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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: 8<sup>th</sup> September, 2022*  
+ **W.P.(C) 5122/2021 & CM APPL. 38343/2022**  
AIR TRAFFIC CONTROLLERS GUILD (INDIA) ..... Petitioner  
Through: Mr. Piyush Sanghi and Ms. Khushbu  
Sahu, Advocates. (M:9899699242)  
versus

DIRECTORATE GENERAL CIVIL AVIATION  
& ANR. .... Respondents  
Through: Ms. Anjana Gosain, Ms. Shalini Nair,  
Ms. Dipika Sharma and Ms. Ritika  
Kanagwal, Advocates for R-1.  
Mr. Digvijay Rai and Mr. Archit  
Mishra, Advocates for R-2/AAI.  
(M:9412636726)

**CORAM:**  
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.

**CM APPL.38343/2022 (for modification) in W.P.(C) 5122/2021**

2. This is an application filed on behalf of the Respondent No.1 - Director General of Civil Aviation (*hereinafter*, "DGCA") seeking certain modifications in the order dated 11<sup>th</sup> May, 2021 passed by this Court.

3. The present petition is one amongst the batch of writ petitions which had been filed challenging the carrying out of Breath Analyser Tests (*hereinafter*, "BAT"), which the staff of Air Traffic Controllers (*hereinafter*, "ATC"), commercial pilots and cabin crew were required to undergo prior to joining their duties at the airports, in view of the outbreak of the COVID-19 pandemic.

4. Initially, the Court had heard connected writ petition being **WP(C) 2946/2020** and issued various directions, vide order dated 23<sup>rd</sup> March, 2020. By virtue of the said order, the Court had suspended the use of BATs until further orders, as an interim measure, and had also accepted an assurance from all ATCs that they would provide a self-declaration that they would not report to duty under the influence of alcohol, as per the prevalent regulations. The Court had also directed the constitution of a committee under the DGMS(Air) and had sought a report. After considering the report of the said committee, the interim order was modified, vide order dated 3<sup>rd</sup> September, 2020. The writ petition was, however, pending.

5. Further writ petitions being **WP(C) 4990/2021** and **WP(C) 5122/2021** were filed seeking immediate halt on the administration of the BAT, in view of the upsurge in COVID-19 infections during the second wave of the pandemic. The said three writ petitions were heard collectively by this Court on 3<sup>rd</sup> May, 2021 and 5<sup>th</sup> May, 2021.

6. Thereafter, vide order dated 11<sup>th</sup> May, 2021, final directions were issued, and all three writ petitions were disposed of. The said final directions are relevant, and are captured hereinbelow:

*“13. After hearing all the Petitioners and the DGCA, it is clear that the two reports of the DGMS (Air) also do not recommend heavy testing through Breath Analyser method, owing to the prevalent circumstances. The blood alcohol test has been rejected by the Committee and this court would not like to substitute its judgement over the same. There is however no doubt that testing for alcohol cannot be completely exempted in as much as the same could be detrimental to passenger safety. While maintaining a balance between the interest of the personnel as also passengers, directions would*

*have to be issued. Keeping in mind both the reports of the DGMS (Air) and the submissions of the parties, the following directions are accordingly issued.:*

- (1) All the personnel shall be bound to give an undertaking and a declaration that they have not been exposed to alcohol consumption in the last 12 hours before duty, in terms of the DGCA's applicable regulations. The said undertakings and declarations would be compulsory for all personnel.*
- (2) After the undertakings are given, insofar as the administration of the Breath Analyser test is concerned, the doctor and any other paramedic/nursing personnel on duty, would take a Rapid Antigen Test prior to joining the duty, in the testing area, to ensure, as far as possible, that they do not have COVID-19 and they are also not likely to transmit it, being asymptomatic.*
- (3) The DGCA shall direct that the Breath Analyser test at all airports would to the extent feasible be conducted in a much bigger and an open area, which has CCTV coverage and not in a small enclosed space, as shown in the photograph today. This would ensure that the exposure of aerosoles is also reduced for the personnel, who are tested.*
- (4) The testing shall be random for all personnel i.e. ATCs, pilots, cabin crews and other personnel. However, insofar as the pilots and cabin crew are concerned, there will be a 5% cap on the number of personnel who are tested, for a period of 3 months. The same can be revised by the end of 3 months, depending upon the prevalence of COVID-19 pandemic.*
- (5) Insofar as the testing area is concerned, as submitted by ld. Counsel for DGCA, not more*

than 6 personnel shall be tested within the duration of one hour.

(6) *The testing equipment shall be subjected to UVCA radiation, as per the protocols already prescribed by the DGCA, which were considered by the Committee appointed by DGMS (Air).*

*14. Keeping in mind the above directions, the DGCA shall issue a comprehensive guideline/order urgently, which contains all the requirements and the protocols to be followed for administration of Breath Analyser Test, in one document. The said order shall be communicated to all the airports and the airlines, across the country to be adhered to uniformly.*

*15. It is again emphasised that the staff of airlines, including ATCs, pilots and cabin crew, would be bound to give undertakings and declarations. in respect of not having consumed alcohol, in terms of the applicable regulations, failing which strict action would be taken including off-rostering and suspension, in accordance with the applicable rules.”*

7. Ms. Gosain, Id. Standing Counsel appearing for Respondent No.1 - DGCA submits that pursuant to the directions issued in paragraph 14 of order dated 11<sup>th</sup> May, 2021, and in view of the changed circumstances in respect of the COVID-19 pandemic, including reducing trend of COVID-19 cases, as also, increase in volume of air traffic as a result of resumption of 100% normal airline operations, fresh guidelines have been issued by the DGCA. The said fresh guidelines dated 29<sup>th</sup> March, 2022 are extracted below:

*“i. 50% of cockpit crew member and the cabin crew member shall be subjected to the random pre-flight Breath-Analyzer test for entire operation of an Organization on daily basis. The airlines operators*

*shall ensure that all operation bases are covered for random pre-flight breath-analyzer examination.*

*ii. In case of Flying Training Institutes, 50% of instructors and 40% of student pilots shall be subjected to Pre-flight breath-analyzer on daily basis.*

*iii. The CAR Section-5 Series-F, Part-IV is hereby restored and breath-analyzer test of applicable personnel shall be conducted as per the provisions of the CAR.*

*iv. For operation of aircraft registered in private category, 50% of the Pre-flight Breath-analyzer test shall be carried out in accordance with the existing DGCA letter no. DGCA-15011(01)/18/2020-DAS dated 03.12.2020.”*

8. Ms. Gosain, Id. Standing Counsel submits that various representations were received from several airlines requesting for modification of the directions issued, vide order dated 11<sup>th</sup> May, 2021. Accordingly, the present application has been moved primarily seeking the following modifications in the order dated 11<sup>th</sup> May, 2021:

- i. Dispensing with the requirement that the doctor and any other paramedic/nursing personnel on duty, would take a Rapid Antigen Test for COVID-19 prior to joining the duty in the testing area, for administering BAT, in terms of paragraph 13(2) of order dated 11<sup>th</sup> May, 2021, extracted hereinabove, as also, to permit the conduct of BAT tests as per pre-COVID protocols.
- ii. Dispensing with the requirement of conducting not more than six tests in one hour, and to permit to conduct BAT as per pre-COVID protocols. in terms of paragraph 13(5) of the order dated 11<sup>th</sup> May, 2021, extracted hereinabove.

9. On the other hand, *Id.* Counsel for the Petitioner submits that, insofar as the directions in terms of paragraph 13(5) of order dated 11<sup>th</sup> May, 2021 is concerned, the same may be modified. However, as regards the direction issued in terms of paragraph 13(2) of order dated 11<sup>th</sup> May, 2021 to the effect that the doctors or nursing personnel are to take COVID-19 Rapid Antigen Tests, the said direction should continue to operate.

10. This Court has heard *Id.* Counsels for the parties and perused the present application. Insofar as the conduct of COVID-19 Rapid Antigen Test in respect of doctors, paramedics and nursing personnel is concerned, such a test can be conducted within 15 to 20 minutes, and continues to be one of the quickest screening tools for COVID-19. Doctors and paramedics/nursing personnel ought to be tested on Rapid Antigen Tests, prior to conducting tests on other personnel, as the risk would be high if such a test is not conducted, and either the doctor or nurse turns out to be COVID-19 positive. This is more so because there are chances of such persons being asymptomatic and being unaware if they have contracted the virus. Thus, at this stage, the said test would continue to be mandatory, in terms of paragraph 13(2) of order dated 11<sup>th</sup> May, 2021.

11. However, considering the submissions made today, in respect of the direction issued in paragraph 13(5) of order dated 11<sup>th</sup> May, 2021, that only six personnel shall be tested in one hour is concerned, in view of the increase in air traffic and reduction in incidence of COVID-19, as also, to ensure optimum utilisation of resources and reduce delays, the same is dispensed with, for the time being. The order dated 11<sup>th</sup> May, 2021 is modified accordingly.

12. It is made clear that the guidelines issued by the DGCA from time to time shall continue to operate. The conduct of BAT for staff of ATCs, commercial pilots, cabin crew and other staff members, shall also continue depending upon the guidelines issued by the DGCA in light of the status of the COVID-19 pandemic. Liberty is granted to the Respondent No.1 - DGCA to move an application seeking modification, at a later stage.

13. The present application is disposed of in the above terms.

**PRATHIBA M. SINGH**  
**JUDGE**

**SEPTEMBER 8, 2022/dk/ad**

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