

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) PIL No.3422 of 2022

Barpali Banika Sangha and another* *Petitioners

Mr. Ashutosh Mishra, Advocate

-versus-

Union of India and others* *Opposite Parties

Mr. P.K. Parhi, ASGI for Union of India and

Mr. S.N. Das, Additional Standing Counsel for State

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

10.03.2022

Order No.

01. 1. This is the second round of litigation on the issue of expansion of the National Highway-26 passing through Barpali Town, from a two-lane to a four-lane highway. Initially, these very Petitioners had filed W.P.(C) No.27181 of 2021 in which, this Court passed the following order:

“1. The Barpali Banika Sangha has filed the present petition for a direction to the Opposite Parties to construct a bypass road from 0/0 to 21/0 km of NH-26 as the failure to do so is causing grave inconvenience to the general public there in the circumstances mentioned in the grievance petition dated 11th May 2021 (Annexure-8) addressed to the Chief Engineer, National Highways, PWD, Odisha.

2. Learned counsel for the Petitioners draws attention to a letter written way back on 2nd December 2020 by the Executive Engineer, N.H. Division, Sambalpur to the Chief Engineer, N.Hs. Odisha, Bhubaneswar asking that the proposal for construction of a bypass road in the above location may be sent to the Ministry of Road Transport and

Highways, Government of India for approval. He submits that despite the above specific recommendation and a further recommendation made by the Chief Engineer to the Superintending Engineer on 17th March 2021, no action has been taken till date.

3. In the light of the above submissions, a direction is issued to the Chief Engineer, National Highways, PWD, Odisha to immediately examine the aforementioned petition/representation dated 11th May 2021 of the Petitioners in light of the recommendations already made as referred to above and upon hearing the writ Petitioners, to pass a reasoned order indicating the decision not later than 6th December, 2021. The decision be made available to the Petitioners not later than 13th December, 2021. A direction is also issued to the Secretary, Ministry of Road Transport & Highways (Opposite Party No.1) to examine the proposal and communicate the decision within the same period to the Superintending Engineer, N.H. Circle, Sambalpur.

4. Mr. Parhi, learned Asst. Solicitor General states that he will communicate this order to Opposite Party No.1 forthwith.

5. It will be open to the Petitioners to seek appropriate interim directions from the authorities concerned.

6. The writ petition is disposed of in the above terms.

7. An urgent certified copy of this order be issued as per rules.”

2. Pursuant to the above order, the parties were once again heard and now the Chief Engineer, National Highways, Odisha (Opposite Party No.3) has passed a reasoned order on 3rd December, 2021, which has been challenged in the present petition.

3. Mr. Ashutosh Mishra, learned counsel for the Petitioners submits that the spirit of this Court’s order dated 26th October, 2021 has not been complied with in passing the aforementioned order. In particular, he states that apart from the recommendation made on

2nd December, 2020 of the Executive Engineer, N.H Division, Sambalpur to the Chief Engineer about construction of a bypass road from 0 to 21 Kilometer of N.H-26 not being taken into account, the direction issued by this Court to the Ministry of Road Transport and Highways (MoRTH)-Opposite Party No.1 to examine the proposal and communicate its decision to the Superintending Engineer, N.H. Circle, Sambalpur has also not been complied with.

4. It is repeatedly urged by Mr. Mishra that on account of several road accidents that are taking place on the N.H-26 as it presently exists on the 6 Kilometers stretch through Barpalil Town, it is necessary to consider the proposal for a bypass road for which, recommendations have already been made earlier. According to him, there is Government land available which can be utilized for construction of such a bypass road.

5. At the outset, the scope of the writ jurisdiction under Article 226 of the Constitution and in particular, the scope of judicial review on the administrative action must be recapitulated. The High Court is, in exercising its writ jurisdiction, essentially concerned with the decision making process and not with the decision itself. Interference with the final decision is warranted only when the decision is shown to be vitiated by malice in fact or malice in law. That is not the case here. In fact, there are no pleadings or documents to show that the impugned decision dated 3rd December, 2021 is vitiated by mala fides at all.

6. The High Court when passing the earlier order dated 26th October, 2021 was only facilitating the decision making process

that is as democratic as is feasible. It was to ensure that persons likely to be affected by the decision are heard and all their concerns addressed.

7. A perusal of the impugned decision dated 3rd December, 2021 of Opposite Party No.3 reveals that there was a proper hearing given to the Petitioners and each of their concerns has been addressed. That the Petitioner's suggestions may not have been accepted by the authorities, who are to take a final call in the matter, is not ipso facto a ground to conclude that the decision is either arbitrary or irrational. There are bound to be different points of view regarding the best course of action to be taken in regard to a certain issue. Merely because there are differences of views, they will not itself make the view that commends itself for acceptance, arbitrary or irrational. In any event, this Court is not expected to sit in appeal over the decision of the authority as long as it has been arrived at through a proper decision-making process.

8. Whether there should be a bypass road as suggested by the Petitioners was a call that the expert bodies had to take. On this specific aspect, the following paragraphs in the impugned order are relevant:

“11. Thereafter the CCE, Western, NH Circle, Sambalpur vide Letter No.2864 dated 17.09.2021 submitted his reply stating that there is no scope to have a bypass to Barpali town as per the DPR and administrative approval by the Ministry and he proposed for sending of the proposal to the Ministry for inclusion of same in future annual plan which was also communicated to the ADG cum RO, MoRTH, Bhubaneswar vide T.O Letter No.8507 dated 22.09.2021.

12. The ADG cum RO, MoRTH, Bhubaneswar vide Letter No.1128 dated 30.09.2021 with reference to T.O Letter

No.8507 dated 22.09.2021 has opined that the estimate for widening to 4 lane from km 0.00 to km 21.0 (Bargarh to Barpali) and 2L + PS from Km 21.0 to Km 72.0 (Barpali to Balangir) has been approved by Ministry based on the detailed proposal submitted by state PWD and the necessity of Barpali bypass may not be technically and economically feasible to include the same at this stage since during project preparation of 4 lane along the existing road has been decided on merits. Further, ADG cum RO, MoRTH, Bhubaneswar has also communicated that, it may not be also technically and economically feasible to include Barpali Bypass in the annual plan in near future. The reply of R.O was also intimated to the Barpali Banika Sangha vide T.O Letter No.9191 dated 22.10.2021. Despite all such communications to the Barpali Banika Sangha, they have filed Writ petition (PIL) in the Hon'ble High Court on the said matter.

13. As regards bypass is concerned, the section 2.1 (ii) of IRC SP 73 2018 (A manual for specifications and standards for two lanning of highways with paved shoulder) stipulates as follows,

“Where there are constraints in existing ROW width or difficulty in acquiring land along the existing alignment in the built up areas, the Authority may decided for construction of bypass.”

14. Further, the section 2.1 (ii) a & b of IRC SP 84 2019 (A manual for specifications and standards for four lanning of highways) stipulates as follows,

“In built up areas, 4 lane divided carriageway along with service roads with and without footpath shall be provided as a part of four laning of Highway. Where there is constraint of ROW width, the Authority may specify the construction of bypass.”

15. Thus, the provision for the construction of 4 lane divided carriage way along with service roads on both sides of the existing NH 26 in the Barpali town portion has been kept in the original scope of work considering the traffic feasibility and Passenger Car Units (PCU), CVD within the available Right of Way (ROW) in pursuance to the IRC codal provisions. Further, in such circumstances

there is no requirement of acquiring any additional land for the construction of four lane road through Barpali town.”

9. The Court is therefore not persuaded that the above concerns of the Petitioners have not been addressed and all completing points of view have not been carefully examined by the authorities. The Court is not persuaded that it should substitute the views of the authorities with its own view. That is certainly not the scope of the writ jurisdiction of the High Court.

10. As regards the safety aspect, the impugned order in Para-16 to 18 addresses this very specific issue. How best the problem of road accidents in the stretch should be addressed is again for the authorities to tackle. There are a number of steps indicated in the impugned order which, the Court has no doubt, will be acted upon by the authorities.

11. The Court is not therefore satisfied that any case has been made out for further interference in the matter. The writ petition is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M/Panda/S. Behera