

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2709-2710 OF 2012

NATIONAL HIGHWAY AUTH.OF INDIA

... APPELLANT(S)

VS.

CONSERVATION OF NATURE TRUST & ORS.

... RESPONDENT(S)

J U D G M E N T

ANIL R. DAVE, J.

the

1. Being aggrieved by the judgment delivered by

Madurai Bench of Madras High Court dated 20th May, 2010, in
Writ Petition (MD) No.11850/2009 and Writ Petition (MD)
No.4406/2009, the National Highways Authority of India has
filed these appeals.

2. The issue involved in these appeals is with regard to
construction of a part of national highway, which connects
the North of India to the Southern tip of India.

3. The facts giving rise to the present litigation in a
nutshell are as under:

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MALHOTRA

Date: 2016.04.05 13:26:05

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Reason: DSC of ms anita
malhotra, cm is used by sarita
purohit, cm for signing

1

4. The appellant wants to construct a part of four lane

National Highway across a water body named Narikulam Tank,

which falls within the Panagudi-Kanniyakumari Stretch.

The respondent is an NGO which filed a writ petition

before the High Court of Madras, Madurai Bench, contending

that construction of the highway through Narikulam Tank would adversely affect not only the water body, but would also harm the environment and several species of birds, including migratory birds, who visit the said water body regularly. Moreover, it also submitted in the petition that water of Narikulam Tank is a source of drinking water for the residents of Maharajapuram, Leepuram and Panchalingapuram Panchayats and therefore, in the said petition it was prayed that the highway should not be constructed in a manner which would go through Narikulam Tank. The alternative was either to construct an overbridge or to have a road that would avoid going through the lake and would pass through nearby villages. The said petition was allowed by virtue of the impugned judgment.

5. Being aggrieved by the afore-stated judgment delivered by the High Court, the appellant has approached this Court.

6. The learned senior ² counsel appearing for the appellant has submitted that the High Court should not have interfered with the project proposed by the appellant, whereby four-lane highway is to be laid. According to him, laying of the highway was planned after meticulous study and after considering all relevant factors, including the fact that the highway was to pass through Narikulam Tank. He has further submitted that by constructing an overbridge or a flyover, the appellant-authority would be spending a further sum of approximately Rs.55 crores (Rupees Fifty Five Crores only) and that too, the estimate was made at least before five years and due to price rise in the meanwhile, the additional cost could be more than Rs.60 crores. He has further submitted that if an overbridge is not constructed

and the highway is constructed in a way that would pass through adjoining villages, not only the cost would increase but that would necessitate acquisition of substantial land, over which houses have been constructed by the villagers. The acquisition proceedings would not only result into additional cost but would also be time

3

consuming and that might also result into a long drawn litigation as the land owners would not easily permit their lands to be acquired.

7. The learned counsel has further submitted that during the pendency of these appeals, a report from National Environment Engineering Research Institute (for short 'NEERI') had been called for at the instance of the appellant and the NEERI had submitted its fresh report dated 13th May, 2011, after considering all relevant factors. The said report has already been taken on record by this Court. According to the said report, construction of the highway through the lake would not be as harmful as submitted by the respondent NGO.

8. The learned counsel has further submitted that in matters where construction is to be put up after consulting experts, the Court should normally respect the discretion of the experts and professionals concerned with the subject. The learned counsel has further submitted that because of the present proceedings, only a small portion to the said highway has remained unconstructed, whereas the rest of the highway connecting Madurai and Kanyakumari section has been substantially constructed.

4

Due to non-construction of the afore-stated patch of the highway, much inconvenience is being faced by the citizens who are using the said highway.

9. On the other hand, the learned counsel appearing for the NGO, the original petitioner, has submitted that the High Court has rightly interfered with the proposed plan of the appellant by giving a direction to construct an overbridge so as to cross the lake so that the water body is not adversely affected. He has further submitted that the additional cost of Rs.55 Crores (Rupees Fifty Five Crores only) should not be the factor to be considered by the State authorities because in the instant case, more important issue with regard to the environment is involved. The learned counsel has also stressed the importance of the environmental issues and has submitted that clean environment, availability of drinking water and maintenance of ecological balance are more important than a few crore rupees, which the appellant or the Government may spend for the purpose of construction of an overbridge or changing the alignment of the highway. He has further submitted that necessary environmental impact assessment has also not been done so far at the instance of the appellant and therefore, the appellant is not acting in

5

accordance with law, which the appellant is supposed to do.

10. Upon hearing the learned counsel at length and upon going through the report submitted by the NEERI, we are of the view that the High Court should not have interfered with the decision taken by the appellant with regard to construction of the highway through Narikulam tank.

11. Upon perusal of the report and the sketch which has been made a part of the record, it is clear that an embankment is to be constructed for the purpose of laying down the four-lane highway and the embankment would be having sufficient space for free flow of water from one

side of the embankment to the other side.

12. The submission made by the learned counsel appearing for the respondent to the effect that in some of the cases, where construction of embankment had resulted into drying up of the water bodies, may not be relevant because drying up of a water body would depend upon several factors. It would not only depend upon the size of the water body, but would also depend upon use of water for irrigation, seepage, temperature and such other factors. We cannot come to a conclusion that simply because of an

embankment, quantity of water⁶ in the tank would be adversely affected. Moreover, the submission with regard to endangerment to the aquatic birds is also not of much substance for the reason that the water body would surely continue to attract aquatic birds who have been visiting the said water tank for last several years. At the most, because of vehicular traffic and the embankment, more birds would be using the area which would be away from the embankment.

13. So far as the submissions with regard to not following the provisions regarding the environmental impact assessment are concerned, we are sure that the appellant would do the needful before laying down the road if there is any provision which constrains the appellant to get necessary permission/certificate from the authorities concerning environment. We are sure that the appellant authority would do the same and we cannot expect the authority like the appellant, to act in violation of any legal provision. If the needful has not been done so far, we are sure that the authority would take appropriate permission from the concerned authorities before constructing the highway.

14. Upon perusal of the report of the NEERI dated 13th May, 2011, we find that the NEERI has made recommendations after considering all relevant factors. The relevant portion of the recommendations is reproduced hereinbelow :

"NHAI should immediately either go ahead with the construction of over bridge or be innovative and identify alternate structure of embankment which may be cost effective than bridge to avoid affecting the present status of Narikulam tank or with the least disturbance. The proposed construction should ensure continuous flow of water on either side of the construction and should not lead to any obliteration/deterioration. In either case, NHAI should work in close association with other stakeholders to maintain/improve status of Narikulam tank. It will be primary responsibility of NHAI to follow-up on protection of Narikulam tank and this responsibility should not be shirked away on the premise of payment to any government agency such as PWD. Protection of Narikulam tank will clearly demonstrate NHAI's commitment in protection of water tanks, build image among community and strengthen institutional mechanism in the district. This recommendation does not mean replacing existing institutional mechanism of water tank protection in the district by NHAI. NHAI should also restore

twice the land lost in construction of bridge/modified embankment on Narikulam tank, in nearby area where wetland is already lost. PWD or district administration should earmark the area of compensatory wetland development."

15. We direct the appellant to act as per the afore-stated recommendations and take appropriate action for completing the construction of the highway at the earliest. We are sure that the authority will not take further time for completion of the work so as to see that inconvenience caused to the people is brought to an end as soon as possible.

16. At this juncture, we may also add that normally in the matter of technical things like construction etc., the Court should give due importance to the projects made by

VERSUS

CONSERVATION OF NATURE TRUST & ORS. Respondent(s)
(With appln.(s) for clarification of Court's order dated
27.2.2012 on behalf of Respondent No.1 to 3 and for permission
to file Annexure R/11 and office report)

Date : 18/02/2016 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s) Ms. Indu Malhotra, Sr. Adv.
Ms. Gunjan S. Jain, adv.
Mr. Vivek Oriel, Adv.
Mr. Vikas Soni, Adv.
Mr. S.P. Bhatia, Adv.
For M/s. M.V. Kini & Associates, Advs.

For Respondent(s) Mr. V. Prabhakar, Adv.
Mr. R. Chandrachud, Adv.
Ms. Jyoti Parashar, Adv.
Mr. T. Arul, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are allowed with no order as to costs in
terms of signed Non-reportable judgment.

(Sarita Purohit)
Court Master

(Chander Bala)
Court Master

(Signed Non-reportable judgment is placed on the file)