

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS. 3239-3246 OF 2020
(ARISING OUT OF SLP (C) NOS. 3008-3015 OF 2020)****STATE OF KERALA & ANR. ETC. ETC. APPELLANTS****VERSUS****M/S RDS PROJECT LIMITED & ORS. ETC. ETC. RESPONDENTS****J U D G M E N T****R.F. Nariman, J.**

- 1) Leave granted.
- 2) Heard Mr. K.K. Venugopal, learned Attorney General for India appearing on behalf of the State of Kerala, Dr. Abhishek Manu Singhvi, learned Senior Counsel for the Respondent No.1, Mr. Gopal Sankaranarayanan, learned Senior Counsel for the Respondent No.3, Mr. Jaideep Gupta, learned Senior Counsel for the Respondent No.2, Mr. Rana Mukherjee, learned Senior Counsel for the Respondent No. 9 and Mr. V. Giri, learned Senior Counsel for the Respondent Nos. 4 & 5. The impugned High Court judgment dealt with a project called the Palarivattom Flyover on the National Highway, Cochin City, State of Kerala. This was constructed by

Respondent No.1 and inaugurated on 12.10.2016. However, after one year of this Flyover being used, the Consultancy Agency for the Ministry of Road Transport and Highways, Government of India, on regular inspection of the bridge, reported on 16.03.2018 that the bridge was in a distressed condition with several cracks as a result of which measures should be taken to rehabilitate the flyover. The IIT, Madras, was thereafter appointed as an expert agency which delivered several reports in which, according to it, the bridge could follow a carbon fibre fabric composite treatment and be repaired instead of being demolished. Meanwhile, Dr. E. Sreedharan submitted a report to the Chief Minister of Kerala on 03.07.2019 in which he recommended the strengthening and replacement of RCC girders with PSC girders to ensure durability which would necessitate a demolition and re-construction of the bridge. Dr. E. Sreedharan, by a report dated 14.09.2019, referred to the IIT reports and did not agree with the same, stating that if his plan was to be carried out, a 100 year guarantee would be given for the newly constructed flyover.

3) Given these divergent streams of opinion, the State Government then set up a High Level Committee consisting of five persons who are as follows:-

1. Sri Ashok Kumar M. (Convenor)
Chief Engineer, National Highways,

Public Works Department
Thiruvananthapuram

2. Sri S.Mano Mohan (Member)
Chief Engineer, Bridges,
Public Works Department
Thiruvananthapuram
3. Sri M.N. Jeevaraj (Member)
Chief Engineer (Rtd.),
Public Works Department
Thiruvananthapuram
4. Sri S. Saju (Member)
Senior Bridge Engineer,
Public Works Department
Thiruvananthapuram
5. Sri S.M. Ashraf (Member)
Senior Structural Engineer,
Public Works Department
Thiruvananthapuram

4) It will be noticed that apart from experts who were engineers, one of whom was a Senior Bridge Engineer, a Senior Structural Engineer of the PWD was also a member of this Committee. This Committee went into the IIT reports and the Sreedharan report in some detail, after which it concluded as follows:

“9. Conclusion

“a. The tests carried out by IIT Chennai are as per IS codes and IRC recommendations. IIT Chennai being a premier and reputed institution, their findings can be accepted and relied on. However, a load test as specified in IRC 112:2011 has not been proposed by IIT Chennai. The reasons are not mentioned in their report. The Committee feels that since crack width in certain girders have exceeded the allowable limits which is one of the compliance criteria for load test, IIT

might have decided that there is no point in doing a load test before strengthening. However, IIT has recommended load test after strengthening the flyover. IIT has suggested its scheme for strengthening the flyover, which again is as per IRC recommendations. But, IIT has not mentioned the service life of the flyover after strengthening. IRC also does not recommend service life of any structure after doing the strengthening works proposed by IIT.

b) As mentioned by Dr. E.Sreedharan a new construction with proper design, with quality execution of the work with quality materials and strict technical supervision can expect a service life of 100 years.

c) Construction cost of the proposal of demolishing and replacing of superstructure as proposed by Dr.E. Sreedharan will cost (18.71 crores), more than double the cost estimated for the strengthening scheme proposed by IIT (7.31 crores). The required completion time for both cases is almost the same.

d) Normally rehabilitation/strengthening are required for old as well as distressed bridges having service life of 40 years or more and also strengthening works are normally required for limited members or locations of a flyover/bridge. In the case of Palarivattom flyover as per the findings of IIT Chennai, 97 RCC girders out of 102 girders requires strengthening which is an extensive strengthening work for superstructure. Based on the all the above factors, Committee is of the opinion that considering the service life assured by Dr. E. Sreedharan for 100 years, it is better to accept the proposal by him.”

5) The State of Kerala, by a G.O. dated 25.10.2019, examined this High Level Committee Report, and accepted it, stating as follows:

“6. Government have examined the whole matter in detail and have decided to accept the recommendations of the Technical Committee and to proceed accordingly.

It is also decided to accept the letter of offer made by Delhi Metro Rail Corporation to take over the bridge for rehabilitation as per letter read as 6th above. DMRC shall submit detailed item wise estimate for approval of Government. On the basis of the detailed estimate, Finance Department shall allot funds in the appropriate Head of Account for the purpose. RBDCK will hand over the bridge site to DMRC free of all encumbrances.

7. RBDCK shall realize the loss sustained to the Government from the contractor in the light of the report of IIT Madras, report of Dr. E.Sreedharan and the FIR filed in case No. 1/2019 of Moovattupuzha Vigilance Court and as per the relevant provisions of the agreement. RBDCK shall also initiate action against the contractor for the lapses as per PWD Manual.

8. This order will be subject to the final decision of Hon'ble High Court in WP (C)s 25343, 25362 and 26405 of 2019."

6) At this point, a Writ Petition was filed by the Respondent No.1 in the Kerala High Court against the aforesaid G.O. By the impugned judgment, the Kerala High Court went into the terms, in particular, clause 11 of the original tender between the contractor- Respondent No.1 and the State, and then considered the various reports. The High Court also noticed that a vigilance enquiry had been conducted because there were allegations that there was large scale corruption, and as part of it, a team of experts from the Government Engineering College, Trichur reported that there are 2183 cracks on the girders out of which 99 cracks are above 0.3

mm width and 83 cracks on pier caps out of which 5 cracks are about 0.3 mm width.

7) After considering the arguments of counsel appearing for all parties, including the Respondent No.3- KITCO, stating that a load test is extremely necessary for the purpose of ascertaining the strength of the flyover before anything further is done to it, the High Court concluded:

“19. There is no dispute about the fact that as per the terms of contract between the parties, load test is a requirement to be performed to ascertain the strength of the bridge and to ensure that it has the expected strength. According to the contractor, though certain cracks have developed in the girders, it needs only repairs which the contractor is willing to do and it would not affect the strength of the bridge in any way. A similar view had been expressed by the consultant M/s KITCO as well. According to them, the load test is mandatory to ascertain the strength of the bridge, and if the girders and platform are demolished, such an opportunity will be lost. The Government and its authorities are not in favour of a load test since they feel that the aforesaid cracks itself are enough to arrive at a conclusion that those girders are to be demolished. Government had already taken a decision to remove the platform and girders. Once it is removed and demolished, it may not be possible to ascertain the strength of the present structure, which may prejudicially affect the right of all the stakeholders, including the Government. The contractor as well as the consultant still believes that the load test would prove that there is no requirement for demolishing the structure. Therefore, before demolishing the platform and the girders, it is better to have a load test conducted, to avoid any further controversy in the matter. After conducting such load test, it shall be open for the Government and its authorities to take a decision whether they should proceed in accordance

with the manner in which they have already decided or to take a different approach in the matter.

In the result, the following directions are issued.

(i) That the Government shall conduct a load test of the Palarivattom flyover through an approved qualified agency capable of conducting such a test, with notice to all the stakeholders.

(ii) The entire expenditure for conducting the load test shall be borne by the petitioner in WP (C) No. 26030/2019.

(iii) The entire process shall be completed within a period of three months or at an early date, as may be possible.

(iv) After conducting the load test, the Government shall file a statement before this Court along with the report of the concerned agency.”

8) Having perused the High Court judgment, what is clear is that the High Court, instead of applying the well-established parameters of judicial review and ascertaining whether the decision of the State Government would violate Article 14, went into the matter itself and stated that it is better to have a “load test conducted to avoid any further controversy in the matter”.

9) Given the fact that an Expert Committee, which is a High level Committee of five experts was set up to go into the divergent opinions of IIT Madras and Dr. E. Sreedharan, and the experts having come to a particular conclusion, it is very difficult then to say that the Government, in accepting such Expert Committee Report,

could be said to have behaved arbitrarily. On this ground alone, we set aside the judgment of the High Court, as also the review judgment.

10) The appeals are allowed in the aforesaid terms.

11) The Writ Petitions that are pending in the High Court may be disposed of within a period of six months from today.

..... J.
(ROHINTON FALI NARIMAN)

..... J.
(NAVIN SINHA)

..... J.
(INDIRA BANERJEE)

New Delhi;
September 22, 2020.