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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No.3184/2021

COURT ON ITS OWN MOTION

... Petitioner

versus

DIRECTORATE GENERAL OF CIVIL AVIATION & ORS.

..... Respondents

Through: Ms. Bani Dikshit, Adv. for Air
India along with Dr. AB
Subbaiah, GM in flight services
& Ms. Meenakshi Kashyap,
GM-Industrial Relations
Ms. Anjana Gosain & Mr.
Kirtiman Singh, Advs. for
DGCA & Ministry of Civil
Aviation

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **08.03.2021**

1. The Court is constrained to pass the present order because of an alarming situation which was witnessed, by the Court, during the Air India flight from Kolkata to New Delhi on 5th March, 2021.

2. It was noticed that, though all the passengers had worn masks, many passengers had worn the masks below their chin and were exhibiting a stubborn reluctance to wear their masks properly. This behaviour was seen not only in the bus transporting the passengers from the airport to the flight but also within the flight itself. It was

only on repeated entreaties made (by me) to the offending passengers that they condescended to wear their masks properly. On the cabin crew being questioned in this regard, they stated that they had directed all the passengers to wear masks, but were helpless in case they did not comply.

3. To the perception of the Court, such a situation, in the present scenario, when the country is seeing a resurgence of COVID-2019 cases, after they had shown signs of ebbing, is completely unconscionable. Passengers in a flight are in a closed air-conditioned environment, and, even if one of the passengers suffers from COVID, the effect on other passengers could be cataclysmic. It is a matter of common knowledge that being within arm's length distance of a COVID carrier, even if he is asymptomatic and is merely speaking, is more than sufficient to transmit the virus.

4. Attempts were made, by the Court, to trace, from the internet, the latest guidelines of the Directorate General of Civil Aviation (DGCA), regarding the protocols to be followed by passengers undertaking domestic air travel. Unfortunately, the website of the Directorate General of Civil Aviation does not contain the latest guidelines, issued with regard to in-flight protocol to be maintained by the passengers and the crew. The guidelines available on the website of the DGCA – which, too can be accessed, only after an intrusive navigation through the site, are of 21st May, 2020. The Court has come across two news items, in different editions of the Times of India in August, 2020, specifically stating that the instructions of May, 2020, were subsequently altered, by relaxing them in some respects

and making them more stringent in others. Relaxation was permitted by allowing, *inter alia*, meals to be served in flight, middle seats to be occupied, etc. At the same time, a news item in the e-edition of the Times of India, dated 29th August, 2020, titled “India’s new flying rules: No mask and SOP violation can land you in ‘no-fly’ list”, contains the following recital:

“As per the latest development, the Directorate General of Civil Aviation (DGCA) has now asked airlines to put those passengers on the ‘no-fly list’ who violate the standard operating procedures (SOPs) or do not wear masks during a flight. This means, you will no longer be allowed to fly if you don’t wear masks or comply with the COVID related protocols.

Meanwhile, the government has also allowed airlines to resume in-flight meal services on domestic flights, and serve alcohol and hot meals on international flights, however, those being subject to certain guidelines.

Therefore, from now on, passengers who intentionally don't use a face mask, and poses a risk to other passengers, they will be put on ‘no-fly list’ by flight commander or the cabin crew after assessment. However, passengers will be allowed to remove facemasks if absolutely necessary and that too for legitimate reasons.”

5. This Court does not intend to criticise, in any manner, the efforts made by the Governmental authorities, including the DGCA, in trying to deal with the COVID-19 pandemic situation, which has left everyone befuddled regarding the best possible manner to deal with the crisis. Sensitization of the citizenry has, however, to precede, not succeed, galvanization of the governmental machinery. Having put in place protocols to be followed by the public, in various exigencies, to

mitigate the possibility of a COVID resurgence, if such a resurgence - which looms large as an ominous possibility as on date - is to be avoided, these measures would have to be strengthened.

6. This order merely seeks to achieve this objective, by lending some teeth to the instructions already in place, in the larger public interest.

7. The following guidelines are, therefore, issued, for immediate compliance by all airlines as well as by the DGCA:

(i) The DGCA is directed to reflect, forthwith, on its website, prominently, the instructions containing the guidelines and protocols to be followed by passengers and in-flight crew in domestic flights. This shall be reflected on the main website of the DGCA, without requiring the person accessing the site to navigate through various links to reach the instructions. The DGCA will ensure that prominence, to the instructions, or to the weblink through which they can, by a single click, be accessed, is accorded, by displaying them in a distinct and different font, blinking or otherwise, or by any other suitable means.

(ii) All airlines are directed to ensure that, along with the boarding pass, written instructions regarding the protocol to be followed by passengers in flight, including the measures that could be taken against them on failure to follow the protocols, are provided to the passengers. The passengers should also be duly sensitised regarding their responsibilities, to abide by said

protocol, both before as well as after boarding the flight. The in-flight announcements which, presently, merely require the passengers to wear masks at all times, should be modified to include a cautionary word regarding the penal action that could be taken against them in the event of default.

(iii) In-flight crew shall carry out periodical checks of the aircraft, in order to ensure that all passengers are complying with the protocol to be followed by them in flight, especially regarding wearing of masks. It is made clear that masks should be worn as directed by governmental instructions, covering the nose and mouth, and not worn merely covering the mouth or below the chin.

(iv) In the event of any passenger being unwilling to follow this protocol prior to the flight taking off, the passenger should be offloaded without delay. If a passenger, despite being reminded more than once in flight, refuses to follow this protocol, action should be taken against the passenger in accordance with the guidelines issued by the DGCA or Ministry of Health and Family Welfare, including placing the passenger on a “no-fly” regimen, either permanently or for a stipulated, sufficiently long, period.

(v) It shall be the responsibility of the in-flight crew to ensure strict compliance, by the passengers, with the aforesaid protocol. In order to ensure compliance, the DGCA may consider sending random observers on flights, without prior

information, who would check to ensure that the COVID protocols are followed in flight.

(vi) Strict enforcement of all penal provisions, which could visit delinquent passengers who refuse to abide by the COVID protocols to be maintained in flight, should be ensured. There should be no relaxation whatsoever in that regard.

(vii) It is noticed that the guidelines of the DGCA do permit relaxation from the requirement of wearing masks in exceptional cases. Such relaxation, if necessary, should be allowed only in cases which are truly exceptional, such as for medical reasons, after a conscious assessment and evaluation of (a) the necessity of the passenger to fly and (b) the justifiability of the passenger's refusal to wear the mask, weighed against the risk to public interest involved if the passenger is allowed to travel without a mask. In deserving cases - which should be the exception, not the rule - the airline should take steps to isolate the passenger so that he is kept at a safe distance from other passengers in the flight.

8. All concerned authorities are directed to accord adequate publicity to these guidelines, so that there is strict compliance therewith. The DGCA, the Ministry of Civil Aviation and Ministry of Home Affairs, as well as all airlines operating in the domestic sector, should take all steps in order to ensure that these guidelines are complied with. They should also ensure that, in the case of airlines

which repeatedly fail to ensure compliance with the said guidelines, penal action is initiated, in accordance with law.

9. Let this order be also displayed on the official website of the DGCA, the Ministry of Civil Aviation and the Ministry of Home Affairs, and a copy provided to learned counsel for the Union of India and Air India, who have been gracious enough to appear at the request of the Court.

10. The DGCA would also ensure circulations of these guidelines to all airlines, for strict compliance therewith. Periodical review of the situation should be undertaken, to ensure that no laxity creeps into the system.

11. It is the duty of each of us to contribute towards this end. Pointing fingers at the Central and State Governments, who have formidable tasks to deal with, and are doing all they can, is of no use whatsoever. Each of us, as members of a conscious and conscientious citizenry, is required to be sensitive and sensitized in equal measure, and to strain every sinew to keep the pandemic at bay. If the citizenry becomes complacent, no Government, howsoever activated and alive to the situation, can help.

12. Let the matter be now registered as a Suo Motu Public Interest Litigation and listed before the appropriate Bench dealing with Public Interest Litigations as per roster, subject to orders of Hon'ble the Chief Justice, on 17th March, 2021.

13. The DGCA as well as Air India, who are represented today, would file reports before the Bench, regarding compliance with the above guidelines, before the next date of hearing.

C.HARI SHANKAR, J

MARCH 8, 2021

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