

Karnataka High Court decision approving Sadashivnagar-Yeshwantpur Road Widening regressive

Revisitation of this order essential given the irreversible and deep impacts on people's rights to life, housing and livelihood, and the environment

SUMMARY

A Division Bench of the High Court of Karnataka has held that the widening of the Sadashivnagar road for 6 laning is in conformance with the law, even when the public have been denied opportunity of participating in such a decision. Given the very deep and irreversible impacts of this decision in response in a PIL filed by Dr. Meenakshi Bharat and ors, a reappraisal of this judgment is critical to ensure safety and security of all residents of Bangalore, and not only those who can afford to use private transport.

Key points:

- The widening of the road is justified on the basis of proposals made in the 1984 Comprehensive Development Plan, thus rejecting the contention that the public cannot subsequently affect such decisions.
- Directions are issued on Environment Support Group and *Hasire Usiru* to assist the Government in such road widening, even when the organisations are not parties to the PIL, and have exposed that road such widening is not a solution to relieving traffic congestion on the basis of various applicable laws, policies and evolving urban planning science.
- The direction to ESG and *Hasire Usiru* contradict the fundamental premise of jurisprudence, that an opportunity of a fair Hearing must be extended to all affected by a decision in conformance with Principles of Natural Justice.
- Consequently, earlier directions of Karnataka High Court in connected matters raised by Environment Support Group could not be brought to the attention of this Division Bench. Were ESG heard in the matter, there is every possibility that the decision could have been progressive.
- Constant public participation in decision making is fundamental to urban planning, as is required in the Constitutional 74th Amendment (Nagarpalika) Act. However, this direction seems to suggest that a decision once taken by the Government has absolute permanence, even when the context in which such decisions were taken in the past has comprehensively changed. The order also dismisses the possibility of progressive ideas affecting positively an older decision for the greater common good.
- Pedestrian and cyclist issues are totally ignored in this direction.
- Disturbingly, the order argues that “widening roads is the only means to overcome this traffic congestion” even as it accepts that a report of the Directorate of Urban Land Transport is a result of 'cutting edge scientific analysis'. This report, interestingly, argues for adopting various measures other than road-widening to curtail traffic congestion, and in specific relevance to this stretch of road.

DETAILED ANALYSIS OF THE HIGH COURT ORDER

Hon'ble Justice Mr. N. Kumar and Hon'ble Justice Mr. H. S. Kempanna constituting a Division Bench of the Hon'ble High Court of Karnataka have released their order¹ dated 30th November 2011 in the Public Interest Litigation filed by Dr. Meenakshi Bharath and ors. (WP No. 23745/2011) challenging the widening and 6 laning of the existing road from Cauvery junction to Yeshwantpur cutting through old neighbourhoods in core Bangalore area. The order was released only on 15th June 2012 with various directions. It makes the unscientific assertion that road widening “is the only means to overcome .. traffic congestion” and is thus in the public interest.

Justification for Project based on 1984 plans:

In approving this highly controversial project, the Court has relied on the submission made by the Bangalore Development Authority that the proposal to widen the road from its existent widths (which varies along the proposed alignment) to 30 metres uniform width, was a proposal contained in the 1984 Comprehensive Development Plan, and subsequently maintained in the 1995 Revised Comprehensive Development Plan. Since this proposal was not implemented in the period past 28 years, considering the high levels of traffic congestion in the city now, the Court held that it is imperative for the project to be implemented with due dispatch and that too within twelve months from the date of the order (30 November 2011).

Thus, the Court rejected the Petitioners' contention that the proposal to widen this road not being included in the 2005 Draft Comprehensive Development Plan of the BDA gives room for local residents to assume that the old proposal has been abandoned. In fact, the Division Bench has argued that “a draft requires to be published inviting comment from the public. But, once after hearing the public, the plan is approved, when it is sought to be revised, the particulars are to be mentioned in the draft plan inviting objection. If at the time of revision, existing position is not to be revised and it has become final, after hearing the public comments, it is not necessary to mention in the draft plan every time all the particulars which are already included”. The judges then proceed to state that “non-mentioning the width of the road in the draft Master Plan will not in any way violate the provision of law and therefore, we do not find any substance in (this) contention.”

Directions issued on ESG and Hasiru Usiru involving them in the outcomes of the decision, but without making them parties:

In developing the operative part of its order, the Division Bench has relied on an earlier order of the Karnataka High Court in Environment Support Group and ors. vs. Commissioner, Bangalore Mahangara Palike (WP NO. 14101/2005) wherein it was held that when tree felling is involved “an opportunity would be given to the representatives of 'Hasiru Usiru', wherever possible”. It has then proceeded to issue the following orders, amongst others:

- “Hasiru Usiru' organisation is at liberty to coordinate with the Corporation authorities in protecting and preserving the tree growth and also extend their support for improvement of the tree growth along the 30 mtrs. Road and nearby area and the Corporation shall also extend full cooperation in this environmental protection programme.”
- “In future, if the Corporation Authorities have to remove the trees on the side of the road, they shall strictly comply with the provisions of the Tree Protection Act and as directed in

¹ A copy of this order may be accessed at: <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/672296/1/WP237451130112011.pdf>

the earlier writ proceedings, the authority shall issue notice to the 'Hasire Usiru' Organisation and pass appropriate orders in accordance with law.”

- “In the working of this order, if there is any difficulty to the parties to this proceeding, they may approach this Court.”

Environment Support Group and 'Hasire Usiru' (a voluntary unregistered coalition of various organisations and individuals in Bangalore working to protect peoples rights, urban commons and promote progressive solutions to urban mobility without resorting to the socially, economically and environmentally destructive transport proposals such as road widening), have not been made a party to the proceedings in the case filed by Dr. Meenakshi Bharat and ors. Even so, the Court has saddled 'Hasire Usiru' and ESG, which represents HU in legal matters, in delivering responsibilities that are absolutely opposed to their very stance that the current pattern of road development is not consistent with progressive urban planning, and that such projects grossly violate people's rights while also adversely affecting the local economy and the environment.

Admittedly, liberty is cast on the organisations to coordinate with the implementing agencies to ensure the road widening projects are implemented. **But the Hon'ble Court could have in conformance with the principles of natural justice ensured that ESG and HU were extended an opportunity of a Hearing before saddling them with such tasks that are contradictory to their stances taken in other connected matters in the Karnataka High Court.**

Earlier directions of Karnataka High Court in connected matters:

In the absence of such an opportunity being extended to ESG, it appears that certain vital orders of the Hon'ble High Court of Karnataka were not brought to the notice of this Division Bench. This includes a PIL filed by ESG challenging road widening projects as unscientific and illegal, and which is under the active consideration of the High Court since 2008 (WP 7107/2008). An interim order² of the Principal Division Bench of the Karnataka High Court in this matter, operative since 16 March 2009, categorically states that road widening and such other projects can only be undertaken in “strict compliance” of the public involvement and other procedures contained in the Karnataka Town and Country Planning Act and the Karnataka Preservation of Trees Act.

This interim direction was issued acknowledging that the Petition raises serious concerns that road widening projects do not comply with progressive features of the National Urban Transport Policy, 2006, National Street Vendors Policy, 2004, the Constitutional 74th Amendment (Nagarpalika) Act, 1992 (which requires Metropolitan Planning Committees, and not BDA and BBMP, to decide on such matters) and also the requirements under the Environment Impact Assessment Notification, 2006 which requires that Environment and Social Impact Assessments must be undertaken to assess the need for re-development of built areas in the city.

Were ESG heard, Hon'ble Justice Mr. N. Kumar and Hon'ble Justice Mr. H. S. Kempanna would not have been deprived of the opportunity also of referring to the 16th November 2010 final order of the Principal Division Bench of the Karnataka High Court in a PIL filed by Environment Support Group challenging the violations of the Karnataka Town and Country Planning Act and other laws in development of Bangalore Metro (WP 13241/2009).³ Here the Principal Division Bench of the Hon'ble High Court held categorically that “in future, in case, they (Bangalore Development Authority) desire to change the land use, as has been depicted in the master plan, the competent

2 A copy of this order may be accessed at: http://static.esgindia.org/campaigns/Tree%20felling/Hasire%20Usiru/legal/HC_Road_7107_2008_PIL_160309.rar

3 A copy of this order may be accessed at: http://static.esgindia.org/campaigns/metro/legal/ESG_PIL_Metro_Judgement_13241-09_161110.pdf

authority shall follow the procedural mandate depicted in Section 14-A of the Karnataka Town and Country Planning Act, 1961". And that BDA "shall comply with the procedure contained in Sections 29, 30, 31, 32 and 34" of the Act, all of which mandate public consultation in revision of existing master plans and the proposing and confirmation of new projects and plans. So serious was the Court that such provisions must not be violated ever, that it even recorded the submissions of Karnataka Government's Advocate that "the provisions referred to hereinabove, shall be complied with, without any deviation whatsoever". Thereafter, to be absolutely sure there would not be any deviations at all, as it would cause irreparable harm to people's rights and the environment, the Court thought it fit to affirm that "needless to mention, that in case of violation of direction issued by this Court, based on the statement made to this Court, the concerned officer/official shall be held responsible, for his having disobeyed the order passed by this Court, as also, the prescribed mandate of law."

Public participation in decision making fundamental to inclusive urban planning:

Clearly, therefore, it is imperative that any decision relating to urban infrastructure projects, and those that involve land use change, the provisions of the Karnataka Town and Country Planning Act and other related laws must fully be complied with. *While civic groups and citizens consistently make efforts to ensure compliance with law and judicial orders, it is rather disappointing that the Court has now supported a decision that negates the very principles of public involvement in decision making.* To technically rely on the contention of the BDA that the proposal to widen the road passing through Sadashivnagar was contained in 1984, and that such a proposal in itself is sufficient to implement the project 28 years later, is an argument that contradicts other applicable orders of the Karnataka High Court, as cited above. *Most importantly it seems to suggest that a decision once taken by the Government has permanence, even when the context in which such decisions have been taken have comprehensively changed. It also dismisses the possibility of new knowledge and progressive ideas that evolve affecting positively an older decision for the greater common good.*

A disturbing feature of the current order in the PIL filed by Dr. Meenakshi Bharat, is that it appears also to condone the lack of compliance with the basic purpose of laws that guarantee consistent, continuous and democratic participation of the public in decision making. Such a regressive direction may not have been rendered if all other connected directions of this Hon'ble Court on similar matters, which have a direct relevance to the matters under consideration, were placed before the Court.

Pedestrian and cyclist issues totally ignored:

Pedestrians and cyclists are the least carbon and infrastructure intensive, and yet the most vulnerable road users in Indian cities. The petitioners' had raised the concern that widening roads and constructing signal free corridors make it impossible for pedestrians to cross and destroy the possibilities of travel by foot and cycling. It is very unfortunate that while upholding road-widening, the Division Bench has completely ignored these serious concerns, and seems content to promote the interests of private motor vehicle users alone. As in the case of the widening of Bellary Road, such road projects criss-crossing the core city is certain to kill scores of people: especially pedestrians (particularly children, handicapped and the elderly) and cyclists, for whose safety and welfare there is little or no attention at all invested while arriving at such decisions.

Basis on which Road-Widening is upheld is of wider concern:

The order states that "widening roads is the only means to overcome this traffic congestion". This

even as it has acknowledged that the Karnataka's Directorate of Urban Land Transport (DULT) has produced a report which the Court confirms is 'cutting edge scientific analysis'. This report, that studied this specific road widening proposal, advocates that several measures can be adopted to relieve traffic congestion and that road-widening is not a solution in tackling such problems. Several citizen groups, policy makers and elected representatives have acknowledged that road-widening need not be the only solution for traffic congestion. This being the case, it is of concern that the order insists that road-widening is the only means to solve congestion. As a consequence, it fails to consider that such decisions supporting ill-thought high speed carriageways disastrously affect hundreds of homes and businesses, will eat into footpaths, parks and open spaces, and destroy the last vestiges of greenery in the city.

We are deeply concerned that the current decision seems to extend an unfettered license for continuation of road widening and other such projects. For instance, it endorses several signal free corridors that are being implemented, which are promoted in comprehensive violation of law, admittedly without evidence backing their technical and financial viability and in violation of progressive urban planning norms. *Despite the fact that such mega projects have not complied with the law as applicable, the current year's State budget has allocated a whopping Rs. 426 crores (about 50% of the amount allocated for Bangalore's infrastructure development) to building such corridors.*

Given the very deep and irreversible impacts of this decision in the Meenakshi Bharat PIL, a reappraisal of this judgment is critical to ensure safety and security of all, and not only of those who can afford to use private transport. We would explore all legal remedies for a revisit of this judgment by an appropriate Court.



Leo F Saldanha
*Environment, Social Justice and Governance
Initiatives*
Environment Support Group – Trust
1572, 36th Cross, Ring Road, Banashankari II
Stage, Bangalore 560071
Tel: 91-80-26713559-61
Email: esg@esgindia.org
Web: www.esgindia.org

Vinay K Sreenivasa
Roshni K Nuggehalli
Hasiru Usiru
hu.bangalore@gmail.com ;
<http://hasiruousiru.in>