



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE B. VEERAPPA

WRIT PETITION No.2432/2017 &
WRIT PETITION Nos.6232-6234/2017(GM-RES)

BETWEEN:

1. DR. S. J. RAJALAKSHMI,
AGED ABOUT 30 YEARS,
D/O LATE S. JANARDHANA MURTHY,
R/O.NO:5 17TH MAIN,
MUNSWERA BLOCK, SRINAGAR,
BANGALORE-26.
2. DR. S. SHOBHA
AGED 60 YEARS,
W/O LATE S. JANARDHANA MURTHY,
R/O NO:5, 17TH MAIN,
MUNESWARA BLOCK, SRINAGAR,
BANGALORE-26. ... PETITIONERS

(BY SMT. MANJULA N TEJASWI, AMICUS CURIAE;
Dr. S.J. RAJALAKSHMI - PARTY-IN-PERSON)

AND:

1. THE MANAGER,
CUSTOMER SERVICES,
AIR INDIA LIMITED,

SERVICE COMPLEX, NEAR ARRIVAL GATE,
HAL AIRPORT, VIMANAPURA POST,
BANGALORE-17.

2. THE MANAGER,
CUSTOMER SERVICES,
AIR INDIA LIMITED,
NEW DEHI, AIR PORT,
NEW DEHI, INDIA.
3. SMT. SUMITHARA
EZI DRIVE TOURS & TRAVELS,
P.NO:49, GROUND FLOOR,
5TH CROSS, RAMANANJANEYA LAYOUT,
MARATHAHALLI,
BANGALORE.
4. THE INSPECTOR
GIRINAGAR POLICE STATION,
BANGALORE-85. .. RESPONDENTS

(BY SRI K. MOHAN KUMAR, ADVOCATE FOR
SRI K. SUBBA ANANTHI, ADVOCATE FOR R1 & R2;
SRI K.V. OMPRAKASH, ADVOCATE FOR R3;
MS. NILOUFER AKBAR, AGA FOR R4)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING
TO REFUND THE AMOUNT OF RS.5,70,000/- [RS.FIVE
LAKHS SEVENTY THOUSAND ONLY] BY RESPONDENT-3
COLLECTED PRIOR TO THE TOUR FROM THE PETITIONERS
ETC.

THESE WRIT PETITIONS COMING ON FOR FINAL
HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The 1st petitioner – Dr. S.J. Rajalakshmi, who is physically disabled of 75% permanent physical impairment as per the Medical Certificate issued by the Medical Superintendent, Victoria Hospital and the 2nd petitioner who is aged about 63 years as on today, are before this Court for a direction to direct the Respondent No.3 to refund an amount of Rs.5,70,000/- collected prior to the tour from the petitioners and to direct Respondent Nos.1 and 2 to refund Air ticket charges from Bengaluru to London; London to Scotland; Scotland to London; and London to Bengaluru as per Annexures – Z-Z6, Z9 to Z12 and also direct the Respondent No.3 to get back luggage from Sheraton Hotel, London and to direct the respondents to make good a loss of medical practices on account of the hospitalization for a period of six months as they have lost of practice as doctors and to direct the respondents to pay medical expenses incurred by the petitioners as per the memo filed before

this Court and to direct the respondent No.4 to file the charge sheet on the complaint made by the petitioners against the persons mentioned therein.

I FACTS OF THE CASE

2. It is the case of the petitioners that Respondent No.3 - Smt. Sumithra Ezi Drive & Travels has conducted customized tour for 16 days as per Annexure-Q on 16.2.2016. Both the petitioners have paid Rs.5,40,000/- to respondent No.3. The tour conducted from 24.7.2016 to 10.8.2016. It is further case of the petitioners that they have booked air tickets from Bengaluru to London and London to Bengaluru separately through Respondent Nos.1 and 2 along with the wheel chair. On 18.7.2016, the petitioners booked air tickets to London through Air India after paying the entire air ticket charges. When the petitioners reached the London at about 6.00 a.m. on 19.7.2016, the wheel chair of the 1st petitioner was not

provided by the Respondent Nos.1 and 2 - Air India at London Airport. Immediately, the petitioners lodged complaint to the Police and the concerned authorities of the Air India on that day itself. But no reply was received nor assisted the petitioners. Only at 9 p.m., the respondent Nos.1 and 2 provided regular wheel chair and taken the petitioners to hotel and the petitioners reached the hotel at 11.00 p.m. It is further contended that on 19.7.2016 itself, the petitioners had planned to go to Scotland, but the same was missed because, the respondents have not provided wheel chair on 19.07.2016 at 6.00 a.m. The petitioners have booked air tickets for 20.7.2016 through Respondent Nos.1 and 2 - Air India on the assurance that they will provide wheel chair at 7 a.m. on the said day. But the Respondent Nos.1 and 2 were able to provide wheel chair only at 11.15 am. Therefore, the petitioners have missed the said flight also.

3. It is further contended that on 20.7.2016 the petitioners booked Jet Airways flight at 6 p.m. and reached Scotland and landed in a private hotel. Subsequently on 23.7.2016 returned to London and stayed in a hotel. On 24.7.2016 the agent of Respondent No.3 at London never met the petitioners nor arranged the hotel as agreed at the time of booking. Only on 25.7.2016, the agent of Respondent No.3 at London met the petitioners, but not arranged any room. The petitioners went city tour arranged by Respondent No.3 agent at London. Only at night, the agent of the Respondent No.3 arranged one room in a hotel without any proper facilities. There was no help from the agent of Respondent No.3 in the said hotel. Knowing fully well that the 1st petitioner is physically disabled to an extent of 75% and without wheel chair, she cannot move about, the agent of Respondent No.3 at London has not made necessary arrangements on 26.7.2016. Somehow, the petitioners have managed and

on 27.7.2016 they came back to India. Due to the health problem and further as there was no assistance from the agent of Respondent No.3 or from the Respondent Nos.1 and 2 – Air India, in providing wheel chair within the time and making necessary arrangements, the petitioners suffered a lot from mental agony and physical sufferings and lost their money and as a result, they cut short the tour and came back to India. Therefore, the petitioners are before this Court for the reliefs sought for.

4. The petitioners also filed the additional documents on 23.9.2019 pertaining to Income Tax returns of 1st petitioner, academic achievements of 1st petitioner and hospitalization and medical bills issued by the concerned Medical Officers/doctors amounting to Rs.13,80,000/- to prove the physical sufferings and mental agony suffered by the petitioners during the tour. Therefore, the petitioners sought to allow the present writ petitions.

II OBJECTIONS FILED ON BEHALF OF RESPONDENTS 1 & 2

5. The Respondent Nos.1 and 2 filed objections along with the brief synopsis on 12.9.2019. They did not dispute the list of events stated by the petitioners in the writ petitions. It is contended that on 18.7.2016, petitioner Nos.1 and 2 have travelled from Bengaluru to London via Delhi by Air India flight and on 19.7.2016, regular wheel chair arranged in London Airport and also in Hotel and on 20.7.2016 only wheel chair delivered to petitioners, thereby missing of the wheel chair is not disputed. On 20.7.2016, the petitioners have traveled to EdinBurgh and on 22.7.2016, petitioners have travelled from EdinBurgh to London. Petitioner Nos.1 & 2 wrote a letter to Respondent Nos.1 & 2 on 9.8.2016 about missing of the wheel chair. On 11.8.2016, letter of apology written by Respondent Nos.1 & 2 to the petitioners.

6. It is further contended that from London Airport to the car and in the hotel, wheel chair was provided. On the next day morning i.e., 20.7.2016 only wheel chair was delivered at 10.00 a.m. and for the delayed delivery of baggage, Rs.4,000/- was paid by Respondent Nos.1 and 2. From 20th onwards, they traveled by Ezi Tours and Travels Private Limited. The whole cost of both petitioners' tickets (used and unused) has been refunded. As per the interim order dated 8.2.2018 passed by this Court, the petitioners had agreed for Rs.73,750/- and the amount of Rs.48,024/- delivered to petitioner No.1 on 22.3.2018 and Rs.25,726/- on 12.7.2017 and contended that the writ petitions filed by the petitioners for the reliefs sought for, are not maintainable.

7. It is further contended that as per Article-17 Section 17.1(b) as appearing in the Conditions of Contract, the liability for loss, delay or damage to baggage is limited by the Montreal Convention 1999 and such liability is

limited to a maximum of 1,131 SDRs per passenger unless the passenger has made, at the time when checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum, if so required and in that case, the carrier shall be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

8. It is further contended that the very fact that the Montreal Convention, the Warsaw Convention and the Conditions of Contract have a provision for delayed delivery of baggage with compensation fixed, it is obvious that there is a provision in these legal Acts that the delivery of baggage can be delayed for which delay delivery compensation is payable, though every effort will be taken by Respondent Nos.1 & 2 to ensure that the baggage reaches the destination of the petitioners.

9. It is further contention of the respondent Nos.1 & 2 that Air India Confirms that in the instant case of the petitioners, the delayed baggage was not lost or misplaced, it arrived in London the same night i.e., on 19.7.2016 at 1900 hours. In view of clearance formalities in London Airport, by the time the baggage was taken out of British Customs it was around 2200 hours. As it was an unearthly hour to disturb the passengers, the baggage was forwarded to the petitioners at 1000 hours on the following morning i.e, 20.7.2016. Taking due cognizance of the situation, Respondent Nos.1 & 2 Airport officials in London Airport provided hotel accommodation to 1st and 2nd petitioner with food consisting of breakfast/lunch/dinner. The same is confirmed by Duty Manager of Respondent Nos.1 & 2 from London.

10. It is further contended that for the delay in delivery of baggage, an amount of Rs.4,000/- has been paid to the petitioners and the same is accepted.

Thereafter, the petitioners are aiming to unduly profit themselves in demanding Rs.15,00,000/- after accepting the offer of Rs.4,000/- on 10.1.2017. Therefore, the present writ petitions are not maintainable.

11. It is further stated that from the petitioners' contentions, it is revealed that they experienced considerable difficulty in the course of their land tours. Respondent Nos.1 and 2 - Air India is in no way responsible for this and strongly aver that it has no role to play in these arrangements as it is outside the ambit of transportation contract between the petitioners and Respondent Nos.1 & 2 - Air India. Therefore, the Respondent Nos.1 and 2 sought to dismiss the present writ petitions.

III ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PARTIES

12. Smt. Manjula N. Tejaswi, learned *amicus curiae* appointed to assist the Court on behalf of the petitioners contended that the Respondent Nos.1 and 2 had not

provided the wheel chair of the 1st petitioner on 19.7.2016 at 6 a.m. at London Airport as agreed and because of the said fault committed by the Respondent Nos.1 and 2, the 1st petitioner cannot move about and she suffered both mental trauma and physical suffering because of the conduct of respondents in not providing wheel chair, which is her life jacket, within the time. She would further contend that only at 9 p.m. on the said day, the respondent Nos.1 and 2 provided wheel chair and the petitioners reached the hotel only at 11.00 p.m. She would further contend that though the petitioners had planned to go to Scotland on 19.7.2016 itself, the flight was missed because the respondents had not provided the wheel chair on 19.7.2016 at 6 a.m. She would further contend that the petitioners had booked air tickets for 20.7.2016 through Respondent Nos.1 and 2 on the assurance that they will provide wheel chair at 7 a.m. on the said day, but the Respondent Nos.1 and 2 provided

wheel chair only at 11.15 a.m. and therefore the petitioners missed the said flight also. She would further contend that knowing fully well that the 1st petitioner is physically disabled to an extent of 75% and without wheel chair, she cannot move about, the agent of Respondent No.3 who is at London has not made necessary arrangements at London. As there was no assistance from Respondent Nos.1 and 2 in providing wheel chair within time and since Respondent No.3 has not made necessary arrangements including hotel accommodation at London, the petitioners suffered a lot from mental agony and physical sufferings and as a result, they cut short the tour and came back to India. Therefore, she submits that the petitioners are entitled to compensation as sought for.

13. Per contra, Sri K. Mohan Kumar, learned counsel for Respondent Nos.1 and 2 reiterating the objections filed, he has not disputed the list of events submitted by the petitioner in the writ petitions, but

contended that on 18.7.2016 petitioner Nos.1 and 2 travelled from Bengaluru to London via Delhi by Air India flight and on 19.7.2016, regular wheel chair arranged in London Airport and also in Hotel and on 20.7.2016, the wheel chair delivered to the petitioners, thereby missing of the wheel chair is not disputed. He further contended that from London Airport to the car and in the hotel, the wheel chair was provided. He further contended that on 20.7.2016, the wheel chair was delivered at 10 a.m. and for the delayed delivery of baggage, Rs.4,000/- was paid to the petitioners by Respondent Nos.1 and 2. He would further contend that as per the interim order dated 8.2.2018 passed by this Court in the present writ petitions, the respondents have paid the amount to the petitioners. Therefore, the petitioners are not entitled to any relief before this Court under Articles 226 and 227 of the Constitution of India and sought to dismiss the writ petitions.

IV MEMO FILED BY RESPONDENT No.3

14. At this stage, Sri K.V. Omprakash, learned counsel for respondent No.3 files a memo dated 25.09.2019 agreeing to pay an amount of Rs.3,45,000/- (Rupees Three Lakhs Forty Five Thousand Only) towards full and final settlement resolving the dispute amicably without any further claim or litigation between the petitioner and respondent No.3. Said memo is placed on record.

V MEMO FILED BY PETITIONER No.2

15. Dr. S. Shobha – Petitioner No.2 who is present before the Court submits that she is agreed for the memo filed and received the cheque bearing No.172511 dated 30.09.2019 for Rs.3,45,000/- (Rupees Three Lakhs Forty Five Thousand Only) drawn on IndusInd Bank, Marathahalli, Bengaluru in the presence of Smt. Manjula N. Tejaswi who is appointed as *amicus-curiae* to assist the Court on behalf of the petitioners.

16. The Petitioner No.2 also filed a memo dated 25.09.2019 praying to delete the prayer at Sl.No.1 against respondent No.3. In view of the memo filed, the prayer at Sl.No.3 of the writ petition (To refund the amount of Rs.5,70,000/- by respondent No.3 collected prior to the tour from the petitioners is dismissed as not pressed.

17. Sri K.V. Omprakash, learned counsel for respondent No.3 in so far as prayer No.4 concerned (to direct the respondent No.3 to get back the luggages from the Sheraton Hotel, London) submits that respondent No.3 will take all the necessary and sincere efforts by writing letters to get back the luggages of the petitioners from the Sheraton Hotel, London. Said submission is placed on record.

VI POINT FOR DETERMINATION

18. Having heard learned counsel for the parties, the only point that arises for my consideration in the present writ petitions is:

"Whether the petitioners have made out a case to award compensation as sought for in the present facts and circumstance of the case?"

19. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the materials on record carefully.

VII CONSIDERATION

20. Before considering the matter on merits, it is relevant to consider the provisions of Section 5 of the Aircraft Act, 1934 and Rule 133A of the Aircraft Rules, 1937 which reads as under;

"Section 5. Power of Central Government to make rules.- (1) *[Subject to the provisions of section 14,] the [Central Government] may, by notification in the [Official Gazette], make rules [regulating the manufacture,] possession, use, operation, sale, import or export of any aircraft or class of aircraft d [and for securing the safety of aircraft operation.]*

(2) Without prejudice to the generality of the foregoing power, such rules may provide for -

(a) the authorities by which any of the powers conferred by or under this Act are to be exercised;

(aa) the regulation of air transport services, and the prohibition of the use of aircraft in such services except under the authority of and in accordance with a licence authorising the establishment of the service;

(ab) the economic regulation of civil aviation and air transport services, including the approval, disapproval or revision of tariff of operators of air transport services; the officers or authorities who may exercise powers in this behalf; the procedure to be followed, and the factors to be taken into account by such officers or authorities; appeals to the Central Government against orders of such officers or authorities and all other matters connected with such tariff. Explanation.- For the purposes of this clause, "tariff" includes fares, rates, valuation charges and other charges for air transport of passengers or goods, the rules, regulations, practices or services affecting such fares, rates, valuation charges and other charges and rates, terms and conditions of commission payable to passenger or cargo sales agents;]

(ac) the information to be furnished by an applicant for, or the holder of, a licence authorising the establishment of an air transport service to such authorities as may be specified in the rules;]

[(b) the licensing, inspection and regulation of aerodromes, the conditions under which aerodromes may be maintained, the prohibition or regulation of the use of unlicensed aerodromes;

(ba) the fees which may be charged at those aerodromes to which h [the Airports Authority of

India Act, 1994] does not apply or is not made applicable;]

(c) the inspection and control of the manufacture, repair and maintenance of aircraft and of places where aircraft are being manufactured, repaired or kept;

(d) the registration and marking of aircraft;

(e) the conditions under which aircraft may be flown, or may carry passengers, mails or goods, or may be used for industrial purposes and the certificates, licences or documents to be carried by aircraft;

(f) the inspection of aircraft for the purpose of enforcing the provisions of this Act and the rules thereunder, and the facilities to be provided for such inspection;

(g) the licensing of persons employed in the operation, manufacture, repair or maintenance of aircraft;

[(ga) the licensing of persons engaged in air traffic control;

(gb) the certification, inspection and regulation of communication, navigation and surveillance or air traffic management facilities; The Aircraft (Amendment) Act, 2007 (44 of 2007) came into force with effect from 01-02-2008 vide Notification No. AV.11012/3/2000-A dated 21st January 2008

(gc) the measures to safeguard civil aviation against acts of unlawful interference;]

(h) the air-routes by which and, the conditions under which aircraft may enter or leave j [India], or may fly over j [India], and the places at which aircraft shall land; (i) the prohibition of flight by aircraft over any specified area, either

absolutely or at specified times, or subject to specified conditions and exceptions;

(j) the supply, supervision and control of air-route beacons, aerodrome lights, and lights at or in the neighbourhood of aerodromes or on or in the neighbourhood of air- routes;

[(jj) the installation and maintenance of lights on private property in the neighbourhood of aerodromes or on or in the neighbourhood of air-routes, by the owners or occupiers of such property, the payment by the Central Government for such installation and maintenance, and the supervision and control of such installation and maintenance, including the right of access to the property for such purposes;]

(k) the signals to be used for purposes of communication by or to aircraft and the apparatus to be employed in signalling;

(l) the prohibition and regulation of the carriage in aircraft of any specified article or substance;

(m) the measures to be taken and the equipment to be carried for the purpose of ensuring the safety of life;

(n) the issue and maintenance of log-books;

(o) the manner and conditions of the issue or renewal of any licence or certificate under the Act or the rules, the examinations and tests to be undergone in connection therewith, the form, custody, production, endorsement, cancellation, suspension or surrender of such licence or certificate, or of any log-book;

(p) the fees to be charged in connection with any inspection, examination, test, certificate or licence, made, issued or renewed under this Act;

(q) the recognition for the purposes of this Act of licences and certificates issued elsewhere than in h[India] relating to aircraft or to the qualifications of persons employed in the operation, manufacture, repair or maintenance of aircraft.

(qq) the prohibition of slaughtering and flaying of animals and of depositing rubbish, filth and other polluted and obnoxious matter within a radius of ten kilometers form the aerodrome reference point; and]

(r) any matter subsidiary or incidental to the matters referred to in this sub-section."

"Rule 133A Directions by Director-General-

(1) The Director-General may, through Notices to Airmen (NOTAMS), Aeronautical Information Publication, Aeronautical Information Circulars (AICs), Notices to Aircraft Owners and Maintenance Engineers and publication entitled Civil Aviation Requirements, issue special directions not inconsistent with the Aircraft Act, 1934 (22 of 1934) or these rules, relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft registered in India.

(2) The Civil Aviation Requirements under sub-rule(1) shall be issued after placing the draft on the website of the Directorate General of Civil Aviation for a period of thirty days for inviting objections and suggestions from all persons likely to be affected thereby;

Provided the Director General may, in the public interest and by order in writing, dispense with the requirements of inviting such objections and suggestions or reduce the period for submitting such objections and suggestions.

(3) Every direction issued under sub-rule(1) shall be complied with by the person or persons to whom such direction is issued."

21. A careful reading of the above provisions, make it clear that the Central Government by notification makes rules regulating the manufacture, possession, use, operation, sale, import or export of any aircraft or class of aircraft and for securing the safety of aircraft operations. The Director-General may, through notices to Airmen (NOTAMS), Aeronautical Information Publication, Aeronautical Information Circulars (AICs), Notice to Aircraft Owners and Maintenance Engineers and publication entitled Civil Aviation Requirements issue special directions not inconsistent with the Aircraft Act, 1934 or these rules, relating to the operation, use, possession, maintenance or navigation of aircraft flying in or over India or of aircraft

registered in India and takes appropriate steps in the public interest and by order in writing, dispense with the requirement of inviting such objections and suggestions etc.

22. Section 44 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 reads as under;

"Section 44. Non-discrimination in transport.—Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to—

(a) adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons;

(b) adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently."

23. Taking into consideration the above provision, it is clear that notwithstanding the fact that there have been significant movements in recognizing the rights of

differently abled persons, much is yet to be achieved. Indian Government also has come out with various legislations and schemes for the upliftment of such differently abled persons, but gap between the laws and reality still remains. Even though human rights activists have made their best efforts to create awareness that people with disabilities have also right to enjoy their life and spend the same not only with the sense of fulfillment, but also to make them contribute in the growth of the society, yet mindset of large section of the people who claim themselves to be 'able' persons still needs to be changed towards differently abled persons. It is this mindset of the other class which is still preventing, in a great measure, differently abled persons from enjoying their human rights which are otherwise recognized in their favour.

24. Keeping in view the aforesaid principle, at this stage it is relevant to consider the claim of the petitioners. It is an undisputed fact that the petitioner No.1 is a Doctor

aged about 33 years as on today is physically disabled of 75% permanent physical impairment (locomoto) as per the certificate issued by the Medical Superintendent, Victoria Hospital, Bengaluru. In spite of such disability, she graduated in Bachelors in Dentistry (BDS) at Oxford Dental College and completed courses in Fashion designing, psychology, vedic Yoga and modeling in the year 2009 and completed masters in dentistry (MDS) – masters in dentistry-orthodontics and dentofacial orthopedics at Government Dental College, Bangalore in the year 2010 and in the year 2014 she established her own dental clinic and she became proprietor of S.J. Dental Square, the dental professionalis, Multi Specialty Dental Clinic and was the Chairman of S.J. Foundation (Trust) and also was also a Trainer for wheelchair service programme in the year 2015. In the year 2016 she has taken initiative in 'N Talks'- a platform to bring real life heroes on stage, participated in Dental implantology workshop in Kerala and in the year

2017 she was appointed as Assistant Professor at SGR Dental College, Bengaluru and from 2009-2017 she explored various destinations in India and abroad and in the year 2014-15 she participated in wheelchair dance at 'Mobility India Cultural Event' and in 'Miss Wheelchair India 2015'. She also completed a course in WSTP-B and WSTP tot-B, in the year 2014-17 and she organized Free Dental Health checkup camps at various schools in Bengaluru and she was a rank holder in Bachelors of Dental surgery for Karnataka State, awarded as positive hero by Dr. Batras on the occasion of International Women's day award. She achieved gold medal in Masters of Dental Surgery specializing in Orthodontics and Dentofacial from Rajiv Gandhi University of Health Sciences, she was first rank holder for Karnataka Stage. She crowned as 'Miss. Wheelchair India 2014' in the year 2014, in the year 2015 she organized a 'National Beauty Pageant for Women with Disability' – 'Miss Wheelchair India 2015' on December 5th

at Indiranagar Club, Bengaluru and she was rated as one of the 9 Bold Women in India by Kosmoderma through an article named 'Bold is Beautiful' and awarded as 'Women of Substance' by SRL Diagnostics, she also participated in 'District Level Wheelchair World Popularity 2017' at Poland, she was Ambassador for 'Miss Wheelchair World in India', she honored for National appreciation award by Indian Orthodontic Society by the President at Jaipur also received National award for being Role Model of India honored by President of India at Vigyan Bhavan, Delhi in the year 2014-17. The petitioner No.2 also a Doctor and Proprietor of Sri Raghavendra Hospital, Bengaluru and providing her service to the general public.

25. Taking into consideration the above lifetime achievements and the honours owned by petitioner No.1, it is clear that petitioner No.1 ignoring her 75% disability achieved name and lifetime awards which indicates the will power of the petitioner No.1.

VIII CONSTITUTIONAL PROVISIONS

26. Article 14 and 21 of the Constitution of India reads as under;

"Article 14- Equality before law:- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

"Article 21- Protection of life and personal liberty:- No person shall be deprived of his life or personal liberty except according to procedure established by law."

27. According to the petitioners, in the Europe Tour package conducted by respondent No.3, when they reached London at about 6.00 a.m. on 19.07.2016, the respondent Nos.1 and 2 have not provided the wheel chair of the petitioner No.1. The petitioners lodged complaint to the jurisdictional police. According to the petitioners, no reply was received. Only at 9 p.m., the respondent Nos.1 and 2 provided wheel chair and taken the petitioners to hotel at 11.00 p.m. It is further contended that on 19.07.2016, the

petitioners wanted to go to Scotland, but the same was missed because of respondents not provided wheel chair within the time. The petitioners have booked air tickets for 20.07.2016 through respondent Nos.1 and 2 on the assurance that they will provide wheel chair at 7.00 a.m. But they provided only at 11.15 a.m., due to which, the petitioners missed that flight also.

28. Under those peculiar facts and circumstances, the petitioners suffered shock and trauma of the event and they had trouble for sleeping and eating. According to the petitioners, the incident was occurred two years back, whenever they had a flashback, they feel haunted with that scene that they were mis-managed by respondent Nos.1 and 2 and they have been treated like animals and they continues to have nightmares where they suffered at London airport. In view of the difficulties faced by them, especially petitioner No.1 who suffered with kind of agony, humiliation and emotional trauma which amounts to doing

violence to their human dignity and infringes, to the hilt, their fundamental rights under Articles 14 and 21 of the Constitution of India.

29. It is also not in dispute that respondent Nos.1 and 2 apologized the petitioners by their letters dated 11.08.2016 and paid Rs.4,420/- for the delay in providing the wheel chair, thereby, respondent Nos.1 and 2 admitted the mis-management, where the petitioners were forced to suffer set back and nightmares at London airport without food and shelter and made the petitioners to cut short their tour program and returned to India without waiting till 10.08.2016 as per the original programme i.e., from 16.07.2016 to 10.08.2016.

XI CIVIL AVIATION REQUIREMENTS 2008

30. The Central Government also issued Civil Aviation Requirements on 01.05.2008 (CAR 2008) with regard to carriage by Air of persons with Disability and/or

persons with Reduced Mobility issued by the Director General of Civil Aviation (DGCA) under the provisions of Rule 133 A of the Aircraft Rules, 1937 wherein it is stated as under;

4.1 No airline shall refuse to carry persons with disability or persons with reduced mobility and their assistive aids/devices, escorts and guide dogs including their presence in the cabin, provided such persons or their representatives, at the time of booking and /or check-in for travel, inform the airlines of their requirement.

4.4 All airlines and airport management shall run program for their staff engaged in passenger handling e.g. cabin crew / commercial staff including floor walkers and counter staff etc. for sensitization and developing awareness for assisting passengers with disabilities. The training program shall be conducted at the time of initial training and a refresher shall be conducted every 3 years on the subject. Only such persons who have current course shall be assigned to handling disabled persons. The

training program should interalia, include assisting disabled persons in filling up travel documents as may be required while providing assistance in flight.

4.6 Many persons with disabilities do not require constant assistance for their activities. Therefore, if the passenger declares independence in feeding, communication with reasonable accommodation, toileting and personal needs, the airlines shall not insist for the presence of an escort.

4.8 All airlines shall provide necessary assistance to persons with disabilities/impairment who wish to travel alone without an escort.

4.10 (a) Airport operator shall display International symbol of Disability within the visible proximity of the main entrance of the arrival/departure terminal, informing that they may contact the concerned airline operator for special assistance. Special assistance to be

provided by Airport operator/security agencies to the visually impaired in locating concerned airline operator counter/office. Airport operator shall provide dedicated reserved parking space, toilets with independent entrance with proper signage and barrier free access to all areas in the terminal building.

b) Once a passenger has bought a ticket for travel, it is obligatory on part of the airline that he reaches the aircraft from the departure lounge, and at the end of the journey from the aircraft to the arrival lounge exit, without incurring any further expenditure.

4.13 Airlines shall provide assistance to meet the particular needs of the persons with disabilities and persons with reduced mobility, from the departing airport terminal to the destination airport terminal.

5.1 No medical clearance or special forms shall be insisted from persons with disabilities or persons with reduced mobility who only require special assistance at the airport for assistance in

embarking / disembarking and a reasonable accommodation in flight, who otherwise do not require any additional assistance.

10.1 A disabled person or person with reduced mobility who considers that this regulation has been infringed may bring the matter to the attention of the managing body of airlines, airport or other concerned authorities, as the case may be.

10.2 The managing body of the airlines and the airport shall ensure speedy and proper redressal of these complaints.

X LETTER BY RESPONDENTS 1 & 2

31. The letter dated 01.09.2017 written by the respondents 1 & 2 to the petitioners reads as under;

"Passenger Dr.Rajalakshmi is a disabled person and she needs her wheelchair for her day to day activities. They had four pieces of checked in baggage and the wheelchair. On arrival at London the wheelchair was not received by them as it was left behind at Delhi Airport. It was

subsequently handed over to them on 20 July, 2016.

No delay delivery compensation was offered to the passenger at London (refer to attached mail from Duty Manager, Air India, Heathrow). As passenger is entitled to a delayed delivery compensation of GBP 50, kindly transfer the equivalent in INR amounting to INR 4420/- (four thousand four hundred twenty only) to the account details given below:

*NAME OF THE ACCOUNT HOLDER : DR.RAJALAKSHMI S.J
NAME OF BANK : CANARA BANK
ADDRESS OF BANK : HANUMANTHAGAR
BANGALORE - 560 019.
ACCOUNT NUMBER : 0472101037337
IFSC CODE : CNRB0000472"*

32. It is the specific case of the petitioners that they have booked tickets in Air India-respondent Nos.1 and 2 as per Annexures- Z, Z6, Z9 to Z12. It is further case of the petitioners that in view of the sufferings at the instance of respondent Nos.1 and 2, petitioners cut short their programme/ original plan and returned to India on 27.07.2016 as the second petitioner had no assistance from the third respondent at London. Immediately, the second petitioner was shifted to BGS hospital and she took

treatment for twenty days. Petitioners have produced relevant documents along with an application and affidavit dated 16.09.2019. The petitioners have produced various medical records, which are not disputed by the respondents 1 & 2. The details of hospitalization and other expenses furnished by the petitioners is as under:

1	Medical treatment at Brussels	₹25,000/-
2	Jayadeva Institute of Cardiology	₹1,25,000/-
3	BGS Hospital	₹4,00,000/-
4	Curi Hospital, Koramangala	₹5,000/-
5	St.John's Hospital	₹1,000/-
6	HCG Hospital	₹2,000/-
7	Fortis Hospital	₹1,800/-
8	Victoria Hospital	₹1,000/-
9	Rangadoria Hospital	₹5,000/-
10	Follow up treatment at Jayadeva	₹15,000/-
11	Follow up treatment at BGS Hospital	₹21,000/-

12	Lab investigation at different hospitals	₹5,000/-
13	Lab investigation: x ray, scanning, MRI	₹45,000/-
14	Medication daily interfere	₹1,45,000/-
15	Catheterization for petitioner No.1	₹1,45,000/-
16	Pus removal for petitioner No.1	₹10,000/-
17	Physiotherapy for petitioner No.1	₹3,54,000/-
	Total	₹13,05,800/-

33. In addition to the above, it is submitted that the petitioners have incurred ₹2,26,000/- towards air tickets, ₹36,000/- towards visa charges, taxi charges and other incidental expenses, in all ₹5,06,000/-.

34. As per Civil Aviation Requirements issued by the Office of the Director General of Civil Aviation, Government of India, dated 01.05.2008, effective from the said date, with regard to carriage by Air of Persons with Disability and/or Persons with Reduced Mobility, at paragraph 6, it is provided as under:

6. Availability of Wheelchairs and/or other Assistive Devices.

All assistive aids shall be provided without any extra cost to the passengers.

6.1 Wheelchairs

(a) Airlines shall ensure that at all stations, for boarding/ disembarking purposes, before departure, during intermediate stops and on arrival wheel chairs are available without any extra charge and that advance arrangements made with other concerned agencies like Airport Management where necessary to ensure that movement of persons with disabilities and persons with reduced mobility within the airport is not restricted.

(b) Passengers who intend to check-in with their own wheelchair shall be given the option of using a station/ airport wheelchair. If the passengers prefer to use their own wheelchair within the airport, they shall be permitted to use it up to the aircraft, whereupon it may be stowed

at an appropriate place in the aircraft. At the time of disembarking, the passenger's wheel chair should be returned to him to enable him to transfer himself from the aisle seat directly into his own wheel chair.

At 7.5, it is provided as under:

7.5 Loading of special equipment of persons with disabilities or reduced mobility.

Special equipment required by incapacitated passengers and persons with disabilities or reduced mobility in connection with their trip, if not carried in the passenger cabin, shall be loaded in the baggage holds where it is easily accessible for timely return to the passenger at the time of disembarkations. All such items must be properly identified and tagged, must always travel with the passenger, and shall be loaded in such a way as to be readily and immediately available at transfer and destination points.

35. The Guidelines for Recognition/Renewal or Extension as an approved Tourist Transport Operator (TTO), revised with effect from 18th July 2011, at Guideline Nos.2, 8, 11 and 14, it is provided as under:

2. Definition: A TTO is the one who provides tourist transport like cars, coaches, boats etc., to tourists, travel agents and other service providers for transfers, sight seeing and journeys to tourist places etc.

8. The following conditions must be fulfilled by the TTO for grant of recognition/renewal or extension by MOT:-

(i) The application for grant of recognition/renewal or extension shall be in the prescribed form and submitted in duplicate along with the required documents.

(ii) The applicant should have been in the tourist transport operation

business for a minimum period of one year at the time of application.

(iii) TTO has operated in the above period a minimum number of six tourist vehicles with proper tourist permits issued by the concerned State Transport Authority (STA)/Road Transport Authority (RTA) for commercial tourist vehicles. Out of these six tourist vehicles, at least four must be cars. The tourist vehicles and the related documents should be in the name of the company except where the owner is a Proprietor. A list of vehicles in the prescribed proforma as at Annexure-1 should be attached with the application.

(iv) The applicant should have adequate knowledge of handling the tourist transport vehicles for transferring tourists from the Airport, Railway Stations, Bus Stations, etc., and for sight-seeing of tourists, both

foreign and domestic. The drivers should have working knowledge of English and Hindi/local languages.

(v) The drivers of the tourist vehicles should wear proper uniform and must possess adequate knowledge of taking the tourists for sight seeing.

(vi) The applicant should have proper parking space for the vehicles.

(vii) TTO is registered with the appropriate authority for carrying on the business of operating tourist transport vehicles.

(viii) For the monuments protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), the TTOs should deploy/engage the services of Regional Level Tourist Guides trained and licensed by Ministry of Tourism,

Government of India or other guides authorized by the Government of India or under orders of the Hon'ble Court(s). For other monuments and destinations, the guides authorized under the orders of the appropriate authority, if any, of the concerned monument/destination should be deployed/engaged by TTOs.

(ix) The minimum office space should be at least 150 sq. ft for rest of India and 100 sq.ft for hilly areas which are above 1000 meters from sea level. Besides the office may be located in the commercial area and equipped with telephone, fax, computers etc. Its surroundings should also be neat and clean. There should be sufficient space for reception and easy access to the toilet facilities.

(x) The turn-over of the firm from Tourist Transport Operations only

should be a minimum of Rs.25.00 lakh for rest of India and Rs.10.00 lakh for the North-East region, remote and rural areas duly supported by a Certificate issued by Statutory Auditor of the firm. In this regard, the turn over through foreign exchange and INR must be mentioned separately, by the Statutory Auditor of the firm.

(xi) The applicant should be income tax assessee and should submit copy of acknowledgment certificate as a proof of having filed income tax return for current assessment year.

11. The recognition/renewal or extension would be granted to the Head Office of the TTO. The Branch Offices of TTO would be approved along with the Head Office or subsequently, provided the particulars of the Branch Offices are submitted to MOT for recognition and for renewal

or extension to the concerned RD and accepted by it.

14. Even though the scheme of granting approval of recognition to service providers of Travel Trade is voluntary, in nature, there is a need to have a pro-active role of MOT and Travel Trade to ensure that more and more service providers seek approval and then service the tourists. There is also a need to educate the stakeholders as well as consumers against the potential risk of availing services through the unapproved service providers.

36. A careful perusal of the Civil Aviation Requirements, 2014 discloses the tremendous efforts made by the Committee taking care of most of the problems which such people face. As the Executive Summary of the said report shows, the Committee recommended that allocation of responsibility between airports and airlines should be clearly defined to avoid delays and inconveniences/ hardships to Persons with Reduced Mobility

arising due to lack of communication between service providers. It has also been suggested that the equipment and other facilities should be standardized in consultation with Department of Disabilities Affairs. Internal audits should be introduced to ensure that assistive devices are available in good condition and handling persons are properly trained in their use. Responsibilities also need to be clearly defined for each stakeholder, namely, responsibility of the airlines, their agents and ticketing website for ticketing, airport operator for providing a helpdesk and assisting the passenger on arrival at the airport, responsibility of airline for check-in, responsibility of CISF for security check etc.

37. It is well settled that, the rights that are guaranteed to differently abled persons under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rights of Persons with Disabilities Act, 2016, are founded on the sound

principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution of India. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognized. They are:

- (i) Theological Models,
- (ii) Philosophical Models and
- (iii) Constitutional Models.

The Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies.

38. Our Constitution which guarantees human rights that are contained in Part III with the caption "Fundamental Rights". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by its Court to include right to live with dignity. Human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak. Human Dignity-The Constitutional Value and the Constitutional Right" Cambridge University Press (2015).

"The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in three ways:

- (i) the value of human dignity serves as a normative basis for constitutional rights set out in the constitution;*

- (ii) *it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity;*
- (iii) *the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right."*

39. The Hon'ble Supreme Court, while considering Article 21 of the Constitution of India in the case of ***Association of Medical Super Specialty Aspirants and Residents and others vs. Union of India and others*** made in ***W.P. (Civil) No. 376 of 2018 dated 19th August 2019***, at paragraph 26, 28, 29, 32 and 33, has held as under:

26. Right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and

expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter, and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and the restriction would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.

28. The State's obligations are not satisfied solely by refraining from imposing limitations on the right to human dignity. The State must also

take action to protect human dignity and to facilitate its realization. The constitutional right to dignity is intended to ensure human beings' political and civil liberties as well as their social and economic freedoms.

29. Dr. A.K.Sikri.J. in **K.S.Puttaswamy v. Union of India** observed that the realization of intrinsic worth of every human being as a member of society is an indispensable condition, and has been recognized as an important human right. Truly speaking, this is directed towards the deprived, downtrodden and the have-nots. He further held that the humanistic concept of human dignity which is to be accorded to that particular segment of the society has to be kept in mind. Their human dignity is based on the socio-economic rights that are read into the fundamental rights. The importance of the communitarian approach along with the individualistic approach to human dignity was addressed by Dr.A.K.Sikri, J. in the above judgment. The learned Judge emphasized on the role of the State and community in establishing collective goals and restrictions on

individual freedoms and rights on behalf of a certain idea of the good life.

32. The Universal Declaration of Human Rights (UDHR) recorded in the Preamble its recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of every person to the enjoyment of the highest attainable standard of physical and mental health. ICESCR mandates the States Parties to achieve full realization of the aforementioned right through the creation of conditions which would assure to all, medical service and medical attention in the event of sickness, inter alia.

33. The above discussion leads us to the conclusion that right to life guaranteed by Article 21 means right to life with human dignity. Communitarian dignity has been recognised by this Court. While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of

communitarian dignity. The laudable objective with which the State Governments have introduced compulsory service bonds is to protect the fundamental right of the deprived sections of the society guaranteed to them under Article 21 of the Constitution of India. The contention of the Appellants that their rights guaranteed under Article 21 of the Constitution of India have been violated is rejected.

40. Sri K. Mohan Kumar, learned counsel for Sri K. Subha Ananthi, Advocate for respondent Nos.1 and 2, contended that the prayer sought in the present writ petition cannot be granted by this Court in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India, as the petitioner has an alternative remedy before the Consumer Forum or the Civil Court, for damages. The said contention cannot be accepted for the simple reason that the petitioners' tour was scheduled from 24.07.2016 to 10.08.2016 through the third respondent. It is not in dispute that the petitioners booked air tickets with

respondent Nos.1 and 2 on 18.07.2016. The missing of wheel chair which is a life jacket to the first petitioner is also not in dispute and admittedly, when the petitioners booked air tickets on 18.07.2016 and entered Air India aircraft from Bengaluru to London. When they reached London by 6.00 am on 19.07.2016 the wheel chair was not provided by the Air India. The respondent Nos.1 and 2 provided the wheel chair to the first petitioner only on 20.07.2016. The respondent Nos.1 and 2 paid Rs.4,4,20/- for delayed delivery of wheel chair. Thereby, the entire tour programme of the petitioners was disturbed and their plans became upset. Thereby, petitioners suffered mental and physical agony. The first petitioner who is 75% disabled as declared by the medical surgeon of Victoria Hospital, cannot move without wheel chair which is a life jacket to her. Therefore, the contention of the learned counsel for respondents 1 & 2 cannot be accepted.

41. It is also not in dispute that this Court, by the Order dated 13.03.2018 directed the respondent Nos.1 and 2 to deposit ₹5,00,000/- before this Court. Accordingly, the Air India has deposited the said amount and the same is received by the petitioners. That was subject matter of W.A.Nos.1166-1169/2018. The Division Bench of this Court, by the Judgment dated 11.04.2018, dismissed the Writ Appeals and recorded a finding as under:

"Having heard learned counsel for the appellants and having perused the material placed on record, we find that, in this matter, the learned single Judge has passed the order granting interim compensation with reference to the sufferance and agony of a differently abled person and her mother (writ petitioners), for want of delivery of the specially designed wheel chair, while arriving at the London Heathrow Airport from Bengaluru, in a flight operated by the appellants.

Having regard to the circumstances of the case, we find nothing of infirmity in the exercise

of discretion by the learned single Judge; and on the given set of facts, we find no reason for interference.

The appeals are, therefore, required to be dismissed.

Learned counsel for the appellants, in the last, made a plea for enlargement of time for compliance of the order passed by the learned single Judge by a period of two weeks.

Even in this regard, we are not inclined to pass any order, but we would leave it open for the appellants to make appropriate request for consideration before the learned single Judge.

With the observations foregoing, these appeals stand dismissed summarily."

42. The said Order passed by the Division Bench dismissing the Appeals confirming the interim order passed by the learned single Judge directing respondent Nos.1 and

2 to pay ₹5,00,000/- to the petitioners as an interim measure has reached finality.

43. It is also not in dispute that the first petitioner is suffering from 75% locomotive disability. She cannot move without wheel chair. Because of the mistake committed by the respondent Nos.1 and 2 by not providing the service as contemplated under the guidelines issued by the Central Government of India from time to time, to take care of the tourists, especially disabled persons, the petitioners have suffered physical and mental agony, emotional trauma and humiliation. They cannot digest the sufferings. Ultimately, they cut short their tour and returned to India, burying their wish of seeing the world. That is not the intention of the legislature while enacting the guidelines, Aircraft Act and Rules in that regard. The first petitioner who is physically disabled cannot be discriminated and Article 14 of the Constitution cannot be violated. She cannot be

deprived of her personal liberty as enshrined under Article 21 of the Constitution of India.

44. The material on record clearly depicts that there is a mistake on the part of the Airport Authority of India as well as the third respondent who conducted the tour. The third respondent filed Memo before this Court and admitted that there are certain lapses on their part and paid ₹3,45,000/-. It clearly indicates the mistake on the part of respondent Nos.1, 2 and 3.

45. It is relevant to state at this stage that, after returning to India, immediately, petitioners lodged complaint with the fourth respondent, jurisdiction police on 20.08.2016 against respondent No.3. But the police failed to take necessary action. If the jurisdictional police had acted promptly in accordance with Section 154 of the Code of Criminal Procedure, the things would have been different and because of the inaction on the part of the jurisdictional

police, the petitioners are driven before this Court, unnecessarily. It is the duty of the concerned Police Officer in charge of the Police Station to register FIR and no preliminary enquiry is permissible. It is only to ascertain whether the information reveals a cognizable offence or non-cognizable offence. Admittedly, even today, the fourth respondent has not discharged his duty as contemplated under Section 154 of the Code of Criminal Procedure. He has failed to perform his duty towards the society and thereby made the petitioners to suffer. The fourth respondent has no heart at all, to harass the first petitioner who is physically disabled. The fourth respondent has no respect to the law and has no respect to human beings. The act of the fourth respondent indicates negligence and carelessness, for the reasons best known to him. The provisions of Section 166 of the Indian Penal Code contemplates that, a public servant disobeying the law with an intention to cause injury to any person shall be punished

with simple imprisonment for a term which may extend to one year, or with fine, or with both. The fourth respondent, being a public servant, since not discharged his duty, the obligation is on the higher Officers to initiate appropriate action against the fourth respondent for not registering FIR, since the receipt of complaint is not disputed.

46. In the case of ***Sri Mareppa vs. The State of Karnataka, Department of Home and others*** reported in ***ILR 2017 KAR 3109*** this Court has categorically held that, "every police officer should have the courtesy towards the public is the essence of and the key to good public relations. It is essential that every Police Officer, from the man on beat to the highest executive, should have a sound knowledge of the value of the courtesy. The police are the first visible point of contact of citizens. It is the only agency that has the widest possible contact with the people. Police functions are mostly prohibitive and regulatory in nature and this leaves an impression on the

individual citizens that Police interferes with the life, liberty and freedom of the people. It is the duty of the Police to preserve order and prevent crime. When there is a violation of law, it is the duty of the Police to apprehend the offenders and produce them before the Court to be dealt with the procedure established by law.”

47. The material on record clearly depicts that there is negligence on the part of the respondents and thereby, the first petitioner-a disabled person suffered mental and physical trauma. The second petitioner-mother of the first petitioner, aged about 63 years, who accompanied the first petitioner also suffered physical and mental agony.

48. The respondents have not discharged their duty and thereby made the first petitioner who is 75% disabled made to suffer. Thereby, the petitioners are dragged before this Court. The petitioners cannot be directed to approach either the Consumer Forum or the Civil Court for

compensation as contended by the learned counsel for respondent Nos.1 and 2, since there is an admitted fact that there is mistake on the part of respondent Nos.1 and 2 in not providing wheel chair to the first petitioner within the time stipulated, when they reached the London Airport. Admittedly, the wheel chair is provided after one day. Therefore, the entire tour programme fixed by the petitioners was disturbed and thereby, they suffered a lot. The first petitioner suffered major haemolytic disease. After returning to India, on 27.07.2016, from the Airport, the first petitioner was directly taken to Jayadeva Institute of Cardiovascular Sciences and Research and she was discharged only on 04.08.2016. The second petitioner was also hospitalized at BGS Global Hospitals on 16.08.2016 and was discharged on 19.08.2016. The History for admission reads as under:

"History: Mrs.Shoba felt shortness of breath and mild chest pain in Europe (Scotland, England) in last week of July. It was relieved by

iso-sorbitate tablet. She initially went to jaydeva institute of CVSI, Bangalore, where complete cardiac evaluation was done and was found to be within normal limits. Incidentally she was found to have haemolytic anaemia (PS: microcytic hypochromic, moderate anisocytosis, microspherocytes and auto agglutination of rbc, Imp:Haemolytic anaemia). HIV, HBsAg, Anti HCV serology were negative and there was raised indirect bilirubin. Later she was referred to us for further management. There is no history of similar illness in the past. There is no family history of haemolytic anaemia.”

49. In view of the above, petitioners have made out a case to direct the respondent Nos.1 and 2 to pay the compensation. The petitioners, in the present writ petitions are entitled to compensation/damages. My view is supported by the dictum of the Hon'ble Supreme Court in the case of **Jeeja Ghosh and another vs. Union of India and others** reported in **AIR 2016 SC 2393**, wherein, at paragraphs 35, 36, 46 and 47, it is held as under:

35. *It is not in dispute that the Pilot as well as the crew members of the airlines are supposed to ensure the safety of all the passengers and a decision can be taken to deboard a particular passenger in the larger interest and safety of other co-passengers. The question is, whether such a situation existed when Jeeja Ghosh was deboarded? Whether this decision was taken by the airlines after taking due deliberations and with medical advice? Unfortunately, the answer is a big "NO". Jeeja Ghosh is a disabled person who suffers from cerebral palsy. But her condition was not such which required any assistive devices or aids. She had demanded assistance regarding her baggage at the time of security check in, from the check-in counter. For boarding of the aircraft, she came of her own. This was noticed not only by the persons at the check-in counter but also by security personnel who frisked her and the attendant who assisted her in carrying her baggage up to the aircraft. Even if we assume that there was some blood or froth that was*

noticed to be oozing out from the sides of her mouth when she was seated in the aircraft (though vehemently denied by her), nobody even cared to interact with her and asked her the reason for the same. No doctor was summoned to examine her condition. Abruptly and without any justification, decision was taken to deboard her without ascertaining as to whether her condition was such which prevented her from flying. This clearly amounts to violation of Rule 133-A of the 1937 Rules and the CAR, 2008 guidelines.

36. *The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution. Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These*

are: (i) *Theological Models*, (ii) *Philosophical Models*, and (iii) *Constitutional Models*. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten. Even right to equality is interpreted based on the value of human dignity. Insofar as India is concerned, we are not even required to take shelter under theological or philosophical theories. We have a written Constitution which guarantees human rights that are contained in Part III with the caption "*Fundamental Rights*". One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live

with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal. What are the dimensions of constitutional value of human dignity? It is beautifully illustrated by Aharon Barak [Aharon Barak, Human Dignity – The Constitutional Value and the Constitutional Right (Cambridge University Press, 2015)] (former Chief Justice of the Supreme Court of Israel) in the following manner:

"The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional

rights set out in the Constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right.”

46. *Jeeja Ghosh herself is a living example who has, notwithstanding her disability, achieved so much in life by her sheer determination to overcome her disability and become a responsible and valuable citizen of this country. A little care, a little sensitivity and a little positive attitude on the part of the officials of the airlines would not have resulted in the trauma, pain and suffering that Jeeja Ghosh had to undergo. This has resulted in violation of her human dignity and, thus, her fundamental right, though by a private enterprise (Respondent 3).*

47. *On our finding that Respondent 3 acted in a callous manner, and in the process violated*

the 1937 Rules and the CAR, 2008 guidelines resulting in mental and physical suffering experienced by Jeeja Ghosh and also unreasonable discrimination against her, we award a sum of Rs 10,00,000 as damages to be payable to her by Respondent 3 within a period of two months from today.

50. The petitioners have claimed compensation of ₹5,06,000/- towards Air tickets and other incidental expenses, ₹13,30,800/- towards medical expenses. Further, in view of the above, the petitioners, both being Doctors, could not concentrate on their practice for six months. Therefore, claimed ₹15 lakhs for loss of earning. In all, petitioners claimed ₹33,36,800/-. The fact remains that the petitioners are able to produce the air tickets as per Annexures-Z, Z1 to Z6, Z9 to Z12 and certain medical records from page Nos.78 to 206 and have not produced any material documents to prove that they have incurred

loss of ₹15 lakhs as they could not do their profession for six months.

51. In the absence of any documents, this Court is of the considered opinion that ₹3,00,000/- has to be taken as loss of income for a period of six months. Though the petitioners claim compensation/damages of ₹33,36,800/- and additional expenses spent till today, this Court is of the considered opinion that the respondents have unnecessarily driven the petitioners before this Court without solving the problem, when deficiency of service is admitted. Taking into consideration the violation of Articles 14 and 21 of the Constitution of India, **violation of the provisions of the Aircraft Act and Rules**, and Section 44 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, this court is of the opinion that the petitioners are entitled to ₹20,00,000/- as compensation/ damages.

X CONCLUSION

52. For the reasons stated above, the writ petitions are ***allowed in part***. The petitioner Nos. 1 and 2 are entitled to compensation/damages of ₹20,00,000/- (Rupees Twenty Lakhs only), i.e., ₹10,00,000/- (Rupees Ten Lakhs only) each, from respondent Nos.1 and 2, in addition to the amount already paid by respondent Nos.1 and 2 in pursuance of the interim order passed by this Court.

53. Accordingly, respondent Nos.1 and 2 are directed to pay total compensation of Rs.20,00,000/- to petitioner Nos.1 and 2 towards air tickets, medical expenses and other incidental expenses, as stated supra, within a period of eight weeks from the date of receipt of certified copy of this Order. The respondent No.3 is also directed to take necessary steps to get back the petitioners' luggage from Hotel Sherlton, through their agents who are working on behalf of the third respondent. The Deputy Commissioner of Police, Bengaluru South, Bengaluru, is

directed to take appropriate action against the respondent No.4 for not registering case in terms of the provisions of Section 154 of the Code of Criminal Procedure.

54. The service rendered by Smt.Manjula N. Tejaswi, Amicus Curiae appointed by this Court is appreciated and the Karnataka State Legal Services Authority is directed to pay ₹20,000/- as remuneration to Smt.Manjula N. Tejaswi, within a period of one month from the date of the receipt of the copy of this order. The service rendered by Sri K.Mohan Kumar, learned counsel is also appreciated and placed on record.

55. Further, the question of registering case now against the respondent No.3 by the respondent No.4 does not arise.

Ordered accordingly.

Sd/-
JUDGE