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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 2679 OF 2017

Capt. Bernd Kai Von Hoesslin

... Petitioner

V/s.

Union of India and Ors.

... Respondents

Dr. Birendra Saraf, Senior Advocate a/w. Rishika Harish, Samit Shukla and Aneesa Cheema i/b. DSK Legal for the Petitioner

Mr. N.R. Bubna for Respondent Nos. 1 to 3

***CORAM : S.V. GANGAPURWALA &
M.G. SEWLIKAR, JJ.***

DATE : 4 MAY 2022

P.C. :-

Heard the learned Senior Advocate for the Petitioner and the learned Counsel for the Respondents.

2. The Petitioner seeks directions against the Respondents to conduct investigation of the incident as reported by the Petitioner vide his E-mail dated 27th June 2017 and letters dated July 3, 2017 and September 12, 2017.

3. The learned Senior Advocate for the Petitioner submits that the Petitioner at the relevant time was employed as a Senior Commander - TRI during the period from September 29, 2013 to May 5, 2017. It is submitted that on or about 3rd April 2017, the two passengers in wheelchair propelled by battery were brought near the aircraft gate. The Petitioner objected to the same as the same is against the security of the aircraft. To substantiate the contentions reliance is placed upon Circular No.2 of 2010. It is further submitted that the Respondents were duty bound to conduct investigation as it affected the safety of the aircraft and the passengers therein. The Respondents cannot shirk the responsibility of conducting the investigation. The incident would squarely cover under the definitions of incident as defined under Clause 2(18) of the Aircraft (Investigation of Accidents and Incidents) Rules, 2017. The learned Senior Advocate submits that the Petitioner was, thereafter, terminated but not on account of the incident, but as the financial position of the Jet Airways was declined. It is submitted that erroneously the Petitioner was also de-rostered.

4. The learned Counsel for the Respondent Nos. 1,2 and 3 submits that as per the Rule 4 of the Rules 2017, the incident has to be reported within 24 hours so as to conduct an enquiry and investigation.

5. In the present case the incident had taken place on 3rd April 2017 and for the first time on 21st June 2017 the Petitioner informed the DGCA and the Petition was filed subsequently. It is further submitted that had the incident been reported immediately, some fruitful investigation was possible. It is further submitted that the incident cannot be categorized as an incident under Rule 2(18) of the Rules of 2017.

6. We have considered the submissions canvassed by the learned Counsel for the parties.

7 The Petitioner being incharge of the aircraft would have been justified in taking objection to the wheelchair propelled by batteries be brought near aircraft gate. If the Petitioner was acting on the said bonafide belief, then the Petitioner's act may not be objected. There are some complaints filed by the two passengers against the Petitioner. In the present Writ Petition we are not required to dwell into the same as that is not the subject matter of this Petition. It would not be possible to have any fruitful investigation as five years have lapsed. It is submitted that even the Jet Airways is not functioning now and no purpose would be served by directing the Respondent No.2 to conduct an investigation after lapse of five years. The incident was also reported to DGCA after two and half months and not immediately as it is required under Rule 4 of the Rules of 2017.

8. In the light of the above, no further orders are required to be passed in the present Petition.

9. The Writ Petition is disposed of. No costs.

(M.G. SEWLIKAR, J.)

(S.V. GANGAPURWALA, J.)

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