

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NO.14528 of 2015

Between :

A.V.Koti Reddy s/o. late Peda Narsaiah,
Aged about 78 years, Occu: Retired,
R/o. Plot No.318, Road No.79,
Jubilee Hills, Hyderabad and others.

.... Petitioners

and

The Union of India, rep.by its Secretary,
Ministry of Commerce & Industry
(Department of Industrial Policy & Promotion),
Udhyog Bhavan, New Delhi and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 05.10.2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?

2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals

3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

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Vs.

\$ The Union of India, rep.by its Secretary,
Ministry of Commerce & Industry
(Department of Industrial Policy & Promotion),
Udhyog Bhavan, New Delhi and others.

.... Respondents

!Counsel for the petitioners : Sri B.S.Prasad, senior counsel appearing for Sri
M.R.K. Chakravarthy, counsel for petitioners

Counsel for the Respondents: Asst.Solicitor General for respondent No.1;
Government Pleader for respondents 2, 3 & 7;
Sri P.Sudhakar Reddy for Respondents 4, 6 & 9;
Sri P.Keshava Rao for Respondent no.5; and
Sri T.V.Ramana Rao for respondent No.8

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 14528 of 2015

ORDER:

This writ petition is filed praying to grant the following relief;

“.....to issue a Writ, order or direction more particularly, one in the nature of Writ of Mandamus, declaring the action of the respondents in commencing and proceeding with the road cutting and laying of pipeline work in Road No.79 and 82 of Jubilee Hills, Hyderabad from 6-5-5015 onwards and the Order of the 5th Respondent vide Lr.No.18/DB/GM(E)/PD- IV/KDWSP/PH-III/Pkg-IX/2015-16/3C dated 23-4-2015 and License No.L&O/M7/52/2015 dated 5.1.2015 granted by the 3rd Respondent to the 9th Respondent permitting blasting and road cutting in the thickly populated residential area of Road Nos.79 and 82,

Jubilee Hills, Hyderabad without considering and disposing of the objections/representations of the Petitioners dated 17.2.2015 and 7.5.2015, as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India, and consequently, direct the respondents to lay the pipeline from the vast open and uninhabited Government land adjacent to Road No.82, Jubilee Hills, Hyderabad and also direct the respondents to restore the natural Nala/ Storm Water Drain passing through Road Nos.79 and 82, Jubilee Hills, Hyderabad feeding Kothacheruvu of Shaikpet Village to its original position...”

2. To augment the supply of drinking water to the city of Hyderabad on account of ever growing requirements of city, Government of Telangana has started various schemes to bring water from major reservoirs over a period of time in a phased manner. In the said process in Krishna Phase III, drinking water pipelines are being laid to bring water from AMRP canal connected to Akkampally reservoir. The total length of the pipeline is 174 Kms. The pipeline connects two major reservoirs in the city located in Prashasan Nagar and Sainikpuri. As part of this project one arm of pipeline is passing from Saheb Nagar—Mailardevpally—Prashasan Nagar to reach the reservoir at a stretch of 35 Kms. The proposed pipeline is passing through Road Nos 79 and 82, Prashasan Nagar as last stretch of 35 Kms pipeline to reach the reservoir.

3. Petitioners are residents of Road Nos. 79 and 82 of Jubilee Hills, Hyderabad. Petitioners having come to know that such pipeline is being laid, raised objections for laying of the pipeline through Road Nos. 79 and 82 of Prashasan Nagar. Petitioners filed complaints with various authorities, acknowledged by respective officers on 18.2.2015, followed by another representation dated 7.5.2015. The grievance projected by the petitioners is three fold:

1) it is an area covered by sheet rock and therefore requires cutting of rock-sheets to lay the pipeline which necessarily involve using of blasting technology and breaking the rocks is harmful to the people living in the area and also would have effect on the properties located in the area;

2) Natural stream water drain is passing through road No. 79 which joins the natural lake which is called Kothacheruvu and on account of blasting and road cutting work taken up by the respondent authorities, the natural stream water is affected and polluted drainage is flowing into the stream water drain. As a result, Kothacheruvu lake is also being polluted. On account of the work taken up by the

respondents, the existing drainages are blocked resulting in flowing of water on the road and accumulation of polluted water causing health hazards. The drain water and stagnated water is resulting in spread of mosquitoes. It is contended that Road no. 79 is very narrow road of approximately 40 feet as compared to road No. 182 which is a wider road.

3) The work taken up by the respondents impeding movement of traffic, causing traffic blockage and affecting the residents of the locality in free movement. According to petitioners there was no justification to undertake laying of pipeline on this stretch, more particularly in view of its topography and when large extent of Government land is available, through which subject pipeline could have been laid.

4. Alleging inaction on the specific complaints filed by the petitioners against laying of pipeline, this writ petition is filed.

5. Several documents are filed by petitioners in support of their contentions, enclosed photographs taken on the field and have also circulated video-CD in support of their contention as to how the work taken up by the respondent authorities is affecting the normal life as well as polluting the natural drain.

6. This Court by order dated 21.5.2015 granted interim stay as prayed for by the petitioners. Praying to vacate the said order, respondent Sewerage Board has filed counter affidavit and a vacate petition in W.V.M.P.No. 1550 of 2015.

7. Heard learned senior counsel Sri B S Prasad for petitioners, learned Assistant Solicitor General for first respondent, learned Government pleader for Home (T) for second respondent, Sri T Sudhakar Reddy, learned standing counsel for respondents 4,6 and 9, Sri P Keshava Rao, learned standing counsel for fifth respondent-GHMC, and Sri T S Ramana Rao, learned standing counsel for eighth respondent –Pollution Control Board.

8. Learned senior counsel appearing for petitioners submitted that the permission granted by the Hyderabad City Police is ex-facie illegal and based on the said permission, the respondent authorities through their contractor, could not have taken up the blasting work. According to learned senior counsel, use of explosives is regulated by The Explosives Act, 1884 (Act 4 of 1984) and rules made there-under. Unless permission is obtained from the competent authority to undertake use of explosives, no explosives can be used by any person. When the

Central Act governs the field, the City Police has no authority or competency to grant permission to undertake explosions by relying on the provisions of the Hyderabad City Police Act, and therefore, the permission granted by the City Police Commissioner on 5.1.2015 is ex-facie illegal and therefore the said license is liable to be set aside on this ground alone. Learned senior counsel further contended that the provision in Section 21 of Hyderabad City Police Act to the extent repugnant to the provisions of Explosives Act, 1884, is void to that extent, and therefore certificate issued in exercise of power referable to Section 21 of the Hyderabad City Police Act, is ex-facie illegal.

9. Learned senior counsel further contended that even assuming that permission was validly granted, the conditions of license are also violated. Under Section 21 of the Hyderabad City Police Act, Rules are notified. Rules prescribe observance of various requirements before undertaking the blasting. License also incorporates these conditions. No prior permission was obtained from local police and in gross violation of the mandatory precautions while taking up blasting work by the contractor; and the blasting is affecting the surrounding buildings. On account of blasting, digging and road cutting, the drainage system got damaged and polluted water is now mixing with the natural drain water and flowing into Kothacheruvu. Most of the residents are more than 60 years of age and already suffering with various ailments, and usage of gelatin sticks for blasting would create not only sound pollution but also create air pollution and vibrations to people and buildings.

10. Learned senior counsel further contended that when there is alternative land available, where the pipeline can be laid properly without affecting the normal life of the residents of the colony and the people who use the road, more so when the road is very narrow, the action of the respondent authorities is illegal.

11. Learned senior counsel further contended that on account of the work undertaken by the respondent authorities, the drainage system adversely affected. The drainage is over flowing affecting the residents, emitting false smell and creating health hazards. Appropriate precautions are not taken before undertaking such exercise. It is causing damage to the sewerage pipelines and other cables connecting houses on either side of the road; severely affecting the amenities; road is very narrow and steep; and is thickly populated. There is danger to the safety of

the residents.

12. Sri T Sudhakar Reddy, learned standing counsel for Hyderabad Metropolitan Water supply and Sewerage Board contended that the project taken up by the State Government is a prestigious project and if Krishna Phase –III is implemented it would provide drinking water to 2,75,000 consumers through two reservoirs, one of such reservoir is located in Prashasan Nagar of Jubilee Hills and as per the original plan, the pipeline work ought to have been completed by 30.6.2015. That out of 35 Kms stretch of laying of pipeline, the Sewerage Board has successfully completed laying of pipeline to 31 Kms and on the entire stretch same technology is used and so far there is no instance of damage to person or property reported on account of the work undertaken by the respondent Sewerage Board. The respondent Sewerage Board is using the technology of ‘controlled blasting’ by using gun powder by observing all the norms as required by the Hyderabad City Police. This stretch is covered by sheet rock and has to be necessarily broken to lay the pipeline. The rock is being removed by intensive controlled blasting method; so far no private property is affected; and apprehensions expressed by the petitioners are only imaginary and baseless. In fact on this stretch so far no such blasting is used. But respondent Sewerage Board may require using it whenever it encounters sheet rock. It is not in public interest to stall the work. On account of the interim order passed by this Court, work has come to stand still and the project is beyond the schedule. Thousands of residents of the city are suffering on account of shortage of drinking water; more particularly in view of drought conditions, causing lot of hardship to the people. The delay in completion of the project also escalates costs, which is against the public interest.

13. Learned standing counsel strenuously contended that all-along only public road is used to lay pipelines and at no point of time private property is affected. It is not for the petitioners to suggest where to lay the pipelines, more so, when their properties are not affected. Laying of pipeline requires detailed planning and it is for the Engineers to envisage how and where the pipeline should be laid. It may be true that Government land is available nearby but merely because government land is available, pipeline cannot be diverted, without assessing the proper contours of laying of pipeline and mechanics of drawing the water through such pipelines.

14. According to learned standing counsel, Hyderabad City Police Commissioner is competent to issue license and in valid exercise of power vested in him under Section 21 of the Hyderabad Police Act, license is granted. The respondent Sewerage Board through its contractor shall observe all the precautions before undertaking controlled blasting. This has been observed scrupulously throughout the stretch without harming anybody so far.

15. Learned standing counsel further contended that all the precautions are taken to minimize the inconvenience to the residents and passers by. There may be some water logging affecting drainage in the process of road cutting but all those things would be taken care of after the pipeline is laid. Huge money is spent by respondent Sewerage Board for undertaking the work. The Sewerage Board paid Rs.2,06,00,000/- which was estimated as money required towards restoration charges from IOC petrol bunk near Shaikpet nala junction to Prashasan Nagar reservoir via Filmnagar road Nos. 79 and 80 to GHMC for repairing and re-laying the roads which are affected. This restoration work can be taken up once pipeline work is completed.

16. Sri P Keshava Rao, learned standing counsel for respondent GHMC submitted that GHMC is no way concerned with laying of pipeline but once laying of pipeline is completed, it would take up the work of relaying of roads on war footing.

17. Initially the stand of the respondent Sewerage Board was that the contractor is only using gun powder for undertaking the controlled blasting wherever required. In the affidavit deposed by Sri G Rameshwar Rao, Director (Operations) and Chief General Manager (Engg) of respondent Sewerage Board dated 21.09.2015, he has stated that the procedure followed for taking up controlled blasting is that a single row on the specified final excavation line is marked; 5 to 6 numbers of holes along the single row are made of size 1 to 1 ½ inch diameter for a depth of 1 feet each; the holes will be loaded with low intensive blasting material such as half of the gelatin stick for smooth blasting and the holes are well distributed and completely stemmed. He states that necessary precautions are followed.

18. Three issues that arise for consideration in the writ petition are:

1) Whether the respondent Sewerage Board through its contractor is competent to take up work of blasting the rocks without obtaining permission from

the competent authority under the Explosives Act, 1884 ?;

2) Is it permissible for the respondent Sewerage Board to undertake laying of pipeline on narrow road when alternative Government land is available?; and

3) While undertaking pipeline is it not mandatory for the respondent Sewerage Board to take all precautions including not clogging drainage lines and not polluting the natural water stream which is flowing into Kothacheruvu ?.

ISSUE 1:

19. To appreciate the contention that the license granted by Hyderabad City Police Commissioner on 5.1.2015 is illegal and such license has to be granted by the Chief Controller under the Explosives Act, 1884 it is necessary to consider the scope of relevant provisions of Explosives Act and the Hyderabad City Police Act.

20. Section 4 (d) of the Explosives Act, 1884 defines 'explosives'. It is an inclusive definition and is all encompassing. It specifically includes use of 'gunpowder' for explosion. Any explosion, which is covered by the definition of 'explosives', if taken up by any authority or person, which is not for private use but for public use in public places, necessary permission has to be obtained from the competent authority. Section 5 of the Act empowers the Government of India to make the rules to govern issuance of license for use of explosives. In exercise of said power, Government of India, formulated rules known as 'Explosives Rules 2008', notified vide GSR 907 (E) published in the Gazette of India dated 29.12.2008. Rule 6 mandates to obtain authorization for use of explosives from the Chief Controller. Rule 7 prohibits use of explosives unless authorized. Admittedly, in the present case no such authorization was obtained from the Chief Controller, as required by the above Rules.

21. On analysis of the provisions of Explosives Act and the Rules made there under it is clear that use of explosives is regulated by the Explosives Act, 1884 and unless authorisation is obtained from Chief Controller in accordance with the Rules 2008, no person can undertake explosion in public place. In the instant case, no such authorization is obtained. Thus, no explosion by using the gunpowder or gelatin stick can be taken up by respondent Board and its Contractor without obtaining authorization from the Chief Controller.

22. Section 21 has to be understood in the context in which Hyderabad City

Police Act is made. Hyderabad City Police Act is intended to regulate the law and order in Hyderabad city and in the process of regulating and enforcing the law and order in Hyderabad City, various powers are vested in police officers appointed under the Act. Primary responsibility of the police officers is to ensure safety and security and maintenance of law and order in the city. Section 21 enables the Commissioner of City Police to frame rules to regulate various aspects involving policing duties. Power to make rules includes regulation of issuance of license and regulation of blasting in terms of Section 21 (f) (v) of the Act. In exercise of said power, rules were formulated. A closure reading of the rules framed in exercise of said power would show that Commissioner is required to take all precautions necessary so that when a person undertakes blasting, it does not cause harm to the passers by, to the residents in the locality and properties in the locality. Therefore, rules regulate how a person can undertake blasting at a given place and what is the nature of blasting that can be taken up. The rules mandate that no person is competent to undertake blasting within the limits of Hyderabad City without obtaining permission from the Commissioner of Hyderabad City Police. Rules require prior intimation to the local police officer, taking his consent and taking all safety measures before undertaking the blasting. In exercise of this power, the Commissioner issued license on 5.1.2015 permitting the contractor of the respondent Sewerage Board to undertake blasting subject to fulfillment of conditions mentioned therein.

23. The Explosives Act do not delineate minutely measures that are required to be taken up while undertaking blasting, more particularly when explosives are required to be used in a thickly populated place like Hyderabad city. Thus, what is provided in Section 21 and Rules made there under, is regulation of blasting activity by a person, if he has authorisation to undertake such blasting. Thus Section 21 of the Hyderabad Police Act read with rules made there under cannot be said as derogatory to the Explosives Act. It introduces additional safeguards to protect the citizens. It seeks to fill the void created by the Central Act. Thus, I do not see any conflict in the relevant provisions. They complement each other and both sub-serve larger public interest.

24. Thus, even if valid permission is granted by the Chief Controller, blasting activity can be taken up only if license is granted by the Hyderabad City Police Commissioner. Reading of the license granted by the City Police Commissioner

would show that it mandates contractor to observe various safeguards before undertaking blasting. I therefore see no illegality in the license issued by the Commissioner of Police on 5.1.2015.

25. In view of the mandatory requirements of Explosives Act and the Rules made there under, based on the license obtained by the Commissioner of Police, no explosion can be taken up by the contractor without first obtaining authorisation from the Chief Controller as envisaged in the Rules, 2008. In fact, Hyderabad City Police Commissioner ought to have ensured that the contractor obtained permission from the Chief Controller before granting license and he ought to have made it compulsory to obtain such authorisation before granting license. This Court hopes and expects that appropriate remedial measures would be taken up hereafter by the Hyderabad City Police to avoid unnecessary litigation and complications. Admittedly, the 9th respondent is using blasting technology to break the rocks for laying pipelines, no such explosion can be taken up without obtaining authorisation from the Chief Controller under the Act 4 of 1884. The first issue is answered accordingly.

ISSUES 2 & 3:

26. I see no merit in the contention of the senior counsel with reference to diversion of the pipeline through adjacent government land. Admittedly, the pipeline is being laid on the existing public road and to lay pipeline no private property was acquired. How to lay pipeline and from where to lay pipeline cannot be to the whims and fancies of local people. The Engineers draw a detailed course to draw water to the desired point. Various aspects involve in planning which are highly technical in nature. Merely because inconvenience is caused to petitioners if the pipeline is not diverted, is not a ground for interference by this Court. Technical matters must be left to the discretion of the experts. It is to be noted that no malice is attributed to persons who have planned the route of pipeline. Moreover, in exercise of power of judicial review under Article 226 of the Constitution of India, this Court cannot venture into issues where appropriate designs are made by technical persons with reference to the requirement of the water flow, more particularly when no private property is affected and pipelines are being laid on the existing public road.

27. Ancillary grievance of the petitioners is twofold: firstly, on account of undertaking of blasting, there is a possibility of affecting health of the people living in the area, more so, when most of them are above 60 years of age and are already suffering with some or the other ailment and as area in Road No.79 being narrow road and thickly populated, the vibrations created by the blasting are affecting their properties and also person. Secondly, on account of cutting of the road, the existing drainage system is also affected and sewerage lines and now connected to the drain water nala consequently polluting the Kothacheruvu lake.

28. The stand of the respondent Sewerage Board is that modern technology is used and all precautions are taken while undertaking the blasting. It is called controlled blasting. Therefore it does not result in spread of broken rock pieces and does not create vibrations. Further more, while cutting the road, there is possibility of damage to the existing sewerage lines but soon after completion of the pipeline work, same would be repaired.

29. Admittedly some inconvenience is caused to the residents of the locality as well as people using the road on account of the cutting of the road and existing sewerage lines. The respondent Sewerage Board ought to have taken appropriate care to ensure that existing sewerage lines are not affected. It cannot be said that in the present days, modern technology is not available to ensure that existing sewerage lines are not be affected, while laying pipelines. At-least, respondent Sewerage board ought to have taken care to lay temporary pipelines so that sewerage pipelines are not affected, there would not be spill over of sewerage water into open or mixing with the natural stream and water logging in the area. The respondent Sewerage board is aware of consequences of water logging, i.e., growth of mosquito that will have serious repercussions on health. The issues 2 & 3 are accordingly answered.

30. In the peculiar facts of this case, the following directions are issued:

1. Having regard to the serious concerns expressed by the petitioners and having seen the photographs enclosed to the writ petition and to the additional material papers and video, the respondent Sewerage Board is directed to ensure that sewerage lines are not affected and there is no open flow of sewerage water and clogging of water during the execution of work. If necessary, Sewerage Board shall

take steps to lay temporary sewerage lines and ensure that sewerage water does not over flow and cause water logging;

2. The GHMC is further directed to ensure that soon after the pipelines are laid, the repairs and relaying of the road work should be undertaken and completed expeditiously;
3. As directed by the City Police Commissioner in order dated 5.1.2015, all necessary precautions have to be taken and a senior level responsible officer of the Sewerage Board should be present whenever blasting is taken place. Notice boards displaying blasting in the area should be put up as directed by the City Police Commissioner and local police should be informed in advance of taking of such blasting. To the extent possible, they shall ensure that blasting should be taken up only when traffic is less;
4. In view of the mandate of provisions of the Explosives Act, 1884 and the Rules 2008 made there under, 9th respondent and respondent Sewerage Board are directed not to undertake blasting work without obtaining authorisation from the Chief Controller under the Explosives Act;
5. Having regard to the larger public interest to lay water pipelines as early as possible, the Chief Controller under the Explosives Act, Government of India is directed to grant permission, after observing due formalities as required, on priority basis and preferably within a period of one week from the date of submission of application for grant of such permission by the contractor through respondent Sewerage Board.

31. The writ petition is accordingly disposed of. No costs. Miscellaneous petitions, if any pending, stand closed.

P.NAVEEN RAO,J

Date: 05.10.2015

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 14528 of 2015

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