

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

218

CWP-5946-2019

Date of decision: 22.02.2024

KASHMIR SINGHPetitioner

VERSUS

N.H.A.I AND OTHERSRespondents

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

Present: - Mr. Jaiteshwar Singh, Advocate
for the petitioner.

Ms. Sonia Madan, Advocate and
Mr. Mahender Joshi, Advocate
for respondent No.1-NHAI.

None for respondent No.2.

Mr. Pankaj Mulwani, DAG, Haryana
for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

1. Prayer in the present writ petition is for seeking directions to the respondents-NHAI to provide a foot over bridge or construct/provide a cut (crossing) on National Highway for the villagers as a solution to end their woes as is seemingly provided at other places for other villages.
2. The petitioner, who is a resident of the village Moriwala, claims that he has been authorized by the Gram Panchayat vide resolution dated 19.01.2019 to institute the present writ petition espousing the grievance of the

residents of the village on account of construction of National Highway No.10 connecting the State of Punjab to Delhi, while passing through the State of Haryana, whereby their hardships in crossing over to the other side of the road for availing access to their fields has been escalated.

3. It is contended that on account of the above Highway, the village has been bifurcated into two parts resulting in causing difficulties for the residents. The said difficulties have been highlighted as under:-

a) That the utter difficulty is faced when the residents have to catch a bus from the bus shelters located on the opposite side of the road. To do so they have to cross the road by jumping or they have to cover a distance more than 1 KM in order to get to the other side of the road. While crossing over the grills great danger is posed as no provision is made for Zebra crossing or a speed breaker to slow down the incoming traffic and therefore it increases the chances of mishap on the road.

b) That the small school going children have to walk for a distance of around 1.5 KM in order to get to their school, due to the non-provision of a crossing or a footbridge.

c) That the dispensary is located on one side of the road and aged women/men, children, unwell people and pregnant ladies face sheer difficulty as they have to walk quite a distance in order to cross the road and get to the other side of the road and reach dispensary

d) That same is the case when the residents have to travel a considerable distance with their animals when they have to get them examined in the animal centre.

e) That the farmers and the daily wagers face great difficulty while crossing the road in order to get to their fields from their houses on the other side of the road.”

4. A representation espousing the above said grievances was submitted by the Gram Panchayat of Village Moriwala to the Minister of Transport and Highways on 12.06.2018, however, no reply was received on the same. A representation was later submitted to the Project Director on 07.07.2018 requesting the authorities to take note of the situation and to help the villagers to overcome their difficulty. A response was thereafter received on 31.08.2018 from the Regional Office of the National Highway Authority of India (NHAI), Panchkula stating that a cut at a distance of 550 meters from the village end has been already provided on one side and another cut at a distance of 600 meters has been provided. Any other crossing will prove dangerous and would cause a safety hazard. A representation was also sent by the petitioner to the respondents thereafter on 09.10.2018 and the same was followed by the reminders but no action was taken resulting in institution of the present writ petition.

5. Pursuant to the issuance of notice by this Court, a reply had been filed on behalf of the National Highway Authority of India wherein it is stated that the petitioner had concealed the true and correct factual aspects regarding the crossing and foot over bridge, speed breakers etc., on National Highway-10. It is stated that a cut road has already been provided at KM. 246+850 in front of B.R. Global School, Moriwala which is at a distance of 325 mtr. towards Hisar from the center of the village habitation. Further, another road cut has been provided at a distance of 1350 mtr., from centre, towards Sirsa, for users/public/traffic. It is also pointed out that entry point and exit point on service road have been provided on the left hand side as well as on the right hand side and a median cut has been provided at 247.635

KM. Hence, sufficient entry/cross over points have been made available for the convenience of the villagers. It is further stated that prior to the commencement of the construction work, a detailed project report was prepared by empanelled consultant of the Ministry of Road Transport and Highways and that the road alignment and design, including structures, was envisaged keeping in view the geometries of the road, traffic management, road safety pre and post construction. The Concessionaire undertook the construction as per the said DPR and cannot construct/shift the location of service lane, at the request and will of individual, as the same is likely to cause a higher expenditure to the State exchequer not only on account of creation of additional infrastructure but also on account of additional safety measure and project delay.

6. Reference was also made to the Traffic volume at Village Moriwala on per day basis and that a crossing being already available at a distance of 325 mtr. from the centre of the village and in front of the B.R. Global School, Moriwala to contend that the convenience of the villagers has already been catered too. The response of the respondents to the inconvenience raised by the petitioner is as under:

“(a) That in reply to the contents of this sub-para, it is submitted that the high rise grills have been provided on both sides of divider of main carriageway and on both sides of service road just to avoid unauthorized crossing and to prevent accidents which infact is in the larger public interest particularly for the residents of village Moriwala. It is noteworthy to mention here that the petitioners are themselves admitting that they cross the grills in an unauthorised manner which increase the chances of mishap. It is submitted that the answering respondent cannot be held responsible for the unauthorised acts of the residents of village Moriwala.

(b) That the contents of this sub-para are wrong and denied. It is vehemently denied that school going children have to walk for a distance of around 1.5 Km in order to get to their school, due to the non-provision of the crossing or a footbridge. It is reiterated that a road cut has already been provided at KM. 246+850 in front of B.R. Global School, Moriwala, which is at a distance of 325 mtr. toward Hisar from the center of village Moriwala habitation.

(c) That the contents of this sub-para are wrong and denied. It is vehemently denied that aged women/men, children, unwell people and pregnant ladies face sheer difficulty as they have to walk quite a distance in order to cross the road and get to the other side of the road (sic) and reach dispensary. It is the case of the answering respondent that no changes can be made to the Detailed project report which has been prepared after detailed analysis of the traffic demographics which cannot be changed for convenience of a few persons and thereby putting a large number of people at risk.

(d) That the contents of this sub-para are wrong and denied. It is denied that the residents have to travel a considerable distance with their animals when they have to get them examined in the animal centre. It is submitted that cuts have already been provided at appropriate places which are well- within the reach of the residents.

(e) That the contents of this sub-para are wrong and denied. It is denied that the farmers and the daily wagers face great difficulty while crossing the road in order to get their fields from their houses on the other side of the road. It is submitted that for the ease of passage, service lane and cuts at appropriate place has already been provided.”

7. It was thus said that it is not a case of lack of access to the petitioner and that a mere inconvenience being faced by the residents cannot

be equated as a gross hardship. It was also pointed out that providing of any another crossing/foot over bridges is likely to cause a traffic hazard for the road users/public on the National Highway. An additional crossing at the place demanded, would act hazardous to the commuters crossing over to the other side since vehicles are plying at a speed of around 100 kms per hour. Additionally, it would cause incurring of massive expenditure on installation of crash barrier etc. The counsel for the parties have been heard at length and the documents have been perused.

8. The contentions of the petitioner however fail to impress upon this Court.

9. Despite the said reply having been filed by the respondent-National Highway Authority of India (NHAI) on 06.01.2020, no replication/rejoinder has been filed by the petitioner controverting the stand of the respondent including availability of the crossing at a distance of 325 mtrs. from the centre of the village and near the School itself. Thus, two different crossing/access have been already made available in addition to the entry and exit points on the service lane near the village, within a distance of less than 2 kms. It cannot thus be said that the villagers are facing huge inconvenience or that any right of the villagers has been grossly violated in crossing over the section of the road. Merely because the Bus Stand is on the other side, the same cannot be said to be a sufficient ground of providing a crossing that every such point which residents of village may ask for.

10. A Bus stop is always on both sides and not just on one side. Besides, any claim of any specific village/villagers cannot be seen in isolation. While carrying out planning for construction of such projects including National Highways, the demands, security and traffic aspects are

required to be taken into consideration by the experts. No exception can be carved out, on the basis of the nature of inconveniences highlighted above. When the respondent-National Highway Authority of India fails to provide for an access, in terms of the guidelines/circulars issued by them, that such a petition can be entertained.

11. Taking into consideration that the stand of the respondents has remained uncontroverted and the respondent NHAI had duly considered the request advanced by the residents of the village and found the same to be technically unfeasible, there can be no basis for this Court to disagree with the report of experts of the National Highway Authority of India. The law is well settled that the projects of National Highway are conceptualized and planned by experts and that the High Court does not possess the requisite expertise to cause diversions/direct changes in execution of such projects in any manner whatsoever. The Court, not being equipped to decide upon the viability and feasibility of the said demands, writ jurisdiction ought to be exercised in a special case only.

12. Reliance in this regard can also be placed on the judgment of Hon'ble Supreme Court of India in the matter of ***“Union of India versus Kushala Shetty*** reported as ***(2011) 12 SCC 69*** as well. This Court had also examined the said issue and had held that for providing of such facilities at the National highways, various parameters are kept in mind by the experts and such parameters cannot be substituted by the opinion of the Court. The relevant extract of the judgment dated 11.11.2022 passed in ***CWP-4431-2016*** titled as ***“Jatinder Singh and others versus Union of India and others”***, is extracted as under:-

“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.

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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.”

13. The present writ petition is accordingly dismissed at this stage. Dismissal of the instant writ petition shall however not operate as a bar against the petitioners to file fresh representation before the competent authority, on account of any change scenario and/or pointing out any other alternative place. In the event of such grievance being espoused, the respondent-NHAI may take a considerate decision thereupon.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 22, 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No