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

+ W.P.(C) 12193/2023 & CM APPL. 47884/2023

SNV AVIATION PRIVATE LIMITED & ANR. Petitioners

Through: Mr. Amit Sibal Sr. Advocate with Mr
Ashish Bhan, Mr. Aayush Mitruka and
Ms. Lisa Mishra and Mr. Abhinav
Srivastava, Advocates.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION & ANR.

..... Respondents

Through: Ms. Anjana Gosain, Ms. Avshreya
Rudy and Ms. Nippun Sharma,
Advocates along with Mr. Amit
Teotia, Dy. Director; Capt. Prashant
Dhalla, FoI and Mr Amit Gupta,
Director for Respondents
Ms. Awantika Manohar, Mr. Nilesh
Sharma and Mr. Dhawesh Pahuja,
Advocates for 'Federation of Indian
Pilots'(FIP)
Mr. Vivek Kohli, Sr. Advocate with
Ms. Neetika Bajaj and Mr. Siddharth
Puri, Advocates for 'Indian Pilots
Guild ('IPG')

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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26.09.2023

CM APPL 47884/2023

1. The present petition filed under Article 226 of the Constitution of India, seeks issuance of direction to Respondent No.1 and/or Respondent No.2 to take necessary action pursuant to the Petitioner's letters dated 03.08.2023 and



18.08.2023 read with interim orders dated 25.07.2018 and 11.10.2019 passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017, to enforce the Civil Aviation Requirement ('CAR'), Section 7-Flight Crew Standards Training and Licensing Series X, Part II, Issue III dated 16.08.2017 bearing F. No. 23-5/ 2016-AED ('CAR, 2017').

1.1. The Petitioner No.1 operates an airline under the brand name 'Akasa Air'. This Petition has been filed on the assertion that a large number of pilots employed with the Petitioners have resigned from their respective positions, without complying with the minimum contractual notice period ('defaulting pilots') as per their respective employment agreement entered with the Petitioners and as mandated under CAR, 2017. It was stated during the oral arguments that the number of such defaulting pilots who have resigned in the past few months stands at forty-three (43).

1.2. The Respondent No.1 is the Directorate General of Civil Aviation ('DGCA') and Respondent No.2 is the Union of India, Ministry of Civil Aviation. It is the stand of the Petitioners that Respondent No.1 is responsible for the regulatory functions in respect of matters specified in the Aircraft Act, 1934 ('Act of 1934') or Rules made thereunder, including in respect of pilots and Air Transport Undertakings such as the Petitioner No.1 herein.

Arguments of the Petitioners

2. Mr. Amit Sibal, the learned senior counsel for the Petitioners, states that the Petitioners are constrained to file the present petition in light of the mass resignations of its pilots received in the last one (1) month, without serving the minimum contractual notice period, which has severely impacted the operations of the Petitioner Airline.



2.1. He states that due to the aforesaid reason, the Petitioner Airline was constrained to cancel 600 scheduled flights in the month of August, 2023 and since the trend of resignations is still prevailing, the Petitioner fears at least 600 flights to be cancelled in this month i.e., September, 2023. He states that in addition to the Petitioners, the cancellations of the scheduled flights have also caused prejudice to the passengers who were scheduled to fly on these flights. He states that therefore, in the facts of this case, the cancellation of flights due to the acts and omissions of the defaulting pilots is also against public interest as recognised by Respondent No.1 in CAR, 2017.

2.2. He states that the employment contract between the Petitioner No. 1 and the pilots, prescribes a six (6) month mandatory contractual notice period and in this regard, he relies upon clause 11.4.1 of the sample contract filed with the petition.

2.3. He states that in this regard, the Petitioner seek issuance of directions to Respondent Nos. 1 and 2 to examine the Petitioner's representations and after seeking a response from the defaulting pilots, take necessary action against the defaulting pilots in accordance with the extant law. He states that the mandate for serving the minimum contractual notice period by a pilot and in case of non-service, its adverse effect on the public interest is duly recognised by Respondent Nos. 1 and 2 in CAR, 2017.

2.4. He states at the outset that the Petitioners in this petition are not seeking any direction to the Respondent Nos. 1 and 2 to consider or take action with respect to the 43 pilots who have already resigned.

2.5. He states that Petitioners have filed this petition seeking a direction to the Respondent Nos. 1 and 2 to take cognizance of representations made by the Petitioners in respect of future infractions by its serving pilots i.e., if they



too resign without serving the minimum contractual notice period. In this regard, he states that the Petitioners have approached this Court so as to clarify that Respondent Nos. 1 and 2 are at liberty to take action against the defaulting pilots for violation of CAR, 2017 as required under the Act of 1934 and the Aircraft Rules, 1937 ('Rules of 1937'), more specifically under Rule 19 (2A), 39A (2) and 133A of the Rules of 1937.

2.6. He states that though the Petitioners have brought to the attention of the Respondent No.1 as well as the Minister of Civil Aviation, Government of India, the aforesaid facts of violations by its defaulting pilots, vide representations dated 03.08.2023 and 18.08.2023 respectively. He states that however, the Respondents have failed to take any cognizance of the said representations presumably on account of the interim orders dated 25.07.2018 and 11.10.2019 passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017.

2.7. He states that the said interim orders dated 25.07.2018 and 11.10.2019 passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017 are expressly clear inasmuch as the protection under the said interim orders extends to the pilots subject to the pilots duly complying with their minimum contractual notice period. The Petitioners states that in case of non-compliance the said conditional interim orders cease to operate and the Respondent Nos. 1 and 2 are at liberty to initiate inquiry against the defaulting pilots and take appropriate action under the extant law.

2.8. He states that the salutary object of CAR, 2017 to serve public interest has been judicially recognised by the Supreme Court in *Air India Express Limited & Others v. Captain Gurdarshan Kaur Sandhu, (2019) 17 SCC 129*



and the Division Bench of this Court in *Air India Limited v. Kanwardeep Singh Bamraj, 2021, SCC OnLine Del 5402*.

2.9. He states that the contractual notice period stipulated in the employment contracts voluntarily signed by the pilots are being breached with impunity due to the understanding that no coercive steps can be taken against them by Respondent No.1 under CAR, 2017 in view of the interim orders passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017.

Arguments of the Respondent Nos. 1 and 2

3. Ms. Anjana Gosain, learned counsel for Respondent No.1 i.e., DGCA and Respondent No.2 states that prior to issuance of CAR, 2017, the Respondent No.1 has also issued Civil Aviation Requirement, Section 7- Flight Crew Standards Training and Licensing Series X, Part II, dated 01.09.2005 ('CAR, 2005') and Civil Aviation Requirement, Section 7- Flight Crew Standards Training and Licensing Series X, Part II, Issue II, dated 27.10.2009 ('CAR, 2009'). She states that CAR, 2005 issued by the Respondent No.1 stipulated only the duty of the pilot to serve the six (6) months' notice period. She states that in the CAR, 2009, the Respondent No.1 inserted clause 3.5 in order to impose a corresponding responsibility on the Air Transport Undertaking to ensure that the service conditions of the pilots are not changed. She states that this was done in order to balance the interest of the pilots and the Air Transport Undertaking to ensure that the notice period of six (6) months is served by the pilots without causing any prejudice to the said pilots.

3.1. She states CAR, 2005, was challenged by the Society of Indian Pilots ('SIP'). She states that similarly CAR, 2009 and CAR, 2017 as well have been



challenged in the writ petitions filed by associations of pilots wherein the interim orders dated 25.08.2018 and 11.10.2019 has been passed by this Court.

3.2. She states that CAR is an executive instruction issued by Respondent No.1 under Rule 133A of the Rules of 1937. She states that it has been issued in public interest and the conditions set out therein are in the nature of guidelines which the stakeholders must follow. She states that however, the employment agreement signed between the pilot and the Airline is over and above the CAR.

3.3. She states that under the extant law in case of violation by a pilot, the Respondent No.1 has the right to impose a fine and in case of violations by the Airline, to impose penalty. She states, however, the Respondent No.1 does not adjudicate upon any violation of employment contracts of the nature which has arisen in this petition.

3.4. She states that Respondent Nos. 1 and 2 are vehemently opposing to the grant of any reliefs sought by the Petitioners. She states that the Respondent Nos. 1 and 2 categorically deny that they have any power or jurisdiction to adjudicate the plea of breach of employment agreement (including the breach of minimum contractual notice period) executed between the pilots and the Petitioners. She states that this is a matter entirely outside the purview of the Respondents.

3.5. She also opposed the grant of relief on the ground that this petition cannot be decided without hearing the W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017 in which the interim orders dated 25.07.2018 and 11.10.2019 were passed and which in the understanding of Respondent Nos. 1 and 2 operate as a complete stay of CAR, 2017.



3.6. She states that the issue with respect to (i) the reasonableness of notice period for pilots prescribed in CARs and (ii) the powers of the Respondents to issue the CAR is a subject matter pending in the said writ petitions and the said issue must be decided in the first instance before issuing the directions sought in this petition.

3.7. She states that without passing of any final decision by this Court on the merits of the pending writ petitions and vacation of the interim orders, the Respondents cannot take any action against either of the parties i.e., the pilots or the Airlines, for violating the CAR, 2017.

3.8. The Respondent Nos.1 and 2 have filed written submissions dated 22.09.2023. In the written submission, the Respondents have disputed that 600 flights of the Petitioner were cancelled in August, 2023 and in this regard, they have stated that as per record of DGCA there is no communication from the Petitioners to the Respondents that flights in the month of August, 2023 were cancelled on account of mass resignations of the pilots. The Respondents have submitted that as per their record, the Petitioner No.1 reported cancellation of 1.17 % flights in the month of August, 2023 and even for the said cancelled flights no reason for cancellation on account of pilots' resignation was furnished by the Petitioner.

Arguments on behalf of Associations representing pilots

4. Mr. Vivek Kohli, learned senior counsel appearing for Indian Pilots Guild ('IPG') states that he represents the petitioner in W.P. (C) No. 7588/2017. He states that non-impleadment of the said petitioner in this petition is not *bona fide*.



4.1. He states that IPG opposes grant of any relief in this petition before hearing the *lis* pending adjudication in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017, listed on 13.10.2023.

4.2. He resists the clarification sought by the Petitioners and states that the breach, if any, of the minimum contractual notice period by the defaulting pilots would only entitle the employer to avail the remedies available in law for enforcement of the contract. He states that as a matter of fact, the Petitioners herein have availed their contractual remedies against the said pilots.

4.3. He states that however, the Respondent No.1, DGCA, has no jurisdiction to adjudicate on the said plea of breach of contractual term or to take any action against the defaulting pilots for not serving the minimum contractual notice period.

4.4. He states that since the grant of the clarification of the interim orders dated 25.07.2018 and 11.10.2019 passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017 would amount to granting the final relief sought in this petition, no such clarification should be granted at this stage and especially without hearing the petitioners in the said three (3) writ petitions.

4.5. He states that non-impleadment of the IPG in this petition, though a clarification is being sought of the interim orders passed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017 itself makes this petition not maintainable. The IPG has filed written submission dated 22.09.2023.

5. Ms. Awantika Manohar, learned counsel appearing on behalf of Federation of Indian Pilots ('FIP') i.e., the petitioner in W.P. (C) 8399/2017



has similarly raised an objection to the non-impleadment of FIP in the present petition.

5.1. She similarly opposes the grant of any relief in the present petition, pending the determination of W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017.

5.2. She states that in the said writ petitions, the petitioners therein have raised an issue that Respondent No.1, DGCA, does not have the power to issue the CAR, 2017 and/or regulate employment terms by prescribing a minimum contractual notice period.

5.3. She states that as per Section 5 (2) (g) of the Act of 1934, the Respondent No. 1 has power only to make rules with respect to regulating licensing requirements and it has no jurisdiction to enforce the contract between the pilots and the Airlines. She states that the power of the Respondents to take action under Rule 39A (2) of the Rules of 1937 is only with respect to non-compliance of the licensing conditions and no action is permissible for non-adherence of contractual terms.

5.4. She states that any enforcement of the minimum contractual notice period by Respondent No.1 would be hit by the rigours of Section 27 of Indian Contract Act, 1872.

5.5. The FIP has filed written submissions dated 22.09.2023. It is stated that as per the information available on the website of DGCA, since the cancellation rate of the flights of the Petitioner for the month of August, 2023 was 1.17%, it would essentially mean that there was a cancellation of about 42.12 flights in the said month of August, 2023. Lastly, it is stated that this petition should be heard along with the pending writ petitions listed before this Court on 13.10.2023.



Findings and directions

6. This Court has heard the counsel for the parties and perused the record.

7. A perusal of the written submissions filed by the Respondent No.1, DGCA, and oral submissions advanced by its counsel shows that it is vehemently objecting to the interpretation of the interim orders dated 25.07.2018 and 11.08.2019 offered by the Petitioners herein.

7.1. The Respondent No.1, DGCA, has contended that it understands that there is an absolute restraint against DGCA from taking any action against the defaulting pilots on account of the said interim orders. This is also the interpretation offered by FIP, and IPG, i.e., the Petitioners in W.P.(C)7588/2017 and W.P.(C) 8399/2017.

8. Pertinently, neither Respondents nor FIP and IPG have disputed the submission of the Petitioners that its pilots have failed to serve their respective minimum contractual notice period of six (6) months.

8.1. The Respondents have in their written submissions, however, sought to brush aside the fact of the non-adherence/breach of the contractual notice period by the pilots, by contending that there has been no tangible effect on the operations of the flights of the Petitioner due to the said mass resignation and/or non-compliance of the contractual notice period; and in this regard, the Respondents have placed on record the data with respect to flight cancellation of the Petitioner Airline, available with the DGCA.

9. Further, significantly the Respondent Nos. 1 and 2 have disputed their own jurisdiction to take disciplinary action against the defaulting pilots for not serving the contractual notice period agreed to under the employment agreement. This submission of Respondent Nos. 1 and 2 is dehors the restraint imposed by the interim orders dated 25.07.2018 and 11.10.2019. In this



regard, the submission of the Respondent Nos. 1 and 2 at paragraph 3 and 4 (XII) of the written submissions dated 22.09.2023 read as under:

3. It is submitted and clarified that the answering Respondents does not have any power or delegated authority to interfere in any employment contract, decisions in respect of Airport Operators, Airline Operators and or any other stake holders in terms of the Aircraft Act, 1934 or the rules made therein under.

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4 (XII). It is submitted that Respondents No.1 is not an adjudicating authority to interpret and or to take a decision with respect to the contractual/commercial agreement between the pilots and the Airlines. It is further submitted that Respondent No.1 has clearly taken a stand in the Counter-Affidavit filed in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017, wherein it is having been categorically stated that the terms and conditions within contractual/commercial agreements are over and above the purview of DGCA in terms of doctrine of privity to the contract. It is reiterated that the parties are free to fix their notice period as per their mutual understanding and Respondent No.1 has no role to play in the same.

(Emphasis supplied)

9.1. Pertinently, Respondent Nos. 1 and 2 have not addressed on the scope of CAR, 2017 more particularly paragraph 3.3 to 3.7 with respect to issue of their jurisdiction, wherein paragraph 3.4 records that Respondent No.1 shall initiate action against defaulting pilots if the facts justifying such an action are made out.

10. The Petitioners at the outset have stated that they are not seeking any action against the 43 pilots, who have already resigned, from the Respondent, DGCA and for the present, in this petition are only seeking clarification of the interim orders dated 25.07.2018/11.10.2019 and a direction to Respondent No. 1, DGCA, to take appropriate action as per extant law for possible future infractions by existing employee-pilots of the Petitioners.

10.1. The said submission of the Petitioner substantially moulds the reliefs sought in the petition and this interim application; and the prayers herein are



therefore, limited to future infractions.

11. As regards the issue of clarification of the interim orders dated 25.07.2018 and 11.10.2019, this Court is of the opinion that, the orders are clear and unequivocal inasmuch as the said orders are conditional upon the pilots and Airlines duly complying with the terms of the contract and in case of non-compliance, the CAR, 2017 becomes operative; and Respondent No.1 is at liberty to act in accordance with the said CAR, 2017 and under the extant law against the party in breach. There is no absolute restraint against Respondents from taking action as contended by Respondent Nos. 1 and 2. To this extent, this Court is in agreement with the submissions of the Petitioners and rejects the submissions of the Respondents, IPG and FIP.

12. As regards issuing a direction to Respondent Nos. 1 and 2 to act upon a representation in future from the Petitioner against a defaulting pilot, in the facts of this case, since Respondent No. 1 is contending that it has no jurisdiction to consider a representation made by the Petitioners against the defaulting pilots under the extant law including CAR, 2017, as it is a contractual dispute; in the opinion of this Court, the said issue of jurisdiction would have to be decided finally before issuing a direction to Respondent Nos. 1 and 2 to consider and inquire upon a complaint received from the Petitioner.

12.1. In the considered opinion of this Court, a direction to Respondent Nos. 1 and 2 to decide the representation of Petitioners against (future infractions) by the defaulting pilots cannot be issued at this interim stage without first deciding the issue of jurisdiction of Respondent Nos. 1 and 2.

12.2. This Court deems it appropriate to hear the arguments on the issue of jurisdiction of Respondent Nos. 1 and 2 to take action against the defaulting



pilot for not serving the minimum contractual notice period or the period prescribed in CAR, 2017 if it leads to harassment of passengers as stipulated in CAR, 2017, since a doubt has been raised by the said Respondent Nos. 1 and 2 itself and it has denied its jurisdiction.

12.3. It will also obviate the objections on behalf of IPG and FIP with respect to compliance of the principles of natural justice and adjudication on their pleas as well on the issue of jurisdiction of Respondent No.1 and 2.

12.4. It is therefore, deemed appropriate to hear and decide this petition along with W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017 on 13.10.2023.

13. The Petitioner is seeking the direction for possible future infractions and therefore, the direction sought against Respondent No.1 can await the final adjudication. It is however, made clear that if during the pendency of this petition, in case a pilot acts in breach of the minimum contractual notice period as specified under his/her employment agreement, then such an action will be at pilot's own risk and will remain subject to the outcome of the present petition.

14. With the aforesaid directions, the CM APPL. 47884/2023 stands disposed of.

W.P.(C) 12193/2023

15. In view of the submissions of FIP and IPG and considering the commonality of issues arising in W.P.(C) No. 12387/2009, W.P.(C) No. 7588/2017 and W.P.(C) No. 8399/2017, it is deemed appropriate to implead FIP and IPG as Respondent Nos. 3 and 4 respectively in the Present Petition.

15.1. The Petitioner is directed to file an amended memo of parties within one (1) week.



16. The Respondent Nos. 1 to 4 are at liberty to file their reply if any, within two (2) weeks. In case, replies are not filed, the written submissions filed by Respondent Nos. 1 and 2 and Respondent Nos. 3 and 4 shall substitute as their replies.

17. List on 07.10.2023 before Joint Registrar (Judl.) for completion of pleadings.

18. List before Court on 13.10.2023.

**MANMEET PRITAM SINGH ARORA
(JUDGE)**

SEPTEMBER 26, 2023/msh/hp/sk