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## AIR INDIA V. NARGESH MEERZA 1981 4 SCC 335

~ *Divanshu Rani*

### INTRODUCTION

Air India v. Nargesh Meerza is a remarkable case that deals with the discriminatory policies based on gender norms. The case was filed by Nargesh Meerza in 1981 after she and other Air Hostess were forced to resign from their job after they got married, this provision does not apply to male attendants. This case primarily deals with the stereotypical provisions in the regulations that govern employment of Air hostesses are violative of the fundamental right to equality under Article 14 and the prohibition of discrimination under Article 15 of the Indian Constitution.

### FACTS OF THE CASE

Under Sec 3 of the Air Corporation Act of 1953, the central government created 2 corporations Air India International and Indian Airlines. The Air India International deals with international flights whereas Indian airlines operate flights within India. Air hostesses that were employed by Air India were governed by regulation 46 and 47 of the Air India employees services regulations and Air hostesses employed under Indian Airlines were governed by the Indian Airlines Service, Regulation No. 12.

The rules that governed the services were deemed as faulty because of which the petitioner Nargesh Meerza, a Air hostess in Air India airlines imposed a challenge on Regulations 46 and 47 of the Air India employees services regulations.

As per the regulations the Air hostess were required to retire when they get married, their pregnancy or at reaching the age of 35 whichever occurs earliest. Further, the age of retirement of Air Hostess could be extended upto ten years by granting yearly extensions at the option of the

Managing Director. If the Managing Director chose to exercise his discretion under Regulation 47 an Air Hostess could retire at the age of 45 years.

Air hostess under Indian Airlines was governed by similar regulations but their age of retirement could only be extended till 40 years of age.

## **ISSUES OF THE CASE**

- Whether Regulation 46 & 47 are violative of Articles 14,15, 16 of the Constitution of India and thus ultra vires in whole or part?
- Whether the discretionary authority enumerated in Regulation 47 qualify excessive delegation?

## **ARGUMENTS**

### Petitioner Arguments

- In the case it was contended on the behalf of Air Hostess that the Air Hostess that are employed by one corporation or the other class perform the similar class of duties as compared to Assistant Flight pursers and hence any discrimination between these 2 positions are clearly violative of Art. 14.
- The Air hostess have been particularly selected for hostile discrimination by the corporation on sex and disabilities arising from sex. All these infractions are clearly violative of Ar15(1) and Ar16(4).
- These regulations are based on the old stereotypical notions about women's roles and societies and perpetuate gender based stereotypes, which are unconstitutional.
- The termination on the grounds of Air hostess on the ground of the pregnancy or when married are clearly arbitrary and violates workspace equality principles.
- Apart from discrimination based on age and sex, Air Hostess are clearly deprived of the promotional opportunities available to the male members of the cabin crew.

### Respondent Arguments

- In this case the management contested Air hostess fall in the different criteria as compared to the Air flight pursuers due to their recruitment process, qualifications, promotional avenues, and retirement circumstances. Hence, It is not discriminative of Ar. 14

- The recruitment of Air Hostess is sex based but is not entirely based on sex and it considers various others factors. So, it is not violative of Ar 15(2)
- The Khosla and Mahesh Awards upheld Regulation 46 of the Air India (A.I.) Regulations and Regulation 12 of the Indian Airlines Corporation (IAC) Regulations, respectively. These awards give the regulations statutory authority. Unless the regulations are inherently arbitrary or unjust, the Court should not step in, especially since the awards have legal effect on the parties.
- The Pregnancy based restrictions are reasonable considering the
- A large number of Air Hostess leave jobs much before the age of retirement stipulated by the regulations, leave much earlier. These things must be considered when evaluating the the regulations.

## **ANALYSIS OF THE CASE**

The court emphasized that Ar 14 of the constitution prohibits hostile discrimination and aims for reasonable classification. This case cites previous cases to support the idea that equality under Ar 14. Equals should be treated as equals and unequals as unequals. Different pay scales, service terms, leave, and so on in different positions do not necessarily violate Article 14 if the class or categories of service are fundamentally different in purpose and spirit. The court examined that the Air hostess constitutes a different and separate class from the flight pursuers.

Some provisions were deemed as reasonable like bar on marriage within four years of service whereas certain other provisions like the termination on first pregnancy, were deemed arbitrary and violative of Article 14 of the Constitution. The regulations are primarily based on sex which causes an unreasonable bias and thus ultra vires Ar 14 of the constitution. The Court asserted that service conditions must have a rational nexus to the requirements of a job rather than being based on arbitrary standards.

The court further rejected the contention of respondents that women tend to leave their jobs before retirement. The current provision related to pregnancy as a reason for retirement is arbitrary. Rather, the court suggested that the pregnancy clause should be amended to retire air hostesses upon the birth of their third child, citing public health principles.

Granting excessive powers to the managing director leads to discrimination and lack of uniformity in treatment of the Air hostess. The ambit of the Managing director becomes so wide that the

regulation 47 can be mistreated easily and thus is violative of Article 14 by suffering from excessive delegation.

## **JUDGEMENT**

It was held in the case that the impugned provisions of Air India forms a clear case of arbitrariness. Since the provisions are only arbitrary it was deemed unnecessary to strike down the entire regulation. The case challenged the constitutionality of regulations in the Air India Employee Service Regulations that imposed discriminatory conditions on female employees, such as mandatory retirement at age 35, termination upon marriage within the first four years of service, and retirement upon the first pregnancy.

The clauses regarding the retirement age of 35 and mandatory age of retirement upon marriage and pregnancy were found to be unconstitutional. These provisions were deemed as discriminatory and outdated notions and violated the fundamental rights of equality and non discrimination enshrined in Articles 14, 15, and 16 of the Constitution.

The clause regarding the retirement age and pregnancy is struck down immediately. The court recommends that the pregnancy provision be updated to reflect modern standards, replacing the current language with criteria that prioritise public health without discrimination. The retirement age should not be set arbitrarily, but rather based on medical tests and other relevant factors and circumstances.

The Powers given to the managing director by Regulation 47 are excessively broad and lead to discriminatory behaviors. The court found that it is violative of Ar 14 due to the potential for misuse and lack of clear guidelines.

The decision reinforced gender stereotypes and limited the interpretation of Article 15(1) to discrimination solely on the basis of sex, excluding intersectional discrimination. The regulations were discovered to be based on false assumptions and stereotypes about women's abilities and roles, thus violating the constitutional guarantee of equality.