

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4851 of 2022

Abhijeet Kumar Pandey

... .. Petitioner/s

Versus

State of Bihar & Ors.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Singh, Sr. Advocate
Mr. Sanket, Advocate

For the Respondent/s : Mr. Lalit Kishore, AG
Mr. Pawan Kumar, AC to AG

For Union of India : Dr. K.N. Singh, ASG
Mr. Kumar Priya Ranjan, CGC
Mr. Devash Shandar Singh, JC to ASG
Mr. Sriram Krishna, JC to ASG

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

11 31-08-2022 The present writ petition has been filed seeking a writ of mandamus directing the respondents to start developing/construction a new Greenfield Airport at Saran.

2. In a bunch of related petitions, on 31.03.2022, this Court passed a composite order, relevant extract of which is reproduced below:-

“Indeed, these petitions are not adversarial in nature; hence action and approach in the affirmative, adopted by the functionaries of the State, both Central and the State, would positively have far-reaching consequences on the lives of the people of Bihar. It also results in the overall development and economic growth of Bihar. Time and again, we have emphasized the need, requirement,



significance and importance of creating infrastructure within the State of Bihar, for various reasons, among other things, checking the migration of people from the State of Bihar. Should the Airports in Bihar be allowed to remain inoperational and closed?; should their capacity be not enhanced?; does not the State require more airfields for easy and convenient access for its residents to the different parts of the State?; would not it create avenues for tourism growth, both domestic and international? These are issues which would arise for consideration.

Prima facie, we are of the considered view that the issues highlighted are of prime importance and significance and absolutely in the public interest. Hence, an endeavour, by adopting a proactive approach, is required to be made by all functionaries of the State, and all this is necessarily to be done at the highest level, for as we notice, one such communication dated 25h August 2021 (Annexure P-30, Page 668) that of the Minister Civil Aviation, Government of India, as we are informed, has not evoked any response.

We also noticed that way back on 14th July 2017, the issue of expansion of the Airports' infrastructure in Bihar took place between Hon'ble the Chief Minister of Bihar and Hon'ble Minister of Civil Aviation. Against this backdrop, we believe that it would be only appropriate that the issue is discussed afresh at such a level.

Given the same, we direct as under:-

(a) The Chief Secretary, Government of Bihar shall take up the matter at the appropriate level, enabling the authorities to decide on all the issues highlighted supra, at the earliest.

(b) The decision taken by the Government be placed on record.

(c) The Divisional Commissioner, Patna, shall place on record the action taken report in terms of the meeting already convened by him.

(d) The Director, Airport Authority of India, Patna, shall have the survey report prepared and placed on record within the next 15 days.

(e) The State shall place on record the decision concerning the deposit of Rs.268 Crore for early expansion of the Airport at Gaya.



(f) Response to the petitions be positively filed within the next two weeks.”

(Emphasis supplied)

3. On 28.06.2022, this Court was informed by the learned Additional Solicitor General that Ministry of Civil Aviation, Government of India as also the Airport Authority of India had nominated nodal officers to facilitate the expansion and/or setting up of Airports within the State of Bihar. Appreciating this approach, we had also asked the State to nominate a nodal officer on its behalf, which was also done.

4. The Officers interacted themselves. Thereafter, we also interacted with them and recorded certain observations in our order dated 28.07.2022 in CWJC No.3795 of 2022 titled as Gaurav Singh v. The Union of India & Ors. which is reproduced *in toto* as under:-

“We have interacted with Mr. Narendra Singh, Deputy Secretary, Ministry of Civil Aviation, Government of India (Nodal Officer), Mr. Shantanu Phalanikar, General Manager, (Arch), Airport Authority of India, Mr. Anchal Prakash, Airport Director, Patna, Mr. B.C.H. Negi, JCM Planning (AI) (Ex. Airport Director), Mr. Capt. Sheo Prakash, Director Operation, Civil Aviation Directorate, Govt. of Bihar. who has been nominated as a Nodal Officer on behalf of the State Government and Mr. Rajiv Pratap Rudy.

Having heard learned counsel for the parties and interacted with the officers who are present in Court, we simply adjourn the matter with hope and expectation that Shri Lalit Kishore, learned Advocate General as also Dr. K.N.Singh, learned Additional



Solicitor General would take up the matter with the highest authority of the State, which would bear fruitful result.

List this case on 11.08.2022.

The officers, who are present in Court, need not remain present on the next date of hearing.”

(Emphasis supplied)

5. We may emphasize that the adjournment as on that date was with the hope that the learned Advocate General and the learned Additional Solicitor General would persuade their respective clients for expeditious taking steps, necessary for establishment and expansion of infrastructure in Bihar. Since then, the case has been adjourned thrice (11.08.2022; 17.08.2022 and 24.08.2022).

6. Today, a supplementary counter affidavit dated 30.08.2022 filed by Sri Sheo Prakash, Director, Operation, Civil Aviation Directorate, Cabinet Secretariat Department, Bihar, Patna is placed on record, indicating the steps taken by the State for establishment and improvement of the infrastructure of the Airports in Bihar.

7. Significantly in the said affidavit there is no reference qua the establishment of a Green Field Airport, the subject matter of the present petition.

8. Though, orally, learned Advocate General informs that steps taken for development of infrastructure of the Airports at



Patna and Bihta would be sufficient enough to meet the requirement of Bihar.

8. It is in this backdrop, we feel the need to deal with the issue of establishment of Green Field Airport in a more elaborate manner, giving complete picture with regard to infrastructure of Airports in Bihar.

9. The importance of development of Airports within the State cannot be understated. As recorded in one of our earlier orders, the nature of these proceedings is not adversarial and is focused singularly on the development of the State of Bihar and facilitation of ease of travel and the associated socio-economic development, when it comes to establishment of infrastructure, such as Airports. It is undoubted, that, in the end, it is a policy decision to be taken by the Government and it is not for the Court to impose its understanding of policy upon the Government. To that end, any and all orders of this Court are only to further the progress in this regard.

10. The State of Bihar is, we must note for emphasis, the most populous being home to 1/10th India's population, having proximity of two countries, namely Nepal and Bangladesh. The State has also large number of people travelling not only to other States but also foreign countries specially Middle East and



United States. This makes it all the more important for Bihar to have properly functioning, wide serving Airports, both International and Domestic.

11. Pursuant to this pushing of the importance of these Airports by this Court, one of the meetings held was on 26.07.2022 among the officers of Airport Authority of India; Ministry of Civil Aviation and Additional Chief Secretary, Cabinet Secretariat, Department, Government of Bihar. Though no formal minutes of the meeting were prepared during the course of the proceedings, we are apprised of the status of the Airports in Bihar which we record as under:

12. The State of Bihar has 31 Airports. 7 including 2 Civil Enclave are operated by Airport Authority of India; 21 Airports are owned by the State Government; 5 including 2 Civil Enclave belong to Defense.

AAI 07 (including 2 Civil Enclaves)

- State Government 20+1
- Defence 05 (including AAI CE)
- Private 00

Gaya and Patna Airport are two operational AAI Airports. Darbhanga is operational AAI Civil Enclave Bihta & Purnea are proposed Civil Enclaves to be developed by AAI. List of the airports is placed below.

S. NO.	NAME OF THE AIRPORT	OWNED BY
1	PATNA (JPNI)	AAI



2	GAYA	AAI
3	MUZAFFARPUR	AAI
4	RAXAUL	AAI
5	JOGBANI (FORBSEGANJ)	AAI
6	DARBHANGA (CE)	MOD/AAI
7	BIHTA (CE)	MOD/AAI
8	HATHUA (HATHWA)	MOD
9	JEHANABAD	MOD
10	PURNEA	MOD
11	ARRAH	SG
12	BEGUSARAI	SG
13	BHABUA	SG
14	BHAGALPUR	SG
15	BIHAR SHARIFF	SG
16	BIRPUR	SG
17	BUXAR	SG
18	CHHAPRA	SG
19	DEHRI/SURA	SG
20	KATIHAR	SG
21	KISHANGANJ	SG
22	MADHUBANI	SG
23	MOTIHARI	SG
24	MUNGER	SG
25	NARIA	SG
26	SAHARSA	SG
27	PANCHANPUR	SG



28	SAMASTIPUR	SG
29	SITAMARI	SG
30	BETTIAH	SG
31	VALMIKI NAGAR	SG

13. Development of new Greenfield Airport is undertaken as per the provision of Greenfield Airport Policy of Govt. of India available at Ministry of Civil Aviation termed as “Guidelines for Setting Up of Greenfield Airports” (Page 670). It envisages setting up of Airports via partnership between the Government(s) and Private Entrepreneurs, i.e. PPP Model. (Page 677)

14. The procedure is as follows:-

- (i) The request is received by MoCA from State Govt. /Project Proponent for establishment of a new upcoming airports.
- (ii) State Govt./Project Proponent conduct a pre-feasibility study on identified sites for operation of Intended aircraft.
- (iii) After the feasibility of the site for operation of intended aircraft, DPR is prepared by State Govt./ Project Proponent.
- (iv) The State Govt./Project Proponent apply to mandatory clearances such as site clearances from MoCA, NoC from MoD, EIA Clearances, Approval from ministry of Home Affairs etc.
- (v) After obtaining all clearances, application for in-principle approval from MoCA is submitted by State Govt./ Project Proponent based on the recommendations of DPR.
- (vi) After in-principle approval from MoCA is accorded, the land is acquired by the State Govt./Project Proponent for taking up further development activities



along with construction of the airport.

15. It appears that since the year 2011, both the Central Government and the State Government have been interacting for the establishment of a Greenfield Project in Bihar. After exchange of certain proposals with respect to certain sites, ultimately the pre-feasibility report was prepared in reference to one site commonly known as “Sonpur Greenfield Airport, Saran”. (Page-610)

16. We may also notice that the Central Government has brought out the National Civil Aviation Policy 2016 with the goal to make air travel accessible, affordable and convenient to masses. The vision, mission and objective of the NCAP 2016 are:-

a) Vision: To create an eco-system to make flying affordable for the masses and to enable 30 crore domestic ticketing by 2022 and 50 crore by 2027, and international ticketing to increase to 20 crore by 2027. Similarly, cargo volumes should increase to 10 million tonnes by 2027.

b) Mission: Provide safe, secure, affordable and sustainable air travel for passengers and air transportation of cargo with access to various parts of India and the world.

c) Objectives

i) Establish an integrated eco-system which will lead to significant growth of civil aviation sector, which in turn would promote tourism, increase employment and lead to a balanced regional growth.

ii) Ensure safety, security and sustainability of aviation sector through the use of technology and



effective monitoring.

iii) Enhance regional connectivity through fiscal support and infrastructure development.

iv) Enhance ease of doing business through deregulation, simplified procedures and e-governance.

v) Promote the entire aviation sector chain in a harmonised manner covering cargo, MRO, general aviation, aerospace manufacturing and skill development.

17. The development of Airports is also a component of UDAN Scheme which aims to enhance regional air connectivity, making air travel accessible to a larger number of people. A total of 21 State Government's Airport and 3 Airport of Airport Authority of India were included in the UDAN Scheme for the State of Bihar. The apparatus as it functions is that interested Airlines, based on assessment of demand submit proposals and after a feasibility study is undertaken, funds are allocated under the Regional Connectivity Scheme (RCS).

18. However, no bids have been received from any Airlines for Airports in Bihar.

19. We may also note that under UDAN 4.0 and 4.1, the State Government is required to sponsor certain routes.

20. However, the State of Bihar has not taken any such step.

21. In fact, the State of Bihar has number of Airports that are currently non-functional, details of which are given below:-



Arrah	Bihar	No runway
Begusarai	Bihar	9
Bettiah	Bihar	9
Bhabua (Kaimoor)	Bihar	No runway
Bhagalpur	Bihar	20 seats
Bihar Shariff	Bihar	No runway
Birpur	Bihar	9
Buxar	Bihar	No runway
Chhapra	Bihar	20 seats
Dehri on Sonn	Bihar	No runway
Farbisganj	Bihar	20 seats
Hathwa	Bihar	20 seats
Jehanabad	Bihar	20 seats
Jogbani	Bihar	20 seats
Katihar	Bihar	20 seats
Kishanganj	Bihar	9
Madhubani	Bihar	20 seats
Monghyr	Bihar	9
Motihari	Bihar	No runway
Munger	Bihar	9
Muzaffarpur	Bihar	20 seats
Naria	Bihar	9
Panchanpur	Bihar	20 seats
Raxaul	Bihar	20 seats
Saharsa	Bihar	20 seats
Valmiki Nagar	Bihar	20 seats



Law

22. Various High Courts as well as Hon'ble the Supreme Court have recognized the right to travel as a fundamental right.

23. Entry 29, List I, Seventh Schedule of the Constitution of India provides as under:-

“Airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.”

24. Hon'ble the Supreme Court in **Satwant Singh Sawhney v. D. Ramarathanam, AIR 1967 SC 1836** (Constitution Bench) via K. Subha Rao, CJ held:-

“30. A Division Bench of the Mysore High Court in *Dr S.S. Sadashiva Rao v. Union of India* [(1965) 2 Mys LJ 605, 612] came to same conclusion. Hegde, J., as he then was, expressed his conclusion thus:

“For the reasons mentioned above, we are of the opinion: (i) the petitioners have a fundamental right under Article 21 to go abroad; (ii) they also have a fundamental right to come back to this country....”

But a full Bench of the High Court of Delhi in *Rabindernath Malik v. Regional Passport Officer, New Delhi* [Civil Writ No. 857 of 1966 (unreported decided on 23-12-66)] came to a contrary conclusion. Dua, Acting C.J., speaking for the Court, was unable to agree, on a consideration of the language of the Constitution and its scheme. He held that “personal liberty” guaranteed by Article 21 was not intended to extend to the liberty of going out of India and coming back. He was mainly influenced by the fact that Article 21 applied to non-citizens also and that the Constitution not having given a limited right to move throughout the territories to non-



citizens under Article 19(1)(d) could not have given a higher right to them under Article 21.

31. For the reasons mentioned above we would accept the view of Kerala, Bombay and Mysore High Courts in preference to that expressed by the Delhi High Court. It follows that under Article 21 of the Constitution no person can be deprived of his right to travel except according to procedure established by law. It is not disputed that no law was made by the State regulating or depriving persons of such a right.”

(Emphasis supplied)

25. In Maneka Gandhi v. Union of India, (1978) 1 SCC

248, Hon’ble the Supreme Court observed as under:-

“48. In *Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer Government of India, New Delhi* [(1967) 3 SCR 525 : AIR 1967 SC 1836 : (1968) 1 SCJ 178] this Court ruled by majority that the expression “personal liberty” which occurs in Article 21 of the Constitution includes the right to travel abroad and that no person can be deprived of that right except according to procedure established by law. ... The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. The question whether the procedure prescribed by a law which curtails or takes away the personal liberty guaranteed by Article 21 is reasonable or not has to be considered not in the abstract or on hypothetical considerations like the provision for a full-dressed hearing as in a courtroom trial, but in the context, primarily, of the purpose which the Act is intended to achieve and of urgent situations which those who are charged with the duty of administering the Act may be called upon to deal with. Secondly, even the fullest compliance with the requirements of Article 21 is not the journey's end because, a law which prescribes fair and reasonable procedure for curtailing or taking away the personal liberty guaranteed by Article 21 has still to meet a possible challenge under other provisions of the Constitution like, for example, Articles 14 and 19. If the holding in *A.K. Gopalan v. State of Madras* [1950 SCR 88 : AIR 1950 SC 27 : 51 Cri LJ 1383] that the freedoms guaranteed by the Constitution are mutually exclusive were still good law, the right to travel abroad which is part of the right of personal liberty under Article 21 could only be



found and located in that article and in no other. ...”
(Emphasis supplied)

26. Reference to the aforesaid judicial pronouncements, is no more, than emphasizing the citizen’s right to travel, infringement of which only curtails personal liberty. It is in this backdrop that herein later, we have posed certain questions for consideration by the authorities.

27. The Central Government has enacted Airports Authority of India Act, 1994 “for the better administration and cohesive management of Airports and Civil Enclaves whereat Air transport services are operated or/are intended to be operated and of all aeronautical communication stations.”¹

28. Section 12 of the Act under Chapter III reads functions of the Authority. Section 12(3) (aa) reads as “establish airports, or assist in the establishment of private airports, by rendering such technical, financial or other assistance which the Central Government may consider necessary for such purpose.”

29. Section 19 of this Act reads as Compulsory acquisition of land for the Authority- Any land required by the Authority for the discharge of its functions under this Act shall

¹ Preamble of The Airport Authority of India Act, 1994



be deemed to be needed for a public purpose and such land may be acquired for the Authority under the provisions of the Land Acquisition Act, 1894 or of any other corresponding law for the time being in force.

30. The question which arises for consideration is as to whether inability to do so on account of absence of rudimentary services, would constitute a violation of a right to travel. Particularly in Bihar, if a national scheme exists to make air travel more accessible to the members to the society, why should this State lag behind? With respect to domestic travel which forms a part of Article 19 (1) (d) of the Constitution of India guaranteeing freedom of movement, is not lack of air travel services a hindrance to that as well?

31. Hence, this Court puts certain questions, to be answered by the respondents, in this specific context of Green Field Airport-

- (i) What is stand of the State with respect to having a Green Field Airport within the State of Bihar?
- (ii) It has come on affidavit that the State had proposed two locations, namely Nalanda and Punpun, for Green Field Airports both of which were not accepted by the Airport Authority of India. What is the stand of the Airports Authority of India, in this context, of the suitability of any Airport, including



the one at Saran, in relation to which pre-feasibility report stands prepared, within Bihar to be developed as such?

- (iii) Whether Patna or Bihta can be developed as Green Field Airports and for the same to happen, in either case, what are the minimum requirements which would need to be fulfilled?
- (iv) Whether Patna and Bihta as a location for an Airport has the capacity to be developed as an International Airport?
- (v) Whether Bihta being a defense facility, can be allowed, from the perspective of National security to be transformed into a National/International Airport?
- (vi) Whether the Airport at Patna or Bihta, given its current location, can be expanded to meet the requirements of International Airports.
- (vii) Given the current numbers and the projected increase in air travel, is the development of Airports across all locations not justified?
- (viii) From the perspective of international travel and the associated demands of infrastructure, which location will be most suitable for an International Airport in Bihar?
- (ix) What is the current load of air traffic and expected and anticipated increase in the next one decade?

32. The questions, illustrative in nature, leaving it for the authorities to further ponder over the issue and find solution to



the problem at the earliest.

33. Let an affidavit on the above and also on all other ancillary points, be filed by the respondents within ten days. Reply, if any, be also filed before the next date.

34. List on 12.09.2022.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sunil/ K.C.Jha/-

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