IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 07, 2022

\+ W.P.(C) 11020/2020, CM No. 1731/2021

ALL INDIA AIRCRAFT ENGINEERS ASSOCIATION & ANR.

..... Petitioners

Through: Mr. Sanjay Hegde, Sr. Adv. with
Mr. Shwetank Sailakwal and
Mr. Kartikey Sahai, Advs.

versus

UNION OF INDIA ANR

..... Respondents

Through: Ms. Anjana Gosain, CGSC with
Ms. Shalini Nair, Adv. for R-1
Mr. Sanjiv Sen, Sr. Adv. with
Mr. Akanksha Das and Mr. A.P.
Singh, Advs. for R-2 to R-4

AND

\+ W.P.(C) 416/2021, CM No. 1098/2021

EXECUTIVE PILOTS ASSOCIATION & ANR.

..... Petitioners

Through: Mr. Vivek Kohli, Sr. Adv. with
Mr. Nalin Talwar, Mr. Sunil Tyagi,
Ms. Prerna Kohli, Mr. Sandeep
Bhuraria, Ms. Yeshi Rinchhen and
Ms. Bharti Chawla, Advs.

versus

AIR INDIA LIMITED & ORS.

..... Respondents

Through: Mr. Sanjiv Sen, Sr. Adv. with
Mr. Akanksha Das and Mr. A.P.
Singh, Advs. for R-1 & R-2
Ms. Anjana Gosain and Ms. Shalini
Nair, Advs. for R-3 & R-4

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

As both the writ petitions involve identical issues, the same are being decided through this common order: -

W.P.(C) 11020/2020

1. This writ petition has been filed by the petitioners, who are two associations, All India Aircraft Engineers' Association and Air India Aircraft Engineers' Association with the following prayers: -

> *"In view of the above mentioned facts, circumstances and grounds, it is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased: -*
>
> *a. to issue a writ, order or direction in the nature of certiorari against the office order ref no.: AIESL/COP/2020/1452 dated 23rd July 2020;*
>
> *b. issue a appropriate writ, order or command directing the Respondent to disburse salary of the Petitioner Associations on time.*
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> *c. to pass such other and further order as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the present case and in the interest of justice in favour of the Petitioners;"*

2. In substance, the challenge in this petition is to an office order dated July 23, 2020 whereby the respondent AI Engineering Services Ltd. ('AIESL' for short) has rationalised the allowances of employees of AIESL which includes Aircraft Maintenance Engineers (the

petitioners herein), Support Service Engineers, Service Engineers, Aircraft Maintenance Engineers (737 Vertical), Technician (737 Vertical), Aircraft Maintenance Engineers (ATR Vertical), Technician (ATR Vertical), General category Officers, Clerical and allied category staff and unskilled category, Fixed Term Employees of AIESL.

3. Mr. Sanjay Hegde, learned Senior Counsel appearing for the petitioners would submit that the impugned order by which allowances have been reduced, has been passed unilaterally without consultation and in violation of Articles 14, 19 and 21 of the Constitution of India. According to him, Air India and Indian Airlines were merged into a single entity in the year 2007 and a company being NACIL was established which was renamed in, 2010 as Air India Ltd. under the administrative control of the Ministry of Civil Aviation (respondent No.1). The entire Engineering and Engine Overhaul Department of respondent No. 2, Air India, was hived off to be made as respondent No. 3 i.e. All India Engineering Services Ltd. (AISEL). The said respondent assured members of the petitioner association that they would be getting pay, allowances and other benefits as would have been applicable to them had they continued in the parent company.

4. Mr. Hegde laid stress on the fact that the respondent No.3 company AIESL is running in profits, as per the admission in the impugned order itself. Furthermore, no financial emergency had been declared at the time of issuance of the impugned order and the respondent No. 3 was running into profit as well as members of the association were also working throughout the pandemic inasmuch as

they worked on the mission Vande Bharat mission, which was successful and was lauded everywhere.

5. The grievance of the petitioner is the unequal cuts in the gross pay due to economic measures imposed by the respondent No. 3 has no rationale with respect to imposing different deductions for the employees working under it.

6. Mr. Hegde would submit that an affidavit was filed before the Supreme Court wherein in paragraph 17, it was specifically stated that the members of the petitioner association would be getting pay, allowances and other benefits as applicable to them had they continued in the parent company. The respondent No. 1 has violated the terms of the affidavit submitted by them before the Supreme Court by imposing a discriminatory wage cut by selecting different parameters / allowances for the deduction for the employees of respondent Nos. 2 and 3. That apart, the impugned office order has been passed in a discriminatory manner inasmuch as the impugned office order has cleverly included the special allowances i.e. special pay, qualification pay (license / approval allowance), other allowances (linked to basic pay) and personal pay in the cut. Owing to the same, the top management and other officials in HR/Finance/Commercial Departments have only one component i.e., other allowances (50% of basic) which comes to only 7% as actual deduction in salary whereas the engineers have the cut in all components wherever words "Allowance" and "Personal Pay" are suffixed which amounts to approximately 21% deduction in salary. According to Mr. Hegde, this action of the respondents of imposing a non-uniform and

discriminatory deduction against the petitioner association is illegal and arbitrary. In the case of pilots the deductions were reduced from 40% to 35% but in case of petitioner associations, even after repeated representations, no steps were taken.

7. Mr. Hegde submitted that the salary of the members of petitioners consists of two components i.e., DPE pay which includes Basic, IDA, HRA and Special Allowances (special pay + qualification pay), which constitutes 50-70% of the total salary. The aforesaid allowances had been granted to the AMEs on the basis of the Justice Dharmadhikari Committee Report and the impugned office order essentially dilutes the recommendations of the said Committee. According to Mr. Hegde, Supreme Court in ***Manipal Academy of Higher Education v. Provident Fund Commissioner, (2008) 5 SCC 428***, has held that special allowances if not uniformly given to all the employees are not a part of the basic wages / salary, however, in this case the members of the petitioner association the same had been granted on the basis of the Justice Dharmadhikari Committee Report as approved by the Cabinet and, hence, members of the petitioner associations are entitled for these allowances as part of the salary.

8. Mr. Hegde stated that the Supreme Court while interpreting word 'Property' has held that it is inclusive of both movable and immovable property and salary payable to an employee can be said to be part of the property. Reference is made to the judgment of ***Madhav Rao Scindia & Ors. v. Union of India & Anr., (1971) 1 SCC 85***. He heavily relied upon the judgment of the Andhra Pradesh High Court in ***Dinavahi Lakshmi Kameswari v. State of Andhra Pradesh***

& Anr., (2020) SCC Online AP 600, wherein, the High Court in similar facts and circumstances set aside the order passed by the State Government regarding pay cuts citing the prevalence of the Covid-19 pandemic. The said judgment was upheld by the Supreme Court in ***State of Andhra Pradesh & Anr. v. Dinavahi Lakshmi Kameswari, 2021 SCC Online SC 237***. According to him, the aforesaid judgments clearly holds that the salary cuts cannot be imposed citing the prevalence of the Covid-19 pandemic, when the respondents are running into profits.

9. As noted above, the impugned action being without consultation with the petitioner association and there being no agreement between the associations and respondent No.3 under the garb of the pandemic, the impugned order could not have been issued. In fact, the respondent themselves admitted in paragraph 15 of the counter affidavit that now the respondents are earning profits and, hence, there is no need of the deductions to be made against the petitioner associations. That apart he highlighted the fact that the respondents Nos. 3 and 4 have themselves written to the Respondent No. 1 to roll back the cuts in salary. He prays that in view of the averments made in the petition and in view of the submissions, the respondent should be directed to immediately stop the cuts which have been implemented by way of the office order, in future and further direct the respondents to repay the salary and other allowances deducted in the name of economy measures from the members of the petitioner association.

W.P.(C) 416/2021

10. This petition has been filed by the petitioners, petitioner No.1 being Executive Pilots Association with the following prayers: -

> *"It is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-*
>
> *A. Issue a writ of certiorari or any other writ, order or direction in the nature of certiorari quashing (i) Impugned Order I- i.e., Office Order dated 20.03.2020; (ii) Impugned Order II- i.e., Office Order dated 22.07.2020; (iii) Impugned Order III- i.e., Staff Notice dated 14.07.2020; (iv) Impugned Order IV- i.e., Compulsory Leave Without Pay dated 21.07.2020; (v) Impugned Order IV- i.e., Office Order dated 18.l2.2020, issued by the Respondent;*
>
> *B. Issue a writ of Mandamus or any other writ, order or direction in the nature thereof directing the Respondents to adhere to the Petitioners service conditions and career progression arrangement as per the wage agreement dated 21.12.2006;"*

11. At the outset, I may state here that the challenge in the petition is to five orders issued by the respondent No.1, which are as follows:

i. Office Order dated March 20, 2020 (Order No. i).

ii. Office Order dated July 22, 2020 (Order No. ii)

iii. Staff notice dated July 14, 2020 (Order No. iii)

iv. Leave without pay scheme dated July 21, 2020 (Order No. iv)

v. Office Order dated December 18, 2020 (Order No. v)

12. Insofar as, the orders at (iii) and (iv), which require an employee selected by Committee to go on compulsorily leave without pay for a period of six months or for two years which is extendable up

to five years are concerned, during the hearing on January 12, 2021, the respondent through Mr. Bhasin had submitted before this Court that the order dated July 14, 2020 has not been given effect to and there is no decision of the respondent to implement the same. That apart, in the counter affidavit filed by the respondent, Air India, it has been stated there is no intent to implement this part of the scheme. This aspect has also been clarified during the submissions and, hence, the petition qua orders (iii) and (iv) does not survive.

13. The respondent No.1 vide order at (i) above had imposed a 10% deduction in allowances in respect of all the employees. The order No. (ii) has been issued regarding rationalisation of allowances of all employees, thereby the allowances have been reduced by 40%. By order at (v), the rate of deduction was relaxed from 40% to 35% by the respondent No.1. The submission of Mr. Vivek Kohli, learned senior counsel for the petitioners is that the impugned orders have been issued to effectuate a cost cutting exercise in order to save the respondent, Air India, from extinction. The purported justification of the orders was the disruption in airlines business caused by the Covid-19 pandemic.

14. According to Mr. Vivek Kohli, it is elementary that Article 14 of the Constitution forbids class legislation. However, it does not forbid legislation based on reasonable classification where similarly situated citizens are treated alike for the stated purpose of legislation. In order to pass the test of permissible / reasonable classification the long standing and time-tested twin condition must be fulfilled.

i. The classification must be found on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and;

ii. That the differentia must have a rational nexus to the object(s) sought to be achieved by the statute in question.

15. He stated that the most important element is to have a reasonable nexus between classification and object sought to be achieved through such classification. If there is no reasonable and / or direct nexus between the former and the later, the scheme would fail and would be required to be struck down by this Court.

16. He also stated that the impugned orders fail both these tests and the orders are in violation of Article 14 as they suffer from the vice of under-inclusiveness and the classification as formulated does not have any nexus with the stated purpose of the impugned orders i.e., cost cutting.

17. According to Mr. Kohli, in the airline business, the sole asset which generates revenue is the aircraft. The more it flies in the air and carries passengers to their destinations, the more revenue is generated. In fact, the percentage of the time an aircraft stays in the air determines the efficiency of the airline. The core functions i.e., functions related directly to revenue generation of an airline consists of: -

i. The aircraft engineers who keep the aircraft maintained and airworthy.

ii. The pilots who fly the aircraft.

iii. The Cabin Crew who takes care of the passengers so also the support functions such as, ticketing, ground handling, HR, finance and other sundry functions performed by the staff of the entire organisation.

18. According to Mr. Kohli, without the core functions, an airline cannot function at all. The core functions are directly concerned with the revenue generating activities of the company. This fact is also recognised in the various wage agreements entered with the associations of these core function employees and the respondent (Air India). Concerning the petitioners is the wage agreement entered into with the pilot's association namely, Indian Pilots Guild (IPG) and the Indian Commercial Pilots Association (ICPA).

19. According to Mr. Kohli, the wages of the petitioners comprises of two elements: -

a. Fixed, which is also called DPE and comprises the basic pay, HRA etc.; and

b. Allowances, which are an operating expense linked to the revenue.

20. The first of these elements is a pure cost and would be payable irrespective of the fact, airline is operational or not and whether revenue is being generated or not. The second of these elements is payable only when the revenue generating activity, i.e., flying the aircraft is undertaken. Thus, these Allowances are in the nature of Flying Allowance, Executive Flying Allowance, Special Pay, Wide Body Allowance, Domestic Layover Allowance, High Altitude Allowance, Check Allowance, Examiner Allowance, Additional

Landing Allowance. He stated that the petitioners were guaranteed a fixed payment for 70 hours under the wage agreement before the outbreak of the pandemic. He also stated that the pay structure of the core functionaries, especially, the flight crew is designed in a manner whereby the base pay is relatively low and allowances which are marked or pegged to the flying duties make up almost more than 80% of the salaries. The allowances paid to the pilots, and other core function employees, are in the nature of operational expenses which must be incurred to carry out the main business or revenue generating exercise of the Company.

21. He also stated that the wages of the support staff i.e., General Category Officers and staff etc., also comprises of two elements (i) Fixed, which is also called DPE and comprises the basic pay, HRA etc., and; (ii) Allowances which are fixed and in the nature of petrol allowance, club memberships, cars, etc. However, both the elements in this case are pure cost, as neither of these elements are dependent on the flying of the aircraft i.e., the revenue generating exercise.

22. The Respondents vide the impugned orders sought to impose deductions starting from 10% and going up to 40% and thereafter reduced it to 35%, on the allowances of the various employees including the petitioners herein. Though it is noticed that the purpose of the impugned orders is to cut costs, it completely fails to achieve that purpose. In fact, the orders do not even address that purpose. The pure costs, the first element of wages of the various employees have been left untouched. Thus, there is no cost cutting even attempted by the impugned orders.

23. On the other hand, what has been addressed and cut are the Allowances, directly related to the revenue generating exercise i.e., flying. This element, as explained is not a cost at all and is, in fact, an expense that is necessary to carry out the revenue generating exercise i.e., flying. The basic difference between cost and expenses which is an elementary principle of accounting practice has been totally ignored by the impugned orders. He stated that the ramifications of the impugned orders are that, if the pilots are required to fly more and thus entitled to higher Flying Allowances, the deeper will be their deduction and the harsher will the impugned scheme be upon them. Hence, it is a disincentive for a pilot to fly more. Purported reasoning of reducing the allowances in the name of austerity, as directed, curtailed the expenses related to the revenue generating activities and not the cost which burdened the respondents. The classification made between flight cabin crew and other employees is arbitrary and possibly a hostile discrimination inasmuch as it seeks to punish them for working harder and doing more for the airline. The classification sought to be made by the impugned orders between the basic pay on the one hand and allowances on the other has no reasonable nexus with the stated purpose of the impugned orders and hence they are in violation of Article 14 of the Constitution.

24. He stated that the impugned orders seek to justify the classification by cutting the allowances of support functionaries. This is merely to derail the entire objective of the impugned orders. In fact, classification suffers from the vice of under-inclusion in as much as it does not include the basic element of costs while seeking to carry out a

cost cutting exercise. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of ***State of Gujarat & Ors. v. Shri Ambica Mills Ltd. & Ors., 1974 (4) SCC 656***. According to him, the ratio of the judgment of the Supreme Court in ***Ambica Mills (supra)*** surely covers the case of the petitioners inasmuch as it is a clear case of under inclusion / over classification, whereby the General Category Officers and staff, who are all related to costs have been spared, but the pilots / petitioners have been subjected to discrimination and have been burdened arbitrarily by the respondent. He submitted that the above principles have been reiterated by the Supreme Court in a recent judgment dated November 23, 2021 in the case of ***State of Tamil Nadu and Anr. v. National South Indian River Interlinking Agriculturalist Association, Civil Appeal No.6764 of 2021***.

25. He stressed on the fact that during the pre-Covid era, the flying allowance of the pilots was fixed at a minimum of 70 hours in a month and the hourly rate was fixed at ₹6800/- to ₹7000/- per hour. However, after the outbreak of the Covid-19 pandemic, the flying hours were reduced to 20 hours in a month and the hourly rate has been reduced to ₹3500/- to ₹4080/- per hour. This reduction in the hourly rate of pay and the elimination of a guaranteed payment of 70 hours of flying related allowances imposes a double prejudice on pilots alone i.e., pay cut (deduction in hours) within a pay cut (deduction in allowances). On the contrary, the other departments like Finance and Personnel underwent only an 8% cut in the gross salary. He also referred to the following judgments in support of his submissions: -

i. ***Chiranjit Lal Chowdhuri v. Union of India & Ors., AIR 1951 SC 41***;
ii. ***State of Bombay & Anr. v. F.N. Balsara, AIR 1951 SC 318***;
iii. ***Budhan Choudhary v. State of Bihar, AIR 1955 SC 191***;
iv. ***Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar & Ors., AIR 1958 SC 538***.

26. Finally, he submitted that after the onslaught of the Covid-19 pandemic, the role of the flying crew of Air India was lauded the world over. Donning the hat of a frontline corona warrior, the petitioner body along with the other flying crew have successfully conducted 2,449 flights and ferried 3,30,077 passengers safely around the world under the Central Government's Vande Bharat Mission. Under this Mission, the flying crew even conducted flights to countries / cities worst affected by the Covid like Rome and Wuhan. The pilots and cabin crew belonging to the Respondent airline have extended their duty hours to an unprecedented 30 hours straight, in a bid to serve the Nation during these difficult times. As a result of the massive exposure, as many as 98 pilots also tested Covid positive even after taking all precautions like pre and post flight Covid tests, utilisation of PPE kits and masks, etc. Every member of the flying crew was even required to self-isolate after every flight. He stated that, being the backbone of the Airline, the pilots never resiled from their positions more so during the Vande Bharat Mission. Finally, he stated the prayers made in the petition be granted and the impugned orders be set aside.

27. Mr. Sanjiv Sen, learned Senior Counsel appearing for the AIESL, respondent Nos.3 and 4 (in W.P.(C) 11020/2020) would

submit that present petition has been filed by the petitioner challenging the impugned decision dated July 23, 2020 which is a pure commercial, administrative and policy decision concerning rationalisation and allowances of employees in AIESL in terms of the directives of the Ministry of Civil Aviation dated July 20, 2020 and with approval of the Board of Directors of AIESL, respondent Nos.3 and 4 have in view of unprecedented and catastrophic situation caused by the Covid-19 pandemic and its adverse impact, taken the decision. He stated that such a decision ought not to be interfered by this Court while exercising its jurisdiction under Article 226 of the Constitution. That apart, the dispute is of a private nature between company and its employees, and cannot be called in question through a writ petition as no public law element is involved. Further, the Covid-19 pandemic has been judicially recognised as a *Force Majeure* event which has adversely affected and has put to standstill, the commercial operations of enterprises and answering respondent Nos. 3 and 4, being a commercial enterprise, have in the interest of survival taken the impugned decisions, which cannot be questioned through this writ petition.

28. According to Mr. Sen, AIESL is a fully owned subsidiary of the respondent No.2, Air India. Air India's financial position is inextricably interlinked with that of AIESL. The direction of respondent No.1 to the respondent Nos.3 and 4 on which basis the impugned order was passed is also fully justified, since respondent No.1 has been providing financial relief to the tune of thousands of crores of Rupees per year for the benefit of Air India, the Indian public

and the country at large. Even during the Covid-19 pandemic, by keeping Air India afloat, the respondent No.1 provided relief to lacs of Indians and other nationals who had been stranded all over the world and helped them travel back and forth from India. Thus, the very well-considered and researched directions of the respondent No.1 cannot be called in question. In any case, the directions of respondent No.1 have not been challenged in this petition.

29. On merits, he justified the impugned decision by contending that the petitioners received a very high salary / emoluments and it does not lie in their mouth to raise a grievance against the rationalisation of allowances as the effect thereof is very minimal, apart from being fully justified. He stated that extra ordinary times demand extra ordinary measures. The Covid-19 pandemic has resulted in a catastrophic situation, causing an adverse impact on the aviation sector. It is a matter of common knowledge that all airlines all over the world have taken far more stringent measures, including large scale retrenchment. On the contrary, despite the devastating impact of the Covid-19 pandemic, respondents have not retrenched a single engineer or any other employee, in spite of very serious difficulties. In such a situation, the impugned actions cannot be challenged by the petitioners.

30. Mr. Sen stated the power of rationalisation exists with the employer and it is not open to the writ petitioners to invite this Court's attention to the nitty-gritties of rationalisation. Thus, whether the reduction in allowances ought to have been 20% or 30% or 40% etc., cannot be called in question before the writ Court under Article 226 of

the Constitution. That apart, it is common knowledge that respondent No.1 vide its order dated March 23, 2020 ceased all commercial operations of flights with effect from midnight of March 24, 2020. This was followed by a notification of Union of India, issuing a nationwide lockdown with effect from March 25, 2020 under the Disaster Management Act, 2005. The order suspending commercial operation of flights continues till date and has been extended till January 31, 2022. More than 70% of the air operations of Air India were suspended from March, 2020 and the situation looks even more grim at the moment. As a result, thereof, the number of flights reduced drastically, for example from 3000 flights to 640 flights per week for A320 aircrafts and 420 to 40 for the B787 aircrafts, etc. As a result of the above, the utilisation of the engineers, pilots and other employees reduced drastically. According to Mr. Sen, the aircraft utilisation has also reduced drastically, for example A320F from 846.10 to 200.50 daily block hours. That apart, he stated that most commercial airlines drastically reduced and retrenched staff and adopted stringent cost cutting measures to survive. However, since commercial airlines were not functioning and Indian Nationals were stranded in various countries across the world, as a relief measure, the respondent No.1 directed running of rescue flights under the Vande Bharat Mission, purely as a welfare and humanitarian measure. He stated that utmost consideration was given to the components like Basic, DA and HRA which were not deducted from any of the category of employees of respondent Nos. 3 and 4. The remaining other allowances were clubbed and the rates of deduction were decided as per the directions

of the respondent No.1 and it was ensured that the rates of rationalisation were kept uniform across the employees of similar cadre, considering the quantum of their allowances. It is, therefore, that the rate of rationalisation of engineers is fixed at 40%. There can be a difference in the actual amount deducted as the allowances vary from employee to employee, depending upon their service conditions.

31. Mr. Sen stated that the petitioners have made highly erroneous and distorted and baseless submissions that a lower pay cut has been imposed for the top management. It can be seen that the allowances of all the General Category Officers have been rationalised by 50% which is the highest among all categories of employees. He also mentioned that when compared with General Category Officers, the gross salary of the engineer category is much higher. In any case, it is submitted that the decision of rationalisation has been fixed in terms of the communication of the respondent No.1. He summed up his submissions made so for by stating: -

a. No employee, including engineers and pilots have been retrenched.

b. Basic Pay, VDA and HRA have not been deducted for any category of the employees.

c. The rate of deduction depends upon the quantum of the allowances.

d. All the above decisions were taken after carefully examining the prevailing situation, precarious condition of the aviation industry, the financial distress being undergone by Air India and AIESL, etc.

e. Apart from the huge accumulated losses of about ₹50,000 Crores, the respondent No.1 is extending cash relief of ₹250 Crores a month, i.e., around ₹3,000 Crores a year, of public / tax payers' money to Air India, which has affected the finances of AIESL as well, since AIESL is a fully owned subsidiary of Air India.

32. Mr. Sen stated that it is because of the rationalisation measures taken, AIESL could improve its financial condition during the Covid-19 pandemic. Considering the present prevailing conditions, it has been decided to review the rationalisation of the allowances and accordingly, the AIESL herein has written to the respondent No.1 vide its letter dated December 21, 2021 and the matter is pending further in this regard. However, the situation being dynamic has in January, 2022, suddenly taken a turn for the worse.

33. He stated that the actual effect of rationalisation is that on an average, the percentage of deducted amount is around 10% of gross salary for E-1 Cadre (Assistant Aircraft Engineer) to E-3 Cadre (Aircraft Engineer) and 20% of gross salary from E-4 Cadre (Senior Aircraft Engineer) to E-9 Cadre (Executive Director). Therefore, it can be seen that where the average gross salary of Deputy Aircraft Engineer is approximately ₹1,22,000/-. The average deduction is approximately ₹9,700/-. Similarly, the average gross salary of Deputy Chief Aircraft Engineer is approximately ₹2,72,000/- whereas the average deduction is approximately ₹55,000/- resulting in a net take home salary of approximately ₹2,17,000/-. Therefore, it can be seen that utmost care has been taken and that a reasonable reduction is

undertaken. He reiterated that deduction on key components of salary such as the Basic Pay, DA and HRA remains intact.

34. Mr. Sen who appeared for Air India in the connected writ petition being W.P.(C) 416/2021 as well, would make similar submissions.

35. He also stated that petitioners in this writ petition are pilots who are part of the management of Air India as distinct from Commercial Pilots who are in the workmen category. The members of the petitioners receive very high salary / emoluments and it does not lie in their mouth to raise a grievance against the rationalisation of allowances as their effect is very minimal, apart from being fully justified.

36. He stated that counsel for the petitioners have admitted during arguments that in the extra-ordinary situation that is prevailing, the respondents have the power to rationalise allowances. Once such a concession has been made, in an answer to a question pointed out by the Court, it is not open to the writ petitioners to invite the Court's attention to the nitty-gritties of rationalisation. Thus, whether the reduction in allowances ought to have been 20% or 30% or 40% etc., cannot be adjudicated upon in this writ petition.

37. He impressed upon the fact that even before the onslaught of Covid-19 pandemic, Air India was reeling under a debt of more than ₹30,000 Crores, even after transferring debts of ₹29,464 Crores to AI Assets Holding Limited, an SPV formed under the disinvestment plan. The answering respondent also has outstanding liabilities towards various banks of over ₹11,000 Crores. Moreover, during normal flight

operations, Air India suffers a cash deficit of ₹250 Crores a month and has managed to keep itself afloat only pursuant to the financial support by the Ministry of Civil Aviation.

38. He contended that because of the reduction of the flights, more than 80% of the pilots became redundant. It is ensured that rates of rationalisation are kept uniform across all employees of similar cadre, considering the quantum of their allowances. Therefore, the rate of rationalisation for the pilots is fixed at 40%. He also stated there can be a difference in the actual amount deducted as the allowances vary from employee to employee, depending upon their service conditions.

39. He argued that the petitioner association comprises of pilots who are part of the management as being distinct and different from Commercial Pilots who are in the workmen category. For example, Senior Executives, who are pilots and form a part of the management and also undertake flying duties and get total emoluments of approximately ₹10,00,000/- per month. Since Basic Pay, HRA and VDA are untouched, even a 40% reduction would still result in a payment between ₹6,00,000/- to ₹7,00,000/- per month. Similarly, all members of the petitioners are very highly paid. None of them were retrenched despite there being a redundancy of over 80% in the demand / requirement of pilots during the pandemic.

40. According to him, that even after rationalisation also, 46% of the wage bills of the answering respondent consists of wages of 1700 pilots per month as against 9788 of other employees. Moreover, rationalisation of allowances has been made all across the board for all employees and not just pilots alone. In support of his submissions, he

has relied upon the judgments in cases of ***Air India v. Cochin International Airport & Ors., 2000 (2) SCC 617***; ***Life Insurance Corporation of India v. Escorts Limited & Ors., 1986 (1) SCC 264***; ***Jatya Pal Singh & Ors. v. Union of India & Ors., 2013 (6) SCC 452*** and; ***Praga Tools Corporation v. Shri C.A. Imanual & Ors., 1969 (1) SCC 585***.

41. He distinguished the judgment relied upon by Mr. Hegde in the case of ***Dinavahi Lakshmi Kameswari (supra)*** by stating the facts which arose for consideration in that case are not similar to the ones in the case at hand. Mr. Sen seeks the dismissal of both these writ petitions.

42. Ms. Anjana Gosain, learned counsel appearing for Ministry of Civil Aviation / respondent No.1 submitted that the said Ministry is the apex body for taking policy decisions in the civil aviation sector. It is a conceded position that Air India comes within the purview of respondent No.1 / Ministry. Given the prevalent position due to the Covid-19 pandemic for the past two years has led to the aviation sector taking a serious commercial and financial hit. In response to this situation the respondent No.1 took a conscious decision for reducing and subsequently stopping international flight operations for a considerable period in accordance with the lockdown regulations. Further, Ms. Gosain made the following submissions:

I. She stated that Air India being a loss-making company was being financed by the respondent No.1 for its day-to-day operations. It was in this peculiar background that a policy

decision was taken to rationalise the expenses including the wages of the employees.

II. In furtherance of this cause the respondent No.1 in consultation with its IFD and based upon the inputs of Air India decided to impose cuts in the allowances of the employees, primarily of those belonging to the senior cadre being engineers, pilots and other general category officers. She stated that in comparison of other private players in the market who had undergone severe budget cuts including retrenchment of its employees, the respondent No.1 encouraged Air India to avoid such a situation. However, a reduction in the allowances to the bare minimum for a temporary period was seen as essential to avoid such a situation. As per Ms. Gosain, the respondent No.1 is a competent authority to issue directions to Air India for undertaking austerity measures, it is for these reasons she stated that the rationalisation is not only legal but also prudent.

III. In order to enforce the rationalisation measures, respondent No.1 initially reviewed the situation in a graded manner and directed Air India to take various steps as enumerated in the letters dated July 15, 2020, July 17, 2020, December 18, 2020 and July 23, 2021. It was through these letters the respondent No.1 first reduced the allowances for pilots by 40%, later these reductions were relaxed to 35%. The allowances for general category officers were initially reduced

by 50% but were later revised and relaxed to 30%. The allowances for cabin crew were reduced by 20%.

IV. Similar reductions were also made in the allowances payable to the engineers employed with Air India, the percentage of these reductions was different for each designation keeping in mind the salary payable to such engineers. Ms. Gosain stated that the basic pay and allowances as per the DPE guidelines were not touched at all, remaining intact and in force. As per the respondent No.1, it was only due to the Covid-19 situation that the respondent No.1 was constrained to extend such austerity measures.

V. Ms. Gosain maintained that the aviation industry was one of the worst hit industries, however in order to avoid the situation of large-scale termination of employees, the rationalisation measures were imperative. She stated the respondent No.1 mindful of its role as the apex Ministry in the civil aviation sector and took such a decision to ensure that a uniform reduction was made across similar posts and designations, factoring in allowances and package entitlement.

VI. It is the case of respondent No.1 and so contended by Ms. Gosain that Courts while exercising their powers under the writ jurisdiction have restrained themselves from interfering with policy decisions and have left it to the rationale of the expert bodies assessing the circumstances and the financial situation. She argued that in this case too, respondent No.1 in consultation with Air India would review the position as and

when it improves and this statement was also made while answering the representations of the petitioner associations dated August 5, 2020 and September 17, 2020. While concluding her arguments she sought dismissal of these petitions.

FINDINGS

43. Having heard the learned counsel for the parties and perused the record, at the outset, I may state, before I deal with the submissions made by the counsel, it is important to note that it is common knowledge that Air India is one of the respondents in W.P.(C) 416/2021 and has been disinvested by the Government of India. Insofar as AIESL is concerned, it is stated that it is a subsidiary of Air India. It is not known whether AIESL, is part of the disinvestment process or not. But the disinvestment of Air India shall not have any bearing on the issue which arises for consideration, that is whether the impugned orders passed at the relevant time are justified. The impugned orders issued by Air India and AIESL were, on the directives of the Ministry of Civil Aviation (Respondent in both the petitions) with regard to rationalisation of allowances / reducing the amount of all allowances as they were being paid to the members of the petitioner Associations and this Court is only considering the said issue, by proceeding on the premise that the Ministry of Civil Aviation was competent to give such directions and Air India / AIESL were under obligation to implement the same.

44. The first and the foremost issue that needs to be answered is based on the plea of Mr. Sen on the maintainability of the petitions,

challenging the impugned orders / decision on the ground of the same being a purely commercial, policy and administrative decision and the dispute is of a private nature between the companies and its employees, the same cannot be called in to question through a writ petition.

45. I do not find any merit in the submission. The impugned decisions are of Air India and its subsidiary AIESL on the directives of the Ministry of Civil Aviation as admitted by Mr. Sen and Ms. Gosain. Air India and AIESL are / were funded by the Government of India as such the latter has a pervasive control. Therefore, the action has a public law element, as such amenable to the jurisdiction of this Court under Article 226 of Constitution of India.

46. Mr. Sen had relied upon the judgment in the case of ***Praga Tools (supra)***. Suffice to state that the said judgment has no applicability in the facts of this case as the Supreme Court was dealing with a company incorporated under the Companies Act, 2013 with 56% of its shares held by the Government of India and 32% with the concerned State Government and the balance 12% held by private individuals, which is not the case here. In ***Godavari Sugar Mills Ltd. vs State of Maharashtra & Ors., 2011 (2) SCC 439,*** the Supreme Court held that where the issue which arises is related to public law functions / public duty, access to justice by way of public law, remedy under Article 226 of the Constitution of India shall not be denied.

47. Having decided the objection of maintainability raised by Mr. Sen, I now proceed to deal with the merits of the issue that arises for consideration before this Court in these petitions i.e., whether the

respondents could have affected / reduced the allowances of the members of petitioner associations. At the outset, I may highlight the broad submissions made by Mr. Hegde and Mr. Kohli as under:

47A. Mr. Hegde's Submissions

i. The order could not have been passed unilaterally without consultation and in violation of Articles 14, 19 and 21 of the Constitution of India.

ii. The employees in W.P.(C) 11020/2020 (of AIESL) were assured that they would be getting pay and allowances and other benefits, as would be applicable to them had they continued in their parent company Air India.

iii. AIESL is running into profits and the fact that the members of the association have been and are working throughout the pandemic and as such the allowances could not have been reduced. The unequal cuts in the gross pay due to the economic measures has no rationale with respect to imposition of different deductions for the employees working under it.

iv. The impugned order has been passed in a discriminative manner inasmuch as the impugned office order has clearly included the special allowances i.e., special pay, qualification pay, other allowances and personal pay in the cut.

v. The officials in the HR / Finance / Personnel department have only one component i.e., other allowances (50% of basic) which comes to only 7% as actual deduction whereas in case of engineers it comes to 21%.

vi. The salary of the members of the petitioners consists of DPE pay which includes basic, DA, HRA and special allowances (special pay + qualification pay) which constitutes 50-70% of the total salary which have been

granted on the basis of Justice Dharmadhikari Committee Report; and have been diluted by the impugned orders.

vii. As the "property" includes both movable and immovable property, the same could not be taken away by the impugned decision.

47B. Mr. Kohli's Submissions

i. The impugned orders are bad, as they have no reasonable nexus between classification and object sought to be achieved.

ii. The impugned orders are in violation of Article 14, as it suffers from the vice of under-inclusiveness.

iii. The business being flying and the sole asset being the aircrafts, the more it keeps in the air and flies passengers to their destination, the more revenue it generates, and the functions are being done by the members of the petitioner association, their allowance cannot be affected as they are operating aircrafts linked to revenue.

iv. The impugned orders are discriminatory as, in the case of support staff the allowances reduced are pure cost and not dependant on the flying of the aircraft, i.e., the revenue generating expense. The cut in allowances of the Finance and Personnel is only 8% unlike in the case of the Executive Pilots which is much more.

48. The petitioners in both the petitions are Aircraft Maintenance Engineers and Executive Pilots who have challenged the order issued by their respective employers i.e., AIESL and Air India, reducing the allowances that were being paid to them. The employees, in the other departments in whose case also there is a reduction in the allowances, have not approached the Court. In respect of Aircraft Maintenance Engineers the reduction is to the extent of 40% of the allowances like qualification pay, CAT / A/M, special pay and other allowances.

Similarly, in respect of Executive Pilots in W.P.(C) 416/2021, the following allowance have been reduced to the extent of 35% (earlier it was 40%): -

i. Flying Allowance; Executive Flying Allowance; Special Pay; Wide Body Allowance; Domestic Layover Allowance; Quick Return Allowance; High Altitude Allowance; Check Allowance; Instructor Allowance; Examiner Allowance; Additional Landing Allowance

ii. Flying allowance to be paid as per actual hours flown by an individual pilot in a month. However, as a special case pilots available for flying will be paid at fixed 20 hours of flying allowance or actuals, whichever is higher in a month during 1st and 2nd quarters of the financial year 2020-21 on revised flying allowance rate.

iii. Simulator training hours will be paid on the revised rate of flying allowance.

iv. Overtime rate beyond 70 hours in a month shall be 125% of the revised rate flying allowance.

v. Layover allowance at stations outside India will be payable at Government rates.

49. It is a common knowledge that from the month of November, 2019 onwards the whole world including India had to face catastrophic situation arising from the Covid-19 pandemic. The country had also faced the brunt of the pandemic, having an adverse impact on all spheres of life. It led to a complete / partial lockdown affecting the movement of the people from one part of the country to the other part

and also travelling abroad. All modes of transportation including the air transport had come to a standstill, w.e.f. March 24, 2020. The order suspending commercial operations of flights has been extended till January 31, 2022. Mr. Sen stated, more than 70% of the air operations of Air India were suspended from March 2020. According to him, the number of flights reduced drastically from 3000 flights to 640 flights per week for A320 flights and 420 to 40 B787 aircrafts, etc. The effect of reduction in flights has resulted in underutilisation of aircrafts, engineers, pilots and other employees, effecting the revenue of Air India. In fact, Mr. Sen has highlighted the fact that Air India has accumulated losses of about ₹50,000 Crores and is suffering a cash deficit of ₹250 Crores a month, that is around ₹3000 Crores a year which is being compensated by the respondent No.1. In fact, Ms. Gosain has also stated that the Aviation Industry was the worst hit industry, however, in order to avoid large scale termination of employees, the rationalisation measures had to be taken. Neither Mr. Hegde nor Mr. Kohli have disputed the power of the respondents to rationalise the allowances. If that be so, there can also be no dispute that situation as was existing, required the respondents to take this drastic decision. The situation justified the rationalisation measures.

50. As stated by Mr. Sen and Ms. Gosain, the rationalisation / reduction was only with regard to the allowances being paid to the employees. The salary of the employees like Basic Pay, DA, HRA has not been touched. The reduction in allowances is in respect of all the employees in the organisation. Insofar as, AIESL is concerned, the reduction is of varying amounts from 10% to 20% of the gross salary.

51. Similarly, in respect of Executive Pilots in Air India, the respondents without affecting Basic Pay, HRA and DA have reduced the allowances. The reduction being 40% as contended by Mr. Sen, still the take home salary varies between ₹6 lacs - ₹7 lacs. It is important to note the allowances are relatable to the flying duties and restriction in flying of commercial airlines has resulted in underutilisation of the aircrafts, pilots, employees effecting the revenue for Air India. The plea of Mr. Hegde and Mr. Kohli is primarily of discrimination, inasmuch as the allowances with regard to the employees in other departments, have not been reduced in the same manner as has been done with regard to the Aircraft Maintenance Engineers and Executive Pilots. The justification advanced by Mr. Sen is that the rates prescribed for reduction commensurate with the allowances being drawn by the engineers / pilots. This plea of Mr. Sen is appealing / convincing. In this regard, I may highlight, that with regard to an employee in E-1 (Cadre) to E-3 (Cadre) (in AIESL) the deduction is around 10% and for higher cadre officers, i.e., E-4 - E-9 level it is 20% ranging from ₹9,700 to 55,000/- as against the salary of ₹1,22,000/- and ₹2,72,000/- [Ref. Paragraph 33 above]. Similarly, in the case of Executive Pilots the reduction is from ₹10 Lacs to ₹6-₹7 Lacs.

52. I find, it is only the Executive Pilots and the Aircraft Maintenance Engineers, who have approached this Court against the impugned decision though, in terms of the impugned orders passed, there is reduction in allowance of other employees holding other designations as well.

53. The plea of Mr. Kohli was that as of today, the revenue for Air India is being generated because the flights are being operated by the Executive Pilots and as such there cannot be reduction in the allowances paid to them is concerned, the same is unmerited. No doubt, a pilot flies the aircraft, but the issue is of running / working of the Company. Every employee, contributes in his own way to keep the company running, which includes, the flying of the aircraft. Hence, merely because a pilot flies the aircraft, his allowance should not be reduced, would be discriminatory and shall be hit by Article 14 of the Constitution. There is a uniform policy, reducing the allowances proportionally. In other words, higher the allowance, higher the amount of reduction. The allowances of the general category employees were initially reduced to 50% but later revised and relaxed at 30%. Similarly, in the case of cabin crew, it has been reduced to 20% of the allowances.

54. The plea of Mr. Hegde that AIESL is making profits and as such there cannot be any reduction in the allowances of the AME, (the petitioners) in AIESL is also unmerited. AIESL is a subsidiary of Air India and as already noted above, that Air India, was in losses and suffered a cash deficit of ₹250 Crores a month which was being financed by the Ministry of Civil Aviation. So, as put by Mr. Sen the loss of Air India has affected the finances of AIESL, which required cost cutting.

55. Similarly, the plea of Mr. Hegde, that allowances as granted pursuant to the recommendation of Justice Dharmadhikari Committee could not have been reduced, is unmerited. This reduction is common

to all. It is only Aircraft Maintenance Engineers who have approached the Court, but other employees in the engineering department and even Commercial Pilots and also the employees in the general category like HR / Finance, etc. in whose case also there are similar reductions in allowances, have not approached the Court. The policy cannot be set to naught only at the behest of a few employees, that too in such compelling circumstances.

56. It is for the respondents themselves to decide by taking into account relevant considerations to determine what ought to be the appropriate reduction in allowances. As long as the reduction is not palpably arbitrary, the scope of judicial review is very limited. The submission of Mr. Sen that this Court would not like to interfere with the decision-making process in the factual situation is justified.

57. Insofar as, the judgment relied upon by Mr. Hegde in the case of ***Dinavahi Lakshmi Kameswari (supra)***, the same is distinguishable for the following reasons;

a. In the said case, the impugned action was deferment of salary and pension, which is not the case here. The salary has not been touched. So also the pension. It is only the allowances that too only to a certain extent.

b. Given the circumstances arising out of the Covid-19 pandemic, the impugned decisions are taken to keep the entities afloat. Moreover, the rationalisation was done uniformly across the board without any discrimination only to avoid any drastic action.

58. In so far as the Judgments relied upon by Mr. Hegde are concerned, in the cases of ***Manipal Academy of Higher Education (supra)*** and ***Madhavrao Scindia (supra)*** for the propositions already noted above in view of my conclusion above and in view of the facts and the reduction of allowances (and not salary) because of compelling circumstances coupled with the fact that similarly placed employees, having accepted the reduction as also the fact that the Basic Salary, DA and HRA, have not been reduced, I am of the view, the Judgments referred to are distinguishable on facts. Similarly, the Judgments relied upon by Mr. Kohli in the case of ***Ambica Mills (supra)***, ***State of Tamil Nadu & Anr. (supra)***, ***Chiranjit Lal Chowdhuri (supra)***, ***State of Bombay (supra)***, ***Budhan Choudhary (supra)*** and ***Ram Krishna Dalmia (supra)*** in support of his submission that the petitioners have been discriminated inasmuch as all the general category officers and staff, who are related to costs have been spared whereas they, i.e., pilots who are performing the core activity of flying / generating revenue have been arbitrarily fastened with the reduction of allowances, have no applicability in view of the facts based on which, I have held, that there is no discrimination rather there is a justifiable ground in reducing the allowances in the manner they have done for the pilots and engineers.

59. In the peculiar facts of this case, this Court refuses to exercise its power under Article 226 of the Constitution of India.

60. Petitions are dismissed. The dismissal of the writ petition shall not preclude the Ministry of Civil Aviation, to review the impugned decision, if they are empowered to do so in respect of AIESL.

CM No. 1731/2021 in W.P.(C) 11020/2020 (for interim directions)
CM No. 1098/2021 in W.P.(C) 416/2021 (for stay)

61. Since I have heard the parties finally on merits, and dismissed the petitions, these applications are also dismissed.

V. KAMESWAR RAO, J

FEBRUARY 07, 2022*/ds/jg*