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

***Date of Decision: 27<sup>th</sup> April, 2021***

+ **W.P.(C) 4990/2021 & CM APPL. 15297/2021**

INDIAN COMMERCIAL PILOTS ASSOCIATION..... Petitioner

Through: Mr. Adit S. Pujari and Ms. Tusharika  
Matto, Advocates.

versus

DIRECTORATE GENERAL OF CIVIL AVIATION..... Respondent

Through: Ms. Anjana Gosain, Ms. Shalinin  
Nair, Advocates with Mr. Anand  
Pandey, DDRI, DGCA.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through video conferencing.
2. The present petition has been filed by the Indian Commercial Pilots Association, which is an organization of commercial pilots, working with Air India.
3. The case of the Petitioner- Association, is that owing to the recent spurt of Covid-19 infections that have been witnessed in India, exemption ought to be given to commercial pilots, from undergoing the breath-analyzer tests as mandated under Section 5- Air Safety, Series F Part III Issue III- 4<sup>th</sup> August 2015 (as modified vide Order bearing No. DGCA 15031/4/2020-DAS dated 04.09.2020) of the Civil Aviation Requirements Regulation identified as F. No. AV 15011/21/2010-AS, issued by the Director General of Civil Aviation (*hereinafter*, "DGCA").

4. It is further prayed that the Respondent be directed to reinstate the earlier order, dated 29th March 2020, which was temporarily in operation, and had suspended the conduct of breath-analyzer tests subject to the undertakings being provided to the DGCA.

5. Mr. Adit S. Pujari, Id. Counsel appearing for the Petitioner submits that the conduct of breath-analyzer tests would expose a large number of pilots to grave danger, in view of the fact that the manner in which breath-analyzer tests are conducted would require that the same breath-analyzer equipment is used for all the pilots and other personnel who would be undergoing the said test. He submits that since breath-analysis involves the use of an equipment which would be connected to the nose and mouth of the person who takes the same, there is a severe chance of an infection being transferred from one person, who has been previously tested is positive for COVID-19. This is due to the communicable nature of the disease. He further submits that during the period when breath-analyzers were suspended from being administered last year, only random testing was being conducted and, in any event, considering this recent spike in COVID-19 infections, he submits that the authorities ought to consider conducting blood-alcohol tests instead of breath-analyzer tests.

6. Notice was issued in this writ petition on yesterday i.e., on 26th April 2021. Ms. Anjana Gosain, Id. Counsel had appeared in the matter and was asked to seek instructions. Ms. Gosain submits that considering the rate of spread of COVID-19 infections, the DGCA, on its own, has decided to modify the protocol for conduct of breath-analyzer tests. She submits that under the existing arrangement, insofar as the domestic personnel are concerned, 25% of them were being tested in a random manner, and insofar

as the international personnel/ pilots are concerned, all 100% of them were being tested. Insofar as the cabin crew is concerned, the testing was random. However, due to the recent developments in respect of the spread of the pandemic, on a review conducted by the DGCA, it has been decided as under:

*“In view of rising number of COVID-19 cases, the DGCA has reviewed the conduct of B.A. Test of all Aviation personnel and after the approval of competent authority the DGCA order of even number dated 04.09.2020 & 07.09.2020, have been suitably modified and henceforth the employer/ organization shall ensure that:*

- i. 10% of flight crew member and the cabin crew member shall be subjected to random preflight Breath-Analyzer test for entire operation of an Organization in India.*
- ii. ATCO shall be subjected to random Breath-Analyzer test before commencement of duty at each station on daily basis.*
- iii. For operation of aircraft registered in private category the Pre-flight Medical requirements shall continue as per DGCA-15011(01)/18/2020-DAS dated 03.12.2020*

*The above direction/arrangement is purely a temporary measure in view of COVID-19 and shall be valid up to 17.05.2021 and till then the relevant provisions of the CAR shall remain suspended. The restoration of provisions of respective Civil Aviation Requirements on the subject will be reviewed from time to time.*

*Every aviation personnel who is reporting for duty is required to submit an undertaking in respect of the fact that he/she is not under the influence of alcohol and that he/she has not consumed alcohol/psychoactive substance in last 12 hours from the time of reporting for duty. The undertaking must also contain a warning that in case of violation of the*

*undertaking, strict enforcement action will be taken by DGCA against the individual. The process of submitting undertaking is to be done in presence of medical representative in accordance with CAR Section 5 Series F Part III & IV respectively and the same shall be captured on CCTV/Camera.*

*While conducting breath-analyzer test, following precautions /measures shall be taken:*

*1. The doctor/medical personnel/paramedic etc. as authorized under CAR Section 5 Series F Part III & IV shall scan a person for symptoms of COVID-19 disease before carrying out a BA test.*

*a) If any person is detected with COVID symptoms, the person shall be exempted from BA test and be removed from duty. Such person shall undergo the required examination and shall return to duty only after having been declared fit. Records are to be maintained for all such cases.*

*b) Such cases shall not be treated as missed BA case.*

*2. The person carrying out the test and undergoing the test should ensure hygiene conditions including the following:*

*a) The person doing the test should use Personal Protective Equipment(PPE) Kit*

*b) The person undergoing the test should wash their hands before and after BA test or use disposable gloves for handling the BA machine.*

*c) BA examination room/area should not be crowded*

*d) Integrity and sanitary condition of BA tubes/ mouth piece should be maintained.*

*e) **Before every use, the BA equipment should be sanitized using UV sterilizers.***

*Further, all organizations shall ensure strict adherence to the COVID-19 protocol issued by Government of India from time to time while complying with these requirements.*

*This issues with the approval of Competent Authority)”*

7. She relies upon the said new protocol, extracted above, which is now being proposed by the DGCA, to submit that the DGCA is conscious of the safety of its personnel and has hence taken a policy decision to change the quantum of testing. It is submitted that the testing has been reduced from 25% to 10% in the domestic sector and 100% to 10% in the international sector for pilots. For others, the testing is on a random basis. She further submits that there is no risk to the personnel inasmuch as prior to every use of the breath-analyzer equipment, the same would be sanitized with UV sterilizers.

8. The present petition has a background that on the outbreak of the pandemic, in the last week of March 2020, the Air Traffic Controllers Guild of India had filed a petition being ***W.P.(C) 2946/2020***, titled ***Air Traffic Controllers Guild (India) v. Union of India and Ors.***, wherein a similar prayer was made to stop the conduct of breath-analyzer tests. Vide order dated 23rd March 2020, immediately upon the outbreak of the pandemic, this Court had issued the following directions:

*“12. The Petitioner and its members have already assured and undertaken in their representation dated 17th March 2020, to the PMO, DGCA and AAI as under:*

*“.....Sir, you can well understand the gravity of the situation. If it is not stopped right now, it can even affect general public as well. We can assure you that our members know their critical*



*duty and never come under the influence of alcohol...”*

*This Court takes the assurance and undertaking given by the ATCs as an undertaking to this Court. It is expected that ATCs are responsible officers and are conscious of the extenuating circumstances currently prevalent.*

*13. In the light of the above, purely as an interim measure, until further orders, the following directions are issued:*

*i. The DGMS (Air), Delhi shall immediately convene a meeting of the DGCA, AAI, Ministry of Civil Aviation, including any doctors or medical specialists tomorrow i.e., 24th March 2020 or at the earliest possible convenience to draw up an alternative protocol for conducting breath analyser tests on ATCs;*

*ii. The Breath Analyser Test currently being conducted shall remain suspended with immediate effect at all airports till further orders;*

*iii. The Petitioner and all its members shall abide by the assurance to the effect that they appreciate the critical nature of their duty and undertake that they would not report to work under the influence of alcohol;*

*iv. An undertaking and a self-declaration shall be obtained under the signature of each ATC who reports to work;*

*v. Any violation of the undertaking and self-declaration given by the Petitioner and/or its members shall entail severe consequences including suspension of the licence;*

*vi. The DGMS shall draw up the new protocol to be followed until the spread of COVID-19 abates;*

*vii. DGCA is however permitted to conduct any other way of testing which is not invasive in nature and which does not increase the chance of spreading of COVID-19. Urine/blood testing, if opted for as the method of testing, shall be done by using disposable syringes and/or sterilised equipment, in a 2% randomised sample, until the new protocol is framed so*

*that any violation of the self-declaration or undertaking can be detected;*

*viii. AAI shall provide any facilities that may be needed for the DGCA to implement the above directions.”*

9. Pursuant to the orders given by the Court, a Committee was constituted by the DGCA and the report of the said Committee was placed on record. The report which was submitted by the DGMS (Air) was, thereafter, considered by this Court, and finally the writ petition was disposed of on 3rd September 2020 with the following directions:

*“5. I have considered the submissions made by the learned counsels for the parties. On the aforesaid, it has been noted that this court is not an expert in the medical field. The Medical Report dated 16.06.2020 is pursuant to the directions issued by this Court and was headed by DGMS (Air) and attended by other Air Force Medical Officers. They are certainly the experts in their field. As submitted by the learned counsel for the respondents, Breath Analyser Tests are being presently conducted even for the pilots, though in a restricted manner. The respondents are also agreeable to put in place the precautionary measures as suggested by the Medical Board.*

*6. In the present case, the interests of the ATCs and of the air traveler have to be balanced. With the respondents having agreed to take precautionary measures and even reducing the number of tests, this Court does not find any reason to continue with the interim order dated 23.03.2020 any further.*

*7. The interim order dated 23.03.2020 shall accordingly, stand modified to the extent that the respondent no.2 shall be bound by the recommendations of the Medical Board dated 16.06.2020, till further orders”*

10. The present writ petition has now been filed in the light of the recent spike in the COVID-19 infected persons, and the threat posed by the same,

which is much higher in magnitude, than it was at the time of previous order dated 23<sup>rd</sup> March which was passed in ***W.P.(C) 2946/2020***, just when the pandemic had broken. There is no doubt that the current wave of the COVID-19 pandemic has infected a larger number of people and the DGCA has accordingly, on its own, conducted a review.

11. The question as to whether breath-analyzer tests ought to be conducted or not, and whether the safeguards, which have been currently proposed in the Draft Circular dated 27th April 2021, is according to this Court, a question which ought to be first considered by an expert Medical Committee, since this Court may not have adequate expertise to decide on such an issue and the report of the Committee would be of great assistance. While taking a decision on such an important and sensitive issue, the said Medical Committee would have to bear in mind the safety of passengers, as also the safety of the personnel including the pilots, the cabin crew, air traffic controllers etc.

12. The DGCA has, on its own, scaled down the number of tests which shall be conducted and has also assured the Court that before every use the breath-analyzer equipment would be sterilized using a UV sanitizer.

13. The question as to whether blood tests should be conducted, and whether the sanitization of the equipment with UV sterilizers would be sufficient to maintain the safety of the personnel or not would have to be considered by a Medical Committee which would be constituted by the DGMS (Air). Obviously, the safety of both sides i.e., the passengers as well as the flying crew/ personnel, has to be ensured by the authorities and neither of their interests can be compromised.



14. Over the course of submissions, Mr. Pujari, Id. Counsel for the Petitioner, has submitted that insofar as the international pilots and cabin crews are concerned, they are tested upon arrival, and in respect of those personnel since there is no immediate flight which the said arriving personnel would be taking, their tests should be, in any case, converted to blood-alcohol tests, in order for testing the alcohol limits. This issue would also be considered by the Medical Committee, which is to be constituted by the DGMS (Air).

15. Above all, this Court has no doubt that the undertakings which have to be given by the personnel, to ensure that they do not consume any alcohol 12 hours prior to reporting on duty, would have to be duly adhered to, by the personnel, including Air Traffic Controllers and Cabin Crew. Undertakings, to this effect, would continue to be obtained from each of the said personnel, and a violation of the same would be viewed extremely strictly.

16. In this background, the following directions are issued:

- i. The DGCA would immediately bring into operation, the Draft Order dated 27th April, 2021, placed before the Court today and extracted above, so that the same can be implemented with effect from tomorrow i.e., 28th April, 2021 itself.
- ii. The DGMS (Air) shall constitute a Medical Committee of duly qualified people, who shall submit a report on all of the issues discussed above, as also the issues raised in the writ petition.
- iii. One of the apprehensions expressed by Id. counsel for the Petitioner is that UV sterilizing of the breath analyzing equipment would not neutralize the COVID-19 aerosols. if

emitted by a previous user of the said equipment. This issue shall also be specifically considered by the Medical Committee.

- iv. Undertakings, with respect to no alcohol consumption 12 hours prior to reporting on duty, would continue to be taken from each of the personnel as per the Draft Order dated 27<sup>th</sup> April 2021, and other applicable rules and regulations.

17. The said Medical Committee, formed by the DGMS (Air), shall meet either physically or through video conferencing, and submit a report as per the directions mentioned above, on or before 4<sup>th</sup> May 2021. The said report shall be emailed directly to the Court Master, with an advance copy to Id. Counsel for the Petitioner.

18. List on 5<sup>th</sup> May, 2021.

**PRATHIBA M. SINGH  
JUDGE**

**APRIL 27, 2021**  
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