

(2017) 05 MP CK 0088

MADHYA PRADESH HIGH COURT

Case No: 9244-2014

Neeraj Mandloi

APPELLANT

Vs

Assistant Commissioner of
Income Tax, Bhopal and others

RESPONDENT

Date of Decision: May 4, 2017

Acts Referred:

- Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Hon'ble Judges: P.K. Jaiswal, Virender Singh

Bench: Division Bench

Advocate: Yogesh Mittal, Manoj Munshi

Judgement

1. The petitioner, in this third round of Public Interest Litigation, who claimed to be a public spirited person and responsible citizen of India and an ex-corporator, has agitated the jurisdiction of the Court under Article 226 of the Constitution of India to raise the issue of poor/terrible and inadequate condition of roads in all over Indore city.

2. It is submitted that the petitioner has visited several places of Indore city and found that the condition of the roads all over the city is very poor. The respondents, who are responsible as State and local authorities to look after the condition of the roads and are duty bound to ensure good condition of roads for welfare of citizens are not discharging their duties diligently. Their negligent attitude propelled the petitioner to file this petition in the interest of public at large.

3. The petitioner had earlier filed a Public Interest Litigation bearing W.P.No.178/2014 before this High Court, but the same has been withdrawn on 27.1.2014 with a liberty to file a fresh petition with better particulars and details of

the places where roads are in bad condition in the Indore city. Subsequently, the petitioner filed a petition bearing Writ Petition No.2865/2014, which was also dismissed vide order dated 15.4.2014 observing that the petitioner has not approached the competent authorities specifying his grievance about any particular road. Rather he has raised this issue in the public interest regarding roads of several parts of Indore City.

4. After dismissal of W.P.No.2865/2014, the petitioner has visited several places of Indore city and collected photographs to demonstrate bad condition of the roads. He has submitted a detailed representation to the respondent No.2 Indore Municipal Corporation (IMC) describing the entire issues with copies of photographs.

5. The petitioner tried to gather information under Right to Information Act, 2005 about roads, particulars of contractors, total cost and reasons for poor condition of the roads because in most of the area the roads have been constructed within a period of one year, but even after several requests and reminders, the documents have not been supplied by the respondents nor has the condition of the roads improved.

6. It is submitted by the petitioner that the construction of the roads within the territory of the Corporation is the responsibility of the IMC. Describing method of construction which may be adopted by the IMC and giving details of condition of roads of almost 300 locations with photographs, the petitioner has prayed that the respondents be directed to improve the condition of the roads in various places of the city of Indore and particularly condition of the roads, which have been specified in the chart.

7. It is further submitted that the respondents may also be directed to point out, construct and provide facility of roads at various locations, which are lacking road connectivity, especially those areas where the weaker section of the society resides, who are still deprived the facility of roads. It is further prayed to issue appropriate directions/orders directing the respondents to make stringent measures to fix accountability and streamline road construction and other civil work and to compel the authorities to publicize the details of contractors, value of contract and project duration to help bring transparency and accountability to the whole process of construction of roads.

8. In reply, the respondent No.2-Indore Municipal Corporation has submitted that the road condition of the city in the past few years was not good, but thereafter, there is remarkable improvement. Most of the roads shown in the photographs have already been constructed. In most of the areas of the city cement concrete roads have been constructed in place of bitumen roads, which has longer life and

low maintenance cost. It is further submitted that most of the major roads of the city have been widened to the fullest extent possible. All the major and semi roads have been re-constructed.

9. The Indore Municipal Corporation has engaged one of the most reputed infrastructure consultancy firm RITES (Rail India Technical and Economic Service, an engineering consultancy company, specialized in the field of transport infrastructure), a Government of India enterprises, for improvement of road conditions and traffic mobility thereon in the city of Indore. The RITES has submitted a detailed mobility plan for Indore city in July 2012 and a draft name and styled as ???Comprehensive Mobility Plan for Indore Urban Area??? running into 400 pages (Annexure R-2/1).

10. The Corporation has also constituted a Technical Advisory and Monitoring Committee for the purpose of technical advice and monitoring of the roads. This Committee comprises of eminent engineers and technical experts of the city, who advise the Municipal Corporation on improvement of roads and bridges of the city. The Committee is also responsible for selection of contractors for construction of good quality roads,bridges etc. The Committee decides and also suggests the Corporation in this regard from time to time. This Committee is playing an pivotal role in the development, improvement and maintenance of the roads of the city. In past three years, the committee has cleared many proposals of construction/renovation of the roads (Annexure R/2-2). The Corporation has issued many work orders for construction/renovation and improvement of the roads (Annexure R/2-1).

11. The Corporation has constructed, renovated, renewed, widened many roads in the city, which includes major roads, minor roads and also the roads in the slums. Various modes of construction, development and maintenance of the roads have been adopted by the Corporation. The Corporation constructs the roads in the colonies either directly from the funds of Municipal Corporation or under Janbhagidari scheme where the local residents contribute funds for construction of roads in their locality. The Corporation immediately takes action for construction of roads on receipt of the proposal of corporators or local residents.

12. The Corporation is adopting transparent policy for award of contract to the contractors on the basis of open public bidding and selection of qualified contractor by the independent Technical Advisory and Monitoring Committee. It has developed proper mechanism accountability and levy of penalty upon the contractors in case of poor quality work. The petitioner or any other citizen may obtain any information about tender, award of contract, payment to contractors, levy of penalty etc. under Right to Information Act from the Corporation. The Corporation being a public authority is accessible to anyone and all the functions are transparent and subject to

scrutiny by all authorities, Courts and Comptroller General of audits.

13. The petitioner has submitted photographs which are more than three to four years old and most of the photographs have been taken in monsoon season when due to clogging of water on the roads, the condition of the roads get deteriorated.

14. It is further submitted that the petitioner has attached the photographs, which are mostly taken in the slums, unauthorized and illegal habitats where the Corporation cannot construct road unless those habitats are declared authorized and legal. In the city of Indore most of the colonies have been developed by private builders and colonizers those who have taken the money from the residents but have not provided basic infrastructure particularly the roads. The Corporation can not construct the roads in these colonies unless these colonies have been handed over to the Corporation. However, the Indore Municipal Corporation is taking steps against such type of colonizers and undertakes and as soon as these colonies will be handed over the Corporation, the Corporation will take care of the roads. There are practical difficulties, which are being faced by the Corporation. There are financial constraints and also difficulties to get good contractors, who can construct roads particularly in slums and other new and under developed colonies.

15. The Corporation is undertaking the task of road construction and its maintenance on top priority and in most of the areas new roads particularly cement concrete roads with pavers alongside the roads have been constructed.

16. It is also submitted that Indore is one of the fastest growing city in the Central India, which has emerged as one the biggest education, health and commercial center. The city limits are expanding leaps and bounds whereas the generation of revenue is not increasing to that extent. Even then development and improvement of roads is the top priority of the Corporation. If details of any particular locality are provided by the petitioner, the Corporation will take care of it and on the basis of the facility and financial position of the Corporation necessary action would be taken on priority basis as the construction and development of the roads of the city is one of the top agenda of the Corporation and also to keep the city green and clean. Submitting that construction of the roads is ongoing process and mentioning that in the past three years the Corporation has constructed, renovated, renewed and widened many roads of the city including major and minor roads particularly roads in slum areas. Therefore, the respondent prayed for dismissal of the petition.

17. The respondents No. 1, 3 & 4 have adopted the reply filed by the respondent No.2.

18. In rejoinder to the reply of respondent No.2/ Corporation, the petitioner has dismissed in general all the claims of the Corporation regarding construction,

maintenance and improvement of roads of the city and submitted that the reply is vague and entire reply is missing the core of the litigation and hypothetical facts and statistics have been narrated in a manner to hide their responsibilities.

19. It is submitted that it is the duty and responsibility of the respondents to stop development of unauthorized colonies and to take appropriate action against them at initial stage. These colonies cannot be developed without permission of the respondents. Therefore, at the time of granting permission, they should take care of all the issues on the subject. These colonies cannot be developed without connivance of the Respondents. They cannot shirk their liability and throw it over to the private builders or colonizers. Same is the position of the slum areas, which also cannot emerge, if the respondent takes action against them at initial stage.

20. It is also alleged that the respondents are misappropriating public funds in collusion with road contractors and thereby giving acceleration to corruption. Rejecting all the claims made by the respondents in the reply, the petitioner prays for suitable direction to all the respondents on the subject matter of the petition.

21. We have heard the arguments of all the counsel at length and considered the documents particularly the photographs submitted by both the parties.

22. In rejoinder, the petitioner has admitted that all the photographs submitted by him were taken at the time of filing of the petition in the year 2014. Nothing is on record to show that there is no improvement in the condition of roads. On the contrary recent photographs submitted by the respondent No.2 indicates that there is significant improvement in the condition of the roads. Various new cement concrete roads in the city also covering new areas have been constructed by the respondent/Corporation. The petitioner has not filed any recent photographs of the same localities to show that the roads are still in the same condition as they were at the time of filing of this petition.

23. The Corporation has taken many steps in this regard, appointed infrastructure consultancy firm RITES and constituted Technical Advisory and Monitoring Committee, adopted transparent bidding procedures. All these facts have not been controverted by the petitioner in his rejoinder.

24. The respondents have undertaken that they are open to adhere and to give special attention to any particular proposal of maintenance of old road or construction of a new road, which appears to be appropriate and the petitioner, who is ex-corporator may submit any proposal with all relevant documents before the appropriate authority.

25. As far as grievance of acceleration of corruption is concerned, the Petitioner may

redress its grievance by filing an appropriate application before the Lokaykta, EOW or any other such agency. This Court is not a proper forum to raise all such issues.

26. The cause for invoking its jurisdiction by the High Court in the instant case is the poor condition of the roads in the Indore city. Condition of roads undoubtedly is an issue of serious concern and should have been carefully dealt with both in terms of implementation and by revisiting the reasons for faults or lapses in this regard. This exercise is for the authorities to carry out. Construction of new roads or maintaining any old constructed road is an incessant process. It cannot be over on one fine morning. An omnibus or pandemic direction by the Court would not suffice to address the subject and also would not solve the problem.

27. The Respondent No.2 has constituted a committee to look after the issue and has also engaged RITES and formulated a plan and policy with the help of known experts of the field. Formulation of policies and deciding on steps to be taken are matters on which courts singularly lack expertise. Where to construct a road or which roads repair/maintenance etc. ought to be determined by authorities of the government vested with duty and obligation to do so. The court can interfere only where there is a breach of law or a violation of the Constitution. In absence of any bias or discrimination, it is not for the Court in the exercise of its power of judicial review to suggest a policy which it considered fit. This is something which travels far beyond the legitimate domain of judicial review.

28. Considering the aforesaid so also the steps taken or proposed to be taken by the respondents, and also keeping in view the nature of the process, it does not appear appropriate at this stage to issue any such direction as prayed in the petition. The petition stands disposed off with the aforesaid observation.