



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **LPA 284/2022 and C.M. Nos. 20837/2022 & 20839/2022**

EXECUTIVE PILOTS ASSOCIATION & ANR. Appellants

Through: Mr. Vivek Kohli, Sr. Advocate with
Ms. Yeshe Rinchhen, Mr. Akash
Yadav and Ms. Bhavya Bhatia,
Advocates.

versus

AIR INDIA LIMITED & ORS. Respondents

Through: Mr. A. P. Singh and Ms. Akanksha
Das, Advocates for Respondent No.1
/AIL.
Ms. Anjana Gosai, Ms. Nippun
Sharma and Ms. Hetika Vadhera,
Advocates for Respondent/UoI.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Aggrieved by the dismissal of the writ petition, being W.P.(C) No. 416/2021, *vide* Judgment dated 07.02.2022, passed by the learned Single Judge, the writ petitioners, i.e., Executive Pilots Association & Anr., have filed the instant appeal.

2. Shorn of details the facts leading to the instant LPA are as under:-

- i. It is stated that during the COVID-19 pandemic, since the aviation sector suffered a serious hit both commercially and financially, the Ministry of Civil Aviation took a conscious



decision of reducing and then stopping the international and domestic flights for a considerable period of time.

- ii. Since Air India was already a loss making public sector undertaking, a policy decision was taken to rationalize the allowances of its employees. This decision was taken in consultation with the Ministry of Civil Aviation.
 - iii. The cuts in allowances were made primarily in the case of the senior cadre employees of the organization, i.e., engineers, pilots and other general category officers. The decision to cut the salaries of the officers was taken by office orders dated 20.03.2020, 22.07.2020 and 18.12.2020. *Vide* the above said orders the allowances of pilots were first reduced by 40%. However, after reviewing the situation, the same was reduced to 35% from 40% subsequently. Similarly, the allowances for general category officers was initially reduced to 50% which was later revised to 30%. Similarly, in the case of cabin crew, the cut in their allowance was reduced to 20%.
 - iv. The order reducing the allowances of the pilots is the subject matter of challenge in W.P.(C) 416/2021, from which the instant appeal arises.
3. It is pertinent to mention at this juncture that the reduction has been challenged by the Appellants in the present LPA and the All India Aircraft Engineers Association has chosen not to challenge the impugned Judgment dated 07.02.2022.
4. Though before the learned Single Judge the issue of maintainability of the writ petition was taken up by Respondent No.1/Air India, but the learned



Single Judge rejected the said contention and decided the writ petition on merits.

5. The learned Single Judge held that the rationalisation was only with regard to the allowances being paid to the employees and not in the salary component of the employees, i.e., the basic pay and other necessary allowances like DA, HRA, which are paid to all the employees and have not been reduced. The learned Single Judge held that the policy evolved by Air India was for uniform reduction in allowances which was proportional to the amount of allowances received by the employees. The higher the allowances greater was the reduction. The learned Single Judge took judicial notice of the fact that the aviation sector suffered gravely due to stoppage of the airlines, and, therefore, the decision to reduce the allowances was based on policy decision which required no interference. It is this judgment which is under challenge in the instant appeal.

6. Mr. Vivek Kohli, learned Senior Counsel appearing for the Appellants, contends that Air India was the only airline which was flying under the Vande Bharat Mission and the pilots did a yeomen's job in transporting stranded passengers from across the world to our country. He states that the pilots put their lives at risk for this purpose. He states that the majority of the salary received by the pilots is by emoluments and the reduction in allowances hit the pilots the most. He states that other employees do not get as much allowances as the pilots and the pilots who have actually worked during the pandemic are being subject to a greater loss compared to the other employees who were not flying or were not involved in the operation of transporting people across the world to the country. He, therefore, states that the decision taken by Air India to reduce allowances



discriminates the pilots against other employees since other employees do not get as many allowances as the pilots get.

7. A perusal of the material on record shows that a pilot gets Flying Allowance, Executive Flying Allowance, Special Pay, Wide Body Allowance, Domestic Layover Allowance, High Altitude Allowance, Check Allowance, Examiner Allowance, Additional Landing Allowance and the flying allowances are paid according to actual hours flown by an individual pilot every month. The question therefore which arises for consideration is as to whether the policy decision taken by the airline to reduce the allowances in the case of pilots is discriminatory and violative of Article 14 of the Constitution of India.

8. This Court can take judicial notice of the fact that from the beginning of the year 2020, the entire world suffered due to COVID-19 pandemic and there was a complete lockdown affecting the movement of people in the entire country and across the world. All the operations including that of the aviation sector were completely suspended. Operations of airlines stopped during the lockdown and there was only a very gradual reopening of operations from June, 2020. The situation normalised only somewhere in the mid or end of the year 2020.

9. Material on record shows that the pilots of Air India even after the reduction of 40% of allowances still took home a salary of about Rs.6 to 7 lakh. This Court has to take judicial notice of the fact that many pilots across various airlines have lost their jobs but Air India ensured that there are no lay offs. The policy of reduction in allowances has been evolved by Air India to ensure a reduction only in allowances since it is not the case of the Appellants that all the pilots in Respondent Organization were flying and involved in the Vande Bharat Mission. The cut was across the board for



pilots who were flying and those who were not flying in the Vande Bharat Mission.

10. A perusal of the material on record shows that the decision of the Respondents of proportionate reduction of the allowances across the board cannot be said to be arbitrary. The argument of Mr. Kohli that only the pilots were working during the COVID-19 pandemic to ferry people cannot be accepted because the pilots could not have flown the aircrafts without the help of the ground staff. It is not the pilots but every staff had to be put to a proportional cut in their allowances. An airline cannot work without the proper assistance of the ground staff and it cannot be said that just because the pilot flies the aircraft, his allowance alone should not be cut. The fact that a pilot even without the allowance takes home a pay package of Rs.6 to 7 lakh as compared to many other people in the country who lost their entire livelihood during the pandemic cannot raise a grouse that they have been victims of reduction in pay and allowances.

11. The scope of interference by a Court in policy matters have been crystallized by the Apex Court in a number of cases. The Apex Court in Bajaj Hindustan Limited v. Sir Shadi Lal Enterprises Limited & Anr., 2011

(1) SCC 640, has observed as under:-

“21. It is settled law that in the areas of economics and commerce, there is far greater latitude available to the executive than in other matters. The Court cannot sit in judgment over the wisdom of the policy of the legislature or the executive. Thus in Balco Employees' Union (Regd.) v. Union of India [(2002) 2 SCC 333] it was observed: (SCC pp. 381-82, paras 92-93)

“92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such



change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved.”

In the same decision in SCC para 39 it was observed: (Balco Employees' case [(2002) 2 SCC 333] , SCC pp. 358-59)

“39. In Premium Granites v. State of T.N. [(1994) 2 SCC 691] while considering the court's powers in interfering with the policy decision, it was observed at p. 715 as under: (SCC para 54)

‘54. It is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.’ ”

22. In SCC para 41 of the aforesaid decision in Balco employees' case [(2002) 2 SCC 333] this Court quoted from its earlier decision in M.P. Oil Extraction v. State of M.P. [(1997) 7 SCC 592] as follows: (SCC p. 611, para 41)

“41. ... The executive authority of the State must be held to be within its competence to frame a policy



for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the court should not embark on the uncharted ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.”

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37. It was held in the above decision as well as in India Cement Ltd. v. Union of India [(1990) 4 SCC 356 : AIR 1991 SC 724] that even if some persons are at a disadvantage and suffered losses on account of formulation and implementation of the government



policy that is not by itself sufficient ground for interference by the Court.

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40. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. The impugned policy parameters were fixed by experts in the Central Government, and it is not ordinarily open to this Court to sit in appeal over the decisions of these experts. We have not been shown any violation of law in the impugned notification or press note.

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45. In our opinion there should be judicial restraint in fiscal and economic regulatory measures. The State should not be hampered by the Court in such measures unless they are clearly illegal or unconstitutional. All administrative decisions in the economic and social spheres are essentially ad hoc and experimental. Since economic matters are extremely complicated this inevitably entails special treatment for distinct social phenomena. The State must therefore be left with wide latitude in devising ways and means of imposing fiscal regulatory measures, and the Court should not, unless compelled by the statute or by the Constitution, encroach into this field.

46. In our opinion, it will make no difference whether the policy has been framed by the legislature or the executive and in either case there should be judicial restraint. The Court can invalidate an executive policy only when it is clearly violative of some provisions of the statute or Constitution or is shockingly arbitrary but not otherwise.”

12. The Apex Court in Distribution of Essential Supplies and Services During Pandemic, In Re, (2021)7 SCC 772, observed that:



“15. It is trite to state that separation of powers is a part of the basic structure of the Constitution. Policy-making continues to be in the sole domain of the executive. The judiciary does not possess the authority or competence to assume the role of the executive, which is democratically accountable for its actions and has access to the resources which are instrumental to policy formulation. However, this separation of powers does not result in courts lacking jurisdiction in conducting a judicial review of these policies. Our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive policies. Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform.

16. We had clarified in our order dated 30-4-20214, that in the context of the public health emergency with which the country is currently grappling, this Court appreciates the dynamic nature of the measures. Across the globe, the executive has been given a wider margin in enacting measures which ordinarily may have violated the liberty of individuals, but are now incumbent to curb the Pandemic. Historically, the judiciary has also recognised that constitutional scrutiny is transformed during such public health emergencies, where the executive functions in rapid consultation with scientists and other experts...”

13. Respondent No.1/Air India was under the control of the Ministry of Civil Aviation till 27.01.2022 after which the same was disinvested by the Government of India. Therefore, when the impugned office orders were notified, Respondent No.1 was ‘State’ under Article 12 of the Constitution of India as the same was being run by the Government. It is established that State has a fiduciary duty to perform towards its citizens under Article 19(1)(g) and Article 21 of the Constitution of India and thus it becomes the



bounden duty of a welfare state to secure the right of livelihood of the citizens. Therefore, to secure the livelihood of its employees, the office orders impugned herein were notified by the Respondent/Airline downsizing the allowances of the pilots and other employees. The lockdown measures have equally impacted the employees and the employers. All industries or establishments are of a different nature and financial capacity and while some may bear the financial burden of payment of wages etc., the others may not be able to do so equally. A balance has to be struck between two competitive claims as survival of the company was of paramount importance.

14. This Court also takes note of the fact that the Respondent No.1 was in a cash deficit of more than Rs. 250 crores and any decision taken by the Government along with the officers of the Respondent No.1 organisation were purely policy and administrative decisions to keep the Respondent No.1 afloat. The Counsels appearing for the Respondents also apprised this Court that no employees of the Respondent No.1 organisation were retrenched from the same cadre and only the salary component that is the allowances were reduced as per a cognitive policy decision, which was even and equal for all persons throughout the same cadre and was only a downward revision.

15. The decision taken by the Ministry of Civil Aviation during the pandemic was the domain of the Ministry and thereafter the impugned Office Orders were brought into effect by the Respondent No.1. It is established law that the Courts do not run governments and should not interfere with policy decisions under Article 226 of the Constitution of India and can only interfere in the decision-making process on grounds of *malafides*, unreasonableness or arbitrariness. Courts cannot examine



relative merits of economic policies and cannot strike down a Policy merely on the ground that another Policy would be fairer and better.

16. From the above discussion it is clear that it is not in the ambit of this Court to interfere with the impugned Office Orders passed by the Respondents during the Covid-19 pandemic, as the pandemic was an unprecedented situation and it is not for this Court to don a cloak of executive and decide upon merits of a policy designed by experts in the sector. Further, for this Court to indulge into the argument of violation of Article 14 of the Constitution of India, the appellants have not been able to establish that the State did not have a discernible reason for notifying the impugned Office Orders and that the State was not within its bounds of reasonableness. Hence, this Court refrains from setting aside the impugned Judgment dated 07.02.2022 passed by learned Single Judge.

17. In view of the above, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 03, 2023

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