

(2023) 02 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (C) No.1742 Of 2023

M/S Ekk Infrastructure Limited

APPELLANT

Vs

National Highway Authority Of India, Palakkad Division

RESPONDENT

Date of Decision : 07-02-2023

Acts Referred:

Motor Vehicles Act ,1988 — Section 115

Citation : (2023) 02 KL CK 0075

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : K.J.Mohammed Anzar, P.K.Minimole, A.Radhakrishnan Nair, Bappu Galib Salam, Muhammed Ashique, G.Motilal, B.G.Bidan Chandran, E.C.Kuriakose, Lejo Joseph George,

Final Decision : Disposed Of

Judgement

Anu Sivaraman, J

1. This writ petition is filed seeking the following reliefs:-

"i. call for the entire records leading to the issuance of Ext.P6 order of the 2nd respondent Grama Panchayat and to issue a writ of certiorari, any other order, writ or direction to quash the same.

ii.Issue a writ of mandamus, any other order, writ or direction, directing the 3rd respondent, SHO Chalakudy Police Station to afford necessary aid and assistance to the petitioner, if required, for the extraction and removal of ordinary earth from the area allotted as per Exts.P2, P3 and P4 permits issued by statutory authorities. "

2. Heard the learned counsel for the petitioner, the learned standing counsel appearing for the 1st respondent, National Highway Authority of India, the learned standing counsel appearing for the 2nd respondent and the learned Government Pleader.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a contractor entrusted with the construction of pending works of Chalakudy underpass by the 1st respondent. The petitioner was issued with Exhibit P2 approved mining plan and Exhibit P3 quarrying permit for extraction of ordinary earth. Exhibit P4 transit passes were also issued. However, the Secretary of the 2nd respondent Panchayat has issued Exhibit P6 proceedings dated 12.1.2023 stating that the petitioner cannot operate his heavy vehicles through the Peelarmoozhi Kottamuri Road and that such plying of heavy vehicles is banned on the said road. It is submitted that the 2nd respondent has no power or authority to issue an order in the nature of Exhibit P6. It is submitted that the Panchayat has the duty and the responsibility to maintain roads vested in it under Section 170 of the Kerala Panchayat Raj Act, 1994 and the power to restrict the use of vehicle is vested in the State Government under Section 115 of the Motor Vehicles Act, 1988 and there is no power whatsoever in the Panchayat to issue an order in the nature of Exhibit P6.

4. A counter affidavit has been placed on record by the 2nd respondent and it is contended that there is a chance that a culvert on the road in question may collapse due to the plying of heavy vehicles.

5. A reply affidavit has been placed on record by the petitioner specifically pointing out that the order is passed only due to the political and popular pressure exerted and that there is no danger to the road in question. The learned counsel has also made available several decisions of this Court where the specific issue of the power of the Panchayat to pass an interdictory order in the nature of Exhibit P6 have been considered and it was held that there is no such power available with the Panchayat or its committee to restrict operation of heavy vehicles on Panchayat road.

6. Having considered the contentions advanced on either side, I am of the opinion that in the light of the decision of this Court in *Jimmichan Mathew v. State of Kerala and others* [2022 (1) KLT 373] the 2nd respondent cannot issue a communication in the nature of Exhibit P6. In the above view of the matter, this writ petition is allowed. Exhibit P6 is set aside. There will be a direction to the respondents to permit the petitioner to ply his vehicles on the public road. However, the petitioner shall take appropriate steps to see that all safety precautions are duly adhered to by the petitioner and that there is no undue damage caused to the culvert by the operation of the vehicles of the petitioner.

Writ petition is ordered accordingly.