

# RAJASTHAN HIGH COURT

Mahesh Chandra Purohit

Vs.

Container Corporation of India, Ltd.

Civil Writ Petn. No. 1919 of 2001  
(N.N. Mathur and Jagat Singh, JJ.)

21.07.2001

## JUDGEMENT

**Mathur, J.**

1. Mahesh Chandra Purohit, an advocate by profession, has filed this writ petition under the label of "Public Interest Litigation" seeking direction to restrain the respondent-Container Corporation of India Limited from constructing and operating the Container Depot near Bhagat Ki Kothi and shift to a place, which may be far away from the residential localities i.e. near Salawas, Hanwant or Luni Railway Station. The writ petition is based on a news item appeared in the Newspaper 'Dainik Bhaskar', Jodhpur Edition, dated 24th March, 2001 to the effect that an Inland Container Depot (hereinafter referred to as the ICD") shall commence its operation near Bhagat Ki Kothi from the month of April, 2001. It is averred that the purpose of the ICD is to carry goods from various places to the Depot for loading in the Railway Containers and similarly for taking away the goods which have been received from the Railway to different destinations. It is further averred that the approach towards the proposed ICD is through heavily populated area in between the Patrakar Colony and Masuria Section-7. According to the petitioner, the location of the site is in the heart of the city and there would be traffic congestion on account of movement of the trailers/trucks. According to him, on an average, 100 trailed trucks containing containers will be moving towards the proposed Container Depot after its operation. Thus, according to the petitioner, the proposed location of the ICD at Bhagat Ki Kothi will pose serious traffic hazard to the residents of the Masuria Section 7, Patrakar Colony and other colonies. The petitioner has made it clear that he has no objection to setting up of Inland Container Depot at Jodhpur as it will benefit to the general public but his only objection is to the location of the ICD in a thickly populated area. According to the

petitioner, the grievance raised by him in the writ petition is closely connected with the grievance raised in the *Mahendra Lodha v. State of Rajasthan*,<sup>1</sup> wherein this Court by order dated 21-11-2000\* has prohibited entry of heavy traffic beyond New Power House except during night hours between 10 p.m. and 7 a.m.

2. Separate counter-affidavits have been filed on behalf of the first respondent- Container Corporation of India Ltd., Additional Chief Engineer, P.W.D., Govt. of Rajasthan, Jodhpur and the Divisional Railway Manager, Northern Railway, Jodhpur. The Jodhpur Handicraft Exporters Association (hereinafter referred to as 'the Handicraft Association') was also permitted to intervene in the matter. An affidavit has also been filed on behalf of the Handicraft Association. Except the second respondent Additional Chief Engineer, both the respondents and the intervener have raised a preliminary objection to the effect that instant writ petition is not maintainable under the label of P.I.L." as it has been filed to safeguard the interest of the existing operators who are carrying the export cargo through road and not the public purpose. It is submitted that service provided by the Corporation through rail track would not only be cheaper but also safer. The Handicraft Association has gone to the extent of saying that petitioner has been planted by some persons who are having business interest in the matter. It is pointed out that in the city of Jodhpur, there exists a Container Depot in the name of 'Rajasthan Small Industries Corporation' (in short 'RSIC'). This Container Depot charges huge money in the name of transportation charges. The Association has also referred- to names of some of the individuals, who had applied for opening Container Depot. It is submitted that the ICD owned by Government of India, will render better services and enable the exporters to send their articles/goods to the destination point such as Mumbai and Kandla and the same will facilitate the business of exports. Thus, obviously the existing Container Depot and some of the persons who are interested to enter into the business, are uncomfortable in commissioning of the ICD at Bhagat Ki Kothi. As regards the location, it is submitted that the petitioner is not as innocent as he has tried to project himself by saying that he is only interested in shifting the location of the ICD. It is submitted that the purpose of seeking shifting of the ICD from Bhagat Ki Kothi to Salawas, Hanwant or Luni is that the ICD should become uneconomical and unviable. It is also pointed out that there is no suitable railway land available at Salawas, Hanwant or Luni Railway Stations and they are far away from the industrial area of Jodhpur and setting up of the ICD at those places will become totally uneconomical and unviable as there will be increase in cost of the road transportation from the industrial area located in and around

Jodhpur. Further, there being no proper railway land available at the said places, cost of acquiring private land for setting up the ICD will be prohibitive. Thus, the entire purpose of the writ petition is not to allow the respondent- Corporation to come into competition with the existing operators against the interest of public of Jodhpur.

3. The respondent has given a long narration as to how the demand of the people at Jodhpur to set up the ICD at Jodhpur came to be materialised. It is submitted that the various Exporters Organisations like A.P.E.D.A., Export Promotion Council for Handicrafts, Jodhpur Industry Association, Rajasthan Guar Gum Organisation, Jodhpur Handicraft Exporters Organisation raised the demand for setting up the ICD first in the year 1991. The copies of the representations received from the Export Associations for setting up the ICD at Jodhpur have been placed on record. A letter dated 13th June, 1993 of Shri Ashok Gehlot, presently the Hon'ble Chief Minister of Rajasthan and the Member of Parliament at the relevant time, requesting for setting up the ICD at Jodhpur has also been placed on record. Similarly, the correspondence between Shri Pradhyumn Singh, Minister of Industries, Rajasthan and Shri Nitish Kumar, the Railway Minister at the relevant time, Shri Jaswant Singh Bishnoi, Member of Parliament and Ms. Mamta Banerjee, the Railway Minister at the relevant time and some more prominent dignitaries of the State and National level have been placed on record showing the anxiety of providing rail linked ICD at Jodhpur. The matter was examined in the Central Government at various levels. It was found that Jodhpur has high level of exports, the main commodities being Guar Gum and Handicrafts. The present export cargo goes either in break bulk by trucks to twin ports of Mumbai or through containers from Inland Container Depot of Rajasthan State Industrial Corporation at Jodhpur, which is not found to be economical or safe. For opening of the new I.C.D., an application was made to the Inter-Ministerial Committee (IMC) comprising of the representatives of the Ministry of Railways, Ministry of Surface Transport, Ministry of Finance and Ministry of Commerce. The guidelines laid down by the Ministry of Commerce for setting up the ICD have also been placed on record. The feasibility report, projections of the traffic and the site plan and other informations were considered at various levels. The IMC after considering the application of the first respondent granted permission to open ICD at Jodhpur in September, 1999. Before granting the permission of ICD at Jodhpur, the viewpoints of all the persons concerned including the State of Rajasthan were considered. The site for ICD was selected after survey of origin/destination of export cargo. After the grant of permission, the first respondent spent about Rs. two crore in establishing the ICD at

Bhagat Ki Kothi. The narration given by the first respondent is also supported by the Railway Administration.

4. The second respondent i.e. the Additional Chief Engineer, P.W.D., Jodhpur, has pleaded ignorance on official level with respect to the establishment of ICD at Bhagat Ki Kothi. It is, however, submitted that it will create an unpleasant hazard from the traffic point of view. It is further submitted that the existing road going towards Basni Industrial area is not in a position to sustain the additional heavy burden of big trailers. It is further submitted that beside the movement of heavy trucks and light vehicles, there will be great rush of cars, two wheelers and three wheelers.

5. In rejoinder to the reply filed on behalf of the Additional Chief Engineer P.W.D., the first respondent has submitted that the reply is based on the assumption that whatever has been stated by the petitioner in the writ petition is true, otherwise he owned no information even to the fact that the ICD has been established at Bhagat Ki Kothi. A reference has been made to the admission made in para 10 of the reply, which reads as under :

".....the answering non-applicant has no information till now as to how the said Container Depot will operate and what will be the number of long trucks/trollers which will arrive and leave the Depot daily for the purpose of loading and unloading of the containers."

6. It is submitted that in spite of the second respondent having no knowledge whatsoever about the number of trucks/trollers, which will operate in the ICD has made a sweeping statement with respect to the traffic pressure on the roads of Jodhpur City. It is submitted that the Rajasthan Small Industries Corporation Limited (RSICL) has succeeded in getting land at Bhagat Ki Kothi Railway Station for setting up the ICD. The State Government before the Inter-Ministerial Committee (IMC) has made a statement that it is in favour of setting up the ICD by the first respondent at Bhagat Ki Kothi on the ground that since RSICL is already running as ICD and the traffic handle was not at large. Thus, the affidavit filed by the Executive Engineer is contrary to the statement made by the State Government before the IMC with regard to condition of the road. It is averred that the volume of the traffic and vehicles carrying the road, there is already in existence a Railway Goods Shed, FCI Godown and Military Siding,

where the trucks are regularly plying. It is further averred that the military siding is being used for loading and unloading of the tanks and other heavy military equipments even beyond 50 tonnes and the same road is being used as will be used by the trucks coming to the ICD. It is submitted that if the road can take the load of the tanks and other heavy military equipments, the said road can certainly take the load of vehicles coming to the ICD, which may not ordinarily be more than 12 tonnes.

7. From the aforesaid affidavits, the position emerges as follows :

"(i) It is not in dispute that commissioning of railway linked ICD at Jodhpur will be in the public interest.

The benefits which would accrue to the general public and exporters by commissioning the ICD have been catalogued in para 4 of reply of the first respondent, which have gone unrebutted on record. They are extracted as follows :

(a) Faster movement of the export containers from Jodhpur to Sea ports. The reduction in transit time would be of 3-4 days for each container. Thus, it will benefit the various industries to export more from Jodhpur and earn more foreign exchange for the Country.

(b) The cost of transportation of containers from Jodhpur to Sea port by rail would be about 20% less than the existing cost borne by the exporters.

(c) At present all the empty containers for export are being brought either from Delhi or Mumbai by road to Jodhpur for stuffing of export cargo in the said containers and after stuffing of the export cargo in the said containers and after sealing of the containers by the customs, the containers are taken by road from Jodhpur to the Sea port and thus causing congestion not only in and around Jodhpur but also on the National Highway from Delhi to Jodhpur and from Jodhpur to Sea port and also pollution. After Commissioning of I.C.D. at Jodhpur, the movement of empty containers from Delhi/Sea ports to Jodhpur would almost be totally eliminated as the movement of the empty containers would be by rail. As regards the movement of export cargo containers, the same would also be transported through rail and thus reducing the movement of trucks by about 85%. Thus, the commissioning of ICD at Jodhpur would considerably reduce the congestion on the roads both on the National Highways and in Jodhpur City and also reduce the pollution.

(d) The faster movement of export cargo containers will enable the exporters to

load their containers on the nominated/scheduled vessels and thus meeting their contractual commitments. The failure to meet the commitments not only entails loss to the exporters but earn a bad name for the country besides loss of foreign exchange.

(e) The movement of the containers by rail would reduce the congestion and the pollution.

(f) The commissioning of I.C.D. at Jodhpur will reduce the losses and save the reputation of the exporters of Guar Gum, which is one of the major item of export from Jodhpur. As the re-handling of the Guar Gum is responsible for deterioration of its quality and consequently India which was one of the major exporter of Guar Gum exporting upto 70% of the product has now been able to export only around 50% of the production.

(g) The handling of the export containers through I.C.D. and then further movement by rail reduces the risk of pilferage to the great extent unlike the road transportation where it is reported that sometimes the pilferage takes place during the transit of the export cargo during road movement.

(h) Due to repeated handling of Guar Gum and delay in shipments due to movement of the containers by road are responsible for rejection of the goods of exporters and consequently filing of the claims and the legal proceedings against the exporters with the result that not only the exporters suffer huge losses but also it brings a bad name to the industry and to the Country. The Country thus loses reputation and precious foreign exchange.

(i) The opening of the ICD at Bhagat Ki Kothi, Jodhpur will spur the competition and the same would be in the interest of industry/exporters and the country as a whole. Any delay in Commissioning of the ICD would perpetuate the vested interest as mentioned hereinabove."

(ii) The ICD at Bhagat Ki Kothi has been established to meet the demand of the people of Jodhpur, raised way back in the year 1991. The matter was examined by the various authorities at various levels. After thorough examination by the IMC, the sanction was granted in September, 1999. Before granting permission of ICD at Jodhpur, the viewpoints of all the persons concerned including the State Government, were considered. After grant of permission, the first respondent has spent about Rs. two crore in establishing the ICD at Bhagat Ki Kothi. It has already been commissioned. As far as the location at Bhagat Ki Kothi is concerned, it was selected after survey of origin/destination of export

cargo. The shifting of ICD from Bhagat Ki Kothi to Salawas, Hanwant or Luni would be uneconomical and unviable, as the cost would be prohibitive and the export of goods from Jodhpur area would be costly and not be competitive. This will be detrimental to the public interest.

(iii) The approach to the ICD will not be from the Rotary Circle side as stated by the applicant but from the opposite side i.e. from Basni Industrial Area, Commercial and Light Industrial Area, New Power House. The said approach is being presently used by the persons using the Railway Goods Shed, Military Siding and F.C.I. Godowns at Bhagat Ki Kothi. Thus, it is wrong to say that ICD at Bhagat Ki Kothi will pose a great threat of heavy traffic to the residents of various colonies near Bhagat Ki Kothi.

(iv) The weight of the truck on an average Per Twenty Foot Equivalent Unit (in short 'TEU') i.e. 20 ft. container would not be more than twelve tonnes. The capacity of per TEU including the weight of the truck is said to be 22 tonnes and on an average, the trucks will be carrying the weight of eight tonnes approximately. The traffic shall not be more than twenty trailers/trucks per day. Thus, it is wrong to say that the road cannot bear the weight or it will be a traffic hazard.

(v) There shall be a small patch, where the traffic regulations have been imposed by this Court. With respect to the allegation as to the violation of the order of this Court dated 21-11-2000 in Mahendra Lodha's case (2001 (1) Raj LW 463), the statement of the respondent in the rejoinder deserves to be noticed, which is extracted as follows :

The non-applicant No. 1 most respectfully submits that the applicant at some places himself admits that in view of the order dated 21-11-2000, trucks/trailers carrying containers cannot go beyond New Power House except between 10 p.m. to 7 a.m. (para 9 of the reply to the Preliminary Objections and para 6 rejoinder to the brief facts). It is respectfully submitted that the non-applicant No. 1 is not saying that the trucks can ply beyond New Power House Road 24 hours. It is respectfully submitted that the traffic bound for ICD has to follow the traffic regulations as imposed by this Hon'ble Court. At no point of time, it was the case of the non-applicant No. 1 that the traffic bound for the ICD can flout the traffic regulations. In fact the non-applicant No. 1 has 30 ICDs all over India and in some places, there are traffic restrictions during peak hours. For example in Delhi the movement of heavy trucks are restricted between 8 a.m. to 11 a.m. and 5 p.m. to 9-30 in the evening. The trucks coming to the ICD

Tughlakabad, Delhi, which is the biggest ICD in Asia, is handling about 20,000 TEUs per month abides by the traffic restrictions imposed by the traffic police at Delhi. Similarly, there are traffic restrictions at other places and at no place the traffic is being totally prohibited on account of traffic restrictions."

8. Now, it is well settled that judicial review is restricted to decision- making process and the decision is not amenable to judicial review. The Apex Court in *Centre for Public Interest Litigation v. Union of India, reported in* <sup>2</sup> held as under (p. 91 of AIR) :

"Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so, it would not be desirable either. Where the selection or rejection is arbitrary, certainly the Court would interfere. It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

9. In *Raunaq International Ltd. v. IVR Construction Ltd., reported in* <sup>3</sup> the Apex Court held that the stage for objecting the project is at the time when the same was under consideration and before a final decision is taken to undertake the project and not at the stage of commissioning of the project. The Court observed (at p. 398 of AIR) –

"Normally before such a project is undertaken, a detailed consideration of the need, viability, financing and the cost effectiveness of the proposed project and offers received takes place at various levels in the Government. If there is a good reason why the project should not be undertaken, then the time to object is at the time when the same is under consideration and before a final decision is taken to undertake the project. If breach of law in the execution of the project is apprehended, then it is at the stage when the viability of the project is being considered that the objection before the appropriate authorities including the Court must be raised. We would expect that if such objection or material is placed before the Government, the same would be considered before a final decision is taken. It is common experience that considerable time is spent by the

authorities concerned before a final decision is taken regarding the execution of a public project. This is the appropriate time when all aspects and all objections should be considered. It is only when valid objections are not taken into account or ignored that the Court may intervene. Even so, the Court should be moved at the earliest possible opportunity. Belated petitions should not be entertained."

The Apex Court reiterated the dicta in celebrated decision in the case of *Narmada Bachao Andolan v. Union of India*, reported in <sup>3</sup>

10. Thus, it is well settled that when a decision is taken by the Government after due consideration and full application of mind, the Court is not to sit in appeal over such decision. The High Court in exercise of powers under Article 226 of the Constitution will not transgress into the field of policy- decisions. Whether to have an infrastructure project or not, or what is the type of project to be undertaken or what should be its location and how it has to be executed, are part of policy-making process and the Courts are inequipped to adjudicate on policy-decisions so undertaken. Even in case of violation of fundamental rights, the challenge to such policy-decisions must be before execution of the project. With respect to the environmental problems, its impact should be seen in relation to the project as a whole.

11. It is evident that establishment of ICD at Jodhpur is undisputedly in the larger public interest. The location of ICD at Bhagat Ki Kothi has been selected after full survey and consideration of viewpoints of all concern. The project has not only crossed the stages of conception and decision to undertake the project, but also the stage of execution. A sum of Rs. two crore has already been spent and the ICD at Bhagat Ki Kothi shall come into operation on any day, as soon as the Customs Department issues relevant notification. The entire infrastructure is available at Bhagat Ki Kothi, as Railway Goods Shed and Military Siding and F.C.I. Godown are already in operation. The location is not likely to be traffic hazard, as the entry is from the side of Basni Industrial Area and not the City i.e. from Rotary Circle. The apprehension that approach roads will not be able to bear the load of trucks/trollers is unfounded. It goes without saying that first respondent shall be bound by the orders/directions given by this Court in the case of Mahendra Lodha, to the extent applicable to them.

12. Consequently, we find no merit in this writ petition and the same is hereby

dismissed. Cost easy.

Petition dismissed.

Cases Referred.

1. Writ Petition No. 6073/1993
2. (2000) 8 SCC 606
3. (1999) 1 SCC 492
4. (2000) 10 SCC 664