

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Writ Petition (PIL) No. 37 of 2017Kamal Kumar Dubey **Versus** Union of India & Others

alongwith

Writ Petition (PIL) No. 67 of 2017

21/09/2020	Shri Ashish Shrivastava, Shri Sudiep Shrivastava and Shri Sandeep Dubey, Advocates for the Petitioners. Shri Ramakant Mishra, Assistant Solicitor General for Union of India/Respondent No. 1. Shri Anumesh Shrivastava, Advocate for Respondent No.2/Airport Authority of India Ltd. Shri S.C. Verma, Advocate General with Shri Sudeep Agrawal, Deputy Advocate General for the State. Shri Yogesh Pandey, Advocate for Respondent No. 6. Shri Apurv Goyal, Advocate for Respondent No. 7. 1. Pursuant to the detailed orders passed by this Court on 27.01.2020, 17.02.2020, 17.03.2020 and lastly on 21.08.2020 (alerting the Respondents concerned that the Court may have to consider to strike off the defence, if the version of the Respondents concerned is not brought on record), affidavits/statements/status report have come to be filed in connection with the steps for upgradation of the Bilaspur Airport and to obtain the 3'C' Licence (with proposal to have it further upgraded to 4'C' level). It will be worthwhile to take note of the gist of the contents of the above proceedings, to have proper appreciation of the position

as on date and to pass appropriate orders.

2. The 2nd Respondent-Ministry of Defence {in Writ Petition (PIL) No. 67 of 2017} has filed an affidavit (dated 11.06.2020) through the competent authority at Bilaspur, pointing out that the said Ministry has formulated Annexure-1 policy dated 11.03.2015 for processing the request for defence land from Central Government Departments/State Governments and organizational control by them (including local bodies) for execution of projects related to creation/upgradation of public infrastructure/utilities. On receipt of a communication from the State Government, requesting the Defence/Army to make available the extent of land for making runway of a minimum of 2200 mts. (as necessary for getting 4'C' licence) in the first week of March, 2020 at Raipur, the Deputy Director, Aviation Department of the State was assured of necessary co-operation, simultaneously explaining the procedural requirement for placing an intent directly with the Ministry of Defence, Government of India, as per the policy guidelines contained in Annexure–1 mentioned above, also handing over a copy of the said policy. In fact, the communication issued by the Government of Chhattisgarh, Aviation Department was not in procedural accordance with the contents of the Ministry of Defence Policy Letter, Annexure – 1, as it was neither addressed to the Joint Secretary concerned in the Ministry of Defence, nor did it contain the details as specified in the format for application for transfer of land. It is further stated in paragraph 15 of the said affidavit that this Court might direct the Aviation Department of the State Government to process the requirement of defence land for development of Bilaspur Airport with the concerned Joint Secretary of the Ministry of Defence, Government of India, in accordance with the guidelines Annexure-1, as mentioned above.

3. The Director General, Civil Aviation (for short 'the DGCA'), the 6th Respondent in WPIL 67 of 2017, has filed an affidavit (dated 28.08.2020) wherein it has been

stated that, on considering the application of the Aerodrum Operator (State Government), 2'C' licence was already granted on 06.12.2018 for the Bilaspur Airport which is valid till 05.12.2020. Thereafter, considering the upgradation proposal dated 17.02.2020 submitted by the State Government (who is the owner and operator of the Bilaspur Airport) for granting '3C' license; approval for execution of the required works for upgradation was granted vide letter dated 04.03.2020, alongwith instruction to submit the safety assessment vide Annexure R-6/3. It is stated in paragraph 7 of the affidavit that, in response to the letter dated 28.01.2020 of the State Government requesting to commence operation of ATR 72 Aircraft (3C) from Bilaspur Airport (whereas the Aerodrum is compliant for Aerodrum Reference Code 2C only), it was informed vide reply dated 03.02.2020, advising the Aerodrum Operator (State Government) to carry out the safety assessment and mitigate all the associated risks as per ICAO Doc 9981 and submit the safety assessment and mitigation measures to the DGCA. But no such request has been stated as received so far. The DGCA has further stated in paragraph 8 of the affidavit that no other proposal regarding upgradation of infrastructure/ facilities is pending with the DGCA; adding that, on taking further steps by the State, complying with all the requirements in terms with the relevant provisions of law, for getting 3'C' licence, the DGCA would consider the same for upgradation of the licence accordingly.

4. The State Government has filed a Status Report dated 01.09.2020 as to the works being carried out in connection with the development of the Airport. The various correspondences with different authorities including the DGCA are also referred to. Pursuant to Annexure C-1 request of the State Government dated 17.02.2020, Annexure C-2 approval dated 04.03.2020 was granted by the Deputy Director of Operations (Aero standards) for DGCA, New Delhi for extension of the boundary wall and construction of perimeter works and allied works of Bilaspur

Airport (concept/design at execution level). It is stated that the works have already been started in the third week of February 2020 and they are nearing completion.

5. Alongwith the Status Report, the State Government has given the particulars in a tabulated form, marked as Annexure C-8, which is reproduced below for easy reference:

"Directorate of Aviation, Government of Chhattisgarh

Progress of Work for 3C VFR up-gradation

S.No.	Nature of Work	Completed	PDC	Reason for Delay
Preparation of runway strip 150 X 1610 m				
1	Grading of surface and widening of stripe from 40 m to 75 m either side of runway	90% completed	15 days after rain stop	Due to nationwide lockdown due COVID 19 follow by monsoon more time taken in excavation of old perimeter road of 1200 X 5 m area
2	Preparation of Runway End Safety Area (RESA)	RESA 60X90 m on runway 17 side 95% completed	15 days after rain stop	
		RESA 60X90 m on runway 35 side 50% completed	15 days after out fencing is completed	
Construction of perimeter fencing on runway 35 side and 17 Approach (2800 m)				
3	Poll Fixing for chain link fencing	2300 m completed	Sep 2020	Due non availability of material viz. bricks, sand, cement, polls due closer of factory/firm during nationwide lockdown.
4	Chain Link fencing	500 m completed	Oct 2020	Due to closure of factory due to COVID 19

				lockdown
5	Excavation of cement based work	500 m	Sep 2020	Due to delay in demarcation of land boundary between army and airport land.
Construction of perimeter road				
6	Subgrade work of road	2000 m Completed	Nov 2020	Due to heavy rain and paucity of funds. Due to delay in demarcation of land boundary between army and airport land.
Perimeter Road Lighting				
7	Perimeter road lighting work is in progress	50% completed	10 days after rain stops	Due to delay in perimeter road work."
6. Alongwith the status report, the Respondent-State has filed a reply as well, pointing out that, besides the construction activities in the Bilaspur Airport, efforts are also being taken to obtain security vetting/clearances from the Director General (for JD Corps), Bureau of Civil Aviation Security, New Delhi, vide Annexure R-4/1 dated 06.07.2020. Pursuant to this, the DGCA vide mail dated 10.07.2020 has required the authorities in the State to submit the application with the documents in the prescribed format; which was forwarded vide Annexure R/4-2 dated 20.07.2020. It is pointed out that, despite sending the said letter (Annexure R-4/2) requesting the competent authority for early security vetting so as to enable the authorities of the State to submit the application for licence, no inspection with regard to security clearance has been done so far. It is mentioned that, while demarcating the boundaries, the boundary line was found lying in a zig-zag manner and therefore, 2.04 acres of Army land was required for doing the needful, apart from the necessity to obtain 100 acres				

of land south of runway 35 for upgrading the Bilaspur Airport to 4C VFR category. Necessary proceedings were filed before the competent authority of the Defence; upon which instructions have been given to follow the procedure for transfer of the Defence land for public utilities and public infrastructure projects as per the communication dated 04.03.2020 and 11.03.2020 (Annexure R-4/4). In order to assess the actual requirement of the Army land for upgradation of the Bilaspur Airport to 3C VFR and 4C VFR, physical verification of the land was felt necessary and hence a joint physical survey was proposed to be conducted, which was informed to the authorities of the Army at Raipur. Physical verification was carried out by the Revenue officials and the authorities of the Bilaspur Airport and demarcation as well as availability of Army land and Government land was assessed; after which letter dated 15.06.2020 was issued to the Sub Divisional Officer (Revenue) Bilha. It is stated that further steps are being taken.

7. As per the letter dated 20.08.2020, a team of Revenue Officials has been constituted to conduct the 'joint survey' and the same has been communicated to the Commander, COSA (Chhattisgarh and Orissa Sub Area) vide Annexure R-4/9. It is pointed out that because of heavy rains, the joint survey could not be commenced as proposed; but it was started later on 29.08.2020 in the presence of the Army officials (reported as completed by 04.09.2020 as submitted by the learned Advocate General). It is also stated that as per the information gathered, Bilaspur Airport in the Eastern region has been identified for award of the RCS routes in UDAN (Ude Desh ka Aam Nagrik) 4.0 scheme.

8. The 1st Respondent, Ministry of Civil Aviation has filed their return dated 03.09.2020, pointing out that the Government of India has launched the UDAN Scheme, which is a regional connectivity scheme, the primary objective of which is to make air travel affordable to the common citizen of the country. It also intends

boosting of national economic development as well as creation of job opportunities, providing development of infrastructure for the air transport in all the regions and States in India, as borne by Annexure R/1. It is asserted in paragraph 5 that the Government of India is ready to give three years' exemption for 'Viability Gap Fund'.

Paragraph 5 of the said return is to the following effect:

"5. That, the Government of India is ready to give 3 years GST exemption for liability gap fund (presumed as wrongly typed in place of Viability Gap Fund) from date of commencement of RCS according to the terms and conditions mentioned in the MOU dated 09/09/2016, which was entered between Ministry of Civil Aviation, Government of India, State of Chhattisgarh and Airport Authority of India. VGF funding shared by central and state Government is in ratio (80%-20%) and for NE & UT (90%-10%). VGF not provide for cargo operation. VGF is for operators (RCS) who can provide 50% seats in concessional rates. If state govt. is very much interested for development of aviation industry in there state then it is free to give more VGF. The MOU dated 09/09/2016 is annexed herewith as Annexure R/3."

8. Shri Ashish Shrivastava, the learned counsel appearing for the Petitioners in WP(PIL) No. 37 of 2017 submits that works in connection with the upgradation and steps for obtaining the higher grade licences are going only at a snail's pace. Similar submission is made by Shri Sudiep Shrivastava, the learned counsel appearing for the Petitioners in WP(PIL) No. 67 of 2017.

9. The learned Advocate General points out that all the works were scheduled to be completed months before and it was accordingly, that a sum of Rs. 27 Crores was allotted; out of which Rs. 5 Crores have already been put in the account of the Airport. The delay was only because of the Covid-19 pandemic situation and also because of the heavy rains. It is pointed out, as given in the Status Report, that most of the works will be completed within 10-15 days.

10. Shri Sudiep Shrivastava, the learned counsel for the Petitioner in WPPIL No. 67 of 2017 submits that the delay in completing the works cannot be attributed to the COVID-19 lockdown or the Rains as several 'unlocks' have already been ordered

by the Central Government and also the State Government. The works in other different segments are proceeding fast without any hindrance. According to the learned counsel, the delay is because of not providing the requisite funds, which is discernible from Annexure C-8 table given alongwith the 'Status Report', where it has been mentioned that the given PDC would be effective 'from the date of receipt of approval' to utilize the funds for the increased work due to increase in length of perimeter of fencing and perimeter road from the Aviation Department, Raipur.

11. According to us, this is purely an internal arrangement within the realm of the State and as such, we direct the competent authorities of the State Government to take necessary steps on war footing and to grant approval for utilizing the funds. The various works shown in the Status Report as yet to be completed, shall be completed by the State authorities and the position shall be intimated to the competent authority of the DGCA for conducting an inspection and obtaining the 3C licence without delay. The assurance made from the part of the State Government that all the works will be completed by October, 2020 is recorded. The State authorities are required to submit a proper application for making use of the Army land by submitting the same in the proper form, in tune with the guidelines issued by the Central Government as pointed out by the Ministry of Defence and as conceded in the return filed by the State, forthwith. On receipt of the proper application and the documents, appropriate steps shall be taken by the Ministry of Defence and such other authorities to make available the land immediately. On reporting the completion of works, the DGCA shall cause to conduct inspection and take necessary steps for grant of approval for 3C licence without any delay.

12. Since this is not an adversary litigation and further since the setting up of an Airport with all modern amenities/infrastructure is in the best interest of general public and all the stake holders including the State/Central Government/Defence,

concerted action and co-operation of all concerned is of paramount importance. Completion of the works/formalities as above shall be reported before this Court by the next date of posting.

Post these matters on 20.10.2020.

Sd/-

(P.R. Ramachandra Menon)

Chief Justice

Sd/-

(Parth Prateem Sahu)

Judge