

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

208

CWP-4431-2016 (O&M).
Date of decision: November 11, 2022.

Jatinder Singh and others

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. M.S. Sidhu, Advocate,
for the petitioners.

Mr. Bharat Bhushan Sharma, Advocate,
for respondents No.1 to 3.

Mr. R.S. Madan, Advocate, and
Mr. Mahender Joshi, Advocate,
for respondent No.4.

VINOD S. BHARDWAJ. J ORAL)

The present writ petition has been filed under Articles
226/227 of the Constitution of India, seeking issuance of a writ in the
nature of mandamus directing the respondents – NHAI to provide an

underpass access (hereinafter referred to as UPA) for ingress and egress for the residents of village Sahnewal Khurd which is situated on both sides of the National Highway No.1 and that similar UPAs' have already been provided to other villages namely Nandpur, Rajgarh and Kanech.

Briefly summarized, the facts of the case are that the petitioners who are residents of village Sahnewal Khurd, have approached this Court contending that the respondent – NHAI has undertaken the work of widening of the National Highways and accordingly, the bridges and flyovers have been constructed. The village of the petitioners i.e. Sahnewal Khurd is situated between the towns Sahnewal and Doraha of District Ludhiana on NH-1. As a result of the bridges/flyover constructed, the abadi of village Sahnewal Khurd is now divided on both sides of the National Highway. Resultantly, people have to travel on either sides of the Highway on daily basis. He contends that there is a continuous flow of traffic on the main highway whereas slow carriage way is required to be used by the residents of the village and in the absence of any access to go to the other side, the residents are inclined to crossover the highway and thus, endangering their lives and that of the commuters as well.

It is further averred that one vehicular underpass has been provided one kilometer away from the village and that it is difficult for residents to cross the Highway for their everyday routine works. It is further averred that the UPAs have been constructed by the NHAI for

inhabitants of village Rajgarh, Kanech and Bilga. The footover bridge was also constructed to approach the Gurudwara Attar Sahib on the G.T. Road towards the side of Doraha, however, the said footover bridge is neither feasible nor practicable since old age persons cannot use the footover bridge for reaching on the other side. Various other aspects highlighting the difficulties faced by the residents were also referred.

Reply on behalf of respondent No.2 and 4 – NHAI have also been filed on 12.7.2017, however, no rejoinder to the said written statement has been filed.

Learned counsel appearing on behalf of the petitioner has reiterated the averments contained in the writ petition and submits that the NHAI was required to consider the hardships and difficulties faced by the residents of village Sahnewal Khurd and to provide an UPA access for the residents of the adjacent villages. He further contends that the foot over bridge is neither a feasible nor practical remedy for approach by the residents of the villages who have to now travel one kilometer away to reach on the other side since the village abadi has now been bifurcated on both sides of the National Highway and people would have to commute on either side on daily basis.

Per contra, the respondents - NHAI has submitted in its response as under:-

“2. That at the very outset, it is submitted that the petitioners have not approached this Hon'ble Court with clean hands as petitioners have suppressed true and material facts which are essential for the just and proper decision of the matter in question. It is relevant to mention here that the residents of Sahnewal Khurd had earlier made similar representations, addressed to then Chairman, NHAI, Sh. C.P. Joshi requesting for construction of a VUP at km 299+950. In this regard, office of independent Engineer had submitted the report vide letter no BQ234/IC-PJ/NH-1/AMB/2012/4879 dated 19.05.2012, wherein it was stated that construction of additional VUP at 299.50 is not technically feasible, keeping in view, the already existing/proposed 7 number of structures i.e. flyover, VUP, PUP and FOB in a span of 6 Kms. Copy of letter dated 19.05.2012 is appended herewith as Annexure R-2/1.

3. That thereafter answering respondent commissioned another detailed study from its experts on the issue of feasibility of under pass whereby Independent Engineer vide letter BQ234/IE-PJ/NH- 1/AMB/2012/5344 dated 19th/20th September 2012 categorically stated that there was a bi-directional service road in the projected plan of the said site on the either side of the National Highway/Carriageway. It shall be pertinent to mention here that the situation obtaining at present at the said site is that

the project stands completed as per proposed plan. The final outcome is that at the demanded location there is easy flow traffic on the bi-directional service/slip roads abutting the main highway and just less than 1 Km away there is a vehicular under pass for the petitioners/villagers to go from one side to the other and further since another under pass is not technically possible so close to the already existing vehicular under pass 299.500 KM location (demanded by the petitioner), yet keeping in mind the public sentiments Foot over bridge is proposed. It is therefore, clear that the petitioners have access to two under passes i.e. 298.56 Km (Vehicular under pass) and 301.728 Km (Fly over) location that are very close to the petitioner's village. Copy of letter dated 19/20.9.2012 is appended herewith as Annexure R-2/2.

4. That it is worthwhile to mention here that earlier the residents of Village Sahnewal Khurd had approached this Hon'ble Court in CWP NO.9585 of 2013, in which this Hon'ble Court while disposing of the petition, in limine, had directed to decide the representation while taking into consideration the report of the experts as to where the proper under pass can be given. Thereafter, in compliance of the said orders of the Hon'ble High Court, the predecessor of the answering respondent decided the representations made by the residents of Sahnewal Khurd vide letter dated 26.08.2013 (Annexure R-2/3). It is pertinent to mention here that the answering respondent while deciding the representation undertook an exhaustive analysis of the highway and only thereafter a well considered reply dated 26.08.2013 was furnished to the

residents of Sahnewal Khurd. In the said reply dated 26.08.2013, the residents of Sahnewal Khurd were apprised of technical infeasibility the answering respondent was facing in the construction of an under pass at 299.50 KM as prayed for by the petitioner in the instant writ petition.

5. It is most respectfully submitted that the present writ petition is not maintainable before this Hon'ble Court in the present facts and circumstances of the case. The project (Highway) on to which the petitioner is demanding an under pass access for ingress and egress of inhabitants of village Sahnewal Khurd, District Ludhiana has already been completed. In addition to this, it is respectfully submitted that the aforesaid said village locates in between 297 KM to 304 KM of National Highway-1 (hereinafter mentioned as NH-1) at 299.950 K.M. It is pertinent to mention here that during the up-gradation of NH-1 provision of partial access have been provided to facilitate the crossing of vehicles and pedestrians at the following locations:-

<i>(i) Flyover</i>	<i>KM 301.728</i>
<i>(ii) Vehicle under pass (VUP)</i>	<i>KM 297.225</i>
<i>(iii) Vehicle under pass (VUP) (Additional)</i>	<i>KM 298.500</i>
<i>(iv) Vehicle under pass (VUP)</i>	<i>KM 302.714</i>
<i>(v) Foot over Bridges</i>	<i>KM 299.470</i>
<i>(vi) Pedestrians under pass (PUP)</i>	<i>KM 302.308</i>
<i>(vii) Flyover Bridge</i>	<i>KM 298.959</i>

The VUP at KM 298.50 has been added in addition to the original plan only on the request. of public and to cater the needs of nearby villages. It is pertinent here to mention that all these structures are constructed keeping in view various attending circumstances. A detailed feasibility survey is conducted and thereafter, a feasibility report is prepared then the same is submitted to the appropriate authority and only after its approval, the funds are allocated as per the in the report and thereafter these structures are constructed.

6. It is worthwhile here to mention that the petitioner village has a service lane on both sides of the carriage way i.e. NH-1, these service lanes are not one way which means the movement is allowed in both the directions and therefore the inhabitants of the village Sahnewal can cross the NH-1 from any of the structures mentioned above.

7. That it is pertinent here to mention that the N.H.-1 is being developed on BOT (Built Operate Transfer) and PPP (Public Private Partnership). In BOT a private entity receives a concession from the Private or Public Sector to finance, design, construct, and operate a facility stated in the concession contract. PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. Further at the time of BOT or concessionaire agreement all the structures that are to be constructed by the developer/builder in the project are mentioned and only after that the proportionate funds are

disbursed to the developer/builder by the Government. It is worthwhile here to mention that at this stage if any alteration/addition in the structures of the Highway it will result in financial implications to the respondent and it will further adversely affect the development work of the highway.

8. That it is noteworthy here to mention that the answering respondent had yet again asked its engineers cum surveyor to conduct a survey keeping in view the requests made by the petitioner, as to check the feasibility of VUP at 299.5 KMs. Thereafter the surveyor submitted a detailed report dated 23.03.2015 annexed as Annexure R- 2/4. In report the surveyor has specifically stated that it is not feasible to recommend any additional provisions/proposals/structures at this stage on the highway concerned.

9. That it is worth while here to mention that after the directions issued by the Hon'ble High Court in CWP No.9585 of 2013, the answering respondent got the spot examined several times through it Independent Engineers (Experts) as to see feasibility of the under pass at that particular spot. During the inspection of the spot, it has been found by the respondent that raising of construction at that particular point may require reconstruction/restructuring of the highway because the work of laying of top layer stand completed in this stretch. The Independent Engineers of the answering respondent came out with a solution suggested to construct a Foot Over Bridge (FOB) which can used by cyclist alongwith the pedestrians, and the same will resolve the problem of the

petitioner village. The FOB can be constructed without any major changes in the highway and the same does not necessitate huge finances. Report dated 27.11.2012 of the engineer is attached here with as Annexure R-2/5.

10. That according to the concessionaire agreement between the respondent and concessionaire, the vehicular under/overpass structures can only be provided at the intersection of the project highway with the all National Highways and State Highways. Such under passes shall also be provided across other categories of roads carrying an average daily traffic of more than 5000 passenger cars unit on the date of inviting bid. The daily intensity of traffic at the aforesaid place is less 5000 vehicles therefore the same cannot be constructed there. It was further agreed in the concessionaire agreement vehicular under passed should be constructed to connect service roads on both sides of the project highway in such a manner that no vehicle is required to travel more than 2 Kms on in such a manner that to connect service road to approach a underpass crossing over to the other side.”

I have heard the learned counsel for the parties and gone through the documents available on record.

A reading of the aforesaid clearly shows that the representations submitted by the residents of the villages have been considered on various occasions by the NHAI to examine the feasibility and possibility of providing an underpass to the villagers at the places as

have been demanded by them. The same have not been found to be feasible. It is also specifically submitted that a bi-directional service road has already been provided for and the same can be taken into use by the residents of the village. The said bi-directional service road being at a distance of 01 kilometer away, it is not technically possible to provide a vehicular underpass at such a close proximity only to satisfy the public sentiment. Besides, there are two other access points i.e. UPAs at 298.56 km. (vehicular underpass) and 301.728 km (flyover) location. It is evident that location of the villages is between 297 kms to 304 Kms of NHAI and within the aforesaid distance, there are as many as 07 different crossings of vehicles and pedestrian prescribed for. A detailed feasibility report was duly prepared and submitted to the appropriate authority and the request of the petitioners was also considered. A report from the Surveyor was also called for on 23.03.2015 wherein even the Surveyor has said that it was not feasible to recommend any additional provision/proposal or structures on the aforesaid Highway which is already complete. Various technical issues for prescribing another vehicular underpass have been noticed as aforesaid. There is no material to controvert the stand adopted by the NHAI to be an incorrect representation or that it is technically possible to provide an additional underpass.

Besides, the Hon'ble Supreme Court has held in the matter of **Union of India Vs. Kushala Shetty and others dated 21.02.2011** **passed in Civil Appeal Nos.2866 to 2880 of 2011**, as under:-

“24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

Further, a Division Bench of this Court in the matter of **Kimat Rai and Sons (HUF) Vs. National Highway Authority of India and another, passed in CWP No.8514 of 2017 decided on 19.04.2018** has held as under:-

*“8. As is apparent, the petitioners with a view to save their own property have suggested to acquire the land of other land owners. Such a suggestion being contrary to the public interest has to be discarded, especially when NHAI is expert in job and having arrived at a decision after getting consultancy from experts i.e., M/s Gifford India Pvt. Ltd. Such a view was taken by Hon`ble Apex Court in **Union of India Vs. Kushala Shetty and others, 2011(4) R.C.R. (Civil) 353**, laying down that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would*

subserve the larger public interest. In such matters, the scope of judicial review is very limited. “

It cannot be disputed that the projects of constructions of Highways and widening/augmentation of the infrastructure in the Country is the field of experts. It comprises of persons having vast knowledge and expertise in the field of development and maintenance of the Highways. Once the project study has been completed along with the viability and feasibility of any such demand being catered to and having not been found feasible by the experts, such view of the experts should not be ordinarily interfered with by the High Court in exercise of its powers of judicial review under Articles 226/227 of the Constitution of India.

Similar view was taken by the Hon'ble Supreme Court in the matter of **M/s. N.G. Projects Limited Vs. M/s. Vinod Kumar Jain and others, in Civil Appeal No.1846 of 2022, decided on 21.03.2022.**

The relevant extract reads as under:-

*“10. We find that the interference in contract awarded to the appellant is wholly unwarranted and has caused loss to public interest. Construction of roads is an essential part of development of infrastructure in any State. The learned Single Bench and the Division Bench of the High Court were exercising power of judicial review to find out whether the decision of the State was manifestly arbitrary or unjust as laid down by this Court in **Tata Cellular v. Union of***

*India and to act as appellate authority over the decision of the State. This Court in **Tata Cellular** held as under:*

xx xx xx

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696], Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

xx xx xx

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

xx xx xx

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested

by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and un- budgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

xxx

xxx

xxx

*13. This Court sounded a word of caution in another judgment reported as **Silppi Constructions Contractors v. Union of India and Ors., 2019 SCC OnLine SC 1133**, wherein it was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters could cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above, the Courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference would cause unnecessary loss to the public exchequer. It was held as under:-*

“19. This Court being the guardian of fundamental rights is duty bound to interfere when there is

arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts, but this discretionary power must be exercised with a great deal of restraint and caution.

xx

xx

xx

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realize that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the

contract or tender and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind, we shall deal with the present case.”

(Emphasis supplied)

14. In *National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd.*, reported as 2022 SCC OnLine SC 111, *this Court sounded a word of caution while entertaining the writ petition and/or granting stay which ultimately may delay the execution of the Mega projects. It was held as under:*

“95. Even while entertaining the writ petition and/or granting the stay which ultimately may delay the execution of the Mega projects, it must be remembered that it may seriously impede the execution of the projects of public importance and disables the State and/or its agencies/instrumentalities from discharging the constitutional and legal obligation towards the citizens. Therefore, the High Courts should be extremely careful and circumspect in exercise of its discretion while entertaining such petitions and/or while granting stay in such matters. Even in a case where the High Court is of the prima facie opinion that the decision is as such perverse and/or arbitrary and/or suffers from mala fides and/or favouritism, while entertaining such

writ petition and/or pass any appropriate interim order, High Court may put to the writ petitioner's notice that in case the petitioner loses and there is a delay in execution of the project due to such proceedings initiated by him/it, he/they may be saddled with the damages caused for delay in execution of such projects, which may be due to such frivolous litigations initiated by him/it. With these words of caution and advise, we rest the matter there and leave it to the wisdom of the concerned Court(s), which ultimately may look to the larger public interest and the national interest involved.”

xxx xxx xxx

21. Since the construction of road is an infrastructure project and keeping in view the intent of the legislature that infrastructure projects should not be stayed, the High Court would have been well advised to hold its hand to stay the construction of the infrastructure project. Such provision should be kept in view even by the Writ Court while exercising its jurisdiction under Article 226 of the Constitution of India.

xxx xxx xxx

23. xxx xxx xxx

The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State and this limitation should be kept in view. Courts should be even more reluctant in interfering with contracts involving technical issues as there is a

requirement of the necessary expertise to adjudicate upon such issues.

(Emphasis Supplied)

The residents of the villages adjacent to the National Highway may only claim a right to access on either side, which such human aspect has already been taken into consideration. However, such a demand cannot be extended to vest a right in favour of the residents for access from the points of their choice. Such discretion has to be left to the planners i.e. experts of the NHAI. They have undertaken the entire survey and explored the possibilities of providing access/UPA at various points which have translated into the cost of the project and has been executed. Any interference at any later stages is likely to have serious implications not only in due execution of the projects but also in escalation of the cost of the project and thus drain of public exchequer. Convenience cannot be equated as conferring a right. Hence, merely because the petitioners are inconvenienced in travelling to the other side of the National Highway, cannot be equated to denying access and form the basis for directing the NHAI to provide an additional underpass at the place as designated by the petitioners. Any such, undue indulgence has a cascading effect of similar demand being raised at multiple points on the NHAI and thus defeating the very object of developing the Highway Projects. Even otherwise, the survey reports take all aspects into consideration and road safety has to be duly taken into consideration.

Optimisation of access's and reduction of access on the Highway has to be undertaken for safety of travellers.

I thus, fail to find myself in agreement with the petitioners in the given set of circumstances and find that no vested legal or fundamental right of petitioners has been violated as may necessitate judicial review.

The instant petition is accordingly dismissed.

November 11, 2022
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No