

(2010) 08 MAD CK 0168

Madras High Court

Case No: Writ Petition No. 14326 of 2010

Paramount Airways Private Ltd.

APPELLANT

Vs

The Director General, Director
General of Civil Aviation and The
Ministry of Civil Aviation

RESPONDENT

Date of Decision: Aug. 3, 2010

Acts Referred:

- Aircraft Rules, 1937 - Rule 30(6)
- Civil Procedure Code, 1908 (CPC) - Section 13, 151
- Constitution of India, 1950 - Article 19(1), 226, 32

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: T.V. Ramanujam for T.K. Bhaskar, for the Appellant; M. Raveendran, Addl. Solicitor General for A.S. Vijayaraghavan, Sr. Central Government Standing Counsel, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

By consent, the writ petition is taken up for disposal. This writ petition is filed, challenging the order in

AV.14015/01/05-AT.1, dated 02.07.2010, passed by the 1st respondent.

2. The case of the petitioner as put forth in the affidavit would run thus:

(i) On 29.07.2005, the petitioner entered into three Aircraft Specific Lease Agreements (hereinafter referred to as ASLA) with Celestial Aviation

Trading 71 Limited (Celestial Aviation) under which the following three Aircrafts were leased in favour of the petitioner.

A. MSN 17000126 VT-PAD

B. MSN 17000137 VT-PAE

C. MSN 17000147 VT-PAF

Simultaneously, with the execution of the said ASLA, the petitioner also entered into a common Terms Agreement (hereinafter referred to as CTA)

with M/s. GE Commercial Aviation Services Ltd. (GECAS), under which Celestial Aviation would play the role of a lease manager in respect of

the aforementioned Aircrafts. In 2006, pursuant to the execution of the said Lease Agreements, the Aircrafts were handed over to the petitioner

and since then, the petitioner has been in possession and control of the Aircrafts. From 2006 onwards till September 2009, all rentals and dues

were duly paid by the petitioner to GECAS.

(ii) On 02.09.2009 and 17.09.2009, GECAS served an Urgent Default Notice upon the petitioner, alleging therein that the petitioner had defaulted

in paying the agreed rent under the CTA & ASLA. Subsequently, GECAS issued another Default Notice on the petitioner, stating that the

petitioner had failed to maintain the Aircraft bearing S. No. 17000137 in good operating condition and had removed various parts from the

aircraft. On the basis of the said allegation, GECAS also contended that an event of default had occurred in terms of the Aircraft Lease Common

Terms Agreement dated 29.07.2005 and therefore, sought to terminate the leases. On 25.09.2009, a Grounding Notice was issued by

GECAS/Celestial Aviation in respect of the aircrafts leased to the petitioner prohibiting the Aircrafts from flying. On 05.10.2009, Notice of

continuing Event of Default and Warning was issued by GECAS/Celestial Aviation to the petitioner. The petitioner, in response to the aforesaid

two notices stated that as per the contract between the parties, the petitioner is also entitled to a refund to the tune of about US\$ 1.27 million.

GECAS/Celestial Aviation had a security deposit worth about US\$ 5 million and in addition, the petitioner was also maintaining a further safety

deposit in the form of maintenance reserve for about US \$ 10 million. Further, more than 65% of the amounts claimed by had already been paid

and acknowledged. The petitioner, by way of the response had claimed offset of the amounts due to it to be adjusted against any rental due from

the petitioner to GECAS/Celestial Aviation. On 14.10.2009, GECAS issued a notice of termination purporting to terminate the Lease

Agreements, CTA and ASLA, and called upon the petitioner to stop using the Aircraft and handover the possession of the same. The Letter of

Credit was also encashed and GECAS realized an amount of approximately INR 8 crores.

(iii) On 15.10.2009, Celestial Aviation filed a claim form before the High Court of Justice, Queens Bench in London seeking a declaration that the

termination of the lease agreement is valid and for a direction that the petitioner should have over to it the possession of the Aircrafts, Celestial

Aviation had, in accordance with the laws of England, requested for a summary judgment, wherein, the court delivered a judgment solely based on

the pleadings, without conducting a regular trial. On 17.10.2009, the petitioner issued replies to the notices sent by GECAS.

(iv) The Director General of Civil Aviation (DGCA), on 19.11.2009, informed the petitioner of having received a letter dated 13.11.2009 from the

representatives of GECAS requesting them to de-register the leased aircrafts and also asking the petitioner to give their comments on the same.

The said letter was suitably replied to by the petitioner on the same date. On 30.11.2009, the petitioner received another letter from DGCA

providing with a last opportunity to the petitioner to offer their comments with regard to de-registration of the leased Aircrafts. The petitioner

replied on the same day informing the DGCA that they had preferred a Writ Appeal No. 1704 of 2009, before the Hon"ble Division Bench of this

Court and also informed them of the request made before the High Court at Madras, to grant them two weeks" time to file a detailed reply. Vide

the said reply, the petitioner specifically pointed out that there was on-going proceedings before the High Court of Justice at London pertaining to

declaration that a valid termination of lease has occurred and that therefore the matter is sub-judice in relation to the validity of the termination. The

petitioner sought some more time to file a detailed reply considering the above facts. On 30.11.2009, a draft order was circulated by the Queen"s

Bench Commercial Division Court in London.

(v) On 02.12.2009, the petitioner issued a detailed reply to the DGCA reiterating that the matter was sub-judice and that the termination of the

lease agreements was not valid and again sought a personal hearing. On 04.12.2009, the DGCA passed an order cancelling the registration of the

Aircrafts leased to the petitioner with immediate effect, without waiting for the decision of the Queens Bench Division, London. On the same date,

the High Court of Justice, Queens Bench, London passed an order in which it refused to grant declaration that the lease agreement was validly

terminated and that the GECAS/Celestial Aviation are entitled to re-possess the Aircrafts. On 07.12.2009, the petitioner preferred W.P.(C) No.

13678 of 2009 along with an Application for stay before the Hon"ble High Court, Delhi against the order of the DGCA dated 04.12.2009. On

07.12.2009, the learned Single Judge of the High Court stayed the operation of the order dated 04.12.2009.

(vi) The Queen's Bench Division arrived at a conclusion on 11.02.2010 that it could not grant the relief against forfeiture to the petitioner on

various grounds. The petitioner sought permission to appeal against the order dated 12.02.2010 passed by the Queen's Bench Division

Commercial Court, London before the Appellate Court in London challenging the findings of the court and praying for a stay of the order passed

by that Court. Subsequently, on 05.03.2010, the Appellate Court in London stayed the operation of the order dated 12.02.2010, while imposing

certain conditions upon the petitioner, which were to be complied with by the petitioner for the stay to operate. The petitioner was granted a time

frame up to 10.03.2010 for compliance with the said conditions.

(vii) On the basis of the orders dated 11.02.2010 and 23.02.2010, GECAS/Celestial Aviation, on 05.03.2010 approached the learned Single

Judge of the Delhi High Court u/s 151 of the CPC for vacation of stay of the order dated 07.12.2009, staying the order of the DGCA. Due to

regulatory constraints imposed by Indian Foreign Exchange Laws, the petitioner was unable to comply with the conditions of stay imposed upon it

despite sufficiency of funds. The petitioner was therefore constrained to file an application for modification of the conditions of stay before the

Appellate Court in London on 12.03.2010. On 15.03.2010, the petitioner brought to the notice of the learned Single Judge of the Delhi High

Court, the application for modification filed by the petitioner before the Appellate court in London as also a suit filed by the petitioner before the

Chennai High Court, filed on 11.03.2010 for a declaration that the termination was invalid. The petitioner's application for vacation of stay filed by

GECAS/Celestial Aviation was allowed and further proceeded to dismiss the writ petition of the petitioner.

(viii) According to the petitioner, even assuming without admitting that DGCA was entitled to act pursuant to the decision of the Queens Bench

Division, it is submitted that in order for that decision to be effective as against the petitioner, it had to pass the test of Section 13 of the CPC. The

DGCA could only have proceeded against the petitioner once this test was satisfied. Therefore, the petitioner preferred a Writ Petition before this

Court in W.P.(C) No. 5283 of 2010 on 15.03.2010 praying for restraining the DGCA from proceeding to de-register the aircrafts of the

petitioner. The said writ petition was dismissed by this Court on 18.03.2010 by the learned Single Judge holding that the petition was not

maintainable in the light of the order dated 15.03.2010 passed by the Delhi High Court in W.P.(C) No. 13678 of 2009. On the same day, i.e.

18.03.2010, the petitioner preferred a Writ Appeal in W.A. No. 546 before the Division Bench of this Court against the order of the learned

Single Judge of this Court and the Division Bench, after hearing the petitioner's contentions, was pleased to direct the DGCA herein to permit the

petitioner to fly its aircrafts until 3.00pm on 19.03.2010 and permitted the petitioner to approach the Delhi High Court in appeal against the order

of the learned Single Judge of the Delhi High Court.

(ix) In view of the above direction of the Division Bench of this Court, the petitioner on 18.03.2010 itself, preferred L.P.A. No. 198 of 2010

before the Delhi High Court against the judgment and order dated 15.03.2010 passed by the learned single Judge of the Delhi High Court in W.P.

(C) No. 13678 of 2009, on the grounds that the learned Single Judge of the Delhi High Court had failed to appreciate that the order dated

04.12.2009 was passed by the DGCA in violation of the petitioner's rights under the principles of natural justice as well as other grounds. The

Division Bench of the Delhi High Court heard and disposed of L.P.A. No. 198 of 2010 on 22.03.2010 on the basis that the order of DGCA

dated 04.12.2009 was passed without granting a proper hearing to the petitioner herein and the DGCA therefore, was directed to grant the

petitioner an opportunity of hearing in the matter in the nature of a post-decisional hearing.

(x) Aggrieved over the said order passed by the Division Bench of the Delhi High Court dated 22.03.2010, the petitioner preferred S.L.P.(C) No.

9519 of 2010 before the Supreme Court praying to set aside the order of the Division Bench of Delhi High Court on the grounds that an order for

post-decisional hearing would not serve the purposes of justice especially in the light of the fact that the direction had been passed by the Division

Bench after considering the petitioner's contentions as to violation of principles of natural justice.

(xi) In accordance with the order dated 22.03.2010 passed by the Division Bench of the Delhi High Court and without prejudice to the rights of

the petitioner in S.L.P.(C) No. 9519 of 2010, the petitioner appeared before the DGCA on 25.03.2010 for a post-decisional hearing further to

the order dated 04.12.2009. As on previous occasions, the petitioner yet again requested the DGCA to provide a copy of the request for de-

registration made by GECAS/Celestial Aviation. Yet again, the request was not adhered to by the DGCA. The petitioner put forth its case before

the DGCA on the principles of natural justice, grounds of non-provision of fair hearing, non-issuance of a proper show cause notice and non-

provision of the relevant documents relied upon in the show cause notice. The petitioner also submitted written submissions before the DGCA. On

29.03.2010, the DGCA passed an order sustaining its earlier order dated 04.12.2009, inter-alia, relying on the provisions of the Cape Town

Convention which has not been incorporated into Indian law in any form.

(xii) In view of the decision of the DGCA after granting of the post-decisional hearing, the SLP filed by the petitioner before the Supreme Court

was dismissed. Therefore, the petitioner was constrained to file a writ petition under Article 32 of the Constitution of India on 30.03.2010, being

W.P.(C) No. 127 of 2001, inter-alia, on the basis that the petitioner's rights under Article 19(1)(g) has been violated. The said writ petition is still pending before the Supreme Court.

(xiii) Prior to the order of the 1st respondent dated 04.12.2009, the petitioner was operating 5 Embraer 170 aircrafts, being the aforesaid 3

aircrafts leased from GECAS and 2 aircrafts bearing numbers VT-PAB (MSN: 17000005) and VT-PAC (MSN: 17000002) leased from one

ECC Leasing Company Limited. On 06.04.2010, the 1st respondent issued show-cause notice to the petitioner calling upon it to show cause as to

why its Scheduled Operator's Permit No. S-17 dated 14.10.2005 should not be suspended, within 3 working days from the date of issuance of

the notice. The said show cause notice was issued pursuant to the Civil Aviation Requirements, wherein, C.A.R, Section 3, Series C, Part II, Para

3.2.3 reads provides as follows:

Before the Scheduled Operator's Permit is issued, an applicant shall have a fleet of minimum five aeroplanes or five multi-engine helicopters either

by outright purchase or through lease. The aeroplanes shall be of maximum certified takeoff mass of more than 5,700 kg and type certified meeting

the requirements of transport category aircraft acceptable to DGCA....

(xiv) The petitioner replied to the said Show Cause notice vide its letter dated 09.04.2010 based on the following points:

(a) Although Certificate of Registration of 3 of its 5 Aircrafts have been de-registered, the petitioner's writ petition under Article 32 of the

Constitution of India before the Supreme Court challenging the said de-registration is still pending disposal.

(b) The petitioner has entered into purchase agreement with Airbus directly for purchase of ten numbers of A-321 Aircrafts and two numbers of

Embraer Aircrafts from Golden Lotus Leasing Corporation.

(c) The petitioner has entered into a lease agreement with M/s. Golden Lotus Leasing Corporation for lease of 3 numbers of A-320 and 2

numbers of A-319 aircrafts.

(d) The petitioner has submitted an application to the Ministry of Civil Aviation for obtaining NOC for import of aircrafts on 25.01.2009.

(e) In the meanwhile, the petitioner also finalised agreements to bring 3 Aircrafts on short-term Wet-Lease basis.

(xv) The petitioner would further submit that despite furnishing all relevant documents in support of the above grounds, the 1st respondent

proceeded to suspend the Schedule Operator's licence of the petitioner vide order 16.04.2010. The said order of suspension was in utter violation

of an order of injunction dated 14.12.2009 operating against the 1st respondent in W.P. No. 25901 of 2009. The 1st respondent was constrained

to revoke the said order of suspension vide letter dated 01.05.2010 after the petitioner issued a notice of contempt for violation of the aforesaid

order in W.P. No. 25901 of 2009. The writ petition in W.P. No. 25901 of 2009 was filed by the petitioner challenging another Show Cause

notice issued by the 1st respondent pertaining to de-registration of the petitioner's two aircrafts leased from ECC Leasing Company Ltd.

Subsequently, on 19.06.2010, this Court was pleased to dispose of the said writ petition with a direction to the 1st respondent to consider and

dispose of the show cause notice in accordance with law.

(xvi) The petitioner has already entered into a Wet Lease Agreement with M/s. Jagson Airlines for operating three Dornier Aircrafts bearing

Registration No. VT-EUM, VT-ESS and VT-ESQ. The petitioner is in possession and operating two other aircrafts leased from ECC Leasing

Company Ltd. Therefore, the petitioner, even at present, is having rights over 5 aircrafts. The petitioner gave a representation to respondents 1 and

2 for issuing necessary permits from respondents to operate the said aircrafts vide letter dated 20.04.2010. However, it is not able to operate the

three aircrafts taken on Wet lease basis from M/s. Jagson Airlines as the respondents are deliberately delaying granting of necessary permits to

enable the petitioner to use the aircrafts. Apart from the above three aircrafts, the petitioner has entered into a Memorandum of Understanding

dated 21.12.2009 with Airbus for purchase of ten A321 Aircrafts. The petitioner has also entered into a Lease Agreement with Golden Lotus

Leasing Corporation Ltd. for three A320-214 and two 319 Aircrafts. As per the Agreement, all Aircrafts are to be delivered to the petitioner

before November 2010. In terms of the Agreement, the petitioner has paid the Said Golden Lotus Leasing Corporation Ltd. a sum of USD

2,50,000/-. The said payment has been acknowledged by the lessor vide letter dated 05.04.2010.

(xvii) With regard to the import of the said Aircrafts purchased and taken on dry-lease from Airbus and Golden Lotus Leasing Corporation Ltd.,

the Ministry of Civil Aviation has granted "in Principal Approval" for the same. The letter communicating the said approval dated 05.05.2010 from

the Ministry states as follows:

The decision has been conveyed to the Director General of Civil Aviation (DGCA) vide this Ministry's Letter No. AV.13030/1/2010-DT dated

05.05.2010. You are therefore requested to contact the DGCA for further necessary action in the matter.

This important factual matter was not available to the the DGCA at the time of the decision dated 16.04.2010. If this factor is taken note of, then

clearly the substance of the DGCA order dated 16.04.2010 would stand erased.

(xviii) Therefore, the petitioner was constrained to file a writ petition bearing No. W.P. No. 13314 of 2010 seeking a writ of mandamus directing

respondents 1 and 2 to dispose of the representation of the petitioner dated 20.04.2010 and not to take any action against the petitioner till then.

When the said writ petition was first listed before this Court on 25.06.2010, it was represented on the said date on behalf of the respondents that

the matter be adjourned to 29.06.2010 for the respondents' counsel to get instructions on the status of the petitioner's representation. On

30.06.2010, it was represented on behalf of the respondents before this Court that the petitioner's representations for permission to operate more

aircrafts can be considered only after providing certain documents by the petitioner to the respondents. The matter was accordingly adjourned by

two weeks by this Court to enable the petitioner to submit the documents required by the respondents for considering the petitioner's

representation. Although the "In Principle Approval" dated 05.05.2010 has been forwarded by the Ministry on 05.05.2010, no action has been

taken thereon till then. Also, on 24.06.2010, the petitioner sent to the 1st respondent an application for permitting an import of 6 Bombardier Q 400 Aircrafts for which approval had already been obtained from the Ministry.

(xix) At this stage, to the shock and surprise of the petitioner, the 1st respondent proceeded to cancel the schedule operator's permit of the petitioner pursuant to the show cause notice dated 06.04.2010 by way of online order, thereby reinstating the earlier order of suspension dated 16.04.2010, without affording an opportunity of hearing to the petitioner and the same was communicated to the petitioner vide letter dated 02.07.2010. Challenging the said order dated 02.07.2010, the petitioner is before this Court in this writ petition.

3. A common counter affidavit has been filed by the respondents. The respondents would state that the petitioner had gone through a complete chain of litigation starting from W.P.(C) No. 13678 of 2009 in the High Court of Delhi and ending with dismissal of their S.L.P.(C) No. 9519 of 2010 in the Supreme Court and in between, there were also several other steps like L.P.A. and post decisional hearing by DGCA. But, this complete chain of litigation too failed to satisfy them and they still chose to file a writ petition before the Supreme Court under Article 32, which they claim is still pending. The respondents would further state that the reply to the Show Cause Notice received from the petitioner vide their reply dated 09.04.2010 did not contain any defence as per sub-para (a). Even if the petitioner had taken such a defence, it would not have succeeded, as mere pendency of a writ petition is not a valid ground for restraining the executive from proceeding further in a particular matter as per existing law. The registration of the three Aircrafts VT-PAD, VT-PAE, VT-PAF was lawfully cancelled by the 1st respondent, as the lease agreement had been terminated by the lessor and, therefore, the 1st respondent was duty bound to de-register these Aircrafts in accordance with Clause (vi), Sub-rule 6 of Rule 30 of the Aircraft Rules, 1937. The Madras High Court as well as the Delhi High Court have upheld the action taken by the 1st respondent and dismissed the petitions filed by the petitioner against the order of the 1st respondent.

3.1. The respondents would further state that paragraph 3.2 of the Civil Aviation Requirements (in short "CAR") Section 3 Series C Part II dated

1st March 1994, which has been amended from time to time, provides that before the Scheduled Operator's Permit is issued, the applicant shall

have a fleet of minimum 5 aeroplanes or multi-engine helicopters either by outright purchase or through lease. Further 10.19 of the CAR provides

that degradation of the Operator's capability below the required level or breach of any of the requirements of the CAR or of any provision of

Aircraft Act, 1934, Aircraft Rules, 1937, Civil Aviation Requirements, Orders/directions/requirements issued under the said Act or Rules and as

amended from time to time shall render the Operating Permit liable to alteration, suspension or cancellation. The 1st respondent had duly

considered the documents furnished by the petitioner with their reply to the show cause notice, but, it was found that they were nowhere close to

meeting the minimum fleet requirement, as they did not even possess the approval of the Ministry of Civil Aviation for import/acquisition of

additional aircrafts. Merely entering into agreements with some parties does not suffice to meet the requirement. The requirement is not met even

after approval of the Ministry is granted because actual arrival of aircraft takes a long time.

3.2. It is further stated that the subject matter of the Writ Petition in W.P. No. 25901 of 2009 before this Court was the de-registration of two

aircrafts. Whereas, the subject matter of the present writ petition is the suspension of the Scheduled Operators Permit (SOP) issued to the

petitioner. Two different sections or set of officers deal with the subjects relating to re-registration of aircraft and the matters relating to SOP, under

the DGCA. The injunction order dated 14.12.2009 would have been received by the Section of Officers dealing with de-registration. Hence, the

section of Officers dealing with SOP were not aware of the same. Therefore, they proceeded to issue show cause notice dated 06.04.2010, for

which the petitioner submitted its reply on 09.04.2010. The petitioner did not make any reference or mention about the injunction order dated

14.12.2009 in its reply dated 09.04.2010. As the concerned officials were not put on notice about the injunction order dated 14.12.2009, he

proceeded to pass an order suspending the SOP on 16.04.2010, since the petitioner did not meet the minimum requirements, its SOP after

considering the reply. However, when the injunction order was brought to the notice of the officials under the 1st respondent, immediate action

was taken and the order issued vide letter No. AV/14015/01/2005-AT.1 dated 16.04.2010 was revoked on 30.04.2010.

3.3. With regard to the averment in the affidavit that the petitioner had approached the 2nd respondent on 20.04.2010 for permission to wet lease

three Dornier type of Aircrafts from M/s. Jagson Airlines bearing Registration Nos. VT-EUM, VT-ESS AND VT-ESQ, the respondents would

admit that it is true. But, according to the respondents, the intention of the petitioner was merely to circumvent the provision of the CAR as out of

the three Dornier Aircrafts, two i.e. registration No. VT-ESS and VT-ESQ were already grounded w.e.f. 18.10.2006 and 23.08.2004,

respectively, because of expiry of Certificate of Airworthiness. The third Dornier Aircraft registration VT-EUM, was also grounded although a

Certificate of Airworthiness was valid till 03.05.2010, because M/s. Jagson Airlines had been earlier advised by DGCA not to undertake any flight

pending the 24 months and 48 months inspection Schedule, which had not been carried out by the Operator on this aircraft. When the petitioner's

representative was questioned on these issues, they realised that the trick will not work and consequently they modified their proposal and

approached the 2nd respondent on 30.04.2010 seeking permission to wet lease two MI-172 helicopters and one Dornier aircrafts bearing

Registration No. VT-EUM from M/s. Jagson Airlines. The proposal was again a sham as M/s. Jagson Airlines had already contracted the two

MI-172 helicopters to the Government of Arunachal Pradesh. The 1st respondent queried M/s. Jagson Airlines about the availability of these

helicopters for M/s. Paramount Airways, but no reply has been received so far. The respondents would contend that these events clearly indicate

that the petitioner was only playing a game and had no serious proposal for induction of aircraft in their fleet. Thus, they prayed for dismissal of the

present writ petition.

4. Mr. T.V. Ramanujam, learned Senior Counsel appearing for the petitioner argued that the impugned order dated 02.07.2010, passed by the 1st

respondent, reinstating the earlier order of suspension dated 16.04.2010 is legally invalid for the following reasons:

4.1. The earlier suspension order was issued on 16.04.2010 in purported exercise of the powers contained in Para 3.2.3 of the Civil Aviation

Requirements. This order was revoked on 30.04.2010. Thereupon, the respondents became functus officio with respect to the proceedings under

Para 3.2.3 of Civil Aviation Requirements. Therefore, there exists no power thereafter to suo moto "reinstate" or revive an order which has

already been revoked.

4.2. The so-called "Reinstatement Order" is a fresh exercise of power and must therefore be preceded by a Show Cause Notice as set out in the

Rules. The non-issuance of any notice prior to passing of the impugned order vitiates the same on the ground of violation of the principles of natural

justice.

4.3. Between the earlier order of suspension dated 16.04.2010 and the impugned order dated 02.07.2010, there is an intervening event, i.e. the

"In Principle Approval" dated 05.05.2010 issued by the Ministry of Civil Aviation. The sub-stratum of the order dated 16.04.2010 is that, ""their

oral contentions relating to future plans for import of additional aircrafts also have no merit as the process of obtaining Government Approval is

lengthy and may not materialize soon."" The fallacy inherent in this statement stands established by the receipt of the Approval on 05.05.2010. In

the light of this, the sudden ""reinstatement"" of the order dated 16.04.2010, without even a reference to the Approval dated 05.05.2010 is utterly

devoid of reason or legality. Had some kind of opportunity been given, the petitioner would have placed these facts before the DGCA and

satisfied the DGCA that the ground realities based on which the order dated 16.04.2010 had been passed had been fundamentally altered and no

grounds for revival or reinstatement of the order exist.

4.4. He would contend that the show-cause notice dated 06.04.2010 pursuant to which the order dated 16.06.2010 was passed by the 1st

respondent gives only three days to the petitioner i.e. the petitioner has submitted his explanation to the said show cause notice on 09.04.2010.

This is contrary to the provisions of the Aircraft Rules, 1937, which clearly stipulates under Clause 15 of Schedule XI that if the Director-General

is satisfied that there is sufficient ground for doing so, he may, for reasons to be recorded in writing, cancel the permit or suspend it for any specific

period. Before any action is taken under sub-paragraph (1) or sub-paragraph (2), the Director-General shall give to the holder of the permit not

less than fifteen days" notice in writing specifying the ground or grounds upon which it is proposed to cancel or, as the case may be, suspend the

permit and shall give him an opportunity of show cause either in writing or by appearing in person before the Director-General against the action

proposed to be taken.

4.5. Learned Senior Counsel would submit that the petitioner may be afforded an opportunity of hearing as per the order of this Court dated

18.06.2010 made in W.P. No. 25901 of 2009, wherein the learned Single Judge of this Court had disposed of the writ petition with a direction to

the 2nd respondent to consider the reply of the petitioner and pass appropriate orders on merits and in accordance with law. It is his contention

that the action taken by the respondents in disobedience of the above order passed by this Court is illegal and the subsequent action would be a

nullity. At the end, he would submit that it is the statutory duty of the respondents to consider and decide upon the petitioner's application at the

earliest, to enable the petitioner to carry on operation of aircrafts.

4.6. To substantiate his stand, learned Senior Counsel for the petitioner has relied on a decision rendered by the Supreme Court in Civil Appeal

No. 973 of 2007, decided on 03.06.2010 in the case of Manohar Lal (D) by Lrs. v. Ugrasen (D) by Lrs. and Ors. Relevant paragraphs are

extracted as under:

23. In *Mulraj Vs. Murti Raghonathji Maharaj*, , this Court considered the effect of action taken subsequent to passing of an interim order in its

disobedience and held that any action taken in disobedience of the order passed by the court would be illegal. Subsequent action would be a

nullity.

28. In Gurunath Manohar Pavaskar and Others Vs. Nagesh Siddappa Naval Gund and Others, , this Court while dealing with the similar issues held

that even a court in exercise of its inherent jurisdiction u/s 151 of the Code of Civil Procedure, 1908, in the event of coming to the conclusion that a

breach to an order of restraint had taken place, may bring back the parties to the same position as if the order of injunction has not been violated.

5. Per contra, Mr. M. Raveendran, learned Additional Solicitor General of India appearing for the respondents would submit that the proceedings

in W.P. No. 25901 of 2009 relates only to de-registration of aircraft. The proceedings emanating from the show cause notice relate to

cancellation/suspension of Scheduled Operator's Permit (SOP) for the reason that the fleet strength had dwindled contrary to the conditions of the

permit. Thus, they are independent proceedings operating in two different fields. In view of the fact that W.P. No. 25901 of 2009 was disposed of

holding that the writ petition is pre-mature and directing the petitioner to place all the facts before the authorities concerned, the interim order dated

14.12.2009 gets diluted and merges with the final order made on 18.06.2010. Once the said writ petition is disposed of and the interim order is no

longer in force, then the suspension order dated 16.04.2010 gets revived automatically more so in view of the fact that admittedly, the petitioner

does not have required fleet strength.

5.1. He would further submit that three aircrafts have been de-registered long back and proceedings initiated by the petitioner in that regard ended

and the petitioner was unsuccessful. Out of the other two aircrafts, only one is in operation. The other aircrafts have been grounded by the

petitioner itself for want of spares, since the owner is not supplying spares on account of the petitioner's default in making payments and the parts

of the grounded aircrafts are being used in the aircraft that is being operated.

5.2. Learned Additional Solicitor General would contend that the present order passed on 02.07.2010 cannot be assailed on the ground that there

is lack of opportunity to defend. Assuming the omission to give opportunity causes prejudice, the petitioner is not entitled to relief under Article

226 since the petitioner cannot make out any case before the authorities. Hence, the contention there is a violation of the principles of natural

justice in not affording an opportunity as laid down in schedule 11 cannot be sustained.

6. I have heard Mr. T.V. Ramanujam, learned Senior Counsel for Mr. T.K. Bhaskar appearing for the petitioner and Mr. M. Raveendran, learned

Additional Solicitor General for Mr. A.S. Vijayaraghavan, learned Senior Central Government Standing Counsel for the respondents and given my

thoughtful consideration to the materials placed before this Court.

7. On going through the records, what comes to be known is that on 29.07.2005, Aircraft Specific Lease Agreement in respect of three aircrafts

bearing Nos. MSN 17000126 VT-PAD, MSN 17000137 VT-PAE and MSN 17000147 VT-PAE was entered into between the petitioner and

GE Commercial Aviation Services Limited (GECAS), under which Celestial Aviation would play the role of lease manager in respect of the

aforementioned aircrafts, pursuant to which the aircrafts were handed over to the petitioner. On 17.09.2009, GECAS served a Default Notice

upon the petitioner, alleging therein that the petitioner had defaulted in paying the agreed rent under CTA & ASLA. Subsequently, GECAS issued

another Default Notice on the petitioner, stating that the petitioner had failed to maintain the Aircraft bearing S. No. 17000137 in good operating

condition and removed various parts from the aircraft. On the basis of the said allegations, GECAS sought to terminate the lease agreement. On

25.09.2009, a Grounding Notice was issued by GECAS/Celestial Aviation in respect of the aircrafts leased to the petitioner prohibiting the

Aircrafts from flying. On 14.10.2009, GECAS issued a notice of termination purporting to terminate the Lease Agreements and calling upon the

petitioner to stop using the Aircraft and hand over the possession of the same, to which the petitioner submitted his reply on 17.10.2009, stating

that the said notice was invalid. On 19.11.2009, DGCA sent a letter to the petitioner informing that an application dated 13.11.2009 was

submitted on behalf of GECAS, seeking to deregister the aircrafts and asking the petitioner to forward their comments. On 02.12.2009, the

petitioner issued a detailed reply to DGCA, stating that the matter was sub judice and that the termination of lease agreement by GECAS was not

valid.

8. On 09.12.2009, DGCA issued show cause notice, asking the petitioner why the leased aircrafts should not be deregistered in view of the notice

of termination of lease, dated 14.10.2009. On 14.12.2009, W.P. No. 25901 of 2009 was filed by the petitioner for quashing of the show cause

notice dated 09.12.2009, wherein this Court passed interim order, restraining DGCA from deregistering/grounding the aircrafts bearing

Manufacturer serial Nos. VT-PAB and VT-PAC and from cancelling, revoking or suspending any permission, licence or certificate required to be

held by the petitioner so as to enable the petitioner to carry on its business activities.

9. On 06.04.2010, DGCA issued a show cause notice to the petitioner, calling upon it to show cause why its Scheduled Operator's Permit No.

S-17, dated 14.10.2005, should not be suspended, within 3 working days from the date of issue of the notice on the basis that it did not have five

aircrafts, to which the petitioner gave a reply on 09.04.2010. Not satisfied with the petitioner's reply, on 16.04.2010, the first respondent

suspended the Scheduled Operator's Permit issued to the petitioner with effect from 19.04.2010. On 30.04.2010, pursuant to the interim order of

this Court dated 29.04.2010 in W.P. No. 25901 of 2009, the suspension order in respect of Scheduled Operator's Permit No. S-17, dated

14.10.2005, was revoked by the first respondent. On 18.06.2010, W.P. No. 25901 of 2009 was disposed of by this Court, with a direction to

the petitioner to approach DGCA with all possible pleas, in which event the authority should consider the same and pass appropriate orders on

merits and in accordance with law, uninfluenced by the orders made thereunder. Thereafter, the first respondent, on 02.07.2010, passed the

impugned order, reinstating the order dated 16.04.2010, suspending the Scheduled Operator's Permit No. S-17, dated 14.10.2005.

10. In the above background, if we take into consideration the contention of the learned Senior Counsel for the petitioner that the respondent has

to pass a fresh order instead of reinstating the order dated 16.04.2010, it is to be stated that the order dated 16.04.2010 was suspended only

following the interim order of this High Court during the pendency of the Writ Petition. Now that the said Writ Petition having been dismissed

finally, the interim order automatically ceases to operate and, therefore, the authority, in my considered opinion, has rightly restored its earlier, dated 16.04.2010, by passing an order afresh.

11. One more contention raised by the learned Senior Counsel for the petitioner is that the order passed by this Court in W.P. No. 25901 of 2009

will give advantage to the petitioner to claim an opportunity of hearing before passing the impugned order.

12. While examining this contention, it is to be stated that the said order is concerned with deregistration of the aircrafts and the show cause notice

was issued in that respect. Therefore, any direction in this regard will be advantageous only to that case and not to the issue in hand.

13. The last contention of the learned Senior Counsel for the petitioner is that the petitioner ought to have been given a fifteen days" notice and

thereafter an opportunity of hearing before passing the order of suspension of Scheduled Operator"s Permit.

14. Schedule XI to Aircraft Rules deals with Grant of permission to operate schedule air transport services. As per Clause 15(3) of the said Rules,

before any action is taken under sub-paragraph (1) or sub-paragraph (2), the Director-General shall give to the holder of the permit not less than

fifteen days" notice in writing specifying the ground or grounds upon which it is proposed to cancel or, as the case may be, suspend the permit and

shall give him an opportunity of showing cause either in writing or by appearing in person before the Director-General against the action proposed

to be taken.

15. Keeping the above rule in mind, if we look at the events in hand, show cause notice was issued on 06.04.2010, calling upon the petitioner to

explain why their Scheduled Operator"s Permit No. S-17, dated 14.10.2005, should not be suspended, for breach of the requirements of the

provisions of the Act and the Rules, within three working days from the date of issue of the notice, for which the petitioner gave his explanation on

09.04.2010. Not satisfied with the said reply, on 16.04.2010, the authority suspended the Scheduled Operator"s Permit issued to the petitioner

with effect from 19.04.2010. On 30.04.2010, pursuant to the interim order of this Court dated 29.04.2010 in W.P. No. 25901 of 2009, the said

suspension order was revoked by the first respondent. Thereafter, since W.P. No. 25901 of 2009 was disposed of on 18.06.2010, directing the

petitioner to approach the first respondent with all possible pleas, the first respondent considered the reply given by the petitioner to the show

cause notice, but the same was found to be not satisfactory. Hence, the first respondent passed the impugned order, dated 02.07.2010, reinstating

the order dated 16.04.2010, suspending the Scheduled Operator's Permit No. S-17, dated 14.10.2005.

16. It is true, only a time of three working days was given to the petitioner to reply to the show cause notice, instead of fifteen days, as mandated

by the rules. Had the petitioner kept quiet by not giving reply to the show cause notice, the position would have been different. Having given reply

to the said show cause notice, the petitioner is now estopped from taking a plea that he ought to have been given fifteen days time for reply. In the

given situation, even if this Court interferes with the order impugned and remands the matter to the authority for fresh consideration after giving

fifteen days time, it will only be an empty formality and will not serve any purpose to the petitioner, as the petitioner has not fulfilled the minimum

fleet operations, as required under Para 3.2.3 of Civil Aviation Requirements Section 3 -Air Transport Series "C" Part II.

17. It is also the contention of the learned Senior Counsel that principles of natural justice have not been followed by the respondents. It is well

settled by a Division Bench of this Court in The Commissioner, Coimbatore Corporation Vs. A. Thangavelu and Others, , that the rules of natural

justice are not a straitjacket formula and also are not inflexible. The Supreme Court, in Haryana Financial Corporation and Another Vs. Kailash

Chandra Ahuja, , has held that principles of natural justice have to be complied with, only when prejudice is caused to the person concerned. One

of the principles of natural justice is audi alteram partem (hear the other side). But, it is equally well settled that the concept of ""natural justice"" is not

a fixed one.... Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket formula or a rigid formula. Even

if a hearing is not afforded to a person who is sought to be affected or penalised, it can be argued that "notice would have served no purpose"" or

hearing could not have made difference"" or ""the person could not have offered any defence whatsoever."" In the case on hand, even on affording an opportunity of hearing, no purpose would have been served, as the petitioner has not fulfilled the minimum fleet operations.

18. This Court is also inclined to deal with a plea made by the learned Senior Counsel for the petitioner that credible materials have been placed

before the respondents showing the petitioner's efforts to increase its fleet and also that there were instances that some other airlines fell short of

the requisite number of aircrafts, to which the respondents gave considerable opportunity to regain their strength of fleets and one such airline

called "Go Air"" is referred to by the petitioner and admitted by the respondents in their counter that an opportunity was given to them to raise their

fleet strength and similar opportunity ought to have been given to the petitioner as per para 15 (3) of Schedule XI to Grant of Permission to

Operate Schedule Air Transport Services and the said treatment has not been given to the petitioner.

19. Of course, the case of the petitioner was to be looked into in view of the fact that the petitioner had entered into an agreement with one M/s.

Jagson Airlines and the further agreement with one M/s. Golden Lotus Leasing Corporation for lease of three numbers of A-320 and two numbers

of A-319 aircrafts, but that has been refuted by the respondents, stating that it is not as per the requirement and the aircrafts of M/s. Jagson

Airlines in question have been leased out to the Government of Arunachal Pradesh.

20. A perusal of the records would reveal that the agreement in respect of M/s. Golden Lotus Leasing Corporation is only in a budding stage and

the credible material has not been placed before this Court to show that there is an immediate possibility of purchase of aircrafts and there will be

increase of fleet strength as per the requirement. It may be possible for the petitioner to increase the fleet strength in future, but, in the given

circumstances, in the absence of any material to show that there is an immediate possibility of increase of fleet strength and though according to the

learned Senior Counsel for the petitioner there is an in- principle approval for purchase of certain aircrafts vide proceedings dated 05.05.2010 and

there is a possibility of restoration of operating permit, as the same is denied by the respondents, this Court cannot now interfere with the order of suspension of Scheduled Operator's Permit. Order of suspension is temporary in nature. Therefore, if the petitioner is able to satisfy the requirements, the respondents shall look into the same and pass appropriate orders on merit and in accordance with law.

21. Writ Petition is dismissed with the above observation. No costs. Consequently, the connected M.P. Nos. 1 and 2 of 2010 are also dismissed.