

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
AD-HOC NO. WP-LD-VC-3 OF 2020
WRIT PETITION (L) NO. OF 2020
ALONG WITH
OS-IA-LD-VC-01 TO 05 OF 2020

Deven Yogesh Kanani,)
Age : 51 years, Occupation : Pilot,)
Plot No. 34, Amar Villa, JaiHind CHSL.,)
North-South Road No. 11, JVPD Scheme,)
Vile Parle (West), Mumbai – 400 049)... **Petitioner**

Versus

1. Directorate General of Civil Aviation,)
Through Deputy Director General, Sudipta Dutta, DDG,)
Address : Deputy Director General (WR), Integrated)
Operational Office Complex, New Airport Colony, Opp.)
Parsiwada, Sahar Road, Vile Parle (East), Mumbai – 400 099)

2. Air India Limited)

3. Air India Charters Limited (known as **Air India Express**),
subsidiary of Air India, a fully owned subsidiary of Air India)
Limited.)
(Respondent Nos. 2 and 3 through their Chairman and)
Managing Director, Air India Limited, Airline House,)
113 Gurudwara Rakabganj Road, New Delhi – 110001)... **Respondents**

Mr. Abhilash Panickar a/w. Ms. Jyoti Panickar, Mr. Siddharth Kejriwal, Mr. Jigar Agarwal i/b. Entrust Legal Services LLP for the Petitioner.

Mr. Tushar Mehta, Solicitor General a/w. Mr. Anil C. Singh, Addl. Solicitor General, Mr. Aditya Thakkar i/b. Mr. Pravartak Pathak for Respondent No. 1 and for the Applicant – UOI in OS-IA-LD-VC-1 of 2020.

Mr. Darius Khambata, Sr. Adv. a/w. Dr. Abhinav Chandrachud, Ms. Kavita Anchan, Mr. Arsh Misra i/b. M.V. Kini and Company for Respondent Nos. 2 and 3.

Mr. Venkatesh R. Dhond, Sr. Adv. a/w. Mr. Atul Sharma, Mr. Abhishek Sharma, Mr. Sidhartha Srivastava, Ms. Sugyata Choudhary, Ms. Yasmeen Sabir i/b. Link Legal India Law Services for the Applicant – SpiceJet Limited in OS-IA-LD-VC-2-2020.

Mr. Janak Dwarkadas, Sr. Adv. i/b. Vyapak Desai, Mr. Sahil Kanuga, Ms. Bhavana Sunder i/b. Nishit Desai Associates for the Applicant - Interglobe Aviation Limited – IndiGo in OS-IA-LD-VC-3-2020.

Mr. Darius Khambata, Sr. Adv. a/w. Mr. Rohan Kelkar, Mr. Hemang Raythattha, Mr. Sunil Gangan, Ms. Dhanashree i/b. RMG Law Associates for the Applicant - Go Airlines (India) Limited in OS-IA-LD-VC-4-2020.

Mr. K.P. Anil Kumar a/w. Ms. Priyanka Kumar for the Applicant - All India Cabin Crew Association (AICCA) in OS-IA-LD-VC-5-2020.

Ms. Sheetal Sabnis, representative of the Applicant - Go Airlines (India) Limited in OS-IA-LD-VC-4-2020, present through Video Conferencing.

**CORAM : S.J.KATHAWALLA, &
SURENDRA P. TAVADE, JJ.
RESERVED ON : 5TH JUNE, 2020
PRONOUNCED ON : 15TH JUNE, 2020**

JUDGMENT (PER S.J.KATHAWALLA, J.) :

1. The Petitioner, Shri Deven Yogesh Kanani, is working as a Pilot (Commander) with Air India. Respondent No. 1 is the Directorate General of Civil Aviation ('DGCA'), which is the regulatory body in the field of civil aviation primarily dealing with safety issues. It is responsible for regulation of air transport services to/from/within India and for enforcement of civil air regulations, air safety and airworthiness standards. Respondent No. 2 is Air India Limited. Respondent No. 3 is Air India Charters Ltd, a fully owned subsidiary of Air India Ltd.
2. On 19th May, 2020, the Petitioner filed the above Writ Petition seeking enforcement of Clause 7 of the DGCA Circular dated 23rd March, 2020 in respect of '*Vande Bharat*' flights (*i.e.* non-scheduled international flights), whereby Air India has till 1st June, 2020 brought back 58,867 Indians stranded overseas on account of the out break of Covid-19. Clause 7 of the DGCA Circular dated 23rd March, 2020 reads as under :

"7. Seat allocation at the time of Check-in to be done in a manner to ensure that the seat between two passengers is kept empty."

3. The Petitioner has in paragraphs 29 and 30 of the above Writ Petition alleged that he has been a victim of abuse and misuse of power by a few officials 'who are known to operate corruptly in violation of law'. Upon his complaint the Central Vigilance Committee ('CVC') found certain wrong doings and thus the Ministry of Civil Aviation vehemently pressed for action by Air India, which Air India has not complied with. He has filed Criminal Writ Petition No.1457 of 2020 seeking directions for registration of FIR, concerning malpractices, which Criminal Writ Petition according to the CMIS date was to come up for hearing on 20th March, 2020. However the cause of action in the above Writ Petition is independent of the said pending proceedings.

4. On 22nd May, 2020, the Petitioner moved this Court (Coram : R.D. Dhanuka and Abhay Ahuja, JJ.) seeking an urgent direction against Respondent Nos. 2 and 3 to comply with the Circular dated 23rd March, 2020 i.e. to ensure that the seat between two passengers is kept empty.

5. In response, Air India and its subsidiary submitted before the Court that the said Circular dated 23rd March, 2020 does not apply to '*Vande Bharat*' flights (i.e non-scheduled international flights) and the same applied only to scheduled domestic flights. It was also submitted that all the precautions required to be taken so as to prevent spread of Covid-19 are taken, while lifting these stranded passengers from abroad and bringing them to India. It was further submitted that in the subsequent

guidelines issued, there is no such condition prescribed for keeping one seat vacant between two passengers and that even if one seat is kept empty between two passengers, the criteria of social distancing generally prescribed by the Government of India would not be satisfied.

6. Not being convinced by the submissions advanced on behalf of Air India and its subsidiary, this Court passed an Order dated 22nd May, 2020 directing Air India and its subsidiary to comply with the Circular dated 23rd March, 2020, while lifting the stranded passengers from abroad and bringing them to India, also in respect of non-scheduled commercial flights, and directed that the matter be placed on board on 2nd June, 2020. At 05.30 p.m., on the same day of hearing i.e. 22nd May, 2020 Air India and its subsidiary moved the Court with the information that the said Circular dated 23rd March, 2020 issued by the Government of India, which included a direction that the seat between two passengers be kept empty, has been superseded with immediate effect by a fresh Circular dated 22nd May, 2020, issued by the Government of India. The Court after going through the Circular dated 22nd May, 2020 on the video conferencing screen observed that the said new Circular dated 22nd May, 2020 applied only to domestic operations and not to international operations. The Court allowed the Petitioner to amend the above Writ Petition and impugn the new Circular dated 22nd May, 2020 and also continued with the urgent order that was passed in the morning session directing Air India and its subsidiary to comply with the Circular

dated 23rd March, 2020 while lifting passengers from out of India and bringing them back to India, including by non-scheduled commercial flights.

7. Thereafter, the Respondents moved the Hon'ble Supreme Court and submitted that the Order passed by this Court dated 22nd May, 2020, will cause immense difficulty to the passengers stranded on foreign soil, as despite such passengers having a valid ticket for travel, those in the family who had middle seats will have to be off loaded and kept behind, and in certain cases this may even lead to the schedule getting disrupted. The Hon'ble Supreme Court, thereupon passed an Order dated 25th May, 2020, allowing Air India to operate the non-scheduled flights with the middle seats booked by the passengers upto 6th June, 2020, and further recorded that thereafter Air India will operate non-scheduled flights in accordance with the interim order to be passed by the Bombay High Court. The Hon'ble Supreme Court remanded the matter to this Court with a request to pass an effective order after hearing all concerned on the date fixed i.e. 2nd June, 2020, or soon thereafter.

8. Some of the observations of the Hon'ble Supreme Court in its Order dated 25th May, 2020, are relevant and reproduced hereunder :

*"At this juncture, we would consider it necessary for the High Court to arrive at a *prima facie* finding regarding the safety and health of the passengers qua the COVID-19 virus, whether the flight is scheduled flight or a non-scheduled flight.*

.....

We make it clear that the Director General of Civil Aviation is free to alter any norms he may consider necessary during the pendency of the matter in the interest of public health and safety of the passengers rather than of commercial considerations.

Needless to mention that in case the respondents feel aggrieved by this order, it shall be open to them to approach this Court.”

9. Pursuant to the aforesated liberty granted by the Hon'ble Supreme Court, the Petitioner filed Miscellaneous Application No. 980 of 2020 and IA No. 49337 of 2020 in SLP (C) Diary No.11630 of 2020, before the Hon'ble Supreme Court with a request to revoke the permission granted to Air India to operate the non-scheduled flights with the middle seat booked upto 6th June, 2020, on the ground that Air India suppressed certain facts from the Court. As recorded in the Order passed by the Hon'ble Supreme Court dated 27th May, 2020, the Application made by the Petitioner was dismissed as withdrawn with liberty to the Petitioner to raise all contentions raised in I.A. No.49339 of 2020, before this Court.

10. The Petitioner thereafter carried out amendments in the above Writ Petition, and pending the hearing and final disposal of the above Writ Petition interalia sought direction against DGCA to issue guidelines to ensure that Air India and its subsidiary and other airlines operating within the country, allocate seats by maintaining sufficient distance between the two passengers.

11. In view of the aforestated clarification of the Hon'ble Supreme Court dated 25th May, 2020, that the Director General of Civil Aviation is free to alter any norms he may consider necessary during the pendency of the matter in the interest of public health and safety of the passengers rather than for commercial considerations, on 26th / 28th May, 2020, a High Level Committee of experts was constituted by the DGCA to meet and recommend certain safety measures to be followed on flights. The Expert Committee comprised of (i) Shri Rajesh Bhusan, OSD, Ministry of Health and Family Welfare, Government of India (ii) Dr. Randeep Guleria, Director, AIIMS, New Delhi (iii) Prof. Balram Bhargava, DG, ICMR, New Delhi and (iv) Dr. Naresh Trehan, CMD, Medanta – Medicity.

12. The High Level Committee of Experts deliberated on the issue and gave its recommendations which are reproduced hereunder :

“15. After detailed deliberations, Committee recommends as follows:

- a. If the passenger's load and seat capacity permit keeping the adjacent seat vacant, then the airlines shall allot the seats in such a manner that the adjacent seat is kept vacant.*
- b. If the number of passengers is more, than the members of the same family (living in the same house) can be allowed to sit together.*
- c. If physical distancing cannot be achieved due to passenger load, then additional protective measures should be provided to the individual occupying the intervening seat like 'wrap around gown' (Ministry of Textiles approved standards) to protect the*

upper parts of the passenger along with mask and face shield. This will create an additional protection between the passengers and also build confidence among the fellow passengers.

d. Airlines/ Airports should explore the possibility of having a disinfection tunnel to ensure maximum safety of passengers. This should be adopted after due validation by concerned agencies.

e. No meals or drinking water on board except in extreme circumstances (health reasons).

f. Passengers to be provided with safety kits by airlines which include three layered surgical mask, face shield and adequate sanitizer (sachets/ bottle).

g. The embarkation/ disembarkation should be sequential and passengers should be advised by airlines to follow the instructions and not to rush to the entry/ exit gate.

h. Airlines should set the air-conditioning system in such a way that the air gets replaced at the shortest possible intervals.

i. All aircraft to be sanitized after each trip as per the norms laid down by Regulator. At the end of the day each aircraft to be fully sanitized. Special attention to be paid to sanitize the seat belt.

j. Airplane lavatories to be cleaned / sanitized frequently during the flight.

k. Airlines to do health check-up of all crew regularly. All flying crew to be given full protective suits.

l. In case of COVID-19 related medical emergency on board, aircraft disinfection to be carried with special attention to the affected seats.

The aforesaid measures should be in addition to those already prescribed MoCA/DGCA.”

13. Pursuant to the recommendations of the Expert Committee, DGCA after deliberating upon the same, passed its Order dated 31st May, 2020, wherein the above recommendations of the Expert Committee were issued to all concerned as directions of DGCA.

14. On 1st June, 2020, the DGCA filed its detailed Affidavit-in-Reply to the above Writ Petition. In its Affidavit-in-Reply, DGCA mentioned about the formation of the High Level Committee of experts, its recommendations and the consequent Orders passed by the DGCA dated 31st May, 2020. Copies of the recommendations and the Order dated 31st May, 2020 are also annexed to the Affidavit-in-Reply of DGCA. The DGCA also mentioned in its Affidavit-in-Reply that the Circular dated 23rd March, 2020 was issued on an urgent basis in the wake of outbreak of COVID -19 without carrying out any expert consultation before issuing the said Circular. It is also pointed out in the Affidavit-in-Reply that the Air Transport Facilitation Committee Meeting was held on 4th May, 2020. It was attended by several doctors i.e. Dr. P.K. Sen, Additional DGHS; Dr. Suman Kango, ICMR; Dr. Samiran Panda, ICMR, and social distancing on flights was discussed and rejected at this Meeting.

15. It was further pointed out in the Affidavit-in-Reply by DGCA that it was pursuant to the said Meeting that the Standard Operating Protocols ('SOPs') were issued on 5 May 2020, by the Ministry of Home Affairs, Government of India, and 6th

May, 2020 by the Ministry of Civil Aviation, Government of India. It was also submitted that the SOPs were necessary, as the 23rd March, 2020 DGCA Circular did not apply to non-scheduled international flights.

16. Despite the above, the Petitioner did not deem it fit to amend the Petition and impugn the further Order of the DGCA dated 31st May, 2020 or the decision taken at the Meeting dated 4th May, 2020 of the Air Transport Facilitation Committee or any of the SOPs.

17. The matter was called out before this Court on 2nd June, 2020, when apart from the Advocates appearing for the parties, intervention applications were moved before this Court on behalf of other flight operators i.e. IndiGo, SpiceJet and GoAir, on the ground that since the Petitioner has now sought interim reliefs with regard to all the airlines operating within the country, any order passed without them being heard, would cause severe prejudice to them. In view of there being 77 urgent matters on the Cause List of this Court on 2nd June, 2020, on that day the matter was adjourned to 4th June, 2020 and the parties were directed to file their written submissions before 4th June, 2020.

18. On 4th June, 2020 this Court was shocked to note that not only had the Petitioner set out in quotes, what the Learned Chief Justice of India had purportedly stated in Court on 25th May, 2020, i.e. at the time of hearing of the Application made by the Respondents, but the Advocate for the Petitioner started to rely on the same by reading out the same in Court. We had to stop the Advocate for the Petitioner from

reading this objectionable portion of the written submissions by expressing our displeasure and reprimanding his conduct. This Court thereafter, inquired from the Advocate for the Petitioner why he had not impugned the Order dated 31st May, 2020, and whether he would still want to render an amendment at least to the extent of impugning the said Order dated 31st May, 2020 passed by DGCA, pursuant to the Report of the High Level Committee of experts. In response, the Advocate for the Petitioner stated that he is not supposed to carry out amendments repeatedly impugning the orders/circulars/SOP's issued by DGCA as he has already sought a declaration in prayer Clause C-2 that any Circular, dated 22nd May, 2020 or later, issued by Respondent No. 1, to the extent that it supersedes the condition of allocating seats during check-in, in such a manner so as to keep seat(s) vacant between passengers, be read with the Circular, dated 23rd March, 2020. The said submission of the Advocate for the Petitioner (who at the outset had informed the Court that the above Writ Petition is not a Public Interest Litigation) to put it mildly, is 'preposterous'. It is only because this Court is required, as per the request of the Hon'ble Supreme Court, to arrive at a *prima facie* finding regarding safety and health of the passengers qua the Covid-19 virus, that we have not proceeded to dismiss the above Writ Petition on this ground alone.

19. Thereafter, on 4th June, 2020, the Petitioner has made the following submissions before this Court :

- i. That the Respondents obtained an Order dated 22nd May, 2020 from the Hon'ble Supreme Court by suppressing (a) the Letter dated 19th May, 2020 from the Air India Cabin Crew Association to the Chairman and Managing Director, Air India stating that crew members and the passengers have been infected with Covid-19 and (b) the fact that Air India had in the past unilaterally cancelled 100% tickets which were booked by passengers for travel during the month of March, April and May, 2020 and at that time, all operational issues of offloading passengers, visa issues, airport cooperation etc., as now alleged, had not come in their way and were smoothly handled.
- ii. That the Circular dated 30th May, 2020 passed by the Government of India, Ministry of Home Affairs, titled 'National Directives for Covid-19 Management' recommended Social Distancing (2 gaz ki doori - 6 feet) and directed all other Ministries to follow the same and also directed penal provisions in case of its violation. The Report of the Expert Committee is contrary to this Order.
- iii. The cases of Covid-19 are increasing since May, 2020 as suggested by the graphs.
- iv. The percentage of people infected in air travel is around 0.57%, whereas the percentage of people infected Pan-India is around 0.016 %.
- v. Air India and Air India Express have violated the Circular dated 23rd March, 2020 from 23rd March, 2020 to 22nd May, 2020 and endangered lives of

passengers. This is already 'upheld' by the Bombay High Court vide its Order dated 22nd May, 2020.

vi. If the airlines follows the discipline of selling tickets after reducing the number of seats required to maintain social distancing, then the question of passenger load will not arise.

vii. The submissions of the Respondents imply that outside it is necessary to keep a distance of 6 feet and inside the aircraft even one seat between passengers is not required to be left out, as if the virus will know it's inside the aircraft and it is not supposed to infect.

viii. That the data provided by the Respondents show that rate of infection is at least 36 times more than Pan India Covid infection rate.

ix. That the photograph from Khaleej Times, shows that the medical fraternity itself travelled with the middle seat vacant, and they do not believe in the recommendations of the Expert Committee, raising questions whether the Expert Committee Report is only to be tested on common passengers and not on the medically aware doctors.

x. That :

“ The MoHFW Novel Coronavirus Disease 2019 (COVID-19):
Guidelines on rational use of Personal Protective Equipment
Point 3. Mode of transmission. There is clear evidence of human-to-human transmission of SARS-CoV-2. It is thought to be transmitted mainly through respiratory droplets that get generated when people cough, sneeze, or exhale. SARS-CoV-2

also gets transmitted by touching, by direct touch and through contaminated surfaces or objects and then touching their own mouth, nose, or possibly their eyes. Healthcare associated infection by SARS-CoV-2 virus has been documented among healthcare workers in many countries. **The people most at risk of COVID-19 infection are those who are in close contact with a suspect/confirmed COVID-19 patient or who care for such patients.**

- Below point 5.5 **Points to remember while using PPE**
- 1. **PPEs are not alternative** to basic preventive public health measures such as hand hygiene, respiratory etiquettes which must be followed at all times. 2. **Always (if possible) maintain a distance of at least 1 meter from contacts/suspect/confirmed COVID-19 cases.** 3. Always follow the laid down protocol for disposing off PPEs as detailed in infection prevention and control guideline available on website of MoHFW.
- The Containment Plan issued by Ministry of Health and Family Welfare dated 16-May-2020 refers to social distancing at several places along with other measures.
 - o **2. 2. Local transmission of COVID-2019 disease;**
 - o **2.3 Large outbreaks amenable to containment;**
 - o **5.3. Containment of individual clusters within the geographically defined perimeter;**
 - o **5.4. Evidence for implementing geographic quarantine -** Mathematical modeling studies have suggested that containment might be possible especially when other public health interventions are combined with an effective social distancing strategy;
 - o **6.1. Institutional mechanisms and Inter-sectoral Co-ordination;**
 - o **6.4.3 Activities in Containment and Buffer zones**
 - o **7.4. Surveillance in Buffer zone -** Measures such as personal hygiene, hand hygiene, social distancing to be enhanced through

IEC activities in the buffer zone.

- o **13.3 Social distancing measures** - For the cluster containment, social distancing measures are key interventions to rapidly curtail the community transmission of COVID-19 by limiting interaction between infected persons and susceptible hosts.
- o The advisory issued by Ministry of Health and Family Welfare at <https://www.mohfw.gov.in/pdf/SocialDistancingAdvisorybyMOHFW.pdf> had proposed 15 measures. Measure at 11 reads - *11. Non-essential travel should be avoided. Buses, Trains and aeroplanes to maximize social distancing in public transport besides ensuring regular and proper disinfection of surfaces*
- Expertise of the '*Expert Committee*' is questionable as facts available show that their recommendation is suspect and perhaps compromised and contradicts the WHO, MHA, MoHFW and well settled medical literature on Covid-19.”

xi. That the submissions of the Respondents that HEPA filter cleans and re-circulates air every 3 minutes and gives operation theatre quality air, cannot be accepted, since HEPA filter is situated on the aircraft. Therefore, exhaled air before travelling to HEPA filter will first reach the passengers seated next, before reaching the HEPA filter, and coming back. This itself shows that the HEPA filter is not an effective way to stop droplets in air from reaching the adjacent passengers.

xii. That the airlines are charging exorbitant rates in the name of massive humanitarian global effort to bring back Indians from abroad.

xiii. That even family members cannot be allowed to sit on the middle seat, since in the event of the family member being infected, he / she can pass it on to others during subsequent transit.

xiv. That the Expert Committee have not considered the possibility of an infected person first infecting the gown and the gown then coming in contact with the adjacent person's clothes thereby infecting the other person. There is also a possibility that the persons who are wearing gowns, when he/she goes to the toilet or whilst sitting, or standing up, the flowing gown may cross infect the adjacent areas and further infect other passengers.

xv. That therefore the reliefs sought in paragraph 36 of the Written Notes dated 5th June, 2020 be granted.

20. Mr.Tushar Mehta, the Learned Addl. Solicitor General has on behalf of the Union of India and DGCA, inter alia submitted as follows :

i. That the DGCA Order dated 23rd March, 2020 issued by the Deputy Director Civil Aviation, which is the sole basis of the Petitioner's case, was passed by the DGCA in the nature of an immediate response in the wake of the outbreak of Covid-19 and the number of passengers was also dropping due to the spread of Covid-19. In view of the emergency involved, no expert consultations were carried out by DGCA.

ii. That vide its Circular dated 19th March, 2020, since the International Commercial Operations were already banned by the DGCA with effect from 22nd March, 2020, the Circular dated 23rd March, 2020, was applicable only to scheduled domestic flights. The Ministry of Civil Aviation ('MoCA') vide Order dated 23rd March, 2020, restricted the operation of the domestic scheduled / non scheduled

flights with effect from 25th March, 2020. Therefore, with a ban being imposed on international as well as domestic flight operations, the Circular dated 23rd March, 2020 hardly ever came into operation.

iii. That in order to facilitate the movement of stranded Indian nationals outside the country, the Ministry of Home Affairs vide Order dated 5th May, 2020 issued a detailed SOP.

iv. That the Ministry of Civil Aviation ('MoCA') vide Departmental Order dated 6th May, 2020 designated Respondent Nos. 2 and 3 as the nodal agency to perform the function of evacuation of stranded passengers. MoCA also issued SOP enumerating detailed guidelines and precautionary measures to be adopted by both Respondent Nos. 2 and 3 exclusively to carry out these rescue operations / non-scheduled international flights.

v. That prior to issuance of the 6th May Circular, the 'Air Transport Facilitation Committee' ('ATFC') deliberated upon various measures / protection to facilitate the operational readiness, while ensuring all the safety measures against Covid-19, including the on-board aircraft physical distancing. The meeting was attended by the senior representatives of Ministry of Health, National Disaster Management Authority ('NDMA'), Indian Council of Medical Research ('ICMR') and the Ministry of Home Affairs among other senior members from various departments concerning the issue. The provision relating to keeping the seat between two passengers empty, was specifically discussed but not included in these guidelines

issued for rescue operations. The Petitioner has deliberately concealed this Circular dated 6th May, 2020, issued specifically for the rescue operations / international non-scheduled flights and has relied upon the Circular dated 23rd March, 2020, which was not in force and was also not applicable to the rescue flights

vi. That the Central Government in larger public interest decided to recommence the schedule domestic flights in calibrated manner The MoCA vide its Order dated 21st May, 2020 issued general instructions / guidelines for commencement of domestic air travel. These guidelines are very comprehensive and prescribe additional measures such as thermal screening of passengers, use of face cover, face masks, and use of sanitizers by the passengers, use of PPEs by the crew and prohibition of on-board services etc. The provision related to keeping the seat between two passengers empty was also not included in these guidelines issued specifically for scheduled domestic flights.

vii. That as there were already two separate and specific Circulars for rescue operations / international non-scheduled flights (6th May, 2020) and domestic scheduled flights (21st May, 2020) in existence, DGCA vide its Circular dated 22nd May, 2020 formally superseded its earlier Circular dated 23rd March, 2020. The Petitioner by way of the present Writ Petition is seeking to enforce this Circular dated 23rd March, 2020.

viii. That evacuation flights to rescue Indians stranded in other countries started on 7th May, 2020 and the domestic airlines were scheduled to commence

operations from 25th May, 2020. With a view to harmonize health related instructions during such travel, the Ministry of Health and Family Welfare ('MoHFW') issued guidelines for domestic travel and for international arrivals vide its Order dated 24th May, 2020. These guidelines mandated passengers as well as crew members to maintain hand, respiratory as well as environmental hygiene while on board the aircraft.

ix. That pursuant to the Order dated 25th May, 2020, passed by the Hon'ble Supreme Court in SLP (c) Diary Nos. 11629 and 11630 of 2020, and with a view to further strengthen the health system for passengers on board and to revisit the health precautions both for international and domestic flights, the Union of India constituted a High Level Committee comprising of civil aviation and medical experts of eminent repute. The said Committee went into all the details, which are required to be examined and considered while taking the decision, *inter alia*, whether to keep one middle seat vacant. Based upon the report / recommendations of the said Committee, the DGCA issued an Order dated 31st May, 2020, directing that the middle seat be kept vacant between passengers as far as possible, however in cases where it is not possible due to passenger load, additional protective equipment like "wrap around gown", as well as three layered mask / shield be provided to the passenger occupying the middle seat. These directions are applicable to all stake holders and have come into force with effect from 3rd June, 2020. The Order dated 31st May, 2020 has not been challenged by the Petitioner.

x. That as per projections, the total stranded Indian Nationals to be brought back by 16th June, 2020 under Phase 1 and 2 are approximately 70,000. Under Phase 3, the projected passengers to be brought back are approximately 85,000. As on 29th May, 2020 more than 6.36 Lakh Indian Nationals have requested and registered with various Indian Embassies for rescue missions from more than 120 countries. Thus, the rescue operations are carried out on a large scale after taking all necessary health and precautionary measures as stipulated in the SOPs dated 6th May, 2020 and 31st May, 2020, issued by the MoCA and DGCA, respectively.

xi. That the issues involved for adjudication in the present Writ Petition would necessarily require taking a decision based upon several scientific facts and other factors, which would need technical know-how not only of the aviation industry, but also with regard to Covid-19. The decisions which are to be taken for taking care of health and safety of passengers are taken after an elaborate exercise of evaluation of scientific material and with the inputs of experts in civil aviation as well as medical professionals. In view of the peculiar nature of the subject of the Writ Petition, it may not be possible for this Court to take a view different from the views and decisions arrived at collectively by technically qualified persons after detailed deliberations and keeping in mind the health and safety of passengers, especially when the said decisions are not so manifestly arbitrary or irrational, that no prudent man would take it.

xii. That European Union Aviation Safety Agency ('EASA'), the European Authority for civil aviation, expressly notified Guidelines on 21st May, 2020 for

management of air passengers and aviation personnel in relation to the Covid-19 pandemic. The provision related to keeping the seat empty between two passengers was also not included in these Guidelines.

xiii. That prior to boarding, all passengers are subject to thermal screening for possible symptoms of Covid-19. Again while de-boarding, the passengers are subject to another thermal screening. All passengers symptomatic or otherwise are thereafter subject to 7 to 14 days institutional quarantine depending on the '*Vande Bharat Mission*' Guidelines.

xiv. That there are possibilities of transmission of Covid-19 at the destination airport, conveyer belt area of the airport, taxi stands and other subsequent public places where the passengers may go. Moreover, the crew under '*Vande Bharat Mission*' are allowed to operate flights only after they are found negative in the Covid-19 test. Thus, it cannot be presumed that Covid-19 transmission has happened on board the aircraft.

xv. That the '*Vande Bharat Mission*' is carried out under the aegis and guidance of the Guidelines / Circulars / Government Orders dated 5th May, 2020, 6th May, 2020, 24th May, 2020 and 31st May, 2020 issued by MHA, MoCA, MoHFW and DGCA, respectively, whereas the domestic commercial scheduled operations are carried out based on the Guidelines dated 21st May, 2020, 24th May, 2020 and 31st May, 2020 issued by MoCA, MoHFW and DGCA as also the subsequent guidelines issued / to be issued. Thus, the said Guidelines are all notified only after detail

consultations with medical experts and the same do not mandate keeping vacant seats. However stringent rules such as thermal screening, use of three layered masks, PPE kits for passengers sitting in the middle seat, face shield as an additional measure, wrap gowns, use of sanitizers at regular intervals, among several other measures, have been prescribed at various check points during the flight journey.

xvi. That the present Writ Petition is therefore devoid of any merits. The case of the Petitioner is based on disputed facts and documents and therefore no interference under Articles 226 and / or 227 of the Constitution of India is warranted.

21. Mr. Darius Khambata, the Learned Senior Advocate appearing for Air India and Air India Express (Respondent Nos. 2 and 3), has in addition to the above submissions *inter alia* submitted as follows :

i. That between 7th May, 2020 and 1st June, 2020, Respondents Nos. 2 and 3 brought back 58,867 passengers to India in 423 “*Vande Bharat*” flights (*Annexure A, Written Submissions of Respondents No. 2-3*]. Of these, only 248 passengers were infected with Covid-19 (including 9 passengers in Delhi and 12 in Mumbai, though the figures in Hyderabad are as yet not known). The detailed SOPs dated 5th and 6th May, 2020, which were issued pursuant to the recommendations of experts at the Air Transport Facilitation Committee Meeting dated 4th May, 2020, were followed during these flights.

ii. That, further the passengers were subjected to a three-stage screening process for these flights : (i) firstly, passengers were subjected to “thermal screening”

(i.e., through a temperature gun) prior to them boarding the flight ; (ii) secondly, passengers were subjected to thermal screening after disembarking from the flight ; and (iii) all passengers were then subjected to 7-14 days of mandatory quarantine (*Paragraph 25, Written Submissions of Respondents No. 2-3*).

iii. That in these “*Vande Bharat*” flights, passengers were brought back to India from countries where the incidence of Covid-19 was far higher than that in India (e.g., USA, Italy, etc.), and therefore, the rate of prevalence of Covid-19 among passengers on the said flights was obviously likely to be higher than the rate of prevalence of Covid-19 in the general Indian population.

iv. Moreover, there is nothing to indicate that passengers contracted Covid-19 on board the “*Vande Bharat*” flights. They may have contracted the virus before boarding the flight and have been asymptomatic at the time of boarding (in which case the thermal screening would not have been able to detect them), or even contracted it subsequently at the airport, upon arriving in India. The data produced by the parties herein do not show that the mode of seating of passengers had anything to do with the virus being contracted, or even that Covid-19 was contracted on the flight.

v. That the only credible material on the basis of which this Court can come to a *prima facie* finding consists of the Minutes of the Air Transport Facilitation Committee Meeting dated 4th May, 2020 and the Expert Committee Meeting dated 26th and 28th May, 2020.

vi. That in the Writ Petition, the Petitioner merely relies on the existence of DGCA's Circular dated 23rd March, 2020 (which has now been explained by the DGCA as not being based on any scientific material).

vii. That during the hearing held on 4th June, 2020, the Petitioner relied on a graph presentation which, once again, has no bearing on the matter. This is because, as explained above, the passengers were brought back to India from countries where the incidence of Covid-19 was far higher than that in India (e.g., USA, Italy, etc.), and therefore, the rate of prevalence of Covid-19 among passengers on the said flights was obviously likely to be higher than the rate of prevalence of Covid-19 in the general Indian population.

viii. That the flights operated by Respondents No. 2-3 use High Efficiency Particulate Air ('HEPA') filters to clean and re-circulate air. These filters have been highly recommended by the European Union Aviation Safety Agency ('EASA') in its Report entitled "*COVID-19 Aviation Health Safety Protocol*" dated 21 May 2020 (*Pages 102-103, Reply of Respondents Nos. 2-3*). In paragraph 3.4 of the said protocol (*Page 125 at Page 127, Reply of Respondents Nos. 2-3*), EASA has stated that HEPA filters "*have demonstrated good performance with particles of the size of the SARS-CoV-2 virus (approximately 70-120 nm).*" The EASA recommended that, "*(a)eroplane operators using the recirculation of cabin air are recommended either to install and use HEPA filters*" or to avoid cabin air recirculation entirely (provided that this would not compromise any safety critical features). In a study conducted by Dr. Kimmo Ketola

(Medical Director of Finair Airlines), it was found that the air filtration system brought about through HEPA filters resulted in air quality which was “*shown to meet the same standards as hospital operating theaters.*” (Pages 55-56, *Reply of Respondent Nos. 2-3*).

ix. That as held by the Hon’ble Supreme Court in the case of ***Dr. Basavaiah v. Dr.H.L.Ramesh*** reported in (2010) 8 SCC 372, the High Court cannot sit in Appeal over the opinion of experts and must express deference to such opinions.

x. That as held by the Hon’ble Supreme Court in the case of ***Union of India v. CIPLA Limited***, reported in (2017) 5 SCC 262 (at paragraph 94-95), the expert committee recommendations can only be set aside if they are shown to be arbitrary, discriminatory, unreasonable or ultra vires, which is not so in the instant case.

xi. That as held by the Hon’ble Supreme Court in the case of ***Hanuman Laxman Aroskar v. Union of India***, reported in (2020) SCC Online SC 41 (at paragraph 59), that while a Court can ensure that an expert body has taken into account all necessary inputs, its decision must thereafter be respected.

xii. That in the instant case, the Air Transport Facilitation Committee and High Level Committee of the experts have specifically considered and rejected the suggestion that seats must be kept vacant between passengers. Under such circumstances, the said decisions of experts ought to be accepted.

xiii. That as held by the Hon'ble Supreme Court in the case of *Academy of Nutrition Improvement v. Union of India*, reported in (2011) 8 SCC 274, the scope of judicial review in the matter concerning public health is very limited.

xiv. That the Petitioner's reliance on the Letter dated 19th May, 2020 of the All India Cabin Crew Association ('AICCA') is misplaced. The said Letter has nothing to do with keeping seats vacant between passengers in order to prevent the spread of Covid-19. In the said Letter, the AICCA primarily expressed concern over the fact that cabin crew members and operations staff (as opposed to passengers) were contracting Covid-19 and that there were "*no hospital beds available for our Crew/Staff*" in Mumbai.

xv. That since the said concerns of AACCA were addressed by Respondent Nos. 2 and 3, AACCA wrote a subsequent Letter dated 27th May, 2020, in which it thanked the Chairman and Managing Director of Respondent No.2 for his "*prompt action in the matter to ensure that hospital facilities are provided to the Cabin Crew at Mumbai, even though there has been a chronic shortage of beds across Mumbai*".

xvi. That the Petition is therefore misconceived and without merit and this Court be pleased to dismiss the Petition and not grant any of the reliefs prayed for therein.

22. Mr. Anil Kumar, the Learned Advocate appearing for AICCA submitted that the letter dated 19th May, 2020 written by the AICCA is wrongly used despite the fact that the said letter does not pertain to the middle seat being kept vacant or

occupied in order to prevent the spread of Covid-19. He has further submitted that in fact after receipt of the Letter dated 19th May, 2020, Respondent Nos. 2 and 3 have taken care of all the grievances / apprehensions of its members with regard to the availability of hospital beds and the insurance and as on date the AICCA has no grievance against Air India and its subsidiary (Respondent Nos. 2 and 3). The Learned Advocate appearing for AICCA has made it clear that AICCA is not supporting the Petitioner and in view of the Order of DGCA dated 31st May, 2020, the AICCA has no objection if the middle seat between two passengers is not kept vacant.

23. By an Order dated 4th June, 2020, this Court referring to certain statements in the Expert Committee's Report dated 30th March, 2020, sought clarification from the Expert Committee as to whether by mere touch of a person carrying COVID-19 virus, the virus can be transmitted to the person so touched. On 5th June, 2020, when the matter was called out the clarification issued by the Expert Committee was tendered in Court. The Learned Advocate appearing for the Petitioner on that day (i.e. 5th June, 2020), tendered fresh additional documents, which were taken on record. This Court also heard the Learned Advocates appearing for the parties as well as the Learned Advocate appearing for the Intervenors i.e. the flight operators operating Indigo, SpiceJet and GoAir flights. The learned Advocates for the said operators reiterated the submissions advanced on behalf of DGCA / Union of India and Respondent Nos. 2 and 3. Mr. Dwarkadas, Senior Advocate appearing for IndiGo, laid stress on the fact that between period 25th May, 2020 to 2nd June, 2020,

approximately 2,00,000 passengers flew in 2165 IndiGo flights and only 0.038% (80 passengers) were tested positive for Covid-19.

24. We have considered the submissions advanced by the Advocates for the parties as well as the Intervenors. We have also considered the written submissions filed by the parties and the Intervenors, the documents relied upon by them and the case laws cited upon by the Respondents.

25. The Advocate for the Petitioner has submitted that the Respondents had on 25th May, 2020 obtained an Order from the Hon'ble Supreme Court suppressing certain facts and the Hon'ble Supreme Court, in its Order dated 27th May, 2020 passed in I.A. No.49339 of 2020 moved by the Petitioner, had granted him liberty to point out the suppressions to this Court. We shall therefore first deal with the Petitioner's grievances pertaining to the alleged suppression.

26. The first grievance of the Petitioner is that the Respondents suppressed the Letter dated 19th May, 2020, which was written by the Air India Cabin Crew Association (AICCA) to the Chairman and the Managing Director of the Air India. Since by the said Letter, the AICCA had sought hospital beds for the members of the crew, who would be tested positive and Covid-19 insurance protection for them and had nothing to do with keeping seats vacant between two passengers in order to prevent the spread of Covid-19, the question of any suppression on the part of the Respondents as alleged, does not arise. In fact, the AICCA has intervened before us in the above matter and has informed us that by their subsequent Letter dated 27th May,

2020, they have pointed out that they were deeply concerned that their Letter dated 19th May, 2020 was being used by some persons illegally and the 1300 members, whom they are representing, are in no way supporting the Petitioner, since they are satisfied with the Order of DGCA dated 31st May, 2020.

27. The second grievance raised by the Petitioner is that whilst pointing out the difficulties faced in cancellation of the middle seats booked, as directed by this Court vide its Order dated 22nd May, 2020, the Respondents suppressed from the Hon'ble Supreme Court that 100% bookings for the months of March, April and May, 2020 were unilaterally cancelled by the Respondents prior to the lockdown without providing any refund to the passengers, who had booked tickets and in doing so, they had not faced any difficulties. We see no suppression in this. As far as cancellation before the lockdown is concerned, the Respondents had no option but to cancel all flights due to the prevailing circumstances. The flights were cancelled not after the passengers reached the airport, and neither were some passengers allowed to board their respective flights and the remaining left behind. The Application before the Hon'ble Supreme Court made on 25th May, 2020 by the Respondents was in order to point out that individuals who were assigned the middle seats were already waiting at the airport to board the flights and also in cases where members of the family were taking the same flight, and if one member was allotted the middle seat, and such member had to be dropped, whilst the others could return to India, the same would result in grave hardship to the concerned persons/families. One more problem faced

by such passengers was that in view of their overstay in the foreign country they were left with limited funds and it would have been difficult for them to survive in that country for more days i.e. until they were accommodated on subsequent flights. We therefore hold that the allegation of suppression raised by the Petitioner is misconceived and misdirected in light of the above facts and clarifications placed before this Court by the Respondents, and are thus rejecting the same.

28. As regards the allegation made on behalf of the Petitioner that Air India and Air India Express (Respondent Nos. 2 and 3) have violated the Circular dated 23rd March, 2020 from 23rd March, 2020 to 22nd May, 2020, and have endangered lives of passengers as upheld by this Court vide its Order dated 22nd May, 2020, we would at the very outset like to clarify that the Order dated 22nd May, 2020 was not a final order and the same was passed pursuant to an Application made by the Petitioner for urgent orders and in the absence of any Affidavit filed on behalf of the Respondents clarifying and/or explaining their stand with regard to the same.

29. As submitted by the Respondents, vide Circular dated 19th May, 2020, international commercial flights were banned by DGCA with effect from 22nd March, 2020. The Circular dated 23rd March, 2020 was therefore only applicable to scheduled domestic operation. This is also clear from the fact that the said Circular is directed only to "all scheduled domestic airlines operating in India". In fact, on the very same day, i.e. on 23rd March, 2020, the Ministry of Civil Aviation, by its Circular (page 332 to the Respondent No.1's Affidavit-in-Reply), also brought to halt

operations of all scheduled domestic flights, non-scheduled flights etc. (subject to certain exceptions like all-cargo flights, medical evacuation flights, etc. and flights by private aircraft operators), with effect from 24th March, 2020. Since the said Order essentially came into effect from 24th March, 2020, the Circular issued by the Respondent dated 23rd March, 2020 hardly ever came into operation.

30. Further, as submitted on behalf of DGCA / Union of India, due to prohibition of international travel of passengers, many Indian nationals who had travelled to different countries before the lockdown for various purposes were stranded abroad. Due to prolonged stay abroad, they were suffering distress and were desirous of returning to India urgently. In order to facilitate the movement of such stranded Indian nationals outside the country, the Ministry of Home Affairs, vide Order dated 5th May, 2020, issued a detailed SOP and the Ministry of Civil Aviation, vide Departmental Order dated 6th May, 2020, designated Respondent Nos. 2 and 3 as nodal agencies for evacuation of stranded passengers and also issued SOP enumerating detailed guidelines and precautionary measures to be adopted by both Respondent Nos. 2 and 3, exclusively to carry out these rescue operations / non-scheduled international flights. In fact, prior to issuance of the 6th May Circular, the Air Transport Facilitation Committee ('AFTC') deliberated upon various measures / protections to facilitate the operational readiness while ensuring safety measures against Covid-19, including the on-board aircraft physical distancing. The Meeting was attended by senior representatives of Ministry of Health, National Disaster

Management Authority ('NDMA'), Indian Council of Medical Research ('ICMR') and the Ministry of Home Affairs, among other senior members of various departments concerning the issue. The provision relating to keeping the seat between two passengers empty was specifically discussed but not included in these Guidelines issued for rescue operations in pursuance of this meeting. Again the Central Government in larger public interest decided to recommence scheduled domestic flights in a calibrated manner. The MoCA, vide its Order dated 21st May, 2020, issued general instructions / guidelines for commencement of domestic air travel. These Guidelines are very comprehensive and prescribe additional measures such as thermal screening of passengers, use of face cover, face masks and use of sanitizers by the passengers, use of PPEs by the crew and prohibition of on-board services etc. The provision relating to keeping the seat between two passengers empty was also not included in these Guidelines issued specifically for scheduled domestic flights.

31. Thus, there already were two separate and specific Circulars for rescue operations / international non-scheduled flights (6th May, 2020) and domestic scheduled flights (21st May, 2020) in existence. DGCA vide its Circular dated 22nd May, 2020 formally superseded its earlier Circular dated 23rd March, 2020. We therefore see no wrong doing on the part of the Respondents and in absence of any contrary material, we reject the contention of the Petitioner that Air India and Air India Express have violated the Circular dated 23rd March, 2020 from 23rd March, 2020 to 22nd May, 2020, and thereby endangered the lives of passengers.

32. The Petitioner has heavily relied on the Order dated 30th May, 2020, issued by the Government of India, Ministry of Home Affairs, and has submitted that under the caption, 'National Directives for Covid-19 Management', it is provided that social distancing of 06 feet be maintained. According to the Petitioner, the Report of the Expert Committee is contrary to this Order. The Petitioner has submitted that therefore, according to the Respondents, it is necessary to keep a distance of 06 feet when outside, i.e. when not in the aircraft, but inside the aircraft even one seat between passengers is not required to be left vacant, and thereby argued that as if the virus will know it is inside the aircraft and it is not supposed to infect.

33. Whilst advancing the above arguments / submissions, in our view, the Petitioner has lost sight of the fact that the Order extending lockdown, which is dated 17th May, 2020, was issued for containment of Covid-19 in the country for a period upto 31st May, 2020. The said Order dated 30th May, 2020 relied on by the Petitioner further extended the lockdown in Containment Zones upto 30th June, 2020. In the Guidelines annexed to the Order under the caption "Guidelines for Phased Re-opening (Unlock 1)", it is provided that in areas outside the Containment Zones, all activities will be permitted, except activities set out under the caption Phase-I, Phase-II and Phase-III, which will be allowed with stipulations following Standard Operating Procedures (SOPs), to be prescribed by the Ministry of Health and Family Welfare (MoHFW), in a phased manner. In paragraph 2 of the said Guidelines, it is stated that National Directives for Covid-19 Management, as specified in Annexure-I shall

continue to be followed throughout the country. Items 2 and 10 of the said Annexure-I captioned ‘National Directives for COVID-19 Management’ are reproduced hereunder :

“2. Social distancing : Individuals must maintain a minimum distance of 6 feet (2 gaz ki doori) in public places.

Shops will ensure physical distancing among customers and will not allow more than 5 persons at one time.

10. Social distancing : All persons in charge of work places will ensure adequate distance between workers, adequate gaps between shifts, staggering the lunch breaks of staff, etc.”

Therefore, National Directives for Covid-19 Management under Annexure-I prescribes maintaining minimum distance of 06 feet in public places. At work places, the persons in charge is mandated to ensure adequate distance between workers. It is further made clear under Sub Clause (iii) of paragraph / point 6 of the Guideline under caption “Unrestricted movement of persons and goods” that, “Movement by passenger trains and Shramik special trains ; domestic passenger air travel ; movement of Indian Nationals stranded outside the country and of specified persons to travel abroad ; evacuation of foreign nationals ; and sign-on and sign-off of Indian seafarers will continue to be regulated as per SOPs issued.”

Therefore, as far as air travel is concerned, it is expressly clarified that the SOPs issued pertaining to the same, would apply. The Petitioner has therefore, without applying his mind, sought to rely on directives dealing with social distancing. It will not be out of place to mention here that in public places / work places, the individuals tend to crowd and many times without protective equipments like mask, etc. or with protective equipments which are of very poor quality. Therefore, it is made mandatory to maintain distance of 06 feet for individuals, who are visiting public / work places.

34. The Petitioner has relied on a photograph which appeared in Khaleej Times to show that the medical fraternity going to UAE from India are keeping the middle seat vacant, and therefore it is established that the medical fraternity is also not believing the recommendations of the Expert Committee.

The Learned Senior Advocate appearing for Respondent Nos. 2 and 3 has informed the Court that the doctors shown in the said photograph who went to UAE from India to fight coronavirus, have not used Air India flights. In fact, we have noted that no particulars are provided as to what was the arrangement between the said Indian medical professionals and the UAE Government, i.e. terms of the contract including travel arrangements, and what were the precautions taken by the doctors with regard to wearing of protective gear like masks, etc. It is also not clear as to when the said photograph was taken. From the photograph, it is noted that many doctors were not even wearing masks. The masks worn by the doctors were not the same and did not

appear to be triple filter masks. None of the doctors were wearing face shield. Relying on such a photograph and making a submission that even the medical fraternity does not support the recommendation, of the Expert Committee goes to show that the Petitioner, instead of assisting the Court with cogent material qua the spread of Covid infection inside the aircraft, is determined to belittle the Respondents as well as members of the Expert Committee latching on to any material he is able to obtain to further his argument, irrespective of its relevance to the cause he is espousing.

35. The Petitioner has submitted that the airlines cannot use the excuse of passenger load and must follow the discipline of selling tickets after reducing the number of seats required to maintain social distancing. In response, the Respondents have submitted that thermal screening of passengers is carried out before they get into any aircraft. Inside the aircraft, the protocol prescribed in the Guidelines / Circulars / Government Orders dated 5th May, 2020, 6th May, 2020, 24th May, 2020 and 31st May, 2020 issued by MHA, MoCA, MoHFW and DGCA, respectively, is strictly followed for '*Vande Bharat Mission*' flights, whereas for domestic flights, the Guidelines / Circulars/ Orders dated 21st May, 2020, 24th May, 2020 and 31st May, 2020 issued by MoCA, MoHFW and DGCA are followed. All the said Guidelines / Circulars/ Government Order are notified only after detailed consultations with medical experts and the same do not mandate keeping the seats vacant. However, stringent rules such as the use of three layered masks, face shield, wrap gowns for passengers using middle seats, use of sanitizers at regular intervals, among several other measures, are

followed during the flight journey. Thus, all precautionary measures as stipulated with regard to passengers as well as the crew are complied with by all air flight operators. Upon disembarkment, thermal screening of all passengers is again carried out and they are thereafter compulsorily placed under institutional quarantine for 07-14 days. It is not established till date that any passenger, who is tested positive, has been infected on board an aircraft. The Respondents have further submitted that passengers who test positive may be asymptomatic at the time of boarding, or may catch infection even after disembarkment at the destination airport, conveyor belt area of the airport, taxi stands and any other public places, where the passenger may subsequently go. It is submitted that, however, the Petitioner wants to proceed on the basis that all air passengers, who test positive during quarantine, have been infected on board the aircraft. It is submitted that only because the Petitioner nurtures this unsubstantiated belief and basis his case regard to keeping the middle seat vacant thereon, the airline is not expected to reduce the number of seats and deprive lakhs of passengers, who are still left stranded across the globe (from more than 120 countries) from returning to their homeland, as well as domestic air travellers who are required to urgently travel back home as they too have been deprived of attending to their urgent work / matters, for the last almost three months. It is submitted that despite the experts not having recommended that the middle seat be mandatorily kept vacant, the Petitioner, without having any expertise in this regard, is insisting on the same. In fact, the High Level Committee of experts have opined that the precautions suggested

by them would have the same effect as keeping the middle seat vacant. We are of the view that what the Court has to see is whether the recommendations of experts are made after due deliberations, whether they are fair and reasonable and not tainted with any arbitrariness / ulterior motive. If that is so, it is not for this Court to insist on measures which are not consistent with these recommendations.

36. It is true that between 7th May, 2020 and 1st June, 2020, the Respondent Nos. 2 and 3 brought back 58867 passengers to India in 423 'Vande Bharat' flights. Of these, 248 passengers were infected with Covid-19 (figures of Hyderabad are not known). The SOPs dated 5th and 6th May, 2020, which were issued pursuant to the recommendation of Experts at the Air Transport Facilitation Committee Meeting dated 4th May, 2020, were followed during these flights. The Petitioner has chosen to compare the percentage of infection found in the 248 air travellers from the 58,000 plus air travellers who travelled by 423 flights, with the infection spread in Pan India and has submitted that whilst the percentage infection in Pan India is only 0.16% the percentage of infection found in air travellers is around 0.57%.

37. As pointed out by the Learned Solicitor General, 0.57% of people infected in air travel (out of 58,000 air travellers) who travelled by 423 flights, would tantamount to being around half a passenger per flight. The Pan India population is about 130 Crores, out of which, 2,11,770 persons were found Covid-19 positive. The infection spread in Pan India is therefore 0.16%. It would therefore be unfair to

compare the percentage of the people who have travelled by air and are infected with Pan India Covid infection rate.

38. As far as the submission of the Petitioner set out in Sub Clause (xi) of paragraph 18 is concerned, the Petitioner has referred to “Novel Coronavirus Disease 2019 (Covid-19 : Guidelines on rational use of personal protective equipment)” and relied on point 3 captioned ‘Mode of transmission’ and the points under the caption “Points to remember while using PPE” (i.e. after point 5.5 under the caption on ‘Home Quarantine’). After perusal of the same, we are of the view that either the Petitioner has not realized, or he has avoided to disclose to the Court that these points are part of the Guidelines for health-care workers and others working in points of entries (POEs), quarantine centers, hospital, laboratory and primary health care / community setting, and do not pertain to the protocol to be followed inside an aircraft.

39. The Petitioner has thereafter referred to the Containment Plan issued by the Ministry of Health and Family Welfare dated 16th May, 2020, which refers to social distancing at several places, along with other measures. The said Containment Plan issued by the Ministry of Health and Family Welfare pertains to ‘Large Outbreaks’ including ‘cluster containment’, etc.

40. The Petitioner has relied upon the following proposed interventions under the caption ‘Advisory on Social Distancing Measure in view of spread of Covid-19 disease’ , which reads thus :

“11. Non-essential travel should be avoided. Buses, Trains and aeroplanes to maximize social distancing in public transport besides ensuring regular and proper disinfection of surfaces.”

However, the Petitioner has again lost sight of the fact that the said advisory clarifies that the proposed interventions shall be in force till 31st March, 2020, and the same will be reviewed as per the evolving situation. Thereafter, there is no further advisory to the same effect. In fact, there are Reports relied on by the Respondents which suggest various methods of protection, where social distancing is not possible. There are no effective submissions made by the Petitioner qua the said Reports, save and except for stating (without any support) that HEPA filter is not an effective way to stop droplets in air from passing to adjacent passengers, and that the Expert Committee has not considered the possibility of an infected person first infecting the gown, and the gown then coming in contact with others, and thereafter infecting such others, especially when such person visits the toilet or is standing or whilst seating himself, and that if a member of the family is allowed to use the middle seat, in that event the family member being infected cannot be ruled out, he can in turn pass it on to others during subsequent transit. The Petitioner has failed to appreciate that even if the middle seat is kept vacant, the person/s at the window seat whilst getting out for going to the lavatory and thereafter returning back to his seat, is likely to touch (through his clothes) the persons/s sitting on the aisle seat/s. Therefore, if his

argument is to be accepted, in every row of the aircraft only one passenger should be accommodated. We cannot allow an individual to instill such fear in the minds of the members of the public, without any scientific basis. We would rather follow the advise of experts, if their opinion is found to be fair and reasonable and not tainted with any arbitrariness / ulterior motive/s.

41. We have therefore received no assistance from the Petitioner in determining how the safety / health of the passengers qua the Covid-19 virus is affected if the airlines fail to keep the middle seat vacant, which is his primary thrust in the above Writ Petition.

42. As stated earlier, the Hon'ble Supreme Court vide its Order dated 25th May, 2020 has requested this Court to arrive at a *prima facie* finding regarding the safety and health of the passengers qua Covid-19 virus, whether the flight is scheduled flight or non-scheduled flight.

43. Since the Petitioner has built his case on the existence of the DGCA Circular dated 23rd March, 2020, which is not based on any scientific material, the only credible material for consideration by this Court, are the Minutes of the Air Transport Facilitation Committee dated 4th May, 2020 and Report of the High Level Committee of the experts dated 26th and 28th May, 2020, clarified by the Minutes dated 4th June, 2020.

44. The Members present at the Air Transport Facilitation Committee Meeting held on 4th May, 2020, included Dr. P.K. Sen, Additional DGHS; Dr.

Suman Kango, ICMR; Dr. Samiran Panda, ICMR. The issue pertaining to social distancing on flights was specifically discussed and rejected at this Meeting. Paragraph 4 (viii) of the Minutes of the said Meeting record as follows :

“Physical distancing onboard aircraft was discussed in detail. Mandating the airlines to use empty seats to increase physical distance between passengers is not an effective health precaution onboard aircraft. This measure requires nil movement of person within the aircraft and empirically not found effective. This is the measure which needs to be enforced when no other additional measures/protections are available. The information available from various organizations /agencies indicate that this face covering is effective at reducing droplet spread and this is of potential benefit where physical distancing cannot be achieved.”

Therefore, the experts who attended the Meeting reached a consensus that it was not possible to achieve physical distancing on flights despite keeping seats between passengers vacant, because passengers move during flights (e.g. to go to the lavatory, etc.). Instead, the Committee recommended other safety measures such as “*wearing masks, face shield and gloves*”, “*availability of high quality filters for recirculation of air*” frequent cleaning, disinfection of aircraft etc.

45. It was pursuant to the said Meeting that SOPs were issued on 5th May, 2020 by the Ministry of Home Affairs, Government of India and on 6th May, 2020 by the Ministry of Civil Aviation, Government of India. Clause 3(m) of the SOP dated 6th

May, 2020 provides that “*(e)fforts should be made to arrange passengers to sit separately*”. However, in view of the recommendation of the experts at the Air Transport Facilitation Committee Meeting dated 4th May, 2020, this was not made mandatory. There is also no clause in the SOP, which requires a seat to be kept vacant between passengers. Instead, other safety measures have been adopted (e.g. handing over a “*safety kit*” to passengers containing two-layered surgical masks, sanitizer, etc., no newspapers/magazines being offered on flight, pre-boarding thermal screening of passengers, etc.)

46. Pursuant to the Order dated 25th May, 2020 of the Hon’ble Supreme Court, wherein it was specifically noted that Respondent No. 1 was “free to alter any norms” during the pendency of the matter “*in the interest of public health and safety of the passengers rather than of commercial considerations*”, on 26th and 28th May, 2020, a High Level Committee of Experts was constituted by the DGCA to meet and recommend certain safety measures to be followed on flights. The Expert Committee consisted of eminent doctors i.e. (i) Dr.Pradeep Singh Kharode, Secretary, Ministry of Civil Aviation, (ii) Mr. Rajesh Bhusan, OSD, Ministry of Health, (iii) Prof. Balram Bhargava, ICMR, (iv) Dr.Randeep Guleria, Director, AIIMS and (v) Dr. Naresh Trehan, CMD, Medanta – Medicity.

47. The Expert Committee noted that a “*face mask worn by two persons in proximity with each other minimizes the risk of transmission due to droplets from mouth / nose.*” It noted that an “*efficient air conditioning system*” minimized the risk of

transmission through the air and recommended that aircrafts which use “*HEPA filters which are effective in screening out various microbes*” could be operated in a manner that “*replacement of air is very frequent*”. The Committee further noted that “***if the person sitting in between two persons is wearing a protective gear then the same effect as keeping the seat vacant can be achieved***” (Emphasis provided). After “*detailed deliberations*” the Expert Committee also recommended that if the passenger load and seat capacity permit, then “*the airlines shall allot the seats in such a manner that the adjacent seat is kept vacant*”. If the number of passengers was more, “*members of the same family (living in the same house) can be allowed to sit together*”, since they would be exposed to each other at home in any case.

48. The recommendations made by the Expert Committee for ensuring the safety of passengers on flights are already reproduced in paragraph 12 above.

49. DGCA deliberating on the said recommendations, accepted the same, and by its Order dated 31st May, 2020 issued the following directions to safeguard the health of persons involved in air travel :

“(i) All passengers shall be provided with safety kits by airlines, which shall include three layered surgical mask, face shield and adequate sanitizer (sachets / bottle).

(ii) The airlines shall allot the seats in such a manner that the middle seat / seat between two passengers is kept vacant if the passenger load and seat capacity permits the same. However, the members of the same family may be allowed to sit together.

(iii) If middle seat / seat between two passengers is occupied due to passenger load, then additional protective equipment like 'wrap around gown' (Ministry of Textiles approved standards) shall be provided to the individual occupying the intervening seat in addition to the three layered face mask and face shield.

(iv) No meals or drinking water shall be served on board except in extreme circumstances arising due to health reasons.

(v) The embarkation / disembarkation shall be sequential and passengers shall be advised by airlines to follow the instructions and not to rush to the entry / exit gate. The airline shall ensure orderly entry / exist of the passengers.

(vi) Airlines shall set the air-conditioning system in such a way that the air gets replaced at the shortest possible intervals.

(vii) Aircraft shall be sanitized after the end of each sector when there is no passenger on board. However, on transit flights, when passengers are on board, the seats (including its contacts) which have been vacated by the passenger shall be sanitized. At the end of the day, each aircraft shall be deep cleaned as per the procedure by the DGCA vide its Circular 4/1/2020-IR dated 17.03.2020. Special attention shall be paid to sanitize the seat belt and all other contact points.

(viii) Airplane lavatories shall be cleaned / sanitized frequently during the flight.

(ix) Airlines shall carry out health check-up of all crew regularly. All flying crew / Cabin Crew shall be given full protective suits.

(x) In case of COVID-19 related medical emergency on board, aircraft disinfection shall be carried with special attention to all the affected and adjoining seats.

(xi) Airlines / Airports shall be explore the possibility of having a disinfection tunnel to ensure safety of passengers after fully evaluation its health implications on human beings.

(xii) The aforesaid directions are in addition to those already prescribed MoCA/DGCA.

The above directions are for strict compliance by all stakeholders and shall come into force with effect from 3rd Jun 2020. ”

50. The Hon'ble Supreme Court in the case of **Dr.Basavaiah v. Dr. H.H. Ramesh** (supra) has held that the Court cannot sit in appeal over the opinion of experts and must express deference to such opinions. Paragraph 21 of the said Judgment is relevant and excerpts of the same are reproduced hereunder :

“21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field. In the instant case, the experts had evaluated the qualification, experience and published work of the appellants and thereafter recommendations for their appointments were made. The Division Bench of the High court ought not to have sat as an appellate court on the recommendations made by the country's leading experts in the field of Sericulture.

.....

In Maharashtra State Board of Secondary and High Secondary Education v. Paritosh Bhupeshkumar Sheth (1984) 4 SCC 27) the Court observed thus : (SCC pp. 56-57, para 29)

“29. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.”

51. In the case of ***Union of India v. CIPLA*** (supra), the principle laid down by the Hon'ble Supreme Court is that the Expert Committee recommendations can only be set aside if they are shown to be arbitrary, discriminatory, unreasonable or ultra vires.

52. In the case of ***Hanuman Laxman Aroskar v. Union of India*** (supra), the Hon'ble Supreme Court held that while a Court can ensure that an expert body has taken into account all necessary inputs, its decision must thereafter be respected.

53. In the instant case, the Air Transport Facilitation Committee as well as the High Level Expert Committee have specifically considered and rejected the suggestion that seats must be kept vacant between passengers. We find nothing in the Minutes of Air Transport Facilitation Committee or in the Minutes / Recommendations of the Expert Committee, which can be termed as arbitrary, discriminatory, unreasonable or ultra vires.

54. In case of ***Academy of Nutrition Improvement v. Union of India*** (supra), the Hon'ble Supreme Court held that the scope of judicial review in matters

concerning public health is very limited. Paragraph 35 of the said Judgment is relevant and reproduced hereunder :

“35. This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collection and analysing inputs from surveys and research. Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or proper, in relation to technical issues relating to public health in preference of those formulated by persons said to possess expertise and rich experience.”

55. As stated hereinabove, All India Cabin Crew Association has also appeared before the Court and informed the Court that they support the Order dated 31st May, 2020 of the DGCA, which is based on the recommendations of the Expert Committee and they do not support the Petitioner’s contention that the middle seat of the aircraft ought to be kept vacant.

56. We also do not agree with the Petitioner’s submission that the Expertise of ‘Expert Committee’ is questionable or that their recommendation is “suspect and perhaps compromised”, for reasons alleged or otherwise.

57. After considering the aforesigned submissions of the Respondents and the Intervenor, and more particularly the Minutes of the Meeting dated 4th May, 2020

of the Air Transport Facilitation Committee and the Report of the High Level Committee of Experts dated 26th and 28th May, 2020, clarified by the Minutes dated 4th June, 2020, we are of the *prima facie* view that the safety and health of the passengers on board the aircraft *qua* Covid-19 virus is adequately taken care of even if the middle seat of the aircraft is not kept vacant on account of passenger load and seat capacity. However, the Respondents and all other flight operators in the country shall during the air travel of passengers, strictly follow and implement the Order dated 31st May, 2020 as well as the applicable SOPs.

58. The Interim Application is disposed off. However, at this stage, we do not propose to pass any orders *qua* payment of costs. Costs shall be ordered at the hearing of the Petition.

59. This Order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(SURENDRA P. TAVADE, J.)

(S.J.KATHAWALLA, J.)