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

+ W.P.(C) 8845/2016 & CM APPL. 28939-28940/2024

AMIT SAHNI Petitioner

Through: Mr. Amit Sahni, Mr. Ankur, Mr. Parth Sharma, Mr. Vaibhav Mishra, Ms. Kanupriya Mehta and Ms. Sonali Tiwari, Advocates

versus

UNION OF INDIA AND ANR Respondent

Through: Ms. Anjana Gosain with Mr. Nippun Sharma, Advocates

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+ W.P.(C) 4958/2018, CM APPL. 19069/2019 & CM APPL. 31335/2023

MR. BEJON KUMAR MISRA Petitioner

Through: Mr. Shashank Deo Sudhi and Mr. Aru Prakash, Advocates (through VC)

versus

UNION OF INDIA AND ORS. Respondent

Through: Ms. Anjana Gosain with Mr. Nippun Sharma, Advocates

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Date of Decision: 15th May, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present writ petitions have been filed as Public Interest Litigation ('PIL') seeking similar reliefs and have therefore been heard together.
2. The Petitioners seek a direction to the Respondents to frame



guidelines for putting a cap on airfares so as to prevent the private airlines from charging arbitrary, irrational and exorbitant airfares for the flights.

3. The Petitioner in W.P.(C) 8845/2016 contends that this issue first came to his attention in February, 2016, when due to civil agitation on the border of Delhi and Haryana, there was restriction of vehicular movement and resultantly, the airfares of the private airlines escalated fifteen to twenty-five times. He states that a similar spike in prices was noticed by him during other emergencies in the country and he felt that the airlines were cashing in on the helplessness of the citizen/traveller.

3.1. He states that in these circumstances, the Petitioner filed an RTI application seeking information from Respondents, however, the Union of India replied that it does not exercise any control over the airfare.

4. Learned counsel for the Petitioner in W.P.(C) No. 4958/2018 states that in addition, it has also come to his attention that the mechanism of refund by airlines in case of cancellation is not robust. He states that after Jet Airways cancelled one of his flights, the Petitioner herein lost all the monies paid for the advance booking and attempts made for a refund with Respondent, Directorate General of Civil Aviation ('DGCA'), have not borne any results.

5. In reply, learned counsel for Respondent-DGCA states that airlines are required to establish a reasonable tariff under the provision of Rule 135(1) of Aircraft Rules, 1937 after having regard to all relevant factors including the cost of operation, characteristics of service, reasonable profit and the prevailing tariff. She states that the airlines are required to upload sector-wise tariff sheets on their respective website. She states that the fare bucket on a specific sector contains information on a number of fares



offered by airlines including the lowest and highest fare in the fare bucket. She states that so long as the fare charged by the airline does not exceed the fare bucket established and displayed on their website, the airlines are compliant with the regulatory provision of Rule 135(2). She states that there is no provision under Rule 135, which entitles DGCA or Union of India to enforce capping of fare.

5.1. She states that with the repeal of Air Corporation Act, 1953, the requirement for airline tariff approval or amendment by the Government has been dispensed with. She states that while the Government no longer regulates the fare that is charged, it ensures that considerable information is provided to the public in a transparent manner with respect to airline fares on the website of the airline.

5.2. She states that the assertions in the petition as regards manifold increase in the airfare during the affected period of agitation are not substantiated with either the boarding pass or proof of invoice of the ticket price. She states that the allegations of unlawful and discriminatory airfares have not been substantiated vis-à-vis the applicable tariff regulation.

5.3. She states that in fact in a petition filed before the Competition Commission of India ('CCI') by a complainant seeking similar direction to DGCA to fix fares, the CCI vide order dated 6th March, 2013 held that no such directions can be issued by CCI to DGCA.

5.4. She states that the airfares are determined by the forces of demand and supply and relies upon the contents of her counter affidavit to explain the lean season period and the high season period in the airfares. She states that the airline sector works on dynamic pricing which relies on various factors including the day of the week, time of the day, number of days



before the flight and many such factors. She states dynamic pricing plays a crucial role in determining how airlines improve their revenue per flight. She states that the airlines have to fly a scheduled flight even if it has only three passengers on board and therefore, the presumption that all flights are fully booked is a misnomer.

5.5. She states that as regards the writ petitioner in W.P.(C) No. 4958/2018, his application for refund of monies paid to Jet Airways cannot be maintained before DGCA. She states that the Petitioner will have to approach the appropriate forum for a refund of the amount especially since the said airline has closed business.

6. Having heard the learned counsel for the parties, we are of the considered opinion that no directions as prayed for are called for in this PIL.

7. The contents of the counter affidavit filed by Respondent DGCA evidence that the airfare pricing by the private airlines is not unchecked and is being regulated by DGCA in accordance with the Aircraft Rules, 1937. Rule 135(4) empowers DGCA to issue directions to the airlines if it is satisfied that airlines have charged excessive or predatory airfares. The directions issued by DGCA have to be complied with by the airline concerned as per Rule 135(5). There is thus, in place an existing legal regime to ensure that air fares are affordable and in case of any violation by the airline, the DGCA can take action against the said airline.

8. The Petitioners while raising grievance with respect to isolated incidents of spiked airfares have not substantiated the same with any corroborative documents. The Petitioners have relied upon the incidents reported in the newspaper articles, however, in the absence of any documents evidencing the claim of over-charging, which could prove



violation of the applicable Aircraft Rules, 1937, there is no reason to conclude that Respondent-DGCA has failed to check the violation of the statutory rules by the airlines.

9. The aviation sector being a capital-intensive sector, the regulated free play given to the airlines to implement dynamic pricing of the fares for each flight appears to be in conformity with the norms followed worldwide and appears to be essential growth of the said sector. However, the interest of the passengers is to be safeguarded by DGCA, which is empowered under Rule 135 to check against sudden price surge if it is contrary to the declared highest tariff of the airline in the concerned sector. In an appropriate matter, upon proof of payment of the high tariff charge the aggrieved passenger would have a right to approach the appropriate forum for action against the erring airline(s). But, we are not inclined to direct DGCA to fix and regulate the airfares of the private airlines as a matter of norm. The legislature has made a conscious shift from a regulated regime to deregulation in the year 1994, when it repealed the Air Corporation Act, 1953 and the Petitioners have not made out any grounds for this Court to interfere in this policy change adopted by the legislature.

10. Accordingly, the present PIL petitions are dismissed alongwith pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 15, 2024/rhc/aa