

HIGH COURT OF MADHYA PRADESH : JABALPUR

(Division Bench)

Hearing through Video Conferencing

Writ Petition No.13499/2020

Municipal Council, Harda

vs.

National Highway Authority of India, Hoshangabad & others

Jabalpur, dated : 30.09.2020

Shri Ashish Shroti, learned counsel for the petitioner.

Shri Mohan Sausarkar, learned counsel for respondent No.1.

Shri Ashish Anand Bernard, learned Deputy Advocate General for the respondent-State of M.P.

Petitioner vide present writ petition under Article 226 of the Constitution seeks two fold directions that :

- i) the National Highway Authority of India and/or concerned department of the State Government to provide necessary funds for the purpose of shifting of pipeline, and;
- ii) the Principal Secretary, Department of Urban Administration and Development, State of Madhya Pradesh be directed to accord technical and administrative approval for the above work.

2. The mandamus sought arises in the context of the fact that the National Highway Authority of India (for short 'NHAI') is in the process of development of 4 lane under economic corridor in Bharatmala Pariyojna : Nanasa to Pidgaon Section of NH-47 (NH-59-A) (Indore to Harda PKG-III) as approved by Standing Finance Committee/competent Authority.

3. That there exists a water pipeline from Nemawar to Harda which require shifting to prevent it from being damaged.

4. The record reveals that in a permanent Lok Adalat, First Additional District Judge, Harda, in Case No.3/2015, 4/2015 and 8/2015 had directed the present petitioner to remove the pipeline in question. The order was challenged in W.P.No.19720/2015. Vide order dated 19.07.2016, writ petition was disposed of in the following terms:

“The permanent Lok Adalat in terms of Section 22 C of the Legal Services Authority Act, 1987 exercises jurisdiction in respect of the matters conferred on it. Shifting of pipelines is not a subject over which the permanent Lok Adalat exercises its jurisdiction nor the construction of National Highway and that too costing more than Rs.10,00,000/-. Thus, the permanent Lok Adalat will not have any jurisdiction in respect of shifting of pipelines falling under the National Highway.

Having said so, we find that replacement of pipelines is in public interest. As per Municipal Corporation it involves an expenditure of Rs.11.25 crores. Therefore, we find that the present writ petition can be disposed of with direction to the State Government and also the National Highway Authority of India to take appropriate decision that as to how much pipelines is required to be shifted and how much the National Highway Authority of India, the State Government and/or the Municipal Corporation shall contribute the expenses for shifting of such pipelines.

The Municipal Council shall furnish a detailed project report for the perusal and preparation of the State Government and also for the National Highway Authority of India within two weeks. The decision for such project report shall be taken by National Highway Authority of India, the State Government and the Municipal Council within next six months.”

5. It appears that without any detailed estimate and breakups of cost the petitioner vide its covering letter No.5003 dated 04.09.2018 provided cost estimate amounting to Rs.15.75 crore for shifting pipeline. The letter evoked a response from NHAI on 15.06.2020 addressed to Collector, Harda stating therein:

“3. while giving the approval, Finance Committee has deleted the cost provision towards water pipeline shifting as Director General (Road Development) & Special Secretary to the Govt. of India, MoRT&H brought to the notice of the Committee that as per the existing MOU between the concerned State department and NH PWD Madhya Pradesh, the cost of any pipeline utility shifting is to be borne by the former and accordingly, the committee has deleted the cost provision allocated towards water pipeline shifting.

4. Accordingly, it is requested to direct concerned Government department/Agency for shifting of pipeline on NH-59-A (Nanasa Pidgaon section in km. 127 40 km 142 at the edge of proposed ROW (i.e. 30 m from centerline of proposed NH) in consultation with NHAI/DPR consultant at their own cost immediately and get the shifting work completed so that construction of 4 laning can be taken up by NHAI in the stretch.”

6. In sequel whereof the Executive Engineer, NH PWD Division Indore issued a letter on 17.06.2020 to the present petitioner to take steps to shift the pipeline, failing which, the communication states that, action as per the stipulation in the National Highways Act, 1956 Act shall be adhered to.

7. These facts have led the petitioner, Municipal Council to file the petition for direction to the National Highway Authority of India and/or concerned department of the State Government to provide

necessary funds for the purpose of shifting of pipeline and to the Principal Secretary, Department of Urban Administration & Development, State of Madhya Pradesh to accord technical and administrative approval for the said work.

8. Evidently, there was no mandamus by the Co-ordinate Bench. A probable solution in absence of MOU between the State Department and NH PWD Madhya Pradesh that the cost of any pipeline utility shifting is to be borne by the concerned State department which led to deleting of the cost provision by the Standing Financing Committee allocated towards water pipeline shifting.

9. In these fact situation the mandamus sought for cannot be issued.

10. As no relief can be granted, the petition fails and is dismissed.

11. The dismissal of petition, however, will not prevent the petitioner from taking steps under the M.P. Municipalities Act, 1961 and the Act of 1956 before appropriate forum. No costs.

(Sanjay Yadav)
Acting Chief Justice

(Rajeev Kumar Dubey)
Judge

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