

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 263 of 2012

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE J.B.PARDIWALA

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SHARADCHANDRA RAJANIKANT SHAH & 4....Applicant(s)

Versus

UNION OF INDIA - THROUGH CHIEF SECRETARY & 9....Opponent(s)

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Appearance:

MS SNEHA A JOSHI, ADVOCATE for the Applicant(s) No. 1 - 5

MR UTKARSH SHARMA, AGP for the Opponent(s) No. 9 - 10

MR RAMNANDAN SINGH, ADVOCATE for the Opponent(s) No. 1

NOTICE SERVED BY DS for the Opponent(s) No. 1 - 8

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 28/08/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioners have raised grievances of the residents of Modasa and surrounding regions who, according to the petitioners, have been deprived of railway connection with Shamlaji. Case of the petitioners is that the broad-gauge railway line between Modasa and Shamlaji was declared way back in the year 1978. The said project has still not been implemented. This resulted into great hardship to the residents of that area. Petitioners have also raised the question of certain unmanned railway crossings at Modasa-Nadiad route.

2. The petitioners have, accordingly, made following substantive prayers:

“12.(a) This Hon'ble Court may be pleased to issue a writ of Mandamus or a writ in nature of mandamus or nay other appropriate writ, order or direction directing the respondent authorities to proceed further in the matter by issuing appropriate orders regarding acquisition of land for the proposed BG line from Modasa to Shamlaji in terms of the directions issued vide Ministry of Railway letters dated 24.10.2008, conveying approval of President and for release of funds for the purpose by the Ministry of Railways. (In this case there is no progress in the matter and after 4 years the project is still on papers only).

(b) This Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ,

order or direction directing the respondent authorities to provide enough funds to North West Railways to expeditiously complete the Gauge Conversion Works between Udaipur and Shamlaji Road and provide Western Railway a thorough BG Rail Track for Udaipur.

(c).This Hon'ble Court may be pleased to issue a writ of Mandamus or a writ in nature of mandamus or nay other appropriate writ, order or direction directing the respondent authorities to take appropriate measures especially to provide the manned level crossing system and other infrastructure as sanctioned by the parliament and further be pleased to direct the authorities to provide National Internet Sitings and Sleeping reservation system for the trains running on Modasa-Nadiad route.

(d) Your Lordships may be pleased to issue direction directing the authorities to provide the goods traffic facilities as sanctioned by the project."

3. The Railway Authorities have appeared and filed a detailed reply dated 06.03.2013. A further reply is also filed dated 03.08.2014. The Railway Authorities do not dispute that a railway project between Modasa and Shamlaji has been declared. In the replies, they, however, submitted that implementation of the new railway line is a complex task requiring number of technical details. A petition, in the nature of public interest, seeking implementation of such a project would not be maintainable particularly, in the later reply of the railways, it is pointed out that the following progress has been made in the direction of implementation of the project.

"I say and submit that as per the programme submitted by the Railway, the preliminary work of location survey is in progress as per the plan. It is submitted that following works have been completed or are in progress:-

(1) Compilation of the existing details along the proposed new line between Modasa and Shamlaji along new alignment;

(2) Marking of the final proposed new alignment;

(3) Collection of centerline level along the proposed new alignment;

(4) Collection of Village Map from the State Authority is in progress.

4. It is further submitted that the work of new rail line between Modasa-Shamlaji has been sanctioned as material modification to the main project of Ahmedabad-Himmatnagar-Udaipur Gauge Conversion.

5. I say and submit that the sanctioned cost of Gauge Conversion of Ahmedabad-Himmatnagar-Udaipur, including new material modification between Modasa-Shamlaji is Rs. 1215.35 Crore. With the estimated cost of Ahmedabad-Himmatnagar Gauge Conversion Project as Rs. 277.14 Crore and that of new line between Modasa-Shamlaji is Rs. 106.46 Crore.

6. I say and submit that during the financial year 2013-14 the tenders were floated/finalized in connection with Ahmedabad- Himmatnagar gauge conversion work worth approximately Rs. 70 crore, was withdrawn/discharged/short closed due to non-availability of fund against the Ahmedabad-Himmatnagar-Udaipur Gauge Conversion Project including new line between Modasa-Shamlaji.

7. I say and submit that the allotted fund for the financial year 2014-15 to Western Railway, against Ahmedabad-Himmatnagar Gauge Conversion Project with New line of Modasa-Shamlaji is only Rs. 1.00 crore. Accordingly, no fresh tender for Ahmedabad-Himmatnagar Gauge Conversion Project has been invited for the financial year 2014-15.

8. I say and submit that due to limited allotment of fund, the main project, i.e. Ahmedabad-Himmatnagar Gauge Conversion is project, i.e. Ahmedabad-Himmatnagar Gauge Conversion is proposed to be taken up first.

9. I say and submit that while the survey was in progress, even farmers whose lands are likely to be acquired, have approached this Hon'ble Court by filing Special Civil Application No. 5542 of 2014, challenging the route for laying down new railway line between Modasa-Samlaji proposed by the Direct Collector Sabarkantha and approved by the Railway Board, wherein notice has been issued and the same is pending before this Hon'ble Court.

10. I say and submit that the proposed outlay for the year 2014-15 was submitted to Railway Board for allotment of funds under Demand No. 16 Plan Head-14 (Gauge Conversion) for Ahmedabad-Himmatnagar-Udaipur including Modasa-Shyamlaji New rail line was Rs. 109.66 Cr. However, the Railway Board has sanctioned 41.05 Crore against Ahmedabad-Himmatnagar-Udaipur Gauge Conversion and out of which Rs. 40 crore has been allotted to North-Western Railway and whereas only Rs. 1.05 crore has been allotted to Western Railway. Copy of the Demand No. 16 and copy of Railway Board communication to the General Manager, Western Railway dated 17.04.2014 are annexed hereto and marked as Annexure RI (Colly) to this reply.

11. I say and submit that due to paucity of fund, the project is likely to be delayed."

4. Learned counsel Ms. Joshi for the petitioners vehemently contended that the railway project, which is envisaged way back in the year 1978, has been delayed for more than 30 years. The Railway Authorities has not taken effective steps for implementation of the project. In the meantime, residents of the area are deprived of railway connection. Directions, therefore, as prayed for, be granted. With respect to unmanned railway crossings, she further submitted that the same would be hazardous to human safety.
5. Relying on a decision of the learned Single Judge of this Court, in case of ***Kanjeta Vibhag Yuvak Mandal and anr. vs. State of Gujarat and ors.*** reported in ***2008 (2) GLH 150***, she contended that discriminatory diversion of public fund is not permissible and this Court can give suitable directions to the Government Authorities.
6. She also placed reliance on the following decisions:
 - (i) In case of ***DID Frenchisees Association (Gujarat) vs. Chief General Manager*** reported in ***2005 (2) GLH 555***;

(ii) In case of ***Union of India vs. Dr. Kushala Shetty & ors.*** reported in ***AIR 2011 SC 3210;***

(iii) In case of ***Shyam Naik and ors. vs. General Manager, East Coast Railway, Rail Vihar, Chandrasekharur, Bhubaneswar and ors*** reported in ***AIR 2012 ORISSA 38;***

(iv) ***In case of Patel Dilipkumar Mangaldas vs. National Highway Authority of India and ors.*** reported in ***2013 (2) GLR 1477.***

7. On the other hand, learned counsel Mr. Singh for the Railway Authorities opposed the petition contending that prayers in the petition cannot be granted in the public interest petition. The Railway Authorities have taken appropriate steps as permissible. Under the circumstances this Court would not substitute a judgement that of the Executive while exercising writ jurisdiction. He relied on the following decisions:

(i) In case of ***Union of India and ors vs. Kannadapara Sanghatanegala Okkuta and Kannadigara and ors.*** reported in ***(2002) 10 SCC 226;***

(ii) In case of ***Union of India and ors vs. J.D.Suryavanshi*** reported in ***(2011) 13 SCC 167***

8. Railway counsel also submitted that presently, the railway traffic on Modasa-Nadiad route is extremely low. Only passenger trains pass and there is no goods train traffic putting. Creating a manned railway crossing is economically not viable. If in future, the traffic increases, suitable steps would be taken promptly.

9. While considering the grievances of the petitioners, we must realize that howsoever sympathetic our views may be to the needs and requirements of the petitioners and other residents of the locality, there are certain self imposed restrictions on exercise of powers under Article 226 of the Constitution of India. Though, in our Constitution, there are no water tight compartment creating division of power between the executive and the judiciary, nevertheless, the broad division of powers is well recognized. The judiciary, in exercise of its judicial function, would not enter into the arena of highly complex administrative functions which are principally those of the executive. On which route a railway line should be established and if the project is already clear along which route there should be a greater focus or greater urgency are matters which can be judged only by the executive who are, in turn, answerable to the Parliament. The members of the Union Legislature are elected by the people directly and who, in turn, seek a re-mandate

every five years. They have to take care of the interest of the people of the country in various ways. In the process, the executive also has to take into account not only the feasibility, the geographical area of the region where the proposed project is to be implemented. The ground realities, such as, the land which is to be acquired and last but not the least, diversion of the public funds. These are budgetary proposals which are prepared after great detailed of exercise and expertise. The Court sitting in exercise of writ jurisdiction would not substitute its opinion without full information and at times necessary expertise which would be hazardous to intervene into governmental function of directing the Railway Authority to create certain train corridor and to be implemented such a project without any further delay. These are all the areas of governmental consideration. It may be that the residents of Modasa and around may have a genuine need of railway line. For that matter there may be many other regions in the country who may be far more backward and may have a greater or a prior need for such attention. It is entirely for the executive to address these issues and implement various schemes declared in union budget or the railway budget considering the availability of the funds and various other factors.

10.(i) In case of DID Franchisees Association (Gujarat) vs. Chief

General Manager (supra), the learned Single Judge, in fact, observed that in exercise of writ jurisdiction, the Court will not supplant such a decision of an expert body unless there are mala fides.

(ii) In case of **Union of India vs. Dr. Kushala Shetty & ors.** (supra), the Supreme Court observed that:

“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.”

(iii) In case of **Patel Dilipkumar Mangaldas vs.**

National Highway Authority of India and ors. (surpa), Division Bench of this Court also observed that considering complex nature of issue, all persons seeking right to access to National Highway P.I.L. Could not be entertained. It was observed that taking into consideration complex nature of the issue with the Court has to be mindful of the principle that judicial review and interference in the matters, which requires technical expertise must be best left to the experts to decide upon.

(iv) In case of ***Kanjeta Vibhag Yuvak Mandal and anr. vs. State of Gujarat and ors.*** (supra) the High Court was considering the issue whether the State Government had given facility of grant to certain schools whereas denied to the petitioner's school. It was in this background the question of equality arose.

11. On the other hand as rightly pointed out by the counsel for the railways,

(i) In case of ***Union of India and ors vs. Kannadapara Sanghatanegala Okkuta and Kannadigara and ors.*** (supra), the Apex Court observed that there was no basis for the observation of the High Court that challenge in venue of the zonal headquarters was as a result of a different political

party having come to power at the Centre. The High Court was of the opinion that in such policy matters, judicial review would not be available.

(ii) In case of ***Union of India and ors vs. J.D.Suryavanshi*** (surpa), the Supreme Court held and observed that:

“6. Railway administration is a specialized field. It has to cater to the needs of the entire country. It has limited resources and limited number of railway engines and railway coaches, particularly AC coaches, more particularly AC-I class coaches. Railway will have to distribute and utilize the available resources and the available Rolling Stock equitably, uniformly, and appropriately to serve all the sections of the country. It is possible that in a particular section there may be hardship, inconveniences and need for introduction of more trains, better timings, and better facilities. But one sector is not India. We shudder to think what would happen if every High Court starts giving directions to the Railway to provide additional trains, additional coaches and change timings wherever they feel that there is a shortage of trains or need for better timings. Even in the State of Madhya Pradesh, we are sure that apart from Gwalior-Indore sector, there are other sectors which may be facing similar hardships and problems. The Railway does not exist to cater to a particular sector. It is for the Railway administration to decide where, how and when trains or coaches should be added or the timings should be

changed. The Courts do not have data inputs, specialized knowledge or the technical skills required for running the Railways. The High Court cannot interfere in regard to only one sector without having any material or information about the requirements of other sectors available infrastructure, existing demands and constraints, safety requirements etc. Nor can the High Court direct introduction of trains or additional coaches of a particular category or direct change in timings of a train. Changing the timing of a train is not a simple process, but requires co-ordinated efforts, as it would affect the timings of other trains. There are also different types of trains - express trains, superfast trains, passenger trains, goods trains, with different speeds and priorities. Any attempt to pick and choose one train or one sector for improving the functioning will led to chaos involving technical snags and safety problems.

12. In the present case itself the case of the railway is that after acquiring the route for the proposed railway line, the acquisition of the land had to be done by the State Government. Such acquisition has run into controversies. It is not unknown that national projects of such kind often time run into legal hitches. Alongwith all private properties is one prime area where such projects are bound to run into resistance. We are informed that some of the prospective land losers have filed writ petition before the learned Single Judge of this Court challenging proposed acquisition of their land. In this public interest petition we cannot remote control such objection. We cannot decide the authority and

legality of such acquisitions or the challenges made by the land losers. These are the issues which the administration has to encounter before such projects can be implemented. By very nature of things these are complex issues. In absence of any mala fides on part of the Railway Authorities, we are unable to issue the directions, as prayed for by the petitioners. In the result, this petition is dismissed.

(AKIL KURESHI, J.)

(J.B.PARDIWALA, J.)

Jyoti