(2008) 01 MAD CK 0257

In the Madras High Court

Case No : Writ Petition No''s. 20332 of 1998, 3826, 19802 and 5459 of 1999 and 7366 of 2003 and W.M.P. No''s. 30810 of 1998, 5480 and 29066 of 1999, 17367 of 2000 and 9497 and 9498 of 2003

G. Jayakumar APPELLANT

Vs

Union of India (UOI) and The General Manager (Developmental Project), Larsen and Tubro Ltd., E.C.C. Construction Group RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:
National Highways Act, 1956 — Section 10, 2, 3, 3(6), 7

Citation : (2008) 1 MLJ 1217

Hon'ble Judges : S.J. Mukhopadhaya, J;K. Suguna, J

Bench : Division Bench

Advocate : S. Karthikeyan, in W.P. No. 20332 of 1998, for the Appellant; V.T. Gopalan, Addl. Solicitor General of India assisted by P. Wilson, Asst. Solicitor General of India for Respondent No. 1 in W.P. No. 20332 of 1998, D. Srinivasan, A.G.P. for Respondent No. 2 in W.P. No. 20332 of 1998 and Nalini Chidambaram for R. Murari, in W.P. No. 20332 of 1998, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these Writ Petitions, almost similar prayer having been made and as common question of law is involved, they were heard together and disposed of by this common order.

2. In two Writ Petitions, namely W.P. Nos. 3826 and 19802 of 1999, the petitioner-Citizen Vice Club, represented by its President, has prayed for a declaration that Section 8A of the National Highways Act, 1956 (hereinafter referred to as ''the N.H. Act'') read with Notification No. 530, New Delhi, 21.8.1998, issued by the respondent-Union of India, i.e. Ministry of Surface Transport (Road Wings), authorising levy of collection of fees by the respondent-M/s. Larsen and Toubro Limited (for short, "L & T")-- (i) for use of "Aathu Paalam" Bridge across the River ''Noyyal'' in Km.161/2 of N.H.47 in W.P. No.

3826 of 1999 and (ii) for use of part of National Highways i.e. Coimbatore by-pass starting from Km.141.0 of N.H.47 at Salem Bridge and re-joining N.H.47 at Km.171/200 at Palghat side in W.P. No. 19802 of 1999, as illegal, unconstitutional and violative of Article 14 of the Constitution of India and the principle of the Indian Contract Act and inconsistent with the statutory requirements of the N.H.Act. The very same Notification No. 530, New Delhi, 21.8.1998 is challenged in W.P. No. 5459 of 1999.

3. In two other Writ Petitions, namely W.P. Nos. 20332 of 1998 and 7366 of 2003, prayer has been made to issue a Writ of Mandamus, (i) in W.P. No. 20332 of 1998: forbearing the respondent-L & T from collecting the toll amount from the vehicles passing through the New and Old Bridges of Aathu Paalam at Coimbatore city falling on N.H.47 on the strength of contract entered into between the respondents 1 and 2 and 3, dated 3.10.1997 and subsequently to direct the Union of India, represented by Chief Engineer (Planning and Private Investments), Ministry of Surface Transport and the Chief Engineer of the National Highways of the Department of Highways of the State to take over the maintenance of the Bridge for themselves and (ii) in W.P. No. 7366 of 2003: forbearing the respondent-Union of India, Ministry of Surface Transport (Road Wings) and the respondent-L & T from collecting toll fees from the motor vehicle owners who pass through the Aathu Paalam Bridge over Noyyal River on the South of Coimbatore City and refund the amount collected in excess of the cost of construction of the Bridge in the said Aathu Paalam to the respondent-Commissioner of the Corporation of Coimbatore.

4. For determination of the issues, it becomes necessary to set out few essential facts, as it appears from the pleadings and other records and noticed hereunder:

(a) Pursuant to Amendment by Act 26 of 1995 with effect from 16.6.1995, the Union of India introduced Section 8A of the N.H. Act, authorising the Central Government to enter into an agreement with any private person other than the State or Local Body, for the development and maintenance of the whole or any part of a National Highway and to collect and retain fees by the private persons at such rate, for services or benefits rendered by them as the Central Government by the Notification provide. Pursuant to the aforesaid provision, a Scheme called "Build-Operate-Transfer" (for short, "B.O.T") was introduced on 1.9.1995, by the Government of India from its Ministry of Surface Transport, by issuing a Global Tender for National Highway Projects on B.O.T. basis for different parts of different Highways including Coimbatore By-pass, which includes Road-Over-Bridge and Cross Drainage Structures on N.H.47 in the State of Tamil Nadu. The interested companies/consortium of companies were asked to purchase the tender documents which were to be submitted on or before 18.12.1995. Under the B.O.T. Scheme, the contractor was required to construct and maintain the facility for the entire construction period out of their own funds and expected to recoup the cost incurred by collection of a fee from the users of the facility. In the global tender notice, as also in the tender documents, it was specifically mentioned that the entrepreneurs will be permitted to recover the investment along with the returns through levy of fees from users of facility for a certain specified period, after which the facility will revert to the Government.

(b) The respondent-L & T, along with others, submitted the tender papers. The Union of India has felt that the project should be an integrated project for the construction of by-pass road as well as two additional lane-bridges on K.M.162/2 on N.H.47, apart from strengthening and refurbishing the existing two lane-bridges. The respondent-L & T being the best tenderer, was accepted and awarded the work and a construction agreement was entered into between the respondents on 3.10.1997. According to the construction agreement, it is the obligation of the respondent-entity to construct the by-pass road and bridges and to maintain and operate the same for the respective construction period, and at the end of the construction period, the bridges and the bye-pass road will be transferred to the Union of India by the respondent-L & T Ltd.

(c) The respondent-L & T completed the work and the projects were thrown open to public in December 1998 and the bye-pass road had been completed and thrown open for the traffic purpose since 19th January, 2000.

(d) Union of India, in exercise of its power conferred by Section 8A of the N.H. Act, 1956 issued Gazette Notification in Nos.S.O.716(E) and S.O.717(E), both dated 21.8.1998, fixing the toll for both Aathu Paalam Bridge and Coimbatore By-pass road respectively. It was revised from time to time by the subsequent Notifications, including Notification Nos.S.O.383(E) and S.O.384(E), both dated 3.5.2000, Notification Nos.716(E) and 717(E), both dated 19.6.2003, Notification Nos.1087(E) and 1088(E), both dated 1.8.2005, Notification Nos.943(E) and 944(E), both dated 23.6.2006, etc. It is only when the Aathu Paalam Bridge was constructed and the Notifications were issued on 21.8.1998, most of the Writ Petitions were preferred between 1998 and 1999, except the one which was preferred subsequently in 2003.

5. The petitioners, while challenging the vires of Section 8A of the N.H. Act, 1956 and the Notifications dated 21.8.1998, took the following pleas to assail the Notifications:

(a) The respondent-Union of India and the respondent-L & T entered into a contract in a secret manner without inviting an open tender to reduce the cost of the public at large.

(b) The cost for the said Scheme, i.e. construction of Aathu Paalam Bridge which is within the municipal area of Coimbatore Corporation and the by-pass road to an extent of 26 Kms. were estimated to be constructed at the cost of Rs. 6 crores and Rs. 95 crores respectively, but the agreement was entered at the rate much higher than the schedule of rates available under the Highway Manual, which is Rs. 58 lakhs for the Bridge and around Rs. 30 crores for the by-pass road. Further plea was taken that the B.O.T. Scheme was entered into between the respondent-Union of India and the respondent-L & T in a secret manner without being considered by a competent tender issued and while repaying the cost of the Bridge, much advantage was made in favour of the respondent-L & T, which was able to collect a very higher amount than the actual construction cost which they incurred in constructing the Bridges as well as the by-pass road for a period of 21 years and 32 years respectively.

(c) Inspite of the fact that Section 8A of the N.H. Act authorises the "B.O.T " Scheme, as per the guidelines, while the contract was awarded, not even a single guideline had been taken care of.

(d) Though it was essential u/s 10 of the N.H. Act to place the Notifications/ agreement before the Parliament, the same had not been carried out.

(e) There is a clandestine understanding between the respondent-Union of India and the respondent-L & T Ltd. right from the entry into the agreement in fixation of fees. The agreement was originally planned for the by-pass road, but later on it was deliberately coupled with the existing Aathu Paalam Bridge, which costs hardly about Rs. 50 lakhs to Rs. 60 lakhs as per the Highways estimate.

(f) The respondent-L & T Ltd. was authorised to put toll points at two places, one at Aathu Paalam Bridge and another at the by-pass Road.

(g) Inspite of Section 2 of the N.H. Act which specifically exclude such operation of the Highways within the Municipal limits from the purview of National Highways, the Government had brought Aathu Paalam Bridge, which falls within the Municipal limits, and the respondent-Union of India has no jurisdiction at all to couple the Aathu Paalam Bridge extension within the purview of the N.H. Act, which is ultra-vires Section 2 of the N.H. Act.

(h) The power u/s 8A of the N.H. Act cannot be exercised by the authorities in respect of the portion of the Road or Bridge which had not been declared as ''National Highway''.

(i) Section 8A of the N.H. Act so far as it authorises a private person to collect fees without representation from the persons who pay the fees, would amount to excessive delegation of essential Legislative function between the Executive and the private person.

(j) Section 8A of the N.H. Act insofar it imposes an obligation on a citizen in respect of a contract between the Central Government and the private person without any privity or representation from the citizens, is Constitutionally impermissible, as it violates the principle of enforceability of an agreement under the Indian Contract Act.

(k) Section 8A of the N.H. Act is also a direct infringement between the Panchayat and the local authorities after their acquisition of Constitutional status pursuant to Constitution''s 73rd Amendment.

(l) The levy of fee u/s 8A of the N.H. Act in respect of Highways coming within the local limits of the Municipality, is ultra-vires Section 2 of the N.H. Act read with Articles 243W and Schedule 12 of the Constitution of India, wherein the maintenance etc. of Roads and Bridges are under the exclusive domain of the State Government.

(m) Section 8A of the N.H. Act insofar as it delegates a public duty to a private person for collecting the toll/fee is violative of Article 266 of the Constitution of India.

6. On the other hand, following stand has been taken by the respective counsel for the respondent-Union of India and the respondent-L & T, who prayed to dismiss the Writ Petitions:

(i) The agreement reached between the Union of India and the L & T in 1995, having not been challenged by the petitioners and they having not taken part in the bid, the Writ Petitions are not maintainable.

(ii) The Vires of any law cannot be challenged in a Public Interest Litigation.

(iii) If there is a conflict between the Central Government Legislation and State Legislation relating to Municipality, Central Act will prevail.

(iv) Before the issuance of the Notification dated 21.8.1998, Parliamentary approval as required u/s 10 of the N.H. Act was taken.

(v) Legislative competence having not been challenged, and in the absence of any violation of fundamental right, Section 8A of the N.H. Act should not be held to be ultra-vires.

(vi) L & T, having already spent a sum of Rs. 1.5 crores, after completion of work, the challenge to the Notification and the Laws, is uncalled for.

(vii) The respondent-Union of India has explained the basis for fixing the rates of toll/fee, and the Central Government in the year 1978, made Rules for the services rendered relating to use of permanent Bridges costing more than Rs. 25 lakhs completed and opened to traffic on or after 1st April, 1976. When the Notification of the above said Rules, 1978 was issued, the rates of fee chargeable is given under the Schedule to the said Notification and the levy of toll/fee shall be for a period of considered adequate to recover the cost of the Project and the said Rules were further modified by the Ministry''s Notification, dated 19.2.1992, by which cost of the Project which qualify for levy of toll/fee, was raised to Rs. 1 crore, but toll/fee rates remained unchanged. The rates of fees to be levied for Bridges costing more than Rs. 1 crore, as laid down by the Notification dated 19.2.1992, is as follows:

Sl. Name of the Vehicle Amount in Rs. No. 1 Car/Jeep Rs. 5/- 2 Bus/Truck Rs. 15/- 3 Other Mechanically propelled vehicles like Mobile Crane, Earth Movers, Road Roller and Dozers. Rs. 20/- (viii) In the year 1997, the Rule was further modified to the extent that the levy of toll was made applicable to permanent Bridges, as also the upgraded Sections of National Highway. No time limit for collection of those toll was prescribed, which is to be charged in perpetuity by the

Executive Agency. As per the 1997 Notification, the Rules, called as "National Highways (Fees for use of National Highway Section and Permanent Bridges-Public Funded Projects) Rules, 1997, was framed. Rule 10 of the above said Rules deals with special condition when Section or Project built by the Government are used for developing adjacent "B.O.T" Projects of private parties. The above Rule provides to improve the financial viability of the B.O.T. Project as decided by the competent authority, and the Concessionaire may be allowed to collect and retain the fees to collect it for the full concession period as agreed to in specific agreement in respect of the facility offered to him. Under Rule 10 of the above said 1997 Rules, the Central Government can allow the Concessionaire to collect and retain the fee, which is being followed in the B.O.T. Cases for the work allotted u/s 8A of the N.H. Act.

7. We have heard the learned Counsel for the respective parties and noticed their contentions, as also the Laws, as referred to, and the Notifications. We have also noticed the judgments referred to by one or other parties.

8. One of the questions raised is that Section 8A of the N.H. Act in respect of the Highways which is coming within the local limits of the Municipality, is ultra-vires Section 2 of the N.H. Act read with Article 243W and 12th Schedule of the Constitution, as the maintenance etc. of Roads and Bridges are within the exclusive domain of the State.

9. Section 8A of the N.H. Act empowering the Central Government to enter into an agreement with private persons for development and maintenance of National Highways, was inserted by National Highway (Amendment) Act, 1995 with effect from 16.6.1995. Subsequently, Section 2 of the N.H. Act which relates to declaration of certain Highways to be National Highways, was amended by the National Highway Laws (Amendment) Act, 1997 with effect from 24.1.1997 and the words "except such part thereof as are situated within any Municipal area" were omitted, thereby, apart from each of the Highways specified in Schedule to the N.H. Act, 1956, the Central Government was empowered to include any other Highway to be National Highway including parts which are situated within any Municipal area. As such, after the amendment of Section 2 of the N.H. Act, no Legislation is necessary to add or delete the Highways from the Schedule to the Act, as evident from the amended Section 2 of the N.H. Act and quoted hereunder:

Section 2: Declaration of certain highways to be national highways--

(1) Each of the highways specified in the Schedule is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification, such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the

Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

In view of the amendment to Section 2 of the N.H. Act, it cannot be alleged that Section 8A of the N.H. Act is in conflict with Section 2 of the N.H. Act.

10. In the present case, the petitioners have questioned the Legislative competence of Central Government to enact Section 8A of the N.H. Act, alleged to be "ultra-vires" Article 243-W of the Constitution of India. While dealing with the Legislative competence of the Parliament to enact a Law, the Supreme Court in the decision reported in Attorney General for India and Others Vs. Amratlal Prajivandas and Others, , noticed its earlier decision of the Constitution Bench of seven Judges, reported in Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) and observed as follows:

23. ...The test evolved in the said decision is this in short: Where the legislative competence of Parliament to enact a particular statute is questioned, one must look at the several entries in List II to find out (applying the well-known principles in this behalf) whether the said statute is relatable to any of those entries. If the statute does not relate to any of the entries in List II, no further inquiry is necessary. It must be held that Parliament is competent to enact that statute whether by virtue of the entries in List I and List III or by virtue of Article 248 read with Entry 97 of List I....

11. To find out the Legislative competence so far as National Highways and other Roads/Bridges are concerned, one may refer to List-I-Union List and List-II-State List, of Schedule 7 and Schedules 11 & 12 of the Constitution of India and the following facts emerge from those Schedules:

Nature of Road/Highway List Schedule Entry Legislative competence /Competent body 1. Highway declared by I 7 23 Union List/ or under law made by Central Government Parliament to be national highways 2. Communications, that II 7 13 State List / is to say, roads, State Government bridges, ferries, and other means of communication not specified in List-I (i.e. State Roads and Bridges) 3. Roads, culverts, - 11 13 Panchayats bridges, ferries, waterways and other means of communication (Article 243G of the Constitution of India - Powers, authority and the responsibilities of Panchayat). It relates to Panchayat Roads and Bridges. 4. Roads and Bridges - 12 4 Municipalities (Article 243W of the Constitution of India- Powers, authority and responsibilities of Municipalities, etc.). It relates to Municipal Roads and Bridges.

12. The Legislative powers of the Parliament and the State Legislatures, is governed by Articles 246 and 258 of Part-XI of the Constitution of India and the Parliament has exclusive power to Legislate with respect to any of the matters enumerated in List-I (Union List) of Schedule 7 of the Constitution of India; the State Legislature has exclusive power to make laws with respect to any of the matters enumerated in List-II (State List) of Schedule 7 of the Constitution of India. In the decision of the Supreme Court reported in Govt. of A.P. and Another

Vs. J.B. Educational Society and Another etc., , the Supreme Court, while dealing with the Legislative competence of the Parliament and the State Legislature, observed as follows:

10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in Clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

13. In the present case, we have noticed that there is no over-riding power so far as it relates to National Highways, State Roads and Bridges, Panchayat Roads and Bridges and Municipal Roads and Bridges. They are separate and the Parliament or State Legislature or competent body has exclusive power to Legislate with respect to matters relating to the respective Roads and Bridges. For example, the National Highways is an exclusive domain of the Parliament under List-I of Schedule 7 of the Constitution of India, which can legislate with regard to the National Highway. However, in respect of the State Roads and Bridges, the State Legislature having been empowered - vide List-II of Schedule 7 of the Constitution of India, the State Legislature can legislate in respect of such State Roads and Bridges. Similar is the position so far as it relates to Panchayat and Municipal Roads and Bridges, subject to the provisions of the Constitution of India, and if the Legislature of the State Bye-Laws empower such local bodies.

14. Much reliance has been placed by the learned Counsel for the petitioners on Article 243W of the Constitution of India, which relates to power, authority and responsibilities of the Municipalities, etc., as shown hereunder:

Article 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.

From Article 243W of the Constitution of India, it will be evident that the said provision is not only subject to the provisions of the Constitution of India, the Legislature of a State, by law, also may empower the Municipality with such power and functions, including those in relation to the matters listed in Schedule 12.

15. So far as the Municipality Roads and Bridges are concerned, in view of the Law if any laid down by the Legislature of the State, the concerned Municipality may implement its scheme and perform the functions in relation to such Municipality Roads and Bridges, and it has nothing to do with the National Highway, which is in the exclusive domain of the Parliament and the Central Government.

16. We accordingly hold that Section 8A of the N.H. Act and Article 243W of the Constitution of India, are not repugnant to each other and they operate in different fields; the object and purpose of the provisions of the two enactments relate to different fields, namely that Roads and Bridges, as in the present case.

17. The other ground challenged is that Section 8A of the N.H. Act is ultra-vires Article 266 of the Constitution of India. For proper appreciation of the matter, it is desirable to notice the relevant provisions relating to fees for services or benefits rendered on National Highways, i.e. Sections 7 and 8A of the N.H. Act, 1956 and quoted hereunder:

Section 7: Fees for services or benefits rendered on national highways--

(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, permanent bridges the cost of construction of each of which is more than rupees twenty-five lakhs and which are opened to traffic on or after the 1st day of April 1976, temporary bridges and tunnels on national highways and the use of sections of highways:

Provided that if the Central Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this sub-section.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

(3) Any fee leviable immediately before the commencement of this Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule shall continue to be leviable under this Act unless and until it is altered in exercise of the power conferred by Sub-section (1).

Section 8A: Power of Central Government to enter into agreements for development and maintenance of national highways:

(1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development, maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in Section 7, the person referred to in Sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in Sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject matter of such agreement for proper management thereof.

Section 7 of the N.H. Act, as evident, empowers the Central Government to levy fees at such rates as may be laid down by the Rules for the services and benefits rendered by it in relation to the use of Bridges etc. u/s 7(2) of the N.H. Act, such fees so levied, has to be collected in accordance with the Rules, namely the National Highways Rules, 1957 being issued in this regard. So far as Section 8A(2) of the N.H. Act is concerned, it not only empowers the Central Government to enter into an agreement with any private person in relation to development, maintenance of whole or any part of the National Highway, u/s 8A(2) of the N.H. Act, notwithstanding anything contained in Section 7 of the N.H. Act, such person is entitled to collect and retain the fees at such rate for services or benefits rendered by him, as the Central Government may by Notification specify.

18. Therefore, it will be evident that while Section 7 of the N.H. Act empowers the Central Government to levy and collect fees for the services or benefits rendered by it in relation to the use of permanent Bridges, etc., u/s 8A(1) of the N.H. Act, the person would develop, maintain, whole or part of National Highway, and u/s 8A(2), such person is also entitled to collect and retain fees at the rate prescribed by the Central Government.

19. Article 266 of the Constitution of India relates to ''Consolidated Funds and the Public Accounts of India, and of the States, as reproduced hereunder:

Article 266: Consolidated Funds and public accounts of India and of the States--

(1) Subject to the provisions of article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of

loans shall form one consolidated fund to be entitled "the Consolidated Fund of India", and all revenues received by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State".

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or the public account of the State, as the case may be.

(3) No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

From the aforesaid Article 266 of the Constitution of India, it will be evident that if the Revenue was received by the Government of India, it shall form the Consolidated Fund of India and all other public money received by it or on its behalf, that should be credited to the Public Account of India. Therefore, if any fee is collected by the Central Government or on its behalf u/s 7 of the N.H. Act, such money received by it on its behalf is to be credited to the Public Accounts of India, but if a person other than the Union of India (Central Government) or the State Government, collects any fee, as provided u/s 8A(2) of the N.H. Act, such individual person is not supposed to deposit the money so received as fee in the Public Accounts of India.

20. For the aforesaid reasons, we are of the opinion and hold that Section 8A of the N.H. Act is not repugnant to Article 266 of the Constitution of India and on that ground, no interference is called for in these Writ Petitions.

21. The other ground taken is that the Central Government, while issuing the Notifications dated 21.8.1998, had not laid down the Notifications before the Parliament, as required u/s 10 of the N.H. Act, which reads as follows:

Section 10: Laying of notifications, rules, etc., before Parliament--

All notifications or agreements issued or entered into under this Act shall be laid before both Houses of Parliament as soon as may be after they are issued or entered into.

22. Mr. V.T. Gopalan, learned Additional Solicitor General, assisted by Mr.P.Wilson, learned Assistant Solicitor General, appearing for the respondent-Union of India, submitted that the Notifications dated 21.8.1998 were placed before the Parliament and approved and also produced the Original File of the Central Government, in F. No. N.H.15013/27/94-PL, in support of such claim. The said File not only contains different notes and letters given/issued since 28.9.1994, but the copies of paper publication of global tender, project summary, minutes of the Evaluating Committee, are also on record.

23. A submission was made by Mr. V.T. Gopalan, learned Additional Solicitor General appearing for the respondent-Union of India, that Section 10 of the N.H. Act, is "directory and not mandatory" and therefore, even if it is presumed that the Notification fixing the rate of fee is not placed before the Parliament, it will not invalidate the Notification issued by the Central Government. Reliance was placed on the decision of the Supreme Court reported in AIR 1979 SC 1149 (Atlas Cycle Industries Ltd. v. State of Haryana). That was a case relating to Essential Commodities Act, 1955. u/s 3(6) of the Essential Commodities Act, there was a requirement of law that every order made u/s 3, as soon as it is made, be placed before both Houses of Parliament. In the said case, while fixing the maximum selling price of various categories of iron and steel, including black plain iron sheets, the Central Government issued the Notification fixing the rates, but the said Notification was not placed before Houses of Parliament, and the Supreme Court held as follows:

32. From the foregoing discussion, it inevitably follows that the Legislature never intended that non-compliance with the requirement of laying as envisaged by Sub-section (6) of Section 3 of the Act should render the order void. Consequently non-laying of the aforesaid notification fixing the maximum selling prices of various categories of iron and steel including the commodity in question before both Houses of Parliament cannot result in nullification of the notification. Accordingly, we answer the aforesaid question in the negative. In view of this answer, it is not necessary to deal with the other contention raised by the respondent to the effect that the aforesaid notification being of a subsidiary character, it was not necessary to lay it before both Houses of Parliament to make it valid.

24. Section 10 of the N.H. Act being similar to Section 3(6) of the Essential Commodities Act, in view of the Supreme Court decision rendered in that case AIR 1979 SC 1149 we answer the question in the negative and against the petitioners.

25. The other question raised relates to the validity of the agreement, but we are not inclined to answer the same, as none of the petitioners have challenged the agreement as reached between the respondents-Union of India and L & T.

26. In view of the foregoing discussion and findings, it is not necessary to deal with the other contentions as raised by the petitioners, as the same are covered by the findings rendered above. It is also not necessary to refer the other judgments relied on by one or other counsel for the parties, as they are not relevant in the present context.

27. We find no merits in any of the Writ Petitions and accordingly, the same are dismissed. But, in the facts and circumstances of the case, there shall be no order as to costs. The Miscellaneous Petitions are closed.

