IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15 ..07..2015

Date of Reserving the Orders	Date of Pronouncing the Orders
08.07.2015	15.07.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.29648, 30348 of 2008 &
12015 of 2009 and
connected M.Ps

VOICE CONSUMER CARE COUNCIL
REP. BY ITS TRUSTEE .. Petitioner in W.P.No.29648 of 2008

N.CHANDRASEKARAN .. Petitioner in W.P.No.30348 of 2008

K.R.RAMASWAMY @
TRAFFIC RAMASWAMY
.. Petitioner in W.P.No.12015 of 2009

Vs

1 STATE OF TAMIL NADU
REP. BY ITS PRINCIPAL SECRETARY
HIGHWAYS DEPARTMENTS,
FORT ST. GEORGE CHENNAI - 9.
..1st respondents in all W.Ps.

2 THE CHIEF ENGINEER (GENERAL)/
STATE HIGHWAYS AUTHORITY
CHENNAI.
..2nd respondent in W.Ps.29648 & 30348/2008

3 THE DIRECTOR
INFORMATION TECHNOLOGY
EXPRESS HIGHWAY LIMITED
CHENNAI-8.
..3rd respondent in W.Ps.29648 & 30348/2008

4. THE CHIEF EXECUTIVE OFFICER
TAMILNADU ROAD DEVELOPMENT COMPANY LTD.
SINDHUR PANTHEON PLAZA
PANTHEON ROAD,
EGMORE, CHENNAI-8.
.. 2nd respondent in W.P.No.12015 of 2009

5 THE MANAGING DIRECTOR
IT EXPRESSWAY LIMITED
SINDHUR PANTHEON PLAZA
PANTHEON ROAD,
EGMORE, CHENNAI-8.
.. 3rd respondent in W.P.No.12015 of 2009

6 THE DISTRICT COLLECTOR,
KANCHEEPURAM DISTRICT.
.. 4th respondent in W.P.No.12015 of 2009

7 THE COMMISSIONER OF POLICE
CHENNAI CITY
EGMORE, CHENNAI-8.
.. 5th respondent in W.P.No.12015 of 2009

Prayer in W.P.Nos.29648 & 30348 of 2008: Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of writ of declaration to declare G.O.Ms.No. 268 Highways and Small Ports (HW2) Department dated 11.11.2008 as illegal and ultra-vires to Tamil Nadu Highways Act without legislative sanction and unconstitutional and violative of Article 265 & 266 of the Constitution of India.

Prayer in W.P.No.12015 of 2009: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus to direct the respondents 1 to 3 to shift the toll plaza erected at Seevaram by 3rd respondent in Rajiv Gandhi Salai to some area after 15 kilometers away from city limits in the same road.

For Petitioners :: Mr.K.M.Vijayan,Senior counsel
(W.P.29648/2008) for M/s La Law

(W.P.30348/2008) Mr.T.K.Ashok Kumar

(W.P.12015/2009) Mr.P.T.Perumal

For Respondents :: Mr.P.H.Arvind Pandian,
all W.Ps. Addl.Advocate General

Asstd. by S.T.S.Moorthy,
Govt.Pleader and
Mr.M.Sivavarthanan

C O M M O N   O R D E R

T.S.SIVAGNANAM, J.

All these three writ petitions filed as Public Interest Litigations, seek to question the levy of Toll for vehicles using Rajiv Gandhi Salai, pursuant to a Government Order in G.O.Ms.No.268 Highways and Small Ports (HW2) Department dated 11.11.2008.

2.In W.P.Nos.29648 of 2008 and 30348 of 2008, the prayer is identical, wherein the petitioners have sought for issuance of a writ of declaration to declare G.O.Ms.No.268 as illegal and ultra vires to the Tamil Nadu Highways Act without legislative sanction, unconstitutional and violative of Article 265 and 266 of the Constitution of India.

3.In W.P.No.12015 of 2009, the petitioner seeks for issuance of a writ of mandamus to direct the respondents 1 to 3 therein to shift the Toll Plaza erected on Seevaram by the third respondent in the Rajiv Gandhi Salai to some other area, 15 Kms away from the City limits in the same road.

4.At the first instance, we propose to take up the Writ Petitions, wherein a declaratory reliefs have been sought for:

(i)The Government of Tamil Nadu by virtue of the impugned Government Order, permitted the third respondent viz. Information Technology Express Highway Ltd., (ITEH), a subsidiary company of the Tamil Nadu Road Development Corporation (TNRDC) to collect toll from the road users of the Rajiv Gandhi Salai (herein after referred to as the 'subject Highway'). The impugned Government order states that ITEH, is carrying on developmental work of 20.1 kms long road and in accordance with the agreement between the TNRDC and the Government, the Government decided to absorb the cost of acquisition of land for forming the Highways and the cost of laying road and development to be absorbed by the ITEH. The cost of the development of the road was estimated at Rs.200 crores and with a view to compensate the said expenses to be incurred by the ITEH, they were authorised to collect the toll from 01.02.2006 to 30.6.2036. The Government order also fixed the rate of toll to be collected and to be revised and increased at the rate of 10% once in two years.

(ii)The challenge to the impugned Government Order is on the ground that the subject Highway has been declared as Highway under the Tamil Nadu Highways Act, which Act came into effect on 01.12.2002 and the Act provides a machinery for acquisition and controlling of ribbon development, removal of encroachment and levy of betterment charges against the land owners and that the levy of toll was earlier governed by the Tolls Act, 1851, a Central Act, the Government was entitled to issue notification for collecting toll in exercise of the statutory powers conferred under the Act. The Act classifies the toll collected as public revenue. The petitioners would further state that the toll collected from the subject Highway is not a toll under the Tolls Act. It is the further case of the petitioners that besides the Tolls Act, the State Government has no power to levy the toll more particularly under the Tamil Nadu Highways Act. It is further submitted that under the National Highways Act, there is no provision for levy of dues under section 7 of the Act and after the amendment in 1995, in terms of section 8-A, the Central Government was empowered to enter into an agreement with any person for the development and maintenance of National Highways and also empowers to collect the fees at such rates, by the private persons who make the development under the Build, Operate and Transfer scheme. The petitioner states that unlike the Central Act, 1956, the State Highways Act does not empowers the State Government to levy fees by a legislative provision, which is an essential ingredient, without which fee cannot be levied.

5.The learned Senior Counsel appearing for the petitioners after reiterating the above submissions, submitted that in terms of Article 265 and 266 of the Constitution of India, no fee can be levied without authority of law and any fee collected pursuant to authority of law, will be deemed to a public revenue to be remitted to the Consolidated Funds of India and can be spent only in accordance with the appropriation bill made to that effect.

6.Therefore, the learned Senior counsel contends that the impugned Government Order enabling collection of tolls is not supported by any legislative provisions under the Tamil Nadu Highways Act and levying fee being an essential function, cannot be levied pursuant to the Government Order under Article 162 of the Constitution of India or by an agreement with the third parties. Further, it is submitted that at the time when the Writ Petitions were filed, the entire Highway was not complete and therefore the impugned Government Order enabling the collection of toll prior to the completion of road, is illegal. Further, it is submitted that it is not known as to the basis on which the fee is determined and the fee fixed clearly amounts to an unjust enrichment. Therefore, the submission of the petitioners is that in the absence of appropriate provision, the State Government has no competence to levy toll in respect of the Highway declared as State Highway and the only Act under which toll has to be collected for the development, which vests with the State Highways Authority, does not empower levy of toll under the State Act and in the absence of any statutory authority to collect toll, the impugned order has to held to be illegal and ultra vires of the Tamil Nadu Highways Act.

7.The Writ Petition, filed for issuance of a writ of mandamus to shift the Toll Plaza from the existing location, is on the ground that it is located at a distance of 3 kms from Chennai City Limit and the road users are compelled to pay high rate of toll for travelling small distances.

8.The learned Senior Counsel referred to the provisions of the Indian Tolls Act, 1851 (Central Act), in particular section 2(2)(b)(c) and submitted that in case of toll levied under clause (c) of sub-section (1) of section 2, for the recovery of the amount expended upon the road or bridge for the person concerned, together with interest thereon at such rates as the State Government may fix and such other amount as the State Government may determine and in terms of sub-section (3-A). It is submitted that where tolls are levied in respect of any road or bridge under clause (c) of sub-section (1), the receipts from the toll, after deducting the expenses on account of the collection thereon, shall be paid to the person or body or association of individuals concerned. It is further submitted that in terms of clause (b) of Sub-Rule 4 of Rule 2, all sums payable to any person or body or association of individuals under sub-section (3-A) shall be charged on the Consolidated Fund of the State.

9.By referring to section 3 and section 6 of the Tamil Nadu Highways Act, 2001, it is submitted that there is no power under the State Act to levy toll and in terms of the Central Act, the amounts so collected shall be charged on the Consolidated Funds of the State and there is no power vested with the State Government to levy toll and empower the same to be collected by ITEH.

10.The learned Additional Advocate General appearing on behalf of the respondents submitted that the State has necessary powers and the authority to levy the tolls on road/bridges etc., under the Indian Tolls Act, 1851, as per the State Amendment passed by the Tamil Nadu State Legislature and notified as Tamil Nadu Act 6 of 1938 and 35 of 2000, inserting certain amendments to section 2 of the Central Act and therefore, the levy of toll by the respondents is legal and valid. Further, it is submitted that the impugned Government Order is only an intimation to the third respondent to commence the collection of toll from the particular date and the Government Order authorising collection of toll was issued in G.O.Ms.No.45 dated 23.2.2005 in exercise of the powers conferred under clause (c) of sub-section (1) and clause (c) of Section 2 of the Central Act, as amended and the said Government Order is not subject matter of challenge in these Writ Petitions. Therefore, it is submitted that the collection of toll is as per the provisions of law in terms of amendments made by the State Legislature and therefore, the same has legislative sanction as contemplated under Article 265 and 266 of the Constitution of India.

11.Counter affidavit filed by the ITEH is also on the similar lines with that of the stand taken by the State Highways Authority.

12.As regards the plea of shifting the Toll Plaza, it is stated that the Toll Plaza at Egattur which is situated at the distance of 20 kms from Madhya Kailash junction and 70 kms from City limit (SRP Tools junction) and the same is in accordance with the Rules and the prayer for shifting the Toll Plaza is unjustified. Further, in the counter affidavit filed by the TRDC and ITEH, the respondents seek to justify the rates fixed viz-a-viz the amount spent on development of the subject Highway. Further, it is submitted that as regards the local resident fee, they can apply for local resident passes and on production proof of residence and ownership of the vehicles, they would be issued passes. On the above grounds, the respondents seek to justify the levy and collection of tolls from the road users of the subject Highways.

13.The short issue which falls for consideration is as to whether the respondent, Government of Tamil Nadu has legislative competence to levy toll from the road users of the subject Highway and whether the same is intra vires of the provisions of the State Act.

14.The petitioners would state that the levy of Toll by the State Government from the road users of the subject Highway is without legislative sanction and unconstitutional. To support such a stand, reliance has been placed on certain provisions of the Central Act. In this regard reference was made to section 2 of the Central Act, which gives power to the State to levy tolls on Roads and Bridges.

15.Secondly, reference has been made to section 2(2)(c) and submitted that in cases where toll is levied under clause (c) of sub-section (1) of section (2), the same shall be at such rate, as the State Government may fix and such other amount as the State Government may determine. By referring to sub-section (3-A) of section 2, it is submitted that such levy of toll under clause (c) of sub-section (1) of Section 2 shall be paid to the person or body or association of individuals concerned and in terms of sub-section (4) of section 2 clause (b), all sums payable to any person or body or association of individuals under sub-section (3-A), shall be charged on the Consolidated Fund of the State. Therefore, the petitioners would state that the manner in which toll could be collected by the State Government is in terms of the aforesaid provisions and the State Act viz. the Tamil Nadu Highways Act, does not empower the State Government to levy toll and toll can be levied only under the provisions of the Central Act and levy and collection of toll by the third respondent ITEH is wholly illegal as it does not have legislative sanction.

16.One important aspect which cannot lost sight of and as pointed out by the learned Additional Advocate General is the amendment to section 2 of the Central Act done by the Tamil Nadu State Legislature and for better appreciation, the same is quoted hereunder:

"2.Power of State Government to levy tolls on roads and bridges-

(1)The State may levy tolls in respect of -

(a)any road or bridge made, improved or repaired at their expense after the 1st April, 1931;

(b)any road or bridge made, improved or repaired after the 1st April, 1931, partly at the expense of the State Government and partly at the expense of a local body or bodies, or solely at the expense of a local body or bodies, provided that the total expense incurred on the road or bridge shall not be below such limit, if any as the State Government may by rules determine; and

(c)any road or bridge made, improved or repaired at the expense of any person or body or association of individuals, whether incorporated or not, provided that the total expenditure incurred on the road or bridge shall not be below such limit, if any, as the State Government may, by rules, determine."

Further, Section 2(2)(c) of the Tolls Act, as amended by Tamil Nadu Act 35 of 2000 with effect from 4.10.2000, reads as follows:

(c) In case of tolls levied under clause (c) of sub-section (1) for the recovery of the amount expended upon the road or bridge by the person or body or association of individuals concerned, together with the interest thereon at such rate as the State Government may fix and such other amount as the State Government may determine."

17.The above amendment was made by the Tamil Nadu Act 6 of 1938, which is in substitution of section 2 as it originally stood under the Central Act. By virtue of the said amendment brought about empowers the State Government to levy the toll in respect of any road or bridge made, improved or repaired at the existence of any person or body or association of individuals, whether incorporated or not, provided that the total expenditure incurred on the road or bridge shall not be below such limit, if any, as the State Government may, by Rules, determine. The further amendment by virtue of Tamil Nau Act 35 of 2000 with effect from 04.10.2000, states that in case of tolls levied under clause (c) of sub-section (1), for the recovery of the amount spent upon the road or bridge by the person or body or association of individual concerned, together with interest thereon as the State Government may fix and such other amount as the State Government may determine.

18.Thus, by virtue of the amendment made by the Tamil Nadu State Legislature, any person or body or association of individuals, whether incorporated or not which has made, improved or repaired any road or bridge would also fall within the ambit of the levy of toll, for which State Government has been empowered in terms of the said amended provision. Therefore, we do not agree with the submissions made on behalf of the petitioners that the levy of toll on the subject Highway lacks legislative competence.

19.It has to be further pointed out that the petitioners seek for a declaration to declare the impugned Government Order in G.O.Ms.No.268 dated 11.11.2008. On a bare reading of the impugned order, it is evident that the same has been passed for the purpose of authorising the levy of toll from 01.12.2008 for the developments made. There is a reference to another Government order in G.O.Ms.No.45 dated 23.2.2005. It is by the said Government Order, the collection of toll was authorised in exercise of the power conferred under clause (c) of sub-section 1 and clause (c) of sub-section 2 of Section 2 of the Central Act. Though this Government Order was issued in 2005, there is no challenge to the said Government order and the subject matter of challenge is only an order authorising collection of toll from an appointed date.

20.The learned Senior Counsel appearing for the petitioner submitted that the petitioners have sought for declaratory relief and the petitioners grievances cannot be rejected on such hyper technical plea. We are not persuaded to accept such submissions for more than one reason. Firstly, the amendment to the Central Act by the State Legislature amending the provisions of the Central Act are not the subject matter of challenge, the amended provisions empowers the levy of toll to be made by the State Government and therefore, the levy and collection of toll on the subject Highway is within the competence of the State Legislature. Secondly, the notification authorising collection of toll was issued in 2005 and published in the Government Gazette on 02.03.2005 and there has been no objection by the petitioners at that point of time and after the developmental activities were completed and the Government Order was issued fixing the date from which the toll shall be collected, the petitioners have rushed to this Court by way of these Writ Petitions. This is one more reason to negative the prayer made by the petitioners.

22.As regards the plea raised with regard to shifting of the existing Toll Plaza, is stated that the Toll Plaza at Egattur is situated at the distance of 20 kms from Madhya Kailash junction and 17 kms. from the city limits and the said location has not been shown to be in violation of the Rules which were in force at the relevant point of time.

23.For all the above reasons, the petitioners have not made out a case for interference and accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa/pbn

To

1 THE PRINCIPAL SECRETARY
HIGHWAYS DEPARTMENTS,
FORT ST. GEORGE CHENNAI - 9.

2 THE CHIEF ENGINEER (GENERAL)/
STATE HIGHWAYS AUTHORITY
CHENNAI.

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6 THE DISTRICT COLLECTOR,
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7 THE COMMISSIONER OF POLICE
CHENNAI CITY, EGMORE, CHENNAI-8.

+1cc to M/s. P.T. Perumal, Advocate, S.R.No.36028
+1cc to M/s. M. Sivavarathan, Advocate, S.R.No.35791
+1cc to the Government Pleader, S.R.No.35954
+ 1 cc to M/s. La Law, Advocate Sr.36365

RSK(CO)
EU(24/07/2015)

W.P. Nos.29648,
30348 of 2008 &
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