



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.[MD].No.13950 of 2013

and

M.P.(MD)No.1 of 2013

J.Mahendra Varman : Petitioner

Vs.

1.The Government of India,
Rep. by its Secretary,
Ministry for Civil Aviation,
New Delhi.

2.The Director General of Civil Aviation, New Delhi.

3.The Chairman,
The Air Port Authority of India,
Rajiv Gandhi Bhavan, Safdarjug Airport,
New Delhi.

4.The Director,
The Airport Authority of India,
Madurai Airport,
Madurai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to include the Madurai Airport as one of the point of call in the Bilateral Air Service Agreement (BASA) and consequentially, allow both Indian and foreign carriers to operate international flights to and from Madurai Airport.

For Petitioner : Mr.M.Ajmalkhan,

For M/s.Ajmal Associates

For Respondents 1&2 : Mr.G.R.Swaminathan,

Assistant Solicitor General of India,

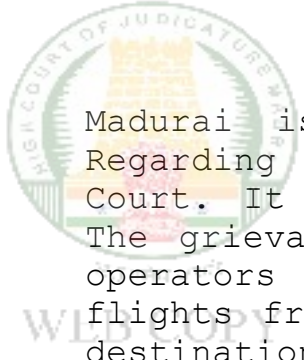
For Mr.R.Vijayarajan

For Respondents 3&4 : Mr.C.Godwin

O R D E R

[Order of the Court was made by S.NAGAMUTHU, J.]

<https://hcservices.courts.gov.in/hcservices/>
The petitioner is a Doctor by profession. He also claims that he is involving himself in social activities. According to him,



Madurai is regarded as a "Cultural Capital of Tamil Nadu". Regarding that statement, there can be no controversy before this Court. It is also a Tourist Centre attracting foreign tourists. The grievance of the petitioner is that though several domestic operators as well as foreign operators are willing to operate flights from Madurai Airport or via., Madurai Airport to foreign destinations, the respondents have not taken any action on such requests. Therefore, he has come up with this Writ Petition seeking a direction to the respondents to include Madurai Airport as one of the point of call in the Bilateral Air Service Agreement (BASA) and consequentially, to allow both Indian and foreign carriers to operate international flights to and from Madurai Airport.

2. In the counter filed by the Under Secretary, Ministry of Civil Aviation, Government of India, *inter alia*, in paragraph Nos.2.3, 3.3 and 3.4, he has stated as follows:

"2.3. It is also submitted that the practice followed in bilateral ASAs is that Indian designated carriers are free to operate to agreed foreign destinations from any point in India. Therefore, an Indian airline is entitled to operate international flights from Madurai to any other country based on its commercial judgment and designation by the Government under the respective bilateral. The answering respondent has already granted permission to Spice Jet for operation of international flights from Madurai to Colombo, Singapore, Dubai and Kuala Lumpur. Actual operations have been started by Spice Jet from Madurai to Colombo and Dubai. Hence, the present petition is liable to be dismissed on this ground alone.

3.3. In reply to paragraph 5, it is submitted that the main gateway for international flights in Tamil Nadu is Chennai and not Madurai as being made out by the petitioner. Further, it is also submitted that declaration of an airport as a Customs Airport does not automatically entitle that airport to be opened to foreign carriers. It depends on the decision of the Government whether to open it to foreign carriers and if so, to what extent, taking into account so many factors. Due to special considerations, traffic rights have been granted to designated airlines of Sri Lanka to operate to Madurai under the bilateral ASA with Sri Lanka. But it does not mean that the same privilege be extended to airlines of other countries. Each case has to be considered separately on the basis of factors enumerated in para 2.2 above. However, as already stated in para 2.3 above, Indian designated carriers are free to operate international flights from Madurai and Spice Jet is not hindered in doing so.

3.4. The averments contained in Para 6 of the W.P. regarding bilateral ASA are not denied, but it is



reiterated that the petitioner is missing the point that exchange of rights under bilateral ASAs, including the points of call in each other's territory, is subject to negotiations for which so many factors have to be taken into consideration and points of call cannot be granted to foreign carriers for the asking. This point has already been elaborated in the preliminary submissions (para 2.2) made above."

3. The learned Assistant Solicitor General of India appearing for the first and second respondents would submit that as of now, there is no application from any local operator seeking necessary permission to operate flights either from or via., Madurai Airport to foreign destinations. Already, Spice Jet Airlines has got permission for operation of international flights from Madurai to Colombo, Singapore, Dubai and Kuala Lumpur. Actual operations have been started by Spice Jet from Madurai to Colombo and Dubai. The learned Assistant Solicitor General of India would further submit that so far as the foreign carriers are concerned, such permission cannot be granted for mere asking. He would submit that it involves so many factors. He would submit that it is a policy decision of the Government either to allow a foreign carrier to operate international flights from Madurai Airport or via., Madurai Airport to foreign countries or not to concede to the said request. It is also stated by the learned Assistant Solicitor General of India that Sri Lankan Airline alone, which is a foreign carrier, has been permitted by the Government to operate flights from Madurai Airport.

4. In our considered view, in such policy matters, which involves foreign policy, economic policy and so many other considerations, we cannot interfere and issue any direction as prayed for by the petitioner. So far as the local carriers are concerned, since there is no application, as of now, pending, seeking permission to operate international flights either from or via., Madurai Airport, we cannot grant any further direction in this regard. Thus, we do not find any merit in this Writ Petition. The Writ Petition is, accordingly, dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

+One cc to Mr.R.Vijayarajan, Advocate, SR.No.69983

+One cc to Mr.C.Godwin, Advocate, SR.No.69957

SML

RL/3C/3P/SKS/RR/14.12.2016

<https://hcservices.ecourts.gov.in/hcservices/>

Order made in

W.P.[MD].No.13950 of 2013

Dated: 17.11.2016

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