

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.117 OF 2009

IN

WRIT PETITION ST.NO.9004 OF 2009

...

Airports Authority of India ...Appellant

v/s.

The President, Airport Kamgar Union

and others ...Respondents

...

Mr.C.U.Singh, Sr.Advocate with Mr.Girish Kulkarni &
Mr.Mayur Shetty i/b M.V.Kini & Co. for the Appellant.

Mr.J.P.Cama, Sr.Advocate with Ms.Gayatri Singh for
Respondent No.2.

Mr.Anand Grover with Ms.Jane Cox for Respondent No.3.

Mr.Mihir Desai with Mr.R.A.Rodrigues i/b Mr.Sagar

Talekar for Airport Authority Employees Union.

Mr.Vinod Bobde, Sr.Advocate i/b Wadia & Gandhi & Co.
for Respondent No.4.

ALONGWITH

LETTERS PATENT APPEAL NO.119 OF 2009

IN

WRIT PETITION ST.NO.9831 OF 2009

...

Mumbai International Airport

Pvt.Ltd.

...Appellant

v/s.

Indian Airport Kamgar Union

and others

...Respondents

...

Mr.Rafiq Dada, Sr.Advocate with Mr.Birendra Saraf &
Mr.Bharik Manek i/b Wadia Gandhi & Co. for the
Appellant.

Mr.J.P.Cama, Sr.Advocate with Ms.Gayatri Singh for
Respondent No.1.

Mr.Anand Grover with Ms. Jane Cox for Respondent
No.3.

Mr.Mihir Desai with Mr.R.A.Rodrigues i/b Mr.Sagar
Talekar for Airport Authority Employees Union.

...

CORAM: D.K.DESHMUKH &

R.S.MOHITE, JJ.

DATED: 23RD APRIL, 2009

P.C.:

Admit.

(D.K.DESHMUKH, J.)

(R.S.MOHITE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.144 OF 2009

IN

LETTERS PATENT APPEAL NO.117 OF 2009

IN

WRIT PETITION ST.NO.9004 OF 2009

...

Airports Authority of India ...Appellant

v/s.

The President, Airport Kamgar Union

and others ...Respondents

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Mr.C.U.Singh, Sr.Advocate with Mr.Girish Kulkarni &
Mr.Mayur Shetty i/b M.V.Kini & Co. for the Appellant.

Mr.J.P.Cama, Sr.Advocate with Ms.Gayatri Singh for
Respondent No.2.

Mr.Anand Grover with Ms.Jane Cox for Respondent No.3.

Mr.Mihir Desai with Mr.R.A.Rodrigues i/b Mr.Sagar
Talekar for Airport Authority Employees Union.

Mr.Vinod Bobde, Sr.Advocate i/b Wadia & Gandhi & Co.
for Respondent No.4.

ALONGWITH

CIVIL APPLICATION NO.146 OF 2009

IN

LETTERS PATENT APPEAL NO.119 OF 2009

IN

WRIT PETITION ST.NO.9831 OF 2009

...

Mumbai International Airport

Pvt.Ltd.

...Appellant

v/s.

Indian Airport Kamgar Union

and others

...Respondents

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CORAM: D.K.DESHMUKH &

R.S.MOHITE, JJ.

DATED: 23RD APRIL, 2009

P.C.:

1. By both these civil applications, same interim order is claimed. Therefore, both these civil applications can be conveniently disposed of by a

common order.

2. The facts that are relevant are that the Respondents are the trade-unions of the employees working with the Airport Authority of India. After the Airport Authority of India Act, 1994 was amended by the Parliament and Section 12A was added, an agreement was entered into between the Airport Authority of India and a company formed for that purpose, which is Appellant in one of the Appeals. The date of that agreement is 4th April, 2006. The scheme of the agreement, so far as employees engaged by the Airport Authority of India is concerned, was that the employees of the Airport Authority of India will be taken on deputation by the company for the purpose of running the airport for a period of three years and thereafter the company will engage its own employees for running the operation of the airport. 60% of the employees of the Airport Authority were to be given an option to be absorbed in the service of the company. The employees who were not given option as also those employees who did not opt to join the company, were to continue to be in the employment of the Airport Authority of India and Airport Authority of India was to continue to employ them. This change

over was to take place from 2nd May, 2009. Anticipating this development, an industrial dispute was raised. Reference which is made is in following terms:

"Whether the action of the management of "AAI" in entering into 'Operations, Management and Development Agreement (OMDA) dated 4-4-2006 with Mumbai International Airports Pvt.Ltd., Mumbai and in refusing the work and dislocating the employees of "AAI" from their original work place during the initial period of three years w.e.f.3.5.2006, is in contraventions of Section 9A of Industrial Disputes Act, 1947?"

3. That reference is pending. In that reference, an application was made by the trade-unions for interim reliefs. Interim relief that was sought was that the Airport Authority of India should not transfer the services of the employees who remain with the Airport Authority of India. The Industrial Court by order dated 24th March, 2009 granted that interim relief, which in principal now restrains the Airport Authority of India from transferring its employees.

This order was challenged by the Airport Authority of India as also the company by filing two Writ Petitions. Those were Writ Petition (st) No.9004 of 2009 and Writ Petition (st) No.9831 of 2009. Both petitions have been disposed of by the learned single Judge by an order dated 13th April, 2009. The learned single Judge has slightly modified the interim order passed by the tribunal, however, principal interim order passed by the industrial tribunal restraining the Airport Authority of India from transferring the employees has been maintained. These two appeals have been filed, one by the Airport Authority of India and other by the company challenging the interim order of the tribunal as also the order passed by the learned single Judge of this court.

4. We have heard the learned Counsel for both sides. We find that the Appellants have made out a prima facie case. Therefore, we have admitted both these appeals. Therefore, now the question arises whether we should grant interim relief staying the operation of the interim order passed by the Industrial Tribunal during the pendency of these Appeals. The consequence of the stay of the order of the

industrial tribunal is that the Airport Authority of India shall be free, if it finds necessary to transfer the services of its employees to other stations. In our opinion, if this is the consequence ensuing, that consequence in no way can be termed as illegal. In fact transfer is one of the conditions of services of employees of the Airport Authority of India. The Airport Authority of India has framed, in exercise of its power conferred by clause (b) of sub-section 2 of Section 42 of the Act, the Regulations, which are Airport Authority of India (General Conditions of Service and Remuneration of Employees) Regulations, 2003. The regulation which is relevant is Regulation No.7, which reads as under:-

7. Liability for Service Anywhere in India or abroad:- Any employee in the service of the Authority shall be liable to be transferred to any office, project, or any other place where he may be posted for any of the Authority's work in any part of the country or abroad as may be required by the Competent Authority.

The Trade-unions relied on the Hand Book of Employees Service conditions and on Clause 5 of that Hand Books reads as under:-

Transfers & Tours

All Group A & B employees are liable to transferred anywhere in India and abroad or sent on tour for official duty. Group C & D employees are normally not transferred against their wishes from one unit to another.

These guide-lines obviously are contrary to the provisions of the Regulations, which has statutory force and therefore, in our opinion, those guide-lines will not operate. One more aspect, in our opinion, is relevant is that perusal of the reference shows that the reference that is made is to find out whether the action of the Airport Authority of India is in contravention of Section 9A of the Industrial Dispute Act. Perusal of Section 9A of the Industrial Dispute Act shows that a notice is required to be given of the change which results in change in the conditions of services applicable to

the workmen in respect of any matter specified in the Fourth Schedule. Perusal of the Fourth Schedule shows that transfer is not one of the conditions of the service in relation to which notice is required to be given. Perusal of the provisions of Section 9A shows that no notice of change is required to be given where the workmen likely to be affected by the change are persons to whom rules or regulations notified by the appropriate government in the official gazette apply. The conditions of services of the employees of the Airport Authority of India as observed above are regulated by the statutory Regulations. Prima facie, therefore, in our opinion, it cannot be said that the trade-unions have strong prima facie case in their favour. One aspect that appears to have weighed with the learned single Judge in rejecting the petitions is that the employees will be subjected to mass transfer by the Airport Authority of India. Before the industrial tribunal an apprehension was expressed that the services of the employees may be retrenched. However, before the learned single Judge and also before us a clear statement has been made on behalf of the Airport Authority of India that none of the employees will be retrenched and that even at the place where they will

be transferred will be provided work. In our opinion, even assuming that it will result in mass transfer of employees, it cannot be said that it is an unanticipated event. The employees are aware that this consequence is being faced by the employees because of the scheme of the privatisation undertaken by the Government pursuant to enactment of Section 12A in the Airport Authority of India Act and therefore, even if some harsh consequences flow they are because of the transitory period and because the scheme of privatisation has been undertaken in larger public interest. The consequence of not granting the interim relief would be that the employees would be subjected to transfer. There is no possibility of employees suffering any irreparable injury because of the transfer, because if ultimately the tribunal finds in their favour, they can be re-posted to their previous place. So far as the question of balance of convenience is concerned, in our opinion, balance of convenience also lies in favour of granting interim relief. Because the consequence of not granting interim relief would be that the Airport Authority of India will be forced to retain those employees, who are in excess. According to OMDA, the Airport Authority of India ceases to control the operation of

the Airport and therefore they do not need these employees. It has been stated before us that the company has already recruited employees to run the operation of the airport. Obviously, therefore, it is not possible for the company to employ these employees because there is no work for them. If the Airport Authority of India does not force the company to take over these employees, then the Airport Authority of India will have to continue to employ them at Bombay, where there will be no work available for them with the Airport Authority of India after 3rd May, 2009 and payment will be made by the Airport Authority of India to them without taking any work from them from public fund. In our opinion, this is most undesirable situation. We have been pointed out by the learned Counsel for the Appellant that the employees will be given three options for their transfer and that a screening committee has also been set up for that purpose. Therefore, interest of employee will also be taken into consideration while effecting transfer.

5. Thus, we find that, looking from all the three relevant aspects i.e. prima facie case, balance of convenience and irreparable injury, there is case

made out for grant of interim relief in favour of the Appellants. In our opinion, therefore, it is not only necessary and in the interest of justice, but it would be in the public interest also that we should grant interim order in favour of the Appellant. Both Civil Applications are, therefore, granted in terms of prayer clause (a).

6. At this stage, a request is made to stay the operation of the interim order. In our opinion, for two reasons this request cannot be granted. Firstly, we have found that the trade-unions have no case on all the three aspects which are relevant and secondly, even if the transfer orders are issued, we have been told that minimum period of 12 days will be given for joining the duties. The request is, therefore, rejected.

(D.K.DESHMUKH, J.)

(R.S.MOHITE, J.)