

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision:- 22.07.2016.

1. Civil Writ Petition No.1704 of 2009 (O&M)

M/s Delhi Gurgaon Super Connectivity Limited . . . Petitioner.

Versus

State of Haryana and others . . . Respondents.

2. Civil Writ Petition No.6526 of 2009 (O&M)

Kanwaljit Singh Anand . . . Petitioner.

Versus

Union of India and others . . . Respondents.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Rohit Khanna, Advocate
for the petitioner (in CWP No.1704 of 2009)

Ms. Aarti, Advocate for
Mr. Rajiv Kataria, Advocate
for the petitioner (in CWP No.6526 of 2009).

Mr. R.T. P.S. Tulsi, Senior Advocate with
Mr. Sunil Kumar Sahore, Advocate and
Mr. Lovedeep Singh Sodhi, Advocate
for respondent No.3/NHAI in CWP No.1704 of 2009
and respondents No.2 to 4 in CWP No.6526 of 2009.

Mr. Akshay Bhan, Senior Advocate with
Mr. Sahil Sharma, Advocate and
Mr. Dushyant Manocha, Advocate
for respondent No.5 (in CWP No.1704 of 2009).

S.S. Saron, J.

M/s Delhi Gurgaon Super Connectivity Limited has
filed the present petition under Articles 226 and 227 of the
Constitution of India. It seeks directions against the State of

Haryana; Director General of Police, Haryana; National Highway Authority of India; Deputy Commissioner of Police (Traffic) Gurgaon and M/s Millennium City Express Way, New Delhi (respondents No.1 to 5) to support, cooperate with and facilitate the petitioner in the implementation of the Delhi-Gurgaon Express Way Project. The petitioner prays for providing dedicated Police Teams to assist in the collection of lawfully authorized toll. This is to ensure the safety and security of the life and property and regulate the traffic at the two toll plazas at KM 24.00 Dundahera Border and KM 42.00 Kherki Daula, National Highway-8 District Gurgaon, Haryana and along the Delhi-Gurgaon Express Way.

Kanwaljit Singh Anand has also filed a petition under Articles 226 and 227 of the Constitution of India praying for directing the respondents to strictly adhere to the rules and directions issued from time to time regarding the safety norms of the over busy express highway maintained by the National Highways Authority. In this manner, the accidents are to be minimized; besides, proper requisite services are to be rendered to commuters of the road as well as the interest and convenience of the residents in the vicinity on both sides of the roads are taken care of. It is further prayed that National Highways Authority and the contractor who build the road on BOT basis be held accountable for the public money collected by way of toll and the damages suffered by the commuters on the road on account of the negligence and violations of various rules. This is in respect of the stretch of Express Highway from Dhaula Kuan to

Manesar in Haryana on NH-8. A further direction is sought against the respondents to make all such necessary improvements of complete fencing of the road on both the sides by installing effective fencing on the divider of the eight lanes road. Appropriate penal action is also sought against respondents No.3 to 7 for being grossly negligent and being guilty of ignoring their duties and thus liable under Section 304-A of the Indian Penal Code.

The son of Kanwaljit Singh Anand (petitioner) namely Rahul Anand met with an unfortunate accident on 09.03.2009 on the stretch of the road between the Gurgaon Toll Plaza on the Express Highway i.e. National Highway No.8. According to petitioner Kanwaljit Singh Anand, this accident had occurred because of the callous attitude of the respondents. Therefore, he files the present writ petition for directing the respondents to strictly adhere to the rules and directions issued from time to time regarding the safety norms of the over busy express highways maintained by the National Highways Authority of India (hereinafter referred as 'NHAI') so as to ensure that the accidents are minimized.

According to the petitioner (s) in both the petitions, the requisite services are rendered to the commuters of the road, as well as the interest and convenience of the residents in the vicinity on both the sides of the road are being taken care of. However, the NHAI and the contractor, who built the road on BOT basis are not complying with the norms that are liable to be followed and observed; besides, have been acting in a casual and

negligent manner. Therefore, they are liable to be held accountable for the public money collected by way of toll and the damages suffered by the commuters of the road on account of the negligence and violation of various rules and directions regarding the stretch of express highway from Dhaula Kuan to Manesar in Haryana, on National Highway No.8. Besides, complete fencing of the road on both the sides of the road and installing effective fence on the divider of 8 lane road would be of great help and minimize the accident that occur quite frequently. Penal action against respondent Nos.3 to 7, it is submitted, is liable to be taken as the said respondents have been grossly negligent and guilty of ignoring their duties and liable under Section 304-A of the Indian Penal Code.

The prayers made by Shri Kanwaljit Singh Anand are quite omnibus and in the first instance he is liable to represent before the authorities, besides, avail other alternative remedies.

In the petition filed by M/s Delhi Gurgaon Super Connectivity Limited, this Court has passed interim orders from time to time regarding the proper and smooth flow of traffic and for free flow of traffic at the toll plazas on the roads in question. The order passed by this Court in this regard on 04.09.2012 issuing various directions for maintaining smooth flow of traffic and collection of tolls etc. may be adverted to. These pertain to the effective functioning of the toll plazas. In the said order, the earlier orders passed in the case have been adverted to. Thereafter this Court passed orders dated 28.09.2012, 8.10.2012 and 22.09.2014, which also deal with the matter in issue.

Shri Akshay Bhan, Senior Counsel with Mr. Sahil Sharma and Mr. Dushyant Manocha, Advocates, appears for M/s Millennium City Express Way Private Limited (respondent No.5 in CWP No.1704 of 2009). He submits that the only issue, which had remained pending for consideration, had been that the toll plaza at National Highway No.8, Gurgaon, which had remained closed, was liable to be made operational on the same terms of the period of concessionary rate. He further submits that M/s Millennium City Expressway Private Limited, in any case, is not a signatory to the Memorandum of Discharge dated 26.03.2014.

In the said Memorandum of Discharge, it has *inter alia* been agreed by Delhi Gurgaon Super Connectivity Limited ('DGSCCL' - for short), the concessionaire, that it waives and discharges NHAI from all its legal and arbitration claims (existing and future), including but not limited to those forming part of the clauses (a) to (d). The said clauses (a) to (d) mention the various pending cases in this Court and Hon'ble the Delhi High Court. It is mentioned that the concessionaire DGSCCL waives and discharges NHAI from all its claims (existing and future) pertaining to the period prior to DGSCCL handing over the projects/concession to the Senior Lenders. These include but are not limited to the main claim for Rs.988 crores raised vide DGSCCL letter dated 10.10.2012. The claims for revenue leakage at IGI Toll Plaza due to alternate toll free connectivity to IGI Airport. The claims on revenue loss during the toll suspension period at KM-24 Toll Plaza as per this Court order dated 04.09.2012 and the claim for non-revision of toll rates in the financial years 2012-13 and 2013-14

vide DGSCCL letter dated 09.09.2013. Besides, NHAI has also waived and discharged the concessionaire DGSCCL from all its legal and arbitration cases and claims (existing and future) pertaining to the period prior to DGSCCL handing over the project/concession to the Senior Lenders including but not limited to clauses (a) to (d) of para 4 of the Memorandum of Discharge dated 26.03.2014.

Shri Akshay Bhan, learned Senior Advocate, submits that without prejudice to the fact that M/s Millennium City Expressway Private Limited is not a signatory to the Memorandum of Discharge, the present petitions may be disposed of leaving the parties open to avail appropriate legal remedies and file fresh petitions, if necessary.

A copy of the Memorandum of Discharge dated 26.03.2014 between NHAI and DGSCCL submitted in Court today, is taken on record.

In the present case, therefore, nothing survives for the present and in view of the settlement reached at by way of Memorandum of Discharge dated 26.03.2014 the present petitions are being disposed of. In case any of the parties have any claim, he/it may enforce the same by availing appropriate alternative legal remedies in the first instance and file fresh petitions in case it is necessary.

In the light of the Memorandum of Discharge dated 26.03.2014 between NHAI and DGSCCL that has been filed, both the petitions stand disposed of leaving the parties to avail

alternative remedies in the first instance and then approach this Court, if the need so arises.

(S.S. Saron)
Judge

(Lisa Gill)
Judge

22.07.2016
Sachin/A.Kaundal