**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11349 of 2017**

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1. Anju Mishra, Advocate, Patna High Court, Daughter of S.N. Mishra, Resident of Mahaveer Colony, Anisabad, Beur, Patna.

.... .... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry fo Road Transport and Highways, Govt. of India, New Delhi.
2. The Director, National Highways Authority of India, New Delhi.
3. The State of Bihar through its Chief Secretary.
4. The Principal Secretary, Department of Road and Transport, Govt. of Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s: Mr. Anju Mishra, Advocate
For the Respondent/s: Mr. Niraj Kumar Sinha, A.C.to PAAG2)
For the Respondent : Mr. S.D. Sanjay, A.S.G.
: Mr. Anshay BAhadur Mathur,CGC

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE DR. JUSTICE RAVI RANJAN**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 16-08-2018**

1. The present public interest litigation-writ petition has been filed by the petitioner for an appropriate writ/order directing the respondent authorities to exempt the private cars/ four wheelers from paying any toll fee at the toll plazas erected under

the Authority of National Highways Authority of India as well as State Toll Booths across the State of Bihar. It is further prayed for appropriate writ/order directing the respondent authorities not to extend any exemption to the vehicle of the Central Government or the State Government on duties and collect toll from them if these vehicles are not discharging any work related to NHAI, in terms of Section 11(1)(b)(v) of the National Highways Fees (Determination and Collection ) Rules,2011.

2. Mrs. Anju Mishra, learned Advocate, who has appeared as party in person, has vehemently submitted that when a vehicle is purchased, vehicle tax and road tax is already paid and, therefore, the fees levied on toll tax is arbitrary and illegal. It is further submitted that apart from the taxes paid, the purchaser has to pay annual insurance which also is hefty and, therefore, the fees levied on the toll tax may have an additional financial burden upon the vehicle owners.

2.1. It is the case of the petitioner that National Highways Authority of India constructs and maintains the highways by entering into an agreement with the concessionaire, who, in turn, erects toll plazas to collect the toll from the users as per Section 8-A of the NHAI Act, 1956. It is submitted that such concessionaires are purely business people and they devise everything to suit their business needs and to mint money out of the whole transaction.

2.2. It is further submitted by the petitioner that keeping a small car/ four wheeler is not luxury any more and it has become an acute need. It is further submitted that there must be a reasonable classification between the small four wheelers and commercial vehicle.

2.3. It is further submitted on behalf of the petitioner that the situation becomes grim as the National Highways Authority of India toll collected from the private cars in the State of Bihar is highest in the country i.e. Rs. 100 to 150 and so on.

2.4. It is further submitted on behalf of the petitioner that even the toll plazas are erected at much frequency and many times in the state of Bihar for covering a distance of 150 Kilometers, three toll plazas have to be crossed. It is further submitted on behalf of the petitioner that by virtue of Section 11(1)(b)(v) of the National Highways Fees (Determination of Rates and Collection) Rules, 2008, the vehicle used for official purposes by the Government organizations for inspection, survey, construction and operation of the National Highways and maintenance thereof only shall be exempted from paying any toll otherwise toll have to be collected from them. It is further submitted that on one hand the NHAI concessionaire collects exorbitant fees from the .. and on the other hand the Central Government and the State Government vehicles on duty are given blanket exemption. It is submitted that therefore the blanket exemption granted to Central and State Government's vehicle deserves to be set aside.

3. The present petition is vehemently opposed by Niraj Kumar Sinha, A.C. to Principal Additional Advocate General-2, appearing on behalf of the respondents-State and Mr. S.D. Sanjay, learned Additional Solicitor General, appearing on behalf of respondent-Union of India.

3.1. Mr. S.D. Sanjay, learned A.S.G. appearing on behalf of respondent Nos. 1 and 2 has vehemently submitted that levy of toll at the toll plazas and the exemption to the vehicle of the Central Government or the State Government on duty is absolutely in consonance with the provisions of the Act and the Rules and also in the larger public interest. It is submitted that the levy of toll at the toll plaza is a policy decision and, more particularly, to maintain the roads motorable and the same shall be in the larger public interest. Therefore, the present petition deserves to be dismissed.

3.2. It is further submitted that as per the Rule 3(1) of the National Highways Fee (Determination of Rules and Collection) Rules published vide notification No. G.S.R. 838(E) dated 05.12.2008, the Central Government by way of notification levy fee for use of any section of National Highway, permanent bridge, bypass or tunnel forming part of the National Highway. It is further submitted that merely because vehicle owner might be paying some other taxes can not be the ground to set aside the levy of toll which otherwise is valid under another Act. It is very much required for the development of the roads which, otherwise, is permissible as per the Rules.

3.3. It is further submitted that the user fee (which is not a tax) is to be collected from the road users for the use of certain section of national highway to recover the capital cost of the project.

3.4. It is further submitted that according to the Fee Rules,2008 (as amended), the user fee is to be collected in perpetuity and the user fee (at full rates)is to be collected only up to recovery of the capital cost, along with the interest, of the project and the user fee rates are to be reduced to 40% after recovery cost.

3.5. It is submitted by the learned

Additional Solicitor General appearing on behalf of the respondent Nos. 1 and 2 that the allegation of undue benefits are given to the concessionaires while collecting toll fee is baseless. It is further submitted that the concessionaire's agreements are being done in the National Highway Act under the power of the Central Government, which only is the beneficiary of such collection.

3.6. It is further submitted that the Central Government and/or the State Government under the National Highway Act may not have sufficient fund for construction/maintenance of the roads, more particularly, with the highways and, therefore, such a provision for collecting the tax by concessionaire is permissible and they are allowed to collect the toll fee as they invested large chunk of money. It is, therefore, submitted that the collection of fee from such concessionaire is absolutely in consonance of the provisions of National Highway Act and the Rules, 2008 as amended from time to time.

3.7. It is further submitted on behalf of the respondents that the rate of fee for use of a section of National Highway of four or more lanes shall be based on the length of such section of National Highway and the base rate of fee per kilometers depending on the type of vehicle as provided under the Act. It is also submitted that the allegation that the rate of toll fee in the State of Bihar is highest is totally baseless. It is further submitted that user fee rates applicable to any toll plaza on National Highway is worked out as per the provisions of the applicable National Highway Fee Rules (1997/2008) based on road length, structures of more than 60 meter or bypasses present on the stretch. It is further submitted that separate fee rule is provided for public funded and BOT projects. It is further submitted that in the case of public funded sections, the fee is determined on the basis of per kilometer rate provided in the fee rules duly indexed and multiplied by the length of the section and rounded off to nearest Rs. 5 (Five rupees). It is also submitted that for the standalone bridges developed under public funded project, cost based fee rate is provided. It is further submitted that in case of BOT section, the fee is determined on the basis of per kilometer rate provided in the concession agreement duly indexed and multiplied by the length of the section and rounded off to nearest Rs. 5/1(Five/one rupees) as the case may be. It is further submitted that the parameters for calculation of toll fee is same all over the country and, therefore, allegation that the rate of fee in the State of Bihar is too excessive and/or high is absolutely baseless and has no substance.

4. In so far as Rule 11 of the Rules 2008 dealing with the exemption from the payment of toll fee except Rule 11(1)(b)(v) of the Rules is concerned, it is submitted that the legislature has decided the list of the dignitaries for exemption from payment of toll fee considering their contribution and involvement in the public administration of the country, contribution of the National Awardees, movement of defence personnel/ forces on the National Highway, importance of ambulance and funeral van for the society in general. It is further submitted that as such granting exemption to vehicle belonging to the Central Government or the State Government on duty cannot be said to be *per se* illegal and unreasonable and/or has no nexus with the object and purpose in granting such exemptions.

4.1. It is further submitted that to pay the toll fee with respect to the vehicles belonging to the Central Government or the State Government on duty would be and/or can be said to be from one pocket to another pocket of the Government. It is further submitted that even otherwise, the virus of the Section 11(1)(b)(v) of the Rules, 2008 are not under challenge. It is further submitted that the exemption to the vehicles of the Central Government and the State Government on duty is absolutely in consonance with the provisions of the Act and the Rules and is a policy decision in accordance with the statute.

5. Making submission, it is requested to dismiss the writ petition.

6. Having heard the petitioner as party in person and the learned counsel appearing on behalf of the respective respondents and perused the counter affidavit filed on behalf of the respondent Nos. 1 and 2 referred to hereinabove, we are of the opinion that the present petition, for the reason stated hereinbelow, deserves to be dismissed.

6.1. In so far as levy of toll fees on the toll plaza on the National Highway is concerned, considering the various provisions of the Act and the Rules, the same is absolutely in the larger public interest and the same is permissible under the relevant provisions of the Act and the Rules. Merely because the vehicle owner might be paying some other taxes under the other statute can not be the ground to set aside the levy or the fees levied under the provisions of the National Highway Act and the Fee Rules, 2008/2011. The object and purpose of collection of tall fees on the highway is to maintain and provide the good/ motorable roads which shall be in the larger public interest. From the averments in the counter affidavit filed on behalf of the respondents, the rates of toll fee is uniformly applied in the entire country and the same is charged as per the Fee Rules, 2008. It appears that the user fee rates applicable to any toll plaza on the National Highway is worked out as per the provisions of the applicable Fee Rules (1997/2008), based on road length, structures of more than 60 meters or bypasses present on the stretch. Separate fee rule is provided for public funded and BOT projects and in case of public funded sections, the fee is determined on the basis of per kilometer rate provided in the fee rules duly indexed and multiplied by the length of the section and rounded off to nearest Rs. 5 (Five rupees). It also appears that in case of standalone bridges developed under the public funded project, cost based fee rate is provided. In case of BOT sections, the fee is determined on the basis of per kilometer rate provided in the concession agreement duly indexed and multiplied by the length of the section and rounded off to nearest five/one rupees as the case may be. Even the concessionaires are required and permitted to collect toll fees as per the concessionaire agreement with respect to them, more particularly, who invest money under the public private project, as permissible under the provisions of the Act and the Rules. The toll fee/user fee is collected for the use of certain section of the National Highway to recover capital cost of the project. Therefore, the levy of user fee and toll fee at the toll plaza cannot be said to arbitrary and unreasonable and/or illegal as the same is collected in the larger public interest and as per the provisions of the rate and the fee rules.

7. In so far as challenge to the exemption to the vehicle belonging to the Central Government and the State Government on duty is concerned, it is required to be noted that the same is permissible under the Rule 11(1)(b)(v) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. As such, the same is a policy decision of the Government/Legislature to grant exemption from payment of toll fee to certain categories. In the present case, the exemption granted to the vehicle belonging to the Central Government or the State Government on duty, as such, cannot be said to be *per se* illegal and/or arbitrary. The same is permissible under the relevant provision of the Fees Rules, more particularly, Rule 11 of the Rules, 2008. Even otherwise, it is

required to be noted that to pay the fee with respect to the vehicle belonging to the Central Government and the State Government of duty can be said to be making the payment from one pocket to another pocket of the Government. Under the circumstances challenge to the exemption granted to the vehicle belonging to the Central Government or the State Government on duty fails.

8. In view of the above and for the reasons, stated above, the present petition fails and deserves to be dismissed and is, accordingly, dismissed. No order as to cost.

**(Mukesh R. Shah, CJ)**

**(Dr. Ravi Ranjan, J)**

Brajesh/-

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