

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU



2024:JKLHC-JMU:441

Uploaded on: 12.03.2026

WP(C) No. 1243/2023

1. Surinder Singh, aged 44 years, S/o Sh. Trilok Singh, R/o Village Bashat, Tehsil Chenani, District Udhampur.
2. Som Raj, aged 49 years, S/o Prithvi Gir, R/o Katwait, Bachhal, Sudhmahadev, Udhampur.
3. Sharief Khan, aged 55 years, S/o Sh. Bashir Khan, R/o Bashat, District Udhampur.
4. Sudesh Chander, aged 43 years, S/o Sh. Romal Chand, R/o Sarar, Bap, Udhampur.

.....Petitioners

Through: Mr. Yasser Ejaz Tak, Advocate

Vs

1. Union of India,
Through Ministry for Service Transport and Highway Govt. of India, New Delhi.
2. National Highway and Infrastructure,
Development Corporation Ltd.
Through its CMD, 3rd Floor, PTI Building,
4- Parliament Street, New Delhi – 110001.
3. The Executive Director (P)
NHIDCL, H. No. 261, Sector-6,
Channi Himmat, Jammu.
4. General Manager (P),
PMU-Akhnoor,
NHIDCL, 333-F Shakti Nagar, Jammu – 180001.
5. Authority's Engineer
TPF-Getinsa Euro Studios S.L. in association with
Segmental Consulting and Infrastructure Advisory Limited.
Project Office: Friends Colony Lane, Opp. BSF old Bridge,
Paloura, Jammu (J&K) 180001.
6. ECI-SRM Projects,



....**Respondents**

Through: Mr. Sunny Mahajan, CGSC.
Mr. Rahul Pant, Sr. Advocate with
Mr. Anirudh Sharma, Advocate.
Mr. Basit Manzoor Keng, Advocate.

Coram : HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

JUDGMENT
(12.03.2026)

01. This is a writ petition filed by four petitioners, all claiming to be residents of different villages of district Udhampur.

02. Before this Court comes to purported cause of action leading the writ petitioners to join together and come up with writ petition thereby seeking this Court to interject with respect to an ongoing construction of a stretch of road falling on Chenani – Sudhmahadev Section of NH-244 on the plea that construction of High Gallas/Open Box Cut at three/four locations of said stretch is against the proposal/recommendations of the respondent No. 4 – General Manager (P), PMU-Akhnoor and the respondent No. 5 – Authority Engineer, TPF, warranting alternate alignments to be resorted to, this Court needs first to refer to the Project before coming to the stretches/sections with respect to which originally approved and allotted course of construction is alleged to be objectionable and vulnerable.

03. Chenani – Sudhmahadev is linked by NH-244 with respect to the widening and upgradation of which a proposal for 2-Lane with paved shoulder configuration and geometric improvement from **Km 0.000 to Km 16.990** on Chenani –



Sudhmahadev Section of NH-244 in the then State of Jammu & Kashmir was envisaged to be undertaken by the Ministry of Road, Transport & Highways through the respondent No.2-National Highways and Infrastructure Development Corporation Limited (in short "**NHIDCL**").

04. The respondent No. 2-NHIDCL came to allot said project work's contract to the respondent No. 6 – **M/s ECI-SRM Projects** on **27.03.2018**. The allotment of the project was governed by the following schedule:-

Name of the Contractor	M/s ECI-SRM Project
Letter of Award	27.03.2018
Contract Agreement	20.04.2018
Supplementary Agreement	22.11.2018
Contract Price	155.04 Cr
Length of the Project	16.990 Km
Revised date of Completion	31.03.2022

05. At the time of institution of present writ petition, major road construction work is said to have been carried out and completed except at four sections where road construction work came to suffer road block. Said four sections are :-

Km 6 + 480 to Km 6 + 76

Km 11+300 to Km 11+580

Km 11+660 to KM 11+920

Km 13+200 to Km 13+460

06. At the aforesaid four sections, the nature of road construction is meant to be that of a steep box cut road which is form of a road construction technique used in hilly or mountainous terrain where a deep, narrow, rectangular shaped or U-shaped trench (the box) is excavated through a



slope to create a road way. This type of road construction method is employed often to create a direct, stable route while minimizing the foot prints on the hilly side.

07. It would be serving the context to state here that there are some design constraints relatable to such type of road construction on account of the fact that because of cutting of soil, through which road is to pass, the excavation of the surface, the strengthening of the side slopes etc become a matter of challenge and that requires measures to prevent failures on steep, excavated slopes

08. During course of execution of the project work at aforementioned locations of said road, issues of slope stability factor relatable to the nature of the soil cropped up. The reason for halting of the road construction at the aforesaid three sections is said to be soil stability factor because of deep excavation with prospect of perennial sliding tendency of stop box cut construction at the aforesaid three sections..

09. For dealing with the work stopping issues at said sections, the Managing Director of the respondent No.2-NHIDCL carried out a review meeting on **18.12.2019** which was followed by involvement of all the concerned stakeholders. In this meeting, it is said to have been decided to get the strata geologically examined as per the site conditions and a feasible slope stabilization proposal.

10. There is said to have taken place follow up inspection by the officials of the respondents No. 2, 3 & 4 joined by the respondent No. 5 – the Consultant of the respondent No. 2, the respondent No. 6 and its representatives and its deputed Geologist and Design Director on **16.06.2020**.



11. The purported inspection is said to have resulted in the respondent No. 6 – M/s ECI-SRM Project's engaged and deputed Geologist-Mr. K. S. Jamwal (ex-Deputy Director General, Geological Survey of India) coming up with a purported report and putting up the following conclusions:-

“Conclusion

- *After taking into considerations of all the prevailing geological conditions and ground realities. It is recommended that alignment of the proposed road may be detoured for this section to avoid possibility of threat to the road users and local populace. It would be better if we opt for a tunnel in this section.*
- *The proposal of tunnel should not be viewed from prism of financial implications only, because it will provide long term stability and safety. However, the provision of detouring of this section, may also be worked out for economical and reliable aspects. Moreover, such a huge cutting of overburden to form box-cut is not advisable because it will remain constantly under safety threat. Even cut & cover section does not seem favourable for this length because for that also, we have to excavate first up to a depth of 43 m which may cause serious hazards and unfortunate human suffering before we fill it with cover.*
- *Proposal for 120 m long tunnel, between CH 13+300 and CH 13+420 seems feasible and permanent remedial measures for anticipated serious hazards of landslides within this most critical section where cutting of 43 m overburden is involved. Moreover, excavation of proposed tunnel will have similar favourable geological conditions*



like the CHENANI-NASHRI TUNNEL. In this case, the intersection of the tunnel axis with geometry of rocks is more favourable than that of CHENANI-NASHRI TUNNEL.

- *If such changes are feasible and possible at this stage, then a balanced view of both situations may be worked out from point of view of Techno-economic feasibility to arrive at final decision. But undersigned is of the opinion that option of the detouring seems appropriate and technoeconomical than all other options.*

Final Conclusion:

1. *Box Cut @ Ch 6+470 to 6+700: Detouring of this site be tried through available natural gap near by the present site. Else 100 M cut and cover method can also be adopted to avoid the risk of slope failure.*
2. *Box Cut @ Ch 11+340 to 11+540: Detouring of this site be tried through available natural gap near by the present site. Else 100 M Tunnel can also be adopted, to avoid the risk of slope failure.*
3. *Box Cut @ Ch 11+700 to 11+960: Detouring of this site be tried through available natural gap near by the present site. Else 120 M Tunnel can also be adopted, to avoid the risk of slope failure.*
4. *Box Cut @ Ch 13+220 to 13+460: Detouring of this site be tried through available natural gap near by the present site. Else 120 M Tunnel can also be adopted, to avoid the risk of slope failure.”*

12. The purported report of Mr. K. S. Jamwal (ex-Deputy Director General, Geological Survey of India) annexed with the



writ petition bears the signature of said Mr. K. S. Jamwal as well as of Design Director, co-author to the said report while bearing date **15.09.2020**.

13. As against the aforesaid said report dated **15.09.2020** generated from the end of the respondent NO.6, the respondent No. 5, in its communication **No. S-NHIDCL-SQS-885** dated **03.10.2020** (Annexure-III, Page 56 to the writ petition) addressed its own take to the respondent No. 4 – General Manager (P), PMU-Akhnoor. In this communication of the respondent No. 5, reference is being made to two communications dated **10.07.2020** & **16.09.2020** from the end of the respondent No. 6 - M/s ECI-SRM Projects.

14. In its above said communication dated **03.10.2020**, the respondent No. 5 refers to the discussion with the respondent No. 6 and the Geologist. In this regard, the proposal submitted by the respondent No. 6 came to be cited which proposal is as under:-

S. No.	Description of Option	Chainage	Length (in Mtr)
1	Realignment/ Detouring	Ch. 6+480 to 6+760	280 M
		Ch. 11+300 to 11+540	240 M
		Ch. 11+660 to 11+920	260 M
		Ch. 13+200 to 13+460	260 M
		Total	1040 M
2	Tunnel Sections	Ch. 6+540 to 6+660	120 M
		Ch. 11+380 to 11+480	100 M
		Ch. 11+760 to 11+880	120 M
		Ch. 13+300 to 13+420	120 M
		Total	460 M
3	Cut & Cover	Not Feasible as per	-



	Sections	contractor's Proposal	
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15. It came to be conveyed by the respondent No. 5, in its very said communication dated 03.10.2020, that upon examination by the respondent No.5's Highway Design Expert, the proposal of tunnels is not feasible in the given geological conditions due to inadequate ground mass. Insofar as proposal for realignment/detouring is concerned, the same is said to be having the concurrence of the respondent No. 5 with the following ramifications:

“The proposal involves an approximately 520 M increase in length of the project highway in the affected sections as per the details given below:-

S. No.	Box Cut Chainage	Original Length (m)	Maximum Height (in m)	Realignment / Detouring Chainage	Revised Length in Detouring (m)	Variation in Length (m)
1	6+480 to 6+760	280	30.68	6+480 to 6+990	430	150
2	11+300 to 11+540	240	34.48	11+280 to 11+560	320	80
3	11+660 to 11+920	260	37	11+760 to 11+880	410	150
4	13+200 to 13+460	260	43	13+280 to 13+540	400	140
		1040		Total	1560	520

Increase in length due to detouring was proposed to be not involving any increase in total project cost as the same could be adjusted out of saving in length of project highway due to restricting scope of the package upto 15+600 instead of 16+990 as per original scope of contract.”



16. The respondent No. 2 was, thus, urged to take a suitable decision regarding disposal of ROW approximately 2.50 hectare already acquired at said box cut sections which would be rendered surplus.

17. Thus, the respondent No. 5 extended its in-principle approval for realignment/detouring of the subject highway in the box cut sections as per the details set out hereinabove.

18. On **26th & 27th of September, 2020**, there is said to have taken place Special Project Monitor's (SPM) visit to the site to come up with an opinion that option of realignment/detouring is feasible and economical. Mention of this fact is found made in communication **No. NHIDCL/PMU-AKH/AE/C-S/2020-21/802** dated **20.10.2020** (annexure-IV, page 59 to the writ petition) of the respondent No. 4 – General Manager (P), NHIDCL, PMU-Akhnoor addressed to the respondent No. 3 – Executive Director (P), NHIDCL, RO-Jammu.

19. The respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor** from his end through aforesaid communication dated **20.10.2020** came up with his take and opinion that option for realignment is not a sensible provision and that construction of box cut after securing the slopes is feasible and viable so as to continue with construction of open box cut as planned. This opinion of the respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor** was however relatable to section **6+480 to 6+760** whereas with respect to other three sections, the respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor** endorsed the proposal for



realignment/ detouring as proposed and submitted by the respondent No. 5 in his communication dated **03.10.2020**.

20. From the aforesaid communication dated **20.10.2020** of the respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor**, an inference is dishd out as if the concern of the petitioners with respect to the original plan of construction of the national highway at the three sections/stretches is well meaning and well placed.

21. There is said to have taken place a site visit of the Managing Director of the respondent No. 2 – **NHIDCL** on **28.07.2021** as is finding mention in communication **No. NHIDCL/RO(Jammu)/JMU/C-S/2021-22/631** dated **03.08.2021**(Annexure –X, Page 61 with the writ petition) from end of the **Deputy General Manager (P), NHIDCL, RO-Jammu** to the respondent No. 4 – **General Manager (P), NHIDCL, PMU-Akhnoor**. In terms of said visit of the Managing Director of the respondent No. 2 – NHIDCL on **28.07.2021**, the realignment was contemplated to be necessary in order to bypass proposed box cuts at three locations while simultaneously referring to carrying out of the work as per approved scope at the location of the proposed box cuts. In this regard, para 6 of this communication is worth reproducing

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“6. As discussed during the site visit of MD NHIDCL on 28.07.2021, re-alignment necessary in order to bypass proposed box cuts at 03 locations and construction of Major Bridge No. 4 not to be included in the Change of Scope proposal. Work is to be carried out as per approved scope at the location of the proposed



box cuts and the location of the Major Bridge No. 4. Authority Engineer in consultation with the contractor is required to work out the revised cost of the work considering only the Change of Scope whose in principle approval was obtained from NHIDCL HQ (namely re-alignment of Major Bridge No. 2 and RRM Drain and Maintenance work for 4.200 Kms) and the same may be submitted to the Authority at the earliest.”

22. On the part of the respondent No. 4 – **General Manger (P), NHIDCL, PMU-Akhnoor**, a communication **No. NHIDCL/PMU-AKH/AE/NH-244/CS/2021-22/591** dated **03.09.2021** came to be addressed to the respondent No. 5. In this communication, the respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor** is found to be referring to letter **No. ECI-SRM/J&K/CSD/2021-22/401-402** dated **24.08.2021** of the respondent No. 6 on the issue of requirement related to additional ROW for construction of a box cut from Ch. 13+180 to 13+490 vis-à-vis Detour.

23. The said proposal of the respondent No. 6 is said to have been diligently discussed to announce that the decision was to go ahead with the present box cuts meaning thereby originally conceived and planned road way construction is to be carried out.

24. The respondent No. 4- **General Manager (P), NHIDCL, PMU-Akhnoor** in his said communication dated **03.09.2021** proposed review of the case in the light of the points which are set out herein below:-

- a. There will be a need for a proper slope/angle of repose which will have to be provided to cut faces



of the box cuts for stability. To provide slope at even minimum 60°, an additional 30 meter wide extra land along the box cut will be required to be acquired as only total 24 meter wide land has only been acquired as on today. This additional land will be more or almost same if the box cut with 42 meter height is avoided by taking a detour. Moreover 42 meter high slope will never be stable and safe. It will kept bleeding and causing accidents.

- b. The soil required to be dug for these three box culverts with 43 meter height will cumulate to almost 6 to 7 lakhs cubic meters which will require a very huge area to stack the muck. The land fill area is not available.

25. In his above said communication dated **03.09.2021**, the respondent No. 4 – **General Manager (P), PMU-Akhnoor** is referring to a discussion during SPM’s visit and also during the visit of MD of the respondent No. 2-NHIDCL by reference to which it was decided to go ahead with present box cuts and, accordingly, the respondent No. 6 was directed to proceed but then the respondent No. 4 – **General Manager (P), PMU-Akhnoor** brings in reference of severe rains bringing technical problems for which review on the above mentioned points was proposed.

26. On the part of the Deputy General Manager (P), NHIDCL, RO-Jammu communication **No. NHIDCL/RO(Jammu)/JMU/C-S/2021-22/964** dated **20.09.2021** came to be addressed to the respondent No. 4 – **General Manager (P), PMU-Akhnoor** by reference to review conducted by the MD of the respondent No. 2 on **20.09.2021**. In para 7



of this communication, it came to be observed and recited that during the site visit of MD of the respondent No. 2-NHIDCL on **28.07.2021** re-alignment being necessary in order to bypass proposed box cuts at three locations and construction of major bridge No. 4 not to be included in the change of scope proposal as the work is to be carried out as per the approved scope at the location of the proposed box cuts and the location of major bridge No. 4.

27. The respondent No. 4 – **General Manager (P), PMU-Akhnoor** came to address a communication **No. NHIDCL/PMU-AKH/AE/NH-244/C-S/2021-22/1077** dated **03.01.2022** to the respondent No. 3. In this communication, the respondent No. 4 – General Manager (P), PMU-Akhnoor in para 5 came up with the following take:-

5.	<p>Slope protection works for Box cut locations:- Since the present acquired ROW was 24M</p> <p>_____.</p>	<p>As per MOM dated: 03.08.2021 of the review meeting conducted at Jammu under the Chairmanship of Managing Director, NHIDCL on 30.07.2021 after the site visit on 28.07.2021 and issued necessary directions as listed below:-</p> <p>Para 6 of MOM issued states that “As discussed during the site visit of MD NHIDCL on 28.07.2021, re-alignment is necessary in order to bypass proposed box cuts at 03 locations and construction of Major Bridge No. 4 not to be included in the Change of Scope proposal. Work is to be carried out as per approved scope at the location of the proposed box cuts and the location of the Major Bridge No. 4. Authority Engineer in consultation with the Contractor is required to work</p>
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		<p>out the revised cost of the work considering only the Change of Scope whose in principle approval was obtained from NHIDCL HQ (namely realignment of Major Bridge No. 2 and RRM Drain and Maintenance work for 4.200 Kms) and the same may be submitted to the Authority at the earliest.”</p> <p>The SPM (Mr. S. K. Doon) during site visit on 28.08.2021 while discussing the case of Box cut Sections has suggested that the area of formation consists of soil mixed with boulders and the angle of repose is likely to be approximately 60 degrees. As per SPM remarks:-</p> <ol style="list-style-type: none">a. Minimum required width for box cut section from Ch. 11+280 to Ch. 11+960 considering a slope of 1H:2V shall be (12 m + 37 m) 49 m at the top. Approximate quantity of excavation for 680 m long section is likely to be more than 7 lac cum.b. Minimum required width for Box cut section from Ch. 13+200 to Ch. 13+460 considering a slope of 1H:2V shall be (12 m + 43 m) 55 m at the top. Approx quantity of excavation for 260 m long section is likely to be more than 3 Lac cum. <p>The SPM in his inspection Report dated 03.09.2021 has suggested that either additional land should be acquired so that proper side slopes are maintained to avoid any landslides/accidents or these sections should be</p>
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		<p>developed on existing alignment. SPM has also suggested that same following two options for consideration of the Authority which were reviewed by AE as per details given below:-</p> <p>a. OPTION-I:- Acquiring additional land so that proper side slopes are maintained in deep box cut sections to avoid any landslides/accidents.</p> <p>b. OPTION-II:- Developing these sections on existing alignment.</p> <p>The above mentioned Options (i.e. Option I & II) were discussed during several review meetings and as per the directions of RO Jammu vide letter No. NHIDCL/RO(Jammu)/JMU/C-S/2021-22/964 dated 20.09.2021. Option-I (i.e. acquiring additional land so that proper side slopes are maintained in deep box cut sections) has been considered and included in the Consolidated Change of Scope proposal accordingly.</p> <p>It is to be mentioned here that the ROW width acquired at these locations is only 24 M but the average height of hill cutting at these locations requires additional width of ROW to be acquired for proper slope protections measures to ensure the safety of road users and any future landslides obstructing the Project highway.</p> <p>Earthwork/formation cutting for 24 m ROW has been carried out by the contractor (photographs enclosed) and in-principle approval for slope stability measures are</p>
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	required to proceed further.
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28. Aforesaid communication came to be followed by another communication **No.NHIDCL/RO(Jammu)/AKH/ NH-244/C-S/18(8)/2021-22/1830** dated **11.01.2022** from the end of the respondent No. 3 to the General Manager (T), NHIDCL HQ, New Delhi wherein in para 5(e) the following situation came to be put up:-

5(e) Slope protection works for Box cut locations:- Since the present acquired ROW was 24M

PMU-Akhnoor & AE's Comments	Comments/Recommendation of RO-Jammu
<p>As per MOM dated: - 03.08.2021 of the review meeting conducted at Jammu under the Chairmanship of Managing Director, NHIDCL on 30.07 2021 after the site visit on 28.07.2021 and issued necessary directions as listed below:-</p> <p>Para 6 of MOM issued states that "As discussed during the site visit of MD NHIDCL on 28.07 2021, re-alignment is necessary in order to bypass proposed box cuts at 03 locations and construction of Major Bridge No.4</p>	<p>The proposal for detouring at 04 Nos of Box Cut locations was initially submitted by the Contractor as the height of box cuts at this location was found to be very high between 28-45 m. However, at Km 6+480 to Km 6+760, the said proposal was not allowed as the work at this location was already initiated and the forest trees were also cut. However, the detouring at 03 Nos of location was also discussed during the visit of MD NHIDCL on 28.07 .2021 and owing to the fact that, the detouring would require additional land acquisition which would lead to the further delay in the completion of the project under PMDP-2015, which is already lagging behind the scheduled date of completion, instruction was issued by MD NHIDCL to drop the proposal for detouring</p>



not to be included in the Change of Scope proposal. Work is to be carried out as per approved scope at the location of the proposed box cuts and the location of the Major Bridge No. 4. Authority Engineer in consultation with the Contactor is required to work out the revised cost of the work considering only the Change of Scope whose in principle approval was obtained from NHIDCL HQ (namely realignment of Major Bridge No. 2 and RRM Drain and Maintenance work for 4.200 Kms) and the same may be submitted to the Authority at the earliest."

The SPM (Mr. S. K. Doon) during site visit on 28.08.2021 while discussing the case of Box cut Sections has suggested that the area of formation consists of soil mixed with boulders and the angle of repose is likely to be approximately 60 degrees. As per SPM

at these locations and carry out the work as per the Schedule-B of Contract Agreement with requisite slope protection works.

Accordingly, this office has directed the Contractor to carry out the work at these locations as per Schedule-B, however, it may also be noted that the ROW acquired at these locations is only 24 m and since the overburden at these locations were in the range of 28-45 m, hence, as highlighted by SPM, Shri SK Doon in his inspection report that considering a slope of 1H:2V, the minimum width required for box cut sections at Ch 11+280 to Km 11+960 is 49 m at the top and requires additional land and accordingly at Ch.13+200 to 13+460, the minimum width required at the top for BOX Cut was determined as 55 m, with a requirement of additional land. The SPM suggested two options as indicated by PMU-Akhnoor viz. (i) Acquiring additional land so that proper side slopes are maintained in deep box cut sections & (ii) developing these sections in existing road. The same has been discussed several times at this office and as per the directions issued by this office vide letter dated 20 09 2021, the option-1 has been considered by AE & GM(P), PMu-Akhnoor for consideration considered



remarks: Minimum required width for box cut section from Ch. 11 +280 to Ch. 11+960 considering a slope of 1H:2V shall be (12 m + 37 m) 49 m at the top.

Approximate quantity of excavation for 680 m long section is likely to be more than 7 lac cum.

- a. Minimum required width for Box cut section from Ch.13+200 to Ch. 13+460 considering a slope of 1H:2V shall be (12 m +43 m) 55m at the top. Approx quantity of excavation for 260 m long section is likely to be more than 3 Lac cum.

The SPM in his inspection Report dated 03.09.2021 has suggested that either additional land should be acquired so that proper side slopes are maintained to avoid any landslides/accidents or these sections should be developed

under clause 13 1.3 (iii).

In this context, the COS proposal has been examined in this office and it has been observed that instead of 04 locations, the contractor has submitted the proposal for 06 locations and the additional 02 box-cut locations involves acquisition of Forest land. The box cut proposed at Ch 6+020 to Ch.6+250, involves Private land on LHS and Forest land on RHS, Further, the box cut at Ch. 6+500 to Ch.6+700 involves Forest land at both LHS and RHS. The EPC Contractor and AE has previously been directed by this office, that COS regarding slope protection requiring additional acquisition of Forest land shall not be considered since the whole process is time taking and shall delay the completion of the project. Therefore, this office is of opinion that the proposal for COS for slope protection works viz. catchment drain, chute drain, matting and hydro seeding as well as additional excavation work at these locations for maintaining the requisite slope is recommended for 04 locations only as per Annexure-G for according in-principle approval and issuing of Change of Scope order as per clause 13.2.4 of Contract Agreement.



on existing alignment. SPM has also suggested the same following two options for consideration of the Authority which were reviewed by AE as per details given below:

- a. **OPTION-I:-**
Acquiring additional land so that proper side slopes are maintained in deep box cut sections to avoid any landslides/ accidents.
- b. **OPTION-II: -**
Developing these sections on existing alignment.

The above mentioned Options (i.e. Option I & II) were discussed during several review meetings and as per the directions of RO Jammu vide letter No. NHIDCL/RO (Jammu)/JMU/C-S/2021-22/964 dated:- 20.09.2021, Option-1 (i.e. acquiring additional land so that proper side slopes are maintained in deep box cut sections) has been considered



<p>and included in the Consolidated Change of Scope proposal accordingly.</p> <p>It is to be mentioned here that the ROW width acquired at these locations is only 24 M but the average height of hill cutting at these locations requires additional width of ROW to be acquired for proper slope protections measures to ensure the safety of road users and any future landslides obstructing the Project highway. Earthwork/ formation cutting for 24 m ROW has been carried out by the contractor (photographs enclosed) and in-principle approval for slope stability measures are required to proceed further.</p>	
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29. On the other hand, the Sub-Divisional Magistrate, Chenani by virtue of his communication **No. SDM/C/2021-22/1629-35** dated **04.02.2022** addressed to the Deputy Commissioner, Udhampur came to advert to the issue of road blockade at the aforesaid stretches stating therein that the box cutting at eight locations have been done in an unplanned way



as the land cuts are vertical despite the soil being very loose extremely prone to slides and threat to public life and property for which NHIDCL needs to take immediate preventive and corrective measures. So much so, the box cuts falling in the section in Village Chullyar are said to have caused huge losses to public/private land and other properties.

30. The respondent No. 5 was required to consult the respondent No. 6 to work out the revised cost of the work considering the change of scope which might become necessary for slope construction work at the location of the box culverts as per requirement at the site.

31. It seems that it is at this stage of the situation that the intervention from the end of the petitioner No. 4 – Sudesh Chander came up with a representation addressed to the Deputy Commissioner, Land Acquisition Udhampur and the respondents No. 3 to 6 wherein the **respondent No. 4** by reference to letter dated 20.10.2020 of the respondent No. 4 – General Manager (P), PMU-Akhnoor came to exploit the recommendation that detouring/realignment needs to be done because of slope stabilization issues which would always be prone to risk rendering maintenance of national highway on the locations very expensive. The petitioner No. 4 – Sudesh Chander in his representation objected that the course of action on the part of the respondent No. 3 on his own to acquire more land for increasing the road width at the aforesaid locations was in disregard to the recommendations on the issue.

32. The respondent No. 4 – General Manager (P), PMU-Akhnoor from his end came to address communication **No.**



NHIDCL/PMU-AKH/C-S/R&P.G/2022-23/738 dated **09.11.2022** in response to the petitioner No. 4's e-mail dated 03.11.2022. The respondent No. 4 – General Manager (P), PMU-Akhnoor in his said communication dated 09.11.2022 meant to object to the petitioner No. 4 as to how he came to acquire the official correspondence related to NHIDCL and its officials.

33. The petitioner No. 4 from his end by virtue of his letter dated **15.11.2022** addressed to the respondent No. 4 – General Manager (P), PMU-Akhnoor came to refer that the communications related to the subject are there in the public domain through the reference of the respondent No. 5 as well as the respondent No. 6. The petitioner No. 4 came to impress upon the respondent No. 4 – General Manager (P), PMU-Akhnoor to come to allege that the respondent No. 4 – General Manager (P), PMU-Akhnoor was in hand in globe with the respondent No. 6.

34. As per the petitioners, their concern was brought to the notice of Member Parliament - Shri Jugal Kishore Sharma and other concerned public authorities for revisiting the original plan of construction of the road at the aforesaid three locations/sections.

35. The petitioners at this stage had come forward with the institution of the present writ petition on **15.05.2023** along with the photographs of the site in reference attached for the five sections showing box cut No. 1.

36. In their writ petition, the petitioners in para 22 came forward with the grounds of challenge addressed against the casual approach of the respondents with respect to



construction of the road in the form of High Gallas/Open Box Cut at three locations i.e., Ch. 11+300 to 11+540, 11+660 to 11+920 & 13+200 to 13+460 stating the same to be against the proposal and recommendations of the respondent No. 4 – General Manager (P), PMU-Akhnoor and the respondent No. 5.

37. The petitioners in the grounds of challenge pleaded that proposed alignment of road with Deep Gallas/ Box Cut is not viable in the area as per the expert Geologist and despite his report and recommendations endorsed by the officials of NHIDCL, the respondent No. 2 is not accepting the same which action of the respondent No. 2 is, thus, said to be arbitrary and unfair lacking *bona fide*. Thus, much emphasis has been placed upon so-called expert report of Geologist-Mr. S. K. Jamwal nominated by none else than the contractor-respondent No. 6 whose report then came to be endorsed and recommended by the respondent No. 4 – General Manager (P), PMU-Akhnoor joined by the respondent No. 5. The petitioners, thus, asked for the following prayers:-

“Writ petition under Article 226 of the Constitution of India for the issuance of an appropriate writ, direction or orders commanding the respondent No.2 to 4 to execute the work of widening and upgradation on Chenani- Sudhmahadev Section of NH-244 by accepting the proposal/ recommendation of the Authority's Engineer (Respondent No. 5) dated 03.10.2020 forwarded to respondent No. 4 for realignment/ detouring option at 03 Locations i.e. Ch.11+300 to 11+540, 11+660 to 17+920 and 13+200 to 13+460 which is based upon the report of Geological Expert Sh. K.S. Jamwal (Retd. Deputy Director, Geological Survey of India) instead of the construction



of High Gallas/ Box Cut which being unstable shall be prone to landslides and shooting stones leading to risk of loss of lives not only of the residents of the area but also the commuters plying through the said sections of the NH-244;

With further writ direction or order commanding the respondent No. 2 and 3 to accept the proposal/ recommendations dated 20.10.2020 of the respondent No. 4 for realignment/ detouring option at 03 Locations i.e., Ch.11+300 to 11+540, 11+660 to 11+920 and 13+200 to 13+460 having being recommended for in principal approval, which is not only based upon the Expert opinion of the Authority's Engineer but also the Special Project Monitor;

With further issuance of appropriate writ direction or order restraining the respondent No.2 to 6 to execute the work at 03 Locations i.e., Ch.11+300 to 11+540, 11+660 to 17+920 and 13+200 to 13+460 by construction of High Gallas/ Open Box Cut being not only against the expert recommendations but being prone to collapse of side slopes which could lead to man-made disaster in the area of the petitioners.

With further issuance of appropriate writ direction or order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the writ petition.”

38. In response to the writ petition, this Court, by virtue of an order dated **19.05.2023**, came to place *status-quo* direction as a result whereof situation came to be held up.

39. From the end of the respondents No. 1 to 4, reply cum objections to the writ petition came to be submitted on



02.08.2023 accompanied with an application for vacation of *status-quo* direction as set out in the order dated **19.05.2023** by this Court.

40. The reply/objections on behalf of the respondents No. 1 to 4 was signed by the respondent No. 4 – General Manager (P), PMU-Akhnoor supported by an affidavit of incumbent Shri. S. P. Singh Sangwan.

41. Along with their reply/objections, the answering respondents No. 1 to 4 came up with set of supporting communications as annexures to assert that the writ petition is based not on true facts and without any *locus-standi* on the part of the petitioners.

42. In their reply/objections, the answering respondents No. 1 to 4 came to submit that the MD of the respondent No. 2 on the basis of his visit on **28.07.2021** had directed that the upgradation of the road shall be carried out as per the original alignment including the Deep Box Cuts for which purpose the SPM in his report dated **03.09.2021** suggested additional land to be acquired for proper site slopes maintenance to avoid any landslide/accidents.

43. In the reply/objections, the respondent No. 4 – General Manager (P), PMU-Akhnoor came to submit that the respondent No. 6 was directed to go ahead with the construction of box culverts and the respondent No. 5 was directed to propose slope protection measures which are necessary as per the site conditions along with protection to work out the additional land acquired as per site conditions so as to maintain stable slope after proposing slope protection measures.



44. By reference to a communication dated **20.09.2021**, a direction for carrying out the work as per the original alignment was emphasized.

45. By reference to deliberations of a meeting held on **04.10.2022** under the Chairmanship of MD of the respondent No. 2, the directions issued to the respondent No. 6 to execute the work as per the provisions of the contract without any additional financial implications due to required slope protection has been reiterated with an observation that additional land at the box cut locations to be provided by the respondent No. 5 to the respondent No. 6 for which additional required land is said to have been acquired to the extent of 1.86 Hectares.

46. From the end of the petitioner No. 1 – Surinder Singh, a Supplementary Affidavit dated **01.04.2024** came to be submitted in order to counter the factual assertions made in their reply/objections on behalf of the respondents No. 1 to 4.

47. In his Supplementary Affidavit, the petitioner No. 1 – Surinder Singh came up with emphasis that the respondents No. 1 to 4 have neglected the report of the Geologist appointed by the respondent No. 6 in which it is clearly mentioned that detouring of the road in issue should be tried/attempted to avoid the risk of slope failure and in the alternative, the recommendation for 100 M cut and cover method instead of box cuts. The Geologist's report is said to have received no consideration at all. In the supplementary affidavit, the petitioner No. 1 came to reiterate that Special Project Monitor's (SPM) report dated **01.10.2020** being contrary to its second report dated **03.09.2021** in the context of which realignment



option is the better option reiterated by the respondent No. 5 as well.

48. On behalf of the respondent No. 5, reply to the writ petition came to be filed on **14.03.2024**. In his objections, the respondent No. 5 came forward with a statement that on the basis of visit of MD of the respondent No. 2 – NHIDCL on 28.07.2021, the direction was to carry out the upgradation of the road as per the original alignment including the deep box cut. In his reply, the respondent No. 5 comes to state that while discussing the case of box cut sections, the Special Project Monitor (SDM) in his report dated 03.09.2021 has come to suggest that additional land should be required for proper side slopes to be maintained to avoid any landslide/accidents, on the basis whereof the respondent No. 6 came to be directed to go ahead with the construction of box culverts and the respondent No. 5 was directed to propose slope protection measures necessary as per the site conditions besides direction for working out additional land acquired as per site conditions so as to maintain stable slopes after proposing slope protection measures.

49. On behalf of the respondent No. 6, reply/objections to the writ petition came to be filed on **22.04.2024**. In its reply, the respondent No. 6 has come to place reliance upon Geologist – Shri K. S. Jamwal's report to say that if road construction is to be carried out as per the original layout then it may lead to geological disturbances in the soil/rock mass in the affected sections besides an environmental damage which shall adversely affect safety of the local public and the road users travelling on these highway sections.



50. The respondent No. 6, in its reply has emphasized that the geological study report along with its various technical proposals submitted by the Geological Expert – Shri S. K. Jamwal should be considered in the large interest of stability of the highway project and for the sake of public safety. The respondent No. 6 along with its reply has annexed a technical report from the end of the Design Director of the respondent No. 6. In this technical report, emphasis has been again referred to that of Geologist-Shri K. S. Jamwal’s report and recommendations and the consideration received from the end of the respondents No. 4 & 5.

51. The direction of MD of the respondent No. 2 – NHIDCL on 28.07.2021’s visit to go ahead with the original plan of construction for open box cut sections with suitable slope protection/stabilization measures was referred to be technically neither in line with the measures recommended by the Geology domain expert nor in line with the respondent No. 5’s recommendation in the matter. In this regard reference has been made to the provisions of clause 7.9.3 of IRC:SP;48-1998 with respect to deep box cuts which is reproduced herein under:-

*“**Box cut:** At steep and narrow spurs, box cut or through cuts may be provided. These reduce the length of the road and also improve the radius of curves. Such cuts, however, have their own problems. During excavation, the cutting and disposal of spoils take more time and efforts as compared to hill side cut. Drainage of road surface and surrounding areas is difficult. Sub-surface springs get activated on the formation during wet weather. If the soil is unstable box cuts become trouble spots due to frequent slides and blockage of road requiring expensive protective works like breast walls, sub-soil drains, catch water drains etc. A careful study and comparative cost analysis of reduction in*



length vis-a-vis provision of additional protective works should be made before taking a decision on providing box cuts. A typical cross section of box cut is shown in Fig. 7.12.”

52. It is in aforesaid backdrop of chronology of facts and circumstances that the petitioners are seeking issuance of an appropriate writ, direction or order thereby commanding the respondents No. 2 to 4 to execute the work of widening and upgradation of Chenani-Sudhmahadev Road Section of NH-244 by accepting the proposal/ recommendation of the respondent No. 5 in terms of communication dated **03.10.2020** forwarded to the respondent No. 4 – General Manager (P), PMU- Akhnoor, NHIDCL for realignment/detouring option at three locations based upon report of Geological Expert – K. S. Jamwal instead of going ahead with the construction of High Gallas/ Box Cut which is claimed to be unstable and prone to landslides and shooting stones leading to the risk of loss of lives of the residents of the area but also the users of Chenani-Sudhmahadev NH-244 at aforesaid sections.

53. The petitioners also seek an appropriate writ direction or order commanding the respondent No. 2 – NHIDCL and the respondent No. 3 – Executive Engineer (P), NHIDCL for accepting proposal/recommendations of the respondent No. 4 – General Manager (P), PMU-Akhnoor for realignment/detouring option at three given locations having been recommended and accepted in principle based not only upon expert opinion of the respondent No. 5 but also of the Special Project Manager (SPM).

54. Thus, in a way, this Court is being called upon by the petitioners to prohibit the respondents from going ahead with



the original plan of construction of the Chenani-Sudhmahadev NH-244 by reference to the three/four locations in reference said to be problematic in terms of construction of the road to pass through said three/four locations.

55. Before this Court examines its competence to issue so called expert like direction/order unto the respondent No. 2 in particular i.e., NHIDCL to abandon the original scheme of things in the construction of NH-244 at aforesaid three locations, this Court needs to bear in mind the mandate of the Hon'ble Supreme Court of India providing scope for indulgence in such like situations/cases, which is set out in the judgments in the following cases:-

- 1) **1991 (2) SCC 539: Dahanu Taluka Environment Protection Group and another Vs. Bombay Suburban Electricity Supply Company Limited and others.**
- 2) **1999 (1) SCC 492: Raunaq International Ltd. v. I.V.R. Construction Ltd. & Ors.**
- 3) **2000 (10) SCC 664: Narmada Bachao Andolan vs Union of India And Others**
- 4) **2016 (6) SCC 408: Centre For Public Interest Litigation vs U.O.I.& Ors.**
- 5) **2001 (3) SCC 572: The Project Director, Project Implementation Unit Vs P. V. Krishnamoorthy & others.**
- 6) **2022 (11) SCC 1: Rajiv Suri Vs Delhi Development Authority.**
- 7) **2022 (6) SCC 127: N.G. Projects Limited v. Vinod Kumar Jain.**
- 8) **2024 (1) SCC 716: Delhi International Airport Vs Union of India and others.**



56. This Court has no iota of doubt that the present writ petition has a taint of being a sponsored litigation and that too prompted by and at the end of the respondents No. 5 to 6.

57. To put it more simply, the respondents No. 5 to 6 seem to have self invited this writ petition from the end of the four petitioners who otherwise cannot be assumed to have such a passionate indulgence in the matter of tracking the development project of Chenani-Sudhmahadev NH-244 construction project to the extent of knowing each and every in and out project related nuisances.

58. This Court has not come across with any averment from the end of the petitioners in the entire writ petition as to how they were able to get all the purported requisite interest and information forming subject matter of the writ petition as surely not by exercise of their right to information under the Right to Information Act, 2005.

59. Even if this Court were to make concession for the *bona fide* of the petitioners that as being proactive residents of the area being concerned with the ongoing construction of Chenani-Sudhmahadev NH-244, still this Court would not be in a position to assume the driver seat by substituting the respondent No. 2 – NHIDCL to direct as to how the construction of the road at three sections/stretchers is to be carried out or ought to be carried out.

60. Factually gathering from the standpoint of the respondent No. 2 – NHIDCL, this Court cannot do fault finding with the final decision of the respondent No. 2- NHIDCL in



terms whereof the construction of the road at three sections/stretches has been asked to be carried out as originally conceived with all safety provisions having been resorted to by the respondent No. 2- NHIDCL at its end.

61. In case the Chenani-Sudhmahadev NH-244 would ever suffer any mishap at the aforesaid three sections as apprehended by the petitioners, then surely the culpability and accountability of the respondent No. 2- NHIDCL would be there to attend the delinquency and deficiency of the respondent No. 2 – NHIDCL but as on date when the writ petition came to be filed and the case has been heard, this Court cannot assume that the respondent No. 2 – NHIDCL is adamant to undertake road construction at three sections/stretches on a risk and vulnerable note.

62. Therefore, this Court finds lack of *bona fide* at the end of the petitioners as well as lack of cause of action at their disposal to come up with the present writ petition which is held to be misconceived and, accordingly, ***dismissed***.

63. Any interim direction operating in the present writ petition shall also stand ***dismissed***.

64. The detailed judgment is following the order dated **25.09.2024** vide which the petition was ordered to be dismissed as is hereby being done.

(Rahul Bharti)
Judge

Jammu
12.03.2026
Muneesh

Whether the judgment is speaking : Yes / No
Whether the judgment is reportable : Yes / No