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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: 24.02.2025+ W.P.(C) 896/2025 and CM APPL.4400/2025 (Stay)

M/S RAJASTHAN PATRIKA PRIVATE LIMITEDPetitioner
Through: Mr. Ashok Gaur, Sr. Advocate along
with Mr. Ajay Choudhary, Mr. Manish
Kr. Sharma and Ms. Sakshi Singh,
Advocates.

versus

UNION OF INDIA & ORS.Respondents
Through: Ms. Mahamaya Chatterjee,
Government Pleader for Union of India
alongwith Mr. Akash Dubey,
Advocate.
Mr. Digvijay Rai, Advocate and Mr.
Archit Mishra, Advocate for R-2/AAI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner, *inter-alia*, seeking the following prayer/s:-

“a) Quash and set-aside the order dated 16.10.2023 issued by Respondent No.3 Designated Authority refusing to issue no objection certificate under rule 5 of the Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015 and also the order dated 11.10.2024 issued by Respondent No.4 i.e. Appellate Committee rejecting the appeal filed by the petitioner against the order dated 16.10.2023 issued by Respondent No.3 Designated Authority; and

b) Declare the Petitioner entitled to issuance of a No Objection Certificate for raising building to the height of 461 mts Above Mean Sea Level (AMSL) as per the revised maximum elevation of 465.48 mts AMSL determined in the aeronautical study relating to a building of M/s Gurnani Inn Pvt Ltd. situated nearby and in the same Industrial area the duly approved in the order dated 27.06.2024 passed by Appellate



Committee for height clearance in file no. ATM-1609/126/2022-ATMDoAS as maximum elevation available for buildings in the said location;

c) Pass appropriate writ/order directing the respondents to issue No-Objection Certificate in favour of the petitioner for raising building to the height of 461 mts AMSL; and

d) In the alternative, declare clause 6.2 of the Aeronautical Study Guidelines (Aerodrome Safeguarding Circular (ADSAC) 05 of 2020) ultra vires to the Rules of 2015 as amended thereafter in 2020 as also being unreasonable and arbitrary, thus unconstitutional; and any adverse action taken against the petitioner during the pendency of the petition may also be declared illegal. and/or

e) Cost of the entire proceedings be awarded in favor of the Petitioner and against the Respondents”

2. The factual background of this matter is that the petitioner holds a perpetual lease for Industrial Plot No. B-8 (B&C), measuring 4026 square meters, located in Malviya Industrial Area, Jaipur, Rajasthan. The plot was leased by the Rajasthan State Industrial Development & Investment Corporation Ltd. (RIICO), which developed the site for industrial purposes.

3. RIICO approved the revised building plans for the petitioner’s structure, permitting the construction of a seven-story building under approval letter no. 1674, dated 18.11.2021. The approved height was 30.78 meters from the plinth level. The relevant portion of the approval letter dated 18.11.2021 is reproduced as under –

“Sub:-Building construction permission for IT industries on Plot No. s- 8 B & C allotted in Malviya Industrial Area, Jaipur under Model Rajasthan Urban Areas Building Regulation-2020 and Building Regulations, 2021 RIICO Disposal of Land Rules, 1979. With reference to your letter dated 11.11.2021, building construction permission for the entry of the proposal submitted for Plot No. B- 8 B &C, Malviya Industrial Area, Jaipur is given following condition.

1. The constructed building will be maintained as per the approved map and there will be no deviation of any kind be made. It will be the



responsibility of the architect/licencee to maintain the constructed building as per the requirements of building, regulations. After the completing 'the construction work as per the (approval, it will be insured that only IT industries are established after obtaining the certificate. In the affidavit and maps presented by 'architect Mr. Gyanendra Singh Shekhawat, the following dimension of the building for the IT industries are proposed.-

a) Setback 12.19-12.19 -10.06-12.19

b) **Height 30.78 Mtrs. (including base height)**

c) BAR 12891.04 (3.20)

d) Parking 142 ECU

2.Regarding the height of proposed building, it will be insured that before starting the construction work at height more than 425 Mtrs. elevation above standard Sea Level (AMSL), no objection certificate will be obtained from the Airport Authority. All responsibility in this regard will be of licencee/your...”

(emphasis supplied)

4. Thereafter, the petitioner constructed the building up to seven floors. After completing the construction, the petitioner submitted a completion certificate, duly certified by an architect, to RIICO for issuance of an occupation certificate. The constructed building has a height of 445.5 meters above mean sea level (AMSL).

5. For the issuance of the occupancy certificate, RIICO asked the petitioner to submit an NOC form Airports Authority of India.

6. On 13.09.2023, the petitioner submitted an application to the Designated Officer, NOCAS, Airports Authority of India (AAI) for height clearance up to 461 meters AMSL. The application was accompanied by a site survey report, an undertaking, and an authorization letter, as mandated by GSR 751(E) dated 30.09.2015, issued by the Ministry of Civil Aviation.



7. It is submitted that the structure is located within 1,000 meters of Jhalana Hills, which has a top elevation of approximately 517.39 meters AMSL. The site is situated between the Jaipur International Airport runway and Jhalana Hills.

8. It is the case of the petitioner that the Shielding Criteria under GSR 751(E) were applicable, as the proposed height was within negative shielding due to the higher elevation of Jhalana Hills.

9. However, the Designated Officer rejected the application on 16.10.2023. The reason stated for the said rejection was that “Comments of Jaipur Airport Operator “a building with a top elevation of 445.5 meters AMSL is already constructed at the site, thus violating the maximum permissible top elevation.” The same is reproduced as under –



ANNEXURE P/7
भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA
JAIP/NORTH/B/091323/78921

मालिक का नाम एवं पता M/s Rajasthan Patrika Private Limited
OWNERS Name & Address Kesargarb, Jawahar Lal Nehru Marg, Jaipur-302004, Rajasthan, India

दिनांक/DATE: 16-10-2023

पनओसी अस्वीकृति पत्र
NOC Rejection Letter

1) यह अनापत्ति अस्वीकृति प्रमाणपत्र भारतीय विमानपत्तन प्राधिकरण (भाविप्रा) द्वारा प्रदत्त दायित्वी के अनुक्रम तथा सुरक्षित एवं नियमित विमान प्रचालन हेतु भारत सरकार (नागर विमानन मंत्रालय) की अधिसूचना जी. एस. आर. 751 (ई) दिनांक 30 सितम्बर, 2015, जी. एस. आर. 770 (ई) दिनांक 17 दिसम्बर 2020 द्वारा संशोधित के प्रावधानों के अंतर्गत दिया जाता है।
1. This Rejection Letter is issued by Airports Authority of India (AAI) in pursuance of responsibility conferred by and as per the provisions of Govt. of India (Ministry of Civil Aviation) order GSR751 (E) dated 30th Sep.2015 amended by GSR770(E) dated 17th Dec 2020 for safe and Regular Aircraft Operations.

2) ऊँचाई की अनुमति हेतु मूल्यांकन विवरण :
2. Assessment details for Height Clearance:

अनापत्ति प्रमाणपत्र आईडी / NOC ID	JAIP/NORTH/B/091323/789219
आवेदक का नाम / Applicant Name*	Sankalp Choudhary
संरचना का प्रकार / Type of Structure	Building
स्थल का पता / Site Address*	Plot No. B-8 (B and C), Malviya Industrial Area, Jaipur - 302017, Rajasthan, India
स्थल के निर्देशांक / Site Coordinates*	26 51 28.05N 75 49 39.87E, 26 51 27.86N 75 49 39.93E, 26 51 29.67N 75 49 40.89E, 26 51 26.86N 75 49 41.70E, 26 51 28.61N 75 49 42.85E
स्थल की ऊँचाई एएमएसएल मीटर में (औसतन समुद्र तल से ऊपर), (जैसा आवेदक द्वारा उपलब्ध कराया गया) / Site Elevation in mtrs AMSL as submitted by Applicant*	409.51



2025:DHC:1181



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भारतीय विमानपत्तन प्राधिकरण
AIRPORTS AUTHORITY OF INDIA

JAIP/NORTH/B/091323/789219

* जैसा आवेदक द्वारा उपलब्ध कराया गया / As provided by applicant*

ऊपर बताया गए एन ओ सी आई डी वाले एन ओ सी के लिए आपका आवेदन निम्न लिखित कारणों से अस्वीकार कर दिया गया है:
Your application for NOC with NOC ID stated above is rejected for the following reasons:

Comments of Jaipur Airport Operator "A building with Top Elevation of 445.5 meters AMSL is already constructed at the site, thus violating the maximum permissible top Elevation."

क्षेत्र का नाम / Region Name: उत्तर/NORTH

पदनामित अधिकारी/Designated Officer नाम/ पदनाम/दिनांक सहित हस्ताक्षर Name/Designation/Sign with date	 उत्पल दत्ता बरुआ/UTPAL DUTTA BARUAH महाप्रबंधक (एटीएम)/General Manager (ATM) उत्तरी क्षेत्र/ Northern Region भारतीय विमानपत्तन प्राधिकरण/Airports Authority of India एन ओ सी एच कॉम्प्लेक्स/ई.ग.अ. हवाई अड्डा, नई दिल्ली-37 NATS Complex/IGI Airport, New Delhi-37
द्वारा तैयार Prepared by	 16/10/2023 Narencha Dev A-5M(ATM)
द्वारा जांचा गया Verified by	 16/10/2023 Yashwant Sharan JGM (ATM)

ईमेल आईडी / EMAIL ID : noc_nr@aai.aero
फोन/ Ph: 011-25653551

10. Aggrieved by the same, the petitioner filed an appeal before the Appellate Committee, AAI, on 23.10.2023, requesting reconsideration based on shielding criteria. The petitioner specifically sought an NOC for 456.04 meters AMSL, considering precedents for the same location/locality. The relevant portion of the petitioner's appeal is reproduced as under –

"Later on we submitted NOC application for height clearance of 461 Meter AMSL to the Designated Officer, AAI but our application has been rejected without considering requisite parameters applicable on the building constructed by us, which includes shielding criteria available at the site.



Being aggrieved by rejection of NOC, we are filing the present appeal. We would like to submit that there is a natural terrain exists just nearby to our building. Therefore, you are requested to consider our appeal application applying Shielding Criteria. We believe that as per Shielding Criteria Study our subject building will remain below the Hill lock and our building height including mumty, lift room / overhead water tank and Lightning Arrestor / Aviation light will be up to 46.53 Meter AGL.”

11. Thereafter, during the pendency of appeal, the petitioner filed Writ Petition No. 3629/2024 before this Court since no opportunity for a hearing was provided to the petitioner by the appellate Committee and no aeronautical study was conducted. In the said writ petition, the petitioner also challenged Clause 6.2 of Aerodrome Safeguarding Circular 05/2020. This Court, in its order dated 24.05.2024, recorded the statement of AAI that a personal hearing would be granted to the petitioner before deciding the appeal and that the petitioner could challenge Clause 6.2, which was being used to deny the height clearance, before the appellate authority. Accordingly, the Court disposed of the petition, directing that all contentions could be raised before the Appellate Committee.

12. It is further submitted that a nearby plot, E-2, Malviya Nagar Industrial Area, belonging to Gurnani Inn Pvt. Ltd., was granted a height clearance of 465.48 meters AMSL by the Appellate Committee on 27.06.2024.

13. Following the Court's order, the petitioner submitted multiple representations and reminders on 06.06.2024, 10.07.2024, and 26.07.2024, emphasizing the revised height clearance granted to Gurnani Inn Pvt. Ltd. (465.48 meters AMSL). However, the Appellate Committee dismissed the appeal on 11.10.2024 on the following grounds –



11. *The Appeal of the Applicant has been considered by the Appellate Committee and is rejected on account of the following reasons:*

- i. The Applicant violated Rule 4 of GSR 751 (E), as prior to construction of the structure, no NOC Application was filed by the Applicant for obtaining NOC from AAI.*
- ii. RIICO committed a grave error allowing the Applicant to construct a structure upto a height of 425 M AMSL without NOC from AAI, which is a violation of Rule 7, GSR 751 (E) and a copy of this Order may be sent to RIICO for caution in future.*
- iii. The Applicant constructed the structure beyond M AMSL without obtaining a NOC from AAI which is clearly stipulated in Clause 2 of the letter dated 18.11.2021.*
- iv. The prayer of the Applicant for Aeronautical Study to determine whether the shielding criteria be would be applicable to the Applicant which would entitle it for a higher height than 431.5M AMSL, is not permissible as per Para 5 of Schedule II of GSR 751 (E) read with GSR 770 (E), GSR 770 (E) has defined 'Existing Objects' as those structures which have been duly constructed as per the valid NOC already issued. In the present case, no NOC was sought for or by the AAI and hence, the structure of the Applicant does not fall within the definition of the 'Existing Objects' and in this view, Aeronautical Study of the structure cannot be permitted."*

14. It also directed the Airport Operator to take action under Rule 15 of GSR 751(E) and the Aircraft (Demolition of Obstructions) Rules, 1994. The rejection order was communicated via email on 23.10.2024.

15. Following the Appellate Committee's order, the Officer-in-Charge of Jaipur International Airport submitted a report to the Director General of Civil Aviation (DGCA), claiming that the petitioner's building and nearby trees infringed upon the Obstacle Limitation Surface (OLS) of the airport.

16. Acting on this report, the Joint Director, DGCA, issued an order on 27.12.2024 under Rule 4 of the Aircraft (Demolition of Obstructions) Rules, 1994, directing the petitioner to furnish details within 60 days. The petitioner submits that this order was issued despite the petitioner's



compliance with shielding norms and without any fresh aeronautical study to justify the adverse decision.

17. The petitioner has now approached this Court under Article 226 of the Constitution of India, seeking relief against the rejection of its application for a No-Objection Certificate (NOC) to construct a building up to a height of 461 meters AMSL. The petitioner prays for an extension of height benefits similar to those granted to M/s Gurnani Inn Pvt. Ltd., based on the aeronautical study conducted in its case. Furthermore, the petitioner challenges the orders passed by the Designated Officer and the Appellate Committee and seeks a direction to conduct an aeronautical study to determine the permissible height for construction. The petitioner also contends that Clause 6.2 of the Aeronautical Study Guidelines (Aerodrome Safeguarding Circular (ADSAC) 05 of 2020) is ultra vires the 2015 Rules, as it imposes unreasonable and arbitrary restrictions, rendering it unconstitutional.

18. It is the case of the petitioner that a revised height clearance of 465.48 meters AMSL was approved for another building in the same industrial area by the Appellate Committee's order dated 27.06.2024. This approval was granted after an aeronautical study determined that such a height is safe for air traffic operations at Jaipur Airport. Given this precedent, the petitioner, whose plot is only 150 meters away from M/s Gurnani Inn Pvt. Ltd. and is located farther from the aerodrome, is similarly entitled to a height clearance of at least 461 meters AMSL.

19. It is submitted that the respondents rejected the petitioner's NOC application primarily on the ground that the existing structure exceeds the previously allowed height, without conducting an aeronautical study or



considering shielding benefits. In the case of the petitioner that before denying the NOC, the respondents should have referred the matter to the International Civil Aviation Organization (ICAO) or conducted a shielding criterion study, as required under international standards and aeronautical regulations.

20. It is averred that the Appellate Committee's observation that the petitioner violated Rule 4 of GSR 751 (E) by failing to obtain prior NOC is incorrect, as Rule 4(1) does not apply to cases specified under Rule 7(2). Given that local authorities had already approved construction, the petitioner acted within legal parameters and should not be penalized for an inadvertent omission.

21. The petitioner submits that the Appellate Committee erred in rejecting the petitioner's request for an aeronautical study under Para 5 of Schedule II of GSR 751 (E), read with GSR 770 (E). The committee wrongly interpreted GSR 770 (E) by defining "Existing Object" in an overly restrictive manner, ignoring that aeronautical studies are meant to assess both existing and proposed structures for safety compliance.

22. It is further the case of the petitioner that the respondents have imposed an arbitrary precondition under Clause 6.2 of the 2020 Circular, requiring the petitioner to demolish its structure before seeking height clearance through an aeronautical study. This condition is devoid of rationality, as aeronautical studies are meant to determine permissible heights, not penalize existing constructions. The demolition requirement lacks any reasonable nexus to the objectives of aeronautical studies and is therefore ultra vires the Aircraft Act, 1934, as well as unconstitutional under Article 14.



23. The respondent opposes the present petition by submitting as under -
- a. No NOC was obtained by the petitioner before construction. Instead, the petitioner proceeded to construct a building that reached 445.5 meters AMSL, which not only violated the terms of RIICO's permission but also exceeded the permissible height of 431.34 meters AMSL as per aviation safety regulations.
 - b. It is submitted that the petitioner's argument that an Aeronautical Study should have been conducted to determine the shielding criteria for permitting a higher height is untenable, as Aeronautical Studies are not applicable in cases where there is a clear violation of NOC norms.
 - c. The Committee noted that conducting an Aeronautical Study (AS) under Para 5 of Schedule II of GSR 751(E) read with GSR 770(E) was not permissible in such cases where the construction had already been completed in violation of the height clearance norms.
 - d. It is submitted that a similar legal issue had arisen earlier in Writ Petition (C) No. 11829/2016, where a petitioner who had violated NOC conditions sought an Aeronautical Study to regularize the excess height. The High Court, in its judgment dated 30.01.2018, observed that the term "Existing Object" was not defined in Para 5 of Schedule II of GSR 751(E) at the time. This legal gap allowed for ambiguity regarding whether unauthorized construction/s could be subjected to an Aeronautical Study post-facto. To address this issue and prevent unauthorized constructions from benefiting from post-construction Aeronautical Studies, the Government of India amended GSR 751(E) through GSR 770(E) on 17.12.2020. This amendment provided a clear



definition of “Existing Objects”, stating that only structures constructed with a valid NOC qualify as existing objects. This amendment effectively barred any post-facto regularization of unauthorized constructions through an Aeronautical Study.

- e. The petitioner’s NOC application was officially rejected on 16.10.2023, primarily on the ground that a building with a top elevation of 445.5 meters AMSL had already been constructed at the site, exceeding the maximum permissible height of 431.34 meters AMSL as per the aviation regulations. Since the Petitioner’s structure was already in violation, the regulatory authorities could not grant an NOC for an unauthorized construction, nor could they conduct an Aeronautical Study for an object that did not fall within the definition of “Existing Objects” under the amended GSR 770(E).

ANALYSIS AND CONCLUSION:

24. Having considered the rival submissions of the parties, I find merit in the prayer of the petitioner seeking conduct of an Aeronautical Study for the purpose of assessing whether the existing structure of the petitioner would adversely affect the safety or significantly affect the regularity of operations of aeroplanes in the concerned airport. The reasons are enumerated hereunder.

25. One of the reasons cited in the order passed by the Appellate Committee for rejecting the appeal of the petitioner was that ‘the RIICO Committed a grave error allowing the Applicant to construct a structure upto a height of 425 M AMSL without NOC from AAI, which is a violation of



Rule 7, GSR 751 (E) and a copy of this Order may be sent to RIICO for caution in future.

26. It is completely incongruous and untenable to penalise the petitioner for the sanction granted by another statutory authority viz. RIICO. In terms of the approval letter dated 08.11.2021 issued by RIICO, there was no impediment for the petitioner to raise construction upto a level of 425 meter AMSL elevation. The appellate authority has found even this construction to be irregular; the said view is *ex-facie* untenable.

27. A perusal of the GSR 751 (E) - Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules, 2015, reveals that the same contains a shielding criteria¹ and provides for conduct of

¹ **“4. Shielding criteria**

The principle of shielding is applicable w.r.t. Natural Terrain, already penetrating one of the obstacle limitation surfaces of an airport and it is not likely to be removed. The shielding criteria as explained below is applicable w.r.t. AGA and CNS surfaces.

4.1 The principle of shielding will not to be applied in:

I. Transitional surface area,

II. Approach surface areas, within 4000 meters of the inner edge of approach surface.

III. Inner Horizontal Surface (IHS), within a distance of 2500 meters from the runway centre line. In case of multiple runways, area encompassed by 2500M from centerline of all runways.

4.2 The following criteria shall be followed for the purpose of applying shielding criteria for the proposed structure with respect to existing natural terrain.

4.2.1 Proposed (shielded) object located beyond a distance of 2500M from runway centerline:

(i) Draw a line joining the centre point of the plot to the nearest runway end (runway code no. 3 & 4) or ARP (code 1 & 2) as the case may be. Shielding will be applicable w.r.t. applicable terrain within the area bounded by the two lines drawn parallel to the above line, at a distance of 600M on either side. A line, across the highest point of applicable reference (shielding) terrain, perpendicularly to the above parallel lines shall be drawn to delineate the areas for different type of shielding i.e, negative or equal to the horizontal plane passing through top of reference terrain (For the illustrations refer to Appendix-F and Appendix-G of Schedule VIII).

(ii) If the proposed structure is lying between the aerodrome and the reference terrain, a negative shielding of 10% shall be applicable. The shielding benefit of a horizontal plane, equal to reference terrain height, shall be provided in the area located in the opposite side away from the aerodrome (For the illustrations refer to Appendix-F and Appendix-G of Schedule VIII).

4.3 Communication Navigation Surveillance (CNS) Parameters:

For CNS facilities, shielding benefit could be provided to the structures in cases wherein such structures (shielded) are in the shadow of the highest terrain of permanent nature. Shadow for this purpose is defined as an area falling below a line drawn from the top and both the extremities of the terrain of permanent nature, to the facility and extrapolation of the same plane behind from the said obstacle.



Aeronautical Study and CNS stimulation study² for the purpose of assessing the maximum permissible height of structures, especially when the structures are in the shadow of the highest terrain of natural permanent structures. The maximum permissible height limit of a structure can be determined, based on the shielding criteria provided that the structure is situated in the proximity to an existing obstacle of greater or similar heights and does not pose a risk to aviation safety.

28. In the present case, the petitioner's building is located within 1,000 meters of Jhalana Hills, which has a top elevation of approximately 517.39 meters AMSL. The site is positioned between Jaipur International Airport's runway and Jhalana Hills, potentially allowing it to benefit from shielding considerations.

² **5. Conduct of Aeronautical Study and CNS Simulation Study**

5.1 The Aeronautical Study, as referred to in the Civil Aviation Requirements Section-4, Series 'B', Part I on Aerodrome Design and Operations and ICAO Annex 14, may be conducted to determine that the existing object or the proposed new object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes in pursuance of the ICAO provisions as given below:

Note 1: New objects or extensions of existing objects should not be permitted above the conical surface and the inner horizontal surface except when, in the opinion of the appropriate authority, after aeronautical study it is determined that the object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes.

Note 2: Existing objects above an approach surface, a transitional surface, the conical surface and inner horizontal surface should as far as practicable be removed except when, in the opinion of the appropriate authority, after aeronautical study it is determined that the object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes.

5.1.1 The request for aeronautical study shall be considered by the Member (Air Navigation Services), Airports Authority of India, on case to case basis.

5.1.2 Aeronautical Study shall not be carried out in Approach and Transition surfaces.

5.1.3 Aeronautical Study, as per the established guidelines, shall be carried out by AAI, ICAO or any other agency, approved for the purpose by Ministry of Civil Aviation.

5.1.4 Based on the Aeronautical Study report, including a revised height clearance if necessary, shall be communicated to the applicant by AAI.

5.1.5 Guidelines are available at NOCAS at www.aai.aero.

5.2 Communication Navigation Surveillance (CNS) Simulation study: In case any structure is required to be made within aerodrome premises (airside and city side) by the Aerodrome Operator which creates obstruction from CNS point of view, a simulation study could be carried out to study the impact of this structure on the performance of the relevant facility and in case the study confirms that the impact would not hamper the operability of the facility, such structure could be permitted within the aerodrome premises."



29. The only reason for not determining the maximum permissible height of the petitioner's structure based on the shielding criteria and based on an Aeronautical Study is that the petitioner did not obtain an NOC from AAI before commencing construction. In this regard, a perusal of GSR 751 (E) does not reveal any embargo on conducting an Aeronautical Study only on account of absence of NOC.

30. In fact, a perusal of Rule 4³ reveals that the same itself recognizes an exception to obtaining an NOC for height clearance, if a case is covered by the sub-rule 2 of the Rule 7. The said sub-rule is reproduced as under:-

“(2) In cases of aerodromes where the Colour Coded Zoning Maps has been issued, the Local, Municipal or Town Planning and Development authorities shall, in accordance with the height specifications provided in such Colour Coded Zoning Maps, approve the construction of the structures, as per the existing building regulations or bye laws or any other law for the time being in force...”

31. Sub-rule (2) of Rule 7 creates a specific exemption for aerodromes where the Colour Coded Zoning Maps (CCZMs) have been issued. In such cases, an NOC is not required, and instead, the Local, Municipal, or Town Planning and Development Authorities are responsible for approving construction based on the height specifications provided in the CCZM.

³ 4. Restrictions on constructions, erections, trees, etc.- (1) No structure shall be constructed or erected, or any tree planted or grown on any land within a radius not exceeding twenty kilometers from the Aerodrome Reference Point of the civil and defence aerodromes, as specified in Schedule III to Schedule VII, without obtaining a No Objection Certificate for the height clearance, except in cases specified in subrule (2) of rule 7.

(2) No structure shall be constructed or erected, or any tree planted or grown on any land within the areas specified in Schedule I of the civil and defence aerodromes, as listed in Schedule III to Schedule VII, except for essential navigational aids and other installations required for aeronautical purposes.

(3) No structure higher than the height specified in Schedule II, shall be constructed or erected and no tree, which is likely to grow or ordinarily grows higher than the height specified in the said Schedule shall be planted on any land within a radius of twenty kilometers from the Aerodrome Reference Point.

(4) The level roads and level railway lines within one kilometer of the airport boundary wall shall also be subject to issuance of the No Objection Certificate.



32. The petitioner argues that its case falls within this exception. A CCZM was also handed over during the course of the hearing. Furthermore, the relevant local authority in this case was RIICO, which granted the petitioner permission to construct the building up to a certain height.

33. Thus, the framework of Rules itself is such that it cannot be said that obtaining of a prior NOC from AAI, is an inflexible requirements. At least in the cases covered by Rule 7(2), it is permissible for the Municipal, Local or Town Planning and Development Authorities to approve construction of structures as per extant building regulations or bylaws and in accordance with the height specifications provided in such colour coded zoning maps.

34. In any event, this Court find nothing in the Rules which completely precludes or prohibits the conduct of an Aeronautical Study to determine the maximum permissible height of a structure only for want of a valid/subsisting NOC from the AAI.

35. The fundamental objective of an Aeronautical Study is to assess whether an object poses a risk to air traffic operations and, where appropriate, to determine the feasibility of granting revised height clearance. If the respondents' strict interpretation were to be applied, it would defeat the very purpose of an Aeronautical Study by denying a legitimate examination of shielding criteria.

36. The issue is squarely covered by a judgment of this Court in case of *M/s. DBS Reality vs. Union of India*, 2018:DHC:686. In that case also, the contention of the AAI was that it is not permissible to conduct an Aeronautical Study of structures which have been raised in violation of the height restrictions and/or beyond the NOC granted by the AAI. In that case, the Court noticed Sub-Clause 5.1 of Clause 5 of the Schedule 2 of GSR 751



(E) which clearly makes it incumbent to conduct an Aeronautical Study in the following terms:

“Conduct of Aeronautical Study and CNS Simulation Study

5.1 The Aeronautical Study, as referred to in the Civil Aviation Requirements Section-4, Series 'B', Part I on Aerodrome Design and Operations and ICAO Annex 14, may be conducted to determine that the existing object of the proposed new object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes in pursuance of the ICAO provisions as given below:

Note 1: New objects or extensions of existing objects should not be permitted above the conical surface and the inner horizontal surface except when, in the opinion of the appropriate authority, after aeronautical study it is determined that the object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes.

Note 2. Existing objects above an approach surface, a transitional surface, the conical surface and inner horizontal surface should as far as practicable be removed except when, in the opinion of the appropriate authority, after aeronautical study It is determined that the object would not adversely affect the safety or significantly affect the regularity of operations of aeroplanes.”

37. In the said case of ***DBS Reality*** (supra), reliance was sought to be placed by the AAI on Note 2 above to contend that the expression ‘existing objects’ should be read to meet only those objects which were existing when the construction of a new airport was contemplated in the area. This Court found that there was no reason to construe the relevant provision for conducting an Aeronautical Study in a restrictive manner.

38. Again, in the case of ***KGA Investments v. Union of India***, 2018 SCC OnLine Del 12492, this Court noticed the scope, extent and coverage of Clause 5.1.1 of Schedule 2 of the GSR 751(E) and found that the same expressly provide that the request for Aeronautical Study required to be considered on a ‘case to case basis’. It was also expressly noticed that the contention to the effect that Aeronautical Study cannot be undertaken unless



the excess height of any structure is demolished, is not supported by any Rule or even the stated policy. It was specifically observed as under:-

“35. In view of the above, this Court finds it difficult to accept the aforesaid contention. Further, as noticed above, sub-clause 5.1.1 of Schedule II to the said Rules expressly provides that the request for Aeronautical Study is required to be considered on a case to case basis.

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37. The contention, that Aeronautical Study cannot be undertaken unless the excess height is demolished, is not supported by any rule or even the stated policy. Sub-clause 5.1 of Schedule II to the said Rules also clearly indicate Aeronautical Studies may be conducted to determine whether the existing body or proposed new body would adversely affect the safety or significantly affect the regularity of operations of aeroplanes. Thus, the contention that the Aeronautical Studies cannot be conducted in any case unless the building, which is already constructed, is removed is unpersuasive.”

39. Learned counsel for AAI has strenuously contended that pursuant to the aforesaid judgment of **DBS Reality** (supra), an amendment was carried out in GSR 751(E) vide notification dated 17.12.2020 [by way of GSR 770(E)] wherein a definition has been accorded to the expression “existing object” as under:

“(viiia) “the existing object” include (a) those structures which have been duly constructed as per the valid No Objection Certificate already issued: or..... ”

Basis which, it is contended, that an Aeronautical Study is not permissible in cases where no valid No Objection Certificate (NOC) has been issued.

40. The said contention is unmerited for multiple reasons. Firstly, the said contention does not detract from the conclusion in **KGA Investments** (supra) that an Aeronautical Study would be conducted as may be required on a “case to case basis”.

41. Secondly, a perusal of Note 2 reveals that “existing objects” should as far as practicable be removed except when an Aeronautical Study



determines that the object would not adversely affect the safety and significantly affect regularity of operations of the aeroplanes. The change/insertion of the definition of “existing object” does not altogether preclude or bar the conduct of an Aeronautical Study, as is sought to be contended by the AAI.

42. Thirdly, in the context of the purport of Note 2 [*viz.* removal of structures which pose a threat to safety of operations], it is incongruous for the expression “existing object” to be confined to those structure/s which have been constructed in terms of a valid NOC issued by the AAI. With regard to such structures which have been constructed in consonance with an NOC, there would be no occasion to remove them on the basis that they affect the safety or significantly affect the regularity of operations of aeroplanes. On the contrary, an aeronautical study may warrant removal of structures for which no NOC has been granted by the AAI. If the definition of “existing object” is applied in a restrictive matter to Note 2, the same would take such structures (constructed without an NOC) beyond the sweep of the mandate in the said Note 2, to remove such structure/s. This would be incongruous. Notably, it is not the petitioner’s case that its structure is not liable to be removed in the event the Aeronautical Study finds that the same adversely affect safety and regularity of operations of aeroplanes. On the contrary, the petitioner fairly submits that if the Aeronautical Study finds that its structure is found to adversely affect the safety and regularity of operations of airplanes, the same be removed. It only seeks that Aeronautical Study be directed to be conducted to ascertain the same.

43. Fourthly, and importantly, the definition of ‘existing object’ as provided vide GSR770(E) is an inclusive definition. It is well settled that the



purport of providing an inclusive definition is to “enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of words and also the sense which the statute wishes to attribute to it”⁴.

44. Thus, by according an inclusive definition to the expression ‘existing object’, the same would not imply that the expression is to be applied in a restrictive manner so as to exclude the conduct of Aeronautical Study for structure/s that have been raised without a valid NOC.

45. A three judge bench of the Supreme Court in ***Regional Director, Employees’ State Insurance Corporation V. High Land Coffee Works Of P.F.X. Saldanha And Sons And Another***, 1991 SCC OnLine SC 210, has observed as under:

*“7. The view taken by the High Court seems to be justified. The Statement of Objects and Reasons of the Bill which later became the Act 44 of 1966 indicates that the proposed amendment was to bring within the scope of the definition of “seasonal factory”, a factory which works for a period of not exceeding seven months in a year — (a) in any process of blending, packing or re-packing of tea or coffee; or (b) in such other manufacturing process as the Central Government may, by notification in the official Gazette, specify. The amendment therefore, was clearly in favour of widening the definition of “seasonal factory”. The amendment is in the nature of expansion of the original definition as it is clear from the use of the words “include a factory”. The amendment does not restrict the original definition of “seasonal factory” but makes addition thereto by inclusion. The word “include” in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word ‘include’ is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. [See (i) *Stroud’s Judicial Dictionary*, 5th edn. Vol. 3, p. 1263 and (ii) *C.I.T. v. Taj Mahal Hotel*¹, (iii) *State of Bombay v. Hospital Mazdoor Sabha*.”*

⁴ Reserve Bank Of India v. Peerless General Finance And Investment Co. Ltd. And Others (1987) 1 SCC 424



Thus, the inclusive definition accorded to the expression “existing objects” cannot be construed to exclude any structure/s which are not explicitly referred to in the inclusive part of the definition.

46. The same principle has been reiterated in ***Ramala Sahkari Chini Mills Limited, Uttar Pradesh V. Commissioner, Central Excise, Meerut-1, Meerut***, 2016 SCC OnLine SC 299, in which the Supreme Court observed as under -

“1. We have heard the learned counsel for the parties. We have also read and considered the order dated 29-11-20101 of this Court referring the matters to a larger Bench for a decision on the question as to whether the definition of the term “input” in Rule 2(g) of the Cenvat Credit Rules, 2002 is to be understood to include items beyond the six items mentioned specifically in Rule 2(g)?

2. The answer to the question referred, according to us, is self-contained in the order of reference which has referred, inter alia, to a three-Judge Bench decision of this Court in ESI Corpn. v. High Land Coffee Works². There are other decisions of this Court by Coordinate Benches (three Judge) on the issue which need not be adverted to specifically inasmuch as it has been clearly held in ESI Corpn.² that the word “include” in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction.

3. We answer the question referred to us in the above manner leaving it for the appropriate Bench of this Court to decide on the factual parameters of the case(s) and the entitlement of the assessee (s) to Cenvat credit in the facts of each case.”

47. Thus, again, the inclusive definition of “existing object” does not restrict or exclude structures/ objects which otherwise fall within the natural meaning of the expression.

48. Again, a division bench in ***Anuj Jain Interim Resolution Professional For Jaypee Infratech Limited v. Axis Bank Limited Etc.***, 2020 SCC OnLine SC 237



45. Looking to the frame of the Code, where the significant expressions “financial creditor” and “financial debt” have been defined with the words “means” and “includes”, we may further refer to the principles of construction of such a definition clause in a statute. Tersely put, the law remains settled that where a word is defined to “mean” something, the definition is prima facie restrictive and exhaustive. On the other hand, where the word defined is declared to “include” something more, the definition is prima facie extensive. However, a little difficulty arises when the definition contains both the words “means” and “includes”.

49. It is evident that GSR 770(E) consciously does not accord a restrictive (and instead accords as ‘inclusive’ definition) definition to the expression “existing object”.

50. The judgment of Kerala High Court in case of **B. Reghuram Shetty v. The chairman**, W.P.(C). No.1104 of 2019 also supports the case of the petitioner. In that case it has been held as under:

“25. The prime ground for objection of the respondents against holding Aeronautical Study is that the petitioner has not made an application for Aeronautical Study before construction of the building. All other builders/owners of building in the area had approached respondents 1 and 2 for NOC before construction exceeding the permissible height. The petitioner herein approached them after effecting the construction. I find that the said argument need not stand in the way of conducting Aeronautical Study since the study will be conducted at the expenses of the petitioner and if the building of the petitioner satisfy the safety requirements of the respondents, it will definitely save considerable money as well as spent human efforts. It will not in any manner adversely affect the interest of respondents 1 and 2 or of the general public either.

26. The other objection raised by the learned standing counsel for respondents 1 and 2 against the conduct of Aeronautical Study is that such study cannot be conducted after construction of the building. Though subsequent to Ext.P12 judgment, the respondents have passed Exts.P17 and P19 orders, there is nothing in Exts.P17 and P19 orders which would indicate that Aeronautical Study cannot be conducted after construction of a building. Though the respondents in their counter affidavit in paragraph 19 have stated that Aeronautical Study is not permissible once the construction is made beyond the limit, no material has been produced before this Court to sustain the said argument. Therefore it will not be safe



or advisable to rely on that statement and deny the petitioner an opportunity of availing Aeronautical Study so as to save the construction.”

51. The respondent’s reliance on the judgment of this Court in *Shrishti Infrastructure Development Corporation Limited & Ors. Union of India* W.P.(C).No. 7652/2015, is of no avail.

52. In the said judgment the Court ruled that it lacks the authority to determine permissible building heights near airports, as such decisions fall within the jurisdiction of the Airports Authority of India (AAI) and the Appellate Committee under the Aircraft Act and related regulations. The Court observed that the petitioners had acknowledged the applicability of the 14.01.2010 Notification, which mandates obtaining a No Objection Certificate (NOC) for construction near airports, and did not claim that their approved height was below the prescribed limits. The Court found no arbitrariness in the authorities’ decision-making, as height restrictions were revised over time due to evolving aviation safety standards. The Court observed that despite receiving multiple reconsiderations, the petitioners illegally proceeded with construction beyond the permitted height after their NOC expired in 2010, making them ineligible for relief under equitable jurisdiction. The Court also rejected their demand for a third-party review, stating that it was not a mandatory procedural requirement. Consequently, the petition was dismissed.

53. However, the present case is clearly distinguishable. Here, the petitioner is seeking the conduct of an aeronautical survey to assess whether the permissible height limits can be extended.

54. Quite apart from the above aspects, another extremely vital aspect of the present case is that barely 150 meters away from the plot/land of the



petitioner, there exists a structure/ building with a height clearance of around 465 meter AMSL, which enjoys the approval of the Appellate Committee. The said approval was granted following an Aeronautical Study which determined that such an elevation was safe for air traffic operations at Jaipur International Airport.

55. There is, *prima facie*, merit in the contention of the petitioner that denying similar dispensation to the petitioner would result in serious and insidious discrimination and violation of Article 14 of the Constitution of India.

56. It is notable that as per the 'guidelines for conducting Aeronautical Study issued by the AAI' (Aerodrome Safeguarding Circular (ADSAC) 05 of 2020), it is specifically provided that conduct of an 'Aeronautical Study' should be subject to a fee of Rs.20,00,000/- + applicable GST. The petitioner is willing to bear the requisite charges and also undertakes to abide by the findings of the Aeronautical Study.

57. With reference to Clause 6.2⁵ of the Aeronautical Study Guidelines, as outlined in the Aerodrome Safeguarding Circular (ADSAC) 05 of 2020, it is evident that the same is in derogation of the provisions of GSR 751 (E). As set out hereinabove, a careful examination of GSR 751 (E) reveals that there is no blanket restriction or embargo in conducting an Aeronautical

⁵ 6.2. The appeal for the aeronautical study shall not be considered under the following circumstances:

6.2.1. The appellant has violated any of the terms and conditions of the duly issued NOC, including the permitted top elevation.

6.2.2. The NOC was not duly issued i.e. the data provided by the applicant for the issuance of NOC was incorrect.

6.2.3. The appellant has not applied for issuance of NOC, to the concerned Designated Officer of AAI.

6.2.4. Building or the structure has already been constructed above the permitted top elevation or the same has already identified as an obstacle by the airport operator.

6.2.5. Any other circumstance, not considered appropriate by the Member (ANS) AAI or the Chairperson of the Appellate Committee.



Study to determine the maximum permissible height of the structures, solely on account of absence of a No Objection Certificate (NOC) issued by the AAI. As such, Clause 6.2 (supra) cannot be read/ construed in a manner which is inconsistent with or at variance with GSR 751 (E). It cannot also be construed as creating or introducing an embargo or restriction, which cannot be found in the statutory rules viz. GSR 751 (E). In the event of any inconsistency or repugnancy, the statutory rules viz. GSR 751 (E) would necessarily prevail.

58. In this regard, reference may be made to the judgment of the Supreme Court in ***Bharathidasan University & Another v. All India Council for Technical Education & Others***, 2001 SCC OnLine SC 1138 in which it has been held as follows :-

“14. The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within its confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack. It would, therefore, be a myth to state that Regulations made under Section 23 of the Act have “constitutional” and legal status, even unmindful of the fact that any one or more of them are found to be not consistent with specific provisions of the Act itself. Thus, the Regulations in question, which AICTE could not have made so as to bind universities/UGC within the confines of the powers conferred upon it, cannot be enforced against or bind a university in the matter of any necessity to seek prior approval to commence a new department or course and programme in technical education in any university or any of its departments and constituent institutions.”

(emphasis supplied)



59. In the circumstances, this Court finds no impediment to conduct an Aeronautical Study at the petitioner's expense. The impugned order issued by the Appellate Committee, inasmuch as it denies the same, is set aside. The Appellate Committee is directed to consider the findings of the Aeronautical Survey/Study which is directed to be conducted, and pass a fresh order determining the maximum permissible height for the petitioner's structure after taking into account the findings of the Aeronautical Survey/Study. The Appellate Committee shall also take into account its order/s passed in respect of other structure/s in the vicinity of the petitioner's structure.

60. The present petition stands disposed of in the above terms. Pending application also stands disposed of.

SACHIN DATTA, J

FEBRUARY 24, 2025/sv/at