

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

+ **WP(C) No.2741/2011**

% Date of Reserve: 24.04.2012  
Date of Decision: 01.05.2012

WG. CRD. (RETD.) V.A. JOSHI & ORS. ....Petitioners  
Through: Mr. Sanjeev Narula, Mr. Ashish  
Virmani, Advocates

Versus

UNION OF INDIA & ANOTHER .....Respondents  
Through Mr. Sachin Datta, Mr. Kapil  
Wadhwa, Advs. for UOI

**CORAM :-**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**A.K. SIKRI, Acting Chief Justice**

1. By means of this writ petition, the petitioners challenged the vires of the amendment to Clause 6 of Section M of Schedule II of the Aircraft Rules, 1937 published in GSR No.11(E) dated 10.1.2011. The operative portion of the said amendment with which the petitioners feel aggrieved reads as under:

“3. In Schedule II of the said rules, -

(i) in Sections B, C, D, E, F, G, H, I, J, K, M, N, U, V, W, X, Y and Z, for paragraph 2, the following paragraph shall be substituted, namely:-

“2. **Validity** – The licence shall be valid for a period as specified in rule 39C.”

(ii) in Sections J and M, in paragraph 6, after the second and third proviso, respectively, the following proviso shall be inserted, namely:-

“Provided also that on attainment of the age of sixty-five years, such privileges shall be restricted to that of Private Pilot’s Licence (Aeroplanes).”

2. By the aforesaid amendment, the respondents have restricted the privileges of the petitioners, who are holders of airline transport pilot licences, on the attainment of age of sixty-five years to that of private pilot licence holders. According to the petitioners, the impugned amendment has, in effect, infringed their rights to earn livelihood and remuneration and to be gainfully employed for the purpose of flying private aircrafts on non-commercial flight operations. This, they perceive, is violating their fundamental rights guaranteed under Article 14, 19(1)(G) and 21 of the Constitution of India as according to the petitioners, this amendment imposes unreasonable restrictions which serve no purpose and ex facie appear to be an act out of vindictiveness. The basic factual matrix of the lis raised in this petition goes as under:
3. As per the petitioners, they are experienced pilots holding ALTP (Air Line Transport Pilot) License and all of them have flying experience of more than 10,000 hours each. They have been pilots for the last 35 to 40 years and most of them have retired from Indian Air Force. All of them are above 65 years of age. There are various categories of Pilot Licenses as provided under the Aircraft Rules, 1937. For the purpose of the present petition, we may take note of the major three categories of licenses, namely, (a) Airline Transport Pilot License (ATPL or ALPT); (b) Commercial Pilot License; and (c) Private Pilot License. All the petitioners herein hold ALTP Licenses. Prior

to the impugned amendment, the petitioners who are above 65 years of age, were permitted to fly private aircrafts for non-commercial flight operations. There was no restriction under any of the provisions of the Act or the Rules framed thereunder or the CARs prohibiting pilots above 65 years of age from undertaking non-commercial flight operations for remuneration. The only provision under the Rules dealing with the maximum age limit for commercial flight operations was Rule 28A of the Rules. The petitioners were thus employed with private organization, PSUs, State Governments, who had their private aircrafts. The petitioners were flying such aircrafts for non-commercial flight operations, i.e., no fee was being charged from the passengers in the aircraft. Prior to 17.11.2005, Rule 28A was based on earlier GSR 251 dated 20.7.1999, which read as under:-

**“28A. Maximum age limit for professional pilots.-**

(1) No person, holding a professional pilot license i.e. a commercial, senior commercial or air transport pilot's license, shall engage himself in scheduled air services or non-scheduled aircraft operations for remuneration or hire after attaining the age of 60 years.”

4. Vide Notification No. G.S.R. 676 (E) (17-Nov-05) dated 17.11.2005 by an amendment in Rule 28A of Aircraft Rules, 1937, the said Rule was substituted to read as follows:-

**“28A. Maximum age limit for professional pilots.-**

(1) No person, holding a pilot's license issued under these rules and having attained the age of sixty-five years, shall act as Pilot-in-Command or Co-pilot of an aircraft engaged in commercial air transport operations.

(2) No person holding a pilot's license issued under these rules and having attained the age of sixty years, shall act as Pilot-in-Command or Co-pilot of an aircraft

engaged in commercial air transport operations unless it is operated in a multi-crew environment and the other pilot is less than sixty years of age.”

5. The aforesaid rule, as it existed, permitted the pilots, even after the age of 65 years, to fly/engage in non-commercial air transport operations as it does not restrict those pilots holding ALPT licenses from flying private aircraft for non-commercial operations. According to the petitioners, even when this was the legal position, on the plain reading of Rule 28A of the Aircraft Rules, the Joint Director General of Civil Aviation issued a circular Notification dated 25.6.2008 incorrectly interpreting the aforesaid rule and thereby imposing a virtual ban on the persons above the age of 65 years from even flying non-commercial aircrafts, whether scheduled or unscheduled. Some of the petitioners, therefore, challenged this Notification by filing Writ Petition No.5850/2008. Entertaining this petition, order dated 16.10.2008 was passed by this Court granting interim stay of the operation of the aforesaid communication dated 25.6.2008. However, thereafter the impugned amendment was made in Clause 6 of Section M to Schedule II of the Rules. This amendment in the rules was informed to the Court in the aforesaid pending writ petition. Taking note thereof, the writ petition was disposed of vide order dated 9.2.2011 holding that the said writ petition had become infructuous. At the same time, liberty was granted to the petitioners to challenge the said amendment. This is how the present writ petition has been filed.
6. In order to understand the impact of the amendment, it would be necessary to reproduce the entire Clause 6 of Section M to Schedule II of the Rules. The said clause with amendment reads as under:

**“6. Privileges** — Subject to the validity of endorsements and ratings in the licence and compliance with the relevant provisions of Rules 39B, 39C and 42 of the Aircraft Rules, 1937, the privileges of the holder of an Airline Transport Pilot’s Licence shall be :—

(a) to exercise the privileges of a private, a Commercial and a Senior Commercial Pilot’s Licence;

(b) to act as Pilot-in-Command or as Co-Pilot of any aeroplane where a Co-Pilot is required to be carried and which is entered in the aircraft rating of his licence:

Provided that he shall not act as Pilot-in-Command of an aeroplane having a all-up-weight exceeding five thousand seven hundred Kgs. unless he has completed on that type of aeroplane not less than one hundred hours of flight time as a Co-Pilot, followed by ten consecutive satisfactory route checks of which not less than five shall be by night under the supervision of a Check Pilot, performing the duties and functions of a Pilot-in-command and has demonstrated his competency to fly as a Pilot-in-Command to the satisfaction of the Director-General.

Provided further that for all flights as Pilot-in-Command or as Co-Pilot on transport aeroplanes having an all-up-weight exceeding five thousand seven hundred Kgs., he shall have undergone satisfactorily within the preceding six months of the intended flight, appropriate proficiency checks in respect of that type of aircraft as required by the Director-General.

Provided also that for all IFR flights as Pilot-in-Command or as Co-pilot, he shall be required to have current Instrument Rating.

**Provided also that on attainment of the age of sixty-five years, such privileges shall be restricted to that of Private Pilot’s Licence (Aeroplanes).”**

*[Highlighted portion incorporated by way of amendment]*

7. It is the case of the petitioner that the requirements for issue of ALTP, validity, renewal, aircraft rating and privileges are provided in Section M of Schedule II of the Aircraft Rules, 1937. Neither prior to amendment of the Rules on 10.1.2011 nor thereafter there has been any upper age limit for an applicant to hold an ALTP. It is the submission of the petitioners that Rule 28A of the Rules imposes restrictions/embargo only in case of commercial operations by persons above the age of 65 years. The term “commercial air transport operations” has not been defined anywhere. In any case, no restrictions are put on the pilots above the age of 65 years to fly non-commercial aircrafts. Reference was made to Rule 3(43), (45) and (46) which define private aircraft, public transport and public transport aircraft respectively. Further, rule 3(9) defines air transport service. It was argued that one can gather the meaning of commercial air transport operation from these definitions to mean only those operations where public transport and public aircraft, to carry the passengers on commercial basis, are operated and would not apply to flying private aircrafts. It was thus argued that without amending Rule 28A, such an embargo could not be put by adding proviso to Clause 6 of Section M to Schedule II of the Aircraft Rules.
8. It was further contended that Clause 6 of Section M dealt with privileges which the holders of license were entitled to enjoy which could not prescribe any such upper age limit by way of impugned amendment.
9. It was also the submission of the petitioners that the impugned amendment restricting the pilots, above the age of 65 years, from

flying even non commercial aircraft was totally arbitrary and had no nexus with the objective sought to be achieved. The submission in this behalf was that age had nothing to do with the capability and capacity to fly. According to the petitioners, whether a pilot should be entitled to fly a non-commercial aircraft or not can have nexus only with the health of such a pilot. It was submitted that there were various provisions in the Aircraft Act, 1934 as well as Aircraft Rules, 1937 which take care of this requirement to ensure the safety of the aircraft and its passengers inasmuch as the pilots flying aircrafts are given licenses only if they are medically fit and otherwise competent and fulfill the eligibility criteria laid down under the Rules. In the instant case, the eligibility criteria and requirement insofar as the educational qualification, knowledge, experience and other requirements are concerned, are not in question. Therefore, critical analysis may be required only insofar as the medical fitness required for the renewal of an ALTP license above the age of 65 years. Reference was made to Section 5A of the Aircraft Act, 1934 which empowers the Director General to issue directions for securing the safety of the aircraft operations. Provisions of Rule 29C of the Rules were also highlighted which enable DGCA to lay down standards and procedures not inconsistent with the Aircraft Act and the Rules made thereunder to carry out conventions. As per Rule 33A of the Rules, DGCA is entitled to issue, inter alia, civil aviation requirements not inconsistent with the Aircraft Act and the Rules made thereunder. Likewise, Section 4 of the Act enables the Central Government to make rules to implement the convention relating to International Civil Aviation signed at Chicago on 7<sup>th</sup> December, 1944. Rule 39B of the Rules as well as provision of Civil Aviation Requirements (CAR) were shown to

contend that adequate measures were in force to ensure that pilots who operates an aircraft is medically fit to undertake such operation. Rule 39B which deals with the medical standards prescribed for issuance/renewal of license.

10. It is, therefore, submitted by the petitioners that once the petitioners meet and fulfill the strict medical requirements, the restriction imposed on them by the impugned proviso to fly aircrafts for non-commercial operations would infringe upon their right to earn livelihood. It was thus submitted that once a pilot is required to undergo the aforesaid strict medical test requirements and his license is renewed only after qualifying the aforesaid medical standards, age could not be the criteria to deny the holder of such a valid license to operate even non-commercial air transport. It was thus submitted that no empirical study was done before introducing such a provision which also made this provision arbitrary. Reliance was placed on the judgment of the Supreme Court in the case of ***B.P. Sharma v. Union of India & Ors., (2003) 7 SCC 309*** in support of the proposition that putting age restrictions and imposing a ban on carrying on private operation or self-employment on attaining a certain age was unconstitutional, particularly in the absence of any strong reasons therefor.
11. To sum up, the impugned amendment is questioned on the following basis:
  - a. Such a restriction could not be imposed by amending Clause 6 of Section M to Schedule II, which dealt with privileges, without making appropriate amendment in Rule 28A of the Aircraft Rules, 1937.

- b. The impugned amendment was arbitrary and violative of Article 14 of the Constitution of India as upper age limit had no nexus with the objective sought to be achieved. According to the petitioners, relevant consideration in this behalf was the medical fitness and not the age and prescribing the maximum age limit without even any empirical study was clearly a measure based on the whims of the respondents.
12. The respondents have contested the aforesaid petition by filing the counter affidavit. It is the submission of the respondents that the necessity of introducing this provision was felt when it came to the notice of the DGCA that even non-scheduled aircrafts were essentially being used for commercial purposes as against the Rule 28A as amended by Notification No. GSR676 (E) dated 17.11.2005. In cases of aircrafts owned by different corporate houses etc. having registered their aircraft under passenger category are being used at times for the employees of the corporate house for commercial activities. To illustrate upon the above said contention, the respondent has elaborated upon with few examples which fall under the category of Commercial Purpose despite use of Non-Scheduled Aircraft:
- (a) Carriage of business customers in a Non-Scheduled aircraft from one place to another.
  - (b) Use of a Non-Scheduled Aircraft for the purpose of transportation of officers in the senior management of a Company for attending client meetings/conferences/summits/business deals etc.
  - (c) Use of non-Scheduled aircraft for purposes of on-site visits, i.e. visit of mines or a visit of a rig of the said company.

It was argued that as regards remuneration, it is aptly clear that the definition of the public transport in the Aircraft Rules includes in its ambit remuneration of any nature whatsoever.

*“Public transport: means all carriage of persons or things effected by aircraft for a remuneration of any nature whatsoever, and all carriage of persons or things effected by aircraft without such remuneration if the carriage is effected by an air transport undertaking.”*

13. It was submitted that the aforesaid provision exemplify that pilots above 65 years of age cannot be permitted to fly the aircraft owned under private category but used for transport of the employees/associates of a company for commercial purposes. Therefore, from safety point of view, it was necessary to put a bar on use of Non-Scheduled Aircrafts being used for the purposes of “Commercial Transactions” of Corporate Houses and State Governments for remuneration of different kinds. Accordingly, it was deemed necessary to issue a clarification stating that all the operators including State Government must not employ Private Pilot License Holders who are above the age of 65 years even if their aircrafts are registered under private category.
14. It is also the case of the respondents that the amendment is only clarificatory in nature and such a provision is inherent in Rule 28A of the Rules which puts an embargo on undertaking of “commercial air transport operation” by pilot after the age of 65 years. It is also the case of the respondents that earlier communication dated 25.6.2008 was justifiably issued which had not been set aside in the first round of litigation. According to the respondents, the impugned communication dated 25.6.2008, has been issued in view of safety of

aircraft operations in conformity with the International Standards. The said letter was issued with due approval of the Director General of Civil Aviation. Learned counsel for the respondents highlighted the distinction between the unamended Rule 28A and its implications after the amendment. He pointed out that the unamended provision dealt with scheduled and non scheduled aircraft operations only whereas after the amendment, embargo was put on flying commercial aircraft by the pilots who are more than 65 years of age which includes third category of embargo, i.e. corporate client.

15. In rebuttal, counsel for the petitioner submitted that no such third category could be read in the amendment to Rule 28A more so when this was not going to help in any way. Interpretation to Rule 28A as suggested by the Respondent was also questioned and it was submitted that even as per DGCA, amended Rule 28A permitted a pilot holding an appropriate license to continue to fly for remuneration except flying an aircraft engaged in scheduled air service or non-scheduled commercial air transport operations. We have given our due consideration to the aforesaid submissions made by learned counsel for the parties on both sides.
16. The pleadings and submissions of the parties, as noted above, show that there are two points which need consideration and the view we take on these issues shall determine the outcome of this case. These are:
  - (i) Whether amendment in Rule 28A of the Aircraft Rules, 1937 was necessary to incorporate the provision of upper age limit or it could be done by amending Clause 6 of Section M to Schedule II only?

- (ii) Whether the impugned amendment is arbitrary and violative of Article 14 of the Constitution of India.

***Issue No.1***

17. Section 5 gives power to the Central Government to make rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operations. Under sub-section (2) of Section 5, specific areas are specified relating to which rules can be framed. Section 7 gives power to the Central Government to make rules for investigation of accidents. Sub-section (2) of Section 8 empowers the Central Government to make rules regulating all matters incidental or subsidiary to the exercise of power to detain aircraft. There is no dispute that under these provisions, Central Government has the power to regulate air transport services etc. which would include eligibility conditions which pilots are required to fulfill in order to enable them to undertake air transport operation - commercial, non-commercial etc. Rule 28A deals with maximum age limit for professional pilots. Vires of these rules are not under challenge. Thus, the petitioners accept that the Central Government even has power to fix maximum age limit for professional pilots. The argument is altogether different. Contention is that if the Central Government wanted to put age restriction for pilots holding valid ALTP licenses from flying private aircraft for non-commercial operations, then this could have been done by amending Rule 28A of the Rules and not otherwise. It is argued that Rule 28A, in its existing form, imposes restriction/embargo only in case of commercial operations by persons above the age of 65 years and

there is no restriction for such category of persons to fly private aircraft for non-commercial operations. No doubt, no provision is inserted in this behalf by amending Rule 28A. On the other hand, it is Clause 6 of Section M to Schedule II of the Rules which is amended incorporating such a provision. Schedule II to the Aircraft Rules, 1937 deals with “aircraft personnel”. This schedule has reference to Section 7 and Part V. Rule 7 mentions the documents which are to be carried on aircrafts by a person who is flying an aircraft as well as the documents which any aircraft registered in India is to carry on board as required by these rules. Section M in Schedule II deals with “Airline Transport Pilot’s Licence (Aeroplanes)”. Clause 1 thereof stipulates requirements for issue of licenses and inter alia mentions minimum age, educational qualification, medical fitness, knowledge, experience, skill etc. Clause 2 deals with validity of the license issued for this purpose. Under Clause 3, procedure for renewal of license is stated. Clauses 4 and 5 talk about ratings of aircraft, instructor and instrument as well as extension of aircraft ratings. Clause 6 (with which we are concerned) mentions about the privileges which the holder of an Airline Transport Pilot is granted. Sub-clause (a) thereof states that the privilege of the holder of an airline transport pilots licence shall be to exercise the privileges of a private, a commercial and a senior commercial pilot’s license. Sub-clause (b) grants a privilege to act as Pilot-in-Command or as Co-Pilot of any aeroplane where a Co-Pilot is required to be carried and which is entered in the aircraft rating of his licence. To this sub-clause, by way of amendment, 4th proviso is added as per which on attainment of the age of sixty-five years, such privileges shall be restricted to that of Private Pilot’s Licence (Aeroplanes). We are of the opinion that in clause 6 when

privileges are mentioned and these privileges are subject to certain conditions contained in various provisos, it was open to the Government to put the condition of age restriction to enjoy this privilege. Therefore, we do not agree with the contention of learned counsel for the petitioner that age restriction could not be provided by amending Clause 6 of Section M to Schedule II of the Rules. No doubt, Rule 28A specifically deals with maximum age limit for pilots and it could have been better to amend Rule 28A for incorporating the aforesaid age restriction in case of non-commercial air transport operations as well. However, that would not mean that purpose could not be achieved by amending Clause 6 of Section M to Schedule II of the Rules, even if it is presumed to be a case of imperfect legislative drafting. After all, both Schedule II as well as Rule 28A are the part of same aircraft rules. Rule making authority is Central Government. The amendment whether to Rule 28A or to Schedule II is to be carried out in the same manner by following same procedure. The amendment to rule is not challenged as ultra vires. Contention raised is that there should have been amendment to Rule 28A and not in Schedule II. This would hardly be of any legal consequence.

18. We, therefore, do not find any merit in this contention. For this reason, it is not necessary to deal with the contention of the respondent that the amendment is only clarificatory in nature and such a provision is inherent in Rule 28A of the Rules.

### ***Issue No.2***

19. We now proceed to deal with the second contention which was argued with much more force by learned counsel for the petitioner,

namely, age of a pilot had no nexus with the objective sought to be achieved particularly from flying non-commercial aircraft. As recorded above, the submission was that whether a pilot should be entitled to fly a non commercial aircraft or not shall have nexus only with the health of such a pilot.

20. No doubt, there are various provisions in the Aircraft Act as well as Aircraft Rules which take care of safety requirements, namely, safety of aircraft as well as its passengers. A person before becoming a pilot and entitled to the privileges of a pilot is supposed to meet the eligibility criteria and requirement regarding educational qualification, knowledge, experience and other requirements. There are various medical fitness standards prescribed for a pilot and sufficient provisions are made to ensure the medical fitness required for renewal of an ALTP licence above the age of 65 years. Provisions in Civil Aviation Requirement (CAR) are also made for this purpose.
21. Rule 39B which deals with the medical standards prescribed for issuance/renewal of licence is reproduced below:

**“39B. Medical standards** - (1) No licence or rating referred to in rule 38, required for any of the personnel of the aircraft, shall be issued or renewed unless the applicant undergoes a medical examination with an approved medical authority and satisfies the medical standards as notified by the Director-General:

Provided that if in the opinion of the approved medical authority the condition of the applicant is not such as to introduce any hazard either of sudden incapacity or of inability to perform his duties safely during the period of validity of his licence or rating and failure to attain the requirement is capable of being compensated and the Director-General has satisfactory evidence that the

applicant has already acquired and demonstrated his ability, skill and experience which compensate for his deficiency, the licence or rating may be renewed or endorsed with any special limitation when the safe performance of flight duties is dependent on compliance with such limitations :

Provided further that, in the case of a member of the operating crew of an aircraft engaged in public transport or aerial work who is on duty in the territory of a foreign country where medical centres recognized by the Director-General do not exist, the Director-General may renew the licence or rating for two consecutive periods of three months each without the candidate having successfully undergone the prescribed medical examination if such candidate produces a medical certificate from a registered practitioner in modern medicine declaring his fitness in accordance with the prescribed medical standards.

*Explanation-* For the purposes of this sub-rule 'approved medical authority' means a medical authority approved by the Director-General.

(2) The Director-General may require a member of any flight crew to undergo a medical examination by any Medical Authority at any time, if, in his opinion, such examination is necessary in the interest of safety of operations.

22. The primary activity of the Medical section of DGCA is the scrutiny and approval of medical records required for the certification of Licensed Aviation Personnel. All medical documents for Class I and Class II Medical examinations conducted at DGCA approved medical Examiners, as applicable, are assessed for completion and correctness by the Joint Director Medical Services (Civil Aviation) who is the Medical Assessor at DGCA. The DGCA issues medical assessment in accordance with the International Standards and

Recommended Practices as contained in ICAO Annex 1 and as stipulated in Rule 39B of the Rules.

23. As per the CAR referred above, the petitioners undergo Class 1 Medical Assessment requiring medical examinations/tests every six months, as prescribed under the Aircraft Rules, 1937. Since they are above the age of 65 years, during every second medical examination/test, i.e. in one year's time, the petitioners undergo specialized major medical tests for ascertaining the fitness of individual organs of the body like heart viz. EEG, ECG, USG, 2D ECHO, Chest X-Ray, Tread Mill Test, Lipid Profile, Audiometry, Full Eyes Test and some more. Details and purposes sought to be achieved by these tests are given herein below:

- A. Electroencephalogram (EEG) – This test evaluates electrical activity produced by the brain, which can signify or rule out certain conditions, most commonly seizure disorders. The EEG takes about an hour to complete, and the results are automatically sketched on paper, while a video monitor records the movement of the patient, which can disrupt the test.

As the test progresses, if it is used to examine seizure disorder, a person may be directed to look at flashing lights, which might trigger a seizure. The lights are stopped if evidence from the EEG shows that a person is in pre-seizure made. Thus the person generally does not have a seizure, but shows electrical activity consistent with what would become a seizure.

- B. Electrocardiogram (ECG or EKG) is a diagnostic tool that measures and records the electrical activity of the heart in exquisite detail. Interpretation of these details allows diagnosis

of a wide range of heart conditions. These conditions can vary from minor to life threatening.

C. Lipid Profile is a group of tests that are often ordered together to determine risk of coronary heart disease. They are tests that have been shown to be good indicators of whether someone is likely to have a heart attack or stroke caused by blockage of blood vessels or hardening of the arteries (arthrosclerosis). The lipid profile typically includes:

- (i) Total cholesterol
- (ii) High density lipoprotein cholesterol (HDL-C) – often called good cholesterol
- (iii) Low density lipoprotein cholesterol (LDL-C) – often called bad cholesterol
- (iv) Triglycerides
- (v) Very low density lipoprotein cholesterol (VLDL-C)
- (vi) Non-HDL-C

D. 2D Echocardiogram is a test in which ultrasound is used to examine the heart. In addition to providing single-dimension images, known as M-mode echo that allows accurate measurement of the heart chambers, the echocardiogram also offers far more sophisticated and advanced imaging. This is known as two-dimensional (2-D) Echo and is capable of displaying a cross-sectional “slice” of the beating heart, including the chambers, valves and the major blood vessels that exit from the left and right ventricle. It reveals the size of the chambers of the heart, including the dimension or volume of the cavity and the thickness of the walls. The appearance of the

walls may also help identify certain types of heart disease that predominantly involve the heart muscle.

Echocardiography can also identify if the heart is pumping poorly due to a condition known as cardiomyopathy (pronounced cardio-myo-puth-e), or if one or more isolated areas have depressed movement (due to prior heart attacks). Thus, echocardiography can assess the pumping ability of each chamber of the heart and also the movement of each visualized wall.

- E. Chest X-Ray: It is a procedure used to evaluate organs and structures within the chest for symptoms of disease. Chest X rays include views of the lungs, heart, small portions of the gastrointestinal tract, thyroid gland, and the bones of the chest area.
- F. Audiometry – This test for testing hearing ability of a person. It determines the hearing levels with the help of an audiometer, but may also measure ability to discriminate between different sound intensities, recognize pitch, or distinguished speech from background noise. Acoustic reflex and otoacoustic emissions may also be measured. Results of audiometric tests are used to diagnose hearing loss or disease of the ear, and often make use of an Audiogram. The most commonly used assessment of hearing is the determination of the threshold of audibility, i.e. the level of sound required to be just audible.
- G. Full Eyes Test: A battery of tests are performed by ophthalmologists, optometrists, or ophthoptists assessing vision and ability to focus on and discern objects, as well as other tests and examinations pertaining to the eyes.

24. Besides the aforesaid three major medical tests, the petitioners are also required to undergo very specialized medical tests like Holter, BP Ambulatory, etc. based on necessity and requirement. The strict regiment provided for Class 1 medical assessment ensures that the pilots above the age of 60 (65 and above in the present case) meet the international medical requirements for flying an aircraft.
25. It is not the case of the respondents that a licence of a pilot who attains the age of 65 years cannot be renewed at all. Only stricter medical standards of CAR measures are provided before the pilot license of such persons is renewed.
26. In this backdrop, the question is as to whether there can be an embargo on flying non-commercial aircraft merely on the ground of age even when he is otherwise found fit. In ***B.P. Sharma v. Union of India, (2003) 7 SCC 309***, the respondents had fixed upper age limit of 60 years for ‘guides’ by amendment to Ancient Monuments and Archeological Sites and Remains Rules, 1959. Respondents had sought to justify the fixation of such age limit on the ground that normally a person after the age of 60 years tend to lack physical stamina which the nature of the job very much require. Striking down this rule fixing upper age limit of 60 years as violative of Article 14, the Court has held as under:

“14. So far as the fixation of age beyond which it is provided under the Clause No. 17 that the identity card shall not be renewed, does not seem to be within the scope of the provisions indicated above. The guides profess their independent profession. Since they come in touch and have to deal with the members of public and the tourists from within and outside the country, the Government of India considered it necessary to regulate the conditions of their profession. For example the fee etc. which would be chargeable by them, the way they

will conduct their profession and behave with the tourists and many do's and don't's have been provided. So far so good, since it is undoubtedly only regulatory in nature and they have to conform to certain norms laid necessarily suitable for the profession, which as a matter of fact is for the benefit and to protect the interest of the visitors and tourists seeking access to the protected monuments. But otherwise the State or the Government of India does not figure into the picture in any role whatsoever. There is no relationship of master and servant between them nor there exists any contractual relationship. No benefit is conferred nor any emolument etc. is payable to the guides by the Government. No kind of protection nor any other benefit is provided to them by the Government. This is as much a matter of self-employment and private profession, as many others. In absence of any such relationship as that of master and servant or contractual in nature, ordinarily there would be no good reason for the State to completely prohibit at its choice, to carry on a private profession or self-employment, on attaining a certain age. The High Court expressed its agreement with an earlier decision of Allahabad High Court in the case of Virender Kumar Chadha (supra) which in turn expressed its agreement with reasons given in the case of J.K. Agarwal (supra), a passage from which has been quoted earlier. In the case of J.K. Agarwal (supra), a distinction has been sought to be made between the profession of the tourists guides and the professions like that of lawyers and doctors and it has been observed that while the latter are primarily concerned with mental skills and mental faculties the former relates basically to physical or manual conditions. It cannot be said that the doctors and lawyers do not need to have energy, stamina and strength to practice their profession, though may be it is required lesser in degree. We feel that this kind of a distinction is misconceived in the matter of private profession which is self-employment of a person equipped in a particular discipline or profession; it is better left to the client, patient or consumer of the related service to choose as to whose services they may like to avail of. Besides doctors and lawyers there are innumerable categories of persons who are self-employed, earning their livelihood exerting themselves

physically and manually also. It does not mean that they can be subjected to total curtailment of their right to earn their livelihood at any given stage. We also fail to understand the logic that young and energetic guides would certainly promote better tourism business. The visitors come to see the places of interest, not because of the energetic guides but due to the importance of a monument, its beauty, historical background or things like that. If young and old guides both are available, it would be for the visitors to choose whom to engage; those who are less energetic may not undertake very arduous engagement and may still be able to perform and profess their profession restricting their activities according to their ability to manage the assignment. At times it is quite possible that a more matured and elder guide may be more informative and may make the tour more interesting. Hence, in private professions it is better left to the consumer of the service to make his own choice, whatever be the profession. The observation in J.K. Agrawal's case (*supra*) that a Guide may not bother about the conditions laid for approved guides and may continue with the work of guide; true, there is no such restriction for it under Rule 8(d) but it cannot be with charges for the job. Where there may be no such restriction without charges there is no good reason to prohibit charging for it. A profession cannot be carried on without any remuneration. Therefore, the line of reasoning adopted in the case of J.K. Agarwal (*supra*) with which agreement has been expressed in the case of Virender Kumar Chadha (*supra*) followed in the impugned judgment does not appeal to reason. Regulatory measures may be for better efficiency, conduct and behavior in the public interest, but ordinarily it cannot prohibit a person totally debarring him from carrying on his profession at an age chosen by the Government unless there may be special reasons for it.

15. The right which is guaranteed to all citizens under Article 19(1)(g) of the Constitution of India is to practice any profession or to carry on any calling, trade or business. Clause (6) of Article 19(1) however, places a restriction that nothing would prevent the State from making any law imposing reasonable restrictions in

exercise of the right in the interest of general public. Sub-clauses (i) and (ii) further provide that professional and technical qualification as may be thought necessary for practicing the profession can always be prescribed and exclusion of carrying on of any calling, trade or business etc. is also envisaged which is also carried on by a State or by a Corporation owned and controlled by the State, Subject to above noted restrictions the valuable right as provided under Article 19(1)(g) is available to all the citizens who are free to choose any trade, business, calling or profession etc. It obviously, also includes the manner and terms in which they will carry on their profession, but again subject to reasonable restrictions which may be thought necessary by the State in the interest of general public. On the other hand, once a citizen voluntarily chooses to join government service or any other service, he would obviously be free to do so but he would be bound by the terms and conditions of the service as may be provided under the law or by contract of service.”

27. We are not unmindful of the fact that in the aforesaid case, upper age limit of 60 years was fixed for ‘guides’ and the job of guides may be altogether different from the functions which are to be performed by a pilot. At the same time, the decision has to be based on some cogent material so that the application of mind is discernible therefrom. Learned counsel for the petitioner also appears to be right in his submission that no empirical study is undertaken on this aspect, namely, it may not be safe to permit a pilot above the age of 65 years to fly a non-commercial aircraft. The matter is not examined from this angle at all. No doubt, Central Government is given power to make rules regulating the grant of licence of a pilot and the privileges which the pilot shall enjoy. At the same time, it has to be based on strong reasons therefor.

28. In these circumstances, we remit the matter back to the respondents for proper and thorough examination of the issue and take an informed decision. In the meantime, though we are not striking down the impugned provision, we would like to keep it in abeyance. The writ petition is disposed of in the aforesaid terms.
29. No order as to costs.

**ACTING CHIEF JUSTICE**

MAY 01, 2012  
pk

**(RAJIV SAHAI ENDLAW)  
JUDGE**