

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

&

THE HONOURABLE MR. JUSTICE T.V. ANILKUMAR

Thursday, the 10th day of October 2019/18th Aswina, 1941

WP(C) No.26405/2019

PETITIONERS

1. ASSOCIATION OF STRUCTURAL AND GEOTECHNICAL CONSULTING ENGINEERS, VADAKUMTHALA BUILDING, PULLEPADY, ERNAKULAM, (EKM/TC/394/2012), KERALA STATE, PIN-682 018, REPRESENTED BY ITS PRESIDENT MR.REJI ZACHARIAH.
2. DR.ANIL JOSEPH, 49 YEARS, IMMEDIATE PAST PRESIDENT, ASSOCIATION OF STRUCTURAL AND GEOTECHNICAL CONSULTING ENGINEERS, VADAKUMTHALA HOUSE, PULLEPADY, COCHIN- 682 018.

RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.
2. THE SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.
3. ROADS AND BRIDGES DEVELOPMENT CORPORATION OF KERALA, 2ND FLOOR, PREETHY BUILDING, M.V. ROAD, PALARIVATTOM, ERNAKULAM- 682 025, REPRESENTED BY ITS MANAGING DIRECTOR.
4. KITCO LIMITED, FEMITH'S, PUTHIYA ROAD NH BYPASS, VENNALA, ERNAKULAM- 682 028, REPRESENTED BY ITS MANAGING DIRECTOR.
5. RDS PROJECT LIMITED, REGISTERED OFFICE AT 427, SOMDUT CHAMBERS II, 9 BHIKAJI CAMA PLACE, NEW DELHI- 110 066 AND HAVING ITS REGIONAL OFFICE AT SHIHAB THANGAL ROAD, PANAMPILLY NAGAR, ERNAKULAM- 682 036, REPRESENTED BY ITS MANAGING DIRECTOR.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to:

1. Stay all proceedings contemplated by respondents 1 to 4 to demolish the existing Palarivattom Flyover, pending disposal of the Writ Petition.
2. Direct the respondents 1 to 4 to produce a copy of the final report submitted by the IIT, Madras and Dr.E.Sreedharan before the Government, pending disposal of the Writ Petition.
3. Direct the respondents 1 to 4 to submit a report as to why load test was not conducted before a final decision was taken by the State Government, pending disposal of the Writ Petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 03/10/2019 and upon hearing the arguments of M/S SANTHOSH MATHEW, DIVYA SARA GEORGE, JAISY ELZA JOE, KARTHIKA MARIA, VEENA RAVEENDRAN, ANIL SEBASTIAN PULICKEL, ARUN THOMAS, JENNIS STEPHEN, VIJAY V. PAUL, Advocates for the petitioner, STATE ATTORNEY & GOVERNMENT PLEADER FOR R1 & R2, STANDING COUNSEL for R3, M/S. K.L. VARGHESE, VIZZY GEORGE, NITHIN GEORGE & B.DEEPAK, Advocate for R4, SRI.S.SREEKUMAR (SENIOR ADVOCATE) ALONG WITH M/S.HARIKRISHNAN S., HANI P.NAIR, AJAY BEN JOSE, P.MARTIN JOSE, P.PRIJITH & THOMAS P.KURUVILLA, Advocates for R5, the court passed the following:

P.T.O.

**A.M.SHAFIQUE & T.V. ANILKUMAR, JJ**

W.P.(C).Nos.25343, 25362 & 26405 of 2019

Dated this the 10<sup>th</sup> day of October, 2019

**ORDER**

**Shaffique, J.**

**W.P.(C).No. 25343/2019**

Admit. Government Pleader takes notice for respondents 1 to 3. Sri. Shyson P Manguzha takes notice for the 4<sup>th</sup> respondent. Sri. Martin Jose P takes notice for the 5<sup>th</sup> respondent.

**W.P.(C).No. 25362/2019**

Admit. Assistant Solicitor General of India takes notice for the 1<sup>st</sup> respondent. Government Pleader takes notice for respondents 2 and 3. Smt. Sheela Devi appears for the 4<sup>th</sup> respondent. Sri. Shyson P Manguzha takes notice for the 5<sup>th</sup> respondent. Sri. Regi takes notice for the 6<sup>th</sup> respondent. Sri. Martin Jose P takes notice for the 7<sup>th</sup> respondent.

**W.P.(C).No.26405/2019**

Admit.

These writ petitions concerns a common issue relating to Palarivattom Fly over in NH 66 Bye-pass. One of the main contentions urged in these public interest litigation is with reference to the opinion expressed by the Government to dismantle the bridge on account of the reports available with

the Government. The main contention urged on behalf of the petitioners as well as the contractor and KITCO is that the efficiency of the bridge can be considered only after a Load Test is conducted as per the provisions of the contract. Clause 11 relates to the Load Test. Clause 11.1 to 11.5 reads as under:

**"11.0 LOAD TEST**

11.1 The contractor is required to carry out load test in one of the completed deck with equivalent static load including impact as per provisions contained in relevant codes. The instrumentation arrangements for the test will be decided by the Engineer and his decision shall be final. For carrying out such a test, the Contractor should quote specific rate.

11.2 The above test is optional and if asked to carry out load test on one of the completed deck, he must be in a position to carry out the test.

11.3 The rate of this item under relevant Annexure (Proof Testing) shall include cost of all materials, equipment, labour, etc.

11.4. The Engineer may also insist on the contractor for further load tests to be made on any parts of the bridge superstructure, if in his opinion, such tests are deemed necessary for any one or more of the reasons specified below:

1. The concrete test cubes failing to attain the specified strength.
2. Shuttering being removed prematurely
3. Concrete being improperly cured.
4. Any other circumstances attributable to the

negligence on the part of the Contractor which, in the opinion of the Engineer, results in the structure or part thereof being of less than the expected strength. For carrying out such unscheduled test, necessitated due to the negligence on the part of the Contractor, no payment will be made.

11.5 Such structure or parts of the structure, which fail to pass the specified tests, shall be removed from the site by the contractor at his cost. The payments made on account for the rejected structure/part structure work shall be recovered from the Contractor and the work shall be re-done by him at the same rates. The Contractor shall indemnify the Employer against any and all obligations of payment in respect of the rejected items."

2. It is inter alia contended that though the Government has placed reliance upon a few reports, no Load Test has been conducted so far which is the basic test to be conducted in order to find out the strength of the bridge, and whether it is to be dismantled or to be repaired. Though IIT Madras after having inspected the bridge has directed that further test had to be conducted, nothing of that sort has been relied upon by the Government, whereas the Government seems to have proceeded on the basis of the opinion given by Mr. Sreedharan, who is an Adviser to the Government.

3. The learned Senior Counsel who is appearing for

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KITCO, Sri. K.L. Varghese submits that the report of Mr. Sreedharan cannot be taken for granted, in so far as there are several infirmities in that report which cannot be treated as final.

4. Be that as it may, in so far as the contract contains a provision to find out the strength of the structure by conducting a Load Test, Government shall consider whether a Load Test is to be conducted through a competent agency, either by IIT Kanpur, IIT Mumbai or any agency having specialization in bridges and whether the Government contemplates to rely upon the said report as well, before proceeding further in the matter. A statement shall be filed before this court within two weeks. The bridge may be demolished only after getting permission from this Court.

Sd/-  
A.M SHAFFIQUE  
JUDGE

Sd/-  
T.V. ANILKUMAR  
JUDGE

-TRUE COPY-

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*10/10/19*  
ASSISTANT REGISTRAR

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