
(2024) 11 KL CK 0111
In the High Court Of Kerala
Case No : Writ Petition (C) No. 40109 Of 2022

Anilkumar C

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 14-11-2024

Acts Referred:

Citation : (2024) 11 KL CK 0111

Hon'ble Judges : Dr. Kauser Edappagath, J

Bench : Single Bench

Advocate : V.V.Surendran, P.A.Harish, Aswathi C, Vishnu Pradeep, Deepa V.,
K.L.Lakshmi Rani

Final Decision : Dismissed

Judgement

Dr.Kauser Edappagath, J

1. This writ petition has been filed to give a direction to the respondents to provide a proper underpass across the National Highway at Mokavoor in the bus route Kunduparamba -Eranhikkal at Kozhikode. There is also a prayer to issue a writ of mandamus directing the respondents to consider Ext.P3 representation requesting to provide an underpass at Mokavoor as mentioned above.

2. The petitioners are residents of Mokavoor at Kozhikode Corporation. The 28 km long Vengalam-Ramanattukara Bypass taken over by the National Highway Authority of India (NHAI) and renamed as NH66 runs through the Mokavoor area dividing the same into two, i.e., on either side of NH66. The petitioners are residing on the northern side of the National Highway. The widening of the highway to make it 6 lane traffic is steadily progressing. It is alleged that the old existing city road is at a lower ground level and the Highway is envisaged at a high level about 15 to 20 feet above the city road. It is further alleged that more than 2000 old residents of Mokavoor area have from time immemorial been using Kunduparamba – Mokkaavoor - Eranhikkal road for all their daily activities and several stage carriages are plying from Mokavoor to Kunduparamba and to

Kozhikode town cutting across the National Highway. The residents of this area are solely dependent on this route to come to and fro daily. According to the petitioners, therefore, underpass as suggested by them at Mokavoor is an absolute necessity. It is their further grievance that instead of providing underpass at Mokavoor bus stop, the authorities have provided very narrow underpasses in the bypass at comparatively less important locations. It is in these circumstances, they have approached this court with the above mentioned prayers.

3. The respondents 1 and 2 filed counter affidavit opposing the prayers. It is contended that the representation of the petitioners for construction of the underpass at Mokavoor was considered by them and it was found that it was not at all feasible as per the existing site conditions. According to them, if an underpass is constructed at the place where the city road meets the National Highway, it will not have the minimum vertical clearance of 3.5 metres. It is further contended that as per Clause 2.13.4 of the Indian Roads Congress, 2019, an underpass recommended at a distance of 2 kms is not practical in a densely populated State like Kerala. It is also contended that there are proposals for construction of underpass on either side of the demanded location i.e., one underpass at Mokavoor (Kampuram Bhagavathi temple) which is at a distance of 760 metre north and another underpass at Malikadavu at a distance of 690 metres south of the demanded location and that public can make use of these cross road structures for travelling from one side to the other side of the Highway.

4. I have heard Sri.P.A..Harish, the learned counsel for the petitioners, Sri.Vishnu Pradeep, the learned Central Government Counsel for the respondent Nos.1 and 2 and Smt.Deepa V., the learned Government Pleader.

5. An Advocate Commissioner was deputed at the instance of the petitioners to inspect the site and the Commissioner submitted a report and sketch.

6. The learned counsel for the petitioners reiterated the averments contained in the writ petition. The learned counsel further submitted that NHAI was required to consider the hardship and suffering by the people of the locality including the petitioners and to provide underpass at the site demanded. The learned counsel also submitted that the proposal for construction of two underpasses on the northern and southern side of the demanded location would not serve any purpose. On the other hand, the learned Central Government Counsel for the 2nd respondent submitted that the request of the petitioners for construction of an underpass at Mokavoor was already examined through an independent Engineer and it was not found feasible. The learned Central Government Counsel further submitted that one among the two underpasses proposed on the northern and southern side of the demanded location is completed and the other one is about to complete. The petitioners can very well utilize the underpasses which is situated just 730 metres away from the demanded location for access to the other side. The Counsel also submitted that convenience cannot be equated as conferring the right and merely because the petitioners have inconvenience in

travelling to the other side of the National Highway, it cannot be equated to denying access.

7. The records would show that the representation submitted by the petitioners was already examined and considered by the 2nd respondent. The feasibility and viability of providing an underpass at Mokavoor was examined through an independent Engineer and Ext.R2(a) report was obtained. In the said report, it was stated that as per the approved Plan and Profile of Main Carriageway and Service Road, sufficient vertical clearance is not available at the demanded location for providing an underpass. The report shows that the vertical clearance available is only 1.096 metre and in order to provide an LVUP (Light Vehicle Underpass), a minimum vertical clearance of 3.50 metre including slab thickness is required. It is further reported that for making a minimum vertical clearance of 3.50 metre for providing an underpass, either the finished road level of the Main Carriageway has to be raised or the finished road level of service road has to be lowered to the level of natural ground level. But, lowering of profile of service road is not possible as there are chances of flooding during rainy season. It is also against Manual Standards and Codal specifications. In Ext.R2(a), the Engineer reported that the underpass at Mokavoor is not at all feasible. It is also specifically stated that there were proposals for construction of underpass on either side of the demanded location i.e., one at a distance of 760 metre on the north and another at a distance of 690 metre on the south. It is submitted by the learned Central Government Counsel for the 2nd respondent that one among those two underpasses is completed and the other one is about to complete. The petitioners and public can make use of these underpasses for travelling from one side to the other side of the Highway. It is also relevant to note that the service road on the either side of the main Highway are by-directional. That apart, as per clause 2.13.4 of the Indian Roads Congress, 2019, underpass is not recommended at a distance of 2 kms. As stated already, there are nearby underpasses at a distance of 760 metre towards Vengalam and 690 metres towards Ramanattukara side.

8. NHA is a professionally managed statutory body having expertise in the field of development and the maintenance of the National Highways. The NHA through the experts considered the request of the petitioners to provide an underpass at Mokavoor and the same has been found to be not feasible. They chose to construct two underpasses at a distance of 760 metre towards north and 690 metre towards south after thorough study by experts in different fields. The petitioners residing adjacent to the National Highway may claim access to the other side. Their demand cannot be extended to vest a right in favour of the residents for access from the points of their choice. The experts of NHA explored the various possibilities of providing underpass at various points and decided to construct two underpasses mentioned above. The construction of those underpasses is almost over also. Thus, any interference at this stage will have serious implications. Merely because the petitioners have inconvenience to travel to the other side of the National Highway cannot be equated to denying access

and form the basis for directing the NHAI to provide an additional underpass at the place as demanded by the petitioners. It is trite that the scope of judicial review in the matter of this nature is very limited. In *Union of India v. Kushala Shetty and Others* [(2011) 12 SCC 69], the Supreme Court held that;

“NHAH is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAH prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited.”

For the reasons stated above, I find no reason to give a direction to the respondents to consider the request of the petitioners to provide an underpass at Mokavoor. The writ petition fails and it is accordingly dismissed.