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(1996) 3 ALT 939

Andhra Pradesh High Court

Case No: Writ Petition No. 8210 of 1996

Mohan Raj Jhawar	APPELLANT
Vs	
Union of India (UOI) and Another	RESPONDENT

Date of Decision: April 23, 1996

Acts Referred:

- Air Corporations (Transfer of Undertakings and Repeal) Act, 1994 - Section 9
- Constitution of India, 1950 - Article 12, 14

Citation: (1996) 3 ALT 939

Hon'ble Judges: T.N.C. Rangarajan, J

Bench: Single Bench

Advocate: Bajrang Singh Thakur, for the Appellant; Bhaskara Mohan, S.C., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.N.C. Rangarajan, J.
This writ petition seeks a direction to the respondents to extend the benefit of holiday bonus scheme to all passengers. Second respondent had devised a scheme by which Government and public sector employees were offered tickets at one half of the normal fares in the domestic sector. In a press release, the second respondent has stated that Air tickets will be given to them at roughly the price of a second class air conditioned train ticket. It is a smart marketing move for filling up seats which often go empty. The petitioner submits that there is no reason why this scheme should not be extended to all other passengers, who may also be prepared to pay the concession fare and travel in domestic sector of the international air travels.

2. The learned counsel for the petitioner has to first establish that second respondent is a State or an instrumentality of the State within the meaning of Article 12 of the Constitution

of India. Though Air India was originally a statutory corporation, it has become an ordinary company by the provisions of The Air Corporations (Transfer of Undertaking and Repeal) Act, 1994 (for short "the Act")- It may be that, the funds given by the Government earlier are retained by the new Company and it may also be that the monopoly of Air Travel run by the Government earlier is now also run by this new company. But after the liberalisation, we have a situation where the new company is after all like any other commercial company in the air travel business, except that it happened to be wholly owned by the Government of India. This by itself cannot make it an instrumentality of the State for applying the principle of discrimination. The learned Counsel for the petitioner drew my attention to Section 9 of the Act, which shows that the Central Government may give directions to the company as to the exercise and performance of the company of its functions, and that company shall be bound to give effect to any such directions. But, I do not think that this provision will be sufficient to make the company an instrumentality of the State, besides this I have my own doubts as to the validity of this section. In any event, the question is only whether a commercial decision of a company in the course of its business can be questioned in a writ petition. It is for the company to decide in what manner its services shall be marketed. The public, who are in fact customers cannot demand that the services should be extended at the same price to all, as the fares will be dependent upon the services which were extended to different sectors of customers. Profit motive may not be the only reason for such decisions, as the company may also have to take into account other factors for taking such decisions.

3. In the present case the Air India has taken into account the fact that if the Government servants, who are eligible for leave travel concession and who are likely to travel during summer vacations are given concessional fare there will be consequential reduction on the pressure on trains, and this is one aspect of the public policy which cannot be ignored. Admittedly such a commercial decision if taken by any private airline will be unquestionable and it should make no difference if the airline happens to be owned by Government.

4. In the circumstances, I am convinced, that not only that the second respondent - Air India is not an instrumentality of the State, but also its commercial decisions cannot be questioned on the ground of discrimination. Hence the writ petition is dismissed.