(2015) 06 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 11497 of 2014

Govind Chandrasekhar APPELLANT

Vs

The Union of India and Others RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14
National Highways Act, 1956 — Section 7, 9

Citation : (2015) 5 CTC 353 : (2015) 4 LW 98 : (2015) 5 MLJ 385

Hon'ble Judges : Sanjay Kishan Kaul, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : V. Raghavachari, for the Appellant; A. Murughan, CGSC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.

1. Toll roads are an ancient concept. Aristotle in his writings mention use of tolls in many parts of Asia including India where tolls were levied as far back as the 4th century BC, tolls were used in the 14th and 15th centuries in the Holy Roman empire. Some may wonder why we have to continue to pay for roads that are already paid for.? The simple truth is, roads are never paid for -they need a steady stream of funding to support ongoing maintenance that will keep them safe and drivable. Toll roads are to ensure free flow of traffic, save commuters time, ensure safety, increase fuel economy etc.

2. The petitioner a practising Advocate of this Court by way of this Writ Petition filed as a public interest litigation seeks for issuance of a Writ of Mandamus, to forbear the respondents from collecting Toll Fee at its Toll Plaza at Paranur, Chengalpet alleging the establishment of the said toll plaza is illegal and the toll fee collected is exorbitant.

3. The petitioner would state that the second respondent, National Highways

Authority of India, (NHAI) entered into a contract with the fourth respondent on 31.05.2013, empowering the fourth respondent to collect toll fee from the subject toll plaza. The petitioner alleges that the demand made by the fourth respondent is in excess of the sum stipulated in the contract. The petitioner is said to have reached the Toll Plaza on 12.04.2014, on his way to Uthiramerur and was directed to pay a toll of Rs. 55/- (return journey), when the notification displayed in the toll booth stated otherwise. The petitioner is said to have picked up a quarrel with the persons/authorities in the toll plaza and stated to have obtained a copy of the agreement entered into by the fourth respondent and by relying upon the same, he would state that the collection of toll by the fourth respondent is far in excess of the amount permitted and therefore illegal.

4. The petitioner contends that the establishment of the toll plaza at Paranur is illegal and contrary to Rule 8 of the National Highway Fee (Determination of Rates and Collection) Rules, 2008, having been established within a distance of 5kms from Chengalpet City. It is further contended that in terms of Rule 8(2), no toll plaza can be established in the same section within a distance of 60kms and therefore, the very establishment of the toll plaza being contrary to the Rules is illegal. Further, it is submitted that the collection of toll in the subject toll plaza is exorbitant and contrary to the approved rates. In this regard reference was made to the notification dated 16.05.2012 and the contract agreement, dated 30.05.2013 entered into between NHAI and the fourth respondent. Placing reliance on the order of the Hon''ble Supreme Court in the case of M.S.K. Projects (I)(JV) Ltd., Vs State of Rajasthan in Civil Appeal No. 5416/2011, dated 21.07.2011, it is submitted by the learned counsel for the petitioner that while it is competent for the State to levy/collect toll fee, it cannot be a source of revenue for the State. Therefore, it is submitted that the very establishment of the toll plaza and the rates of toll collected is illegal and violative of Article 14 of the Constitution of India.

5. The learned Senior counsel appearing for the NHAI by referring to the affidavit filed by its Project Director submitted that the work of four laning had been completed under ''BOT (Annuity) category'' for the stretch from Km 25.00 to Km 121.00 between the Tambaram and Tindivanam, was completed in the year 2004 and commercial operation commenced from 01.04.2005; the capital cost of the project was Rs. 418.56 crores besides cost of supervision consultant, land acquisition and utility shifting cost at Rs. 30.03 crores and the total cost of the project was Rs. 448.59 crores. It is further submitted that NHAI has to pay annuity of Rs. 1255.68 crores in 30 installments (twice in a year) to the BOT (Annuity) Concessionaire for a period of 15 years from 2005 to 2019, which includes maintenance of 93 kms stretch in all respects like ordinary maintenance, special repairs, renewals, safety related issues. It is further submitted that the toll plaza at Paranur was established in exercise of the powers conferred under Section 7 of the National Highways Act, 1956, (hereinafter referred to as the ''Act'') read with Rules 3, 5 and 11 of the National Highways (Fee for the Use of National Highways section and Permanent Bridge- Public Funded Project) Rules,

1997, and Rule 3(2) of the National Highways (Rate of Fee) Rules 1997, (hereinafter referred to as the ''1997 Rules''). It is further submitted that in 2008, the National Highways Fees (Determination of Rates and Collection) Rules 2008, were framed and the subject toll plaza was brought under the 2008 Rules by notification dated 16.05.2012. It is stated that the toll fee collected is in accordance with the said Rules. Pursuant to the amendment to the Fee Rules in 2014, which was implemented vide notification dated 26.03.2014, the toll fee was worked out and accordingly given vide publicity in the Tamil and English newspapers dated 30.03.2014. Therefore, the NHAI seeks to justify the rate of toll collected to be in accordance with the Rules, more particularly Rule 6 of the Rules. As regards the effect of Rule 8, relating to the location of the toll plaza, it is submitted that the 2008 Rules would have no application as the subject toll plaza is not a new toll plaza, but an existing one having been established under the 1997 Rules and when there is a transition from 1997 Rules to the 2008 Rules all the existing toll plazas established under the 1997 Rules were saved under the 2008 Rules and therefore, the contention raised by the petitioner in this regard is misconceived and untenable.

6. It is further submitted that in accordance with the interim directions issued by this Court on 21.05.2014, separate account has been maintained. The notification and the paper publications referred to by NHAI in their affidavit were placed in the form of a typed set of papers. Further details regarding the work done for the period from 2013 to 2015 along with photographs to show that maintenance is being periodically carried on were also filed in separate typed set of papers.

7. The Concessionaire/fourth respondent has filed two counter affidavits which is in line with the stand taken by NHAI, that apart the fourth respondent has given certain statistics as regards the number of vehicles which cross the toll plaza per day etc. Further, it is submitted that the rate of toll to be paid has been conspicuously displayed in the toll plaza and when there was a revision of rates, the same were also duly notified by establishing new signboards.

8. The Divisional Engineer (National Highways), Chennai, has filed a report furnishing the distance particulars between ''0'' point of Chennai to Paranur toll plaza, Paranur toll plaza to Chengalput Town, Paranur toll plaza to Attur toll plaza, Attur toll plaza to Vikiravandi toll plaza and Vikiravandi toll plaza to Villupuram Town.

9. We have heard the learned counsels appearing for the parties at great length and considered the materials placed on record.

10. In the preceding paragraphs, we have set out the relief sought for by the petitioner and the factual details. It has to be pointed out that the petitioner has not challenged the notification fixing the rates of toll payable by vehicles crossing the subject toll plaza, but seeks for a blanket relief from this Court to restrain the respondents from collecting toll fee at its toll plaza at Paranur, Chengalpet. On

the given facts, we have doubt as to whether such a relief sought for could be granted.

11. Be that as it may, we proceed to consider the contentions raised by the learned counsel for the petitioner which are broadly under two heads. Firstly the challenge is to the location of the subject toll plaza as being in violation of Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules 2008. By referring to the said Rules, the petitioner would state that the toll plaza is located within a distance of 5kms from Chengalpet City and therefore, it offends Rule 8(1) of the 2008 rules. Referring to Sub-Rule (2) of Rule 8, the petitioner contends that any other toll plaza on the same section of National Highway and in the same direction shall not be established within a distance of 60kms.

12. In exercise of powers conferred under Section 9 of the National Highways Act, 1956, the 2008 Rules were framed and published in the gazette of India, dated 05.12.2008 and came into effect from the said date in terms of Rule 1(2) of the 2008 Rules. Rule 1(3) of the 2008 Rules states that the said Rule shall not apply to agreements and contracts executed and bids invited prior to the publication of the 2008 Rules. Admittedly, the subject toll plaza was established under the 2007 Rules and in terms of Rule 1(3) of the 2008 Rules, the same would not be applicable to the subject toll plaza. This issue was considered by this Court in the case of S.Joel Vs The Secretary to Government of India and Ors., in W.P. No. 29389 of 2010, dated 20.04.2015. Therefore, the contention raised by the petitioner referring to the 2008 Rules has to necessarily fail.

13. The next contention raised is with regard to the rate of fee collected. The petitioner relying on his own experience during April 2014, would state that the toll fee collected is a far in excess than the permissible rates. We have referred to the affidavit filed by the NHAI in the preceding paragraphs with regard to the fixation of the toll plaza. The subject toll plaza was established under the 2007 Rules and after the 2008 Rules came into force, the toll plaza was brought under the 2008 Rules w.e.f., 01.06.2012, vide notification, dated 16.05.2015, and the rates fixed is in accordance with the Rule 5 of the 2008 Rules, the fee was increased twice i.e., 01.04.2013 and from 01.04.2014, after due publication in the newspapers. The averment made by the petitioner in the affidavit filed in support of the Writ Petition appears to be vague. However, if there is a strange incident of any collection of excess toll than the rates prescribed and duly notified it was well open for the person crossing the toll plaza to bring into the notice of either the Concessionaire or NHAI and for such reason, this Court by way of a Public Interest Litigation cannot forbear the respondents from collecting toll fee. Therefore, the second contention raised by the petitioner has also to fail.

14. While concluding the arguments, the learned counsel appearing for the petitioner submitted that the toll road was an existing road and by virtue of imposition of toll, the petitioner and other travelling public are compelled to pay toll for an existing facilities, that too at exorbitant rates. It is the further

submission that the toll road has not been maintained properly, the road contains several patch work, the entire stretch is accident prone, there is no proper barricading of the roads, which joins the toll road from the towns and villages along the National Highway etc.

15. The learned Senior counsel appearing for the NHAI submitted that the toll road is a four lane road, which was established in 2004 under ''BOT (Annuity category)'' and commercial operations commenced from 01.04.2005, with the project cost of 448.59 crores. It is further stated that NHAI has to pay annuity? of Rs. 1255.68 crores in 30 installments (twice in a year) to the BOT (Annuity) Concessionaire for a period of 15 years from 2005 to 2019, which includes maintenance of the 93 kms stretch in all respects.

16. Therefore, we are not convinced to accept the plea of the petitioner that it is an old road for which toll has been collected as the present road is a four lane? established at substantial cost as mentioned by NHAI, which has not been disputed. However, with regard to the condition of the road though submission has been made regarding the quality of the road, maintenance, etc., there is no material placed by the petitioner to show that the condition of the road is either bad or deplorable. NHAI has placed in the form of typed set of papers, the abstract of the work done details for the period from 2013 to 2015 along with photographs. We are prima facie inclined to accept the submission of NHAI.

17. However, we wish to point out that toll roads have been established through out the country to ensure smooth flow of traffic at reasonable speeds subject to limitations and for the purpose of such facility, the travelling public is charged. As pointed out by the Hon''ble Supreme Court in the case of M.S.K. Projects (I) (JV) Ltd., (supra), toll fee is compensatory in nature and be collected by the State to reimburse itself the amount, it has spent on the construction of the road/bridges etc. However, it cannot be a source of revenue to the State. If that be the case, NHAI is bound to maintain the toll roads to facilitate smooth and safe movement of traffic for which purpose, NHAI has to ensure that all roads leading from town and villages, which have to necessarily access to the toll road/National Highway has to be clearly barricaded. The service road should have clear obstruction free approach, so that the public who are to reach the villages and towns along side the National Highway do not haphazardly come into the main stream. Barricading is essential not only to regulate the flow of traffic, but also to keep cattle at bay. We can take judicial notice of the fact that often slow moving vehicles and bullock cart use the National Highway/toll road without using the service road, since there is no proper barricading and there are encroachments in the service road. Further as the National Highways/Toll Roads have designated places for crossing over either by construction of underpasses or providing of ''U'' turn facility invariably Motorist in the nearby villages and towns, use the National Highway by travelling in the opposite direction, so that they need not travel for a little distance to use the underpass or the ''U'' turn facility to move over to the opposite side. This results in head on collusion between the vehicles and in most

cases resulting in death of the passengers.

18. Therefore, the National Highways in co-ordination with the local Superintendent of Police and District Collector of the respective Districts should device ways and means to ensure that the National Highways/toll Road is clearly barricaded and the travelling public in the villages and towns near the National Highway are sensitized not to cross the National Highways except in places designated, as they are putting their life to peril. The sensitization programme should reach the commoner in the villages, who could only afford to buy slow moving vehicles such as mopeds or who may use bullock cart. An earnest endeavour should be made by the State as well as the NHAI to ensure not only the safety of the travelling public who use the toll road, but also to prevent accidents on account of persons crossing over the National Highway in other than places earmarked. For such purpose well illuminated signboards containing word and pictorial warnings should be erected at conspicuous places where people including pedestrian often crossed the National Highways. We hope and trust the observations made are taken note of seriously and adequate steps be taken in this regard.

19. In the light of the above while declining to grant the relief sought for, the Writ Petition is dismissed with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.

