

Centre of Integrated Development and Research Vs. State of Orissa

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Court : Orissa

Decided On : Sep-25-1995

Reported in : 1996(I)OLR1

Judge : A. Pasayat and ;P.C. Naik, JJ.

Acts : [Constitution of India](#) - Articles 19(1), 21 and 38(2)

Appeal No. : Original Jurisdiction Case No. 3234 of 1995

Appellant : Centre of Integrated Development and Research

Respondent : State of Orissa

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : None

Judgement :

A. Pasayat, J.

1. Centre of Integrated Development and Research (hereinafter referred to as 'the petitioner') has sent a letter to the Honourable the Chief Justice of this Court, for a direction to the concerned authorities for providing necessary safeguard to life of the people of Orissa by ensuring good roads. It is stated that the roads have become so unusable that it is causing not only traffic hazards, but also adding to

the cost of maintenance of vehicles, as due to bad roads damage is caused to the vehicles. Construction of new roads are not undertaken and on the other hand, existing roads are also not repaired regularly and properly.

2. The learned counsel for State on instruction submitted that all necessary steps are being taken for maintenance of roads and for construction of new roads wherever and whenever necessity arises. This is the stand of Engineer-in-Chief of Public Works.

3. 'Road' is a way or passage and the expression cannot be limited to public roads, and to exclude private roads. A road is a road whether public or private. The expression is wide enough to include rail-road or railway track because road is genus and railway is species of road. The word 'road' according to Webster's Dictionary applies generally to highways, and as a generic term includes highways, streets, and lanes. The word 'road' is often defined to include public bridges, and is equivalent to the words 'county way', 'county road', 'common road' and 'state road'. A 'highway' or 'road' is an open way or public passage, it is ground appropriated for forming a communication between one city or town and another. A road is an open way or public passage, ground appropriated for public travel, it is essentially the one over which the public have the right of way. Even where the road is a private one which is meant a way over which some strangers to the ownership of land had private rights, it did not include a drive or path or mode of access to a messuage which was within the curtilage of such messuage.

4. Every person is entitled to life as enjoined in Article 21 of the Constitution. Every person has right under Article 19(1)(d) of the Constitution to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right embraces not only physical existence of life but the quality of life and access to road is access to life itself. These aspects are to be looked into in the background of Article 38(2) of the Constitution. In view of our constitutional imperatives there should be road for communication in reasonable conditions and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. The State has constitutional obligation to provide roads for communication as far as feasible and possible. Public has a right

of passage or access over foot-paths and pavements. The sweep of life as provided under Article 21 of the Constitution is wide and far-reaching. 'Life' as observed by Field, J. in *Munn v. Illinois*: (1877) 94 US 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. (See : *Kharak Singh v. State of U. P.* : AIR 1963 SC 1295; and *Oles Tellis and Ors. v. Bombay Municipal Corporation and Ors.*: AIR 1986 SC 180). Foot-paths or pavements are public properties which are intended to serve the convenience of the general public. They are not laid for private purpose indeed their use for a private purpose may be the very object for which they are laid. Right to life as enshrined in Article 21 of the Constitution includes all those aspects of life which go to make a man's life meaningful, complete and worth-living.

5. The learned counsel for State has submitted that the State Government is aware of its constitutional and legal imperatives to provide roads for the citizens. That is not the issue. The question does not refer to obligation to provide roads to the citizens. The question is whether there should be necessary steps taken for proper maintenance of the roads. This is also not in dispute. It is on the other hand submitted that large amount of funds are being spent to maintain the roads in good conditions.

6. The petitioner has not made any grievance that funds are not being provided for. Its stand is that there is misutilisation of funds, and only a pittance of the amount provided for is being spent for the purpose of construction/repair of roads. This is a common grievance. Roads should be maintained properly to avoid appearance to pot-holes and unevenness on the road. Sharp edges of metal pieces protrude out of the road sometimes get into feet of innocent pedestrians, or affect the tyres and tubes of the vehicles. There is some substance in the stand taken by the petitioner that because of unevenness of roads, large number of pot-holes, or depressions in the roads, driving a vehicle becomes difficult and sometimes dangerous. The State Government has constitutional obligation to maintain the roads properly.

7. Learned counsel for the State assured that prompt remedial steps shall be taken if any one brings to the notice of the concerned authorities about any deficiency in the condition of any road. He has submitted that if any suggestions for bringing any improvement is given, the same shall be only considered. Authorities shall, it is stated, periodically conduct detailed checkings to ensure that proper road conditions are maintained. These are only some of the steps in the right directions. A serious study of the problem is necessary. Routine periodic patch work repairs would not suffice. Effort should be made to find out why conditions of roads become so bad causing innumerable problems.

We dispose of this application in view of assurance of the learned counsel for the State that the problem shall receive serious consideration of the concerned authorities. Effort should be made to find out whether funds meant to be utilised for construction and/or maintenance of roads have been utilised for the said purpose, or there is any leakage. A separate cell should be constituted with experienced officers so that surprise checks periodically of new constructions/repairs can be made to find out whether construction as reflected in records has been actually made, such surprise checks will act as an instrument of caution for concerned officials. That would avoid large number of accidents, wastage of money on wear and tear of vehicle parts and accessories.

The writ petition is accordingly disposed of.

P.C. Naik, J.

8. When one talks of a proper road, one probably means a road which is in good shape, well constructed and reasonably wide so that traffic in either direction can move freely as also the pedestrians. With the increasing population the pressure on road is mounting and with the delay and bottlenecks caused in the carriage of goods by the railways, more and more people are now preferring road transport for carriage of goods. Many areas in our State as also in our country are still far away from rail heads and people have no option but to depend on road transport. So also there are places where one can reach quicker by road in comparison to travel by train. All these factors are resulting in more and more persons and the vehicles

on the road. Naturally, the pressure on the road is mounting and for want of proper care and proper construction, the roads are in a miserable state.

9. The condition of the road indicates that proper care and supervision is not being taken in construction thereof. The authority feels satisfied with a little patch work or, by putting a thin layer of metal on the road and sprinkling some coal-tar and using a road roller. With this 'dressing' of the road is said to have been constructed. Naturally after a few days of it being constructed, because of heavy traffic the thin layer of metal cracks up and the road once again resumes its earlier shape-having pot-holes, protruding metal pieces and bumps. What is therefore required is proper construction of roads, for once they are properly constructed, they will remain in good shape for some time provided they are periodically checked and repairs are carried out to maintain it in proper condition. What is also necessary is to see that roads are safe and for this proper alignment is necessary. So also it becomes necessary to remove obstacles which are road hazards. The biggest hazard today on the roads, whether inside the cities or on the highways, is the number of the speed-breakers which have been put up in a very crude manner and have become a driving hazard-as these tend to become hard breakers. In the absence of any indicators/reflectors the speed breakers are not visible and a person on the road becomes aware of its existence practically when he is near it. He is therefore suddenly required to brake, or if he is not able to suddenly brake, the vehicle jumps over the breaker with the result that the occupants more often than not receive sudden jolts or their heads bang against the rest of the vehicle. The vehicles also jump over the speed-breaker and as the speed-breakers are high some portion of the vehicle touches the speed-breaker thereby causing damage to the vehicle also.

10. There have been many cases where persons driving a two-wheeler or its pillion rider have been thrown off the vehicle of the sudden braking of the vehicle or because the scooter/cyclist has failed to notice the speed-breaker as it is not marked. Putting up the speed-breakers appears to be a fashion even on the Highways and these also are without any reflectors or indicators and a person driving on the Highways particularly after dusk is greatly troubled by these speed-breakers. Thus added to the problems of bad roads is the problem of unmarked

speed-breakers which are added hazards to the drivers and who use the road. In our opinion, it becomes the duty of the concerned authorities to see that if at all it is necessary to have a speed-breaker they should be properly constructed and properly marked so that they serve the purpose of breaking the speed and not as head breakers.

11. The roads are no doubt planned, but there is something wrong in the implementation of the plan and it is probably due to the faulty implementation, lack of supervision and probably misutilisation of the ear-marked money which also has prevented construction of a good road. We can quite understand the problem of the State in not being able to spare huge funds, but there is no excuse for not having proper utilisation, proper supervision and proper construction of roads even when money is ear-marked for that purpose.

12. While on the subject, I may also add that it becomes the duty of the citizens to see that they do not damage the roads. It is not unusual to see people digging up the roads for putting up tents and shamianna. The local administration should also be strict and should take appropriate action against those who are guilty of damaging the roads in this manner. These days it is not unusual to see that after the road is constructed shortly thereafter, there are people of the Telephone Department or Public Health Department or the Municipality digging the road for repairing cables, or changing the pipe line and the like and once the (repair) work is over, no care is taken to see that the portion dug up is properly filled with metal and the road made even. Hence even the governmental agencies and local authorities contribute their mite in damaging the roads.

13. Thus, many factors are responsible for the pitiable condition of our roads. No doubt, in view of the assurance given by the learned State Counsel, the concerned authorities will seriously study the situation and take suitable action for improving the roads in our State.