

W.P.(C) No. 24216/2020

: 1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 16TH DAY OF NOVEMBER 2020 / 25TH KARTHIKA, 1942

WP(C).No.24216 OF 2020(S)

PETITIONER/S:

YESHWANTH SHENOY
AGED 42 YEARS
PRIYADARSHINI, VEEKSHANAM ROAD, ERNAKULAM-682 018.

BY YESHWANTH SHENOY(PARTY IN PERSON)

RESPONDENT/S:

- 1 THE UNION OF INDIA,
THROUGH THE SECRETARY, MINISTRY OF CIVIL AVIATION, RAJIV
GANDHI BHAVAN, SAFDARJUNG AIRPORT, AURBINDO MARG,
NEW DELHI-110003.
- 2 AIRPORT AUTHORITY OF INDIA,
THROUGH THE CHAIRMAN, RAJIV GANDHI BHAVAN, SAFDARJUNG
AIRPORT, NEW DELHI-110 003.
- 3 DIRECTORATE GENERAL OF CIVIL AVIATION,
THROUGH THE DIRECTOR GENERAL, AURBINDO MARG, OPP.
SAFDARJUNG AIRPORT, NEW DELHI-110 003.
- 4 AIR INDIA EXPRESS LIMITED,
THROUGH ITS MANAGING DIRECTOR, 1ST FLOOR, OLD
OPERATIONS BUILDING, AIR INDIA COMPLEX, OLD AIRPORT,
SANTACRUZ (EAST), MUMBAI-400 029.
- 5 AIRCRAFT ACCIDENT INVESTIGATION BUREAU,
THROUGH THE DIRECTOR GENERAL, O/O. MINISTRY OF CIVIL

W.P.(C) No. 24216/2020

: 2:

AVIATION, RAJIV GANDHI BHAVAN, SAFDARJUNG AIRPORT,
AURBINDO MARG, NEW DELHI-110 003.

6 THE STATE OF KERALA,
THROUGH THE STATION IN CHARGE, KARIPUR POLICE STATION,
MALAPPURAM, KERALA-400 086.

7 THE CENTRAL BUREAU OF INVESTIGATION,
THROUGH ITS S.P., ACB, KATHRIKKADAVA, P.O. KALOOR,
ERNAKULAM-682 017.

R1, R3 BY ADV. SRI.P.VIJAYAKUMAR
R2 BY ADV. SRI.V.SANTHARAM
R2 BY ADV. SRI.LAKSHMEESH.S.KAMATH

R1, R3 & R5 BY SRI.GIREESH KUMAR CGC
R2 BY SRI.N.N SUGUNAPALN(SR)
R4 BY SRI.M.GOPIKRISHNAN NAMBIAR
R6 BY SRI. ARAVIND KUMAR BABU SR. GOVERNMENT PLEADER
R7 BY SRI. SASTHAMANGALAM AJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-11-2020,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Dated this the 16th day of November, 2020.

JUDGMENT

SHAJI P. CHALY,J.

This is a Public Interest Litigation filed by an advocate enrolled in the rolls of the Bar Council of Kerala in 2001. The issues raised by the petitioner are on the basis of the air crash that occurred at the Calicut International Airport recently, on 7th August 2020. Respondent No. 1 is the Ministry of Civil Aviation, who has supervisory control over respondents 2, 3, 4 and 5, who are Airport Authority of India, New Delhi, Directorate General of Civil Aviation, New Delhi, Air India Express Limited, Mumbai, Aircraft Accident Investigation Bureau, New Delhi. Respondent No. 6 is the State of Kerala. But, however, the petitioner has made the Station House Officer, Karipur Police Station, Malappuram to represent the State, who is not a proper party, in view of the provisions of the Kerala High Court Rules, 1971, and the State is always to be represented by the Secretary of the concerned Department or the Chief Secretary. The 7th respondent is the Central Bureau of Investigation. The sum and substance of the case put forth by the petitioner is that overshooting runways is the most common

type of air accidents, but nowhere in the world did such an accident cause such a high number of fatalities.

2. According to the petitioner, after years of research in the maze of aviation regulations and operations, the petitioner found that there was criminal culpability on the part of respondent No.2 with full backing of respondent Nos. 1 and 3. It is stated that the petitioner, thereafter, took up the issue of aviation safety in various High Courts and the petitioner has filed three writ petitions before this Court and one of them was disposed of while the other two are pending, out of which one is more specific to the Calicut Airport i.e., W.P.(C) No. 21085 of 2016 .

3. The petitioner claims that since he has filed various writ petitions before various courts in regard to the aviation safety, this Public Interest Litigation is filed with all *bona fides* with larger public interest and the petitioner has no personal interest. Therefore, it is submitted that the intention of the petitioner is to introduce the subject of aviation and its complexities, draw a picture of each component and how critical state they are in, then move to the specific issues with the Calicut Airport and the various warnings and specific information given to the State Authorities, their wilful and deliberate

violations of Air Regulations and explain the importance of independent and impartial investigation by a Court of Inquiry as against the Aircraft Accident Investigation Bureau (AAIB) investigation and the need for CBI to investigate the criminality and why the Calicut Airport needs to be shut down with immediate effect until the Airport complies with Air Safety Regulations.

4. It is further submitted that aviation is a very complicated operation and there are several aspects that have to work in sync for safe operations. There are aircrafts movements across geographical boundaries and unless there is a standardization, such large scale operations are impossible. This resulted in the requirement of a body that would provide for 'minimum standards' and the same is being done by the International Civil Aviation Organization (ICAO). ICAO sets minimum standards and also provides for 'recommendations'. These ICAO standards are adopted by the Domestic law and that is how the aviation industry functions smoothly and it is in this background it is important to understand that whatever needs to be done has to be done in compliance with laws and what is at stake is the reputation of the State itself. It is also submitted that there are different components of aviation and in case of Mangalore and Calicut, the issues related to the Airport and its design were pointed out repeatedly

before the actual accident, but the Airport officials ignored to take any corrective measures which were wilful and deliberate. It is the case of the petitioner that multiple checks and balances failed to rectify such glaring issues, because these checks and Balances have been severely compromised by mismanagement and deliberate illegal acts by the aviation authorities, including the Government of India. According to the petitioner, the Airport Authority of India has to mandatorily conduct surveillance audits and the Directorate General of Civil Aviation had to conduct safety audits and these were either not conducted or the lapses detected were not rectified in accordance with Air Regulations.

5. Apart from the above submissions made, in respect of the Calicut International Airport accident, various facets of safety, issues relating to Airport Design, Aircraft Design, airworthiness, maintenance, Aircraft Maintenance Engineers, the minimum qualifications required for pilots, cockpit crew, cabin crew etc. are all narrated by the petitioner, to establish that any compromise on such aspects would lead to Air-crash disasters and if the respondents are not taking appropriate action for maintenance of the Airports and Aircrafts in accordance with the Rules provided for the purpose, the disasters would be shocking to the proportion than as expected by the authority.

6. With the above submissions, the petitioner also states that every component in aviation is a ticking time-bomb. It is submitted that Calicut was waiting to happen and it was identified soon after the Mangalore Air-crash. The tabletop airports came to limelight after the Mangalore Air-crash. The Union of India had formed the Civil Aviation Safety Advisory Council (CASAC) to advise measures to be taken to ensure aviation safety. The petitioner has also pointed out that Ext.P16 e-mail was sent by Late Justice V. R. Krishna Iyer to the then Prime Minister of India expressing apprehension over the safety of Calicut Airport. According to the petitioner, as per an order dated 23.11.2016 in W.P.(C) No. 21085 of 2016, this Court ordered the Airport Authority of India and the Directorate General of Civil Aviation to produce the safety audit reports. However, the said authorities are yet to comply with the said order.

7. The petitioner also points out that the corruption is so rampant with respondent Nos 1 to 4 and according to him, the investigation by the CBI into these incidents would be relevant at this point of time. It is also submitted that the Calicut Airport conforms only to Code 4C classification, which prohibits wide-body aircraft that require Code 4E. It was pointed out by the CASAC Aerodrome group and Operations Group that it should be changed and wide-body aircraft

should be prohibited. It is also stated that on 01.05.2015, the then Directorate General of Civil Aviation cancelled the permission for wide-body aircraft to operate to and from Calicut Airport. However, the current Directorate General of Civil Aviation reissued the permission for wide-body aircraft operation from Calicut. Added to this, in July, 2019, the Directorate General of Civil Aviation Safety Audit has identified several safety deficiencies at Calicut and there were two significant findings i.e., (1) excessive rubber deposits on the runway and (2) cracks in the runway. The sum and substance of the contentions put forth by the petitioner is that the said report should have opened the eyes of the authorities to the dangers and results due to wide-body aircraft landing and taking off at Calicut. Yet, before the resolution of these safety deficiency findings, the Directorate General of Civil Aviation renewed the licence of Calicut Airport from mid 2019 to October, 2021.

8. But, it is submitted that after the unfortunate air crash that killed 19 passengers, the Directorate General of Civil Aviation changed the code, which is a standing testimony to the fact that respondent No.3 is not led by Rule of Law, but his own whims and fancies and in this regard, the petitioner has produced a communication issued by the Airport Authority of India dated 23.03.2016 to the Secretary of the

Malabar Development Council, by which it was specified that relaxing the safety norms for operation of code E Aircraft as suggested by the said person shall endanger safety of aircraft operations and can be taken up only after DGCA clearance, as safety is paramount at all times.

9. That apart, it is submitted that unprofessional and incompetent persons head crucial departments, which causes all sorts of complications and the experts in the field are kept away by inducting IAs Officers, who know nothing about aviation and claim to be sitting in the position after drawing knowledge from their experience. Therefore, according to the petitioner, the attempt made by him was a desperate one to avoid an air crash. But, despite the best efforts of the petitioner, the fears of the petitioner came true on 07.08.2020 when another Boeing crashed into the Calicut Airport killing 19 people. Anyhow, as regards the enquiry by the aviation specialists, the Government of India had recently formulated the Aircraft (Investigation of Accidents and Incidents) Rules, 2017 ('Rules, 2017' for brevity). According to the petitioner, the earlier Directorate General of Civil Aviation used to investigate. As regards the enquiry by the aviation experts, AirCraft Accident Investigation Bureau (AAIB) has appointed a panel of officers to conduct the enquiry into the air crash

W.P.(C) No. 24216/2020

: 10:

as per Ext.P22 order dated 13.08.2020. But, according to the petitioner, it is certain that these investigators, however, are professionally competent , they will not be able to be impartial and independent and will lack the courage to even take on record evidence against their bosses. That apart, it is pointed out that the Directorate General of Civil Aviation is on record blaming the pilots and the petitioner asserts that the officials involved including the Secretary, Ministry of Civil Aviation, the Chairman, Airport Authority of India and the Directorate General of Civil Aviation, each of whom are IAs officers and are heading the top positions, and no investigator will ever have the courage of investigating a trial leading to any of them.

10. Moreover, the investigation by the AAIB is a closed one according to the Rules, while the Court of Investigation (COI) is an open and a public one. The Central Government has the powers to appoint a Court of Inquiry under Rule 5(1)(d) r/w Rule 12 of the Rules, 2017 and the petitioner has already written to the Ministry of Civil Aviation requesting the Court of Inquiry to be ordered, evident from Ext.P23. Above all these contentions, it is submitted that the petitioner has no issues with the panel of officers appointed as per Ext P22, except the participation of Mr. Jasbir Singh Larhga, who was the Investigating Officer of the Ghatkopar Air Crash, which has been

thoroughly compromised and the said Officer has not just tampered with the evidence but planted evidence in a manner to suit the conclusions he wanted to draw.

11. That apart, it is pointed out that the panel does not include a Human factors Specialist, and Human factors is one of the most crucial links in any air crash. It is also reiterated that however competent these officers are, the investigation can never be independent or impartial, unless it is open to the public and headed by a Retired Supreme Court Judge or at least a retired High Court Judge. It is also submitted that though Judges are non-technical persons, other members of the COI can be technical members and the requirement of the Judge is to ensure that every issue taken up is recorded and nothing is tampered with.

12. He has further submitted that a complaint with the Station House Officer of the Karipur Police Station, Malappuram in regard to the air accident, is pending. The paramount contention advanced on the basis of the aforesaid submission is that the Indian Air Space has zero margin for errors and even a slightest error can be costly for various reasons recited in the writ petition. Further, the Calicut Air crash is just a warning bell to save Indian Civil Aviation from future

threats from the sky and what is most important is an impartial investigation and effective remedial measures. With the above backdrop, according to the petitioner, the act of the Airport Authority of India in not complying with the Air Regulations as regards the Airport Design is violative of Article 21 of the Constitution of India, and that the inability of the Directorate General of Civil Aviation in identifying the serious lapses in safety during its audits is also violative of Article 21 of the Constitution of India. Other grounds are also raised and seek the following reliefs:

1. Direct the respondent No.1 to order a Court of Inquiry headed by a retired Supreme Court Judge/High Court Judge under Rules 5(1)(d) read with Rule 12 of Aircraft (Investigation of Accidents and Incidents) Rules, 2017.
2. Direct the respondent No.1 to remove Jasbir Singh Larhga from the panel of investigators and replace him with a more appropriate officer with impeccable integrity and also to include a 'Human Factors' Specialist in the team.
3. Direct the respondent No.7 to register an FIR and take over the criminal investigation of the Calicut Aircrash.
4. Direct the respondent No.2 to shut down the Calicut airport permanently for operations of both narrow body and wide body aircrafts as the exemptions sought are permanent in nature.

13. We have heard Sri. Yeshwanth Shenoy appeared in person,

W.P.(C) No. 24216/2020

: 13:

learned Additional Solicitor General of India appearing for respondents 1 to 3 and 5, learned Senior Government Pleader Sri. Tek Chand for the State and learned Standing Counsel for the Central Bureau of Investigation and also the Air India Express Limited, and perused the pleadings and materials on record.

14. The pleadings and the facts discussed above would make it clear that the petitioner is basically aggrieved by the enquiry undertaken by the panel of investigators as per Ext.P22 order of the Aircraft Investigation Bureau dated 13.08.2020 rather than an enquiry by the Court of Inquiry, which reads thus:

GOVERNMENT OF INDIA
AIRCRAFT ACCIDENT INVESTIGATION BUREAU
MINISTRY OF CIVIL AVIATION
SAFDARJUNG AIRPORT, NEW DELHI

File No. INV/11011/6/2020-AAIB
Date: 13th August, 2020

ORDER-ACCIDENT

Whereas Boeing 737-800 aircraft VT-AXH, of M/s. Air India Express Ltd., while operating a Scheduled flight from Dubai International Airport, U.A.E., met with an accident on 7th August, 2020 during landing at Kozhikode International Airport.

And whereas the Aircraft Accident Investigation Bureau (AAIB), India desires

as per its mandate to investigate and determine the probable cause(s) and contributory factor(s) leading to the accident and make recommendations to avoid recurrence of such accident in future.

Now, in exercise of the powers conferred by Rule 11(1) of the Aircraft (Accident and Incidents Investigation) Rules, 2017, the Director General-AAIB, India hereby orders an investigation into the said accident to find out the probable cause(s).

The Director General-AAIB, India hereby appoints Capt S S Chahar, Former Designated Examiner on B737NG, as Investigator-in-Charge to inquire into the circumstances of this accident.

He will be assisted by the following investigators:-

- (a) Sh. Ved Prakash, Operations Expert
- (b) Sh. Mukul Bhardwaj, Senior Aircraft Maintenance Engineer -B737
- (c) Gp. Capt. (Dr.) Y S Dahiya Aviation Medicine Expert.
- (d) Sh. Jasbir Singh Larhga, Deputy Director AAIB.

The Investigator-in-Charge may take the assistance of other experts/agencies whenever required.

The headquarters of the investigation will be at New Delhi.

The Investigator-in-Charge will complete its inquiry and submit the report to AAIB, India, preferably within five months from the date of issue of this order.

(Aurobindo Handa)
Director General, AAIB

15. At the same breath, it is stated in the writ petition that the petitioner has no issues with the investigation conducted as per Ext.P22. But, however, according to him, one of the members i.e., Sri. Jasbir Singh Larhga, Deputy Director of AirCraft Accident Investigation Bureau, is not a fit person to be in the investigating team. Anyhow, it is the case of the petitioner that with respect to the rest of the aspects, he has already addressed the Minister for Civil Aviation as per Ext.P23 communication dated 08.08.2020. But, on going through the petition, what we find is that except from seeking an open enquiry by the Court of enquiry providing participation to the public, none of the safety aspects as are narrated in the writ petition are recited there. In our considered opinion, an investigation is going on in accordance with Ext.P22 order issued by the AirCraft Accident Investigation Bureau, which is the competent authority to do so, and though the petitioner has raised objection with respect to one of the members, the investigation as such is not objected to. Even though scathing remarks are made against one of the investigators as pointed out above, he is not made a party in the writ petition. Most of the aspects put forth by the petitioner in the writ petition are all technical aspects in regard to the safety precautions that are to be undertaken by the respective

stakeholders so as to prevent the accidents. Therefore, we do not think we need to go into the said contentions advanced now, especially due to the fact that the relief sought for by the petitioner is confined to the enquiry in regard to the air crash at Calicut Airport.

16. It is true, the Government of India has introduced the Rules, 2017 with the intention of carrying out the investigation of accidents of aircrafts, which has got various facets. Rule 3 deals with obligation to investigate an accident and incident, which specifies that the sole objective of the investigation of an accident or incident shall be the prevention of accidents and incidents and not to apportion blame or liability. Therefore, we wish to say at the outset that the enquiry is ordered for prevention of future accidents in the light of the instant air crash. Rule 4 stipulates the manner in which the notification is to be issued on occurrence of any accident or incident .

17. Rule 5 deals with obligation to investigate and it reads thus:

5. Obligation to investigate.— (1) In case of an accident or incident to an aircraft in the territory of India, notwithstanding its registration,--

(a) the DG, AAIB shall institute an investigation into the circumstances of the accident, and shall be responsible for conducting the investigation;

(b) the DG, AAIB shall institute an investigation into the circumstances of the serious incident when the aircraft involved is of maximum mass of over 2250 Kg. or is a turbojet airplane;

(c) the DG, CA shall institute an investigation into the circumstances of all incidents and serious incidents to aircraft not covered by clause (b);

(d) the Central Government may institute a formal investigation into circumstances of any accident to an Indian registered aircraft if it appears that it is expedient to hold such investigation.

(2) Notwithstanding anything contained in clause (c) of sub-rule (1), where it appears to the Aircraft Accident Investigation Bureau that it is expedient to hold an investigation into circumstances of any incident or a serious incident covered under said clause (c) , it may, by order, institute an investigation into circumstances of an incident or a serious incident to any aircraft.

(3) Classification by the Aircraft Accident Investigation Bureau of an occurrence as accident or serious incident or incident shall be final and binding.

(4) In case an accident or a serious incident to an Indian registered aircraft occurs at a location not being a

territory of any State, then the Aircraft Accident Investigation Bureau shall institute an investigation into the circumstances of the accident or serious incident and shall be responsible for conducting the investigation.

(5) In case India is the nearest State to the scene of an accident in international waters to an aircraft not registered in India or not operated by an Indian operator, then the Aircraft Accident Investigation Bureau shall advise the State of Registry to institute an investigation and the Aircraft Accident Investigation Bureau in such a case shall provide assistance to the extent it is able to and shall, likewise, respond to requests by the State of Registry.

18. Rule 6 deals with participation and sub-Rule (1) specifies that in case the Aircraft Accident Investigation Bureau has instituted an investigation of an accident or a serious incident in accordance with Rule 5, then the accredited representatives, who are appointed by the following States, namely:— (a) the State of Registry; (b) the State of the Operator; (c) the State of Design; and (d) the State of Manufacture; shall be permitted to participate in the investigation. That apart, as per sub-Rule (2), the States referred to in sub-rule (1) shall also be entitled to appoint one or more advisers to assist their accredited representatives. Sub-Rule (3) specifies that the States referred to in sub-rule (1) shall have the rights and entitlements in accordance with the standards stipulated under Annex13. Apart from the same, from Sub-Rules (4), (5) and (6), a State which has a special interest in an accident by virtue of fatalities or serious injuries to its citizens shall be entitled to appoint an expert who shall have rights and

entitlements in accordance with standards stipulated under Annex13, that any State which on request provides information, facilities or experts to Aircraft Accident Investigation Bureau shall also be entitled to appoint an accredited representative to participate in the investigation who shall have the rights and entitlements in accordance with the standards stipulated under Annex 13, and that the Aircraft Accident Investigation Bureau on receipt of a notification of an accident or a serious incident to an Indian registered aircraft in the territory of another State, may appoint accredited representative and advisors to participate in the investigation and intimate it to the State of Occurrence.

19. Rule 7 deals with the protection of evidence, custody, removal and preservation of damaged aircraft and it reads thus:

7. Protection of evidence, custody, removal and preservation of damaged aircraft.—(1) In the case of an accident or a serious incident, which is required to be notified under Rule 4, the Investigator-in-Charge shall have unhampered access to the wreckage and all relevant material and information, including flight recorders and Air Traffic Services records, and shall have unrestricted control over it to ensure that a detailed examination can be made without delay by authorised personnel participating in the investigation.

(2) The aircraft and contents thereof shall not, except by a person under

the authority of the DG, AAIB, be removed or otherwise interfered with:

Provided that-

(a) the aircraft or any parts or contents thereof may be removed or interfered with so far as may be necessary by persons authorized to conduct search and rescue operations for the purpose of extricating persons or animals dead or alive, or preventing the destruction of the aircraft and its contents by fire or other cause, or preventing any damage or obstruction to the public or to air navigation or to other transport;

(b) if the aircraft is wrecked on water, the aircraft or any parts or contents thereof may be removed on such extent as may be necessary for bringing it or them to a place of safety by persons authorised to conduct search and rescue operations;

(c) goods may be removed from the aircraft under the supervision and with the concurrence of an officer of the Aircraft Accident Investigation Bureau or a person authorised by the DG, AAIB;

(d) personal luggage of passengers and crew after photography, weighing, etc. may be removed from the aircraft under the supervision of a Police Officer, a Magistrate, an Officer of the Aircraft Accident Investigation Bureau or a person authorised by DG, AAIB; and

(e) mails photography, weighing etc. may be removed under the supervision of a Police Officer, a Magistrate, an Officer of the

Department of Posts and Telegraphs or an Officer of the Aircraft Accident Investigation Bureau or a person authorised by DG, AAIB.

(3) The DG, AAIB may, for the purposes of any investigation including preliminary investigation under these rules, authorise any person or persons to take measures –

(a) to protect the evidence and shall include the preservation, by photographic or other means, of any evidence which might be removed, effaced, lost or destroyed;

(b) to maintain safe custody of the aircraft and its contents and shall include protection against further damage, access by unauthorised persons, pilfering and deterioration;

(c) for preservation of the aircraft for such a period as may be necessary for the purposes of an investigation.

(4) The owner of the aircraft or his nominated representative shall have the right to be present during any examination or other action taken under sub-Rules (1), (2) and (3):

Provided that the Aircraft Accident Investigation Bureau shall not be bound to postpone any action which it may consider necessary under this Rule by reason of the absence of the owner or his representative.

(5) If a request is received from the State of Registry, the State of the Operator, the State of Design or the State of Manufacture that the aircraft, its contents, and any other evidence remain undisturbed pending inspection by an accredited representative of the requesting

State, the Aircraft Accident Investigation Bureau shall take all necessary steps to comply with such request, so far as this is reasonably practicable and compatible with the proper conduct of the investigation subject to the provisions of sub-rRules (1) and (2).

(6) Subject to the provisions of sub-Rules (1), (2) and (3), the Aircraft Accident Investigation Bureau shall release custody of the aircraft, its contents or any parts thereof as soon as they are no longer required for investigation, to owner or operator or his representative, or any person or persons duly designated by the State of Registry or the State of the Operator, in case of foreign registered aircraft.

(7) For the purpose of sub-Rule (6), the Central Government shall facilitate access to the aircraft, its contents or any parts thereof:

Provided that, if the aircraft, its contents, or any parts thereof lie in an area within which the Aircraft Accident Investigation Bureau finds it impracticable to grant such access, the Central Government shall effect removal to a point where access can be given.

(8) The Aircraft Accident Investigation Bureau shall be the sole agency regarding the custody of the evidence collected during the investigation including the wreckage and recorders, and in case of requirement of access to such evidence by any other agency, DG, AAIB after being satisfied for requirement of such access may facilitate such access while retaining the custody thereof.

20. So, also as per Rule 8, Aircraft Accident Investigation Bureau is conferred with several powers and duties and the said Rule reads

thus:

8. Aircraft Accident Investigation Bureau.—(1) For the purposes of carrying out investigation into accidents, serious incidents and incidents referred to in sub- rules (1), (2) and (4) of rule 5, the Central Government shall set up a Bureau in the Ministry of Civil Aviation known as the Aircraft Accident Investigation Bureau of India and appoint such number of officers in the Aircraft Accident Investigation Bureau who are familiar with civil aircraft accident investigation procedures and other persons, as it deems fit from time to time.

(2) The Aircraft Accident Investigation Bureau shall be an attached office to Government of India, Ministry of Civil Aviation and the DG, AAIB shall report to Secretary, Ministry of Civil Aviation.

(3) The Aircraft Accident Investigation Bureau shall discharge the following functions, namely:-

(a) obtaining preliminary report under rule 9 from any person or persons authorised either under sub- rule (1) of rule 9 or under sub-rule (3) of rule 7;

(b) classification of occurrence and setting up investigation and in case of formal investigation, assisting the Central Government, under these rules;

(c) to facilitate the investigation and administrative work of the investigation whenever necessary;

(d) processing of the reports of investigation received by the Aircraft Accident Investigation Bureau, which includes –

(i) acceptance of report by DG, AAIB and making it public by DG, AAIB in a manner it deems fit;

(ii) forwarding of the final report, made public by the Central Government under sub-rule (2) of rule 14 or by Aircraft Accident Investigation Bureau, to the States as required under

Annex 13;

(iii) forwarding of the final report, made public by the Central Government or Aircraft Accident Investigation Bureau, to ICAO if the mass of the aircraft involved in accident or incident is more than 5,700 kg.

(e) to formulate safety recommendation on the basis of safety studies, including induction of new technology to enhance safety, conducted from time to time;

(f) to establish and maintain an accident and serious incident database for effective analysis of information on actual or potential safety deficiencies;

(g) to process obligations of the Central Government under Annex 13 to the Convention relating to International Civil Aviation signed at Chicago on the 7th day of December, 1944 as amended from time to time;

(h) to forward the recommendations made in investigation reports and safety studies to DG, CA and other regulatory authorities for their follow up and to obtain compliance of the same; and

(i) any other functions, which the Central Government may ask the Aircraft Accident Investigation Bureau to perform from time to time under these rules.

(4) The Aircraft Accident Investigation Bureau may, make procedures, not inconsistent with the provisions of the Act and the rules made thereunder to carry out the purposes of these rules and the functions referred to in sub-rule (3).

(5) In particular, and without prejudice to the generality of the foregoing power, such procedures may provide for all or any of the following matters, namely:—

(a) the persons required to notify the accidents and incidents;

(b) the notifications of accidents and serious incidents to

International Civil Aviation

Organisation and the States for participation in the investigation;

(c) the investigation of aircraft accidents and incidents;

(d) the format of report for investigation conducted under these Rules;

(e) any other matter subsidiary or incidental to aircraft accident and incident investigation.

21. That apart, Rules 9 and 10 deals with preliminary investigation and powers and duties of the investigator and they read thus:

9. Preliminary investigation.—(1) The DG, AAIB may authorise any person including an officer of the Aircraft Accident Investigation Bureau to conduct a preliminary investigation into an accident or incident and to submit a preliminary report to the Aircraft Accident Investigation Bureau in a specified format to assess the classification of the occurrence and the expertise needed for detailed investigation under rule 11, if considered expedient by the Aircraft Accident Investigation Bureau.

(2) The person authorized to conduct the preliminary investigation shall —

(a) have the powers and duties specified under rule 10; and

(b) have the access to examine or otherwise deal with the aircraft as provided under sub- Rule (3) of rule 7.

10. Powers and duties of Investigator.— (1) For the purposes of investigation of accidents and incidents an Investigator shall have power—

- (a) to require the attendance of any person, by summons under his hand, whom he thinks fit to call before him and examine for such purpose and to require answers or returns to any inquiries he thinks fit to make;
- (b) to require any such person to make and to sign a declaration regarding the true nature of the statements made by him;
- (c) to require and enforce the production of all books, paper, documents and any articles including but not limited to Flight Data Recorder, Cockpit Voice Recorder and Air Traffic Services Records which he may consider necessary for the investigation, and to retain any such books, papers, documents and any articles including but not limited to Flight Data Recorder, Cockpit Voice Recorder and Air Traffic Services Records for examination until completion of the investigation;
- (d) to have access to and examine any aircraft and its components involved in the accident or incident, the place where the accident or incident occurred or any other place, the entry upon and examination of which appears to the Investigator necessary for the purpose of the investigation.

(2) The Investigator shall be responsible for fair, impartial and judicious conduct of investigation based on relevant standard of Annex 13.

22. Rule 11 deals with the manner in which the investigation is to be carried out by the Aircraft Accident Investigation Bureau, and it reads thus:

11. Investigation by Aircraft Accident Investigation Bureau.-- (1) The DG,AAIB may appoint an Investigator-in-Charge and one or more Investigators to assist him, to hold an investigation into an

aircraft accident or a serious incident and such Investigator-in-Charge and Investigators shall have the same powers and duties as an Investigator has under Rule 10.

(2) The investigation shall be held in private.

(3) When a person other than an officer of the Government is appointed as Investigator by the DG, AAIB, he may be granted such fee and expenses as may be determined by the Aircraft Accident Investigation Bureau.

(4) Every person summoned by the Investigator-in-Charge as a witness in accordance with these rules shall be allowed such expenses as the Aircraft Accident Investigation Bureau may from time to time determine.

(5) The Investigator-in-Charge shall submit a Final Report to the Aircraft Accident Investigation Bureau in the format specified by the said Bureau based on relevant standards of Annex 13.

23. Rule 12 deals with the formal investigation and it reads thus:

12. Formal investigation.— Where it appears to the Central Government that it is expedient to hold a formal investigation of

an accident, it may, whether or not an investigation has been made under Rule 11, by order, direct a formal investigation to be held and with respect to any such formal investigation, the following provisions shall apply, namely:-

- (a) the Central Government shall appoint a competent person (hereinafter referred to as "the Court"), to hold the investigation, and may appoint one or more persons possessing legal, aeronautical, engineering, or other special knowledge to act as assessors, and one or more Investigators shall be appointed from Aircraft Accident Investigation Bureau as an assessor;
- (b) when a person other than an officer of the Government is appointed as a Court or assessor, he may be granted such fee and expenses as may be determined by the Central Government;
- (c) on or after the appointment of the Court, all other investigations ordered under these Rules shall be treated as closed and all relevant material on the subject shall be transferred to the Court;
- (d) the Court shall hold the investigation in open court in such manner and under such conditions as the Court may think fit for ascertaining the causes and circumstances of the accident and for enabling it to make the report hereinafter mentioned:

Provided that where the Court is of opinion that holding the investigation is likely --

- (i) to be prejudicial to the interests of any country; or

(ii) to jeopardize the personal safety of a person who is willing to make any statement or give evidence, the Court may, hold the proceedings in camera, the whole or part of the investigation;

(e) the Court shall have, for the purpose of the investigation, all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) and without prejudice to these powers the Court may -

(i) enter and inspect, or authorize any person to enter and inspect, any place or building, the entry or inspection whereof appears to the Court requisite for the purposes of the investigation; and

(ii) enforce the attendance of witnesses and compel the production of documents and material objects; and every person required by the Court to furnish any information shall be deemed to be legally bound to do so within the meaning of section 176 of the Indian Penal Code (45 of 1860);

(f) the assessors shall have the same powers of entry and inspection as the Court;

(g) every person attending as a witness before the Court shall be allowed such expenses as the Court may consider reasonable:

Provided that, in the case of the owner or hirer of any aircraft concerned in the accident and of any person in his employment or of any other person concerned in the accident, any such expenses may be disallowed if the Court, in its discretion, so directs for reasons to be recorded in writing;

(h) the Court after holding consultation on Draft Final Report with the States as required in Annex 13, shall submit the Final Report to the Central Government in the format specified by Aircraft

Accident Investigation Bureau and such report shall be forwarded to the said Bureau by the Central Government for processing as per sub-Rule (3) of Rule 8 and Rule 14;

(i) the assessors shall either sign the said report, with or without reservations, or state in writing their dissent therefrom and their reasons for such dissent, and such reservations or dissent and reasons, if any, shall be forwarded to the Central Government with the report.

Further procedures are prescribed in respect of the manner in which investigation is to be made, consultation and final report, reopening of investigation etc.

24. By discussing the above Rules, we intend to say that there is a clear cut procedure prescribed to deal with the investigation of an aircraft accident as per Rules, 2017. It is an admitted fact that immediately after the accident, in terms of Rules, 2017, the Aircraft Accident Investigation Bureau had appointed investigators to look into the matter. The Rules extracted above would make it clear that a structured procedure is contemplated with respect to the formulation of investigators and to tackle the situations to incorporate representatives as per the request of the stakeholders. Therefore, what we propose to say is that when there is a procedure prescribed

under law and the investigation is going on, we do not think, it is right on the part of a writ court to interfere with the same and order a parallel investigation by appointing a former Judge of the Supreme Court or of any High Court. True, the Central Government is vested with powers to conduct a formal investigation in accordance with the powers conferred under Rule 12 of Rules 2017, but we do not think that it is a mandatory requirement whereas the investigation by the AAIB under Rule 5 is a mandatory requirement. In short, we have no hesitation to say that the writ petition filed by the petitioner is a premature one, since the investigation is going on by the investigators appointed by appropriate statutory authority. The only contention of the petitioner with respect to the appointment of the investigators is that one of the members is not competent or a fit person due to some earlier incident. Now, in spite of making allegations, the said person is not made a party in the said writ petition and no documents are produced to substantiate the allegations. Moreover, the entire matter in respect of the investigation is under the control of the Government of India and the appropriate statutory authorities and if there are any shortcomings in the matter of enquiry, it is for the Government of India or the authorities to take appropriate decisions at the appropriate time.

25. That said, we are conscious of the fact that a writ of mandamus is not issued as a matter of course, but it is issued only on a finding that there are any wilful or deliberate acts in not complying with the statutory requirements, or has exceeded the statutory powers, or to prevent any authority from indulging in any proved illegalities or when there is delay in carrying out any public duty etc. The petitioner has not alleged any such incidents enabling this Court to step in at this stage of the statutory enquiry. We are also of the opinion that we are expected to exercise the discretion conferred under Article 226 of the Constitution of India consistent and in tune with the statutory provisions. We are also reminded of the precedents on this point and bearing in mind those principles, enunciated by judge made laws, we have no reluctance to hold that no substantive and objective circumstances are made out by the petitioner to issue a writ of mandamus. It is also well settled that the power of judicial review is conferred by the constitution of India to ensure that the rule of law prevailing in the country is observed and followed by the statutory authorities and the executive and is never intended to interject in an ongoing proceedings, and if that is done, we are afraid, we would be inviting to ourselves the true characteristics of a meddlesome-interloper. We are, therefore, of the view that the writ of

W.P.(C) No. 24216/2020

: 33:

mandamus sought for by the petitioner at this stage cannot be granted, because we are of the opinion that the investigation is in progress and it may take some time to complete the investigation. We are also of the opinion that the investigation sought for by the petitioner by directing the CBI to register an FIR is also a premature one, because if any criminality is involved in the air crash, it can only be identified by the Investigating team appointed as per Ext.P22 order of the AAIB.

26. Taking into account all the materials and the law, we have also no hesitation to hold that the petitioner has not made out any case to order an open enquiry by appointing retired Judges as is sought for by the petitioner.

Needless to say, the writ petition fails and accordingly, it is dismissed.

**S. MANIKUMAR,
CHIEF JUSTICE.**

**SHAJI P. CHALY,
JUDGE.**

Rv

APPENDIX

PETITIONER'S/S EXHIBITS:

| | |
|-------------|--|
| EXHIBIT P1 | COPY OF THE ORDER DATED 01/08/2016 BEFORE THE HIGH COURT OF BOMBAY IN PIL 86/2014. |
| EXHIBIT P2 | LIST OF MAJOR NON-COMPLIANCES CONCERNING PLANNING/ENGG. DIRECTORATE FOR 54 AIRPORTS ACROSS INDIA. |
| EXHIBIT P3 | COPY OF THE ORDER DATED 18/04/2018 OF THE HON'BLE HIGH COURT OF DELHI IN WPC 10862/2017 DIRECTING THE DGCA TO COMPLY WITH THE LAW AND COME OUT WITH A NEW FDTL REGULATION. |
| EXHIBIT P4 | COMPLAINT DATED 24/05/2018 REGISTERED WITH THE LODHI COLONY POLICE STATION BY THE PETITIONER. |
| EXHIBIT P5 | COPY OF THE E-MAIL DATED 24/05/2018 SENT BY THE PETITIONER TO RESPONDENT NOS. 1, 3 AND 4. |
| EXHIBIT P6 | COPY OF THE LETTER DATED 17/02/2011 WRITTEN BY THE MS. S.MANGALA TO THE CHAIRMAN OF THE APPELLATE COMMITTEE, MINISTRY OF CIVIL AVIATION. |
| EXHIBIT P7 | MINUTES OF MEETING DATED 29/04/2011 OF THE MEETING HELD IN THE OFFICE OF RESPONDENT NO.1. |
| EXHIBIT P8 | LETTER DATED 17/06/2011 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NOS.1 &3. |
| EXHIBIT P9 | LETTER DATED 06/07/2011 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NOS.1 & 3. |
| EXHIBIT P10 | LETTER DATED 28/03/2012 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NO.1. |
| EXHIBIT P11 | LETTER DATED 10/07/2012 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NO.1. |
| EXHIBIT P12 | LETTER DATED 06/11/2012 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NO.3. |
| EXHIBIT P13 | LETTER DATED 11/04/2013 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NO.1. |
| EXHIBIT P14 | LETTER DATED 28/04/2013 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NO.1 TO 3. |

| | |
|-------------|--|
| EXHIBIT P15 | LETTER DATED 10TH JULY 2013 WRITTEN BY CAPT. RANGANATHAN TO THE RESPONDENT NOS.1 AND 3. |
| EXHIBIT P16 | LETTER DATED 1 AUGUST 2011 WRITTEN BY JUSTICE (RETD.) V.R. KRISHNA IYER TO THE THEN PRIME MINISTER MR. MANMOHAN SINGH. |
| EXHIBIT P17 | ATR REPORTS OF CALICUT AIRPORT PRODUCED BY THE DGCA IN WPC 21085/2016 BEFORE THE HON'BLE HIGH COURT OF KERALA. |
| EXHIBIT P18 | ATR REPORTS OF CALICUT AIRPORT PRODUCED BY THE AAI IN WPC 21085/2016 BEFORE THE HON'BLE HIGH COURT OF KERALA. |
| EXHIBIT P19 | STATEMENT DATED 23RD AUGUST 2011 AND THEREAFTER GIVEN TO THE CBI BY AN EMPLOYEE OF THE AAI. |
| EXHIBIT P20 | AAI LETTER DATED 23RD JUNE 2016 STATING THAT WIDEBODY OPERATIONS AT CALICUT AIRPORT ENDANGERS SAFETY. |
| EXHIBIT P21 | E-MAIL OF THE PETITIONER DATED 6TH SEP. 2016 TO THE DGCA QUESTIONING WITHHOLDING OF CRUCIAL DOCUMENTS. |
| EXHIBIT P22 | ORDER DATED 13 AUGUST 2020 OF THE AAIB APPOINTING A PANEL TO INVESTIGATE CALICUT AIR CRASH. |
| EXHIBIT P23 | E-MAIL OF THE PETITIONER DATED 8TH AUGUST 2020 TO THE RESPONDENTS 1 TO 3 AND COPIED TO THE CIVIL AVIATION MINISTER SPECIFICALLY SEEMING CONSTITUTION OF COI. |
| EXHIBIT P24 | COMPLAINT DATED 13TH AUGUST, 2020 REGISTERED WITH THE KARIPUR POLICE STATION BY THE PETITIONER. |
| EXHIBIT P25 | E-MAIL OF THE PETITIONER DATED 3RD JUNE 2020 TO THE RESPONDENTS WARNING THEM OF THE OVERSHOOT SEASON IN INDIAN AVIATION. |
| EXHIBIT P26 | LIST OF PIL'S FILED BY THE PETITIONER. |