



2024/KER/52084

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

TUESDAY, THE 9<sup>TH</sup> DAY OF JULY 2024 / 18TH ASHADHA, 1946

WA NO. 742 OF 2024

AGAINST THE JUDGMENT DATED 09.04.2024 IN WP(C) NO.31606 OF 2023 OF

HIGH COURT OF KERALA

APPELLANTS:

- 1        ABDUL RAZAK  
          AGED 64 YEARS  
          S/O ALAVIKUTTY  
          CHORAPULAKKAL HOUSE, RANDATHANI P.O  
          MALAPPURAM DISTRICT, PIN - 676510
  
- 2        FIROZ P  
          AGED 48 YEARS  
          S/O MOHAMMEDKUTTY  
          PALLIMALLIL HOUSE, RANDATHANI P.O  
          MALAPPURAM DISTRICT, PIN - 676510
  
- 3        MOHAMMED FASIL  
          AGED 32 YEARS  
          S/O MUSTAFA  
          MOORKATH HOUSE, RANDATHANI P.O  
          MALAPPURAM DISTRICT, PIN - 676510

BY ADVS.  
K.M.SATHYANATHA MENON  
AYISHA

RESPONDENTS:

- 1        UNION OF INDIA  
          REPRESENTED BY ITS SECRETARY, MINISTRY OF ROAD TRANSPORT  
          & HIGHWAYS, TRANSPORT BHAWAN, 1,  
          PARLIAMENT STREET, NEW DELHI, PIN - 110001
  
- 2        STATE OF KERALA  
          REPRESENTED BY ITS CHIEF SECRETARY,  
          SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001



- 3 THE NATIONAL HIGHWAYS AUTHORITY OF INDIA  
REPRESENTED BY ITS CHAIRMAN, G-5 & 6,  
SECTOR-10, DWARAKA, NEW DELHI, PIN - 110075
  
- 4 THE REGIONAL OFFICER  
NATIONAL HIGHWAYS AUTHORITY OF INDIA  
THIRUVANANTHAPURAM, PIN - 695024
  
- 5 THE PROJECT DIRECTOR  
NATIONAL HIGHWAY AUTHORITY OF INDIA, (MINISTRY  
OF ROAD TRANSPORT & HIGHWAYS), PROJECT  
IMPLEMENTATION UNIT, VII/511-B, NEYTHELI-  
MAVELIPURAM ROAD, MAVELIPURAM KAKKANAD,  
ERNAKULAM DISTRICT, KERALA, PIN - 682030

BY ADVS.  
SMT.MINI GOPINATH, CGC

SRI.V.K.SHAMSUDHEEN, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON  
09.07.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



'C.R.'

**JUDGMENT***Dated this the 09<sup>th</sup> day of July, 2024**Syam Kumar V.M., J.*

Apprehending that a stretch of the Six Lane National Highway No.66 (NH66), an arterial road connecting Panvel in Maharashtra to Kanyakumari in Tamil Nadu, while it passes through the neighbourhood of the appellants, might cut off their access to the utilities and institutions situated on the other side of the road, appellants who are residents of Marakkara Grama Panchayat in Malappuram District had filed W.P.(C) No.31606 of 2023 *inter alia* seeking a direction to the respondents to construct a Vehicular Underpass at a specified chainage so as to enable convenient access to both sides of NH 66.

2. The learned Single Judge, after an anxious consideration of the contentions put forth, dismissed the Writ Petition *inter alia* holding that since a Vehicular Underpass, accessible by making a slight detour of 369 meters has already been put up close to the appellants' neighbourhood thus ensuring a comparably convenient access to both sides of NH 66, the apprehension harboured by the appellants does not subsist



any longer. The learned Single Judge further reasoned that when questions requiring technical expertise like the one raised in the W.P.(C) comes up, courts have always deemed it safer not to supplant its opinion over that of the experts. Aggrieved by the said Judgment dated 09.04.2024 in W.P.(C) No.31606 of 2023, this Writ Appeal is filed by the appellants.

3. We have heard Sri.K.M.Sathyanatha Menon, learned counsel appearing on behalf of the appellants and Smt.Mini Gopinath, learned CGC and the Standing Counsel appearing on behalf of respondents 1 and 3 to 5 as well as the Government Pleader appearing on behalf of the 2<sup>nd</sup> respondent.

4. The learned counsel for the appellants vehemently contended that many of the facilities and buildings including Randathani Market, G.U.P.School, Rahmania English School, Akshaya Janasevana Kendram, Saw Mill, Co-operative Bank, ATMs, Hospitals, Mosques, burial grounds etc. to which the general public were formerly having easy access from Kalpakanchery and Marakkara Panchayats would now be effectively cut off with the construction of the new six lane NH66. He submits that though a vehicular underpass (VUP) has been provided for at chainage 290.940 and a vehicular overpass (VOP) has been provided for at chainage 292.660 between a distance of 1.8 Kms., the same do not facilitate the easy



movement of people across NH66 as before. The inconvenience caused to the appellants and to the general public could have been averted by constructing a vehicular underpass either at chainage 291.475 wherein the PWD road intersects with the National Highway or at 291.700 where the market road intersects with the National Highway or at 291.309 in NH66 at Randathani, submits the learned counsel. He seeks to buttress this point by pointing to the Manual of Specifications and Standards for Six Laning of Highways which is produced along with the W.P.(C) as Ext.P1, relevant clauses whereof mandate that an underpass has to be provided if schools, hospitals or industries are situated within a distance of 200 mtrs. The appellants thus contended that it was obligatory on the part of the NH authorities to provide a VUP at any of the chainages suggested by them.

5. *Per contra* the learned Standing Counsel appearing for respondents 1 and 3 to 5 pointing to the statement dated 26.10.2023 filed by the said respondents in the W.P.(C) submits that a VUP with a vent size of (1x15x5.50) has already been constructed at Km. 290+940 and that the same is only 260 mtrs. from the location requested by the appellants. It is also submitted that in addition thereto, another VOP has been provided at Km. 292+600 which is only 1.3 Km from the



requested location. The learned counsel submits that connections to both Kalpakanchery and Marakkara Panchayats exist through the provision of service roads on both sides and that at present the public are utilising the VOP for the purpose of crossing over from one side to another. The learned Standing Counsel further brings to our attention the Objection dated 09.02.2024 filed by the Project Director on behalf of respondents 1 and 3 to 5, wherein it has been stated that as per the Manual of Specifications and Standards for Six Laning of Highways which provides guidance to the National Highway Authorities while undertaking six laning works such as NH 66, the distance of construction of Overpasses and Underpasses stipulates that VUP shall be provided as specified in Schedule B, ie., at Km. 290+940 and VOP at Km. 292+ 660. Within a distance of 360 mtrs., another underpass shall not be permissible as per IRC SP 87 para 2.13.4 (i) as it would result in road safety issues. Further, it is pointed out by the learned Standing Counsel that at the time of physical inspection conducted, no significant cross road was in existence at the location Km. 291+309 and that crossing facility in the form of a VUP at Km. 290+940 mentioned above has been provisioned and access has been provided through continuous service roads on both sides. Service roads have already been constructed and traffic is plying on both sides.



Learned Standing Counsel submits that in view of the above and also taking note of the fact that the construction work has already been completed, the judgment of the learned Single Judge does not warrant any interference.

6. We note from the pleadings that a VUP has already been constructed at a chainage which is very close to the location suggested by the appellants. We also note that at present the public are utilising the VOP for the purpose of crossing over from one side to another. We note that in the report submitted on behalf of the District Collector, as directed by this Court (produced along with memo dated 11.12.2023), it has been stated that the nearest available underpass is just 400 mtrs. away. The learned counsel for the appellants however insists that putting up another VUP at the chainage suggested by the appellants would make it even more convenient for the public to cross over and access the utilities on the other side of the NH. The learned Standing Counsel relying on the Manual of Specifications and Standards for Six Laning of Highways submits that VUPs at such close distances are not only impermissible, but also could result in road safety issues.

7. We note that the appellants are not espousing their private interests and are rather raising the plea on behalf of the general public of the locality who have been impacted by the



construction of NH 66. However, the larger public good involved in projects like the construction of National Highways crisscrossing the length and breadth of the country augmenting the much needed national infrastructure need not be overemphasized. Thus there arises the need to balance the interests of the people of a particular locality with that of the interest of the public at large so as to subserve the 'common good'. The Supreme Court in **Coal India Ltd. and another v. Competition Commission of India and another** [(2023) SCC OnLine SC 740] has held that the expression 'common good' referred to in Article 39(b) of the Constitution in a Benthamite sense involves achieving the highest good of the maximum number of people. Viewed from the point of view of 'Common good' as a resolve to achieve the highest good of the maximum number of people, the individual interests of a group must yield to the larger public interest [**Asha Ranjan v. State of Bihar and others** [(2017) 4 SCC 397]. In the context of reconciling public interest with private interest, the Supreme Court in **Dr.Abraham Patani of Mumbai and another v. The State of Maharashtra and others** (2022 SCC Online SC 1143) considered the scope and ambit of Public interest and concluded as follows:

*"91. At the same time, we must not lose sight of the fact that in several situations,*





*the needs of the many must outweigh that of the few. We say so not with any fervour nor as a mantra, but as a solemn acknowledgment of the realities of modern life. The question of what constitutes "public interest" has been contemplated upon multiple times and the history of this Court is full of musings by different benches on the exact contours of this phrase in the context of various situations and statutes.*

.....

95. *It is unnecessary to belabour the point. The proposition is simply that the notion of public interest will necessarily reflect the specificities of the situation at hand. In the present case, the public interest which has been emphasized upon by Respondents is the urgent need for the creation of a connecting road through the Appellants' property. The need stems from the traffic congestion caused on the route from the Mahakali Caves to the Central MIDC. The lack of a direct linkage requires detours to be taken that significantly increase commuting time and cause inconvenience to the general public.*

96. *When the public interest is so clearly articulated and is an urgent and pressing exigency, private interests must give way to the extent required."*

8. We note that the learned Single Judge had duly taken note of the existence of the VUP close by and had concluded as follows: "*I find that as between chainage 291.309 where Ayooob Khan Road meets the service road and the vehicular underpass at 290.940, the distance is only 369 meters.*" We concur with the reliance placed by the learned Single Judge on the judgment in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy and others** [(2021) 3 SCC 572], wherein it had been held as follows:



*“63.4 ..... it was a well considered decision taken by the said Committee set up under the aegis of the MoRTH.*

*64. It must be assumed that the broadbased committee of experts in the field, was fully aware of the governing policies and criteria for designating national highways. It was also cognizant of the requirements and priorities of the area concerned and the norms specified for prioritising the stretches/sections. In that, national highways are regarded as arteries of the country’s economy.”*

In view of the above, we find no reason to interfere with the judgment of the learned Single Judge. Appeal dismissed. No costs.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

Sd/-

**SYAM KUMAR V.M.**  
**JUDGE**

csl