



Civil Writ Petition No. 11076 of 2019

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 11076 of 2019

Date of decision : January 08, 2025

Gram Panchayat Bhakli through Hans Raj Panch

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Sushil Sheoran, Advocate, for the petitioner

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No. 1 and 2

Mr. Lalit K. Gupta, Advocate, for
respondents No. 3 and 4-Union of India

KULDEEP TIWARI, J.

1. Gram Panchayat Bhakli throw challenge to the report dated 27.9.2028, Annexure P/11, by filing the instant petition, under Articles 226/227 of the Constitution of India, seeking its quashing, as well as for issuance of directions upon the respondents No. 3 to 5 i.e. relevant departments to construct the Railway Under Bridge (hereinafter to be referred as the "RUB") at point 28/8 on Rewari-Hissar-Bathinda Railway Section instead of at point 28/2-3.

2. What propelled the petitioner to approach this Court, is the shifting of the RUB from point 28/8 to point 28/2-3. The joint inspection report for feasibility of proposed RUB has found that the RUB at point 28/8 is not technically feasible whereas it is feasible at point 28/2-3.

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Before convincing upon the submissions made by the learned counsel for the parties, let us have brief glance at the facts of the instant case.

3. It is the second round of litigation. Earlier for the same cause of action, the petitioner filed CWP-5370-2017, and the same was disposed of by this Court, vide order dated 10.8.2018, with a direction upon the respondent-State, as well as the department of Railways, to fix up a date for visiting the site, after due notice to the residents of both the villages i.e. the petitioner as well as respondent no. 6, and all others who are likely to be benefitted or affected by the proposed construction, and the exercise was ordered to be completed within a period of three months from the date of receipt of certified copy. Thereupon, the joint inspection report was carried out, and finally it was submitted. It was found that the RUB is not feasible at point 28/8, whereas, it is feasible at point 28/2-3.

SUBMISSIONS BY LEARNED COUNSEL FOR THE PETITIONER

4. Learned counsel for the petitioner in order to challenge the aforesaid report has made two fold submissions; firstly, that the Joint Committee had acted under political pressure, and therefore, in order to give benefits to the people living near over-bridge, the Joint Committee has made wrong observations; and secondly, he tried to challenge the technical feasibility report on the following grounds:-

(i) In the report and on spot, there is a path of 22' (6.70 meters). If 3 meter wide RUB/Underpath is constructed then the land would remain 3.70 meter and in both sides it will be 1.85 meter in each side but in report 1.35 meter shown i.e. ½ meter less in each

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side. On this ground alone, the report is liable to be set-aside.

(ii) In earlier report, the Railways found point 28/8 is feasible for RUB. How after that it is not feasible. The false report is prepared at the instance of local MILA and one Veer Kumar who is member of Railway Board from Kausali. Earlier the report was prepared at point 28/9 to show that there is no road or rasta on other side, now the area of both sides were shown one meter less. Thus, the report is prepared with malafide intention.

(iii) That on one side 54' open land of railway and other side 49' open land adjoining the railway track is lying. The under-pass is to be constructed in the land of railway department and sufficient land lying on both sides."

SUBMISSIONS BY LEARNED COUNSEL FOR THE RESPONDENTS

5. The submissions made by learned counsel for the petitioner were strongly opposed by the learned State counsel for respondents No. 1 and 2, and learned counsel for the Railways-respondents No. 3 and 4.

6. The learned State counsel has submitted that there is a skew of about 25 inches at Bhakli-Juddi road on railway line, which is impermissible under the Railway's rules, and norms as it allows the underpasses at right angle, and not in skew. Moreover, the consolidated path of Juddi road is 22 ft (6.70 mtrs) wide and there exist pucca residential houses along with some vacant plots along the path on eastern side of railway track. However, the required clear width of RUB/underpass is minimum 3.00 mtrs plus 1.0 mtrs for its two walls. Thus, after constructing

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proposed RUB/underpass at this point, net width available on either sides of the approaches will be hardly 1.35 mtrs. on side which is quite insufficient for constructing service road. He further submits that for constructing the RUB at point **28/8**, it would necessitate acquisition of land. Further there is market on both sides of railway line at point **28/2-3**, where there is public movement from dawn to dusk, and even during late night hours. Further, the Railway has also expressed its serious concern qua trespassing on point **28/2-3**, which underlines the necessity of an underpass at this point.

7. On the other hand, learned counsel for the Railways-respondents no. 3 and 4, has submitted that the location, and feasibility of RUB has to be decided by the State Government {PWD (B&R) department}, whereas, the Railways can tell the feasibility on the railway line.

8. This Court has considered the rival submissions of both the parties concerned, and is of the considered view, that there is no merit in the instant petition. The first issue raised by the learned counsel for the petitioner regarding shifting of RUB from point **28/8** to **28/2-3**, on the basis of political pressure, this Court finds no substantive evidence, except the bald allegations. The members of Joint Committee, which prepared the impugned inspection report, are independent technical experts, therefore, without any substantive evidence, the submission of acting under political pressure is not acceptable, and the same is rejected. Though both the parties have put up their point of concern regarding the technical feasibility of



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RUB, however, this Court cannot comment upon the technical issue, as raised in the instant petition. Even the petitioner is not a technical expert, nor is technically qualified to say that RUB is feasible at point 28/8. From the perusal of the record, it reveals that the problem is not only to be faced by residents of two villages, but it is the problem with regard to residents of 30 villages. Therefore, the competent authority is required to evaluate the best place to construct the RUB, and after considering all the technical limitations, it was concluded by the technical experts that the RUB is not feasible at point 28/8, whereas, it is most feasible at point 28/2-3, therefore, the asked for relief for quashing of report dated 27.9.2018, Annexure P/11, cannot be granted.

9. In sequel to the aforesaid, the instant petition is **dismissed**.

10. However, it is open for the petitioner to approach the authority concerned, in case, it is feasible to have second separate RUB, near their village, subject to technically, and financially feasible to the respondents.

11. Ordered, accordingly.

January 08, 2025

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**(KULDEEP TIWARI)
JUDGE**

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No