

CWP No.10557 of 2017

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.10557 of 2017
Date of decision:23.08.2017**

Aerial Advertising Private Limited ...Petitioner

Versus

State of Haryana and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Puneet Kansal, Advocate,
for the petitioner.

Mr. Saurav Mohunta, DAG, Haryana.

Mr. Pawan Sharma, Advocate,
for respondent no.2.

Rakesh Kumar Jain, J.

The petitioner is a private limited company, which is engaged in the business of advertising and publicity through aircraft banner towing under non-scheduled (CHARTER) and scheduled services, glow signs, pamphlets or with any other media including aerial photography. They purchased a Piper Super Cub VT-DME aircraft in the year 2007 for using it for its business. Vide letter dated 03.04.2006, the petitioner was granted approval by the Adviser Civil Aviation, Haryana for the use of facilities of Haryana Institute of Civil Aviation at Civil Aerodrome, Pinjore. It is mentioned in the letter dated 03.04.2006 that the Haryana Institute of Civil Aviation will charge ₹50,000/- per month for the technical and hangar facilities to be provided to the petitioner's aircraft at the Aerodrome. Thereafter, the petitioner entered into a formal agreement on 01.11.2008 with the Haryana Institute of Civil Aviation,

as per which both the parties agreed mutually for housing, parking and maintenance of the petitioner's aircraft at Haryana Institute of Civil Aviation, Pinjore against monthly charges of ₹50,000/-.

The petitioner's agitation is that respondent no.2 has withheld valid original documents of its aircraft arbitrarily and has prayed that the order dated 31.05.2016, being illegal, may be set aside.

It is pertinent to mention that vide letter/order dated 31.05.2016, the petitioner was informed that the parking and maintenance contract was valid till 31.03.2016 and as on that date, an amount of ₹31,63,133/-, relating to parking and maintenance charges for the period January, 2013 to March, 2016, was outstanding. Therefore, the petitioner was directed to pay the outstanding dues immediately, otherwise it was informed that no maintenance would be carried out and it would be the responsibility of the petitioner to maintain its aircraft as per the standard procedure and all the documentary record of the aircraft will be handed over only if the dues are cleared.

During the course of hearing, counsel for the petitioner has argued that at present, the aircraft is parked at Hyderabad. However, there is no dispute that the petitioner is in arrears of the charges claimed by the respondents. The petitioner has not made any kind of counter-claim or asked for any set off of the amount claimed by the respondents. All that has been argued is that the respondents cannot withhold the valid original documents, which are most essential for the purpose of flying the aircraft. It is sought to be argued that the documents cannot be withheld on account of non-payment of dues by the petitioner and in this regard, it is submitted that there is no such provision either in the Aircraft Act, 1934 (hereinafter referred to as the "Act")

or the Aircraft Rules, 1937 (hereinafter referred to as the “Rules”). It is also sought to be argued that the right of the petitioner to property has been infringed arbitrarily by the respondents by withholding the essential documents.

On the other hand, counsel for the respondents have submitted that the petitioner is blowing hot and cold in the same breath. On one hand, it is submitted by the petitioner that the respondents cannot withhold the essential documents and on the other hand, the petitioner itself represented to the respondents, admitted its liability to pay the outstanding dues by way of installments and had even asked for the schedule of payment. It is also submitted that it is a matter of contract between the parties. The petitioner has very conveniently taken its aircraft to another Aerodrome, without making the payment and until and unless the dues are cleared, the original essential documents cannot be returned to the petitioner.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the petitioner itself is at fault and cannot blame the respondents. They entered into the agreement on 01.11.2008 in which, it was categorically provided that the petitioner would pay housing, parking and maintenance charges of its aircraft @ ₹50,000/- per month to the respondents. The petitioner is admittedly liable to pay the outstanding dues. The respondents have not denied to release the documents of the petitioner's aircraft but they have asked it to pay the dues first. The petitioner, thus, cannot be allowed to take the plea that the respondents are acting arbitrarily in this regard because the petitioner itself has got the payment of schedule prepared, paid it for some time and then stopped making the

payment and as a result thereof, the dues became outstanding.

Thus, in view thereof, I do not find any merit in the present petition and the question of applicability of the Act and the Rules does not arise in this case as clearly the petitioner is at fault because of breach of contract as it has not paid the outstanding dues of housing, parking and maintaining of its aircraft

Consequently, the present petition is hereby dismissed.

August 23, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No