

I.A. No. 4/2017

B.P. Mahesh v. State of Karnataka

2018 SCC OnLine Kar 39 : (2018) 1 AIR Kant R 707 : (2018) 2 KCCR (SN 104)
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In the High Court of Karnataka at Bengaluru
(BEFORE H.G. RAMESH, A.C.J. AND P.S. DINESH KUMAR, J.)

Sri. B.P. Mahesh and Others Petitioners

Sri. Ashok B. Patil, Advocate

v.

The State of Karnataka and Others Respondents

Sri. A.S. Ponnanna, Addl. Advocate General for Sri. Vivek Holla, HCGP for R1 to 3 & 5 & 6

Sri. D.R. Rajashekarappa, Advocate for R7

Sri. D.N. Nanjunda Reddy Senior Advocate for Sri. S.H. Prashanth, Advocate for R4 & 8

Sri. R. Subramanya, Advocate for M/s. Haranahalli Law Partners for R9;

Sri. Gururaj Joshi, Advocate for R10

Sri. K. Krishna, Advocate for R11

I.A. No. 4/2017

In

Writ Petition No. 47168/2017 (GM-RES) PIL¹

Decided on January 8, 2018

ORDER ON I.A. NO. 4/2017

1. This public interest litigation is filed, opposing a proposed 'Steel Flyover' on the 'Hare Krishna Road', Bengaluru. The petitioners claim to be the residents on and around Hare Krishna Road. They have *inter alia* prayed for an appropriate writ and to quash Government Order in ಸರ್ಕಾರಿ ಆದೇಶ ಸಂಖ್ಯೆ:ನಆಆ/ 610 ಎಂಎನ್‌ಎಸ್ 2014, ಬೆಂಗಳೂರು, ದಿನಾಂಕ: 24.6.2017, according approval for construction of the flyover.

2. Petitioners have filed this interlocutory application, I.A. No. 4/2017, praying for a direction to respondents No. 4 and 8 to stop further construction work of the 'Steel Flyover'.

3. We have heard the learned Counsel appearing for the Parties.

4. Relevant facts necessary for consideration of this interlocutory application are, by a letter dated 12.9.2014, the Commissioner, Bruhat Bengaluru Mahanagara Palike ('BBMP' for short), sought for administrative and financial approval from the State Government for construction of the 'Steel Flyover' in question. In pursuance of a decision taken by the cabinet in it's meeting held on 6.6.2017, the State Government accorded their approval vide Government Order dated 24.6.2017.

5. Shri Ashok B. Patil, learned Counsel for the petitioners principally urged that, the proposed construction of the flyover is in violation of guidelines and specifications contained in the manual prepared by the Indian Roads Congress CIRC for short), on two counts:

- Firstly, the vertical height beneath the flyover is less than the recommended specification prescribed in the IRC manual; and
- Secondly, the ramp gradients of the flyover are far in excess of permissible limits

prescribed in the IRC manual.

6. Shri Patil submitted that, specifications prescribed in the IRC manual are mandatory in nature and required to be strictly followed. In support of his case, he relied upon following authorities:

- (2016) 15 SCC 480 [*Indian Oil Corporation Limited v. Arti Devi Dangl*];
- (2014) 6 SCC 36 [*S. Rajaseekaran v. Union of India*];
- 2005 SCC OnLine Bom 528; (2005) 4 Bom CR 25 [*Kewal Semlani v. Commissioner of Bombay*]; and
- (1987) 1 SCC 658 [*B.K. Srinivasan v. State of Karnataka*]

7. Defending the action of the BBMP and justifying requirement of the flyover, Shri Nanjunda Reddy, learned Senior Counsel appearing for the BBMP, submitted that, the design for the flyover was approved by the Technical Advisory Committee, chaired by Dr. B.R. Sreenivasamurthy, a former Professor of Indian Institute of Science. The BBMP, being a Civic body is mainly interested in the welfare of citizen. Therefore, keeping in view, the critical necessity for the flyover, the BBMP, has got most feasible design prepared in the existing site condition and availability of space. Further, keeping in view, the deliberations before this Court in this proceeding, the BBMP has re-considered the matter all over again and got the design re-worked, which has resulted in reducing the ramp gradient on the Race Course Road side to 3.50 percent and ramp gradient on the Sheshadripuram side to 5.60 percent while maintaining the vertical clearance of 4.50 meters.

8. Shri Nanjunda Reddy, further submitted that, the specifications contained in the IRC manual are required to be followed 'as far as possible'. Adverting to the authority in the case of *Indian Oil Corporation Limited* (supra), relied upon by the petitioners, he argued that, in the said case, the PWD authorities therein, who were constructing the Highway had adopted the IRC guidelines. Therefore, compliance of the IRC guidelines was held necessary by the Hon'ble Supreme Court. He pointed out that, the manual for the Grade Separators and Elevated Structures published by the Indian Roads Congress, also makes it clear that the provisions of the said manual may be followed, wherever feasible.

9. In substance, it was urged by Shri Nanjunda Reddy that, the flyover project is taken up for the convenience of the citizen. The design has been prepared strictly in accordance with the standard technical specifications and the same has been approved by the Technical Advisory Committee, chaired by an eminent Professor. Further, having deference to the points of view, which emerged during the progress of this case, the BBMP, has *suo motu* modified the design. Therefore, the grievance of the petitioners have been well redressed.

10. In the backdrop of the rival contentions urged, the question that arises for consideration of this Court is:

- *Whether the prayer contained in I.A. No. 4/2017 to stop further construction of the flyover merits consideration?*

11. This writ petition is presented invoking Article 226 of the Constitution of India. The main relief sought for by the petitioners is to quash the Government Order dated 24.6.2017, according approval for construction of the 'Steel Flyover'. The principal ground urged in support of the petition is that, the flyover design is not in conformity with the guidelines prescribed in the IRC manual.

12. In the case of *Indian Oil Corporation Limited* (supra), upon which much reliance was placed by the learned Counsel for the petitioners, it is held as follows:

"9. In view of the above conclusion reached, it is not necessary for us to consider the arguments advanced on the question of permissibility of deviations from the tender conditions on the touchstone of public interest or the issue of understanding

the requirement of the IRC Guidelines as implied terms of the tender documents."

(Emphasis supplied)

13. We have gone through the IRC manual for Grade Separators & Elevated Structures (IRC:SP:90-2010) produced by the petitioners. While describing the scope of this manual, it is precisely stated thus:

SCOPE

This Manual covers various aspects and practices required to be considered in the Planning, Design, Construction and Maintenance of all the forms of grade separated structures including Flyovers, ROB's, RUBS, Underpasses, Subways, Pedestrian or Foot Over Bridges and Interchanges both for urban as well as rural or non-urban situations. The requirements and provisions of this Manual may be followed wherever applicable, except in cases where local site conditions, byelaws or other regulations require otherwise."

(Emphasis supplied)

14. We have also perused IRC:92-1985 published by the Indian Roads Congress with regard to design of interchanges in the urban area produced by the petitioners. Adverting to clause 5.1.2, it was urged by Shri Patil, that the maximum limit prescribed by the IRC for the ramp is 6 percent, whereas, the ramp gradient has crossed the said limit of 6 percent in the instant case.

15. The BBMP, has placed on record a report dated 11.12.2017 prepared by M/s. Aloon Consulting Engineers (India) Private Limited, containing technical details, such as, vertical clearance, gradient of ramps in percentage, in respect of 14 different existing flyovers/underpasses in the City. On perusal of the said report, we find that, the minimum vertical clearances is as low as 3.56 meters (on the Sheshadri Road at the inter-junction near Maharani Ladies Science College) and the gradient as high as 7.20 percent (on Ballari Road at BDA junction).

16. During the pendency of these proceedings, the BBMP, has re-worked the flyover design and brought down the ramp gradients on both sides. The ramp gradient on the Race Course Road side is now reduced to 3.50 percent and the ramp gradient on the Sheshadripuram side is reduced to 5.60 percent.

17. Further, the order of precedence suggested to be followed in case of conflict is described in the tendered document, as follows:—

"2.5 Order of Precedence in case of Conflict

In Case of Conflict between different Parts of Tender Document, the following Order of Precedence shall prevail.

1. Design Criteria as specified in Tender Document.
2. Instructions to Tenderers.
3. Special Conditions of Contract.
4. General Conditions of Contract.
5. MoRT & H/IRC Specifications.
6. Codes of Practice."

(Emphasis supplied)

18. The above clause contained in the tender document shows that the 'IRC specifications' is penultimate in the list. Thus, in contrast to the facts contained in the case of *Indian Oil Corporation Limited* (supra), the BBMP has not given an indication that it has adopted IRC norms in totality, rendering itself incumbent for enforcement of those norms.

19. The study report in respect of 14 different flyovers and bridges in various Parts of the city shows that they have different vertical clearances and gradients. This also gives a clear indication that the IRC norms are made applicable, keeping in view, the

facts and circumstances of respective projects and the same is in consonance with the scope of IRC norms described in IRC:SP:90-2010 relied upon by the petitioners themselves.

20. Development of infrastructure and providing Civic amenities are the duties of the Civic bodies and the same are undertaken as per policies framed by the Executive from time to time. We are highly conscious of the fact that, in a proceeding under Article 226 of the Constitution of India, this Court is required to examine only the decision making process by the Executive. Keeping in view the public safety, we have examined the matter comprehensively. We are satisfied that, the BBMP has taken sufficient care with regard to the public safety. This is manifest by the fact that the initial report with regard to the study and review of flyover in question was undertaken by Dr. J.M. Chandra Kishen, Professor, Department of Civil Engineering, Indian Institute of Science and the flyover design has been approved by a technical committee, headed by a former professor of Indian Institute of Science, which is a premier Institute.

21. Further, the BBMP, during the pendency of these proceedings has modified the design and made a sincere attempt to bring the technical specifications as near to the norms prescribed by the IRC, which has resulted in maintaining the vertical clearance of 4.50 meters and reducing the ramp gradients to 3.50 percent and 5.60 percent. The BBMP, has assured this Court that the construction shall be in conformity with the specifications contained in the modified design. The said assurance made by the BBMP through Shri Nanjunda Reddy, learned Senior Counsel, is placed on record.

22. Thus, we are of the considered view that the principal ground urged with regard to 'IRC specifications' is untenable. The construction of the flyover falls within the scope and ambit of infrastructure development and it is a policy matter. Every day's delay in construction would not only affect the commuters adversely, but also speaks clearly on the exchequer with the increase in cost of construction.

23. In the facts and circumstances, any order interjecting the progress in construction of the flyover would defeat public interest. Therefore, the balance should tilt in favour of construction of flyover.

24. In view of the above discussion, we see no merit in I.A. No. 4/2017 and the same is accordingly dismissed.

25. Wa make no order as to costs.

¹ This I.A. No. 4/2017 is filed under Article 226 of the Constitution of India Praying to Issue Appropriate Direction to Respondents No. 1 to 4 and 8, to Stop the Further Construction Work of the Impugned Steel Flyover Project at Shivananda Circle on Hare Krishna Road, Benagaluru, in the Interest of Justice and Equity.