

DEVAN RAMACHANDRAN, J.

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W.P.(C) Nos.34310/2019 & 32680/2008
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Dated this the 19th day of August, 2022

ORDER

Read orders dated 01.08.2022 and 08.08.2022.

2. The more this Court delves into the issue of bad roads, it becomes apparent that it is a result of either corruption or insouciance; and in most times, both.

3. There is at least one road in Kerala which has stood the ravages of monsoon for the last more than a decade and half; and hence citizens cannot be found fault if they have to believe that if a road is constructed well, it will last.

4. Alas, with respect to most of the other roads in Kerala, it is a continuing saga of construction, dilapidation and construction again; which happens in quick succession, at least once in a year or multiple times.

5. One certainly has to, therefore, examine the angle of corruption.

6. Since as I have already said in my earlier orders, uncorroborated inputs point to huge deficiency in the work standards, because the allotted resources do not reach the specified termini.

7. Sri.K.V.Manoj Kumar - learned Senior Government Pleader, who is also appearing for the PWD, submitted that the Vigilance and Anti Corruption Bureau has, in obedience to the directions of this

Court in the interim order dated 19.07.2022, begun vigilance inspection on all roads and persons entrusted with its management and construction, including Engineers and Contractors. He added that this is being done even before the circular as ordered by this Court has been issued; but assuring that the same will be brought out without any further delay. Sri.Manoj Kumar explained that 116 roads have already been so inspected, its samples taken and sent for forensic examination and that every Engineer and Contractor found culpable will be charged and subjected to legal consequences.

8. The learned Senior Government Pleader, thereafter, submitted that, as far as National Highway Authority of India (NHAI) is concerned, their Concessionaire refused to even respond to the letters issued to them and that this has led to the bad condition on several stretches. He then confirmed that the District Collectors are now playing a proactive role and that at least three of them had visited the sites and settled reports on the manner in which the work was being conducted, particularly at the place when a young man lost his life in the unfortunate accident on the 5th August, 2022.

9. Sri.Manoj Kumar concluded saying that a Detailed Action Taken Report, with respect to the roads as well as the vigilance action, will be placed on record without any delay; and that all

necessary penal consequences would also be initiated against those found guilty.

10. Sri.Bidan Chandran - learned standing counsel for the NHAI, put the entire fault for the bad condition of the stretch where the young man lost his life on 05.08.2022 on the Concessionaire. He submitted that the concessionaire is acting under a "Build - Operate - Transfer" arrangement and that it was fully responsible for the upkeep of the stretch, as also the balance of the road.

11. Sri.Bidan Chandran then submitted that, consequent to the orders of this Court dated 08.08.2022, the NHAI took very stern and strict action to ensure that the roads are restored and that a Committee was constituted, with the Regional Office as its Presiding Offices. He added that the Committee visits the sites very frequently, even every three or four days; and that this has now ensured that most of the stretches of the NHAI, if not all, have been completely restored and made safe for traffic and pedestrians.

12. However, as regards NH66 is concerned, Sri.Bidan Chandran conceded that there are still some issues; but explained that this was because of the ongoing work, saying that the Kodungallur Bypass has been substantially repaired and its work will be completed within the next ten days also, if not already done.

13. After I heard Sri.Bidan Chandran on the afore lines, I asked him whether any enquiry has been initiated by his client into

the Concessionaire, in charge of the area where the young boy died on 05.08.2022. He submitted that investigations are on and that steps will also be taken to remove the Concessionaire to appoint another entity in their place; and added that it will be within the powers of this Court, under Article 226 of the Constitution of India, to fix compensation in favour of the family of the victim and that the NHAI welcomes it, so that it will become a deterrent to other Concessionaires in future.

14. Sri.Vinod Bhat, learned *amicus curiae*, submitted that the stretch between Ernakulam and Valayar of the NHAI seen to be now fairly good and that he had visited the same as per the directions of this Court.

15. However, as regards the PWD roads and the roads maintained by the LSGD is concerned, the learned *amici curiae* - Sri.Vinod Bhat and Smt.S.Krishna, submitted that much work still require to be done. They pointed out that many of the roads under the PWD and the LSGD are still wanting basic repair and maintenance and that accidents are waiting to have.

16. Of course, as I have said above, Sri.Manoj Kumar submitted that work on these stretches are also underway and that it will take some more time to complete it.

17. In the afore perspective, it must be remembered that the creation of pothole or crater on a road can only be construed as a

“man made disaster” under the provisions of the Disaster Management Act. This Court has already so declared in the earlier interim orders and has authorized the District Collectors to act within their statutory powers.

18. It would not require this Court to prod them constantly since their work is a continuous one - on an hour to hour or minute to minute basis - depending upon the conditions of the roads in the territories under their control. The officers under the various District Collectors - in their capacity as Chairman or Chairperson of the the Disaster Manager Authority - must be instructed to visit and watch every road and to ensure that all of them are kept free of disaster, lest another accident happened.

19. Certainly, the Government of Kerala will be at liberty to issue necessary circulars in this regard, which I order them to do in addition to the one relating to the vigilance cases; but I hereby, direct the District Collectors to act proactively to avert 'man made disasters' on the roads; and I caution them that every further accident will have to be explained by them in future.

20. As far as the victim of the accident that happened in the National Highway on 05.08.2022 is concerned, since Sri.Bidan Chandran - learned Standing Counsel for the NHAI, says that the State Machinery can take necessary action against the Concessionaire, I direct Sri.K.V.Manoj Kumar - learned

Government Pleader, to inform this Court the steps taken against the Concessionaire under the penal laws and to fix constitutional tort liability on them, under the sanction of the sovereign's power for such purposes constitutionally.

21. The NHAI, of course, will also be obligated to file their report regarding the action taken by them against the Concessionaire, both in this regard or with respect to the contract in question.

22. As far as the city of Kochi specifically is concerned, the PWD and the Corporation will ensure that every road, without exception, is repaired and kept ready within the next two weeks. Wherever the Cochin Smart Mission Limited requires its work to be completed, it shall do so, including for maintaining the drainage and drainage holes through gratings/slabs and such other; and reports in this regard will also be placed on record by them by the next posing date.

23. Before I conclude I must, however, record that the Government of India and in particular its Ministry of Road Transport and Highways, have a specific role to play, particularly with respect to the principles of Constitutional Tort, when somebody is killed or injured in an accident on the National Highway. They must inform this Court how we must respond to the cri de coeur of the family of a victim, or that of an injured, for

having either been killed or put to danger because the Authorities vested with duties did not do it well or neglected it. The Assistant Solicitor General of India - Sri.S.Manu is hereby directed to obtain specific instructions from the said Ministry and place it before this Court - either in the form of a counsel statement or counter pleading, as may be - by the next posting date.

24. Though the victim of the accident which happened on 05.08.2022 is not before this Court, a larger question arises as to whether judicial notice of his family's plight should be taken and they be compensated under the constitutional guarantees. These aspects will also be considered on the next posting date and I request the learned counsel for the parties to be ready on this aspect.

25. The earlier invitation to the public to approach the learned Amici Curiae will remain in force; but I add that they will also be at liberty to approach the District Collector through their online portals/pages for this purpose. If any such information is brought to the notice of the District Collectors, then they, in their capacity as Chairperson of the District Disaster Management Authority, will register it as a case and cause an enquiry into it; thus leading to necessary action thereon. Should any District Collector fail or refuse to do so, it will be seen as a violation of their statutory duties and necessary consequences will be forced

to be ordered by this Court in due time.

Post on 31.08.2022 and I request the Director of Vigilance to be present online for deliberation, if any, on that date.

Sd/-

**DEVAN RAMACHANDRAN,
JUDGE**

stu/rp