

(2016) 05 SC CK 0042

In the Supreme Court Of India

Case No : Writ Petition (C) No. 98 of 2012

Jeeja Ghosh and Anr.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Aircraft Rules, 1937 — Rule 133A
Constitution of India, 1950 — Article 14, 21
Consumer Protection Act, 1986 — Section 12, 13

Citation : (2016) AIR(SCW) 2393 : (2016) AIRSC 2393 : (2016) ALLSCR 1404 : (2016) 4 ALLWC 3385 : (2017) 1 ALT 20 : (2016) DNJ 590 : (2016) 3 JBCJ 111 : (2016) 5 JT 294 : (2016) 4 KCCR 403 : (2016) 3 LawHerald 2090 : (2016) 2 LawHeraldSC 1540 : (2016) 4 MLJ 438 : (20

Hon'ble Judges : A.K. Sikri;R.K. Agrawal, JJ.

Bench : Division Bench

Advocate : Ms. Jyoti Mendiratta, Advocate, for the Appellant; Atul Sharma, Abhishek Sharma, M.R. Shamshad, Ms. Kiran Bhardwaj, B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J. - In the book on the rights of differently abled persons authored by Joseph P. Shapiro, which is titled "NO PITY"[24]the first chapter, "Introduction" has the sub-title "You Just Don't Understand" and the very first sentence of the said book is : "Nondisabled Americans do not understand disabled ones".

[24]`NO PITY": People with Disabilities Forging a New Civil Rights Movement" [Indian reprint by Universal Book Traders]

2. The present PIL, spearheaded by Jeeja Ghosh, who is herself a disabled person, with the support of the NGO ADAPT (Able Disable All People Together), bears testimony to the statement of Shapiro. Irony is that though the aforesaid remarks were made by Shapiro way back in the year 1993 and notwithstanding the fact that there have been significant movements in recognising the rights of

differently abled persons, much is yet to be achieved. India also has come out with various legislations and schemes for the upliftment of such differently abled persons, but gap between the laws and reality still remains. Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfilment but also to make them contribute in the growth of the society, yet mindset of large section of the people who claim themselves to be "able" persons still needs to be changed towards differently abled persons. It is this mindset of the other class which is still preventing, in a great measure, differently abled persons from enjoying their human rights which are otherwise recognised in their favour. Present case, though a PIL, got triggered by an incident which proves aforesaid introductory statement made by us.

3. Petitioner no. 1, Ms. Jeeja Ghosh is an Indian citizen with cerebral palsy. She is an eminent activist involved in disability rights. She is, inter alia, a Board member of the National Trust, an organization of the Government of India, set up under the "National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities" Act (Act 4 of 1999). Ms. Ghosh has been felicitated by the West Bengal Commission for Women on the occasion of International Women's Day in the year 2004, and is the recipient of the Shri N.D. Diwan Memorial Award for Outstanding Professional Services in Rehabilitation of Persons with Disabilities by the National Society for Equal Opportunities of the Handicapped (NASEOH) in the year 2007. Ms. Jeeja Ghosh is also the recipient of the "Role Model Award" from the Office of the Disability Commissioner, Government of West Bengal, for the year 2009, and was also an elected Board Member of the National Trust for Persons with Autism, Cerebral Palsy, Multiple Disabilities and Mental Retardation from 14th August, 2008 to 19th July, 2011. This Curriculum Vitae of petitioner no. 1 amply demonstrates how a person suffering from cerebral palsy, can overcome the disability and achieve such distinctions in her life, notwithstanding various kinds of retardation and the negative attitudes which such persons has to face from the society.

4. It so happened that Ms. Ghosh was invited to an International Conference, North South Dialogue IV, in Goa, from the 19th to the 23rd of February, 2012, hosted by ADAPT (Petitioner no. 2). The conference was intended to put a special focus on people with disabilities and their families, countries in the global South facing huge systemic and institutional barriers, and the tools for change that would make a difference in their lives in these countries. Additionally, Ms. Jeeja Ghosh was invited as one of 15 international individuals to review an Indo-German project which was being show-cased at the conference. ADAPT purchased return plane tickets for Ms. Jeeja Ghosh, including a seat on flight SG 803, operated by SpiceJet Ltd. (Respondent no. 3) scheduled to fly from Kolkata to Goa on the morning of 19th February, 2012. The conference was to begin in the afternoon of the 19th February, 2012.

5. After being seated on the flight, Ms. Jeeja Ghosh was approached by members

of the flight crew who requested to see her boarding pass, which she gave them. Then they proceeded to order her off the plane. Despite her tearful protestations and informing them that she needed to reach Goa for the conference, they insisted that she de-board. After returning to the airport and arguing with airlines officials, she later discovered that the Captain had insisted that she be removed due to her disability.

6. It is averred in the petition that as a result of the shock and trauma of this event, she had trouble sleeping and eating, so she was taken to a doctor the following day where she was prescribed medication. Because of this, she was unable to fly to Goa on 20th February, 2012, and, thus, missed the conference altogether. Not only did this humiliate and traumatize her, but it also deprived the conference organizer, ADAPT (petitioner no. 2) and all of the attendees of the opportunity to hear her thoughts and experiences, and prevented her from providing her analysis of the Indo-German project under review.

7. Petitioner no. 1 grudges that even after four years of the said incident whenever she has a flashback, she feels haunted with that scene when she was pulled out of the plane, like a criminal. She continues to have nightmares. The petitioners, in these circumstances, have preferred the instant petition under Article 32 of the Constitution of India for putting the system in place so that other such differently abled persons do not suffer this kind of agony, humiliation and emotional trauma which amount to doing violence to their human dignity and infringes, to the hilt, their fundamental rights under Articles 14 and 21 of the Constitution.

8. We may mention, at this stage, that SpiceJet had sent a letter to petitioner no. 1 apologizing for the incident. However, according to the petitioners, the SpiceJet tried to trivialize the incident by just mentioning that "inconvenience caused" was "inadvertent". It is also mentioned in the petition that before approaching this Court she had submitted a compliant to the Ministry of Social Justice and Empowerment about the incident as well as to the Commissioner for Persons with Disabilities, West Bengal and the Chief Commissioner for Persons with Disabilities, Government of India. Both had issued show cause notices to SpiceJet in response to which petitioner no. 2 was informed that a refund for flight, less RS. 1,500/- as a cancellation fee from the airlines on which the return luggage had been booked through Jet Konnect, will be made. The petitioners perceive it as sprinkling salt on their wounds.

9. It is claimed that such behaviour by airlines Crew is as outrageous as it is illegal. SpiceJet's staff clearly violated "Civil Aviation Requirements" dated 1st May, 2008 (for short, "CAR, 2008") with regard to "Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility" issued by the respondent No.2 - Directorate General of Civil Aviation (for short, "DGCA") as authorized by Rule 133A of the Aircraft Rules, 1937, which states:

"4.1 No airline shall refuse to carry persons with disability or persons with

reduced mobility and their assistive aids/devices, escorts and guide dogs including their presence in the cabin, provided such persons or their representatives, at the time of booking and/or check-in for travel, inform the airlines or their requirement. The airlines shall incorporate appropriate provisions in the online form for booking tickets so that all the required facilities are made available to the passengers with disabilities at the time of check-in.

[...]

4.4. All airlines and airport management shall run program for their staff engaged in passenger handling e.g. cabin crew/commercial staff including floor walkers and counter staff etc. for sensitization and developing awareness for assisting passengers with disabilities. The training program shall be conducted at the time of initial training and a refresher shall be conducted every three years on the subject. Only such persons who have current course shall be assigned to handling disabled persons. The training program should, inter alia, include assisting disabled persons in filing up travel documents as may be required while providing assistance in flight.

[...]

4.6. Many persons with disabilities do not require constant assistance for their activities. Therefore, if the passenger declares independence in feeding, communication with reasonable accommodation, toileting and personal needs, the airlines shall not insist for the presence of an escort.

[...]

4.8. All airlines shall provide necessary assistance to persons with disabilities/impairment who wish to travel alone without an escort.

[...]

4.10(b) Once a passenger has bought a ticket for travel, it is obligatory on part of the airline that he reaches the aircraft from the departure lounge, and at the end of the journey from the aircraft to the arrival lounge exit, without incurring any further expenditure.

[...]

4.13 Airlines shall provide assistance to meet the particular needs of the persons with disabilities and persons with reduced mobility, from the departing airport terminal to the destination airport terminal.

[...]

4.14 Persons with disabilities and persons with reduced mobility have equal choice of seat allocation as others, subject to safety requirements and physical limitations of the aircraft - like seats near the emergency exits and seats with more leg-room.

[...]

5.1 No Medical clearance or special forms shall be insisted from persons with disabilities or persons with reduced mobility who only require special assistance at the airport for assistance in embarking/disembarking and a reasonable accommodation in flight, who otherwise do not require additional assistance.

[...]

10.1 A disabled person or person with reduced mobility who considers that this regulation has been infringed may bring the matter to the attention of the managing body of airlines, airport or other concerned authorities, as the case may be.

10.2 The managing body of the airlines and the airport shall ensure speedy and proper redressal of these complaints."

10. It is submitted by the petitioner that the Union of India (respondent No.1) has an obligation to ensure that its citizens are not subject to such arbitrary and humiliating discrimination. It is a violation of their fundamental rights, including the right to life, right to equality, right to move freely throughout the territory of India, and right to practice their profession. The State has an obligation to ensure these rights are protected - particularly for those who are disabled. More specifically, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, "Act, 1995") encapsulates the Government's obligations to ensure that those with disabilities can achieve their full potential free from such discrimination and harassment. The Act specifically deals with transportation systems, including airports and aircrafts.

11. Further, various international legal instruments also guarantee these rights for the disabled, including the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which India ratified in 2007. Specifically, the UNCRPD requires in Article 5:

"2. State Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."

12. The UNCRPD specifically targets transportation systems such as airlines when it states in Article 9:

"1. To enable persons with disabilities to live independently and participate fully in all aspects of life, State Parties shall take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and system, and to other facilities and services open or provided to the public."

And the UNCRPD makes clear that private carriers are covered as well in Article 9(2):

"2. State Parties shall also take appropriate measures:

[...]

(b) To ensure that private entities that offer facilities and services which are open to or provided to the public take into account all aspects of accessibility of persons with disabilities;"

13. The Vienna Convention on the Law of Treaties, 1963 requires India's internal legislation to comply with international commitments. Article 27 states that a "State party... may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

14. Further, the Biwako Millenium Framework for Action Towards an Inclusive, Barrier-Free and Rights-Based Society for Persons With Disabilities in Asia and the Pacific, published in 2002 and signed by India as well, states that "existing land, water and air public transport systems (vehicles, stops and terminals) should be made accessible and usable as soon as practicable."

15. According to the petitioners, filing of this petition was necessitated because of the reason that petitioner no. 1 is not the only disabled passenger to suffer such discrimination and humiliation. There have been many others who have undergone same kind of maltreatment and trauma while undertaking such air flights. In the petition some such instances are narrated. It is pointed out that one, Mr. Tony Kurian was repeatedly denied the right to purchase tickets on an Indigo flight because he is visually impaired. Ms. Anilee Agarwal was recently forced to sign an indemnity bond before she could fly from Delhi to Raipur on Jet Connect, threatened with being "body-lifted" by four male flight crew members, and finally "thrown down the steps" in an aisle chair when she refused to be carried by hand. Mr. Nilesh Singit was told by a SpiceJet captain that he was not allowed to fly with his crutches, and has been asked to sign indemnity bonds on numerous occasions. Ms. Shivani Gupta recently reported that she has also been asked to sign indemnity bonds on numerous occasions. Thus, according to the petitioners, such problems exist across airlines and across the country and requires clear national direction. It is further alleged that despite the existing constitutional, statutory and international law on the issue, situations continue where these differently abled persons face discrimination and harassment while traveling.

16. In this backdrop, the petitioners seek the following relief:

"(a) Issue a writ in the nature of Mandamus or any other appropriate Writ, order or direction to the respondents directing them to follow "Civil Aviation Requirements" dated 1st May, 2008 with regard to "Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility" as issued by the office of the Director General of Civil Aviation.

(b) Issue an order directing respondent nos. 1 and 2 to monitor the compliance of all Indian airlines with respect to "Civil Aviation Requirements" dated 1st May, 2008 with regards to "Carriage by Air of Persons with Disability and/or Persons with Reduced Mobility", and to investigate any apparent violations and provide penalties to airlines that fail to implement these requirements, updating the Civil Aviation Requirements to include these penalties if appropriate.

(c) Issue an order directing respondent nos. 1 and 2 to investigate the written complaint dated 21st February, 2012 by petitioner no. 1 and forwarded by the Indian Institute of Cerebral Palsy, and to take action in accordance with law against SpiceJet (respondent no. 3) and any and all officials responsible for the above stated violations.

(d) Issue an order directing SpiceJet (respondent no. 3) authorities, their men, agents and persons acting on their behalf to adequately compensate the petitions for lost money, wasted time, and the humiliation and trauma suffered during the above-mentioned incident;

(e) Issue a writ, order or direction or pass any other or further order or orders in the interest of justice, as it may deem fit, in the facts and circumstances of the present case."

17. Notice in this petition was issued to the respondents, who are Union of India (respondent no. 1), DGCA (respondent no. 2) and SpiceJet Ltd. (respondent no. 3). They filed their responses to the petition. Insofar as respondent no. 3 - SpiceJet Ltd. airline is concerned, it has given its own version to the episode occurred on 19th February, 2012 and has denied any maltreatment to petitioner no. 1, giving their own version of the entire incident and justifying the action they had taken, in the process. We shall advert to that aspect in detail later while considering prayer (d) of this petition.

18. We have already taken note of some of the international covenants and instruments guaranteeing rights to persons with disabilities. Insofar as obligation to fulfill these rights are concerned, the same is not limited to the Government or government agencies/State but even the private entities (which shall include private carriers as well) are fastened with such an obligation which they are supposed to carry out. We have also mentioned that in the year 2000, respondent no. 2, i.e. DGCA had issued CAR with regard to "carriage" by persons with disabilities and/or persons with reduced mobility.

19. The very fact that such requirements were issued by the Directorate General of Civil Aviation reflects that the authorities are not oblivious of the problems that persons with disabilities suffer while undertaking air travel. At the same time, it was found that these instructions did not adequately take care of all the hassles which such people have to undergo. Thankfully, the Government realised the shortcomings in the CAR, 2008 and agreed to revise the same, which shows positive stance of the Government and also reflects that the authorities did not treat the present petition as adversarial and accepted that such causes require

"social context adjudication" approach. To this end in mind, the Ministry of Civil Aviation appointed an expert committee known as "Ashok Kumar Committee" (hereinafter referred to as the "Committee") under the Chairmanship of Mr. G. Ashok Kumar, Joint Secretary. The said Committee consisted of as many as 21 members, including members from the cross-section, i.e. the Ministry, Airport Authority of India, DGCA, different NGOs working for the benefit of persons with disabilities, representative of airline, etc. This Committee did stupendous task by taking care of all the nuances of the issue involved and submitted its fabulous report, after reviewing the existing CAR for persons with disabilities.

20. A perusal of CAR, 2014 discloses the tremendous efforts made by the Committee taking care of most of the problems which such people face. As the Executive Summary of the said report shows, the Committee recommended that allocation of responsibility between airports and airlines should be clearly defined to avoid delays and inconveniences/hardships to Persons with Reduced Mobility (for short, "PRM") arising due to lack of communication between service providers. It has also been suggested that the equipment and other facilities should be standardised in consultation with Department of Disabilities Affairs. Internal audits should be introduced to ensure that assistive devices are available in good condition and handling persons are properly trained in their use. This aspect should also be overseen by DGCA. Responsibilities also need to be clearly defined for each stakeholder, namely, responsibility of the airlines, their agents and ticketing website for ticketing, airport operator for providing a helpdesk and assisting the passenger on arrival at the airport, responsibility of airline for check-in, responsibility of CISF for security check etc.

21. The report highlights some important areas which were not covered in the CAR, 2008. These include accessibility of ticketing system and complaints and redress mechanism. A "Complaints Resolution Officer" to deal with issues relating to PRMs has been recommended for each airport. It has also been suggested that Ombudsman be appointed for settlement of complaints between complainant and airport/airline through conciliation and mediation. The report covers the airport facilities and equipment required in an exhaustive manner. It covers accessible routes and passageways, wayfinding, signage, automated kiosks, accessible telecommunication systems/announcements, arrival/departure monitors, seating areas and guidance for service animals.

22. The Committee reviewed the CAR, 2008 and made several recommendations for amendment in the said CAR. It suggested that the definition of persons with reduced mobility should include such persons who require assistance in air travel, for example, persons with hearing and vision impairment, persons with autism etc., who have no visible impairment but still require facilitation at the airport and in the aircraft. The Committee also suggested standardisation of training, standard operating procedures, need for sufficient oversight by authorities, need for clarity on requirement of medical clearance by passengers, standardisation of

equipment at airports and on aircraft, proper training of security checking personnel and need for more clarity on seating arrangement to PRMs. It was also suggested that curbside assistance kiosks should be mandated and guidelines should be issued on provision of priority tags for passengers on wheelchairs. Recommendation was made mandating location of dedicated parking space at airports and for the accessibility of in-flight entertainment system. Safety briefings in aircraft should also be made in sign language for persons who are hard of hearing/deaf. It should also cover emergency evacuation of blind passengers.

23. The report highlights international best practices on interaction with persons with disabilities, covering separately the interaction with the blind, the deaf and persons with mobility disability etc. It also covers in detail the training procedure, including initial and recurrent training. Significant recommendations include the following:

Revision of CAR on Carriage by Air of Persons with Disabilities in a time bound manner.

Ensure compliance of recommendations within 3 years at major airports and then at other airports in a phased manner.

Address a suggested funding mechanism for meeting cost of implementation.

Define allocation of responsibilities for airlines, airports and others for their respective roles in providing facilities to persons with disabilities.

Standardisation of equipment like wheelchairs and facilities designed for PRMs.

Establishment of Standard Operating Procedures for all service providers and adequate training of their staff.

Web enabled booking, in-flight briefing and evacuation of such persons.

Implement a mechanism for grievance redressal.

Airlines and airports declare their policy on facilities provided to PRMs by publishing on their respective websites.

24. On the filing of the aforesaid report in this Court, the learned Additional Solicitor General appearing on behalf of the Union of India was asked about the action which the Government intended to take on those recommendations. Taking this report as the basis the Ministry has issued amended CAR dated 28th February 2014 (hereinafter referred to as CAR, 2014). Though most of the recommendations are accepted, there is some tweeking done by the Government and some of the suggestions of the Committee are not incorporated in the revised CAR, 2014. This prompted the petitioners to give their comments pointing out that some of the suggestions given by the Committee are not incorporated and therefore CAR, 2014 needed further modification and fine-tuning. The Government had taken time to respond to the same.

25. Mr. Rohit Thakur, who is working as Assistant Director in the Office of DGCA, has filed an affidavit on behalf of the Union of India stating that the Government has no objection in the Court going into the necessity of implementation of specific terms of the recommendations of the said Committee without any formal amendment. The response to the suggestions is given in a tabulated form and it is necessary to reproduce the same in its entirety:

S. No.

Suggestion

Reply

1.

Definition/Scope of the CAR

While the Ashok Kumar Committee Report's proposed definition was accepted, the draft CAR also incorporates the category of "incapacitated persons" which should be removed and substituted with "persons with additional/specific Support requirements".,

The term "Person with Disability" has been retained in the CAR to keep the terminology in line with ICAO Annex 9 and Circular 274 on and Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 published in Part II, Section 1 of the Extraordinary Gazette of India, Ministry of Law,, Justice And Company Affairs.

The term physical or mental impairment is defined to include "such diseases and conditions as orthopaedic, visual, speech and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism" - and it is to be noted that autism has been excluded from this. This must be rectified to include autism, and in the alternative, the definition proposed by the Committee must be accepted in its entirety.

However, every effort has been made to include all concerned terminology within the ambit of the definition to cater the needs of affected persons. The term "incapacitated" has been adopted from 14 CFR Pt 382 with addition of definition on "physical or mental impairment" for added clarification.

The term "autism" has been included in CAR as per the recommendation.

2.

Procurement of standardised assistive devices

The Committee recommended that all airports should procure all assistive equipment based on a schedule of standardised equipments. The Committee recommended that the standardisation should be done in consultation with the Department of Disability Affairs in a suitable time frame. This is not reflected in

the draft CAR, which poses a problem because then there will be no obligation to standardise assistive devices and ensure a minimum quality for the same. Therefore, the Committee recommendations with regard to procurement of standardised assistive devices must be accepted.

With regard to airport infrastructure and facilitation for person with disabilities, Chapter 9.11 of ICAO document 9184 Airport Planning Manual and Annex 9 provides the standards which are guidelines for ICAO Contracting States. The standardisation processes are normally better achieved through deliberations with stakeholders ensuring economic viability and their implementation in a feasible manner. Department of Disability Affairs is a separate Authority under Ministry of Social Justice and Empowerment, which is not under this office purview. Organisations performing functions under the provisions of Aircraft Rules, 1937 can only be brought under the ambit of CAR issued by this office.

In view of the above, matter cannot be resolved by issuance of direction for standardisation within stipulated time frame to the Department of Disability Affairs. However, concern has been addressed in the CAR through training requirement of personnel in consultation with the department.

3.

Internal Audit Systems

The Committee recommended that Airlines and airport operators must have an internal audit system in place to ensure that assistive devices are available and are in good condition and assistance and training are provided in adequate and proper manner. The Committee recommended that the DGCA would oversee as the regulator. The draft CAR mandates surveillance of the operators by the DGCA as part of Annual Surveillance Programme. The audit system must be an internal one, on the lines of the Ashok Kumar Committee recommendations, which can be more frequent and detailed.

Para 4.3.1 to 4.3.7 of the CAR deals with the training of personnel for staff engaged in passenger handling for sensitisation and developing awareness for assisting persons with disability or reduced mobility. Para 4.4.2 of the CAR mentions that stakeholders develop an in-house document on handling persons with disability or reduced mobility and the proof of its compliance shall be made available to DGCA and other enforcement agencies. In place of internal audit on regular interval, the assistive devices require maintenance as per OEM instruction and checks by operators. The effectiveness of their maintenance can be ensured through annual surveillance stated at 4.4.9 of the CAR.

4.

Help Desk

The Committee recommended a telephonic help desk, which would be fully accessible, to be set up to receive assistance requests in advance from

passengers with disabilities. Any request for on board assistance would be communicated to the airline. This is a necessity as this would ensure a fail safe fully accessible means of communication for persons with disabilities and also communicate specific needs to airlines which may be unstated at the time of booking. The draft CAR removes this requirement completely and the same must be incorporated in the final CAR. The proviso to 4.1.1 seems to keep some leave so that in a event a travel agent or a representative or on account of any communication failure, the airline does not have a record of such a request, the person with disability may be denied permission to board the aircraft. This cannot be the case. 4.1.5 applies only to the "emergency travel". Airlines must be always prepared to take a person with disability on board and so the 48 hours of requirement seems to indicate that airlines will not be prepared otherwise - if there is a time limit at all, it needs to be reduced.

Concern regarding help desk would be addressed through compliance of CAR Para 4.1, Para 4.2 and 4.4 and more specifically through 4.1.1, 4.1.7, 4.1.17, 4.1.23, 4.2.10, 4.4.1, 4.4.2 and 4.4.3.

5.

Curbside Assistance Kiosks

The Committee mandates that curbside assistance kiosks at the airport are to be set up by the airport authority, providing live assistance and intermediaries, including guiders, readers and professional sign language interpreters must be made the the curbside kiosks. These kiosks should be at the first point of contact of the passenger and the airport premises. This may be at parking, in case the passenger has his own transport, or at the drop-off points at the airport in case of hired transportation. The airport must facilitate movement of persons with disabilities from these areas to check-in counters by providing qualified/properly trained personnel and necessary assistive aids/equipment. For this purpose the passenger will be required to call the assistance kiosk in advance. This also provides for special provisions for entering airports, for example, allowing auto rickshaws inside the airport where barred, if plying a person with a disability. Similarly, for persons who are blind/are visually impaired, getting from the drop-off point to the entry to the departure gate is extremely difficult. The draft CAR eliminates the curbside kiosk facility. The draft CAR states that "Once persons with disability or reduced mobility report at the airport with valid booking and intention to travel, the airline shall provide assistance to meet their particular needs and ensure their seamless travel from the departure terminal of the departing airport upto the aircraft and at the end of the journey from the aircraft to the arrival terminal exit, without any additional expenses". This seems to indicate that the CAR does not cover entry into and exit from the larger airport premises, which is severely problematic and must be amended to reflect the intention of the Committee.

The suggestion made is addressed under Paras 4.2.9 and 4.2.10 of the CAR

which states that airport operator shall ensure that persons with disability or reduced mobility are transported within the airport in the same condition, comfort and safety as those available for other passengers and that the facilities at the airport are accessible to persons with disability or reduced mobility during their transit through the airport.

6.

Wheelchair usage

While the Committee Report retains the right of passengers with disabilities to use their mode of assistance throughout their journey, the CAR places several restrictions on the same. Passengers who intend to check-in with their own wheelchair are to be given an option of using a station/airport wheelchair. If the passenger prefers to use their own wheelchair, they shall be permitted to use it provided the wheelchair to specifications as laid down by Disable Person Transport Advisory Committee (DPTAC), UK. The CAR also says that the acceptance of automated wheelchair/assistive devices using batteries shall be subject to the application of relevant regulations concerning dangerous goods, which will inconvenience passengers. Instead, the CAR must lay down the protocol for travelling with wheelchairs and storage of the same, with batteries being removed/kept safely depending upon whether they are dry or wet cell batteries. The BCAS website must include the rules concerning carrying of battery-operated personal wheel-chairs or other assistive devices/aids to avoid ambiguity in any event. If passengers are made/opt to use the airport provided wheelchair, they should be allowed to keep wheelchairs till the point of boarding the aircraft and not be forced to shift between the wheelchair and chairs to accommodate other passengers. To that end, an adequate number of wheelchairs must be produced. Also it should not be the case that the person who is using a wheelchair, who is accompanied by an escort, cannot use airport assistance to push his or her wheelchair. It should not be obligatory on the part of the escort to take over the responsibility of the airport assistance staff.

The Aircraft (Carriage of Dangerous Goods) Rules, 2003 have been framed to give effect to the provisions of Annex 18 to the Chicago Convention and the Technical Instructions for the Safe Transport of Dangerous Goods by Air issued by ICAO. Since the carriage of dangerous goods by air has a direct bearing on the safety of aircraft operations, strict compliance with these provisions is of paramount importance. The carriage of dangerous goods is a highly skilled job, which requires proper packing, labelling and handling etc. during various stages such as storage, loading, unloading and transportation. Hence the CAR says that acceptance of automated wheelchair/assistive devices using batteries shall be subject to the application of relevant regulations concerning dangerous goods.

7.

Checking in assistive aids

While airlines should never insist on assistive aids and devices being checked in, in the event that assistive aids are to be checked in, the Committee recommended that certain safeguards be in place e.g. the use of Priority tags, barring the transport of assistive aids/equipment by conveyor belt, prioritizing the loading and unloading of assistive aids/equipment. These guidelines are completely missing from the draft CAR.

Security check is under the purview of BCAS and not under the airline purview.

Para 4.1.23 states that airlines shall make suitable arrangements for assisting persons with disability or reduced mobility for their quick clearance and baggage deliver and that their checked-in baggage should be given "Assistive Device" tags to ensure early identification and assistance by the airline ground staff.

8.

Security Check - Responsibility of CISF

The Committee Report, in Annexure 4, details the manner in which security checks should be handled by the CISF, from the training of screeners to the protocols they should employ. The manner in which passengers on wheelchairs, passengers who are blind/have low vision, passengers with hearing impairments and those with hidden disabilities are to be managed is detained. This detail is lacking in the draft CAR, and it is quite surprising because it is at the stage of security checks that most trouble is caused to persons with disabilities and there are violations of their dignity.

Manner of security check and their training is under the purview of BCAS. However, issue has been addressed in respect of airline and airport staff at Para 4.3.1, 4.3.2 and 4.3.6 of CAR all airlines and airport operators shall conduct training program for their staff engaged in passenger handling for sensitization and developing awareness for assisting persons with disability or reduced mobility and to ensure that the staff is well briefed on their legal responsibilities. The contents and duration of the training program shall be in accordance with the guidelines issued by the Department of Disability Affairs, Ministry of Social Justice and Empowerment.

It shall be the responsibility of airport operator to ensure that security staff positioned at airport undergoes disability-related training.

9.

Transfer to aircraft

The Committee clearly demarcates the separation of responsibilities between the Airport and the Airlines, and that the Airport is responsible for placing the passenger in the aircraft and disembarking the passenger as well. On board, the responsibility is solely with the airline. With regard to boarding and disembarking, the Committee Report mandates that airports have appropriate boarding ramps, ambulifts, aerobridge, boarding-aisle chair, wheelchairs or other

assistance needed, as appropriate. The Committee Report stresses that no passenger shall be manually lifted. In the draft CAR, the onus is on airlines and they are only required to have provision of onboard aisle wheelchairs for persons with disability or reduced mobility not carried on stretchers, "wherever possible subject to limitations of aircraft". This leaves scope for passengers with disabilities being treated in a manner that is against their dignity and self respect. This must be removed. Airports must be responsible for procuring assistive aids and devices to ensure hassle free boarding and disembarking from the aircraft.

The term "subject to limitations of the aircraft" was included in the CAR as some small sector flights use smaller aircrafts, whose aisle width may not allow movement of aisle wheelchair.

However, issue has been addressed through Para 4.1.34 which stated that airlines shall ensure that aircraft coming newly into service or after major refurbishment shall be fitted with special equipment to cater for the needs of persons with disability or reduced mobility commensurate with the size of aircraft. Para 4.1.9 For embarkation/ disembarkation and in-flight use, airlines shall have provision of onboard aisle wheelchairs for persons with disability or reduced mobility not carried on stretchers, wherever possible subject to limitations of aircraft. The onboard aisle wheelchair shall conform to specifications as laid down by Disabled Persons Transport Advisory Committee (DPTAC), UK.,

10.

Ambulift: Presently, ambulifts are procured by airports and airlines are asked to pay ambulift charges every time they use it, and so it is advisable that they be charged a sum amount for a month whether they use it or not. By this every airline will be made to use the service for its disabled passengers rather than not use it for want of extra payment for each use. Also the ambulift and other equipment shall be maintained in good condition with periodic monitoring and it should be registered in record about maintenance details, repair details, duration under maintenance/repair, dates, duration and number of times for which service was unavailable to passenger. The Complaints Resolution Officer should also monitor the register.

The suggestion is with regard to commercial arrangement between airline and airport. DGCA would take up the matter for resolution with airline and airport as and when difficulty reported. However, the provision of ambulift is covered under point No. 4.2.12 of the CAR.

11.

On Board the Aircraft

The Committee Report mandates that for the benefit of passengers with disabilities. Communication of essential information concerning a flight should be

in accessible formats. Safety videos should be available in sign language and with subtitles. In flight entertainment must be in accessible formats, and cabin crew should assist passenger to access toilet if requested using onboard aisle chair. Further, Aisle chairs should be mandated to be carried on board for flights longer than 3 hours. These provisions do not find mention in the CAR, and they are most essential to ensure the safety and comfort of passengers with disabilities.

On board airlines which serve meals, or where paid meals have been requested for in advance by a passenger with a disability, the same will be served with cutlery which is universally designed so as to allow for the passenger to eat unassisted as far as possible. In cases where the passenger is unable to eat on his own, the crew will assist in feeding the passenger in a manner which does not impinge upon his dignity.;

The concern is covered under Para 4.1.5 of the CAR.

The concern has been addressed by Para 4.1.20 which states "Airlines should provide safety briefing and procedure for emergency evacuation in respect of person with disability or reduced mobility in any of the form of passenger briefing card, individualized verbal briefing, video display (in aircraft with In-flight Entertainment System), etc.

12.

Ticketing System and Website.

The draft CAR does not, unlike the Committee Report, mandate that airline, airport and ticketing websites have to adhere specifically to W3C web accessibility standards (available at <http://www.w3.org/WAI/intro/wcag.php>). The same must be mandated as it is the global standard in accessibility.

The W3C web accessibility standards are not recognised by Indian Govt. However, procedures similar to the mentioned standards are incorporated in the CAR at point nos. 4.1.1, 4.1.2, 4.1.3 and 4.4.1.

13.

Complaint Mechanism

In case of deficiency of service relating to persons with disabilities, the Committee Report details a procedure which begins from the Complaints Resolution Officer (CRO), who is placed at the Airport itself, who will make attempts to resolve the grievance, and if the same fails, he is mandated to assist the passenger in making a complaint to the Ombudsman appointed under the DGCA. In the draft CAR, the complaint mechanism places the sole burden on the passenger to file the Complaint before the Nodal Officer, and there is no accessible means of complaint mechanism and neither is there any obligation on any authority to try and resolve the matter at the first stage. The draft CAR must incorporate the Complaint redressal mechanism as suggested under the

Committee Report.

The concern regarding appointment of ombudsman under DGCA at more than 70 airports with a staff strength of nearly 400 is not a viable solution. The Grievance Redressal Mechanism is covered under point 4.5 of the CAR.

DGCA has issued Air Transport Circular 01 of 2014 which addresses the issue. The effectiveness of grievance redressal mechanism would be monitored through surveillance.

In addition to basic training, operators are required to provide specific training for personnel who may be required to provide direct assistance to disabled persons and persons with reduced mobility.

14.

Accessibility, way finding and signage

The Committee Report has detailed the manner and extent to which Universal Design must be adopted by Airports in their infrastructure. It is important that the same be designed in accordance with the principles of Universal Design which have been detailed in Annexure 3 of the Committee Report. While the same has been mentioned in the draft CAR, the provisions are not as comprehensive as that of the Committee Report. The draft CAR must expand the same.

Concern on accessibility, way finding and signage, seating area, accessible airport infrastructure has been addressed in para 4.2.1, 4.2.2, 4.2.3, 4.2.5 and 4.2.6 which are in line with ICAO documents. The inclusion of the same in detail would be repetition.

15.

Seating Areas

The Committee deals with the importance of designated seating areas and their positioning and signage for the benefit of passengers with disabilities. Aircraft and airport staff should be able to identify these areas and provide regular updates to persons with disabilities seated in these areas on the status of their flights and enquire about their needs. Further, seating areas should allow for resting accommodation, where persons with severe dysfunction/disabling medical conditions could lie down and rest/stretch/straighten themselves. There is no such emphasis in the Draft CAR, which is silent on the specific issue of seating.

Para 4.2.2 and 4.2.3 of the CAR is with regard to special reservations in the terminal building and parking of the airport for persons with disability or reduced mobility.

16.

Service Animals

While the general concerns relating to service animals and their ability to travel with the person they are assisting have been addressed in the document, the question of relieving areas for the Service Animals, which has been detailed in the Committee Report, has not been dealt with in the Draft CAR.

The carriage of animals guide dogs for persons with disability or reduced mobility is as mentioned in Para 4.1.16 of the CAR. Further, carriage of animals by air is governed by Aeronautical Information Circular (AIC) 9 of 1985, wherein the concerns mentioned in the suggestion are addressed.

17.

Training and Sensitization

Annexure 2 of the Committee Report has detailed provisions relating to training and sensitization of all personnel working dealing with the travelling public at various levels in the airports and airlines. The disability sensitivity extended to needs of all types of disabilities, especially those which are not given much importance in the mainstream, like psychosocial disabilities and autism. However, the Draft CAR restricts this extensive training programme to staff of Airlines and airport Operating staff only, and not to Governmental Agencies who come into contracts with passengers - like Security personnel, Immigration Officers, and Customs Officers, to name a few. Best practices shall also include training of all officials at airport and airlines functioning within the airport to undergo periodical orientation on perspective to disability rights and dignified ways of handling persons with disabilities and not just the security personnel alone. The orientation can be part of their periodic internal review meetings.

Para 4.3.1 to 4.3.7 of the CAR is with regard to trainings that needs to be provided to staff and security personnel dealing with persons with disability or reduced mobility. Para 4.3.6: It shall be the responsibility of airport operator to ensure that security staff positioned at airport undergoes disability-related training. However, Immigration and Security are under different public authorities. The issue is required to be addressed by themselves separately.

18.

Accessible Airport Infrastructure

It is essential that the needs for accessible and universally designed Airport Infrastructure are met by Airport Operators. To this end, the Committee Report detailed an extensive Annexure viz. Annexure 3 with each and every requirement. Not only is this not reflected in the Draft CAR, but no standards of any sort are mentioned. Nor is there any requirement specified that persons with disabilities or universal design experts would be consulted in the design aspects of Airports. This is a major shortcoming of the Draft CAR.

With regard to construction and other design related queries relating to the airport, issue is addressed through ICAO Annex 9 and ICAO Airport Manual.

Airport operators are required to demonstrate compliance to to those guidelines. The international standards are being complied by the Airport Operators. In view of the above, redundancy in the regulation is not desirable.

19.

Offloading of Passengers

While the Draft CAR seems to be clear on the question of medical papers, the exact grounds on which medical clearance is required by passengers and the medical grounds on which a passenger can be refused travel or offloaded is not clarified. Under no circumstances can persons with disabilities be asked to provide medical clearance papers if they have no other ailment or medical condition which would hinder their ability to fly. The Government Issued Disability Card is sufficient documentation for all purposes. There is some ambiguity with regard to pilot's discretion in offloading passengers which requires to be clarified as well and this discretion cannot extend to evicting persons with disabilities off a flight.

In order to discourage airlines from offloading passengers on basis of disability, airlines have been asked to specify in writing the basis of such refusal indicating its opinion that transportation of such persons would or might be inimical to the safety of flight. The same has been mentioned in Para 4.1.35 of the CAR. Passengers having any of the conditions mentioned in Para 4.1.26 (a) through (f) are required to produce medical certificate. Other cases, it does not require such certificate. The concern has been addressed through para 4.1.15 which stated "if passengers for any reason have to be offloaded, highest possible priority for transportation shall be given to persons with disability or reduced mobility, including their escorts, if any."

20.

Seating versus Safety

The Committee Report has dealt with this issue in detail, and laid down the important guidelines in seating of persons with disabilities to ensure the greatest emphasis on safety of the person with disabilities to ensure the greatest emphasis on safety of the person with disability as also the fellow passengers. The Draft CAR does not reflect the importance of this issue. The placing of the escort/companion of the person with disability and the person with disability should be mandated and not give the loophole of "all reasonable efforts". There should also be a mandate of reserving front seats for persons with disabilities. The additional priority to not discomforting persons with disability or reduced mobility while considering decisions relating to offloading passengers is appreciated.

Concern was accepted.

The CAR has specifically made provision for passengers with disability or reduced

mobility to be given preferential seating for better evacuation procedures, in case of an emergency. Para 4.1.13 of the CAR deals with the reservation of seats for such passengers.

21.

Temporary replace of damaged wheelchairs

While the Committee Report categorically states that temporary replacement wheelchairs must be provided to passengers on a like-for-like basis as far as possible, free of cost, in the Draft CAR the provision is modified to state that in the event a passenger's wheelchair is damaged, temporary substitute be provided on request. The term "on request" needs to be removed. Also, the mandate for this replacement to be "free of cost" is missing.

Concern was accepted.

Para 4.4.8 of the CAR states that a passenger shall be compensated in case wheelchair or other assistive device is damaged during travel by air.

22.

Guidelines relating to the maximum permissible weight and dimensions of assistive aids/equipment to carried

The Committee Report specifically deals with this issue and prescribes that irrespective of the weight and dimensions of assistive aids/equipment they should be allowed to be checked in free of cost. It is important that the permissible weight is high enough such that motorized wheel chairs and mobility scooters can be checked-in free of cost. All assistive aids/equipment that can fit in the internal storage space shall be allowed to be taken on board. Other than for takeoff and landing, the assistive aids shall be made available for the passenger on request. The Draft CAR does not deal with this issue at all.

Para 4.1.8 of the CAR lays down the condition for usage of own wheel chair till embarkation.

Assistive devices weighing up to 15 Kg free of charge as additional baggage have been allowed subject to the limitation of the aircraft. The same is addressed in Para 4.1.24 of the CAR.

23.

Priority in using toilet facilities in aircraft

The Committee Report specifies that persons with disabilities must be given priority to access toilets on the aircraft. The Draft CAR is silent on this.

The term "Priority to access toilets of the aircrafts" is discriminatory as for as equal opportunity, protection or rights of citizen is concerned. However, new aircrafts are mandated with separate toilet for person with disability.

24.

Priority check-in counters

The Committee Report specifies that airlines shall operate priority check-in counters for those persons with disabilities who require quick check-in. The Draft CAR is silent on this.

Para 4.1.22 and 4.1.23 addresses the concern.

26. The reply/comments which is given by the official respondents to the suggestions given by the petitioners, and as encapsulated in the tabulated form above, takes care of many of the apprehensions expressed by the petitioners. However, notwithstanding the same, in certain respects the guidelines can be further fine-tuned by the official respondents, keeping in view the recommendations of the Committee, where they have not been fully implemented. We, therefore, are of the opinion that the following aspects may be reconsidered by the DGCA/Government to see whether they can be incorporated in CAR 2014 by proper amendments:

(1) In spite of procurement of standardised assistive devices, which is mentioned at S.No. 2 above, it is pointed out by the learned counsel for the petitioners that all airports should procure all assistive equipments based on the schedule of standardised equipments and this standardisation should be done in consultation with the Department of Disability Affairs in a suitable time frame. It is pointed out that the same is not reflected in the CAR, 2014. The explanation given by the respondents is that the standardised processes are normally better achieved through deliberation with stakeholders ensuring economic viability and Department of Disability Affairs is a separate authority which is not under the purview of DGCA. However, that could not be the reason for not making a joint effort or involving the Department of Disability Affairs. We, therefore, direct that the concerned officers of the DGCA as well as officers from the Department of Disability Affairs, which is under the Ministry of Social Justice and Empowerment, shall have a joint discussion on this aspect to consider the recommendation given by the Committee.

(2) On "Help Desk" (mentioned at S. No. 4), the Committee had recommended a telephonic help desk which would be fully accessible, to be set up to receive assistance requests in advance from passengers with disability. In response, it is stated by the respondents that concern regarding help desk would be addressed through compliance of various sub-paras of para 4 of draft CAR. In spite of complying the same in an indirect manner through the said provisions, it may be considered to specifically provide for a separate help desk to take care of the complaints, queries etc. of all passengers with disability.

(3) Regarding wheelchair usage (S. No. 6), though the Committee had recommended that the passengers with disabilities should be allowed to retain the use of their wheelchair, this has not been accepted keeping in view the safety

of aircraft operations. The concern of the respondents may be justified to some extent, but we still feel that this aspect be reconsidered, viz. whether it would be feasible to allow such passengers to use their wheelchairs, at the same time imposing conditions which may take care of safety. We say so because of the reason that in the Committee there were representatives from security agencies as well and still such a recommendation is made which implies that the members of the Committee would have kept in view the safety norms and yet made this recommendation as it appeared to be feasible to them.

(4) In spite of security check of such disabled passengers, the Committee has suggested, in Annexure 4, in detail the manner in which security check should be handled by the Central Industrial Security Force (CISF). Admittedly, in the CAR this has not been incorporated. The issue is skirted by merely stating that security check and their training is under the purview of Bureau of Civil Aviation Security (BCAS). BCAS can be involved and in consultation with the officers of BCAS this aspect can be reconsidered.

(5) Insofar as facilities to passengers with disability while on board the aircraft is concerned (S.No.11), the suggestion of the Committee was that the communication of essential information concerning a flight should be in accessible formats. Likewise, flight entertainment should also be in accessible formats and the cabin crew should assist the passenger to access toilet if requested using on-board aisle chair. We find that para 4.1.5 of the CAR does not cover all the aspects of the recommendations given by the Committee. It would be more appropriate to incorporate the same in the CAR so that it becomes a bounden duty of the airlines to ensure that passengers with disability are taken care of more appropriately while they are on-board.

(6) Insofar as complaint mechanism is concerned (S. No. 13), the Committee has given detailed procedure to address such complaints, which begins from the Complaints Resolution Officer (CRO) who is placed at the airport itself. The response of the official respondents is that it may not be feasible in small airports. Even if that be so, to begin with, such a mechanism can be introduced at big/major airports. This aspect, therefore, needs to be reconsidered.

(7) At S.No. 17, the aspect of training and sensitisation is dealt with. This is one aspect which needs serious attention. No doubt, some provisions are made in CAR, 2014 with regard to training that is to be provided to the staff and security personnel dealing with persons with disability or reduced mobility. We impress upon the official respondents to draft a suitable module for such training which ensures that the staff and security personnel, who are trained in this behalf, are suitably sensitised. It hardly needs to be emphasised that unless such staff is sensitive to the needs of persons with disability or reduced mobility and is properly equipped to take care of such passengers with the empathy that is required, whatever mechanism is put in place is not going to be successful. Therefore, we urge upon the respondents to prepare such training modules, the manner in which training is to be provided and ensure that the airlines as well as

airports conduct such training programmes, at regular intervals, for the concerned officials who are supposed to deal with these passengers.

(8) Equally important is the issue of offloading of passengers (S. No. 19) which needs to be taken care of with all seriousness it deserves. We are of the view that suitable provision in the training module itself be provided in this behalf as well. We direct that the official respondents, in consultation with other departments as mentioned above, shall consider the aforesaid aspects, and even other aspects which deserve such attention but may not have been specified by us, within a period of three months and on that basis whatever further provisions are to be incorporated should be inserted.

27. With this, we address ourselves to the relief claimed by Jeeja Ghosh against respondent No.3 - SpiceJet Ltd., i.e. prayer (d) of the writ petition.

28. The petitioners have stated in detail the treatment which was meted out to Jeeja Ghosh on February 19, 2012 when she was forcibly de-boarded by the flight crew due to the insistence of the Captain of the aircraft, because of her disability. It is stated that she was going from Kolkata to Goa to attend a conference which was organised by petitioner No.2, which she had to miss. She has also narrated the trauma, shock and mental pain which she has suffered as a result of this event.

29. We have already mentioned the gist of the event as narrated by the petitioners. We may mention at this stage that Jeeja Ghosh has also filed a claim before the State Consumer Dispute Redressal Commission, Kolkata, which is pending adjudication. We were informed that the State Commission has been adjourning the matter from time to time because of the pendency of the instant writ petition. Both the sides agreed that the claim of Jeeja Ghosh be decided by this Court in the present writ petition itself. For this reason, we had heard the petitioners as well as learned counsel for respondent No.3, on this issue.

30. Respondent No.3 has filed an affidavit stating its own version in respect of the incident. The allegation of respondent No.3 is that it is Jeeja Ghosh who failed to follow the procedure laid down in Article 4.1 of CAR, 2008 by not informing respondent No.3, at the time of booking of tickets as well as at the time of check-in, about her disability. It is the say of respondent No.3 that this led to confusion and subsequent de-boarding of Jeeja Ghosh occasioned by the lack of knowledge of her condition among the crew members present there and her visible disability and poor health condition, as according to the respondents her condition had taken a turn for the worse as soon as she boarded the aircraft and it was not possible to take risk by allowing her to take five hour long flight journey without being escorted by any person who could have taken care of her. It is stated that had she informed about her sickness, the airlines would have made proper escort arrangements. It is further stated that by not disclosing her disability, it is Jeeja Ghosh who was jeopardising her own safety and the safety of other persons on board the aircraft. It was also argued that the crew of

respondent No.3 in fact complied with Rules 22 and 141 of the Aircraft Rules, 1937 (for short, "Rules, 1937") by de-boarding Jeeja Ghosh and that in the circumstances that existed, it was a bona fide act on the part of the officials of respondent No.3. According to them, the action was in the larger interest of other persons in the aircraft as their safety was also paramount and had to be taken care of.

31. Referring to Article 5.2 of CAR, 2008 it is argued that a medical clearance may be required by the airlines when the airline, inter alia, receives information that there exists a possibility of medical condition getting aggravated during or because of the flight, of a passenger. Refuting the claim of the petitioners that medical condition of Jeeja Ghosh was not a disability *stricto sensu*, it is the say of respondent No.3 that as per the medical literacy, cerebral palsy affects body movement, muscle control, muscle coordination, muscle tone, reflex, posture and balance. It can also impact fine motor skills, gross motor skills and oral motor functioning. Therefore, Jeeja Ghosh could have faced serious consequences during the long air journey which would have been much serious.

32. Learned counsel for the petitioners, on the other hand, refuted the aforesaid contentions of the counsel for respondent No.3. It was vehemently denied that Jeeja Ghosh had failed to follow the procedure laid down in Article 4.1 of CAR, 2008. Article 4.1 reads as follows:

"No airline shall refuse to carry persons with disability or persons with reduced mobility and their assistive aids/devices, escorts and guide dogs including their presence in the cabin, provided such persons or their representatives, at the time of booking and/or check-in for travel, inform the airlines of their requirement. The airlines shall incorporate appropriate provisions in the online form of booking tickets so that all the required facilities are made available to the passengers with disabilities at the time of check-in."

33. Learned counsel argued that the aforesaid provision is in two parts: one applies to persons with disability and the second part applies to persons with disability who require assistant devices or aids. It was argued that the proviso applies to the latter category only whereas Jeeja Ghosh is merely a person with cerebral palsy and did not require any assistant device or aid. The only assistance she required was regarding her baggage which she asked for at the time of security check-in. Thus, there was no reason as to why she was asked to de-board the aircraft when there was no assistant device or aids about which she ought to have informed the airlines. It is claimed that so far as requirement of assistance regarding baggage is concerned, she had duly informed the officials of the airlines. Refuting the argument of learned counsel appearing for respondent No.3 predicated on Rules 22 and 141 of the Rules, 1937, it was submitted that the Operations Manual of the airline places an obligation on the Pilot in-charge not to commence the flight until he/she is sure of the safety of all the passengers. In the present case, there was no evidence to prove that Jeeja Ghosh had posed any hazard to the safety of the Pilot in-charge or other

passengers. Moreover, the decision to de-board her was taken without even interacting with her. The claim of respondent No.3 that blood and froth was oozing out of the sides of her mouth is denied with the submission that there is no evidence to prove the same. On the contrary, it is claimed, she was completely fine and it was only the conduct of the respondent airline which became a cause of her subsequent sickness. Referring to the offer given by the airline to fly Jeeja Ghosh on the very next day, it is submitted that this act on the part of the airlines itself shows that Jeeja Ghosh was alright and there was no medical condition which would have prevented her from flying. Mocking the stand of the airline that the person having cerebral palsy would, in emergency situation, not be able to respond to the safety instructions and she is a risk to herself and potential danger to the lives of co-passengers also, the submission of the petitioners is that it is in complete contravention of CAR, 2008 which prohibits the airlines from refusing to carry a person with disability or person with reduced mobility. The relevant provisions in this regard have already been extracted above.

34. After considering the respective arguments of the counsel for the parties and going through the relevant provisions of Rules and CAR, 2008 brought to our notice, we arrive at the irresistible conclusion that Jeeja Ghosh was not given appropriate, fair and caring treatment which she required with due sensitivity, and the decision to de-board her, in the given circumstances, was uncalled for. More than that, the manner in which she was treated while de-boarding from the aircraft, depicts total lack of sensitivity on the part of the officials of the airlines. The manner in which she was dealt with proves the assertion of Shapiro as correct and justified that "non-disabled do not understand disabled ones".

35. It is not in dispute that the Pilot as well as the Crew members of the airlines are supposed to ensure the safety of all the passengers and a decision can be taken to de-board a particular passenger in the larger interest and safety of other co-passengers. The question is, whether such a situation existed when Jeeja Ghosh was de-boarded? Whether this decision was taken by the airlines after taking due deliberations and with medical advice? Unfortunately, the answer is a big "NO". Jeeja Ghosh is a disabled person who suffers from cerebral palsy. But her condition was not such which required any assistive devices or aids. She had demanded assistance regarding her baggage at the time of security check-in, from the check-in counter. For boarding of the aircraft, she came of her own. This was noticed not only by the persons at the check-in counter but also by security personnel who frisked her and the attendant who assisted her in carrying her baggage up to the aircraft. Even if we assume that there was some blood or froth that was noticed to be oozing out from the sides of her mouth when she was seated in the aircraft (though vehemently denied by her), nobody even cared to interact with her and asked her the reason for the same. No doctor was summoned to examine her condition. Abruptly and without any justification, decision was taken to de-board her without ascertaining as to whether her condition was such which prevented her from flying. This clearly

amounts to violation of Rule 133-A of Rules, 1937 and the CAR, 2008 guidelines.

36. The rights that are guaranteed to differently abled persons under the Act, 1995 are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Models, (ii) Philosophical Models, and (iii) Constitutional Models. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption "Fundamental Rights". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfillment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak^[25] (former Chief Justice of the Supreme Court of Israel) in the following manner:

[25] Aharon Barak "Human Dignity - The Constitutional Value and the Constitutional Right" Cambridge University Press (2015)

"The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right."

37. All the three goals of human dignity as a constitutional value are expanded by the author in a scholarly manner. Some of the excerpts thereof, are reproduced below which give a glimpse of these goals:

"The first role of human dignity as a constitutional value is expressed in the approach that it comprises the foundation for all of the constitutional rights. Human dignity is the central argument for the existence of human rights. It is the rationale for them all. It is the justification for the existence of rights. According to Christoph Enders, it is the constitutional value that determines that every person has the right to have rights...

The second role of human dignity as a constitutional value is to provide meaning to the norms of the legal system. According to purposive interpretation, all of the provisions of the constitution, and particularly all of the rights in the constitutional bill of rights, are interpreted in light of human dignity...

Lastly, human dignity as a constitutional value influences the development of the common law. Indeed, where common law is recognized, judges have the duty to develop it, and if necessary modify it, so that it expresses constitutional values, including the constitutional value of human dignity. To the extent that common law determines rights and duties between individuals, it might limit the human dignity of one individual and protect the human dignity of the other."

38. We should, therefore, keep in mind that CAR instructions have also been issued keeping in view the spirit of human dignity enshrined in Article 21 and the right that are to be ensured to such persons. The underlying message in all these provisions is the acknowledgment that human rights are individual and have a definite linkage to human development, both sharing common vision and with a common purpose. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights.

39. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. {See - Report of United Nations Consultative Expert Group Meeting on International Norms and

Standards Relating to Disability 10-2-2001}.

40. Earlier the traditional approaches to disability have depicted it as health and welfare issue, to be addressed through care provided to persons with disabilities, from a charitable point of view. The disabled persons are viewed as abnormal, deserving of pity and are, and not as individuals who are entitled to enjoy the same opportunities to live a full and satisfying life as other members of society. This resulted in marginalising the disabled persons and their exclusion both from the mainstream of the society and enjoyment of their fundamental rights and freedoms. Disability tends to be couched within a medical and welfare framework, identifying people with disabilities as ill, different from their non-disabled peers, and in need of care. Because the emphasis is on the medical needs of people with disabilities, there is a corresponding neglect of their wider social needs, which has resulted in severe isolation for people with disabilities and their families.

41. However, the nations have come a long way from that stage. Real awareness has dawned on the society at large that the problems of differently abled are to be viewed from human rights perspective. This thinking is reflected in two major declarations on the disability adopted by the General Assembly of the United Nations on December 20, 1971 and thereafter in the year 1975. The position was reiterated in the Beijing Conclave by the Government of Asian and Pacific Countries that was held from December 01-05, 1992 and in order to convert the resolutions adopted therein into reality, the Indian Parliament also passed the enactment, i.e. Act, 1995.

42. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and given detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perceptions has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are

not accepted in the main stream either even when people sympathies with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which disabled feel as their grievance is that others do not understand them.

43. As pointed out in the beginning, the very first sentence of the book "NO PITY" authored by Joseph P. Shapiro reads:

"Non disabled Americans do not understand disabled ones."

The only error in the aforesaid sentence is that it is attributed to Americans only whereas the harsh reality is that this statement has universal application. The sentence should have read:

"Non disabled people do not understand disabled ones."

For, non-disabled people generally look upon disabled ones with pity. The general feeling is that these "invalid people" are incapable of doing anything in life. They are burden on the society which the society bear. Of course, they sympathize with disabled persons. They may even want to willingly bear the burden. They may help them financially or otherwise. However, what they do not understand is the feeling of the people with disabilities. Disabled people no longer see their physical or mental limitations as a source of shame or as something to overcome in order to inspire others. What non-disabled people do not understand is that people with disabilities also have some rights, hopes and aspirations as everyone else. They do not want to depend on others. They want to brave their disabilities. They want to prove to the world at large that notwithstanding their disabilities they can be the master of their own lives. They can be independent. They can be self-reliant. They do not want sympathies of non-disabled. They want to be trusted. They want to be treated as valued member of the society who can contribute to the development and progress of the society. For this they want the proper environment to grow. Our society automatically under-estimates the capabilities of people with disabilities. People with disabilities want this change in the thinking of non-disabled. It is the thinking of Disability Rights Movement, USA that it is not so much the disabled individual who needs to change, but the society. Says disability rights activist Judy Heumann:

"disability only becomes a tragedy for me when society fails to provide the things we need to lead our lives-job opportunities, or barrier-free buildings, for example. It is not a tragedy to me that I am living in a wheel chair."

44. Helen Keller represents the mind of such disabled persons when she says "I am only one; but still I am one. I cannot do everything, but still I can do something; I will not refuse to do something I can do".

45. It is the common experience of several persons with disabilities that they are unable to lead a full life due to societal barriers and discrimination faced by them in employment, access to public spaces, transportation etc. Persons with

disability are most neglected lot not only in the society but also in the family. More often they are an object of pity. There are hardly any meaningful attempts to assimilate them in the mainstream of the nation's life. The apathy towards their problems is so pervasive that even the number of disabled persons existing in the country is not well documented.

46. Jeeja Ghosh herself is a living example who has, notwithstanding her disability, achieved so much in life by her sheer determination to overcome her disability and become a responsible and valuable citizen of this country. A little care, a little sensitivity and a little positive attitude on the part of the officials of the airlines would not have resulted in the trauma, pain and suffering that Jeeja Ghosh had to undergo. This has resulted in violation of her human dignity and, thus, her fundamental right, though by a private enterprise (respondent No.3).

47. On our finding that respondent No.3 acted in a callous manner, and in the process violated Rules, 1937 and CAR, 2008 guidelines resulting in mental and physical suffering experienced by Jeeja Ghosh and also unreasonable discrimination against her, we award a sum of RS. 10,00,000 as damages to be payable to her by respondent No.3 within a period of two months from today. This petition stands allowed and disposed of in the aforesaid terms.

48. We would like to conclude this judgment by observing that to most disabled persons, the society they live in is a closed door which has been locked and the key to which has been thrown away by the others. Helen Keller has described this phenomena in the following words:

"Some people see a closed door and turn away. Others see a closed door, try the knob and if it doesn't open, they turn away. Still others see a closed door, try the knob and if it doesn't work, they find a key and if the key doesn't fit, they turn way. A rare few see a closed door, try the knob, if it doesn't open and they find a key and if it doesn't fit, they make one!"

49. These rare persons we have to find out.