

W.P.(C) No. 24850/2018

: 1 :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 12TH DAY OF NOVEMBER 2020 / 21ST KARTHIKA, 1942

WP(C).No.24850 OF 2018(S)

PETITIONER:

DR. P.A. MARY ANITHA,
AGED 45 YEARS
CHAIRMAN, CENTRE FOR EMPOWERMENT & CHARITABLE SOCIETY,
PARTHASARATHY BUILDING, DURBAR HALL ROAD, KOCHI-682 016.

BY ADVS.
SMT.M.A.VAHEEDA BABU
SMT.AMRIN FATHIMA
SRI.AVINASH P RAVEENDRAN
SRI.K.M.FAISAL (KALAMASSERY)
SRI.RAHUL ROY
SRI.P.U.VINOD KUMAR

RESPONDENT/S:

- 1 CORPORATION OF KOCHI, ERNAKULAM,
KOCHI-682 011. REP. BY ITS SECRETARY.
- 2 THE EXECUTIVE ENGINEER,
KERALA PUBLIC WORKS DEPARTMENT, DEVAKULANGARA,
MAMANGALAM, EDAPPALLY, ERNAKULAM, KOCHI-24
- 3 THE SENIOR TOWN PLANNER
ERNAKULAM, KOCHI-682 030
- 4 KOCHI METRO RAIL LIMITED
REVENUE TOWER, SHANMUGHAM ROAD, KOCHI-682 011, REP. BY
ITS MANAGING DIRECTOR.

Addl.R5 IMPLADED:

- 5 COCHIN SMART MISSION LIMITED (CSML)

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REPRESENTED BY ITS DIRECTOR, HOUSING BOARD BUILDING,
PARK AVENUE,KOCHI

ADDL. R5 IS SUO MOTO IMPEADED AS ADDITIONAL R5 AS PER
ORDER DATED 3/7/2020 IN WPC.

R1 BY SRI.JOSEPH K.L., SC, KOCHI MUNICIPAL CORPORATION
R1 BY SMT.SAREENA GEORGE,SC,COCHIN CORPORATIO
R2 BY SRI. ARAVINDA KUMAR BABU, SR. GOVERNMENT PLEADER
R4 BY ADV. SRI.K.JAJU BABU (SR.)
R4 BY SMT.M.U.VIJAYALAKSHMI, SC, KOCHI METRO RAIL LTD.
R4 & R5 BY ADV. K.JAJU BABU (SR.)
R5 BY ADV. SMT.M.U.VIJAYALAKSHMI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.11.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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'CR'

Dated this the 12th day of November, 2020.

JUDGMENT

SHAJI P. CHALY,J.

This is a Public Interest Litigation filed by the Chairperson of an NGO namely Centre for Empowerment and Enrichment (CEFEE). According to the petitioner, she volunteers and aims primarily to enable differently abled children to come up to the limelight of the society and to live in dignity in the society. As is evident from Ext.P2, CEFEE had functioned as the Nodal Agency of District Administration, Ernakulam for its project "Jyothi Educational Project", 2015 and 2017. In this writ petition, the petitioner espouses the hardships, inconvenience, dangers and threats to the life frequently faced and confronted by differently abled children, men and women, due to the lack of safe and proper footpaths and allied facilities within the area of the Corporation of Kochi, the first respondent herein.

2. The case projected by the petitioner is that the Corporation of Kochi as well as the Public Works Department and their Nodal Agencies have the duty and the responsibility to ensure that the differently abled people are able to enjoy their rights to walk freely and fearlessly

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within the limits of Kochi city by providing safe and hindrance free footpaths to access the roads. According to the petitioner, the respondents have miserably failed to protect the rights and interests of the differently abled people by curtailing their right due to the poor maintenance of footpaths within the limits of the Kochi city, thereby affecting their fundamental right for free movement and to practice any profession or to carry on any occupation, trade or business, right to livelihood etc. It is also submitted that Section 346 of the Kerala Municipality Act, 1994 ('Act, 1994' for short) casts duty on the first respondent Corporation to make the public streets and bridges vested in it and under the control of it to be maintained and repaired at the cost of the municipal fund and to meet the cost of all improvements to the same, which are necessary or expedient for the public safety or convenience. Therefore, the Municipal Corporation as well as the Public Works Department are duty bound to discharge their duties by making appropriate, timely and proper repairs of the public roads vested in them under law so as to facilitate the requirements of differently abled persons also, and though the petitioner had approached the Corporation and the Public Works Department with Exts. P4 and P5 representations no action was initiated by them to redress the grievances, which persuaded the petitioner to approach this Court. In the above background, the following reliefs are sought for:

1. Issue a writ of mandamus or other appropriate writ, direction or order directing the respondents to ensure that all existing footpaths abutting the public roads/streets within the territorial jurisdiction of the first respondent are with even surface and continuity and to erect railing in between the public roads and footpaths, and also to remove all kinds of encroachments on the footpaths, to ensure free and safe movement of differently abled people.
2. Direct the first respondent Corporation to make improvements in the existing footpaths abutting all the public roads/streets within the territorial jurisdiction of the first respondent so as to make it user friendly to the differently abled or in the alternative,
3. Permit the petitioner and the NGO, Center for Empowerment and Enrichment to which the petitioner is the Chairman to make improvements in the existing footpaths abutting all the public roads/streets within the territorial jurisdiction of the first respondent so as to make it user friendly to the differently abled.
4. Issue a direction or order to the respondents to favourably consider Exts.P4, P5 and similar representations submitted by the petitioner before them.

3. Counter Affidavits are filed by the Kochi Metro Rail Limited and the Kochi Smart Mission Limited, respondents 4 and 5, explaining and narrating the role played by them in the development of public roads and streets consequent to the implementation of Kochi Metro Rail Project, a joint venture project of the Government of India and the Government of Kerala.

4. The sum and substance of the submissions made by the said respondents are that consequent to the implementation of the Metro Rail Project, certain developmental activities were undertaken by them

in respect of the roads, drains and other public amenities as is agreed upon by them in contracts executed.

5. The 5th respondent ie the Cochin Smart Mission Limited, apart from other submissions, has submitted that it is having a mandate for reconstructing the existing roads in Ward Nos. 1, 2, 3, 4, 5 of 62nd division (portion), 66th division (portion) and 67th division (portion) of Kochi Municipal Corporation. It is also submitted that the designs of these roads are prepared observing relevant guidelines of Indian Road Congress (IRC), Ministry of Housing and Urban Affairs and other relevant codes and guidelines. That apart, it is submitted that the roads are categorized into smart roads and other roads for tendering purpose and major roads are clubbed under smart roads and all other roads having a width of more than 4 meters are being considered for improvement under other roads. Smart roads are designed with uniform width of lanes, median and footpaths along with storm water drains and ducts for laying electrical and data cables. The primary aim is to avoid overhanging electrical and data cables, which pose threat to safety to the vehicles and pedestrian.

6. It is significantly pointed out that wherever the level change is required, adequate slope necessary for the movement of disabled people will be provided to the extent possible, and that the footpaths

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will be tiled and will be at same elevation. In other roads having less width, the construction provides a footpath on two sides or single side based on the available width. Here also, the footpaths will be of uniform level and wherever the level changes are required, it will be provided with gentle slope. Generally, the narrow roads in congested areas of Ernakulam can only be considered as multi use where vehicular movement and pedestrian movement are often merged. Here, driving discipline and traffic management are more important. The CSML will transfer the roads back to KMC or PWD after construction and maintenance is the obligation and responsibility of the respective agencies. Other aspects are also submitted by the CSML in regard to the efforts made by the said Organization to make the city a smart one.

7. The Executive Engineer of the Kerala Public Works Department, the second respondent, has also filed a counter affidavit stating that the MG road and the Banerji Road are the only roads maintained by the Public Works Department. It is pointed out that the majority portion of the existing footpath on the side of Aluva-Ernakulam road has been constructed by the Delhi Metro Rail Corporation Ltd and the Koch Metro Rail Ltd. through the Metro corridor and then handed over the same to Kerala Public Works

Department. It is also submitted that the said agencies have constructed footpaths in major portions of Aluva -Ernakulam road as per IRC guidelines that, Banerjee road starting from Madhava Pharmacy Junction to High Court junction is handed over to Cochin Smart Mission Ltd. and they are carrying out the maintenance of the said road, which is in progress. It is further undertaken that corrective measures, if any, required will be taken in the existing footpath, wherever necessary, to make them user friendly for both the pedestrian and the differently abled people. Other difficulties faced by the PWD due to the narrow width of the roads, footpaths, electrical and telecommunication cables passing under the existing footpaths are also pointed out.

8. We have heard Adv. M.A. Vaheeda Babu for the petitioner, Sri. Joseph K.L for the Corporation of Kochi, Sri. Aravind Kumar Babu, learned Senior Government Pleader for the Public Works Department , and Smt. M.U. Vijayalakshmi and Brijesh Mohan for the Kochi Metro Rail Ltd. and the Cochin Smart Mission Ltd., and perused the pleadings and materials on record.

9. The discussion of facts made above would make it clear that the concern expressed by the petitioner is in respect of the poor maintenance of the footpaths and the roads by the Corporation of

Kochi as well as the Public Works Department causing difficulties to the differently abled people to use the roads and the footpaths basically due to the unscientific nature of constructions carried out and the poor and timely maintenance. The materials produced by the respondents and the pleadings put forth would make it clear that in connection with the implementation of the Metro Rail Project, within the Corporation Limits several works were carried out by the Delhi Metro Rail Corporation Limited, and the Cochin smart mission Ltd. It is also stated that various roads, footpaths and drainages were constructed and ducts are provided for drawing cables etc. Evidently, some beautification works were carried out by utilizing the existing roads and footpaths owned by the Corporation of Kochi and the Public Works Department through the agencies specified above. But, that has not resolved the grievances highlighted by the petitioner so as to utilize the roads and footpaths for the beneficial enjoyment of the differently abled people by providing kerb access to the footpaths from the road, clearance of all obstructions, including banners, unauthorised advertisements and the pavement dwellers. No doubt, appropriate ramps should be provided enabling the differently abled people to pass through the footpaths, and clearance of all obstructions are essentially required to cater the needs of the pedestrians and more importantly the differently abled. It is also admitted that at various places, ramps

are provided in order to cater the needs of the differently abled people. The Cochin Smart Mission Limited is entrusted with the works of certain divisions of Kochi Corporation, and it is undertaken by it that whatever be the requirement for the beneficial enjoyment of the differently abled persons, the same would be carried out in the works entrusted to it. The Public Works Department has also undertaken that whatever modification required in that regard would be undertaken by the Public Works Department on the roads and the footpaths maintained by them.

10. In this regard, we point out that by virtue of the provisions contained under Section 207 of the Act, 1994, all public roads, streets, lanes and bridges other than National Highway, State Highway or major district road or roads classified by Government as such vest in the Municipality together with all pavements, stones and other materials and other things provided therein along with all sewers, drains, drainage works, tunnels and culverts, whether made at the cost of the Municipal fund or otherwise in, alongside or under such roads and all works, materials and things appertaining thereto. Therefore, there can be no doubt that the Kochi Municipal Corporation is endowed with the duty to provide necessary amenities and convenience to the general public, which includes the duty and

responsibility to maintain the roads and footpaths so as to cater to the needs of the differently abled persons.

11. The duty of the Municipality under other circumstances also is clearly specified under Section 208 of the Act, which reads thus:

208. Duty of Municipality in respect of public streets withdrawn from its control.— Where any public street has been withdrawn from the control of a Municipality under subsection(2) of section 207 and placed under the control of the Government or under the control of any other authority by the Government, it shall be the duty of the Municipality to provide at the cost of the municipal fund, to such extent as the Government may, by general or special order, direct-

- (a) for the lighting, watering, scavenging and drainage of such street;
- (b) for the provision, maintenance and repair of the water-supply mains, drains and sewers in, alongside, or under such street;
- (c) for the provision, maintenance and repair of footways attached to such street:

Provided that where in the discharge of such duties, it is necessary for the Municipality to open and break up the soil or pavement of any such street, the Municipality shall obtain the previous consent of such officer as the Government may by general or special order, specify .

Provided further that in cases of emergency, the Municipality may, without such consent, open and break up soil or pavement of any such street, but shall, as far as practicable, restore such soil or pavement to the condition in which it was immediately before it was opened and broken up; and a report of the action so taken and the

reasons therefor shall be sent forthwith to the officer specified under the foregoing proviso.”

12. That apart, Section 346 of the Act, 1994, which deals with maintenance and repairs of public streets, reads thus:

346. Maintenance and repair of streets:— (1) A Municipality shall, at the cost of the municipal fund, cause the public streets and bridges vested in and under the control of the Municipality to be maintained and repaired and may, from the same fund; meet the cost of all improvements to the same which are necessary or expedient for the public safety and convenience.

(2) A Municipality may entrust to any other Municipality or Panchayat with their consent the maintenance of such public street or portion thereof the cost of maintenance being provided by that Municipality.

13. Taking into account all the above aspects, we are of the considered opinion that the cause put forth by the petitioner are genuine and *bona fide* in nature so as to protect the interests of the differently abled persons, and we have no hesitation to hold that differently abled people like any other citizens are entitled to enjoy the fruits of life and liberty guaranteed under article 21 of the constitution of India. They are also entitled to enjoy the other fundamental rights guaranteed to the citizens under the Constitution to the extent possible for them. That apart, the State has a duty as per the directive principles of state policy under Part 1V of the Constitution to secure a social order for

the promotion of welfare of the people, which includes the special and essential requirements of the differently abled citizens and therefore, it is the inevitable function of the State and the local bodies to look after the affairs of the differently abled citizens also. Which thus means, any failure on the part of the State Government or the authority concerned to discharge such duties can only be viewed as a serious and unpardonable lapse justifying a writ court to step in to issue necessary directions. Now, after the introduction of Part 1XA to the Constitution of India dealing with Municipalities on and with effect from 01-06-1993, the Municipalities are liable to discharge such functions entrusted with them thereunder. In this regard, Article 243W is relevant which reads thus:

243W. Powers, authority and responsibilities of Municipalities, etc.-- Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow--

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred

upon them including those in relation to the matters listed in the Twelfth Schedule

Viewed so, entry 9 of the twelfth Schedule is most significant to the case at hand, which specifies that "Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded". The legal discussions as above are a clear and splendid indicator to think that the Cochin Corporation is obligated to discharge the statutory duties mandatorily taking into account the Constitutional duties and responsibilities to protect the interests of the differently abled persons .

14. In that view of the matter, we have no hesitation to hold that the Corporation of Kochi as well as the Public Works Department are duty bound under law to make necessary arrangements in the footpaths and the road so as to enable differently abled persons to access the roads and the footpaths to their convenience.

15. Thus, deducing the circumstances as above, the writ petition is disposed of directing the Kochi Municipal Corporation and its Nodal Agencies, and the Public Works Department to maintain and repair, and make arrangements for the roads and the footpaths under their respective control so as to enable the differently abled persons to access them appropriately. Steps shall be taken immediately and

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without fail and all the works to the extent possible shall be completed at the earliest and at any rate, within three months from the date of receipt of a copy of this judgment. We also make it clear that the Corporation as well as the Public Works Department shall secure necessary reports from the concerned officers and the Nodal Agencies, and file a comprehensive report before this Court explaining the works carried out by them in that regard at the earliest thereafter, and at any rate on or before 31.03.2020.

sd/-

**S. MANIKUMAR,
CHIEF JUSTICE.**

sd/-

**SHAJI P. CHALY,
JUDGE.**

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APPENDIX

PETITIONER'S/S EXHIBITS:

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| EXHIBIT P1 | EXHIBIT P1 A TRUE COPY OF THE BROUCHER SHOWING ACHIEVEMENTS/SERVICE RENDERED BY NGO i.e., CENTRE FOR EMPOWERMENT & ENRICHMENT, PROMOTED BY THE PETITIONER. |
| EXHIBIT P2 | EXHIBIT P2 A TRUE COPY OF THE ORDER DATED 11/09/2015 OF THE DISTRICT COLLECTOR, ERNAKULAM, APPOINTING THE PETITIONER AS THE NODAL OFFICER FOR THE PROJECT, JYOTHI EDUCATIONAL PROJECT, 2015. |
| EXHIBIT P3 | EXHIBIT P3 A TRUE COPY OF THE NEWS PAPER REPORT DATED 30/03/2016 PUBLISHED IN THE HINDU DAILY MENTIONING ABOUT THE NATPAC STUDY SHOWING THE PERCENTAGE OF PEDESTRIAN MOBILITY IN VARIOUS JUNCTIONS IN KOCHI CITY. |
| EXHIBIT P4 | EXHIBIT P4 A TRUE COPY OF THE REPRESENTATION DATED 17.04.2017 SUBMITTED BY THE PETITIONER TO 1ST RESPONDENT. |
| EXHIBIT P5 | EXHIBIT P5 A TRUE COPY OF THE REPRESENTATION DATED 17/04/2017 SUBMITTED BY THE PETITIONER TO 2ND RESPONDENT. |
| EXHIBIT P6 | EXHIBIT P6 A TRUE COPY OF THE KERALA MUNICIPALITY BUILDING (AMENDMENT) RULES, 2009- G. O.(MS) NO.179/2009/LSGD DATED 17/09/200 |

RESPONDENT'S/S EXHIBITS:

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| EXHIBIT R5(a) | COPY OF THE LETTER NO.CSML/GOCOR/LSGD/127 DATED 25.08.2020 SENT BY THE 5TH RESPONDENT TO THE PRINCIPAL SECRETARY, LSGD (URBAN), THIRUVANANTHAPURAM. |
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/True Copy/

PS to Judge.

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