

IN THE HIGH COURT OF KERALA AT ERNAKULAM

W.P.(C) OF 2020

Yeshwanth Shenoy

.....PETITIONER

Versus

1. The Union of India,
Through the Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhavan,
Safdarjung Airport, Aurbindo Marg,
New Delhi 110 003.
2. Airport Authority of India
Through the Chairman,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi-110003.
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 400029
5. Aircraft Accident Investigation Bureau
Through the Director General,
O/o Ministry of Civil 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,
Mallapuram, Kerala-400086.
7. The Central Bureau of Investigation,
Through its S.P, ACB
Kathrikkadava, P.O.Kaloor,
Ernakulam - 682017

.....RESPONDENTS

MEMORANDUM OF WRIT PETITION FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA

All notices and processes to petitioner and the Respondents may be served on the address shown above.

STATEMENT OF FACTS

1. The Petitioner is an advocate enrolled in the rolls of the Bar Council of Kerala in 2001 and has his practice primarily out of Mumbai / Delhi. The Petitioner is currently residing in Goa and the address mentioned in the Cause Title is his permanent residential address. The Respondent No.1 is the Ministry of Civil Aviation that has supervisory control over the Respondent Nos.2, 3, 4 & 5. The Respondent No.2 is the Airports Authority of India which owns and/or operates various airports across the country and also provides the Air Traffic Management (ATM) facilities to all airports across the country and in this case owns and operates the Calicut International Airport. The Respondent No.3 is the Aviation Regulator. The Respondent No.4 is the Air Operator fully owned and controlled by the Government of India. The Respondent No.5 is the Aircraft Accident Investigation Bureau which was supposed to be an independent Aircraft Accident Investigation body as required by International norms. The Respondent No.6 is the State of Kerala represented by the Station House officer, Karipur Police Station in whose jurisdiction the crash occurred and the Respondent No.7 is the Central Bureau of Investigation which is authorised to investigate corruption issues involving Central Government Officials.
2. After the unfortunate crash of Air India Express flight IX 812 on 22 May 2010, the Petitioner baffled by the high number of fatalities after a plane lands in an airport. Overshooting runways is the most common type of air accidents, but nowhere in the world did such an accident cause such high number of fatalities. After years of research in the maze of aviation regulations and operations, the Petitioner found that there was criminal culpability on part of Respondent No.2, with full backing of the Respondent Nos. 1 & 3. The Petitioner dwelled deeper and found that the Respondent No.1 had serious conflicts. It had overall control over Airports Authority of India (AAI), Air India (AI) [both have commercial interests] and the Directorate General of Civil Aviation (DGCA), which was the Regulator.

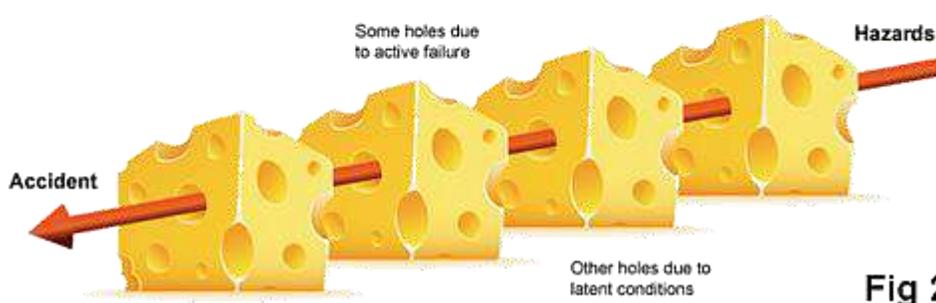
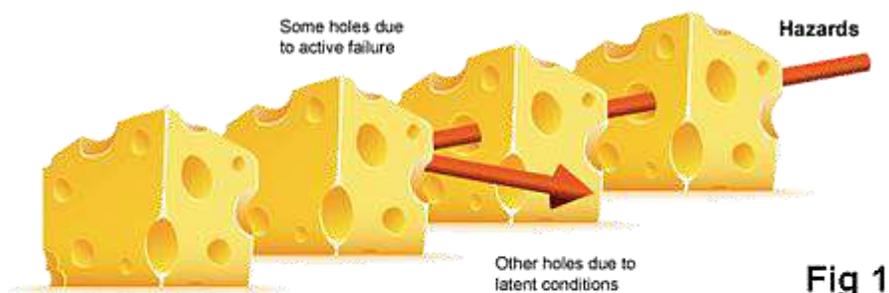
3. The Petitioner thereafter took up the issue of aviation safety in various High Courts. The Petitioner's PIL's in these various High Courts had one thing in common. The Respondents admit to the violation on Affidavits! The Petitioner has also filed three WP in this Hon'ble Court and one was disposed while the other two are pending out of which one is more specific to Calicut airport issues. W.P (C) 21085 of 2016 is pending and the Respondents have failed to comply with the orders passed by the Bench headed by the then Chief Justice Mohan Shantanagoudar. The Petitioner was in Mumbai and on the advice of Justice K.T.Shankaran had engaged an advocate in this Hon'ble High Court to deal with procedural aspects and a reply was sent by the Petitioner notarising it at Mumbai. The Petitioner was told that there was some issue regarding the format with the registry. The Petitioner tried to follow up for a while, but was unable to move through the maze and gave up. The reason the Petitioner argues the matters personally is because Aviation Laws are highly technical and no amount of briefing could prepare an advocate to argue such matters. It requires a thorough study and in spite of Petitioners own research over a decade, the Petitioner is still learning the intricacies of Aviation Law.
4. The Petitioner humbly submits from his experience that the first hurdle to cross in a PIL is normally the 'pre conceived notions' surrounding the PIL. The first attack in the PIL's filed by the Petitioner is a personal attack on the Petitioner with allegations of motives. The Respondents have several times indulged in it unabashedly and the Petitioner fully expects the same especially from the present Director General of the Respondent No.3 who has taken upon himself the task of 'destroying the credibility of the Petitioner' rather than act on the thousands of e-mails the Petitioner has sent him pointing out specific issues that concerns Aviation safety and issues that endangers human lives.
5. The Petitioner is well aware of the recent debate among the stalwarts of the legal profession on PIL's and therefore, brings the attention of the Hon'ble Courts to the order of the Bombay High Court which appreciated the work of the Petitioner and even awarded an amount of Rs.10,000/- from the Maharashtra State Legal Services Authority to meet the expenses of litigation. A copy of the said order is annexed to this Petition as **Exhibit P1**.
6. The Petitioner intends 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 AAIB investigation and the need for CBI to investigate the criminality and why Calicut airport needs to be shut down with immediate effect until the airport complies with Air Safety Regulations.

7. Aviation is a very complicated operation and there are several aspects that has to work in sync for safe operations. There is a movement of aircrafts 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 Organisation (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. 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. The recent crash in Pakistan has seen not just Pakistan Registered Aircrafts banned from European and American Airspace but pilots licenced by Pakistani Authorities lost their jobs as it became unacceptable worldwide.
8. The Petitioner submits that there are different components of Aviation. The Aircraft itself (its design, airworthiness and Maintenance), the people involved to operate the Aircraft (the Aircraft Maintenance Engineer, the Pilots and the Cabin Crew), the Air Traffic Control which includes equipment as well as personnel operating those instruments, the Airport (its design and the personnel involved). No air accident happens because of failure of one of the component or for one reason, it happens because of multiple failures. In case of Mangalore & Calicut, the issues related to the Airport and its design were pointed out repeatedly before the actual accident and the Airport officials ignored to take any corrective measures which was willful and deliberate. 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 Respondent Nos. 1 to 4. The Respondent No.2 has to mandatorily conduct Surveillance Audits and the Respondent No.3 had to conduct safety audits and these were either not

conducted or the lapses detected were not rectified in accordance with Air Regulations.

9. The Court of Inquiry (COI) appointed by the Respondent No.1 resulted in a report that was described by Capt. Mohan Ranganathan, a member of the Civil Aviation Safety Assessment Council (CASAC) as “A Well Massaged Orchestrated Littany of Lies. The Calicut crash is a standing testimony to the fact that the COI at Mangalore was ineffective as they were not just able to prevent another crash but they couldn't prevent a crash that has too much of similarities with Mangalore. The Petitioner is has approached this Hon'ble Court to ensure that 'we the people' do not make the same mistake we did with the COI, Mangalore by entrusting it with our lives.
10. The Swiss cheese model is used to explain accident causation in 'Aviation Safety' where each of the component is represented by a cheese slice which has holes (or shortcomings) and when the holes align itself, an accident is caused.



The Swiss cheese model of accident causation illustrates that, although many layers of defense lie between hazards and accidents, there are flaws in each layer that, if aligned, can allow the accident to occur.

11. The Petitioner will now give a glimpse of the critical state of Aviation Safety by addressing each of the cheese slices. The Petitioner knows that a picture speaks a thousand words and therefore will use pictures to explain violations.

A. Airports, its design (Annex 14, Volume 1 of ICAO)

Annex 14, Volume 1 contains Standards and Recommended Practices (specifications) that prescribe the physical characteristics and obstacle limitation surfaces to be provided for at aerodromes, and certain facilities and technical services normally provided at an aerodrome. It also contains specifications dealing with obstacles outside those limitation surfaces. Once the Respondent No.3 grants a license to an Airport, that document is a certification to authorities worldwide that it complies with Annex 14. Volume 1 Standards. Any deviation from standards need to be declared and this information is published in Airport Information Publications (AIP's). The Respondent No.2 withholds such information or indulges in giving false information increasing the risk to operations. In Petitions filed by the Petitioner in Mumbai and Delhi, the Respondent No.2 & 3 have admitted to gross violations. Mumbai has 469 obstacles only in the APPROACH path (the restricted zone is a 20 km radius of the airport and there could be a few thousand violations), Delhi has reported 369 obstacles. Obstacles are obstruction to free movement of Aircrafts. Such violations are also around Chennai, Thiruvananthapuram (Documented in W.P.(C) 891/2018 which is disposed off), Surat, Kolkatta and many other airports. These obstacles are not the only violations. The Petitioner produces the data for Airports across India and these 'Major Non-Compliances are concerning the Planning / Engineering Directorate only'. A copy of the list prepared by the Respondent No.2 as on 31 March 2012 is produced and marked as **Exhibit P2**.

B. Aircraft Design, airworthiness and Maintenance

Design Issue: The story of Boeing 737MAX is well known to the world. In India, SpiceJet and Jet Airways had a few MAX aircrafts it operated. Soon after the Lion Air crash, the Petitioner wrote to the Respondent No.3 to look into this aspect and as usual they ignored the warning of the Petitioner. When Ethiopian happened, the world started grounding MAX and India was one of the last ones to do so. Ethiopian could have been an Indian aircraft any day, but the DGCA didn't find it necessary to take an independent call for itself. MAX is now an issue that the Respondent No.3 can use to arm twist the American Regulators.

Airworthiness issue: The story of Pratt & Whitney (P&W) Engines on the Airbus A320 neo is well known. There were an unusual number of issues with these engines reported to the Respondent No.2. However, it refused to ground these aircrafts fitted with the P&W Engines and only after EASA grounded the Aircrafts fitted with those engines. In India, Indigo and Go Air used these engines and even to this date, the Respondent is playing with the lives of people by repeatedly extending the date within which these Engines are to be replaced.

Maintenance: The Maintenance of Aircrafts in India is deplorable, both for scheduled and non-scheduled air operators. As regards, the Scheduled operations are concerned, some of it is dealt with in the explanation of the Aircraft Maintenance Engineers (AME) personnel. As regards the non-scheduled air operators who go to the DGCA approved Maintenance & Repair Organisation (MRO), Ghatkoper crash is the best example. The Aircraft that was written off as scrap was repaired and was flown and the Respondent No.2 says that it was on a 'test flight with no certificate of airworthiness'. A test flight could have been approved by the Director General of the Respondent No.3 only and the Respondent No.5 in its sham investigation has not found violations of Air Regulations either by the Regulator DGCA or the operator or the MRO. The Respondent No.5 probably want the people to believe that the pilots, pushed in two AME's and took off for a pleasure flight. In fact, there were serious allegations against the MRO Indamer Aviation and the Respondent No.3 had treated several complaints against the company with kids gloves because a former Civil Aviation minister was holding 50% of its shares and a former DG, DGCA was the director of the company. Instead of taking away the licence of the MRO, the Respondent No.3 suspended the licence of a few employees who continued in the firm and exploited the other engineers who had the licence.

C. Aviation Personnel

Aircraft Maintenance Engineers (AME): These are specialized Engineers who have different type of licences issued to them based on their skillset like airframes, avionics etc. Unfortunately, even if there are technical courses imparting the specialized skills for Aircraft repairs, in India such centers pop at every place and these are certification courses (very recently some tie ups have ended up in degree courses). Otherwise, after the certification course

these persons write a DGCA exam and if they pass they get the licence. If they do not manage to pass the DGCA exams it is easily a waste of 3-5 years of their life without even having a degree at hand. With the expansion of Aviation, there was an increased need for AME's but these engineers were a cost center for Air Operators and they lobbied and introduced a concept called Cat A Licences. These were used in Europe where the AME courses are normally run by Air operators and the students there get hands on experience. The DGCA introduced this Cat A licences and today most airlines use Cat A licence holders and keep the B & C type engineers only at major stations. This has led to considerable degradation of Maintenance standards and this is a ticking time bomb that will explode in a decade. Just like the crew, the AME also are fatigued and they have been asking for Duty time Limitations and the DGCA has not complied with the recommendations of the Mangalore COI which directed it to introduce DTL to AME's. The DGCA came out with an Advisory Circular that is not worth the paper on which it is printed and this issue of Cat A along with Fatigue will contribute to an air crash in the near future. This act endangers not just the lives of passengers but people on the ground. A picture will explain the dangers of what has been explained here.



The above picture is of a young technician who was found dead while at work at Kolkatta airport. This person would not have died had the Regulations been followed. A technician is not authorised to do maintenance / repair work without supervision. The fact that this person died exposes the fact that the aircrafts are repaired / maintained by persons not authorised to do and that too without supervision. This largely increases the risk to aircraft due to faulty maintenance work and this risk is directly on the Passengers who are unaware about such violations of law. The Respondent No.3 has not taken any strong action against Spicejet except the namesake show cause notices to 'individuals' as against a company that has a policy that pushes the individuals to cut corners in safety. The Petitioner is aware of the maintenance issues that plague most airlines that operate in India. The data relating to maintenance was also manipulated and the same is in public domain as news items. The maintenance logs are manipulated and aircrafts are released to service without actual checks. A serious incident had come to light at Indore with the now defunct Jet Airways where the AME was resting at his home and the technician would forge his signature and release the aircraft to service!

Pilots / cockpit Crew : The minimum qualification to be a pilot is a 10+2 and in many foreign countries even that is not required. But unlike foreign countries, people opt flying as a career and therefore after 10+2 many join the 'sham' flying schools (Begumpet is the most famous spot in India, the lesser said about the training schools, the better) and manage a licence and it would easily cost upwards of Rs. 1 crore. The Petitioner asserts that there are always exceptions to the General Rule and there are highly qualified pilots and very good training schools, but what is being stated is the general state of affairs. At a very young age, many join commercial airlines first with an intent to recover the money spent and once this is through their lifestyle naturally is on the higher side and once they get used to it, there is pressure to continue this lifestyle. Earlier pilots would clock about 500-600 hours a year, but the regulations allowed 1000 hours and so most pilots clock 1000 hours a year and in a span of 5 years they already have 5000 hours. The command too comes easily. But in all this, the impact on the human body goes unaddressed. Flying is a strenuous work and requires a very high level of discipline. Unfortunately, discipline cannot be imbibed in these young

minds like the thorough training of a defence personnel does. A quick glance at the newspapers would show how pilots die of heart attacks in their 20's. The issue of 'Fatigue' is addressed in many accident / incident reports. The COI in Mangalore recommended a relook at the Flight Duty Time Limitations (FDTL) and the then secretary of the Respondent No. 1 put in a lot of work. However, once the public forgot Mangalore, the Air operators started violating FDTL norms with the willful and deliberate involvement of the Respondent No.1 & 3. Pilots is the largest cost center for the Air Operators. The Petitioner took them to the High Court of Delhi and exposed these violations. The High Court of Delhi accepted the contentions of the Petitioner and directed the DGCA to come with a new FDTL Regulation. A copy of the said order is annexed and marked to this Petition as **Exhibit- P3**. However, without any scientific study, the Respondent No.3 came out with an even more dangerous FDTL Regulations and has now come out with another draft FDTL regulation which it intends to implement from December 2020. The Petitioner states that if this FDTL is implemented, Air crashes would be a monthly affair. The Pilots do not stand up to fight these Regulations because all they are worried about is a Job. In the beginning it was about repaying educational loans, later it is to maintain a lifestyle and pay big EMI's and now with Covid 19 killing aviation sector worldwide, the pilots are holding on to their dear jobs and do not even put the least of the resistance to such draconian Regulation that they know will kill them ultimately. The Petitioner had filed a police complaint at the Lodhi Colony police station at Delhi on 24 May 2018 and the police has not bothered to even register an FIR. A copy of the police complaint is annexed and marked to this Petition as **Exhibit – P4**. The Petitioner wrote a letter to the Respondent No.1 & 3 and warned them against the misuse of variations, extensions and exemptions. A copy of the said e-mail dated 24 May 2018 is annexed and marked to this Petition as **Exhibit – P5**.

Cabin Crew : The idea of a passenger as regards the cabin crew is that of one who 'serves your meals and drinks'. However, the cabin crew in an aircraft is to ensure safety and evacuation. The minimum requirement of cabin crew for each aircraft type is based on the safety requirement. The service they conduct is an 'extra work' which adds to their fatigue. Evidence shows that in any crash, if the Cabin Crew survives, there is a higher

possibility of saving passenger lives. The manner in which FDTL Regulations applicable to Cabin Crew is violated is beyond imagination. The Petitioner personally have seen cabin crew unable to stand at the end of their strenuous duties and yet the Respondent No.1 & 3 have done nothing to ensure compliance with regulations. In fact, for extensions, unless each of the crew member agree to an extension, the Pilot cannot seek extension. However, in the real world, what matters is the Pilot's decision and the cabin crew simply signs without the least resistance. There are a few cabin crew who have stood up to fight, but such persons are terminated and these people have a long battle ahead of them in the legal systems. One example of such a battle is that of Mr.K.V.G.Rao who has filed several criminal complaints against Air India.

D. Air Navigation Services:

The Air traffic control officers (ATCO) play a very crucial role in ensuring safety. In the event of an instrument failure in the cockpit, the ATCO's become the eyes and ears of the pilots and play a crucial role in guiding an aircraft to land safely. This work of the ATCO's is also very strenuous. For the proper performance of their duty, they heavily rely on various equipment, many of which malfunction. The ATC Guild has written several letters to the Respondent No.2 on the issue, but none of them have been addressed. They too have duty time limitations but seldom complied with. The Petitioner recalls a conversation with the Airport Director of the Mangalore Airport in the aftermath of the Mangalore Air crash who asked the Petitioner if he should get an ATCO to manage the airport by extending his duties or cite lack of personnel and shut down the airport. The Petitioner asserted that the question was a no brainer and he should shut the airport instead of violating the norms, he looked at the Petitioner as if the Petitioner was from a different planet. Unfortunately, most employees are working with an intent to climb the corporate ladder than do things correctly. There are many who have stood up and have focused on compliance with norms. The Respondent Nos. 1, 2, 3 & 4 has over a period of time systematically sidelined and eliminated such persons and filled itself with highly incompetent and unprofessional people at the top. When that happens, crashes like that in Mangalore and Calicut is a certainty. ATCO officers do other duties like giving height approvals for buildings in the restricted zone of 20 kms. Ms.Mangala Narasimhan is one

such upright, bold and honest officers who refused to sign a letter even when the Respondent Nos.1 to 3 forced her. The Letter she wrote to the Respondent Nos. 1 to 3 is one of the finest one seen by the Petitioner in his career as an Advocate. A copy of the letter dated 17 February 2011 is annexed and Marked as **Exhibit P6**. The Respondents had to sweat it out to come out of it and they had a joint meeting to recommend a new safety procedure which to this date has not been implemented at Mumbai Airport and the same continues to endanger lives of people on an everyday basis because the concerned building is just 600 mtrs from the end of the main runway or just 6 sec from take-off. A copy of the minutes of meeting held on 29 April 2011 is annexed and marked as **Exhibit P7**. She had to pay a very huge price for this and that was with her Job itself. Her husband is also an honest officer and he too was suspended on frivolous grounds by the Respondent No.2. The Petitioner has not been in touch with them for the last two years and is unaware if he is under suspension or has been terminated too. The issue with such actions of the Respondent No.2 is not limited to the individual concerned because it sends a message to all other people to quietly work with their heads down and close their eyes to gross violations of law. The Air Traffic Management is a ticking timebomb that is set to explode because the Respondent No.2 is filled with unprofessional and incompetent persons at the Top. Another example is of an officer who did not give permission for expansion of Runway at Surat. The then chairman of the Respondent No.2 over ruled this decision without any technical expertise on the Subject matter. The runway was extended by 630 mtrs at a huge cost to exchequer only for the Threshold to be displaced by 625 mtrs! For this decision in ensuring safety, this officer was denied his rightful promotion and another officer with an 'unsafe record' was promoted in his place.

12. The Petitioner respectfully submits that Para 11 gives a glimpse of the critical state of Aviation Safety in India. Every component in Aviation is a ticking timebomb. What is submitted there is just the tip of the iceberg that brought the mighty unsinkable Titanic down on its first voyage. The Petitioner have not put the news paper clippings and has avoided it to ensure there are no allegations that the Petition is based on newspaper reports! The Petitioner has over 10,000 pages of the documents of the Respondent No.1 to 4 and this is spread at various locations in Delhi, Mumbai, Bangalore, Chennai and

Ernakulam. Because of the constraints brought about by Covid 19 and because of the limited nature of relief's sought, the Petitioner has decided not to pull them out and make this petition bulky. This glimpse of the state of Aviation Safety is given only for this Hon'ble Court to understand that the cheese slices in Indian Aviation is full of holes and alignment is not going to be a rare incident to occur only once in a decade. The Petitioner asserts that Calicut is just going to be the start of a series and unlike the last decade, Indian aviation will not have to wait for a decade for the next air crash.

13. The Petitioner respectfully submits that Calicut was waiting to happen and this was identified soon after the Mangalore Air crash. The Table top airports came into limelight after the Mangalore Air crash. The Respondent No.1 had formed the Civil Aviation Safety Advisory Council (CASAC) to advice measures to be taken to ensure Aviation Safety. Capt.Mohan Ranganathan, an accomplished pilot with over 35,000 hours of flying was a member of the same. Capt.Ranganathan was assigned the task of inspecting the Mangalore and the Calicut Airports.
14. Capt. Ranganathan in his capacity as a CASAC member wrote numerous letters to the Respondent No.1 to 3, each one specific to Calicut airport and these Respondents not just ignored, but willfully and deliberately colluded to violate Air Regulations. Capt. Ranganathan wrote the following letters:
 - (i) Letter dated 17 June 2011 to the Respondent Nos.1 & 3 titled "Calicut Runway and use of Runway 10 for landing", a copy of this letter is annexed as **Exhibit P8**.
 - (ii) Letter dated 6 July 2011 to the Respondent Nos.1 & 3, a copy of this letter is annexed as **Exhibit P9**
 - (iii) Letter dated 28 March 2012 to the Respondent No.1 titled "Inspection Report of Mangalore & Calicut", a copy of this letter is annexed as **Exhibit P10**
 - (iv) Letter dated 10 July 2012 to the Respondent Nos.1 & 3 titled "Unsafe Operations at Calicut", a copy of this letter is annexed as **Exhibit P11**
 - (v) Letter dated 6 November 2012 to the Respondent No. 3 titled "Safety of Passengers at Mangalore Airport", a copy of this letter is annexed as **Exhibit P12**

- (vi) Letter dated 11 April 2013 to the Respondent No.1 titled “Implementations of recommendations of COI Reports, Functions of AAIB”, a copy of this letter is annexed as **Exhibit P13**
 - (vii) Letter dated 28 April 2013 to the Respondent Nos.1 & 3 titled “Calicut Runway and use of Runway 10 for landing”, a copy of this letter is annexed as **Exhibit P14**
 - (viii) Letter dated 10 July 2013 to the Respondent Nos.1 & 3 titled “Unsafe Operations at Calicut”, a copy of this letter is annexed as **Exhibit P15**
15. The Petitioner states that while working along with Capt.Ranganathan, the Petitioner was surprised to know that he was the nephew of the legendary Justice V.R.Krishna Iyer. Justice Krishna Iyer was deeply disturbed by the State of Aviation Safety and had written numerous e-mails / letters to the then Prime Minister and the Chief Justice of India. A copy of the e-mail sent by the legendary magician of words is annexed to this Petition and is marked as **Exhibit P16**.
16. The Petitioner had approached this Hon’ble Court in W.P.(C) 21085/2016 which is still pending in this Hon’ble Court. By an order dated 23 November 2016, this Hon’ble Court had ordered the Respondent No.2 & 3 to produce the Safety audit reports and these respondents are yet to comply with this order. The compliance record of the Respondents is consistent with both court orders as well as Air Safety Regulations! Instead of the Safety Audit Reports the Respondent Nos. 2 & 3 have produced the Action Taken Reports (ATR’s). These ATR’s give a glimpse of what was the state of Calicut Airport and its Runways. A copy of the ATR’s related to the DGCA audit is annexed and marked as **Exhibit P17**. A copy of the ATR’s related to the audit of Respondent No.2 is annexed and marked as **Exhibit P18**.
17. The Petitioner points out that Corruption is so rampant with the Respondent No.1 to 4. The Safety record on papers and in reality, are the two poles apart. Since these are restricted zones there is no way an ‘outsider’ can interfere. However, there are many honest officers within these organization who stand up and there was one such person who had complained to the CBI. His statements were recorded by the CBI, but it is not known to the Petitioner if the CBI registered a case or not. A copy of the statement made to the CBI by an employee of the Respondent No.2 is annexed and marked as **Exhibit P19**. In his statement it is clearly stated by this employee that non compliances and

violations can lead to major air crash. The Petitioner has never met this person or know the whereabouts of this person, but these documents were sent to the Petitioner in 2013 when the Petitioner was actively working on aviation issues.

18. The Petitioner asserts that the Calicut airport conforms only to Code 4C classification which prohibits wide-body aircraft that requires 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. On 1st May 2015, the then DGCA, M.Sathiavathy, cancelled the permission for Wide-body aircraft to operate to and from Calicut airport. However, the current DGCA, Shri Arun Kumar, reissued the permission for wide-body aircraft operation from Calicut.
19. In July 2019, the DGCA safety audit had identified several safety deficiencies at Calicut. There were two significant findings - excessive rubber deposits on the runway and cracks in the runway. This should have opened their eyes 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 DGCA renewed the license of Calicut airport from mid-2019 to October 2021.
20. After this unfortunate crash that killed 19 innocent souls, the Respondent No.3 is again restricting the wide body operations. This convenience with which the Respondent No.3 changes the Code is a standing testimony to the fact that the Respondent No.3 is not led by Rule of Law but his own whims and fancies. The Petitioner points that the Respondent No.2 in 2016 had categorically stated that Wide Body operations at Calicut would endanger safety. A copy of the letter issued by the Respondent No.2 on 23 June 2016 is annexed and marked as **Exhibit P20**.
21. The Petitioner states that the Respondent Nos.1 to 4 operates in such a way that it is full of conflicts and this results in complete failure of the 'checks & balances' system that ought to have identified such gross lapses in safety parameters. The DG of the DGCA is on the Board of the AAI. The Jt.Secretary of the Respondent No.1 heads the Appellate Committee for Height Clearances (ACHC) and the Jt. DG of the DGCA and a top official from ANS of the AAI is also a part. Under the Aircraft (Demolition of obstructions caused by Buildings & Trees) Rules, 1994, it is the Jt.DG who

has to pass demolition orders for illegal heights. On the one hand, this officer grants additional height and on the other he has to order demolitions. The Jt.Secretary heading the ACHC is also the Chief Vigilance officer of the Aviation Ministry and this takes away any possibility of going after erring and corrupt officials. The ACHC is a money spinner and therefore the Respondent No.1 to 3 are a part of it to share the loot. The ACHC is also the biggest violator of Air Regulation and endangers air space converting it into a mine field for aircrafts. The Petitioner states that the worldwide norm for I.H.S is 45 mtrs plus Aerodrome Elevation and India is the only country where the ACHC single handedly made it into 90 Mtrs plus Aerodrome Elevation and has managed to even violate this norm that it set for itself. This deviation has not been declared to the ICAO and the Reputation of our Nation is at stake as it changes the minima and does not inform the international community. The Vigilance functions to silence the honest officers and petty offenders and has no history of pulling anyone at a higher level.

22. The Petitioner states that unprofessional and incompetent persons head crucial departments. Even the head of the DGCA and the chairman of AAI are IAS officers who know nothing about Aviation and claim to be sitting in the position after drawing knowledge from their experience. However, when it comes to accepting the same logic for the 'expertise' of the Petitioner, these officers are unable to digest that reasoning! If the top is manned by the ignorant and when the incompetent have crawled their way to important positions, we are doomed. If any proof is required to prove that corruption kills, one has to just look at how Aviation is run in this country. This would be the right time to seek the relief of having a technical person to head the DGCA and the AAI, but the Petitioner is not seeking those relief because it is a subject for an altogether separate PIL and specific averments to that effect needs to be made. As stated earlier, this Petition seeks some urgent immediate reliefs on which the future of Indian Aviation would hang. The Petitioner states that the Respondent Nos. 1 to 4 deny 'information' that would have helped the Petitioner to bring out more glaring lapses in Aviation Safety. On 6 September 2016, the Petitioner had written to the officials pointing out the fact that in addition to the violation of Aviation Safety, they were also with holding critical information that could have helped the Petitioner to identify

the lapses and flag them. A copy of the e-mail dated 6 September 2016 is annexed and marked as **Exhibit P21**.

23. The various PIL's filed by the Petitioner across the Country was a desperate attempt of the Petitioner to avoid an air crash. Despite the best efforts of the Petitioner, the fears of the Petitioner came true on 7 August 2020 when another Boeing crashed into the Calicut Airport killing 19 people. This PIL is being filed to ensure larger tragedy doesn't strike Indian Aviation again. In addition to the PIL's, the Petitioner has sent numerous e-mails to the Respondent Nos. 1 to 4. The Petitioner states that this Petition is the last-ditch effort from the Petitioner to ensure safety and save the Indian Aviation from a certain catastrophe. The Petitioner again reiterates that the outcome of this PIL will not affect the Petitioner in any way but it will directly impact the life of millions of people in India and outside.
24. The Petitioner states that every Air Accident that results in loss of life immediately triggers two distinct investigation. One is the Criminal Investigation which is intended to apportion blame on any person who had a role in it and the second is an investigation by the Aviation specialists which is intended to avoid a similar accident or an incident in future.
25. As regards the Inquiry by the Aviation specialists the Government of India had recently formulated the Aircraft (Investigation of Accidents and Incidents) Rules, 2017 (hereinafter the 'Rules 2017'). Earlier, the Directorate General of Civil Aviation (DGCA) used to investigate. The idea of the Regulator itself becoming the investigator was found inappropriate and conflicting by the International Civil Aviation Organisation (ICAO) during its Audits. Therefore, around 2012, the Government of India finally created the Respondent No.5 organization on papers and peppered it with staff on deputation from DGCA. In 2017, the Government brought out the Rules, but the AAIB continues to be an organisation on paper without either an appropriate office, staff or any other facilities that is required for the complex investigation of Air Accidents. The AAIB is nothing but an eye wash formula intended to fool the International Community. In the new Digital India, the only information available on AAIB makes it clear that it is an orphan which is surviving only because it was born. However, it has now started lending its name on a few investigation reports. The Petitioner had filed a PIL in the High Court of Bombay for a COI in the Ghatkoper Crash. However, that is still pending and

the AAIB has released the final investigation report. The AAIB has tampered with evidence, planted evidence to suit its pre concluded conclusions and the same has been brought to the attention of the Respondent No.1 by Capt.Amit Singh, who is a fellow of the Royal Aeronautical Society. The Petitioner intended to file criminal case against the Respondent No.5 and its investigators but unfortunately the Covid 19 froze the normal life in India.

26. As regards the inquiry by the Aviation experts, the AAIB has appointed the panel of officers. A copy of the order dated 13 August 2020 is annexed and marked as **Exhibit P22**. However, the Petitioner is certain that these investigators, however professionally competent they are, will not be able to be impartial and independent and will lack the courage to even take on record evidence against their bosses. The DG of the DGCA is on record blaming the pilots and the Petitioner asserts that the officials involved include the Secretary, Ministry of Civil Aviation, the Chairman, AAI and the DG of the DGCA, each of whom are IAS officials and are heading the top positions and no investigator will ever have the courage of investigating a trail leading to any of them. Moreover, the investigation by the AAIB is a closed one according to the Rules while the 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. The Petitioner has already written to the Minister for Civil Aviation requesting a Court of Inquiry. A copy of the said e-mail is annexed and marked as **Exhibit-P23**.
27. The Petitioner states that the Petitioner have no issues with the Panel of officers appointed except the participation of Mr.Jasbir Singh Larhga. This particular officer was the investigating officer of the Ghatkoper Air crash which has been thoroughly compromised and this officer has not just tampered with evidence by planted evidence in a manner to suit the conclusions he wanted to draw. A written complaint by Capt. Amit Singh is pending with the Respondent No.1 and under no circumstances can such an officer be a part of Inquiry. The Petitioner certainly intends to file criminal complaint against the said officers as the photographic evidence of tampering is available.
28. The Petitioner points out that the panel does not include a Human Factors specialist and Human Factors is one of the most crucial links in any crash. The intent of the investigation is not to apportion blame but to identify cause and even assuming it is attributable to the pilot as the COI did in Mangalore, what

the investigation needs to do is to understand why such a person did what he did in the given circumstances. This crucial link was not investigated in Mangalore and for this reason alone that investigation cannot be said to have been a thorough one and we have paid a price with 19 lives.

29. The Petitioner again reiterates, 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. The COI is an open inquiry as opposed to the closed inquiry carried out by the AAIB. The Petitioner is fully aware that Judges are non-technical persons, however other members of the COI can be technical members. The requirement of the Judge is to ensure that every issue taken up is recorded and nothing is tampered with. This can be accomplished only by a Judge and from the Mangalore experience we can vouch that no high-ranking officer of the Airforce also is capable to conduct an independent and impartial investigation.
30. As regards the Criminal culpability, it is the Police that normally investigates. Even the Rules 2017 requires the owner/operator of the Aircraft to notify the police. The Petitioner says that normally the police files an FIR and names the two pilots as the accused and later closes the criminal proceeding on the ground that both the accused are dead. The Petitioner has filed a complaint with the Respondent No.6 on the 13th of August 2020 by e-mail, a copy of which is annexed and marked hereto as **Exhibit P24**.
31. The Petitioner points out that the complexity in the investigation of air crash is so much that the local police are simply not equipped to investigate the same. Though the accident spot is in Calicut, its roots are in the offices of the Respondent Nos.1 to 4 in Delhi and other regional offices. The Petitioner points out that in his complaint with the police he has clearly made out the case of involvement of officers of the DGCA, the AAI, the Ministry of Civil Aviation and unless this case is taken over by the Respondent No.7, nothing meaningful would ever come out of it.
32. The Petitioner points out that he had made the Respondent No.7 a party in many of the PIL's as he had earlier requested the CBI to register an FIR and expose the organised crime racket run by the Ministry of Civil Aviation, the DGCA, the AAI, the Air Operators and several other private parties like the

builders and contractors. The Petitioner respectfully submits that there is a *prima facie* case for the involvement of the CBI and in the absence of such investigation and criminal prosecution of officers involved, we will never be in a position to avoid these air crashes.

33. The Petitioner also points out that this time the corruption has had an 'equaliser' effect. Normally, corruption hits the bottom of the pyramid and it is mostly the lower rungs of society that suffer. However, this corruption has not even spared the Chief Ministers (two sitting chief Ministers perished in aviation accidents), High Court Judges (two sitting judges of the Karnataka High Court were passengers in the spicejet crash landing at Hubli).
34. The Petitioner is certain that the officials or Respondent No.1 to 5 are tampering with evidence and any delay in taking over the investigation would result in the destruction of evidence.
35. The Petitioner submits that he is not a fortune teller to predict Air Accidents, but his certainty of Air Accident is based on the facts gathered by him over the last decade. An air accident in the Indian air space or involving Indian Air Carriers is inevitable as there is no buffer available to account for 'human error'. The Petitioner had written to the Respondent No.1 to 3 as late as 3 June 2020 to warn them on the impending crashes. A copy of the e-mail dated 3 June 2020 written by the Petitioner to the Respondent No.1 to 3 is annexed and marked as **Exhibit P25**. The Petitioner had bluntly asked the part time Civil Aviation Minister to either take care of the Safety issues or keep a few obituaries and his resignation letter ready. The Indian airspace has 'zero margin' for errors and even the slightest error can be costly for the following reasons:-
 - i. Most airports in India are non-compliant with the domestic and international standards and many of these violations are wilful and deliberate.
 - ii. The DGCA have issued both pilot and AME licences to persons who are unqualified. The issue of 'fake pilots' died a natural death when media got tired of the same.
 - iii. The DGCA has closed its eyes to major issues concerning Air Safety, be it the flying schools, the AME institutions, MRO's and Airline operators

- iv. The CNS equipment are malfunctioning/underperforming and the ATCO's are increasingly showing poor results as a result of poor training as well as the safety culture within the AAI which rewards corrupt officers and harasses honest officers
 - v. The obstacle profile around most airports is more and more denser and the worst is that the DGCA fails to notify the international community of the same through declaration of deviations.
 - vi. The pilots / cabin crew / ATCO's /AME's are being pushed to stretch their duty hours in violation of laid down regulations and most of them complain of fatigue
 - vii. The aircraft maintenance is at its poorest and the DGCA helps airlines hide issues.
36. The Petitioner states that he has no intention of dragging this matter in the Courtroom for years. The Petitioner's attempt to knock on the doors of Justice is only to ensure that crucial evidence does not get lost with the efflux of time. The Calicut Air crash is just a warning bell and to save Indian Aviation from future threats from the sky, what is most important is an impartial investigation and effective remedial measures. And for that investigation, it is crucial that evidence is carefully protected and the investigation is open investigation like the COI ordered in Mangalore but to be headed by a Retired Judge of the Supreme Court or atleast a retired Judge of the High Court.
37. The Petitioner brings the attention of this Hon'ble Court to an article that was published on the occasion of the 99th birthday of the great Justice V.R.Krishna Iyer. Universal Publications released a book "A Surfeit of Tributes to India's Greatest Living Judge Justice V.R.Krishna Iyer" in which his nephew, an accomplished pilot and Aviation Safety expert, Mohan Ranganathan wrote an article titled 'Role of Indian Judiciary in Aviation Safety'. He writes "*Judges turning a blind eye to aviation safety are endorsing death penalty on innocent lives. Humane conscience is required and not blind acceptance of government promises. Only a strong and punitive judicial message will save lives. Else, the blood of 158 souls that departed in Mangalore on the fateful day in May 2010, will remain etched on judges' hands. When judicial numbness to loss of lives is added, divine intervention is our only hope.*"

Under the circumstances mentioned above, the Petitioner has no other alternate efficacious remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India on the following among other:

GROUND

- a) The acts of the Respondent No.2 in not complying with the Air Regulations as regard the Airport design is violative of Article 21 of the Constitution.
- b) The inability of the Respondent No.3 in identifying the serious lapses in safety during its audits is violative of Article 21 of the Constitution.
- c) The violations of Duty Time Limitations for Aviation Personnel is rampant and goes unchecked and undetected by the Respondent No.3 who is hand in gloves with the Respondent No.4. The manner in which extensions are given are reckless.
- d) The acts and omissions of the Respondent No. 1, 2 & 3 threatens the lives of not just the passengers and crew but also the people on ground.
- e) The Respondent No.5 has tampered with evidence and planted evidence to suit a conclusion it desired in the Ghatkoper crash and therefore ought not be given a free hand to twist the results of this investigation as well.

For these and other grounds urged at the time of hearing, this Hon'ble Court be pleased to :

- (A) 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.
- (B) 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.
- (C) Direct the Respondent No.7 to Register an FIR and take over the criminal investigation of the Calicut Air Crash.
- (D) 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.

- (E) Direct the Respondents to reimburse to the Petitioner the costs of this Petition
- (F) For such other and further relief's as the nature and circumstances of the case may require.

INTERIM RELIEF

In the interests of Justice, it is humbly prayed that this Hon'ble Court may be pleased to:

- (G) direct the Respondents No.2 to forthwith shut down operations at the Calicut airport until such time that the airport complies with the domestic and international Air Regulations.
- (H) Direct the Respondent No.2 & 3 to give a copy of the Licencing Audit, the Safety hazard identification after a change, the exemption applied for and granted, the Surveillance audit, the Safety audits for all the airports conducted from 1 January 2011 to till date
- (I)Direct the Respondent No. 3 to give a copy of the Safety Audits conducted on the Respondent No.4 from 1 January 2011 to till date.

Dated this 14th Day of August 2020.

Petitioner Party in Person