(1998) 09 MAD CK 0112

In the Madras High Court

State Lorry Owners' Federation APPELLANT

Vs

The Superintending Engineer (NH) RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Citation : AIR 1999 Mad 181 : (1999) 1 MLJ 29

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—State Lorry Owners'' Federation, Tamil Nadu have approached this Court to issue a writ of mandamus directing the

respondent Superintending Engineer (N.H) Salem-4 to forbear from taking action any further with his Tender-Cum-Auction Notice No.

T4/Toll/Do/98 dated 23.6.1998 published in the Hindu dated 1.7.1998 with reference to the rights of toll collection on motor vehicles passing over

the New High Level Bridge across the river Thirumanimuthar at KM 271/2 of N.H.-7 (Bangalore - Salem - Madurai section) near Paramathi-

Velur.

2. The case of the petitioner is briefly stated hereunder:-

The petitioner-Federation is comprised of 100 lorry owners Association at various places in Tamil Nadu and Pondicherry. The permits of which

having been issued by the authorities of the various States, including Tamil Nadu. The petitioner Federation has been registered under the Societies

Act and its Registration No. is Section 60 of 1997. A new high level bridge across the river Thirumanimutharu at K.M. 271/2 of N.H. 7

(Bangalore - Salem - Madurai section) near Paramathi-Velur was constructed four years back. The purpose of such construction was to put up a by-pass road to avoid going through Paramathi town panchayat limits. The cost of the bridge came to about Rs. 40 lakhs only. There are certain

instructions of the Government that unless a bridge project is worth over Rupees one crore, toll could not be collected under the (Indian) Tolls Act,

1851. Therefore, the respondent herein put up the cost of the bridge inclusive of the road portion of the length laid so as to make it worth Rupees

one crore and the Department itself collected tolls initially for two years and for the third year ending with 30.6.1998, the right to collect toll was

auctioned and the Namakkal Taluk Owners Association, Namakkal was the highest bidder. Thereafter, the Department itself attempted to collect

the toll but in view of the strong public protest, the respondent has abandoned the collection of toll by the Department and invited tenders by

publishing in various dailies stipulating that the last date for submission of tenders is 3.8.1998. It is stated that on an average at least 2000 lorries

per day would pass through the said by-pass road and the bridge and most of them belong to the members of the various lorry owners association

affiliated to the petitioner-federation. Hence the lorry owners are highly aggrieved by the collection of such tolls. Accordingly, they sent an

objection petition to -, the respondent on 24.7.1998 inter alia stating that more than twice the cost of the said project including the construction of

the Bridge and the connecting road has already been collected and that any further collection with reference to the said by-pass road and the

bridge, will lose its compensatory character and as such would be violative of the object of the provision of Indian Toll Act itself. It is also stated

that after the introduction of the Tamil Nadu Motor Vehicles Taxation Act, there could be no question of toll also being collected for the motor

vehicles for the simple reason that the Motor Vehicles Taxation Act has been held to be compensatory providing for proper recompense to the

State for the construction and maintenance of roads the bridges. The collection of toll in addition to the Motor Vehicles Tax would amount to

collect double taxation to compensate the amount twice over for the same road and bridge. Hence the petitioner federation requested the

respondent herein to cancel the Tender-cum-Auction Notice dated 23.6.1998 with reference to the above said bridge and by-pass road. But there

has been no response to the said letter, though the same has been acknowledged by the respondent on 25.7.1998. In such circumstances, the petitioner Federation have no other alternative remedy; accordingly they approached this Court by way of the present writ petition.

3. The respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that a high level Bridge was

constructed by the National Highways Department, Government of Tamil Nadu and was completed during the year 1994 across the river

Thirumanimutharu near Paramathi Velur. The actual cost of reconstruction of the bridge and the improvement to approaches was Rs. 117.36

Lakhs. The cost of the bridge could be collected by the Government of Tamil Nadu by levying fee from the users of the bridge for services or

benefits rendered. The interest on the above cost of reconstruction was worked at Rs. 36.97 lakhs at the rate of 9 per cent interest from 1.8.1994

for a period of three years five months, the date on which the cost could be recovered. In all Rs. 154.33 lakhs was the actual cost of

reconstruction of the bridge, improvements to approaches and the interest at 9%. It is further stated that the Government of India enacted the

National Highways Act, 1956, by virtue of the provisions of the Act, the State Government was authorised to construct and maintain the High

Level Bridge across the river Thirumanimutharu near Paramathi Velur. As per Section 7 of the National Highways (Amendment) Act, 1977 (Act

30 of 1977), the Central Government may levy fees at such rates as may be laid down by the rules for services or benefits in relation to the use of

the ferries, permanent bridges. u/s 9(1) of the said Act, the Central Government may by notification make rules for carrying out the purposes of the

Act. As per the Rules framed by the Central Government, the State Government is entitled to levy the fee for the benefits or services rendered in

relation to the use of the such bridge. The Tamil Nadu Motor Vehicles Taxation Act, 1974 is an Act to consolidate and amend the law relating to

levy the tax on Motor Vehicles in the State of Tamil Nadu. The said Act deals with the tax on vehicles. However, the collection of fee under the

National Highways (Fees for Use of Permanent Bridges) Rules, 1992, framed by the Central Government, in exercise of powers conferred by

Section 9 of the National Highways Act, 1956. The said fee is collected only for the services and the benefits rendered by the Government in

relation to the use of permanent bridges on National Highways. The collection of tax under Motor Vehicles Taxation Act cannot be equated to the fees levied under the National Highways Rules and, therefore, the contention of the petitioner that the collection of toll in addition to the Motor

Vehicle Tax would amount to double taxation is not correct. With these averments, the respondent prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard learned counsel for the petitioner as well as learned Special Government Pleader.

5. Mr. V.T. Gopalan, learned Senior Counsel for the petitioner has contended that (i) the statistics for the period from 11.7.1997 to 10.6.1998

would show that the cost of the bridge and the by-pass road has already been recovered long back; accordingly, the continued collection of toll for

the ensuing year will be wholly arbitrary and defeat the very purpose of collection of toll and the compensatory character of such toll is lost; and (ii)

After the introduction of the Tamil Nadu Motor Vehicles Taxation Act, the collection of toll under the Tolls Act, 1851 in addition to the Motor

Vehicles Tax would mean collection of compensatory tax twice over the same subject matter which is not in keeping with the object of both the

said enactments.

6. On the other hand, Mr. D. Murugesan, learned Special Government Pleader, after taking me through the various provisions in the Tolls Act,

1851 as well as to National Highways (Fees for Use of Permanent Bridges) Rules, 1992, has contended that by virtue of the said provisions, the

respondent is competent to collect Toll not only for the actual expenses incurred for the construction of the Bridges, but also for connecting roads,

interest and maintenance etc. He also submitted that the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 would not preclude the

State Government and their authorities to collect Toll as per the provisions of the Indian Toll Act and the Rules made thereunder.

7. I have carefully considered the rival submissions.

8. In order to appreciate the rival contentions, I shall refer the relevant statutory provisions applicable to the present case. The Union of India has

enacted the National Highways Act, 1956 (hereinafter referred to as ""The Act"") declaring certain Highways to be National Highways and for the

matters connected therewith. The Act declaring certain Highways comprised in the schedule annexed to the Bill to be National Highways with

further object to maintain the Highways more effectively. As per Section 5 of the

Act, the responsibility for development and maintenance of

National Highways shall be on the Central Government. However, the Central Government may by Notification in the Official Gazette direct that

any function in relation to the development or maintenance of any National Highways shall also be exercisable by the Government of the State

within which the National Highways is situated, subject to such conditions if any, as may be specified in the notification. As per Section 7 of the

Act, as amended by National Highways (Amendment) Act, 1977, the Central Government may levy fees at such rates as may be laid down by the

rules for services or benefits in relation to the use of the permanent bridges By virtue of Section 9(1) of the Act, the Central Government may by

notification make rules for carrying out the purposes of the Act. Section 9(2) of the Act provides for the matters for which rules could be made by

the Central Government without prejudice to general power. Accordingly, the Government of India made the National Highways (Fees for Use of

Permanent Bridges) Rules, 1978. The Government of India by a subsequent Notification made the National Highways (Fees for Use of Permanent

Bridges Rules, 1992. ""The Executing Agency"" has been defined under Rule 2(a)(iii) of the said Rules as in other cases the State

Government/Union Territory Administrations to which such functions are delegated u/s 5 of the Act. Rule 6(3)(f) of the said Rules defines ""the

permanent Bridge"" as follows:

Rule 6(3)(f) ""permanent bridge"" means a bridge with permanent structures, the cost of which including the cost of the bridge, proper approach

roads,'' guide bunds and protective works, excluding the cost of toll booths, is more than-

(a) rupees 25 lakhs and upto rupees 100 lakhs each, completed and opened to traffic on or after first day of April, 1976 but before the first day of

May, 1992 on N.H. and,

(b) More than rupees 100 Lakhs each, completed and opened to traffic on or after first day of April, 1976, on National Highways.

As per the above Rules, the State Government is entitled to levy the fee for the benefits or services rendered in relation to the use of such bridge.

Rule 5 deals with procedure for collection/realisation of amount, handling, etc. Rule 8 speaks about the tenure of collection of fee, which runs as follows:-

8. The tenure of collection of fee: The levy of fee shall be discontinued in respect of bridges costing more than rupees 25 lacs and upto rupee 100

lakhs completed and opened to traffic on or after first day of April, 1976 but before the first day of May, 1992 on National Highways forthwith or

after the expiry of the existing contract period in cases where contracts have been entered into for fee collection.

The levying of fee shall also be discontinued in respect of bridges costing more than rupees 100 lakhs completed and opened to traffic on or after

first day of April, 1976, on N.H. as soon as the full cost of the bridge or a group of bridges including the cost of approaches, cost of structure to

be put up for the collection of fees guide bunds and protective works, including interest thereon as also the maintenance and special repairs

expenditure thereon upto the date of discontinuance of the levy is recovered.

9. The above provisions enable the State Government to levy Toll for the benefits or services rendered in relation to the use of such bridge.

10. Mr. V.T. Gopallan after furnishing the statistics regarding the actual expenses has contended that the respondent is not justified in collecting

Toll even for the expenses spent for approach roads as well as interest. Mr. Murugesan, learned Special Government Pleader has brought to my

notice the details of Toll collection at bridge across Thirumanimutharu. The details which are enclosed along with the counter affidavit are as

follows:

Details of Toll Collection At Bridge Across

Thirumanimutharu @ KM 271/2 Of N.H. 7.

1. Actual Cost of reconstruction of the bridge @ K.M. 271/2

of N.H. across Thirumanimutharu and

improvement to approaches. 117.36 Lakhs.

2. From 1.8.94 - Interest at 9% for 3.5 year

3.5 X 117.36 X 9 36.97

100 ----

Total Cost of the Bridge for toll Collection 154.33

Therefore Total Cost of the Bridge for Toll Collection. 154.33

Deduct Auction Value Conducted as on 8.1.97

(11.6.9710 A.M. to 10.6.98 (12.00 P.M) Night 90.90

Balance Toll Collection 63.43

Department Collection made from 23.8.95

10.00 A.M. to 27.6.9610 A.M.

5.7.969.00A.M. to 11.6.1997 A.M. 34.39

29.04 Lakhs

10.6.98 to 12.6.98 0.15

28.89

Balance toll Collection to be realised. 28.89 Lakhs

Finalised cost proposal for improvements to approach

in K.M. 271/0.273/0 of N.H. 7 (B.S.M. Section) 71.33 Lakhs

Balance amount to be collected. 100.22 Lakhs

A perusal of the above particulars shows that the respondent has not only included expenses spent for improvement to approach road, but also

interest at the rate of 9 per cent for a period of 3 1/2 years from 1.8.1994. In this regard, Mr. V.T. Gopalan has very much relied on a Division

Bench decision of the Allahabad High Court reported in Jiya Lal and Others Vs. State of U.P. and Another, No doubt in the decision, their

Lordships in the Bench have concluded thus:

Where a bridge or road is constructed by meeting expenditure thereof from general revenue and not by borrowing from some agency, the

Government can levy toll only for recovering the cost of construction. Consequently, the State Government would not be justified in recovering

notional interest on the cost of construction. However, the Government will be able to recover the expenditure incurred on the staff employed for

the collection of toll. But, the cost of construction will not include any sum which has been spent on maintenance of the bridge or the road. No toll

is chargeable u/s 2 to meet the expenses incurred on the maintenance.

The said decision was rendered on 13.1.1981. I have already quoted the rule making power of the Government of India under the Indian Tolls Act

and the Rules framed originally in the year 1978 and subsequently in 1992. I have also extracted Rule 8 from the National Highways (Fees for use of permanent Bridges) Rules, 1992 which enables the State Government, if the cost of the bridge is more than Rs. 100 lakhs, to recover the actual

cost, the cost of bridges including the cost of approaches, cost of structure to be put up for the collection of fees guide bunds and protective

works, including interest thereon as also the maintenance and special repairs expenditure thereon upto the date of discontinuance of the levy. In the

light of the Rule 8 of the Rules. 1992, the collection of toll for the cost of bridge, for the approach road, maintenance as well as interest thereon

cannot be said to be either improper or illegal. In the light of the specific provisions as stated above, the Division Bench decision of the Allahabad

High Court is not applicable to the facts of the case on hand. On the other hand, the Special Government Pleader has brought to my notice a

decision of this court in the case of Kodaikanal Lorry Owners Association v. State of Tamil Nadu and Ors., 1993 WL.R. 86. In a similar

circumstances, Lakshmanan, J., after considering the (Indian) Tolls Act, 1851 as well as Rules made thereunder, upheld the levy of toll on vehicles

entering Kodaikanal Township.

11. As rightly contended by the learned Special Government Pleader, the Tamil Nadu Motor Vehicles Taxation Act, 1974 is an Act to consolidate

and amend the law relating to levy the tax on Motor Vehicles in the State of Tamil Nadu. The said Act deals with the tax on vehicles. However, the

collection of fee is made"" under the National Highways (Fees for Use of Permanent Bridges) Rules, 1992 framed by the Central Government in

exercise of the power conferred by Section 9 of the National Highways Act, 1956. The said fee is collected only for the services and the benefits

rendered by the Government in relation to the use of permanent bridges on National Highways. The collection of tax under Motor Vehicles

Taxation Act cannot be equated the fees levied under the National Highways Rules and therefore, the contention of the learned Senior Counsel for

the petitioner that the collection of toll in addition to the Motor Vehicles Tax would amount to double taxation is not correct.

12. The respondent is entitled to collect fee not only towards cost of construction and maintenance of roads and bridges, but also towards interest

on costs. It is seen from the counter affidavit that the actual cost of construction has not been so far recovered. Therefore, the respondent is justified in continuing the collection of toll for the ensuing year also.

13. Under these circumstances, I do not find any merit in the writ petition, and the same is accordingly dismissed. No costs, Consequently,

W.M.P. No. 17152 of 1998 is also dismissed.

