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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

270

CWP-2852-2024 (O&M).
Reserved on: 24.09.2024.
Date of Decision: 22.10.2024.

PRIME AUTOMOBILES PVT. LTD

... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

... Respondent(s)

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

Argued by: Mr. J.S. Gill, Advocate,
for the petitioner.

Mr. Ashish Chaudhary, Senior Panel Counsel
for respondent No.1/Union of India.

Ms. Sonia Madan, Advocate,
for respondents No.2 and 3/NHAI.

Mr. Suneel Ranga, DAG, Haryana.

VINOD S. BHARDWAJ, J.

1. The prayer in the present petition is for seeking quashing of the impugned order dated 25/01/2024 passed by respondent no. 3 whereby the request of the petitioner for reconsidering the construction of foot over bridge in front of petitioner's showroom, YMCA Chowk, has been declined by the NHAI.

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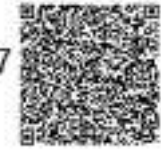
2. FACTS

2.1 The facts of the present case are that the petitioner is an authorized automotive dealer of Mahindra and Mahindra Company, and is engaged in the business of selling new cars, provide services to vehicles of existing consumers and trade spare parts to its different franchise. The entire venture is being carried out in a leased out showroom having plot size of 8057 sq yards situated near YMCA Chowk Faridabad.

2.2 The petitioner's showroom, located on the main highway in Faridabad, Haryana, is enclosed by a boundary wall surrounding the entire premises. This wall has two gates, one at each end, through which all access to the premises takes place. These gates allow entry for new cars, service vehicles, staff, and customers. Additionally, various logistics operations, such as loading, unloading, cargo handling, and containerization, are conducted exclusively through these gates. On an average, nearly 100 cars are claimed to visit the showroom daily for services—either free or paid—as well as for minor or major repairs. The petitioner company employs around 350 staff members, each serving in different capacities.

2.3 That along the outer boundary wall, there is an unpaved path, approximately 10 to 11 feet wide, adjacent to a service lane that runs along the eastern side of the property. This lane facilitates two-way vehicular traffic. Beyond the service lane, there is a main road, elevated by about 2 feet, which experiences a steady flow of heavy traffic throughout the day.

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2.4 The Respondent, National Highways Authority of India (NHAI), entered into a concessionaire Agreement with M/s SEC Buildtech Pvt. Ltd. for the construction of a six-lane project on the Delhi-Agra section of National Highway No. 2, situated in the States of Haryana and Uttar Pradesh. In accordance with the provisions of the said agreement, the construction of foot over bridges (hereinafter referred to as FOB) at various points along the highway was proposed, with one such foot over bridge intended to be built directly between the two gates of the Petitioner's premises.

2.5 Aggrieved by the decision of the Respondents to construct a foot over bridge in the center of the boundary wall of the Petitioner's showroom, the Petitioner submitted a detailed representation by an email on 05.01.2024 to the office of NHAI-Respondent No. 2. In this representation, the Petitioner, among other things, requested the Respondents to reconsider their decision and relocate the proposed foot over bridge approximately 200 meters in either direction, or to explore alternative options for its placement. The primary concern raised by the Petitioner was pedestrian safety, along with additional concerns regarding the impact on its business operations. A hard copy of the representation, dated 06.01.2024, was also submitted.

2.6 Before any order was passed on the Petitioner's representations or any decision taken regarding the concerns raised, Respondent No. 2, on 20.01.2024, sent the necessary machinery and commenced digging in front of the Petitioner's premises. Following strong protests by the Petitioner, the digging was temporarily halted. Subsequently, representatives of the

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Petitioner's company met with the officials of the NHAI, where they were verbally informed that the representation had been decided and that orders for the construction of the FOB had been issued. When the Petitioner's representatives requested a copy of the order, they were assured that it would be sent to their office, but no copy was ever provided. Instead, on 23.01.2024, machinery (JCB) arrived at the site again, and after further consultations, the digging was once more temporarily suspended. However, the Petitioner was advised to take immediate action as he may deem appropriate, as the digging was to resume by the end of the month, if no resolution was reached.

2.7 The petitioner submitted a detailed representation to Project Director-respondent No. 3 on 24.01.2024, requesting reconsideration of the decision to construct the FOB. The Petitioner was, however, advised to seek clarification from Respondent No. 2, with an assurance that the matter would be referred back to them. Representatives of the Petitioner made several further attempts to approach the office of NHAI, however, despite these efforts, no resolution was achieved.

2.8 The respondents are even alleged to have failed to provide a copy of the orders passed, thus, the Petitioners approached this Hon'ble Court by filing CWP No. 2461 of 2024 on 01.02.2024, which was listed for hearing on 05.02.2024. However, in the meantime, on Saturday, the copy of the order was sent to the Petitioner's office. Consequently, the aforementioned writ petition was withdrawn, with liberty to challenge the

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order that had been passed. Accordingly, the present writ petition is being filed to challenge the impugned order dated 25.01.2024.

3. **ARGUMENTS BY PETITIONER**

3.1 The counsel for the petitioner contends that the respondent authorities have overlooked the fact that the petitioner being an automotive dealer, huge logistics trucks enter its premises on a day to day basis for unloading new automobiles, manufactured spare parts etc. and in case the FOB is constructed, the same would lead to overlapping of path of the pedestrians since and the same path is also taken by its logistics trucks to enter the establishment. The same may lead to high probability of accidents and other misfortunes.

3.2 Further, the decision to construct the FOB by the respondent authorities has been taken without any site inspection and that no reason has been assigned for suitability of the current site. Thus, the decision to construct the FOB at that particular place is an arbitrary decision and not backed by any field survey or feasibility study by the respondent authorities. The counsel vehemently argues that in a similar incident that occurred nearby, wherein an FOB was proposed to be constructed in the vicinity of a government school, a request was made to the NHAI and the same was accepted and the FOB was shifted from there to the current place where the premises of the petitioner is situated.

3.3 The counsel of the petitioner vehemently contends that the construction of FOB would not only lead to a drastic increase in litigation due to the clashes between the pedestrians and customers of the petitioners

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but would also lead to substantial challenges to the business of the petitioner by hampering the visibility of the establishment and restriction on the ease of access to the same.

3.4 Moreover, the counsel asserts that the area in question already witnesses huge traffic jams due to presence of a lot automobile dealers in the vicinity. The traffic situation will worsen and lead to congestion if the FOB is also constructed. Also, it will also pose serious threat to the lives of people at large using the FOB. Around 100 cars visiting per day as well as around 300 employees, who too come by their own vehicles, the authorities have failed to apprehend the danger to the lives of the general public.

3.5 The counsel finally prays that it would in the interest of the general public as well as the petitioner's business, if the FOB is shifted approximately 200 meters towards the Ballabgarh area.

4 **ARGUMENTS BY RESPONDENTS NO.2 AND 3.**

4.1 The counsel for respondent no. 2 & 3 – NHAI submits that the National Highway No. 2 (hereinafter referred to as NH2) is a major highway of notable importance both geographically and historically constituting a major portion of the Grand Trunk Road and connecting the states of Delhi, Haryana, Uttar Pradesh, Bihar, Jharkhand and West Bengal. It is also one of the busiest highways in the country. Since, it passes through major and populous cities of the country, it witnesses an astonishing amount of accidents. To prevent these incidents, the proposal to construct FOBs was

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discussed in various District Road Safety meetings for providing a safe passage to public at large and the same was to be done on priority basis.

4.2 The counsel further states that as per the recommendation made by the Independent Engineer in consultation with the Concessionaire, Road Safety Experts, District Administration and Traffic Police Authorities, the location of 7 FOBs in District Faridabad and 5 FOBs in District Palwal had been identified and finalized. For additional safety, provision for fixing of additional median guard rail on the highway, pedestrian guard rail and widening of the service road at certain location on the Delhi Agra Highway was also included in the estimate for the work of FOBs. After inviting tender vide NIT dated 03.07.2023 for the construction of FOBs, a Letter of Award (hereinafter referred to as LOA) was issued in favor of the contractor M/s SEC Buildtech Pvt. Ltd. and the agreement was signed. In the instant case the FOB is being constructed at Km. 32+560 near YMCA.

4.3 The counsel further argues that on receipt of the letter of representation of the petitioner dated 06.01.2024 requesting reconsideration of construction of the abovementioned FOB, the respondent-NHAI vide letter dated 10.01.2024 bearing no. NHAI/CMU/MTR/6-Laning/2024/D-73565 forwarded the representation of the petitioner to the Independent Engineer i.e. M/s L.N. Malviya Infra Projects Pvt. Ltd. and to the concessionaire i.e. M/s DA Toll Road Pvt. Ltd. for comments and recommendations. The Independent Engineer, after duly considering the submissions of concessionaire contained in the letter dated 11.01.2024 bearing no. DATR/SITE/NHAI/2024/01/1364, informed the respondent-

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NHAI vide letter dated 20.01.2024 bearing no. LNMIPPL/PD/NHAI/Delhi-Agra/2024/1086, that the location of the FOB near the YMCA was finalized after inspecting the site with the concessionaire and the Police Department and the same is proposed at the location where the pedestrians cross the Highway and have the most probability of getting in an accident. In fact, the concessionaire in its letter dated 11.01.2024 specifically mentioned that the location has been jointly finalized by taking inputs from the Traffic Police, the NHAI, the Independent Engineer and the Concessionaire for the safety of the pedestrians and as per the demand of the public thereby, ensuring the maximum utilization of the FOB by the General Public.

4.4 The counsel vehemently argues that any change in the location of the FOB would not serve its destined purpose and is not feasible in the interest of public safety. The matter was even reconsidered on receipt of the representation and it was observed that in case the location is shifted, the use of the FOB would be minimal as people would avoid crossing the highway through the FOB if the location of the FOB is too far from the crossing point and therefore, there would be no purpose of constructing the said FOB. Thus, keeping in mind the larger public interest, the location of the FOB could not be changed.

4.5 The counsel also emphasizes that on receipt of the subsequent representation of the petitioner dated 23.05.2024, the abovementioned reasons for not shifting the FOB were highlighted to the petitioner vide letter dated 25.01.2024 bearing no. NHAI/CMU/MTR/6-Laning/2024/D-73738.

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4.6 The counsel further contends that after the issuance of the LOA for the construction of the FOBs, preconstruction activities were carried out by the contractor, prior to the commencement of the construction of the said FOB. The Independent Engineer, vide letter dated 01.02.2024 bearing no. LNMIPPL/NHAI (SEC-FOB)/Delhi Agra/2024/006, had intimated NHAI regarding the objections raised by the local people against the construction of FOBs at different locations and requested the support and assistance from the local administration. A detailed table comprised of the chainage, location of the FOB on the highway, site availability, and name and numbers of the persons raising objections to the construction of the FOBs was also mentioned. As far as the objections raised by the petitioners at the site of the FOB at Km. 32+560, are concerned, it was concluded by the Independent Engineer that keeping in view the situation on the ground, the change in the location of the FOB would not be in the public interest. The site ensures the safety of the public and maximum utilization.

4.7 The counsel for the respondent-NHAI emphasizes that various High Courts across the country have upheld that the infrastructural projects for the larger public interest keeping in view that the safety of the general public is of paramount importance and therefore, the same must supersede private interest. To establish the same, she places reliance on the judgment of Delhi High Court in the matter of **Panchshilla Cooperative House Building Society Limited & Ors. v. State (Govt) of NCT of Delhi & Ors. reported as 2015 (222) DLT 10** wherein the court held that:

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“It is well settled position in law that the laying of infrastructure is the prerogative of the NHAI. It is not for this court to substitute the assessment of the independent engineer with its own opinion and to direct shifting of amenities. Moreover, the objections raised by the petitioner have already been considered by the respondent authorities and they have sought report not only from the concessionaire but have also indulged in a consultative process with the traffic police and they found that shifting of the gradient of the FOB towards the other side would not be feasible and would not be in the best public interest.”

4.8 A similar view was also taken by the Delhi High Court in the matter of **Mange Ram & Ors. v. UOI & Ors. reported as 2012 (5) AD (Delhi) 460** as well as the Telangana & Andhra Pradesh High Court in the matter of **R. Venkateshwara Rao v. State of Telangana reported as 2017 (1) ALT 227.**

4.9 The counsel further places reliance on the judgment of this court in **CWP No. 13117 of 2022 titled as Mohinder Singh v. Union of India & Ors.,** wherein this court observed that:

“It should not be ignored that the issue with regard to the installation of the foot-over bridge/underpass etc. requires comprehensive study and expert report and that the suitability and feasibility of various sites or spots have been duly considered by the NHAI experts. As a matter of fact, the foot-over bridge has been legally retained as per the original concession agreement with slight variations in the situs for which no separate study is required to be conducted. The

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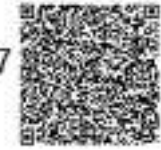


Hon'ble Supreme Court has already held in the matter of Union of India Vs. Kushala Shetty and others reported as 2011 AIR (SCW) 4460 as under:

"24. 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 addition to the above judgment, this Court has also held in the matter of '**Jatinder Singh and others Vs. Union of India** bearing **CWP No.4431-2016** decided on 11.11.2022 that the issue with respect to the access on the National Highway*

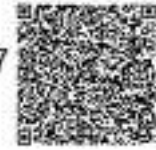
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and/or the passages are the subject matter of expert in which the High Court would not ordinary interfere in exercise of its powers of Judicial Review as such decisions have manifold impact including financial implications on public exchequer to be ultimately borne by the end-user. Convenience of an objector or residents of the locality cannot be the sole basis to issue directions to NHAI to carry out changes in its proposed plans and execution of the projects.”

4.10 Further, the counsel draws attention of this court by showing photographs of the actual and current status of the construction site of the FOB in question which shows that the foundation for the construction of the structure of the FOB on right hand side has been completed and that the construction of the same would not hinder the business of the petitioner as the same is at a location away from the gates of the land of the petitioner. Moreover, she contends that both the gates of the establishment of the petitioner are free and none of the gates are blocked or hindered by the construction of the said FOB. He refers to the photographs, detailed layout plan and the aerial view of the location and contends that the said FOB is being constructed at the most suitable location to facilitate the commuters/pedestrians/workers travelling across the highway from the nearby villages, other connecting roads and the several industrial houses situated in close proximity of the location. Apart from this, there is an existing flyover starting at Km. 32+470 which makes it infeasible to shift the location of the FOB. He contends that from the perusal of the letter of the contractor dated 18.03.2024 bearing no. SEC/NHAI/FOB/NH-2/24/37,

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it is evident that the petitioner waited silently till cement concrete was laid in the foundation before raising an objection at the site against the location of the FOB at Km. 32+560 due to which police support from the Deputy Commissioner, Faridabad was requested by the contractor to ensure timely completion.

4.11 The counsel further contend that the Central Government had carried out substantive amendments in the Specific Relief Act, 1963 with an intent to prohibit the Civil Courts from granting injunctions that would adversely affect the progress of infrastructural projects. Section 20 (A) of the abovementioned act envisages that no injunction shall be granted by a court in a suit under this act involving a contract relating to an infrastructure project specified in the Schedule; where granting an injunction would cause impediment or delay in the progress or completion of such an infrastructure project. The counsel further states that as to what would constitute an infrastructure project is specified in Schedule A of the act. A perusal of the same crystallizes at S. No. 1 under the category Transport at (a) the Road and Bridges. The present case of construction of the FOB to provide safe passage to the general public at large and to ensure safety of the same, is an infrastructural project of national importance and therefore, the same cannot be stayed. To establish this argument, she places reliance upon the judgment rendered by the Hon'ble Supreme Court in the matter of **N.G. Projects Limited v. Vinod Kumar Jain & Others reported as 2022 SCC OnLine SC 336.**

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4.12. Contradicting the submission of the petitioners, the counsel for the respondent- NHAI contends that the decision to construct the FOB at the said location is not arbitrary, but rather is taken as per the recommendations made by the Independent Engineer in consultation with Concessionaire, Road Safety Experts, District Administration and Traffic Police Authorities keeping in mind the intention of providing a safe passage to the pedestrians and to avoid accidents. Shifting the location of the FOB would defeat the whole purpose of constructing it. Further, she also denies that the FOB at Jharsaintly, near the Govt. School at Km. 38+500 was shifted on request of the aggrieved party and the same can be inferred from the letter dated 18.03.2024.

5. **ARGUMENTS BY RESPONDENT NO.4.**

5.1 The State counsel for respondent No.4-Assistant Commissioner of Police, Traffic, Faridabad contends that they have no role in the construction of the FOB and no relief is claimed by the petitioner against them as they are the pro-forma respondent.

6 **CONSIDERATION**

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

6.2 Further, it had also been pointed out that the gates opened by the petitioner were not approved. The site plan attached by respondents and relied upon by them shows that there are metro-pillars immediately close to the proposed site of construction and any shifting would cause obstruction.

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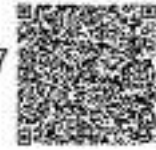
The fly-over starts at distance of 90 mtrs. making the shifting implausible. Besides, there is a cut leading to Mujeshar village from where vehicles in larger nos. come and go. A High Tension wire also would abut, in case the FOB is shifted because then it would fall in ROW. Additionally, there is enough space for shifting of the gate. Hence, it is not a case where the FOB is being constructed arbitrarily, rather, several reasons have been cited by the respondents for declining the request for shifting of the FOB.

6.3 The power of judicial review under Article 226 of the Constitution of India, allows the High Court to issue any order or directions including shifting of the FOB, however, the High Court has to be satisfied whether there is a violation of any fundamental rights; lack of authority or jurisdiction; procedural impropriety; arbitrariness or even in larger public interest. Such a decision may also be interfered with if it is made in bad faith or is in violation of statutory provisions. The constitutional Courts can always weigh the benefits of shifting and determine whether it outweighs the negative impact or not.

6.4 When the circumstances show existence of valid reasons, the Court would not ordinarily go to the number of reasons cited. Once the reasons are judicially valid and are not absurd or unsustainable, this Court would not support its reasons for the reasons of the expert NHAI.

6.5 It is also evident from a perusal of the respective pleadings that the aforementioned site of construction of the FOB has been decided by taking in inputs from the Independent Engineer in consultation with Concessionaire, Road Safety Experts, District Administration and Traffic

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Police Authorities. Moreover, in case the FOB is shifted to any other location, its use may be minimal and the same may defeat the whole purpose of construction of the said FOB.

6.6 The infrastructure projects undertaken by the NHAI, along with the facilities to be provided, are planned after conducting a feasibility study and examining technical aspects, including traffic hazards and safety concerns. Additionally, various project costs related to entry and exit points must be considered. Since these matters fall under the expertise of specialists and are presumed to have been duly considered when determining entry and exit points on or across the National Highway, it is not appropriate for the High Court to subject the experts' decisions to judicial review, especially when there are no allegations of illegality, regulatory violations, or malice. The petitioner's demand to relocate the Foot Over Bridge (FOB), citing potential disruptions to their business and risks to pedestrian safety, lacks merit. Therefore, I find no sufficient or compelling reason to invoke the court's powers of judicial review under Articles 226/227 of the Constitution of India to order the shifting of the FOB, disregarding financial implications or technical approvals.

6.7 The Hon'ble Supreme Court has already held that infrastructure projects are best left to the judgment of experts. The High Court, in exercising judicial review, should not act as an appellate authority over expert decisions regarding traffic assessments, project costs, or provisions for entry/exit points. Unless the authority's decision is tainted by gross impropriety, abuse of power, or violation of law or procedure, such

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decisions should not be interfered with. In this case, no such grounds have been demonstrated by the petitioners. The Hon'ble Supreme Court has held in the matter of **Union of India Vs. Kushala Shetty & Ors. dated 21.02.2011 passed in Civil Appeal Nos.2866 to 2880 of 2011**, and the relevant part is extracted 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.”

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6.8 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.”*

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6.9 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 would 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.

6.10 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:
77. The duty of the court is to confine itself to the question of legality. Its concern should be:*

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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.

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(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 un-budgeted 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

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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

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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.”

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

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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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23. 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)

6.11 The petitioner in the present case may only claim a right to ingress and egress, which such humane aspect has already been taken into consideration. However, such a demand cannot be extended to vest a right in favor of the petitioner, to raise a concern regarding the site of construction of the said FOB and relocating the same instead of shifting its

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own gate that had been opened without sanction from the competent Authority. Any interference at this stage is likely to have implications not only in due execution of the project 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 might have certain possible inconvenience, cannot be the basis for directing the NHAI to relocate the FOB at any other place. 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 report takes all aspects into consideration and road safety has to be duly taken into consideration.

7 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 the petitioners has been violated or any legal or procedural impropriety exists as may necessitate judicial review.

8 The instant petition is accordingly dismissed.

9 All other pending miscellaneous applications, if any, shall also stand disposed of accordingly.

October 22, 2024.

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No