
(2009) 03 P&H CK 0190
In the Punjab And Haryana At Chandigarh

Virender Prabhakar and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Citation : (2009) 154 PLR 531

Hon'ble Judges : Tirath Singh Thakur, C.J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The present writ petition, filed in public interest, is on behalf of few inhabitants of Municipal Council, Kurali, District Ropar, claiming a writ of mandamus directing the respondents to ensure that the Railway Over-bridge being constructed at Kurali, is constructed strictly as per the tender document as well as, as per the agreement entered between the parties. The petitioners have also challenged the action of the respondents in reducing the number of spans from 31 to 9, which has resulted into the reduction of via-duct length and deprivation of right to way to the traffic, thus, causing obstructions in the free flow of the local traffic. The petitioners have also sought a direction that the National High Way Authority of India; should buy back the said two lane Railway Overbridge as the said authority proposes to make a 4-lane National Highway. However, during the course of arguments, learned Counsel for the petitioners has restricted his prayer for providing free movement of traffic from the service lanes across the Railway Track.

2. The petitioners have pleaded that the Government of Punjab decided to construct a Railway Orverbridge at Kurali "Railway Crossing Number 32-B" so as to ease the problem of traffic jam on the roads. The Railway crossing often remains closed due to heavy traffic of trains on the said segment of the Railways. It is pointed out that though the tender was floated on 9.3.1998, but due to legal wrangles, the construction work could not take off. Ultimately, the work started in January, 2005. When the tender was floated, the total length of the bridge was

proposed to be 994 metres and total via-duct length was 576.60 metres supported by 31 spans with each span at the distance of 18 metres. Such via duct was to be used by the local persons on 4.5 metres service roads, which were planned to be constructed on both sides of the bridge for thorough local traffic. Though the traffic density required a 4-lane Railway Overbridge, but due to paucity of space, it was decided to construct a 2-lane railway Overbridge with two additional service roads under the bridge in order to ensure the free flow of the local traffic from one side of the town of Kurali to the other. Thus, in this manner, the authorities were able to make arrangements to ensure free flow of fast moving traffic of the National Highway on the overbridge and the slow moving local traffic under the bridge. This fact finds mention in Built Operate and Transfer agreement entered between the Ministry of Surface Transport, Government of Punjab and entrepreneur, who was to execute the work.

3. It is admitted fact that the overbridge has since been commissioned and is operational. It is also admitted that the inhabitants of the locality are permitted to cross the Railway Overbridge without any toll tax. The grievance of the petitioners is that the Railway Overbridge and the Railway Track bifurcates Kurali into four segments. It is pointed out that traffic across the Railway Track by necessity has to pass through the Railway Overbridge as the service lanes have been blocked near the Railway Track. It is admitted that though the traffic from the service lanes can take a u-turn near the Railway Track, but if the traffic has to go across the Railway Track, the same is through overbridge which causes inconvenience and results into a longer route. Therefore, the block provided near the Railway Track should be dismantled to permit the local traffic to pass through the Railway Crossing by providing manual crossing at the service lanes.

4. In a short written statement filed on behalf of respondent No. 5, it has been pointed out that the Executive Engineer, Central Works Division, Mohali, submitted an undertaking on 22.10.1998 to the Deputy Chief Engineer (Construction), Northern Railway, Chandigarh specifying that the level crossing No. 32-B will be closed permanently after the Railway Overbridge, Kurali is commissioned. It is pointed out that in view of the safety measures, a level crossing is not feasible where Railway Overbridge has been constructed. The Railway Administration has explored the possibility of constructing another Railway Overbridge at the Railway Crossing No. 31-A so as to reduce overcrowd on the Railway Overbridge, but the same was not found feasible.

5. In a written statement filed on behalf of the State of Punjab, it was pointed out that the revised scope of work was issued on 13.1.1998 and there was no mention of span arrangement in the said drawing. 994 metres of length of approaches were shown to be constructed resting on reinforced site structure or on stilts and not supported by 31 spans with each span being at a distance of 18 metres. On the basis of revised scope and bid received from the entrepreneur, the general arrangement drawings with 4 number span on each side, as per the scope of work approved in the concession agreement, were prepared. Two

additional underpass were provided in the solid fill portion approved by the competent authority. It has been further pointed out that the contract of Railway Overbridge has been awarded to respondent No. 3 on the basis of long litigation in pursuance of the decree of the Civil Court dated 20.4.2001 which attained finality with the dismissal of SLP No. 15872 of 2002. It is pointed out that the scope of work was changed on 13.1.1998. A site meeting was held on 27.1.1998 with the tenderers and the tender documents were received on 9.3.1998 as per the revised scope of work issued on 13.1.1998.

6. An additional affidavit dated 14.11.2008 of Shri A.P.S. Brar, Executive Engineer, Central Works Division, Mdhali, has been filed, wherein it has been pointed out that a clear undertaking has been given to the Railways that the level crossing will be closed soon after the bridge is completed.

7. Having heard learned Counsel for the parties at some length, we do not find any merit in the present writ petition. The grievance of the petitioners is restricted to the free flow of traffic from the service roads across the Railway Track. In the reply filed on behalf of respondent No. 5, it has been pointed out that in view of the safety measures, a level crossing is not feasible, where the Railway Overbridge has been constructed. The inhabitants of the area are not being taxed for using Railway Overbridge. Therefore, mere fact that the inhabitants have to take a longer route to reach the other side of the Railway Track by itself is not sufficient to direct the respondents to permit level crossing, when such level crossing is not permissible in view of the safety measures. As a matter of fact, the claim of the petitioners would lead to providing of two level crossings in the service lanes in lieu of one level crossing prior to construction of the overbridge, which will not be permissible in terms of the safety measures. Such is the undertaking given by the State Government as well, as required as per the norms of the Railways.

8. Thus, we do not find that any direction is required to be issued to the respondents to permit movement of the traffic on the service roads across the Railway Track.

Consequently, the present writ petition is dismissed.