

I N D E X

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2.	ANNEXURE A-1: A copy of the registration certificate of the Applicant.	

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

(Public Interest Litigation)

I.A. NO. OF 2020

IN

CIVIL WRIT PETITION (Civil) NO. OF 2020

IN THE MATTER OF:-

Pravasi Legal Cell ...PETITIONER

Vs.

Union of India and Anr. ...RESPONDENTS

And in the matter of:-

Travel Agents Federation of India

A society registered under the

Societies Registration Act, 1860

having its registered address

at 710/711, The Avenue,

International Airport Road,.

Opposite Leela Hotel

Andheri (East) Mumbai 400059

through its President

Mr Pradip Lulla ...APPLICANT

AN APPLICATION FOR INTERVENTION

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE APPLICATION OF THE APPLICANT ABOVE NAMED.

MOST RESPECTFULLY SHOWETH AS UNDER:-

1. That the Petitioner above named has filed the present writ petition, seeking a declaration that the action of the airlines, operating Domestic as well as International commercial Air travel, in refusing to refund the full amount collected for tickets booked by the passengers and cancelled by them on account of cancellation of flights, in the wake of restrictions imposed by the Government of India to contain Covid19, is arbitrary and in violation of the Civil Aviation Requirements issued by the DGCA. The Petitioner has also sought directions from this Hon'ble Court, to the Respondents to issue appropriate directions to the airlines to facilitate the refund of the amounts so collected to the passengers. The Petitioner has also brought to the notice of this Hon'ble Court some of the ambiguities in the Office Memorandum issued by the Respondents vide Orders dated 16.4.2020 and 19.4.2020, which are being used by the airlines to avoid payment of refund as sought by the passengers towards cancellation of flights.

2. This Hon'ble Court, vide its Order dated 27.4.2020, was pleased to issue notice to the Respondents and was further pleased to record that the instructing counsel of the Ld. Solicitor General has accepted the said notice, on behalf of the Respondents.

3. The Applicant herein, is a Federation of the Travel Agents in India, having as many as 1400 active, associate, allied and affiliate (travel service intermediaries – non-IATA) members from all over India. The Travel Agents Federation of India (TAFI) was established in 1986. It is a professional body of travel agents coordinating different segments of the travel trade and is a non-political, non-commercial and not-for-profit body. The Applicant is also a member of World Travel Agents Associations Alliance (WTAAA) and an affiliate member of the Southern African Tourism Services Association (SATSA). The Applicant also represents the travel trade before official bodies of government, airlines and other appropriate forums and augments the development of the travel industry in India by encouraging improvement in the standard of service, inculcating professionalism and spreading awareness and updated information on travel and regulations. It protects the interests of those engaged in the industry by highlighting the need to maintain high ethical standards and ensuring compliance of rules, regulations and guidelines set by the consulates, government authorities and airlines. Hereto annexed and marked as **ANNEXURE A/1** at pagesis a copy of the certificate of registration of the Applicant federation.
4. It is submitted that while appreciating the plight of the ultimate consumers ie the passengers who had directly booked their tickets from the airlines etc, as brought to the notice of this Hon'ble Courtvide the present writ petition, it is also important to note that there are many passengers who have booked their flights through travel agents, including members of the present applicant. The flight booking process through travel agents is distinct from passengers booking directly from the airline. The Government of India, in its wisdom and in complete fairness, has issued Office Memorandum dated 16.4.2020 issuing advisories to the airlines to refund money received by the airline from passengers, against the

cancellations of flights, on account of the ban issued by the Government of India, on operation of all domestic and international flights during the period of lockdown.

5. The Applicants state that in para 3(i) of the Office Memorandum dated 16.4.2020, the Government has advised airlines to refund to the passengers, money received for bookings made during the first lockdown period i.e. 25.3.2020 till 14.4.2020, in cases where such refund is sought by the passengers. Vide para 3(ii), it has been further advised money to be refunded to the passengers for tickets booked by them during the period of the first lockdown i.e. from 25.3.2020 till 14.4.2020 for travel during the period of the second lockdown i.e. from 15.4.2020 till 3.5.2020, in cases where such refund is sought by the passengers.

6. At the outset, the applicant wishes to place on record its appreciation of the steps taken by the Respondents in understanding and appreciating the plight of consumers in these trying times, and facilitating return of money blocked in the form of airline tickets, of which the travel itself stands cancelled. However, the office memorandum is ambiguous and stops short of offering an effective and complete resolution to the plight of the passengers. Firstly, the refund directed to be made vide the OM, is related only to the time of booking and not related to the date of travel. Hence the OM has excluded from its ambit, relief to such passengers who have made

the booking prior to the lockdown period for their travel during the lockdown period, of course, at the time of making the booking, being oblivious to the fact that such a lockdown situation is going to emerge during their proposed travel. It is highly improbable that passengers would go ahead and make payments towards booking flights, despite being aware of the ban on domestic and/or international flights. Thus the OM has fallen short of providing meaningful relief to passengers who have booked tickets for travel during the lockdown period, be it the first or the second ensuing lockdown period. The consideration for refund must necessarily be the inability of the passenger to travel during a particular period, on account of the ban on air travel, leaving them no alternative other than to cancel their bookings.

7. Secondly, the OM has also failed to consider and include within its ambit the plight of the members of the Applicant federation as well as other travel agents. A travel agent makes the bookings on behalf of the passengers in two ways. In so far as regular flights are concerned, the payments towards tickets have to be made to the International Air Transport Association (IATA) which is a trade association of the world's airlines. Once a ticket is issued, the airline raises a bill and within a window of 7-10 days, the travel agent has to make the payments towards the tickets issued. The travel agent makes the payment to the IATA which distributes the money to the

concerned airline. The most important aspect for consideration is that although, the travel agent, has to make the payment immediately, the travel agent normally gives credit for making payment to the passenger and the passenger is permitted to make the payment to the travel agent at a later date, as per the continuing business practice.

On the other hand, while making bookings on behalf of its customers, in so far as Low Cost Carriers (LCC's) are concerned, these airlines, such as GoAir, Indigo, Spice Jet or AirAsia etc, do not give any window to the travel agents to make payments towards tickets booked and in fact are required to make advance payments in the bank accounts of the airlines, maintained by the airline of individual travel agents, for that purpose. Hence the travel agents are required to maintain advance deposits of some fixed amounts in the airline accounts towards payments of the tickets issued at a later date, at which time, the ticket price is debited from the said bank account. Thus the LCC's have already debited the amounts for tickets booked for travel of passengers during the lockdown periods and have refused to refund the same to the travel agents. In such circumstances, the funds of the travel agents have been blocked since the passengers, on whose behalf the tickets have been booked and payment made, have not deposited the amounts towards the tickets with the travel agents.

8. It is submitted that the members of the applicant are therefore suffering great financial hardships as crucial funds remain blocked with the airlines, for travel not undergone and in fact which has been cancelled. The Air lines, instead of fairly refunding the payments made, have offered a credit shell, valid for a specified time, i.e instead of refunding the amounts received by the airline, against cancellation of travel during the lockdown, the airlines have offered to reschedule the travel on any date at the option of the passengers, upto a specified time. This offer is neither acceptable to the passengers nor to the members of the Applicant. The passengers, directly or through travel agents, in many cases, have made group bookings or corporate bookings or even individual bookings to travel to a particular destination, on a particular date, to attend a particular event, such as a corporate conference or wedding or other such specific event. In such case, a reschedule of the ticket is of no use to the passenger, since the said event itself for which the travel was to take place has been cancelled. In the circumstances, the passenger cannot be compelled to accept a credit shell instead of receiving a full refund towards cancellation of the tickets. There are also cases where a passenger has booked tickets with a particular airline to a particular destination and another airline for the forward journey to further

destination. Further cases where return tickets have been booked for the travel to commence during the lockdown but returning journey is at a date when the ban on air travel, no more subsists. In such cases also offering credit shells is of no use to the passenger and the only relief can be a full refund in lieu of cancellation of tickets.

9. It is submitted that the most effective and practical resolution to the aforesaid issues is that the air lines to be directed to refund money received by them for travel during the period of the ban on air travel. The refund should be made in the same manner and channel through which the payments for the tickets have been received by the airline. Such directions would secure fair and expedient justice and avoid locking up of funds of the passengers as well as the members of the Applicant herein. In any case, the practice prevailing in respect of refund of funds in lieu of cancellation of tickets, as per the Civil Aviation Requirements, (CAR) issued by the DGCA, vide letter dated 22.5.2008, in public interest and as per Rule 133A of the Aircraft Rules and Ministry of Civil Aviation Order no. AV 13030/105/2007-DT dated 12.5.2008, provides for refund to be made in cases of cancellation of tickets and provides for the option of holding the refund amount

in credit shell by the airlines to be the prerogative of the passenger and not a default practice of the airline. The said letter dated 22.5.2008 appears as annexure P/8 of the writ petition filed by the Petitioner and has not been reproduced to avoid repetition.

10. Considering all above true facts and circumstances, it is clear that the OM dated 16.4.2020 issued by the respondents and already the subject matter of the writ petition pending before this Hon'ble Court, is ambiguous and has failed to consider the plight of the members of the Applicant herein. The Applicants are also accountable for the money taken by them towards tickets booked by them, on behalf of their customers/passengers. The said OM has also failed to provide relief to passengers directly or through the Applicant members, as the case may be, in relation to the travel date and has restricted relief related to the booking date, which has discriminated between the passengers who have booked flights during the ban on air travel and those who had booked earlier but the travel date falling during the period of such a ban on air travel. There is no rationale for the said discrimination as all the passengers and travel agents who have already paid money to the airline stand to suffer on account of cancelled booking due to the ban issued by the Government. of India. The Applicants thus have an active and substantial interests in the outcome of the present proceedings. In these circumstances, it has become just, fair, proper and

necessary, in the interests of justice that the intervenor/ applicants be permitted to intervene and also file an affidavit, if necessary. Thus, the Applicants are making the present Application for the reliefs as prayed.

11. The Applicant submits that they are thus desirous of assisting this Hon'ble Court. The Applicants wish to place on record that they are not desirous of creating adversarial litigation but have sufficient and substantial interest in the refund to be directed by the Respondents to the airline, to be made in the same manner and channel in which the payments have been initially made. Considering all the above genuine and legitimate concerns, the Applicant is seeking to intervene in the present matter and craves permission to place its views before this Hon'ble Court during the hearing of the present petition.

PRAYER

The Applicant, therefore, most respectfully prays that this Hon'ble Court may kindly be pleased to:

- A. Allow the Applicant to intervene in the present Writ Petition;
- B. Allow the Applicant to file additional affidavit, if deemed appropriate by this Hon'ble Court;
- C. Pass any other just and reasonable orders to meet the ends of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER ABOVE NAMED, AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY :

FILED BY

Neela Gokhale/Harshawardhan Bhende

Advocates

Ananya Ghosh

ADVOCATE ON RECORD

Drawn on: .5.2020

Filed on: .5.2020