

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

Abhijeet Kumar Pandey, Son of Binod Kumar Pandey, Resident of C- 208,
Police Colony, Phulwari, P.S. Phulwarisharif, Dist. Patna- 800002, Bihar.

... .. Petitioner/s

Versus

1. State of Bihar through Chief Secretary, Government of Bihar.
2. The Union of India through the Cabinet Secretary, Government of India, New Delhi.
3. Airport Authority of India, through Director General of Civil Aviation, New Delhi.
4. Ministry of Civil Aviation, through the Secretary, Government of India, New Delhi.
5. The District Collector, Chapra at Saran.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr. Jitendra Singh, Sr. Advocate Mr. Rajeev Pratap Rudi, Advocate Mr. Sanket, Advocate
For the State	:	Mr. Lalit Kishore, AG (As he then was) Mr. Pawan Kumar, AC to AG
For the UOI	:	Dr. K.N.Singh, ASG Mr. Kumar Priya Ranjan, CGC Mr. Devansh Shankar Singh, JC to ASG Mr. Sriram Krishna, JC to ASG Mr. Amarjeet, JC to ASG Mr. Girish Nandan Abhishek, Advocate Mr. Ankur Apurv Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-02-2023

The following questions are to be considered by this Court for
adjudication of the present *lis*:-



(i) Whether there exists a right to travel by air and consequently whether the absence of a fully functional and safe airport violates such a right?

(ii) Whether a right to safe travel is a part of right to life under Article 21 of the Constitution of India?

2. This petition under Article 226 of the Constitution of India seeks a writ of mandamus directing the respondents-State of Bihar and Union of India to develop/construct at the earliest a Greenfield Airport at District-Saran, Bihar. Further, it seeks a direction to respondent no.1, namely, the State of Bihar, to issue a notice for tender inviting private companies to bid for the development of such Airport.

3. Before passing any appropriate orders, it is essential to delve into the details of the concept of a Greenfield Airport and its associated details/requirements as also, for the purposes of a reasoned and informed decision, appreciate the way and manner in which the discussion amongst concerned authorities in respect of development of such Airport has taken place up until such point of filing of the present petition and after that as well. The petitioner, in aid of the prayers made, places reliance on numerous voluminous documents extending the record to almost one thousand pages.

4. For ease, this judgment is divided broadly into the following



chapters-

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A. INTRODUCTION

Demographic Character of Bihar

5. The State of Bihar is the most populous State within the Country. It has proximity to three countries- Nepal, Bhutan and Bangladesh. Numerous people call Bihar Home travel to other States and to foreign lands for innumerable reasons. It is essential,



then as submitted, to have an Airport that can serve the growing need of the State and its people in both large and smaller Aircraft(s).

6. The need for development of advanced mode of travel is dependent on economic development. Such a need cannot be justified in the absence thereof.

7. A paper titled as “Inequality in Bihar: A District Level Analysis” Published in 2020 at the Leibniz Information Centre for Economics, Kiel, Hamurg Germany, by Shri Aviral Pandey, Assistant Professor, A.N Sinha Institute of Social Sciences, Patna, Bihar¹, gives an overview of the economy within the State. The chief aspects highlighted therein are that in the year 2018-19 the growth rate (Gross State Domestic Product) was 10.5 percent and with growth across many areas of the economy and that there has been a considerable decline in the incidence of poverty in the state.

8. Even then, Planning Commission estimates the percentage of the population poverty line in Bihar to be 33.7% (fifth across states in terms of poverty in India) as compared to 21.9% at the national level.

9. The most recent economic survey, 2021-22² summarized the economic state of Bihar as- Growth was only at 2.5 percent because of

¹ <https://www.econstor.eu/bitstream/10419/225251/1/Inequality-in-Bihar-Aviral-Pandey.pdf>

² [https://state.bihar.gov.in/finance/cache/12/01-Mar-22/SHOW_DOCS/Press%20Release%20\(English\).pdf](https://state.bihar.gov.in/finance/cache/12/01-Mar-22/SHOW_DOCS/Press%20Release%20(English).pdf)



the COVID Pandemic, Per Capita Income in Bihar was Rs. 50,555 in 2020-21, compared to Rs. 86,659 for India. During the last five years (2016-17 to 2020-21), the primary sector in Bihar had grown at 2.3 percent, the secondary sector at 4.8 percent, and finally, the tertiary sector had grown at the highest rate of 8.5 percent. On Urbanization, the report said, “In the 2011 census, the level of urbanisation in Bihar was very low, only 11.3 percent. But, after the State Government has decided to redefine an urban centre, the present level of urbanisation in Bihar is 15.3 percent, which indicates an appreciable expansion. The expenditure on urban development of the State Government was Rs. 1648 crore in 2015-16, which increased by 68 percent in five years to reach Rs. 2766 crore in 2019-20. Similarly, the expenditure for housing was Rs. 1486 crore in 2015-16, which increased to Rs. 5658 crore in 2019-20, nearly four times during the same period.

A (a). Airports: A Basic Understanding

10. A “Greenfield Airport” is the development of an airport from scratch, having all modern facilities, in sync with the technological advancement of international standard.

11. A “Brownfield Airport” is one where certain structures already exist which are remodeled or improved into a new Airport.

12. “Civil Enclave” is an airport or an area within an airport al-



lotted to any of the armed forces of the Union for use by persons for the purpose of air travel or baggage/cargo or for handling of such services. This includes the land and any building or structure in such area.

13. A Brief Note with the subject "Distinction Advantages/ Disadvantages between a Green Field, Brown Field and Defense Brown Field Projects /Aerodrome" prepared by the Ministry of Civil Aviation, PU Division, Government of India dated 31.01.2022 in response to Rajya Sabha Secretariat's letter No. LAFEAS-TT16011/3/2021-Comm Sec (T &T)-RSS dated 5th January, 2022, explains the concept as well as key differences as follows (Page 699-701):-

"BRIEF NOTE ON ADVANTAGE AND DISADVANTAGE OF GREENFIELD PROJECT, BROWNFIELD, BROWN CIVIL ENCLAVE:

► Greenfield Airport: -

- The word "Greenfield" literally denotes or relates to previously undeveloped sites for commercial development.
- On the similar ground, Greenfield airport is conventionally referred as an aviation facility being developed on vacant land or previously undeveloped land and an airport whose commissioning, planning & construction process is carried out from the scratch/grass root level.
- Ministry of Civil Aviation, Government of India, in this regard has formulated a Greenfield Airport Policy and guidelines for setting up of Greenfield Airport.
- The airports Greenfield in nature are given 'In-Principle' approval as per criteria, guidelines and procedures formulated in Greenfield Airport Policy, 2008.



- Till date, in-principle approval has been accorded for 21 Greenfield airports across the country under Greenfield Airport Policy.
- Previous to the introduction of the policy, there were only 3 Greenfield airports in the country, whereas today there are 11 operational Greenfield airports.

► **Brownfield Airport:-**

The word "Brownfield" literally denotes or relates to sites for potential development that have had previous development on them. In other words, Brownfield means remodelling and improvement upon existing facilities.

- On the similar ground, Brownfield airport is conventionally referred as an airport which have existing infrastructure for development of airport such as runway, terminal building etc.
- Development works are carried out further on these facilities and additional facilities required for safe aircraft operation are created in phased manner.
- There are 119 operational Brownfield Airports in the country, including 30 Civil Enclaves.

► **There are no defence brownfield Airports, only Civil Enclaves are available."**

14. The instant Office Memorandum also contained a comparison between Greenfield and Brownfield Airport which is being reproduced in a tabulated form for ease of reference.

Advantage	Disadvantages/Limitations
<ol style="list-style-type: none"> 1. Can be planned completely in accordance with guidelines intended for critical aircraft. 2. Land is comparatively cheaper to expansion of Brownfield Airport. 3. Scope of expansion is greater as land when purchased, can have earmarked 	<ol style="list-style-type: none"> 1. Capital intensive 2. Requires, comparatively much more time in building as well as operationalization.



Greenfield	<p>areas for further development as per requirement.</p> <p>4. Multi model connectivity is possible and can be achieved right from the initial stage.</p>	
Brownfield	<p>1. Airport infrastructure already exists and so only expansion is to be undertaken as per requirement.</p> <p>2. Lesser costs than Greenfield Airport.</p>	<p>1. Only limited expansion is possible due to land constraints.</p> <p>2. Such airports at times are not able to meet the criteria and have to then operate on temporary licences issued by DGCA.</p> <p>3. Are generally located within a city/town which leads to many issues hindering, for instance, requisite protection of birds in the environment.</p>

B. The Constitution and its understanding as elucidated by Hon'ble the Supreme Court

15. Article 19 (1)(d) of the Constitution of India enshrines the freedom of movement to all citizens in the following words:-

“19(1) All citizens shall have the right—

...

(d) to move freely throughout the territory of India.”

16. Under Article 21, the Constitution guarantees a right to life and liberty only to be restricted by procedure established by law. It reads as under:-

“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.”

17. The Constitution of India demarcates the area of functioning



for the Central and the State Governments under Article 246 as enumerated in the Seventh Schedule. A part of the Union List (List-I) is a control of fields related to Air Transport. Entry 29 of List I reads 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"

18. The Constitution of India has, in the foresight of the Constituent Assembly being set out in a way that it is not static and it evolves, within certain parameters and always in favour of the benefit of the people of the country. Article 21 is case in point. The expression 'Right to life and liberty' has been interpreted to include within itself a vast number of important aspects which come together to guarantee to each person such life that is not a mere physical existence, but of quality.

19. One such right, is the right to access a road. Hon'ble the Supreme Court in **State of H.P. v. Umed Ram Sharma, (1986) 2 SCC 68**, in para 11 speaking through Sabyasachi Mukharji, J., as His Lordship then was, observed:-

"11. ... Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21



embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.”

(Emphasis supplied)

20. On the very same issue, in our interim order dated 31.08.2022 while taking note of some other judgments of the Hon’ble Supreme Court, we had observed as under:-

“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)

21. The above judgments of Hon'ble the Supreme Court spell out two distinct rights. The right of access to road and the right to travel abroad. It is said that the access to a road is access to life itself. While the significant import of this statement may not be applicable in its entirety to that of access of air travel, the present world order of globalization and internationalization makes a somewhat persuasive case to provide for the same to those people who can afford it; are in urgent need of it; mandatorily required for the economic advancement



and development of the nation; as also for the overall socio economic development of every individual.

22. In the context of Bihar, another important aspect to be considered in development of the Air Transport Sector is that the work related migration from Bihar to foreign countries is a significant number. Also the fact that Bihar being one of the highest populated States of India- for one tenth of the population is living here- and it has geographical locational advantage of international borders in close proximity, is a relevant consideration. At the same time, the observations of this Court may not be construed to mean that the difference between the right to travel abroad and the potential right of access to an airport is being blurred.

C. Relevant Legislative Provisions

23. The Airport Authority of India Act, 1994 (referred to as the Act) was enacted to provide for closure integration in the management of Airports and Air Traffic contract services. The aim was to constitute a single unified body to control and manage both the National and the International Airports of the country. The preamble of the Act, as amended vide Act 43 of 2003 reads as under:-

“An Act to provide for the constitution of the Airports Authority of India and for the transfer and vesting of the undertakings of the International Airports Authority of India and the National Airports Authority to and in the Airports Authority of India so constituted 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 “for the purposes of establishing or assisting in the establishment of airports”* and for matters connected therewith or incidental thereto.”

(Emphasis supplied)

24. Section 12 of the Act details the functions to be carried by the authority in the following terms:-

“12. FUNCTIONS OF THE AUTHORITY.- (1) Subject to the rules, if any, made by the Central Government in this behalf, it shall be the function of the Authority to manage the airports, the civil enclaves and the aeronautical communication stations efficiently.

(2) It shall be the duty of the Authority to provide air traffic service and air transport service at any airport and civil enclaves.

(3) Without prejudice to the generality of the provisions contained in sub-sections (1) and (2), the Authority may—

(a) plan, develop, construct and maintain runways, taxiways, aprons and terminals and ancillary buildings at the airports and civil enclaves;

(aa) 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;

(b) plan, procure, install and maintain navigational aids, communication equipment, beacons and ground aids at the airports and at such locations as may be considered necessary for safe navigation and operation of aircrafts;

(c) provide air safety services and search and rescue, facilities in co-ordination with other agencies;

(d) establish schools or institutions or centers for the training of its officers and employees in regard to any matter connected with the purposes of this Act;

(e) construct residential buildings for its employees;

(f) establish and maintain hotels, restaurants and restrooms at or near the airports;

(g) establish warehouses and cargo complexes at the airports for the storage or processing of goods;

(h) arrange for postal, money exchange, insurance and telephone facilities for the use of passengers and other persons at the airports and civil enclaves;

(i) make appropriate arrangements for watch and ward at the airports and civil enclaves;

(j) regulate and control the plying of vehicles, and the entry and exit of passengers and visitors, in the airports and civil enclaves with due regard to the security and protocol functions of the Government of India;



(k) develop and provide consultancy, construction or management services, and undertake operations in India and abroad in relation to airports, air-navigation services, ground aids and safety services or any facilities thereat;

(l) establish and manage heliports and airstrips;

(m) provide such transport facility as are, in the opinion of the Authority, necessary to the passengers traveling by air;

(n) form one or more companies under the Companies Act, 1956 or under any other law relating to companies to further the efficient discharge of the functions imposed on it by this Act;

(o) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act;

(p) perform any other function considered necessary or desirable by the Central Government for ensuring the safe and efficient operation of aircraft to, from and across the air space of India;

(q) establish training institutes and workshops;

(r) any other activity at the airports and the civil enclaves in the best commercial interests of the Authority including cargo handling, setting up of joint ventures for the discharge of any function assigned to the Authority.

(4) In the discharge of its functions under this section, the Authority shall have due regard to the development of air transport service and to the efficiency, economy and safety of such service....”

(Emphasis supplied)

25. The Greenfield Airport Policy, 2008 discussed independently later, encapsulates the legal position emanating from the Act as under- (Page-752-753):-

“2.2 The Aircraft Act, 1934 (the "Aircraft Act") and the Rules made thereunder by the Central Government govern the development, maintenance and operation of all airports, including greenfield airports. Under the Act, Central Government has the sole right to grant a license for setting an airport, and the operations of the airport would be subject to its licensing conditions (Rule 78 of the Aircraft Rules).

2.3 Airports Authority Act (the "AAI Act") was enacted by the Central Government in 1994, which stated that all government airports are to be developed, financed, operated and maintained by Airport Authority of India ("AAI"). However, the AAI Act enables AAI to grant a concession to a private entity for financing, development, operation and maintenance of an airport being managed by AAI. As such, greenfield airports to be developed by the Central Government could adopt the concession route if private participation is envisaged.



2.4 Airports other than those managed by AAI are governed by the provisions of the Aircraft Act and the Rules made thereunder. An entity other than AAI (hereinafter referred to as an "Airport Company") can set up an airport. The Airport Company must function under a license from DGCA to be issued under the Aircraft Act. Such a license can be granted only to the following (Rule 79 of the Aircraft Rules):

(a) A citizen of India; or

(b) A Company or a body corporate either in the Central sector, State sector or the private sector registered under the Companies Act, 1956 subject to the following conditions:

(i) it is registered and having its principal place of business in India

(ii) it meets the equity holding criteria specified by the Central Government from time to time; or

(c) the Central Government or a State government or any company or any corporation owned or controlled by either of the said Governments; or

(d) a Society registered under the Societies Registration Act, 1860

2.5 Thus an airport can be developed and operated either by AAI or by an Airport Company that has been given a license by DGCA as per its license conditions. The Rules also allow the Central Government or a State Government to obtain a license."

(Emphasis supplied)

D. Relevant Policies:-The National Civil Aviation Policy, 2016; The Greenfield Airports Policy, 2008; and the UDAN Scheme.

26. The National Civil Aviation Policy of 2016, (NCAP,2016) Annexure-P/9, Page- 452, has captured the development of the Indian scenario, at the international level, and the changes required therein for growth in terms of number as also access, in the following terms (Page-452 – to -453):-

“1.1 India has the potential to be among the global top three nations in



terms of domestic and international passenger traffic. It has an ideal geographical location between the eastern and western hemisphere, a strong middle class of about 30 crore Indians and a rapidly growing economy. Despite these advantages, the Indian aviation sector has not achieved the position it should have and at present it is ranked 10th in the world in terms of number of passengers.

- 1.2 The Government has proposed to promote the growth of Indian aviation sector in a significant manner as the development of this sector has a multiplier effect on the economy. As per an International Civil Aviation Organisation (ICAO) study, the output multiplier and employment multiplier are 3.25 and 6.10 respectively. The aim of the Government is to provide an ecosystem for the harmonised growth of various aviation subsectors, i.e Airlines, Airports, Cargo, Maintenance Repairs and Overhaul services (MRO), General Aviation, Aerospace Manufacturing, Skill Development, etc.
- 1.3 The Government has proposed to take flying to the masses by making it affordable and convenient. For example, if every Indian in middle class income bracket takes just one flight in a year, it would result in a sale of 35 crore tickets, a big jump from 7 crore domestic tickets sold in 2014-15. This will be possible if the air-fares, especially on the regional routes, are brought down to an affordable level. The reduction in costs will require concessions by the Central and State Governments and Airport Operators.
- 1.4 Systems and processes which affect this sector will need to be simplified and made more transparent with greater use of technology without compromising on safety and security. The growth in aviation will create a large multiplier effect in terms of investments, tourism and employment generation, especially for unskilled and semi-skilled worker.”

(Emphasis supplied)

27. The vision, mission and the objectives of 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.”

28. NCAP, 2016 is comprehensive and lists the numerous areas which it concerns itself with. Of particular note in the present context are the very first two points, i.e. that (a) regional connectivity and (b) safety. Also of importance are (i) Airports developed by State Government, private sector or in PPP Mode and (o) maintenance, repair and overhaul.

29. In the context of safety, it states that aviation safety is of topmost priority and that the focus rests on pre-empting and preventing accident and incident with a zero tolerance policy towards safety violations.

30. The NCAP 2016 also takes note of development of Airports by the State Government, private sector or in public private partnership mode as under (Page 467 – to – 468):-



“12. Airports developed by State Governments, Private sector or in PPP mode

MoCA will continue to encourage development of airports by the State Governments or the private sector or in PPP mode. MoCA will also encourage the State Governments to develop new airports in their State by forming SPV with Airport Authority of India or with other interested Public Sector Undertakings/ Industry in order to create stake and ownership. Wherever so required, MoCA will endeavour to provide regulatory certainty with the following framework:

- a) MoCA will coordinate with AERA, AAI, airlines, airport operators and stakeholders like cargo, MRO, ground handling, etc to identify ways to bring down airport charges, while abiding by the provisions of existing concession agreements and contracts.
- b) MoCA will endeavour that the future airport projects in India, both greenfield and brownfield, have cost efficient functionality with no compromise on safety, security and efficiency.
- c) To ensure uniformity and level playing field across various operators, future tariffs at all airports will be calculated on a ‘hybrid till’ basis, unless otherwise specified for any project being bid out in future. 30% of non-aeronautical revenue will be used to cross-subsidise aeronautical charges. In case the tariff in one particular year or contractual period turns out to be excessive, the airport operator and regulator will explore ways to keep the tariff reasonable, and spread the excess amount over the future.
- d) There are restrictions on the use of land allocated for commercial use of airport. MoCA will explore ways to unlock the potential of the same by liberalising the end-use restrictions for existing (excluding PPP) and future greenfield and brownfield airports of AAI and future greenfield and brownfield airport projects under PPP.
- e) MoCA will coordinate with respective ministries and state governments to provide multi-modal hinterland connectivity (road, rail, metro, waterways, etc).
- f) In future concessions/development of Airports, it will be necessary to ensure a minimum level and standard of cargo facility at the airport.”

(Emphasis supplied)

31. The Government of India has initiated the UDAN Scheme, termed as Ude Desh Ka Aam Nagrik, under which the aim is to



connect small and medium cities with big cities through air service. In our interim order dated 31.08.2022, the status implementation of UDAN Scheme in Bihar was recorded as-

“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.”

32. A Greenfield Airport Policy has been notified which enables a Company to be set up known as an Airport Company which shall operate under licence from the Directorate General of Civil Aviation (DGCA).

33. The policy in respect of development and financing of Greenfield Airports which forms point five of the Greenfield Airports Policy states that Greenfield Airports set up by the AAI would be in Public Private Partnership (PPP), with the lands being provided by the Authority. A “Viability Gap Funding scheme” of upto 20 percent is also available to aid such development. For all other airports, the Airport Company seeking a licence would be responsible- for both



financing and development, including land acquisition. In a scenario where the State Government is desirous of promoting the setting up of airports, Clause 5.3 and 5.4 of the Policy provides a number of alternatives for them to do so. It (The State Government) or any of its entities could apply for a licence, a private entity or a joint venture corporation (an entity with the State as one party) could be selected through a process of competitive bidding.

34. It is open for the State to undertake steps to felicitate this development by providing certain incentives and developing its own policy in this regard. It could however, not, enter into concession agreements. Such incentives could also be granted to the AAI for development of Greenfield Airports in their respective state by the concerned government.

35. The approval process is mentioned as point 9 of the policy. Its essence is that the process of approval for a Greenfield Airport, which is in compliance with the guidelines set forth in the policy, including the 150 km distance from an established civilian airport is that the DGCA would be competent to grant a license of operation, with there being no requirement of approval by the Central Government. Such approval is only required when certain exemptions are sought on rules and guidelines other than the distance criterion,



and the Steering Committee, which is to consider such request for exemptions, is unable to reach a consensus. After the approval in regard of the exemptions requested is conveyed, only would the DGCA take up and consider the request for grant of licence.

36. If an application is made by the airport company to set up an airport within 150 kms of another airport, such application will be considered by the steering committee which would then make a recommendation to the Ministry of Civil Aviation, Government of India. Only if, and after the Ministry accords and communicates its approval, will the DGCA consider the request for grant of license. Further, when a particular application attracts the 150 km distance clause (8.1(b)) and also seeks certain other exemptions/relaxation from other rules and policies, the same process is to be followed- the steering committee, having considered all aspects including contractual liabilities, if any, would make a recommendation to the Ministry of Civil Aviation, Government of India. Only if, and after the Ministry accords its approval and communicates the same, would the DGCA consider such proposals.

37. It is important to note here that the Central Government from time to time is to notify guidelines to be followed by DGCA in granting of licences for Greenfield Airports. From the Record two



points require close attention (Page- 758) :-

“(a) No greenfield airport would be allowed within an aerial distance of 150 Km of an existing civilian airport.

(b) In case a greenfield airport is proposed to be set up within 150 Km of an existing civilian airport, the impact on the existing airport would be examined. Such cases would be decided by the Government on a case to case basis.”

E. Factual Matrix:- The Airports at Patna, Bihta and the Development of a Greenfield Airport in the State of Bihar

38. As reflected from record, correspondence between the various parties involved in a project of this magnitude began in October, 2009 wherein it was decided that the feasibility of Greenfield Airport at Nalanda, and Bihta Air Force Station (referred to as Bihta) as an alternative to Patna Airport were to be examined.

39. Vide letter dated 22.10.2009 (Annexure P-2, Page 246), the report and recommendations by the Airport Authority of India were submitted to Respondent No.1, namely the State of Bihar, for a considered decision.

40. On 15.01.2011, Chief Secretary, Government of Bihar informed the Chairman, Airport Authority of India that land of 1000 acres and an additional 200 acres, if the requirement so arose, has been finalized for Greenfield Airport at Nalanda. The opinion of AAI was



also sought in this regard so that process of land acquisition for such purpose could be initiated. (Annexure- P/3, Page-254)

41. Vide letter dated 14.10.2011, the Airport Authority of India was informed that it may not be possible to make available 1200 acres of land. As also in the absence of technical expertise, the PPP Mode with the State Government as one party may not be possible and so the consent for establishment of Greenfield Airport at Nalanda was sought. (Annexure- P/4, Page- 255)

42. Vide letter dated 21.02.2012 (Annexure-P/7, Page 448), from Member, Planning, Airport Authority of India to Chief Secretary, Government of Bihar, it was informed that there is no possibility of upgradation/expansion of the Patna Airport due to non-availability of land and presence of obstacles. On request of the State Government, AAI carried out feasibility study for construction of Greenfield Airport at Nalanda and Bihta. The said letter includes a comparative chart between the two, which is extracted hereinunder (Page 449):-

“

S. No.	Nalanda (Proposed Greenfield Airport)	Bihta (Existing Airport belong to IAF)
4	No major disadvantage except the Rajgir hills with Shanti Stupa of Lord Budha on the southern side may affect visual Circling by aircraft.	Disadvantage: Restriction of height of terminal building and other infrastructure due to existing IAF Radar. Operational difficulties on day-to-day functioning may arise as being faced at other civil enclaves as per the



		experience at Defence airports.
5	AAI has proposed 4800 acres of land as recommended in the feasibility study report for developing Greenfield airport, but State Government has offered 1200 acres.	It is possible to extend Runway 10/28 for making runway of dimensions 3800 x 45m suitable for wide bodies aircrafts with Cat-1 approach lights, as land is likely to be available.
6	Apart from identifying and acquiring the extent of land needed, the establishment of physical facilities on the land is another issue which may cost anywhere around Rs.1000-1200 Crores approx for Phase-I (for A320 type operations) development.	Bihta Airport can be considered as an alternate to Patna Airport for wide bodied aircraft operations and for establishment of Civil Enclave, as basic infrastructure including runway already exist. Cost incurred will be less than Rs.1000 Crore. Detailed analysis will give exact cost.

”

43. A letter dated 16.05.2016 addressed to the Chief Secretary, Government of Bihar by the Secretary, Ministry of Civil Aviation, Government of India (Annexure- P/8, Page- 450) stated that the Development of a Greenfield Airport at the site indicated in the Patna Urban Master Plan would not be feasible within the next ten to fifteen years. The Government may initiate long term viability study at this point. Up until such point that such a site becomes operational, a revamped Patna Airport along with the Bihta Airport controlled by the Air Force would serve the needs of upto eight million people as against the current volume of five million. The Air Force has, in principle, agreed to allow joint operations. An immediate requirement of five acres was stated with a total of 11.5 acres for the expansion of



Patna Airport and 108 acres for Bihta.

44. A prominent Member of Parliament, vide letter dated 15.10.2019 addressed to the Hon'ble Minister, Civil Aviation; Government of India pointed out the flaws in principle decision of redevelopment of Bihta Airport as an alternative to the Patna Airport (Annexure P/14, Page-599). He identified certain limitations, which he suggests, blurs the difference between the Patna and Bihta Airports in terms of the issues hindering operations, significant at that. The operative portion of the letter reads as under (Page 600 to 601):-

“To my understanding the following limitations which make reinvestment at Bihta Airport no different from those existing at Patna are as follows:-

- Bihta Airport does not have the provision of Parallel Taxi way which is essential for bringing it into the international standard Code E-aircrafts. For this the Air Force has to give permission for land use change, which has not been agreed so far and some land has to be additionally acquired by the State Government. So far only 108 acres of land has been acquired by the State Government which has been handed over to AAI but this does not cater for the runway length extension. The land provided by the State Government of Bihar only caters to the proposed new terminal building, utility building and parking space for airport staff etc. In both places at Patna and Bihta only major expense is being done on the passenger terminal but the upgrade of an Airport primarily also requires the upgradation of tarmac side i.e. extension of the main runway length, parallel taxi track, land in the funnel for approach landing system, navigational instruments etc.
- If I understand that AAI has suggested an additional requirement of 165 Acres + 8 Acres for runway extension for CODE-E i.e. for (Boeing777), A-330/350- Dreamliner etc., along with approach lighting system etc. additional land is required on the city side for Runway 28 for operational reasons. Since Runway 28 would have the instrument approach as ILS- RW28, this would require extension of runway approach and would necessary entail land to be acquired on the Runway 28 approach side which has a Kabragah and a Mosque and is densely populated. It would take years or even more before the matter



gets settled and State Government is asked to acquire the additional land, thereby restricting the efficiency of the existing investment. To acquire the additional land, the Government of Bihar has not taken any step so far and would be rather unwilling as land acquisition in this part of the town has been a real contentious issue.

- Moreso, the length of the NHAI elevated Highway proposed for 26 Kms is around 2600 crores which is going to the additional expenditure by the Government of India for a self limiting airport which does not cater to an international standard and it is just a slightly improved replication of Patna Airport without any major advantage as compared to any green field project.”

45. Pursuing the matter further, he then, vide his letter dated 14.11.2019 addressed to the Chairperson of the Airport Authority of India requested a pre-feasibility study for a Greenfield Airport to be conducted at Saran (Annexure-P/15, Page-603). Most significantly, the needful was done. The recommendations in the study report (Annexure P/16, Page-604) made by a team of experts headed by Sri G. D. Gupta, Executive Director (Planning), Airport Authority of India, upon their visit to the identified site on 23.12.2019, *inter alia*, are as under (Page 608-609):-

“Recommendations:

Prima facie on visual observation, Development of Greenfield Airport is technically feasible at the proposed site subject to OLS survey, fulfillment of other observations and adherence to Greenfield Airport Policy of MoCA.

Approx. 1250 acres of land would be required as per the sample Master Plan enclosed as Annexure V for development of airport for IFR operations of Code E aircraft with single runway. The land requirement is for the operational needs of the airport. To generate non-aeronautical revenue for economic viability of airport, additional land would be required.

Considering the traffic growth and potential at Patna Airport, it would be worthwhile to envision a Greenfield Airport which would meet the



traffic needs of Patna for 40-50 years. Approx. 2300 acres of land (excluding land for non-aeronautical revenue) would be required as per the sample Master Plan (Annexure VI) for development of airport for IFR operations of Code E aircraft with parallel runways. Accordingly, land may be earmarked in the city Master Plan so as to restrict development and for ease of acquisition for future development as per the requirement.”

46. Also an Obstacle Limitation Survey (OLS) was conducted (Annexure-P/17, Page-610) and it does mention a need of approximately 1250 acres for single runway, but a total 2300 hundred acres stretching 5.5 km x 2 km would be required for development of operations of Code E Aircraft with parallel runways. The land acquisition cost as mentioned in a tabular chart is approximately Rs.440 crores. (Page-613)

47. It would not be out of place to mention that the State of Bihar continued to assist in the said exercise and without any demur.

48. In a letter dated 18.09.2020 from the Secretary, Ministry of Civil Aviation, Government of India to the Chief Secretary, Government of Bihar, a reminder was sent in respect of choosing the site between Bihta and Saran in light of conversation between Hon’ble the Chief Minister and Hon’ble Minister of State for Civil Aviation (Independent Charge) in May, 2020. (Annexure- P/24, Page-630)

49. Vide letter dated 30.06.2021, The Hon’ble Minister for Civil Aviation, was apprised of the pros and cons of a Greenfield Airport



vis-à-vis a defense enclave, also to be communicated to the State Government for facilitation of a decision at the earliest. Such a chart, on Page 663 of the Record, is extracted below for ease of reference.

COMPARATIVE CHART

Sl. No.		Sonepur Airport (SARAN)	Bihta Airport (Air Force)
1.	Category	Green Field Project	Defence Property
2.	Operations	All Categories	Limited Category
3.	Approach lighting system	CAT - III	CAT - I
4.	International Flights	100 %	10%
5.	Cargo Capacity and Operations	100%	10%
6.	Passenger Amenities	For Next 100 Years	For Next 5 Years
7.	MRO Facilities	100%	0%
8.	Ease of Civil Operations	100%	30%
9.	Night Parking Facilities	100%	0%
10.	Hub Creation	100%	0%
11.	Destination Covered (U.S. Europe/East/West Coast)	Yes	No



12.	Operations Control	Civil	Air Force
13.	Air Traffic Control	Civil	Air Force
14.	Ease of Air Traffic Control	100 %	50%
15.	Approach National Highways	One Existing & two proposed	One
16.	Investment	4000 Crores	900 Crores
17.	Opportunity for future expansion	400 %	0%
18.	Existing Approaches	Constructed	Not Constructed
19.	Time Frame of Construction	3-5 Years	3-5 Years
20.	Operational Advantage over Patna	100%	10%
21.	Length of Runway	14000 Feets	8000 Feets
22.	Parasllel Taxi Track	Yes	Yes
23.	No. of Parking stands	86	15
24.	City side development prospects	100%	10%
25.	City side revenue prospects	100%	10%
26.	Flight Load Penalty	0%	50%
27.	Future Monetisation prospects	100%	0%
28.	At par with Delhi, Hyderabad, Bangalore, Mumbai, Jewar, Mopa etc.	Yes	No
29.	Vision	100 years	Next 5 years



30.	No of runways	Double	Single
31.	Ease of Construction	100 %	50 %
32.	Ease of Paper work	100 %	50 %
33.	World Class ATC Tower	Yes	No
34.	Height of ATC Tower	80 meter	Not Planned yet
35.	Resettlement of Habitants	NIL	100% for expansion
36.	Land Acquisition Cost	Single Crop Non Habited Non irrigated	Multi crop with habitation irrigated
37.	Construction of Approach Road	Approved	Approved
38.	Number of Approach Entries	6 (Six)	1 (One)
39.	Green rating	A++	Not Known
40.	A preferred international Diversion	Preferred	Not Preferred
41.	Administrative Control	Civil	Air Force
42.	ATC	AAI	Air Force
43.	Land for residential area for employees	100%	No
44.	Position in Eastern India	Largest Airport	No Where
45.	Distance from Patna Airport	18 Kms	29 Kms

50. On 29.09.2021, a letter written by the Hon'ble Minister for Civil Aviation, Government of India to Hon'ble the Chief Minister,



Government of Bihar requested for the stand in respect of either Bihta or Saran to be indicated for the development of two Airports in close proximity may not be commercially feasible (Page-793).

51. In a response, Government of Bihar vide letter dated 04.10.2021 (Page-796) expressed its consent for development of Bihta Airport as an alternative to Patna as already communicated vide earlier letter dated 12.10.2020. It further stood informed that 108 acres of land as requested stood provided, in relation to which work was commenced. Additionally, a reminder was also sent on 18.02.2022 with a request to begin construction at the Bihta Civil Enclave (Page-797).

52. Post filing of the instant petition on 30.03.2022, the Chief Secretary, Government of Bihar vide letter dated 30.08.2022 addressed to Secretary, Ministry of Civil Aviation, Government of India while noting that the progress in respect of development of Airports within Bihar was not satisfactory, attached a status report in that regard (Page-798 to 804).

53. During the pendency of matters relating to development of infrastructure of the airports in Bihar, the instant petition was filed on 30.03.2022 for the reliefs mentioned above. On 31.03.2022, in a composite order passed in CWJC No.7302 of 2020 titled as Gaurav



Kumar Singh v. Union of India, the present petition was also taken note of and some general directions issued in respect of filing of affidavit etc.

54. Petitioner in support of his prayers brought on record, two accident reports- one pertaining to Patna and other to Mangalore. The “ACCIDENT TO “ALLIANCE AIR BOEING 737-299 AIRCRAFT VTECD ON 17TH JULY 2000 AT PATNA” (Page 49) and the other; “REPORT OF THE ACCIDENT TO AIR INDIA EXPRESS BOEING 737- 800 AIRCRAFT VT –AHV ON 22ND MAY, 2010 AT MANGALORE” by the Court of Enquiry of Air Marshal B.N.Gokhale, PVSM, AVSM, VM (page 258 onwards). Under the heading critical Airfields, i.e. those which the DGCA has classified as requiring special qualification for the Flight crew to undertake operations, of the 11 Airports referred, Patna also features in this list. (Page 350 Internal Page 79)

55. He has also placed on record a newspaper report which details the issues plaguing the Airport at Patna on page 445 from “The Print” dated 19th June, 2018 which is titled as “Why Patna airport is a disaster waiting to happen” wherein the authors referring to bird hits at the Patna Airport stated that such incidents were not out of the ordinary. They identified certain problems that are inadequate runway,



its placement in the middle of the city and increasing traffic.

56. In the aforesaid backdrop, vide order dated 31.08.2022, recording the status of all the Airports within the State of Bihar, this Court posed nine questions to the respondents. Portion of the said order is extracted 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 Defence.

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

And

“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?"

57. As already noted, only 3 out of 31 Airports/Civil Enclaves are functional in Bihar.

58. In response thereto, respondent no.2, namely the Union of India, has filed its affidavit dated 24.09.2022 (Page-734) and the State correspondingly has filed their affidavit on 26.09.2022 (Page -774). Comparatively analyzed, the stand is as under:-

Sl. No.	Question	Response by State	Response by Union of India
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1	(i) What is stand of the State with respect to having a Green Field Airport within the State of Bihar?	The Union of India proposed the development of Bihta Airport. The State is very clear and has agreed to this proposal.	
2	(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?		<p>Site feasibility study and OLS survey at Saran were conducted by the AAI in December, 2019 and January, 2020. The site has been found suitable. However, no formal request has been made for development of Greenfield Airport.</p> <p>The State Government vide letter dated 04.10.2021 opined that Civil Enclave at Bihta should be developed. (Page-745)</p>
3	(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?	The State is willing to develop Bihta as Green/Brownfield Airport and to that aid 108 acres of land stands transferred to AAI in December, 2018.	Neither Patna nor Bihta can qualify for Greenfield Projects as an essential characteristic of such an Airport is that development takes place from scratch.



4	(iv) Whether Patna and Bihta as a location for an Airport has the capacity to be developed as an International Airport?	Bihta has the capacity to be an International Airport and the State is providing all necessary support to AAI in this regard. This has been discussed in various meetings chaired by Hon'ble the Chief Minister with Minister and Secretary, Minister of Civil Aviation, Government of India and Chairman, Airport Authority of India.	An International Airport is designated by the Central Government. Such an Airport is one where all facilities concerning customs, immigration, health, quarantine (both plant and animal) are available. The runway length at Patna is 2072 meters which is suited for A 320 or B 737; at Bihta it is 2500 meters which is suited for A321. Accordingly, such destinations accessible with this category of Aircraft can be connected.
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5	(v) Whether Bihta being a defense facility, can be allowed, from the perspective of National security to be transformed into a National/International Airport?	<p>This issue has been discussed in various meetings chaired by Hon'ble the Chief Minister with Minister and Secretary, Minister of Civil Aviation, Government of India and Chairman, Airport Authority of India.</p> <p>In light of the proposal of the Government of India, the State has agreed for the development of Bihta Airport as an International Airport.</p>	<p>The Air Headquarters has granted permission for joint use of Bihta Airfield for civil operations. (Page 746)</p>
6	(vi) Whether the Airport at Patna or Bihta, given its current location, can be expanded to meet the requirements of International Airports.	Yes	<p>The runway length at Patna is 2072 meters which is suited for A 320 or B 737. Accordingly, such destinations accessible with this category of Aircraft can be connected.</p> <p>However, long haul destination would not be feasible due to land constraints.</p> <p>In Bihta, wide body Aircraft operations can be possible if the requested 191.5 acres is made available by the State Government.</p>



7	(vii) Given the current numbers and the projected increase in air travel, is the development of Airports across all locations not justified?	<p>The State Government is focusing on the development of- (1) Patna International Airport; (2) Bihta Airport; (3) Gaya International Airport; (4) Darbhanga Airport; (5) Purnia Airport</p> <p>Presently, the four civilian airports cover almost all districts of Bihar and they are also served by neighbouring airports in Kusi Nagar, Varanasi, Uttar Pradesh, Deoghar, Jharkhand, Bagdogra, West Bengal.</p> <p>The Government of India is required to make custom clearance operational in these four already operational airports which will connect countries, like Taiwan, Sri Lanka, Nepal etc.</p>	<p>The modernization and development of infrastructure is a continuous process taken up on the basis of passenger demand forecast and demand from Airlines. The existing un-served/underserved airstrip within Bihar have been included in the UDAN document. However, no bids have been received.</p>
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8	(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?	Bihta Airport. The location is Central and for better connectivity the State Government has commenced construction of an elevated road for which tender process also stands completed. A total of Rs. 3737.51 crores has been allotted by the Government of India and Rs.456 Crores by the State Government for better road connectivity.	International destination within the flying range of A 320/ B 737 can be connected to Patna and Bihta by way of having longer runway can cater to A 321 Aircraft as well.
9	(ix) What is the current load of air traffic and expected and anticipated increase in the next one decade?"		Airports in Bihar witnessed traffic load of 4.7 million passengers in pre pandemic, 2019 to 2020 and 3.55 million in 2021 to 2022. Expected increase in the next decade is 15.4 million passengers.

59. On 13.10.2022, this Court in its order directed the minutes of the meeting having taken place between Minister Incharge for Civil Aviation, Government of India and the Cabinet Minister, Government of Bihar to be placed on record.

60. The State of Bihar has filed a supplementary counter



affidavit dated 01.11.2022 by which it was submitted that the meeting about which the Court queried was only a courtesy meeting and so the Department is not aware of the details.

61. The petitioner, in response filed a rejoinder dated 05.12.2022 by which he has disputed the claim of the respondent-State of Bihar being unaware of the details of the meeting, in strong terms. He has submitted-

“It would be pertinent to point out that in the aforementioned meeting a thorough discussion was held and a minutes of meeting was circulated on official mail, keeping all objectives and facts including growth of air passenger traffic. It apparently transpired in the meeting with MoCA and State representative that “another airport within the close proximity of 30 Kms. of Patna with same facility and specifications is not feasible and hence imperative requirement of ‘construction of new international Greenfield international airport, which could cater the requirements of B-777/778 type of aircrafts and wide bodies aircrafts and to meet future requirements of State of Bihar”.

8. That from the aforementioned meeting following interferences can be explicitly drawn:-

a. Union Government has said and declined to set up Bihta Airport as an international airport with present limitations;

b. State to find out suitable land for construction of Greenfield airport;

c. Union Government is ready to build an International Airport at or near Patna;

d. Inferring thereby that Greenfield Airport can be developed at Sonapur since it comes within all the parameters discussed in the aforementioned meeting.”

62. We do not wish to comment upon the inferences made by the petitioner, nor on the quote furnished in this affidavit. However, we may only note that as on date, this averment remains un-refuted.



63. Clearly, lack of adequate land is an issue that persists with Bihta Airport with the land granted to Airport Authority of India being 108 acres to the corresponding demand of 191 acres (approx.)]. Hence, argued, the consequences of a Greenfield Airport at Saran will be beneficial for the State as it will be free to monetize the prime real estate upon which Patna Airport stands. Well, this being a policy matter, we refrain from expressing any opinion on monetization, but otherwise the factual matrix of availability of land at Bihta remains unrefuted.

Policy decision

64. Hon'ble the Supreme Court in **State of Kerala and another v. Navena Prabhu and others, (2009) 3 SCC 649** stated that the Court would abstain from issuing directions having financial implication.

65. On the scope of interference by a Writ Court, in policy matters as also matters involving economic considerations, this Court in **Bihar Offset Printers Association v. Union of India, (2022) 2 BLJ 595**, listed and considered numerous judgments of Hon'ble the Supreme Court as under: -

“54. V. Economic Policy of a Government:- Scope of Interference

(i) In **Villianur Iyarkkai Padukappu Maiyam v. Union of India and**



Ors. (2009) 7 SCC 561, the Court observed that:

“**167.** In the matter of policy decision and economic tests the scope of judicial review is very limited. Unless the decision is shown to be contrary to any statutory provision or the Constitution, the Court would not interfere with an economic decision taken by the State. The court cannot examine the relative merits of different economic policies and cannot strike down the same merely on ground that another policy would have been fairer and better.

168. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.”

(ii) Unique Projects inheres unique procedure. [**Villianur Iyarkkai Padukappu Maiyam (supra), para-165**]

(iii) In complex economic matters, every decision is necessarily empiric and it is based on experimentation or what one may call ‘trial and error method and therefore, its validity cannot be tested on any rigid ‘a priori’ considerations or on the application of any strait-jacket formula. The Court must while adjudicating the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or ‘play in the joints’ to the executive. The same is required to be given unless such decision is patently, arbitrary, discriminatory and malafide. [**State of M.P. and others v. Nandlal Jaiswal and others, (1986) 4 SCC 566, State of Punjab v. Yogender Sharma Onkar Rai & Co. and others, (1996) 6 SCC 173**] **Natural Resources Allocation (supra), para- 139, 141, 142; Villianur Iyarkkai Padukappu Maiyam (supra), Air India Ltd. (supra), Manohar Lal Sharma v. Narendra Damodardas Modi and others, (2019) 3 SCC 25; Kuldeep Singh v. Government of N.C.T. of Delhi, (2006) 5 SCC 702, Para-25**]

(iv) Unless the decision is ex-facie contrary to a Statute or against public policy, Constitutional Court would exercise judicial restraint. [**Ramchandra Murarilal Bhattad and others v. State of Maharashtra and others, (2007) 2 SCC 588**] [**Also 5 M & T Consultants, Secunderabad v. S.Y. Yawab and another, (2003) 8 SCC 100, Para-16, Association of Registration Plates v. Union of India and others, (2005) 1 SCC 679, para 35**]

...

(vi) Unless overwhelming public interest requires it so. Intervention otherwise may lead to vast amounts unbudgeted expenditure. [**Master Marine Services (P) Ltd (supra), para 12, Sanjay Kumar Shukla v. Bharat Petroleum Corporation Limited and others, (2014) 3 SCC 493, para 19**]”



F. Observation of the Court

66. The construction and setting up of an airport is undoubtedly a matter of importance but is also one of immense and complex economic implication. It is well settled that in such cases, the Court should not substitute its judgment for the opinion rendered by experts on the matter. In the present factual matrix the location, land acquisition, building etc.- the manner in which it is to be done and the pace at which it is to be done could entirely be within the purview of Government's own policies and, changes or shift therein may affect certain interested parties. However, at present, given that the disagreement between the various parties was not soon to be resolved (the process for building a Greenfield Airport within the State has been ongoing for 17 years), it is only then upon the urging of the petitioner and in view of the benefit for the people of the State that the Court chose to entertain the present PIL to further this discussion to a constructive and logical conclusion. In the light of the holdings of Hon'ble the Supreme Court reproduced supra, this Court has not expressed any opinion/passed any direction which may step onto the functions of other wings of Government but only enabled the concerned authorities to move past the impasse they have found themselves on and hopes that they do so in earnest and at the earliest.



67. From the arguments advanced, documents referred, certain facts of importance come to light.

68. Section 19 of the Act mandates that land acquisition is deemed to be for a public purpose and, therefore, it is not open for the State to refuse a requirement of land by AAI as its role is that of a facilitator and not a determining authority since the same (construction of Airport etc.) belongs to List I of the Constitution of India.

69. Now when after a lapse of 17 years from the time when the need for a Greenfield Airport was first felt in 2006 (Page 819), suitable land has been found at Saran as indicated by the feasibility report, Union Government cannot take the stand that the land is not being provided by the State, effectively 'holding hostage' in a 'tug of war between the Centre and the State', the twelve crore citizens of Bihar. The Legislature has equipped AAI with a sweeping power in civil aviation and has cast a duty to ensure safe air travel and to connect all parts of the country.

70. The report titled as "ACCIDENT TO "ALLIANCE AIR BOEING 737-299 AIRCRAFT VTECD ON 17TH JULY 2000 AT PATNA" (Page 49 onwards) made certain observations in respect of Patna Airport. (a) Tall trees in the approach funnel posed hazard to landing aircraft; (b) that in an operation of Airbus A 320, there is no



margin of error available to the Pilot when landing in bad weather or on a wet runway or technical malfunction or any combination of these factors; (c) the trees on the approach funnel have affected the radio beam and the runway threshold has been displaced by 400’.

71. It is to be noted that as far as back as year 2000, the Court of Enquiry recommended that vehicular traffic on the road which runs close to R/W 25 must be controlled and only light vehicles allowed to ply on the road. And even this traffic, must be stopped during arrival and departure scheduled Air traffic.

72. It is safe to assume that the traffic has crossed the parameter noted above, highlighting one more issue with the Patna Airport and also that keeping in view the current high intensity traffic, stoppage of vehicles as suggested is, an impossibility.

73. We have already noted that in the report pertaining to the accident at Mangalore, Patna features in the list of 11 critical Airports of the country.

74. Proceeding further, we refer to the report prepared by The Airports Economic Regulatory Authority of India (AERA) in respect of determination of Aeronautical tariffs for Jai Prakash Narain International Airport, Patna (2018-23). In this report (Page-494), it has been noted that as on 01.04.2017, the Patna Airport was a ‘major



airport'. It is the sixteenth busiest Airport of the country on metric of passenger traffic for the financial year 2018-19 (Page-499).

75. The traffic growth rates proposed by the Airport Authority of India show 15% growth rate for the period till 2021-2022 and 28% amounting to 8,801,454 passengers in 2022-23 (Page-513). The growth of air traffic in Bihar in the next decade is to the tune of 15.4 million passengers, with the majority (more than 95%, by current traffic bifurcation) being at Patna. (Page 739)

76. The Patna Airport has been listed as one of the top 24 Airports of the country. It is placed under the 'State capitals and industrial hubs' head in the Vision 2040 for the Civil Aviation Industry in India.

77. Apart from the Airport at Patna, the report of the (AERA) also made observations in respect of Bihta Airport. Given that the capacity of the Patna Airport is 0.7 Million Passengers per annum, and that there is huge congestion, a new building with a capacity of 8 million passengers per annum is planned, but the same is likely to saturate by 2023. The Bihta Airport would be functional only by the end of the said year and would strictly be in a supplemental capacity to Patna.

78. It is a well settled proposition that public money must be



used for public good. It is also well understood that the construction of an Airport is a costly affair. But then the connectivity to Bihta Airport is slated to cost approximately Rs.4000 Crores with Rs.3737.51 Crores allotted by the Central Government and Rs.456 Crores by the State for an elevated road (Page 790) and 440 crores in land acquisition costs for the 108 acres which stand acquired. The requirement is 191.5 acres, but as noted by the Hon'ble Minister of Civil Aviation, Government of India the acquisition to that tune in addition to the land already ear marked for this purpose, is difficult due to habitation and in any case not cost effective. In any event, it results into displacement of huge human population.

79. Then, it is for the concerned authorities of the state to consider, whether expending such large amounts from the public exchequer for a facility which will be purely a supplement to the existing facility, which on its own faces numerous issues, can indeed be justified as public good? It must be noted that the issue of safety in respect of the Patna Airport would still remain storming at the face. And Bihta still cannot be developed to achieve the desired result of making an airport, fully automated and functional as per international standards, meeting the ever growing demand for traffic of passengers or goods. It must also be remembered that Bihta is essentially a



defense airport.

80. In such a situation, the appropriate authority as per clause 8.1 of the Greenfield Airport Policy while granting licence for a Greenfield Airport to be built, for instance at Saran, would note that it would be within 150 Km aerial distance limit prescribed by the Central Government, but also keep in view the various safety issues and operational difficulties being faced by the Patna Airport at its current location. It must also be noted that both the previously proposed locations would also contravene the 150 Km limit while additionally and significantly not being able to fulfill the requirement of land which, as estimated for Saran is 2300 acres.

81. The State, as evidenced by the various documents referred to above has been pursuing the construction of a Greenfield Airport in Bihar for more than 17 years and in this process proposed two sites, namely Nalanda and Punpun, both of which were rejected by the competent authority for want of technical feasibility after due investigation.

82. A question that presents itself in this light and in particular context of the various difficulties faced in expansion of Bihta Civil Enclave is, what has prevented the State or other concerned authorities from exploring other avenues and what may be the reasons for the



State's hesitation against development of a Greenfield Airport at Saran as proposed by the petitioner?

83. We may note that the Union of India has submitted on affidavit that both the existing Airports Patna and Bihta are constrained for long term expansion and the plying of wide body Aircraft. It has also supported the development of a Greenfield Airport (Page-739). Noticeably, State Government does not have to spend a penny for a PPP model.

F (a). The Right of Safe Travel under Article 21 of the Constitution

84. In consideration of travel by air, to facilitate which for all persons, the present petition as well as others stand instituted in this court, a question of immense importance presents itself. The aim and purpose behind development of new Airports and facilities is to break the shackles of exclusion of air travel which up till now is only for the economically well-off. In such a case and in light of this expansion, whether any protection exists for travelers? Is the government and/or the private company operating the airport or airline to ensure, for its travelers and users, the protection of any rights?

85. It is well settled that both rights and responsibilities are agents of positive change. Such change is brought on by the forces of social or economic advancement. Then, when in aid of economic as



well as social advancement, of breaking economic barriers, the luxury of air travel is being taken off from its pedestal of largely an aspiration for large sections of society, then, the people and citizens to whom such a thing is being made accessible must be, accordingly protected. Not just travel by Air, but travel in general, encompassing all methods must be protective of the lives of its travelers as well as its employees of the service providers.

86. Safety in any, and, all actions, is a pre-requisite of “life” as without it, the right to enjoy the same, in all its magnificence would be reduced to nothingness as there would not be a life to enjoy. Hon’ble the Apex Court in **Common Cause v. Union of India, (2018) 5 SCC 1**, para 149, stated “We may clearly state here that the interpretation of the Constitution, specially fundamental rights, has to be dynamic and it is only such interpretive dynamism that breathes life into the written words. As far as Article 21 is concerned, it is imperative to mention that dynamism can, of course, infuse life into life and liberty as used in the said Article.”

87. Can it be not then said, that a right to safe travel is within the meaning of life and liberty under Article 21?

88. In the very same judgment, the Constitution Bench (Dipak Misra, CJI) quoted with approval certain paras from **Central Inland**



Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3

SCC 156.

“25. The story of mankind is punctuated by progress and retrogression. Empires have risen and crashed into the dust of history. Civilizations have nourished, reached their peak and passed away. In the year 1625, Carew, C.J., while delivering the opinion of the House of Lords in *Re the Earldom of Oxford* [(1625) W Jo 96, 101 : (1626) 82 ER 50, 53] in a dispute relating to the descent of that Earldom, said:

“... and yet time hath his revolution, there must be a period and an end of all temporal things, *finis rerum*, an end of names and dignities, and whatsoever is terrene....”

The cycle of change and experiment, rise and fall, growth and decay, and of progress and retrogression recurs endlessly in the history of man and the history of civilization. T.S. Eliot in the First Chorus from “*The Rock*” said:

“O perpetual revolution of configured stars,
O perpetual recurrence of determined seasons,
O world of spring and autumn, birth and dying;
The endless cycle of idea and action,
Endless invention, endless experiment.”

“26. The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith, said: “When I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool.” The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.”

and then further referred to **M. Nagraj v. Union of India,**

(2006) 8 SCC 212 (Paras 19 and 29) and **V.C. Rangaduai v. D.**

Gopalan, (1979) 1 SCC 308 (Para 8 and 11) to conclude that

language employed in a constitutional provision should be liberally



construed, for the same can never remain static. If it is allowed to remain static, the very reason for such language would be employed, would be defeated, bypassing with negative prejudice, the intent of such use.

89. We may refer to a few telling paragraphs of **K.S.Puttaswamy v. Union of India (Privacy 9 J.) (2017) 10 SCC 1.**

In regards to interpretation of the Constitution, Dr. Chandrachud, J. as

His Lordship then was, observed:-

“259. The Constitution has evolved over time, as judicial interpretation, led to the recognition of specific interests and entitlements. These have been subsumed within the freedoms and liberties guaranteed by the Constitution. Article 21 has been interpreted by this Court to mean that life does not mean merely a physical existence. It includes all those faculties by which life is enjoyed. The ambit of “the procedure established by law” has been interpreted to mean that the procedure must be fair, just and reasonable. The coalescence of Articles 14, 19 and 21 has brought into being a jurisprudence which recognises the interrelationship between rights. That is how the requirements of fairness and non-discrimination animate both the substantive and procedural aspects of Article 21. These constitutional developments have taken place as the words of the Constitution have been interpreted to deal with new exigencies requiring an expansive reading of liberties and freedoms to preserve human rights under the Rule of Law. India's brush with a regime of the suspension of life and personal liberty in the not too distant past is a grim reminder of how tenuous liberty can be, if the judiciary is not vigilant. The interpretation of the Constitution cannot be frozen by its original understanding. The Constitution has evolved and must continuously evolve to meet the aspirations and challenges of the present and the future. Nor can Judges foresee every challenge and contingency which may arise in the future. This is particularly of relevance in an age where technology reshapes our fundamental understanding of information, knowledge and human relationships that was unknown even in the recent past. Hence as Judges interpreting the Constitution today, the Court must leave open the path for succeeding generations to meet the challenges to privacy that may be unknown today.

262. Technology, as we experience it today is far different from what it was in the lives of the generation which drafted the Constitution. Information technology together with the internet and the social media and all their attendant applications have rapidly altered the course of life in the



last decade. Today's technology renders models of application of a few years ago obsolescent. Hence, it would be an injustice both to the draftsmen of the Constitution as well as to the document which they sanctified to constrict its interpretation to an originalist interpretation. Today's problems have to be adjudged by a vibrant application of constitutional doctrine and cannot be frozen by a vision suited to a radically different society. We describe the Constitution as a living instrument simply for the reason that while it is a document which enunciates eternal values for Indian society, it possesses the resilience necessary to ensure its continued relevance. Its continued relevance lies precisely in its ability to allow succeeding generations to apply the principles on which it has been founded to find innovative solutions to intractable problems of their times. In doing so, we must equally understand that our solutions must continuously undergo a process of re-engineering.”

90. In the same context, Sanjay Kishan Kaul, J. referred to various decisions as under:-

“604. How the Constitution should be read and interpreted is best found in the words of Khanna, J., in *Kesavananda Bharati v. State of Kerala* [*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225] as follows : (SCC pp. 770-71, para 1437)

“1437. ... A Constitution is essentially different from pleadings filed in Court of litigating parties. Pleadings contain claim and counterclaim of private parties engaged in litigation, while a Constitution provides for the framework of the different organs of the State viz. the executive, the legislature and the judiciary. A Constitution also reflects the hopes and aspirations of a people. Besides laying down the norms for the functioning of different organs a Constitution encompasses within itself the broad indications as to how the nation is to march forward in times to come. A Constitution cannot be regarded as a mere legal document to be read as a will or an agreement nor is Constitution like a plaint or written statement filed in a suit between two litigants. A Constitution must of necessity be the vehicle of the life of a nation. It has also to be borne in mind that a Constitution is not a gate but a road. Beneath the drafting of a Constitution is the awareness that things do not stand still but move on, that life of a progressive nation, as of an individual, is not static and stagnant but dynamic and dashful. A Constitution must therefore contain ample provision for experiment and trial in the task of administration. A Constitution, it needs to be emphasised, is not a document for fastidious dialectics but the means of ordering the life of a people. It had (sic) its roots in the past, its continuity is reflected in the present and it is intended for the unknown future. The words of Holmes while dealing with the US Constitution have equal relevance for our Constitution. Said the great Judge:

‘8. ... the provisions of the Constitution are not mathematical



formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth.' [See *Gompers v. United States* [*Gompers v. United States*, 1914 SCC OnLine US SC 153 : 58 L Ed 1115 : 233 US 604 (1914)], SCC OnLine US SC para 8 : US p. 610 (1914)].

It is necessary to keep in view Marshall's great premises that "It is a Constitution we are expounding". To quote the words of Felix Frankfurter in his tribute to Holmes:

'Whether the Constitution is treated primarily as a text for interpretation or as an instrument of Government may make all the difference in the world. The fate of cases, and thereby of legislation, will turn on whether the meaning of the document is derived from itself or from one's conception of the country, its development, its needs, its place in a civilized society.' (See *Mr Justice Holmes* edited by Felix Frankfurter, p. 58)

(emphasis supplied)
(emphasis added)

605. In the same judgment, K.K. Mathew, J., observed: (*Kesavananda case* [*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225], SCC p. 830, para 1563)

"1563. ... That the Constitution is a framework of great governmental powers to be exercised for great public ends in the future, is not a pale intellectual concept but a dynamic idea which must dominate in any consideration of the width of the amending power. No existing Constitution has reached its final form and shape and become, as it were a fixed thing incapable of further growth. Human societies keep changing; needs emerge, first vaguely felt and unexpressed, imperceptibly gathering strength, steadily becoming more and more exigent, generating a force which, if left unheeded and denied response so as to satisfy the impulse behind it, may burst forth with an intensity that exacts more than reasonable satisfaction. [See Felix Frankfurter, of Law and Men, p. 35] As Wilson said, a living Constitution must be Darwinian in structure and practice. [See Constitutional Government in the United States, p. 25] The Constitution of a nation is the outward and visible manifestation of the life of the people and it must respond to the deep pulsation for change within. "A Constitution is an experiment as all life is an experiment." [See Justice Holmes in *Abrams v. United States* [*Abrams v. United States*, 1919 SCC OnLine US SC 213 : 63 L Ed 1173 : 250 US 616 (1919)] .]"

606. In the context of the necessity of the doctrine of flexibility while dealing with the Constitution it was observed in *Union of India v. Naveen Jindal* [*Union of India v. Naveen Jindal*, (2004) 2 SCC 510] : (SCC p. 539, paras 39-40)

"39. Constitution being a living organ, its ongoing interpretation is permissible. The supremacy of the Constitution is essential to bring social changes in the national polity evolved with the passage of time.

40. Interpretation of the Constitution is a difficult task. While doing so, the constitutional courts are not only required to take into consideration their own experience over the time, the international treaties and covenants but also



keeping the doctrine of flexibility in mind. This Court times without number has extended the scope and extent of the provisions of the fundamental rights, having regard to several factors including the intent and purport of the Constitution-makers as reflected in Parts IV and IV-A of the Constitution of India.”

607. The document itself, though inked in a parched paper of timeless value, never grows old. Its ideals and values forever stay young and energetic, forever changing with the times. It represents the pulse and soul of the nation and like a phoenix, grows and evolves, but at the same time remains young and malleable.”

91. From the above expositions, it is amply clear that the Constitution and its interpretation must keep up with the times. For the words of the Constitution to be current, it is only, as stated in **Common Cause (supra) and D. Gopalan (supra)**, *judicial legisputation*, i.e. application of a given legislation to situations broadly falling within the statutory provisions.

92. In other words, understanding the right to life and liberty, in the context of air travel, undoubtedly, gives way to a right to safe travel as an aspect of Article 21.

93. In interpreting the right of free movement (Article 19(1)(d)), Hon’ble Supreme Court in **Kharak Singh v. State of UP, AIR 1963 SC 1295**, Subha Rao and Shah JJ., observed:

“29. This leads us to the second question, namely, whether the petitioner's fundamental right under Article 19(1)(d) is also infringed. What is the content of the said fundamental right? It is argued for the State that it means only that a person can move physically from one point to another without any restraint. This argument ignores the adverb “freely” in clause (d). If that adverb is not in the clause, there may be some justification for this contention; but the adverb “freely” gives a larger content to the freedom. Mere movement unobstructed by physical restrictions cannot in itself be the object of a person's travel. A person travels ordinarily in quest of some objective. He goes to a place to enjoy,



to do business, to meet friends, to have secret and intimate consultations with others and to do many other such things. ...The freedom of movement in clause (d) therefore must be a movement in a free country i.e. in a country where he can do whatever he likes, speak to whomsoever he wants, meet people of his own choice without any apprehension, subject of course to the law of social control....”

94. If the movement undertaken by a person, in not simply the absence of physical restriction, but more wholesome, as described by the Hon’ble Judges above, then, an aspect of safety during travel is essential- for the purpose to be realized.

95. It is undoubted that the access of air travel to people other than in positions of privilege, either inherited or earned, is a recent development moreso after Pandemic Covid-19, in so far as Bihar is concerned, and thus with the widening of this scope, a corresponding widening must also follow in terms of protection of the rights of travelers.

96. As we have noted earlier, the NCAP, 2016 places great emphasis on the safety and security of travelers. The relevant portions of the policy stand reproduced above. The mission- the very foundation of the policy also takes note of the aspect of safety. The Aircraft Act, 1934 under various provision concerning making rules for the equipment to be carried to ensure safety of life, to make rules in furtherance of public health etc ensures the safety of passengers and staff working at facilities. Also is tasked with ensuring safety of all concerned. Section 12, functions of the Authority and Section 42,



making regulations, speak in no uncertain terms. Sec. 42 (2) (h)

reads:-

“securing the safety of aircraft, vehicles and persons using the airport or civil enclave and preventing danger to the public arising from the use and operation of aircraft in the airport or civil enclave”

97. Thus, in the considered opinion of this Court, keeping in view the understanding of travel as described, the socio economic advancement leading to popularization of air travel and the necessity of safety for the protection of life and liberty, a right of safe travel is undoubtedly essential to the right to life.

98. In particular context of Bihar, any decision taken by the Governments, Union, State and the Airports Authority must consider that all passengers undertaking air travel have a right of safe travel and it is the bounden duty of all decision making authorities to ensure the realization of this right.

99. The present case as it stands shows that the petitioner, the State and the Union of India are at impasse in respect of an alternate to a Patna Airport being finalized. We may stress that the present proceedings are in the nature of public interest litigation and as we have observed in our earlier orders ought not to acquire an adversarial colour. The purpose of development of an Airport, whether it be at Bihta or a Greenfield airport at Saran as proposed



by the petitioner, is to serve the State, enhance ease of travel for the numerous people from the State of Bihar travelling in and outside the country and ensure that all possible safety measures and standard are observed and complied with to best protect the lives of the employees of the Airline as well as the travelers.

100. The construction of an Airport either in terms of expansion of the Bihta Enclave or Greenfield Airport at Saran, both would require vast amounts of construction and use of resources. It is essential that the environmental factors be considered when decisions in respect of feasibility, operations etc. are being taken as also decision on use of material and planning and subsequent execution of everyday working once such an Airport is functional. This obligation is all the more important when the project in question is of this magnitude.

101. The State of Bihar has opposed the present writ petition in the nature of public interest litigation, making chiefly the following legal arguments:-

(i) That the petitioner has no *locus standi* and even though the scope and ambit of a PIL has been liberalised and widened, such a petition which is for personal gains/profits should not be



entertained. Reliance is placed on a decision of the Hon'ble Supreme Court in **Janta Dal v. H.S.Choudhary, (1992) 4 SCC 305.**

It is further submitted, relying upon **Jafar Imam Naqvi v. Election Commission of India, (2014) 15 SCC 420**, that the scope of PIL cannot be extended to the present case as it does not match with the purpose of public interest litigation as expanded on by the Hon'ble Supreme Court.

(ii) The decision with respect to development of a Greenfield Airport is a policy decision of the State of Bihar and unless such a decision is absolutely capricious, unreasonable or in the face of constitutional or statutory mandate, interference by the Court is not called for. Reliance is placed on the judgments of the Hon'ble Supreme Court in **Ugar Sugar Works Ltd. v. Delhi Administration, (2001) 3 SCC 635; Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal, (2007) 8 SCC 418; and Delhi Bar Assn. v. Union of India (2008) 13 SCC 628.**

(iii) A writ of mandamus cannot be issued as that can be done so only when a legal right exists and there has been an infringement of such right. Further, that no such writ can lie against the State



under Section 12 of the Airports Authority of India Act, 1994.

Reliance is placed on the decisions of Hon'ble the Supreme Court in **Director of Settlements, A.P. v. M.R. Apparao, (2002) 4 SCC 638**, Para-17; **State of Odisha v. Anup Kumar Senapati, (2019) 19 SCC 626**, Para-39 to 43.

102. On the first contention raised by the respondent-State that the petitioner has no *locus standi* and is using this as an opportunity for personal gain, it is the considered view of this Court that the development of an Airport within the State is a matter of common benefit and will, irrespective of the location upon which Greenfield Airport is built, greatly bolster connectivity of the State of Bihar with other States as well as countries while also providing considerable opportunity of employment to the people of the State. Taking into consideration another argument of the State with respect to being a policy decision as also being acutely aware of its own limitations, this Court intends, not expressing any view, whatsoever, towards the petitioner's specific prayer of a Greenfield Airport being developed at Saran, and, instead considering the multitude of issues surrounding the Jai Prakash Narayan International Airport, Patna, would only urge the governments and various authorities to take further their discussion on the Greenfield Airport to its logical



end, which would be, in favour of the people of the State.

103. The State's reliance on **Jafar Imam Naqbi** (supra) does not serve any cause as the observations made by Hon'ble the Apex Court therein were with respect to delisting of political parties and content of speeches made during the election cycle. The Court had observed that laws were already in place to deal with such situations. The reliefs sought therein by the petitioner sought action, having negative consequences for certain persons. However, in the present case, the nature of relief sought is only positive. The difference between the petitioner and the State is only with respect to the location of the Greenfield Airport and not the idea of the Greenfield Airport itself. All concerned parties, whether it be the Union, the State or other authorities carry out public function and therefore, in the considered view of this Court, are under the duty to resolve differences or find a way out in a manner that the people of the State of Bihar do not suffer because of the authorities being at loggerheads.

104. We may only take note of an observation of the House of Lords in *Julius v. Lord Bishop of Oxford*, (1980) 5 AC 214, quoted with approval by Hon'ble the Supreme Court in **Commr. Of Police v. Gordhandas Bhanji**, 1952 SCR 135: AIR 1952 SC 16, as



under :-

“There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so.”

105. On the argument of the State that this court cannot issue a writ of mandamus in the present case, we find it necessary to list down certain criteria for when such issuance would be warranted. Hon’ble the Supreme Court in a recent order titled as **Vivek Krishna v. Union of India, (2022) SCC OnLine SC 1040**, observed in respect of the issuance of a writ of mandamus that “A Mandamus lies for enforcement of a fundamental right or a statutory right, or the enforcement of a fundamental duty related to enforcement of a fundamental right or a statutory right. In exceptional cases, a writ may even lie for enforcement of an equitable right. The breach or threat to breach a fundamental, statutory or may be enforceable equitable right, is the *sine qua non* for issuance of a writ of Mandamus.”

106. The principles governing the issuance of the said writ were noted as under-

“11. The writ of Mandamus is only granted to compel performance of a public duty or to enforce private rights when duties of a public nature,



affect public rights or when private rights are breached by or in collusion with public officers.

12. The legal duty that may be enjoined by Mandamus can be one imposed by the Constitution, a statute, any law or by rules or orders having the force of law, which are capable of being judicially enforced.

13. The writ of Mandamus is liable to be refused when there is no legal or constitutional obligation of the authority concerned, which is capable of being enforced by Mandamus

....

17. The Court cannot even issue a Mandamus to the Government for enforcement of a Cabinet decision. It is only when an administrative order confers rights or creates estoppel against the Government, that Mandamus can be issued to enforce the circular. Similarly a Mandamus may be issued to cancel an administrative order, which violates the rules of fairness.”

107. As the basic prerequisite, a right, either constitutional or statutory must exist and there must be a breach or threat of breach to such right. It may be argued, from the material produced on record that the a risky nature and placement of the Patna Airport (short runway, placement within the city limits etc.) as also the various reports classifying the Airport as critical would constitute sufficient threat of breach, as somewhat alluded to by the petitioner, however, this Court stops short of making any such observation as the singular purpose of entertaining the present writ petition is to ensure the safety of the people of the State and not to cast aspersion of dereliction of duty.

108. Other contentions put forward by the State such as the Bihta Civil Enclave having the capacity to be developed as an International Airport or the pliability of wide bodied aircrafts at



Bihta, are on facts, not supportive of it being an airport conceptualized as Greenfield Airport and have been dealt with in earlier parts of the judgment.

109. We hold, that a right to safe travel is inherent to the right to free movement under article 19(1)(d) and the right to life and liberty under Article 21 of the Constitution of India.

110. The questions of law are answered accordingly.

G. Directions

111. In the light of the above discussions, we direct the Union of India; the State of Bihar; and the Airport Authority of India to consider afresh the development of an alternative Airport to Patna and Bihta on the lines of Greenfield Airport. It is not for this Court to direct the construction of an Airport at a particular location since that falls squarely within the domain of public policy. However, considering the essentiality of such Airport, we direct that upon such fresh consideration, a decision thereupon be arrived at within a reasonable time and not later than three months. In particular reference to Saran as to why it should or should not be considered as the situs for Greenfield Airport in Bihar, has to be decided on objective consideration, in the backdrop of earth already broken



with the conduct of surveys and preparation of feasibility report. The decision making authority is to also keep in mind the three crucial aspect- (i) that the State of Bihar is one of the populous states with a high volume of employment related travel and migration; (ii) that international borders with three countries are in close proximity and that various historical sites adorn the lands of Bihar and massive tourist and (iii) that as discussed in earlier part of the judgment, the right to safe travel is a facet of Article 21 of the Constitution of India and all efforts must be made to secure such safety.

112. The State/Union of India and the private partner, if involved, to take all possible steps to ensure that any construction made in furtherance of the decision arrived at in terms of the above adheres to principle of sustainable development and obtains all required environmental clearances.

113. The writ petition stands disposed of with the aforesaid observations and directions. However, the petitioner is at liberty to move the Court afresh on the same and subsequent cause of action, should the need so arise.

114. We are appreciative of the assistance rendered by all the



learned counsel, including Shri Jitendra Singh, learned Senior Advocate and in particular Shri Rajeev Pratap Rudi for painstakingly taking us through the technical and legal aspects of the matter.

115. Interlocutory Application(s), if any, shall also stand disposed of.

(Sanjay Karol, CJ)

Partha Sarthy, J. I agree.

(Partha Sarthy, J)

K.C.Jha/ Sunil

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