

(2020) 06 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 3350 Of 2020

Veer Vikrant Chauhan

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 04-06-2020

Acts Referred:

Aircraft Act, 1934 — Section 5(2)(ab), 8B(1)

Citation : (2020) 06 DEL CK 0022

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Prateek Jalan, J

Bench : Division Bench

Advocate : Vineet Malhotra, Vishal Gohri, Shubhendu Kaushik, Jasmeet Singh, Shreya Sethi

Final Decision : Disposed Of

Judgement

D. N. Patel, CJ

Proceedings of the matter have been conducted through video conferencing.

CM APPLs.11811/2020 & 11812/2020 (exemptions)

Allowed, subject to just exceptions.

W.P.(C) 3350/2020 & CM APPL.11810/2020

1. This so-called public interest litigation has been preferred with the following prayers:

"(i) Issue an appropriate writ, order or direction thereby setting-aside the Order No.02/2020, Reference No.AV-13011/1/2020-US(SS)- MoCA dated 21st May 2020 passed by the Government of India, wherein it fixes minimum air fare for travel from point A to point B;

(ii) Issue an appropriate writ, order or direction thereby directing that minimum fare which can be charged should also be applicable to Travel Ports and Travel Agents and other Agents who are selling tickets;

(iii) Issue an appropriate writ, order or direction thereby directing the Respondents to issue clarification in respect of contrary/vague provisions in the order and/or guidelines laid down by the Government of India;

(iv) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case, in favour of the Petitioner and against the Respondent."

2. Having heard the counsel for the petitioner and looking to the facts and circumstances of the case, it appears that this petition, styled as a public interest litigation, has been preferred challenging the minimum fares which are fixed by Government of India, Ministry of Civil Aviation vide their order dated 21st May, 2020 vide order No.02/2020 (Annexure P-1 to the memo of this writ petition). For the ready reference paras 2 and 3 of the said order reads as under:

"2. Whereas it is necessary to ensure that the airlines do not charge excessive fare on the one hand and also to ensure that journey is performed only for essential purposes; It is, therefore, necessary to fix a fare band within which the airlines should charge fare,

3. Now, therefore, in exercise of the powers conferred by Sub-Section (1) of Section 8B read with clause (ab) of Sub-Section (2) of Section 5 of the Aircraft Act, 1934 (22 of 1934), the Central Government hereby directs for the domestic civil flight operations permitted vide Order No. 01/2020 dated 21st May, 2020 issued by Ministry of Civil Aviation, The airlines shall charge fares as specified below:

(i) With respect to amount of fares to be charged by the Airlines from the passenger for journey on a particular sector, the sectors have been classified on the basis of approximate duration of flight and for such classes, the minimum and, maximum fares chargeable are as under:

Class of Sectors

Minimum Fare (in Rs.)

Maximum Fare (in Rs.)

A

2,000

6,000

B

2,500

7,500

C

3,000
9,000
D
3,500
10,000
E
4,500
13,000
F
5,500
15,700
G
6,500
18,600

- (ii) The sectors falling under various classes are enclosed as Annexure I to VII;
 - (iii) The fares indicated in para (i) are exclusive of applicable UDF, PSF and GST;
 - (iv) The fares indicated in para (i) are not applicable for Business Class;
 - (iv) At least forty percent of the tickets of a particular flight shall be sold for the fare less than the mid fare between minimum and maximum fares given in para (i) above (excluding JDF, PSF and GST);
 - (v) The airlines shall make the REDs so as to fit in the specified fare range for each class;
 - (vi) This order shall remain in force till 2359 hrs IST on 24th August, 2020;
 - (vii) All airlines operating scheduled domestic passengers service shall ensure strict compliance;
 - (viii) These regulations on fare are not applicable in RCS Udaan flights."
- (emphasis supplied)

3. Learned counsel for the petitioner has highlighted class of Sector-D of the aforesaid order dated 21st May, 2020, wherein, the minimum fare is ₹ 3,500/-. The learned counsel has now taken this Court to page No.58 of the paper book, which is a screen shot dated 21st May, 2020, taken by the petitioner, highlighting the fare from Delhi to Kolkata for the flight scheduled for 4th August, 2020, cost of which vary from ₹ 2,924/- to ₹ 3,153/-and is cheaper than the minimum fare

fixed by the aforesaid order dated 21st May, 2020. In this regard, it is submitted by counsel for the petitioner that the difference in fare prices will lead to fixation of prices by the cartel of the airlines.

4. We are not in agreement with this contention made by the learned counsel for petitioner. It ought to be kept in mind that whenever such type of tariff is fixed by the Government of India in exercise of the powers conferred under the Aircraft Act, 1934 to be read with rules enacted thereunder, the Courts would be extremely slow in interfering with the same. The exercise of tariff fixation, and economic matters in general, are issues on which the writ court would generally refrain from exercising jurisdiction, unless found to be totally arbitrary or unreasonable. We are not sitting in appeal against such fixation of minimum and maximum fare. It ought to be kept in mind that this fixation of minimum and maximum fares is for the journey to be performed only for essential purposes. Section 8B(1) of the Aircraft Act, 1934 specifically clothes the Central Government with the power to take necessary measures to minimise the possible danger to public health in the event of outbreak of any dangerous epidemic. In the present situation of the Covid-19 epidemic, the exercise of this power by the respondents cannot be said to be arbitrary or unreasonable. The order dated 21st May, 2020 is expressly stated to be in operation only for a period of three months, and subject to review/ modification even during this period. Thus, this is a stop gap arrangement by the Government, for which the present public interest litigation is not tenable at law. An aggrieved individual can always come to the Court or can go to the competent authority.

5. It ought to be kept in mind that, in the present circumstances when various restrictions have been placed on the airline operations, and maximum limit for air fare is given by the Government, the minimum fare is also prescribed so as to strike a balance between the passengers as well as the airlines agency. Paragraph 2 of the order dated 21st May, 2020 further indicates that the reason for fixing a minimum fare is to restrict travel only to the performance of essential journeys. This falls within the scope of the power of the Central Government, as mentioned above. Moreover, fixing of the fare is a complex phenomenon and a decision to be taken by the Government. It is a policy decision and this Court is not inclined to interfere in this policy decision and that too by the way of a public interest litigation.

6. As and when the aggrieved party will approach the competent authority, the decision shall be taken by the competent authority in accordance with law, rules, regulations and government policy applicable to the facts of the case and without being influenced by the aforesaid observations.

7. It ought to be kept in mind that the problem being faced by everyone during this pandemic situation is such a unique phenomenon which requires experimental solutions. There cannot be any mathematical solution for a problem like this. Government has to be given a degree of free movement in joints. We are, therefore, not going into the merits of this case.

8. With these observations, this writ petition is disposed of.