

(2021) 01 KL CK 0141
In the High Court Of Kerala
Case No : Writ Appeal No. 1592 Of 2020

Shaji J. Kodankandath

APPELLANT

Vs

State Of Kerala And Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

National Highways Act, 1956 — Section 4
Constitution Of India, 1950 — Article 226

Citation : (2021) 01 KL CK 0141

Hon'ble Judges : S. Manikumar, CJ; Shaji P. Chaly, J

Bench : Division Bench

Advocate : K.B. Gangesh, Aravindakumar Babu

Final Decision : Dismissed

Judgement

S. Manikumar, CJ

1. Being aggrieved by the judgment in W.P.(C) No.30184 of 2018 dated 25.7.2019, writ petitioners have filed the instant writ appeal.

2. Short facts leading to the filing of the writ petition are that the 1st petitioner/1st appellant is a resident of Pananchery Grama Panchayat. 2nd petitioner/2nd appellant is its elected Ward Member. Residents of Pananchery Grama Panchayat had put-forward an alternate proposal with respect to the alignment of the proposed Hill Highway Project through Thrissur District. By Exhibit-P2 judgment in W.P.(C) No.985 of 2018 dated 19.01.2018, a learned Single Judge had directed the Chief Secretary, State of Kerala, respondent No.1 therein, to take a decision on the petition dated 23.07.2017 submitted by the petitioners therein and other residents of the said Grama Panchayat.

3. As evident from Exhibit-P3 communication dated 04.12.2017, issued by the Chief Engineer, PWD, Thiruvananthapuram, 3rd respondent, the Hill Highway is intended for the development and improvement of transport facilities to high range areas of the State. In the circumstances, Hill Highway Project has to be

implemented in a manner that is most beneficial to the inhabitants of high range areas. As far as Thrissur District is concerned, at the place where the proposed highway enters Thrissur District from Palakkad District, the highway is proposed through the existing National Highway 47 till Pattikkad. There is no benefit for the inhabitants of hilly areas in the region due to this. It was in these circumstances the alternate proposal was made. As regards the alternate proposal is concerned, the Chief Engineer reported that the same is more beneficial to the underdeveloped hilly areas in Thrissur District and that it could be materialized by developing just 9.6 kms. of rural road. Petitioners are aggrieved by Exhibit P4 order issued by the 1st respondent/State rejecting the alternative proposal in spite of the aforesaid favourable findings by the 3rd respondent/Chief Engineer, Public Works Department (R & B), Thiruvananthapuram. Hence, the writ petition was filed seeking the following reliefs:

"(i) a writ of Certiorari or any other appropriate writ order or direction to quash Ext.P4 order passed by the 1st respondent;

(ii) a Writ of Mandamus or any other appropriate writ order or direction commanding the respondents to accept the alternate proposal made in Ext.P1 for implementing Hill Highway Project in Thrissur district."

4. Writ court, after considering the pleadings and the material available on record, dismissed the writ petition by ordering thus:

"Public Works Department is the competent authority to decide in what manner a road has to be formed. This Court cannot substitute their wisdom by invoking power of judicial review under Article 226 of the constitution. Therefore, there is no scope for interfering with the impugned orders. Accordingly, the writ petition is dismissed."

5. Assailing the correctness of the impugned judgment, appellants have raised the following grounds:

A. Writ court ought to have appreciated the fact that the present proposal for Hill High Project through Thrissur district by allowing it to connect with National Highway 47 would defeat the very objective of the project. The Hill Highway is intended for the development and improvement of transport facilities to high range areas of the State. In the circumstances, Hill Highway Project has to be implemented in a manner that is most beneficial to the inhabitants of high range areas. As far as Thrissur district is concerned, at the place where the proposed highway enters Thrissur district from Palakkad district, the highway is proposed through the existing National Highway 47 till Pattikkad. There is no benefit for the inhabitants of hilly areas in the region due to this. The fact that the alternate proposal made by the petitioners would be beneficial to the residents of the Hill Range areas in Thrissur District is admitted by the 3rd respondent in Ext.P5. Nevertheless, the writ court proceeded to uphold Ext.P4 order passed by the 2nd respondent and dismissed the writ petition.

B. Writ court ought to have appreciated Ext.P5 communication issued by the 3rd respondent, wherein it has admitted the fact that the alternate proposal put forward by the petitioners for the alignment of Hill Highway in Thrissur district is actually beneficial for the residents of Hill Range areas of Thrissur district. It is also an admitted fact with only an extent of 9.60 km of Panchayat road is required to be developed for the purpose. In the circumstances, the writ court ought not have upheld Ext.P4 order issued by the 2nd respondent.

C. Writ court ought to have found that the cost estimated by the 3rd respondent for development of 9.60 kms. of Panchayat road in Ext.P5 is without any scientific basis and ought to have rejected such an estimate.

D. As per Section 4 of the National Highways Act, 1956, all the National Highways vest in the Union of India. In such circumstances, no part of National Highway could be declared as a part of Hill Highway, without obtaining prior sanction from the Central Government. No such sanction is seen to have been obtained by the 1st respondent for aligning a portion of the proposed Hill Highway through National Highway 47 in Thrissur district. The writ court failed to appreciate this fact which was specifically pleaded in the writ petition.

E. Finding of the learned Single Judge that there is no scope for interfering with the projects of the Public Works Department is erroneous and improper. The objective of all the projects undertaken by the Public Works Department is for the benefit of the public, and if such projects are to be carried out in a way which is least beneficial to the public or if the project is carried out in a way where no benefits are rendered, the same calls for interference. From time to time, this Court, as well as the Hon'ble Supreme Court, have interfered in similar matters. The impugned judgment in the circumstances is liable to be interfered with.

6. Government Order dated 9.7.2018, produced as Ext.P4 in the writ petition, is extracted hereunder:

"GOVERNMENT OF KERALA

Abstract

Public Works Department - WP(C) No. 985/2018 filed by Sri. Shaji J. Kodan Kandath and two others - Judgment Complied - Order issued.

PUBLIC WORKS (H) DEPARTMENT G.O.(Rt)No.1072/2018/PWD
Dated,Thiruvananthapuram, 09/07/2018

Read: 1. Judgment dated 19.01.2018 of the Hon'ble High Court in the WP(C) No. 985/2018.

2. Letters No. CE(R&B)/TSR/3140/2018 dated 26/04/2018 Engineer (R&B).

05.06.2018 from the Chief

ORDER

Shri Shaji J. Kodan Kandath and two Others approached the Hon'ble High Court of Kerala for a change in the alignment of Hill Highway in Thrissur District and the Hon'ble High Court as per the judgment read above directed the 1st respondent, Chief Secretary to Government to dispose the case after providing participation to the petitioners at any rate, within four months from the date of receipt of a copy of the judgment.

As directed by the Hon'ble High Court, Under Secretary to the Government, Public Works Department heard the petitioners on 05.06.2018. Shri. Shaji. J. Kodan Kandath, Shri K.P Eldhose, two of the petitioners, Smt.Biji P.V., Executive Engineer, Thrissur, PWD and Shri. Prakash S., Assistant Executive Engineer, O/o. CE (R&b) Tvpw, PWD, were attended the hearing.

The Petitioners argument is that modifying Hill Highway alignment in Thrissur District through the route proposed by them will result in the development of the particular area. The Chief Engineer (R&B), Public Works Department as per the letters read above has reported as per the approved alignment plan, Hill Highway enters Thrissur District at Vaniyampara move along NH 544 up to Pattikkad and going through various PWD and Panchayath roads up to district boundary at Vettilappara and the present alignment was proposed by NATPAC and approved by Government. The present alignment of Hill Highway is also easily accessible from the locations mentioned by the petitioners. The Chief Engineer (R&B), Public Works Department has also reported that there is no need to change in the approved alignment of Hill Highway for the development of the particular areas mentioned by the petitioners and it will result in incurring additional cost of construction and delay in the completion of the Hill Highway work. The construction of Hill Highway is intended for the overall development and connectivity of high range areas of State.

Government have examined the matter in detail in the circumstances stated above and have decided to reject the request of petitioners to change the approved alignment of Hill Highway in Thrissur District. The Order of the Hon'ble High Court in the W.P.(C) No. 985 of 2018 is complied with.

(By order of the Governor)

DILEEP KUMAR T. I. UNDER SECRETARY"

7. In the writ petition, a statement dated 17.6.2019 has been filed on behalf of the Executive Engineer, PWD Roads Division, Thrissur/3rd respondent. Relevant portions of the same are extracted hereunder:

"3. It is submitted that the Writ Petition is not maintainable either under law or on facts Hill Highway (SH - 59) is proposed from Nadarapadavu in Kasaragod District to Parassala - Kadukkara in Thiruvananthapuram District and is intended

for the development of the much needed North - South corridor through the hilly regions by upgrading/improving the existing network. The present alignment of Hill Highway prepared by National Transportation Planning and Research Centre, after conducting feasibility studies based on technical, economic, social and environmental considerations and the same was approved by Government, vide GO(MS)No.44/2009/PWD dated 06.07.2009.

4. It is submitted that Exhibit P1 Mass petition was submitted for changing the alignment of starting portion of Hill Highway in Thrissur District through Vazhakumpara - Melechira - Pathamkallu - Manjakunnu - Katachirakunnu - Peechi - Vilanganoor against the approved alignment prepared by NATPAC through Vazhakkumpara - Pattikkad - Vilanganoor portion stating that this alternate proposal will result in the overall development of the area. But the alignment suggested by the petitioner will result in incurring additional cost of construction and delay in the completion of the hill highway project. The construction of hill highway is intended for the overall development and connectivity of high range areas of the State.

5. It is submitted that the petitioner approached the Hon'ble High Court of Kerala and filed WP(C). No.985/2018 for changing the approved alignment of Hill Highway in Thrissur District. In Judgment of WP(C). No.985/2018 dated 19.01.2018 the Hon'ble High Court directed the first respondent to take decision on Exhibit P1 in accordance with law, after providing participation to the petitioner, and attain finality, at the earliest possible time, and at any rate, within four months from the date of receipt of a copy of this judgment. As directed by the Hon'ble High Court, Under Secretary to Government, Public Works Department heard the petitioner and order was issued by Government Vide Exhibit P4 order [GO(Rt) No.1072/ 2018/PWD] dated 09.07.2018.

6. It is submitted that if the alignment is changed an extent of 9.60 km of rural road is to be developed to Hill Highway standard and an additional cost of approximately Rs.50 Crore is required for the development. As the terrain along which the alternate alignment proposed is very steep with deep cuttings on sides a huge amount is required for the construction of protection wall and other related cross drainage arrangements. The alternate alignment proposal was rejected on ground that the original Hill Highway alignment proposed by NATPAC was approved by the Government and DPR preparation is in progress. The NATPAC recommended the most feasible alignment after conducting feasibility studies based on technical, economic, social and environmental considerations. The present alignment of Hill Highway is also easily accessible from the locations mentioned by the petitioners. Also the alignment proposed by the petitioner will incur additional cost of construction of the project. Hence the contention of the petitioner in this Writ Petition is not sustainable."

8. Heard Mr. K.B.Gangesh, learned counsel for the appellants, and perused the material on record.

9. First of all, on the facts and circumstances of this case, it is necessary to consider as to whether the proposed Highway is a National Highway or a State Highway.

10. Material on record discloses that Hill Highway (SH.59) from Nantharapadavu in Kasaragod District to Parassala-Kadukkara in Thiruvananthapuram District is intended for the development of much needed North-South corridor through the hilly regions, by upgrading/ improving the existing Network. Section 4 of the National Highways Act, 1956, referred to by the appellants in Ground No. D of the memorandum of appeal reads thus:

"4. National highways to vest in the Union - All national highways shall vest in the Union, and for the purposes of this Act "highways" include--

(i) all lands appurtenant thereto, whether demarcated or not;

(ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and

(iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways."

11. Ground No. D, made by the appellants is reproduced:

"D. As per Section 4 of the National Highways Act, 1956, all the National Highways vest in the Union of India. In the circumstances, no part of National Highway could be declared to be part of Hill Highway without obtaining prior sanction from the Central Government. No such sanction is seen obtained by the 1st respondent for aligning a portion of the proposed Hill Highway through National Highway 47 in Thrissur district. The learned single Judge failed to appreciate this fact which was specifically pleaded in the writ petition."

12. In the light of the fact that Hill Highway is a State Highway 59, reference to Section 4 of the National Highways Act, 1956 and Ground No.D, are wholly misplaced.

13. According to the appellants, the alternate proposal would be beneficial to the residents of the hilly areas in Thrissur District, and an extent of 9.60 km of Panchayat road is required to be developed.

14. Let us examine as to how the competent authority has addressed the issue, as to whether it is confined to the specific interests of people in hilly regions in Thrissur District alone or the development and connectivity of high range areas in the whole State. In this context, we deem it fit to reproduce the relevant portions of the order in G.O.(Rt) No.1072/2018/PWD dated 09.07.2018 (Ext.P4).

"..... The Chief Engineer (R&B), Public Works Department as per the letters read above has reported as per the approved alignment plan, Hill Highway enters Thrissur District at Vaniyampara move along NH 544 up to Pattikkad and going through various PWD and Panchayath roads up to district boundary at

Vettilappara and the present alignment was proposed by NATPAC and approved by Government. The present alignment of Hill Highway is also easily accessible from the locations mentioned by the petitioners. The Chief Engineer (R&B), Public Works Department has also reported that there is no need to change in the approved alignment of Hill Highway for the development of the particular areas mentioned by the petitioners and it will result in incurring additional cost of construction and delay in the completion of the Hill Highway work. The construction of Hill Highway is intended for the overall development and connectivity of high range areas of State."

15. From the pleadings, it could be deduced that interest of the appellants is confined to the residents of the hilly regions in Thrissur District, whereas, the Government have considered the larger interest of the State, which decision cannot be held as arbitrary, warranting interference. That apart, the competent authority has also considered two aspects, (i) delay in the implementation of the project and (ii) additional cost.

16. Thus, from the above, it could be deduced that the project development of State Highway 59, sought to be achieved, is for the benefit of the residents of the hilly areas of the whole State and not confined to Thrissur district alone; the alignment is proposed by National Transportation Planning and Research Centre (NATPAC) and approved by the Government; and that there would be an additional expenditure of Rs.50 crores. At the risk of repetition, we deem it fit to reproduce the stand of the respondents.

" if the alignment is changed an extent of 9.60 km of rural road is to be developed to Hill Highway standard and an additional cost of approximately Rs.50 Crore is required for the development. As the terrain along which the alternate alignment proposed is very steep with deep cuttings on sides a huge amount is required for the construction of protection wall and other related cross drainage arrangements. The alternate alignment proposal was rejected on ground that the original Hill Highway alignment proposed by NATPAC was approved by the Government and DPR preparation is in progress. The NATPAC recommended the most feasible alignment after conducting feasibility studies based on technical, economic, social and environmental considerations. The present alignment of Hill Highway is also easily accessible from the locations mentioned by the petitioners. Also the alignment proposed by the petitioner will incur additional cost of construction of the project."

17. Giving due consideration to the rival contentions and the material documents, we are of the view that the decision of the competent authority in G.O.(Rt) No.1072/2018/PWD dated 09.07.2018 (Ext.P4), cannot, at any stretch of imagination, be said to be arbitrary, warranting interference. There is no error in the impugned judgment warranting interference. Instant writ appeal is accordingly dismissed.

Pending interlocutory applications, if any, shall stand closed.