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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2015

Delivered on : 28.10.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.33 of 2015

and

M.P.Nos.1 to 3 of 2015

Capt. Lakshmi Krishna Kumar
Represented by her Power of Attorney,
Capt. M.S.Krishna Kumar

... Petitioner

Vs.

1. Union of India,
Rep. By its Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport,
New Delhi-110 003.
2. Air India Limited,
Rep by its Chairman and Managing Director,
Airlines House,
Gurudwara Rakabang Road,
New Delhi-110 001.
3. Central Training Establishment,
Air India Limited,
Represented by its Director of Training,
(CTE) Ferozguda,
Hyderabad-500 011.
4. Directorate General of Civil Aviation,
Represented by its Director General,
Aurobindo Marg, Opp.Safdarjung Airport,
New Delhi-110 003.
5. Capt.N.S.ShivaramaKrishnan
General Manager,
Central Training Establishment,
Ferozguda,
Hyderabad-500 011.
6. Air India Limited,
General Manager,
Operations Department,
Meenambakkam,
Chennai-600 027.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to give a permanent job starting career as a "Trainee Pilot" taking into consideration the falsification of documents in A-320 Endorsement training given by the 2nd and 3rd respondents in Phase-2 with a vitiated malafide intention, which was found by the 4th respondent on 05-09-2014.

For Petitioner : Mr.M.S.Krishnakumar/Party-in- Person

For Respondents : Mr.R.Soundararajan,
Senior Panel Counsel for R1 and R4
Mr.K.Srinivasamurthy
for Mr.N.G.R.Prasad for Air India Ltd.,
Mr.S.Natanarajan for R5

O R D E R

The petitioner is represented by her Power of Attorney, namely her husband and in the affidavit filed in support of this petition sworn to by him, the petitioner would state that she is a B.Com. degree holder and in order to become a Commercial Pilot, studied and qualified in Physics and Mathematics at Higher Secondary Level prior to joining B.Com. degree. The petitioner would further state that she is having a Commercial Pilot Licence [C.P.L.] and the respondents 2 and 3, in its website, invited applications for specialized training in airbus and A-320 aircrafts during the year 2010 and in response to the same, she applied through e-mail to the Central Training Establishment [CTE] at Hyderabad. The third respondent, sent a communication through e-mail dated 24.04.2010 intimating the selection process and personal interview to be held on 28.04.2010 at CTE, Hyderabad for A-320 Type rating endorsement. The petitioner has participated and got selected in the personal interview and her training started on 10.05.2010 and she was also given option to pay the training cost of Rs.24,81,755/- which include 10.3% service tax and also another option to pay the said training costs in three monthly instalments and in the event of opting for payment, vide instalments, an agreement-cum-surety bond/undertaking is to be executed to make the payment of instalments in full and pay the first instalment of Rs.12,40,875/- before 06.05.2010.

2. According to the petitioner, no mention has been made about the additional training cost in the agreement-cum-surety bond signed by her or in the training brochure and the petitioner opted to pay the same by way of instalments and paid all three instalments before the due date. It is stated by the petitioner that the third respondent started giving training for all 23 pilots in the first batch, including the petitioner, on 10.05.2010 at CTE, Hyderabad and it is called



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Phase-I as per the training brochure and she has successfully completed the same and she was placed at Sl.No.19 in the merit list. The 2nd Phase training was started and it is a Simulator Training of A-320 at the above said centre and the third respondent maintains seniority in a batch of 23 trainee pilots, which according to her will be maintained until completion. It is also stated by the petitioner that neither in Phase-I nor in Phase-II, training syllabus was provided to the petitioner to show that training is conducted as per Type Rating Training Organization [TRTO] Approval Manual issued by the Director General of Civil Aviation [DGCA]/fourth respondent and she has also requisite hours of training and check to get A-320 endorsement. The third respondent did not give the syllabus to 79 other A-320 trainee pilots who had undergone the training in subsequent batches also and further that the respondents had completed the A-320 endorsement training in Phase-II in a haphazard manner due to pilot strike and with malafide intention.

3. The petitioner, in this regard, submitted various representations as well as e-mails and though the third respondent has received the same, did not respond. The petitioner would further contend that 6 sessions of Fixed Base Simulator [FBS] which means six-axis motion on simulator session started on 02.04.2011 and ended on 9.04.2011 and insofar as the petitioner is concerned, a remark was entered stating that "Unable to complete FBS syllabus would require more bookings" and it is the stand of the petitioner that training booklet was filled up by the instructor about the progress made by the petitioner and it is in the safe custody of the third respondent. The pilots of Air India also went on strike and therefore, the training started on 24.04.2011 and though the third respondent, at the time of 15 days from 09.04.2011 to 24.04.2011, failed to inform about the programme and so also the fifth respondent and the petitioner was programmed on 24.04.2011 without the progress booklet for Full Flight Simulator-I [FFS-I] and it is in violation of the rules prescribed by the fourth respondent. The petitioner would claim that she was always present for her training programme and not programmed for any additional bookings and after completion of programme for FFS-I, necessary entries will be made in the Simulator Log Book and it cannot be tampered with. However, the instructor can fill the trainee progress booklet at a later point of time also and hence, there is a chance of manipulation and it cannot happen in the case of simulator logbook or records.

4. The main grievance expressed by the petitioner is that insofar as she is concerned, only two hours of Pilot Not Flying [PNF] and Pilot Monitoring [PM] was carried out and recorded in the simulator logbook on 24.04.2011 and in the programme which took place on 26.04.2011, once again PNF and PM were recorded and the third respondent did not programme 2 hours of Pilot Flying and FFS on 26.04.2011 on account of the



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fact that the petitioner's progress booklet was not available. The pilots of Air India went on strike on 26.04.2011 and therefore, training was started on 13.05.2011 for FFS-II and despite repeated requests, the petitioner was given only one PNF and PM in "Adverse Weather" and the other 22 Airbus 320 trainee pilots in batch did two sessions of PNF/PM. The petitioner was imparted final training Phase-III at Chennai under the supervision of the sixth respondent on 05.06.2011 and completed the same on the same day, which is in violation of the letter Order dated 01.04.2014 issued by the third respondent and though the petitioner waited for A-320 endorsement in licence from the fourth respondent/DGCA, the third respondent did not forward the papers for making such an endorsement. However, the third respondent has informed the petitioner through e-mail dated 15.06.2011 to pay an additional amount of Rs.44,120/- towards extra training imparted on 24.04.2011 and there were series of communications between the petitioner and the third respondent and on account of the same, the petitioner has lost her opportunity to get employment in Indigo Airlines and the petitioner has sent a cheque for Rs.44,120/- and also sent an e-mail praying for waiver of the said amount on account of Air India Pilot strike. The petitioner also got A-320 Type Rating endorsement on 13.07.2011 and since it was received belatedly, Indigo Airlines did not allow the petitioner to appear in the said examination held at 10.00 a.m. on that date. The petitioner would state that the fifth respondent has also started rumors that the training has not been completed in A-320 and the petitioner having aware of the same, requested the third respondent to send the details about PNF/PM complete, but it did not respond. Since there was some genuine dispute over the claim of additional amount of Rs.44,120/- towards extra training imparted, the third respondent sent a communication dated 13.10.2011 informing that the husband of the petitioner, who is also a Pilot in the services of the second respondent, was removed from the position of Check Pilot for having issued stop instructions with regard to the payment of the above said amount and her husband was kept off from duty from 29.08.2011.

5. The grievance expressed by the petitioner is that more than 30 days were taken to send the document to the fourth respondent for getting the endorsement of A-320 in the licence in respect of the petitioner, whereas for 22 other A-320 trainee pilots in the petitioner batch, it took only 2 days to forward to the fourth respondent for endorsement of A-320 in the licence and consequently, the petitioner lost the chance of getting employment in Indigo Airlines. Information sought for by the petitioner under Right to Information Act as to the training syllabus for A-320 was also not given citing the reason that it was the intellectual property of Air India. It is also the specific case of the petitioner that the third respondent intentionally did not complete/impart the training to the petitioner and belatedly forwarded the relevant papers and purposefully delayed the process for getting A-320



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endorsement in the licence of the petitioner and thereby the second respondent is under obligation to give permanent job to the petitioner to start her career as trainee pilot, by taking into consideration the falsification of documents in A-320 endorsement in the training given by the respondents 2 and 3 in Phase-II.

6. The Power of Attorney/husband of the petitioner would submit that the fifth respondent, who is the general Manager of CTE at Hyderabad has an axe to grind against him and consequently, not imparted proper training to the petitioner and falsified the records and also deliberately delayed in forwarding the papers which resulted in loss of employment opportunity to the petitioner in Indigo Airlines. It is further contended that in the absence of any additional/extra training, the petitioner was not under obligation to pay a sum of Rs.44,120/- and therefore, the cheque issued by him was countermanded and it was later on honoured and in the interregnum, the validity of A-320 training got expired, which was on account of the sole act of the respondents. It is further contended by the party-in-person/husband of the petitioner that though the respondents are of the view that the petitioner has to undergo first training for getting A-320, such a training is to be imparted without insisting for cost/training expenses for the reason that due to willful malafide and negligent act of the respondents only, such a thing had happened and they are also under obligation to provide employment to the petitioner. Insofar as the jurisdiction of this Court to entertain this writ petition, it is submitted by the party-in-person that though the agreement stipulates that litigation is to be instituted at Hyderabad, the fact remains that the important training, namely actual flying of the aircraft took place at Chennai only and therefore, a part of the cause of action arose within the jurisdiction of this Court and hence, the petitioner can maintain this writ petition on the file of this Court. It is also the submission of the party-in-person/husband of the petitioner that the fifth respondent has developed personal animosity against the petitioner and his wife is made to suffer, due to willful negligence and malafide act and the said act is to be condemned.

7. Per contra, Mr.K.Srinivasamurthy, learned counsel appearing for Mr.N.G.R.Prasad, learned Standing Counsel appearing for the respondents 2, 3 and 6 would contend that at the relevant point of time, PNF is not mandatory and as per the agreement executed by the petitioner in favour of the second respondent, this Court lacks jurisdiction to entertain this writ petition and the petitioner has to institute litigation/file case only at Hyderabad. Insofar as the guarantee for employment projected by the petitioner, the learned counsel appearing for the respondents 2, 3 and 6 has drawn the attention of this Court to Clause 18 of the agreement and the third respondent did not guarantee for



employment in A-320 endorsement and admittedly A-320 endorsement given in favour of the petitioner got lapsed and she has to undergo fresh A-320 training. Insofar as the stand taken by the petitioner about the improper completion of training, it is the submission of the learned counsel appearing for the respondents 2, 3 and 6 that it is not so, as the petitioner was also issued with certificate by the fourth respondent that she has successfully completed the training. In sum and substance, it is the submission of the learned counsel appearing for the respondents 2, 3 and 6 that no employment/job guarantee has been given and since A-320 endorsement has also got lapsed, the petitioner has to undergo fresh training to get that endorsement and consequently, the prayer sought for by the petitioner cannot be granted and prays for dismissal of this writ petition.

8. Mr.S.Natana Rajan, learned counsel appearing for the fifth respondent would submit that no prayer has been made against the fifth respondent, who is arrayed as respondent in individual capacity and since the petitioner's overall performance was not satisfactory, she was given additional training, for which only a sum of Rs.44,120/- was demanded and though the husband of the petitioner has given the cheque, it was countermanded and after much correspondence, the said amount was paid. It is the further submission of the learned counsel appearing for the fifth respondent that the petitioner using the influence of her husband, who is also a Pilot of Air India, has managed to get the papers relating to her endorsement directly from DGCA and would further contend that the Indigo Airlines did not select the petitioner for want of merit/competency and though she allege malafide against the fifth respondent, she has miserably failed to prove and substantiate the same and prays for dismissal of this writ petition with exemplary costs.

9. The learned counsel appearing for the fourth respondent has invited the attention of this Court to the counter affidavit filed by the respondents 1 and 3 and would submit that there was no deficiency in the documents submitted by Air India for the purpose of endorsement of A-320 aircraft licence to the petitioner and she was issued with the endorsement on 13.07.2011. Insofar as the allegation as to improper training is concerned, there was some error on the part of the second respondent and it needs to be investigated. It is further submitted by the learned counsel appearing for the fourth respondent that the petitioner was issued with the endorsement on 13.07.2011 and she did her last simulator on 26.05.2011 and her endorsement in respect of A-320 got lapsed on 25.05.2014 itself and she has not renewed A-320 type rating and she is required to undergo complete rating as per CAR Section 8, Series F, Part I. Insofar as the stand taken by the petitioner that no proper PNF training is given, the respondents 1 and 4 took a stand that as per her instructor, PNF Session was not carried out for the reason that it was not



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mandatory at that point of time and FFS Sessions 5 and 6 were carried by him and they were inadvertently marked by oversight and also further took a stand that Air India has not submitted satisfactory reply and therefore, the matter is still pending for further action.

10. The second respondent has also filed a counter affidavit contending that relevant records were despatched through the fourth respondent and they made an endorsement on 13.07.2011 stating that the petitioner has successfully undergone the training and though it was the normal procedure that the petitioner has to collect the Course Completion Certificate and the licence with the endorsement from their establishment at Hyderabad, by using the influence of her husband, who is a pilot and presently Deputy General Manager (Operations) in the services of the second respondent, she got those certificates from the office of the fourth respondent/DGCA itself directly. It is the specific stand of the second respondent that the petitioner was given training on all essential aspects, but for which the DGCA would not have given her the endorsement to fly A-320 type aircraft. The second respondent has also supported the stand of the respondents 1 and 4 that as per CTE Training Manual, the trainee has to do 6 PNF bookings, whereas the petitioner has done only 4 PNF bookings and six booking was not mandatory as per the DGCA requirement during the year 2011 and only during the year 2012, it was made mandatory. However, the petitioner has got the endorsement way back on 25.07.2011. It is further contended by the second respondent that the petitioner is putting pressure on the second respondent/Air India to give her a job stating that as against 5 bookings as per Air India Training Manual, she had only 4 bookings and thereby, the training was defective. It is further contended by the second respondent that the petitioner is making an issue of a non-issue because in 2011, completing 6 bookings was not mandatory at the relevant point of time. The petitioner has taken such a stand for the reason that she is over-aged to join Air India and the upper age limit for the post of Senior Pilot is 35 years and the petitioner is at present over aged and her CPL is also not valid as on date, which is the basic requirement for senior training post and hence, prayed for dismissal of this writ petition.

11. The petitioner has filed a rejoinder to the counter affidavit filed by the second respondent contending among other things that the respondents 1 and 4 did not take proper investigation as to the falsification of documents submitted by the second respondent/Air India and she is ready to undergo training of A-320 extended refresher Phase II and III at the cost of the third respondent which include her travel and stay and having accepted that no proper training has been given to her that too after taking Rs.25 lakhs towards cost of training, the prayer sought for is unsustainable and prays for allowing of this writ petition.



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12. This Court has paid its best attention to the rival submissions and also perused the materials placed before it.

13. The following issues arose for consideration:

(I) Whether this Court has territorial jurisdiction to entertain this writ petition in the light of Clause No.20 of the agreement dated 10.05.2010 entered into between the petitioner and the second respondent ?

(II) Whether the petitioner is entitled to succeed in this writ petition?

14. The preliminary objection raised by the learned counsel appearing for the respondents 2 and 6 is that as per Clause 20 of the agreement dated 10.05.2010 entered into between the petitioner and the second respondent "any dispute, if arises, in regard to the above course and any of the terms and conditions of this agreement shall be subject to the jurisdiction of courts of Hyderabad/Secunderabad only and as a consequence, the petitioner cannot maintain this writ petition and this Court also lacks territorial jurisdiction to entertain this writ petition and the remedy open to the petitioner, if any, is to approach the jurisdictional Court at Hyderabad and in support of his submissions, placed reliance upon the following judgments:

(i) A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem [(1989) 2 SCC 163]

(ii) Eastern Coalfields Ltd. and Others v. Kalyan Banerjee [(2008) 3 SCC 456]

15. In A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem [(1989) 2 SCC 163] it has been observed that the jurisdiction of the Court in matter of a contract will depend upon the situs of the contract and the cause of action arising through connecting factors and in the said judgment, it is observed as follows:

"16. So long as the parties to a contract do not oust the jurisdiction of all the courts which would otherwise have jurisdiction to decide the cause of action under the law it cannot be said that the parties have by their contract ousted the jurisdiction of the court. If under the law several courts would have jurisdiction and the parties have agreed to submit to one of these jurisdictions and not to other or others of them it cannot be said that there is total ouster of jurisdiction. In other words, where the parties to a contract agreed to submit the disputes arising from it to a particular jurisdiction which would otherwise also be proper jurisdiction under the law their



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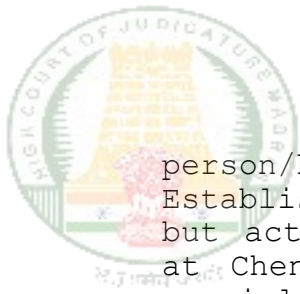
agreement to the extent they agreed not to submit to other jurisdictions cannot be said to be void as against public policy. If on the other hand the jurisdiction they agreed to submit to would not otherwise be proper jurisdiction to decide disputes arising out of the contract it must be declared void being against public policy. Would this be the position in the instant case?

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21. From the foregoing decisions it can be reasonably deduced that where such an ouster clause occurs, it is pertinent to see whether there is ouster of jurisdiction of other courts. When the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown, the other courts should avoid exercising jurisdiction. As regards construction of the ouster clause when words like "alone", "only", "exclusive" and the like have been used there may be no difficulty. Even without such words in appropriate cases the maxim "expressio unius est exclusio alterius" – expression of one is the exclusion of another – may be applied. What is an appropriate case shall depend on the facts of the case. In such a case mention of one thing may imply exclusion of another. When certain jurisdiction is specified in a contract an intention to exclude all others from its operation may in such cases be inferred. It has therefore to be properly construed."

16. Eastern Coalfields Ltd. and Others v. Kalyan Banerjee [(2008) 3 SCC 456], the Hon'ble Supreme Court of India held that "Cause of action" for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged under Section 20(c) CPC.

17. The party-in-person/husband of the petitioner countering the said arguments has invited the attention of this Court to document No.18 of the typed set of papers filed by the fifth respondent and would submit that the said communication was sent by the Executive Director (Training), NACIL-CTE-Hyderabad to the General Manager (OPS), NACIL-Southern Region-Chennai, wherein request has been made to arrange A-320 Flying training at Chennai on 5th and 6th June 2011 for the following trainees (external batch) for a duration of 3.45 hours and further request was made to provide a safety pilot during the above flying and also arrangements may be made for issue of their temporary identity cards to permit them to undergo the training and accordingly in liaison with office of the security Chennai and the petitioner is one among the trainees out of five trainees deputed for actual flying. It is the submission of the party-in-



person/husband of the petitioner that at Central Training Establishment at Hyderabad, only training simulator was given, but actual flying training was imparted to the trainees only at Chennai on 5th and 6th of June 2011 and it is the most crucial and important aspect of the part of the training to become a pilot of A-320 aircraft and as such, a part of the cause of action arose within the jurisdiction of this Court and hence, this writ petition is maintainable.

18. It is settled position of law and also as per the above cited decision of the Hon'ble Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem [(1989) 2 SCC 163] that when the clause is clear, unambiguous and specific accepted notions of contract would bind the parties and unless the absence of ad idem can be shown and when certain jurisdiction is specified in a contract an intention to exclude all others from its operation may be such cases be inferred and it has therefore to be properly construed.

19. In the considered opinion of the Court and also rightly contended by the party-in-person that the crucial part/aspect of the training was undergone by trainee pilots including the petitioner herein at Chennai on 5th and 6th June 2011 by actual flying of aircraft. It is also an admitted fact that in the Central Training Establishment at Hyderabad of the second respondent, only simulator training was given and the actual training experience is the most important and the skill of the trainees would be tested to the maximum while flying the aircraft, of-course with the guidance and help of the safety pilots.

20. In the light of the said factual aspects, this Court is of the view that this Court is having territorial jurisdiction to entertain this writ petition and therefore, Issue No.I is answered in favour of the party-in-person/husband of the petitioner.

21. The main grievance expressed by the petitioner is that he has been imparted proper training and was never trained as per the syllabus/course and required hours of training in Pilot Not Flying (PNF) has not been given to her and further on account of the deliberate and malafide acts of the respondents 3 and 5, the required certificates have not been given to her on time and they were deprived of their right to get employment in other private airlines as well as in the second respondent and as a consequence, she has to be given permanent job to start her career as a trainee pilot. To analyze this issue, it is proper and necessary to refer to some of the documents filed by the petitioner as well as by the respondents in the typed set of papers.

22. It is an admitted fact that an agreement came into being at Hyderabad on 10.05.2010 between the National Aviation Company of India Limited (Air India) and the petitioner and



prior to that, the second respondent offered Airbus A-320 type rating course on chargeable basis in terms of the notification dated 22.03.2012 and the petitioner herein, who has submitted the application, was selected and she was called upon to execute the agreement subject to certain conditions. It is relevant to extract the following clauses of the said agreement:

"2. That the duration of the course is fixed at the minimum of 22 weeks from the date of commencement, which may stretch upto 36 weeks, depending upon the conditions, such as availability of trainers, simulators etc. The schedule of the course comprises of three stages viz. Ground classes/class room training for 12 weeks for preparation of the candidate to appear for TRTO examination; Simulator training on successful completion of TRTO examination; and Aircraft familiarisation training on A320 aircraft.

3. That the fees of the entire course is fixed at Rs.22,50,000/- plus Service Tax @ 10.3% i.e., Rs.2,31,755/-, thus making a total of Rs.24,81,755/- (Rupees twenty four lakhs eighty one thousand seven hundred fifty five only) payable by the candidate before commencement of the course, in lumpsum or in three instalments, i.e., Rs.12,40,875/- before commencement of the course; Rs.6,20,440/- payable on completion of two months from the date of payment of first instalment; and Rs.6,20,440/- payable on completion of four months from the date of payment of second instalment.

11. That the candidate is permitted to make a maximum of three attempts to clear TRTO Examination and in the event of failure in the first and second attempts, he/she will have to undergo further training, which will be provided on chargeable basis. Such charges for additional training do not form part of the total cost of training as stipulated above and it will be independently fixed by the company and payable by the candidate before commencement of such additional training.

12. That in case where a candidate is unable to achieve the required level of proficiency within the stipulated hours, on simulator, additional training would be imparted to enable him/her to achieve the required proficiency level subject to payment of additional charges for simulator training at the rate of Rs.33,000/- (plus service tax) per hour inclusive of instructor charges.

13. That in the event of the candidate's needing additional training on simulator/flying, it will be arranged by NACIL subject to availability



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of simulator/instructor/requisite training partner/Aircraft, NACIL shall not undertake any firm commitment in this regard, to a candidate who would be making further attempts to pass the examination. NACIL will however make every effort for completion of simulator/flying training to a candidate on the basis of training seniority within the schedule as expeditiously as possible, subject to the availability of the Simulator/Aircraft and the instructor.

17. The responsibility of NACIL-CTE is to complete the training which entails the trainee to obtain only A320 type rating issued by DGCA as per the syllabus/course schedule filed with them for external candidates. The course completion certificate will be issued by the Executive Director (Training)-NACIL with the relevant endorsement made on the personal log book of the trainee regarding further training requirements to be carried out on the aircraft as per the stipulations of the airline wherever he/she is employed for eligibility to fly as full fledged co-pilot.

18. NACIL shall not make any responsibility for the employment of a candidate who has attended and completed the course either in NACIL or any of its subsidiary Airlines."

As per the said clauses, the selected candidates is permitted to make a maximum of three attempts to acquire TRTO examinations and in the event of failure in the first and second attempts, he/she would have to undergo fresh training which will be provided on chargeable basis and the said charges for additional training do not form part of the total cost of training as stipulated above and it will be independently fixed by the company and payable by the candidate before commencement of such additional training and in case where a candidate is unable to achieve the required level of proficiency within the stipulated hours, on simulator, additional training would be imparted to enable him/her to achieve the required proficiency level subject to payment of additional charges for simulator training at the rate of Rs.33,000/- (plus service tax) per hour inclusive of instructor charges.

23. It is the stand of the fifth respondent, who is the General Manager of the third respondent that the petitioner was trained by Capt.Sangeetha Kabra Bangar, Capt.N.J.Divecha, Capt.Rajiv Nandha and Capt.D.Karpa and they made observations in respect of the training undergone by the petitioner and further that everyday training will be entered in the book shown in the typed set of documents pages 22 to 62 and it is a



confidential one, which has to be submitted by the trainee, to be forwarded by the Director of Training to the fourth respondent along with Commercial Pilot Licence (CPL) of the trainee for getting A-320 type rating endorsement in the said licence and once it is submitted, it becomes a confidential document. It is also the stand of the fifth respondent that progress made by the petitioner during each and every bookings was given to the petitioner in the syllabus book given to the petitioner and vide notification/observation dated 09.04.2011 made by Capt.Sangeetha Kabra Bangar, the petitioner was unable to complete the syllabus and would require more bookings and based on that additional bookings were given to the petitioner and because of that only, she could complete her FBS and got cleared for FBS as observed by Capt.M.S.Bodi and she has also aware of the requirement of giving additional bookings and also of the fact that she has to pay Rs.44,120/- towards charges for additional bookings. The petitioner was only a slow learner as observed by various captains who gave training to her and the said fact only warranted for additional bookings for training.

24. No doubt, the petitioner, by arraying the fifth respondent in his individual capacity, has raised serious allegations but she has not controverted the fact that she was trained by the above said four persons. Insofar as the cost of additional training/bookings is concerned, admittedly, the husband of the petitioner, who is arguing this case, is an employee of the second respondent and in his capacity as a Pilot, has issued a cheque dated 05.07.2011 for a sum of Rs.44,120/- and when it was presented for realization, the payment was stopped and after series of correspondences, the payment was made by the petitioner's husband by a cheque dated 10.02.2013. As pointed out, according to the petitioner, the fifth respondent has spread a rumor that insofar as she is concerned, PNF/PM is not complete as per the Type Rating Training Organization (TRTA) Manual and in spite of repeated requests, the third respondent never gave simulator records and it is also the stand of the petitioner that she has also requested for waiver of the charges/amount payable towards Pilot Union Strike and hence her husband stopped the payment of the cheque which was ultimately honoured and the said payment was ultimately made on 10.02.2013 and as a consequence, she has lost the job opportunity and as such, she is ready to undergo training in the form of extended refresher Phase-II and III courses at the cost of the third respondent which includes her travel and stay.

25. The averments made in this regard by the petitioner in the affidavit filed in support of this writ petition as well as the rejoinder affidavit would reveal that the petitioner was under impression that she was not given proper training as per the TRTA Manual and she was forced to undergo additional training on account of Pilot Union strike and was repeatedly corresponding with the authorities to waive the



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same and pending consideration, cheque payment was stopped in respect of the cheque given by her husband. In the light of the said stand taken by the petitioner, an incidental question arose as to whether the petitioner was imparted with proper training or not ?

26. It is relevant to take into consideration the counter affidavit filed by the respondents 1 and 4. The respondents 1 and 4 had considered the complaint made by the petitioner that there were falsification of documents in respect of A-320 endorsement training given to her in Phase-II. In para 7 of the counter affidavit, the respondents 1 and 4 took a stand that the said allegation/matter was examined and it was found that there was no deficiency in the documents submitted by the second respondent/Air India to their office on 05.07.2011 for the purpose of getting A-320 endorsement in the licence of the petitioner. However, it is evident that there is some error on the part of the second respondent or on the petitioner or may be both, which needs to be investigated and it was also taken up with the second respondent on 16.07.2014. Insofar as the additional simulator training imparted to the petitioner is concerned, the respondents 1 and 2 would state that a clarification was sought from the second respondent and they have stated that the petitioner was found to be a slow learner and additional training session was recommended to her to be on par with other training partners and accordingly she underwent the same and by that time, the other trainees had progressed and continued FFS training without the petitioner and thus, she was de-linked from the batch and insofar as PNF sessions were concerned, her instructor had inadvertently marked by oversight and since the second respondent has not submitted satisfactory reply, the matter is still pending for further action.

27. The second respondent, in its counter affidavit, took a stand that because the petitioner was given some additional training, a sum of Rs.44,120/- was demanded for additional sessions and the cheque issued in this regard was dishonoured and was paid after two years. It is further stated by them that on account of the training of the petitioner, they despatched the records to the fourth respondent to make the endorsement for her training and such an endorsement was also made on 13.07.2011 stating that the petitioner has successfully undergone training for A-320 aircraft and though the normal procedure is that the petitioner has to collect course completion certificate and licence with endorsement from the third respondent, she used her husband's influence, who happens to be a Pilot of the second respondent and presently Deputy Manager (Operations), managed to get those documents from the office of the fourth respondent directly. Insofar as the loss of job opportunity of the petitioner to become a Pilot in the services of the second respondent is concerned, it is the stand of the second respondent that an advertisement dated 25.02.2015 was issued inviting



applications for the post of Commander and Senior Trainee Pilot and the upper age limit was fixed at 35 years and the petitioner has crossed 36 years of age and the A-320 endorsement on her CPC licence is also not valid as on date, which is a basic requirement for Senior Trainee Pilot. It is also the stand of the second respondent that PNF sessions were not mandatory at that point of time, during which the petitioner undergone training and though the petitioner has done 4 PNF bookings as against 6 PNF bookings as per the CTE training manual, it was not mandatory as per the 4th respondent requirement during the year 2011 and only in the year 2012, it was made mandatory for getting licence, however the petitioner got her A-320 endorsement way back on 13.07.2011. The petitioner seems to have acted on the rumors floated by the fifth respondent that she was not imparted with proper training, but the fact remains that the petitioner, on successful completion of training, was issued with an endorsement on A-320 aircraft, which also got expired and if at all she wants to pilot the aircraft, she has to once again undergo training afresh for which she has to necessarily incur the costs.

28. It is also pertinent to point out at this juncture that while the endorsement of A-320 type rating licence was given in favour of the petitioner was alive, it was not cancelled by the fourth respondent on the ground of alleged fabrication of records or not undergone proper training and as per the stand of the fourth respondent, the matter is under investigation and depending upon the results of the same, she may proceed with further course of action or work out her further remedy in accordance with law.

29. Another grievance expressed by the petitioner is that the second respondent has to provide her with employment. In the considered opinion of the Court, the petitioner, as a matter of right, cannot insist the second respondent to provide her with employment for the reason that the agreement entered into between the second respondent and herself clearly states that NACIL shall not take any responsibility for the employment of a candidate who has attended and completed the course either in NACIL or any of its subsidiary Airlines. In fact, during the subsistence of A-320 endorsement, the petitioner has made attempts to get employment in Indigo Airlines and Air Asia and was unsuccessful. The judgment of the Delhi High Court dated 07.11.2014 made in WP(C). No.2596/2010, relied on by the petitioner/party-in-person, is not coming to the aid of the petitioner for the reason that it is held in the said decision that the selection of a Trainee Pilot is a step in the direction of recruiting a full-fledged pilot who has the onerous task of flying an aircraft which itself is a very valuable property, over and above the fact that he has to shoulder the responsibility of securing the precious lives of the passengers who fly in it and further that the methodology applied by the employer for screening the



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candidates is a matter that is purely within the domain of the respondent company who is the employer and the court ought to refrain from exercising its power of judicial review to tweak the prescribed norms of selection and/or, modify/amend/alter the said norms in any manner only to serve the interests of an unsuccessful candidate.

30. In the light of the reasons assigned above, this Court is of the considered opinion that the plea of the petitioner and the stand taken by her in this writ petition is unsustainable, leaving her to work out her remedy in accordance with common law, subject to law of limitation, if she is so advised. In the light of the stand taken by the fourth respondent in their counter affidavit, as and when the result of the probe/investigation is made known to her, she as well as the respondents 2, 3 and 5 are entitled to work out their remedy strictly in accordance with law. Therefore, Issue No.2 is answered against the petitioner.

31. In the result, this Writ Petition is dismissed, subject to above observations. No costs. Consequently, connected miscellaneous petitions are closed. It is also made clear that the findings/observations made herein will not have any bearing in the writ petition filed by the husband of the writ petitioner and it is to be decided on its own merits.

jvm

28.10.2015

This matter having been posted on Wednesday, the Fourth day of November 2015 for being mentioned in pursuance of the Order dated 28.10.2015 and made herein in the presence of the above said counsels and party - in - person, this Court made the following Order:

This matter is listed today under the caption "Being Mentioned" at the instance of the petitioner, who is represented by her husband/Power of Attorney, namely Captain Krishna Kumar.

2. The party-in-person/husband of the petitioner has pointed out certain inadvertent mistakes that had crept in para Nos.1, 24, 25, 27, 28, 29 and 30 of the order dated 28.10.2015 and prays for clarification.

3. Hence, in the order dated 28.10.2015, the following paras shall be read as follows:

In Para-1, the words

"..... and in order to become a Commercial Pilot, studied and qualified in Physics and Mathematics at Higher Secondary



Level prior to joining B.Com....”
should be read as

“..... and in order to become a Commercial Pilot, studied and qualified in Physics and Mathematics at Higher Secondary Level after completing B.Com....”

In Paras 24 and 25, the word “TRTA” should be read as “TRTO”

In Para 27, the words

“ and the A-320 endorsement on her CPC licence is also not valid as on date,...”
should be read as

“..... and the A-320 endorsement on her CPL (Commercial Pilot Licence) is also not valid as on date,...”

In Para 28, the words

“...and as per the stand of the fourth respondent, the matter is under investigation and depending upon the results of the same, she may proceed with further course of action or work out her further remedy in accordance with law.”
should be read as,

“....and as per the stand of the fourth respondent, the matter is under investigation and therefore, the fourth respondent/DGCA is directed to complete the investigation as expeditiously as possible and not later than three months from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as to the other official respondents and depending upon the results of the investigation, the parties are at liberty to work out their further remedy in accordance with law”.

In Para 29, the words

“In fact, during the subsistence of A-320 endorsement, the petitioner has made attempts to get employment in Indigo Airlines and Air Asia and was unsuccessful.”
should be read as

“In fact, during the subsistence of A-320 endorsement, the petitioner has made attempt to get employment in Indigo Airlines and was unsuccessful.”

In Para 30, the words

“... leaving her to work out her remedy in accordance with common law, subject to law of limitation, if she is so advised..”

should be read as



"... leaving her to work out her remedy in accordance with common law, subject to law of limitation, if the petitioner requires compensation and so advised.."

04.11.2015

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Sd/-
Assistant Registrar(CO)

True Copy

Sub Assistant Registrar

To

1. The Secretary,
Union of India,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport, New Delhi-110 003.
2. The Chairman and Managing Director,
Air India Limited,
Airlines House, Gurudwara Rakabang Road,
New Delhi-110 001.
3. The Director of Training,
Central Training Establishment,
Air India Limited,
(CTE) Ferozguda, Hyderabad-500 011.
4. The Director General,
Directorate General of Civil Aviation,
Aurobindo Marg, Opp.Safdarjung Airport,
New Delhi-110 003.
5. Capt.N.S.ShivaramaKrishnan
General Manager,
Central Training Establishment,
Ferozguda, Hyderabad-500 011.
6. General Manager,
Air India Limited,
Operations Department,
Meenambakkam, Chennai-600 027.

+1cc to Mr.N.G.R.Prasad ,Advocate(sr.60809)
+4 cc's to Mr.M.S.Krishnakumar,Advocate(sr.58279)
+2 cc's to Mr.S.Natarajan,Advocate(sr.60582)
+1 cc to Mr.R.Soundarajan,Advocate(sr.61563)

W.P.No.33 of 2015

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