerable to attack on the ground of constitutional invalidity. It would entrust the Government with a naked arbitrary power capable of being used to compel quasi-judicial tribunals to dispose of cases in a particular way it would enable them to couch the order in a general way to induce a tribunal to come to a particular decision in a given case; and it would be destructive of the entire judicial procedure envisaged by the Act and the rules framed thereunder in the matter of disposal of specified questions.” (¶8)

24. Like observations were made by the Court in *CIT Shimla v Greenworld Corporation* (2009) 7 SCC 69, where the Court stated:

“When a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order; by no stretch of imagination a higher authority can interfere with the independence which is the basic feature of any statutory scheme involving adjudicatory process.”

25. In the present case the single judge noted that the Union had not defended its position in the letter dated 09.10.2012 that the dues owed by DFC should be kept in abeyance and the fact that it did not take any action against the AAI subsequent to the demand notice issued against DFC, was a clear indication that the letter dated 09.20.2012 was never intended to be a direction. In opposition to this line of reasoning and also relying on the letter dated 19.11.2012 by the AAI, DFC relied on the authority of *Mohinder Singh Gill v Chief Election Commissioner, New Delhi* (1978) 1 SCC 405, in specific the following paragraphs:

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji A.I.T. 1952 S.C. 16:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

26. Firstly, this court notices that the letter dated 09.10.2012 was not a public order as in the above case. It was a private communication that forwarded information that had been brought to the Ministry's attention. Secondly, as the single judge notes, Section 40 of the Act uses the phrase "from time to time". Thus, there is no permanency that the decision taken by the MCA in the letter dated 09.10.2012 and the UoI is free to formulate any new position on the matter regarding dues owed by Category I flying clubs. By not demanding that the dues of DFC be kept in abeyance, the UoI has clearly changed its position.

27. In light of the above decisions and given the nature and content of the letter dated 09.10.2012, the appeal has to fail. The letter dated 09.10.2012 does not constitute a direction by the UoI to the AAI but a mere request for the board of the AAI to consider the matter. The AAI is clearly the competent authority to determine the amount of rent and to collect any dues, and its decision to pursue recovery of dues is valid.

28. During the pendency of proceedings, the eviction order had been made; the court is of the opinion that DFC's right to challenge it in the appropriate forum (as also the decision to recover dues from it) ought to be kept open. In the event appeals have not been filed, the DFC shall do so, within four weeks from today. The appellate authority or competent forum, in both cases shall in such event entertain the appeals on their merits and decide them in accordance with law.

29. The appeals fail and are dismissed but subject to the liberty reserved in the preceding paragraph; there shall be no order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**A.K. CHAWLA
(JUDGE)**

FEBRUARY 02, 2018

