

IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND  
ARUNACHAL PRADESH)

PRINCIPAL SEAT AT GUWAHATI

**PIL No 6 of 2013**

**PETITIONER:**

Shri Taniang Kipa,  
son of Sri Kipa Kecha,  
resident of Karsingsa Village,  
P.O/P.S Banderdewa,  
District Papum Pare,  
Arunachal Pradesh

-Versus-

**RESPONDENTS:**

1. The Union of India,  
Represented by the Secretary to the Ministry  
of Civil Aviation, Govt. of India,  
New Delhi.
2. The Joint Secretary,  
Civil Aviation,  
New Delhi, India
3. The Chairman,  
Airport Authority of India,  
Rajiv Gandhi Bhawan,  
Safdarjung,  
New Delhi-110 003
4. The Executive Director,  
Airport Authority of India,  
Department of Planning,  
New Delhi – 110 003
5. The Principal Secretary  
to Prime Minister Office,  
New Delhi
6. The Deputy Secretary,  
Govt. of India,  
Cabinet Secretariat Rashtrapati Bhawan,  
New Delhi.
7. The State of Arunachal Pradesh,  
Represented by the Chief Secretary,  
Govt. of Arunachal Pradesh,  
Itanagar

8. The Secretary, Department of Civil Aviation,  
Govt. of Arunachal Pradesh, Itanagar
9. The Commissioner,  
Department of Civil Aviation,  
Govt. of Arunachal Pradesh, Itanagar
10. The Deputy Commissioner,  
Papum Pare District, Yupia,  
Arunachal Pradesh.

### **BEFORE**

**HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE, THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A. K. GOSWAMI**

For the petitioner : Mr. H. Gupta, Adv.

For the respondents : Mr. Randip Sharma, Ld. ASGI

Mr. KN Choudhury, Sr. Adv.  
assisted by Mr. R Dubey, Adv. for AAI  
Ms. M Bora, GA, Arunachal Pradesh

Date of hearing : 18.02.2014

Date of delivery of Judgment : 12<sup>th</sup> March, 2014

### **JUDGMENT AND ORDER**

**(A.M.Sapre, CJ)**

This is a petition filed by one Shri Taniang Kipa claiming to be the resident of Karsingsa village District Papum Pare, Arunachal Pradesh under Article 226/227 of the Constitution of India seeking to invoke the extraordinary jurisdiction of this court relating to PIL (Public Interest Litigation) against the State and its authorities in relation to the subject matter of the writ petition.

In substance, the grievance of the writ petitioner is against the decision of the State in shifting of site for construction of Airport project known as "**Greenfield Airport Project**" from a site/place called "**Karsingsa/Banderdewa at Itanagar**" to another place called "**Hollongi**".

According to the petitioner, firstly: the decision having rightly been taken by the State in the first instance to set up an Airport at a place "**Karsingsa/Banderdewa**", there was neither any need nor an occasion for shifting the Airport site to other place at "**Hollongi**" thereby changing the earlier decision, secondly: the decision to shift is irrational, arbitrary and not conceived in the public interest, thirdly: it is taken to extend benefit to persons in power so that they are able to get some kind of monetary consideration, fourthly: construction of Airport at new site would cause more burden in terms of investment as compared to its original cost on the earlier site selected and hence it is bad. These were essentially the grounds on which the decision to shift the site for construction of the Airport from original site is assailed in this PIL.

On notice being issued to the respondents, i.e Union of India, the Civil Aviation Ministry, its authorities and the State authorities, returns are filed denying therein all the allegations made in the writ petition being totally baseless and without any material. The respondents have given reasons in support of their decision to shift the site from "**Karsingsa/Banderdewa**" to "**Hollongi**".

It is inter alia averred that the decision to shift the Airport site was taken after intense deliberation inter se all agencies involved in the decision making process and was therefore conceived in the best public interest and the stakeholders. It was, according to the respondents, based on full application of mind by all the competent authorities including experts, who, after examining all the pros and cons, approved the alternative site.

The respondents filed entire correspondence to show as to how and in what manner, the decision was taken to justify its reasonability, fairness and rationality. It was also contended that the petitioner – a single so-called aggrieved has no social background, he has come to the court with some oblique motive either for his benefit or for someone else. It was contended that no group of persons, social organization etc. have challenged the decision of shifting. It was also contended that the very fact that petitioner has not challenged the decision to set up an Airport is enough to dismiss

the writ petition because the question as to whether Airport is to be constructed at " A " place or " B " place is not for any individual to decide and more so, who has no expertise in the subject, but it is for the experts in the field to decide. It is essentially on these grounds, the petition is opposed.

This court entertained the writ petition and passed various interim orders from time to time including the order directing all the parties to maintain "status quo" in relation to the site till further order.

This court, then, with a view to find out as to whether the decision to shift the Airport was just and in the interest of public at large, by order dated 30.8.2013, appointed a high power committee consisting of four members headed by a retired High Court Judge and three experts in the field to probe.

Following was the constitution of the committee:

- |  |     |          |
|--|-----|----------|
| “(i) Justice A.C.Upadhyay (Retired)  | ... | Chairman |
| “(ii) Director of Civil Aviation   | ... | Member   |
| “(iii) Joint Secretary, Home, North East                                       | ... | Member   |
| “(iv) Joint Secretary, Rural Development<br>(To be nominated by the Secretary) | ... | Member”  |

However, by order dated 14.11.2013, the Court modified its earlier order dated 30.08.2013 and re-constituted the Committee's constitution as under:

- |   |     |          |
|---|-----|----------|
| “(i) Justice A.C.Upadhyay ,<br>Former Judge of Gauhati High Court                         | ... | Chairman |
| “(ii) Director of Aerodrome   | ... | Member   |
| “(iii) Sri Saranjit Singh,<br>Director of Land Reforms,<br>Government of India            | ... | Member   |
| “(iv) Sri JP Singh,<br>Director of North East<br>and Home Affairs,<br>Government of India | ... | Member   |
| “(v) Home Secretary,<br>Government of Arunachal Pradesh                                   | ... | Member”  |

The committee was asked to visit two sites in question and then to submit the report within one month.

In compliance of this order, the members of the committee visited the two sites and submitted a detailed report running into 26 pages. It was concluded that the new site proposed for construction of Airport is just, proper and in the interest of public at large as compared to the earlier one.

It is apposite to reproduce the comparative analysis of the two sites made by the committee along with their findings and conclusion:

**"35. Keeping in view the aforesaid suitability parameters into consideration, a relative study of the proposed sites for development of the Greenfield Airport at Banderdeva and Holongi, is given hereunder:**

**PROPOSED GREENFIELD AIRPORT AT ITANAGAR  
Site selection comparison Banderdeva site V/s Holongi site**

Sl No.	Consideration Factor	Banderdeva	Holongi
<b>(A) Location/land issue</b>			
1.	Location & approach to Airport site	25 Km from Itanagar in the eash ward direction. Approach road will be necessary to connect the Airport site from NH-52A	Proposed site is about 20 Km from Itanagar in the West direction. Approach road available from National Highway but required to be widened.
2.	Airport land	Hilly and Forest land free from encroachment. (Approx. area 250 Hectare)	Plain land with resettlement of Chakma Refugees.(Approx. area 320 Hectare)
3.	Land profile	Hilly terrain which requires heavy cutting and filling for proposed airport. Cutting up to 50 m and filling of about 40 m (approx) will be required. Two river streams are passing from the proposed site and needs to be covered with bridges at required locations along with associated river training works.	Plain land with least cutting and filing (2m to 3m filling) two streams namely, Kokila river and Holongi River are passing at the proposed ends of runway. One telephone nallah is also passing through the land. Normal river training and nallaha diversion works may be required along with proper drainage scheme to take care of water logging in heavy rains.
4.	Airport level	The runway shall be a "TABLE TOP" because of hilly terrain and finished Airport elevation will be around 190m.	Airport/runway will be on flat level connecting NH-52A at almost same level. Finished airport elevation will be around 100m.
<b>(B) Operations/Safety issues</b>			
5.	Orientation of proposed runway	Proposed runway bearing will be 08/26 (East West direction)	Proposed runway bearing will be 08/26 (true bearing 078/258 degrees)
7.	Operational restrictions Runway use	Likely operational restrictions due to table top proposed runway	Operational restrictions will be less, due to flat ground.

8.	Meteorological aspects	Higher frequency of low cloud during monsoon and winter session possible due to elevated location and table top.	Less frequency of low cloud during monsoon and winter season due to its location on plane ground and near Brahmaputra valley. Possibility of Aircraft operations in all weather conditions.
9.	Airspace conflict	This is likely to result in Air-space conflict between flights operating at both the nearby airports at Lilabari and Jorhat. Distance from Lilabari airport (Assam) is about 20 KM.	Less conflict with Lilabari Airport located 60 KM away.
10.	Obstacles in the OLS surfaces	As per ICAO guidelines, both approach Runway 08 and 26 has obstacles. Transition surface will be having many obstacles.	Runway approach 26 will have no natural obstacles. However, runway approach 08 will have small portion of hill. Runway orientation can be slightly modified to get rid of hill in approaches. Though, transition surface and Horizontal Inner Surface, on northern side, penetrated by hills at some location but instrument approach possible.
<b>(C) Environmental issues</b>			
12.	Environmental impact	Due to heavy deforestation as well as heavy cutting and filling work, may impact on ecology.	May not have impact on environment due to no forestation and very less cutting/filling required due to plain land.
<b>(D) Land/Development issues</b>			
13.	Resettlement and rehabilitation (R&D) works	Minimum R&R works required, being forest land	About 156 families of Chakma refugees required to be resettled rehabilitated.
14.	Construction activity	Difficult terrain will hamper the access of the site by the men, material and the machines. Preparation of site will need at least 2-3 monsoon seasons for perfect compaction of geologically unstable soil. This may further increase the cost and construction time of the project.	Flat land, it will be easier to develop the airport. The site is easily approachable by NH-52 and NH-52A. The site will require filling of 2 to 3 meters, earth can be made available from the nearby foothills.
15.	Construction hindrances	Originally it was planned to build runway for ATR Aircrafts, but subsequently it was decided to build runway to operate Air Bus 320. For bigger Aircraft , additional length of runway is necessary. At Banderdeva site. Construction of a bridge over the existing river (passing through the Airport site) is essential for construction of runway for A-320 type Aircraft. The	

		construction of a bridge itself is a time consuming task and may require 4-5 years construction period.	
16.	Future Airport expansion	As the Airport will be constructed by cutting hills and filling of valleys with the help of retaining walls etc. the future expansion will be difficult and costly.	Expansion, if required will be easier.
17.	Development period after land acquisition	5 ½ years(approx.)	Four years (approx.)
18.	Project costs	Considerably high due to deforestation work, heavy hill cutting and land filling works (approx. cost – Rs. 1250 crores)	Low due to site being located in almost level area (approx. cost Rs.1069 crores including R & R package)

Similarly, the experts also examined the cost factor involved in the construction of the Airport on two sites as given by Ministry of Civil Aviation, which reads as under:

**“Cost comparison between Banderdeva and Holongi sites for the development of Greenfield Airport at Itansagr.**

For Banderdeva the estimate was made for operation of A-321 whereas for Holongi in Phase-I it will be for A-321 and in Phase-II for B-767 type of aircrafts. Accordingly, in Holongi the land acquisition and river diversion is considering the ultimate development i.e. for B-767 type aircraft operation. For comparison of estimate the operations at both the sites have to be brought to almost the same bench mark. Accordingly, the cost of certain parameters which are required for the ultimate development in the case of Holongi has been segregated and shown as cost related to Phase-II. The cost of Banderdeva which was made in March, 2010 has been brought to the level of Dec 2012 by adding 10% escalation per year.

Parameters	Banderdeva	Holongi	Remarks
1.Runway size	2250mx45m	2300mx45m Ph-1 2800mx45m Ph-11	For A-321 For B-767
2. Basic strip	2370mx300m	2420mx300m Ph-I 2920mx300m Ph-II	
3.RESA	90mx90m on both ends	90mx90m on both ends	
4.Nav. aids	DVOR	DVOR,* ILS	*will be finalised after detailed survey
5.Isolation Bay	One taxiway to be used	Separate bay	
6. Apron size	90mx112m	160mx115m	
7.Taxiways	2 nos.	2 nos Ph-1 3 nos Ph-II	
8.Approach lights	Simple approach lights on both ends	One end SA light and other end CAT-I	
9.Land	250 ha.	190Ha. Ph-1	

		320 Ha. Ph-II	
10. Design Lights	A-321	A-321 in Ph-I B-737 in Ph-II	
<b>Cost in crores</b>			
(i) cost of land (250 Ha. Considered for both sites)	30.00	160.00	70 Ha considered for Ph-II
(ii) cost of land for rehabilitation and approach road (100 Ha.)		66.44	
(iii) cost of rehabilitation		35.92	
(iv) construction of boundary wall	31.70	31.20	
(v) cost of approach road	3.88	67.55	
(vi) power supply	-	17.67	
(vii) shifting of HT line	-	16.57	
(viii) Bulk water supply	0.70	20.49	
(ix) Development of land	831.77	46.90	For 250 Ha.
(x) Internal Road, drainage etc.	41.10	50.00	
(xi) Airside assets like runway, apron, taxiway, isolation bay etc.	109.70	150.00	
(xii) Terminal building	53.10	50.00	
(xiii) other operational & Non-operational Buildings & equipments	58.10	10.00	
(xiv) Residential area	12.90	10.00	
(xv) Diversion of Nallah, Culvert etc.	81.30	50.00	
<b>Total (i)</b>	<b>1254.25</b>	<b>858.84</b>	
	<b>Say 1255</b>	<b>855</b>	
		<b>Phase-II</b>	
(i) cost of land		46.50	70 Ha
(ii) development of land		13.10	
(iii) Airside Assets		50.00	
(iv) Hotel conversion centres		50.00	
(v) Diversion of Nallah, Culverts etc.		50.00	
<b>Total(ii)</b>		<b>209.60</b>	
<b>Grand total (i) &amp; (ii)</b>		<b>1068.44</b>	

### CONCLUSION

36. On careful evaluation of all the factors and issues for establishment of the Airport in two locations noted above, it becomes obvious that the change in the location for establishment of the Airport from Banderdewa to Holongi is technically and scientifically justified.

37. All the members of the committee individually and collectively subscribed to the view that the site for construction of Greenfield

Airport at Holongi would be more appropriate, suitable and convenient in terms of topography, environmental impact, constructability, airport operations and on safety point of view.”

It is with this background and the findings of the expert committee’s report, the question arises for consideration is as to whether the decision to shift the airport to a new site is proper or arbitrary.

Before we come to the facts of the case in hand, it is necessary to take note of the law laid down by the Supreme Court on such issue. In somewhat similar circumstances, the question arose before the Supreme Court in the case reported in **(2002) 10 SCC 226 (Union of India vs Kannadapara)** as to whether the decision to shift the headquarters of South Western Railway to Hubli instead of being at Bangalore is justified or not? The High Court of Karnataka in PIL had held that such decision was bad in law and therefore it was quashed. The Railways (Union of India) felt aggrieved and challenged the decision of the Karnataka High Court in Supreme Court. Their Lordships allowed the appeal and while setting aside the order of the High Court, dismissed the PIL and laid down the following principal of law by placing reliance on its earlier decision rendered in **(1996) 2 SCC 405 (Delhi Science Forum vs Union of India)** as under :

“5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal mala fides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide. In any case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Governments and a different political party had come into power, is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out by the following passage from a decision of this Court in *Delhi*

*Science Forum v. Union of India (1996) 2 SCC 405* when at p. 413, it was observed as follows: (SCC p. 413, para 7)

"7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations — because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court."

6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction could under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with law, then the only direction which could have been issued by the court was to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the sites of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect.

7. For the aforesaid reasons, these appeals are allowed and the impugned judgment of the High Court is set aside, the result of which would be that the writ petition filed by the respondents would stand dismissed."

When we apply the aforesaid law to the facts of the present case in hand, we find no merit in the challenge laid by the petitioner to the decision of the State in shifting of the construction of Airport on the new alternative site at **Holongi**.

In the first place, we cannot sit as an appellate court over the findings of the expert committee and find fault therein. Secondly: the petitioner was not able to point out any prima facie error in the expert committee's report. Thirdly: no documents were filed by the petitioner to show any apparent error therein. In other words, the petitioner, could have filed another report to point out any error. He did not do so. Fourthly and apart from the three reasons, mere perusal of the report would go to show that the committee examined all relevant issues as to why the site now proposed is better than the earlier one. The committee, which consisted of experts from the Civil Aviation Ministry, was conscious of the work assigned. Fifthly: it seems clear by reading the report that new site in all respect, i.e. safety, convenience and cost factor is better than the previous one. Sixthly: merely because one site had been selected initially, would not mean that the State can never change its earlier decision when better option is available and when it is approved by a committee of experts. Seventhly: it being purely an administrative decision as held in the case of **Union of India** (supra), unless it involved some legal malafides or arbitrariness in the decision making, it is beyond challenge. Such was the case here because the petitioner was not able to point out any error in the decision making. Eighthly: since the petitioner did not challenge the main decision to set up the Airport but confined its challenge to its shifting from one place to another, it is not necessary for us to go into the basic question, namely, whether State was justified in taking a decision to set up an Airport or not. Even otherwise, such decision was beyond challenge because it is the need of the hour for every State to have its own Airport for the convenience of the public at large and lastly: we find that the facts in hand are similar in nature to the case of **Union of India** (supra).

In view of foregoing discussion, we hold that the decision to shift the setting up of the Airport at **Hollongi** deserves to be upheld.

The learned counsel for the petitioner however argued that the decision to shift the airport was taken to extend undue benefit to few persons in power. He contended that due to change in site,

few individuals in power are likely to be benefited in terms of money because now State will have to pay money to them by way of compensation. In other words, the submission was that the decision to shift was more for the benefit of few persons in power rather than for the benefit of public.+

In the first place, the petitioner did not place any factual details and evidence on this issue. Secondly, he did not implead any such persons in the petition. In the absence of material pleadings and necessary parties, it is not possible for this court to make any factual inquiry on this issue, which is based on legal and factual malice. It is apart from the fact that no such comments was made by the committee in their report.

Be that as it may, we consider it apposite to direct that it shall be the duty of the State to ensure that all factual inquiries as is necessary under the provision of the Land Acquisition Laws and other related State laws in relation to the land in question at **Hollongi** be undertaken strictly in accordance with law and after verifying and making inquiries necessary, proceed with the construction of Airport on the new/alternative land selected.

It is with these directions, the petition stands accordingly disposed of.

No cost.

**JUDGE**

**CHIEF JUSTICE**

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