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HIGH COURT OF DELHI

Reserved on : 8th May, 2008

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Date of decision: May 30th, 2008

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WP(C)No.1998/2007 & CrI.M. 8439/2007

Capt. P.N. Sharma

..Petitioner

through
Mr. Naresh Kaushik with Mr.Satish
Dayanandan and Ms. Amita
Kalkal, Advocates.

Versus

Chairman-cum-Managing Director,
Indian Airlines Ltd. & Ors.

..Respondents

through
Mr. Parag Tripathi, ASG with
Mr.Apporve Karol, Advocates for
respondents No.1, 3 & 4

Ms. Barkha Babbar with Mr. Liny
K. Nambiar, Advocates for Union
of India/DGCA

Mr. Surender Mann with Mr. Kamal
Shankar, Advocates for
respondent No.5

Coram :

Hon'ble Mr.Justice Manmohan Sarin
Hon'ble Mr.Justice Manmohan

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| (1) | Whether reporters of local paper may be allowed to see the judgment? | Yes |
| (2) | To be referred to the reporter or not? | Yes |
| (3) | Whether the judgment should be reported in the Digest ? | Yes |

Manmohan Sarin, J.

1. Petitioner Capt. P.N. Sharma, has filed this petition, purporting to be in public interest, seeking correction of emergency landing

procedure after take off in respect of Airbus A 320 Bogie aircraft in use with the respondent No.1 Indian Airlines Limited. It is the petitioner's claim that the procedure prescribed by the manufacturers in the Airline Flight Manual (AFM) and the Flight Crew Operating Manual (FCOM) and the Quick Reference Handbook (QRH), regarding mandatory requirements for handling abnormal conditions in respect of Over Weight Landing (OWL) and the Go Around (GA) procedure is deficient, defective and needs correction. Petitioner contends that incorrect procedure is forced upon Pilots resulting in the aircraft being flown in an unsafe manner, risking the lives of the passengers on account of existence and application of wrong, faulty and unsafe procedures.

2. Petitioner claims that he has repeatedly written pointing out the defects but the respondents while acknowledging the concern of the petitioner and to some extent, merits of the petitioner's suggestions, have failed to take necessary steps which they are bound to take in law. It is contended that subject matter of the petition is of vital public interest and of national concern as it involves the safety of those using the aircraft. Petitioner, therefore, assails the procedure published by the respondent No.5 in the Quick Reference Handbook and the Flight Crew Operating Manual in respect of Airbus A 320 Bogie Aircraft as incorrect and unsafe and seeks a direction for the same to be stopped forthwith. Petitioner further seeks a mandamus to the respondents to adopt and adhere to the procedure pointed out by the petitioner and laid down in the AFM and Airbus Industries' publication i.e. "Getting Grips with Airplane Performance" especially in respect of the emergency and abnormal conditions arising in the

flights by the aircraft with regard to Over Weight Landing and the Go Around procedure.

3. Petitioner, a graduate in aeronautics, claims to have 30 years' flying experience of various aircraft such as DC-3, AVRO, Boeing 737, Airbus A 320. Petitioner has also worked as a Deputy General Manager (Operations) of Indian Airlines. He claims to have participated in Special Courts of Inquiry where he was asked to give evidence in accident cases and his assistance sought as an expert. Petitioner stated that he had been rated as a good pilot. He had assisted in the Ahmedabad Boeing crash as also in the Vayudoot inquiry. Petitioner states that he has done considerable research on the inadequacy of training. He had pointed out several inadequacies in the training programme for pilots. He had prepared Fog Operations Training Manual, which even the respondent No.5 found to be very informative and a comprehensive guide for A320 CAT II/III flight operation under fog conditions. In short, petitioner claims to be having the requisite expertise, experience, skill, knowledge and an aptitude for research in such matters. Petitioner claims to have experience of 16,000 flying hours with an incident and accident free record. Petitioner claims to be committed and devoted to improving and bettering the flight operating standards.

4. Petitioner claims to have detected a design defect in the Green Hydraulic System of the A 320 aircraft and had informed the Union of India through DGCA, i.e. respondent No.2, who refused to believe the petitioner's submissions either on account of incompetence or their lack of interest in technical matters. Petitioner also submitted his research work pointing out the above defect to respondent No.5

supported with various drawings, documents etc. Petitioner claims that ultimately, respondent No.5 M/s. Airbus Industries, after due inquiry and investigations, accepted that there was defect in the design of said Hydraulic System. Petitioner claims that the respondents vide their letter of 24.3.1998, acknowledged the defect. However, a perusal of the letter shows that the interpretation sought to be given by the petitioner is rather a self-serving one as would be evident from the following extract from the said reply.

“It has been confirmed that assuming the very specific case of a flight proceeded with abnormal L/G door configuration (partially or fully open) in high altitude, it leads to a cold soak effect on the green hydraulic system that may be followed by the triggering of the ECAM LO LVL warning. Applying the ECAM procedure “HYD G RSVR LO LVL”, will lead to a loss of the green hydraulic system.

The loss of the green hydraulic system is considered as major, whereby the aircraft is flying in normal law and apart from landing gear gravity extension and multiplying the landing distance per 1.1, no specific flight crew action is required. When during the decent the cold soak effect disappears, the fluid quantity indication on the system page may return back to normal and when monitored by the flight crew, the lost system could be recovered.

Based on customer information, such an event can be considered as very remote and the consequences for the operation of the aircraft are minor restrictive. Comparing the low probability and operational consequences with the involved expense to redesign the concerned systems, Airbus does not envisage to realize one of your proposal whereby each would improve the situation described above. There was some delay in answering your letter due to the number of involved Airbus departments during our investigation.”

The last para of the above quoted extract reveals that as per M/s. Airbus Industries evaluation and assessment the possibility of event and consequences as apprehended by the petitioner were

extremely restrictive. The proposal was not found practically feasible. Moreover, the process in which the loss of system is itself recovered has also been described.

5. Notice in the writ petition was issued on 14.3.2007. Pleadings have since been completed. Counter affidavits on behalf of the respondent Nos.1, 2 & 4 as also on behalf of respondent No.5 have been filed.

6. Respondents No.1, 2 & 4 have described the present petition as one having been filed out of personal vendetta and with the intention of settling scores with the answering respondents and its officials. It is stated that the petitioner's professional background has been such that he has tried to implicate his seniors who had found his job performance to be unsatisfactory. It is contended that petitioner suffers from an attitude problem. He found it unpalatable to take instructions from his seniors and often berated them. Respondents state that the correspondence generated by the petitioner indicate, and is suggestive of his suffering from a disturbed mental state. The petitioner had been referred to the Indian Airlines Panel Psychiatrist in March, 2007, who diagnosed him as suffering from anxiety and depression. Respondents in the counter affidavit, have also pointed out basic arithmetical errors by the petitioner, even in simple calculation of the fuel consumption and the weight loss. It is claimed that after the fuel consumption, the weight of the aircraft would be well within the limits prescribed. Further, there has been no event of metal fatigue/failure in the last 18 years in landing where the overweight exceeded 64.5 tons.

7. Respondents have pointed out that the issues sought to be raised by the petitioner are highly technical requiring technical experts to decide the same. The Court neither possesses the expertise nor is the appropriate forum for such an exercise.

8. The respondents aver that the DGCA is the statutory authority having expertise to deal with the contentions raised by the petitioner apart from the manufacturers of the Aircraft. It is rightly averred that the procedures/instructions regarding the operation of the plane in question as mentioned in Flight Crew Operating Manuals and QRH (quick Reference Handbooks) are strictly adhered to. The Standard Operating Procedure, Normal and Abnormal Procedures and the Emergency Procedures as formulated by the manufacturers of the Aircraft are also required to be strictly followed. Each aircraft has to have a certificate of airworthiness. The answering respondents No.1, 3 & 4 cannot on their own change the instructions. Specific approval of both the manufacturer of the aircraft in question and the regulatory authority of Civil Aviation in India, i.e. DGCA is required. The aircraft in question is used by Indian Airlines as an operator for public transport. Its airworthiness is certified by the statutory authority of the country of origin. Respondent No.5 after following the due process of flight testing, research and development and meeting the requirement of public airplane performance, standards acceptable worldwide in aviation, has prescribed the procedures. While flying the Aircraft in India, the procedure adopted by the Pilots is based upon the documents provided by respondent No.5 manufacturer and a certificate of airworthiness is issued by DGCA.

As regards the training to be imparted to Pilots, it is based upon the procedure and curriculum approved by respondent No.5 as well as DGCA.

9. Respondents have explained that they have an in-built procedure in which the inputs and feedback from Pilots are taken into consideration and the Central Training Establishment (CTE) is the coordinating agency to channelize these concerns of the Pilots with respondent No.5. The airworthiness of the aircraft is continuously monitored through a system of surveillance checks, line checks, flight data recorder and investigation of incidents involving malfunctioning of the aircraft system. It is stated that the answering respondents on receiving petitioner's communications, had taken up the matter with M/s.Airbus Industries and also formed a Review Committee with CTE at Hyderabad to examine the suggestions made. The Committee duly examined the same and its report/comments were forwarded to petitioner in March, 2007. Respondent No.5 M/s. Airbus Industries, after a detailed and comprehensive consideration, have not considered it necessary to amend the procedures as suggested by the petitioner. Respondents have also pointed out that the aircraft in question has been flying with the Indian Airlines since 1987 and the petitioner had got his endorsement on 26.11.1992. Yet, he never raised these queries regarding the procedure for Over Weight Landing (OWL) and Go Around (GA) procedure prior to 2007. It is contended that these concerns are clearly an afterthought and as a result of the petitioner's own personal prejudices.

10. Petitioner had made several allegations of callousness, negligence and failure to discharge their respective statutory and

other duties on the part of answering respondents due to their declining to accept his suggestions and amendments, petitioner attributes negligence and apathy to flight safety to the respondents.

11. We have carefully considered the written submissions made as well as the pleadings on record. The issues sought to be raised by the petitioner are highly technical. The DGCA is the authority cast with the responsibility of implementing, controlling and supervising airworthiness standards, safety operations, crew training in India and, therefore, is best suited to rectify the technical shortcomings, if any, in the aircraft. The suggestions of the petitioner had been given due consideration by the manufacturers M/s. Airbus Industries, who have large stakes involved all over the world, who after a comprehensive evaluation of the suggestions and alleged defects as pointed out, found that the suggestions made by the petitioner were not practically feasible. It appears that petitioner is projecting miniscule inconsequential suggestions as being of seminal importance, critical and deserving acceptance, so as to project and establish his credentials.

12. We may also notice here that M/s. Airbus Industries apart from protecting their reputation for flight safety, have high commercial stakes in the matter. For all such manufacturers, flight safety is of paramount importance and towards this end, if any suggestion comes for improvement, the manufacturer of necessity would examine it so as not to leave any measure to ensure total safety of aircraft, essential for their very survival far from allowing any defence mechanism to set in. However, the alleged defects pointed out by the petitioner did not find favour by the respondent Indian Airlines, their

experts, the CTE Committee, the manufacturers of aircraft, i.e. the Airbus Industries, the Director General of Civil Aviation, the duly constituted authority. All the different agencies and authorities and the manufacturers have found the aircraft airworthy and the suggestions made by the petitioner neither necessary nor feasible nor acceptable. We are of the view that the matter must rest with the finding and opinion of the above experts and not permitted to be agitated any further.

13. We may notice that the petitioner has also instituted a civil suit being CS(OS)No.1106/2007 titled Capt. P.N. Sharma Vs. CMD, Indian Airlines Limited against the Indian Airlines Ltd. Senior Officers namely Capt. N.V.S. Chandoke, Executive Director (Operations), Capt. R. Nagar, Executive Director (Flight Safety) and M/s. Airbus Industries were impleaded as respondents. The suit was filed for recovery of Rs.2,60,00,000/- (Rupees Two Crore Sixty lacs only) as compensation and damages. Petitioner claims that he has been rendered medically unfit by constant and relentless harassment at the work place. Petitioner has been allegedly subjected to unwarranted inconvenience, hardship, discomfiture, frustration and mental stress of forcing him to fly unsafe aircraft. Petitioner claims that he would have continued with 10 years of flying career and his active flying life has been curtailed on account of the torturous regime under which the petitioner was forced to work. Petitioner claimed compensation computed at Rs.1,60,00,000/- based on his annual salary of Rs.48,00,000/- and 10 active flying years left. Exemplary damages were also prayed for being forced to command an aircraft that was sub-standard and was not airworthy and thus, being exposed to risk

of life. While deciding the Writ Petition, we do not wish to make any observation which would prejudice or affect the outcome to the pending suit and have accordingly confined ourselves to disposal of the Writ Petition itself. Law will take its own course as regards the proceedings in the suit are concerned.

14. Learned counsel for the respondents and the learned Additional Solicitor General have urged that this is petition is an abuse of the legal process and of public interest litigation. Reliance has been placed on an observation of the Supreme Court in "*Neetu Vs. State of Punjab & Ors.*" reported at **AIR 2007 SC 758** to urge that the attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Court should not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Such petition deserves to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs. We are of the view that the present petition is without merit and is misuse of public interest litigation.

15. Respondents have claimed that petitioner was suffering from an attitude problem and also anxiety and depression. In these circumstances, we would give to the petitioner the benefit of doubt that it may be the action of a person, who misdirected himself and not one with oblique motives. Accordingly, we refrain from levying exemplary costs on the petitioner but dismiss the petition with nominal costs of Rs.10,000/- to be paid to the Delhi High Court Legal Services Committee.

In view of dismissal of petition, application under section 340 Cr.P.C also stands dismissed, which is even otherwise devoid of merit.

Manmohan Sarin, J.

May 30th, 2008
Rk

Manmohan, J.