
(2019) 05 RAJ CK 0079

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4743, 8801, 12131, Of 2018, 2854 Of 2019

Mahendra Singh Chouhan

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226, 227

Citation : (2019) 05 RAJ CK 0079

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Vikas Balia, Karan Singh Rajpurohit, Ankur Mathur

Final Decision : Dismissed

Judgement

1. These writ petitions under Articles 226 & 227 of the Constitution of India have been preferred claiming, in sum and substance, the following reliefs:

"It is, therefore most humbly and respectfully prayed that record of the may kindly be called for and after examining the same this Hon'ble Court by an appropriate writ, order or direction direct quash and set aside the order dated 10.12.2018 (Ann.18). It is further prayed that a declaration may kindly be made that if the state takes any position in the mid of contract then the new conditions can only be imposed with mutual understanding. A declaration may kindly be made that the earlier contract is having no effect ongoing contract.

Any other order or direction which this Hon'ble Court thinks fit in the interest of justice may kindly be passed in favour of the petitioner."

2. Brief facts of this case, as noticed by this Court, are that the respondent invited tenders for toll collection for a period of 24 months on Dabok-Mawli-Kapasan-Chittorgarh Road (State Highway-9) at Km.2/800 and Km.79/500. The petitioner came out to be the highest bidder having given the rate of Rs.3711.00 lakhs.

3. The agreement between the petitioner and the respondent has been executed, and thereafter, the work order has been issued to the petitioner on 12.12.2017. In pursuance of the said work order, the petitioner has executed a bank guarantee as a performance security and also gave 5% security money of the bidding price. The petitioner has also submitted a bank guarantee to the tune of Rs.5,56,65,000/- and the security of the bidding amount was Rs.1,85,55,000/-. The petitioner also submitted 24 postdated cheques for advance monthly installments for the contract period. Further, the petitioner was to pay the bid amount in 24 monthly advance installments and 5% of the performance security was to be realized in 24 installments.

4. The bidding amount, in the present case, was Rs.37.11 crores and the monthly installment was Rs.1,57,56,288/-, but the petitioner was to pay monthly installment of Rs.1,49,83,163/- and rest of the amount of installment was being deducted from the 5% performance security amount, which was Rs.7,73,125/-. Thus, as per the pleaded case of the petitioner, an advance monthly installment, which is to be paid by the petitioner, was Rs.1,49,83,163/- plus Rs.7,73,125/-, which was to the tune of Rs.1,57,56,288/-. The petitioner has paid the monthly installment from the date of work order, as full and final amount till 31.03.2018.

5. The Government of Rajasthan on 06.03.2018 announced that on all the State Highways, the private vehicles shall be exempted from toll, and in pursuance of such announcement, a letter dated 31.03.2018 was issued directing the petitioner not to levy and collect the toll from private vehicles i.e. four wheeler car etc.

6. The respondents thereafter, took a decision to carry out seven days' traffic census alongwith 24 x 7 videography from 12.03.2018 to 19.03.2018 on all toll points jointly alongwith Project Director and the contractor. The said traffic census/survey was to ascertain as to how many exempted vehicles were crossing the toll booths, so that necessary deduction can be made in the concluded and accepted bid amount. The concluded bid amount in this case was Rs.37.11 crores and the deduction was to be made in accordance with the aforementioned joint survey. The said modus operandi was finalized to compensate the revenue loss to the petitioner.

7. Learned counsel for the petitioner however, submitted that such joint survey was never conducted and is thus, seriously disputed.

8. Learned counsel for the petitioner further submitted that no proper mechanism was framed, which could satisfactorily compensate the petitioner for the loss caused due to the policy decision taken by the respondent for exempting the private vehicles from the toll with effect from 31.03.2018.

9. Learned counsel for the petitioner also claims that thereafter, the respondent kept on making efforts to make unlawful recovery from the petitioner under coercion without taking a definite stand regarding the traffic census and the formula on which the petitioner could operate henceforth.

10. Learned counsel for the petitioner further submitted that the postdated cheques were being filled for the amounts, which did not commensurate with the reduced toll collection due to change in policy implementation. As per the learned counsel for the petitioner, being aggrieved by the same, the petitioner has preferred another writ petition being S.B. Civil Writ Petition No.7292/2018 titled as "Mahendra Singh Chouhan Vs. State of Rajasthan & Ors., in which an order was passed by this Hon'ble Court on 26.10.2018 directing the respondent-RSRDC to decide the controversy objectively by taking into account the statistical data available and the videography recordings etc., and further that the bank guarantee was not to be encashed till such appropriate decision was taken.

11. The aforementioned order dated 26.10.2018 passed by this Hon'ble Court in S.B. Civil Writ Petition No.7292/2018 reads as under:-

"By way of this writ petition, the petitioner being the toll collection contractor on the Debok-Mawli-Kapasan-Chittorgarh Road (SH-9) having contract for a period of 24 months i.e. w.e.f. 12.12.2017, has approached this Court with the following prayers:-

"It is, therefore, prayed that the record of the case may kindly be called for and after examining the same this Hon'ble Court by an appropriate writ, order or direction the order dated 30.04.2018 (Annexure-6). It is further prayed that the respondents be directed to direct the respondents not to encash the bank guarantee and the amount from 5% performance security and not to submit the "post dated cheque" which were given in pursuance of earlier bid amount of work order dated 12.12.2017 Rs.3711.00 lakh till the final Legal ascertainment is made in pursuance of Joint Survey. It is further prayed that respondents be directed to refund the 5% performance security amount which has been realized by them. The respondents be further directed to not to annul the contract and not to take any coercive step."

In furtherance of the previous proceedings and the interim order passed by this Court, the petitioner has already deposited a sum of Rs.2 Crore with the respondents. Shri Bhandari has filed an additional affidavit indicating the anticipated exemption to the petitioner in light of the fact that the State Government has exempted all private vehicles from toll collection. In the interregnum the respondent-RSRDCC directed the petitioner to conduct a videography recording of all the toll booths and submit weekly report of exempted vehicles. In furtherance of this exercise, the petitioner claims that he is entitled for exemption to the tune of Rs.1,49,83,163 per month. The respondents have assessed the exemption entitlement of the petitioner to the tune of Rs.82,04,896/- per month. In view of the marked difference in the quantum of exemption as stated by the parties, the respondent-RSRDCC is directed to decide the controversy objectively by taking into account the various statistical data available and the videography recording etc. Requisite exercise in this regard shall be completed within ten days from today by passing a reasoned order. Till then, the Bank guarantees of the petitioner shall not be encashed.

However, the petitioner shall continue to deposit the undisputed monthly collection amount with the respondents.

The writ petition is disposed of in these terms."

12. Learned counsel for the petitioner further submitted that an exemption rebate of Rs.82,04,896/- per month was sanctioned provisionally on the basis of the claimed joint survey conducted from 12.03.2018 to 19.03.2018.

13. Learned counsel for the petitioner also submitted that the joint survey is a doubtful exercise and does not carry signatures of the petitioner, and without ascertaining the correct amount, which is to be recapitulated, the respondent is going ahead with the same stand of imposing traffic census/survey conducted between 12.03.2018 to 19.03.2018.

14. Learned counsel for the petitioner further submitted that on 04.04.2018, the petitioner was directed to undertake 24x7 videography on toll booths, and further, weekly report of the exempted vehicles alongwith soft copy of the recordings were also sought, in pursuance of the aforementioned order dated 26.10.2018 passed by this Hon'ble Court.

15. Learned counsel for the petitioner also claims that the petitioner himself conducted a survey from 06.04.2018 to 12.04.2018, and on the basis thereof, he was claiming exemption rebate of Rs.1,15,90,380/- per month, whereas the respondent-Department was granting only provisional exemption rebate to the tune of Rs.82,04,896/- per month.

16. Learned counsel for the petitioner also submitted that the respondent decided to take videographic account of the calculations by the decision dated 05.11.2018. Thereafter, the petitioner presented the videography and further submitted the calculations/counts, as required.

17. Learned counsel for the petitioner further submitted that the respondents rather than seeing the seven days' traffic census/calculations took account of only 50 minutes of the videography submitted and the pass the impugned order dated 10.12.2018, whereby arbitrary and incorrect decision was taken.

18. Learned counsel for the petitioner also submitted that out of the seven days' traffic census, only 50 minutes recording has been utilized for passing the impugned order.

19. Learned counsel for the petitioner further submitted that it is a gross violation of the earlier order passed by this Hon'ble Court on 26.10.2018, as the respondent was required to arrive at a logical conclusion by objectively considering the statistical data available, the video recordings etc.

20. Learned counsel for the petitioner also submitted that provisional approval of exemption rebate to the tune of Rs.82,04,896/- per month, as amount of exemption rebate to be given to a toll contractor, was arbitrary as it was never finalized appropriately and the provisional declaration made on 11.09.2018 has

been finalized without proper objective consideration.

21. Learned counsel for the petitioner has shown to this Court the impugned order dated 10.12.2018, relevant portion of which reads as under:

यह कि न्यायालय द्वारा प्रदत्त समय सीमा को देखते हुए दिनांक 27.11.2018 को नोटिस जारी कर दिनांक 03.12.2018 को याचक एवं विभागीय प्रतिनिधियों को दिनांक 03.12.2018 को संवेदक याचक एवं विभागीय प्रतिनिधि उपस्थित हुये परियोजना निदेशक उदयपुर द्वारा संवेदक याचक द्वारा स्वयं के स्तर पर की गई विडियोग्राफी सैम्पल जॉच उनके प्रतिनिधियों के साथ की गई। सैम्पल परीक्षण दिनांक 12.03.2018 सांयकाल 4.18.23 सैकण्ड से 50 मिनट की विकडयोग्राफी के आधार पवर रिपोर्ट प्रस्तुत की गई। विभागीय प्रतिनिधि का कथन है कि डबोक टोल संग्रहण प्लाजा से याचक संवेदक द्वारा कराये गये विडियोग्राफी में कुछ प्राईवेट वाहनों को एक से ज्यादा बार टोल प्लाजा से निकलते हुये पाया गया है। इसलिए संवेदक द्वारा स्वयं के स्तर पर की विडियोग्राफी सर्वे सही प्रतीत नहीं होता है। दिनांक 12.03.2018 को 50 मिनट की सैम्पल विडियोग्राफी में ऐसे वाहन जो एक से ज्यादा बार टोल प्लाजा से निकले है, उनकी रिपोर्ट निम्न प्रकार प्रस्तुत की गई है।

क्रमांक

वाहन संख्या

टोल प्लाजा से 50 मिनट में वाहनों के वाहनों के निकलने की संख्या

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8060

12

2

5920

11

3

0394

17

4

4245

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6988

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3121

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1276
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1904
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5142
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0423
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4005
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7761
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8807
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1319
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17

0421

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18

कुल वाहन की संख्या 17

166 बार टोल प्लाजा से गुजरे

याचक संवेदक से उनके द्वारा की गई विडियोग्राफी के सन्दर्भ में स्पष्ट करने हेतु अनुरोध किया गया उनका यह कथन रहा कि ऐसे प्राइवेट वाहन जो एक ही दिन में कई बार डबोक टोल संग्रहण से पास होना विडियोग्राफी में आ रहे हैं, उन्हें कम करते हुए पुनः गणना करा ली जाए।

विभाग के प्रतिनिधियों का कथन है कि जब 50 मिनट की सैम्पल जॉच में डबोक टोल संग्रहण से 17 प्राइवेट वाहनों को 166 बार निकलते हुए विडियोग्राफी में पाया गया है, इसलिए याचक/संवेदक द्वारा कराई गई विडियोग्राफी के आधार पर याचक के अनुसार प्राइवेट वाहन के पेटे देय किस्त में छूट दिया जाना न्यायोचित नहीं है, जबकि विभाग द्वारा कराई गई विडियोग्राफी संवेदक को आवंटित टोल संग्रहण प्लाजा पर संवेदक के कर्मचारियों की उपस्थिति में कराई जाकर प्रतिमाह देय किस्त में प्राइवेट वाहन के पेटे छूट दी गई है।

याचक द्वारा एवं परियोजना निदेशक उदयपुर द्वारा प्रस्तुत अभिलेख का अनुशीलन, अवलोकन व विवेचन किया गया मेरा यह स्पष्ट अभिमत है कि याचक द्वारा स्वयं के स्तर पर कराई गई विडियोग्राफी का सैम्पल जॉच में कुल 17 वाहनों को एक से ज्यादा बार डबोक टोल प्लाजा क्रास करते हुए पाये गये हैं। इसलिए संवेदक/याचक को स्वयं की विडियोग्राफी के आधार पर छूट के लिए दर्शाई गई राशि 1 करोड़ 49 लाख 83 हजार 163/- रुपये का छूट का कोई औचित्य नहीं है। विभाग के स्तर पर कराये गये विडियोग्राफी सर्वे के आधार पर दी गई छूट उचित है।

उपरोक्त अनुसार आदेश आज दिनांक 05.12.2018 को जारी किया गया।

एस.डी.

(प्रदीप मिश्र)

प्रबन्ध निदेशक

आर.एस.आर.डी.सी. लि. जयपुर

22. Learned counsel for the petitioner further submitted that a bare perusal of the impugned order, as aforequoted, shows that the provisional assessment of exemption rebate made earlier has been finalized without any basis and without proper survey.

23. Learned counsel for the petitioner also submitted if the respondents were not considering videography done by the petitioner, then at least a neutral traffic census ought to have been conducted.

24. Learned counsel for the petitioner further submitted that the matter came up for hearing on 22.04.2019 and on that date, the respondent-RSRDC has made available a copy of sheet stating it as survey report which was undertaken on 12.03.2018 to 19.03.2018.

25. Learned counsel for the petitioner also submitted that the survey has been undertaken by one PK Engineering. As per learned counsel for the petitioner, the Department has directed PK Engineering to undertake two types of joint surveys i.e. (i) Manual and (ii) Videography. Learned counsel for the petitioner further submitted that the sheets which were made available were not signed by PK Engineering, and even in the writ petition, it has been specifically stated that the copy of the survey report was not made available and in the reply it has been admitted that the respondent-RSRDC has not given copy of the survey report to the petitioner.

26. Learned counsel for the petitioner further submitted that the sheet which has been made available is said to be extract of seven days' survey, but the sheet was not being signed or sealed by PK Engineering.

27. Learned counsel for the petitioner also submitted that vide order dated 11.09.2018, a provisional approval has been accorded for Rs.82,04,896/- per month and such provisional approval has been further approved by the Managing Director of RSRDC, and as per the petitioner, no final exemption amount has ever been disclosed in the impugned order dated 10.12.2018.

28. Learned counsel for the petitioner further submitted that the impugned order dated 10.12.2018 is arbitrary, as the respondents on their own and in gross violation of the order dated 26.10.2018 passed by this Hon'ble Court has not given any data about their own exemption, and that, 50 minutes videography has been considered, which is wrong, as the vehicles shown in the said videography were plying alongwith the nearby area.

29. On the other hand, learned counsel for the respondent has drawn the attention of this Court towards conditions No.13 and 14 of the contract as well as relevant part of the agreement, which read as under:-

"Condition No.13 of the contract:

If any installment is not paid by the contractor on due date, the contractor shall be liable to pay minimum 7 days simple interest @ 18% per annum on the remaining amount on a weekly basis such a week shall be counted from the date of payment. Due date shall be reckoned from the actual date of toll commencement.

Condition No.14 of the contractor:

If contractor fails to deposit installment even after one month period, then process of floating the fresh NIT for remaining period shall be initiated and cost of NIT will be charged from the contractor. After two months default period or contractor fails to continue the toll further then all the deposits including advance money and BG amount taken as per rule, will be forfeited/revoked and he shall be debarred for minimum 1 (one) year period by the Corporation for participating in any further tenders of the corporation.

Relevant part of agreement:

"toll tax shall be levied according to the rates prescribed from time to time by the State Government on toll vehicles/carriage and other than those which have been exempted or which may hereafter be exempted by the Government. The list of exemption enforce as given in schdule-I here to append which is also form part of the agreement."

30. Learned counsel for the respondent thus submitted that the consent in the agreement given by the parties clearly entitle the respondent to levy the exemption as per its terms.

31. Learned counsel for the respondent further submitted that though it is not disputed that the work order has been issued, but the respondent, for the purpose of construction of the road, has also taken huge loan from the Banks, which is to be repaid to the Bank through the medium of toll to be collected by the petitioner.

32. Learned counsel for the respondent also submitted that as per the toll agreement, the petitioner was required to provide actual receipts of the toll collection quarterly for the entire toll period, but the petitioner has never provided such information. Therefore, as per learned counsel for the respondent, the petitioner was hiding information regarding actual toll collection from various types of vehicles, which was against the terms of the agreement.

33. Learned counsel for the respondent further submitted that the petitioner has not deposited the monthly installment within the time limit since beginning itself. Therefore, as per learned counsel for the respondent, the respondent had to present the postdated cheques and such cheques were returned by the Bank concerned.

34. Learned counsel for the respondent also submitted that the decision of the exemption of private vehicles from the toll charges was taken by the Government of Rajasthan in the interest of public at large.

35. Learned counsel for the respondent further submitted that the petitioner is not depositing the monthly toll installments regularly as per agreement/modified toll installments, and at present, the total due amount is Rs.2,69,37,608/- of original installments and the interest of Rs.62,59,026/-, and total due amount on the part of the petitioner is Rs.3,31,96,634/- as on 30.03.2019.

36. Learned counsel for the respondent also submitted that the contract which has been entered into between the petitioner and the respondent makes it amply clear that if the contractor fails to deposit the installment even after one month period, then the process of floating the fresh NIT for the remaining period shall be initiated and the cost of such NIT will be charged from the contractor.

37. Learned counsel for the respondent also submitted that after two months' default period or if contractor fails to continue the toll further, then all the

deposits including advance money and BG amount taken as per rules, shall be forfeited/revoked and he shall be debarred for minimum one year period by the Corporation from participating in any further tenders of the Corporation. Thus, as per learned counsel for the respondent, the respondent was compelled to issue the fresh NIT in the interest of public at large.

38. In support of his submissions, learned counsel for the respondent relied upon the precedent law laid down by the Hon'ble Supreme Court in *State of Gujarat & Ors. Vs. Meghji Pethraj Shah Charitable Trust & Ors.*, reported in (1994) 3 SCC 552, relevant para 22 of which reads as under:

"22. We are unable to see any substance in the argument that the termination of arrangement without observing the principles of natural justice (*audi alteram partem*) is void. The termination is not quasi judicial act by any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is also not an executive or administrative act to attract duty to act fairly. It was- as has been repeatedly urged by Shri Ramaswamy- a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

39. Learned counsel for the respondent has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in *United Commercial Bank Vs. Bank of India & Ors.*, reported in (1981) 2 SCC 766, relevant para 43 of which reads as under:

"43. A letter of credit sometimes resembles and is analogous to a contract of guarantee. In *Elia and Anr v. Matsas and Ors.* Lord Denning, M.R., while refusing to grant an injunction stated:

..... a bank guarantee is very much like a letter of credit. The courts will do their utmost to enforce it according to its terms. They will not in the ordinary course of things, interfere by way of injunction to prevent its due implementation. Thus they refused in *Malas v. British Imex Industries Ltd.* But that is not an absolute rule. Circumstances may arise such as to warrant interference by injunction.

A Bank which gives a performance guarantee must honour that guarantee according to its terms. In *R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.*, Kerr, J. considered the position in principle. We would like to adopt a passage from his judgment at p. 761:

It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banks have notice, the courts

will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims; these are risks which these merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged.

(Emphasis supplied.)

The observation of Kerr, J. have been cited with approval by Lord Denning, M.R. in *Edward Owen Engineering Ltd. v. Barclays Bank International Ltd.*"

40. Reliance has also been placed by learned counsel for the respondent on the precedent law laid down by the Hon'ble Supreme Court in *Himadri Chemicals Industries Ltd. Vs. Coal Tar Refining Co.*, reported in (2007) 8 SCC 110

"14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit :-

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit.

(iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned.

18. For the reasons aforesaid, we do not find any merit in this appeal. The appeal

is thus dismissed. We may, however, make it clear that whatever findings have been arrived at by us in this appeal or by the High Court while dealing with the prayer for grant of an interim order of injunction, shall not be taken to be final as to the disposal of the application for injunction by the High Court. There will be no order as to costs.

41. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent law cited at the Bar, this Court is of the opinion that the factual dispute being raised by the petitioner cannot be resolved here in the writ jurisdiction in the particular condition where the respondents have themselves stated that they have conducted a proper traffic census from 12.03.2018 to 19.03.2018 and they have followed all the necessary parameters to come to the conclusion of exemption rebate to the tune of Rs.82,04,896/-.

42. This Court finds that the contract gave wider leverage to the respondents, and therefore, the petitioner was bound to levy the toll tax according to the rates prescribed from time to time by the State Government on toll vehicles/carriage and also exemptions whichever to be granted.

43. This Court further finds that the wide conditions of the contract were having a binding effect upon the petitioner. The order dated 26.10.2018 passed by this Hon'ble Court in S.B. Civil Writ Petition No.7292/2018, as quoted hereinabove, required the respondents to pass a speaking order in relation to the controversy. However, on a bare perusal of the said order, this Court finds that the petitioner has played a complete fraud in the name of traffic census and data, as even in 50 minutes' sample provided by the petitioner, there were 17 vehicles which passed 166 times through the toll in the same duration, and thus, the petitioner is standing on a pedestal of deceit and concealment. The petitioner is seeking escalated cost as per the impugned order as the video provided was not in accordance with law and was in fact a fraud upon the system.

44. The relevant portion of the impugned order, as quoted above, shows that how vehicle No.8060 passed 12 times in 50 minutes' duration; vehicle No.5920 passed 11 times in 50 minutes; vehicle No.0394 passed 17 times in 50 minutes; vehicle No.4245 passed 8 times in 50 minutes; vehicle No.6988 passed 6 times in 50 minutes; vehicle No.3121 passed 12 times in 50 minutes; vehicle No.1276 passed 5 times in 50 minutes; vehicle No.1904 passed 9 times in 50 minutes; vehicle No.5142 passed 5 times in 50 minutes; vehicle No.6882 passed 18 times in 50 minutes ; vehicle No.0423 passed 6 times in 50 minutes; vehicle No.4005 passed 6 times in 50 minutes; vehicle No.7761 passed 25 times in 50 minutes; vehicle No.8807 passed 5 times in 50 minutes; vehicle No.1319 passed 8 times in 50 minutes and; vehicle No.0421 passed 2 times in 50 minutes. Therefore, seventeen vehicles, as per the videography provided alongwith list, have crossed the toll plaza more than 166 times creating a highly hyped and escalated version of the private vehicles, which are said to have passed through the toll in question only in 50 minutes, whereas the total videography was of seven days.

45. In Dalip Singh Vs. State of U.P. & Ors. (Civil Appeal No.5239/2002 decided on 03.12.2009), the Hon'ble Supreme Court held as under:

"6. In Prestige Lights Ltd. V. State Bank of India (2007) 8 SCC 449, it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution.

9. In K.D. Sharma v. Steel Authority of India Ltd. and others (2008) 12 SCC 481, the court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in G. Jayshree and others v. Bhagwandas S. Patel and others (2009) 3 SCC 141.

21. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the Prescribed Authority and the Appellate Authority."

46. In Arunima Baruah Vs. Union of India & Ors. [Appeal (Civil) No.2205/2007 decided on 27.04.2007], the Hon'ble Supreme Court observed thus:-

". It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

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In Halsbury's Laws of England, Fourth Edition, Vol.16, pages 874-876, the law is stated in the following terms:-

"1303.

1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject matter of the

litigation has been improper. This was formerly expressed by the maxim "he who has committed iniquity shall not have equity", and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

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In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, the court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice and keeping in view the fact that judicial review is a basic feature of the Constitution of India."

47. In *Lourdu Mari David & Ors. Vs. Louis Chinnaya Arogiaswamy & Ors.* [Special Leave Petition (Civil) No.14751/1996 decided on 09.08.1996], the observations made by the Hon'ble Supreme Court read as under:-

"It is settled law that the party who seeks to avail of the equitable jurisdiction of a Court and specific performance being equitable relief, must come to the Court with clean hands; In other words the party who makes false allegations does not come with clean hands and is not entitled to the equitable relief."

48. This Court further finds that this Hon'ble Court stood by the petitioner, while passing the aforementioned order dated 26.10.2018 in S.B. Civil Writ Petition No.7292/2018, whereby the respondents were directed to decide the controversy objectively by taking into account the various statistical data available and the videography recording etc., thereby, affording full opportunity to the petitioner to seek redressal of his grievances. However, with this kind of conduct of providing fraudulent, hyped and escalated data to cause loss to the public exchequer, the petitioner, not only has failed to avail such opportunity granted by this Hon'ble Court earlier, but also the right to get the respondents to fairly adhere to the order dated 26.10.2018 has been wasted by him. The conduct of the petitioner is also writ large, as per the impugned order and the videography provided by him, and thus, the petitioner is not entitled to now claim for an objective assessment, particularly in the circumstances where he has provided a videography, which is not only unlawful but also an attempt to cheat upon the system.

49. This Court also finds that the petitioner has not come with clean hands and

has committed a fraud and thus cannot get the benefit of any protection from this Court and thus, the impugned order is justified. Further, the details of traffic census/survey from 12.03.2018 to 19.03.2018 has been placed on record. On a bare perusal of the calculations of the toll, it induces confidence, as the respondents have gone into the details of how many cars, jeeps, light vehicles, tractor, light commercial vehicles and trucks and other heavy vehicles have passed through the toll in the given time and what was the rate and amount collected from them on the particular dates.

50. This Court further finds that the very detailed calculation toll sheets provided clearly reflect that the respondents have applied their mind thoroughly before coming to the figure of exemption rebate i.e. Rs.82,04,896/-.

51. This Court also finds that the petitioner has not uttered a whisper about why he played fraud in the 50 minutes' videography, by providing details of seventeen vehicles which passed through the toll 166 times, the petitioner has not been able to at all justify or rebut the claim of the respondent that the petitioner has provided fraudulent details.

52. In light of the aforesaid observations and the aforementioned precedent laws, no interference is called for in the present writ petitions and the same are accordingly dismissed. The stay applications also stand dismissed accordingly.