

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

Date of decision: 22nd DECEMBER, 2022

IN THE MATTER OF:

+ **W.P.(C) 12007/2022 & CM APPLs. 35845/2022, 54363/2022**

HARSH VIBHORE SINGHAL Petitioner

Through: Petitioner in – person.

versus

THE CABINET SECRETARY, GOVERNMENT OF INDIA & ORS.

..... Respondents

Through: Ms. Anjana Gosain, Ms. Dipika Sharma and Ms. Ritika Khanagwal, Advocates.

Mr. Satinder S. Gulati, Advocate for the Applicant in impleadment application.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The Petitioner, by way of the instant Public Interest Litigation (PIL), seeks to quash the Impugned Notification Ref. F.No.CAS-7(1)/2008/Div-I (Restricted Articles) 96898 dated 04 March 2022 in the Avsec order 02/2022 (“**Impugned Notification**”) and the Corrigendum to the said Impugned Notification Ref. F.No.CAS-7(1)/2008/Div-I (Restricted Articles) 96898 dated 12 March 2022 in the Avsec order 02/2022 issued by the Respondents stating that the Impugned Notifications are unconstitutional and violate Article 14, 15 and 21 of the Constitution of India besides posing pernicious and palpable security risks to civil aviation safety in India.

2. The Petitioner has further prayed for constitution of an Empowered Working Committee ("EWC") to examine a pragmatic and workable solution to ensure that the sanctity of religious expression of the carriage of Kirpans on person in public places is suitably protected by carriage of an appropriately designed and crafted Kirpans which should not exceed beyond 4 cm blade length and similar hilt to disable a firm hand grip without any sharp edges or pointed tips or made of materials as ornately crafted wood, wrought iron or plastic specifications that cannot be misused while being carried on person in any civilian flight without hurting the sentiments or religious beliefs of the Sikh Community, and the Empowered Working Committee may be constituted with a retired justice of a High Court as Chairman with the Petitioner as a member and one or two nominee members of each of the Respondents.

3. The Petitioner, who is an Advocate by profession, states that he is committed to working for public safety, health and environment. He states that the Ministry of Civil Aviation, Bureau of Civil Aviation Security, Government of India has released the aforesaid Impugned Notification dated 04.03.2022 in exercise of powers conferred by sub-Section IA of Section 5A of the Aircraft Act, 1934 (XXII of 1934), read with Rule 3 (b) of the Aircraft (Security) Rules, 2011, for the purpose of the safety of passengers, crew, aircraft, ground personnel and the general public in all matters related to safeguarding against acts of unlawful interference.

4. Various directions have been laid down in the aforesaid Impugned Notification regarding the safety of passengers, crew, aircraft, ground personnel and the general public. The Impugned Notification lists certain prohibited items that cannot be carried in the aircraft as well as directions and procedures that have to be followed by the passengers. The Impugned

Notification also gives certain exceptions under the extant regulations i.e., carriage of wooden staff by religious heads as part of faith in hand baggage which shall be dealt in case to case basis by security staff, especially, when the known head of a religious sect is involved and no security implication or threat is apprehended. The said Impugned Notification dated 04.03.2022 granted exemption to a Sikh passenger for carrying Kirpan which reads as under:

“ii. Kirpan:

a. Kirpan may be carried only by a Sikh passenger, on his person, provided the length of its blade does not exceed 15.24 cms (6 inches); and the total length of a Kirpan does not exceed 22.86 cms (9 inches). It is allowed while travelling by air on Indian aircrafts within India (domestic routes of fully domestic flights operating from Domestic Terminals only.

b. This exception shall be for Sikh passengers only as stated above. And, no stakeholder or its employee at airport (including Sikh) and working in any terminal domestic or international shall be allowed to carry Kirpan on person.”

5. Thereafter, a corrigendum dated 12.03.2022 to the aforesaid Impugned Notification dated 04.03.2022 was also issued which reads as under:

“Corrigendum to Avsec Order No.02/2022

Subject: - Handling of Restricted Articles.

In exercise of the power conferred by Sub-section 1A of Section 5(A) of the Aircraft Act 1934, read with Rule 3 (b) of the Aircraft (Security) Rules 2011, the DG. BCAS, for the purpose of the safety of the passengers, crew, aircraft ground personnel and the general public

in all matters related to safeguarding against acts of unlawful interference with civil aviation, directs the following:

In place of part 20 (ii) (a) and (b) following shall be substituted -

“20 ii. Kripan: Kirpan may be carried by a Sikh passenger, on his person, provided the length of its blade does not exceed 15.24 cms (6 inches); and the total length of a Kirpan does not exceed 22.86 cms (9 inches). It is allowed while travelling by air on Indian aircraft within India (domestic routes of fully domestic flights only)”

2. The other provisions of the ibid AvSec order shall remain unchanged.

Sd/-

(Jaideep Prasad, IPS)

Director General, BCAS”

To:- as per attached list.

6. It is stated by the Petitioner that the exemption granted to Sikh Community passengers carrying Kirpan in the aircraft is a complete disregard to the safety of passengers and other laws in the country. It is the submission of the Petitioner that carrying Kirpan by Sikh Community travellers can be proved to be dangerous to the safety of passengers and this is also against the International Conventions i.e., Tokyo Convention Act, 1975, International Civil Aviation Organisation (ICAO), Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague on 16.12.1970 ("Hague Convention") that India acceded to by enacting the Anti Hijacking Act, 1982, Protocol Supplementary to the Hague Convention at Beijing signed on 10.9.2010 that India acceded to and that deals with unlawful acts against Civil Aviation by new types of threats which required

comprehensive amendments to the said Anti Hijacking Act, 1982 and the Anti Hijacking Act, 2016.

7. It is further stated by the Petitioner that the State cannot discriminate on grounds of religion or religious communities in favour of one particular form of religious faith and no religion can expect State patronage and cannot be endowed with any particular concessions to the exclusion or in preference to all others, and no citizen can claim any entitlement or any preferential treatment.

8. It is further stated by the Petitioner that a perusal of the Impugned Notification does not indicate that it is a careful, well thought out and measured calibration to balance all conflicting interests embraced within the exercise of such freedom, and therefore, the State by its policies cannot endanger civilian flights by placing the passengers at risk.

9. It is further stated by the Petitioner that allowing the Sikh Community to carry Kirpans on their person, while on board civilian flights in India, do not form any reasonable classification that makes them distinct and separate from others. It is stated that allowing Sikhs with the absolute unrestricted and unfettered right to carry 6-inch sharp steel blade having sharp edges on person cannot be permitted and this shows a complete lack of application of mind on the part of the Government.

10. It is stated in the writ petition that there can be no argument against the fact that any unscrupulous person masquerading himself to be a Sikh can misuse the Kirpan. Certain instances have also been given in the writ petition where persons have attempted to hijack planes and have in fact in some cases successfully hijacked planes.

11. Notice was issued in the petition on 18.08.2022 and a counter affidavit has been filed by the Director General, Bureau of Civil Aviation Security, Government of India/Respondent No.5.

12. Heard learned Counsels appearing for the Parties and perused the material on record.

13. It is stated in the counter affidavit that several representations were received by the Central Government in relation to permission about bearing the Kirpan on person of a Sikh. It is stated that after considering several aspects, the Government has acceded to the request. It is stated that Director General, Bureau of Civil Aviation Security, Government of India after a lot of deliberations has laid down several norms for safety and security of the co-passengers which read as under:

“a. Deployment of Sky Marshal in selected and sensitive routes.

b. Safety and Locking of cockpit doors, ensuring the pilots safety.

c. Basic defence training to cabin and crew members.

d. Crew members are provided with restraining equipment/items such as - Ropes, Pepper spray, shocking devices, cello tapes, etc.

e. Kirpan is allowed with Sikh passenger only in fully domestic flights.

f. Kirpan is allowed on body of a Sikh passenger rather than handbag so that no other passenger can use it.”

14. Article 25 of the Constitution of India gives every person the right to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality, and health. Explanation – I to Article 25 of the Constitution of India specifically clarifies that wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

15. It is well settled that the Courts, while exercising jurisdiction under Article 226 of the Constitution of India, does not sit as an appellate authority over the policy decisions. It is also well settled that the scope of interference in the matter of policy decisions is extremely limited and that Courts must restrain from interfering in the matter of policy decisions unless there is a categorical infringement of fundamental rights.

16. The Apex Court in State of U.P. v. Chaudhari Ran Beer Singh, (2008) 5 SCC 550, has observed as under:

“13. Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan case, though learned counsel for the respondents prayed that such a direction should be given. As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the

Government the court cannot interfere even if a second view is possible from that of the Government.”
(emphasis supplied)

17. Similarly, the Apex Court in Directorate of Film Festivals and Others v. Gaurav Ashwin Jain and Ors., (2007) 4 SCC 737, has held as under:

“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364] , Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223] , Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304] , BALCO Employees' Union v. Union of India [(2002) 2 SCC 333] , State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])”

(emphasis supplied)

18. The Apex Court in BALCO Employees' Union (Regd.) v. Union of India, (2002) 2 SCC 333, has held that Judicial interference by way of Public Interest Litigation (PIL) is only available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Every matter of public interest or curiosity cannot be the

subject-matter of PIL and Courts are not intended to and nor should they conduct the administration of the country. It was held that Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties.

19. The Apex Court has repeatedly warned that Courts must resist the temptation to usurp the power of the executive by entering into arenas which are exclusively within the domain of the executive and that Courts, while exercising jurisdiction under Article 226 of the Constitution of India, should not interfere in matters of policy or in the day-to-day functioning of any departments of Government or statutory bodies.

20. The Bureau of Civil Aviation, Ministry of Civil Aviation, Government released a Circular bearing No.14/2005 dated 15.04.2005 permitting the carriage of Kirpan by Sikh passengers while travelling by air within India under the following conditions:

“(i) Kirpan may be carried only by a Sikh passenger, on his person, provided the length of its blade does not exceed 15.24 cms (6 inches); and the total length of a Kirpan does not exceed 22.86 cms (9 inches).

(ii) It is allowed while travelling by air on India aircrafts within India; and

(iii) Kirpan is allowed only on domestic routes of fully domestic flights.”

21. The abovementioned Circular took the shape of the Impugned Notification dated 04.03.2022 which is under challenge in the PIL. There was also a corrigendum dated 12.03.2022 to the said Impugned Notification dated 04.03.2022 wherein it is stated that Kirpan may be carried by a Sikh

passenger, on his person, provided the length of its blade does not exceed 15.24 cms (6 inches); and the total length of a Kirpan does not exceed 22.86 cms (9 inches) and that the Kirpan is allowed while travelling by air on Indian aircraft within India (domestic routes of fully domestic flights only).

22. Keeping in view the dictum of the Apex Court, the Circular bearing No.14/2005 dated 15.04.2005 and the Impugned Notification dated 04.03.2022 which is under challenge in the instant PIL, and also keeping in mind the Explanation - I to Article 25 of the Constitution of India, this Court is of the opinion that the decision of giving exemption for carrying Kirpan to Sikh passengers *vide* the abovementioned Circular and Impugned Notification has been arrived at by the Government after due deliberations. The issue involved in the instant PIL is entirely a matter of policy decision.

23. A reading of the counter affidavit filed by Director General, Bureau of Civil Aviation Security, Government of India/Respondent No.5 shows that adequate precautionary and security measures are being taken by the Government to ensure safety of passengers, crew, aircraft, ground personnel and the general public. This Court is, therefore, not inclined to entertain the instant PIL.

24. The PIL is, accordingly, dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

DECEMBER 22, 2022

S. Zakir