

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13352 of 2020
and WMP No.16490 of 2020

E. Venkadesan Petitioner

vs-

1. The Chairman / Chief Executive Officer,
Railway Board,
Ministry of Railways,
Govt. of India,
New Delhi
 2. The General Manager,
Southern Railway,
NGO Annexe, George Town,
Chennai - 600 003
 3. The District Collector,
Collectorate,
Villupuram District,
Villupuram
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the respondents to construct ROB instead of RUB in lieu of level crossing No.106 at Nedimozhiyanur village at Railway km 139/38-40 between Mailam and Perani stations in compliance with the first respondent's Circular No.2017/CE-IV/RUB/88 New Delhi dated 04.10.2017.

For Petitioner

: Mr.K. Sakthivel

For R.1 & R.2

: Mr.P.T. Ramkumar
Standing Counsel

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard learned counsel for the petitioner.

2. The construction of a limited utility subway in lieu of railway level crossing is the subject matter of this Public Interest Litigation.

3. The matter had been agitated before this Court earlier and the following order was passed by us on 10.07.2020:-

" Heard learned counsel for the petitioner and learned Standing Counsel for the respondent Railways and the learned State Government Pleader for the State.

2.The petitioner contends that a representation has been filed praying for construction of an underpass and averments regarding the same have been made.

3.We are not inclined to entertain this petition for deciding the claim on merits. But, since a request has been made contending that it is in larger public interest, we dispose of this petition with liberty to the second respondent to pass an appropriate order and intimate it to the petitioner on the representation so said to have been filed by the petitioner within a period of six weeks from the date of presentation of certified copy of the order. No costs. Consequently, W.M.P.No.10712 of 2020 is closed."

4. In response thereto and the representation made by the Member of Parliament of the area concerned, the General Manager, Southern Railway made the following communication on 20.08.2020:-

"GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
Southern Railway

JOHN THOMAS
GENERAL MANAGER

General Manager's Office
Chennai - 600 003

Dear Sir,

Sub: Stop proposal for construction of
Underground Bridge in
Nedimozhiyanur
Village - Mailam - Villupuram District

Ref: Hon'ble MP's letter No.A/CG/077/2020
dt.09.06.2020.

.....
I have examined the matter raised in your letter referred above and the following remarks to the issues are furnished.

As per Railway Board directives all level crossings are to be eliminated by providing ROB/Subway on all routes taking into consideration of traffic density since level crossings are potential source of accidents. Accordingly, the decision has been taken to eliminate level crossing no.106.

The demand to stop the construction of Subway is in lieu of level crossing No.106 at Nedimozhiyanur Village at Railway km 139/38-40 between Mailam-and Perani Stations in Chennai Egmore-Villupuram section of Chennai Division. As per Railway Board's policy ROB can be constructed at level crossing where Train Vehicle Unit (TVU) is more than 1,00,000. The traffic density at LC No.106 is less than 1,00,000 TVU hence this LC does not qualify for construction of ROB on 50:50 cost sharing basis. Also, if ROB is proposed on deposit basis by state govt or sanctioned in future it involves land acquisition and diversion of Road alignment as the village is located just 200m from Railway track. In view of above facts, a subway is proposed in lieu of LC.

The District Collector, Villupuram vide his letter No.R.C.No.C3/29435/2018 dt.24.06.2020 granted permission for the construction of subway at LC No.106.

The size of the subway sanctioned at LC No.106 is of 4.50m x 4.75m, which is enough for plying of harvesting machines, heavy loaded

trucks and lorries carrying sugarcane, buses etc. Drainage facilities like collection well with heavy duty Diesel and electric pumps will be provided to avoid water logging during rainy season.

Since the subway is proposed at a distance of 6m away from the existing LC No.106, hence the existing road traffic will not be affected. Only after Commissioning of the subway, the existing LC No.106 will be closed for road traffic.

Further adequate pumping arrangements for dewatering during rainy season, (duly engaging agency) are available at subway which is constructed in lieu of L.C No.105, which is 500m away from LC No.106.

Thus, provision of subway at LC 106 will ensure more safety to public. Elimination of Lcs is one of the mission mode item of Indian Railways to enhance the safety of train operations.

With kind regards,

Yours sincerely,

John Thomas
(JOHN THOMAS)

Dr.M.K. Vishnu Prasad,
Member of Parliament (Lok Sabha)
Arani Constituency,
No.6, 1st Street, East Abiramapuram,
Mylapore, Chennai - 600 004. "

5. Many villagers went on a protest in order to forestall laying of the subway contending that if the subway is constructed it will not be useful because its dimensions are not sufficient enough to meet the passing traffic and secondly, it would remain flooded during rainy season making it almost impassable, that was sought to be demonstrated with a news report in respect of a neighbouring subway, constructed by the Railways.

6. The agitation of the locality was taken notice of by the Administration and a Peace Committee was formed, in which, the issues were being discussed. The points for discussion are contained in the document, which has been filed at Page No.24 is extracted herein under:-

"The following are the points to be discussed in the peace committee meeting to be held on 04.09.2020 in Tahsildar Office, Tindivanam:

1. As per Railway Board's directives, all the level crossing gages in Indian Railways are to be eliminated and constructed ROB/RUB so that speed of the train services can be increased and also level crossings gates are potential safety hazards and hence maximum number of Gates to be eliminated.

2. For Construction of ROB, the TVU should be more than 1.0 lakh. As per official records the traffic Density is 40256 TVUs as on 2017. Hence the LC is not qualified for ROB.

3. ROB can be provided Deposit terms, if State Govt., is agree to bear the entire cost along with other charges. But no such proposal is received from the State Government.

4. For RUB/Subway, full construction cost will be borne by the Railways in the interest of public utility and as well as safety of public due to increased speed in the section.

5. Accordingly Concerned District Collectors have been approached for approval for closure of LCs and construction of Subway in lieu of it.

6. District Collector, Villupuram have accorded approval for construction of Subway at LC gage No.106 at Nedimozhiyur village vide Proceedings No.R.C.No.C3/29435/2018 dt.24.06.2020.

7.The Box Size is going to be provided is 4.50m x 4.75m in clear where the harvesting machine, Sugarcane vehicles, Buses, Lorries etc will easily pass through the Subway.

8. Drainage facilities like collection well with high HP Diesel pump, Electrical pump will be provided at subway for clearing the stagnated water during rainy season time to time/

9. As per Railway Board's directives a separate agency will be arranged by the Railway for dewatering in subway during rainy season as well as waterlogged season.

10. Lighting arrangements will be provided in the subway for safe movement of pedestrians in the subway in night time.

11. The approach road slope will be provided 1 in 20 or 1 in 30 according to land arranged by the Highway department.

12. A ladder will be provided for removal of slip deposited in the collection well.

13. Till to completion of Subway, the existing LC gage will be in operation for public utility.

7. It appears that the villagers insisted upon their demands that stand recorded in the Peace Committee Meeting held in the presence of Tahsildar, Tindivanam and Deputy Tahsildar of the area on 03.09.2020. The same is extracted herein under:-

"Peace Committee Meeting

Place: The Tahsildars Office, Tindivanam Taluk

People protested against the construction of a subway on 1.09.2020. Following which this peace committee meeting held today presided over by the Tahsildar of Tindivanam in the presence of Railway Officers of the Railway Department at Tindivanam Taluk office on 03.09.2020.

The following villagers and Government Officers are participated:

Details of participants: Thiru Kannan, Thiru Subramanian, Thiru Palaniappan, Thiru. Kanthan, Thiru.Venkatajalapathy, Thiru Govindaraj, Thiru Robo Muthu/ Thiru Venkateswarn and Thiru. Venkatesan.

The following points were raised by the representatives of the villagers:-

1. Water catching in the tunnel during rainy season will be interruption of traffic.
2. Heavy vehicles harvest vehicles cannot pass through subway.
3. Since Nediayanur is the panchayat, villages may

not be going to government offices.

4. Tunnels are likely to be place of anti-social and robbery.

5. Similar projects failed in many places, they said.

6. The site of the subway is near the lake and the water catchment will be high.

7. The stagnation of water in the sub way may lead to a journey of 20 km to reach the cities.

They asked the railway administration either to make the project as a flyover or continue as it is in the current position. And the railway officials explained the advantages of the RUB project.

Following the above clarification, the public who had attended the talks were advised to approach the government within 10 days to request for permission to construct a flyover and if fruitful action does not take place within 10 days, it was informed on behalf of the public that they would not object to the continuance of the work after 04.9.2020.

8. It is urged by the learned counsel for the petitioner that in accordance with the Circular of the Railway Board dated 04.10.2017, the respondents ought to have conducted a proper survey and should have taken care to build a Railway Over Bridge instead of an underpass keeping in view the topography of the locality and the traffic. Instead, they have opted for an underpass, which is not feasible demographically and it is not in conformity with the Circular of the Railway Board itself.

9. The Railway Board Circular "dated 04.10.2017 has been filed on record and the same is extracted hereunder:-

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
RAILWAY BOARD

No.2017/CE-IV/RUB/88 New Delhi, dated 04.10.2017

General Manager
All Zonal Railways

Sub: Important issues related to construction of RUB/Subways including drainage.

Ref: (i) Board's Office Letter No.2006/CE-IV/MISC-2(RUBs) dated 18.04.2012.
(ii) Board's Office letter No.2017/CE-IV/Misc (RUBs) dated 21.03.2017.
(iii) Report on RUB/Subway circulated

vide letter No.2017/CE-IV/RUB/88
dated 03.07.2017.
(iv) CRS/NE Circle letter No.1675/Policy/
Pt-I dtd 16.08.2017.

Railway Board vide letter dt.18.04.2012, referred above, issued guidelines that level crossing which do not qualify for sanction RUB on cost sharing basis in terms of Para 925 of IRPWM, can be planned for elimination by Subways if found "technically feasible".

Many representations have been received on water-logging at newly constructed RUB/LHS/Subways. These RUB/LHS/Subways remains flooded most of the time due to inadequate drainage system. This situation indicates that drainage issues might not have been addressed properly by Railway during planning and execution stage and also by state govt. during service.

Keeping in view of large no. of representations, Railway Board vide letter No.2016/CE-IV/LX-ROB/RUB (Innovations), dated 20.09.2016 has nominated a committee consisting of EDCE/B&S/Railway Board, CBE/NR, CBE/WCR & ED/Structure/RDSO, to study the various issues related to construction of RUB/LHS/Subways and frame guidelines for uniform adoption by the Zonal Railways.

Committee recommended that:

i) Construction of RUB/Subway should normally be done where sufficient embankment height is available so that there is no drainage problem.

ii) Construction of RUB/Subway may have to be done where there is less embankment height but proper natural drainage leading to nearby bridge/low lying area can be provided, however, in such cases the invert level of drain should be above the normally observed flood level in nearby bridge/low lying area.

Iii) Normally, construction of RUB/Subway need not be carried out where general ground level is above the bed level of proposed subway. However, in exceptional circumstances, Construction of RUB/Subway may have to be done where there is problem of water logging i.e., the general ground

level is above the bed level of proposed RUB/Subway. In such cases the joints of RC boxes should be properly sealed, U-type RCC lining should be made and cover shed of economical design on approaches may be provided as per site condition. The sumps should also be provided with pumping arrangement for pumping out of water.

Instruction have further been issued by Board vide letter dt.21.03.2017 (reference (ii) above) that due to serious drainage problem at large no of RUB/LHS/Subways locations, should be constructed only at those locations, where it is technically feasible from drainage point of view.

CRS/NE Circle vide his letter No.1675/Policy/Pt-I/564 dated 16.08.2017 addressed to GM/NER & GM/NCR, informed that "For Limited height subways, the drainage is a serious concern. Most of the plans received with application are either not having any drainage arrangement or arrangement indicated in very casual way. For each and every site, specific drainage arrangement shall be integral part of Plan which should show details of collection of water and its disposal till final outfall with levels. A specific note as to how all weather availability of subway will be ensured shall invariably be enclosed with application".

As such, Zonal Railway should plan drainage arrangement as per site situation and following options of drainage can also be considered in addition to earlier issued guideline on drainage:

- a) Joints of box segments should be sealed properly
- b) Rain water harvesting
- c) Hump on road side or provision of reverse slope of road before start of downward ramp to RUB/LHS/Subways to avoid ingress of water through ramp and side. Retaining wall should continue along the approach slope upto the hump or from where reverse slope starts.
- d) Sump-pump arrangement at critical locations for providing water-pumping system.
- e) Elaborate drainage arrangement to divert surrounding water.

From the above, it is clear that drainage issue can be tackled with proper planning and execution even at locations having inadequate bank height. UMLC planned for elimination by construction of

RUB/LHS/Subways must be eliminated on priority by sorting out the issue of drainage. The provision of drainage arrangement should be made the integral part of construction of RUB/LHS/Subways at planning stage itself for its proper functioning. The planning and execution should include detailing for collection of water and its disposal till final outfall.

CRS/NE Circle further informed that in majority of cases, the subway is planned 10-20m away from existing level crossing location and subway is subsequently connected with very sharp curve at approach. This severely restricts the actual capacity of subway to handle road traffic and is permanent bottleneck.

In view of the above, the approach of RUB/LHS/Subways should be planned in such a way to avoid sharp curve in the approach road. To ensure this, as far as possible, RUB/LHS/Subways should be constructed either on the same alignment of level crossing by temporary diversion/closure of level crossing or at suitable location so as to avoid bend in the approach road to the maximum extent.

(Piyush Agarwal)
Principal Executive Director/Bridge

10. Pointing out towards the parameters as provided in the said Circular, it is urged that the subway cannot be constructed where the general ground level is above the bed level of the proposed subway.

11. It is urged that water accumulation will continue to impede any traffic through the subway and the huge amount which is being spent for constructing the subway will go waste and will be of no use to the public.

12. Learned counsel for the Railways has invited the attention of this Court to the consideration made by General Manager, Southern Railway and he submits that keeping in view the traffic density, it has not been found feasible to construct a Railway Over Bridge as the site does not qualify for such a construction.

13. Learned counsel for the petitioner contends that the possibility of construction should have been based on more cogent material instead of a consideration being made bereft of the Railway Circular.

14. It has then been pointed out by the learned counsel for the respondents that all arrangements, in case of water flooding occurs, are being made under the Circular itself, for which, appropriate directions can be given. It has further been submitted that the passage of subway is sufficient even for trucks and buses to pass underneath.

15. We have considered the submissions raised on behalf of Railways and we find that the choice of constructing a subway is based on an empirical consideration and a technical assessment, but, so far as the problem of water logging, as pointed out by the learned counsel for the petitioner, is concerned, the same has to be addressed to and we, therefore, direct the respondents Railways to ensure all arrangements as envisaged in the Circular dated 04.10.2017 for allowing unimpeded traffic through the subway.

16. The Railways shall also ensure that the traffic shall not be obstructed on account of any mismanagement on their part and it shall be their obligation to confirm by all possible means that the passage is open to the public to facilitate free flow of traffic.

17. The response given to the Member of Parliament on 20.08.2020, explains the stand taken by Railways, which, in our opinion, cannot be subjected to any further Judicial Review.

18. However, in the event of any such impediment being faced by the villagers, it is open to them to represent to the officials of the Ministry of Railways for consideration of their grievances.

19. The writ petition stands disposed of subject to the aforesaid observations. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman / Chief Executive Officer,
Railway Board,
Ministry of Railways,
Govt. of India,
New Delhi.

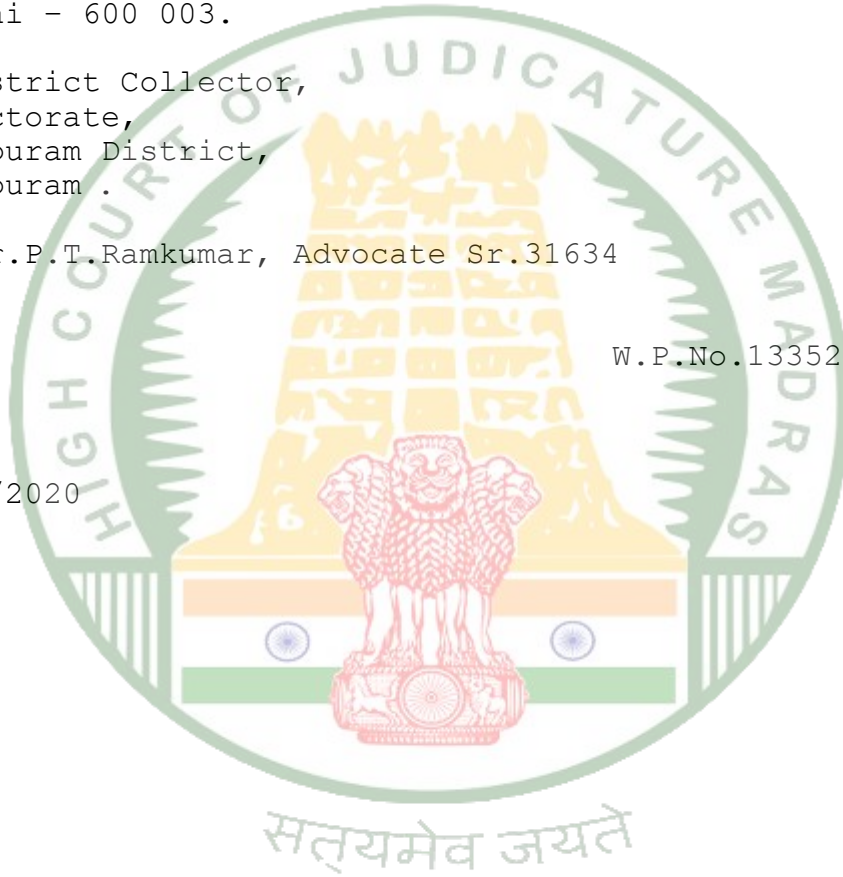
2. The General Manager,
Southern Railway,
NGO Annexe, George Town,
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3. The District Collector,
Collectorate,
Villupuram District,
Villupuram .

+1cc to Mr.P.T.Ramkumar, Advocate Sr.31634

W.P.No.13352 of 2020

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srg 21/10/2020



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