



2025:DHC:1185



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment pronounced on: 24.02.2025

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W.P.(C) 7953/2024 & CMAPPLs.54245/2024, 54246/2024, 32763/2024

POURNIMA NILKANT SOMKUWAR

.....Petitioner

Through: Mr. Madhav Khurana, Mr. Samarjit G. Patnaik, Mr. Puneet Relan, Mr. Irfan Muzamil, Ms. Kashish Seth and Ms. Tanu Seth, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Ms. Anjana Gosain and Ms. Nippun Sharma, Mr. Devesh Khanagwal, Advocates for R-1 to 3.
Mr. Suhail Sehgal and Mr. Prashant Drolia, Advocates for R-4.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition under Article 226 of the Constitution of India seeks the following directions:-

“a. Issue a writ, order or direction in the nature of Mandamus thereby setting-aside the order dated 05.03.2024, passed by Respondent No.3;

b. Issue a writ, order or direction in the nature of Mandamus setting-aside the order dated 07.05.2024, passed by Respondent No.1;

c. Issue a writ or direction in the nature of Mandamus directing the Respondent No.3 to issue a Biometric Aerodrome Entry Pass/ Airport Entry Pass to the Petitioner, so as to enable the Petitioner to exercise her right to livelihood as enshrined under Article 19(1)(g) and Article 21 of the Constitution of India;

d. Pass any other/further order(s) as this Hon'ble Court may deem fit and



proper in the facts and circumstances of the present case.”

2. The petitioner is a licensed commercial pilot who obtained her commercial pilot license on 04.10.2012 and Multi Engine Rating on 18.03.2013. Thereafter, in the year 2019, the petitioner received a ‘Letter of Intent of Employment’ from respondent no.4 [M/s. Inter Globe Aviation Ltd. (INDIGO)] for the post of ‘Junior First Officer-Initial Phase’, in terms of which, the petitioner was required to complete a DGCA approved ‘A320 Type Rating Training Programme’ before being considered for final appointment and employment. After having obtained the requisite ‘A-320 type rating’ certification on 15.04.2020, the petitioner secured gainful employment with the respondent no.4 and entered into an employment agreement dated 25.01.2023.

3. It is submitted that an FIR bearing No.306/2023 dated 19.07.2023 came to be registered, purportedly on motivated allegations, against the petitioner and her husband under Sections 323/342/370/374/34 of the Indian Penal Code, 1860 read with Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Section 14 of the Child and Adolescence Labour (Protection and Regulation) Act, 1986, at Police Station, Dwarka South. The petitioner was arrested on 19.07.2023 and *vide* order dated 17.08.2023 passed by the Court of learned ASJ, Dwarka, was admitted to regular bail.

4. It is submitted that following registration of the aforesaid FIR on 19.07.2023, a suspension letter was issued on the same day by the respondent no.4, suspending the petitioner’s employment as a ‘Junior First Officer – Final Phase’ with immediate effect on account of the offence



mentioned in the FIR dated 19.07.2023 constituting a “gross misconduct in terms of the applicable company policies”.

5. Subsequently, in reference to an AEP application for the petitioner which had been filed by the respondent no.4, an order dated 05.03.2024 came to be addressed by the respondent no.3 i.e. the Regional Director, Bureau of Civil Aviation Security (BCAS), Mahipalpur, New Delhi to the Chief Security Officer of the respondent no.4, wherein it was, *inter alia*, stated as under :-

“4. Further, competent authority has examined the case and denied to issue AEP to the applicant, as the charges against her are serious in nature.”

6. Consequently, a show cause notice dated 12.03.2024 was issued by the respondent no.4. The said notice culminated in a termination letter dated 20.03.2024, by virtue of which, the services of the petitioner were terminated by the respondent no.4 on the ground that the petitioner does not possess a valid Aerodrome Entry Pass/Airport Entry Pass (hereinafter ‘*the AEP*’). Having a valid AEP is a condition precedent for the purpose of employment of the petitioner in terms of Clause 3.8(f) of the employment agreement dated 25.01.2023.

7. Being aggrieved by the order dated 05.03.2024 passed by the respondent no.3, an appeal was filed by the petitioner before the respondent no.2 (Director General, Bureau of Civil Aviation Security) on 06.03.2024. *Vide* order dated 03.04.2024, it was, *inter alia*, directed as under :-

“6. The appeal of the appellant has been examined and the issues raised by her have been considered. The offences which are mentioned in the FIR are of very serious nature. She was arrested and released on bail after a month. I cannot make any comments on the grounds of filing FIR as mentioned by the appellant. The case is still pending and under investigation. In view of the above, I am of the opinion that there is no



need to interfere with the order of RD BCAS, Delhi. Security of aviation sector is very important and outweighs all the other consideration. Hence, issuance of AEP to Smt. Pournima Somkuwar is denied in interest of aviation security.”

8. Thereafter, on 28.03.2024, a second and final appeal against the aforesaid order dated 03.04.2024 was preferred under Rule 64(3) of the Aircraft (Security) Rules, 2023 by the petitioner, which was, again, rejected by respondent no.1. *Vide* order dated 07.05.2024 it was, *inter alia*, observed as under:-

“10. The Appeal dated 28.03.2024 filed by Mrs. Pournima N.S. was heard by me on 26.04.2024. As an Appellate Authority, I have gone through the submissions made by Mrs. Pournima N.S., documents placed on record by BCAS and also the relevant provisions of AEP Guidelines, 2022 have been examined.

Para 11.9 of the AEP Guidelines, 2022 provides that:

11.9 Aerodrome Entry Permit shall not be issued, if during a performance of background check it is proved that applicant was convicted of:

11.9.1 Certain serious crime, specifically possession and use of hard drug trafficking in hard and soft drugs, trafficking in weapons or the illegal possession of weapons, assault, extortion, acts endangering public safety including acts of unlawful interference against civil aviation sexual offenses or membership of a criminal organization (in exceptional circumstances) DG, BCAS may determine that such a person has been fully rehabilitated and therefore, no longer constitutes a risk).

11.9.2 Other relevant offences such as burglary, fencing of stolen goods, embezzlement, fraud and fraudulent misinterpretation, without restitution.

11. During hearing BCAS has submitted that as no new facts are brought to notice by appellant in the case, therefore, the decision of DG, BCAS for denial of issuance of AEP to Mrs. Pournima N.S. shall stand.

12. In this regard, Para 11.10 of AEP Guidelines, 2022 provides that "the decision of DG, BCAS shall be final in cases where an FIR is registered and/or a case is pending before the Court in India for serious categories of crimes as mentioned above".

13. In view of the above, based on hearing of appeal and documents put on record, I am of the opinion that there are no grounds for modifying existing Order of BCAS and accordingly the appeal of Mrs. Pournima Nilkant Somkuwar is rejected.”



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9. It is in the above background that the present petition has been filed by the petitioner. It is submitted that the impugned orders dated 05.03.2024 and 07.05.2024 have been passed without affording an opportunity of hearing to the petitioner, and as such, deserve to be set aside on this ground alone.

10. It is further submitted that the orders passed by the respondent no.1, 2 and 3 have also been passed without appreciating the correct position under the AEP Guidelines. It is submitted that Para 11.10 of the AEP Guidelines have not been duly taken note of in the order passed by the respondent no.1.

11. Further, it is stated that Paras 11.9 and 11.9.1 of the relevant guidelines have been completely misconstrued inasmuch as the bar contained therein would come into operation only in the event of the petitioner being convicted of the particular offence/s mentioned therein. It is further submitted that the concerned authorities have also failed to take note of the fact that the allegations against the petitioner are clearly motivated. It is submitted that the FIR dated 19.07.2023 was occasioned on account of the fact that the petitioner has employed a person of 12 years of age.

12. It is further submitted that the respondents no.(s) 1-3 have ignored the fact that the FIR dated 19.07.2023 was registered under Sections 323/342/374 of the Indian Penal Code, which are bailable offences, punishable for a maximum term of one year. Furthermore, the offences under Special Acts like the Juvenile Justice (Care and Protection of Children) Act and the Child and Adolescence Labour (Protection and Regulation) Act, 1986, which have been mentioned in the FIR dated 19.07.2023 are also bailable offences.

13. It is further contended that even though the offence under Section



370 IPC is a non bailable offence, the ingredients of Section 370 IPC (which deals with trafficking or engages such minor for sexual exploitation in any manner, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine) are not at all satisfied in the present case since there was no trafficking in the present case inasmuch as the concerned minor child was placed in the custody of the petitioner by the parents of the said minor.

14. Learned counsel for the respondent nos.1 to 3 opposes the present petition on the ground that since the petitioner is no longer an authorized person to enter the aerodrome on account of the petitioner no longer being employed with the respondent no.4, there can be no question of an AEP being issued to the petitioner.

15. It is submitted that the petitioner is entitled to an AEP only in terms of the relevant guidelines and in terms thereof, the same can be issued only to those individuals, who have a legitimate requirement for accessing restricted areas of the Airports, such as employees of Airlines, Airport Operators, Ground Handling Agencies, and other related Organizations.

16. Having heard the respective counsel for the parties, I find merit in the contention of the petitioner that the impugned orders dated 05.03.2024 and 07.05.2024 have been issued mechanically and that the relevant guidelines have been misconstrued.

17. The order dated 05.03.2024 does not even take note of the relevant AEP guidelines on the basis of which the entitlement of the petitioner to an AEP is to be assessed. Furthermore, the order dated 05.03.2024 incorrectly records the FIR against the petitioner to have been registered at Police



Station, Palam Village, New Delhi on 15.12.2020 whereas it was actually registered at Police Station, Dwarka South on 19.07.2023.

18. Para 3 of the order dated 03.04.2024 notes that the order dated 05.03.2024 was based on the recommendation of the AEP Committee in accordance with Para 11.11 of AEP Guidelines, 2022. However, neither the order dated 05.03.2024 nor the order dated 03.04.2024 give any reason as to how the relevant provisions of the guidelines have been applied.

19. The Para 11.11 of the relevant guidelines reads as under:-

“11.11 For other Crimes, cases of Motor Vehicle Act, Dowry Prohibition Act or Negotiable Instrument Act etc where in FIR is registered and/or a case is pending before the Court in India; RD, BCAS concerned may take final decision on the basis of recommendation of the local AEP Committee.”

20. It can be seen that the aforesaid stipulation does not contain any inflexible rule that whenever an FIR is registered against a person applying for an AEP, the AEP is to be necessarily denied on that basis.

21. Learned counsel for the petitioner is right in contending that the aforesaid stipulation has to be read in the context of Para 11.9 of the AEP Guidelines which reads as under:-

“11.9 Aerodrome Entry Permit shall not be issued if during a performance of background check, it is proved that applicant was convicted of:

11.9.1 Certain serious crimes, specifically possession and use of hard drugs, trafficking in hard and soft drugs, trafficking in weapons or the illegal possession of weapons, assault, extortion, acts endangering public safety including acts of unlawful interference against civil aviation, sexual offences or membership of a criminal organization (in exceptional circumstances, DG, BCAS may determine that such a person has been fully rehabilitated and, therefore, no longer constitutes a risk).

11.9.2 Other relevant offences such as burglary, fencing of stolen goods, embezzlement, fraud and fraudulent misrepresentation, without



restitution.”

22. It is evident from a bare perusal of Para 11.9 that the aforesaid guidelines are not applicable in the case of the petitioner inasmuch as (i) the applicant has not been convicted of any offence; and (ii) the applicant has also not even been accused of any crime/s of the nature referred to in Para 11.9.1 of the aforesaid AEP Guidelines. In the context of the crime/s set out in Para 11.9.1, denial of AEP would be justified.

23. Moreover, Para 11.10 renders a decision of the Directorate General, Bureau of Civil Aviation Security (DG BCAS) final in cases where an FIR is registered and/or a case is pending before any Court for the crime/s mentioned under Para 11.9.1 and 11.9.2. Para 11.10 of the AEP guidelines reads as under:-

“11.10 The decision of DG, BCAS shall be final in cases where an FIR is registered and/or a case is pending before the Court in India for serious categories of crimes as mentioned above.”

24. However, as noticed, Para 11.11 does not contemplate a blanket embargo. Necessarily, in the context of a situation where a person, who has previously been in possession of an AEP and is sought to be denied the same on the basis of registration of an FIR in respect of a crime which is not a serious crime of the kind referred to in Para 11.9, an opportunity of hearing is required to be given to the concerned person. However, no such hearing has been afforded to the petitioner in the present case.

25. A division bench of this Court in ***A.K. Sharma v. Director General of Civil Aviation and Anr.*** 2002 SCC OnLine Del 433 held that administrative decisions with adverse civil consequences automatically attract the principles of natural justice. While affirming the said proposition, a co-



ordinate bench of this Court in *AR Airways Pvt. Ltd. v. Union of India and Others* 2021 SCC OnLine Del 3225 has held as under:-

“25. In the present case, it cannot be denied that the Impugned Orders have adverse civil consequences on the petitioner inasmuch as its operation as a Non-Scheduled Air Operator comes to a standstill because of the same. It is therefore, beyond doubt that the principles of natural justice have to be applied in such circumstances. The respondent no. 2 has also issued a Show Cause Notice to the petitioner before taking further steps of cancellation of the Air Operator Permit. The only question before this Court is as to whether such Show Cause Notice to the petitioner was to give/contain reasons as to why its security clearance is being revoked.

26. The reason for revocation of the security clearance has now been disclosed in the counter affidavit filed by the respondent no. 3 as under:—

“4. The entire matter was examined in consultation with security agencies upon the inputs received and prevailing guidelines/policy of the Ministry of Home Affairs. It was noted M/s. A.R. Airways Private Ltd. vide letter dated 30.08.2019 declared Shri Ashok Kumar Chaturvedi as ultimate beneficial owner of the company. The said declaration of the company was forwarded by Ministry of Civil Aviation vide OM dated 07.10.2019 to this Ministry. Security agencies provided following inputs in respect of Shri Ashok Kumar Chaturvedi, the ultimate beneficial owner of M/s. A.R. Airways Private Limited:

- a) A case no. RC-003/1998/ACU-VII/AC-11/New Delhi was registered on 26.02.1998 u/s 120-B IPC r/w section 420 IPC and 13(2) r/w 13(1)(d) of PC Act, 1988 against Smt. Neera Yadav, IAS (UP-71), former Chairperson cum Chief Executive Officer, Noida & others, on the order dated 20.01.1998 passed in a Writ Petition(C) No. 150/97 by Hon'ble Supreme Court of India. The Court had directed the CBI to investigate irregularities in allotment and conversion of certain plots of land in NOIDA.*
- b) After investigation, seven Charge Sheets were filed in this case but one charge sheet vide Court Case No. 21/2002, arising out of the above case, was filed against Smt. Neera Yadav, IAS (UP-71) former Chairperson cum Chief Executive Officer, NOIDA and Shri Ashok Chaturvedi S/o Shri D.N. Chaturvedi, Chairman-cum-Managing Director of M/s. Flex Industries Ltd., and Flex Engineering Ltd. NOIDA (UP) u/s 120-B IPC r/w 13(2) r/w 13(1)(d) of the PC Act, 1988 and substantive offence thereof on 16.01.2002.*
- c) On 07.12.2010, the Special Judge (Anti Corruption), UP (East) Ghaziabad convicted both the accused persons viz Smt. Neera Yadav and Shri Ashok Chaturvedi and sentenced them to 04 years RI and fine of Rs. 25,000/- and Rs. 50,000/- respectively.*



- d) Accused person, namely, Shri Ashok Chaturvedi filed a Crl. Appeal No. 7826/2010 in the Allahabad High Court, challenging his conviction order which is pending.
- e) The above inputs of the CBI against Shri A.K. Chaturvedi, the ultimate beneficial owner of M/s. A.R. Airways Private Ltd., attracted security parameter, viz. "Conviction in the Court of law in the cases of charge sheet filed for the Prevention of Corruption Act" mentioned at serial no. 23 of Annexure-C, of the Guidelines, dated 25.06.2018, of MHA on the assessment of proposals for national security clearance and corrigendum issued for the said guidelines on 27.06.2018. This qualifies for denial of security clearance to the company as per the said guidelines.

It is further submitted that in view of zero tolerance for corrupt practices and where additional inputs are of egregious nature, and have the potential of impacting the integrity of the sector and/or involve persons/institutions who embroiled in corrupt deals nationally or investigations carried out have resulted into conviction of key managerial persons connected in the present or in the past with such companies the denial of the security clearance in the matter is justified."

27. The allegations on which the security clearance has been revoked were, therefore, not of such nature as could not have been put to the petitioner for eliciting its response thereto. The submission of the respondent that the same being secretive could not be put to the petitioner cannot be accepted. The conviction of Mr. Chaturvedi and the consequence thereof, was not of such nature so as to attract the Official Secrets Act, 1923 or a plea of privilege by the respondents. Therefore, the Show Cause Notice issued in absence of such disclosure was clearly perfunctory in nature and could not have had any meaningful response from the petitioner. There was a clear violation of principles of natural justice."

(emphasis supplied)

26. An opportunity of hearing is necessary, particularly since, denial of AEP directly affects and jeopardises the livelihood of the petitioner inasmuch as the impugned orders rendered it untenable/impractical for the petitioner to get gainful employment as a qualified Pilot. Indeed, the petitioner's employment with the respondent no.4 has also been terminated *vide* termination notice dated 20.03.2024.

27. In the circumstances, the impugned orders dated 05.03.2024 and 07.05.2024 are set aside.



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28. Learned counsel for the respondent nos.1 to 3 is right in contending that since the petitioner is no longer employed with the respondent no.4, there is no occasion for the petitioner for obtaining an AEP. However, it is made clear that the petitioner is not precluded from seeking employment in the aviation sector and apply for an AEP through her employer-organization and/or as contemplated under the AEP Guidelines. If and when such an application is made, the same shall be considered on its own merits and in accordance with law and after complying with the principles of natural justice.

29. The present petition is disposed of in the aforesaid terms. All pending applications also stand disposed of.

SACHIN DATTA, J

FEBRUARY 24, 2025/r, dn