

(2014) 10 OHC CK 0039

In the Orissa High Court

Case No : Writ Petition (Civil) No. 1702 of 2014

Damodar Mishra

APPELLANT

Vs

The East Coast Rail

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Railways Act, 1989 — Section 18

Citation : AIR 2015 Ori 62

Hon'ble Judges : Amitava Roy, C.J;Dr. Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

1. The instant proceeding laid as a PIL registers the demur against the proposed demolition of the unmanned level crossing at Gate No. 220-482 Kms/37-39 between Nirakarpur Railway Station and Bhusandpur Railway Station. A direction has been sought for to order the Railway Administration to upgrade the existing unmanned Level Crossing into a manned one in public interest.

2. We have heard Mr. D. Mishra, learned counsel for the petitioner and Mr. A. Pal, learned counsel for the Railway-opposite party.

3. The petitioner's pleaded case is that the existing unmanned level crossing exists for the last 170 years and is the life link of the neighbouring villages located on the eastern and western sides of the railway track and is claimed to be the way used by lakhs of people. Besides agricultural lands around, cattle also move through the railway crossing for their grazing near Chitrakut Hill. That vehicular traffic also ply through the said unmanned level crossing has also been pleaded. It has thus been contended that if the same is closed or demolished, it would result in untold sufferings and inconvenience to the general public and more particularly, the inhabitant villagers of the locality. The petitioner has averred that though the demolition or closure of the unmanned level crossing at village Kashipur on 9.1.2014 was proposed, the same was opposed by the general public for which the same could not materialize. Referring to Section 18 of the Railways Act, 1989, it has been urged that in case railway administration

apprehends accidents and untoward incidents for the unregulated use of the unmanned level crossing, it is obliged erect a fence/gates/bars thereof. According to the petitioner, if for the failure of the railway administration to take such initiative such accidents occur, it ought to be adjudged actionably negligent and liable to pay compensation.

4. The opposite party in their counter affirmed by the Senior Divisional Engineer (South), East Coast Railway, Khurda Road Division while endorsing the validity of the action proposed, have averred that the Railway Board has been emphasizing on the construction of Limited Height subway (in short "LHS") in lieu of the unmanned level crossing where embankment height permits and accordingly the proposal was sent to the Collector and District Magistrate, Khurda vide office letter No. Engg./Drg./LC/Closure/695/Pt.IV/92 dated 22.7.2013 for closing down the unmanned level crossing involved and constructing the limited height subway. Referring to the Railway Board letter no. 2003/CE-IV/Misc-2(RUBs) dated 18.4.2012 mentioning that the responsibility for the maintenance of road passing through the subway, lighting, drainage system of diversion road and other works will rest on the State Government, the opposite party have clarified that the entire construction of Limited Height subway will be borne by the railway administration. The opposite party have further elaborated that as per the instruction of the District Collector, Khurda vide letter no. 1183(2) dated 23.8.2012, a joint inspection was held by the Tahasildar, Tangi and Asst. Divisional Engineer, Balugaon, East Coast Railway on 27.8.2012 in connection with the proposed closure of unmanned level crossing and the said exercise revealed the following at the site

(a) The village situated on the up side of the level crossing was very well connected to the NKP station and National High Way connecting road without crossing the level crossing.

(b) On down side of the level crossing, there was no habitation and instead there was forest land.

(c) The traffic which crossing through the level crossing is only the vehicles carrying illegal forest product and illegal mining minerals.

5. According to the opposite party, the closure of the unmanned level crossing was recommended to avoid possibility of accidents and to secure public safety. The Collector & District Magistrate, Khurda Road eventually on a consideration of all relevant aspects approved the closure of the unmanned level crossing whereafter public notice was published on different newspapers on 14.12.2013. The opposite party however, admitted that in view of the resistance of the local public, though proposed, the unmanned level crossing could not be closed on 9.1.2014. Vis-?-vis the petitioner's assertion to upgrade the said unmanned level crossing to a manned arrangement, the opposite party have stated that as per the guidelines issued by the Railway Board vide letter no. 2006/CE-I/LX/WP/Pt. dated 30.8.2011 the TVU for all unmanned Level crossing gates ought to be Rs.

3000/-, but for unmanned level crossing involved it was Rs. 1530/- as per the census done in March, 2011 and hence manning of the said gate was not possible because it was impermissible against the guidelines of the Railway Board.

6. The petitioner in his rejoinder apart from reiterating the assertions in the writ petition has generally refuted the correctness of the averments made by the opposite party. The correctness of the finding in the spot survey has also been questioned.

7. Learned counsel for the petitioner has emphatically argued that having regard to the existence and use of the unmanned level crossing gate by the members of the local public for over a century, abrupt closure/demolition thereof would not only violative of their right to life, but also dislocate and disrupt the daily activities of the inhabitants of the locality as well as commuting public using the way. That the grazing cattle and the vehicular traffic would come to a standstill has also been urged. Learned counsel has insisted that in case the railway administration is of the view that use of the unmanned level crossing has the potential of exposing the users to accidents and mishaps, it is its obligation under Section 18 of the Railways Act, 1989 (hereinafter called in short "Act") to get it manned after erecting necessary fences/gates/bars. Without resorting to such measures, the contemplated steps to close/demolish the unmanned level crossing is wholly illegal and arbitrary, he maintained.

8. Reliance has been placed on the decision of the Apex Court in Union of India (UOI) Vs. United India Insurance Co. Ltd. and Others, and of this Court in Laxmi Priya Sahoo and Another Vs. Divisional Railway Manager, East Coast Railway and Another, .

9. As against this, Mr. Pal has pleaded that as the area around the unmanned level crossing is well connected to the NKP station and National Highway, the plea of inconvenience of the public in general as raised is wholly incorrect. Apart from contending that the Railway Board norms do not permit up gradation of the unmanned level crossing. Learned counsel has argued that the railway administration is prepared to construct a limited height sub-way in lieu of the unmanned level crossing at its own cost. Referring to the inspection report Mr. Pal has urged that in view of the disclosures as recorded therein, the unmanned level crossing ought to be closed even otherwise to prevent the illegal pilferage of forest produce and mining minerals.

10. Upon hearing the learned counsel for the parties and on consideration of pleaded facts and documents on record, we are not inclined to intervene. A perusal of the inspection report Annexure-D/4 to the counter of opposite party unmistakably reveals the correctness of the pleaded stand to that effect. The report clearly mentions that the unmanned level crossing ought to be closed to avoid possibility of accidents and public safety. That the village situated on upside of the level crossing is very well connected to the NKP station and National Highway connecting road without crossing the level crossing is also

recorded. The inspection report also discloses that on the down side of level crossing, there is no habitation and it is totally forest land. There are materials on record to conclude that the proposal for up gradation of the unmanned level crossing do not meet the norms of the Railway Board on the basis of the TVU ascertained in terms of the census done in March, 2011. That the Collector and District Magistrate, Khurda on an assessment of all relevant facts had approved the closure of the unmanned level crossing is evident from his order dated 21.11.2013.

11. On a cumulative consideration of the materials on record thus, the proposed action of opposite party to close/demolish the unmanned level crossing at Gate No. 220 does not appear per se to be illegal, arbitrary or illogical and more decisively against public interest.

12. Section 18 of the Railways Act, 1989 is extracted hereunder for ready reference:-

18. Fences, gates and bars-The Central Government may, within such time as may be specified by it or within such further time, as it may grant, require that-

(a) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

(b) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at level crossings;

(c) persons be employed by a railway administration to open and shut gates, chains or bars.

13. A bare reading of the above makes it very clear that in absence of any requirement mandated by the Central Government, no duty is cast on the Railway Administration to make provision for the fence/gate/bar as contemplated therein. The decisions cited at the Bar are out of context as those turn on individual facts pertaining to claim for compensation arising out of accidents for the failure of the Railway Administration to ensure sufficient safeguards at the unmanned level crossings. In the case in hand, the Railway Administration foreseeing possibility of accidents and to prevent illegal activities of clandestine siphoning of forest produce and mining minerals has decided to close/demolish the unmanned level crossing involved. In doing so, the availability of alternative route to obviate public inconvenience has also been taken note of. To reiterate, the decision has been approved by the Collector and District Magistrate, Khurda. In the face of such a conscious decision taken on behalf of the District Administration and the Railways, on a scrutiny of all relevant aspects, we are of the view that in exercise of Court's extra ordinary writ jurisdiction, no intervention as sought for is warranted. The reason cited in the inspection report that to prevent accidents and therefore for public safety, the unmanned level crossing ought to be closed is evidently in public interest. As an unmanned level

crossing is inherently hazardous posing constant possibilities of accident, it is thus in consideration of public safety the opposite party had taken the decision to close/demolish the unmanned level crossing involved. The impugned action in our comprehension is informed with reasons and justification which by no means can be discarded as irrelevant or inadequate.

14. The petition is thus rejected.