

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No. 27 of 2015

Vinodkumar Manmal Jain and others vs. The Union of India and others.

Notes, Office Memoranda of

Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's
Orders.

Mr. M.I.Dhatrak, Adv. for the petitioners.

Mr. Rohit Deo, ASGI for R-1

Mr. A.A.Kathane, Adv. for R-3.

Mrs. Bharti Dangre, Govt. Pleader for R- 5 &
6.

Mr. S.G.Jagtap, Adv. for intervenor.

CORAM: B.R.GAVAI & INDIRA K. JAIN, JJ

DATE : 10.6.2015

The petitioners, who are the residents of Saoner Town, have approached this Court thereby challenging the decision of the respondent NHAI of shifting the Toll Plaza from the present location to at KM 25.7 to village Takli on Nagpur - Saoner-Betul Section (NH-69).

2. The respondent no.2 NHAI has undertaken the work of widening of NH-27 on Nagpur Abdula Section. The

said work is undertaken on BOT - ANNUITY basis. As such for meeting out the expenditure on expansion of the road, the NHAI is authorized to collect toll from the vehicles plying on the said road. Initially, the toll booth was to be established at KM 23 on the said road. However, a Public Interest Litigation being PIL No. 2 of 2014 has been filed in this Court challenging the said decision, by the Sarpanch of the village Patansaongi. It is the contention of the petitioner therein that the said Toll Plaza was situated at a point which would enable the vehicles to enter into Patansaongi village prior to the location of the Toll Plaza and exist Patansaongi village on a location which is after the Toll Plaza. It was the contention of the petitioner that apart from the loss of revenue to the State, there will be lot of hardships caused to the villagers inasmuch as heavy vehicles would be passing through the village road. An affidavit by the Executive Engineer of the State Government was also placed on record supporting the contention of the petitioner.

3. The said petition has been heard on various dates.
4. It appears that after noticing that the contention

raised in Public Interest Litigation No. 2/2014 is having substance and having noticed that the location of the said Toll Plaza would result into loss of revenue, the NHAI has decided to relocate the said Toll Plaza at KM 25.7. The said decision is challenged by the petitioners who are the residents of Saoner. It is the basic contention of the petitioners that in view of Rule 8 of the National Highways Fees (Determination of Rates and Collection) Rules, 2008, the Toll Plaza cannot be constructed within a distance of ten kilometres from a Municipal Council or Local Town Area. It is also the contention of Mr. Dhatrik, the learned counsel for the petitioners that the NHAI is not a authority within notified under section 5 of the National Highways Act.

5. Civil Application No. 976 of 2015 has been filed by the applicant who is the President of the Municipal Council, Khapa. He also supported the contention of the petitioners. It is submitted that the difficulty which the Toll Plaza would have faced if located at Patansaongi also continues at the relocated place, inasmuch as the vehicle owners in order to avoid to pay toll can enter the road prior to Toll Plaza which leads towards Khapa and thereafter at the intersection take turn and travel

towards the road which comes to Saoner. It is submitted that this would also cause inconvenience to the villagers of Khapa.

6. The learned counsel for NHAI, on the contrary, submits that having realized that the location at Patansaongi would result in loss of toll tax, the toll plaza is proposed at the present location. He submits that the toll plaza is around 8 KM away from the limits of the Municipal Council, Saoner. The learned counsel submits that in view of the first proviso of Rule 8 of the National Highways Fees (Determination of Rates and Collection) Rule, 2008, the NHAI is empowered to locate the Toll Plaza within a limit of 10 KM but beyond 5 KM. It is submitted that the reasons are recorded as reflected in the communication dated 13.1.20015 by the NHAI to its General Manager.

7. Insofar as the contention of the learned counsel for the petitioners insofar as section 5 of the National Highways Act, 1956 is concerned, it deals with the responsibility of development and maintenance of the National Highways. It provides that any function in relation to the development or maintenance of any National Highway shall subject to such

conditions, if any, as may be specified in the notification, also be exercisable by the Government of State within which the National Highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.

8. The Parliament has also enacted The National Highways of Authority of India Act, 1988. Section 11 of the said Act provides that the Central Government may, by notification in the Official Gazette, vest in, or entrust to, the authority such national highway or any stretch thereof as may be specified in such notification. In exercise of the power vested in the Central Government, the Central Government has issued a Notification dated 21st April, 2010 wherein various national highways including one which is the subject matter of the present petition, have been entrusted to the National Highway Authorities of India.

9. Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 reads thus:

“8. Location of toll plaza:--1) The executing authority or the concessionaire, as the case may

be, shall establish a toll plaza beyond a distance of ten kilometers from a municipal or local town area limits;

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

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

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

kilometres:

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

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

It would, thus, be seen that sub rule 1 of the said Rule requires the executing authority or the concessionaire to establish a Toll Plaza beyond a distance of 10 KM from a municipal or local town area limits. However, the first proviso thereof enables the executing authority, for reasons to be recorded in writing, to locate or allow the construction of Toll Plaza within a distance of 10 KM of such municipal or local town area limits, but in no case within 5 KM of such municipal or local town area limits. Undisputedly, the Toll Plaza which is proposed, though is within a distance of ten kilometres from

the municipal limits of Saoner Municipal Council, is beyond five kilometres from the limits of Municipal Council, Saoner. Perusal of the affidavit in reply would reveal that the authority has specifically averred that taking into consideration the reasons that the establishment of the Toll Plaza at Patansaongi would result in loss of revenue, has decided to shift the Toll Plaza.

10. As already discussed above, during the pendency of the Public Interest Litigation No. 2/14, it appears that the authority after finding out various alternatives, finally realized that establishing the Toll Plaza at the place chosen at Patansaongi would enable the vehicles to enter and exist the village Patansaongi from the alternative road available and as such enable them to avoid the payment of toll tax. It is to be noted that various orders were passed in the said Public Interest Litigation from time to time.

11. It would ,thus, be seen that though normally a Toll Plaza is not to be located within a distance of ten kilometres, the authority is empowered to locate it within a distance of ten kilometres but beyond a distance of five kilimetres if reasons

are recorded for that. As already discussed above, the authority has also recorded the reasons. The reason which is recorded by the authority is also taking into consideration the larger interest of the public revenue.

12. In that view of the matter, we do not find that there is any substance in the contention as raised by the petitioners. Apart from that insofar as the residents of Saoner are concerned, as per the policy of NHAI, the residents would be issued passes which would enable them to use the facility at meager price. Apart from that, whether the Toll Plaza is situated at Patansaongi or at a proposed location at village Takli, no difference is likely to cause to the residents of Saoner. In that view of the matter, we do not find that there is any larger public interest of the citizens of Saoner involved in the present petition.

13. Normally the right of the intervenor is only to support or oppose the case of the petitioner or respondent. However, since it is the Public Interest Litigation, we do not propose to go into the technicalities. We have, therefore, also considered the contentions of the intervenor on merits. The

intervenor has placed on record, a sketch map to show that the situation of the present Toll Plaza is identical with the situation at Patansaongi.

14. At a first glance, the contention raised on behalf of the intervenor appears to be very impressive one. However, if we go into the details, it would reveal as to how the said map is misleading. Whereas in the case of Patansaongi the vehicles are required hardly to go 100 metres away from the national highway for avoiding the payment of toll naka and again to travel a distance of 100 metres to come again at national highway after avoiding the toll naka; in the case of intervenor, the vehicle would be first required to travel a distance of 8.50 KM towards Khapa and then at the intersection at Parseoni – Khapa road again travel a distance of 9 KM for coming on the national highway. Though the map shows glaring similarities in the case of Patansaongi and Takli, the factual situation is much distinct than the situation shown in the map. It is difficult to believe that a person would travel a distance of almost 20 KM on a narrow road and take a long route only to avoid toll at the proposed point. In that view of the matter, we find that the intervention is also without any

merit.

15. In that view of the matter, we do not find that any public interest is involved in the petition. The petition is devoid of any substance and as such dismissed.

16. At this stage, Mr. Dhatrak, the learned counsel appearing for the petitioner prays for continuation of interim relief for a further period of eight weeks.

Since we find that there is no public interest involved in the petition, we are not inclined to grant request as made. Prayer is rejected.

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