HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.1624 OF 2017

ORDER:

Heard Sri Vedula Venkata Ramana, learned Senior Counsel for the petitioner and learned Assistant Solicitor General of India appearing for the respondents 1 to 3.

The case of the petitioner is that the petitioner is an airlines/air operator in Southern India, having obtained air operator permit from the office of the 2nd respondent. It is running airlines (AIR COSTA). It has taken on lease four aircrafts from the respondents 4 and 5 and entered into lease agreements. As per the said lease agreements, disputes, if any, between the lessor and lessee are to be resolved in English Courts as per English Law. The petitioner states that he paid security deposit of 7.2 Million USD in favour of respondents 4 and 5. Due to certain disputes and differences, the 5th respondent required the petitioner to land one of the aircrafts at Jinan, Republic of China and the petitioner has complied with the same. The petitioner further states that in spite of security deposit, 5th respondent has not delivered possession of one of the other three aircrafts. While so, respondents 4 and 5 issued a notice on 9.1.2017 for termination and grounding of the remaining two aircrafts (MSN 19000608, 19000593) on the ground that the petitioner has committed an event of default and the petitioner was prohibited from flying the aircrafts. The petitioner was also threatened with deregistration. Now, the petitioner states that it has got several claims against respondents 4 and 5, since the respondents 4 and 5 did not hand over the aircraft under the terms of four lease agreements. The petitioner states that though the respondents 4 and 5 are claiming outstanding amount of 6.6 Million USD, the petitioner's security deposit to the tune of 7.23 Million USD is more than that amount. The notice of termination was followed by a notice of demand dated 17.01.2017 wherein it was indicated that they have already applied for deregistration with the first respondent, and the present writ petition was filed seeking a direction to the respondents 1 to 3 not to consider and act upon the request of the respondents 4 and 5 for deregistration of the aircrafts which are plied by the petitioner.

The execution of four lease agreements and the delivery of three aircrafts out of four aircrafts is not in dispute. The petitioner executed an irrevocable power of attorney and de-registration and export request authorization in favour of respondents 4 and 5 along with letters of intimation to the 1st respondent. The relevant portion is as follows:

> (i) recognition that the authorized party or the person it certifies as its designee is the sole person entitled to:
> (a) procure the de-registration of the Aircraft from the Aviation Register maintained by the Directorate General of Civil Aviation of India for the purposes of Chapter III of the Convention on International Civil Aviation, signed at Chicago, on 7 December 1944, and
> (b) procure the export and physical transfer of the Aircraft from India.
> (ii) confirmation that the authorized party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in India shall cooperate with the authorized party with a view to the speedy completion of such action.

A perusal of notice of termination applied to lease of three aircrafts dated 8.1.2017 indicates that several notices were issued i.e., on 31.3.2016, 22.4.2016, 3.6.2016, 22.6.2016, 3.8.2016, 19.9.2016, 12.10.2016 and 27.10.2016 indicating the events of default and demanding payment of total outstanding shown as 6,603,603.09 USD. This was followed by another notice dated 9.1.2017. After filing writ petition, learned counsel filed additional set of material papers to show another notice of demand dated 17.1.2017 wherein it was shown that the following amounts are due from the petitioner.

Lessor	Aircraft	Amount due (USD)
CAT 63	MSN 19000217	1,505,324.57
CAT 63	MSN 19000233	1,255,980.76
CAT 14	MSN 19000593	1,746,054.72
CAT 14	MSN 19000608	2,096,243.04
TOTAL		**6,603,603.09**

It was stated therein that failure to pay the said amount by the lessee constituted continuing events of default pursuant to schedule-IX paragraphs (a) & (g) of the agreements. It was also stated in the said notice that the lessee by e-mail, dated 9.1.2017 acknowledged its liability and to pay and to hand over the Aircraft (MSN 19000593 & 19000608), and undertook to pay USD 4,000,000 by 12.01.2017 failing which the petitioner assured that it would ground both aircraft on 13.01.2017 and hand over the possession of the aircraft as well as the aircraft records. Finally notice says that the lessee was asked to hand over the aircraft to the lessor by 8.00 pm on 18.1.2017 and pay the amounts outstanding indicating further that failing to do so would invite proceedings against the lessee/guarantor.

The above facts further show that when the lessee, the petitioner herein were due of certain amounts to the respondents 4 and 5, and respondents 4 and 5 wanted to initiate action against the petitioner, the present writ petition is filed against the respondents 1 to 3 not to consider the request of the respondents 4 and 5 for deregistration of the aircraft. The first respondent is empowered under Rule 30 of Aircraft Rules, 1937, to issue Certificate of Registration and it provides for cancellation of registration in sub-rule (6) which reads as follows:

30. Certificate of Registration-
(1) ....
(2) ....
(3) ....

> (4) ....
> (5 ....
> (6) The registration of an aircraft registered in India may be cancelled at any time by the Central Government, if it is satisfied that—
> (i) such registration is not in conformity with the provisions of sub-rule (2); or
> (ii) the registration has been obtained by furnishing false information; or
> (iii) the aircraft could more suitably be registered in some other country; or
> (iv) the lease in respect of the aircraft, registered in pursuance of sub-clause (iv) of clause (a) of sub-rule (2) is not in force; or
> (v) the certificate of airworthiness in respect of the aircraft has expired for a period of five years or more;
> (vi) the aircraft has been destroyed or permanently withdrawn from use; or
> (vii) it is inexpedient in the public interest that the aircraft should remain registered in India.

The procedure relating to registration/deregistration of the aircraft was contained in the Circular of the 1st respondent dated 10.9.1998, which provides as follows:

> **9. Cancellation of Registration of Aircraft**
> 9.1 The registration of an aircraft registered in India may be cancelled at any time by the DGCA, if it is satisfied that:-
> i. such registration is not in conformity with para 3.1 of this CAR; or
> ii. the registration has been obtained by furnishing false information; or
> iii. The aircraft could more suitably be registered in some other country; or
> iv. the aircraft has been destroyed or permanently withdrawn from use' or
> v. it is inexpedient in the public interest that the aircraft should remain registered in India; or
> vi. the lease in respect of the aircraft registered pursuant to paragraph 3.1 (iv) (a) has expired, or
> (b) has been terminated by mutual agreement between the lessor and the lessee, or
> (c) has been otherwise terminated in accordance with the provisions of the Lease Agreement, or terms of lease
> vii. the Certificate of Airworthiness in respect of the aircraft has expired for a period of five years or more.

Now, the learned Senior Counsel for the petitioner submits that since the 1st respondent has to be satisfied with regard to the need for cancellation of registration at the instance of respondents 4 and 5 pursuant to termination of lease, the petitioner shall be heard its version before taking any action and the first respondent cannot solely act on the basis of the version put forward by the respondents 4 and 5. But the documents of irrevocable deregistration, export authorization, power of attorney and deregistration authority issued in favour of respondents 4 and 5 goes against the claim of the petitioner.

Be that as it may, it is premature to predicate what the first respondent is going to do on the request made by the respondents 4 and 5 at this stage. The 1st respondent is the statutory authority, who takes action in accordance with law. This Court cannot direct the 1st respondent to act in a particular manner and it is for the first respondent to take stock of the situation and exercise its power by following due process of law. At this stage, it is relevant to notice that the petitioner did not take any steps in accordance with law against the respondents 4 and 5 and when the respondents 4 and 5 want to take action pursuant to the documents executed by the petitioner, the petitioner came up with the present writ petition. In the circumstances, this Court is not inclined to entertain the present writ petition. After dictation of this order at this stage, the learned counsel for the petitioner wanted to delete the respondents 4 and 5 from the array of the respondents and the same is permitted.

With the above observations, this Writ Petition is disposed of at the admission stage. No order as to costs.

As a sequel, miscellaneous petitions pending if any in the writ petition shall stand closed.

A. RAMALINGESWARA RAO J

Dt. 19.01.2017
GBS