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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : December 04, 2017

% Judgment pronounced on: December 20<sup>th</sup> , 2017

+ WP(C) 9820/2017

**INTERGLOBE AVIATION LIMITED & ANR. .... Petitioners**

Through Mr. Mukul Rohtagi, Sr. Adv. with  
Mr. Gaurav Sarin, Ms. Charul  
Sarin & Mr. Abhishek Manchanda  
Advs.

versus

**UNION OF INDIA & ANR. .... Respondents**

Through Ms. Anjana Gosain and Ms.  
Rabiya Thakur, Advs. for R-1.

Mr. Harish N. Salve, Mr. Rajiv  
Nayar and Mr. Parag P. Tripathi,  
Sr. Advs. with Ms. Anuradha  
Dutt, Ms. Vijayalakshmi Menon,  
Mr. Anish Kapur, Mr. Saket Sikri  
and Mr. Anirudh Bakhru, Advs.  
for R-2.

Mr. Digvijay Rai and Mr. Pulkit  
Tyagi, Advs. for R-3.

Mr. Dhruv Mehta, Sr. Advocate  
with Mr. Sourabh Mishra,  
Advocate for R-5.

Mr. Darpan Wadhwa, Sr.  
Advocate with Mr. Rajshekhar

Rao, Ms.Meghna Mishra and Mr.  
Ankit Rajgariha, Advocates for  
R-6.

**CORAM:**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**J U D G M E N T**

**A.K. CHAWLA, J.**

Petitioner no.1, a provider of Scheduled Air Transport Services, is a Public Limited Company, and, providing the Air Transport Services in the name and style of 'IndiGo'. Petitioner no.2 is said to be its shareholder.

2. Instant petition, under Article 226 of the Constitution of India, has come to be filed by the petitioners seeking issuance of Writs of Certiorari and Prohibition in respect of the instructions/directions contained in the letters/communications dated 6.9.2017, 28.9.2017, 5.10.2017 and 21.10.2017, whereby, the respondent no.2, in short 'DIAL', has directed *inter alia* the petitioner no.1 to operate its flights, to and fro Mumbai, Kolkata and Bengaluru w.e.f. 4.1.2018 from Terminal-2 of Indira Gandhi International Airport (IGI Airport). Writ of Certiorari is also sought to be issued in respect of the communication bearing no.AV 24011/278/2015-AD dated 14.6.2017 issued by the respondent no.1 permitting 'DIAL' to decide the suitable course

of action in relation to shifting of operations of the airlines concerned.

3. Whole issue actually lies in a narrow compass. 'DIAL'-the airport operator, is entrusted with the responsibility of developing, operating and managing the IGI Airport, and, in view of the growth of aviation and the growing passenger traffic, has undertaken the exercise of renovation and expansion of the capacity of its Terminal-1 (T-1), as per Master Plan - 2016, and, as a temporary measure, requires operations of some flights to be re-located from Terminal-1 to Terminal-2.

4. Petitioner no.1, in short, 'IndiGo' has approached this Court being aggrieved of the decision taken by 'DIAL' to shift the entire operations of Go Air and flight operations of 'IndiGo' and Spicejet, to and fro Mumbai, Kolkata and Bengaluru, to Terminal-2. After the institution of the instant petition, Spicejet and Go Air also, sought to be impleaded in the instant proceedings and have been impleaded as respondent nos.5 and 6, respectively.

5. Capacity constraints at Terminal-1, and, Terminal-2 after renovations being available for shifting/re-location, 'DIAL', in the first instance, attempted to have consensus amongst the three domestic airlines i.e. 'IndiGo', Spicejet and Go Air for the operation of their flights from Terminal-1 and Terminal-2. Said

three airlines having failed to reach a consensus or even propose the flights that may be relocated from Terminal-1 to Terminal-2, 'DIAL', vide its letter dated 16.8.2017 proposed to distribute traffic between Terminal-1 and Terminal-2 in such a manner that 1/3rd of their existing flights were handled and operated from Terminal-2 on pro-rata basis and sought response from any or all the three airlines by 31.8.2017, failing which, it would be constrained to allocate the flights to be shifted from Terminal-1 to Terminal-2, setting out the deadline for relocation and shifting of flight operations w.e.f. 1.10.2017. 'IndiGo' vide its letter dated 30.8.2017, expressed reservation on the premise that its critical concerns and queries were not discussed, clarified or addressed and that, it did not have adequate time to plan and properly execute a terminal move, without creating mass confusion for its customers, and, that, once a mutually acceptable plan was agreed, it will need a minimum of 120 days to implement such plan. 'DIAL', vide its letter dated 6.9.2017 however, conveyed its decision to 'IndiGo' for operation of its flights to Mumbai, Kolkata and Bengaluru from Terminal-2 w.e.f. 29.10.2017. 'IndiGo' opposed. Vide its letter dated 28.9.2017, 'DIAL' then communicated to 'IndiGo' that Go Air was shifting its entire operations from Terminal-1 to Terminal-2 w.e.f. 29.10.2017 and that, w.e.f. 29.10.2017, the flights of 'IndiGo', Spicejet and Go Air operating to Mumbai, Kolkata and Bengaluru shall be operating from Terminal-2. During this course, Go Air shifted its entire operations to Terminal-2. Vide its letter dated 5.10.2017,

'DIAL' reiterated that flights of 'IndiGo' and Spicejet operating to Mumbai, Kolkata and Bengaluru, should be operated from Terminal-2 w.e.f. 29.10.2017. It was followed by another letter of 'DIAL' dated 21.10.2017, conveying to 'IndiGo' that it should plan its activities in a manner that from 4.1.2018, the flights of 'IndiGo' operating to and fro Mumbai, Kolkata and Bengaluru should operate from Terminal-2 only, failing which, 'IndiGo' shall be solely responsible for all the consequences. It has resulted into filing of the instant petition.

6. During the course of hearing, to appreciate the allegations of irrationality and/or arbitrariness, if any, 'DIAL' was directed to place on record the internal assessment said to have been carried out, on the premise whereof, the impugned decision was taken. Such internal assessment has come to be filed.

7. 'IndiGo' extends challenge to the decision conveyed to shift operations of its flights to and fro Mumbai, Kolkata and Bengaluru to Terminal-2 on the premise that 'DIAL' has failed to adhere to a fair, transparent and balanced approach, in arriving at the decision to safeguard the interest of the public and the concerned airlines, and, that, it was unilateral, unreasonable and unrealistic and that, splitting of operations of selective airlines, constituted an abuse of authority given by the respondent no.1 to the respondent no.2, vide letter dated 14.6.2017. It is thus, said to be violative of Article 14 of the Constitution of India. According

to 'IndiGo', permitting Go Air to shift its entire operations from Terminal-1 to Terminal-2 w.e.f. October 29, 2017 and at the same time, directing the other two i.e. 'IndiGo' and Spicejet, to relocate and split operations by shifting flights on sectors Mumbai, Kolkata and Bengaluru from Terminal-1 to Terminal-2 w.e.f. 4.1.2018, was wholly arbitrary, discriminatory, illegal and malafide. 'IndiGo' asserts that such decision causes complete confusion and inconvenience to passengers and virtually, has the effect of destroying the business of 'IndiGo', which has built its reputation as the most efficient airline over the last eleven years. 'IndiGo' vehemently asserts that part shifting of its operations would cause great inconvenience to millions of its passengers. Besides that, 'IndiGo' asserts for the impugned decision having been taken unilaterally and without any consultative approach, inasmuch as, 'DIAL' initially, vide letter dated 19.1.2017, proposed three options viz. (i) Move one airline to Terminal 2 on interim basis from Terminal-1; (ii) Relocate some flights of all three airlines from Terminal 1 to Terminal 2; and, (iii) Reduce flights in peak hour by 20% for all three airlines in Terminal-1 and spread it to non-peak hours. In addition, all new flights/frequencies were proposed to be operated from Terminal-2 w.e.f. 01st February 2017. Thereafter, on an internal assessment, all the three airlines were directed to shift 1/3rd of their operations on pro-rata basis i.e. flights of sectors of their choice. Post another internal assessment, 'DIAL' is said to have issued fresh directions to all the three airlines for the three sectors to be

shifted from Terminal-1 to Terminal-2. Go Air however, then came to be permitted to shift in its entirety, while 'IndiGo' and Spicejet directed to split operations and shift in part. It is said to be not in consonance with any of the proposals and the internal assessment reports of 'DIAL' and therefore, discriminatory and arbitrary. According to 'IndiGo', even the internal assessment carried out by 'DIAL' is faulty, inasmuch as, no expert's opinion or consultation with the airlines including 'IndiGo' or passengers body, being the relevant stakeholders, is said to have been done, during or for arriving at the conclusion in the reports constituting the internal assessment by 'DIAL'. 'IndiGo' has also taken a plea that its detailed representation dated 16.10.2017, which contains the empirical data including impact, efficiency and the anti-competitiveness of 'DIAL's decision including alternative options given by 'IndiGo', reflects arbitrariness in the impugned decision. It is also said that the impugned decision to split and shift operations would cause extreme operational difficulties, inasmuch as, it would impact on-time performance, aircrafts rotation and positioning, crew rotation and utilization, invites additional engineering stores and ground equipments, and, so on, and that, such inconvenience do not exist for the passengers travelling by Go Air, Vistara, Jet Airways, Air Asia and Air India, as these airlines will be operated from one terminal of IGI Airport. It is also said that such issues will increase during fog condition at Delhi, especially, when the impugned decision is to come into effect on 4.1.2018, which is in the middle of Delhi's

foggy winter. Thus, according to 'IndiGo', 'DIAL' has failed to adhere to a fair, transparent and balanced approach in arriving at any decision to safeguard the interest of public and the concerned airlines, and, instead, its arbitrary approach in arriving at such a decision is unilateral, unreasonable and unrealistic and thereby, wholly arbitrary. In view thereof, extending challenge to the impugned directions/ decisions, the judicial review is prayed, placing reliance upon M.P. Housing & Infrastructure Development Board vs. B.S.S. Parihar & Ors. (2015) 14 SCC 130; All India Railway Recruitment Board vs. K. Shyam Kumar (2010) 6 SCC 614; Brij Mohan Lal Vs. Union of India (2012) 6 SCC 502; and, Union of India Vs. International Trading Co. (2003) 5 SCC 437.

8. According to 'DIAL', shifting of flight operations of the subject three airlines was necessitated as an interim measure to enable it to implement Master Plan -2016 for development and expansion of Terminal-1 to increase its existing capacity of 20 million passengers per annum (mppa) to 35-40 mppa in public interest and the financial concerns of the petitioners could not take priority over public interest and that, the entire re-development was to take place in approx. 42 months. Questioning the maintainability of the instant writ petition, 'DIAL', advertent to the efforts made by it to resolve the issue amicably, having provided diverse options to the three airlines, which the three airlines failed to avail of, pleads that the



impugned administrative decision taken by it, on due consideration of the attending circumstances to optimally utilise the available space between the two terminals, until such time renovations are over, was beyond the pale of judicial review. In support of such plea, reliance is placed upon *Ekta Shakti Foundation vs. Govt. of NCT of Delhi* (2006) 10 SCC 337 and *Essar Steel Limited vs. Union of India* (2016) 11 SCC 1. 'DIAL' also says that its decision was based on detailed and comprehensive studies with an endeavour to ensure fairness, equity and non-discrimination, and, in pursuance thereof only, vide communication dated 16.8.2017, the three airlines were asked to shift 1/3rd of their operations from Terminal-1 to Terminal-2 and decide for themselves, as to which of its operations they wanted to shift. It is thus said that the three airlines having failed to respond in that context, 'DIAL' was constrained to take decision vide communication dated 6.9.2017 directing all flight operations of the three airlines to and fro the three sectors to be shifted to Terminal-2 w.e.f. 29.10.2017 and that, this decision was also based on comprehensive studies and analysis of traffic data and passengers convenience and that, as 'IndiGo' and Spicejet did not take any step for shifting of the stated operations to Terminal-2 and rather, refused to co-operate, in order to avoid passengers inconvenience, 'DIAL' had extended the date of shifting of operations to 4.1.2018. 'DIAL' also alleges that 'IndiGo' is delaying the expansion of project of Terminal-1 contrary to public interest and that, the option given by 'IndiGo'

to move Spicejet and Go Air to Terminal-2, while it operates solely from Terminal-2, is another attempt of 'IndiGo' to gain commercial advantage by becoming the sole airline operating from Terminal-1, while the 'DIAL's actions were based on a broader prospective taking into consideration, *inter alia*, passengers requirements, convenience, safety, Terminal capacities and the re-development operations. Also, according to 'DIAL', 'IndiGo' has unconditionally and without demur accepted night parking stands on the condition that it shall co-operate with 'DIAL' by shifting from Terminal-1, as and when, it became necessary. 'DIAL' then also points out that there is dire need to renovate and expand the capacity of Terminal-1, which is currently operating much beyond its maximum capacity of 20 mppa. Increase in the traffic at Terminal-1 and the projections for the coming year, as given by 'DIAL', are as under :

Airlines	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
INDIGO	6.6	7.1	9.1	12.1	16.1	18.1
SPICEJET	4.2	4.4	4.0	3.6	4.3	4.9
GOAIR	2.1	2.4	2.8	3.1	3.6	4.0
<b>TOTAL</b>	<b>12.9</b>	<b>13.9</b>	<b>15.9</b>	<b>18.8</b>	<b>24.0</b>	<b>27.0</b>

Referring to the afore-going data, 'DIAL' says that during the period of re-development of Terminal-1, it would reduce boarding gates from 15 to 10 and aircraft parking stand from 55 to 33, bringing down the capacity of Terminal-1 to 13 mppa and

that, with additional measures, the capacity can be brought upto maximum of 17 mppa and that, with the 'IndiGo's traffic in financial year 2017-18, which is estimated at 18.1 mppa approx., 'IndiGo' cannot operate entirely either out of Terminal-1 (capacity of 17 mppa) or Terminal-2 (capacity of 12 mppa). 'DIAL' also says that, even with the shifting of operations of Go Air to Terminal-2, the traffic at Terminal-1 is expected to be approx. 23 mppa, which would be in excess of maximum existing capacity of 20 mppa, which requires to be further reduced to between 13 to 17 mppa. 'DIAL' also says that peak fog season in January causes flight delays resulting in an increased pressure on the infrastructure of the terminal and endangers the safety and security of the passengers as well as the flights operations and therefore, 'IndiGo's financial concerns cannot take priority over public interest of development. As for Go Air only having been moved to Terminal-2 completely from 29.10.2017, 'DIAL' says, it agreed, considering various factors such as (i) safety and security of passengers and efficient flight operations, as T-1 was handling traffic much above its capacity; (ii) adamancy of the 'IndiGo' and Spicejet in not shifting their operations to T-2; and, (iii) the quantum of Go Air's operations vis-a-vis balancing the capacity between T-1 and T-2. It is also said that 'IndiGo' has been avoiding the shift of its part operations from Terminal-1 to Terminal-2 on some pretext or the other since 4.1.2017, constraining 'DIAL' to change the deadline for three times, while, 'DIAL' never gave any preferential treatment to either of the three

airlines and that, while 'IndiGo' and Spicejet adamantly refused to shift part operations to Terminal-2 in October, 2017, Go Air expressed its willingness to shift and additionally requested to shift its complete operation to Terminal-2 and that was acceded to, being conscious of the fact that traffic at Terminal-1 had increased approx. 3 mppa, since the time, the proposal of shifting 1/3rd flights operations was given to the three airlines and it would aid in decongesting Terminal-1 in the interest of public safety, safety of flights operations and the re-development activity. 'DIAL' has furnished the estimated remaining traffic at Terminal-1, on the shifting of traffic of three sectors i.e. Mumbai, Kolkata and Bengaluru, of 'IndiGo' and Spicejet during the financial year, as follows :

Airlines	FY 17-18 excluding the Traffic of three sectors i.e. Mumbai, Bengaluru & Kolkata (in mppa)
IndiGo	13.9
Spicejet	3.5
Total	17.4

Traffic at Terminal-2 including of Go Air and three sectors for 'IndiGo' and Spicejet is then estimated to be, as follows :

Airlines	FY 17-18 (estimated in mppa)
IndiGo (Traffic of three sectors i.e. Mumbai, Bengaluru & Kolkata)	4.2
Spicejet (Traffic of three sectors i.e. Mumbai, Bengaluru & Kolkata)	1.4
Go Air (Total Traffic)	4.0
<b>Total</b>	<b>9.6</b>

Thus, according to 'DIAL', as a result of shifting of 9.6 mppa passengers to Terminal-2, Terminal-1 will handle around 17.1 mppa and any additional growth in flights of any airlines, irrespective of destinations, will be catered from Terminal-2 upto its available capacity. 'DIAL' thus pleads that its decision(s) carries no ground for judicial review.

9. Spicejet, on its part, being at par with 'IndiGo' for operational difficulties, adverts to the various challenges in operating from Terminal-2. Spicejet on its part however, equally expresses its concern for 'IndiGo', exclusively operating from Terminal-1.

10. Mr. Rohtagi, ld. Sr. counsel for 'IndiGo', strenuously contended that the impugned direction/decision of 'DIAL' was wholly unreasonable, arbitrary and unjustifiable. In his submissions, in view of the operational capacity of Terminal-2,

both Go Air and Spicejet, keeping in view their traffic load and the operations, as per the own data provided by 'DIAL', could be accommodated there and 'IndiGo' could continue to operate from Terminal-1 and that, it was the most viable solution to the whole issue, and, that, it would not only help smooth operations of the three airlines, but, the public as well. In his submissions, such most obvious and viable solution, for the reasons unexplained, has come to be ignored by 'DIAL' and that, it reflects arbitrariness in the impugned decision. In the second limb of his submissions, Mr. Rohtagi also contended that the impugned decision was not an outcome of any scientific study or elaborate deliberations with the stakeholders including 'IndiGo', inasmuch as, the decision to shift the entire operations of Go Air and part operations of three sectors of Mumbai, Kolkata and Bengaluru to Terminal-2, is not the outcome of any well founded assessments carried out for the purpose by 'DIAL'. It was also contended that with the impugned decision getting implemented, the operations of 'IndiGo' will get further divided into three i.e. Terminal-1, Terminal-2 and Terminal-3 and it would get subjected to further operational difficulties, besides much inconvenience to the passengers, while, there was no other airline, which was required to spread its operations in this fashion and that, it was not justifiable, but, arbitrary. Mr. Rohtagi pointed out that Go Air, Vistara, Jet Airways, Air Asia and Air India, were operating only from Terminal-1. In his submissions therefore, the impugned decision was an outcome of unfairness, unreasonableness and

improportionality and thereby, discriminatory, as well. In his submissions therefore, such decision, though administrative, was subject to judicial review.

11. Mr. Salve, Id. Sr. counsel for 'DIAL' was very vociferous in his submissions to contend as to how the airport is to be operated, keeping in view the security and convenience of the passengers and the other stakeholders, is an obligation cast upon 'DIAL' only. It was strenuously contended that the impugned decision had come to be taken on due deliberations, keeping in mind, the diverse factors of security and convenience of the passengers and the other stakeholders and that, such administrative decision was not subject to judicial review. It was also contended that it should be left open to 'DIAL', as to how the airport is to be run and any airline, howsoever big, could not dictate its operational terms. In his submissions, the larger public interest is the paramount consideration for the decision taken by 'DIAL'. Adverting to the traffic data of the three airlines, Mr. Salve also strenuously contended that the impugned decision was the most viable solution and therefore, it did not suffer from any element of unreasonableness, arbitrariness or malice. It was also contended that this Court is not to sit in appeal over the impugned decision to see, as to whether it is fair or not.

12. Mr. Mehta, Id. Sr. counsel for Spicejet, in his limited submissions, contended that while there were difficulties in

operating the flights from Terminal-2 with the paraphernalia presently provided, it was totally opposed to 'IndiGo' operating from Terminal-1 exclusively, inasmuch as, it would be anti-competitive.

13. Hallmark of a judicial review under Article 226 of the Constitution of India is the rule of law and in that regard, the power vested in the High Court for the exercise of extraordinary jurisdiction is without any fetter, does not require any elaboration. The scope of the judicial review, is however, well elaborated in the diverse judgments of the Courts. In M.P. Housing's case, the Hon'ble Supreme Court has reiterated the principles of judicial review, adverting to the various pronouncements, as under:

**"40.1. In *Coimbatore District Central Coop. Bank* [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] , this Court has held thus: (SCC pp. 678-79, paras 17-20)**

**"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of**



exercising power, known to law is the ‘doctrine of proportionality’.

18. ‘Proportionality’ is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.

19. de Smith states that ‘proportionality’ involves ‘balancing test’ and ‘necessity test’. Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. ....

20. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

‘The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts

where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.”

40.2. In *Teri Oat Estates (P) Ltd. [Teri Oat Estates (P) Ltd. v. UT, Chandigarh, (2004) 2 SCC 130]* , it was held as under:

“46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority ‘maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve’.

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50. In *Om Kumar [Om Kumar v. Union of India, (2001) 2 SCC 386 : 2001 SCC (L&S) 1039]*, however, this Court evolved the principle of primary and secondary review. The doctrine of primary review was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court in *E.P.*

**Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165] noticed and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example, punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury unreasonableness.**

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**40.4. In State of U.P. v. Sheo Shanker Lal Srivastava [(2006) 3 SCC 276 : 2006 SCC (L&S) 521] , this Court has held thus:**

**“23. In V. Ramana v. A.P. SRTC [(2005) 7 SCC 338 : 2006 SCC (L&S) 69] this Court upon referring to a large number of decisions held:**

**‘11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.’**

**24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality.**

.....  
....."

The impugned decision, as such, is to be tested on the touchstone of afore-going cardinal principles of judicial review.

14. The impugned administrative decision relates to shifting of flight operations of IndiGo, Spicejet and Go Air from one terminal to the other, which is undisputedly necessitated, on account of development of IGI Airport, and, which is in public interest. It is a matter of record that the airport operator-'DIAL', at the threshold, in January, 2017, had given an opportunity to all the three airlines operating from Terminal-1 to reach a consensus for operations of their flights or even propose the flights that may be relocated from Terminal-1 to Terminal-2, as a temporary measure. They failed either way, while, 'DIAL' continued to pursue, so that the process of renovations and expansion of Terminal-1 could be undertaken, at the earliest. It is a matter of record that in the absence of any progress, the Ministry of Civil Aviation took serious note of the situation and vide letter dated 14.6.2017, expressed its anguish for the severe capacity constraints at Terminal-1 on account of the increased demand of the Low Cost Carriers (LCCs) i.e. 'IndiGo', Spicejet and Go Air. In this letter, the Ministry of Civil Aviation, taking note of the

continuing deadlock, which was causing inconvenience to the passengers, desired of 'DIAL' and the three airlines, to arrive at a mutually acceptable settlement by 15.7.2017, failing which, gave liberty to 'DIAL' to decide the suitable course of action and that was to be binding on all the stakeholders including 'IndoGo'. Situation did not improve even thereafter. Deadlock persisting, as none of the airlines co-operated, 'DIAL' on its part so proceeded to ask the three airlines to distribute their traffic between Terminal-1 and Terminal-2 in such a manner, that 1/3rd of their existing flights were handled and operated from Terminal-2 on pro-rata basis, and, expected them or anyone of them to do so by 31.8.2017, failing which, it shall be constrained to allocate the flights to be shifted from Terminal-1 to Terminal-2. Steps so taken by the Ministry of Civil Aviation and 'DIAL' do reflect all fairness in their approach for every attempt being made to accommodate the subject airlines, as far as possible. In the series of such follow up actions, the decision ultimately taken by 'DIAL' asking the airlines to operate flights to and fro Mumbai, Kolkata and Bengaluru from Terminal-2, ignoring 'IndiGo's letter dated 30.8.2017, where-under, it had sought to agitate the issues of passengers' inconvenience; impact on their efficiency and increase in cost; and, the decision being anti-competitive, in the considered opinion of this Court, cannot be faulted with for being either unilateral or inequitable. None of the issues sought to be agitated by 'IndiGo' can be said to be in the larger public interest, which is sought to be pursued by the Ministry of Civil Aviation

and 'DIAL'. There is no denial of the fact that the traffic load of Terminal-1 was much beyond its capacity even as on 31.8.2017. IndiGo's assertion of passengers' inconvenience on account of shifting of arrival and departure from Terminal-1 to Terminal-2, as its flights carry both inbound and outbound passengers, feeding IndiGo's entire network to/fro from Delhi, is more suggestive of its own commercial interests and its desire to operate from only one Terminal and that too, Terminal-1, inasmuch as, the capacity of Terminal-2 at the given time was 12 mppa as against IndiGo's traffic load of 16.1 mppa, which is estimated to be 18.1 mppa during the financial year 2017-18. In the given factual conspectus, Can the splitting of operations of 'IndiGo' be avoided even on being retained at Terminal-1 becomes the moot question for consideration? When one adverts on this aspect, it emerges that during the course of renovations and expansion of Terminal-1, 'DIAL', seeks to reduce boarding gates from 15 to 10 and parking stands from 55 to 33, bringing down the capacity of Terminal-1 to 13 mppa, which, with additional measures can be brought upto only 17 mppa. Thus, even if it is assumed so, such extended capacity would also not be sufficient to cater to the expanding traffic graph of 'IndiGo' , inasmuch as, the IndiGo's traffic for the financial year 2017-18, is estimated at 18.1 mppa. It therefore, imperative that 'IndiGo', in any case, requires shifting of some of its operations from Terminal-1. Convenience of passengers much contended to on behalf of 'IndiGo' would be a matter of concern of other airlines

as well, even of smaller magnitude. The plea of passengers' inconvenience agitated by 'IndiGo' therefore, does not hold much water. Be that as it may, passengers' convenience and security is much of the concern of 'DIAL' than any airline. Any impact on the efficiency and increase in cost of the operations of the flights, in the given scenario, when the 'DIAL' requires shifting of some operations for the purposes of renovations and expansion with a view to decongest Terminal-1 in the interest of public safety and safety of flight operations, becomes irrelevant. If, 'IndiGo' has grown big and is going to be bigger than before, it has to share the responsibility not only towards the increase in cost, if, at all, it is called for, and, ensure efficiency thereby, of its own. As for the issue of anti-competitiveness, the assertion of 'IndiGo' that on account of the flights operations of three sectors getting shifted to a new terminal as against its competitors operating from Terminal-3 under one roof and enjoying homogenous operations, *it ipso facto*, equally does not sound well founded. Suffice to say, airlines in questions are Low Cost Carriers (LCCs) and have been operating under one roof only, but, as a temporary measure, they are being accommodated amongst two terminals i.e. Terminal-1 and Terminal-2 and therefore, the comparison and the element of competitiveness sought to be agitated, equally does not hold good. Be that as it may, none of the issues or the aspects sought to be agitated by 'IndiGo', in the considered opinion of this Court, falls within the domain of judicial review under Article 226 of the Constitution of India. Facts and circumstances, by no means,

even indicate that 'DIAL' on its part acted unfairly or unreasonably. The impugned decision of 'DIAL' cannot be said to be unilateral for the simple reason that it took this decision, on account of any of the airlines, including 'IndiGo', failing to respond to its repeated requests and the proposals, inasmuch as, the operations of the airport is the prime responsibility of 'DIAL', which, it seeks to discharge. In that view of the matter, the contention raised on behalf of Spicejet, does not survive and is rejected.

15. During the course of hearing, on being directed, 'DIAL' placed before the Court the copies of the Internal Assessment Reports, on the premise whereof, the impugned decision came to be taken by it and it transpires that in its supplementary report dated 3.7.2017, taking into account the overall traffic at Terminal-1 for all the destinations operated by the three airlines during the period FY 2016-17, recommendation for advising all the three airlines to shift the flights operations to and fro Mumbai, Kolkata and Bengaluru from Terminal-1 to Terminal-2 was made. So has come to be done vide the impugned decision made applicable to all the three airlines including 'IndiGo'. The only difference emerging is to the effect that Go Air in addition to the said operations, has been allowed to shift its remaining operations also to Terminal-2, and, that is also subject to any further directions. Be that as it may, if, Go Air has been allowed to shift its other operations also, such shifting of the remaining



operations of Go Air, cannot be considered to be not in consonance with the Internal Assessment Report dated 3.7.2017. Even otherwise, the impugned decision cannot be said to be at much variance with the said Reports inviting judicial review.

16. No submissions came to be made as regards the impugned communication dated 14.6.2017 issued by Ministry of Civil Aviation, whereunder, 'DIAL' was authorized to decide the suitable course of action and its decision was to be binding on the airlines. Submissions came to be made on the merits of the impugned decision and impliedly, the challenge to the said letter/communication dated 14.6.2017 was dropped. Be that as it may, the said communication was addressed by the Ministry of Civil Aviation not only to 'DIAL', but, all the three airlines including 'IndiGo' and thereunder, all of them were required to discuss the issue amongst themselves in order to arrive at a mutually acceptable solution within a month and in case, no consensus amongst the airlines was formed on the modalities for operationalising Terminal-2 and shifting of operations from Terminal-1, 'DIAL' was authorized to decide the suitable course of action, which was to be binding on the airlines. In view thereof, the impugned decision taken by 'DIAL' cannot be said to be without any authority. Suffice to say, no legal infirmity in such authority has come to be pointed out during the course of hearing. In view thereof, the prayer for its quashing stands rejected.

17. In view of the foregoing, the petition is dismissed. Keeping in view however, the fact that the deadline for beginning the operations of 'IndiGo' and Spicejet from Terminal-2 in terms of the impugned communication is going to expire on 4.1.2018, the time provided to 'IndiGo' and Spicejet to shift their such part operations is extended till 15.2.2018. It is also directed that, in the event, 'IndiGo' and Spicejet make a request for shifting of operations of their flights other than the sectors Mumbai, Kolkata and Bengaluru, at par with the traffic of the such sectors within 7 (seven) days from today, it shall be open for 'DIAL' to consider such request(s) and dispose off such request(s) within 7 (seven) days of the receipt thereof, collectively or individually. Writ petition and the pending application(s) stand disposed off accordingly.

**A. K. CHAWLA, J**

**DECEMBER 20<sup>th</sup>, 2017**

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