

(2015) 12 AHC CK 0078

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 62657 of 2015

Chetna Society and Others

APPELLANT

Vs

Chief General Manager (Technical) and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

National Highways Authority of India Act, 1988 — Section 11

Citation : (2016) 1 ADJ 291 : (2016) 2 ALJ 169 : (2016) 114 ALR 440 :
(2016) 1 AWC 998 : (2016) 1 UPLBEC 472

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Udit Chandra, for the Appellant; Devendra Kumar and Pranjal Mehrotra, for the Respondent

Final Decision : Dismissed

Judgement

1. The Union Government in the Ministry of Road Transport and Highways entrusted a stretch of National Highway No. 24 comprised of the Hapur-Moradabad-Bareilly-Sitapur section (from kilometer 59.000 to kilometer 413.200) falling within the territory of the State of Uttar Pradesh to the National Highways Authority of India¹ under Section 11 of the National Highways Authority of India Act, 1988. On 19 February 2010, NHAI entered into a concession agreement in respect of the Moradabad-Bareilly section comprised from kilometer 148.000 to kilometer 262.000 with Moradabad-Bareilly Expressway Limited. In respect of this section, a toll plaza has been constructed at Ch. 228.885. A separate and distinct agreement was entered into by NHAI for the development of the Bareilly-Sitapur section comprised from kilometer 262.000 to kilometer 413.200 for which a concession agreement was entered into with another concessionaire, BHPL. In respect of the Bareilly-Sitapur section, a toll plaza is to be set up at kilometer 267.000 and kilometer 370.000. It is the proposed location of the toll plaza at kilometer 267.000 on the Bareilly-Sitapur section which forms the subject matter of the challenge in the present public

interest litigation.

2. The toll plaza which is proposed to be set up at kilometer 267.000 is sought to be questioned on four grounds:

(i) The toll plaza is situated within a distance of 100 to 300 meters from the following educational institutions:

a. Manas Sthali Sr. Secondary Residential Public School, with about 600 students with a residential hostel within an area of 200 meters from proposed Toll Plaza;

b. Future Institute of Engineering and Technology, with about 1000 students and a hostel facility;

c. Krishna Public Senior Secondary School with about 800 students within a distance of 100 meters from proposed Toll Plaza;

(ii) Rule 8(1) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 stipulates that a toll plaza should be situated beyond a distance of ten kilometers from municipal or local town area limits. In the present case, the proposed toll plaza, it has been submitted, is within two kilometers of the limits of the Nagar Palika Parishad at Faridpur;

(iii) Rule 8(2) stipulates that the distance between two toll plazas on the same section of a national highway and in the same direction shall not be within sixty kilometers. The toll plaza on the Moradabad-Bareilly section is situated at kilometer 228.885, whereas the proposed toll plaza on the Bareilly-Sitapur section at kilometer 267.000 will fall within the prohibited distance of sixty kilometers; and

(iv) There will be a charging of a double fee because the concessionaire for the Moradabad-Bareilly section is charging a user fee upto kilometer 269.80, whereas the proposed toll plaza will cover a user fee from kilometer 267.000. In support of this submission, reliance has been placed on the receipts issued by the concessionaire for the Moradabad-Bareilly project, indicating that the fee is being charged from kilometer 212.30 to kilometer 269.80 at NH 24. On the basis of these fee receipts which have been annexed to the supplementary affidavit filed by the petitioners on 16 November 2015, it has been submitted that, in respect of the Bareilly-Sitapur section, charging of a fee at the toll plaza at kilometer 267 would overlap with a fee which has been charged by the concessionaire for the previous section.

3. These four submissions fall for consideration.

4. Rule 3 of the Rules of 2008 provides for the levy of a fee. Under rule 3(1) the fee is levied for the use "of any section" of a national highway, permanent bridge, bypass or tunnel forming part of the national highway, as the case may be, in accordance with the provisions of the Rules. The base rate of fee is indicated in rule 4. The rate of fee is computed by multiplying the length of the section by the rates which are specified in the schedule for the base year 2007-08.

5. Rule 8 of the Rules of 2008 is in the following terms:

"8. Location of toll plaza. - (1) The executing authority or the concessionaire, as the case may be, shall establish a toll plaza beyond a distance of ten kilometers from a municipal or local town area limits:

Provided that the executing authority may, for reasons to be recorded in writing, locate or allow the concessionaire to locate a toll plaza within a distance of ten kilometers of such municipal or local town area limits, but in no case within five kilometers of such municipal or local town area limits:

Provided further that where a section of the national highway, permanent bridge, bypass or tunnel, as the case may be, is constructed within the municipal or town area limits or within five kilometers from such limits, primarily for use of the residents of such municipal or town area, the toll plaza may be established within the municipal or town area limits or within a distance of five kilometers from such limits.

(2) Any other toll plaza on the same section of national highway and in the same direction shall not be established within a distance of sixty kilometers:

Provided that where the executing authority deems necessary, it may for reasons to be recorded in writing, establish or allow the concessionaire to establish another toll plaza within a distance of sixty kilometers:

Provided further that a toll plaza may be established within a distance of sixty kilometers from another toll plaza if such toll plaza is for collection of fee for a permanent bridge, bypass or tunnel."

6. Under sub-rule (1) of rule 8, it has been stipulated that the executing authority or the concessionaire shall establish a toll plaza beyond a distance of ten kilometers from municipal or local town area limits. Thereafter the first and second provisos contemplate a relaxation of this norm of ten kilometers in stipulated situations. Under the first proviso, the toll plaza may be located within a distance of ten kilometers of municipal or local town area limits, but in no case within five kilometers of those limits, for reasons to be recorded in writing by the executing authority. Under the second proviso, where a section of the national highway, permanent bridge, bypass or tunnel is constructed within municipal or local town area limits or within five kilometers therefrom, primarily for the use of the residents of the municipal or town area, the toll plaza may be established within municipal or town area limits or within a distance of five kilometers.

7. In the counter affidavit which has been filed by the Project Director of NHAI, it has been stated that Faridpur town has an actual right of way of 50-60 meters, but as a result of encroachments, the width of the road has been reduced to 35 to 40 meters, resulting in frequent traffic congestion. Under the concession agreement with BHPL, a new alignment of NH-24 was created, bypassing Faridpur. The bypass will prevent large scale demolitions in Faridpur town, ease traffic congestion and will lead to a reduction in air and noise pollution. The

construction of the proposed bypass will provide relief to the local residents and to the daily users of the stretch.

8. This disclosure constitutes a sufficient justification for the applicability of the second proviso to Rule 8. Hence, there is no substance in the challenge with respect to the distance between the toll plaza and the limits of the Nagar Palika Parishad at Faridpur.

9. We shall next deal with the challenge on the ground that under Rule 8(2), the distance between two toll plazas should not be less than sixty kilometers on the same section of a national highway and in the same direction. The crucial words of Rule 8(2) are "any other toll plaza on the same section of national highway and in the same direction". In other words, where one section of the national highway is being developed under a concession agreement, the distance of another toll plaza on that section should not be within sixty kilometers. Evidently, this requirement of Rule 8(2) is not breached in the present case. The error on the part of the petitioners lies in connecting two separate sections of the national highway and treating them as if they are one. Two separate concession agreements have been entered into by NHAI, one for the Moradabad-Bareilly section from kilometer 148.000 to 262.000 which was awarded on 19 February 2010. The second and distinct section is for the stretch from Bareilly to Sitapur falling from kilometer 262.000 to 413.200 of NH 24 for which a concession agreement was executed on 22 June 2010. There are two separate concession agreements for the development of two separate sections of NH 24. Hence, the requirement of Rule 8(2) is not breached. The toll plaza which is being established at kilometer 267.000 is on the Bareilly-Sitapur section and hence, for the purpose of computing the distance within the meaning of Rule 8(2), the toll plaza on the Moradabad-Bareilly section would be of no relevance. The provisions of Rule 8(2) have, therefore, not been breached.

10. Insofar as the issue of the educational institutions is concerned, the counter affidavit which has been filed by the Project Director of NHAI states that clause 27.3 of the concession agreement stipulates that the concessionaire shall not collect any fee from local residents for noncommercial use of the project highway and shall issue a pass for crossing the toll plaza at a nominal monthly charge. The relevant section of Schedule-R of the concession agreement is in the following terms:

"27.3 Exemption for Local Users

The Concessionaire shall not collect any Fee from a Local User for non-commercial use of the Project Highway, and shall issue a pass in respect thereof for commuting on a section of the Project Highway as specified in such pass and for crossing the Toll Plaza specified therein. For carrying out the provisions of this Clause 27.3, the Concessionaire shall formulate, publish and implement an appropriate scheme, and make such modifications to the scheme as may reasonably be suggested by the Authority or by Local Users from time to time;

provided that for defraying its expenses on issuing of passes and handling of Local Users, the Concessionaire shall be entitled to charge a monthly fee of Rs. 150 (Rupees one hundred and fifty), with reference to the base year 2007-08, to be revised annually in accordance with the Fee Rules to reflect the variation in WPI, and then rounded off to the nearest 5 (five) rupees; provided further that no passes will be required or Fee collected from a vehicle that uses part of the Project Highway and does not cross a Toll Plaza."

11. Consequently, a clear provision has been made so as to provide relief to local residents using the project highway for non-commercial purposes in terms of clause 27.3 of the concession agreement. This provision, it may be noted, is not under challenge and we see no reason to entertain the objection.

12. As regards the issue of the levy of a "double" user fee, the only basis is the receipt which has been issued by the concessionaire of the Moradabad-Bareilly section which states that it is for the section from kilometer 212.300 to kilometer 269.800. The concession agreement with the concessionaire for the Moradabad-Bareilly section is upto kilometer 262.000, as stated in the counter affidavit. Hence, it has been stated on behalf of NHA I that the concessionaire in respect of the Moradabad-Bareilly section would be entitled to charge for that section. In fact, we find from the notification of the Union Government dated 17 January 2014 (Annexure-3 to the writ petition) that there is a reference to the concession agreement for the development of the Moradabad-Bareilly section from kilometer 148.000 to kilometer 262.000 (design chainage being from kilometer 148.000 to 269.800 of the agreement). The petitioners apprehend that there will be a levy of double user fee. However, the statement which has been made on behalf of NHA I will redress that apprehension.

13. For all these reasons and since we have considered the matter from all its perspectives, we see no reason to grant any relief. No case for interference has been made out.

14. The writ petition is, accordingly, dismissed. There shall be no order as to costs.

1NHA I

2Act of 1988

3Rules of 2008