

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Ahmed Ali M. Shaikh, CJ
Mr. Justice Yousuf Ali Sayeed

CP No.D-1369 of 2021

Directions:

For orders as to maintainability of the petition.

02.09.2021

Dr. Shafaat Nabi Khan, Advocate for Petitioners M/s Air Indus (Pvt) Limited.

AHMED ALI M. SHAIKH, CJ.- Through instant Petition, Petitioners seek suspension of operation of Final Notice dated 25.01.2021, issued by the Respondent Civil Aviation Authority, Karachi. Paragraphs 2 and 3 of the said notice are reproduced hereunder:-

“2. Without prejudice, it is underscored that despite finalization of reconciliation process, you M/s Air Indus did not make payment of CAA Outstanding Dues with respect to Non-Aeronautical Charges of Rs.52,031,361/- and aeronautical charges of Rs. 3,168,117/- (as of 12th January, 2021), which has resulted in continuous accumulation of dues.

3. Therefore, you M/s Air Indus are finally advised in your own interest to clear all CAA Non-Aeronautical and Aeronautical dues within fifteen (15) days from receipt of this final notice, failing which CAA will be constrained to take necessary action including cancellation of all allotments and taking over of all premises at CAA Airports. You may also visit the office of the undersigned in person in case of any query, clarification and clearance of the outstanding dues within the above mentioned stipulated time.”

2. Briefly facts of the case are that Petitioners M/s Air Indus (Pvt) Limited are a private limited company registered with the Security and Exchange Commission of Pakistan. In the year 2011 Regular Public Transport (**RPT**) License, under relevant Rules, was issued to the Petitioners. In July, 2013 they commenced their operation with a fleet of three Boeing 737-300 Aircrafts. Unfortunately, in June, 2014 terrorists attacked the Jinnah International Airport, Karachi, badly damaging Petitioners’ two airworthy Aircrafts parked at the maintenance bay under the protection and safety of Respondent Civil Aviation Authority. According to the pleadings, despite the said huge loss the Petitioner kept on paying all CAA dues even in non-operational days but they kept on raising rental bills without renewing the license while operation of the

Petitioners have been suspended since 2015. The Petitioners, however, received a letter from the Respondent dated 22.01.2021 read with letter dated 18.12.2020, mentioning that Petitioners' request has been forwarded to Billing and Revenue Section, JIAP for provision of Reconciliation Statement of Rs.45,010,430/-. Per averments made in the memo of Petition, the Respondent vide Final Notice dated 25.01.2021 has enhanced the outstanding dues from Rs.45,010,430/- to Rs.52,031,361/- without any legal/plausible justification.

3. Learned counsel for the Petitioners submits that operations of the Petitioners have been suspended since 2015 and the Respondent CAA instead of reconciling the account and providing details of outstanding Rs.45,010,430/- as also requested in Petitioners' letter dated 29.11.2020, has unilaterally enhanced the dues to Rs.52,031,361/-. He submits that under the garb of impugned final notice the Respondents are attempting to take over all premises allotted to the Petitioners at CAA Airport. Learned counsel also submits that earlier Petitioners filed a CP No.D-5329 of 2017, seeking suspension of operation of notice dated 12.07.2017, issued by the Respondent. He has placed on record a photocopy of the order dated 09.05.2018 passed by this Court in aforesaid Petition.

4. We have heard the learned counsel for the Petitioners and perused the material available on record, including the photocopy of aforesaid order dated 09.05.2018. The concluding paragraph of the said order reads as under:-

“Since the responsibility and task to renew the license vests in the Aviation Division, Government of Pakistan, therefore, they would be in a better position to decide and adjudge the issue in accordance with law. However, it has been agreed by consent that the petitioner shall submit all relevant documents to the concerned office of the Civil Aviation Authority (CAA), where all the documents shall be examined and scrutinized with an ample opportunity of hearing to the Petitioner's Chairman/CEO. In the meeting the chairman of petitioner's company shall point out compliance of all necessary requirements according to the checklist and after due satisfaction, the matter will be referred to the Aviation Division, Government of Pakistan. If everything is found in order, license shall be renewed within a period of one month. Copy of this order may be transmitted to the learned DAG., who will ensure compliance after sending the matter by the Civil Aviation Authority to the Aviation Division, Government of Pakistan. When the matter will be forwarded to the Aviation Division, Government of Pakistan, the Director General, CAA, shall also transmit a copy of said letter to the learned D.A.G. for information.”

Perusal of the impugned Final Notice dated 25.01.2021, prima facie, reveals that despite finalization of reconciliation process the Petitioners have failed to make payment of Respondent CAA's outstanding dues. However, the notice provides opportunity to visit the office of the CAA in person for clarification and clearance of outstanding dues. There is nothing on record that pursuant to the aforesaid notice the Petitioners have approached the Respondent CAA for clarification, etc. Besides, while exercising powers under Article 199 of the Constitution this Court cannot resolve the subject controversy of reconciliation of accounts. In the circumstances, instant Petition alongwith pending Application stands dismissed leaving the Petitioners at liberty to avail remedy provided under the law, if so advised.

Chief Justice

Judge