

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

WRIT PETITION NO. 1935 OF 2024

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Deven Yogesh Kanani

...Petitioner

Versus

Director General of Civil Aviation & Ors

...Respondents

Mr. Bhagyashree Bhalchandra Patwardhan, for the Petitioner.

Mr. Pranil K. Sonawane, (Through VC), a/w Raj Chourasia, Deepak Hariasra, for Respondent Nos.1 & 2.

Mr. Zal Andhyarujina, Senior Counsel, a/w Jahaan Dastur, Shayan Bisney, Aseem Samuel, Nitin Jain, Prapti Kedia, Neha Rautela, i/b Agama Law Associates, for Respondent No.3.

Mr. Deven Yogesh Kanani, Petitioner present in Court.

Mr. Digvijay Singh, Chief Pilot, Air India present in Court.

Mr. P.R. Gupta, Flight Dispatcher, Air India present in Court.

Mr. Hemant Kumar, Principal Counsel, Air India present in Court.

**CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.**

DATE : DECEMBER 19, 2024

PC :

1. This Petition was heard on various dates at great length. The Petitioner, along with his Learned Counsel, and the Learned Senior Counsel on behalf of Respondent No. 3, with the assistance of the Chief Pilot of Respondent No.3 (who has also attended hearings on various

dates either virtually or in-person), have addressed us on various facets of the matter

2. Having had their assistance in appreciating the material on record, various questions were posed by us about the contentions of the parties made in the pleadings. Upon consideration of the submissions made by the parties and appreciation of the material on record, we were *prima facie* of the view that the issues involved in the Petition are required to be, and are best addressed by the expert regulator namely, the Directorate General of Civil Aviation (“**DGCA**”), Respondent No.1, which has also participated in these proceedings. We are of the view that this is not a matter of a bilateral dispute between two parties, but a matter that involves issues of a wider social impact involving flight safety and passenger safety. We take note that Respondent No.3 is fairly resolute and confident that it meets every norm applicable in this regard whereas the Petitioner is as resolute in his view that it is not so. We are not experts in the field and we believe that it would be appropriate that these issues are squarely dealt with by the DGCA, without our views influencing the appreciation by DGCA of all facets involved in the matter.

3. Consequently, we put it to the Learned Counsel of the parties

that we were inclined to send the matter for full consideration of the DGCA. In forming this view, we were also cognizant of the fact that the penalty order dated January 24, 2024 passed by the DGCA, and the appellate order dated May 24, 2024, upholding the penalty, do not articulate the issues involved in a manner that enables us to form a view on the merits of the matter, in the course of judicial review by us. Consequently, it is only appropriate that these facets are squarely considered and dealt with by Respondent No.1, in an articulate and comprehensible manner.

4. After we expressed this view, the parties have reflected on what fell from us, and have fairly agreed and confirmed that Respondent No.1 i.e., the DGCA may be directed to consider the question of whether Respondent No.3's Boeing 777-200LR aircraft (with 12 minutes of oxygen supply), can in the event of a decompression, achieve descent to FL100(10,000 feet) within 12 minutes and land safely at the planned alternate aerodrome, *inter alia* using the escape routes generated by the Canadian Aviation Electronics Flight Plan Manager Software (using the Terrain Resolver Module incorporated therein), on all routes on which such aircraft have been deployed after the earlier regulatory action by the DGCA in the form of the order dated January 24, 2024, which came to be upheld in appeal by an order dated May 24,

2024.

5. We direct the DGCA to examine the foregoing, consider all material relevant to the aforesaid issue, and arrive at its findings on compliance, and the need for remedial measures and directions, if any.

6. The DGCA shall conduct the proceedings in accordance with law, and following the principles of natural justice. In the peculiar facts of this case only, we permit both the Petitioner and Respondent No.3 to present their submissions to the DGCA, with all relevant documents and their contentions and both shall be granted an opportunity of being heard by Respondent No.1, with an opportunity of controverting any contentions and submissions of the other. It is clarified that we have not expressed any view on the merits of the matter one way or the other and that all contentions of the parties in connection with the issues referred to the DGCA are expressly kept open.

7. We trust the DGCA as a sectoral regulator, to take into account all facets of its regulatory mandate in the course of dealing with the issue that the parties have agreed to have us refer to the DGCA, with the due dispatch that the DGCA considers appropriate to deal with the issue at hand. We trust that the DGCA, which has a number of pilots from Air India on deputation, would ensure that the entire process is

conducted in a manner that does not leave any room for a perception of conflict of interest at any level of its regulatory review.

8. The Petition is disposed of in the aforesaid terms. Needless to clarify, we make it clear that we do not intend to circumscribe the exercise of regulatory jurisdiction by the DGCA on any facet of any matter outside the scope of these proceedings.

9. Since the reference of the aforesaid issue to the DGCA has been made by consent of Respondent No.3 and the Petitioner, Mr. Andhyarjina, Learned Senior Counsel for Respondent No. 3 fairly states that he is not pressing the issue of territorial jurisdiction. Consequently, we are not pronouncing upon the same.

10. The Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]