

(2007) 07 MAD CK 0129
In the Madras High Court
Case No : Writ Petition (MD) No. 3215 of 2007

P. Kathirvel

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Railways Act, 1989 — Section 19, 19(1)

Citation : (2007) 07 MAD CK 0129

Hon'ble Judges : P.R. Shivakumar, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : P. Rathakrishnan for S. Muthalraj, for the Appellant; R. Thiyagarajan for S. Manohar, for Respondent Nos. 1, 4 and 6, R. Janakiramulu, Special Government Pleader for Respondent Nos. 2, 3, 5 and 7 and S. Srimathy, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The petitioner, a resident of Tuticorin Town, claiming to be an Office Bearer of a political party, various trade unions

and Vice President of Indian Port and Dock Federation, New Delhi and one of the trustees of Tuticorin Port Trust, has come forward with this

writ petition seeking the issue of a writ of mandamus, forbearing the respondents from constructing the fly over at Tuticorin third railway level

crossing in Tuticorin Town and direct them to appoint an expert committee to study the feasibility of constructing the fly over at the alternative

location suggested by Pallavan Transport Consultancy Services Limited, Chennai. The petitioner has brought forth this writ petition as a pro bono

public invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

2. The respondents, who entered appearance through counsel, have put in their counter-affidavits in reply to the averments made by the petitioner

in his affidavit filed in support of the writ petition. The relevant files of the concerned respondents have also been placed before the Court for its perusal.

3. This Court heard the arguments advanced by Mr. Mr. P. Rathakrishnan, learned Senior Counsel representing the petitioner, by Mr. R.

Thiyagarajan, learned Senior Counsel representing the respondents 1, 4 and 6, by Mr. R. Janakiramulu, learned Special Government Pleader,

representing the respondents 2, 3, 5 and 7 and also by Mrs. Srimathy, learned Counsel representing the eight respondent. This Court also perused

the relevant records and paid its anxious considerations to the submissions made on either side.

4. There are three railway level crossings in the Centre of Tuticorin City, viz., Gate No. I at Kilometre 653/5-6, Gate No. II at kilometre 652/700-

800 and Gate No. III at kilometre 651/800-900. In order to ease the road traffic congestion in Tuticorin Town, construction of a Road Over

Bridge across the railway line at the level crossing at Kilometre 651/800-900 (Gate No. III) has been undertaken on a cost sharing arrangement

between the Government of Tamil Nadu and the Railway Administration. The estimated cost of the project has been worked out at Rs.

11,69,50,102/-. Out of the above said total project cost, the share of the railways is Rs. 5,58,00,598/- and that of the Government of Tamil Nadu

is Rs. 6,11,49,504/-. According to the contesting respondents (RR-1 to 7), the construction of the road over bridge at the above said location was

started in the year 2002 itself and the construction work is in progress. The construction of the over bridge is expected to be completed in October

2007. In fact, as per the records produced by the respondents, the construction of the main bridge portion over the railway lines has already been

completed and what remains to be done is to provide the linking gradient roads on both sides. At this juncture, the petitioner has come forward

with this writ petition seeking the above said reliefs.

5. The learned senior counsel representing the petitioner argues that the construction of a Road Over Bridge across the railway lines at the level

crossing at kilometres 651/800-900 (Gate No. III) on the Ettaiyapuram Road has

been undertaken by the respondents, disregarding the report of the Pallavan Transport Consultancy Services Limited, Chennai ruling out the feasibility of having a Road Over Bridge at the above said location and instead suggesting an alternative location on the link road running on the west of the above said location parallel to Ettaiyapuram road; that the respondents, even without considering the above said report and taking a decision to reject it, have chosen to proceed with the construction of the Road Over Bridge in question and that the same, according to the petitioner, will be a waste of public money to the tune of crores of rupees, besides causing much inconvenience to the members of the public.

6. Per contra, according to the submissions made by Mr. R. Janakiramulu, learned Special Government Pleader on behalf of the respondents 2, 3,

5 and 7 the report of the Pallavan Transport Consultancy Services Limited, Chennai was studied in detail by the State Government and then only a

decision was taken to have the Road Over Bridge at the above said location. When the State Government approached the railway authorities with

the proposal, the same was considered in accordance with the provisions of the Indian Railways Permanent Way Manual. As per the above said

manual, when the number of vehicles passing through a level crossing exceeds 1 lakh a day, then the level crossing becomes eligible for

replacement by a Road Over Bridge on cost sharing basis. The number of vehicles passing through the level crossing at Gate No. III is much more

than the bare minimum and hence the railways agreed for the proposal to have a Road Over Bridge on the said location on a cost sharing basis.

7. The attention of this Court is also drawn to Section 19 of the Indian Railways Act, 1989, as to how the projects of constructing over bridges or

sub-ways across the railway line are finalised. For the sake of convenience, Section 19 of the Indian Railways Act, 1989 is extracted here under:

Over-bridges and under-bridges:- (i) Where a railway administration has constructed lines of rails across a public road at the same level, the State

Government or the local authority maintaining the road, may, at any time, in the interest of public safety, require the railway administration to take

the road either under or over the railway by means of a bridge or arch with convenient ascents and descents and other convenient approaches,

instead of crossing the road on the level, or to execute such other works as may,

in the circumstances of the case, appear to the State Government

or the local authority maintaining the road to be best adapted for removing or diminishing the danger arising from the level crossing.

(2) The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work

under Sub-section (1), to undertake to pay the whole of the cost of the work and the expense of maintaining the work, to the railway

administration or such proportion of the cost and expenses as the Central Government consider just and reasonable.

(3) In the case of any difference of opinion between the railway administration and the State Government or the local authority, as the case may be,

over any of the matters mentioned in Sub-section (1), it shall be referred to the Central Government, whose decision thereon shall be final.

It has been contended further on behalf of the contesting respondents that the location in question was selected for having the Road Over Bridge

across the railway line, since it does not require acquisition of land, whereas the construction of a over bridge at the alternative location suggested

by Pallavan Transport Consultancy Services Limited, Chennai in its report involves acquisition of land and that the opinion of non-feasibility given

by the Pallavan Transport Consultancy Services Limited, Chennai to have a Road Over Bridge at Gate No. III was rejected, as the same was

made on an erroneous assumption that the gradient to be provided in the over bridge was 1 in 40, whereas the gradient to be provided is only 1 in

30.

8. It is true that the Government of Tamil Nadu through the Directorate of Town and Country Planning had nominated Pallavan Transport

Consultancy Services Limited, Chennai to undertake a study on ""Traffic Operational and Management Plan for Tuticorin Town"" and consequently

the above said agency conducted a study and submitted a report in March 1994 to the Government of Tamil Nadu. Paragraph 5.4.2 of the report

deals with the desirability of having a grade separated crossing (Road Over Bridge) at the point of Gate No. III. According to the opinion of the

agency, having a grade separated crossing at the said location is not possible for the reasons stated therein. The relevant portions are extracted

here under:

...It is felt that a grade separated crossing at this point (III gate) would relieve the congestion and reduce the delay considerably. The new Tuticorin

bus stand is located on the northern side at about 210 metres from the level crossing. Also the 220 KVA Electrical substation located just opposite

to the new bus stand adds to the complexity of the problem. Since we require about 280 metres (with 1 in 40 slope) to reach the road level from

the level crossing, it will not be possible to provide a grade separated crossing at this location.

...

It was informed that the Tuticorin railway station was proposed to be shifted near the New bus stand just before the third gate (Ettaiyapuram

road). If this proposal is pursued the need for a grade separated crossing at this location will not arise at all.

9. Relying on the above said observation made by Pallavan Transport Consultancy Services Limited, Chennai, the petitioner contends that having a

grade separated crossing (Road Over Bridge) at the above said location will not be in the public interest. The above said reasons assigned in the

report of Pallavan Transport Consultancy Services Limited, Chennai have been rejected by the contesting respondents on the following grounds as

spelt out in paragraphs 2 and 3 of the counter-statement filed by respondent No. 7. The relevant portions of which are extracted here under:

2. ...As per Indian Road Congress specification 1 in 30 gradient will be provided and it requires 190 mts. to reach the road level and it will not

affect the new bus stand area and Electrical sub station.

3. Regarding the averments made in Para Nos. 5 & 6 it is submitted that the Pallavan Transport Consultancy Services Ltd has given the planning

Report for traffic. The above consultancy service has suggested to construct a grade separator crossing on the western side of Ettayapuram road

by improving the existing link road having 280 mtrs. length requires 1 in 40 gradient, but the above suggestion is not suited for the city limit. As per

Indian Road Congress specification the gradient of 1 in 30 is provided in this Railway Over Bridge. After numerous investigation made by

Highways Department & Railways, it was finally decided to construct the Railway Over Bridge and service road for Public Service.

The above said contention of the seventh respondent that the Road Over Bridge

across the railway line in the selected location is to be with a gradient of 1 in 30 as per the Road Congress specification and 190 metres will be sufficient to reach the road level has not been disputed by the petitioner. When the provision of a gradient of 1 in 30 is proper in accordance with the Indian Road Congress specification, the objection based on the fact that the new bus stand and electrical sub stations are located at a distance of 210 metres away from the level crossing cannot be sustained.

10. In view of the above said facts and circumstances of the case, we are of the considered view that it is not correct to state that the State

Government did not consider the non-feasibility report incorporated in ""The Traffic Operational and Management Plan for Tuticorin"" submitted to

the State Government by the Pallavan Transport Consultancy Services Limited, Chennai. More over, when executive policy decisions are

involved, the Courts in exercise of their power of judicial review should not ordinarily interfere with such policy decisions of the executive, unless

the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness. In support of the above said proposition, reference

can be made to the judgments of the Honourable Apex Court in M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others, and in Netai

Bag and Others Vs. The State of West Bengal and Others, . The attention of this Court is drawn to the unreported judgment of a Division Bench

of this Court made in ""The Southern Railway, rep. by its Chairman, Chennai v. S. Ponnusamy and Ors. Writ Appeal No. 2271 of 2000, wherein

following the observations made by the Honourable Supreme Court in the judgments cited supra, the Division Bench observed as follows:

There are several decisions of the Hon"ble Supreme Court emphasising similar views and it is not necessary to burden this judgment by referring to

all such decisions. It can be only reiterated that it is a well settled principle of law that while dealing with such matters, the Courts should not

interfere with the conclusion of the authorities based on technical and other assessment merely because in the opinion of the Court, some other

course of action would be more beneficial and the Courts should desist from such interference, unless the Courts come to the conclusion that the

decision of the administrative authority is perverse and arbitrary and no

reasonable man of ordinary prudence could have come to such a conclusion.

11. The above said observation squarely applies to the case on hand. Upon perusing the relevant files produced by the State Government and the Railways, we are satisfied that there is no mala fide, arbitrariness, unfairness or unreasonableness warranting interference in the policy decision taken by the executives.

12. The contention raised on behalf of the petitioner that the construction of the fly over at the selected location shall be a waste of public money to the tune of crores of rupees, as there is a proposal to shift the railway station to Meelavittan also deserves to be rejected as unsustainable. Of

course, the eighth respondent Tuticorin Municipality has filed a counter-statement supporting the above said contention of the petitioner that there is a proposal to shift the railway station to Meelavittan and in such an event of shifting the railway station to Meelavittan, constructing a fly over will become unnecessary. But the said fact that there is a proposal to shift the railway station to Meelavittan has been stoutly denied by the respondents

1, 4 and 6 in their counter-statement. The relevant paragraph-7 of the counter-statement reads as follows:

There is no proposal from railways side to shift Tuticorin Railway Station to Meelavittan and hence the averments that the fly over will not be utilised in long run is not correct and due to difficulties expressed by public in level crossings at kilometres 653/5-6 and 652/700-800 have also been taken into consideration by the State Government and Railways Department and hence it was proposed to construct road over bridge above all these level crossings also.

Therefore, the contention raised on behalf of the petitioner that the fly over at the selected location will not be utilised in long run has got to be rejected as untenable.

13. Yet another point that will go against the petitioner is that the petitioner, having kept quiet for more than five years, after the execution of the work was started, has approached this Court for the issue of a writ of mandamus to stall the same, when major part of the work has already been completed. In fact the construction of the bridge portion over the railway track which alone was entrusted to the railways as per the cost sharing

arrangement is over and what remains to be done is to provide the linking roads on either side of the bridge. The attempt made by the petitioner

herein to stall the execution of the work after a major part of the same has already been completed that too, after a lapse of five years from the

date of commencement of work causes serious doubt regarding the bona fide of the petitioner. The laches pointed out on the part of the petitioner

will give rise to an inference that there might be a hidden agenda behind the mask of the public interest sought to be projected in this writ petition.

In dealing with public interest litigation, certain guidelines indicated by the Honourable Supreme Court have to be followed and it shall be useful to

refer to the following observations made by the Honourable Apex Court in Ashok Kumar Pandey Vs. The State of West Bengal and Others, :

But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for

personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by

politicians and others to delay legitimate administrative action or to gain a political objective.

14. In the instant case, we have pointed out supra, it has been clearly demonstrated that the provision of Road Over Bridge across the railway line

at level crossing Gate No. III will be more beneficial to the general public to ease the road traffic congestion in Tuticorin Town. In addition to that

the desirability of having Road Over Bridges at two other points namely Gate No. I and II has also been felt by the State Government and the

Railways and hence it was also proposed to construct Road Over Bridge at the above the said level crossings also, as spelt out in the counter-

statement of the respondents 1, 4 and 6. On the other hand, it is obvious from the foregoing discussions that the petitioner shall have a personal

interest in either preventing the construction of a over bridge at level crossing Gate No. III or in having a road over bridge constructed at the

alternative location suggested by the petitioner and that in furtherance of such personal interest, this writ petition has been filed in the guise of

protecting public interest. We are of the considered view that there is no public interest involved in the reliefs of mandamus forbearing the

respondents from proceeding with the construction of the Road Over Bridge at Gate No. III and on the other hand, the grant of the reliefs sought

for in this writ petition shall have a drastic and adverse impact on the interest of the public.

15. For all the reasons stated above, we are not inclined to accept any one of the contentions raised on behalf of the petitioner in support of his

prayer made in the writ petition and accordingly, we come to the conclusion that there is no merit in the writ petition and the same deserves to be

dismissed.

16. In the result, this Writ Petition is dismissed. No costs.