

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C).No. 12350 of 2015 (S)

PETITIONER(S) :-

1. ASKAR K.
FINAL YEAR M.B.B.S, GOVERNMENT MEDICAL COLLEGE
MULANKUNNATH KAVU, THRISSUR.
2. ASWIN V.DEV
FINAL YEAR M.B.B.S, GOVERNMENT MEDICAL COLLEGE
MULANKUNNATH KAVU, THRISSUR.
3. MOHAMMAD ASIF
FINAL YEAR M.B.B.S, GOVERNMENT MEDICAL COLLEGE
MULANKUNNATH KAVU, THRISSUR.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :-

1. STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT
THIRUVANANTHAPURAM-695 001.
2. SECRETARY TO GOVERNMENT
PUBLIC WORKS DEPARTMENT, THIRUVANANTHAPURAM-695 001.
3. THE ROADS & BRIDGES DEVELOPMENT CORPORATION
REPRESENTED BY ITS MANAGING DIRECTOR, 2ND FLOOR
PREETHI BUILDING, M.V.ROAD, PALARIVATTOM
KOCHI-682 025.
4. N.C.SULFEEKAR ALI
NELLIKOTUCHALIL P.O., VALLASSERI, KOZHIKODE - 673 001.

R3 BY ADV. SRI.M.VIJAYA KUMAR, SC, RBDCK
R1 & R2 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXT.P1- TRUE COPY OF THE GOOGLE MAP SHOWING THE LOCATION TO MEDICAL COLLEGE.

EXT.P2- TRUE COPY OF THE PROGRESS REPORT OF THE OVER BRIDGE COLLECTED FROM THE OFFICIAL WEBSITE OF 3RD RESPONDENT.

EXT.P3- TRUE COPY OF THE CITIZEN'S CHARTER AND ENGLISH TRANSLATION.

EXT.P4- TRUE COPY OF THE PAPER PRESENTED BY LEN WATSON TITLED "THE PLATINUM TEN".

EXT.P5- TRUE COPY OF THE NEWS REPORT WHICH APPEARED IN MATHRUBHUMI DAILY DATED MARCH 2015 AND ENGLISH TRANSLATION.

EXT.P6- TRUE COPY OF THE PHOTOS SHOWING THE BLOCKING OF ROAD.

EXT.P7- TRUE COPY OF THE CHART.

EXT.P8- TRUE COPY OF THE NEWS REPORT WHICH APPEARED IN MATHRUBHUMI DAILY DATED 10.3.2015 AND ENGLISH TRANSLATION.

EXT.P9- TRUE COPY OF THE SHORT NOTE PREPARED BY DR.V.V.UNNIKRISHNAN.

EXT.P10- TRUE COPY OF THE NEWS REPORT WHICH APPEARED IN THE HINDU DATED 13.4.2012.

EXT.P11- TRUE COPY OF THE RELEVANT PAGES OF KERALA TOLLS ACT 1976.

RESPONDENT(S) ' EXHIBITS :-

EXT.R3(a) : TRUE COPY OF ROAD MAP SHOWING ALL THE ROUTE TO THE MEDICAL COLLEGE.

EXT.R3(b) : TRUE COPY OF THE GOVERNMENT NOTIFICATION PUBLISHED IN THE KERALA GAZETTE, PERMITTING THIS RESPONDENT TO COLLECT TOLL FROM MULAMKUNNATHUKAVU RAIL OVER BRIDGE.

//TRUE COPY//

P.A. TO JUDGE

**ASHOK BHUSHAN, C.J &
A.M. SHAFFIQUE, J.**

W.P.(C) No.12350 of 2015

Dated this the 24th day of November 2015

J U D G M E N T

Shaffique, J.

This writ petition has been filed in the form of public interest litigation by certain Final Year MBBS students in the Government Medical College, Mulamkunnathukavu in Thrissur District, seeking for the following reliefs :-

- "i) to declare that the toll booth operated by respondent No.4 at Mulankunnathu Kavuvu is to be abolished forthwith by respondents 1 to 3;
- ii) to issue a writ of mandamus directing the respondents 1 to 3 to abolish the toll booth at Mulankunnathu Kavuvu at the point connecting Avanoor Mundur Road with Government Medical College, Thrissur and to ensure that no toll booth is functioning in the said locality at any point in the/at the side of/along the said road."

2. The main grievance raised by the petitioners is regarding the delay in toll payment in the Mulamkunnathukavu Over Bridge, which is constructed and managed by the Kerala Roads and Bridges Development Corporation, by which, critically ill patients brought to the Medical College through the said over bridge have to unnecessarily wait for longer time. It is contended that on account of collection of toll by the 4th respondent, who is a contractor, delay is occurring. The petitioners also referred to

various documents, by which, they contend that there is necessity for bringing critically ill patients within a specified time, failing, it will lead to death of the patients. They also point out certain instances, in which, the vehicles had to wait for longer time for the purpose of paying toll in the toll booth, which is constructed near the bridge.

3. Counter affidavit has been filed by the 3rd respondent inter alia stating that there are two level crosses to reach the Medical College and initially a booth was constructed in the Athani Railway Over Bridge, which is normally used by the persons coming to the Medical College. It is stated that after the construction of the said bridge, the Government had taken a decision to reimburse the expenses incurred by the Kerala Roads and Bridges Development Corporation and therefore, there is no collection of toll in the Athani Over Bridge, which leads to Medical College.

4. As far as Mulamkunnathukavu Over Bridge is concerned, the total construction cost incurred is ₹11,15,91,189/-. That apart, the construction cost of railway is about ₹3 Crores. Hence, the total project cost could be taken as ₹14.15 Crores. It is stated that the amount of toll is very nominal and that ambulances

-: 3 :-

and vehicles carrying critically ill patients are exempted from toll payment. It is also stated that the Railway Over Bridge at Mulamkunnathukavu is not a direct route to Medical College and therefore, toll is to be paid. According to them, Athani Railway Over Bridge is more convenient and easily accessible route to Medical College and that Mulamkunnathukavu Railway Over Bridge is constructed for the purpose of reducing waiting time of the public in the level crossing. It is further stated that the 4th respondent has obtained the right to collect toll by an open tender and he quoted an amount of ₹5,05,000/- for one year. The toll collection started during the previous six months and the Corporation has, however, spent an amount of more than ₹11 Crores for construction of Railway Over Bridge. It is therefore, stated that, unless the toll is collected, the Corporation will not be in a position to recover the construction cost from the public at large.

5. Learned counsel for the petitioners also relied upon the judgment of the Supreme Court in **Pt. Parmanand Katara v. Union of India and Others** [1989 (4) SCC 286], wherein, the Supreme Court had occasion to hold that the injured citizen when

brought for medical treatment should instantaneously be given medical aid.

6. Having regard to the aforesaid factual situation arising in the case, we do not think that this Court will be justified in directing the respondent authorities to give up collection of toll in the Mulamkunnathukavu Over Bridge. However, taking into consideration the fact that there could be delay in bringing critically ill patients to the Medical College through the said Over Bridge, the respondent authorities are bound to ensure that free passage is provided for ambulances and vehicles carrying critically ill patients. The 3rd respondent, who is the Managing Agency has to issue appropriate circular and ensure that such arrangements are made in the toll booth and they should also ensure that no obstruction is caused in taking the critically ill patients to the Medical College.

7. One other contention raised by the learned counsel for the petitioners is that the Government should take care of the cost involved in the matter, that too, on account of the fact that they have reimbursed the cost of the Athani Over Bridge. This apparently is a policy matter, which should be taken by the Government, taking into consideration the factual situation

-: 5 :-

involved in the issue. It is always open for the petitioners to represent to the Government regarding the aforesaid factual situation and it is for the Government to take an appropriate decision in the matter.

8. Having regard to the aforesaid factual consideration of the matter, we are of the view that this writ petition can be disposed of with the following directions :-

- (i) that the 3rd respondent shall make necessary arrangements by issuing appropriate directions to the contractor who manages the toll booth, to ensure free and uninterrupted passage of vehicles carrying critically ill patients through the said toll booth without any hindrance.
- (ii) it shall be open for the petitioners to submit necessary representation to the Government and it is for the Government to examine the cost effect and to take consequential action in the matter, if required.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE