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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2946/2020**

AIR TRAFFIC CONTROLLERS GUILD (INDIA)

..... Petitioner

Through: Mr.Piyush Sanghi, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms.Anjana Gosain, Ms.Himanshi &
Ms.Shalini Nair, Advs. with
Mr.Anand Pandey, ADRI, DGCA.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **03.09.2020**

This petition has been heard through video conferencing.

CM APPL. 21493/2020 (Exemption from filing notarized affidavit and affixing of court fee)

1. This application has been filed seeking exemption from filing duly notarized affidavit and affixing requisite court fee. Binding the deponent of the affidavit to the contents of the application, the exemption is granted.
2. Court fee shall be deposited online with the concerned authority within one week and physical stamp be filed within 72 hours from the date of resumption of regular functioning of the Court, as mandated in terms of Office Order dated April 04, 2020 issued by this Court.
3. Application is disposed of.

CM APPL. 21492/2020

1. This application has been filed seeking modification of the order dated 23.03.2020 passed by this Court. This Court, after taking note of the

outbreak of COVID-19 pandemic and risk attached thereto, in relation to the Breath Analyzer Test directed as under:

- “i. The DGMS (Air), Delhi shall immediately convene a meeting of the DGCA, AAI, Ministry of Civil Aviation, including any doctors or medical specialists tomorrow i.e., 24th March 2020 or at the earliest possible convenience to draw up an alternative protocol for conducting breath analyser tests on ATCs;*
- ii. The Breath Analyser Test currently being conducted shall remain suspended with immediate effect at all airports till further orders;*
- iii. The Petitioner and all its members shall abide by the assurance to the effect that they appreciate the critical nature of their duty and undertake that they would not report to work under the influence of alcohol;*
- iv. An undertaking and a self-declaration shall be obtained under the signature of each ATC who reports to work;*
- v. Any violation of the undertaking and self-declaration given by the Petitioner and/or its members shall entail severe consequences including suspension of the licence;*
- vi. The DGMS shall draw up the new protocol to be followed until the spread of COVID-19 abates;*
- vii. DGCA is however permitted to conduct any other way of testing which is not invasive in nature and which does not increase the chance of spreading of COVID-19. Urine/blood testing, if opted for as the method of testing, shall be done by using disposable syringes and/or sterilised equipment, in a 2% randomised sample, until the new protocol is framed so that any violation of the self-declaration or undertaking can be detected;*
- viii. AAI shall provide any facilities that may be needed*

for the DGCA to implement the above directions.”

2. The respondents have filed the present application praying for modification of the above order on the basis of the Medical Report dated 16.06.2020, which has observed as under:

(a) The DGMS (Air) and other Air Force Medical Officers who attended the meeting with DGCA reps and AAI rep are of the considered opinion that the conduct of Breath Analyser Test is the most efficient and reliable method of detecting alcohol in breath. Rest of the methods are neither practical nor reliable keeping in view of the specific requirements of Civil Aviation.

(b) Complete suspension of BA Test may prove counterproductive and hence not advisable. However, considering the extraordinary situation of COVID-19 outbreak, the BA Test in the current frequency may be suspended for a limited duration. As a deterrent measure, random tests in a day may be conducted by the organisation concerned with all precautions prescribed by the DGCA. The machine used for such random tests shall not be used for next 12 hours after the conduct of one test. Besides the random test, the authorities may also test any person who is suspected to have consumed psychoactive substance.

(c) During such suspension period, every ground crew may be directed to submit an undertaking that he/she is not under the influence of alcohol at the time of reporting for duty and has not consumed alcohol in the last 12 hours.”

3. The learned counsel for the respondents submits that pursuant to the order passed by this Court and keeping in view the risk involved with the

general outbreak of the COVID-19 pandemic, the Breath Analyser Test on pilots were conducted at random, while for the Air Traffic Controllers (ATCs) they were completely stopped. She submits that the Medical Board has observed that the conduct of the Breath Analyser Test is the most efficient and reliable method of detecting alcohol in the breath. It also suggested precautionary measures to be put in place for reducing the risks involved.

4. On the other hand, the learned counsel for the petitioner submits that the Report filed on record does not seem to suggest consideration of other methods for conduct of Breath Analyser Test. He further submits that instead of machines not being used for 12 hours after one test, they may be used only after at least 24 hours.

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

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

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

8. The petitioner shall, however, be at liberty to give suggestions/representations to the respondents with regard to further precautionary measures that can be taken.

9. The application is disposed of.

W.P.(C) 2946/2020

List as per the general direction of listing of Delhi High Court.

NAVIN CHAWLA, J

SEPTEMBER 3, 2020/rv