

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON
Wednesday, the 6th day of August 2025 / 15th Sravana, 1947
WP(C) NO. 20253 OF 2021(S)

PETITIONER:

SHAJI J.KODANKANDATH, AGED 51 YEARS, S/O.JOSE KODANKANDATH,
SNEHA ROSE VILLA, KODANKANDATH HOUSE, CHEMBUKAVU P.O.,
THRISSUR-20.

RESPONDENTS:

1. THE UNION OF INDIA, THROUGH SECRETARY, DEPARTMENT OF
ROAD TRANSPORT AND HIGHWAY, NEW DELHI-110 001.
2. THE CHAIRMAN, NATIONAL HIGHWAYS AUTHORITY OF INDIA,
G-5 & 6, SECTION-10, DWARKA, NEW DELHI-110 075.
3. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO
GOVERNMENT, PUBLIC WORKS DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
4. GURUVAYOOR INFRASTRUCTURE PVT.LTD., PRESENTLY HAVING
ITS REGISTERED OFFICE AT DOOR, NO.1-80/40/SP/58-65,
SHILPA HOMES LAYOUT, GACHI BOWLI, HYDERABAD-500 032,
REP. BY ITS AUTHORIZED SIGNATORY, SREEKUMAR M.V,
S/O.LATE K.E.NAIR, AGED 65, R/O 178, GIRINAGAR,
KADAVANTHARA, ERNAKULAM-682 020.

P.T.O

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 stay the operation of Exhibit P6 notification, pending final disposal of the above writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C), this Court's order dated 16/07/2025 and upon hearing the arguments of M/S. K.B.GANGESH, SMITHA CHATHANARAMBATH, AMAL S.KUMAR & ATHIRA A.MENON, Advocates for the petitioner, SMT. O.M.SHALINA, DEPUTY SOLICITOR GENERAL OF INDIA for R1, SRI.SANTHOSH MATHEW, SENIOR ADVOCATE a/w M/S. NANA VATHI MAULIK.G, ARUN THOMAS, JENNIS STEPHEN & ANIL SEBASTIAN PULICKAL, Advocates for R2, SRI.N.MANOJ KUMAR, STATE ATTORNEY & GOVERNMENT PLEADER for R3, SRI. S SREEKUMAR (SENIOR ADVOCATE) along with M/S. P MARTIN JOSE, P PRAJITH, THOMAS P KURUVILA, HARIKRISHNAN.S, AJAY BEN JOSE, MANJUNATH MENON, HANI P NAIR, GITHESH R, SACHIN JACOB AMBAT & ANNA LINDA V.J., Advocates for R4 and of SRI.A.R.L.SUNDARESAN, ADDITIONAL SOLICITOR GENERAL OF INDIA, the court passed the following:

P.T.O.

A. MUHAMED MUSTAQUE & HARISANKAR V. MENON, JJ.

**W.P. (C) Nos. 20253/2021, 27586/2022, 28609/2023,
18735/2025, & W.P. (PIL) 35/2025**

Dated this the 6th day of August, 2025

ORDER

A.Muhamed Mustaque, J.

In this batch of writ petitions, instituted as a public interest litigation, we need to consider, at this juncture, the question of collecting the user fees on the Edapally-Mannuthy stretch of NH 544. There are writ petitions challenging the very agreement that awards the concessionaire, Guruvayoor Infrastructure Pvt. Ltd., the authority to collect the user fees. In some of the writ petitions, the challenge is based on an order passed by the District Collector suspending the collection of the user fees and

subsequent withdrawal of that order by the District Collector. The collection of user fees in this stretch of the NH 544 was given to Guruvayoor Infrastructure Pvt. Ltd. in the year 2006. The present problem of congestion is caused consequent upon the construction of underpasses, flyovers, drainage work, etc., by another set of private contractors. It is also pointed out that if the service road had been properly managed and maintained by the Guruvayoor Infrastructure Pvt. Ltd., the present problem could have been minimised.

2. The District Collector initially passed an order on 28/04/2025 to stop the collection of user fees on account of severe traffic congestion on the highway due to unscientific work undertaken by private contractors. It appears that the District Collector convened a meeting on 25/02/2025, 04/04/2025 and 22/04/2025 to ensure decongestion of traffic. The District Collector noted that construction undertaken by the National

Highways Authority of India (NHAI) had caused severe traffic congestion. The District Collector also noted waterlogging due to the construction activities being undertaken on the highway. Thereafter, the District Collector withdrew the earlier order through a subsequent order dated 29/04/2025, as it appeared that the officials had ensured to adopt effective measures to decongest the traffic. A Division Bench of this Court, in W.P.(C). No. 28609/2023 filed by Joseph Tajet, along with connected matters, on 09/07/2025, issued certain directions and show cause as to why suspension of toll collection be ordered. It is appropriate to refer to paragraphs 3 to 5 of the said order:

"3. In the light of the reports, we are of the considered view that there is total neglect on the part of the National Highway Authority of India to ensure smooth traffic on the stretch. If the National Highway Authority grants permission to collect tolls, they shall ensure that the commuters have the right to use the Highway without any obstructions and the roads are motorable. We also note that in spite of the intervention of District Administration, the National Highway Authority failed to address the issue and resolve it

4. The learned Additional Solicitor General of India as well as the learned Standing Counsel for the National Highway Authority of India would submit that the issue is now confined only to 4.8 Kilometers and there are no other obstructions in the remaining part of the 65 Km. stretch. It is submitted that the National Highway would earnestly take steps to resolve this issue at the earliest.

5. The right to collect toll emanates from statutory provisions. The commuters and the travellers are the beneficiaries, and they pay the tolls based on public trust. It correspondingly creates accountability on the National Highway Authority. If the road rendered is unmotorable and not safe for the travellers, it should result in suspension of tolls collection. The learned Additional Solicitor General of India requested that one week's time may be granted to resolve the issue.

In the light of the above request, we adjourn this matter to 16.07.2025. However, by the time, the National Highway Authority of India shall show cause as to why suspension of tolls shall not be ordered by the next posting."

3. Thereafter, it was brought to the notice of this Court on 16/05/2025 that similar matters were pending before the Hon'ble the Chief Justice, namely, W.P.(C). No.18735/2025 and W.P. (PIL).

No.35/2025, wherein the Bench comprising the Hon'ble the Chief Justice had passed certain orders. It is appropriate to refer to the order passed by the Division Bench consisting of the Hon'ble the Chief Justice in W.P. (PIL). No.35/2025 on 10/07/2025, as follows:

" Heard Ms. Sreelakshmi Babu, learned counsel for the Petitioner, Mr. T.V. Vinu, learned CGC, representing Ms. O.M. Shalina, learned DSGI for Respondent Nos. 1 to 3, Ms. Sandra Sunny, learned counsel for the Respondent No.7, Mr. Thomas P. Kuruvila, learned counsel representing Mr. S. Sreekumar, learned Senior Advocate for Respondent No.8, and Mr. N. Manoj Kumar, learned State Attorney for Respondent Nos.4 to 6.

2. The learned counsel for the Petitioner has brought to our notice the order passed by the learned Single Judge. After obtaining the necessary administrative orders, the Registry will take steps as regards this order.

3. We had raised the question in the last hearing as regards the power of the District Collector to issue a direction to stop toll collection.

4. The learned State Attorney submits that the District Collector had taken action under Section 152 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which order was subsequently withdrawn.

5. As we noted in the earlier order, what the Petitioner seeks is the restoration of the order, but the direction in the said order is to stop toll collection. It appears that the order was passed to ease traffic congestion. There are ways and means to reduce traffic congestion. The learned counsel for the National Highway Authority of India contends that toll collection is a matter of contract and any direction to stop toll collection would have serious consequences under the contract law, giving rise to a claim for damages against the National Highway Authority of India. This aspect was not considered by the District Collector before the order was issued. According to Respondent No.8, the contractor, the toll collection is not the sole reason for the traffic congestion. Various legal issues may arise regarding the direction to stop toll collection.

6. However, it does appear that the issue of traffic congestion has reached serious proportions and needs to be dealt with by the concerned on a priority basis. A meeting involving the Project Director, the contractor, and the senior Government officers is necessary. We are of the opinion that the Chief Secretary to the State shall call for a meeting to find a solution that is practical and legal. The learned State Attorney submits that a copy of the order and copies of various petitions which are pending before this Court on the issue be furnished to the Chief Secretary for his information. We expect a positive development as regards the resolution of the issue which is faced by a large number of commuters in the State.

7. Post on 21 July 2025.”

4. Noting that the Hon'ble the Chief Justice was hearing a similar matter, we placed this matter before the Hon'ble the Chief Justice on the administrative side for the posting of all the matters together by one bench. Accordingly, now all the matters have been placed before us.

5. Pursuant to the direction of this Court, the Chief Secretary convened a meeting on 17/07/2025. It is appropriate to refer to the decisions taken in the meeting:

"Accordingly the following decisions are taken after deliberate discussion

1. During the current raining period, the service roads used for diversion of traffic at all blackspot locations shall be attended on daily basis with Wet Mix, to ensure smooth flow of traffic.

2. To ease traffic congestion at Muringoor, BC overlay should be done for a length of 500 meters of Melur/Koratty Panchayath roads as soon as possible (after rain subsides), by preparing a separate estimate for the same. After that, the diversion of vehicles through the road should be strictly enforced.

3. Recovery van on call especially for Muringur should be arranged by NHAI and payment of which shall be arranged through BOT Concessionaire and Rural SP shall be informed where it is stationed.

4. From Amballoor Junction to Toll plaza, service road shall be done BC overlay (after rain subsides) and all diversion roads shall be rectified permanently. Further, new potholes shall be rectified immediately with wet mix.

5. Strict enforcement of diversion of Car and LMV from Pongam to Muringoor Divine Jn. to be enforced by Police Dept., to alleviate traffic congestion at Muringoor (Ernakulam-Thrissur direction).

NHAI should ensure that the decisions taken are implemented as early as possible Meeting ended at 12.30 p.m"

6. It is also appropriate to refer to the issues considered by the Chief Secretary in the meeting convened:

"The details of 11 black spots are as follows.

Kazhehaparambu, Kuzhalmannam & Alathur comes in the BoT stretch of Walayar to Vadakkenchery having a length of 53 Kilometers in Palakkad District. In 240m, currently vehicles have been diverted as part of the construction works. RoW is 45 meters here.

Kallidukku, Vaniyampara and Mudikkode comes in the BOT stretch of Vadakkenchery to Thrissur section having a length of 28 Kilometers in Thrissur District. Row of which is 60 meters

Amballoor, Perambra, Muringoor, Koratti & Chirangara comes in the BoT stretch of Thrissur-Edapally having a length of 65 Kilometers in Thrissur District. RoW is only 45 meters.

The main issue leading to traffic congestion is that the service roads are getting damaged owing to the Monsoon. Even though contractor agreed for a complete overlay of the Service roads, the work could not be started due to heavy rain. Even though repairs are carried out by the Contractor with Wet mix, it is getting damaged due to heavy rain.

Break down of vehicles is another issue which causes traffic congestion. During day time such incidents are being timely attended, but during late hours it is difficult to arrange for shifting the vehicles which increase the traffic congestion.

From Ernakulam to Thrissur direction there are serious traffic issue at Muringur Jn, which can be solved once the culvert works are completed and after that service roads can be extended. Not much traffic congestion is seen at kallidukka, Mudikkode and Vaniyampara in comparison to that observed during May. At Amballoor there is some traffic congestion due to the bad

condition of service roads and no major diversion roads are existing there. Rectification of Potholes with wet mix during early hours are being done by the contractor. At Perambra roads are intact and no traffic issue is reported except due to vehicle break downs. Service roads have 6.25 meter width only. At Muringur, traffic congestion is at its peak in the evenings which could not be solved for the past 2 months. At Koratti Jn. work is not started and hence no traffic issue is seen and at Chirangara majority of service roads are intact and hence no major issues are being observed. NHAI Project Director recommended that since the major traffic issues are in the direction from Ernakulam to Thrissur, the enforcement of diverting LMVs through Pongam to Muringoor Road which is a PWD diversion road (in good condition) identified by Police will help to reduce the traffic congestion at Muringoor as it by passes 3 work locations Chirangara, Koratti and Muringoor.”

7. It is also appropriate to refer to paragraph 14 of the additional affidavit filed by the National Highways Authority in W.P.(C) No. 20253/2021:

“ 14. The work of constructing additional facilities in the nature of underpass / fly over is disturbing flow of traffic on a cumulative distance of 2.85 kilometers across all construction sites on the 64.94 kilometers Thrissur - Edapally section and a combined distance of 2.24 kilometers across all construction sites on the 28.355 kilometers Vadakkanchery Thrissur section of National Highway 544. The demand, bereft of pleadings, is for complete

stoppage of collection of toll by the concessionaire. Any acceptance of such request would result in circumcision of the right of the concessionaire to collect user fee for use of the stretch of highway developed and now being maintained by it for the period of concession. This would constitute a violation of the terms of the concession, particularly when the concessionaire is not at fault in maintenance and management of the project highway. Any arbitrary decision to stop collection of toll would mean that the concessionaire will suffer suspension of rights flowing from the concession agreement while still being required and obligated to perform the obligations under the concession agreement. This would lead to an incongruous legal situation and may result in suspension of performance of its obligations by the concessionaire. Any such eventuality will bring about catastrophic consequences, including temporary closure of the entire stretch of 64.94 kilometers Thrissur section and 28.355 kilometers Vadakkanchery Edapally Thrissur section of National Highway 544."

8. We heard the learned counsel appearing for the petitioners, the learned Additional Solicitor General of India Mr. A.R.L. Sundaresan, the learned Standing Counsel for the National Highways Authority Mr. Nanavathi Maulik G., and the learned Senior Counsel for the Concessionaire Mr. S. Sreekumar, the

learned State Attorney Mr. N. Manoj Kumar, and the learned counsel for the other respondents.

9. The core issue for consideration is whether this Court should direct the suspension of the collection of user fees.

10. There may be numerous reasons contributing to the present traffic congestion. One possible cause is the failure of the concessionaire to provide and maintain service roads adequately before commencing the underpasses and flyovers construction and black spot rectification works. The very execution of these new works may also be a contributing factor. We are not concerned here with the reasons behind the traffic congestion or who may have caused it. Our focus is solely on the legitimacy of collecting user fees from the public in the circumstances. These are issues that the National Highways Authority ought to have considered and addressed at the appropriate stage. However, their failure to act on time cannot be used as a justification to

resist the demand for suspension of the user fees on the grounds of contractual obligations.

11. While awarding the aforesaid work, the National Highways Authority failed to account for the hindrance to traffic flow and the inconvenience caused to commuters as a result of the construction activity. There appears to have been no effort to evolve managerial protocols or interim traffic management solutions to mitigate the disruption, even though commuters are statutorily obligated to continue paying the user fees. The Court, however, cannot disregard the legal obligation imposed upon road users to pay the toll, which arises pursuant to the concession agreement relating to the national highway. At the same time, it cannot overlook the reality that the congestion and hardship currently experienced by commuters have resulted directly from a distinct construction activity undertaken by the National Highways Authority through separate contractors or on account of failure on

the part of the concessionaire to maintain the service roads. Whatever the reason may be, it is acknowledged by all that the traffic is badly affected in this stretch. This disjunction between the source of disruption and the rationale for fee collection presents a significant question of fairness and enforceability, which the Court is bound to address in balancing public interest with statutory obligations.

12. The argument of the learned Additional Solicitor General of India is that the inconvenience is experienced only at a stretch of 4 kms out of the total stretch of 65 kms. We are not reiterating here the issues now experienced by the public in this stretch of highway; they are spelt out in the meeting convened by the Chief Secretary as well as in the orders passed by the District Collector.

13. Section 7 of the National Highways Act, 1956, empowers the Central Government to levy such rates as

prescribed under the rules for the services of the benefits rendered in relation to the use of highways. Section 16 also imposes duties on the National Highways Authority to develop and maintain national highways. Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, also authorises the Central Government to levy fees for use of the national highways. Similarly, Rules 5 and 6 prescribe revision of the rate and collection of the fee, respectively. It is to be remembered that the public is obliged to pay the user fees at the toll for using the highway. It casts responsibility on the National Highways Authority to ensure smooth traffic without any barrier created by the NHAI or by its agents, who are the concessionaires. This relationship between the Public and the NHAI is bound by the tie of public trust. The moment it is breached or violated, the right to collect toll fees from the public

created through statutory provisions cannot be forced on the public.

14. In modern public governance, the State is empowered to delegate its functions through the engagement of private partners. However, in undertaking such engagements, the State remains duty-bound to protect the interests of its subjects — namely, the public. Every public infrastructure project initiated by the State inherently imposes a corresponding obligation on the State to ensure that public interest is not only safeguarded but prioritised. This responsibility necessitates effective public management and oversight of such infrastructure projects. The contractual obligations entered into by the State with private partners cannot absolve the State of its foundational duty arising from the public trust doctrine. No agreement between the State and a private entity can override the imperative to protect public interest. If the public is not receiving the intended benefit of road

usage in return for the user fees imposed, the State cannot compel payment of such a fee solely based on a private contractual arrangement. Public accountability requires not only supervision of such projects but also active management with a view to upholding public interest. The obligation of the public to pay a user fee under statutory provisions is premised on the assurance that their use of the road will be free from hindrances. When the public is legally bound to pay a user fee, they simultaneously acquire a corresponding right to demand unhindered, safe, and regulated access to the road. Any failure on the part of the National Highways Authority or its agents to ensure such access constitutes a breach of the public's legitimate expectations and undermines the very basis of the toll regime. The Apex Court in **Umri Pooph Pratappur (UPP) Tollways Pvt. Ltd. v. M.P. Road Development Corporation and Another** [Neutral Citation: 2025 INSC 907] has reiterated

that the right to safe, well-maintained, and motorable roads is recognised as a part of the right to life under Article 21 of the Constitution of India and it is the responsibility of the State to develop and maintain the roads.

15. In a recent judgment of the Apex Court in **Vijay Rajmohan v. CBI, [(2023) 1 SCC 329]** in paragraphs 35 and 36, the Apex Court delineated the principles related to accountability as follows;

"35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognised as one of the six principles of the Citizens Charter Movement.

36. Accountability has three essential constituent dimensions: (i) *responsibility*, (ii) *answerability*, and (iii) *enforceability*. Responsibility requires the identification of duties and performance obligations of individuals in authority and with authorities. *Answerability* requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. *Enforceability* requires appropriate corrective and remedial action against lack of responsibility and accountability to be

taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it."

16. Also, the Apex Court in **State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501** held as follows:

"325. There is a direct relationship between the principle of collective responsibility and Government accountability. This relationship is conceptualised in *The Oxford Companion to Politics in India*:

"Accountability can be defined in terms of outcomes rather than processes of Government.... It also includes the criterion of responsiveness to changes in circumstances that alter citizen needs and abilities.... In other words, accountability refers to the extent to which actual policies and their implementation coincide with a normative ideal in terms of what they ought to be.... In this broad sense, accountability amounts to evaluating the nature of governance itself, in outcome-oriented terms."

(Emphasis supplied)

17. It may be true that the construction activities may be at a few places, but the type of traffic congestion resulting has been addressed in the meeting of the Chief Secretary as well as

in the initial order of the District Collector. It is stated at the Bar that traffic congestion has caused delays of at least 2 to 3 hours in commuting through this highway.

18. In a situation like this, in what manner the toll fee has to be levied is for the Central Government to decide; whether a pro rata deduction has to be given, or the levy of the fee be suspended till measures are taken; all these are to be addressed by the Central Government. The National Highways Authority, in this process, has ignored the interests of the public and has taken the grievances of the public lightly. It is to be noted that there are no managerial standards evolved by the Central Government to address issues of this nature. Public accountability principles demand that the Central Government intervene in the matter, as they are the only authority to prescribe rates and decide on the levy of fees. The Court cannot substitute the role of administrative authority of the Central Government in deciding at

what manner the levy of fee has to be regulated or reduced in a situation like this; but at the same time the Court can clearly hold that there is breach of public trust and the National Highways Authority cannot levy the fees till the grievances are addressed upholding the interest of the public.

19. We are conscious of the fact that mere suspension of toll collection may not, by itself, resolve the underlying issues. However, this Court is equally bound to protect the interests of the public, who are statutorily obligated to pay a user fee without receiving any corresponding benefit. The entitlement of the National Highways Authority or its concessionaire to collect such user fees arises under statutory provisions and not merely based on any inter se contractual arrangement. If there is a breach of the statutory mandate, including failure to provide safe, accessible, and unobstructed road usage, it must necessarily follow that the preconditions for collecting user fees remain

unfulfilled. Consequently, in the absence of compliance with the objectives underlying the imposition of such fees, the National Highways Authority or its concessionaire cannot assert a right to demand or collect the same.

20. We note with concern the total apathy displayed by the National Highways Authority in addressing the grievances raised, despite multiple opportunities having been made available to them at least from February 2025 onwards. Although the issue was repeatedly brought to their attention, no meaningful steps were taken to pursue redressal with the Central Government. In such circumstances, we are of the considered view that the collection of toll shall remain suspended until the Central Government, in consultation with the National Highways Authority, Chief Secretary of the State and Concessionaire, takes appropriate remedial action addressing the public grievance.

21. The learned ASGI pointed out an order passed by the Madurai Bench of Madras High Court in W.P.(MD) No. 3996/2025 and connected case, dated 03/06/2025, suspending the collection of toll and a subsequent stay of the order by the Apex Court in SLP(C). No. 16474/2025 dated 09/06/2025. The matter is yet to be considered by the Apex Court. We are of the view that the stay granted by the Apex Court cannot be a reason at all to absolve the National Highways Authority from its responsibility to ensure the use of the highway without any hindrance created consequent upon construction work undertaken by the private contractors.

22. We, however, find that any loss sustained by the concessionaire can be raised by the National Highways Authority in an appropriate manner, in accordance with law, if they are otherwise entitled to claim. Therefore, we order that the collection of user fees shall be suspended forthwith for four weeks, and we further order that the Central Government shall

take appropriate decisions within the above period addressing the concern and grievance of the public highlighted in the meeting of the Chief Secretary.

Sd/-
**A. MUHAMED MUSTAQUE,
JUDGE**

Sd/-
**HARISANKAR V. MENON,
JUDGE**



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