IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2015

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The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.16218 of 2013

Dr.V.R.S.Sampath,
Editor-'Sattakadir',
Law Journal Tamil Monthly,
3/2, Swathi Towers,
3, Durgabai Deshmuk Road,
Chennai-600 028. ... Petitioner

-vs-

1. The Chairman,
   National Highways Authority of India,
   G-5&6, Sector 10, Dwarka,
   New Delhi-110 015.

2. The Secretary,
   Ministry of Road Transport & Highways,
   Transport Bhavan,
   Parliament House,
   New Delhi-110 001.

3. The General Manager,
   Public Grievances,
   National Highways Authority of India,
   G-5&6, Sector 10, Dwaraka,
   New Delhi-110 015.

4. The Chief General Manager-cum-Regional Officer,
   National Highways Authority of India,
   No.1/54-28, Butt Road,
   St. Thomas Mount,
   Chennai-600 016.

5. The Secretary,
   Highways Department,
   Government of Tamil Nadu,
   Fort St. George,
   Chennai-600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents 1 to 4 and their men, agents or subordinates to stop the collection of the toll charges in National Highways No.4 between Chennai to Bangalore, till the completion of the construction and repair works in various places.

For Petitioner : Mr.V.Ravi

For Respondents : Mr.P.Wilson
Senior Counsel for R1, 3 and 4

Mr.Mohanamurali
SCGSC for R2

Mr.STS.Moorthy
Government Pleader for R5

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The writ petition has been filed by the petitioner seeking directions against the National Highways Authority of India and their concessionaire forbearing them from collecting the toll charges till such time the construction and repair works take place. This Court entertained the petition as Public Interest Litigation and issued directions from time to time to ensure that the road which already was constructed, is up to the quality. In this process, we directed inspection by the Indian Roads Congress (IRC) at the cost of concessionaire.

2. The report submitted by the IRC shows defects, which were called upon to be rectified by the concessionaire. On the defects stated to have been rectified, the IRC was again called upon to re-inspect the road at the cost of the concessionaire. The report now filed shows that all the needful has been done, except for the lights, which work would be completed shortly.

3. The learned counsel for the petitioner seeks now to expand the scope of PIL to include the aspects of the so called accountability of how much the concessionaire earns and what is the expenses, etc. - its financial dealings. We are not inclined to expand the scope of the PIL.

4. We were also called upon to issue directions to the State Government arising from the complaint that the Transport Corporation

was not paying the charges, causing financial constraints for the concessionaire, which, in turn reflected in the quality of maintenance. In fact, we have noted in paragraph 6 of our order dated 16.2.2014 that large number of buses of the Transport Corporation were attached in the Execution Proceedings. The learned Advocate General states that the attached buses numbering is about 700 buses. This itself almost shows the financial position of the State Transport Corporation. Despite our observation in various orders, no steps appear to have been taken for either winding up of the State Transport Corporation or to make it viable.

5. We had issued directions for the Transport Corporation to pay the monetary charges, as required in terms of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, as per paragraph 5 of our order dated 03.02.2015. The learned Advocate General has brought five (5) cheques in Court, stated to be good for payment. The cheques have been handed over to the learned counsel for the concessionaire. The details of the cheques are as under:-

Cheque No. & Date & Bank	Amount	Pay to
No.505443 dt. 18.03.2015 drawn on Indian Overseas Bank, Villupuram Branch (1278)	Rs.1,00,00,000.00	ESSEL WALAJAHPET-POONAMALLEE TOLL ROAD PVT. LTD.
No.249992 dt. 18.03.2015 drawn on State Bank of India, SME Branch, Salem	Rs.9,22,613.00	ESSEL WALAJAHPET-POONAMALLEE TOLL ROAD PVT. LTD.
No.886925 dt. 19.03.2015 drawn on Indian Overseas Bank, Cathedral Branch (0109), Chennai.	Rs.30,00,000.00	ESSEL WALAJAHPET-POONAMALLEE TOLL ROAD PVT. LTD.

Cheque No. & Date & Bank	Amount	Pay to
No.886926 dt. 19.03.2015 drawn on Indian Overseas Bank, Cathedral Branch (0109), Chennai.	Rs.30,00,000.00	ESSEL WALAJAHPET-POONAMALLEE TOLL ROAD PVT. LTD.
No.886927 dt. 19.03.2015 drawn on Indian Overseas Bank, Cathedral Branch (0109), Chennai.	Rs.8,13,930/-	ESSEL WALAJAHPET-POONAMALLEE TOLL ROAD PVT. LTD.

6. The aforesaid, is, however, only a fraction of the amount as claimed by the concessionaire which is over Rs.7.00 Crores.

7. There is really no doubt that the State Transport Corporation has been in default of payment. However, the learned Advocate General seeks to raise the issue about the quantum thereof, as according to him, the 2008 Rules were preceded by the Rules of 1997, which gave certain concessions to the State Transport Corporation.

8. In nutshell, the Transport Corporation was entitled to unlimited trips at the same monthly passes, however, subsequently, this is stated to have been restricted to only 50 trips, whereafter, second pass of 50 or less was liable to be purchased. This aspect, however, stands clarified, as per the National Highways Authority of India's letter dated 27.06.2014 stating that only 50 trips are permitted, as per the amended Rules of 2008.

9. On our query, the learned Advocate General conceded that this issue has never been brought to the Court earlier, except recently, when the writ petition has been filed, which has now been numbered. On our query whether any inter departmental communication has taken place in this behalf, the learned Advocate General has drawn our attention to the letter dated 12.06.2014, where the Principal Secretary to Government, Transport (A) Department, Chennai has written to the National Highways Authority of India stating that the State Transport Undertakings are operating the buses with low ticket fares and in uneconomical routes for the benefit of common public and hence, their revenue was less and due to the increase in fuel price, the State Transport Undertakings were in difficulty, and requesting

for allowing unlimited number of singles in a month by getting the monthly passes in Pallikonda, Vaniyambadi and Krishnagiri Toll Plaza and also seeking suitable instructions to the concessionaire.

10. In our view, it is quite obvious that this request has not been accepted by the subsequent communication dated 27.06.2014, which is, in fact, in reference to the very letter dated 12.06.2014. Thus, the Corporation very well knew the fate of its representation. Incidentally, there was no representation based on the interpretation of any Rules, but only seeking concession on compassionate grounds.

11. We have sketched out the aforesaid details for the reason that the Transport Corporations seek to review our order dated 03.02.2015.

12. We are, thus, of the view that insofar as this writ petition is concerned, no further directions are required and the writ petition, stands closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
   National Highways Authority of India,
   G-5&6, Sector 10, Dwarka,
   New Delhi-110 015.

2. The Secretary,
   Ministry of Road Transport & Highways,
   Transport Bhavan,
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Highways Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.16040
+1cc to Mr.V.Ravi, Advocate, S.R.No.15491
+1cc to Mr.K.Mohana Murali, Advocate, S.R.No.15578

W.P.No.16218 of 2013

TS(CO)
CA(11/04/2015)