

No need to keep middle seats vacant: Air India vs Deven Y. Kanani & Ors.
written by Priyanka Barik | June 17, 2020



Bombay HC Rules Flight seating guidelines, Middle Seats Can be Occupied in Flights

COVID-19 pandemic has made an adverse impact on many industries but one of the most affected sectors would be the Aviation Industry. There are a lot of disruptions with regard to the bookings and cancellation of flights due to the coronavirus forced lockdowns. The Government of India ("GOI") acting through the Directorate General of Civil Aviation ("DGCA") directed all the airline operators engaged in the schedule, non-schedule, and private aircraft to suspend the operations till May 24, 2020, vide circular dated May 21, 2020.[1]

However, recently the Bombay High Court allowed airlines to operate without leaving middle seats vacant to rescue passengers stranded amidst the COVID-19 pandemic. The Supreme Court on an urgent hearing of the Special Leave Petition ("SLP") filed by the Aviation Ministry, Union of India dated 25 May 2020[2], ordered Air India to keep the middle seat vacant in flights from June 06, 2020, after granting permission to operate the booked international flights till the said date with middle seats occupied as per the normal procedure.

The court opined that this direction was issued keeping in mind the health of the citizens which is a matter of greater concern in comparison to the health of commercial airlines and further asked the Bombay HC to decide on the matter again.[3] Further, Bombay HC vides its judgment dated June 15, 2020[4] allowed passengers to occupy the middle seats in flights but the passengers and the airline authorities are further directed to strictly comply with the guidelines of DGCA on measures to prevent COVID-19.

Brief Background

The impugned case was filed before the Supreme Court vide an SLP challenging an order passed by the Bombay High court dated May 22, 2020 [5]. Bombay HC had demanded a response from the airlines on a plea claiming that they have violated the guidelines issued by the Directorate General of Civil Aviation ("DGCA") dated March 23, 2020[6] ("Circular"). The Circular mandated the middle seat between 2 passengers to be left vacant in compliance with the social distancing norms for international flights.

The petition was originally filed by an Air Indian Pilot, Deven Y Kanani. However, the respondents contented to the Bombay HC, that the Circular was

meant only for scheduled domestic flights and not for unscheduled international ones. Further, the court stated that it wasn't convinced with the argument since the entire point of issuing COVID safety guidelines was defeated. Therefore, the Hon'ble HC passed the interim order mandating to keep one seat vacant between two seats in all rescue/ relief flights across the world ("Impugned Order")[\[7\]](#).

Questions of law

1. Whether the impugned order mandates indiscriminate dropping of 1/3rd persons from already scheduled flights without taking note of the precautions?
2. Whether the Hon'ble HC erred in holding that the circular dated 23.03.2020 does not apply to non-scheduled rescue/relief flights for lifting stranded passengers abroad?

Arguments

It was contended that the impugned order ignores the gradual strategy of the executives who are responsible for dealing with the current issues. Due to the problems faced by Indians around the world, rescue flight operations were started, which were called non-scheduled flights, in order to bring those stranded passengers back to India under the 'Vande Bharat Mission'. However, it was further submitted that necessary precautions and adequate care had been taken by the airline authorities by way of standard operating procedures issued by the Ministry of Home Affairs ("MHA") dated May 05, 2020[\[8\]](#) in order to rescue Indian origin residents stuck in foreign countries.

It was further contended that the central authorities published another circular on May 22, 2020, that also discussed general safety and hygiene guidelines[\[9\]](#), but nowhere had they mentioned anything about the mandate of keeping vacant seats between passengers whilst traveling. Therefore, after reading both the circulars together, the Bombay HC directed Air India to comply with the necessary safety standards and operating procedures, while validating the supersession of the Circular by the May 22 circular so far as domestic flights were concerned. However, in the case of international flights, and non-scheduled and commercial flights, the court-mandated that the middle seats be kept vacant.

The order also gave liberty to the petitioners to amend the petition and challenge the new circular issued by the DGCA dated May 22, 2020[\[10\]](#). It was also contended that the real safety procedures should be maintained through testing and quarantine and not by keeping flight seats vacant, which may give rise to procedural formalities and hinder the rapid repatriation of people to and from abroad. It was also brought to the notice of the court that the standard operating procedure guidelines issued by the Ministry of Home Affairs, dated May 05, 2020[\[11\]](#), amidst other requirements, had not mentioned any vacant seat requirement.

In furtherance, to that, the SC also ordered Bombay HC to take the final decision on this matter. The Bombay HC passed the order[\[12\]](#) after relying on the decision of the expert committee which was requested by the court to get a clarification on the stance of whether a mere touch of a person carrying COVID-19 virus, the virus can be transmitted to the person so touched.

The committee clarified that the Covid-19 virus can be transmitted by the touch only under certain circumstances, if a surface like clothes is infected (infection takes place when the droplets from the mouth or nose of the infected person touch that surface) and then non-infected person comes in

contact with that surface and then touches his/her mouth or nose, then there is a chance that the second person might get infected.

The virus cannot be transmitted merely by touching unless the condition mentioned above is fulfilled. The committee's reply clarified that the protective gown given to the middle seat passengers will insulate the nearby passengers even if the infected person touches a surface or comes in contact with a non-infected person.

Keeping in mind the arguments, the Hon'ble High Court passed its order not mandating middle seats to be kept vacant. Further, the airlines are advised to keep the middle seat unoccupied, and if the same is not possible due to high passenger load, then the middle seat passengers should be provided with protective equipment like wrap-around gowns, in addition to the face mask and face shield.

Brace Yourselves: An Analytical Perception

It is understandable that the temporary suspension of all commercial activities has rendered an inevitable catastrophe on most of the industries, especially on the Aviation Industry, whose services have been stopped since the onset of lockdown in March, for checking the spread of the infection. Immense losses have been incurred as a result of the shutdown in business, especially considering that the cost of maintenance of aircraft is massive. Also, in the present petition, it was further observed that earlier the Hon'ble Bombay HC erred in passing the impugned order without realizing the cascading effect on the passengers who have been stranded in various foreign countries for long. The HC vide its order prevented Air India from operating any flight without having the middle seat vacant. However, it was bound to cause a serious problem with regard to the flights that had been already booked by the passengers. It was impossible for the authority to decide which one-third of the passengers were to be disembarked.

Furthermore, in the light of the above contentions, the current plea regarding the assurance of the passenger's safety during the travel has averred that the urgency behind moving of the SLP on a priority basis was to ensure the protection of the thousands of people stranded within the country as well as those stranded in various other countries and were being shifted to India by Air India. The legislative intent behind the Circular issued was to disembark one-third of the passengers, so as to reduce the risk of spread of the infectious disease.

Further, it was held that primary importance must be given to the protection and health of people and not to the economic health of the airlines.

Therefore, the Bombay HC in the recent judgment observed that the petitioner had failed to appreciate the fact that even if the middle seat is vacant, the person(s) at the window seat whilst getting out for going to the lavatory and thereafter returning back to his seat, is likely to touch (through his clothes) the person/s sitting on the aisle seats, and hence concluded that keeping a middle seat vacant would not be effective against the spread of COVID-19.

[1] <https://bit.ly/2APs19T>

[2] Air India vs Deven Y. Kanani, Special Leave Petition (C) No. _ of 2020, May 25, 2020.

[3] Special Leave Petition _ of 2020, Arising from an order dated 22.05.20, passed by Hon'ble HC Judicature, Writ Petition (L) No. 3/2020.

[4] Deven Yogesh Kanani vs DGCA and Ors., AD-HOC NO. WP-LD-VC-3 OF 2020

[5] Writ Petition (L) No. 3/2020.

[6] <https://bit.ly/3fBPWsd>

[7] Ibid.

[8] <https://bit.ly/3ddy3hZ>

[9] <https://bit.ly/2Y9YYqC>

[10] Ibid.

[11] <https://bit.ly/3ddy3hZ>

[12] AD-HOC NO. WP-LD-VC-3 OF 2020

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