
(2001) 04 CAL CK 0024
In the Calcutta High Court
Case No : Writ Petition No. 2094 (W) of 2001

Subhas Dutta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Environment (Protection) Act, 1986 — Section 24, 3(2)
Environment (Protection) Rules, 1986 — Rule 5
Railways Act, 1989 — Section 11

Citation : (2001) 3 CALLT 36 : (2001) 2 ILR (Cal) 169

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Mr. M.C. Das, Party in person, for the Appellant; Mr. L.K. Chatterjee and Mrs. Ila Chatterjee, for the Respondent

Judgement

A.K. Mathur, C.J.—This is a Public Interest Litigation whereby the Petitioner has prayed that by a writ of Mandamus the Respondents or their agents should be restrained from extending the project of Metro Rail through the river bed of Adi Ganga in any manner and to recall and rescind the project of extension of Metro Rail. Petitioner alleged that he is a Social Worker and environment activist. Therefore he has filed this petition for protection of the environment. It is alleged that the Green Bench of this Court has already passed an order of cleaning of Adi Ganga and also directed to Implement the Scheme for improvement of the river Adi Ganga. It is alleged that Petitioner has come to know that the extension project of Metro Railway from Tollygunge to Garia has now started and substantial part of Metro Rail will be laid on Adi Ganga by constructing pillars at the middle of the river. It is alleged that on account of construction of pillars in the river bed the entire stretching from Tollygung to Garia about 6 Kilometre will be covered by pillars. It is alleged that on the one hand the State Government has already implemented a Scheme for cleaning, dredging and removing the encroachments from Adi Ganga by spending Rs. 35.51 Crores and on the other

hand a permanent construction are being created by the Central Government Agency that is Metro Rail Authority by constructing pillars at the middle of the river for the entire stretching from Tollygunge to Garia, it is alleged that the construction of these pillars will be highly detrimental to the free flow of the water in this river. Therefore being inspired by the bona fide Intention to maintain the environment and not to interfere with the free flow of water in river Adi Ganga the petitioner has filed this petition. It is also submitted that Adi Ganga carries a high degree of cultural and religious heritage of Calcutta/West Bengal/Hinduism. Therefore it is a sacred duty of all citizens to save this from being polluted.

2. In the written submission also the petitioner has repeated more or less what he has said in the writ petition and he has tried to highlight that in this new millennium it is the duty of all the citizens of the World to maintain ecology. It is submitted that the concept of sustainable development has been come to be known for the first time in the Stockholm Declaration of 1972 and thereafter this concept has been given a definite shape by World Commission on Environment and Development in its Report called "Our Common Future". It is pointed out that the salient principles of "Sustainable Development" are the Inter Generational Equity, use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle. Polluter Pays Principle, Obligation to assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. It is also pointed out that the environmental measures mean that the State Government and the statutory authorities must anticipate, prevent and attack the causes of environmental degradation. Therefore the whole attempt of the petitioner with reference to the various National and International documents is to show that the Metro Rail should be prevented from tampering with the free flow of the water in sacred and religious river Adl Canga. An affidavit-in-opposition was filed by the Respondent Metro Railway and they have pointed out that the Metro Railway started the construction activities relating to extension project along the Central line of the Tolly Nala only after obtaining permission from the State Government. It is submitted that this extension of the Metro Railway will be highly beneficial to the people of Calcutta. It will also connect Eastern Railway at Garia and will bring South 24-Parganas closer to Calcutta Central Business District. This will also reduce enormous pressure of Sealdah South Suburban Section. It is also pointed out that this extension was sanctioned at a cost of Rs. 696 Crores in the year 1999-2000. The section will be on the elevated structure and the alignment will run along the Tolly Nala to the extent of 8.45 K.M. with six stations. The full project will be most useful project for the benefit of the public at large. It is also pointed out that all technical redressal had been addressed to avoid silting of the nullah as well as to ensure feasibility of future dredging. It is also pointed out that the Metro Railway has agreed to the proposal of extra-widening and lining of the nullah as proposed by the Irrigation Department it is also pointed out that the Metro Railway has engaged M/s M.N. Dastur and Company Ltd. for carrying out

environment Impact Assessment in connection with the extension. It is also pointed out that the Chief Engineer, Metro Railways has issued a clarification that they will not disturb a huge thickly populated residential area on either side of the Tolly nullah and the proposal to run the train through the Tolly's nullah has been accepted. It is also pointed out that the provisions of the Environment Act is not applicable to the construction of the Railway Project

3. We have heard learned counsel for the parties at length. After going through the matter we are of the opinion that in the present state of legal position which we shall advert to herein-after it would not be possible to interfere in this Public Interest Litigation. In this connection our attention was invited to section 11 of the Railways Act, 1989. Section 11 of the Railways Act reads thus:

"11. Notwithstanding anything contained in any other law for the time being in force, but for subject to the provisions of this Act and the provisions of any law for the acquisition of land for a public purpose or for companies, and subject also, in the case of a non-Government railway and the Central Government, a railway administration may, for the purposes of constructing or maintaining a railway-

(a) Make or construct in or upon, across, under or over any lands, or any streets, hills, valleys, roads, railway, tramways, or any rivers, canals, brooks, streams or others waters, or any drains, water-pipes, gas-pipes, oil-pipes, swears, electric supply lines, or telegraph lines, such temporary or permanent inclined-planes, bridges, tunnels, lines of railways, passages, conduits, drains, piers, cuttings and fences, in-take wells, tube wells, dams, river training and protection works as it thinks proper;

(b) alter the course of any rivers, brooks, streams or other water courses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them and divert or later either temporarily or permanently, the course of any rivers, brooks, streams or other water courses or any roads, streets or ways, or raise, or sink the level thereof, in order to carry them more conveniently over or under or by the side of the railway;

(c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railways;

(d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery apparatus and other works and conveniences as the railway administration thinks proper;

(e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead;

(f) erect, operate, maintain or repair any telegraph and telephone lines in connection with the working of the railway;

(g) erect, operate, maintain or repair any electric traction equipment, power

supply and distribution Installation in connection with the working of the railway;
and

(h) do all other acts necessary for making, maintaining, altering or repairing and using the railway."

4. Section 11 starts with the non-obstante Clause "Notwithstanding anything contained in any other law for the time being in force" thereby the provisions of any other enactment will not come in the way of the construction undertaken by the railways, be it on any line or any streets, hills, valleys, roads, rivers, canals, brooks, streams or other waters and drains. It further says that it can alter the course of rivers, brooks, streams or other water courses for the purpose of constructing and maintaining tunnels, bridges, passages or any other works over or under them and divert or alter either temporarily or permanently, the course of any rivers, brooks, streams or other water courses.

5. Therefore, in view of the overriding provisions of this Act all other provisions stand superseded by virtue of this non-obstante Clause. In this connection 11 may also be relevant to mention that (The) Environment (Protection) Act, 1986 is an earlier legislation than that of the Indian Railways Act, 1989 (hereinafter referred to Act of 1989). Therefore the Indian Railways Act, 1989 will supersede the Environment (Protection) Act, 1986 [hereinafter referred to Act of 1986]. That section 24 of the Act of 1986 which has also a non-obstante clause which also says that any Act or Rules or Orders made shall not have any effect notwithstanding anything contained inconsistent with the provisions of this Act. These two non-obstante Clauses appear in two different enactments. But the Railways Act is a subsequent Act than that of the Environment Act. In case of two non-obstante Clauses appearing in two different enactments, when the subsequent enactment says that notwithstanding anything contained in any law for the time being in force it supersedes all the enactments prior to coming into force of this enactment. The non-obstante Clause is normally used as a legislative device to modify the ambit of provisions of the existing law and to have the overriding effect. Therefore in view of this statutory provision no effect can be given to the Environment Act. In this connection our attention was invited to a Notification issued under the Environment (Protection) Rules, 1986. This Notification had been issued in exercise of the power conferred under sub-section(1) and Clause 1 of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with Clause (d) of sub-rule 3 of Rule 5 of the Environment Protection Rules 1986 thereby the Central Government has directed that on and from the date of publication of this Notification in the Official Gazette, expansion or modernization of any activity If pollution load is to exceed the existing one or new project listed in Schedule I to this notification, shall not be undertaken in any part of India unless it has been accorded environmental clearance by the Central Government in accordance with the procedure laid down in this Notification. However the Schedule-I appended to this Notification does not include the Railway Projects. Central Government has laid down that for

projects mentioned in Schedule I for which an environment clearance has to be taken from Central Government. In that there is no mention of the railway projects. State Pollution Board has also informed the Court that the Board also issued an Order extending permission to the Metro Railway Authorities for cutting of trees for the project on 10-05-2000 as per the recommendation of the Forest Department, Government of West Bengal. It is also pointed out that "No Objection Certificate" has not been issued at present by the West Bengal Pollution Control Board for the entire project as the project did not submit "Environment Impact Assessment" study. In this background so far as the railway projects are concerned, there is no requirement of the environment clearance under the statutory provisions and the Railways Act, 1989 has the overriding effect. However by this we do not mean to suggest that there should be complete go by to the environment impact. The Railway Administration, the Metro Railway themselves have already appointed a Firm M/s. M.N. Dastur and Company to assess the environmental impact of the construction of this Railway. Though no direction can be given so far as the Project is concerned as there is no statutory bar, however the Metro Railway Authorities has already appointed an expert body to undertake the environmental impact and we hope and trust that the Metro Railway Authorities will abide by the recommendation made by the expert body appointed by them. It is true that the construction of the Metro Railway Project is also a public project for the welfare and benefit of the public. However such developmental work should also work harmoniously with the environment causing as far as possible less harm to environment.

6. Our attention was also invited to a decision of the Bombay High Court in the case of *The Goa Foundation and another Vs. The Konkan Railway Corporation and others*, . There a somewhat identical problem was faced by the Railway Administration for construction of the Konkan Project and in that connection the Division Bench of that Court came to consider the impact of section II of the Railways Act, vis-a-vis the Environment and Protection Act and the Forest Conservation Act of 1980. The Division Bench after considering the matter declined to exercise writ jurisdiction over the construction of the aforesaid Railway Project. The matter was taken up before the apex Court by way of SLP and their Lordship affirmed the aforesaid judgment by Their Order dated 7.12.89. However Hon"ble Supreme Court only set aside the cost awarded by the Bombay High Court and certain remarks made in that judgment Thus in view of these statutory provisions it is not possible to interfere in this Public Interest Litigation. However as mentioned above, we hope that the Railway Administration will certainly abide by the advice given by M/s. M.N. Dastur & Company on their Study and Assessment of the Environmental Impact of this Project.

The writ petition is accordingly disposed of with the above observations.

G.C. Gupta J.

7. I agree.

8. Petition disposed of