



Prafull Shivrao Kadam

...Applicant

vs.

Ministry of Road Transport

...Respondents

And Highways & Ors

Affidavit-in-Reply on behalf of the Respondent No. 2

I, Sanjay S. Kadam, Project Director, having Head office at G-5 & 6, Sector 10 Dwaraka New Delhi -110075 having its Project Implementation Office (PIU) at Solapur office at Plot No. E-2, Jai Jalaram Nagar, Behind Shivdare College, Solapur 413004, do hereby state on solemn affirmation as under:-

1. I say that I have perused the present application and the office records in relation thereto. Having made myself familiar with the facts and circumstances of the case, I am able to depose thereto. I am filing this affidavit for the limited purpose of opposing the admission of the application and/or grant of any interim reliefs. I crave leave to file a more detailed affidavit, if required.
2. At the outset, I say and submit that the present application is hopelessly barred by limitation. S. 14 (3) of the National Green Tribunal Act 2010 provides that no application for adjudication of a dispute shall be entertained unless made within six months from the date on which the cause of action **first arose**. Admittedly, the notification u/s. 3A of the National Highways Act, 1956 was published on 31st January 2018. On the said date it ought to have become clear to the Applicant that his alleged apprehensions regarding damage to the environment would come true and therefore, the cause of action, if any at all, arose on that date. Yet, the Applicant has chosen the convenient and irrelevant date of 27th March 2018 as the date on which the cause of action arose. I submit that the application ought to be dismissed *in limine* on this ground alone.

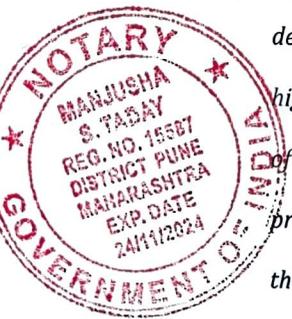
3. At the further outset, I say and submit that the present application is practically infructuous. The alignment of the highway having been fixed, and the Applicants and the surrounding lands having been acquired, the compensation proceedings having concluded by the Award and the construction having begun, it is virtually impossible to set the clock back. I say that any imposed delay on the construction would be gravely prejudicial to the national interest, delaying a public infrastructure project of national importance and also resulting in significant cost over-runs. I say that it is virtually impossible and a monstrously expensive task to realign the whole stretch of the highway and commencing acquisition proceedings afresh for the whole of the affected stretch of the highway while abandoning the expensive acquisitions and constructions already made.
4. At the further outset, I say and submit that the application shows no cause of action whatsoever. The application has been filed on the vague apprehension of the loss of 284 trees inside the premises of a single private entity. The Applicant has provided no particulars whatsoever of the precise location of the said trees, their type and age etc. I humbly submit that a public infrastructure project of national importance cannot be halted or cancelled for such frivolous causes. I humbly submit that the other grounds taken to challenge the project are not within the jurisdiction of this Hon'ble Tribunal to decide. The said objections have already been rejected by the Hon'ble Bombay High Court, as stated hereunder.
5. I say that the frivolity of the application leaves no manner of doubt that the real purpose behind it is to somehow preempt the acquisition of the lands. The Applicant was the owner of Gat No.273 of Village Sangola Tal. Sangola Dist Solapur, which has been acquired under the National Highways Act, 1956 for the project in question. The Applicant had filed his objections to the proposed acquisition before Sub Division Officer, Mangalwedha Division, Mangalwedha i.e. Competent Authority Land Acquisition and the said objection was rejected on 31st May 2018 by the Competent Authority of Land Acquisition (CALA). Certain land-owners had filed proceedings in the Hon'ble Bombay High Court (WP No



(St). 25820 of 2018) challenging the acquisitions and the challenge was rejected and the land-owners had to withdraw the petition. Therefore, the acquisitions have been found to be made in strict compliance with the National Highways Act, 1956. The Applicant now appears to have come up with this alternative strategy of filing this frivolous application to stall the acquisition, while suppressing the abovesaid facts from this Hon'ble Tribunal. I humbly submit that this Hon'ble Tribunal ought not to countenance such abuse of the process of law to meet private ends and the application ought to be dismissed with exemplary costs.

6. At the further outset, and in any event, realignment of the highway is not possible in view of the current alignment having been determined by experts to be perfect from the techno-economic point of view. Therefore, the Applicant has no locus to assail the alignment of the highway decided by this Respondent, especially on vague and frivolous grounds. The Hon'ble Supreme Court has observed in **Union of India v. Kushala Shetty (2011) 12 SCC 69:**

"Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any



violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained."

7. The facts of the case in brief are as under:

a. Since the acquisitions are not and cannot in themselves be under challenge in these proceedings, I shall not state the facts relating thereto in detail. Suffice to say that, as stated above, the acquisitions have made in due compliance with the National Highways Act, 1956 and challenges thereto have failed in the Hon'ble Bombay High Court. Any allegations of breaches of the procedure prescribed for acquisition are denied. The said allegations are at any rate not germane to the issue at hand and are made merely to confuse the issues. Without prejudice, I shall place on record the detailed facts pertaining to the acquisition if required.

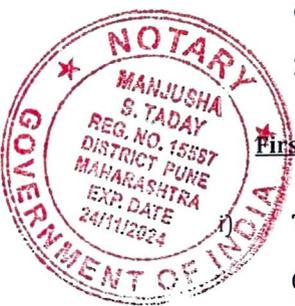
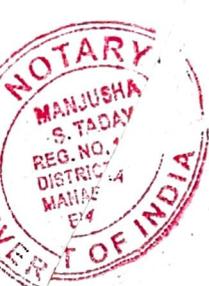
b. The particulars of the public representations/consultations in respect of the project are as under:

A representation dated 7th January 2012 was received by the Sangole Municipal Council from the Applicant herein, stating that the constructing the road through the municipal council limits/town would lead to the need to demolish many homesteads and constructions. By a letter dated 7th January 2012, the Sangole Municipal Council apprised this Respondent of the same.

First Public Meeting:

The first public meeting was held on 14th of October, 2013 under the Chairmanship of Resident Deputy Collector, Solapur Shri Vijaysingh Deshmukh in the presence of large public gathering of Sangola at Solapur.

ii) In the said public hearing, the Consultant, M/s. Arvee Associates, Hyderabad introduced to the public gathering regarding the Detailed Project Report (DPR) alongwith various alternatives for the Sangola Bypass and geometric improvement in Solapur District. The consultant in brief explained all the details regarding various provisions in the Project Report so also explained the alternatives proposed for the Sangola Bypass alongwith other geometric improvement in Solapur District.



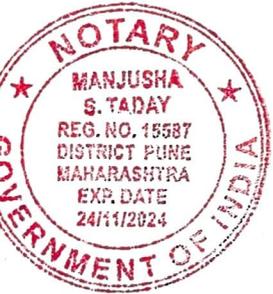


(ii) NHAI representative explained in brief regarding the Plan for Sangola Bypass and the related improvement under the jurisdiction of Solapur District, especially, Junoni, Andhalgaon, Begumpur, Brahmapuri and Kamathi. It was further explained regarding the Project and necessity of the Project.

iv) It was also, Solapur explained in brief the procedure followed for selection of Bypass alignment alongwith various parameters and constraints therein. Further, Also explained the procedure for preparation of Detailed Project Report.

v) The participants have raised various issues and questions. Mr. Ganpatrao Deshmukh, MLA, Sangola requested the Chairman of the meeting to provide the Bypass drawings to Sangola Municipal Council for wide publicity and arrange another meeting alongwith the office bearers of Sangola Municipal Council as well as the general public. Mr. Deepak Abha Salunke, MLC Solapur, was in fact insisted to expedite the Project so that work can be taken up immediately, which will be more helpful and beneficial to the general public at large. The said meeting thereafter ended with vote of thanks to the Chair.

Annexed hereto and marked as **Exhibit-A** is the copy of Minutes of Meeting dated 14.10.2013 and list of attendees



Second Public Meeting:-

- i) The second meeting was held on 22nd October, 2013 at Solapur under the Chairmanship of resident District Collector, Solapur in the presence of large public gathering.
- ii) The Consultants, M/s. Aarvee Associates, Architects, Engineers & Consultants Pvt. Ltd. Hyderabad in brief explained all the details regarding various provisions in the Project Report along with various alternatives proposed for the Sangola Bypass.
- iii) NHAI-PIU Solapur representative explained in detail regarding various alternatives for Sangola Bypass with their merits and de-merits and various parameters and constraints.

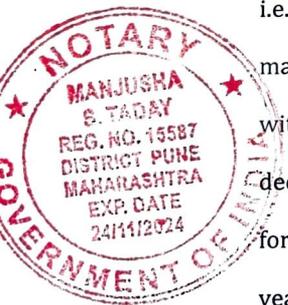
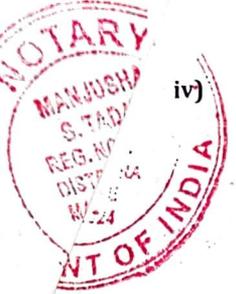
iv) Various participants have raised several of questions. Mrs. Pratibha Manoj Sapate, President of Municipal Council, Sangola has suggested regarding selection of alternatives which majority of people demand. Further she said that Sangola Municipal Council has no any objection for the same. Mr. KashiTukaram suggested that North side alignment is good. Mr. Milind Navalkar suggested that North side alignment is better. Mr. Mahadev Patange suggested that North side Bypass is suitable. Mr. Vishwanath Lavate suggested that North side option is good because South side Bypass Option is very close to Sangola town and due to this, sound pollution and air pollution may increase in future. Advocate, Babanrao Patil also suggested that North side alignment is better because it covers three major roads. Mr. Devidas Bagal also suggested North side alignment is better because it covers Pandharpur road and which is very famous holy place. Shri. Shripati More, Deputy Collector, Solapur also suggested Option II i.e. North side is very better considering next 50 years future development of Sangola town.

v) Majority of the Sangola town people are of the opinion that North side alignment i.e. alternative-2 is most suitable as compared to other two alternatives because majority of the traffic leads to Pandharpur, Akluj, Pune passes through Bypass without entry into town and accordingly in the said Public Meeting, it was decided the selection of alternative option II which having a length of 12.05 Kms. for the construction of Sangola Bypass taking into consideration the next 50 years growth of the city.

vi) The meeting ended with vote of thanks for the participants.

Annexed hereto and marked as Exhibit-B is the Minutes of Meeting dated 22nd of October, 2013 and list of attendees.

c. I say that consequently, the proposal was forwarded to the Ministry of Road Transport & Highways, Government of India and in the Minutes of Meeting dated 26.11.2015 held at Transport Bhavan, New Delhi, under the Chairmanship of Shri Virendra Kaul, Chief Engineer, Ministry of Road, Transport & Highways, Government of India final approval on alignment of



Sangola Bypass has been accorded in favour of alternative II i.e. North Side Bypass of Sangola City. The relevant portion of the said Minutes of Meeting in respect of Sangola Bypass reads as under:-

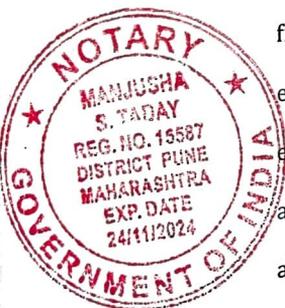
- a. "Sangola Bypass: The consultants submitted 3 alignments for bypass for Sangola town, the longer bypass on the LHS of the town was acceptable to locals and the district collector. The proposed bypass on LHS though longer than the bypass considered on RHS is desirable as it would link 3 major corridors connecting Pandarpur, Pune and Kolhapur, and some radial roads from Sangola town. It was discussed that, CE (NH) has reviewed the alignment and proposed bypasses especially for Sangola Bypass alignment.
- b. I say and submit that the Bypass alignment Plan was prepared by the experts and who have given three options and out of the three options, ultimately, on the basis of public demand and after scrutinizing the technical, topography, environmental and future development, ultimately, the Government of India, Through the Chief Engineer, Road Transport & Highways had approved the Bypass Alignment Option No. II which being the most technically feasible for the Sangola Bypass. Annexed hereto and marked as **Exhibit-C** is the copy of the said Minutes of Meeting dated 26.11.2015.
- c. By the letter dated 22nd November 2018, the Ranger Officer Sangola granted permission to this Respondent for cutting 1684 trees specified therein. Annexed hereto and marked as **Exhibit-D** is the copy of the said letter dated 22nd November 2018.
8. Without prejudice to the above, my paragraph-wise comments on the application are as under:
- a. As to paragraph 4, I say that the Applicant has deliberately suppressed his abovesaid private interest in the matter.
- b. As to paragraph 5 to 12, I say that the contents thereof are substantially true.
- c. As to paragraph 13, I say that the procedure laid down in the Notification No. 2559 dated 22.08.2013 of the Ministry of Environment and Forests has been scrupulously followed and the Applicant's allegations to the contrary are false and are denied. According to the said Notification, projects of expansion





of National Highways less than 100 kms involving additional right of way or land acquisition less than 40 m on existing alignments and 60 m realignment and bypasses are exempt from Environment Clearance from Ministry of Environment and Forests.

- d. As to paragraph 14, I say that the Work Order issued to Arvee Associates was with respect to the preparation of feasibility study and Detailed Project Report and had nothing to do with the subsequent notifications concerning the acquisitions . I say that the Applicant is trying to needlessly confuse matters and to prejudice this Hon'ble Tribunal with his baseless assertions.
- e. As to paragraph 15 to 17, I say that the Report has been prepared by experts keeping in view the industry standards and best practices. The assertions of the Applicant to the contrary are frivolous and are denied. The Applicant has absolutely no *locus*, not to mention the qualifications, to question the financial, technical and environmental feasibility studied and determined by experts. I say and submit that the alignment plan has been prepared by the experts taking into consideration, future growth of the Sangola city as well as adjoining region. They have also taken note of the topography and feasibility and the Bypass Alignment Plan cannot be altered either by Respondent and it was approved by the Chief Engineer, Road Transport & Highways, Government of India. Thus, the allegations of the Petitioners are unfounded and without any basis. Moreover, Petitioners are seeking the indulgence of this Hon'ble Court to enter into the technicality of the detailed Project Report submitted by the Consultants and finally, Alignment Plan approved by the Expert Engineers.
- f. As to paragraph 18, I repeat and reiterate all that is stated herein and deny all averments to the contrary.
- g. As to paragraph 19 to 22, I repeat that the procedure laid down in the Notification dated 22.08.2013 of the Ministry of Environment and Forests has been scrupulously followed and the Applicant's vague and frivolous allegations to the contrary are false and are denied.



- h. As to paragraph 23 to 28, I repeat and reiterate all that is stated hereinabove and deny all averments to the contrary.,
- i. I am advised that it is not necessary to comment on the Grounds taken in the application.
9. Save as hereinbefore expressly admitted, I deny each and every allegation set out in the Application, as if the same had been set forth separately and traversed seriatim. In the premises, I deny that the Applicant is entitled to the relief claimed, or any part thereof, for the reasons alleged or at all. Therefore, I humbly pray that the application be dismissed with costs.

Solemnly affirmed at Solapur
this 27th day Nov. 2020

Respondent No. 2



BEFORE ME

[Signature]
Advocates for the Respondent No. 2
Adv. Ambekar S.S

BEFORE ME

[Signature]
MANJUSHA S. TADAY
ADVOCATE & NOTARY
GOVERNMENT OF INDIA



VERIFICATION

I, Sanjay S. Kadam, having my office at Project Implementation Office (PIU), Plot No. E-2, Jai Jalaram Nagar, Behind Shivdare College, Solapur 413004 National Highways Authority of India, the Project Director of the Respondent No. 2 abovenamed do solemnly declare that what is stated above in paragraphs no.1 to no.9 are true to my own knowledge and that what is stated in the remaining paragraphs are true to the best of my information which I obtained from the :

I believe the information to be true for the following reasons:

Solemnly declared at Solapur

this 29th day NOV 2020

Before me 
Advocates for the Respondent No. 2
Ambekar S.S.


Respondent No. 2



BEFORE ME



MANJUSHA S. TADAY
ADVOCATE & NOTARY
GOVERNMENT OF INDIA

