

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

221

**CWP-28415-2017
Date of Decision: 06.01.2023**

GRAM PANCHAYAT MANAK MAJRA AND OTHERS

... Petitioners

VERSUS

UNION OF INDIA AND OTHERS

... Respondents

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

Present: Mr. Wazir Singh, Advocate
for the petitioners.

Mr. Anil Chawla, Advocate for
Ms. Monica Chawla, Advocate
for respondent No.1-U.O.I.

Mr. Nitin Goel, Advocate for
Mr. R.S. Madan, Advocate
for respondents No.2 and 3- NHAI.

Mr. Manjeet Singh Advocate for
Mr. Ranvijay Singh, Advocate
for respondent No.4.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed under Article 226 of the Constitution of India, 1950 for seeking issuance of a writ in the nature of Mandamus for directing the respondents to provide pedestrian underpass to the petitioners as proposed/reflected vide letter dated 21.07.2015 (Annexure P-3) so that they can approach to their fields on the other side of the National Highway with the agricultural equipments and other necessary machinery.

Briefly summarized, the facts of the case are that the petitioner No.1 - Gram Panchayat alongwith certain residents of the village have approached this Court with a submission that the respondent No.2-NHAI has

carried out construction of G.T. Road (NH-1). The NHAI had floated a project in the year 2006 for widening of 4 lanes to 6 lanes and entrusted the execution of the said work to respondent No.4. The agricultural lands of the petitioners as well as other habitants of the village have consequently been bifurcated on both sides of the G.T. Road (NH-1). The petitioners claim that it is the duty of the NHAI to provide proper access to the residents of the village to their fields so as to facilitate them to carry out their agricultural activities. It has been submitted that a representation was submitted to the Ministry of Road Transport and Highways for redressal of the said grievance and the same was duly considered by the concerned Minister and it was proposed to set up a pedestrian underpass at 146+245 KM while a vehicular underpass was proposed at 147+160 KM. Apart therefrom, two foot-over bridges at 145+200 KM and 145+900 KM were also proposed to be structured. The present petition was thereafter filed to provide for the pedestrian underpass as conveyed vide the above letter dated 21.07.2015 by the Minister, Road Transport, Highway and Shipping, Government of India (Annexure P-3) at 146+245 KMs.

Written statement on behalf of the respondents No.2 and 3 by way of affidavit of Jasbindar Singh, Project Director, NHAI had been filed. It is specifically averred in the said reply that there is no subsisting grievance and that as per the communication dated 03.04.2018 (Annexure R-2/5), the following provisions have been prescribed at village Manak Majra:

“Sr. No.	Provision/ Structure	Locations/Chainages	Status
1.	FOB	At km 145+200	Opened to traffic
2.	FOB	At km 145+900	Opened to traffic
3.	PUP	At km 146+945	Opened to traffic
4.	VUP	At km 147+160	Opened to traffic

The Demanded Location Village - Manak Mazra is situated near km 146+000 LHS. The 1no of PUP at km 146.945 and 1no of VUP at km 147+160 is already constructed by the Concessionaire on the Project Highway of NH-1 and PUP is also nearby the demanded location i.e. 945m. Accordingly to Concession Agreement clause 2.2 (iv) Section 2 Schedule B.

"Vehicular underpass shall be provided to connect the service road on both side of the project highway in such a manner that no vehicle is required to travel more than 2 km on the service road to approach the under pass for crossing over to the other side."

In view of the above, IE may opinion that the above said project facilities as per the provision of Concession Agreement is fulfill the requirement of the road users for the smooth flow of traffic near above said location & the two-way service road is also constructed throughout Nilokheri to cater the local traffic for the convenience of road users as well as FOB near the Village - Manak Mazra is also constructed by the Concessionaire for the smooth crossing of pedestrians on the Project Highway

In this context, it is informed that the location where underpass have been demanded is abutting the Minor Bridge at km 145.812, so technically it is not feasible to construct this underpass near village Manak Mazra as the entire Delhi side approach of the underpass will come over the Minor Bridge as over Burden."

It is contended that the structures i.e. pedestrian underpass, the vehicular underpass and the foot-over bridge as stipulated in the said letter have already been provided and have been opened to traffic and that the location of pedestrian underpass is at a slight variation of the 750 meters while all other crossing points are at places mentioned in the letter. It has further been stated that the distance of the vehicular underpass to be travelled on

service road is less than two kilometers and as such, the access has been provided in terms of the concession agreement. In addition thereto, the feasibility of providing for an underpass at 145.352 was also considered and technical advisor did not find it feasible to construct the underpass at the said proposed site adjacent to the minor bridge.

Even though the above written statement had been filed by the respondents in 2018, however, no replication controverting the assertions and submissions was filed. It has thus remained uncontroverted that four access/cross-over points are available at a distance of less than one kilometer on either sides to the residents of the village Manak Mazra which is located at 146+000 KMs. The grievance of the petitioners has remained confined only to the pedestrian underpass only & all other points are as per the above communication.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

It is evident from the perusal of the respective pleadings as well as the arguments advanced that the vehicular underpass is being claimed at 146+000 KM on the National Highway, whereas the same has been provided at 147+160 KM. Two foot-over bridges at 145+200 KM and 145+900 KM have also been provided while a pedestrian underpass has been prescribed at 146+945 KM. Invariably, multiple entry and exit points have been prescribed within a distance of two kilometers on the either way of the demanded location of 146+000 KM. The vehicular underpass being within the project stipulations and as per the terms of the concession agreement, creation/construction of additional vehicular underpass/pedestrian underpass/foot-over bridge cannot be

directed at this stage especially when there is no violation of any of the conditions of the concession agreement. Further, it is evident that four entry/exit points have been provided within a distance of 2 kilometers and such number of entry/exit points cannot be said to be insufficient merely because the residents of the village perceive some inconvenience to access to their fields. The infrastructure projects of the NHAI and the facilities to be provided thereunder are perceived after carrying out the feasibility study, examining technical aspects as well as the issues of traffic hazards and safety. In addition, thereto, various project costs per entry/exit points are also required to be seen. The same being a subject matter of experts and having been presumed to be taken into consideration while providing for the entry/exit points to and from or across the National Highway, it would not be appropriate for the High Court to carry out a judicial review of the decision taken by the experts which is otherwise not alleged to be illegal or violates the regulations or perpetuated by malice. The demand of the residents having already been considered and not found feasible after noticing that various entry and exit points have already been provided as per concession agreement, I do not find any sufficient and cogent ground for exercising power of judicial review under Articles 226/227 of the Constitution of India and to direct the construction/creation of additional pedestrian underpass ignoring of its financial implications or technical approval.

It has already been held by the Hon'ble Supreme Court that infrastructure projects are best to be left to the wisdom of the experts and the High Court would not in exercise of its judicial review sit in appeal over the decision taken by the experts about the valuation of the traffic, the cost of the project and provisions for the entry/exit points and/or its assessment by the

project experts. Unless the decision of the Authority suffers from gross impropriety, mischief, abuse of power and/or violates the law or the procedure provided in law, the same would not be ordinarily interfered with. No such grounds have, however, been demonstrated by the petitioners in this petition.

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:-

“28. 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 (1994)6 SCC 651** and to act as appellate authority over the decision of the State. This Court in **Tata Cellular (supra)** held as under:*

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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”.

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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.

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(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 unbudgeted expenditure. Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

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*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.

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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.”

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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.

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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)

Apart from above, it is also noticed that sufficient number of entry/exits points on the National Highway to provide access to the residents to their fields have been provided. Merely because the petitioners have to travel some distance to access to their fields cannot be a ground to direct opening of an additional entry/exit point on the National Highway at the asking of the residents of the village across the National Highway as the same would have serious financial implication apart from exposing the commuters/travelers of the National Highway to roadside dangers. The factual aspect noticed in Annexure R-2/5 is not controverted by any cogent material available on record and as such, this Court is left with no other option but to accept the assumptions of the respondents to be correct and undisputed.

Taking into consideration the totality of the facts and circumstances noticed above, the law laid down by the Hon’ble Supreme Court as well as by this Court, I do not find any sufficient ground to interfere with the decision of the respondent-Authority to not provide an pedestrian underpass at the demanded location i.e. 146+245 KM on the National Highway.

The present petition is accordingly dismissed.

06.01.2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

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