

From the Desk of:

Prashant Sivarajan

Advocate, Supreme Court of India



LAWMEN & WHITE
Advocates & Solicitors

REGD.AD

Dated: 31st January, 2020

To,
The Chief Executive Officer
InterGlobe Aviation Limited [Indigo Airlines]
Level 1, Tower C, Global Business Park,
Mehrauli-Gurgaon Road,
Gurgaon – 122 002, Haryana, India.

Also at:
Central Wing, Ground Floor, Thapar House,
124, Janpath,
New Delhi – 110001

LEGAL NOTICE ON BEHALF OF MY CLIENT MR. KUNAL KAMRA
AGAINST THE ILLEGAL, HIGH HANDED AND ARBITRARY ACTION
TAKEN AGAINST HIM REGARDING TRAVEL IN INDIGO FLIGHT 6E 5317
FROM MUMBAI TO LUCKNOW AS PUBLICISED ON TWITTER VIDE
TWEET DATED 28.01.2020 & COMMUNICATED TO HIM VIDE EMAIL
DATED 29.01.2020.

Dear Sir,

Under instructions from and on behalf of my client Mr. Kunal Kamra, [REDACTED], (hereinafter referred to as “My Client”), I hereby serve upon you, the Noticee, the following legal notice:

1. That My Client is one of India’s most prominent Stand-up Comedians. He is a well known public figure, is vocal about social issues and frequently travels throughout India as well as abroad for the purpose of his Stand-up comedy shows. Suffice it to say that My Client enjoys a good reputation in public life and has no history of any unruly/disruptive behavior regarding travel on any domestic/international carrier.

[REDACTED]

2. That on 28.01.2020, while flying on your aircraft i.e Indigo 6E 5317 from Mumbai to Lucknow (hereinafter referred to as the 'said flight') My Client [in exercise of his right to freedom of speech and expression as enshrined in Article 19(1)(a) of the Constitution] sought to indulge in a conversation with a fellow passenger, Mr. Arnab Goswami (a well-known journalist and public figure); and thereafter proceeded to critique the said individual's style of journalism, which was met with no response. Relevant would it be to note that at this point of time the Seatbelt Signs were switched off. Shortly thereafter, when the Seatbelt Signs came on the stewardess asked My Client to take his seat at which point of time he duly complied.
3. Again post takeoff, My Client approached Mr. Goswami and sought his attention when Mr. Goswami replied that he was watching something and did not want to indulge in any conversation. At this point of time, My Client proceeded to record a video of himself aggressively questioning Mr. Goswami. Again when requested by the Stewardess, My Client immediately proceeded back towards his seat.
4. It is also pertinent to note that at no point of time during My Client's exchanges with Mr. Goswami was there ever any intervention by the cabin crew to the effect that such behavior was unruly or disruptive, or that My Client was creating any nuisance whatsoever. Moreover, at no point of time during the said exchanges between My Client and Mr. Goswami was there any complaint by the fellow passengers that such behavior was unruly, untoward or disruptive, much less posing any threat to flight safety. Even Mr. Goswami himself, towards whom My Client's exchanges were directed, did not make any complaint nor did he request the intervention of the cabin crew at any point of time.
5. Furthermore, after the said flight had landed, though not required to, My Client still insisted upon staying back till the very end, and personally made it a point to apologize to each crew member and both pilots individually for any inconvenience that may have unintentionally been caused. Suffice it to say, the same was accepted by both the pilots as well as the crew, and at no point in time was My Client ever intimated that his behavior was unruly/disruptive against which action was being contemplated and neither was My Client notified of the fact that any

passenger (including Mr. Goswami) or crew member had made any manner of formal complaint/grievance against him and his actions whilst travelling on the said flight.

6. Upon arrival at Lucknow, My Client proceeded to tweet about the said incident that had occurred while he was travelling on the said flight at around 06:15 PM.
7. It is apparent that as a knee jerk reaction to the said tweet, in a completely illegal, high handed and arbitrary manner without following either the principles of natural justice nor the procedure in law as prescribed under the Civil Aviation Requirements, Section 3 – Air Transport Series M Part VI Issue II, dated 08.09.2017 as promulgated by the Office of the Director General of Civil Aviation [hereinafter referred to as ‘CAR’], on 28.01.2020, you the Noticee from your official Twitter handle at 8:49 PM proceeded to suspend My Client from flying with your airlines for a period of 6 months “*as his conduct onboard was unacceptable behavior*”. Suffice it to say that any social media platform such as Twitter is not a medium of official communication and the entire action of you the Noticee in suspending My Client from flying smacks of arbitrariness and is completely contrary to the principles of natural justice as well as the procedure in law as prescribed under the CAR.
8. It was only subsequently the next day at 09:38 AM that My Client received an email from your Consumer Relations Team officially intimating him that he had been suspended from flying with Indigo Airlines for a period of 6 months.
9. The above said actions of you the Noticee are liable to be quashed and set aside with immediate effect on account of abject failure and non-compliance with the mandatory provisions of law being the CAR dated 08.09.2017.
10. At the very outset, it is submitted that ‘Unruly Passenger’ is defined under Paragraph 3.1 of the CAR to be “*3.1 Unruly passenger - A passenger who fails to respect the rules of conduct at an airport or on board an aircraft or to follow the instructions of the airport staff or crew members and thereby disturbs the good*

order and discipline at an airport or on board the aircraft.” In the present facts and circumstances, it is stated that My Client has only engaged in conversation with another passenger, who was not at all interested in the same, and has proceeded to comply with the instructions of the cabin crew/staff at all points of time. Therefore, My Client in no way can be termed as an “Unruly passenger” within the meaning of Paragraph 3.1 of the CAR. At best, the same is a question for determination by the Internal Committee to be constituted under Paragraph 6.1 and without any finding by the Internal Committee regarding the same, no proceedings could have been initiated against My Client. It would also be relevant to point out that at no point of time during the entire flight duration was My Client ever interrupted or made aware by the Cabin Crew onboard stating that this kind of behavior on his part amounts to disruption/or that it was endangering the flight safety in any manner, which is also a necessary requirement under Paragraph 4.9 of the said CAR.

11. A bare perusal of CAR dated 08.09.2017 would reveal that a detailed procedure has been prescribed for dealing with the Processing & reporting of Unruly/Disruptive Behaviour has been given in Paragraph 6 thereof, which reads as under:

“6. REPORTING AND HANDLING OF UNRULY PASSENGERS ON BOARD THE AIRCRAFT

*6.1 **Whenever an airline receives a complaint of unruly behavior from the pilot in command**, the incident may be referred by the airlines to an Internal Committee. This Internal Committee shall be constituted by the airline and consists of the following:*

- a) Retired District & Session Judge as Chairman.*
- b) A representative from a different scheduled Airline as Member.*
- c) Representative from a passengers association or consumer association or retired officer of Consumer Dispute Redressal Forum as Member”*

12. A bare perusal of Paragraph 6.1 would indicate that a complaint of unruly behavior from the pilot in command is a sine qua non for initiation of the procedure to declare a passenger as Unruly/Disruptive and then to take any further consequential thereof. In the instant case, it is submitted that to the knowledge of My Client, there is no such complaint made by the Pilot-in-Command regarding

My Client's behavior and therefore its stands to reason that no proceedings under the CAR could have been initiated against My Client, much less could any suspension be imposed sans the mandatory requirement of a complaint from the Pilot-in-Command. Moreover, it is also stated that no action under the CAR could be taken in the instant case, and even if there was any such Complaint, the same has never been informed/intimated to My Client till date.

13. Thereafter, Paragraph 6.2 of the CAR reads as under:

“6.2 The Internal Committee shall decide the matter within a period of 30 days along with category level of the unruly passenger as indicated in Para 4.10 of this CAR. The Internal Committee shall also decide the duration for which the unruly passenger will be banned from flying in accordance with provisions of Para 8.1 of this CAR.”

It would also be useful to note the contents of Paragraph 4.10 of the CAR which reads as under:

“4.10 Airlines shall categorize all such cases of unruly behaviour on-board the aircraft as indicated in Para 4.9 to this CAR into following categories:

a) Level 1: Unruly behaviour (physical gestures, verbal harassment, unruly inebriation etc.)

b) Level 2: Physically abusive behaviour (pushing, kicking, hitting, grabbing or inappropriate touching or sexual harassment etc.)

c) Level 3: Life-threatening behaviour (damage to aircraft operating systems, physical violence such as choking, eye gouging, murderous assault, attempted or actual breach of the flight crew compartment etc.)”

14. It is stated that to the knowledge of My Client no such Internal Committee as is required in law has been constituted as on the date of preparation of the present legal notice inasmuch as the same has been confirmed by the Director General of Civil Aviation (DGCA) on its official twitter handle @DGCAIndia vide tweet dated 29.01.2020 at 6:30 pm wherein it has been tweeted as under:

“Clarification on HUFFPOST News item dated 29 January 2020

HUFFPOST has misquoted/misrepresented the facts as stated by the Director General of Civil Aviation in its News item published today at 5:01PM.

This is to reiterate that the action taken by the airlines is in complete consonance

with Civil Aviation Requirements (CAR) Section-3, Series M Part VI on Handling of unruly passengers.

Now the matter is to be referred to the internal committee as prescribed in para 6.1 of the said CAR. *Further, as per para 6.4 of the CAR, the Internal committee is to give the final decision within 30 days by giving the reasons in writing, which shall be binding on the airline concerned. Punishment for different type of unruly behavior is also prescribed in the same CAR and the Internal Committee has to adhere to the same.”*

15. Therefore, it is abundantly clear that in total abrogation of the mandate of the CAR, which has been admitted by the Nodal Authority DGCA itself, it is writ large that the entire procedure as prescribed in law in order to declare a passenger as a unruly/disruptive passenger has been completely side stepped and therefore, the present ban which has been imposed upon My Client is wholly illegal, arbitrary, unjustified and non-est in law and cannot be allowed to survive under any circumstances. This also points towards the fact that you, the Noticee, has acted in a hasty and biased manner inasmuch as there is a finding that My Client has indulged in unacceptable behavior without following any due process and that too within a few hours of the said flight landing in Lucknow. It is all the more evident that the same is nothing but an arm twisting tactic on part of you, the Noticee, as a direct counter blast to My Client tweeting about the said incident.
16. Furthermore, even as per Paragraph 6.3 of the CAR, *“Pending decision of the Internal Committee, the concerned airline may ban such unruly passenger from flying, but such period may not exceed a period of 30 days.”* Suffice it to say that the instant ban of 6 months which has been imposed upon My Client is completely illegal and in the teeth of Paragraph 6.3 as it is an admitted position by the DGCA that the matter is yet to be referred to the Internal Committee as specified in Paragraph 6.1 of the CAR. Therefore, imposition of 6 months’ ban is completely without the authority of law and against the Regulations issued on the subject matter and must therefore be revoked immediately.

17. Furthermore, as per Paragraph 6.2 of the CAR, it is incumbent upon the Internal Committee to decide the duration for which the unruly passenger will be banned from flying in accordance with provisions of Para 8.1 of the CAR. Paragraph 8.1 which prescribes the maximum duration for which a ban may be imposed based on the gravity of offence, is reproduced herein below:

“8.1 For any person, who is placed in the No-Fly List, other airlines shall have the option to ban him from taking flights to/from/within India for a duration as indicated below:

a) Level 1 - upto three months

b) Level 2 - upto six months

c) Level 3 - for a minimum period of 2 years or more without limit

d) Persons covered under Para 7 - Barred till such time that the person is perceived to be national security risk by the Ministry of Home Affairs.”

18. Therefore, even if for the sake of argument it is assumed that My Client is found guilty by the Internal Committee of having committed any offence, the same would at best amount to a Level 1 offence as the nature of the incident involved only a verbal dialogue on part of My Client and there was no physical contact between My Client and Mr. Goswami, nor for that matter any other passenger or cabin crew. Therefore, at best, only after due deliberation and finding of the Internal Committee, the maximum penalty under law is of 3 months and thus imposition of 6 months' ban is wholly illegal, manifestly arbitrary and non-est in law. It is submitted that in the absence of any grievance on part of the passenger involved namely Mr. Goswami and in the absence of any grievance from any other co-passenger, there was no occasion for initiation of complaint from the Pilot-in-Command regarding unruly behavior on part of My Client, which is the basic requirement in law for initiation of proceedings under the CAR and for referring the matter to the Internal Committee [to which the matter has admittedly not been referred to as per DGA; refer paragraph 14 above] it is not possible to fasten any sort of ban upon My Client.
19. There has been a total non-compliance of the principles of natural justice inasmuch as My Client at no point of time was never informed of the allegations against him

that led up to the ban being issued, and neither has he been provided with a copy of the Complaint as made by any passenger or crew member regarding the fact that his behavior on the said flight was unruly and/or disruptive. My Client has also not been served with any notice regarding any proceeding being initiated/contemplated against him and neither was he ever given any opportunity to rebut the same or to make any submission/representation in his defense prior to precipitative and coercive action being taken against him. Suffice it to say that the principles of natural justice are applicable to judicial, quasi-judicial and administrative authorities even if not provided for in statute, where the decision of authority concerned would result in civil or evil consequences. The Hon'ble Supreme Court has time and again held that when the statutory rules are silent with regard to the applicability of any facet of principles of natural justice the applicability of principles of natural justice which are not specifically excluded in the statutory scheme are not prohibited. In the case at hand, there being no exclusion of the principles of natural justice in the CAR dated 08.09.2017, it is abundantly clear that the requirements of the same would undoubtedly mandatorily have to be complied with by you the Noticee, which has not been done in the instant case.

20. It would also be relevant to highlight the well settled legal position which has been expounded by the Hon'ble Supreme Court in a plethora of judgments that that the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute and its allied rules, particularly when the order has adverse civil consequences. The *audi alteram partem* rule, in essence, enforces the equality clause in Article 14 of the Constitution and it is applicable not only to quasi-judicial bodies but also to any administrative order adversely affecting the party in question unless the rule has been expressly excluded by the Act, Regulation or Rule concerned which as you are well aware is not the scenario in the instant case.
21. Suffice it to say that the Hon'ble Supreme Court has crystallized the legal position in law that any order which infringes a fundamental freedom passed in violation of

the *audi alteram partem* rule is a nullity. Therefore, the present ban as imposed upon My Client deserves to be set aside on this very ground alone.

22. It is also stated that the actions of you the Noticee in suspending My Client from flying thereby restricting his freedom to move freely throughout the territory of India have severely impinged upon My Client's Freedom of Movement, as guaranteed by Article 19(1)(d) of the Constitution, and that too has been carried out in a manner de hors both the law on the subject as well as the requirements of natural justice. Freedom to travel, both within and outside the confines of the territory of the state, has been regarded by the Hon'ble Supreme Court as axiomatic as well as an inherent part of the expression "personal liberty" occurring in Article 21 of the Constitution. Again, it is stressed that these fundamental rights of My Client have been violated without following any due process or procedure established by law.
23. Lastly, it would also be pertinent to point out herein that you the Noticee have acted in blatant violation and derogation of the extant instructions on the subject matter, namely the Civil Aviation Requirements, Section 3 – Air Transport Series M Part VI Issue II, dated 08.09.2017 as promulgated by the Office of the Director General of Civil Aviation. It is asserted that compliance with the DGCA CAR is mandatory and failure to adhere to the same would render you the Noticee liable and the persons so responsible for violation of mandatory DGCA instructions issued under Rule 133A liable for imposition of penalty under S. No. 13 of Category III of Schedule VI of the Aircraft Rules, 1937 entailing punishment of imprisonment of a term not exceeding six months, or with fine not exceeding two lakh rupees, or with both. You are therefore strongly advised to revoke the ban imposed upon My Client and act in accordance with law failing which My Client will take all possible legal recourse for initiation of proceedings for contravention of Rule 133A of the Aircraft Rules, 1937.
24. Therefore, I call upon you the Noticee to immediately and with utmost expediency undertake to carry out the following action, namely:
 - (i) To revoke the suspension of My Client from flying with Indigo Airlines for a

period of 6 months with immediate effect; and

(ii) To tender unconditional apology towards My Client in all leading newspapers as well as electronic media and on all of the social media platforms currently being operated by you;

(iii) To pay compensation towards My Client in sum of Rs. 25,00,000/- on account of the mental pain and agony suffered by My Client as well as losses incurred on account of cancellation of his scheduled shows and programmes in India as well as abroad on account of adoption of a totally illegal, arbitrary and high handed procedure which is against the extant DGCA CAR on the subject matter; and

(iv) To take action against the errant officials responsible for imposing the instant ban in abrogation of the DGCA CARs as notified under Rule 133A entailing imposition of penalty under S. No. 13 of Category III of Schedule VI of the Aircraft Rules, 1937; and

(v) To pay a sum of Rs. 1,00,000/- towards the cost of the present legal notice.

That you, the Noticee are hereby given a period of one week to comply with the mandate of law in terms of Paragraph 24 above, failing which My Client will exercise all due legal recourse available as per law.

A copy of the present legal notice is being retained in my office for the record.

The Cost of the said notice shall be borne by you.

Thanking You,

PRASHANT SIVARAJAN
ADVOCATE

CC:

1. The General Counsel, InterGlobe Aviation Limited [Indigo Airlines], Level 1, Tower C, Global Business Park, Mehrauli-Gurgaon Road, Gurgaon – 122 002, Haryana, India.