

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2034 OF 2021

- 1) Ellora Paper Mills Limited,
Having registered office at village
Devhada Khurd, Post Tumsar 441912,
Tah. Mohadi, Dist. Bhandara, through
its duly authorized Director,
Shri Bandhoo Ram Balchandraram
Prasad, Office at 379, Pt.
Jawaharlal nehru Marg,
Sitabuldi, Nagpur – 440012.
- 2) Mr Sudhir Goenka,
Aged about Major, Occu.- Managing
Director, Director Identification
No.01781894. R/o. 69 Farm Land,
Shristi Building, 3rd Floor,
Ramdaspath, Nagpur.
- 3) Mr. Bandhoo Ram Balchandraram Prasad,
Aged about Major, Occu.- Director,
Director Identification No.6945880,
R/o. Devhada Khurd, Post Tumsar,
District Bhandara.
- 4) Smt. Kusum Sudhir Goenka,
Aged about Major, Occu.- Director,
Director Identification No.05331335,
R/o. MIDC Area, B-Road,
Andheri (East), Mumbai-400093.

.... PETITIONERS

// VERSUS //

- 1) Union of India,
Ministry of Road Transport and
Highways, through its Secretary,
having office at Transport Bhavan,
01, Parliament Street, New Delhi.

- 2) Union of India,
Ministry of Railways,
Railway Board, through Chairman,
Having Office at Rail Bhavan,
New Delhi.
- 3) South-East Central Railway,
Through Divisional Railways
Manager, Office of Divisional
Railway Manager, Having its
office Near Railway Station,
Nagpur.
- 4) South-East Central Railway,
Through Senior Divisional Engineer,
Office of Divisional Railway Manager,
Near Railway Station, Nagpur.
- 5) South East Central Railways,
Through Assistant Divisional
Engineer, Tumsar Road,
Office at Tumsar Road-441913.
- 6) State of Maharashtra,
Public Works Department,
Through its Secretary,
Mantralaya, Mumbai-32.
- 7) Collector, Bhandara,
District Bhandara.

.... **RESPONDENTS**

Shri P. B. Agrawal, Advocate for the petitioners.
Shri N. P. Lambat, Advocate for respondent Nos.2 to 5.
Shri N. R. Patil, A.G.P. for respondent Nos.6 and 7.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 12.07.2021

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Hearing is conducted through Video Conferencing and all the learned Advocates agreed that the audio and video quality was proper.

2. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The grievance of the petitioners is that after the construction of road under the bridge, the petitioner No.1 factory which is the paper mill is unable to procure raw material required for manufacture of writing paper, printing paper, craft paper, packing paper so on and so forth, which is brought to the factory premises by bigger vehicles having containers mounted on them, which are unable to pass through the newly constructed road under bridge and thereby, the fundamental right of the petitioners to carry on with their business has been adversely affected.

4. According to the learned counsel for the petitioners, the maximum height of the road under bridge from the road level is 3.75 mtrs. and whereas, the bigger container-vehicles bringing raw material to the petitioner No.1 factory have a maximum height of 4.63 mtrs. He

submits that these vehicles cannot use an alternate road because that road passes through several villages and has sharp bends at some points and has even hairpin bends at the other because of which the containers are not able to negotiate the turns without possibly causing damage to the person and property of the villagers.

5. Shri Lambat, learned counsel for respondent Nos.2 to 5, submits that there was already a meeting convened by the District Collector to discuss the problem faced by the petitioners and find out possible solution on 06.07.2021 and that now the next proceedings are scheduled to be held on 14.07.2021, in which it is likely that re-survey of the entire area would be carried out. He submits that the petitioners have not brought on record these relevant facts.

6. Shri N. R. Patil, learned A.G.P. for respondent nos.6 and 7 submits that if the petitioners are interested in getting of having a solution, if they may look at the construction of road over bridge already proposed about 01 km. away from the existing site of road under bridge and consider as to whether or not they would like to share the cost of the same by making their contribution under Corporate Social Responsibility fund for the purpose.

7. On going through the documents placed on record, in particular the no objection issued by the Collector on 15.07.2016, we are of the view that the present height of the road under bridge which is 3.75 mtrs., is in accordance with the no objection given by the District Collector after inviting objections from members of the public and this no objection is subject to certain conditions and, therefore, it would be for the District Collector, Bhandara to consider and take appropriate decision in the matter as regards the fulfillment of the conditions imposed in the no objection dated 15.07.2016. About the alternate road to be made available for passage of bigger container vehicles also, we are of the view that the appropriate authority to decide this issue would be the District Collector, Bhandara as, there is likelihood of involvement of several disputed facts.

8. Besides, objections from members from public had also been invited by the District Collector before he issued a conditional no objection, way back in the year 2016 and it appears to us that although Gram-panchayat had taken objection, the petitioner No.1 company or anybody on its behalf never raised any objection before the District Collector and the objection that was taken by the petitioner No.1 company was before the Divisional Railway Manager (Engineer South-East Railway Nagpur). In fact, the objection was required to be taken

before the District Collector, Bhandara. Then, the petitioners have also not questioned the stipulation of maximum height of 3.75 mtrs. for the road under bridge in the no objection given by the Collector on 15.07.2016, in any manner. Nevertheless, whatever grievance the petitioners may be having now, we are of the view that it is the District Collector, Bhandara who should be the appropriate authority to consider and resolve the same. Accordingly, we direct the petitioners to approach the District Collector, Bhandara for redressal of their grievance in the light of the conditions stipulated in no objection dated 15.07.2016 and if the petitioners appear before the Collector within one week from the date of the order, the Collector, Bhandara shall examine the issue from the view point of fulfillment of these conditions of no objection certificate dated 15.07.2016 or otherwise and take appropriate decision in the matter within a period of four weeks thereafter.

Rule accordingly. No costs.

(ANIL S. KILOR, J.)

(SUNIL B. SHUKRE J.)