

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION (L) No.1407 OF 2013**

Island Aviation Services Limited.

..Petitioner

vs.

The Government of India and ors.

..Respondents

...

Ms. Prachi Manekar for the Petitioners.

Mr.Kevick Setalvad, Addl.Solicitor General with Ms. S.I. Shah and

Ms.Daisy Dubash for the Respondents.

...

**CORAM: MOHIT S. SHAH, C.J. &
R.V.GHUGE, J.****DATE : 21 June 2013****P.C.**

Rule, returnable forthwith.

By this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 22 January 2013 passed by the FFRO cum Civil Authority, Bureau of Immigration, Mumbai (Exh.H) as confirmed by the Appellate Authority being Government of India in the Ministry of Home Affairs, Foreigners Division (Immigration Section) through its Joint Secretary (Exh.J).

2. In the impugned orders, respondents-authorities have held that the petitioner-airline allowed the passenger Ms. Farah Sayad, British National, to enter into India through Chhatrapati Shivaji International Airport by their flight, though she was not having valid Indian visa on her passport. Respondents-authorities have, therefore, held the petitioner-airline, to have contravened the provisions of the Passport (Entry Into India) Act, 1920 and the Rules thereunder and have imposed penalty of Rs.1 lac under section 3 of the Immigration (Carriers' Liability) Act, 2000.

3. In view of the order that we propose to pass, it is not necessary to set out all the facts in detail. Suffice to state that while show cause notice called upon the petitioner to remain present before the FRRO cum Civil Authority on 23 January 2013, the impugned order came to be passed on 22 January 2013. The Appellate Authority also did not give the petitioner an opportunity of personal hearing.

4. Mr. Kevick Setalvad, learned Addl. Solicitor General, submits that it was at the request of the petitioner that hearing was preponed from 23 to 22 January 2013 and the representative of the petitioner appeared before the authority on 22 January 2013.

5. Learned counsel for the petitioner states that the petitioner's representative did not attend the hearing, but when he approached respondent No.4, respondent No.4 gave him the impugned order dated 22 January 2013.

6. Without going into merits of the above controversy, it appears to us that this is a fit case where the petitioner should be given another opportunity of personal hearing, apart from the fact that the Appellate Authority had also admittedly not given the petitioner an opportunity of personal hearing. In the impugned order dated 22 January 2013, FRRO cum Civil Authority has not indicated why the penalty of Rs.1 lac was imposed on the petitioner for the contravention of the concerned provisions. Apart from the fact that the petitioner's case is that there was no contravention, it is also contended that the penalty of Rs.1 lac is not the minimum but maximum penalty, but the authorities have proceeded on the basis as if the penalty of Rs.1 lac is a minimum penalty. It is submitted that even if any contravention can be said to have taken place, this is not a case for imposition of heavy penalty of Rs.1 lac.

7. We make it clear that it will be open to the petitioner through its representative to raise all available contentions before the FRRO cum Civil Authority at the hearing to be now given pursuant to this order.

8. Accordingly the impugned order dated 22 January 2013 of the FRRO cum Civil Authority-respondent No.4, as well as the Appellate order by Government of India, in the Ministry of Home Affairs, Foreigners Division (Immigration Section) dated 5 March 2013 are set aside and respondent No.4 is directed to give fresh hearing to the petitioner. The petitioner will be given atleast two weeks' advance notice of the personal hearing.

9. It is clarified that we have not permitted learned counsel for the petitioner to raise the challenge to the Constitutional validity of Section 3 of the Immigration (Carriers' Liability) Act. In future , if necessary, it will be open to the petitioner to raise such a challenge.

10. Rule is made absolute accordingly to the above extent.

CHIEF JUSTICE

(R.V.GHUGE, J.)