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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (PIL) No. 96 of 2018**

1. Anuj Kumar Mishra S/o Harishankar Mishra Aged About 28 Years R/o House No. 17, Ward No. 06 Railway Colony, Village/post/police Station- Mandir Hasaud, Tehsil- Aarang, District- Raipur, Chhattisgarh.
2. Om Prakash Yadav S/o Mr. Noharlal Yadav Aged About 31 Years Occupation- Social Workers, R/o Bajrang Chowk, Mandir Hasaud, Tehsil- Aarang, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, through its Secretary, Ministry of Road, Transport and National Highways, Government of India, New Delhi.
2. National Highway Authority of India, through its Project Director, National Highway No. 53, District- Raipur, Chhattisgarh.
3. State of Chhattisgarh, through Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh.
4. The Collector Raipur, District- Raipur, Chhattisgarh.
5. Raipur Express Way Limited, Raipur Aarang Project, Office Address- Avanti Vihar, Sector- 2F18, Near Hitwad Press, Water Tank, District- Raipur, Chhattisgarh.

---- Respondent**Writ Petition (PIL) No. 32 of 2019**

Parmanand Jangde S/o Shri Hem Das Jangde Aged About 32 Years R/o Village Chhatauna, Post And Police Station Mandir Hasaud, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Union of India, through its Secretary, Ministry of Road, Transport and National Highways, Government of India, New Raipur, Chhattisgarh.
2. National Highway Authority of India, through its Project Director, National Highway No. 53 District- Raipur, Chhattisgarh.
3. State of Chhattisgarh, through Secretary, Public Works Department, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
4. The Collector Raipur, District- Raipur, Chhattisgarh.
5. Raipur Express Way Limited, Raipur Aarang Project, Office Address- Avanti Vihar, Sector-2F 18, Near Hitwad Press, Water Tank, District- Raipur, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Rajeev Shrivastava with Shri Sumit Singh Rathore and Ms. Rashmi Sen, Advocates.
For Respondent/State	: Shri Sudeep Agrawal, Deputy Advocate General.
For Respondent/NHAI	: Ms. Fouzia Mirza, Advocate.
For Respondent No. 5	: Shri Manoj Paranjpe and Shri Anshul Tiwari, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramachandra Menon, Chief Justice

19/11/2019

1. The grievance expressed in these two writ petitions styled as 'Public Interest Litigation' is with regard to the construction of a Toll Plaza at National Highway No. 53, village Mandir Hasaud, which is stated as situated within the span of 14 KMs from the existing Toll Plaza at village Sarona. The challenge is mainly raised with reference to the infringement of the statutory prescriptions insofar as there cannot be such a Toll Plaza within a distance of 60 KMs as provided under proviso to Rule 8(2) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 Rules (*for short 'the 2008 Rules'*). Prayers in the above writ petitions are in the following terms:

Writ Petition(PIL) No. 96 of 2018

1) That, this Hon'ble Court may kindly be pleased to issue writ in the nature of mandamus or any other restraining the respondent authorities from establishing toll plaza at National Highway 53, Village Mandir Hasaud, District Raipur on the same section of Highway where already an existing toll plaza is levying charges which is only 12 Kilometer in the interest of justice;

2) That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case in the interest of justice.

Writ Petition(PIL) No. 32 of 2019

1) That, this Hon'ble Court may kindly be pleased to issue writ in the nature of mandamus or any other restraining the respondent authorities from establishing toll plaza at National Highway 53, Village Mandir Hasaud, District Raipur on the same section of Highway where already an existing toll plaza is levying charges which is only 12 Kilometer in the interest of justice;

2) That, the respondent No. 2 may be directed to complete the work related to road safety and the work necessary for traffic

facility like installation of sign board with radium light, fixing of CAT eye, crush barrier etc.

3) That, this Hon'ble Court may kindly be pleased to grant any other relief(s), which is deemed fit and proper in the aforesaid facts and circumstances of the case in the interest of justice.

2. The prayers are opposed from the part of the State and the National Highway Authority of India (for short 'the NHAI').
3. We heard Shri Rajeev Shrivastava, who led the arguments on behalf of the Petitioners, Ms. Fouzia Mirza, the standing counsel for the NHAI and Shri Manoj Paranjpe, Advocate on behalf of the 5th Respondent/Concessionaire.
4. When the matters came up for consideration before this Court on 13.08.2019, it was submitted from the part of the NHAI that the idea and understanding of the Petitioners in moulding their case with reference to the applicability of the 2008 Rules was not correct and that the said Rules are not applicable to the case in hand. It is pointed out that there is a specific bar/exclusion as provided under Rule 1(3) of the said Rules which is in the following lines:

"1(3) They shall not apply to agreements and contracts executed and bids invited prior to the publication of these rules."

5. The learned counsel for the Petitioner sought to place reliance on sub-rule (4) of Rule 1 of the 2008 Rules to sustain their contention; in response to which it was submitted on behalf of the Respondents that the said sub-rule was brought into force only w.e.f 12.10.2011 and as such, in respect of the agreements and the proceedings which were prior to the publication of the Rules, the said Rules cannot be attracted. It was in the said circumstance, that the matter was got adjourned to get further instructions, if any.
6. Today, when the matter is taken up for consideration, the learned counsel for the petitioners points out that, even if the 2008 Rules are not applicable, the matter would be governed by the then existing rules i.e. the National

Highways (Collection of Fees by Any Person For The Use of Section of National Highways/Permanent Bridge/Temporary Bridge on National Highways) Rules, 1997 (for short 'the 1997 Rules'). There is a corresponding provision as given in sub-rule (2) of Rule 3 of the 1997 Rules, which is in the following lines:

"3(2) The rates of fees and the period of collection shall be decided and shall be specified by notification in the Official Gazette by the Central Government having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such section, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement."

7. The learned counsel submits that there should have been a proper notification in the official gazette with regard to the rates, period, charges/expenses in connection with the building, maintenance etc. and in the absence of any such notification, giving all these factual particulars, the Respondents cannot be permitted to proceed with the toll collection. At the very outset, we find it difficult to accept the said proposition, for the reason that no such case has been moulded or pleaded or prayed for in the writ petition with reference to the aforesaid Rules. All the grounds raised in support of the relief sought for are with reference to the 2008 Rules. In the said circumstance, a case which is not pleaded cannot be permitted to be argued, nor is it liable to be considered by this Court.
8. We find considerable force in the submission made by the learned counsel appearing for the NHAI insofar as the Rules are quite categoric and specific which clearly say that the '2008 Rules' will not be applicable to the cases prior to the date of publication of the said Rules, as involved herein. That apart, the Petitioners could not bring to the notice of this Court as to the existence of any other Rule or provision or precedent in support of their case, as now projected herein.

9. In the course of further submission, the learned counsel appearing for the NHAI submits that the grievance projected by the Petitioners does no longer subsist, in view of subsequent development. Reference is made to Annexure R-2/7 produced alongwith the affidavit/memo dated 01.10.2019 as to the consideration of the subject matter by the Executive Committee of the NHAI in its 393rd Meeting held on 17.06.2019. The question that was considered and the resolution passed are clearly extracted in paragraph 3, 4 and 5 of the application for taking the document on record, which are in the following terms:

"3. That, the 393rd meeting of the executive committee was held on 17.06.2019 and 25.06.2019, wherein the issue of the present toll plaza have been discus as Agenda Item No. 393.02, which was as under:

"Improvement, operation and maintenance, rehabilitation and strengthening of existing 2 lane road and widening to 4 lane divided highway from KM 239.000 to KM 281.000 of NH6 (Raipur-Aurung Section) in the State of Chhattisgarh on Built, Operate and Transfer (BOT) basis. To seek guidance from the MoRT&H in the matter of failure of enforcement of State support agreement."

4. That, after discussion a decision was made on the above agenda by the executive committee which is as under:

"Considering the provisions in the concession agreement (which do not make it mandatory to provide 2 toll plazas), lesser distance between the currently operated toll plaza at KM 242.8 and the proposed toll plaza at KM 258.65, larger public convenience and to minimize the disputes, EC decided to allow fee collection at one toll plaza i.e. KM 258.65 only. Also in order to effectively defend the future claims, if any, the traffic at 3 locations (KM 242.8 KM 258.65 and KM 276.1) may be captured 24X7 using ATCC/Video based traffic surveys.

5. That, the above decision was conveyed to the regional officer National Highway Authority Raipur by the General Manager NHAI New Delhi vide letter dated 19.06.2019. The copy of the letter dated 19.07.2019 alongwith the minutes of the Executive Committee is being filed herewith as Annexure R-2/7."

10. Pursuant to the said resolution, the outcome was let known to the Regional Authority of the NHAI at Raipur, who intimated the position to the 5th Respondent, the Concessionaire and also the State. By virtue of the circumstances mentioned therein, particularly with reference to the public convenience and further since it was not mandatory to provide two separate toll plazas, it has been decided that only one toll plaza will be sufficient and this is sought to be implemented. A true copy of the relevant proceedings in this regard has been produced as Annexure R-2/7 as mentioned above.
11. In view of the turn of events, we are of the view that the grievance projected by the petitioners with reference to existence of 'two toll plaza' within the allegedly prohibited distance has lost its significance or relevance and only one toll plaza is intended to be set up and operated.
12. In the above circumstance, interference is declined and the writ petitions are dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE