

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**PUBLIC INTEREST LITIGATION NO. 159 OF 2016**

SHRIMANTRAO BHAURAO GORDE PATIL AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

WITH  
**CIVIL APPLICATION NO. 697 OF 2017 IN**  
**PUBLIC INTEREST LITIGATION NO. 159 OF 2016**  
(Vishnupant Vitthal Thakur V. Shrimantrao Bhaurao Gorde Patil & anr.)

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Mr. S.M. Godsay, Advocate with Mr. V.C. Patil, Advocate for the petitioners  
Mr. A.B. Girase, Government Pleader for the respondent/State  
Mr. S.V. Advant, Advocate for respondent no.2 and 3  
Mr. S.G. Chapalgaonkar, Advocate for respondent no.4  
Mr. M.N. Navandar, Advocate for respondent no.6 and 7  
Mr. M.N. Deshmukh, Advocate for the applicant in CA/697/2017

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**CORAM : S.C. DHARMADHIKARI &**  
**MANGESH S. PATIL, JJ.**  
**DATE : 01-08-2017**

ORAL ORDER :

1. The petitioners claim to have approached this Court in public interest. Two petitioners are residing around the side of a Railway Gate. The grievance is that Railway Gate no. 54 situated at Sangram Nagar, Aurangabad was to be closed after the construction of the Overbridge. The Railways are keen to close the Gate as per their policy. Therefore, the Gate was to be closed in August, 2016.

However, due to objection by the residents, it was decided that a Underpass would be constructed from the State Government funds on or before 12/12/2016 and till then the Gate will remain open. Though the plans are submitted, on 20/12/2016 the Railways are closing this Gate. The closure of the Railway Gate is detrimental to the interest of the residents of the locality, is therefore the grievance.

2. The prayer is that, the Railways should be directed not to close down such a Gate.

3. There are further reliefs claimed but those are concerning the sanction to the proposal of the Maharashtra State Road Development Corporation for construction of Underpass. However, essentially the prayer is that Gate no.54 situated at Sangram Nagar, Aurangabad should not be closed by Respondent no. 6 and 7 until suitable and alternate way is found.

4. To this Petition, there is an affidavit and which has been filed at page 104. Apart from contending that such an issue cannot be made subject matter of legal proceedings, particularly, under Article 226 of the Constitution of India, it is urged that the closure of the

Railway Gate under the Railway Overbridge is not detrimental to the interest and convenience of the residents in the nearby vicinity. For any one accident on the Level Crossing Gate in future cannot be compensated. To avoid accidents, these Gates are being closed. It is evident that if no effective steps are taken by the State Government to ensure that the Underpass is ready and for use by the public, that by itself does not mean that the Railways should be directed to open the Gate.

5. Then, the Railway Guidelines and the Railway Engineering Code is relied upon, to urge that this guides the policies and decisions of the Railways. It is then stated that the financial repercussions are also huge. Once the Gate was functional, the Railways was incurring a loss of Rs. 9,11,228/- per annum. That was towards maintenance and manpower. In the circumstances, the expenses on payment of salaries to the Gate Keepers, the maintenance charges are all avoided. It is for these reasons, that it is prayed that the Public Interest Litigation be dismissed.

6. This affidavit was filed on 21-07-2017.

7. Prior thereto, we must notice an order passed on 15<sup>th</sup> December, 2016 by this Court in this Public Interest Litigation. That order reads as under:-

*“ Heard the learned respective counsel appearing for the parties.*

*2. The learned counsel for the petitioners seeks leave to delete name of respondent No. 8. Leave to delete the name of respondent No. 8 is granted.*

*3. It is almost agreed by all the parties that closure of Railway Gate No. 54 – the subject matter of this petition, would cause lot of inconvenience to the public residing in the adjoining area. It is doubtful as to whether the over-bridge that has already been constructed, meets with necessary technical specifications in respect of design of the over-bridge. The location and construction of the over-bridge itself has added, according to the petitioners, to the inconvenience and miseries of the residents of the adjoining locality. The closure of the Railway Gate would add further to the inconvenience of the residents.*

*4. Considering the public interest involved, we deem it appropriate to direct the respondents/railway authorities not to close down the Railway Gate No. 54, situated at Sangramnagar, Aurangabad, until further orders.*

*5. The respondents shall, in the meanwhile, consider the request of the petitioners, who represent the residents of adjoining area of providing for an underpass at the location of the aforesaid Railway Gate which may resolve the problem faced by the residents of the locality. The State Government and the Aurangabad Municipal Corporation are directed to take appropriate steps for providing the alternate way/route in the nature of an underpass, at the aforesaid location or may consider any other suitable*

*option for redressal of problem faced by residents of locality.*

*6. Notice to the respondents, returnable on 19th January, 2017. The learned Government Pleader waives service of notice for respondent Nos. 1 and 5. Learned counsel Mr. S.V. Adwant waives service of notice for respondent Nos. 2 and 3. Learned counsel Mr. S.G. Chapalgaonkar waives service of notice for respondent No. 4. Learned counsel Mr. M.N. Navandar waives service of notice for respondent Nos. 6 and 7.”*

8. After perusing this order, which came to be passed prior to the affidavit of the Railways, we cannot accede to the request of Shri Godsay, learned counsel for the petitioners, to continue the ad-interim order, till an Underpass is constructed.

9. Once there are definite policies of the Railways and which guide their traffic and its movement, then, we should not be taking over the functions and policies for that purpose of the Railways in our Writ Jurisdiction.

10. In Writ Jurisdiction, we cannot suggest any alternatives nor we can substitute our opinion with that of the Railway Authorities. Railways have considered all the pros and cons and arrived at a decision that for better management of its traffic, Rail movements, it would be advisable to close down the Gate. There had been burden

on their finances as well. Obligation and duty to maintain a Gate 24 X 7, post the Security at such Gate, when at other Railway Gates, Railways is not in a position to place their Security and incur expenses on maintenance, Staff at such Gates, will be improper. Our insistence should not result in disturbing the policies of the Railways. The residents may have to face some inconvenience but a solution to their problems, does not necessarily lie in stalling and obstructing the Railways from implementing their own decisions. We are of the view that no amount of photographs or other materials would persuade us, much less impress us.

11. There is an Intervention Application (CA/697/2017) filed and which makes some serious allegations against the petitioners. The intervenors / applicants say that the Railway Authorities cannot continue the Railway Gate nor the Corporation and the Traffic Department can allow four wheelers and heavy vehicles on 7 feet colony lay out road. The Public Interest Litigation is for private interest. It is the traders who are interested and for their business motives in ensuring that the Gate is not closed. The residents have no problems by closure of the Gate. Thus, this PIL projects private interest.

12. In the above circumstances, all the more, we are disinclined to grant any relief in Writ jurisdiction. In Writ jurisdiction, we should not be seen as intervening, much less interfering in the policy decisions and of the Authorities like the Railways. Railways perform a duty and to the Nation. The movement of trains smoothly and efficiently is ensured by them, so that they carry the passengers and the goods traffic to its destination in time.

13. We do not see how we can issue any directions to the Railway Authorities, particularly, in the light of their affidavit. As a result of the above discussion, we are of the view that there is no merit in this Public Interest Litigation. It is dismissed.

14. Ad-interim order dated 15<sup>th</sup> December, 2016 passed in this PIL is vacated.

15. Consequently, Civil Application no. 697 of 2017 also stands disposed of.

**[MANGESH S. PATIL]**  
**JUDGE**

**[S.C. DHARMADHIKARI]**  
**JUDGE**

arp/