

Hanuman Laxman Aroskar vs. Union of India (Mopa Airport Case)

The judiciary in India, led by the Supreme Court of India (SC), operates at the intersection of public interest, political pressures, and social expectations. The apex court continuously negotiates such undercurrents and attempts to demonstrate ideal conduct for all levels of the judiciary to follow, including itself. This includes managing and balancing the varied expectations and interests of the society and economy and increasingly dealing with complex issues interlinking economics, environment, competition, trade, technology and allied fields.

The Shivshakti judgement noted that the law and economics interface is most relevant today as India is on the path of economic growth and development due to decades of effort. The judges made strong observations to initiate the discourse on economic analysis of law while adjudicating a sensitive economic matter, the consideration of such commentary by the judiciary in its decision-making still requires attention and adoption.

In the above background and context, this study attempts to understand the first-order direct economic impact of the select (five) judicial decisions of the SC and National Green Tribunal (NGT) on the economy and stakeholders. The study also aims to inform an evidence-based approach toward institutionalising comprehensive and balanced thinking in judicial decision-making.

Furthermore, the study intends to inform the human-centricity of economic development and environment sustainability and evaluate the best possible remedy with equal consideration to equity, environment and economy. It is purely an academic exercise and is nowhere intended to interfere with the decision-making process of the judiciary. This is merely an attempt to assess the economic impact of select decisions of the SC and the NGT.

Background

In 2015, the Government of Goa (GoG) received Environmental Clearance (EC) from the Union Ministry of Environment to develop a second international airport in Mopa, Goa, as the existing Dabolim airport in Goa was saturated. In 2017, the EC was first challenged before the NGT by Hanuman Laxman Aroskar and the

Federation of Rainbow Warriors, which was upheld by the Tribunal in 2018. The petitioners then appealed to the SC against the NGT order.

On March 29, 2019, SC suspended the EC, thereby the construction of Mopa airport, and ordered the Expert Appraisal Committee (EAC) to revisit the environmental concerns that the apex court highlighted.

The key ground to the EC challenge was the failure of GoG to disclose crucial facts in statutory Form-1. On this, Amitabh Kant, CEO of NITI Aayog, remarked that SC is treating the environment and economic development as binaries and stopping critically important projects such as Mopa airport can irreparably harm investor confidence and foreign investment.

In April 2019, EAC revisited the recommendations and laid out additional environmental safeguards and conditions, which were accepted by SC on January 16, 2020, withdrawing the suspension from EC.

About the Study

To understand the economic impact of the stoppage of Mopa airport construction in Goa, if any, on its project cost and timeline, including first-order impact on key stakeholders.

Impact on Project Cost and Time

Overrun: Due to discrete judicial restraints on the construction of Mopa airport, remobilisation of resources, and COVID-19 pandemic delays, the cost of the first phase of the airport increased from ₹1,900 crores to ₹2,615 crores, which is a 38 percent cost overrun. About 1,500 workers engaged at the project site could have suffered immediate job loss due to the suspension of construction work.

Due to such delays, GMR Goa International Airport Limited (GGIAL), the project concessionaire, also received an extension of 634 days, postponing the commissioning of the first phase from

September 2020-August 2022, a time overrun of 21 months. The airport is scheduled to be operationalised on August 15, 2022.

Impact on Financial Dimensions: Under the concession agreement with GoG, GGIAL is required to maintain a 70:30 debt to equity ratio towards financing the airport construction. For this, GGIAL secured a financial closure of ₹1330 crore of debt funding from Axis Bank, while the remaining ₹570 crore equity support was received from GMR Airport Limited (GAL), the holding company of GGIAL.

Due to cost overrun, the financial closure is estimated to go up to ₹1830.5 crore, further expanding bank's exposure to the project. Similarly, GGIAL may need to increase equity support from GAL by about ₹215 crores.

As per inputs received, the Engineering, Procurement and Construction contract value for Megawide Construction Corporation, the construction contractor for the project, may increase from ₹1377 crore to ₹1815 crore, which is a 32 percent increase in value due to price escalation of the relevant materials owing to the delay.

Conclusion

The delay in the construction of the Mopa airport and suspension of EC was avoidable had the GoG made all relevant and necessary disclosures in Form-1 as provided in EIA Notification, 2006. Thus, it is imperative to fix the accountability of agencies/officials involved in the EIA

process. An accountable, transparent and effective governance structure would reduce such avoidable litigations.

During the EC appraisal process and judicial challenge, the EAC and NGT failed to discover the concealment of facts by GoG. The shortcomings/loopholes in the appraisal process had a cascading effect on the outcome, including wastage of time, resources and capital.

Perhaps, the indifferent approach by some of the government officials in preparing the Form-1 led to varied judicial challenges, consequently leading to the suspension of the EC and delaying the construction of Mopa airport.

The SC remarkably recognised the economic significance of the airport project while showing a balanced approach to environment and development by deferring its decision to the expert advice of the EAC.

Thus, EIA Notification 2006 must be implemented in letter and spirit and loopholes should be plugged. Similarly, it is important to review the role of EAC to ensure their ability to appraise the projects' environmental facets critically. At the same time, NGT must engage in a critical review of merits.

Projects such as the Mopa airport involve numerous stakeholders and high capital with potential adverse economic impact. Thus, it is essential to record and address stakeholders' concerns on the project in a time-bound manner. Most importantly, SC must institutionalise a screening mechanism to prioritise the listing of cases with economic significance

to ensure expedited adjudication and preempt avoidable delays and economic losses, as in the Mopa airport case.

Recommendations

Inevitably, the discrete delays towards the construction of the Mopa airport, such as restraint to fell/cut trees by the NGT and EC suspension by the SC. Although facilitated by GoG's failure to disclose facts, it increased the cost of the first phase of the airport from ₹1900 crore to ₹2615 crore or a 38 percent cost overrun.

Similarly, the commissioning of the first phase of the airport was delayed by as much as 21 months, indicating a time overrun. GGIAL received an extension of 634 days to commission the first phase of the Mopa airport by August 15, 2022, as against the initial schedule of September 2020.

The delay is also estimated to increase the financial closure, as required under the concession agreement. The financial closure is estimated to increase from ₹1330 crore to ₹1830.5 crore. This increase in cost may also require GGIAL to increase its equity support from GAL.

Similarly, as per data inputs, the EPC contract is estimated to increase by as much as 32 percent from an initial value of ₹1377 crore to ₹1815 crore on price escalation. About 1500 workers engaged at the project site may have lost their jobs due to the suspension of construction work.

Importantly, even after the EAC revisited its recommendations within a month of the

SC directive, the matter was listed only in January 2020, keeping the EC suspended for about eight months. Therefore, the following recommendations have been drawn from the findings of the case:

1. **Fix accountability of**

agencies/officials involved in Mopa airport's environmental impact assessment process. The initiation of judicial proceedings against developmental projects stemmed from inefficient and inept bureaucracy and its processes, which concealed crucial information.

The rule of law requires a regime with effective, accountable, transparent institutions. This would facilitate a conflict-free process in the context of projects at the intersection of development and the environment.

Thus, the rule of law that imbibes accountability and transparency must be implemented and sustained to reduce litigation challenges and, if required, stand the test of scrutiny before the judicial bodies.

2. **Review of Environmental Impact**

Assessment Notification of 2006 to ensure its implementation in letter and spirit and plug any loopholes. Although the 2006 notification prescribed a comprehensive review process, the EC appraisal failed to consider crucial information in the Mopa airport case.

According to the SC, the 2006 notification embodies the developmental agenda of the country

and must comply with the norms for the protection of the environment and its complexities. Thus, it balances development and environment; hence, the 2006 notification attempts to bridge the gap between environment and development by deferring to EAC, which comprises environmental experts.

The 2006 notification is designed so that any process deficiency may have a cascading effect on the overall outcome. To this end, periodic review and evaluation of the implementation of processes of the 2006 notification are imperative.

3. **Review the role of agencies and tribunals such as EAC, NGT, etc., and ensure that they can**

critically appraise the projects, including environmental facts and concerns. Considering the comprehensiveness of the EC appraisal process, it requires substantial time, resources and capital. For other reasons, EAC is constituted to assess the information provided in Form1 and prepare a comprehensive ToR, which is then evaluated against the EIA report prepared by a regulatory body such as the pollution control board.

While EAC's appraisal is structured transparently, any leniency or oversight in evaluating the information could lead to avoidable judicial scrutiny and intervention that may stall projects of economic significance.

Similarly, NGT is an adjudicatory body with appellate jurisdiction over the grant of EC. Thus, any challenge to

EC must be accorded a critical review of merits. As the SC pointed out, “the processes of decisions are as crucial as the ultimate decision.”

4. **Institutionalise dispute resolution.**

Considering that in PPP projects, such as the Mopa airport, numerous stakeholders and high capital are involved. Thus, any dispute or concern a stakeholder may have regarding economic or environmental concerns must be adequately addressed.

To this end, an independent institution or committee of experts of diverse subject backgrounds must be set up to address any conflicting interests that may come to their notice during the project's development. This institution/ committee could also facilitate the EIA process as envisioned in the 2006 notification to remove bottlenecks and address any concerns or discrepancies associated with the project.

5. **Create a process within the judiciary/adjudicatory tribunals** for prompt hearing of projects of economic significance. The Mopa airport case was listed in January 2020, eight months after the EAC revisited

recommendations within a month of SC's judgment, thus causing an avoidable delay in restarting the construction. Considering that the Mopa airport has a significant cost of ₹2615 crore (revised cost), a screening mechanism could be formed within the SC that prioritises listing cases with such economic significance.

Importantly, the SC recognised the time sensitivity involved by directing the EAC to revisit the recommendation within a prescribed time. Yet, the apex court itself could not prioritise listing the case.

Overall, the Mopa airport matter is a landmark case study highlighting the bureaucratic inefficiency that failed to stand scrutiny by the apex court, including the failure of the comprehensive EC appraisal process and the critical review by EAC as envisioned in the 2006 notification, and even the NGT.

The core issue, i.e., the concealment of facts, that led the SC to suspend EC was avoidable, yet the Mopa airport has an estimated 38 percent cost overrun and 21 months' time overrun. In contrast, an opportunity to spur economic and tourism growth for the state of Goa has been delayed.

This Policy Brief has been prepared by Shiksha Srivastava and published as part of the project entitled, 'Economic Impact Analysis of Supreme Court Judgments' undertaken with the support of NITI Aayog.

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