

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

Judgment reserved on: 24.04.2018
Judgment pronounced on: 30.08.2018

+ **W.P.(C) 6692/2017**

HARSH VARDHAN PRATAP SINGH Petitioner
Through: Mr. Amit Gupta with Ms. Mansi
Kukreja, Mr. Raj Vardhan Pratap Singh
and Mr. Anshul Saroha, Advocates.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Ravi Prakash, CGSC with Mr.
Harman, Advocate for UOI.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.

Background

1. The petitioner before me is the Managing Director and Accountable Manager of a Flying Training Organization (in short 'FTO') going by the name: Falcon Aviation Academy. This writ petition has been filed to challenge the validity of para 13.5 (i) of Section 7, Series D, Part 1 [hereafter referred to as 'Impugned Provision'], which is incorporated in Civil Aviation Requirements (CAR), issued by the Director General of Civil Aviation ('DGCA').

1.1 The petitioner is aggrieved by the fact that the impugned provision effaces the privilege granted to a Flight Instructor ('FI') to supervise and authorise solo flights by student pilots and also to supervise flying instructions imparted by Assistant Flight Instructors ('AFI').

1.2 According to the petitioner, the impugned provision which forms part of the CAR is contrary to and inconsistent with the provisions of Schedule II, para (6) clause (b) of the Aircraft Rules, 1937 (hereafter referred to as the 'Subject Rule').

1.3 The grievance of the petitioner is that the impugned provision is contrary to the Subject Rule as it provides that Assistant Pilot Instructor(s) (APIs)/ Pilot Instructor(s) (PIs) shall obtain approval from the Chief Instructor (CI) or Chief Flight Instructor (CFI) of the concerned FTO and that PIs and APIs shall impart training only after obtaining due authorisation from CI/ CFI/ Deputy CFI in respect of each flight.

Difficulties faced by FTOs

2. In support of his contention, the petitioner has relied upon the Convention on International Civil Aviation (hereafter referred to as 'Chicago Convention'); the Standard and Recommended Practices (SARPs), issued by the International Civil Aviation Organization, (ICAO); the provisions of the Aircraft Act, 1934 ('Aircraft Act'); and the Aircraft Rules, 1937 ('Aircraft Rules').

2.1 The case set up by the petitioner, is that, contrary to the Subject Rules, the DGCA by issuing the impugned provisions as part of the CAR, has created a monopoly in favour of CFIs and Deputy CFIs. It is averred that the monopoly created in favour of CFIs/ Deputy CFIs is affecting the day-to-day functioning of FTOs as no flight training exercise can be conducted without their authorisation, even though, as per the Aircraft Rules such flight training exercises can be conducted under the supervision and authority of persons who are in possession of FI rating as endorsed by the

DGCA.

2.2 In the writ petition, reference is made to practical difficulties caused on account of non-availability of the CFIs/ Deputy CFIs. It is averred that at times a CFI/ Deputy CFI is absent or unavailable on account of leave, meetings with DGCA, participation in refresher courses, renewal of license, instructor rating or when he or she is required to take a medical exam. According to the petitioner, in the event of absence of CFI/ Deputy CFI, for any of the aforesaid reasons, the FTO is required to suspend its flight training exercises.

2.3 Besides this, the CFIs/Deputy CFIs, according to the petitioner, at times misuse their monopolistic powers and thus, often force the FTOs to accede to their unreasonable and unethical demands.

2.4 It is averred that, so much so, even when there are serious complaints by the pilot students with regard to the behaviour of CFIs/ Deputy CFIs, the concerned FTO is unable to take action as it impacts the running of the FTO. To buttress his submission, the petitioner has referred to the leave record of Falcon Aviation Academy's CFIs for the period spanning between the time the impugned provision was introduced (i.e. 01.01.2016) and I presume, in and about the time the instant petition was filed. These details are given in Annexure P-13. The details furnished by the petitioner show that the concerned FTO could work only for 54.07% of the functional days, that is, when the CFIs referred to in the said annexure were actually available.

2.5 The petitioner has also adverted to the complaint of sexual harassment lodged against one of the CFIs and the instance of fake

certificates being issued by a CFI of another FTO, to 25 pilot students so as to enable them to obtain Indian Commercial Pilot licence.

2.6 The petitioner has also alluded to the answer given by the Minister of State for Civil Aviation, on 06.04.2017, to an unstarred question No.5466 in Lok Sabha. It is stated by the petitioner that the Minister of State for Civil Aviation wrongly conveyed to the Lok Sabha that FI rating holders had privileges in consonance with Schedule II, Section R, Para 6 clause (b) of the Aircraft Rules, while the same had been taken away since 01.01.2016 after the insertion of the impugned provision in the CAR by the DGCA.

2.7 The petitioner has also made reference to the fact that via e-mail dated 09.06.2016 the DGCA, in reply to the petitioner's letter dated 16.05.2016 concerning the withdrawal of FIs had indicated that the matter was under consideration. In this behalf, the petitioner has also adverted to his RTI query directed towards the DGCA and the reply dated 07.10.2016 sent in that behalf.

2.8 According to the petitioner, the reply given by the DGCA is vague as it does not specify as to what would happen if the CFI was not present for authorisation.

2.9 Furthermore, the petitioner, pertinently also sent, in about 2017, an RTI query to the DGCA via an e-mail wherein he, *inter alia*, sought to know whether the Air Safety Directorate of the DGCA had ever suggested or advised curtailment or withdrawal of privileges of FI rating holders in its accident summaries, reports, or in any other official memos.

3. Evidently, the Government of India via the Ministry of Civil Aviation informed the petitioner vide communication dated 04.01.2017 that the

matter was under examination for appropriate action.

3.1 Besides this, the petitioner has adverted to correspondence sent to the DGCA between 10.02.2017 and 20.03.2017 to highlight the illegality involved in retaining the impugned provision in the CAR.

3.2 The petitioner makes a specific reference to the communication dated 04.05.2017 addressed by the Deputy Director, Air Safety & CPIO to the RTI query raised by him. The said communication is suggestive of the fact that there has been no general curtailment or withdrawal of privileges of FI rating holders for involvement in accidents or serious incidents, etc., though those who were involved were taken off the roster pending investigation by the Air Safety Directorate.

3.3 To highlight the egregious misconduct of CFIs, the petitioner has adverted to a specific instance pertaining to a CFI working with Falcon Aviation Academy, which involved his having funded the training of a particular student at the behest of an official of the DGCA, because he was looking for a discount in the fees which was charged for the course. It is averred that upon the CFI being found out that he had infringed the terms of his employment, he resigned and joined another FTO without obtaining its previous employer's 'No Objection Certificate', *albeit*, with the blessings of the DGCA.

4. To my mind, the aforementioned infractions committed by CFIs were, perhaps, brought to fore by the petitioner, only to highlight the practical difficulties faced by the FTOs in conducting their training exercises. The instances cited by the petitioner cannot be adjudicated upon in this writ petition as that is not the scope and ambit of writ petition.

Assertions by parties

5. However, what is required to be noticed is that the Ministry of Civil Aviation, Government of India vide communication dated 04.01.2017, while accepting the fact that the restoration of privileges of FI rating holders by "correcting" the impugned provision inserted in CAR, was under examination, has done nothing substantial in the matter except issue a notification dated 19.09.2017.

5.1 By virtue of this notification, the Central Government in exercise of powers under Section 5 of the Aircraft Act has amended Schedule II, Section R, para 6 clause (b) of the Aircraft Rules by, *inter alia*, inserting the following proviso: -

"Provided that this privilege shall be subject to any directions that may be issued by the Director-General in this behalf to Flying Training Organisations."

6. The record shows that pursuant to the notice issued in this writ petition on 04.08.2017, a counter affidavit has been filed on behalf of the respondents which includes Union of India and DGCA via which all that which has been done is to place on record the Gazette Notification dated 19.09.2017, to which, I have made a reference above. Pertinently, none of the averments made in the writ petition have been dealt with or denied by the respondents.

7. The petitioner, on the other hand, has filed a rejoinder. Via the

rejoinder, the petitioner has, apart from reiterating his submissions made in the writ petition, highlighted the fact that the Gazette Notification dated 19.09.2017, does not withdraw or restrict the privilege of FI rating holder. It is asserted by the petitioner that even if the DGCA is considered competent to issue directions regarding privileges conferred on the FIs the same cannot be contrary to or inconsistent with the provisions made in that behalf under the Aircraft Act and Aircraft Rules. It is also averred by the petitioner that the privilege conferred upon FI rating holders cannot be curtailed by way of amendment to the Rules or CAR, since the same would be contrary to SARPs issued by ICAO and section 4 and/or 5A of the Aircraft Act.

7.1 In other words, the submission is that executive instructions can only supplement the statute or cover areas to which the statute does not extend but it cannot run contrary to the statute or whittle down its effect. Reliance in this behalf is placed by the petitioner on the judgment of the Supreme Court rendered in: *Joint Action Committee of Airline Pilots Association of India v. Director General of Civil Aviation*, (2011) 5 SCC 435. The petitioner, thus, takes the stand that CAR is neither a statute nor a subordinate legislation. It is averred that CAR issued by the DGCA are merely executive orders and hence cannot be used to restrict the privileges granted to FIs.

8. In support of their respective stands, the arguments in line with the pleadings in the matter were advanced on behalf of petitioner by Mr. Amit Gupta, while on behalf of the respondents submissions were advanced by Mr. Ravi Prakash, Central Government Standing Counsel.

Analysis and reasons

9. Before I proceed further, it may be relevant to note the assertion made by the petitioner, to which I have made a reference above, which is, that he is the Managing Director and the Accountable Manager of Falcon Aviation Academy and that the said FTO (i.e. Falcon Aviation Academy), has been approved by DGCA, having validity till 19.12.2020, has not been refuted by the respondents.

9.1 Furthermore, the petitioner claims that the Falcon Aviation Academy is in possession of ten (10) Cessna-152 aircrafts and two (2) Piper Seneca PA-34 aircrafts, besides a Red Bird MCX Full-Motion Simulator, for training student pilots is also not put in issue by the respondents.

9.2 Therefore, the petitioner clearly has, to my mind, the necessary *locus standi* and legal interest in assailing the impugned provision inserted in the CAR.

9.3 However, in order to appreciate the contours of the issue at hand and to facilitate its adjudication. It would be necessary to advert to the relevant provisions of the Chicago Convention, SARPs issued by ICAO, the Aircraft Act and the Aircraft Rules framed thereunder.

10. Towards this end, let me first and foremost allude to the Chicago Convention.

10.1 In order to bring about uniformity in international standards, *inter alia*, qua operation of civilian aircrafts, the Chicago Convention was framed on 07.12.1944; fifty two (52) countries including India were signatories to the Chicago Convention. The Chicago Convention was brought into force

on 04.04.1947.

10.2 The Article 37¹ of Chapter VI of the Chicago Convention, *inter alia*, obliges every contracting state to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services. Clause (a) to (k) of Article 37 refers to areas qua which ICAO is empowered to adopt and amend from time to time as may be necessary international standards and recommended practices and procedures to bring about uniformity in regulations, standards and procedures in matters relating to aircraft, personnel airways and auxiliary services so as to facilitate and improve air navigation.

¹ Article 37 – Adoption of International standards and procedure – Each contracting State undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

To this end the International Civil Aviation Organization shall adopt and amend from time to time, as may be necessary, international standards and recommended practices and procedures dealing with:

- (a) Communications systems and air navigation aids, including ground marking;
- (b) Characteristics of airports and landing areas;
- (c) Rules of the air and air traffic control practices;
- (d) Licensing of operating and mechanical personnel;
- (e) Airworthiness of aircraft;
- (f) Registration and identification of aircraft;
- (g) Collection and exchange of meteorological information;
- (h) Log books;
- (i) Aeronautical maps and charts;
- (j) Customs and immigration procedures;
- (k) Aircraft in distress and investigation of accidents;

and such other matters concerned with the safety, regularity; and efficiency of air navigation as may from time to time appear appropriate.

Article 38: Departures from international standards and procedures – Any State which finds it impracticable to comply in all respects with any such international standard or procedures, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the council within sixty days of the adoption of the amendment to the international standard, or indicate the action which it proposes to take. In any such case, the council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the

10.3 Article 38 gives leeway to a contracting State to deviate from established international standards, regulations and practices where it finds it impracticable to comply in all respects with international standards or procedures, albeit, by notifying the ICAO in that behalf. In the event, amendments are made qua an international standard which a contracting State does not wish to adhere to, it is required to give notice to the ICAO within 60 days of such amendment being adopted, and ICAO in turn, is required to notify other contracting States as to differences which obtain between the international standard so adopted and the corresponding standard of the concerned contracting State.

11. It appears that having regard to the fact that India was a signatory to the Chicago Convention, it proceeded to insert Section 4² in the Aircraft Act via amendment Act 12 of 1972 in place of Section 3 w.e.f. 20.04.1972, which, in effect, empowered the Central Government to make rules as may be necessary for carrying out the provisions of the Chicago Convention including the provisions contained in the annexure relating to international

corresponding national practice of that State.

² **Section 4. - Power of Central Government to make rules to implement the Convention of 1944.** Subject to the provisions of section 14, the Central Government may, by notification in the Official Gazette, make such rules as appear to it to be necessary for carrying out the Convention relating to International Civil Aviation signed at Chicago on the 7th day of December, 1944 (including any Annex thereto relating to international standards and recommended practices) as amended from time to time.

Section 5A - Power to issue directions.- (1) The Director-General of Civil Aviation or any other officer specially empowered in this behalf by the Central Government may, from time to time, by order, issue directions, consistent with the provisions of this Act and the rules made thereunder, with respect to any of the matters specified in clauses (aa), (b), (c), (e), (f), (g), (ga), (gb), (gc), (h), (i), (m) and (qq) of sub-section (2) of section 5, to any person or persons using any aerodrome or engaged in the aircraft operations, air traffic control, maintenance and operation of aerodrome, communication, navigation, surveillance and air traffic management facilities and safeguarding civil aviation against acts of unlawful interference, in any case where the Director-General of Civil Aviation or such other officer is satisfied that in the interests of the security of India or for securing the safety of aircraft operations it is necessary so to do.

(2) Every direction issued under sub-section (1) shall be complied with by the person or persons to whom such direction is issued.

standards and recommended practices.

11.1 Importantly, para 2.8.2.1 of Chapter II of Annexure-I of the Chicago Convention provides for the privileges of the holder of FI rating. The said provision, *inter alia*, grants the person holding an FI rating, the privilege to supervise solo flights by pilot students subject to conditions contained therein; which includes, that privileges so granted to an FI are required to be entered in his licence.

12. The power of the Central Government to make rules, (*albeit*, after following the provisions of Section 14 of the Aircraft Act) flows from Section 5 of the Aircraft Act.

12.1 Sub-section (1) of Section 5 adverts to aspects qua which the Central Government can make rules, these concern matters relating to regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing safety of aircraft operations.

12.2 Sub-section (2) of Section 5 sets out under clause (a) to (qq), the areas which the rules could touch upon. Clause (r) of Section 5(2) vests residuary power on the Central Government to provide for matters which are subsidiary and/or incidental to the matters referred to in the foregoing clauses of the said sub-section.

13. Section 5A of the Aircraft Act empowers the DGCA or any other officer specifically empowered in that behalf by the Central Government to issue directions from time to time with respect to specified matters referred to in sub-section (2) of Section 5. In terms of this provision directions can be issued by the DGCA or any the officer specifically empowered by the Central Government for the said purpose, to any person or persons using

any aerodrome or engaged in aircraft operations, etc. provided the directions or orders so issued are consistent to the provisions of the Aircraft Act and the Rules made thereunder.

14. This aspect is further emphasised in sub-rule (1) of Rule 29C³ of the Aircraft Rules, which states that the Director-General may lay down standards and procedures which are not inconsistent with the Aircraft Act and the rules made thereunder to carry out the provisions of the Chicago Convention and any annexure appended thereto.

15. Pertinently, Rule 38A(2)(b)⁴ specifically states that no person other than a person having FI's or AFI's rating shall impart instructions in piloting an aircraft unless he has been specifically authorised in writing by the Director-General to impart such instructions.

16. Rule 133A empowers the Director-General of the DGCA to issue special directions with regard to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or aircraft registered in India through notices via means indicated therein, which are collectively, referred to as CAR, with a caveat that the directions so issued are not inconsistent with the provisions of the Aircraft Act or the Rules made thereunder.

17. This being the overall architecture of the Chicago Convention, the Aircraft Act and the Rules framed thereunder insofar as the issue at hand is

³ **29C - Adoption of the Convention and Annexes.**—The Director-General may lay down standards and procedures not inconsistent with the Aircraft Act, 1934 (22 of 1934) and the rules made thereunder to carry out the Convention and any Annex thereto.

⁴ **38A. Carriage of operating crew. -.....**

(1) **Pilot.-**

(2) **Flight Instructor or Assistant Flight Instructor. –**

(a)

(b) No person other than a person having a Flight Instructor's or Assistant Flight Instructor's rating shall impart instructions in piloting in aircraft, unless he has been specifically authorised in writing by the

concerned, what is required to be considered is the following: -

Issues:

- (i). Whether the impugned provision is unconstitutional and ultra vires the provisions of the Aircraft Act and Rules framed thereunder?
- (ii). Whether the Director-General could amend para 6(b) of Section R, Schedule II of the Aircraft Rules by inserting the impugned provision in CAR?"

Issues ((i) & (ii):

18. In so far as the first issue is concerned, what is required to be recognised, and something which is not in dispute, is that India is a signatory to the Chicago Convention. Thus, in consonance with the provisions of the Chicago Convention, the legislature, by inserting Section 4 in the Aircraft Act has declared its intent to make rules which would be necessary for carrying out the provisions of the Chicago Convention including those which are contained in the annexure appended to the Convention. Therefore, immediately, what one requires to take into account is para 2.8.2.1 of Chapter II of Annexure-I to the convention, which provides for privileges held out to persons who are holders of FI ratings. For the sake of easy reference, the relevant provisions are set out hereafter: -

"2.8.2 *Privileges of the holder of the rating and the conditions to be observed in exercising such privileges*

2.8.2.1 *Subject to compliance with the requirements*

Director-General to impart such instructions.

specified in 1.2.5 and 2.1, the privileges of the holder of a flight instructor rating shall be:

- a) to supervise solo flights by student pilots; and
- b) to carry out flight instructions for the issue of a private pilot licence, a commercial pilot licence, an instrument rating, and a flight instructor rating

provided that the flight instructor:

- 1) *holds at least the licence and rating for which instruction is being given, in the appropriate aircraft category;*
- 2) *holds the licence and rating necessary to act as the pilot-in-command of the aircraft on which the instruction is given; and*
- 3) *has the flight instructor privileges granted entered on the licence."*

(emphasis is mine)

19. Clearly, subject to the conditions stipulated in para 2.8.2.1 the person holding FI's rating under the convention is granted the privilege of supervising solo flights by student pilots.

19.1 India, in consonance with para 2.8.2.1 of SARP has provided in the form of para 6(b), in Section R, under Schedule II of the Aircraft Rules similar privilege to persons holding FI ratings. For the sake of convenience, the same is reproduced hereunder:

*"Section R - FLIGHT INSTRUCTOR'S RATING
(AEROPLANES/ HELICOPTERS)*

6. Privileges - Subject to the validity of endorsements and ratings in the Pilot's licence of which this Flight Instructor's

Rating forms a part and also any endorsement on this rating, the privileges of the holder of a Flight Instructor's Rating shall be -

(a)

(b) to supervise and authorise solo flights by student pilots and supervise flying instructions imparted by Assistant Flight Instructors."

(emphasis is mine)

19.2 As noted above, once India had decided to frame its rules in conformity with the provisions of the Chicago Convention which included those contained in Annexure-I relating to SARPs, under Article 38 it was required, as correctly argued on behalf of the petitioner, to inform the ICAO of any changes brought about in the Rules with the insertion of impugned provision in CAR.

19.3 Clearly, India does not appear to have informed ICAO of the change brought about by virtue of the insertion of impugned provision in CAR. However, having said so there is no timeline is fixed with respect to the same. The timeline of 60 days fixed in Article 38 is with respect to amendments brought about in international standard; which, if a contracting State does not wish to adopt by amending its regulations and practices is required to be notified. Notice in that behalf has to be given by the concerned State to the ICAO within 60 days of adoption of the amended international standard.

19.4 Therefore, India, by deviating from para 2.8.2.1 has not, in that sense, violated an international convention which though incorporated in the Aircraft Rules is only directory in nature.

19.5 The argument advanced on behalf of the petitioner that it violates the provisions of Article 14 of the Constitution cannot be sustained as India has the power even under the Chicago Convention to deviate from the international standards.

20. That being said, what is required to be examined is as to whether the subject rule to which, I have made a reference above, could be amended by inserting the impugned provision in the CAR, as noticed above. Section 5A of the Aircraft Act which confers power on the DGCA to issue directions mandates that the directions so issued have to be consistent with the provisions of the Aircraft Act and the Rules framed thereunder. As noted hereinabove, Rule 29C of the Aircraft Rules while empowering the Director General to lay down standards and procedures clearly limits the power by providing that such standards and procedures should be consistent with the provisions of the Aircraft Act and the Rules framed thereunder to carry out the provisions of the Chicago Convention and the annexure appended thereto.

20.1 The directions which are issued by the Director General from time to time by virtue of power vested under Rule 133A⁵ of the Aircraft Rules also sets out that the directions issued by him cannot be inconsistent with the

⁵ **133A. Directions by Director-General. —**

(1) The Director-General may, through Notices to Airmen (NOTAMS), Aeronautical Information Publication, Aeronautical Information Circulars (AICs), Notice to Aircraft Owners and Maintenance Engineers and publication entitled 311 [Civil Aviation Requirements] issue special directions not inconsistent with the Aircraft Act, 1934 (22 of 1934) or these rules, relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India.

(2) The Civil Aviation Requirements under sub-rule (1) shall be issued after placing the draft on the website of the Directorate General of Civil Aviation for a period of thirty days for inviting objections and suggestions from all persons likely to be affected thereby: Provided that the Director General may, in the public interest and by order in writing, dispense with the requirement of inviting such objections and suggestions.

(3) Every direction issued under sub-rule (1) shall be complied with by the person or persons to whom

provisions of the Aircraft Act or the Rules framed thereunder. Therefore, looked at in the light of the provisions of the Chicago Convention, para 2.8.2.1 of SARP and the aforementioned provisions of Aircraft Act and Aircraft Rules, the impugned provision which stands inserted in the CAR, clearly dilutes the privileges conferred upon the AFI's and FI's. To appreciate the extent of the dilution, the impugned provision is extracted hereafter: -

"13.5 Assistant Pilot Instructor(s)/ Pilot Instructor(s)

*The APIs/ PIs shall be approved by CI of CFI or FTO.
APIs/ PIs shall hold:*

(a)

(b)

Functions and Responsibilities of PIs/ APIs:

i) *The PI/APIs shall impart flying training only after obtaining due authorization by CI/CFI/Dy. CFI for each flight...*

ii) xxx xxx xxx

iii) xxx xxx xxx

iv) xxx xxx xxx."

(emphasis is mine)

21. The impugned provision was inserted in CAR on 30.01.2015 and was brought into effect on 01.01.2016. Plainly, the impugned provision, is contrary to the Subject Rule as it requires FI's and AFI's to impart flying training after obtaining due authorisation from CI's, CFI's and Deputy CFI's.

What has made matters worse for FI's and AFI's is that this approval has to be obtained for each flight. Apart from the practical difficulty that it places on FTOs on account of unavailability of CIs/ CFIs/ Deputy CFIs, it certainly takes away the privilege granted to a person holding an FI's rating to supervise solo flights by student pilots.

21.1 This is a privilege which stands incorporated in a statutory rule framed by the Central Government which in turn is based on para 2.8.2.1 of the SARP appended to the Chicago Convention.

22. In my opinion, the Director General did not have the power to issue a direction of the nature which has the effect of amending a rule framed by the Central Government. The impugned provision which has been inserted in the CAR is undoubtedly inconsistent with the subject rule. The impugned provision is clearly *ultra vires* to the subject rule incorporated in the Aircraft Rules. The impugned provision at best is an executive instruction which cannot overturn a statutory rule framed by the Govt. of India: The observations made in that behalf by the Supreme Court in *K. Kuppusamy and Anr. V. State T.N. and Ors.*, (1998) 8 SCC 469, being apposite, are extracted hereafter:

“3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed

under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.

23. The argument advanced on behalf of the respondents, based on the Gazette Notification dated 19.09.2017, that the proviso to the Subject Rule now empowers the Director General to issue directions qua the privileges conferred on persons holding FI ratings, in fact, fortifies the arguments advanced on behalf of petitioner that the Director General could not have taken away or diluted the privilege of a person holding a FI rating by inserting the impugned provision in the CAR. At best, what one can say of the amendment brought about in the Subject Rule is that it confers on the Director General an enabling power. This power clearly has not been exercised as yet and cannot, to my mind, ratify the impugned provision which was inserted in the CAR when the Director General did not have the power to issue such a direction. The Gazette Notification of 19.09.2017 amending the Subject Rule does not go so far as to ratify the impugned provision inserted in the CAR.

24. Thus, having regard to the foregoing discussion, I am of the view that the impugned provision to the extent delineated hereafter i.e. para 13.5(i) of Section 7 of Series D Part I which reads as follows: -

"13.5 Assistant Pilot Instructor(s)/ Pilot Instructor(s)

*The APIs/ PIs shall be approved by CI of CFI or FTO.
APIs/ PIs shall hold:*

(a).....

(b).....

Functions and Responsibilities of PIs/ APIs:

i) The PI/APIs shall impart flying training only after obtaining due authorization by CI/CFI/Dy. CFI for each flight

ii) xxx xxx xxx

iii) xxx xxx xxx

iv) xxx xxx xxx."

as prayed, will have to be struck down. It is ordered accordingly. There shall be no order as to cost.

**RAJIV SHAKDHER
(JUDGE)**

AUGUST 30, 2018

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