
(2014) 12 RAJ CK 0152
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3255/2014

Vivek Sharma

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:

Citation : (2015) 2 CDR 1010 : (2015) 2 RLW 1614

Hon'ble Judges : Sunil Ambwani, Acting C.J.;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : M.S. Singhvi, Sr. Advocate assisted by Hemant Dutt, Advocate for the Appellant; Kamal Dave, Advocate for the Respondent

Judgement

Sunil Ambwani, Actg. C.J.

1. Heard learned counsel for the parties.
2. By this writ petition filed in public interest, the petitioner has prayed for the following reliefs:

"It is, therefore, most respectfully prayed that by an appropriate writ, order or direction, the respondents may be directed to undertake the work of gauge conversion from meter gauge to broad gauge between Marwar Jn. and Mavli Jn. at the earliest and within such time as this Hon"ble Court deems fit to prescribe and further to start the rail traffic between Jodhpur to Udaipur."

3. On 26.11.2014, after considering the reply, this court passed the following order:

"Mr. Kamal Dave, learned counsel appearing for the respondents, wants some time to satisfy the court as to why the ambitious project of "Unigauge in Railways" has not been implemented in relation to the meter gauge track connecting the stations of Marwar Junction and Nathdwara in North-Western Railways.

Suffice to mention here that this track is connecting several important cities of Rajasthan including Udaipur, Pali, Jodhpur, Bikaner, Jaisalmer, Barmer and Shriganganagar etc. and the track is not in operation since 1997. It is also pertinent to notice that the Ministry of Defence has also repeatedly requested the Railways for gauge conversion of Marwar-Mawali-Chittorgarh meter gauge section into broad gauge looking to the strategic importance.

Put up on 8.12.2014, as prayed."

4. It is submitted by the learned counsel for the petitioners that for last 17 years, the railway connectivity between Jodhpur and Udaipur has been broken and that despite repeated representations and surveys made, no concrete plan has come forward nor any satisfactory reply has been given by the respondents as to the period of time within which the respondents would provide a direct BG link between Jodhpur and Udaipur. It is further submitted that both the cities of Jodhpur and Udaipur are of importance and considered as popular tourist destinations among the foreigners. Large number of tourists travel by rail links by which revenue is generated to the Government in foreign exchange through tourism industry. The direct connectivity after conversion of the link from meter gauge to broad gauge in the ambitious project of "Unigauge Railway Project", will not only be beneficial to the general public but will also facilitate the commerce, tourism, cultural and economic activities and is necessary to be provided to Armed Forces for security reasons also. Learned counsel has relied upon the Reconnaissance Engineering cum Traffic Survey for Gauge Conversion of Marwar-Mavli (183.35 kms) Traffic Report, which reads in Chapter-1 as follows:

"RECONNAISSANCE ENGINEERING-CUM-TRAFFIC

SURVEY FOR GAUGE CONVERSION OF

MARWAR-MAVLI (183.35 KMS)

TRAFFIC REPORT

CHAPTER-I

1.0 INTRODUCTION

1.1 In 1994, Government of India initiated various economic, trade and industrial reforms through the policy of liberalization to enhance industrial and trading activities. The nationalization of import duties and stress on export promotion has seen import and export increase by 24% and 25% respectively. Rajasthan state is one of the front line states that has taken up the policy of liberalization and privatization announced by the Government of India through a process of globalization.

1.2 xxxx

1.3 In pursuance of the above economic efforts, the India Railways adopted a policy of "Unigauge" system. On Western Railway, Marwar-Mavli Barisadri is a

branch single line section on MG system. This line (Marwar-Mavli-Badisadri), through devoid of industries, may become important link to develop new cement industries coming up in the Niamach-Chittaurgarh BG route where basic raw materials are found in abundance and their markets in the hinterland of Western Rajasthan, U.P., Punjab and Haryana. It may also help in the up-liftment of economically backward region of Rajasthan by providing direct BG link with other important cities of India. Besides there is also a demand from Defence Ministry to consider gauge conversion of Chittaurgarh-Mavli-Marwar and Hissar-Ratangar-Bikaner (Northern Railway), as can be seen vide Railway Boards letter No. 93/WI/Genl/0/24 dated 22.12.1995.

1.4 xxxxx

1.5 xxxxx

1.6 The ministry of Defence repeatedly requested the railways for gauge conversion of Marwar-Mavli-Chittaurgarh MG section in to BG on strategic importance. Looking to this, the Railway Board vide their letter No. 93/WI/Genl/0/24 dated 22.12.1995 conveyed to this railway to conduct the Preliminary Engineering-cum-Traffic survey for the gauge conversion of Marwar Jn.-Mavli Jn.-Barisadri MG section to BG, with the following approved terms of reference."

5. Reliance has been placed on an order passed by the Division Bench of this court in C.L. Soni vs. Union of India "DBCWP No. 585/2004" decided on 8.12.2004 in which this court had issued directions in the larger public interest to undertake and complete the left out Degana-Rewari route track via Sadulpur converting it from Meter Gauge to Broad Gauge by the end of the year 2005. The Supreme Court in Civil Appeal No. 6490/2005 "Union of India vs. C.L. Soni" approved the directions given by the Division Bench of this court and restored the matter to the file of the High Court to monitor the implementation of the project. The Supreme Court interfered only to the extent that the period for construction of the project was increased with an observation that the limited interference should not be understood and treated by the appellants as ruse for delaying the implementation of the project.

6. Learned counsel appearing for Railways submits that the matter exclusively falls within the domain of the legislature-policy framers. The Railways are committed for conversion of meter gauge to broad gauge but that conversion is to be made in a phased manner subject to availability of financial resources. After carrying out technical surveys, the reports are placed before the Railway Board, which approves the project, on which it finally goes to the Parliament for budgetary allocation.

7. In the present case, it is submitted that connectivity route is available between Jodhpur and Udaipur. There is no connectivity between Marwar and Mavli but with the change of trains on the route, the connectivity is available. So far as the requirements of the Defence establishment is concerned, the budget in this regard is provided by the Defence and that too is considered by the policy

makers after the requirement is assessed and approved by the Parliament. The relevant part of the reply given by the Railways is quoted below:

"That the petitioner essentially raised issue which is exclusively within the domain of legislature-policy framers, as the conversion is part of the Railway Budget and same is to be carried out keeping in view the financial resources keeping in view comparative importance, need and utility etc. The prayer for providing connectivity in isolation to considering broad view would certainly affect parameters which prevailed for over all development in respect of Railway Facilities in the country as the grounds raised by the petitioner failed to consider the many other important and vital projects which after being examined found to be having priority as per the requirement and financial resources. The conversion of specific route ignoring the planned and phased conversion cannot be raised as public interest as the same would be certainly result in diversion of financial resources from other developmental plans which certainly would affect larger public interest. The utilization of the resources for developmental and other purposes by the Railway necessarily needs to have with panoramic approach dependent on consideration of experts of the field. When the individual interest is pitted against larger public interest any claim by way of public interest litigation is not sustainable although providing connectivity and broad gauge in larger aspect cannot denied to be contrary to public interest, admittedly the same facilitate the public but considering the limited resources available and the pattern of approved planned through the Railway budget the same can be agitated by way of representation to be considered by the appropriate authorities for providing budgetary assistance and other required decisions. In view of submission made above the present writ petition deserves to be dismissed outrightly.

Apart from what has been submitted above, to meet the scarcity of resources and providing maximum infrastructural facilities for rail movement all efforts are being initiated which also reflects from the consideration reflected through the budgetary speech of the Railway Minister.

The Indian Railway runs 12617 trains to carry over 23 million passengers per day connecting more than 7172 station spread across sub continent which equals to moving entire population of country like Australia. The Railway is also a chosen carrier of coal, steel, cement, salt, food-grains as well as milk apart from other product. The Indian Railway carry 31% of the total freight carried in the country by all modes. In a large country like India still there are sectors where people not been able to get connected through the train route despite all above facts still there are vast tracks of hinter land waiting for rail connectivity, railway is vested that varied responsibility at the one hand is expected to earn like a commercial enterprise but also to serve like a welfare organization. Funds to the tune of about Rs. 5 lac crore i.e. around Rs. 50 thousand crore per year for next 10 years are required for ongoing projects alone. This leaves a huge gap between what is available at surplus and what is needed.

In the last 30 years as many as 676 projects were sanctioned worth Rs. 1,57,883/- crore. Of these, 317 projects are completed and 359 projects remain to be completed which will now require as much as Rs. 1,82,000/- crore. In the last 10 years, 99 New Line projects worth Rs. 60 thousand crores were sanctioned. The more projects railway add, the thinner railway spread available resources and longer it takes to complete them. In last 10 years, Indian Railway's made an investment of over Rs. 41,000/- crore in laying 3738 kilometers of new lines. On the other hand it spent about Rs. 18,400/- crore for doubling of 5050 kilometers.

The cost and ROR of the combined project of Marwar-Nathdwara gauge conversion and Bari Sadri-Neemach new line is being updated. Therefore, the survey report of the combined project will be examined and considered by the Railway Board. Nevertheless, keeping in view a large number of ongoing Railway Projects and a huge throw forward of Rs. 1.82 lac crore being faced by Railways, it is not feasible to accept all the demands received by Railways for new line, gauge conversion and doubling projects."

8. The summary of distances of different routes between Neemach and Jodhpur has been presented alongwith System Map as on 1.4.2014. From this summary of distances, learned counsel for the Railway Board has placed on record various distances between the existing route from Neemach to Chittorgarh (56kms.), Chittorgarh to Ajmer (185.93 kms), Ajmer to Marwar (139.84 kms) and Marwar to Jodhpur (103.15 kms), totalling 484.92 kms. He has explained that other route sanctioned between Neemach to Jodhpur is of 445.26 kms. in which the route between Pushkar & Merta Road has already been sanctioned. For the subject route between Neemach to Jodhpur, it is stated by the learned counsel for the Railways that in between Mavli to Marwar for the distance of 183.33, there is an existing Meter Gauge for which the Gauge conversion was not sanctioned, having negative rate of return. The tabular summary of distances of subject route Neemach-Jodhpur, as presented before the court, is reproduced as follows:

9. We have considered the submissions, made at the bar and find that though the Railways is vigilant of its obligations, it must prepare a timeframe for conversion of the Meter Gauge into Broad Gauge under its commitment for ambitious project of "Unigauge in Railways". The programme, considering its magnitude and financial outlay, is to be undertaken in a phased manner subject to financial constraints. The petitioner's concern has been taken care of by the Railways, which has undertaken the surveys for gauge conversion from Meter Gauge to Broad Gauge, for which the final budgetary sanction after its approval by Railway Board is to be provided by the Parliament.

10. In the case of C.L. Soni (surpa) on the basis of the affidavit of the Dy. Chief Engineer (Construction), Bikaner, the court had found that the work of gauge conversion of Rewari-Saulpur (141 kms) was included in the Railway Budget 1997-98 with the provision that the work would be taken up after obtaining the

requisite clearance. The clearance for taking up the work was received in September 2001. After clearance, the job of preparation of plans and estimate for the gauge conversion of Rewari-Sadulpur-Hissar was taken up. In such circumstances, a direction was given by this court in the larger public interest to the Railways to undertake and complete the left out Degana-Rewari route track via Sadulpur by converting from Meter Gauge to Broad Gauge by the end of the year 2005.

11. In the present case, the Railway authorities are conscious of the need of conversion of the route into BG and have carried out the survey, keeping in view the available MG lines and the distances the passengers are required to travel in between, which, according to learned counsel appearing for Railways, is going to be placed before the Railway Board.

12. So far as the requirement of the Ministry of Defence is concerned, the matter may not be considered and dealt with in public interest by this court, as such matters are routed directly from the Ministry of Defence to the Ministry of Railways to be considered for sanction of the project through the finances made available to Defence in the Union Budget.

13. Since we find that the respondents are conscious of their obligations and that the matter is under active consideration of Railways and is going to be placed for consideration before the Railway Board, we do not propose to issue time bound directions for construction of the proposed BG link.

14. The writ petition is, accordingly, disposed-of with the directions that the respondents will give due priority to the conversion of BG Rail link on the subject route in considering the proposal. The Counsel appearing for the Railways will forward a copy of this order to the Railway Board.