Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WRIT PETITION NO. 4 OF 2023

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1. United Goans Foundation, A Society Registered under Societies Act, 1860, Under No. 78/GOA/2015,Having its registered office at 79, Comba Alto, Presently a Office no. 2, 2nd Floor, Shar-N-Sorai Building, Above Hotel Gaylin, Dr. Varde Valaulikar Road, Margao, Goa 403 601 Represented by its President Dr. Aashish Venkatesh Kamat, s/o. Late Venkatesh Kamat, Age 45 Years, Indian National, Residing at 105, Blossom CD Seasons, Murida, Fatorda, Goa. ... Petitioner

Versus

1. State of Goa, Thr. Chief Secretary, Secretariat, Porvorim, Goa 403 521.

2. Director of Civil Aviation, Secretariate, Porvorim Goa.

3. GMR Goa International Airport Ltd.., Thr. Chief Executive Officer, Survey No. 381/3, Mathura One, 1st Floor, /National Highway-17, Porvorim, Goa – 403501. ... Respondents

Mr. Nigel Da Costa Frias, Advocate *with Mr. Vishal Sawant and Mr. Shane Coutinho, Advocates for the Petitioners.*

Mr. Devidas Pangam, Advocate General *with Ms. Maria Correia, Additional Government Advocate for Respondent nos. 1 and 2.*

Mr. Subodh S. Kantak, Senior Advocate *with Mr. Preetam Talaulikar, Ms. Neha Kholkar, Ms. Laxmi Sawant and Ms. Saicha Dessai, Advocates for Respondent no. 3.*

CORAM: BHARATI DANGRE & ASHISH S. CHAVAN, JJ.

DATE: 25th September, 2025

JUDGMENT (*Per Bharati Dange, J.*)

1. United Goans Foundation, pleading that it is involved in promotion of sustainable development and good governance, through reviewing Government Policies, Projects and Reports and who had previously approached this Court raising issues of significance, has filed the present Public Interest Litigation being aggrieved by the fact that the scope of works and capital investment of the Mopa Airport Project tender has been reduced after awarding the contract to Respondent No. 3 without renegotiating and revising the revenue share to the Government of Goa. According to the Petitioner, under the Concession Agreement, the Government will receive a revenue share of 36.99% of airport revenue but it will not receive share from the development in the city side area of the airport, in order to make the project viable.

Claiming that the arrangement with the Respondent no. 3 has resulted into a huge loss to the public exchequer, the PIL Petition seek the following reliefs :

> "(a) For a writ of Mandamus or any other appropriate writ, order or direction thereby directing that the respondent no. 1, Government of Goa, shall conduct a finance appraisal of the Mopa Airport project to determine the value of the asset base and the quantum of revenue to the Government of Goa as was done in the Finance appraisal report prepared in 2013 by KPMG.
> (b) for a writ of Mandamus or any other appropriate writ, order or direction thereby directing that the respondent nos. 1 & 2 to appoint a committee of finance experts to appraise the financial aspects of the

contract entered into between the respondent no. 1 & 3 namely the concessionaire agreement dated 8th November 2016 and to file the report before this Hon'ble Court.

(c) ...

(d) For a writ of Mandamus or any other appropriate writ, order or direction thereby directing the Respondent no. 1 & Respondent no. 3 to make suitable amendments to the concessionaire agreement dated 8th November 2016 so as to provide that the Government of Goa gets a proportionate share in the commercial development in the airport commensurate with its investment."

2. We have heard the learned Counsel Mr. Nigel Da Costa Frias for the Petitioner. The Petition has impleaded the Chief Secretary of the State of Goa and the Director of Civil Aviation, Goa, as Respondent no. 1 and 2, respectively, who are represented by the learned Advocate General Mr. Devidas Pangam. GMR Goa International Airport Ltd, Respondent no. 3, is represented by learned Senior Counsel Mr. Subodh S. Kantak.

Since the Petition is filed in the year 2023 and on the pleadings being completed, by consent of the parties, we have taken up the Petition for final hearing at the stage of admission and hence we issue 'Rule', and which is made returnable forthwith.

3. The Public Interest Litigation has pleaded that the Petitioner is a Society, registered under the Societies Registration Act, 1860 and is represented by Dr. Aashish V. Kamat, a Dentist by profession and a resident of Margao. A declaration is contained in the Petition which reads to the following effect :

> "The Petitioner has conducted thorough research into the issues raised in the Petition to the best of their ability on the basis of available information, and are duly conversant with the matter."

4. The cause of filing the Petition is the Concession Agreement for development of Greenfield International airport on Public Private Partnership basis at Mopa, in Goa dated 08.11.2016, the agreement being executed between the Governor of Goa represented by the Chief Secretary, Government of Goa, referred to as 'The Authority' and the GMR, Goa International Airport limited, a company incorporated under the Companies Act, 2013, referred to as the 'Concessionaire'.

As per the said agreement, the project include the construction of the airport on the site set out in Schedule A with the specification set out in Schedule B together with the provision of project facilities in conformity with the specifications and the standards set out in the Schedule D. The project cover Operation, Maintenance and Management of the Airport as well as the Development Operation and Maintenance of the City Side on the site in accordance with the agreement.

The agreement in question set out the performance and fulfilment and obligations of the Concessionaire along with the obligation of the Authority in Development, Operation and

Maintenance of the Aviation Skill Development Centre at ITI Pernem or any other Government ITI in the State of Goa.

5. In the project so conceived, the background of the Concession Agreement lies in the policy formulated by the Government of India as Greenfield Airport Policy in the year 2008, paving way for development of Greenfield Airport in the Country, under which the Airport could be set up by the Government itself or by the private entity or under Public Private Partnership (PPP), which envisaged grant of two stage clearance i.e. site clearance followed by 'in-principle' approval for development of Greenfield Airport.

In March 2000, the State of Goa, in furtherance of the policy, was granted 'in-principle' approval by the Government of India for establishing Greenfield Airport for public use at Mopa, in Goa through Public Private Partnership (PPP) on BOT basis. For this purpose, area of 78,41,738 square metres was acquired and first master plan for the Airport was prepared by Amman and Whitney, a Consultancy Firm and on 10.02.2012, it was submitted to the Government. The Consultant estimated the cost of the project as Rs. 3957 Crores and the cost of terminal was estimated at Rs. 1234 Crores.

As per the draft finance appraisal report by the Financial Consultant KPMG, prepared in July 2019, the Airport was expected to be developed in four phases over thirty year concession period and as per KPMG, the Government of Goa is expected to earn a revenue share from the aviation/tourism hub SPV.

6. The Government thereafter appointed a Steering Committee to oversee the tender in process but, in place of BOT it was decided to proceed on Design, Build, Finance, Operate and Transfer (DBFOT) basis.

In pursuance of the decision, the State Government invited proposal by way of 'Request for Qualification' (RFQ) for shortlisting the bidders on DBFOT basis and GMR Airports Limited was one of the shortlisted bidder. Thereafter State invited bids by 'Request for Proposal' (RFP), which short listed the bidders prescribing the technical and financial terms and conditions.

On evaluation of the bid received, the bids of GMR Airport Limited, offering a revenue share of 36.99% being the highest revenue share percentage was accepted and letter of award was issued to M/s. GMR Airports Limited on 17.09.2016.

On 08.11.2016, a Concession Agreement was executed between the State and Respondent no. 3- GMR Goa International Airport Ltd., a subsidiary of M/s. GMR Airports Ltd., incorporated to undertake construction, development and operation of Manohar International Airport in State of Goa, through Public Private Partnership (PPP) on DBFOT basis.

7. The Concession Agreement dated 08.11.2016 placed on record envisaged the project in four phases; phase-I being designated to accommodate handling of approximate 4.4 million passengers per year, whereas the second and third phase conceit to accommodate handling of approximately 5.8 million and 9.4 million passengers per year and the fourth phase taking this capacity to 13.1 million per year. Pursuant to the said agreement, the commercial operation commenced on 05.01.2023 and international operations commenced on 21.07.2023.

8. It is in these background facts, we have perused the pleadings in the PIL Petition seeking appointment of Committee of Financial Experts to appraise the financial aspects of the contract entered between the Respondent no.1 and 3 namely the Concessionaire, and seeking suitable amendments in the Agreement dated 08.11.2016, so as to provide that the Government of Goa of get a proportionate share in the commercial development in the airport commensurating with its investments.

Mr. Costa Frias, learned Counsel for the Petitioner by inviting our attention to the various clauses in the Concession Agreement would submit that as per the Agreement, the Government is entitled to receive a revenue share of 36.99% of the revenue generated but the Government is not claiming revenue from the city side area and this would result in loss of Rs.75.54 Crores per year as according to him the value of the city side area (commercial area) which was acquired was around 54 Crores and its market value was estimated by KPMG in 2013 as Rs. 7,000/- per square metre.

He would submit that the development of the city side area is likely to generate huge revenue as it would cover construction of complex like hotels, shopping malls, casinos, restaurants, spas, etc., and in fact the Government has incurred huge expenditure in acquiring this land by acquisition, widening and strengthening of the approach road, utility shifting and rehabilitation of project affected families, this expenditure and the expenditure incurred being approximated to 120 Crores along with an amount paid to the consultants in the sum of Rs.18,23,53,000/-.

The first ground raised in the Public Interest Litigation Petition is about the loss being caused to the Government of Goa as according to Mr. Frias, the Government is losing its revenue share of 36.99% despite its huge investment in development of the property in the city side area. The second contention raised by Mr. Frias and which is a part of a pleading, is an apprehension that since the Concessionaire has reduced the final cost which is Rs.2247 Crores less than the cost of the tendered airport master plan designed by Amman and Whitney and this reduction in scope would result into an inferior quality of the work.

9. Mr. Frias would rely upon the decision of the Apex Court in **Tata Cellular vs. Union of India**[1] which has laid down the scope of

1 (1994) 6 SCC 651

judicial review in Government contracts/tenders and categorically held that the Court in the wake of its power of judicial review can examine the decision making process and not the merits of the decision itself and though the Court cannot interfere with the Government's freedom of contract, it can definitely examine whether the decision/action is vitiated by arbitrariness, unfairness, illegality or irrationality. He would submit that the test to be applied is, whether the wrong is of such a nature so as to require intervention of the Court, so that the Court would set right the decision making process. In addition, he would also rely upon the decision in the case of **Indian Oil Corporation Limited & Ors. vs. Shashi Prabha Shukla & anr.**[2] and in particular paragraph 33, which reads thus :

> "33. Jurisprudentially thus, as could be gleaned from the above legal enunciations, a public authority in its dealings has to be fair, objective, non-arbitrary, transparent and non-discriminatory. The discretion vested in such an authority, which is a concomitant of its power is coupled with duty and can never be unregulated or unbridled. Any decision or action contrary to these functional precepts would be at the pain of invalidation thereof. The State and its instrumentalities, be it a public authority, either as an individual or a collective has to essentially abide by this inalienable and non-negotiable prescriptions and cannot act in breach of the trust reposed by the polity and on extraneous considerations. In exercise of uncontrolled discretion and power, it cannot resort to any act to fritter, squander and emasculate any public property, be it by way of State largesse or

2 (2018) 12 SCC 85

contracts, etc. Such outrages would clearly be unconstitutional and extinctive of the rule of law which forms the bedrock of the constitutional order."

10. The learned Advocate General Mr. Pangam has raised a preliminary objection about the locus of the Petitioner and the maintainability of the Petition, calling in question the terms of the Concession Agreement entered with the Respondent no. 3 on 08.11.2016 by filing a Writ Petition in the year 2023 and about the expertise of the Petitioner in the field of aviation or for that matter, infrastructure projects but before that, we would record the arguments advanced by the learned Advocate General by relying upon the affidavit in reply filed by the Director of Civil Aviation, Respondent no. 2. It is the specific stand adopted in the affidavit filed by the Director with regards to the second point raised by the Petitioner about reduction in the capital which categorically stated thus :

> "13. It is the Petitioner's case that the Respondent No. 3 has reduced the Capital to be invested in the construction of the project and the same will ultimately result in the reduction of the revenue that will be payable to the State of Goa. The said contention is based on the estimates of the costs to be incurred as recorded in the reports prepared by the Project Consultant and the Financial Consultant. The Amman and Whitney report estimated the cost of the entire project to be Rs. 3,957 Crores. The draft Finance Appraisal report prepared by the Finance Consultant in 2013 estimated a cost of Rs. 3,378 Crores for phase 1. It is the Petitioners case that thereafter, the financial consultant

gave a presentation to the Steering Committee wherein they stated that the CAPEX envisaged for Phase 1 amounted to Rs. 3100 crores.

14. Therefore, firstly, it is evident that the project costs arrived at by Project Consultant and the Financial Consultant were merely estimates and not figures arrived at with mathematical exactitude. Secondly, the Respondent No. 2 itself issued a memorandum to all the bidders bringing to their notice that the costs mentioned in the bid document are only indicative in nature. Be that as it may, it is pertinent to not that the cost of the project since then has been revised. As on date the overall revised estimated project CAPEX is Rs.3400 Crore for Phase I alone. As such the Petitioner's said contention is wholly ill founded."

11. The learned Advocate General has submitted before us that the construction and development of the airport at Goa, with world class infrastructure was perceived, in the wake of the policy of the Central Government, encouraging Greenfield Airport and, which received an 'in-principle' approval as early as in 2000 which was subsequently, agreed to establish that the Airport on DBFOT basis. The land for the Airport was acquired between the year 2008 to 2013 whereas the consultation for preparations through different agencies including the finance consultant and project consultant and was accomplished thereupon.

12. Upon following the procedure of construction operations and maintenance of the airport on DBFOT basis, it is submitted that five technical bidders were shortlisted which include Respondent no. 3 and thereafter the technical and commercial terms and conditions were prescribed by the Government and the RFQ including a draft Concession agreement was issued to the short listed bidders. On accepting the bids, the Respondent no. 3 was selected as it projected collection of highest revenue share of 36.99% and a letter of award was thereafter issued to be followed by a Concession agreement executed on 08.11.2016.

Submitting that the Government must have freedom to enter into contracts and fair play in the joints is necessary concomitant for any administrative body in its functioning, it is the submission of the learned Advocate General that in absence of any arbitrariness being established, merely because the Petitioner did not like a stipulation in the contract do not mean that the writ Court shall interfere in exercise of its power of judicial review. According to him, the Petition fails to make out any case for intervention and according to him, the Petition is based on misconceived assertions apart from the fact it suffers from delay and laches. He would also submit that after going through the entire process, when the Concession Agreement is entered in the year 2016 and the work commenced, and even the Airport was inaugurated for domestic operations, the Petitioner chose to remain quite all the while. He would therefore submit that the present Petition is not a bonafide litigation but only filed to cast aspersions on the State, which indulged itself into a project of significance and status for the State of Goa.

Relying upon the affidavit filed by the Director, Mr. Pangam would rely upon specific averments in the affidavit dispelling the contention and the opinion of the Petitioner that the Government is not getting its due share in the city side development and since he has relied upon the relevant portion of the affidavit, we deem it appropriate to reproduce the same :

> "24. It is the Petitioners case that the Government of Goa is not to receive any share in the Commercial development of the airport. The said contention is wholly misplaced. It is unknown on what basis the Petitioner has made such a contention, more particularly when the record speaks otherwise. In order to better appreciate the said position certain clauses of the Concession Agreement which have a bearing on the present issue are reproduced herein;
>
> ...
>
> 3.2 City Side Development
>
> Subject to and in accordance with the provisions of this Agreement and Applicable laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes in accordance with the provisions of Art. 28 (the 'City Side Development') with the right to sub-license any or all parts thereof by means of Project Agreements. [pg. 218 of the petition]
>
> 28.3.2 All revenues accruing from City Side development, shall be appropriated by the Concessionaire in accordance with the

provisions of this Agreement and Applicable laws. [pg. 292 of the petition]

30.2.1 without prejudice to the provisions of Clause 30.1, but subject to clause 30.2.2, the Concessionaire agrees to pay to the Authority for each year commencing from the 6th (sixth) year of the occurrence of the Appointed date, a premium (the Annual Premium) equal to 36.99% (thirty six point ninety-nine per cent) of the Gross Revenue during that year, in the form and manner provided herein. [pg. 297 of the petition]

It is expressly clarified that:

(i) ...

(ii) ...

(iii) Annual Premium paid or payable by Concessionaire for any Accounting Year shall be included in the computation of Gross Revenue; and

(iv) in case of any dispute, discrepancy, ambiguity, doubt or otherwise, relating to the computation and/or meaning of Gross Revenue, the decision of the Authority, at its sole discretion, shall be final; [pg. 354 of the petition]"

13. The learned Senior Counsel Mr. Kantak representing Respondent no. 3, has also described the present Petition filed after lapse of period of six years from the date of Concession Agreement and one year after the inauguration of the airport to be vexatious, devoid of any merit and substance. According to him, the attempt of the Petitioner to re-work or redraft the Concession Agreement, is not within the purview of the jurisdiction of this Court and further, the Petition itself is based on misconception which the Petitioner carries, which is on account of the failure to appreciate the commercial terms of the Concession Agreement.

14. The learned Senior Counsel further submit that in the wake of the procedure followed before the work was allotted in its favour, by following the due procedure and with the concurrence of Respondent no. 2, when a policy decision is taken, the Petitioner on frivolous basis cannot seek any interference.

15. On hearing the respective Counsels and on perusal of the pleadings in the Petition, we note that the Petitioner claim to be an Association of public spirited individuals, locally involved in promoting sustainable development and good governance, but we find that there are no details offered as to the members of the Petitioner association and the work alleged to have been undertaken by it. The President of the Petitioner Association, is a Dentist by profession and we wonder what expertise does the association possess to appreciate the commercial terms involved in the Concession Agreement entered between the Concessionaire i.e. Respondent no. 3 and the Government, considering the implementation of the policy formulated by the Central Government, encouraging Greenfield airport through Public Private Partnership. The Petition has reflected the figures, as the expenditure incurred towards land acquisition and cost of other things but they are not the true figures as regards the cost of construction and merely by picking up excerpts from the master plan prepared for Mopa Airport by consultancy firm, which was just the initiation of the project, the Petitioner has included the information in the pleadings, unmindful of the fact that thereafter several rounds of negotiations took place and the entire procedure for allotment of the final bid was followed.

The Petitioner as a layman is justified in alleging that if the cost of the project is reduced, it will impact the quality but has failed to consider the specifications of the tender documents and also the contract entered between the parties in form of an agreement of 08.11.2016, which contain various stipulations, as a safeguard setting up the discharge of obligations by the Concessionaire in executing the project, in accordance with the approved plans, which were painstakingly prepared and negotiated. According to us, the Petition lack a study of the background facts and, in any case, the scope for interference in a contract entered between the Government and the Concessionaire, in exercise of our writ jurisdiction, is minimal as the commercial wisdom of the State, with the involvement of its various officers, agencies involved cannot be pierced as, we do not possess any expertise in this regard.

The decision involving collective business prudence, do not warrant any tinkering unless it is established that the same is malafide, arbitrary or result into loss of public exchequer. The Government being left with the fair play in the joints when it comes to allotment of tenders which are allotted taking into consideration numerous factors involving policy decisions, financial liability juxtapose against the necessity of the project in larger public interest, in absence of any expertise at the end of the Petitioner and even at the end of a writ Court, the scope for interference is minimal.

16. On examination of the Petition being filed as a Public Interest Litigation, we could notice two prominent flaws ; firstly, the Petition being filed belatedly and according to us, the very same principle which applies to a Writ Petition being entertained without explaining the delay, is equally applicable to a PIL Petition and, secondly, the PIL Petition is an attempt to overreach the decisions taken by the State Government and particularly an important decision of allotting the airport after following the due process, which involved consultation with various stakeholders and for which the State has incurred massive expenditure but in the interest of public at large.

The concept of Public Interest Litigation, which received recognition as proceedings which diluted the concept of locus standi, in order to protect the rights of people who are poor, ignorant or in socially and economically disadvantageous position and unable to seek legal redress but their cause had to be espoused by someone. It was accepted as a powerful mechanism of handling grievances of people and intended to be used to rescue the downtrodden and not for the purpose of serving private ends and therefore it deserve some laxity as the litigation was not to be fought adversarial in nature but but as an effective tool of securing justice to the poor and weaker sections who were not in a position to protect their own interest.

Public Interest Litigation was thus intended to convey 'Litigation in the interest of public' by diluting the norms of violation of individual right. However, this type of litigation suddenly occupied a significant position in the judicial system and in fact it was found to have clogged the system by raising unfounded grievances and sometimes malafide one, defeating the very purpose of relaxing the norms of locus standi. The Hon'ble Apex Court as well as this Court became sensitive about the frivolous cases filed as PILs and discouraged such type of proceedings, at times by imposing heavy costs. The credentials of the applicant who files the PIL was held to be of extreme importance along with the correctness of the information furnished, which was expected to be specific based upon the research carried out and germane to the interest of the public at large and what was discouraged was wild, reckless and baseless allegations.

In **State of Uttaranchal v. Balwant Singh Chaufal[3],** the Hon'ble Apex Court issued the certain directions streamlining the process in filing of the Public Interest Litigation and the said directions are reproduced below :

3 (2010) 3 SCC 402

"(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

17. Consequent to the aforesaid directions, every High Court framed Rules dealing with the Public Interest Litigation, clearly contemplating the Petitioner to give his/her full and complete details so as to reveal his/her interest, credentials and qualifications relevant for the Public Interest Litigation along with a declaration that he/she has no personal interest, direct or indirect, in the subject matter of the Public Interest Litigation. In addition, it is imperative for the Petitioner to set out all relevant facts along with available supporting data, reports, etc.

To encourage only genuine and bonafide Public Interest Litigation and to discourage frivolous litigation filed for extraneous considerations, it is imperative for the Court to verify credentials of the Petitioner before entertaining any cause being projected in public interest and test of bonafides of the Petitioner who files the Petition. With the possibility of the apparent misuse of the jurisdiction of the Court, it is open for the Court to examine the bonafides of the Petitioner, at the threshold irrespective of the seemingly high public cause being espoused by the Petitioner through the Public Interest Litigation, projecting it to be a genuine cause, and seeking relief of redressal of public duty, protecting social, collective rights and interest all vindicating public interest as necessarily it must be an action by any citizen representing the public at large, who has sufficient interest in espousing the cause on behalf of others.

The word of caution in exercise of this jurisdiction, however was clearly spelt out in the case of **Sachidanand Pandey v. State of W.B.,**[4] when the Court observed thus :

> "61. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants."

18. As far as entertaining a Public Interest Litigation in relation to an award of contract, the factors which deserve consideration by the Court are set out in the decision of the Apex Court in **Raunaq International Ltd. v. I.V.R. Construction Ltd.,**[5]**,** in paragraphs 17 and 18.

> "17. Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and cost-effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in

4 (1987) 2 SCC 295

5 (1999) 1 SCC 492

the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the court must be raised. We would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the court may intervene. Even so, the court should be moved at the earliest possible opportunity. Belated petitions should not be entertained.

18. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of the interim order. The interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence the petitioner asking for interim orders in appropriate cases should be asked to provide security for any increase in cost as a result of such delay or any damages suffered by the opposite party in consequence of an interim order. Otherwise public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution."

19. It must be kept in mind that this Court, vested with the writ jurisdiction, shall not take upon itself the function of running the Government as the role of the judiciary is restricted to defend the values enshrined in the constitution and to protect the rights of the citizens but while it exercise the power to uphold the Rule and Law, it must act within its permissible limitations as in the matter of policy, the Constitutional Courts shall not interfere unless necessary. In respect of public projects and policies initiated by the Government, the writ Court shall not interfere as normally such decisions are taken after due care and consideration and any project like the present one, which is approved after due deliberations, the scope of our judicial review that too in a PIL Petition based on mere apprehensions, in our view, is unwarranted and we do not expect the Petitioner as an Association to possess an expertise to raise a challenge to the financial/economic considerations pressed against the Public Interest of having an Airport, taken by the Government in exercise of its executive powers.

We are surely not experts in reviewing the policy decision that too involving the financial affairs of the State and as in the present case, at a belated stage when a contract is entered with the Concessionaire long back in 2016 and steps have been taken in compliance thereof and even the airport is made functional, the Petitioner has approached us, at the stage when the stipulations and conditions in the contract have been taken ahead and rights are vested and liabilities are created.

20. In case of **Ramana Dayaram Shetty vs. The International Airport Authority of India**[6] the delay of five months was considered to be fatal and the Apex Court observed thus :

> "Moreover, the Writ Petition was filed by the appellant more than five months after the acceptance of the tender of

6 AIR 1979 SC 1628

respondent no. 4 and during this period the respondent no. 4 incurred considerable expenditure aggregating to about Rs.1,25,000/- in making arrangements for putting up the restaurant and snack bars and in fact set up the bars and started running the same. It would now be most iniquitous to satisfy the contract of respondent no. 4 at the instance of the appellant. The position would have been different if the appellant had filed the petition immediately after acceptance of the tender of the respondent no. 4 but the appellant allowed period of five months to elapse during which respondent no. 4 altered their position. We are therefore of the view that this is not a fit case in which we should interfere and grant relief to the appellant in exercise of our discretion under Article 226 of the Constitution."

The principle of denial of relief on the ground of laches is equally applicable to the PIL jurisdiction and if there is no explanation offered for the delay, the Petition filed in Public Interest is liable to be dismissed and the Court is not obligated to consider the grievances raised therein on merits if the threshold of the period of limitation applicable in writ jurisdiction is not crossed.

Learned Advocate General has also placed reliance upon the decision in **Small Scale Industrial Manufactures Association (Registered) vs. Union of India & Ors.**[7], which has highlighted the scope of judicial review in the matter of economy and/or economic policy decisions and there can be no doubt in the proposition laid down

7 (2021) 8 SCC 511

in the said decision which clearly hold that the Courts cannot strike down a public policy just because a better policy could have been involved or because a different policy would have been fairer or wiser or more scientific or more logical. Decisions involving economic activities should be grieved with greater latitude and the only restricted function which the Court is expected to discharge is to ensure that the decision is not unreasonable, arbitrary or in violation of any statute or a provision of the constitution.

We do not find any satisfactory explanation offered in the Petition as to why the Petitioners waited till 2023 when the contract/Concession Agreement was executed in the year 2016 and the Petitioner carried apprehensions about the manner of its implementation and on this count, we find the Petition to lacking in bonafides, to be entertained as a Public Interest Litigation.

21. Even on merits, we do not find any reason to intervene as it is only the Petitioner's assumption that under the Concession Agreement, the Government is not claiming any revenue from city side area and this would result into a loss to the public exhequer.

A reading of clause 3.2 in the Agreement, involving the city side development, clearly stipulate that the Concessionaire shall undertake its development operation and maintenance as specified in Schedule A subject to the conditions in Schedule B and D and exploit such development for commercial purposes in accordance with the provisions of Article 28 (the city side development) with the rights to sub-licence any or all parts thereof by means of Project Agreement.

What is relevant to note is the clause 28.3.2 in the agreement prescribing that all revenues accruing from city side development shall be appropriated by the Concessionaire in accordance with the agreement and the applicable laws and in clause 30.2.1, the Concessionaire has agreed to pay to the authority for each year commencing from 6th year of occurrence of the appointed date, a premium (annual premium) equal to 36.99% on the Gross Revenue during that year in the form and manner provided therein.

Worth it to note that 'gross revenue' as per the agreement means revenue computed on an annual basis for an accounting year in accordance with the Indian Accounting Standard as specified in the Companies Rules 2015 and shall even include the monies received from sub-licensee by the Concessionaire as deposits. Therefore, in terms of the Concession Agreement, the Concessionaire is required to pay annual premium equal to 36.99% of Gross Revenue during that year and this includes the revenue generated from city side development as well. In the wake of the aforesaid clarification emerging before us which is a part of the agreement, the apprehension expressed by the Petitioner that there is going to be a loss to the State exchequer is completely unfounded and baseless.

Equally baseless is the second contention of the Petitioner that because the Concessionaire has reduced the price quoted in comparison to the master plan, as the Petitioner is comparing the prices and estimates quoted in the report of Amman and Whitney, which did not give the expenditure figure phase-wise and was merely a projection and not the actual costing but, the report was prepared to identify the infrastructure required to serve Goa's Aviation needs through a 30 years planning horizon and beyond and a master plan prepared was only to guide the design and the development of the Airport. As against the suggested a figure of Rs.3,297 Crores for the entire project but for phase -1 itself, the respondent no. 3 claimed to have incurred higher CAPEX then the cost estimated by Amman and Whitney and the capital expenditure incurred was higher as incurred in RFQ.

It is also a specific stand of the Respondent that an expert authority constituted under the 'Airport Economic Regulatory Authority of India, Act of 2010' namely, the Airport Economic Regulatory Authority (AERA) determining the tariff for various aeronautical services, after taking into consideration various factors has accounted for this expenditure and upon the details of the capital expenditure submitted to AERA and after its due consideration, a total capital expenditure of Rs.3896.20 was described to be the expenditure for the first stage of the project.

In any case, we find the aforesaid objection raised by the Petitioner being merely based on assumptions, do not deserve any consideration and the same is liable to be rejected.

21. Since we find that the Petition filed by the Petitioner lacks bonafide and do not meet the threshold of a genuine 'Public Interest Litigation', but is an abuse of process of law and according to us it is merely an attempt to cast aspersions on the decision making process of Respondent no.1, as it allotted the project of development of Greenfield International Airport at Mopa in favour of Respondent no. 3 as a Concessionaire, and since we find that the belated approach seeking interference in the commercial decision taken by the State, which has followed a Public Tender Process and we find no ground made out to interfere with the Concession Agreement dated 08.11.2016, while we dismiss the Writ Petition, we deem it appropriate to impose a cost of Rs.50,000/- to be paid by the Petitioner to the Goa State Legal Services Authority within a period of four weeks from today.

Rule discharged.

ASHISH S. CHAVAN, J. **BHARATI DANGRE, J.**

Signed by: ANDREZA RODRIGUES EPEREIRA
Designation: Senior Private Secretary to the Hon'ble Judge
Date: 03/10/2025 17:13:00