

(2012) 08 GUJ CK 0051
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 99 of 2012

Rajubhai Shah and another	Vs	APPELLANT
State of Gujarat and others		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 48A, 51A(g)

Citation : (2012) 2 EFLT 777

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

Bench : Division Bench

Advocate : Vijay H. Nangesh, for the Appellant; P.K. Jani, Government Pleader, Rajesh Rindari and Maulik G. Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.—This petition under Article 226 of the Constitution of India in the nature of a Public Interest Litigation has been preferred in the interest of protection of environment and preservation of 10, 262 trees which are likely to be felled for the expansion of highway. Petitioner No. 1 is a resident of Rajkot and claims to be a senior journalist involved in planet green activity for farmhouse and protection of environment and forest.

2. Petitioner No. 2 claims that from 1975 to 2000 he had involved himself in matters like creating awareness for protection of environment, preservation of trees, plantation of trees, saving birds and preservation of Lakhota pond at Jamnagar.

3. The case made out by the petitioners in this petition can be summarised as under:

(1) Respondent No. 2 - Deputy Conservator of Forests, Junagadh issued a public advertisement in "Sandesh" daily newspaper dated 15th April, 2012 inviting tenders from interested persons for cutting/felling 4, 865 trees standing on the roadside as Veraval-Somnath and Jetpur-Junagadh highway are to be expanded.

(2) Respondent No. 3 also issued a public advertisement in "Sandesh" daily newspaper dated 27th April, 2012 inviting tenders from interested persons for felling/cutting of 5, 397 trees for expansion of Rajkot-Atkot, Bhavnagar-Baldhoi-Atkot road.

(3) As the petitioners learnt about the decision of the respondents, they preferred representations to the respondent authorities that the trees may be preserved either by changing alignment for the purpose of expansion of the road or by replanting/transplanting the trees. The petitioners brought to the notice of the respondent authorities that they are not against the expansion/widening of the highway but, at the same time, it is also very much important and necessary to save cutting of the trees in such large numbers.

(4) According to the petitioners, the respondent authorities did not pay any heed to their suggestions and, therefore, they were left with no other alternative but to come before this Court by way of this Public Interest Litigation.

(5) This Court, vide order dated 3rd May, 2012, issued notice to the respondents and also passed an interim order that till the returnable date the tender notice impugned in this writ-application should not be given to any person though its process may continue in the meantime.

4. The respondents appeared and have opposed this petition by filing affidavit-in-reply.

5. We may state that when the petition was preferred, the National Highways Authority of India ("N.H.A.I.") was not a party respondent. As the N.H.A.I. is the agency which is going to undertake the project of expansion of the highway, the said authority preferred an application praying to be impleaded as party respondent being vitally affected and interested in the litigation.

6. Taking into consideration the role of the N.H.A.I., the application was allowed and the N.H.A.I. was permitted to be impleaded as party respondent No. 4. An affidavit has been filed by respondent No. 4 also explaining the importance of the project.

I. Stand of respondent No. 2 :

7. According to respondent No. 2, the issue involved in the present petition pertains to National Highway No. 8-D, a stretch from Jetpur to Somnath, and on the roadside of the said Highway there are approximately 2, 743 trees between Jetpur-Junagadh National Highway and 2, 122 trees between Veraval Bypass to Somnath 5 km. highway road. There are total 4, 865 trees on the roadside of above mentioned area and this area is non-protected forest area.

8. That in the present case, the user agency National Highway Authority of India has applied through the State of Gujarat for cutting of trees for road widening of the said road i.e., National Highway No. 8-D.

9. That the above permission was accorded subject to certain conditions. Some

conditions are such which places emphasis on restoration of the environment lost or damaged due to diversion of land and trees thereof.

10. That the said road being National Highway No. 8-D is required to be widened due to heavy traffic and accordingly the National Highway Authority had sent a proposal dated 26th August, 2010 to the Forest Department for removal of 4, 865 trees adjacent to the roadside.

11. That on receipt of the proposal from the National Highway Authority, the necessary procedure which is required to be followed by the Forest Department had been duly complied with which includes the following steps :

On receipt of proposal of National Highway Authority, the proposal is examined to find out alternatives to save trees. After examining the proposal and field verification, markings are made by the Forest Department on the respective trees which are to be cut. The heights and girths of the said trees are measured for recovering fees from National Highway Authority i.e., the basic fees which is to be paid by the National Highway Authority to the Forest Department for removal of the trees.

That after the marking is made and requisite fees are collected from the National Highway Authority, a report is being prepared which contains the height and girth and total number of the trees which are required to be cut by the Forest Department and also contains an undertaking that twice the number of trees felled shall be planted by the Forest Department.

That the said proposal is then sent to the Forest and Environment Department, Gujarat State for cutting the trees. The State Government verifies the report sent by the Forest Department and either grants permission or rejects the same. Thereafter, if permission is granted, advertisement is issued by the Forest Department inviting tenders.

That the State Government, vide letter dated 20th January, 2012, granted permission for cutting 4, 865 trees of the area declared as non-protected forest and accordingly respondent - authority mainly the Forest Department issued the advertisement inviting the tender.

That the trees which are required to be cut is with a view to widen National Highway No. 8-D which in turn would help in reducing accidents and facilitate smooth flow of traffic on Jetpur-Somnath National Highway.

12. According to respondent No. 2 replanting of the trees being total 4, 865 would not be possible for the reason that the cost of replanting one tree would be approximately Rs. 10,000.00 and secondly replanting of the said trees which are located adjacent to the National Highway No. 8-D is not feasible as no land for such plantation is available with the Forest Department. Adequate soil and water is also not available nearby this location and the width of the trees is more than 90 cms. therefore, replanting of the said trees would not be possible.

That transplanting of non-coppicer species like Neem, Amali, Saru, Pelto, Babul, Rain Tree, Gulmohar is not advisable as they may not survive. Also transplanting of very old trees having basal upto 90 cms. of the coppicer tree is not feasible under the available technology.

13. So far as removal of the trees are concerned, it is to be done for the public purpose i.e., for widening of the National Highway. The implementing agency is National Highway Authority, who submits the proposal, and not the State Government.

II. Stand of respondent No. 4 - National Highway Authority of India :

14. That by the impugned advertisements, the State of Gujarat has invited bids from interested parties for awarding the contract of felling trees alongside the existing national highway for the purpose of widening the national highway. That the work of widening the road is being carried out by the Authority in public-private partnership mode. That though a relief, directly and vitally affecting the applicant has been sought by the original petitioners, the original petitioners had omitted to make the Authority a party respondent.

15. That the Government of India through Ministry of Roads and Highways has decided to enhance the traffic capacity and safety for efficient transshipment of goods as well as passenger traffic on few of the selected heavily trafficked stretches/corridors of national highways. The Authority has been entrusted with the development, maintenance and management of the national highways. One such stretch of national highway identified for augmentation of capacity is the corridor starting at Jetpur at the junction of National Highway No. 8-B and 8-D and going upto the Somnath temple on the western coast line in Gujarat. The project is to make the said stretch of highway a four lane highway under design, build, finance, operate and transfer pattern. Prior to commencement of the project, the Authority had made an application to the Ministry of Environment and Forests, Government of India, seeking Environmental and Coastal Zone Clearance for the project under the EIA Notification, 2006 issued under Environment Protection Act, 1986 and C.R.Z. Notification, 1991. The Ministry, after considering the recommendations of the Expert Appraisal Committee, has accorded necessary Environmental and C.R.Z. clearance for the project to the Authority. The Authority states that as mentioned in the letter of the Government of India granting clearance to the Authority, a total of 18, 056 trees are within the proposed alignment out of which 10, 951 trees are saved (Notified Protected Forest - 8544).

III. Contentions on behalf of the petitioners :

16. Mr. Vijay H. Nangesh, learned Counsel appearing for the petitioners vehemently submitted that cutting of 10, 262 trees for the purpose of expansion of highway will lead to ecological imbalance and will adversely affect the environment of the concerned area. According to Mr. Nangesh, on this ground alone the petition deserves to be allowed and the two public advertisements

issued by the authorities dated 15th April, 2012 and 27th April, 2012 deserve to be quashed.

17. Mr. Nangesh further submitted that most of the trees are on the extreme end of both the sides. If expansion of road is confined to the open space available as per the sketch, then many trees could be saved from being felled.

18. Mr. Nangesh submitted that the Government has the necessary technology in the form of machines which could replant or transplant a tree which is uprooted. The success ratio in such plantation of tree is about 92%. Mr. Nangesh also submitted that the Apex Court has also laid much emphasis in transplanting of trees as far as possible. He relied on some observations of the Supreme Court made in the case of T.N. Godavarman Thirumipadam v. Union of India, Writ Petition (Civil) No. 202 of 1995 in I.A. No. 2899. In the said order of the Supreme Court which has been annexed at p.33 of the paper-book (Annexure-"I"), Mr. Nangesh relied on the following observations of the Supreme Court which are reproduced as under :

I.A. No. 2899 has been filed by the National Highways Authority of India (N.H.A.I.) for directions seeking the implementation of the recommendations of the C.E.C. in Application No. 1290 filed by the N.H.A.I. seeking permission for use of 2.8 Hectares of forest land falling in the Southern Ridge for upgradation of National Highway No. 236 between Andheria More to Delhi Haryana border.

I.A. No. 2899 is ordered, as prayed for, subject to complying with the conditions suggested by the C.E.C. namely :

(i) for the use of the forest land approval under the Forest (Conservation) Act, 1980 will be obtained;

(ii) wherever technically feasible instead of felling of trees, transplanting of trees will be resorted to;

(iii) the area to be handed over by the N.H.A.I. to the I.A.F. should be maintained as part of the Ridge/green area except the minimum area required for the essential services and infrastructure for meeting their security requirements; and

(iv) 5% of the project cost will be deposited with the Delhi Ridge Management Board for undertaking conservation and protection of the ridge areas.

19. It was also submitted that out of 10, 262 trees which are likely to be felled, there are many trees of protected and rare species. Counsel submitted that as per the study of Shri T.N. Das, Professor of Indian Science College, Kolkata in 1982, an estimated value of one tree is Rs. 15,17,000.00. According to Mr. Nangesh, Article 48A of the Constitution of India enjoins upon the State Government to protect and improve the environment and to safeguard the forest and wildlife of the country. Mr. Nangesh also relied upon Article 51A(g) which also enjoins upon the State Government to protect and improve the natural

environment including the forests, lakes, rivers and wildlife and to have compassion for living creatures.

20. Mr. Nangesh, therefore, urged that the petition deserves consideration and this Court may grant appropriate relief as prayed for in the petition.

IV. Contentions on behalf of the respondents :

21. Mr. P.K. Jani, learned Government Pleader submitted that the Government is very much under a constitutional obligation to protect and improve the environment and also to safeguard the forest and wildlife as provided under Articles 48A and 51A(g) of the Constitution of India. However, at times hard decisions have to be taken to take care of some other public interest which also could not be ignored.

22. Mr. Jani submitted that the expansion of the National Highway No. 8-D is very much necessary due to heavy traffic and congestion which has been noticed by the authorities over a period of time. Accordingly, respondent No. 4 - National Highway Authority of India had sent a proposal dated 26th August, 2010 to the Forest Department for removal of trees adjacent to the roadside. On receipt of the proposal, the same was examined by the Forest Department to find out alternatives to save the trees. After examining the proposal and field verification, markings have been made by the Forest Department on the respective trees which are to be cut. According to Mr. Jani, there is no other way out except to cut the trees for the purpose of widening and expansion of the highway.

23. Mr. Jani submitted that it is not possible to transplant a tree as the cost of transplanting one tree would be approximately Rs. 10,000.00 and secondly re-shifting or transplanting of the said trees adjacent to the National Highway No. 8-D is not possible as no land for plantation is available with the Forest Department.

24. Mr. Jani also submitted that the width of most of the trees which have been marked for the purpose of cutting/felling have a diameter of more than 90 cms. and some of them are upto 250 cms. width. Even with the latest technology and equipments a tree, only upto the width of around 60 cms. could be transplanted. Mr. Jani also submitted that transplanting of species like Neem, Amali, Saru, Pelto, Babul, Rain Tree, Gulmohar is also not possible as once they are uprooted they will not survive even if they are re-transplanted.

25. Mr. Jani submitted that expansion of highway is also a project in public interest which could not be ignored by the Government. Under such circumstances, according to Mr. Jani, though the object of filing this petition may be very laudable but at the same time it is not possible to uproot the trees and replant them at the same place or to change the alignment fixed by the experts in this regard for expansion of the highway. Mr. Jani, therefore, urged to dismiss this petition.

26. Mr. Maulik Nanavati, learned Counsel appearing for respondent No. 4 - National Highway Authority of India submitted that the entire exercise of issuing

advertisement inviting bids for cutting trees is being done by the State Government for the purpose of widening the road and in larger public interest.

27. Mr. Nanavati submitted that the work of widening the road has already commenced. The work has come to a standstill as this Court has passed an interim order, whereby the State Government has been restrained from awarding contract for felling trees standing along side of the road that is proposed to be widened. Mr. Nanavati submitted that because of the interim order the work of construction has stopped and the infrastructure project is getting delayed. Mr. Nanavati submitted that the Government of India through Ministry of Roads and Highways, decided to enhance the traffic capacity and safety for efficient transshipment of goods as well as passenger traffic on few of the selected heavily trafficked stretches/corridors of national highways. One such stretch of national highway identified for augmentation of capacity is the corridor starting at Jetpur at the junction of National Highway Nos. 8-B and 8-D and going upto the Somnath temple on the Western Coast line in Gujarat. The project is to make the said stretch of highway a four lane highway under design, build, finance, operate and transfer pattern.

28. Mr. Nanavati brought to our notice that as mentioned in the letter of the Government of India granting clearance to the National Highway Authority of India, a total of 18, 056 trees are within the proposed alignment out of which 10, 951 trees are saved.

29. Having heard learned Counsel for the respective parties and having gone through the materials on record, the only question which falls for our consideration in this matter is as to whether the respondents should be permitted to go ahead with finalization of tender pursuant to the two public advertisements issued in the newspaper dated 15th April, 2012 (Annexure-"A") and dated 27th April, 2012 (Annexure-"B").

30. There cannot be any debate in so far as the preservation of environment and maintenance of ecological balance is concerned. The Constitution of India mandates under Article 48A that, the State Government shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51A(g) enjoins to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. However, in the present case, a peculiar situation has cropped up. If the trees are not permitted to be felled, then under such circumstances a very big project of expansion of highway which is also in public interest would get jeopardize. We tried our best to examine the matter with a view to see as to whether the trees could be saved in any manner or not.

31. We cannot overlook the fact that this Court is not an expert in the field of infrastructure. From the facts which we have been able to gather, it is not possible to re-transplant a tree which is uprooted. It is just not feasible to re-transplant 10, 000 trees, more particularly, when the cost of such re-

transplantation is approximately Rs. 10,000.00 per tree. We have also been told that re-transplantation is possible only of such trees whose width is not more than 65 cms. In the present case, the trees which have been marked for being felled are mostly of the width of more than 90 cms. and some of them are of more than 250 cms. Apart from this, there are few species of trees which, if uprooted and then re-transplanted, would die. Under such circumstances, even if the cost is incurred for such re-transplantation, the same would be wasted.

32. In any view of the matter, we are of the opinion that expansion of National Highway Nos. 8-B and 8-D is also a very important project in public interest which could not be stopped or put to a standstill only because there are trees standing on such a road. We have been informed by learned Counsel appearing for the respondents that three times the number of trees which are going to be felled will be planted in a different area to maintain the ecological balance. This is suggestive of the fact that more than 30, 000 trees will be planted at a place where water and land is available with good soil so that they may not die and grow easily.

33. We have also been told that as per the initial proposal, a total number of 18, 056 trees were within the proposed alignment, out of which 10, 951 trees have been saved by balancing the alignment. We are quite convinced by the fact that the respondents have taken all due care to see that as many trees as possible are saved and three times the number of trees which are going to be felled would be planted at a different place.

34. We have also been informed by learned Counsel appearing for respondent No. 4 - National Highway Authority of India that once the expansion project is completed and the road is widened, all throughout the road on both the sides of the border trees would be planted.

35. Under the circumstances, the decision of the authorities to cut the trees to pave way for a project of another public interest cannot be held to be arbitrary and based on no reason whatsoever but even on mere ipse dixit of the said authorities. The Executive Authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the decision of policy framed is absolutely capricious and not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the execution functionaries thereby offending Article 14 of the Constitution of India or such policy offending other constitutional provisions or comes into conflict with any statutory provision. The Court could not and should not out-step its limit and tinker with the policy decision of the authorities of the State.

36. Having regard to all the circumstances, we do not find any justifiable reason to entertain this petition and grant the relief as prayed for by the petitioners. The petition is accordingly rejected. The interim order granted earlier stands vacated forthwith. However, there shall be no order as to costs.