
(2012) 09 DEL CK 0300

In the Delhi High Court

Case No : Writ Petition (C) No. 2932 of 2012

Centre for Public Interest Litigation

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Citation : (2012) 8 AD 516 : (2012) 193 DLT 329

Hon'ble Judges : Rajiv Sahai Endlaw, J;D. Murugesan, J

Bench : Division Bench

Advocate : Prashant Bhushan, for the Appellant; R.V. Sinha along with Mr. R.N. Singh and Mr. A.S. Singh, Advocates for R-1, for the Respondent

Final Decision : Disposed Off

Judgement

Chief Justice Darma Murugesan Sworn

1. As pro bono publico, in the petition filed by Centre for Public Interest Litigation, the petitioner is concerned about a project for construction of railway link between Katra and Quazigund section in the valley of Kashmir connecting Jammu and Srinagar. The petitioner has sought the following directions:

(i) Direct the Union of India to set up an expert committee to review the entire alignment for Katra-Quazigund link being bound by the current approved alignment or any ruling gradient, and put forward a new workable and safe alignment.

(ii) Direct the CVC and CAG to inquire into the financial losses, wastages, and the conduct of the Ministry of Railways on the above issue.

(iii) Direct the Union of India to set up a Special Purpose Vehicle (SPV) to implement the Katra-Quazigund link (after the alignment review) in a time bound manner.

The petitioner has made a representation on 10.12.2009 followed by a further representation to the Railway Board on 1.4.2010 seeking for re-alignment of the

railway line on the ground that an alternate proposal was made by Mr. A.K. Verma, Chief Engineer of this project after a detailed study.

2. Being aggrieved on the failure of the respondent railways to consider those representations, the petitioner earlier approached this Court by way of Writ Petition No. 13519/2009. Vide order dated 2.12.2009, though this Court expressed the view that this Court would not be competent to entertain the petition concerning the technical issues, and ultimately permitted the petitioner to make a detailed representation to the Board raising the points urged in the writ petition with further direction to the Board to dispose of the said representation within four weeks from the said date. On the basis of the said order, the petitioner had made a further representation on 1.4.2010 on the same grievance, namely, the representation was not considered in the proper perspective particularly with reference to the points raised and objections made. Hence, the petitioner has again approached this Court by way of present writ petition.

3. There have been some earlier orders of this Court on the issue. This Court vide order dated 16th May, 2012 directed learned counsel for the respondent to produce original records containing the decision and the deliberations, if any made, after the petitioner had made representation. When this petition is taken up for hearing, learned counsel for the respondent Board has produced a communication dated August, 2012 made to the Chief Administrative Officer. The said communication reads as under:

It is advised that as per Hon''ble High Court''s Judgment dated 02.12.2009, Shri Prashant Bhushan was allowed to make a detailed presentation to Railway Board on 01.04.2010 on the alignment issue of USBRL project. Deliberations on the above presentation and Board''s decision thereon was dealt with in Board''s File No. 2009/W2/NR/CC/27 which, despite all-out efforts, is not presently traceable in this office. However, there is a brief mention about Board''s rejection of Shri Bhushan''s view-point is available at page 7 of the PIL filed by Shri Prashant Bhushan. A copy of the relevant page is enclosed herewith.

It is also mentioned here that non-availability of Board''s File No. 2009/W-2/NR/CC/27 was earlier communicated to Shri A.K. Verma, CE(C)/Northern Railways in reply to an RTI Application filed by him. A copy of the same is also enclosed herewith for information.

3. A perusal of the said communication shows that the respondent is unable to produce the records as the same are not traceable in the office. In view of the above, when we propose to consider the grievance of the petitioner with reference to the points raised in the representation, Mr. Prashant Bhushan produced a copy of the communication from the Executive Director (Works), Railway Board dated 6.5.2010 which reads as follows:

On above subject, vide reference (i) above, your representation was received. After going through the representation, Board decided to allow you to give a

presentation before the Board. Accordingly, on 1st April, 2010, you presented your view point before the Railway Board.

Board, after hearing your presentation has considered it and has decided to go ahead with its Aug'09 decision. Further, Board has also decided that there is no need to take up any further study or setting up of a new committee as desired by you.

The decision of the Board in this regard is being communicated to you, as directed by Hon'ble High Court of Delhi, vide its judgment dt. 2.12.2009 in writ petition (C) No. 13519 of 2009.

4. A perusal of the said communication shows that the representation was considered and rejected and it was also decided to go on with the August, 2009 decision. The above communication takes us to the issue as to whether the representations/objection of the petitioner had been properly considered or not. It is the contention of Mr. Prashant Bhushan that the report of the Chief Engineer was considered by this Court on an earlier occasion when this Court was considering the challenge to the transfer order of the said Chief Engineer. This Court also noticed that the re-alignment proposed by the said Chief Engineer was also approved by Mr. E. Sreedharan, Managing Director, Delhi Metro Rail Corporation. He also drew our attention to the letter of Mr. Sreedharan, Managing Director dated 19.5.2009 wherein as per the existing project, the present alignment work could show only 10% progress during the last seven years. According to Mr. Prashant Bhushan, this progress has now been reduced to 5% in view of the abandonment of some of the proposed construction of bridges. He heavily relied upon the said communication of the Managing Director of the Delhi Metro Rail Corporation to contend that the existing alignment is not conducive both financially as well as from the safety point of view. He also took us to the minutes of a meeting conducted by the Board on 23.6.2008 and the discussion thereon in support of his representations. The grievance appears to be that none of these objections and the report of the then Chief Engineer were considered and without there being any discussion on the same, the representation was rejected.

5. We have given our anxious consideration to the above submission as well as the submission of learned counsel for the railway board. It is not justifiable for the Court to go into technical issues as well as the policy matters. However, this could be of a general rule as there are certain exceptions. As we are not deciding each and every point raised by the petitioner in his representation, we are not inclined to go into those issues and to give definite findings. The only consideration would be that by earlier order of this Court dated 2.12.2009, the petitioner was given liberty to make a representation to the Board with all objections available to them with a further direction to the Railway Board to consider the same and respond and that too in a given time was complied with or not. In view of the above direction, it is for the respondent board to consider the representation by taking into consideration each and every point raised therein.

6. A reading of the communication dated 6.5.2010, which has been extracted above, addressed to the counsel representing the petitioner does not show that any of the reasons or points raised in the writ petition was considered. In these circumstances, we only direct the respondent railway board to consider the representation made by the petitioners on two earlier occasions, one on 10.12.2009 and another after the orders of this Court dated 2.12.2009, i.e. on 1.4.2010 and communicate the same to the petitioner in a period of eight weeks from the date of receipt of copy of the order. As the subject in issue relates to public interest, we permit the petitioner to make a further representation, if any to be made, along with supporting material within a week from today and the said fresh representation should also be considered by the respondent railway board. By this order, we have not decided any of the issues raised in this petition as it is for the railways to consider. Nevertheless, we observe that the consideration must be constructive with reference to the objections raised by the petitioner. The writ petition is disposed of accordingly.