IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No. 22 of 2014.

Vidarbha Association for Research Technology and Development in Agricultural and Rural Sector vs. The State of Maharashtra and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.
	Shri Firdos Mirza, Advocate for petitioner. Shri Rohit Deo, learned Associate Advocate General with Mrs. Bharti Dangre, learned Government Pleader for R- 1 to 3 & 5. Mr. N.D.Khamborkar, Adv. For R-4. Mr. D.Pathak, Advocate for R- 6.

CORAM: B.R.GAVAI & INDIRA K. JAIN, JJ
DATE : 13.8.2015

The petitioner, who claims to work as linkage between the Agricultural University and the farmers in order to provide knowledge of the latest trends in agriculture and the scientific developments achieved by the University, has approached this Court with a prayer for commanding the respondents not to divert the agricultural and research project's land of respondent no.4 University for non-agricultural purposes. The petitioner has also prayed for quashing the Government Resolution dated 4.3.2014 vide which the Government has approved transfer of 60.68 hectares of land belonging to the respondent no.4 to respondent no.6 and sanctioning the amount of Rs. 5, 64, 20,352/- as compensation towards the building, reservoir, well etc.. situated at the land aforesaid.

2. The Airport at Akola situated at village Shivni was originally constructed in the year 1940 during the Second World War. After independence it was placed under the control of the respondent no.6. Originally the length of runway was 1219 meters and the width was 45 meter. The length of the said airport was increased to 1400 meters in the year 2008. The respondent no.6 decided to expand the existing runway by 1400 meters so as to make it suitable for all weather operations of the aircrafts of the type ATR-72 and accordingly submitted the proposal to the Government of Maharashtra vide communication dated 25th July, 2008.

3. In the year 1969, the Government had established the respondent no.4 University with an aim of providing scientific agricultural assistance to the farmers in Vidarbha. For

the establishment of the said University, vast stretches of land admeasuring 4033 Hectares was acquired by the State Government and allotted to the respondent no.4 University for carrying out the activities as enumerated in the Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983 (hereinafter referred to as " the said Act).

4. The airport at Shivni is abutting the land acquired by the Government for the respondent no.4 and allotted to the respondent no.4. It further appears that there were various discussions between different departments of the State Government and the respondent no.6 for working out the plan for expansion of the airport at Akola. It appears that ultimately a meeting chaired by the Secretary of the Ministry of Civil Aviation, Government of India along with the senior officers of the State of Maharashtra i.e. the Chief Secretary, Additional Chief Secretary of Civil Aviation and the Principal Secretary of Urban Development was held on 6.11.2013 with regard to the expansion and modernization of the various airports in the State of Maharashtra. In the said meeting it was agreed that part of the land allotted to the respondent no.4 would be taken by the State Government from the respondent no.4 and

additional land would be acquired from the private sources so as to provide for expansion of runway. The minutes of the said meeting are recorded and are placed on record along with the affidavit of the respondent no.6. It appears that pursuant to the aforesaid minutes, negotiations were held between the State of Maharashtra and the respondent no.4 and ultimately a Government Resolution dated 4.3.2014 was issued stating that 60.68 hectares land would be taken by the State from the respondent no.4 and would be allotted to respondent no.6 free from encumbrances. It was further agreed that an amount of Rs. 5,64,20,352/- would be paid by the State Government to the respondent no.4 by way of compensation for the structure, reservoir and well on the said piece of land. Being aggrieved thereby the petitioner has approached this Court.

5. Mr. Firdos Mirza, learned counsel appearing for the petitioner submits that the action of the State Government is patently in breach of Section 31 of the said Act. The learned counsel further submits that in view of clause 6 of Section 31 of the said Act, it is only the Executive Council of the respondent no.4, who is empowered to sell or transfer the land. The learned counsel further submits that once the

Government has vested the land in respondent no.4, the State Government has no right to unilaterally take the said land and give it to the respondent no.6.

6. The learned counsel further submits that the State Government itself has issued the Government Resolution dated 30th July, 2004, vide which it was directed that no land of the Agricultural Universities shall be transferred for any non agricultural purposes. The learned counsel further submits that the decision of the State Government is totally in breach of the said Government Resolution.

7. Mr. Mirza, learned counsel further submits that there is hardly any traffic at Akola Airport. The learned counsel submits that present Airport is sufficient to cater to ATR 42 aircraft which has capacity of about 50 passengers. The learned counsel further submits that for the last several years when the said Airport has remained unutilized, no purpose would be served by wasting public money on it. The learned counsel further submits that from the communication addressed by the respondent no.4 dated 15th May, 2014, it is clear that there is no demand from Scheduled Airlines for

operating flights at Akola at present. He submits that when the Air India or Spice Jet who are having ATR-42 aircraft have not expressed their willingness to have commercial services from Akola Airport, the attempt on behalf of the State Government and respondent no. 6 to expand the airport at Akola is nothing else but an attempt to throw the public money in dustbin.

8. Mr. Mirza, the learned counsel for the petitioner further submits that there is already an airport at Amravati which is hardly at the distance of 70 KM from Akola and as such rather than expanding the airport at Akola, the Central and the State Government should construct four-lane road between Amravati to Akola.

9. The learned counsel relying on the Judgment of the Apex Court in the case of Sushanta Tagore and others vs. Union of India and others reported in (2005) 3 Supreme Court Cases, 16 submits that while carrying out the developmental activities, it is necessary that the development should be sustainable. The learned counsel further submits that if the proposed expansion is permitted, apart from various existing structures on the land of the respondent no.4 being required

to be demolished, the various research activities which are carried out by the respondent no.4 and which are of national importance will have to be abruptly stopped. The learned counsel, therefore, submits that the development, which is dangerous to the environment should not be permitted. The learned counsel relying on the Judgment of the Apex Court in the case of Centre For Public Interest Litigation vs. Union of India and another reported in (2003) 7 Supreme Court Cases, 532 submits that the act of the respondent State, which is de horse the statutory provisions, is not permissible in law and the attempt made by the State Government to do so, should be stalled by the Court.

10. Per contra, Mr. Rohit Deo, the learned Associate Advocate General submits that the petitioner does not have any locus. The learned Associated Advocate General, relying on the Judgment of the Apex Court in the case of Villianur Iyarkkai Padukappu Maiyam vs. Union of India and others reported in (2009) 7 Supreme Court Cases, 561, submits that the limited right that is available to the petitioner is to bring to the notice of the Court any act which can be said to be against the interest of the public at large. The learned Associate

Advocate General submits that once the Court is satisfied that there is no public interest involved in the matter, then the petitioner would not have locus to raise any legal grounds. For the infringement of which a party aggrieved, would be entitled to take recourse to the legal remedy. The learned Associate Advocate General, relying on the Judgment of the Apex Court in the case of M/s Ram Singh Vijay Pal Singh and others vs. State of U.P. and others, reported in 2007 (3) ALL MR 806 and in the Case of State of Madhya Pradesh vs. Narmada Bachao Andolan and another reported in (2011) 7 Supreme Court Cases, 639, submits that unless the decision of the State Government is found to be palpably arbitrary, totally irrational, violative of Article 14 or mala fide in nature, it would not be permissible for this Court to interfere with the same.

11. The learned Associate Advocate General further submits that though it is not necessary for the respondent State to go into the merits of the matter even on merits it can be seen that no interference is warranted. The learned Associate Advocate General further submits that the land in question is acquired by the State Government and thereafter allotted to the respondent no.4 for carrying out its activities.

The learned Associate Advocate General submits that since the land is acquired out of its own funds and allotted by the State Government there is nothing which precludes the State Government from taking it back for using the same for other more important public purpose. The learned Associate Advocate General submits that in any case it could be seen that out of 4033 hectares of land, the land admeasuring 1566 hectares of land is lying fallow. He submits that the land which is taken by the State is at the most 1.5% of the land which is given by it to the respondent no. 4. It is further submitted that in any case the State has decided to give equal area of land to the respondent no.4 which is situated at 5KM away from the present location. The learned Associate Advocate General submits that not only that the amount of Rs. 5,64,20,352/- is already transferred to the respondent no.4 on 15.3.2014 and it has been accepted by the respondent no.4 without any demur. The learned Associate Advocate General submits that if for fulfilling the mandate of the directive principles State takes steps to provide developmental infrastructure for the backward area so as to perform its socio economic obligations, interference would not be warranted unless the decision falls in any of the parameters enumerated hereinabove.

12. With the assistance of the learned counsel for the parties, we have gone through the material on record.

13. The Apex Court in the case of Villianur Iyarkkai Padukappu Maiyam (supra) has observed as under:

> "115. On the facts and in the circumstances of the case, this Court is of the view that the only ground on which the appellants could have maintained a PIL before the high Court was to seek protection of the interest of the people of Pondicherry by safeguarding the environment. This issue was raised by the appellants before the High Court and the High court has issued directions regarding the same, which are to be found in para 24 of the impugned judgment. After the High Court's directions the element of public interest of the appellants' case no longer survives. The appellants cannot, therefore, proceed to challenge the award of the contract in favour of Respondent 11 on other grounds as this would amount to challenging the policy decision of the Government of Pondicherry

> through a PIL, which is not permissible. Thus, on the ground of locus standi also the appeals should fail."

Perusal of the aforesaid observations would reveal that in the public interest litigation only public spirited citizen or body could approach the court to seek the protection of the interest of the people at large. However, if any question arises with regard to individual rights of the party and for which party can seek redressal before the competent forum, public spirited citizen or body would have no locus to raise challenge in that regard.

14. By now the scope of interference in the decision of the State Government is well recognized. The Apex Court in the case of <u>M/s Ram Singh Vijay Pal Singh and others</u> vs. State of U.P. (supra) has considered the law on the issue and observed thus:

> "10. In Netai Bag vs. State of West Bengal, (2000)8 SCC 262, this Court held as under in para 20 of the reports:

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In State of M.P. vs. Nandlal Jaiswal, (1986) 4 SCC 566 it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or mala fide. In the matter of different modes, under the rule of general application made under the M.P. Excise Act, the Court found that the four different modes, namely, tender, auction, fixed licence fee or such other manner were alternative to one another and any one of them could be resorted to..........................

In the well known case of Balco Employees Union vs. Union of India, (2002(2 SCC 333, a Three Judge Bench summarized the law on the point as under:

"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. It is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts........."

In Federation of Railway Officers Association vs. Union of India, (2003) 4 SCC 289, it was held as under in para 12 of the reports:-

"12. In examining a question of this nature, where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the Court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of the power, the Court will not interfere with such matters."

This being the settled position of law no direction can be issued to the respondents to transfer the shops, godowns or sheds to the writ petitioners on hire purchase basis."

15. Again in the case of State of Madhya Pradesh vs. Narmada Bachao Andolan and another (supra), the Hon'ble Apex Court has observed thus:

"35. In State of Punjab v. Ram Lubhaya Bagga this Court while examining the State policy fixing the rates for reimbursement of medical expenses to government servants held: (SCC pp. 129-30, paras 25-26 & 29).

"25....When Government forms its policy,it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.

26.....For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.

29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."

36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are

contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P., Villianur Iyarkkai Padukappu Maiyam vs. Union of India and State of Kerala v. Peoples Union for Civil Liberties.

37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."

16. It could, thus, be seen that the public policy can be challenged only if it is found to be patently arbitrary, discriminatory, irrational or mala fide. Merely because the court finds another decision than the decision taken by the State Government to be more appropriate would not be a

ground for the court to interfere with the same.

17. In this back ground we will have to examine the policy of the Union Government of which respondent no.6 is an organ and the State Government.

18. The petitioner has been fair enough to place on record the policy of the Airports Authority of India which is an organ of Union of India. It will be relevant to refer to clause 7 of the Questions and answers. The said clause reads that as per the Government of India's Policy on Airport Infrastructures issued in December, 1999 no greenfield airport will normally be allowed within a distance of 150 Kms from the nearest existing airport. It further provides that where the Government of India decides to set up a new airport at such place through AAI on social economic consideration even through the same is not economically viable, suitable, grant-in-aid will be provided to AAI to cover both the initial capital cost as well as recurring losses. Thus, it would be seen that the generation of profits is not the only criteria while taking a decision to construct airports.

19. Though it is strenuously contended by Mr. Mirza, learned counsel for the petitioner relying on the communication of the respondent no.6 that the airport at Akola is not viable, we find that the communication dated 15.5.2014 does not give a picture as sought to be argued by the learned counsel. Apart from that it is not for us to go into the question as to whether the Airport at Akola is viable or not. That matter is purely in the domain of the expertise having experience in the said field. It is contended by Mr. Mirza, that as per the said communication there is no demand from the Scheduled Airlines for operating flights from Akola at present. However, it would reveal that the respondent no.6 itself in the year 2008 has requested the State Government for grant of 174.67 hectares of land for extension of runway to 1800 m provision of basic strip of 300 m width and associated facilities free of cost and free from encumbrances. It would reveal that due to non availability of land for development works, the mandatory requirement of 300m basic strip cannot be fulfilled whereby the runway remains a non instrument runway. It would reveal that the said runway can cater only to fair weather operations during daytime only. It further reveals that the scheduled flight operations also get restricted due to non availability of

instrument runway i.e. a runway equipped with Navigational aids. It would reveal that due to non fulfillment of DGCA, Civil Aviation Requirements, Akola Airport is unlikely to get an aerodrome license. Perusal of the said letter, therefore, would reveal that unless the additional land is required, runway is extended to 1800m, having a basic strip of 300m width and associated facilities and navigational instruments are provided at the Airport it will not be possible to get the aerodrome license.

20. It is also a policy of the State Government to develop the airports. It is also the policy of the State Government to develop Airports at Divisional Headquarters and Tier II, Tier III Cities. In the affidavit filed by the State Government it is categorically stated that for economic development, tourism development of the backward area of Vidarbha, the Airport at Akola is necessary. Perusal of the minutes of the meeting chaired by the Secretary of Civil Aviation, Union of India with Chief Secretary, Additional Secretary and Principal Secretary of Urban Development of the State of Maharashtra would reveal that in the said meeting a decision is taken for development of ten Airports in the State

of Maharashtra. Out of the said ten airports, one of the airports is the airport at Akola. If the State Government, in order to boost industrial, economic and tourism development of the region, decides to expand and if the Union of India even at the cost of sustaining losses decides to provide assistance for construction of the said airport, can by no stretch of imagination be said to be arbitrary, irrational or mala fide.

21. The fight between the development and the environment is never ending. However, a the proper balance is to be maintained while protecting the environment, sustainable development should also be permitted and while giving green signal for development environmental concerns also need to be taken care of. In the present case, the State, though has taken part of the land, has also decided to compensate by giving equal area of land to the respondent no.4 at a short distance. Not only that but the State has paid an amount of Rs. 5,64,20,352/- by way of compensation to the respondent no.4 which on account of demolishing of the building, reservoir and well. It is further to be noted the said amount has been estimated in the Joint Survey conducted by the Engineer of the respondent no.4 and the Engineer of the

Public Works Department. In that view of the matter, we find that the State Government has duly taken care of the loss of environment that would be caused on account of taking over the said land from the respondent no.4 and transferring it to the respondent no.6. In the totality of the circumstances, we are of the considered view that the decision of the State Government and the respondent no.6 rather being construed to be against the public interest, in our view, would be rather in the larger interest of the people of Akola and adjoining districts, in as much as an avenue for socio economic industrial and tourism development would be opened by the expansion of the airport.

22. Insofar as the contention of Mr. Mirza, the learned counsel for the petitioner regarding availability of airport at Amravati is concerned, as already discussed hereinabove as to at what distance and as to within how much kilometers the airports should be permitted, is a matter within the domain of experts. The respondent State as well as the respondent no.6 have stated that what is prohibited is only the greenfield airport within the distance of 150 KM of another greenfield and there is no such restriction in so far as the brownfield airports are

concerned. It is stated that both the Amravati as well as Akola Airports fall within the brownfield category and would not fall within greenfield category. In any case, the airport at Akola would not cater only to the population of Akola city and may also cater to the residents of Wasim and Buldhana Districts. The distance between the remotest place in Buldhana and Amravati Districts would be approximately 275 – 300 kms.

23. Insofar as the suggestion of Mr. Mirza, the learned counsel for the petitioner that there should be four-lane National Highway between Amravati and Akola is concerned, we would welcome if such a move is made by the State Government and the Central Government. However, construction of four-lane Highway cannot be said to be a substitute for airport at Akola.

24. Insofar as the Judgment of the Apex Court in the case of Sushanta Tagore And others vs. Union of India(supra) is concerned, in the said case the statutory provisions itself restricted the activities to be carried out in 3000 hectares in the second schedule to the Visva-Bharti Act, 1951 and as such the case was of carrying out activities contrary to the statutory

provisions. Such is not the case in the present matter and as such the said Judgment would not be applicable to the facts of the present case. In the case of Centre For Public Interest Litigation vs. Union of India and another (supra), the question that arose for consideration was whether an undertaking can change its character from the Government Company to ordinary company without parliamentary clearance in the light of the statutory provisions. As such the said Judgment would also not be applicable to the facts of the present case.

25. In the result, the petition is without merit and,thus, dismissed.

26. At this stage, Mr. Mirza, the learned counsel for the petitioner requests for continuation of the interim relief for further period of six weeks. Taking into consideration the view that we have taken that the expansion of Akola Airport is rather in the larger interest than it being against the public interest, the prayer is rejected.

JUDGE **JUDGE**

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