



IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. _____ OF 2020

[DIARY NO.10966/2020]

Pravasi Legal Cell & Ors.

.....Petitioners

Versus

Union of India & Ors.

.....Respondents

W I T H

WRIT PETITION (C) NO.570 OF 2020;

WRIT PETITION (C) NO.595 OF 2020;

AND

WRIT PETITION (C) NO.952 OF 2020

J U D G M E N T

R. Subhash Reddy, J.

1. Background facts, and relief sought for, in this batch of cases is similar, as such all these cases are heard together and are being disposed of by this common judgment.

2. The pandemic situation of COVID-19, has adversely affected the economy globally, in several sectors. Our country – India – and civil aviation sector is not an exception to the same.

To contain the pandemic situation of COVID-19, first lockdown was imposed by the Government of India, from 25th March 2020 to 14th April 2020. In view of such lockdown, a ban on operation of all domestic and international flights was imposed. The lockdown period was further extended upto 03rd May 2020, with the ban continuing on operation of all domestic and international flights. There was an issue of refund of air fare during the lockdown period, when domestic and international flights' operation was suspended. The Ministry of Civil Aviation (MoCA), while acknowledging the unusual situation that has arisen due to the lockdown imposed, to contain further spread of COVID-19 and its consequential effect on the air passengers and airlines, by examining the grievances received from various quarters, issued an advisory to all stake holders in civil aviation sector in the shape of Office Memorandum dated 16th April 2020. The advisory issued read as under:

“3.

- (i) If a passenger has booked a ticket during the first lockdown period (from 25th of March to 14 of April, 2020) and the airline has received payment for booking of the air ticket during the first lockdown period for travel during the same period, for both domestic and international air travel and refund is sought by the passenger against that booking being cancelled, the Airline shall refund the full amount collected without levy of cancellation charge. The refund shall be made within a period of

three weeks from the date of request of cancellation.

- (ii) If a passenger has booked a ticket during the first lockdown period and the airline has received the payment for booking of air ticket during first lockdown period (from 25th of March to 14th of April 2020) for travel during the second lockdown period (from 15th of April to 3rd of May, 2020) for both domestic and international air travel and the passenger seeks refund on cancellation of the ticket, the Airline shall refund the full amount collected without levy of cancellation charge. The refund shall be made within a period of three weeks from the date of request of cancellation.”

In the same Memorandum, Government has issued directions to Directorate General of Civil Aviation to monitor the compliance of such advisories referred above.

3. Writ Petition(C) being Diary No.10966 of 2020 is filed by a society registered under Societies Registration Act, 1860 by way of public interest litigation, to declare the action on the part of the respondent-airlines, operating domestic as well as international flights in India, in not refunding the full amount collected for the tickets, due to the cancellation of flights in the wake of restrictions imposed by the Government of India to contain COVID-19 as arbitrary and in violation of Civil Aviation Requirements, issued by the Directorate General of Civil Aviation.

A consequential relief is sought to direct the respondents to refund the full amount upon such cancellations.

4. In this writ petition, it is the allegation of the petitioners that though it is obligatory on the part of the respondent-airlines, operating domestic as well as international flights, to refund the full amount collected for the tickets which are not utilised in view of the cancellation of flights in the wake of restrictions imposed by Government of India to contain COVID-19, respondents are providing a credit shell with the validity of one year, which is contrary to Civil Aviation Requirements (CAR) of May 2008. It is alleged that as per the CAR, the option of holding refund amount in credit shell by the airlines shall be prerogative of the passenger and not a default practice of the airline. While referring to O.M. dated 16.04.2020 issued by the MoCA, it is alleged that the said Memorandum deals only with the refund for the tickets that were booked during the lockdown period and leaves out the majority of passengers who had booked tickets before the flights were banned. It is the case of the petitioners that by issuing O.M. dated 16.04.2020, the Government has indirectly approved the practice of airlines for providing Credit Shell for the tickets booked before the lockdown was declared and the same is in violation of CAR. By further alleging that the time lines for refund as mentioned in the O.M. dated 16.04.2020

runs contrary to CAR, petitioners have sought relief by way of directions to the respondents to refund full amount collected for the tickets booked, any time for travel.

5. W.P.(C)No.570 of 2020 is filed by Air Passengers Association of India, which is also in the nature of public interest litigation under Article 32 of the Constitution of India, seeking directions to various airlines operating both – domestic and international flights – to refund the ticket amounts collected from the passengers of the flights which are cancelled on account of lockdown, with a consequential direction to the respondents to refund the same without levying any charges on account of cancellation etc. In this writ petition also, it is the allegation of the petitioner-Association that, the CARs have been issued in exercise of powers under provisions of Aircrafts Act, 1934, to implement the Convention relating to International Civil Aviation standards and recommended practices but same is not being followed to refund the fare amount in view of the cancellation of flights. By further detailing the dates of lockdown declared by the Government, it is alleged that the action on the part of the airlines in providing 'Credit Shell' instead of refunding the full amount collected for the tickets cancelled on account of cancellation of flights, is in clear violation of CARs. The petitioner also alleges that the option of holding the refund

amount in 'Credit Shell' by the airline shall be the prerogative of passenger not a default practice of the airline. While referring to the representation filed by it on 24.05.2020, and various complaints received from the numerous passengers regarding the actions of the airlines in not refunding the amounts spent by them on air tickets, it is alleged that the action of the respondents in withholding the amounts spent by them on air tickets is illegal and contrary to CAR. In this writ petition it is alleged that the several airlines are not acting as per the O.M. dated 16.04.2020 in refunding the amounts as directed and issuing 'Credit Shell' instead of refund. With the aforesaid allegations, petitioner also seeks directions by way of declaration that the actions on the part of the airlines, which are operating domestic as well as international flights, in not refunding the full amount for the tickets due to cancellation of flights in the wake of restrictions imposed by the Government of India to contain COVID-19 is arbitrary and illegal with a consequential direction to refund the same.

6. W.P.(C)No.952 of 2020 is filed by Col. Ashok Prehar (Retd.) and another seeking quashing of O.M. dated 16.04.2020 issued by the Ministry of Civil Aviation and also seeking a declaration that the denial of refund by the third respondent – Air India Ltd. – for tickets booked by them on 18.12.2019 to travel to United

States of America on 08.05.2020 with a return ticket to India on 05.06.2020, as illegal, arbitrary and contrary to CARs. They seek directions to refund the full amount of Rs.1,66,434/- collected by respondent no.3 for the tickets booked by them on 18.12.2019. In this writ petition it is the case of the petitioners that, petitioner no.1 is a senior citizen who has served in Indian Army for 27 years and retired as a Colonel and the petitioner no.2 is his wife and on 18.12.2019 they have booked tickets to Air India Flight No.AI-173 to travel to San Francisco, United States of America from New Delhi on 08.05.2020 with a return flight AI-102 from New York to New Delhi on 05.06.2020 for an amount of Rs.1,66,434/-. While referring to the advisory issued by the United States of America, by way of Advisory dated 19.03.2020 recommending to avoid any travel and the proceedings issued by the Director General of Civil Aviation, Government of India for banning flights during the lockdown period, it is alleged that in view of cancellation of flights they had no option but to cancel their tickets by seeking refund of the amount. In this writ petition it is the specific case of the petitioners that the O.M. dated 16.04.2020 issued by the Ministry of Civil Aviation, which directs all airlines to pay full refund without levying any cancellation charges for the bookings made and payment received only, during the lockdown period from 25.03.2020 to

03.05.2020, as illegal. It is alleged that the said Memorandum leaves out a majority of passengers including the petitioners who had booked their tickets to travel to United States of America, much earlier to restrictions imposed to control the spread of CORONA virus. Pleading discrimination for the passengers who had booked tickets during the lockdown period, and the passengers who had booked tickets earlier, petitioners seek quashing of O.M. dated 16.04.2020 by further declaration that denial of legitimate refund to the petitioners by the airlines is patently unfair and also states that the action of the third respondent in offering 'Credit Shell' instead of refund is unreasonable and unjustified. It is also pleaded that in view of their age and the pandemic situation in the world, the travel for leisure is likely to remain restricted in the foreseeable future. Petitioners, while pleading that giving 'Credit Shell' vouchers without refunding the full fare to the petitioners, as sought by them, runs contrary to CAR, allege that the denial of refund by third respondent amounts to unjust enrichment at the expense of the petitioners and similarly placed persons. With the aforesaid allegations, petitioners seek quashing of O.M. dated 16.04.2020, with a consequential direction to refund the full amount of Rs.1,66,434/- collected by the third respondent for the flights booked by them on 18.12.2019.

7. W.P.(C)No.595 of 2020 is filed by Travel Agents Federation of India, a society registered under the Societies Registration Act, 1860 seeking declaration that the action on the part of the airlines operating domestic as well as international flights in India, in refusing to refund the full amount collected for tickets to travel during the period of ban on air travel, as illegal and arbitrary with a consequential direction to the respondents to facilitate refunds of the amounts received by the airlines towards the booking of tickets during the period of ban on air travel. In this writ petition, petitioner-Federation seeks directions against the Ministry of Civil Aviation and Directorate General of Civil Aviation, for issuance of appropriate directions to airlines for full refund on tickets booked for travel during the lockdown on account of their cancellation. It is the allegation of the petitioners that there are certain ambiguities in the O.M. dated 16.04.2020 and 19.04.2020, which are being used by the airlines to avoid payment of refund, as sought by the passengers towards the cancellation of flights. In writ petition, it is stated that there are many passengers who had booked their flights through travel agents who are the members of the present petitioner. While stating that the flight booking process through travel agents is distinct from passengers who have booked the tickets directly from the airline. It is the allegation of the petitioner that instead

of refunding the amount deposited by the travel agents with the airlines they are compelling the travel agents/passengers to accept the facility of 'Credit Shell', which compels the bookings to be rescheduled instead of cancellation. While pleading that there is no certainty in rescheduling the travel plans, petitioner-Federation has questioned the action of the respondents in offering 'Credit Shell' and seeks directions for refund of full amount in lieu of cancellation of tickets. In the writ petition, by giving details of various orders passed by the Government and also the Directorate General of Civil Aviation banning the flights during the lockdown period and ban imposed on operation of domestic as well as international flights, it is the case of the petitioner that non-refund of the amount by airlines for the tickets due to cancellation, is illegal and contrary to CAR. While referring to the CARs issued by DGCA and Rule 133A of the Aircraft Rules, it is alleged that holding the refund amount in credit shell by the airlines is the prerogative of the passenger and not a default practice of the airline. With reference to O.M. dated 16.04.2020 issued by the MoCA, it is the case of the petitioner that the said Memorandum directs the airlines to refund value of only those tickets that were booked during the lockdown period by leaving vast majority of passengers who had booked tickets before the flights were banned and also on the tickets which are

booked by the travel agents. It is the case of the petitioner that as per the practice in vogue there are several travel agents who have booked tickets to passengers even before receipt of fare amount from the passengers and if the refunds are not made to them, they will suffer undue hardship. While referring to the situation of pandemic COVID-19 globally, it is stated that tourism industry is suffering from great financial losses and it is further unlikely that people will travel for leisure activities in near future, until the spread of COVID-19 is contained fully. It is the case of the petitioner that where the tickets are booked by travel agents from their account, refund should be made in the same manner and channel through which payments for tickets have been received by the airline. It is alleged that such directions would secure fair and expedient justice by avoiding locking up of funds of the passengers as well as the members of the petitioner-Federation.

8. The first Writ Petition (C) being Diary No.10966 of 2020 is filed by the Pravasi Legal Cell and other subsequent writ petitions are also tagged with the same. Pursuant to order of this Court, Airlines were impleaded as the party respondents, and some Airlines and others have filed applications on their own for intervening in the matter which were allowed by this Court. Common affidavit was filed on behalf of respondents nos.1 and 2

– Union of India and Directorate General of Civil Aviation in the abovementioned writ petition. Individual affidavits were filed by the impleaded respondents on behalf of the Airlines; Travel Agents Federation of India and others who are allowed to be impleaded as party respondents.

9. In the affidavit filed on behalf of respondent nos.1 and 2 while denying the various allegations made by the petitioners, they have explained the existing legal regime with respect to refund of fares and clarified the circumstances which led to issuance of O.M. dated 16.04.2020. While referring to the meetings held by the Ministry of Civil Aviation with the representatives of Airlines, the affidavit discloses the concerns highlighted during such meetings and indicated the proposed workable solutions keeping in view the interests of passengers as well as the airlines. The Ministry of Civil Aviation after consulting all the stake holders arrived at certain formulations, which were referred to in the affidavit and deals with various situations, such as, for domestic airlines where tickets were booked by the passengers directly with the airline; for domestic airlines when the ticket had been booked through a travel agent, by the passenger with the airlines; for international travel when the ticket had been booked on an Indian carrier, when the booking is for ex-India; and for international travel when the

tickets have been booked on a foreign carrier and the booking is ex-India. The supplementary affidavit filed on behalf of respondent nos.1 and 2 further clarified on categories of passengers who are proposed to be covered and clarified the period of booking of tickets and also with regard to the credit shell. Further additional affidavit is also filed on behalf of the said respondents further clarifying with regard to credit shell proposals as proposed by the Government which were referred to in the earlier affidavits. Detailed affidavits are filed on behalf of the airlines and other stake holders who are impleaded as party respondents.

10. We have heard Sri Sanjay Hegde, learned senior counsel appearing for the petitioner-Pravasi Legal Cell in W.P.(C).Diary No.10966 of 2020; Sri C.A. Sundaram, learned senior counsel appearing for the petitioner in W.P.(C)No.570 of 2020; Ms. Sonal Jain, learned counsel appearing for the petitioners in W.P.(C)No.952 of 2020 and Sri Harshwardhan Bhende, learned counsel appearing for the Travel Agents Federation of India; Sri Tushar Mehta, learned Solicitor General appearing for the Union of India; Sri Arvind P. Datar, learned senior counsel appearing for Go Airlines (India) Ltd.; Sri Harish N. Salve, learned senior counsel appearing for Spicejet Ltd.; Sri Mukul Rohtagi, learned senior counsel appearing for Interglobe Aviation Ltd. (Indigo

Airline); Sri Pinaki Misra, learned senior counsel appearing for Tata SIA Airlines Ltd. (Vistara Airlines) and Air Asia India Ltd. and Sri Pallav Shishodia, learned senior counsel appearing for the Indian Association of Tour Operators.

11. By considering the grievances amongst the airline passengers on the issue of refund of tickets by airlines, the Directorate General of Civil Aviation has issued Civil Aviation Requirements by proceedings dated 22nd May 2008. As indicated in the said requirements when the tickets are purchased by means of credit card payments, refund shall be made by airlines within seven days of cancellation; in case of cash transactions refund shall be made immediately; in case of purchase of tickets through travel agents airline shall ensure that the refund process is completed within 30 working days. Further directions were issued to the airlines to refund all statutory taxes and User Development Fee/Airport Development Fee/Passenger Service Fee to the passengers in case of cancellation/non-utilisation of tickets. Similar such Requirements are also issued by proceedings dated 06.08.2010 which were revised on 27.02.2019 and clause 3.3 of the said Requirements deals with the issue relating to 'cancellation of flight' and the obligations on the airliner either to offer an alternate flight or refund the ticket as acceptable to the passenger. In ordinary course the said

requirements are to be followed by the airliner whenever there is a cancellation of tickets.

12. In view of peculiar situation which has arisen on account of pandemic COVID-19, to resolve the issues raised by the various stake holders, while issuing notice this Court vide order dated 12.06.2020 has passed the following order :

“ ”

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Issue notice. Mr. Rajat Nair, learned counsel accepts notice on behalf of the Union of India.

Let notice be issued to the other respondents.

Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India may file counter affidavit to the writ petition within two weeks from today.

Learned Solicitor General submits that a suggestion given by Mr. Harish Salve, learned senior counsel that the Ministry of Aviation shall call for a meeting with the airlines and sort out all the issues is a welcome suggestion and steps shall be taken by the Ministry of Aviation to do the needful.

Liberty is given to the airlines to file counter affidavit within three weeks.

“ ”

13. In the affidavit filed on behalf of respondent nos.1 and 2 in compliance of order dated 12.06.2020, filed by Director General of Civil Aviation it is stated that after the order dated 12.06.2020 passed by this Court, a meeting was held on 02.07.2020 at 17:00 Hrs. under the Chairmanship of Secretary, Civil Aviation through

video conferencing, to discuss issues relating to refund of air fares by airlines. As referred in the affidavit, the meeting was attended by the following participants:

Name and Designation	
MoCA:	
1.	Shri Pradeep Singh Kharola, Secretary
2.	Smt. Usha Padhee, Joint Secretary
3.	Shri Amit Kumar Jha, SO
4.	Shri Avinav Tiwari, ASO
DGCA:	
5.	Shri Arun Kumar, DG
Airlines:-	
6.	Shri Vinay Dubey, CEO, Go Air
7.	Shri Rajiv Bansal, CMD, Air India
8.	Shri K. Shyam Sundar, CEO, Air India Express
9.	Shri V. Hejmadi, Director Finance, Air India
10.	Shri Melwin D'Silva, ED (Commercial), Air India
11.	Shri Bhaskar Bhat, Chairman, Vistara
12.	Shri Leslie Thng, CEO, Vistara
13.	Shri Moin Wasil, Head (Regulations), Vistara

14.	Shri Ankur Garg, CCO, Air Asia
15.	Ms. Priya Mehra, Head (Legal), IndiGo
16.	Shri Sanjay Gupta, Head (Commercial), IndiGo
17.	Shri Chandan Sand, Spicejet

A copy of the Minutes of the meeting dated 02.07.2020 is also placed on record. Thereafter further follow-up meeting was held on 08.07.2020. By referring to two more meetings held by the Ministry on 11.07.2020 – one with Online Travel Agents and other with TAAI/TAFI representatives, minutes of such meeting are also placed on record. While explaining the existing legal regime relating to refund of fares, it is stated that same is governed by Civil Aviation Requirements, which recognise the rights of air passengers to seek refund of their air tickets. While referring to relevant provisions of the CARs of 22.05.2008 and 06.08.2010 as revised on 27.02.2019, it is stated that for cancellation of flights due to *force majeure* (extraordinary circumstances beyond the control of airline), though airline is not obligated to pay any compensation but it is obligated to refund the fare to the passengers. At the same time while referring to the meetings held by the respondent nos.1 and 2 concerning the issues which are raised by the passengers as well as the airlines,

and other stake holders it is stated if any enforcement action is initiated by the DGCA for violations of CARs mentioned above, same may result in reduction/suspension of approved schedule of airline, who have already started operating their flights with limited capacity. It is stated that any such strict enforcement action against airline would further restrict/reduce their operation and any such strict enforcement action may further jeopardise the possibility of generation of cash by the airline which can further adversely affect/delay the refund cycle. As suggested by the respondents, the workable solutions keeping in view the interests of both passengers as well as airlines the following formulations are arrived at to harmonise the interests of passengers and the viability of airlines to an extent. The said formulations read as under:

“Formulations based on the discussions with
scheduled domestic airlines on refund of air fare

A. For domestic airlines when the ticket has been
booked directly by the passenger with the airline.

1. If the tickets have been booked during the first lockdown period, i.e. 25th of March, 2020 to 14th of April, 2020 for the journeys to be undertaken in both first and second lockdown period i.e. from 25th of March, 2020 to 3rd of May, 2020, in all such cases, full refund shall be given by the airlines immediately (this is being mandated vide MoCA's OM dated 16TH April, 2020 as the airlines were not supposed to book such tickets).

2. For all other cases, the airlines shall make all endeavours to refund the collected amount to the passenger within 15 days.
3. If on account of financial distress, if the airlines are not able to do so they shall provide a credit shell equal to the amount of fare collected. This credit shell shall be issued in the name of the passenger who has booked the ticket.
 - a. The passenger shall be able to consume the credit shell up to 31st March, 2021 on any route of his choice. If the passenger wants to buy a ticket of value more than the credit shell, then he can use cash to top it up. If he wants to buy a ticket of value less than the credit shell, he/she can do so and the balance amount of credit shell shall be available to him/her.
 - b. There shall be an incentive mechanism to compensate the passenger if there is a delay in consuming the credit shell – from the date of cancellation upto 30th June, 2020 the value of credit shell shall be enhanced by 0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter, the value of credit shell shall be enhanced by 0.75% of the face value per month, up to March 2021.
 - c. The credit shell shall be transferable. The passenger can transfer the credit shell to any person, and the airlines shall honour such a transfer. The airlines shall devise a mechanism to facilitate such a transfer.
 - d. By the end of March, 2021, the Airlines shall refund cash to the holder of the credit shell.
4. Notwithstanding what is stated above, the airlines shall refund the full amount in case of travellers who have since expired to the

account of the passenger or to his representative.

B. For domestic airlines when the ticket has been booked through a travel agent (including OTA) by the passenger with the airline.

1. If the tickets have been booked during the lockdown period for travel within the lockdown period, in all such cases full refund shall be given by the airlines immediately (this is being mandated vide MoCA's OM dated 16th April, 2020 as the airlines were not supposed to book such tickets). This amount shall be passed on immediately by the Agent to the passengers.
2. For all other cases, the airlines shall make all endeavours to refund the collected amount within 15 days. This amount shall be passed on immediately by the Agent to the passengers.
3. If on account of financial distress, if the airlines are not able to do so they shall provide a credit shell equal to the amount of fare collected. This credit shell shall be issued in the name of the passenger who has booked the ticket. The credit shell shall be transferred by the Agent to the passengers (if booking is through an agent).
 - a. The passenger shall be able to consume the credit shell up to 31st March, 2021 on any route of his choice. If the passenger wants to buy a ticket of value more than the credit shell, then he can use cash to top it up. If he wants to buy a ticket of value less than the credit shell, he/she can do so and the balance amount of credit shell shall be available to him/her.
 - b. There shall be an incentive mechanism to compensate the passenger if there is a delay in consuming the credit shell – from the date

of cancellation up to 30th June, 2020 the value of credit shell shall be enhanced by 0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter, the value of credit shell shall be enhanced by 0.75% of the face value per month, up to March 2021.

- c. The credit shell shall be transferable. The passenger can transfer the credit shell to any person, and the airlines shall honour such a transfer. The airlines shall devise a mechanism to facilitate such a transfer.
- d. By the end of March, 2021, the Airlines shall refund cash to the holder of the credit shell.
- e. The travel agents shall be entitled for their usual fees/service charges/commission.

4. Notwithstanding what is stated above, the airlines shall refund the full amount in case of persons who have since expired. This amount shall be passed on immediately by the Agent to the passengers.

C. For international travel when the ticket has been booked on an Indian carrier and the booking is ex-India

- 1. If the tickets have been booked during the lockdown period for travel within the lockdown period, in all such cases full refund shall be given by the airlines immediately (this is being mandated vide MoCA's OM dated 16th April, 2020 as the airlines were not supposed to book such tickets). This amount shall be passed on immediately by the Agent to the passengers, as the case may be.

2. For all other cases, the airlines shall make all endeavours to refund the collected amount within 15 days. This amount shall be passed on immediately by the Agent to the passengers, as the case may be.

3. If on account of financial distress, if the airlines are not able to do so they shall provide a credit shell equal to the amount of fare collected. This credit shell shall be issued in the name of the passenger who has booked the ticket. The credit shell shall be transferred by the Agent to the passengers (if booking is through an agent).
 - a. The passenger shall be able to consume the credit shell up to 31st March, 2021 on any route of his choice. If the passenger wants to buy a ticket of value more than the credit shell, then he can use cash to top it up. If he wants to buy a ticket of value less than the credit shell, he/she can do so and the balance amount of credit shell shall be available to him/her.

 - b. There shall be an incentive mechanism to compensate the passenger if there is a delay in consuming the credit shell – from the date of cancellation up to 30th June, 2020 the value of credit shell shall be enhanced by 0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter, the value of credit shell shall be enhanced by 0.75% of the face value per month, up to March 2021.

 - c. The credit shell shall be transferable. The passenger can transfer the credit shell to any person, and the airlines shall honour such a transfer. The airlines shall devise a mechanism to facilitate such a transfer.

d. By the end of March, 2021, the Airlines shall refund cash to the holder of the credit shell.

e. Notwithstanding what is stated above, the airlines shall refund the full amount in case of persons who have since expired. This amount shall be passed on immediately by the Agent to the passenger's representative.

D. For international travel when the ticket has been booked on a foreign carrier and the booking is ex-India

1. If the tickets have been booked during the lockdown period for travel within the lockdown period, in all such cases full refund shall be given by the airlines immediately (this is being mandated vide MoCA's OM dated 16th April, 2020 as the airlines were not supposed to book such tickets). This amount shall be passed on immediately by the Agent to the passengers, as the case may be.

2. For all other cases, the airlines shall refund the collected amount to the passenger within 15 days. This amount shall be passed on immediately by the Agent to the passengers. (If the booking is through an agent).”

14. Further affidavit in the form of supplementary affidavit is filed on behalf of respondent nos.1 and 2 which is more in the nature of a clarificatory one on certain doubts expressed by the learned counsel for the petitioners. While clarifying the category of passengers who are proposed to be covered under the proposed formulations mentioned in the earlier affidavit, it is clarified that the following categories are covered:

- “(i) Passengers who had booked their tickets directly from the domestic airline for domestic travel;
- (ii) Passengers who had booked their tickets through a travel agent (including OTA) for domestic airline for domestic travel;
- (iii) International travel passengers who had booked their ticket on an Indian carrier and the booking is ex-India;
- (iv) International travel passengers who had booked their ticket on a foreign carrier and the booking is ex-India.

Though the term ex-India is not defined in the Aircraft Act, 1934 and the Aircraft Rules, 1937, but in aviation industry this term denotes the flights which are originating from India.”

Further clarification is also made on period of booking of tickets.

It is stated that the formulations suggested will cover category of cases where passengers who have booked the tickets prior to lockdown for travel upto 24th May 2020 and refund of fares to passengers covered under this category shall be governed by the proposed formulation relating to credit shell and incentive scheme. Further, passengers who have booked tickets during lockdown for travel during lockdown, such category of passengers are entitled for immediate refund of fares by the airline as the airlines were not supposed to book such tickets.

With regard to passengers who have booked tickets at any period

of time but for travel after 24th May 2020 it is stated that the passengers covered under this category shall be governed by the provisions of CAR. While clarifying the issue raised by the tour operators with regard to credit shell, it is stated that in this category there are two types of purchase of ticket by the agents. The first mode is that when initially passengers pay the money to agent and agent purchases ticket for the passenger and the second mode is the one where agent purchases the ticket for the passengers through its advance deposit with the airline and the passengers pay the money either at the time of consumption of ticket or may be even after consumption of ticket. In the affidavit it is made clear that even in cases where tickets are purchased by tour operator, who has paid the money to the airline for purchasing the ticket for the client but the client is yet to pay that money to the agent, then on cancellation of ticket and converting it into a credit shell, the ticket will remain in the name of passenger and in case passenger utilises the credit shell he will have to pay to the agent and not to the airline. However, in case the passenger does not utilise the credit shell till 31st March 2021, then airline will have to refund the amount as per proposed formulation and money will go back to the same account of the agent from which the ticket amount was paid to the airline. It is also clarified that in case passenger in whose

name the ticket is booked does not utilise the credit shell till 31st March 2021, then the airline will have to refund with interest prescribed in the formulation to the agent from whose account the ticket was booked.

15. Referring to supplementary affidavit filed on behalf of respondent nos.1 and 2 learned counsel appearing for the agents have submitted that when the tickets are purchased by the agent for the passenger by paying their money which is yet to be received from the passenger, there should not be any difficulty for giving the credit shell in the name of the agent himself who has purchased the ticket. When it was pointed out that as per the supplementary affidavit filed by the respondent nos.1 and 2 it was made clear that in cases where tickets were purchased by agents for passengers, where credit shell is given in the name of passenger, if it is not utilised before 31st March 2021 money will be returned to the account of agent from whose account money was paid to the airline, there should not be any difficulty in issuing credit shell in the name of agent, the learned Solicitor General obtained instructions in this regard and filed additional affidavit on 24th September 2020 on behalf of respondent nos.1 and 2. In this affidavit, it is stated that the existing regulatory mechanism recognises the contract between the passenger and the airlines only, for a ticket which is purchased and for which a

named passenger only can be accounted for in the 'passenger manifest' of a schedule flight which is to be maintained as per the best international practices and regulations. The travel agent, if any, involved in the purchase of any ticket on behalf of any passenger remains only a via-media, leaving the principal contract between the airline and the passenger only. Therefore, the proposed formulation suggested earlier, only recognises the contract between the airline and the passenger of a purchased ticket. As such it is stated that credit shell is proposed to be issued in the name of passengers only who have booked their tickets through agents and it is not feasible to issue a credit shell in the name of agent, as much as ticket was purchased in the name of passenger but at the same time it is clearly stated that if such voucher is not used before 31st March 2021 as per the formulation, money has to be paid back by the airliner through the same account from which they have received money.

16. In view of such formulations which are arrived at during the course of meetings held by the respondent nos.1 and 2 with other stake holders, airlines etc., it is submitted that substantially their grievances stand resolved but at the same time certain issues were raised during the course of hearing.

17. Sri Sanjay Hegde, learned senior advocate appearing for the Pravasi Legal Cell has submitted that in view of the proposals as

mentioned in the affidavit filed by the respondent nos.1 and 2, their grievances are substantially redressed but at the same time he has submitted that for the bookings made for foreign air travel through Indian carriers outside the country, same formulation as proposed by the respondent nos.1 and 2 can be applied. Sri C.A. Sundaram, learned senior counsel appearing for the Air Passengers Association of India has submitted that whatever the mode they have booked, all passengers are entitled for refund immediately. It is submitted that the problems faced by the airlines is no ground for not refunding the money which is paid by the passengers. Sri Harshwardhan Bhende, learned counsel appearing for the Travel Agents Federation of India has submitted that when the tickets are booked by travel agents by investing their money on behalf of the passengers there is no reason for not issuing credit shell in the name of agents. Sri Pallav Shishodia, learned senior counsel appearing for Indian Association of Tour Operators has contended that, when tickets are booked by agents, there is no reason for not issuing credit shell in the name of agents. It is further submitted that in case credit shell is not utilised by 31st of March 2021, refund has to come back to the same account of the agent, from which account money is paid for bookings.

18. Shri Harish Salve, learned senior counsel appearing for Spicejet Ltd., in view of the stand of respondent nos.1 and 2 in their first affidavit, has stated that the formulations arrived at as mentioned in the affidavit are by and large acceptable to his client. Sri Rohtagi, learned senior counsel appearing for Indigo Airlines, also has submitted that the suggestions/ formulations as suggested in the affidavit filed on behalf of respondent nos.1 and 2 are acceptable. Shri Pinaki Misra, learned senior counsel appearing for Tata SIA Airlines Ltd. (Vistara Airlines) and Air Asia India Ltd. has submitted that the incentive mechanism suggested for enhancing the face value of the credit shell, in the affidavit filed by respondent nos.1 and 2 itself is reasonable and no higher amount of interest may be considered on the refund. Sri Arvind Datar, learned senior counsel appearing for Go Airlines India Ltd. by drawing our attention to the detailed affidavit filed on its behalf has submitted that COVID-19 is an existential threat to commerce generally, and to airlines in particular. It is submitted that in developed countries airline industry has been able to secure itself more broad-based State relief (whether by bail-out or otherwise, including dispensations from refunds). However, no comparable measures have yet been introduced in India. By referring to facts and figures as mentioned in the affidavit, learned senior counsel has submitted that airlines is one of the

worst affected sectors on account of pandemic COVID-19. Learned counsel drew our attention to the Report dated 09th June 2020, of IATA (the world-wide Aviation Industry Association) on the economic performance of the airline industry. In its report, after predicting a world-wide US\$ 434 billion drop in airline revenue and related indirect tax receipts and a 50.6% fall in passenger demand it further states that GDP growth is likely to contract by 5.0% in 2020; COVID-19 will have a significant impact on international trade (a 13% decline); 2020 will be the worst year in the history of airlines with net losses of \$84.3 billion; and 32 million jobs supported by aviation are at risk etc. Referring to the severe liquidity crunch faced by airlines it is submitted that if the credit shells are not utilised by 31st March 2021, it is not possible to refund the money as ordered and learned counsel has requested to extend the time to encash credit shell at least upto 31st March 2022 to balance the equities.

19. Though the various contentious issues are raised on both sides and at the same time the suggestions/formulations as suggested by respondent nos.1 and 2 in the affidavits filed before this Court are by and large acceptable to the majority of stake holders. In ordinary course modalities and timelines for refund on cancellation of tickets are governed by, the Civil Aviation Requirements, i.e. CAR dated 22nd May 2008; 06th August 2010

as revised on 27th February 2019, and the said Requirements are issued by the competent authority in exercise of powers under the provisions of Aircrafts Act, 1934 and the Rules made thereunder. But at the same time we cannot lose sight of the present situation prevailing in the country and across the globe, i.e. the effect of pandemic COVID-19. It cannot be disputed that the civil aviation sector, which is one of the important sectors, is seriously affected in view of the ban imposed for operating flights. Added to the same, air passenger traffic has come down heavily and which is gradually being restored. At this moment any strict enforcement action of the CARs would further restrict/reduce their operations and such enforcement action may further jeopardise the possibilities of generation of cash by airlines which can further adversely affect/delay the refund cycle. Strict enforcement of Civil Aviation Requirements at this moment may not yield any meaningful result for any stake holder. In view of the suggestions and formulations arrived at in the meetings held by respondent nos.1 and 2, which are acceptable to the majority of stake holders, have to be implemented in letter and spirit. We also feel that such formulations are workable solutions in these peculiar circumstances which are prevailing in the country. The grievances which are raised on behalf of agents can be taken care by this Court by issuing appropriate directions wherever

bookings are made by them, so as to see that their interest is safeguarded. Sri Arvind Datar, learned senior counsel, though has argued to extend the timelines for encashment of credit shell at least up to 31st March 2022 or any other shorter period but we are not inclined to accept the same, keeping in mind that the passengers who, with the hope of travel, have booked their tickets by spending their own money. For these reasons we are not inclined to delve any further on any of the contentions and deem it appropriate to dispose of this batch of cases with the following directions:

1. If a passenger has booked a ticket during the lockdown period (from 25th March, 2020 to 24th May, 2020) for travel during lockdown period and the airline has received payment for booking of air ticket for travel during the same period, for both domestic and international air travel and the refund is sought by the passenger against that booking being cancelled, the airline shall refund the full amount collected without any cancellation charges. The refund shall be made within a period of three weeks from the date of cancellation.
2. If the tickets have been booked during the lockdown period through a travel agent for a travel within the lockdown period, in all such cases full refund shall be given by the airlines immediately. On such refund, the amount shall be passed on immediately by the agent to the passengers.

3. Passengers who booked tickets at any period of time but for travel after 24th May, 2020 – refund of fares to the passengers covered under this category shall be governed by the provisions of Civil Aviation Requirements (CAR).

4. Even for international travel, when the tickets have been booked on an Indian carrier and the booking is ex-India, if the tickets have been booked during the lockdown period for travel within the lockdown period, immediate refund shall be made.

5. If the tickets are booked for international travel on a foreign carrier and the booking is ex-India during the lockdown period for travel within the lockdown period, full refund shall be given by the airlines and said amount shall be passed on immediately by the agent to the passengers, wherever such tickets are booked through agents. In all other cases airline shall refund the collected amount to the passenger within a period of three weeks.

6. In all other cases, the airlines shall make all endeavours to refund the collected amount to the passenger within 15 days from today. If on account of financial distress, any airline / airlines are not able to do so, they shall provide credit shell, equal to the amount of fare collected, in the name of passenger when the booking is done either directly by the passenger or through travel agent so as to consume the same on or before 31st March, 2021. It is open to the passenger either to utilize such credit

shell upto 31st March, 2021 on any route of his choice or the passenger can transfer the credit shell to any person including the travel agent through whom he / she has booked the ticket and the airlines shall honour such a transfer.

6.1. The credit shell issued in the name of the passenger shall be transferable which can be utilized upto 31st March, 2021 and the concerned airline shall honour such a transfer by devising a mechanism to facilitate such a transfer. It is also made clear that such credit shell can be utilized by the concerned agent through whom the ticket is booked, for third party use. It is also made clear that even in cases where credit shell is transferred to third party, same is to be utilized only through the agent who has booked the ticket at the first instance.

7. In cases where passengers have purchased the ticket through an agent, and credit shell is issued in the name of passenger, such credit shell is to be utilized only through the agent who has booked the ticket. In cases where tickets are booked through agent, credit shell as issued in the name of the passenger which is not utilized by 31st March, 2021, refund of the fare collected shall be made to the same account from which account amount was received by the airline.

8. In all cases where credit shell is issued there shall be an incentive to compensate the passenger from the date of cancellation upto 30th June, 2020 in which event the credit shell shall be enhanced by

0.5% of the face value (the amount of fare collected) for every month or part thereof between the date of cancellation and 30th June, 2020. Thereafter the value of the credit shell shall be enhanced by 0.75% of the face value per month upto 31st March, 2021.

Further, the second respondent-Directorate, shall ensure strict compliance of the directions referred above, by issuing necessary instructions to the all concerned.

20. With the above directions, these writ petitions are disposed of.

.....J.
[ASHOK BHUSHAN]

.....J.
[R. SUBHASH REDDY]

.....J.
[M.R. SHAH]

New Delhi.
October 01, 2020.