

Mallayya R. Chhanam	}	Petitioner
versus		
Government of India and Ors.	}	Respondents

Mr.Sagar Patil for respondent no.5.

DATE :- FEBRUARY 18, 2019

1. The petitioner has tendered one more affidavit today and seeking to be a rejoinder affidavit. However, in his petition, the petitioner says that he is aggrieved and dissatisfied with the existing rules and which provide for a no-objection certificate (NOC) from the concerned authority so as to be able to make any construction or to retain any existing construction within the

restrictions placed near the runways at the Chhatrapati Shivaji International Airport, Mumbai. By prayer clauses (b), (c), (d) and (e), the petitioner claims the following reliefs:-

“B) That Hon'ble Court, exercising powers under Article 226 of the Constitution direct the respondent no.1 Ministry of Civil Aviation to add the last sentence of Para No.1.3.2.4 of S.O.84 (E) in S.S.R.751 (E) Airports Authority of India to issue revised NOCs to all the sites in the approach surface as per distance of the displaced threshold of all the runways at CSIA Airport Mumbai. An additional height 2% of the distance of the displaced threshold as NOCs were issued to 18 NOC cases by implementing Para no.1.3.1.4 or more during the validly period of S.O.84 (E) which is as per the Annex-14 and DGCA, Civil Aviation Requirement same may be considered for others for issuing the NOCs.

C) That this Hon'ble Court direct the respondent no.1 and 2 follow the ICAO norms strictly in Inner Horizontal surface of Juhu Mumbai not to follow sites lying in the Inner Horizontal Surface of Juhu upto Inner Horizontal surface of Santercruz in accordance with report of the study of Juhu Inner Horizontal surface is not as per the ICAO norms.

D) That this Hon'ble Court direct the respondent no.1 and 2 to follow the ICAO norms for proposed construction in the approach surface of runway 26 Juhu Airport Mumbai and not to follow recommendations and report of Joglekar Committee which is not as per the ICAO norms.

E) That this Hon'ble Court, exercising powers under Article 226 of the constitution of India Direct the respondent No.4 to cancel the letter dated 07/09/2016 written to respondent no.4 list of the obstacles showing the penetration in the approach surface of all the runways at CSI Airport Mumbai. Direct the respondent no.4 to prepare fresh list of obstacle after respondent no.1 and 2 incorporating the last sentence of Para no.1.3.1.4 of S.O.84 (E) in G.S.R.751 (E), Rules 2015.”

2. By prayer clause (f), he says that respondent nos. 1 and 2 be directed to comply with the ICAO document and particularly document 9137, in which, India has declared regarding shielding benefits on page no. 62.

3. In the writ petition itself, the petitioner says that there are 19 NOC cases where revised height clearances have been given by the Airport Authority of India. It is claimed that there are many more cases where the second respondent might have granted more revised height clearances and all this compromises with the safety and security of the passengers. The petitioner is one such air traveler. Though he is residing in the city of Aurangabad, it is his claim that he travels to Mumbai regularly. He also says that he is an ex-employee of respondent nos. 2 and 3 to this writ petition, namely, the Airport Authority of India and the Director General of Civil Aviation, Ministry of Civil Aviation. He is having more than 36 years' experience in the aviation field and he has worked as Deputy General Manager, Operations (Western Region), Mumbai. The petitioner claims to have witnessed several matters of this nature where NOCs are sought, but they have to be granted based on mathematical calculations on the basis of ICAO documents. The height or permissible elevation for the structure, requiring grant of NOC, is calculated on the basis of Annexures 14 and 10, document 8168 Volume II and document 9137 part 6.

4. The petitioner claims that though he was not allowed to intervene in Public Interest Litigation No. 86 of 2014 and the

chamber summons taken out by him has been dismissed, still, there are subsequent developments enabling him to come to this court and seek the above reliefs.

5. What we have found from a reading of the writ petition, its annexures and the affidavit in reply is that the petitioner is disputing the legality, validity and correctness of the NOCs granted. He is aggrieved by these NOCs. He says that these NOCs contravene the international norms and standards. He does not dispute that so long as these rules and regulations are in place and by the above mentioned Standing Order, the provision of an appeal is available to all concerned. The petitioner claims that he is unable to file such an appeal for an appeal at his instance cannot be entertained for he is not an aggrieved party and though practicing as a legal practitioner, he has come across several mistakes which may create issues and problems of aviation safety and aircraft operation in Mumbai.

6. We have no doubt in our mind that in the event the petitioner approaches the appellate authority, challenging the specific NOCs and convinces the authorities that even though he is not a person aggrieved, but in the larger interest of public, leave be granted to him to present an appeal, such request would be considered by the appellate authority on its own merits and in

accordance with law. It will pass appropriate orders on hearing all concerned, including those who have approached the appellate authority to present such appeal or those persons in whose favour the NOCs have been granted.

7. Once there is a remedy which the petitioner may avail of, then, presently we do not entertain any larger challenge at the petitioner's instance. We allow him to avail of such a remedy. We dispose of the writ petition on the ground that the petitioner can approach the appellate authority challenging the specific NOCs and convince them that though he is not an aggrieved party, still, in the larger interest of public, he be allowed to present an appeal. Such an appeal/application, if made, shall be considered by the appellate authority on its own merits in accordance with law. Merely because we have allowed the petitioner to approach the appellate authority does not mean that it must grant the leave as prayed. All contentions in that regard and of both sides are kept open.

8. The writ petition is disposed of in the aforesaid terms.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)