

GAHC020001702024

2024:GAU-NL:560-DB



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

Case No. : PIL/2/2024

SHRI. VITOLU SEMA AND ANR
S/O HENEZHE SEMA
R/O SAPTIQA TOWN
DIST. ZUNHEBOTO, NAGALAND-798620

2: SHRI JEVITO ACHUMI
S/O LATE YETOHE ACHUMI
R/O B-KHEL
KICHILIMI VILLAGE
DIST. ZUNHEBOTO
NAGALAND-79862

VERSUS

THE STATE OF NAGALAND AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY. NAGALAND KOHIMA

2:THE COMMISSIONER AND SECRETARY
DEPT. OF WORKS AND HOUSING
NAGALAND KOHIMA

3:THE ENGINEER-IN-CHIEF
NPWD (ROADS AND BRIDGES)
NAGALAND KOHIMA

4:THE CHIEF ENGINEER (NH)
KOHIMA NAGALAND

5:THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS (MoRTH)
REPRESENTED BY THE SECRETARY
TRANSPORT BHAVAN
1ST PARLIAMENT STREET
NEW DELHI-110001

6:THE NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD. (NHIDCL)
REPRESENTED BY MANAGING DIRECTOR
3RD FLOOR
PTI BUILDING 4
PARLIAMENT STREET
NEW DELHI-110001

7:THE EXECUTIVE DIRECTOR (PROJECTS)
BHGDCL
NEAR NPWD COMPLEX
KOHIMA NAGALAND

8:AGAPE H. CHISHI
THILIXU VILLAGE BLOCK - 2
LANE - 4
HOUSE NO. 181
DIMAPUR NAGALAND

Advocate for the Petitioner : T. B. JAMIR, I JAMIR,PETER SERTO,TERCHILA
JAMIR,KILEM JAMIR

Advocate for the Respondent : GOVT ADV NL,

Linked Case : I.A.(Civil)/52/2024

SHRI AGAPE H CHISHI
THILIXU VILLAGE BLOCK-II
LANE IV
HOUSE NO. 181
DIMAPUR NAGALAND

VERSUS

SHRI VITOLU SEMA AND 8 ORS
S/O HENEZHE SEMA
R/O SAOTIQA TOWN
ZUNHEBOTO

NAGALAND

2:SHRI JEVITO ACHUMI
S/O LATE YETOHE ACHUMI
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9:THE EXECUTIVE DIRECTOR (PROJECTS)
BHGIDCL
NEAR NPWD COMPLEX
KOHIMA NAGALAND

Advocate for : TAKA MASA
SR. ADV
Advocate for : appearing for SHRI VITOLU SEMA AND 8 ORS

**BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANISH CHOUDHURY**

Date : 25-10-2024

JUDGMENT & ORDER (CAV)

[Vijay Bishnoi, CJ]

Heard Mr. T.B. Jamir, learned counsel appearing for the petitioners. Also heard Mr. L.T. Sangtam, learned Additional Advocate General, Nagaland assisted by Mr. V. Zhimomi, Junior Government Advocate, Nagaland for respondent Nos.1 to 4, Mr. Akhrieu Chusi, learned counsel for respondent Nos.5, 6 and 7 and Mr. Taka Masa, learned Senior Advocate for respondent No.8.

2. The petitioner No.1 is the Gaonbura Saptiqa and President of Saptiqa Gaonburas' Association in the district of Zunheboto, the petitioner No.2 is a public spirited citizen hailing from Kichilimi Village under Zunheboto and is one of the co-conveners of the 17 (seventeen) Villages Public Forum. The present writ petition (PIL) has been filed raising concerns for providing proper road connectivity to 17 (seventeen) villages including Hoishe Village situated between Mukalimi and Zunheboto, namely Shesulimi, Awohumi, Kichilimi, Tukunasami, Nunumi, Shoipu, Saptiqa, Zhevishe, Usutomi, Shena Old, Shena New, Ghukiye, Kulhopu, Nikuto, Xukhepu, Zungti and Hoishe, which falls within the proposed Section-3 of the 2-lane Showuba-Pangsha, East-West Corridor Road. The

stretch from Showuba to Pangsha is divided into several sections and the issue involved in the present petition is in respect of Section-3 of the 2-lane Showuba-Pangsha (East-West Corridor Road) covering the stretch from Mukalimi-Zunheboto.

3. The National Highways and Infrastructure Development Corporation Limited (NHIDCL) has been entrusted with the assignment of the work of "Consultancy Services for preparation of the Detailed Project Report for 2(two) Laning with hard shoulder from Showubha connecting Phuwoto – Sendenyu – Guzunyu - Pughuboto-Saptiqa – Zunheboto – Chessore – Yakore - Noklak to Pangsha in the State of Nagaland".

The NHIDCL has engaged a consultant and the consultant has proposed 2(two) alignment options in respect of Section 3 i.e. from Mukalimi-Aghunato.

Those 2(two) options are reproduced hereunder:

Alignment Option

Option-I

Mukalimi-Shesulimi-Awohumi-Kichilimi-Tukunasami-Nunumi-Saptiqa-Ghukiye-Zungti-Zunheboto-Aghunato

Option-II

Mukalimi-Chishilimi-Lukhai-Satakha-Sukhalu-Aghunato

4. It is the case of the petitioners that in respect of Section-3, i.e. from Mukalimi-Aghunato, two road alignments have been proposed as under : Option-I, Mukalimi-Shesulimi-Awohumi-Kichilimi-Tukunasami-Nunumi -Saptiqa-Ghukiye-Zungti-Zunheboto-Aghunato, i.e. the road which passes from the petitioners' village and the Option-II : Mukalimi-Chishilimi-Lukhai-Satakha-Sukhalu- Aghunato.

It is the case of the petitioner that Option-I passes through 17 (seventeen) villages and benefits a population of approximately 19,000 whereas Option-II passes through only 3 (three) villages, namely, Chishilimi-Lukhai-Satakha and significantly benefits only one village, i.e. Chishilimi which has a population of approximately 1,000 only. The petitioners are, therefore, aggrieved by the minutes of the meeting held on 15.02.2023 between NHIDCL and Nagaland Public Works Department (NPWD) recommending the alignment at Option-II and the letter dated 25.02.2024 issued by the Under Secretary to the Government of Nagaland, Department of Works & Housing Department (Works Branch), Nagaland, Kohima, conveying the approval of the Government to the alignment at Option-II (Mukalimi, Chishilimi, Hoishe and Satakha) under Section-3 of Showuba-Pangsha 2-lane road project. In the petition, the petitioners have also sought for a direction to the respondents, particularly the respondent Nos. 1, 2 & 3 to reconsider the representation submitted by the 17 (seventeen) Villages Public Forum in respect of the Section-3 of the 2-lane Showuba-Pangsha road.

5. It appears that in a joint meeting held on 15.02.2023 between the NPWD and NHIDCL, the road alignment of Option-II was recommended while pointing out certain deficiencies in Option-I. Thereafter, some local persons had approached the Local Member of Legislative Assembly and on his insistence, the Chief Engineer concerned requested the National Highway Department of Nagaland and the NHIDCL to review the decision of constructing 2(two) Lane Road as per alignment Option-II.

The matter also went up to the Hon'ble Chief Minister of the

State of Nagaland and under his instructions, a Joint Survey Technical Team was constituted consisting of officers of Public Works Department (National Highways), Nagaland; Public Works Department [R&B (Road and Building)], Nagaland; representatives of NHIDCL; representatives of District Administration and Consultants and the said Team conducted a joint survey and submitted its report.

Thereafter, the Office of the Superintending Engineer, PWD (NH) Circle-1, Nagaland wrote a letter to the Commissioner and Secretary, Government of Nagaland, Works and Housing Department, Nagaland, dated 13.07.2023 recommending that alignment Option-II is technically more viable.

The relevant portion of the letter dated 13.07.2023 along with the annexure appended to is reproduced hereunder:

*“GOVERNMENT OF NAGALAND
OFFICE OF THE SUPERINTENDING ENGINEER, PWD (NH) Circle-1
NAGALAND :: KOHIMA*

*No.SE(NH)/CORR/2005-06/199-205 Dated Kohima, the
13th July 2023*

To

*The Commissioner & Secretary,
Government of Nagaland
Works & Housing Deptt.
Nagaland*

*Sub: Submission of Survey-Report of Showuba-Pangsha Road with reference to
Section-3 (Mukalimi-Satakha Section)-regarding.*

*Ref: 1) NO.WH/NH-2 2022/413 dated 12.05.2023
2) NO.CE/NH/DPR/2016-17/IP-02/FRI dated 19.05.2023
3) NO.WH/NH-2/2022 (Part) 45 dated 30.06.2023
4) NO.SZ/NH/CORR/2015-16/173-179 dated 17.06.2023*

Sir,

Referring to Sl.No.3 of the reference letter mentioned above,

the Joint Survey Team had a meeting and discussed for recommendation of the options. Since the team has found both options feasible, referring to the determination of alignment/route for widening of National Highways issued by the Ministry of Road Transport & Highways No.NH-15017/21/2018 dated 26th February 2018 in page No.3-5, Sl. No.5

clause (iii) it is mentioned that to go for shortest distance (crow-flight) basing on it we recommend for the same, i.e. option-II, i.e. Mukalimi-Chishilimi-Khukiye-Lukhai-Satakha-Sukhalu-Thokihimi-Aghunato which is technically more viable.

SL. No.	Agency	Represented by
1	NHIDCL	DGM and Team
2	Rail Vikash Nigam Ltd and Shweta Technophile Consultants Pvt. Ltd (Consultants of the Project)	Team leaders with a set of survey team.
3	PWD(R&B)	Superintending Engineer, PWD(R&B) Zunheboto
4	District Administration	SDO(Civil) Pughboto, ADC and EAC Zunheboto, ADC Satakha ADC Aghunato

This is for

favour of your kind information and necessary action please.

.....”

Annexure-1

“Joint Survey Technical Team Report for 2 Laning from Showuba to Pansha (Section-3 Mukalimi-Satakha)

Sl No.	Alignment Option	Length (Existing Road)	Feasibility of alignment	Existing gradient	Remarks
1	Option-I Mukalimi-Shesulimi-Awohumi-Kichilimi-	96 Km	Suitable	Correction of gradients is required in various stretches	As the alignment of both options are suitable, both options were examined taking

	<i>Tukunasami- Nunumi- Saptiga- Ghukiye- Zingti- Zunheboto- Aghunato</i>				<i>into consideration the MoRTH guideline regarding “determination of alignment/route for widening of NHs approach” issued vide letter No.NH-15017/21/2018-P&M dated 26.02.2018 and the following were brought out:</i>
2	<i>Option –II Mulalimi- Chishilimi- Khukiye- Lukhai- Salakha- Sukhalu- Thokihimi- Aghunato</i>	<i>84 Km</i>	<i>Suitable</i>	<i>Correction of gradients is required in various stretches</i>	<i>1. The alignment needs geometric improvements on both options and can be improved.</i> <i>2. Both options opens up the potential of new areas and wealth creation for the less developed areas.</i> <i>3. Option II offers a crow-flight alignment with reduced distance and will lead to savings on travel time and fuel cont.</i> <i>Hence, it was concluded that option II is the more technically viable alignment.</i>

Note:- 1. Joint Survey was carried out on 30th and 31st May 2023

2. The scope of this survey was carried out to study the feasibility of two alignment options mentioned above.

This survey is preliminary in nature.

3. The joint survey team consisted of NHIDCL, consultants (M/s Rail Vikash Nigam Lt. in association with Sweta Techno file consultant Pvt. Ltd.), Engineers from PWD(R&B), PWD (NH), District Administration, Zunheboto.

6. The Survey Report was submitted before the State Government and the State Government, vide letter dated 25.02.2024, approved alignment Option-II as per the decision taken in the meeting under Chairmanship of the Hon'ble Chief Minister, Nagaland held on 23.01.2024.

Relevant portion of the letter dated 25.02.2024 is reproduced hereunder:

“GOVERNMENT OF NAGALAND
WORKS AND HOUSING DEPARTMENT
(WORKS BRANCH)
NAGALAND: KOHIMA

Email:worksbranch2014@gmail.com

Dated: Kohima, February, 2024

To,

*Executive Director, NHIDCL
RO-Kohima, Nagaland*

Sub: Matter regarding Section-3 (Mukalimi-Satakha Section) of Showba-Pangsha-2-Lane Road Project.

Ref: Minutes of the Meeting held on 23/01/2024 (Copy enclosed)

Sir,

Referring to the subject cited above, and pursuant to the decision taken in the meeting held under the Chairmanship of Hon'ble Chief Minister on 23rd January, 2024, I am directed to convey that the alignment option-2 (Mukalimi-Chishilimi-Khukiye-Lukhai-Satakha-Sukhalu-Thokibimi-Aghunato) under Section 3 of Showuba-Pangsha 2-Lane road project has been approved.

This issues with the approval of the competent authority.

.....”

7. The petitioners have challenged the said decision of the State Government of approving construction of 2-lane road as per alignment Option-II on the grounds that the alignment Option -I will cover 17 villages benefiting a population of approximately 19,000 whereas Option-II covers only 3 villages and significantly benefiting only one village with a population of approximately 1,000. It is further contended that alignment Option-I has no landslide prone area and the finding of the Joint Survey Team that the alignment Option-I has more land-slide prone area is totally misleading and self-contradictory. It is also contended that the decision of the authorities to approve the alignment Option-II on the sole factor of crow-flight alignment is unreasonable and unjustified. It is also contended that there will be minimal resistance for land acquisition in the villages falling under Option-I and the same is cost effective also. It is further contended that the Guideline dated 26.02.2018, issued by the Ministry of Road Transport and Highways (MoRTH) provides for development of new areas and wealth creation for less developed areas and looking to that, the villages falling in alignment Option-II are not fit in the said criteria. Several other ancillary grounds have been raised in respect of the decision taken by the authorities to opt for alignment Option -II instead of Option-I.

8. Counter affidavits have been filed on behalf of the State of Nagaland as well as NHIDCL. Counter affidavit has also been filed on behalf of the respondent No.8 who was impleaded as a party respondent by this Court vide order dated 24.04.2024 passed in I.A.(Civil) No.52/2024.

9. All the respondents have opposed the writ petition while claiming that the alignment Option-II is more suitable for construction of 2(two) Lane Road from Mukalimi to Aghunato instead of alignment Option-I.

10. Respondent No.8, in his counter-affidavit, has made a specific contention that the villages falling under alignment Option-I are already proposed to be connected through the roads under the various projects undertaken by the State Government. It is contended that the construction of road in the said villages for road connectivity is already under process, however, the petitioners have not disclosed the said fact with the intention to mislead the Court.

Reply to the affidavits-in-opposition, filed on behalf of the respondents, have also been filed by the petitioners.

11. The learned counsel for the petitioners, relying on the averments made in the writ petition and rejoinder, has argued that the alignment Option-II, as approved by the State Government, is not in consonance with the MoRTH Guidelines. It is contended that the State authorities are obliged to consider and give due weightage to the reasonable or legitimate expectations of the persons likely to be affected by its decisions. It is contended that all the villages falling under alignment Option-I have a legitimate expectation from the State to provide infrastructure such as road. However, the State Government, in an arbitrary manner, has decided to approve the alignment Option-II without there being any justifiable reasons. It is contended that the decision of the State Government of approving the alignment Option-II is arbitrary and liable to be interfered with in the facts and circumstances of the case.

In support of the above contentions, the learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Food Corporation of India Vs. M/s Kamdhenu Cattle Feed Industries***, reported in ***(1993) 1 SCC 71***.

12. It is further submitted by the learned counsel for the petitioners that the Hon'ble Supreme Court has specifically held that the Government cannot act arbitrarily at its sweet will and its action must be in conformity with the standard or norm which is not arbitrary, irrational and irrelevant.

In support of the above submission, the learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Ramana Dayaram Shetty Vs. International Airport Authority of India & Ors.***, reported in ***(1979) 3 SCC 489***.

13. It is contended that the respondents have failed to take into consideration the norms laid down by the Ministry of Road Transport and Highways (MoRTH), dated 26.02.2018 while approving the alignment Option-II.

14. It is therefore contended that the respondents be directed to reconsider the representation submitted by 17 Villagers' Public Forum in respect of construction of 2-Lane Road from Mukalimi to Aghunato in the State of Nagaland.

15. *Per contra*, the learned counsel for the respondents have vehemently opposed the writ petition, while relying on the averments made in the reply, have argued that it is well settled that in the matter of public projects and policies of the Government, the scope of interference is very limited and the Court can only interfere where the said public

project or policy is in violation of the statutory rules or suffers from *mala-fides* or is formed with intention to grant benefit to the undeserved section of the society. It is further contended that the alignment of road is purely a technical matter and the Courts should be slow in dealing with the matters of alignment of roads due to lack of expertise in the field.

In support of the above contention, the learned counsel appearing for the respondents have placed reliance on the decision of the Hon'ble Supreme Court rendered in (i) ***Essar Steel Limited Vs. Union of India & Ors.***, reported in ***(2016) 11 SCC 1*** and (ii) ***Project Director, Project Implementation Unit Vs. P.V. Krishnamoorthy & Ors.***, reported in ***(2021) 3 SCC 572***.

16. Heard the learned counsel appearing for the parties and also perused the material available on record.

17. As observed earlier, in respect of Section 3, i.e. from Mukalimi-Aghunato of the 2-lane Showubha-Pangsha (East West Corridor) Road, 2(two) options were suggested and forwarded to the State Government with the recommendation that Option-II is more feasible.

The local persons have objected to the proposal of approving Option-II and at the instance of the local MLA as well as the State Government, the dispute was again sent for reconsideration/review and in that process, a Joint Technical Survey Team was constituted with the inclusion of PWD Department, National Highway Department of Government of Nagaland, NHIDCL, District Administration and representative of Consultancy Services which has submitted its report and again reiterated that Option-II is more feasible.

18. From perusal of the said recommendation dated 13.07.2023, it is clear that specific reasons for declaring Option-II as more technically viable alignment has been given.

19. The State Government after considering the report of the Joint Survey Committee has approved the same.

20. It is to be observed that the objection against the approval of Option-II has been dully considered by the State of Nagaland as well as by the NHIDCL and therefore, the same was again reviewed. In such circumstances, it cannot be said that the grievances raised by the petitioners or the local people have not been addressed by the respondents.

21. This Court is of the view that so far as alignment of a road is concerned, it is purely within the domain of the executive. The Courts are not equipped to deal with these technical specifications regarding the width, length, lay-out and alignment of a road. Though it is contended on behalf of the petitioners that Option-II as approved by the State Government is not in consonance with the MoRTH Guidelines, the counsel for the petitioners has failed to point out specifically which Guideline or norm of the MoRTH has been violated.

22. The Hon'ble Supreme Court time and again has categorically held that the projects involving of new highways and widening and development of the existing highways are vital for the development of infrastructure and such projects are entrusted to the experts in the field. The Courts are at all not equipped to decide upon viability and feasibility of a particular project and also cannot sit as an Appellate Authority over

the decision of the experts of their field. The scope of judicial review in the matters of alignment of a road etc. is very limited and can only be exercised where it is demonstrated that the same are in violation of any law or tainted due to *mala-fides*.

23. It would be apposite to refer to the observations made by the Hon'ble Supreme Court in ***Union of India Vs. Kushala Shetty & Ors.***, reported in **(2011) 12 SCC 69** regarding the scope of judicial review in the matters of alignment of a road.

The relevant portion of the aforesaid judgment is reproduced hereunder :

“28. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the

charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

24. Thereafter, the Hon’ble Supreme Court in ***P.V. Krishnamoorthy*** (supra) has expressed the similar view.

25. It is true that the State authorities are obliged to consider and give due weightage to the reasonable or legitimate expectations of the persons likely to be affected by its decisions but where the legitimate expectations of the public are not supposed to be fulfilled due to technicalities and other factors, it cannot be said that overlooking the relevant factors, the State is bound to fulfill those legitimate expectations. It would amount to force the State authorities to do the things which are impossible.

26. In view of the above position of law, reliance placed by the learned counsel for the petitioners on the decision of the Hon’ble Supreme Court rendered in ***M/s Kamdhenu Cattle Feed Industries*** (supra) is misplaced.

27. So far as the judgment of the Hon’ble Supreme Court rendered in ***Ramana Dayaram Shetty*** (supra) is concerned, there is no quarrel to the position that the action of the State must be in conformity with the norm which is not arbitrary, irrational and irrelevant. However, in the present case, the petitioners have failed to demonstrate that the action of the State is arbitrary, irrational and irrelevant and is not in conformity with the applicable standard or norm.

28. In view of the discussions made hereinabove, we do not find any merit in this PIL petition. The same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant