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AIR INDIA AND ORS. ETC.

v.

B.R. AGE AND ORS ETC.

OCTOBER 10, 1995

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[S.C. AGARWAL AND B.P. JEEVAN REDDY, JJ.]

Air Corporations Act, 1953 : Sections 7(1), (2), 15, 15-A, 34(1) and 45.

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Central Government—Power to give directions—Scope and extent of—Directions for reservation in services in Air India—Held covered under section 34(1)—Held such directions pertain to exercise and performance of functions by the Corporation—Functions of Corporation held not confined to those specified in section 7—Expression 'powers' and 'functions' held interchangeable.

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In exercise of the power conferred by Section 34(1) of the Air Corporations Act, 1953 the Central Government issued directions to the appellant-Air Corporation to provide reservations for Scheduled castes and Scheduled Tribes in the services under the Corporation. The respondents challenged the vires of these directions before the High Court of Bombay which held that the power under Section 34(1) was confined to giving directions only with respect to "the exercise and performance by the Corporation of its functions" and that the expression "functions" in the said provisions should be understood in the light of Section 7 of the Act which sets out the functions of the Corporation; since regulating the conditions of service of its employees was not a matter specified in Section 7, the impugned directions were not within the ambit of Section 34(1) and thus beyond the authority of the Central Government. Air India as well as its employees belonging to Scheduled Castes preferred appeals before this Court.

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Writ petitions were also filed under Article 32 of the Constitution challenging the directions issued by the Central Govt.

Allowing the appeals and setting aside the judgment of the High Court, and dismissing the writ petitions filed under Article 32, this Court

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HELD : 1. The directions issued by the Central Government are

within the four corners of Section 34(1) of the Air Corporations Act and, therefore, valid and effective. [201-C] A

2. It is true that Section 7 does not set out the functions of the Corporation but it would be erroneous to think that the Corporation has no other functions except those specified in Section 7. The Air Corporation Act speaks of the functions, duties and powers of the Corporation but powers and functions are used as interchangeable expressions. Regulating the service conditions of its employees is referred to as a power in Section 45, but one may ask, is it not its function as well. The very language employed in Section 7 establishes that both the expressions were used by the Parliament as interchangeable concepts. Thus, when sub-section (2) speaks of powers conferred by sub-section (1), it is obviously speaking of the functions of the Corporation but referring to them as "powers". It indeed seeks to confer some more powers upon the corporation viz., those specified in clauses (a) to (l), which are indeed an elaboration and particularisation of the functions referred to in sub-section (1). The language employed in sub-section (2) of Section 7 thus demolishes the distinction sought to be drawn between powers and functions of the Corporation. Therefore, the distinction sought to be drawn between the powers and functions is unsustainable and unreal. A reference to certain other provisions of the Act including Sections 15 and 15-A goes indeed to re-inforce this view. It follows that the directions in question do pertain to the exercise and performance by the Corporation of its functions. B
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[199-C, G, 200-E-G]

CIVIL APPELLATE/ORIGINAL JURISDICTION : Civil Appeal No. 325 of 1981. F

With

Civil Appeal No. 551 of 1981.

From the Judgment and Order dated 27.11.80 of the Bombay High Court in W.P. No. 1279 of 1978. G

And

Writ Petition (C) Nos. 145-48 of 1980.

Under Article 32 of the Constitution of India. H

A K.N. Bhat, Narain B. Shetye, U.A. Rana, Rajiv Tayagi, Anand Prasad for Gagrate & Co., P.H. Parekh, Ms. Manish Pradeep, C.V. Francis, Lalit Bhasin, Ms. Mina Gupta, Ms. Kiran, Vineet Kumar, C.S. Srinivasa Rao and Ms. A Subhashini, for the appearing parties.

B The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Civil Appeal Nos. 325 and 551 of 1981 are preferred against the judgment of a learned Single Judge of the Bombay High Court allowing the writ petition filed by respondents, B.R. Age and others, and quashing the directions given by the Central Government on July 23, 1975 to Air India to provide reservation for Scheduled Castes and Scheduled Tribes in the services under the Corporation. The directions were issued under Section 34(1) of the Air Corporations Acts, 1953. The directions are very elaborate in nature, the sum and substance whereof is to provide reservations in the matter of appointments or posts under the Corporation. The respondents-writ petitioners contended before the Bombay High Court that the directions so given are *ultra vires* the powers of the Central Government, not being within the ambit of Section 34(1) of the said Act. They submitted that the said directions cannot also be justified with reference to clause (4) of Article 16 of the Constitution inasmuch as before giving the said directions, the Central Government had not formed the requisite satisfaction that the members of Scheduled Castes and Scheduled Tribes are not adequately represented in the services under the Corporation. The learned Judge has quashed the directions only on the first ground. He did not go into the question whether the said directions are warranted by clause (4) of Article 16 of the Constitution. Civil Appeal No. 325 of 1981 is preferred by Air India while Civil Appeal No. 551 of 1981 is preferred by the employees of Air India belonging to Scheduled Castes. The Union of India is supporting them in these appeals. Writ Petition (C) Nos. 145-148 of 1980 are filed under Article 32 of the Constitution challenging the constitutional validity of the very same directions issued by the Central Government.

G Section 34(1) of the Air Corporations Act reads thus : "34(1). The Central Government may give to either of the Corporations directions as to the exercise and performance by the Corporation of its functions, and the Corporation shall be bound to give effect to any such directions." The H High Court was of the view that the power under the said provisions is

confined to giving directions only with respect to "the exercise and performance by the Corporation of its functions" and that the expression "functions" in the said provisions should be understood in the light of Section 7 of the Act which sets out the functions of the Corporations. The High Court opined that since regulating the conditions of service of its employees is not a matter specified in Section 7, the said directions are beyond the authority of the Central Government. In short, the High Court understood the functions of the Corporation as confined to those mentioned in Section 7 alone. We are unable to agree.

It is true that Section 7 does set out the "functions of the Corporation" but it would be erroneous to think that the Corporation has no other functions except those specified in Section 7. The Air Corporations Act speaks of the functions, duties and powers of the Corporation but as we shall demonstrate presently, powers and functions are used as interchangeable expressions. Section 45 empowers the Corporation to make regulations not inconsistent with the Act or the rules made under Section 44 for the administration of the affairs of the Corporation and for carrying out its functions. Sub-section (2) of Section 45 specifies the matters with respect to which regulations can be made under the said section. Sub-section (2), insofar as it is relevant, reads thus :

"45(2). In particular and without prejudice to the generality of the foregoing power, any such regulations may provide for all or any of the following matters, namely :

(b) the terms and conditions of service of officers and other employees of the Corporation other than the managing director and officers of any other categories referred to in Section 44."

Regulating the service conditions of its employees is referred to as a power in Section 45, but one may ask, is it not its function as well. Be that as it may, the very language employed in Section 7 establishes that both the expressions were used by the Parliament, in this enactment, as interchangeable concepts. Sub-section (1) and sub-section (2) of Section 7, insofar as relevant, read thus :

"7. *Functions of the Corporations.* - (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of each of the Corporations to provide, safe, efficient,

A adequate, economical and properly co-ordinated, air transport services, whether internal or international or both, and the Corporations shall so exercise their powers as to secure that the air transport services are developed to the best advantage and, in particular, so exercise those powers as to secure that the services are provided at reasonable charges.

B (2) Without prejudice to the generality of *the powers conferred by sub-section (1)*, each of the Corporations shall, in particular, have *power--*"

C (Emphasis added)

The first part of sub-section (1) of Section 7 speaks of the functions of the Corporation while the latter part speaks of the powers of the Corporation being exercised for a proper performance of its functions. So far so good. But then sub-section (2) refers to the functions in sub-section (1) as powers conferred upon the Corporation. It must be remembered that Section 7(1) does not purport to confer any powers upon the Corporation; it only sets out its functions and then says that the Corporation shall exercise its powers so as to perform its functions effectively. Thus, when sub-section (2) speaks of powers conferred by sub-section (1), it is obviously speaking of the functions of the Corporation but referring to them as "powers". It indeed seeks to confer some more powers upon the Corporation, viz., those specified in clauses (a) to (l). Clauses (a) to (l) are indeed an elaboration and particularisation of the functions referred to sub-section (1). The language employed in sub-section (2) of Section 7 thus demolishes the distinction sought to be drawn between powers and functions of the Corporation. To reiterate, it is erroneous to think that the Corporation has no other functions except those specified in Section 7. In the context of the Air Corporations Act, the distinction sought to be drawn between the powers and functions is unsustainable and unreal. A reference to certain other provisions of the Act including Sections 15 and 15-A goes indeed to re-inforce this view. Once we arrive at this conclusion, it follows that the directions in question do pertain to "the exercise and performance by the Corporation of its functions" within the meaning of Section 34(1) and, therefore, valid.

H Sri Bhat, learned counsel for the appellant-Corporation submitted further that the Air India Corporation being a "State" within the meaning

of Article 12, it is bound by the discipline of and the commands of Part-III of the Constitution which contains Article 16(4). What the Central Government did by way of the impugned directions, he says, was only to remind the Corporation of its obligation under Article 16(4) and no more. In view of the opinion expressed by us on the meaning and content of Section 34(1), we need not express any opinion of this submission.

For the above reasons, the appeals are allowed, the judgment under appeal is set aside and the directions issued by the Central Government which were impugned in the Writ Petition (C) No. 1279 of 1978 on the file of the Bombay High Court are held to be within the four corners of Section 34(1) of the Air Corporations Act and, therefore, valid and effective. For the same reasons, Writ Petition (C) Nos. 145-148 of 1980 are dismissed. No costs.

T.N.A.

Appeals allowed and petitions dismissed.