

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2459 OF 2022

Armaan Real Estate Private Ltd. ... Petitioner

V/s.

Union of India through the Sec. ... Respondents
Ministry of Civil Aviation Corporate
Headquarters and 4 Ors.

Mr. Pravin Samdani, Sr. Adv. a/w Nishant Chothani, Mr. Nivit Srivastava, Ms. Sneha Patil, Mr. Amit Hailkar and Ms. Brena Gala i/b Maniar Srivastava Associates for Petitioner, for the Petitioner.

Mr. Y. R. Mishra a/w Mr. N. R. Bubna, Mr. Upendra Lokegaonkar and Mr. Sachidanand T. Singh for R. No. 1 U.O.I.

Mr. Anil Singh, ASG a/w Mr. Adarsh Vyas i/b Mr. Ajay Khaire for Respondent (AAI)

Ms. Manisha Jagtap for R. No. 4 MHADA.

Mr. Vinay Nair i/b Mr. Arun Panickar for R. No. 5.

Mr. Abhay L. Patki, Addl. G.P. for State R. No. 6.

CORAM : G.S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 19th MARCH 2025.

PC:

1. This petition is the lead petition in a batch of petition which are listed before us today. The challenge in this petition is to the provisions of Ministry of Civil Aviation (Height Restrictions for Safeguarding of Aircraft Operations) Rules 2015 and the Ministry of Civil Aviation (Height Restrictions for

Safeguarding of Aircraft Operations) amendment rules 2020 as set out in the amended prayer clause (a).

2. We find from the record of the present proceedings that the petition has appeared before the several division benches of this Court and there are specific orders directing that reply affidavit be filed by the Union of India to the petition. These orders are orders dated 14/07/2022, 07/09/2022, 16/06/2023, 14/12/2023 and the recent order also being dated 7th January 2025, when we made the following critical observations which reads thus:

“4. Considering the nature of the earlier order, we are of the opinion that such a position taken on behalf of the Ministry of Civil Aviation in fact amounts to non-compliance of the orders passed by this Court which may entail this Court to proceed in the matter, forfeiting the rights of the respondents to file any pleadings. However, it appears to us that both Mr. Mishra and Mr. Bubna, learned panel counsel for the Ministry of Civil Aviation are totally helpless on account of such inaction of the concerned department. We may observe that in similar circumstances, there are several orders passed by this Court in multiple proceedings where cost was imposed. Be that as it may, nonetheless we grant an opportunity to the Ministry of Civil Aviation to file affidavit in reply, if he so desires, on or before the adjourned date of hearing. Copy of the reply affidavit be served on all the parties. In the event the affidavit in reply is not filed and served on all the parties, it would be presumed that the Ministry of Civil Aviation is not interested to contest the proceedings and the matter shall accordingly proceed”.

3. Moreover apart from the earlier directions further orders were passed directing that reply affidavit be filed on behalf of the Union of India on or before the returnable date which was 25th January 2025. Mr. Mishra informs that accordingly he had addressed a letter to the Secretary, Ministry of Civil

Aviation. A copy of the letter dated 8th January 2025 informing the Secretary, the Additional Secretary, Ministry of Civil Aviation of the orders passed by this Court dated 7th January 2025 and specifically stating that the Court has granted time as a matter of last chance to the Ministry of Civil Aviation, to file reply affidavit was recorded. This letter has also stated that despite various telephonic and written communication, no instructions are being forwarded to the learned panel counsel. Such letter also sets out the entire background in regard to the telephonic communication. We have taken on record this letter. We find from the contents of the said letter as addressed by Mr. Mishra, learned panel counsel for UOI, that the same was required to be taken into consideration with all seriousness when it pertained to the Court's order. However, it appears that the concerned officials of the Ministry of Civil Aviation are not interested, at all, to take the proceedings seriously, much less to comply with the order of this Court and file reply affidavit to this petition. Mr. Mishra would state that he is helpless, hence finally seeks further time to enable the Ministry to place on record the reply affidavit, as the Rules framed by it are challenged in the petition.

4. We are quite disturbed with such approach on the part of concerned department in not complying with the orders passed by this Court to file reply affidavit and also not forwarding any instructions to learned panel counsel appointed by Ministry of Law and Justice to represent the Union of India/ Ministry of Civil Aviation despite his repeated efforts to appraise them of the orders of this Court orally and in writing.

5. Considering a similar situation where repeated orders of this Court were breached by the State-department and reply affidavit was not filed in compliance of the orders of the Court, in the case of *Sudhakar Madhukar Patil*

*and Ors. Vs. The Collector, Thane*¹, the Court passed orders, which would be required to be applied in the present situation, in so far as the Union of India is concerned. The Court had commented on such routine mantra of adjournments. Deprecating such robotic approach and the endless adjournments sought, the court had made the following observations:

“2. It is seen from the record that even on 2 January 2024 none of the respondents filed reply affidavits and had sought further time to file reply affidavits. Accordingly, the hearing on this petition was adjourned to 20 February 2024.

3. Today when the proceedings are listed again, an adjournment is sought by the State as also CIDCO to file reply affidavits.

4. In the above circumstances, when for a period of one year an order passed by this Court directing the respondents to file reply affidavit is not being complied, we have no alternative but to impose costs. Thus, as a matter of last chance, liberty is granted to file reply affidavits not later than 12 September 2024, subject to payment of cost of Rs.10,000/- each to the petitioners. Stand over to 12 September 2024.

5. We are constrained to pass the aforesaid order as the prior orders passed by the co-ordinate Benches of this Court, setting out specific timelines to file reply affidavits are totally neglected when they were required to be complied. At no point of time during such a long period of more than one year any application was filed on behalf of the respondents seeking an extension of time to file reply affidavits, when the specific orders were staring at the respondents. As if it is a routine “mantra”, the learned AGP as also the learned Counsel for respondent Nos.4 and 5 are instructed to again seek time to file reply, which depicts a very sorry state-of-affairs on the part of the concerned department. In fact, non compliance of the orders passed by this Court and affidavit in reply not being filed, is something which can also be dealt in a different manner while adjudicating the present proceeding.

6. Considering repeated instances of such robotic approach of endless adjournments being sought to file reply affidavits, henceforth we are inclined to take a strict view of the matter more particularly when the orders passed by the Court directing the

¹ Civil Writ Petition No. 9319/2022

State/respondents to file reply affidavit within specific timelines are not being complied, unless there is a valid justification and an appropriate application is made in that regard seeking extension of time. In the event there is no justification, we shall not permit the request either for an adjournment or to file reply affidavits except on payment of costs.

7. *We also have some doubt whether orders passed by the Court are informed to the concerned department, as in many cases such information is not being put up before the Court. The respondents cannot have an approach that the orders passed by this Court issuing such specific directions are rendered meaningless and the proceedings are to be listed only to be adjourned.*

8. *This order be forwarded by the learned AGP to the learned Advocate General as also to the learned Government Pleader on the Appellate Side as well as Original Side, so that with the modern I.T. facilities being available, a circular can be issued prescribing an effective procedure in regard to communication of Court orders and a prompt action to file reply affidavits, can be devised, for the office of the learned Government Pleaders (AS & OS) and more particularly when there are Court orders. This would ensure timely affidavits to be filed in compliance of the Court's orders.*

9. *We may also observe that it has been accepted to be quite easy and/or casual for the respondents to seek time to file affidavits, when it ought not to be so, when specific orders are passed by the Court. The present case is one such example of a casual approach. This also for the reason that when the petitioners are pursuing proceedings before the Court, they are represented by the Advocates and are incurring costs / expenses on the litigation on every possible listing when an adjournment is sought. The cost we have awarded in the present matter can never compensate the petitioners for the actual expenses which are being incurred by the petitioner in pursuing this petition. Such thought is completely overlooked and absent in the mind of the respondents when repeated adjournments are sought to file reply affidavits so to drag the proceedings without any justification. In fact the State Government is incurring enormous expenditure in paying legal fees in hundreds of matters on such unwarranted adjournments being sought, solely for the fault of the concerned department not providing timely instructions to file reply affidavits. Thus, looked from every angle, the situation of endless adjournments on such count, works against the interest of both the parties. In such circumstances, we also need to ponder as to henceforth should we*

adopt a realistic approach to compensate the petitioner for a reasonable cost of an adjournment and more particularly, when Senior Counsel are briefed and a high cost of litigation is incurred by the litigant?

10. In our opinion, such aspects are certainly required to be borne in mind while granting adjournments, failing which instead of weeding out such mechanical unwarranted adjournments, we would in fact nurture such culture which has already plagued the departments. Thus, in appropriate cases and when circumstances warrant, certainly the Court would be required to adopt realistic approach on such issues and pass orders to award cost”.

6. We may observe that this is the lead petition of the year 2022 as informed by the learned senior counsel for the petitioner, the proceedings were served on the Union of India for the first time on 27th January 2022 . The record also indicates that Mr. Y.R. Mishra along with N.R. Bubna Panel Counsel are appearing for Union of India and thereafter repeatedly this petition was listed before several benches of this Court and continuously there are orders as noted by us ordering reply affidavit to be filed.

7. In this view of the matter considering that the Union of India is not only in breach of the orders passed by this Court but also that it has caused serious prejudice to the early adjudication of the present proceedings for want of reply and the colossal waste of judicial time and resources in listing and thereafter adjourning the proceedings, we have no alternative but to permit the Union of India to file reply within one week from today and it shall be subject to payment of costs by the concerned officers, as the Secretary Ministry of Civil Aviation would determine, quantified at Rs. 50,000/- to be deposited with the National Association For The Blind, Mumbai. Payment of costs is a condition precedent.

8. We permit the petitioner to place on record the rejoinder affidavit to the reply affidavit which may be filed on behalf of the Union of India. Apart from the want of affidavit from the Union of India, the other respondents have filed their reply affidavits.

9. Place this matter on 9th April 2025 at 2.30 p.m.

(ADVAIT M. SETHNA, J)

(G.S. KULKARNI, J)