

M.A. (AVIATION LAW AND AIR TRANSPORT MANAGEMENT)

**DANI AVIATION SERVICES PVT. LTD. Vs 1. UNION OF INDIA, MINISTRY OF
CIVIL AVIATION & 2. AIRPORTS AUTHORITY OF INDIA, CHENNAI AIRPORT**

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LIST OF ABBREVIATION

AAI Airports Authority of India

AVSEC Aviation Security

BCAS Bureau of Civil Aviation Security

CISF Central Industrial Security Force

UOI Union of India

CHAPTER I

INTRODUCTION

The case we are dealing with is Dani Aviation Services Pvt. Ltd., vs Union of India- Ministry of Civil Aviation and The Airports Authority of India- Chennai Airport,¹ filed in the High court of judicature at Madras. Dani Aviation Services Pvt. Ltd., is A non-government Ground handling company registered under the Companies Act, 1956 having its Registered Office in Chennai Represented by its Director T.S.Chandrasekar as Appellant in this case against the Union of India, Ministry of Civil Aviation, Represented by its Regional Deputy Commissioner of Security, Southern Region, Chennai Airport And The Airports Authority of India, Chennai Airport, Represented by its Director, Chennai Airport as both the Respondents in this referred case.

Mr. G. Rajagopalan, Senior Counsel with Mr. S. Vanchinathan supported this case for appellant. Mr. J. Ravindran, Asst.Solicitor General of India represented for the Respondent 1 (i.e., UNION OF INDIA) and Mr. A.J. Javad represented the case for the Respondent 2 (i.e., AAI, CHENNAI AIRPORT)

The Hon'ble Judges/Coram were Mr. H.L. GOKHALE, CHIEF JUSTICE and The Honourable Mr. Justice K.K. SASIDHARAN. Appeal was filed under Clause 15 of the Letters Patent against the order passed in W.P.No. 622 of 2010 dated 01.02.2010 on the file of this Court.

As this case introduce that the staff members of the appellant company was prevented by the Central Industrial Security Force (CISF) personnel at the airport stating that the passes issued to the appellant were withdrawn. For conducting the ground handling services at the airport, the employees of the appellant are required to have passes issued by the second respondent- Airport Authority of India. As far as the security at the airport is concerned, the second respondent is guided by the advice of the first respondent- Bureau of Civil Aviation Security (BCAS), which is under the control of Ministry of Civil Aviation.

The appellant is a company registered under the Indian Companies Act, 1956, and is engaged in ground handling services for the aircrafts. One of the directors of this company namely, Mr.Sivakumar Sinnarajah, a person of Sri Lankan origin, and who is a citizen of U.S.A, is holding 66.18% FDI in the appellant-company. The Srilankan Airlines Limited entered into an agreement with the appellant for supply of manpower on 11th October, 2007 for a period of two years for their operations in the Chennai Airport, and the said contract was extended up to October, 2012.

¹. Dani Aviation Services Pvt. Ltd vs Union Of India on 3 February, 2010

CHAPTER II

FACTS OF THE CASE

The facts that led to this appeal are that the appellant is a company engaged in ground handling services for the aircrafts. The Srilankan Airlines Limited contracted for the manpower supply for the period of two years for their operations in the Chennai Airport, and the said contract was later extended for more three years. For executing the ground handling services at the airport, the personnel of the appellant are needed to obtain permits granted by second respondent-Airport Authority of India. As far as the security at the airport is concerned, the second respondent is directed by the instructions of the first respondent - Bureau of Civil Aviation Security (BCAS), which is under the jurisdiction of Ministry of Civil Aviation. After the staff prevented to enter the airport by CISF stating the airport permit has been revoked. The appellant, therefore, filed petition immediately on 11th January, 2010 and urged that the records pertaining to this communication dated January 10, 2010 be summoned and invalidated, and that the first respondent be ordered to grant security clearance to the appellant for their ground handling activities at Chennai National and International Airports.

Mr. G. Rajagopalan correctly argued that he could not cite Article 19 ² of the Indian Constitution since the appeal was on behalf of a corporation and a scenario had arisen due to the participation of a non-citizen. According to him, the appellant had a case under Articles 14 and Article 21³ of the Constitution, which provided that anybody might use the rights granted by the articles. He emphasised Article 14 ⁴ in particular, arguing that public organisations must act fairly and in accordance with natural justice principles in their choices. He said that the appellant had been granted security clearance throughout and that there was no cause to suddenly refuse it, and that the grounds for the denial were also not provided.

He relied upon the judgment of the Apex Court in the case of Maneka Gandhi vs. Union of India ⁵ and Mohinder Singh Gill vs. Chief Election Commissioner ⁶ which states that the public authorities have to explain the exclusion of principles of natural justice

². Article 19 in The Constitution Of India 1949

³ Article 21 in The Constitution Of India 1949

⁴ Article 14 in The Constitution Of India 1949

⁵Maneka Gandhi vs Union Of India on 25 January, 1978

⁶Mohinder Singh Gill & Anr vs The Chiief Election ... on 2 December, 1977

CHAPTER III

ISSUES

- A. Whether the aforementioned provisions, which are enacted in the public interest, and even if Article 19(1)(g), which provides rights to the citizen, overrule the requirements of Rule 92 of the Aircraft Rules, 1937, which are established under the Aircraft Act, 1934?
- B. Whether this impugned conduct, which may result in unwarranted financial damage to the appellant corporation and job losses to its workers, is it legitimate from the standpoint of national security?

CHAPTER IV

JUDGEMENT

After the consideration of the submissions of both the learned counsel, it is easy to accept Mr. Rajagopalan's argument that, in most cases, all public agencies must operate in accordance with natural justice principles, and that a person should be given the chance to clarify his or her perspective. Natural justice principles, on the other hand, are not a rigid formula. In this scenario, Rule 92 of the Aircraft Rules expressly states that the ground handling services provider must get the Central Government's security clearance. The above-mentioned Regulation-6 makes it plain that BCAS has the authority to impose any security limits that may be necessary. The Circulars published under the Aircraft Act, 1934 ⁷ will be applicable, according to the regulation. These restrictions are imposed under Section 42 ⁸ of the Airports Authority of India Act, 1994, and the circular dated 19th February, 2007 demands prior approval to ground handling companies. If any firm receives unfavourable notice, it will not be permitted to work at the airport and may be removed.

The appeal is rejected for the grounds indicated above. There will be no costing order. As a result, the miscellaneous petition has been closed.

⁷ India Code: Aircraft Act, 1934

⁸ Section 42 in THE AIRPORTS AUTHORITY OF INDIA ACT, 1994

CHAPTER V

REASONING OR ANALYSIS

Mr. G. Rajagopalan, distinguished senior counsel standing for the appellant, correctly argued that he could not utilise Article 19 of the Indian Constitution because the appeal was on behalf of a company and a situation had arisen due to the involvement of a non-citizen. He claimed that the appellant had a case under Articles 14 and 21 of the Constitution, and that the appellant was entitled to certain rights under the articles.

He emphasised Article 14 in particular, arguing that public organisations must act fairly and in accordance with natural justice principles in their choices. He said that the appellant had been granted security clearance throughout and that there was no cause to suddenly refuse it, and that the grounds for the denial were also not provided. Mr. J. Ravindran, in response to the appellant's argument, cited Rule 92 of the Aircraft Rules, 1937, which was enacted under the Aircraft Act, 1934, and which states that- While providing ground handling services on its own, the licensee must maintain a competitive environment by enabling the airline operator at the airport to engage any ground handling services authorised by the Central Government to provide such services without limitation. Provided, however, that such a ground-handling service provider must get security clearance.

He also cited the Airport Authority of India's Regulations, which were enacted under Section 42 of the Airport Authority of India Act, 1994. Regulation 6 of these Regulations states that the BCAS may impose such limitations as may be appropriate in this regard on security grounds. The other conditions are listed in Regulation 8, which reads as follows: All concerned agencies shall be required to follow the provisions of the Aircraft Act, 1934, and rules made thereunder, as well as directions, orders, and circulars issued from time to time, in addition to the provisions of these regulations.

He then referred to BCAS Circular No.4 of 2007, dated February 19, 2007, which contained instructions on ground handling agency deployment at the airport. No ground handling agencies are authorised to work at the airport unless they have received previous security clearance from the BCAS, according to Instruction No.(i) of this Circular. The substance for our purpose is instruction no. (v), reads as follows: Background check in respect of ground handling agencies working in the airports is necessary. Therefore, AAI/Aircraft Operator shall send the details of each existing ground handling company, already engaged by them for ground handling functions along with the company profile and address, telephone numbers of Board of Directors and management so that the necessary action could be taken by the

BCAS. In case any company comes to adverse notice, the same shall not be allowed to work at the airport and shall be liable to be removed from the airport.

Mr. Ravindran, therefore, submitted that in as much as there were serious objection from the BCAS, permission granted to the appellant had been withdrawn and this Court should not sit in judgment over the decision, which is in the interest of national security.

At the highest, Article 14 would be an article to apply as canvassed by Mr. Rajagopalan. But, as stated above, the aforesaid provisions of law make it clear that it is the security at the airport, which is more important. The decision taken by the respondents is stated to be from the point of view of national security. In such matters, the prime position of the State to take necessary measures has to be accepted. The High Court cannot sit in a judgment over the decision of the respondent, which are taken from the point of view of security. Mr. Ravindran has rightly referred and relied upon a Division Bench judgment of the Bombay High Court dated 10th June 2008 in W.P.No. (LOD) No.656 of 2009 in the case of Akbar Travel of India (Pvt) Limited vs. Union of India and others.⁹ In that matter also, in a similar situation, Bombay High Court has held that the Court cannot indulge in guess work and hold that the inputs available to the Government do not endanger the security of the airport. These are matters which are better left to the authorities in charge of security of the vital installations and they are in charge of laying down standards and norms for protecting and safeguarding them.

⁹ Travel Corporation Of (India Pvt. ... vs Union Of India (Uoi) And Ors. on 19 July, 1991

CHAPTER VI

CONTRIBUTION OF THE CASE TO THE GROWTH OF AVIATION LAW

The current case and its shortcomings in judgements paved the way for discussion and led to several other petitions. Numerous independent petitions have been raised regarding prevented from the airport entry. Based on the incidents and unlawful activities in the airport, which are likely to endanger the safety of passengers, aircraft or equipment etc, BCAS has been improved security measures and has implemented Rules for the Ground handling agencies. All domestic scheduled airline operators and scheduled helicopter operators will be free to carry out self-handling at all airports including civil enclaves. As mentioned in the Regulation, A foreign airline may undertake self-handling in respect of passenger and baggage handling activities excluding security functions listed in paragraph 1 of AVSEC Order No. 03/2009 dated the 21st August, 2009 [enclosed as Annexure-I] at the airport terminals restricted to the passenger check-in at pre security hold area, at all the airports except civil enclave.

A ground handling agency, with foreign ownership of fifty percent or more of its paid-up capital shall not be allowed to undertake ground handling activities at the civil enclave Entry into terminal building or movement area - Except as provided in rule 90 of the Aircraft Rules, 1937, the entities permitted to undertake ground handling services at airports under these regulations shall also be allowed to enter and remain in the terminal building or movement area.

Security Protocol:

- (1) All ground handling services shall be provided only through the regular employees of the entities permitted under these regulations.
- (2) No hiring of employees through handling contractor or manpower supplier shall be permitted.
- (3) An airline and agency allowed to carry out ground handling services at the airport shall ensure compliance to security provisions as required under any law for the time being in force.
- (4) The ground handling agency, unless it acquires the status of regulated agent or otherwise authorised to do so by the Bureau of Civil Aviation Security, shall not undertake the security functions listed in paragraph 1 of AVSEC Order referred to in sub-regulation (2) of regulation.¹⁰

¹⁰. Airports Authority of India (Ground Handling Services) Regulations, 2018 (bareactslive.com)

CHAPTER VII

CONCLUSION

In the Conclusion of this case study, we can conclude that BCAS has the full authority to impose restrictions as may be necessary on the ground of security. And as per the regulation, the ground handling services provider shall be subject to the security clearance before entering the airport perimeter. BCAS has the power to revoke the entry pass as per the requirement or as necessary. Aviation security is a combination of measures and human and material resources in order to safeguard civil aviation against acts of unlawful interference. Unlawful interference could be acts of terrorism, sabotage, threat to life and property, communication of false threat, bombing, etc.

DGCA who had been conferred power under Section 42 had framed Regulations. However, Civil Aviation Requirements only laid down condition for fixing eligibility criteria, that did not vest any kind of inalienable right with Petitioners. Regulations had given more emphasis on security impact. Merely because an eligibility- criteria had been fixed, that did not mean same could not be changed. Eligibility criteria for grant of permit of ground handling facilities were laid down. It was obligatory on part of operator to provide ground handling facility, if authority so directed.

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