
(2012) 12 GUJ CK 0044
In the Gujarat High Court
Case No : Writ Petition (P.I.L.) No. 75 of 2012

Patel Dilipkumar Mangaldas	Vs	APPELLANT
National Highway Authority of India and Others		RESPONDENT

Date of Decision : 19-12-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 21, 226, 226

Citation : (2013) 2 GLR 1477

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : C.S. Mohanan, for the Appellant; Maulik G. Nanavati for Respondent No. 2 and Parth Bhatt, A.G.P., for the Respondent

Judgement

J.B. Pardiwala, J.—This writ petition under Art. 226 of the Constitution of India, in the nature of a Public Interest Litigation, has been filed by a resident of Kathlal and has prayed for the following reliefs: (A) This Hon''ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing respondent Nos. 1 and 2 to provide suitable underpasses and/or traffic circles at Chipadi Patia, Gogajipura, Pithai Sarali, Kathlal Microwave junction, A.P.M.C. Junction, Samod Talav area, Bhaner-Mahudha (narrow road) Baladmarg Talav area and Kokarwada, where the panchayat/village roads/nails intersect National Highway No. 59 and Kathlal bypass near Kathlal; and also to provide service road on the southern side of Kathlal bypass;

(B) This Hon''ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus directing the respondent Nos. 1 and 2 to remove and relocate appropriately the pillar now being erected at the centre of Nadiad -Kathlal - Kapadwanj - Modasa State Highway at road chainage km., 25/200 near Kathlal.

(C) Pending hearing and final disposal of this petition, this Hon''ble Court may be pleased to direct the respondent Nos. 1 and 2 to hold the work of N.H. 59 at

Chipadi Patia, Gogajipura, Pithai Sarali, Kathlal Microwage junction A.P.M.C. Junction, Samod Talav area, Bhaner-Mahudha (narrow road) Baladmarg Talav area and Khokarwada, where the panchayat/village roads intersect National Highway No. 59 and Kathal bypass near Kathlal for providing suitable underpasses and/or traffic circles;

(D) Be pleased to grant such other and further reliefs as may be deemed just and proper by this Hon'ble Court in the interest of justice.

The case made out by the petitioner in this petition may be summarized as under: 1.1. National Highway No. 59 (N.H. 59) extends from Ahmedabad to Indore via Godhra and Dhar. The work of construction of four-lane for Ahmedabad - Godhra Section of N.H. 59 from road chainage Km. 4.200 to 122.420 in the State of Gujarat has been taken up by the National Highway Authority of India (hereinafter referred to as "the Authority"). The work is being executed on design build finance operate and transfer basis. Near the Kathlal town, part of N.H. 59 is being constructed as a bypass road. Land belonging to a large number of farmers has been acquired by the Authority for construction of the Kathlal bypass road.

1.2. About 10 (ten) existing panchayat/village approach roads intersecting N.H. 59 at different places near Kathlal are being completely blocked, without making any alternate provision for access across the Highway to the people of the area. This action on the part of the authority will be causing not only inconvenience and immense hardship to thousands of villagers, but it will also make their daily life miserable. While making survey and project appraisal and at the time of preparing detailed estimate for the work, the concerned authorities, who acted on behalf of the authority, appears to have overlooked the needs and convenience of the people at the grass-root level. From the manner, in which the work of construction of the Highway and the bypass is being carried out, it is apparent that the very existence of the villagers, on both the sides of the Highway, has been totally ignored. The flaws in the planning and design is visibly demonstrated and it is evident from the fact that one of the pillars for construction of the overbridge across "Nadiad-Kapadwanj-Modasa Railway line" and "Nadiad-Kathlal-Kapadwanj-Modasa State Highway" near Kathlal is erected exactly at the centre of the State Highway, without the consent and knowledge of the Roads and Buildings Department of the State of Gujarat."

1.3. The panchayat/village approach roads, which intersect N.H. 59 near Kathlal, are being used by the people past many years. These roads are their lifelines. Therefore, suitable underpasses and/or traffic circles are required to be provided at the junctions, where each of these roads intersect N.H. 59. If convenient access across the Highway is not provided, each of these intersections are likely to become spots of regular accidents, endangering the lives of the villagers and their livestock.

1.4. The details of the panchayat/village approach roads intersecting N.H. 59

near Kathlal have been stated in Para No. 4.4 of the petition. The petitioner has provided details as regards the following areas.

- (a) Chhipadi-Patia Cross-Road
- (b) Gogajipura
- (c) Pithai-Sarali
- (d) Traffic Circle at Kathlal Microwave Junction
- (e) Traffic Circle at A.P.M.C. Junction
- (f) Samsol Talav Area
- (g) Baladmarg Talav Area
- (h) Nadiad-Kapadwanj State Highway
- (i) Narrow Road to Bhaner and Mahudha
- (j) Access to Farmlands
- (k) Khokharwada Gam.

1.5. According to the petitioner, the respondents have provided six underpasses while widening the road for construction of four lanes between Ahmedabad and Mudel on Ahmedabad Godhra Section of N.H. 59, namely, (1) near village Kanabha where O.N.G.C. Well is situated on the northern side of N.H. 59; (2) near village Kubarthal; (3) near village Chadiael, known for Chadiael Hotel; (4) in the sim of village Khalal, known as Haldarwas Chokadi; (5) near village Mudel; and (6) near village Ratanpur, which is less than 1 km from Mudel. These six underpasses are provided in a span of less than 15 km.

1.6. According to the petitioner, he had drawn the attention of the Chief General Manager, the Authority, Gandhinagar regarding the necessity to provide underpass and/or traffic circles at different places as stated above.

1.7. The residents of Kathlal Gam, Chhipdi, Chipiyal, Gogajipura, Pithai, Sarali, Mudel, Ratanpura, Kaniyel, Toranam, Khadaal, Chipadi Khetar, Bharkuda, Satrunda, Saraswani, Bhoini-Bhuvadi, Aklacha, Mankada, Dhodhawada, Mapariya, Vasana, Rudan, Aklacha, Karoli and other villages near Kathlal are using the panchayat/village roads past many years. If these roads are closed, it will make their daily-life miserable.

1.8. If suitable underpasses or traffic circles are provided at the respective places, where the approach roads intersect N.H. 59, with the development of the National Highway, the normal life of the villagers, who are at the grass-root level, will not be affected, and they will also get opportunity for growth and sustainable development along with the urban population for whose benefit, mostly, the Highways exist.

1.9. Chapter IV of the Control of National Highways (Land and Traffic) Act, 2002 deals with Control of Access to the National Highways. The relevant Section are reproduced below:

28. Right of access:- (1) No person shall have right of access to a Highway either through any vehicle or on foot by a group of five or more persons except permitted by the Highway Administration either generally or specifically in the manner specified in Sec. 29.

(2) The access to a Highway under sub-sec. (1) shall be subject to the guidelines and instructions issued by the Central Government from time to time.

(3) The Highway Administration may, by notification in the Official Gazette, declare a Highway or any portion thereof to be limited for access in the manner as specified in such notification and may also impose any restriction or control on such access to, from or across such Highway as specified in that notification.

29. Procedure for permission to access to Highway:- (1) The general permission under sub-sec. (1) of Sec. 28 shall be given by issuing notification in the Official Gazette for such purpose and specific permission under that sub-section shall be given in the manner specified hereinafter under this Section.

(2) Any person desirous of obtaining specific permission referred to in sub-sec. (1) may make an application in the prescribed form to the Highway Administration specifying therein the means of access to which such permission relates and shall also be accompanied with such fees as may be prescribed and the Highway Administration, shall after considering the application either give the permission with or without the terms and conditions as may be prescribed or reject the application as it may deem fit.

(3) In case, where the permission has been given in respect of the application made under sub-sec. (2), the person to whom such permission has been given shall obtain the licence from the Highway Administration in the prescribed form enumerating therein the terms and conditions, if any, subject to which such permission has been given, and such permission shall be renewed after such period and in such manner as may be prescribed.

(4) If any person contravenes the provisions of sub-sec. (1) of Sec. 28 or violates any terms and conditions subject to which permission has been given under sub-sec. (2) including non-renewal of licence obtained under sub-sec. (3), his access to Highway under the permission under sub-sec. (1) or sub-sec. (3), as the case may be, shall be deemed to be unauthorised access and the Highway Administration or the officer authorised by such Administration shall have the power to remove such access and where necessary, the Highway Administration or such officer may use the necessary force with the assistance of the police to remove such access.

30. Regulation or diversion of access, etc.:- (1) Notwithstanding any permission given under sub-sec. (1) or sub-sec. (2) of Sec. 29, the Highway Administration

shall have the power in the interest of the safety and convenience of the traffic to refuse, regulate or divert any proposed or existing access to the Highway.

(2) Where an existing access is diverted, the alternative access given in lieu thereof shall not be unreasonably distant from the existing access.

1.10. A combined reading of Sees. 28, 29 and 30 of the Control of National Highways (Land and Traffic) Act, 2002 will indicate that while no person shall have right of access to a Highway, except in the manner provided therein, a duty is cast upon the Authority to provide alternative access across the Highway wherever such access is already in existence.

1.11. The provisions of Secs. 28 and 29 of the Control of National Highways (Land and Traffic) Act, 2002 make it clear that after the work of N.H. 59 and its bypass near Kathlal is completed, the residents of the area will have no access to the Highway except in the manner provided therein. Sub-section (2) of Sec. 30 mandates that where an existing access is diverted, the alternative access given in lieu thereof shall not be unreasonably far from the existing access. In the present case, all the existing access across the Highway at nearly ten points, as shown in the sketch at Annexure-D, are being blocked, and no alternate access across the Highway is being provided. This action on the part of the Authority is violative of the principles of sustainable development, which is an integral part of the right to life guaranteed under Art. 21 of the Constitution of India.

1.12. While constructing and maintaining national Highways, at the stage of planning a project, the Authority, being a "State" within the meaning of Art. 12 of the Constitution of India, ought to have adopted an approach of balancing the competing interests of various stakeholders in the society, by giving due regard to the rights and interests of the rural population of the country also, visualizing the growth of population and the possible developments in the next three or four decades.

1.13. Mr. Mohanan, the learned Counsel appearing for the petitioner, therefore, prays for grant of appropriate writ, order or direction, as prayed for, in this petition.

2. Stance of the respondent Nos. 1 and 2:

2.1. The petitioner has been informed by the Authority about the fact that access to the Highway from none of the village/panchayat roads, mentioned in the petition, has been blocked or even restricted and that sufficient provision has been made by the Authority to ensure free, safe and easy entry to and exit from the Highway on either side at all such places where the village or panchayat road intersects with the existing Highway. Despite such knowledge, the petitioner has chosen not to mention these details in the petition and has thereby tried to mislead the Court.

2.2. The entire petition is based on the premise that about 10 (ten) existing panchayat/village approach roads intersecting N.H. 59 at different places near

Kathlal are being completely blocked, without making any alternate provision for access across the Highway to the people of the area. None of the village or panchayat road, mentioned in the petition by the petitioner, has been blocked or denied access to the Highway. The movement of pedestrian or vehicular traffic from any of these village or panchayat roads, insofar as entry to or exit from the Highway is concerned, is not being blocked and shall not get blocked or prevented in any manner because of widening of the Highway. The petition is therefore, based on ill-founded apprehension of the petitioner and the same deserves to be dismissed in limine.

2.3. The Government of India through Ministry of Roads & Highways has launched major initiatives to upgrade and strengthen the National Highways throughout the country. One such program is the National Highway Development Project (N.H.D.P.). It involves widening, upgrading and rehabilitation of about 54,000 km. of Highways across the country. The Authority is mandated to implement the National Highways Development Project. This road development programme is being implemented in a phased manner. Phase III of the program involves upgradation of 12,109 km. (mainly four laning) of National Highways, through the Build, Operate & Transfer mode at a cost of I.N.R. 80,626 crore. The upgradation or widening under this phase is of stretches of National Highways carrying high volume of traffic, connecting state capitals with the National Highway Development Project network under Phases I and II, and providing connectivity to places of economic, commercial and tourist importance. One of the roads included in Phase III is a stretch of approximately 117.600 km of N.H. 59 on the Ahmedabad Godhra Section from km. 4.200 to km. 122.420. The existing two lane road, which is a single carriageway road, is sought to be widened as a four lane divided carriageway on Design, Build, Finance, Operate and Transfer basis as per the Indian Road Congress Code and Standards, specifications for Road and Bridge Works issued by the Ministry of Road Transport & Highways, Government of India and other standards referred to in the Manual of Specifications and Standards for four laning of Highways through Public Private Partnership.

2.4. The design and construction of all Highways identified in Phase III of N.H.D.P. is to be performed in two steps, namely preparation of feasibility-cum-preliminary design by a technical consultant followed by the detailed design and construction by a private concessionaire as Design, Build, Finance, Operate and Transfer project for each Highway in the programme. Accordingly, Authority retained M/s. Scot Wilson Private Limited as consultants for the Preparation of Feasibility-cum-Preliminary Design for the Ahmedabad-Godhra Project of N.H. 59 from km. 4.200 to km. 122+420.

2.5. The technical consultant undertook a comprehensive study with focus on engineering investigations, traffic analysis and forecasts, design standards, environment and social impact assessment, resettlement plan and project cost to determine the technical, economical and financial viability of the project. The

primary focus of the study was to ensure safety of the traffic road users and people living close to the Highway while adhering to the standards and specifications stipulated by Indian Road Congress and the Ministry of Road Transport & Highways, Government of India, achieve enhanced operational efficiency of the Highway, fulfil the access needs of the local population, minimize the adverse impact on the environment due to construction, and determine feasible and constructible options for the project with least cost.

2.6. After exhaustive study, the consultant opined that the project design, as a partially access controlled facility, would enhance the development of the region and improve infrastructure facilities. Being technically feasible and economically advantageous, it recommended its implementation in larger public interest. The Authority accepted the recommendations of the technical consultant and submitted a proposal to the Public Private Partnership Approval Committee (P.P.P.A.C.) working under the Planning Commission of India to accord its approval for undertaking the project. The Committee, after considering the application of the Authority and examining the importance of the project road, accorded its approval to proceed with the work of widening the present stretch of National Highway.

2.7. The Authority thereafter entered into a Concession Agreement with Essel-Ahmedabad-Godhra-Toll Roads Limited, a company promoted by the consortium comprising M/s. Essel Infraprojects Limited and China Railway 18th Bureau (Group) Corporation Limited. The Authority has appointed French Engineering Consultant E.G.I.S. International in J.V. with Egis India Consulting Engineers Limited to act as the Independent Engineer for the project. The Authority has also appointed R.I.T.E.S. Limited as a Safety Consultant for carrying out safety audit of the project.

2.8. The Project Highway is not being developed as "Access Controlled Highway", but as a partially controlled access Highway. Unlike an access controlled Highway, where the entry to and exit from the Highway, is restricted to only certain places/ points, as in the case of Ahmedabad Vadodara Expressway, in a partially controlled access Highway the state, district, village and panchayat roads, which were hitherto intersecting with the Highway at different places, would not get blocked. These roads would still connect with the Highway, where they used to connect prior to commencement of the work of widening the Highway with a slight modification or variation in the point of crossing over of the Highway.

2.9. All the village or panchayat roads, mentioned in the petition, shall continue to have access to the Highway, even after the work of widening the Highway from two lane to four lane is complete, and access to the Highway of none of these village or panchayat roads shall be blocked after completion of the construction work. Each road, mentioned in the petition, is being individually dealt with hereinbelow to demonstrate that access from the said road to the Highway and exit across the Highway is not blocked.

(a) Chhipadi-Patia Cross Road:

This road intersects the existing Highway at km 30+840. The grievance of the petitioner is not that because of the widening work, the road would cease to have continuous access to the Highway. The demand of the petitioner, instead, is to direct the Authority to provide the pedestrian underpass below the Highway for convenient crossing of the Highway by the villagers. The guidelines for the pedestrian Facilities are issued by the Indian Road Congress. The necessity and design of the pedestrian underpasses are governed by the said guidelines. The guidelines provide that the grade separated facility (like Pedestrian Subway or Foot Over Bridge) may be warranted at the locations, where one or more of the following conditions exist volume of the pedestrian and the vehicular traffic is so large that insertion of an exclusive pedestrian phase will increase the cycle time for traffic signals beyond 120 seconds, vehicular traffic demands uninterrupted flow as associated with major arterial roads and expressways, or control at grade pedestrian crossing decisively fails to mitigate the problems of pedestrian vehicle collision. The viability of a grade separated pedestrian facility is to be checked against delay costs for both pedestrians and vehicle drivers/users including increase in vehicle operating costs inflicted by increased delays. Considering this provision, detailed vehicular traffic and the pedestrian movement surveys were conducted at the site. The location was never and is still not signal controlled and so the question of excess cycle time does not arise. The Highway is not a controlled access Highway and so uninterrupted flow, as in the case of expressway, is not proposed. Considering the quantum of traffic flow, increased vehicle operating cost, on account of delays due to the pedestrian crossing, is not anticipated at the location. Keeping in mind these guiding principles, and on thorough analysis of the traffic movement both vehicular and pedestrian, it was found that there is no necessity of providing a pedestrian underpass at the location, and instead it was recommended to provide an opening in the median and the pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and signage, etc. at the median opening to ensure safe movement of the pedestrians. Clause 2.14 of IRC:SP:84:2009 mandates that median openings shall not be provided in front of the service road entry. The "distance between the service road entry and the median opening shall be at least equal to the sum of length of acceleration lane, weaving length, and deceleration length. Location of opening shall be so decided as to minimize intra-flow. This distance shall however be not less than 150 metre. Considering the mandatory provision of law, a median opening is proposed at km 30+840 and at km 31 +380 towards Godhra to facilitate the U turning of traffic. The Pedestrian Under Pass (P.U.P.) is also proposed at km 29+690 for easy and safe access of the pedestrians across the Highway. Sufficient care has been taken by the Authority by providing the pedestrian underpass and an opening in the median with pedestrian crossing facilities to ensure safe, convenient and free movement of pedestrian and vehicular traffic of local populace.

(b) Gogajipura:

This road meets the existing Highway at km. 31+360. The grievance of the petitioner is not of blockage of access to the Highway from the road, but demand is to direct the Authority to provide a pedestrian underpass below the Highway for convenient crossing of the Highway. Necessity of the pedestrian underpass at the location was considered in light of the guidelines for pedestrian facilities issued by the Indian Road Congress, and it was found that there is no necessity of providing a pedestrian underpass at the location. Instead, it was recommended to provide an opening in the median and pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and signage, etc. at the median opening to ensure safe movement of the pedestrians. Accordingly, median openings are proposed at km. 31+380 and at km. 33+940 towards Godhra to facilitate the U turning of traffic. Sufficient care has been taken by the Authority by providing an opening in the median with pedestrian crossing facilities to ensure movement of traffic across the Highway.

(c) Pithai-Sarali:

This road connects with the existing Highway at km 36+200. The grievance of the petitioner is again not of blockage of access to the Highway from the road, but demand is to direct the Authority to provide a pedestrian underpass below the Highway for convenient crossing of the Highway. Like in the case of Gogajipura, necessity of pedestrian underpass at the location was considered in light of the guidelines for pedestrian facilities issued by the Indian Road Congress, and it was found that there is no necessity of providing a pedestrian underpass at the location. Instead, it was recommended to provide an opening in the median and pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and sign age, etc. at the median opening to ensure safe movement of the pedestrians. Accordingly, a median opening is proposed at km. 36+000 towards Ahmedabad and at km. 37+200 towards Godhra at Toll Plaza to facilitate the U turning of traffic. Sufficient care has been taken by the Authority by providing an opening in the median with pedestrian crossing facilities to ensure movement of traffic across the Highway.

(d) Kathlal Microwave Junction:

The road from Kathlal towards Pithai crosses the Highway at km. 38+330. The grievance of the petitioner is not of blockage of access to the Highway from the road, but demand is to direct the Authority to provide a traffic circle at the intersection of the local road with the Highway. The type of intersections at grade interection, grade separated interection without ramps, interchanges, etc., to be adopted is generally decided on the basis of parameters like number of intersecting legs, traffic volume/speed, type of traffic control, etc. The Manual of Specifications and Standards for four laning of Highways through Public Private Partnership specifically prohibits rotary intersection. The demand of the petitioner for providing a traffic circle at the intersection cannot be granted being contrary to the law. In view of the express prohibition to providing of a traffic circle, the next best at grade minor intersection, option at km. 38+324 (R.H.S.)

having regard to the flow, speed, composition, distribution and future growth of traffic has been provided by proposing a median opening at km. 38+200 towards Ahmedabad and at km. 39+680 towards Godhra to facilitate the U turning of traffic. The best possible alternative, as recommended by experts on the subject, has been provided for easy and safe movement of vehicular traffic across the Highway.

(e) A.P.M.C. Junction:

A village road crosses the Highway near the agricultural produce market at km. 39+500. The demand of the petitioner is to provide a traffic circle at the intersection of the local road with the Highway. As stated hereinabove, demand of the petitioner for providing a traffic circle at the intersection cannot be granted in view of the express prohibition to providing of a traffic circle contained in the Manual of Specifications and Standards for Four Laning of Highways through Public Private Partnership. To facilitate crossing over of the Highway, an opening in the median is proposed at km. 38+200 towards Ahmedabad and at km. 39+680 with Kathlal Bypass Start Major Junction towards Godhra. The best possible alternative has been provided for easy and safe movement of vehicular traffic across the Highway.

(f) Samsai-Talav area:

This area is located at km. 40+180 on the project Highway. The demand of the petitioner is to provide appropriate underpass below the bypass road for allowing natural flow of rainwater to Samsai Talav. The longitudinal earthen drains together with water harvesting structures are proposed to be constructed on both sides of the Highway within the right of way to enable collection of rain water and its discharge to the nearest water outlets. The cross-drainage structures will be provided between km. 39+960 to 40+750 based on hydrological study between Samsai and Baladmarg. A box structure (2.5 m. x 2.0 m.) at km. 39+960, another box structure (2.0 m. x 2.0 m.) at km. 40+240 and a pipe culvert (1 m. x 1.2 m.) at km. 40+640 are proposed to ensure free flow of rain water across the Highway.

(g) Baladmarg Talav Area:

This area is located at km. 40+750 on the project Highway. The demand of the petitioner is to "provide appropriate underpass below the bypass road for allowing natural flow of rainwater to Baladmarg pond and also for allowing passage of the villagers to and from Kathlal across the Highway". The longitudinal earthen drains together with water harvesting structures are proposed to be constructed on both sides of the Highway within the right of way to enable collection of rain water and its discharge to the nearest water outlets. As stated hereinabove, a box structure (2.5 m. x 2.0 m.) at km. 39+960, another box structure (2.0 m. x 2.0 m.) at km. 40+240 and a pipe culvert (1 m.x 1.2 m.) at km. 40+640 are proposed to ensure free flow of rain water across the Highway. For pedestrian movement across the Highway, an opening in the

median is proposed at km. 39+680 with pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and signage, etc. at the major Junction with median opening to facilitate crossing of Highway. There is also a Road Over Bridge cum Flyover at km. 41 +340 which can be used by vehicular traffic for crossing under the Highway.

(h) Nadiad-Kapadwanj State Highway:

National Highway 59 intersects with Nadiad-Kapadwanj State Highway at km. 41 +350. To facilitate smooth flow of vehicular traffic on the national Highway, a Road Over Bridge (R.O.B.) cum Flyover is being constructed at the said intersection. The grievance of the petitioner is that one of the pillars of the said flyover stands in the middle of the Nadiad-Kapadwanj State Highway and poses a threat to traffic. The said apprehension of the petitioner is misconceived. The road section below National Highway 59 of the Nadiad-Kapadwanj State Highway is proposed to be developed as a four lane road and the pillar, which has been erected on the state road, will come within the median and thus would not cause any obstruction to the traffic movement. The design of the flyover is in consonance with the specifications prescribed in the Manual of Specifications and Standards for Four Laning of Highways through Public Private Partnership and the safety aspect has also been examined by the Independent Engineer as well as the Safety Consultant of the Highway. The construction of the said work has been approved by the State Government.

(i) Narrow Road to Bhaner and Mahudha:

At km. 41 + 510, there is a road going from below the above referred flyover constructed on National Highway 59 at its intersection with Nadiad Kapadwanj State Highway and the prayer of the petitioner is to issue a direction to Authority to ensure free access to the said road and prevent water-logging at the said location. A road approximately 500 meter long is proposed to be constructed below the Flyover, which would connect to the cross-road at km. 41+510. There would be no obstruction or blockage to free access of the cross-road from the State Highway because of construction of flyover on the National Highway. A pedestrian underpass, about 7m. x 3.5m. wide, is proposed at km. 41 + 890 for easy and safe pedestrian movement. For flow of rain water and to avoid any problem of water-logging at the location, a box structure (2 m. x 2 m.) at km. 40+240 and a pipe culvert (1 m. x 1.2 m.) at km. 40+640 are proposed to be constructed.

(j) Access to Farmlands:

A Pedestrian Under Pass (P.U.P.) having a span of 7m. x 3.5m. is proposed at km. 43 +100 to facilitate movement of farmers of the area which is located between km. 42.500 and 43+000 on the project Highway. The work of constructing the said pedestrian underpass has already begun and progressed substantially. The said underpass can be easily accessed from the existing Highway, and hence, there is no need to provide for a service road for

approaching the underpass.

(k) Khokharwada Gam:

The demand of the petitioner is to provide a Pedestrian Under Pass at km. 43+850 to facilitate crossing over of the Highway by local populace. As submitted hereinabove, the necessity of pedestrian underpass at the location was considered in light of the guidelines for pedestrian facilities issued by the Indian Road Congress and it was found that there is no necessity of providing a pedestrian underpass at the location. Instead it was recommended to provide an opening in the median and pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and signage, etc. at the median opening to ensure safe movement of the pedestrians. Accordingly, a median opening is proposed at km. 42+900 towards Ahmedabad and at km. 44+050 towards Godhra to facilitate the U turning of traffic. Sufficient care has been taken by the Authority by providing an opening in the median with pedestrian crossing facilities to ensure movement of traffic across the Highway.

2.10 It is conceded that about 6 underpasses have been proposed in the length of about 20 kilometers as mentioned in Paragraph 4.5 of the petition. These underpasses have been advised by the technical consultant and expert considering the development plans of Ahmedabad Urban Development Authority, which has already proposed new outer-ring road to existing Sardar Patel ring road and also considering the dense population and traffic movements. Wherever it has been found necessary to provide a pedestrian underpass or flyover, provision has been made for such an underpass or overpass by the technical consultant. Even if, such necessity is not indicated by the technical consultant in the preliminary design but the need for an underpass or overpass has been found during construction or on analytical study of traffic data such underpasses have been subsequently proposed and provided for in consultation with the Independent Engineer and the Safety Consultant. There is a provision in the Concession Agreement entered into between the Authority and the Concessionaire requiring the Concessionaire to provide for an underpass or overpass at a particular location if the need for one arises in future prior to handing over of the project Highway by the Concessionaire to the Authority. At all the places mentioned by the petitioner in his petition, the need for an underpass, as demanded by the petitioner, has been examined by the experts, and after detailed study and evaluation of available data, it has been found that there is presently no necessity for pedestrian underpass at any of these locations. Sufficient care has been taken by the Authority to ensure least inconvenience to the local populace in crossing the Highway by providing a suitable, convenient and safe alternative for crossing the Highway by opening the median and by making provision of pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and sign age, etc. The grievances raised by the petitioner have been sufficiently and satisfactorily met by the Authority even prior to the filing of the present petition.

2.11. It is prayed that there being no merit in the petition, the same may be rejected.

3. Ordinarily, Court would allow litigation in public interest if it is found;

(i) That the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement;

(ii) That the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance;

(iii) That the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provision of the Constitutional law;

(iv) That such person or group of persons is not a busybody or a meddlesome interloper and have not approached with mala fide intention of vindicating their personal vengeance or grievance;

(v) That the process of public interest litigation was not being abused by politicians or other busybodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justiciable in such litigation;

(vi) That the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set-up of the country;

(vii) That the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities;

(viii) Public Interest Litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination;

(ix) That the person approaching the Court has come with clean hands, clean heart and clean objectives;

(x) That before taking any action in public interest, the Court must be satisfied that its forum was not being misused by any unscrupulous litigant, politicians, busybody or persons or groups with mala fide objective of either for vindication of their personal grievance or by resorting to blackmailing or considerations extraneous to public interest.

4. Analysis:

4.1. Taking into consideration the complex nature of the issue with which we are dealing, we have to be mindful of the principle that judicial review and interference in matters, which requires technical expertise must be best left to

the experts to decide upon.

4.2. In *BALCO Employees Union (Regd.) Vs. Union of India and Others*, , the Supreme Court observed in Paragraph 46 as under:

It is evident from the above that it is neither within the domain of the Courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our Courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

4.3. The Supreme Court further proceeded to observe that in examining a question of the nature where a policy was evolved by the Government, judicial review thereof is limited. On matters affecting policy and requiring technical expertise, the Court should leave the matter to the experts who are qualified to redress the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of powers, the Court will not interfere with such matters.

4.4. In the words of Chief Justice Neely:

I have very few illustrations about my own limitation as a Judge, I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges intelligently to review a 5,000 page record addressing the intricacies of public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school-master subsisting its judgment for that of the administrator.

4.5. As held in *Tata Cellular Vs. Union of India*, , judicial review of administrative decisions is against the decision-making process and not against the merits of the decision. In the same decision, it was also held that the modern trend points to judicial restraint in administrative action and the Court does not sit as a Court of appeal over administrative decisions as it does not have the expertise in this connection. The Government must have freedom of contract and a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere. No doubt the decision can be tested by the application of Wednesbury principle of reasonableness and should be free from arbitrariness, bias or mala fide but otherwise the Court should not interfere with such decision.

4.6. In *Federation of Railway Officers Association and Others Vs. Union of India (UOI)*, , the Supreme Court held that matters relating to policy and requiring technical expertise should be left for the decision to those qualified to address the issue and the Court should not interfere unless the decision is arbitrary or irrational.

5. Bearing the aforesaid principles in mind, we now proceed to examine the merits of this petition.

6. It appears from the materials on record, more particularly, the affidavit-in-reply filed on behalf of the respondent Nos. 1 and 2, that six underpasses have been proposed in the length of about 20 km. Such underpasses have been designed by the technical consultant and experts considering the development plans of the Ahmedabad Urban Development Authority, which has proposed the new outer Ring Road to existing Sardar Patel Ring Road, more particularly, considering the rise in the population and the traffic moments. We are of the opinion that questions like where to provide suitable underpasses or traffic circles or how to provide such underpasses is not within the domain of this Court to decide under Art. 226 of the Constitution of India. We have been informed that wherever, it has been found necessary to provide a pedestrian underpass or flyover, provisions have been made for such underpass or overpass by the technical consultant. It has also been brought to our notice that even where such necessity had not been shown or indicated by the technical consultant in the primary design, but during the process of construction or during analytical study on traffic data, wherever such underpasses have been thought fit to be constructed, they have been provided for in consultation with the independent engineer and the safety consultant.

7. It also appears that at all the places highlighted by the petitioner, the need for an underpass was examined by the experts, and after a detailed study and evaluation of the available data, it has been found that at present, there is no necessity for pedestrian underpass at any of such locations. It appears that sufficient care has been taken by the authority to ensure minimum inconvenience to the local people in crossing the highway by providing a suitable convenient and safe alternative by opening the median and by making provisions of pedestrian crossing facilities like pedestrian markings, safety barriers, road delineators and signage, etc.

8. We may only say that the Court cannot sit over the judgment of the authorities entrusted with the task of planning and executing project relating to National Highways. We do not possess the engineering expertise in the field of highway development and the viability and feasibility of the particular project. In our opinion, it could not be said that any of the fundamental right or any other legal right of the petitioner or the public at large has been violated or infringed so as to maintain this petition.

9. At this stage, it will be profitable for us to refer to a recent pronouncement of the Supreme Court on the subject with which we are dealing with in this petition. In *Union of India (UOI) Vs. Dr. Kushala Shetty and Others*, , the Supreme Court, while dealing with almost identical issue, made the following observations:

Here, it will be apposite to mention that N.H.A.I., 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. N.H.A.I., 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 rares 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.

10. The observations of the Supreme Court referred to above makes it abundantly clear that we should not interfere in the present case. Apart from the above, the matter could be looked at from a different angle. Let us assume that some inconvenience or hardship is likely to be caused to the petitioner and the general public due to such construction of the Highway, even then, the petitioner is not entitled to any relief on the principle of "damnum sine injuria".

11. The rule of law is that the exercise of an ordinary right is no wrong even if it causes damage. This legal maxim is based on the principle of law that as a price of our free action, which the law permits, the other person must abide by some measure of inconvenience from equal freedom of one's neighbour. This is what the phrase "damnum sine injuria" means. This is a case of "damnum sine injuria" a case where damage or loss is inflicted without the act being unlawful. It is an act though harmful to the petitioner is not wrongful on the part of the respondent, and no right of action accrues to the petitioner. For the foregoing reasons, we do not find any merit in this petition and the same is hereby rejected. However, in the facts and circumstances of the case, there shall be no order as to costs.