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W.P.No.35251 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.35251 of 2022

A.Kadhirvelu

.. Petitioner

Vs

- 1.The Chairman,
National Highway Authority of India (NHAI),
G5 & 6, Sector 10 Dwarka,
New Delhi-110 075.
- 2.The Regional Officer,
National Highway Authority of India (NHAI)
Regional Office
2&3 Floor, Vijayakrishna Plaza,
Melur Main Road, Madurai.
- 3.The Project Director,
National Highway Authority of India (NHAI)
New No.6, First Floor, III Main Road, Ponnagar,
Trichy-620 001.
- 4.The General Manager,
Regional Office
National Highway Authority of India (NHAI)
Sri Tower, 3rd Floor, DP, 34, Industrial Estate,
Mount Road,
Guindy, Chennai-600 032.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the second respondent to construct the under pass bridge at KM 225/800 in the National Highway NH 45 at Veppur, under construction, leveling with the existing two underpass bridges at KM 224/30 and KM 226/400 with a minimum height of 5 meters without slopes or ups and downs in between the bridges as per the petitioner's representation dated 30.6.2022.

For the Petitioner : Mr.C.R.Malarvannan

For the Respondents : Mr.Su.Srinivasan

ORDER

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

Heard Mr.C.R.Malarvannan, learned counsel for the petitioner;
and, Mr.Su.Srinivasan, learned counsel for the respondents.

2. The contention of the petitioner is that the height of the Light Vehicular Under Pass (LVUP) should at least be raised to 5 meters from the existing 4 meters, so that heavy vehicles can pass



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conveniently. There is lot of inconvenience caused because of the same. The heavy vehicles have to take a detour of 2 kilometers.

3. The height of the LVUP; need for an underpass and a pedestrian crossing, all these have to be decided by the experts.

4. A counter affidavit is filed by the respondents, wherein it has been stated that a joint inspection was held on 19.8.2022. The District Collector was informed that the height of the bus is ranging from 3.15 meters to 3.5 meters. The buses can freely pass through the underpass. The Assistant Divisional Engineer submitted a site report dated 31.10.2022 to the Sub-Collector, wherein a suggestion was made to widen the service road without increase of the height of the underpass. It will not be possible to dismantle the existing construction. To increase the height of the LVUP to 5 meters would not be technically feasible. Further, the affidavit states as under:

"4. (b) In regard to the averment made in para no. 5, 6 & 7, it is submitted that, considering the road safety experts opinion as a permanent mitigation measures pedestrian underpass was



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suggested by the Technical Experts considering the geometry of the stretch and approval has been accorded by NHAI. The contention of the petitioner that, to construct the underpass bridge at km.225/800 matching the level with existing 2 underpass bridges at km.224/300 and at km.226/400 with a minimum height of 5m without slopes, or up & downs in between the bridges is not feasible, since there existing VUP at km.224/950 with a size of 12m X 5m and PUP at km.226/275 with size of 12m X 3.5m already been constructed as a part of the project during 2006-07. The existing PUP at km.226/275 is 6 lane structure and the VUP at km.224/950 is 4 lane structure. It is submitted that the Concessionaire-M/s.Trichy Tollways (P) Limited, as per letter dt.08.10.2021 has also opined that, the new Light Vehicular underpass of size 12m X 4m is being constructed in between the existing PUP & VUP and that, if we go for VUP of size of 12m X 5m, the level difference cannot be matched with existing structures. More over the proposed LVUP can also accommodate the traffic flow of buses also. Therefore, the contention of the petitioner is not sustainable and technically not feasible.



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(c) In regard to the averment made in para no.8, 9, 10 & 11, it is submitted that, earlier NHA I has proposed to provide a Foot Over Bridge (FOB) to check the abrupt crossing of public of main carriageway from service road at this location. The Road Safety Cell of NHA I while identifying the safety issues as a matching solution and counter measure they have proposed for a half subway which is a grade separator, pedestrian crossing and facilitate easier possibility of various active transportation, modes including disabled accessibility. Again, considering the location of bus stand and volume of vehicular movement, the light vehicle underpass proposed and accordingly NHA I has accorded approval for construction of LVUP at this location following the technical expert's opinion as per letter dt. 05.04.2019. It is further submitted that the petitioner's suggestion to increase the height of the LVUP is without any technical feasibility study and backed by any technical aspects. Whereas, the construction of LVUP by NHA I is based on the reputed technical expert's recommendations. Therefore, the contention is not sustainable. Further due to land



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constraint at this location and considering the developments in this location, the service road has been made on both sides of the proposed underpass. It is also to state that though the approved plan as per agreement was 4 lanes configuration only, yet the concessionaire was requested to provide 6 lane from km.224/400 to km.225/200 along with 6 lane VUP in view of traffic and future requirements. All safety arrangements was made at this location. Therefore, the service road has been provided with required median opening at km.224/300 and at m.227/400 for regulation of traffic. Hence the contention of the petitioner that safety arrangements has not been made to avoid accidents is not sustainable.”

5. In view of the decision taken by the experts, it will not be possible to substitute our own views for the views of the experts. It is for the respondents to consider the feasibility, security and safety while constructing the underpass and/or aligning of the road.



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The writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, W.M.P.No.34703 of 2022 is closed.

(S.V.G., CJ.)

(J.S.N.P., J.)

23.04.2024

Index : Yes/No

Neutral Citation : Yes/No

sasi

To:

- 1.The Chairman,
National Highway Authority of India (NHAI),
G5 & 6, Sector 10 Dwarka,
New Delhi-110 075.
- 2.The Regional Officer,
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THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD,J.

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