

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: July 17, 2015

% *Judgment Delivered on: July 28, 2015*

+ **LPA 344/2015 & CM 10354/2015 (stay)**

PANCHSHILA COOPERATIVE HOUSE
BUILDING SOCIETY LIMITED & ORS

..... Appellants

Represented by: Mr.Gaurav Sarin, Mr.Satyam
Thareja, Ms.Charul Sarin,
Ms.Veera Angrish and
Mr.Ajitesh, Advocates.

versus

STATE (GOVT) OF NCT OF DELHI & ORS Respondents

Represented by: Mr.Raman Duggal, Standing
Counsel (GNCTD) with
Ms.Aayushi Gupta, Advocate
for R-1 to R-3.
Mr.S.R.Sharma, Advocate for
R-4.
Mr.Aman Panwar and
Mr.Mudit Gupta, Advocates for
Intervener.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Panchshila Cooperative House Building Society and others, the Appellants herein filed a writ petition being W.P.(C) No.1921/2014 seeking declaration that the decision pertaining to the present location and placement of the Foot Over Bridge (in short 'FOB') which is being constructed on the Outer Ring Road, Panchshila Park on one end in front of House Nos.S-25 to S-29, Panchsheel Park and on the other end in front of House Nos.N-96 and N-98, Panchsheel Park is arbitrary, unreasonable and illegal and sought

quashing of the decision of PWD regarding the choice of location and placement of the same with further directions to the Respondents not to construct the FOB at the impugned location; to restore status quo ante and relocate and construct the FOB at alternate location as suggested by the Appellants. The said writ petition was withdrawn on March 24, 2014 by the learned counsel with liberty to make a representation to the Unified Traffic and Transportation Infrastructure (Planning & Engineering) Centre (UTTIPEC) within a period of two days who was in turn directed to decide the same as expeditiously as possible preferably within a period of four weeks. Vide order dated March 24, 2014, UTTIPEC was further directed to give a hearing to a team comprising three representatives of the Appellants before deciding the matter and liberty was granted to the Appellants to file appropriate proceedings if aggrieved by the decision of the UTTIPEC, leaving the rights and contentions of all the parties open.

2. Pursuant to the withdrawal of the writ petition a representation dated March 27, 2014 was made by the Appellants to the UTTIPEC. After holding a meeting with the Appellants along with the officers concerned on April 04, 2014, the Director (Planning), UTTIPEC sent recommendations to the Secretary, PWD, Government of NCT of Delhi in the following terms on April 25, 2014:

“From the hearing of all the Petitioners following views emerged:

- (i) The current proposed location in the front of house no.S-25 to S-29, Panchshila Park on the one end and house no.N-96 & N-98, Panchsila Park on the other end, adopted by the PWD is not appropriate for construction of FOB due to the following reasons:*

- (a) *There is no footpath on both sides of the road at the current location chosen by PWD; hence it is unsafe for pedestrians attempting to cross the road at this point.*
 - (b) *The service road is too narrow on both sides, approximately 27 feet. After locating the foot print of the FOB, as per the plan, it is found that right of way for traffic movement in the left over service lane is inadequate. Thus, the construction of FOB at current location would create traffic jam.*
 - (c) *The impugned location is too close to the Fly-over and red light under with pedestrian crossing. Hence this location would not be optimally utilised.*
- (ii) *The location in the vicinity of the MAX Hospital (on the north side) and ING Vyasya Bank (on the south side) is more appropriate and is in concordance with UTTIPEC Guidelines for the following reasons as mentioned below:*
- (a) *Service Road is much wider at the alternate location.*
 - (b) *At the alternate location, in addition to the service road, there is also a wide footpath, which can be used for ingress and egress from FOB. Thus, the total width available at alternate location is higher, as compared to the present location.*
 - (c) *A wide footpath is available on either side of the road at the alternate location.*
 - (d) *There are bus stops on either side of the road. It is more suitable from the perspective of people*

accessing the community shopping area, school, park, MAX Hospital and Banks that are situated on both sides of the Ring Road in close proximity to the proposed site.

- (e) The new location is beneficial to great number of the users and residents on both sides of the road namely Panchshila North and South Blocks, Sadhana Enclave and Panchshila Enclave. It also is the mid-block location for the Panchshila Colony.*
- (f) Furthermore, it would be at the mid point between the two metro-stations (namely Hauz Khas & Soami Nagar) where there are already provisions for pedestrian movement.*
- (g) UTTIPEC Guidelines dated 25.11.2010 are to be followed by the Road Owning Agency i.e. PWD, GNCTD.*

In view of the above PWD is requested to take up the matter in FOB Subway Sub-Committee under the chairmanship of Secretary PWD considering the request of the Petitioner as per the directions of the Hon'ble High Court."

3. Pursuant to the UTTIPEC's letter dated April 25, 2015 the Appellants made a representation to the Secretary, PWD on May 02, 2014 calling upon the Sub-committee of FOB to look into the matter in the light of the views expressed by UTTIPEC. It is the case of the Appellants that despite the fact that matter was pending consideration, the construction work on the existing location recommenced in the second week of July, 2014 whereafter the Appellants approached the various authorities and filed RTI applications but

to no avail. Thus the Appellants filed another writ petition being W.P.(C) No.7960/2014 reiterating the prayers made in W.P.(C) No.1921/2014. One of the grounds urged was that the Respondents failed to consider the recommendations of UTTIPEC and started reconstruction of FOB guided by totally extraneous considerations de-hors 2008 UTTIPEC Regulations, UTTIPEC Mandated Guidelines and despite UTTIPEC views/opinion communicated vide its letter dated April 25, 2014. It was also prayed that the location of the proposed FOB be shifted to the alternative location, that is, near the Mother Dairy Concessionaire, Panchsheel Park, Near Bus Stop. After noting the aims and objectives of UTTIPEC vide its interim order dated December 22, 2014 in W.P.(C) No.7960/2014 this Court directed UTTIPEC to file an affidavit after examining the issues raised in the petition and to state its stand on record to the location of the FOB.

4. An affidavit of UTTIPEC was filed by the Director (Planning), UTTIPEC, DDA clarifying that FOB Sub-Committee, PWD is required to examine the feasibility of the desired options for the foot over bridge as per the FOB guidelines in existence and UTTIPEC has approved the FOB Guidelines in Governing Body dated November 25, 2010 and June 10, 2011 under the Chairmanship of the Lieutenant Governor which are to be followed by all road owning agencies, that is, PWD, NDMC, MCD and that UTTIPEC is essentially a policy making body for framing guidelines and was not involved in implementation or approval of any FOB related project.

5. In response to the writ petition an affidavit was filed by the Executive Engineer, PWD on behalf of Government of NCT of Delhi and it was stated that a meeting of FOB Committee was held on November 21, 2014 under the Chairpersonship of the Secretary, PWD wherein the representatives of

Traffic Police, CRRI and UTTIPEC etc.were also present and after detailed deliberations it was decided by the FOB Committee as under:

- “i. The location of FOB shall be near to Panchsheel flyover.*
- ii. The width of staircase and footpath will be restricted to 1.8 m.*
- iii. A reference will be made to transport department for shifting existing Sadhana (south side) bus stop near to flyover/FOB. The minutes of 54th FOB committee issued by Secretary are herewith enclosed as Annexure-I.*

In view of the above decision, the sufficient width of service/slip road will be available. Further in existing South Side Bus Stop is also proposed to be shifted near Flyover/FOB.

Thus the main issues of petitioner has been considered and resolved by the FOB committee and therefore it is requested that the petition may be dismissed.”

6. After arguing the matter for sometime on January 08, 2015 learned counsel for the Appellants on instructions sought to confine the petition only to one aspect of the matter, that is, that the recommendations made by the Subway/FOB Committee at its meeting held on November 21, 2014 as noted above does not have the imprimatur of the Governing Body of the said Respondent and that the Subway/FOB Committee has not considered the guidelines framed by UTTIPEC as also the communication dated April 25, 2014. Thus this Court directed that meeting of the Governing Body of the UTTIPEC be called upon to examine the material which was placed before

the FOB Committee as also its recommendations contained in the letter dated November 24, 2014. Thus the 49th Meeting of the Governing Body of UTTIPEC was held on March 09, 2015 under the Chairmanship of the Lieutenant Governor which came to the conclusion as under:

“..After going through the objections raised by the petitioner in their petition filed in the Hon’ble High Court as well as the other representations received in the PWD/UTTIPEC regarding the location of the FOB at Punchsheel Club, pedestrian foot fall survey conducted by the PWD and the Traffic Police observations and UTTIPEC Guidelines, the Governing Body decided as follows :-

(i). Location of FOB is agreed at the location near Punchsheel Flyover.

(ii). Sadhna Bus Stop to be shifted towards Flyover to benefit the maximum users.

(iii). Pavement of 1.8 mtr. To be left clear of the staircase/ramp / elevators...”

7. Consequently, vide order dated April 27, 2015 in CM No.7602/2015 the learned Single Judge noted that the communication of the UTTIPEC dated April 25, 2014 was followed by a report dated September 25, 2014 which adverted to the study carried out for provision of pedestrian crossing facility near Panchsheel Park area on the Outer Ring Road. The conclusion arrived at in the said report, inter alia, clearly indicates that the pedestrian volume count is the highest at the location, which is the Shahpur Jat intersection as against the one suggested by the Appellants. As per the report nearly 50% of the flow of the pedestrians is at Shahpur Jat intersection while the balance 50% is distributed amongst the three other

intersections. The learned Single Judge further noted that the experts in the matter appeared to have deliberated on the issue of location of the FOB and to expect every resident of the area to agree to the location is impossibility and when public projects are executed some parties are bound to be unhappy. The learned Single Judge also noted that as long as there is no palpable violation of the law or any adverse impact on the public interest, Courts have very little role to play in the matter as the Courts lack the necessary wherewithal and expertise. Thus the Respondents were allowed to continue with the construction of the FOB. Dismissing the application, W.P.(C) No.7960/2014 was listed for October 09, 2015. Hence the present appeal.

8. Before this Court the prayers in the appeal besides seeking quashing of the order dated April 27, 2015 passed in CM No.7602/2015 in W.P.(C) No.7960/2014 are directions to the Governing Body of UTTIPEC to comply with the order dated January 08, 2015 and give a decision on location for construction of Foot Over Bridge after considering the views expressed in the letter dated April 25, 2014 by Director, UTTIPEC and pass speaking order after affording an opportunity of hearing to the Appellants.

9. The contention of the learned counsel for the Appellants is that UTTIPEC being the statutory body under the Delhi Development Act, 1957 (in short 'the Act') was created with a view to enhance mobility, reduce congestion and to promote traffic safety by adopting standard transport planning practices etc. Thus PWD Department of the Government of NCT of Delhi cannot go beyond the recommendations of the UTTIPEC.

10. Before adverting to the contention of the learned counsel for the Appellant it would be relevant to note the composition and authority of

UTTIPEC. Unified Traffic and Transportation Infrastructure (Planning & Engineering) Regulations, 2008 have been notified under Section 57 of the Act. The object of the UTTIPEC Regulations, 2008 are reproduced as under:

“With a view to enhance mobility, reduce congestion and to promote traffic safely by adopting standard transport planning practices, capacity building, enforcement measures, road safety audits, traffic engineering practices and better organisational co-ordination for improved traffic management by efficient lane capacity and work zone management, utilities co-ordination, developing traffic culture and avoiding transport planning pitfalls in the National Capital Territory of Delhi, the Unified Traffic And Transportation Infrastructure (Planning And Engineering) Centre is set up by Delhi Development Authority in exercise of powers under Section 5A of the Act. The business of the TT Centre will be governed by these Regulations-”

11. The aims, objectives and functions of UTTIPEC are:

“03. Aims and Objectives

The aims and objectives of the “Unified Traffic and Transportation Infrastructure (Planning and Engineering) Centre” shall be as follows:-

- (i) To study and coordinate the norms and standards for Planning and Engineering Practices in Traffic and Transportation.*
- (ii) Engineering Aspects of Implementation of National Transport Policy-2006 and Master Plan of Delhi-2021 Transportation proposals.*
- (iii) Traffic Road Safety Audit Guidelines. (TRSAG).*

- (iv) *To coordinate the Engineering and Infrastructure aspects of sustainable public transportation system.*
- (v) *To evolve a parking policy and evolve parking solutions.*
- (vi) *Inventory of corridor wise Traffic and Transportation issues, Traffic Management Strategies and Enforcement Guidelines.*
- (vii) *To act as repository for sharing of traffic and transpiration plans/database/information/digitization and website development.*
- (viii) *Evolving Environmental Impact Assessment Guidelines for Traffic and Transportation Projects.*
- (ix) *Developing protocols and norms for signages, street furniture, lighting, signals, hoardings, trees, roadside landscapes, zebra crossing, pedestrian passages, commuter facilities etc.*
- (x) *Evaluation-Public participation –Feedback.*
- (xi) *To take up other related activities as may be considered appropriate by the TT Centre including co-ordination, capacity building and training.*

.....

05. Functions of TT Centre

In view of Aims and Objectives defined in clause 0.3, the TT Centre shall perform the following functions: -

- (a) *To compile a manual based on hand books/best practices/Traffic transportation planning and engineering norms for uniform adoption in NCT of*

Delhi.

- (b) To digitize the available Traffic & Transportation plans.*
- (c) To develop a comprehensive integrated programme for traffic and transportation projects.*
- (d) To coordinate integrated development of traffic & transportation projects including Integrated Freight Complex (IFC), Metropolitan Passenger Terminal (MPT), Inter-State Bus Terminal (ISBT) by involving concerned local bodies.*
- (e) To co-ordinate refurbishment of urban corridors for capacity augmentation with focus on small improvements and retrofitting measures that synergize into zero defect roads and relieving traffic congestion.*
- (g) All transportation projects/ transport Engineering solution in Delhi by any agency having road Engineering/Infrastructure implication would required clearance of the centre. This would ensure the latest technology and research finding support is available to all new roads and projects.*
- (h) The Technical support of staff and secretarial assistance to this centre shall be provided by the Authority.”*

12. From a perusal of the above Regulations it is evident that UTTIPEC is an advisory body created to evolve policies in respect of planning and engineering practice in traffic, transportation, coordination etc. Further by way of notification dated August 07, 2009 Para-5 (g) of the notification dated July 31, 2008 has been amended to read as under:

“All transportation projects/transport Engineering Solutions in Delhi by any agency having road Engineering/Infrastructural implication would require clearance from UTTIPEC. This would ensure that latest technology and research finding support is available to all new roads and projects. For such projects any reference to/clearance from DDA Technical Committee will no longer be required.”

13. Vide the letter dated April 25, 2014 the Director, UTTIPEC sent the views that emerged after hearing the various parties to the Secretary PWD which were duly considered in the 49th Governing Body Meeting of UTTIPEC held on February 20, 2015 under the Chairmanship of Lieutenant Governor wherein the following decisions were taken in regard to the Foot Over Bridge at Panchsheel Park at Outer Ring Road:

“B. FOB at Panchsheel Club

- i) The FOB at Panchshila Club across Outer Ring Road was approved in 22nd meeting of Sub way committee held on 20.7.2008 under the Chairmanship of Pr. Secretary. (PWD) prior to constitution of UTTIPEC which was notified vide Gazette Notification dated 31.7.2008 S.O. No. 1903 (E) and further modified on 7.8.2009, SO 2065 (E).*
- ii) FOB Guidelines formulated and approved by Governing Body meeting held under the Chairmanship of Hon’ble L.G. on dated 25.11.2010 & 10.06.2011. The principles for crossing as well as FOB need Criteria Guidelines framed by the UTTIPEC is basically a check list to be referred while considering the approval process of FOB. FOB / subway committee under the chairmanship of Pr. Secretary (PWD) is the*

body to approve the FOB / Subway proposal.

- iii) In pursuance of High Court order dated 24.3.14 in the case WP(C) No.1921/2014 titled Panchshila Coop. House Building Society Ltd & ors vs State (Govt.) of NCT of Delhi & ors, the petitioners were invited and a meeting was conducted under the Chairmanship of Commissioner. (Plg.), DDA on 4.4.2014 wherein after hearing all the petitioners, PWD was requested to take up the matter in FOB Sub Committee under the Chairmanship of Secy. PWD considering the request of the petitioners as per the directions of Court orders, with the conditions that UTTIPEC Guidelines dt. 25.11.2010 also to be followed by the Road Owning Agency, i.e. PWD, GNCTD.*
- iv) As per UTTIPEC FOB Guidelines, requirements i.e. location criteria, perceived ease of accessibility, Engineering, Quality and type of construction (as per point No. 2 to 6) of FOB Guidelines are to be followed by Road Owning Agencies (PWD in this case).*
- v) As per approval of 31st UTTIPEC Governing Body dt. 10.06.2011, the FOB Sub Committee under the Chairmanship of Pr. Secretary, PWD to approve the exceptional cases under 3 which FOBs are to be provided by all agencies including PWD, MCD, NDMC etc. The Subway Committee to consider the principles for crossings as well as FOB need criteria and design Guidelines specified by UTTIPEC as part of the approved checklist while considering for approval process.*
- vi) The FOB Sub Committee/ PWD as an implementing body to examine all the criteria's as per the UTTIPEC Guidelines and conduct traffic related surveys, necessary studies /site surveys for co-relating the criteria. The study was conducted by the PWD & the*

matter was placed before the 54th FOB/Subway Committee meeting held on 21.11.14 in which the proposal was approved subject to certain conditions.

- vii) The FOB Sub Committee/PWD is to examine the feasibility of the desired options for Foot over bridge as per the FOB Guidelines in existence.*
- viii) UTTIPEC is a policy making body for framing Guidelines etc. and not involved in implementation of any FOB related project.*

Observations

A presentation was made by the Secretary/PWD regarding the FOB at Panchsheel Club and explained that the pedestrians survey has been got conducted by PWD and it was found that the maximum footfall occurs at the FOB near the foot of the Flyover. Delhi Traffic Police also endorsed the view of PWD regarding the pedestrians survey and Special Commissioner Traffic, Delhi Police also submitted that since the location of the FOB is near foot of the existing Panchsheel Flyover it will be highly utilized by the pedestrians near the Flyover as there is a road leading to Shahpurjat Village. The maximum users will be from Shahpurjat Village who will be using the FOB. Secretary, PWD informed that a number of representations have been received wherein it has been suggested that the locations of the FOB be kept at the present location as it will benefit the maximum users. Secretary, PWD also mentioned that the width of FOB will be reduced so that the FOB Guidelines regarding the obstruction of pavement of minimum 1.8 mtr. to be left clear of the staircase and ramp/elevators.

Decision

After going through the objections raised by the petitioner in their petition filed in the Hon'ble High Court as well as

the other representations received in the PWD/UTTIPEC regarding the location of the FOB at Punchsheel Club, pedestrian foot fall survey conducted by the PWD and the Traffic Police observations & UTTIPEC Guidelines, the Governing Body decided as follows:-

- i). Location of FOB is agreed at the location near Punchsheel Flyover.*
- ii). Sadhna Bus Stop to be shifted towards Flyover to benefit the maximum users.*
- iii). Pavement of 1.8 mtr. to be left clear of the staircase/ramp/elevators.”*

14. It is thus evident that pursuant to the directions of this Court dated March 24, 2014 in W.P.(C) No.1921/2014 the Director, UTTIPEC only sent the views of the different parties after hearing them and requested that the matter be taken up in the FOB/Subway Sub-committee under the chairmanship of the Secretary, PWD whereafter the matter was referred to the 49th UTTIPEC Governing Body Meeting held on February 20, 2015 headed by Lieutenant Governor in pursuance to the direction of the learned Single Judge dated January 08, 2015 and it was agreed that the location of the FOB should be at near Panchseel flyover, Sadhana Bus Stop should be shifted to benefit the maximum users and pavement of 1.8 mtr to be left clear of the staircase/ ramp/ elevators. The main basis of the decision is the number of pedestrians using the FOB and the footfall being the highest at the point in the area where the FOB was under construction. The decision arrived at on February 20, 2015 by the Governing Body duly considered the views expressed by the Appellants which were communicated vide the letter

of Director, UTTIPEC dated April 25, 2014.

15. The Supreme Court in the decision reported as 2000 (10) SCC 664 Narmada Bachao Andolan vs. Union of India and others held:

“229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. Even then any challenge to such a policy decision must be before the execution of the project is undertaken. Any delay in the execution of the project means overrun in costs and the decision to undertake a project, if challenged after its execution has commenced, should be thrown out at the very threshold on the ground of laches if the petitioner had the knowledge of such a decision and could have approached the court at that time. Just because a petition is termed as a PIL does not mean that ordinary principles applicable to litigation will not apply. Laches is one of them.

232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The court has come down heavily whenever the executive has sought to impinge upon the court's jurisdiction.

233. At the same time, in exercise of its enormous power the court should not be called upon to or undertake governmental duties or functions. The courts cannot run the Government nor can the administration indulge in abuse or

non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the court will not interfere. When there is a valid law requiring the Government to act in a particular manner the court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the court to go into the matter afresh and, in a way, sit in appeal over such a policy decision.”

16. While taking administrative decision, Governmental authorities are

required to balance the competing claims and there can never be a perfect solution to a problem. As noted above the Governing Body on the basis of survey conducted noted that the FOB at the existing site would benefit the maximum number of people due to the footfall at that point and thus the decision of the Governing Body cannot be said to be arbitrary, whimsical or malafide warranting interference. Moreover as noted above UTTIPEC is not a statutory authority but an advisory body. The views of the Appellants were duly put before the Governing Body and considered and decision cannot be faulted with for the reason that the same is not as per the views of the Appellant. For the aforesaid discussion we find no merit in the present appeal.

17. Appeal and application are accordingly dismissed. No costs.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 28, 2015
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