

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3 OF 2020

Deven Y. Kanani .. Petitioner.
v/s.
D.G.C.A. .. Respondent.

Mr. Abhilash Panickar ib/b. Entrust Legal Service LLP, for the Petitioner.
Dr. Abhinav Chandrachud with Ms. Kavita Anchan, Mr. Arsh Misra i/b. M.
V. Kini & Co., for Respondent Nos.2 and 3.

**CORAM: R.D.DHANUKA &
ABHAY AHUJA, JJ.**
DATE : 22nd MAY, 2020.
(THROUGH VIDEO CONFERENCE)

PC:-

Heard learned Counsel for the parties.

2 The grievance of the Petitioner who is a pilot working with Air India Limited in the Writ Petition is that, Air India Limited is not following Circular No.4/1/2020 IR dated 23rd March, 2020 issued by the Government of India and more particularly, the condition set out at Serial Nos.7 which provides that seat allocation at the time of checking is to be done in a manner to ensure that the seat between two passengers is kept empty. Learned Counsel invited our attention to the photographs of the passengers in Executive Class and Y class in one of the Air India flight operated between Sanfransisco and Mumbai. He submits that, the whole purpose of the Circular dated 23rd March, 2020 which is issued by the Government of India to prevent spread of Covid-19 and take preventive measures is grossly violated.

3 Dr. Chandrachud, learned Counsel for the Air India Limited on the other hand submits that the Circular dated 23rd March, 2020 issued by the Government of India does not apply to non-scheduled commercial flight but would only apply to schedule domestic flights. He submits that all precautions required to be taken so as to prevent spread of Covid-19 are taken while lifting the passengers from abroad and to bring these stranded passengers in India.

4 The learned Counsel for the Air India Limited submitted that even in the subsequent guidelines issued by the Government of India, there is no such condition prescribed for keeping one seat vacant between two passengers. He submits that even if one seat is kept vacant between two seats, even then criteria of social distancing prescribed by the Government of India would not be satisfied.

5 The learned Counsel for the Petitioner, Mr.Panickar in rejoinder submits that if the argument of Air India Limited are accepted, there would be no preventive measures required to be taken to prevent spread of Covid-19. He submits that there are almost eight measures prescribed by the Government of India to prevent spread of Covid-19, including the condition that seat allocation at the time of checking to be done in the manner to ensure that seat between two passengers to be kept empty. He submits that, said Circular provides guidelines prosecuting preventive measures including social distancing to be taken not only by Air lines but also by the Airport Authority at the Airports.

6 A perusal of the photographs annexed to the Petition which are not disputed by the learned Counsel for Air India Limited, indicates that each and every seat of the Air Craft whether in Executive Class or Y

Class are fully occupied. Not a single seat is kept empty. On perusal of the Circular dated 23rd March, 2020 and the subsequent notices brought to our notice by the learned Counsel for the Petitioner and Air India Limited, *prima facie*, does not indicate that said Circular dated 23rd March, 2020 does not apply to non-schedule flights operated by Air India Limited for lifting Indian stranded passengers abroad.

7 *Prima facie*, we are unable to accept the submission of the learned Counsel for the Air India that social distancing measures which are provided by the said Circular so as to prevent spread of Covid-19 would apply only to Scheduled Flight and not to non-scheduled commercial flights or only to domestic operation and not to International. If these arguments are accepted, the whole purpose of preventing spread of Covid-19 by prescribed measures would be defeated.

8 *Prima facie* it appears that the object behind the Circular dated 23rd March 2020 issued by the Government of India is for the safety of the passengers and for protection of their health in this emergency situation created by the Covid-19 Pandemic. In these circumstances, the Circular can not be interpreted to apply differently to the passengers who are travelling from abroad and the domestic passengers. Paramount consideration is the health and safety of these passengers and to achieve the object that they are not infected by Corona virus when they undertake any such travel. There would certainly be a reasonable caution and care of “safe and healthy travel” is what the measures of social distancing mentioned in the Circular intend without any differentiation of the category of passengers. This would be required to be recognized as

legitimate expectation and concomitant to right to life guaranteed to the citizens who are undertaking such travel.

9 Prima facie, we are in agreement with the submission made by the learned Counsel for the Petitioner that those passengers who are being lifted mainly from U.S.A and U.K. may be Covid-19 infected passengers. In our prima facie view, Air India has violated Circular dated 23rd March, 2020 by not keeping one seat between two seats empty while allocation of the seat at the time of check-in.

10 Respondent no.2 and 3 are directed to file affidavit in reply, stating the number of seats occupied by the passengers in each of the non-scheduled flights, for bringing these stranded passengers from abroad to India after the date of issuance of the Circular dated 23rd March, 2020 and also the seating capacity of the Air Crafts. The affidavit shall also indicate whether preventive measures prescribed in condition Nos.1 to 8 in the said Circular are being followed by the Air India Limited or not. Such affidavit in reply shall be filed within a period of two weeks from today. Copy of the said reply to be served upon the learned Counsel for the Petitioner. We make it clear that affidavit in reply shall disclose the details set out at prayer clause (b) of the Writ Petition.

11 We make it clear that till further orders Respondent nos.2 and 3 are directed to comply with the Circular No.4/1/2020-IR dated 23rd March, 2020 and while lifting their passengers from abroad to India also in respect of non-scheduled commercial flights,

12 Place the matter on board on 2nd June, 2020.

13 This order will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward the Petitioner copy of this order by e-mail. All concerned to act on digitally signed copy of this order.

Later on at 5.30 p.m.

14 Matter was mentioned at around 5.30 p.m. by the learned counsel for Respondent no.2 and 3.

15 After hearing the learned counsel we have passed the above interim order by directing the respondent nos.2 and 3 to implement the Circular dated 23.3.2020 issued by the Government of India till further orders. At this stage, Dr.Chandrachud learned counsel for respondents nos.2 and 3 states that the said Circular dated 23.3.2020 issued by the Government of India has been superceded by the Circular bearing No.4/1/2020-IR dated 22.5.2020 issued by Government of India with immediate effect. Electronic copy of the new Circular has been shown so as a on the VC screen. A cursory glance of the said Circular dated 22.5.2020 indicates that the said new Circular applies only to domestic operations and not to international operations.

16 It is submitted by Dr.Chanadrachud, learned counsel for Respondent nos.2 and 3 that his clients have decided to re-commence the operation of domestic flights w.e.f. 25.5.2020. He submits that comprehensive guidelines have been issued by the Ministry of Civil Aviation vide its order No.A/29017/5/2020 -DT dated 21.5.2020. The

guidelines referred to in the said Circular are not before this Court today nor an electronic copy is placed before us.

17 In view of the above, we direct Respondent nos.2 and 3 to include this new Development in the affidavit directed to be filed. We further direct Respondent no.1 to file affidavit, in reply before the next date.

18 The Petitioners would also be at liberty to amend the Writ Petition and to impugn the new Circular dated 22.5.2020 along with the Guidelines referred to in the said Circular.

19 We have already indicated our *prima facie* observations about the applicability of Circular dated 23.3.2020. It is not the case of Respondent nos.2 and 3 that the new Circular dated 22.5.2020 applies to international operations or to non-scheduled flights. We therefore, make it clear that the earlier directions issued by this Court in para 11, would remain with a rider that the Circular dated 23.3.2020, shall be read with Circular dated 22.5.2020 to the extent that the Circular dated 23.3.2020 stands superceded in so far as domestic flights are concerned.

20 This order will be digitally signed by the Private Secretary of this Court. Sheristedar of this Court is permitted to forward the Petitioner copy of this order by e-mail.

All concerned to act on a digitally signed copy of this order.

(ABHAY AHUJA,J.)

(R.D.DHANUKA,J.)