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

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Reserved on: March 20, 2024

Decided on: July 12, 2024

+ **W.P.(C) 6427/2019**

CAPTAIN AMIT TYAGI

..... Petitioner

**Through: Mr. Sandeep Kumar,
Mr. Gagan Kumar and
Mr. Suraj Kumar, Advocates**

V

UNION OF INDIA AND OTHERS

..... Respondents

**Through: Ms. Anjana Gosain and
Ms. Nippun Sharma,
Advocates
Ms. Rukhmini Bobde,
Mr. Amit Mishra,
Mr. Azeem Samual,
Mr. Akhil Kulshrestha,
Mr. Amlaar and
Ms. Yashika Nagpal,
Advocates for R-3**

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HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

**1. The present writ petition is filed under Article 226 of the
Constitution for quashing the order dated 14.06.2018 (hereinafter**

Signature Not Verified

Digitally Signed
By: HARVINDER KAUR
BHATIA
Signing Date: 18/07/2024
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referred to as **“the impugned order dated 14.06.2018”**) passed by the Joint Director General, Directorate General of Civil Aviation (hereinafter referred to as **“the respondent no. 2”**) along with other consequential orders dated 03.08.2018, 13.12.2018 and 09.04.2019.

2. The factual background of the case as stated by the petitioner is that the petitioner is a commercial pilot having Airline Transport Pilot License (ATPL) bearing no. 4236 and was working with Air India Ltd./respondent no.3 (hereinafter referred to as **“the respondent no.3”**) for the past 13 years. The petitioner is claimed to have an experience of airline flying for nearly 8500 hours and has been commended by the airline management on several occasions. The petitioner was suffering from hair loss and melasma and approached the respondent no 3 for treatment but such facility was not available with the respondent no 3 and the company doctor advised the petitioner to take treatment for hair fall from outside. The petitioner on 06.04.2018 started to take treatment from Omorfia, Aesthetic Clinic. The petitioner during treatment did not orally consume any medicine and the treatment including serum



administration or application of ointments was always done at the clinic.

2.1 The petitioner being commercial pilot with the respondent no 3 was operating flight as per schedule/roster allotted to him. The petitioner on 12.05.2018 did not have any scheduled flight and took an appointment at the clinic for treatment. The petitioner was requested to operate flight no AI-104 from Delhi to Hyderabad on unscheduled pull-out. The petitioner first decided to go for aesthetic treatment as per his appointment and thereafter proceeded towards the airport. The petitioner after reaching airport was subjected to regular Pre Flight Medical Check (PFMC) and tested positive for alcohol during the Pre-flight Medical Examination. The test was conducted at 12:51 pm through an instrument ALCOSENSOR-IV Serial No. 096105 and the Breath Analyzer Test came positive with a reading of 0.020% at 12:51 pm due to the presence of ointments and serums for the ongoing treatment of hair loss and melasma. The second test was conducted at 13:12 pm on the same instrument and the Breath Analyzer Test again came positive with a reading of 0.016%. The petitioner was immediately declared 'Unfit to Fly' and



was asked to go off duty. The petitioner on 12.05.2018 at 15:05 pm i.e. within 2 hours of Breath Analyzer Test underwent Blood and Urine Serum Tests at NABL approved laboratory, SRL Diagnostics and results of the tests were negative for alcohol. The petitioner on 22.05.2018 appealed to the respondent no 2 to consider the probable reasons for false results of BA instrument and showed the entire documents with respect to the treatment of hair loss and melasma and the results of the Urine test and Blood tests undergone at SRL Diagnostics.

2.2 It was mentioned in the impugned order dated 14.06.2018 that the petitioner also tested BA positive on 10.07.2013 at Mumbai while he was scheduled to operate flight no. AI-633 and the present incident was his second time for testing BA positive. The Joint Director General, Directorate General of Civil Aviation passed the impugned order dated 14.06.2018 bearing no. AP-1/PFMC/2018-AS wherein observed that the petitioner had violated the provision contained in the Civil Aviation Requirements (hereinafter referred to as “CAR”) Section-5, Series-F, Part-III, Issue-III dated 04.08.2015 and suspended the pilot license (ATPL no. 4236) of the petitioner for a



period of three years with effect from 12.05.2018. The petitioner alleged that impugned order dated 14.06.2018 was passed without giving any hearing to the petitioner. The relevant portion of the impugned order dated 14.06.2018 is reproduced as under: -

Whereas a routine preflight medical examination for detection of consumption of alcohol was carried out on 12.05.2018 at Delhi Airport.

2. And, whereas during preflight medical check, Capt. Amit Tyagi, ATPL No.4236 belonging to M/s Air India scheduled to operate flight no. AI-104 (DEL-HYD) was tested positive BA (Breath Analyzer) which is in contravention to the provision contained in CAR Section- 5, Series-F, Part-III, Issue-III dated 04th August 2015.

3. Capt. Amit Tyagi, ATPL No.4236 was earlier tested positive BA (Breath Analyzer) on 10.07.2013 at Mumbai while scheduled to operate AI-633. This is his second time BA positive case.

4. Now in exercise of the powers delegated under Clause (a) of Sub-Rule (3) of Rule 19 of the Aircraft Rules, 1937, read with Ministry of Tourism and Civil Aviation Notification No. S.O. 727 (E) of October 1994 the undersigned hereby suspends in public interest, the privileges of the pilot license held by Capt. Amit Tyagi, ATPL No.4236, for a period of three years from the date he was tested BA positive and same shall be endorsed on his pilot license.

2.3 The respondent no 2 wrote an email to the respondent no. 3 enquiring regarding any provision with the M/s Air India Limited for



treatment of Hair loss and melasma and the respondent no 3 vide response dated 12.07.2018 stated that the airline company did not have any provision or facility for said treatment. The respondent no 2 vide order dated 03.08.2018 bearing No. AP-1/PFMC/13/2018-AS dismissed the appeal filed by the petitioner. The petitioner preferred an RTI application bearing reference no. CA/RTI/Appeal/4401 dated 18.08.2018 regarding ALCOSENSOR IV no. 096105, which was duly replied by the respondent no.3 under the signatures of Dr. Ashish Bhagat, Sr. AGM (Medical) & CPIO Medical Department with the relevant documents.

2.4 The respondent no.2 vide letter dated 13.12.2018 communicated to the petitioner that there is no provision for second appeal with the respondent no.2 as per Rule 3B of the Aircraft Rules, 1937 and an appeal may be preferred to the respondent no.1. The petitioner preferred an appeal to the respondent no.1 on 10.01.2019 against the impugned order dated 14.06.2018 and the consequential order dated 13.12.2018 which was dismissed on 09.04.2019 by observing that the petitioner was in violation of the CAR, Series F, Part III, Issue III, Clause 4.3.9 dated 04.08.2015 which prohibits the crew members



from using any substance which has contents of alcohol. The contention of the petitioner with regard to the calibration of the BA Test equipment and the medication of the petitioner was not accepted vide order dated 09.04.2019. It was recorded in the order dated 09.04.2019 that BA equipment was in a calibrated and serviceable state and the procedure of conduct of BA test was as per the prevailing provisions of the CAR and the control test was 0.000 which established that both the readings i.e. 0.020% BAC and 0.016% BAC of the BA Test of the petitioner were positive for detection of alcohol in breath sample. It is also noted that same instrument was used for conducting BA test on other crew members and results were negative for all members. Accordingly, the three years suspension was upheld in terms of the existing CAR of 04.08.2015.

2.5 The petitioner alleged that the respondent no 2 ignored past precedents of Jyoti Janga and Captain Ritesh Matankar. The statutory appeal of the petitioner was dismissed in a mechanical manner by adopting a narrow, restrictive and perverse view of the CAR without appreciating the facts and circumstances and legal precedents cited



by the petitioner. The petitioner being aggrieved by the impugned order dated 14.06.2018 along with other consequential orders dated 03.08.2018, 13.12.2018 and 09.04.2019 filed the present writ petition and made the following prayers: -

- (a) Issue a writ of certiorari/mandamus or any other appropriate writ, order or direction calling for the records and quashing the order dated 9.04.2019 passed by respondent No.1;**
- b) Issue a writ of certiorari/mandamus or any other appropriate writ, order or direction calling for the records and quashing the orders dated 14.06.2018, 03.08.2018, and 13.12.2018 passed by respondent No.2;**
- (c) Direct the respondent No.2 to issue appropriate approvals, permission, letter, instruction which would permit the petitioner for flying duty;**
- (d) Direct damages and cost to be awarded to the petitioner for his loss of livelihood during the entire period of his enforced suspension: and**
- (e) Pass any other order or directions, as deemed fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondents.**

3. The respondent no.2/DGCA filed counter affidavit in response to the present petition wherein it was stated that the International Civil Aviation Organization (ICAO) being international body established regulations and recommendations that each contracting State must adhere with regard to civil aviation. ICAO sets Standards and Recommended Practices (SARPs) covering various aspects of civil



aviation. Annex 1 to the SARPs of the Convention on International Civil Aviation defines psychoactive substances which include alcohol, opioids, cannabinoids, sedatives and hypnotics, cocaine, other psycho stimulants, hallucinogens, and volatile solvents, excluding coffee and tobacco. The Paragraph 1.2.7 of Annex 1 prohibits license holders from using psychoactive substances. The contracting States including India are obligated to enact legislation to enforce these ICAO standards. Consequently, Rule 24 of the Aircraft Rules, 1937 was enacted in alignment with ICAO recommendations.

3.1 The respondent no 2 to ensure compliance with Rule 24 of the Aircraft Rules, 1937 issued CAR Section-5, Series-F Part-III under the authority delegated by Rule 133A of the Aircraft Rules, 1937. The Directorate General of Civil Aviation (DGCA)/respondent no 2 has adopted a zero-tolerance policy regarding blood alcohol content and accordingly CAR stipulates a blood alcohol content limit of 0.000 and there shall not be detectable blood alcohol in breath, urine or blood alcohol analysis of the crew. The operators, crew members, and maintenance personnel are responsible for ensuring compliance



with Rule 24 of the Aircraft Rules, 1937 by conducting BA test prior to flight operations in India.

3.2 The petitioner was tested Breath-Analyzer positive for the second time during pre-flight medical on 12.05.2018 at Delhi while scheduled to operate flight no. AI-104 and his BA readings were 0.020 BAC and 0.016 BAC respectively. The petitioner had earlier tested BA positive on 10.07.2013 at Mumbai while scheduled to operate flight no. AI - 633 (BOM-BHO-DEL) and accordingly, the petitioner's license was suspended for a period of three months being the first offence. The privileges of pilot license of the petitioner were suspended for a period of three years vide order no. AP-1/PFMG/2018-AS dated 14.06.2018 being the second offence. As per Para 4.3.7 of CAR, Section 5, Series F, Part-III, Issue-III no crew member shall consume any drug/formulation or use any substance mouthwash/tooth gel which has alcoholic content and any crew member who is undergoing such medication shall consult the company doctor before undertaking flying assignment. The petitioner in statement dated 22.06.2018 submitted that he consulted company doctor on 05.04.2018 who informed that the treatment for hair fall



and pigmentation is not covered by the company. The petitioner started treatment of his own from Omorfia Aesthetic clinic from 06.04.2018 and had no correspondence/consultation with company doctor regarding medication and its effects thereof. CAR only prescribes the procedure for checking alcohol consumption by breath-analyzer test and samples of blood, urine, etc. required for detailed chemical analysis only in case of accident as per the proviso of para 10 of aforesaid CAR and as such blood and urine test undergone by the petitioner has no relevance and validity. The breath-analyzer equipment was in calibrated state and procedure as per CAR Section-5, Series-F Part-III, Issue-III was followed for conduct of breath-analyzer test of petitioner. The respondent no 2/DGCA has uniformly applied CAR provisions in all cases of Breath-Analyzer positive cases. The petitioner tested BA positive for the first time on 06.11.2007 before issue of CAR in Nov 2009 and his company had taken action against him, thereafter the petitioner tested BA positive on 10.07.2013 and on 12.05.2018. The privileges of license of the petitioner were suspended for a period of three years as he had tested Breath-Analyzer positive twice after issue of aforesaid



CAR. The respondent no 2/DGCA accorded personal hearing to the petitioner on 04.04.2019 and after evaluating the facts and his submission, the appeal was dismissed being devoid of merit. The petitioner was afforded personal hearing in accordance with the provisions of the Aircraft Act, 1934, Aircraft Rules, 1937, and relevant CAR provisions ensuring adherence to principles of natural justice. The present petition is liable to be dismissed being devoid of merit.

4. The respondent no.3/Air India Ltd. filed counter affidavit in response to the present petition wherein stated that the impugned order is the outcome of a policy decision wherein the petitioner does not have the fundamental right to fly an aircraft and courts have consistently refrained from interfering in such policy decisions unless it violates the constitutional law. The Breath-Analyzer test is internationally recognised as an essential procedure by the aviation fraternity to ensure the safety of public, passengers and aircraft and the respondent no.3/Air India Ltd. has acted in accordance with the provisions of CAR which lays down the mandatory procedure of Breath-Analyzer examination to be followed to check for



consumption of alcohol and actions to be taken by the Operator. The respondent no.3/Air India Ltd. being operator is bound to follow the procedures and instructions provided in CAR. The Breath-Analyzer test to check the blood alcohol level is an accurate means and is being used by the aviation fraternity internationally.

4.1 The petitioner was an employee of the respondent no.3 as a Pilot. The license of the petitioner was not suspended arbitrarily and unjustly on the basis of BA positive result without appreciating that the petitioner was undergoing a hair fall therapy through an Aesthetic clinic and the Aesthetician had administered certain serums in the scalp which contain alcohol and derivatives of alcohol. The petitioner was aware that he is not supposed to use any drug formulation/substance/products containing alcohol before undertaking a flight and contention of the petitioner that he was administered certain serums which contained alcohol was a mere afterthought.

4.2 The petitioner as per his own submission had consulted the Company doctor on 05.04.2018 who informed the petitioner that the treatment for hair fall and pigmentation was not covered by the



company. The petitioner started taking treatment and did not inform the company doctor of the respondent no.3/Air India Ltd. regarding any prescribed medication and its effects. The petitioner on earlier occasion was found alcohol positive on 10.07.2013 at Mumbai while scheduled to operate flight no. AI-633 (BOM-BHO-DEL) and the license of the petitioner was suspended for a period of three months being the first offence. The petitioner tested BA positive for the first time on 06.11.2007 before the issuance of CAR in November 2009 and twice on 10.07.2013 and 12.05.2018 after issuance of CAR. The respondent no.3/Air India Ltd. vide e-mail dated 12.07.2018 addressed to the Flight Safety Department had informed the petitioner that there is no provision of cosmetic treatment including the hair fall and scalp baldness in Air India Medical Department policy. The petitioner despite knowing that he had to operate a flight knowingly undertook the alleged treatment which was in violation of proviso contained in Para 4.3.7 of CAR, Section 5, Series F, Part-III, Issue-III. The privileges of license of the petitioner were suspended for a period of three years as per the provisions of CAR as the petitioner tested BA positive on second occasion. There was no issue



with the Breath Analyzer device and the procedure which was followed was in accordance with law. The equipment used for testing the petitioner was calibrated from time to time as per the requirement of CAR. The instrument used for screening (ALCOSENSOR-IV) has been certified and complies with the requirements of the ISO 9001:2015 and a Certificate No.QM1368 dated 15.10.2014 which was valid till 14.10.2020 issued by SHAMKRIS GLOBAL. The daily control test as per CAR Para 6.3 is carried out by duty doctor for checking the serviceability of the BA equipment by getting reading as 0.000. The Breath analyzer equipment was calibrated on 25.01.2018 and calibration was valid up to 23.07.2018. The control test was carried out after first BA test of the petitioner and reading was 0.000 which established the serviceability of the BA equipment and as such no prejudice is caused to the petitioner. There is no procedure laid down in CAR for carrying blood and urine test in case a crew tests BA positive during routine Pre-flight medical. Therefore, the petitioner undergoing blood/urine test after being tested positive in pre-flight Breath-Analyzer test is not relevant. The license of the petitioner was correctly suspended for three years as per the



provisions of CAR since the petitioner was found BA positive twice.

The present petition be dismissed with cost being devoid of merit.

5. The petitioner filed rejoinders to respective counter affidavit of the respondents no 1 and 2 and the respondent no 3 wherein reiterated contents of the petition.

5.1 The petitioner in rejoinder to counter affidavit of the respondent no 3 stated that the suspension of his license was unfair and arbitrary as he brought on record all the relevant documents proving his innocence that he neither consumed any drugs/formulation nor did he use any substance/mouth wash/tooth gel/alcoholic content. The petitioner was not aware that the hair treatment serum administered to him had alcoholic content. BA equipment is not a foolproof method for blood alcohol detection and device used by the respondent no. 3/Air India Ltd. was not reliable method of testing as widely accepted throughout the scientific community and the global aviation experts including the ICAO and having a variable result reading factor i.e. a threshold of 0.020% to 0.040% which is provided for by most aviation regulators in the developed countries. There can be a false detection in the breath alcohol test due to extraneous



circumstances like as in the case of the petitioner using a hair serum treatment and stated CAR does not prohibit consideration of blood and urine test undergone outside the purview of the Airline. There was false detection of blood alcohol content through BA equipment on account of its faulty calibration. The impugned order dated 09.04.2019 and consequent orders dated 14.06.2018, 03.08.2018 and 13.12.2018 were passed by the respondents whereby suspending the Airline Transport Pilot License (“ATPL”) of the petitioner for a period of three years and dismissing the statutory appeal of the petitioner filed under Rule 3(B) of the Aircraft Rules, 1937 without appreciating the civil procedural and serious technical lapses and disregarding the facts and petitioner’s explanation that the Breath Alcohol (BA) reading of 0.020% and 0.016% was not on account of consumption of alcohol but due to an on-going hair treatment which he was taking. The Breath Analyzer instrument i.e. ALCOSENSOR IV used for the test was not calibrated as per the Manufacturer’s Manual as mandated by the CAR. The petitioner prayed that the petition be allowed.



6. The counsel for the petitioner advanced oral arguments and submitted written synopsis. The counsel for the petitioner argued that section IV of the Operators Manual ALCOSENSOR-IV provides for conducting a subject test and states that the accuracy of a subject test is dependent upon a properly calibrated instrument and accuracy check of proper calibration of the instrument. The accuracy check is performed by introducing a sample which contains a known quantity of alcohol to the Alco-Sensor IV and reading provided by the instrument must be within the established tolerances if the instrument is to be considered properly calibrated or accurate.

6.1 The counsel for the petitioner further argued that the operator of the flight has grossly violated the Clause 5.4 of CAR Series F, Part III, Section 5-Air Safety dated 04.08.2015. The operator has not calibrated the BA equipment as per the procedure laid down in the manual which states that the BA equipment shall be calibrated after 10,000 blows/six months/at a frequency as recommended by the equipment manufacturer from an agency having ISO certification to perform calibration activity. The calibration certificate received by the petitioner proved a breach committed by the operator because the



calibration of the equipment was not performed as per the procedure laid down by the manufacturer of the BA equipment in the Manual. The accuracy check had to be conducted after a waiting period of a minimum of three minutes after carrying out calibration but the calibration done was dated 25.01.2018 at 11:01 hours in case of petitioner and the calibration/accuracy check was done at 11:03 hours indicting that the interval was only of two minutes as against the requisite waiting period of a minimum of three minutes and therefore the result of the defective BA equipment cannot be relied upon.

6.2 The counsel for the petitioner further submitted that the ISO certification of the respondent no.3 bearing no. ISO 9001:2015 is applicable only for general management and does not conform to the standard of ISO certification bearing no. ISO 17025:2005 which certifies the facility to carry out calibration/maintenance activity of the BA equipment which is a gross violation of the rules of respondent no.2/DGCA which requires that the Operator to get the calibration of the BA equipment done from the agency which has ISO certification to undertake the calibration activity.



6.3 The counsel for the petitioner further argued that DGCA Rules and Regulations provides that the operator shall be bound by the Rules and guidelines made by the manufacturer of ALCOSENSOR IV and Operator cannot laid down their own procedure for calibration of ALCOSENSOR IV. It is not stated in CAR and manufacturer manual that by caring out dry run every day alleviates accuracy check procedure laid down by the manufacturer. The DGCA Safety Rules and Regulation do not make any provisions that the blood and urine sample cannot be considered for confirmation of the alcohol present in the blood as per the CAR dated 04.08.2015. The counsel for the petitioner referred medical certificate dated 18.05.2018 issued by Dr. Sanjeev Sood which stated that as per the existing scientific evidences, the accuracy of ALCOSENSOR devices below level of BAC of 0.04% is not reliable and such low readings are likely to be false, positive and influenced by other alcohol containing substances like gels and perfumes and as per the Manufacturer Manual, the Alco-sensor devices are not tested/calibrated for this low level of BAC. The counsel for the petitioner prayed that the present petition be allowed.



7. The counsel for the respondents no 1 and 2 advanced oral arguments and submitted written synopsis. The counsel for the respondents no 1 and 2 argued that the Rule 24 of the Aircraft Rules, 1937 mandates the respondent no.2/DGCA to issue procedure for medical examination of aircraft personnel for alcohol consumption and accordingly the respondent no.2 issued CAR section 5, Series F Part III, dated 04.08.2015 which is under delegated powers pursuant to Rule 133A of the Aircraft Rules, 1937. There shall be no detectable blood alcohol in breath, urine, or blood alcohol analysis of the crew and the permissible limit of blood alcohol is set at 0.000 in CAR. The Rule 24 is not applicable to the accept blood samples of the petitioner. The petitioner was a habitual offender and was previously apprehended for the same offence i.e. once prior to the introduction of CAR in 2007 and twice thereafter in 2013 and 2018 resulting in suspensions of his license for periods of 3 months and 3 years, respectively.

7.1 The counsel for the respondents no 1 and 2 further submitted that Para 4.3.7 of CAR cast a duty on the petitioner to inform the respondent no. 3 or its doctor regarding any medication taken during



his hair transplant treatment but the petitioner disregarded the rules and regulations of the respondent authority. The petitioner despite knowing that he was prohibited from using any drug formulation or substance containing alcohol before flying underwent hair treatment and consumed medicines. The petitioner himself acknowledged that on consulting the company doctor on 05.04.2018, he was informed that the treatment for hair fall and pigmentation was not covered by the company but the petitioner proceeded with external treatment. The petitioner despite being informed to operate flight bearing no AI-104 from Delhi on 12.05.2018 underwent treatment without the consent of company doctor of Air India/respondent no.3 just hours before the scheduled flight.

7.2 The counsel for the respondents no 1 and 2 also stated that none of CAR of years 2012, 2015 and 2018 provides provisions for the testing of blood and urine of flight crew members and Blood and urine sample collection is only provided in case of accidents as breath analysis cannot be conducted on flight crew members during accidents. The equipment used for BA test was calibrated on 25.01.2018 and was valid until 23.07.2018. It was further submitted



that accuracy tolerance deviation of $\pm 5\%$ was negated by obtaining 0.000 in the control test and any deviation has crept in the BA Equipment after calibration, it will not show 0.000 reading and will be removed for re-calibration. The respondent no 3 has arranged the equipment and has submitted the ISO certification which complies with the requirement of ISO 9001:2015 and scope of certificate is ALCOSENSOR IV, Breath Alcohol, Analyzers Calibration and Certification and as such there was no issue in calibration.

7.3 The counsel for the respondents no 1 and 2 also stated that the respondent no.1 does not have any role in the BA testing process and the doctor conducting the test is appointed by the Airline Operator and the instrument does not belong to respondent no.1. The respondent no.1 only verifies the calibration certificates of the instruments. The impugned order and consequential orders were passed on basis of the available evidence. The counsel for the respondents no.1 and 2 has placed reliance on **Capt. S K Kapur V Union of India & Ors.** in (W.P. (C) 7503/2018) and prayed that the present petition be dismissed.



8. The counsel for the respondent no.3/Air India Ltd. advanced oral arguments and submitted written synopsis. The counsel for the respondent no 3 argued stated that the present petition is not maintainable against the respondent no.3/Air India Ltd. which is now is a private entity and ceased to be a “State” under Article 12 of the Constitution. The respondent no. 1/UOI and the respondent no.2/DGCA have passed the impugned orders and the respondent no.3/Air India Ltd. is only a proforma party which declared the petitioner unfit to fly and followed procedure of the CAR 2015 for BA test to check the alcohol consumption. The courts have refrained from interfering with the impugned orders which were outcome of policy decision of the Government and that the respondent no.3/Air India Ltd. cannot allow the petitioner to fly as he violated the rules of CAR 2015 and the Aircraft Rules, 1937. The petitioner on 13.11.2022 was tested BA positive for the third time while scheduled to fly flight no. AI-762 (DEL-CCU) in pre-flight breath analyser examination and the respondent no.2/DGCA has accordingly cancelled his license vide order dated 12.06.2023 and the respondent



no.3/Air India Ltd. also terminated the services of the petitioner on 12.07.2023 and as such the present petition has become infructuous.

8.1 The counsel for the respondent no 3 to counter argument of the petitioner stated that he was found BA positive due to his ongoing cosmetic treatment for hair fall wherein the aesthetician administered certain serums containing alcohol argued that it is completely baseless and is an afterthought because the petitioner submitted that he consulted the Company doctor on 05.04.2018 and was informed that such treatment for hair fall and pigmentation was not covered by the respondent no. 3/Air India Ltd. and despite this, the petitioner wilfully undertook the alleged treatment on just a few hours prior to the scheduled flight and did not inform the Company's doctor regarding prescribed medication and its effects. The action of the petitioner was in violation of para 4.3.7 of CAR 2015 and the petitioner was fully aware that he was not supposed to use any drug formulation or any substance/product containing alcohol before undertaking a flight and has flouted the rules and regulations of CAR. The counsel for the respondent no 3 referred **Capt. S.K. Kapur V Union of India & Ors.**, 2018 SCC OnLine Del 10214.



8.2 It is further argued that a blood or urine test as per Para 10 of CAR may be undertaken in cases of accident. There is no provision in CAR for carrying out a blood or urine test in case a crew member tests BA positive during routine pre-flight medical examination detailed under para 6 of CAR and therefore, the blood/urine test of the petitioner undertaken by the petitioner himself after being tested pre-flight BA is not relevant and placed reliance on **Capt. Amit Kumar Yadav V Union of India and Others**, 2023 SCC OnLine Del 4042. The allegations regarding the procedure for calibration of the BA equipment Alco-sensor IV being not properly undertaken and regarding the manufacturing standards for Alco-sensor IV are baseless. The equipment was duly calibrated on 25.01.2018 and the said calibration was valid till 23.07.2018. The respondent no.3/Air India Ltd. fully complied with the requirements of ISO 9001:2015 under the ISO Certificate No. QM1368 dated 15.10.2014 which was valid till 14.10.2020. The control test carried out after the petitioner's first BA test showed a reading of 0.000 and none of the other crew members who underwent the same test on the same day tested BA positive apart from the petitioner and accordingly, the allegations of



the petitioner are baseless. The counsel for the respondent no 3 further stated that Para 1.2.7 of the International Civil Aviation Organization (ICAO) and Rule 24 of the Aircraft Rules, 1937 provide prohibition on use/consumption of intoxicating and psychoactive substances including alcohol by pilots or any crew member. The respondent no.2/DGCA has prescribed a zero-tolerance policy with regard to blood alcohol level and the respondent no.3/Air India Ltd. is bound by it. The reliance was placed on **Capt. Amit Kumar Yadav V Union of India and Others**, 2023 SCC OnLine Del 4042 and **Indian Commercial Pilots Association V Director General of Civil Aviation**, 2017 SCC Online Del 9844. The counsel for the respondent no.3/Air India Ltd. prayed that the present petition be dismissed being devoid of any merit.

9. Before averting to facts of the case, it is necessary to mention relevant provisions dealing with situation subject matter of present petition. Rule 24 of Aircraft Rules 1937 deals with prohibition of consumption of intoxicating and psychoactive substances. It reads as under:-



24. Prohibition on consumption of intoxicating and psychoactive substances

(1) No person acting as, or carried in aircraft for the purpose of acting as pilot, commander, navigator, engineer, cabin crew or other operating member of the crew thereof, shall have taken or used any alcoholic drink, sedative, narcotic or stimulant drug or preparation within twelve hours of the commencement of the flight or take or use any such preparation in the course of the flight, and no such person shall, while so acting or carried, be in a state of intoxication or have detectable blood alcohol whatsoever in his breath, urine or blood alcohol analysis or in a state in which by reason of his having taken any alcoholic, sedative, narcotic or stimulant drug or preparation, his capacity so to act is impaired, and no other person while in a state of intoxication shall enter or be in aircraft or report for duty.

(2) No operator operating a domestic air transport service in India shall serve any alcoholic drink on board such an air transport service and no passenger traveling on such a service shall consume any alcoholic drink while on board.

(3) The holders of licences shall not exercise the privileges of their licences and related ratings while under the influence of any psychoactive substance which might render them unable to safely and properly exercise the privileges of the licences and ratings.

(4) The holders of licences shall not engage in problematic use of substances.

9.1 The respondent no 2 has prescribed a zero tolerance policy with regard to blood alcohol content as there shall be no detectable blood alcohol in breath, urine or blood alcohol analysis of the crew, therefore, the permissible limit of blood alcohol has been laid down



as 0.000. The respondent no 2 issued Civil Aviation Requirements Section-5, Series-F Part-III ensure compliance to Rule 24 of Aircraft Rules, 1937 in exercise of powers delegated under Rule 133A of Aircraft Rule 1937. The CIVIL AVIATION REQUIREMENTS, 2015 SECTION 5 - AIR SAFETY SERIES F PART III ISSUE III deals with procedure to be followed for the breath analyser examination for crew members and aircraft maintenance personnel for consumption of alcohol and actions to be taken by the operators. Para 4.3 provides that the operators/crew members/maintenance personnel shall ensure that there is no contravention of Rule 24 of the Aircraft Rules, 1937 by conduct of breath analyzer examination before operations of flights in India as well as outside India. Para 4.3.1 provides that each flight crew member and cabin crew member shall be subjected to pre-flight breath-analyzer examination at first departure airport during flight duty period. Para 4.3.9 provides that no crew member shall consume any drug/formulation or use any substance mouthwash/tooth gel which has alcoholic content. It further provides that any crew member who is undergoing such medication shall consult the company doctor before undertaking



flying assignment. Para 5.4 provides that the breath-analyzer equipment shall be calibrated after 10,000 blows/six months from an agency having ISO certification to undertake the calibration activity. It further provides that it shall be the responsibility of the operator to ensure continued serviceability of the breath-analyzer equipment and maintain such record. Para 6.3 provides that before such test, the Doctor/Paramedics/Emergency Medical Technicians (EMT) shall obtain a reading of 0.00 on the instrument and the Doctor/Paramedics/EMT shall also carry out a control test on daily basis. Para 8 deals with enforcement action if pre-flight breath-analyzer tested positive/missed test. Para 8.1(b) provides 03 years suspension of licence in case of second time breath analyser test is positive.

9.2 The Coordinate Bench of this court in **Capt. Rahul Panchal V Air India Ltd and another**, W.P.(C) 6604/2021 decided on 15.07.2021 had occasion to deal with the termination letter wherein it was mentioned that the petitioner was found BA positive on the conduct of breath analyzer test on 22.04.2021 and as such the petitioner has consumed alcohol on the said date when the petitioner



was scheduled to operate Flight No AI-401. The petition was dismissed with observation that the petitioner being a pilot was operating the plane carrying passengers, who place their trust on the pilot, the conduct being serious, in the facts of this case, the impugned order terminating the contract /employment of the petitioner cannot be interfered with.

9.3 The Madras High Court in Capt. Monish Chandran V The Government of India and others, W.P.(C) 7128/2018 in situation where the petitioner possessing ATPL license was found BA positive and was suspended observed as under:-

9. A perusal of the aforesaid would go to show that a person is not supposed to be in the influence of alcoholic drink, sedative, narcotic or stimulant drug or preparation while conducting himself as a Pilot, Commander, Navigator, Engineer, Cabin Crew or other acting member of the Crew in an aircraft inasmuch as the same is prejudicial for the safety of the persons traveling in an Aircraft. To prevent such person operating the Aircraft a pre flight breath analyser test and also a post flight breath analyser tests are conducted as per the requirement of the CAR. Hence, a person is supposed to undergo pre-flight analyzer test before boarding. If any of the aforesaid persons test positive in pre-flight breath analyser test he is prevented from discharging his duty and thereby the dangers that may occur to the passengers for discharge of such duty in the influence of alcohol and the intoxicant drugs is avoided. The punishment therefore provided for aforesaid persons on being test positive during pre-flight



test is lenient than a person who test positive on post flight medical examination. However for 1st and 2nd repeat violation found in pre flight breath analyser more severe punishment are provided as a crew member person appears to have repeated the violation of Requirements of rule 24 (1) of the rules in spite of earlier being tested positive. So far as the pre-flight analyser is concerned on the first occasion, if some one tested positive, his license/approval is required to be suspended for three months as provided in para 8.1 of the CAR and for first repeat violation of the same his license is to be suspended for three years and for second repeat violation, even though, it is preflight positive test his license has to be cancelled.

9.4 The Coordinate Bench of this court in **Capt. S. K. Kapur V Union of India & others**, W.P.(C) 7503/2018 decided on 23.07.2018 and also referred by the counsel for the respondents no 1 and 2 dismissed the petition filed to impugn suspension for a period of three years in terms of Paragraph 8.2 of the Civil Aviation Requirements issued on 04.08.2015 as the petitioner had tested positive for alcohol in a Pre-flight Breath Analyzer Test conducted on 07.04.2017 at the Delhi Airport.

9.5 This court while deciding writ petition bearing no W.P.(C) 8826/2020 titled as **Capt. Karan Mehta V Director General of Civil Aviation & others** vide order dated 04.07.2024 observed as under:-



12.1 International Civil Aviation Organization (ICAO) which is an international body lays down regulations and recommendations relating to civil aviation that every contracting state (including India) is bound to follow. ICAO lays down Standards and Recommended Practices (SARPs) and Para 1.2.7 of Annex 1 of SARPs prohibits the use of psychoactive substances by license holders. India enacted Rule 24 of the Aircraft Rules 1937 in tandem with the ICAO recommendation. The respondent no 1 is duty bound to ensure compliance to Rule 24 of Aircraft Rules 1937 and Civil Aviation Requirements Section-5, Series-F Part-III. The respondent no 1/DGCA has mandated zero tolerance policy with regard to blood alcohol content as there should not be detectable blood alcohol in breath, urine or blood alcohol analysis of the crew and the permissible limit of blood alcohol has been laid down as 0.000 in the CAR. The petitioner at time of flight operation as a pilot was not supposed to be under the influence of alcoholic drink, sedative or stimulant drug which may pose serious threat to the safety of the passengers traveling in an Aircraft. Due to this reason pre-flight breath analyser test is conducted as per CAR. The petitioner also underwent pre-flight breath analyzer test and tested positive and it was second occasion when the petitioner tested positive. The respondent no 2 acted as per Para 8.1(b) of CAR. The safety of the passengers can never be compromised or diluted and unnecessary leniency to erring pilot shall be prejudicial to the safety of the passengers.

10. It is reflecting that is that the petitioner is a commercial pilot having Airline Transport Pilot License (ATPL) bearing no. 4236 and was working with the respondent no.3. The petitioner claimed to be suffering from hair loss and melasma and on 06.04.2018 started to take treatment from Omorfia, Aesthetic Clinic. The petitioner was



asked to operate flight no AI-104 from Delhi to Hyderabad but before operating the flight, he had gone for aesthetic treatment. The petitioner was subjected to regular Pre Flight Medical Check (PFMC) and tested positive for alcohol at 12:51 pm through an instrument ALCOSENSOR-IV Serial No. 096105 a with a reading of 0.020% at 12:51 pm and the second test came positive with a reading of 0.016% conducted at 13:12 pm on the same instrument. The petitioner on 12.05.2018 at 15:05 pm also underwent Blood and Urine Serum Tests at NABL approved laboratory, SRL Diagnostics and tested negative for alcohol. The petitioner also tested BA positive on 10.07.2013 at Mumbai while he was scheduled to operate flight no AI-633. The Joint Director General, Directorate General of Civil Aviation vide the impugned order dated 14.06.2018 after observing that the petitioner had violated the provision contained in the Civil Aviation Requirements Section-5, Series-F, Part-III, Issue-III dated 04.08.2015 suspended the pilot license (ATPL no. 4236) of the petitioner for a period of three years with effect from 12.05.2018. The respondent no 3 did not have any provision or facility for treatment undergone by the petitioner. The petitioner vide letter dated



13.12.2018 issued by the respondent no.2 was communicated that there is no provision for second appeal with the respondent no.2 as per Rule 3B of the Aircraft Rules, 1937 which may be preferred to the respondent no.1. The petitioner consulted company doctor on 05.04.2018 and was informed that the treatment for hair fall and pigmentation is not covered by the company. The appeal preferred by the petitioner to the respondent no.1 on 10.01.2019 to challenge the impugned order dated 14.06.2018 and the consequential order dated 13.12.2018 was dismissed on 09.04.2019 for violation of CAR, Series F, Part III, Issue III, Clause 4.3.9 dated 04.08.2015. The petitioner was also tested BA positive for the first time on 06.11.2007 before issue of CAR besides being tested BA positive on 10.07.2013 and 12.05.2018. CAR did not have any procedure for carrying blood and urine test in case a crew tests BA positive during routine Pre-flight medical.

11. The counsel for the petitioner primarily argued and also contended by the petitioner that the respondent no 3 has grossly violated the Clause 5.4 of CAR Series F Part III, Section 5-Air Safety dated 04.08.2015 as the operator has not calibrated the BA equipment



as per the procedure as BA equipment shall be calibrated after 10,000 blows/six months/at a frequency as recommended by the equipment manufacturer from an agency having ISO certification to perform calibration activity. The calibration certificate provided to the petitioner reflected a breach committed by the respondent no 3. The counsel for the petitioner further argued that DGCA Safety Rules and Regulations do not make any provisions that the blood and urine sample cannot be considered for confirmation of the alcohol present in the blood as per the CAR dated 04.08.2015 and referred medical certificate dated 18.05.2018 issued by Dr. Sanjeev Sood. The petitioner also contended that he was suffering from hair loss and melasma and started to take treatment from Omorfia, Aesthetic Clinic since 06.04.2018 and on 12.05.2018 before operating schedule flight underwent treatment before being tested BA positive and further pleaded that he at 15:05 pm also underwent Blood and Urine Serum Tests at NABL approved laboratory, SRL Diagnostics and tested negative for alcohol. However, arguments advanced by the counsel for the petitioner and contention of the petitioner are



meritless and deserved to be rejected on basis of reasons as detailed herein below.

12. CAR provides that there shall not be detectable blood alcohol in breath, urine, or blood alcohol analysis of the crew and the permissible limit of blood alcohol is set at 0.000 in CAR. The petitioner happened to be was a habitual offender as tested positive twice for alcohol after introduction of CAR in 2013 and 2018. The petitioner as per mandate of Para 4.3.7 of CAR was under a duty to inform the respondent no. 3 or its doctor regarding any medication taken during his hair transplant treatment but the petitioner did not inform the company doctor about his treatment and as such violated Para 4.3.7 of CAR. The petitioner during consultation with company doctor on 05.04.2018 was informed that the treatment for hair fall and pigmentation was not covered by the company but preferred to proceed with external treatment. The petitioner on 12.05.2018 just before operating flight bearing no AI-104 from Delhi underwent treatment without the consent of company doctor of the respondent no.3. CAR of 2015 does not contain provisions for the testing of blood and urine of flight crew members which only provided in case



of accidents. The contention of the petitioner that he tested BA positive due to cosmetic treatment for hair fall and was administered certain serums containing alcohol by the aesthetician is manifestly baseless and appears to be afterthought as the petitioner was duly informed by the company doctor on 05.04.2018 about non availability of treatment for hair fall and pigmentation with the respondent no. 3. It is also apparent and established that the equipment used for BA test was calibrated on 25.01.2018 and was valid until 23.07.2018 and accuracy tolerance deviation of $\pm 5\%$ was negated by obtaining 0.000 in the control test and further ISO certification No. QM1368 dated 15.10.2014 complied with the requirement of ISO 9001:2015 which was valid till 14.10.2020. The pilot license of the petitioner was suspended for a period of three years as per Para 8.1(b) of CAR being case of second violation. The impugned order dated 14.06.2018 passed by the respondent no. 2 and order dated 09.04.2019 passed the appellate authority were passed on basis of relevant consideration and appellate authority also afforded opportunity of being heard to the petitioner. This court while deciding writ petition titled as **Capt. Karan Mehta V Director**



General of Civil Aviation & others has already observed that the respondent no 2/DGCA has mandated zero tolerance policy with regard to blood alcohol content and blood alcohol limit has been laid down as 0.000 in the CAR. The petitioner while operating schedule flight as a pilot was not supposed to be under the influence of alcoholic drink, sedative or stimulant drug which may cause serious threat to the safety of the passengers traveling in an Aircraft. The respondent no 2 acted as per Para 8.1(b) of CAR as the safety of the passengers can never be compromised or diluted and unnecessary leniency to erring pilot shall be prejudicial to the safety of the passengers. The arguments oral and written advanced by the respective counsels for the petitioner and the respondents along with case law are considered in right perspective. The arguments advanced by the counsel for the petitioner are without merit and contrary to express provisions of CAR 2015 and cannot be accepted.

12.1 It has also come on record that the petitioner on 13.11.2022 again tested BA positive for the third time while scheduled to fly flight no. AI-762 (DEL-CCU) in pre-flight breath analyzer examination and the respondent no.2/DGCA has accordingly



cancelled his license vide order dated 12.06.2023 and the respondent no.3 also terminated the services of the petitioner on 12.07.2023.

13. The petitioner in view of the above-mentioned facts and circumstances is not entitled for any relief as prayed for in petition as the petitioner reported for his flying duty in violation of mandatory provisions of CAR. Accordingly, the present petition is dismissed along with any pending applications.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JULY 12, 2024
sk/ak/abk