IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2019

Pronounced on : 12 .04.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.7642 of 2019
and
WMP.8280 of 2019

Traffic Dr.K.R.Ramaswamy ... Petitioner

Vs

1. The Government of India, Department of Road Transport and Highway, New Delhi.

2. National Highways Authority of India, Rep. by its Chairman, G-5 & 5, Sector-10 Dwarka, New Delhi-110075.

3. State by Additional Chief Secretary to Government of Tamil Nadu, Highways and Minor Ports Department, Secretariat, Chennai - 9.

4. Chennai Ennore Port Road Company Ltd, Sri Tower, 3rd Floor, DP-34, (SP) Industrial Estate, Guindy, Chennai - 32.

5. Ennore Tank Terminals Private Ltd, Chengalvaraya Naicker Maligai, 23, Rajaji Salai, 3rd floor, Chennai-1 ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the

Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records of the impugned Government order Ms.No.166, Highways and Minor Ports (HV2) dated 01.10.2018 and quash the same or issue any other appropriate writ or direction directing the respondents consequently to remove Toll Plaza at Mathur on the section of Ennore Manali Road Improvement Project connecting the Chennai and Ennore Ports with Inner Ring Road at Madhavaram junction and Trivotriyur-Ponnery-Panchetty Road, Manali Oil Refinery Road, Ennore express way road at Port Gate No.0.

For Petitioner : Mr.Traffic Dr.K.R.Ramaswamy
Party-in-Person

For Respondents: Mr.G.Karthikeyan,
Asst.Solicitor General of India
for R1 & R2
Mr.E.Manoharan,
Addl.Govt.Pleader for R3

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ORDER

SUBRAMONIUM PRASAD,J

This Public Interest Litigation has been filed for a Certiorarified Mandamus, calling for the records of the Government order Ms.No.166, Highways and Minor Ports(HV2) dated 01.10.2018, whereby tolls are being levied for a road having 28.33 km on the section of the Ennore-Manali Road Improvement Project connecting Chennai and Ennnore Ports with Inner Ring Road at Madavaram junction (km 17+500) and Thiruvottiyur - Ponneri - Panchetti Road (km 13+500) Manali Oil Refinery Road junction (km 5+600) Ennore Expressway (km 0+000) at Port gate

No.0, improved and maintained on a long term basis by Chennai Ennore Port road company Limited (CEPRCL) or any agency appointed / authorised by CEPRCL to collect the user fee at the rates specified in the schedule appended to the notification for the period upto recovery of the project capital cost of Rs.600 crores and after recovery of the project capital cost and to quash the same. Writ petitioner has also prayed to remove the toll plaza at Mathur on the section of Ennore Manali Road Improvement Project.

2. The writ petitioner states that the road for which the Government of Tamil Nadu have issued the impugned G.O. is a National Highway. The State Government have no power to issue any Government order levying toll.

3. The writ petitioner would rely on Rule 7(2) of 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 and on Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008. He states that the toll plaza which has been established to collect tolls by respondent No.5 / Ennore Tank Terminals Private Ltd is against the mandate of both the above mentioned Rules.

4. According to the writ petitioner, toll gate is about 3 kms from the Surapattu Toll plaza on the Chennai by-pass National Highway and 5 kms from toll gate, Chennai Tada road and 20 kms from Vanagaram toll gate and as per the Rule 7(2) of 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, toll collection can be done only at one place within a distance of 80 kms, regardless of the number of projects falling within the length in order to achieve the object of facilitating free movement of traffic, and under Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, a toll plaza cannot be established within a distance of 60 kms of Municipal limit or local town limit area.

5. According to the petitioner the toll plaza in question is in violation of this Rule 8(2). The respondent No.1 is the Union of India, Department of Road Transport and Highway, New Delhi, respondent No.2 / National Highways Authority of India, respondent No.4 / Chennai Ennore Port Road Company Ltd, have filed a common counter.

6. According to the respondents, Chennai Ennore Port road company Limited (CEPRCL)/Respondent No.4, was incorporated as a Special Purpose Vehicle, jointly and National Highways Authority of India, the Government of Tamil Nadu, Ennore Port Trust for development of adequate road connectivity between Chennai and Ennore Ports. It is stated that as a part of connectivity to 11 major ports, a company called CEPRCL, respondent No.4 was incorporated on 26.12.2002, with the registered office at New Delhi. A Special Purpose Vehicle has been created for the purpose of developing 4 roads of the State Highways Department, which read as under:-

Sl.No	*Project Name*	*Specification and Current Status*
I	Improving & Widening to 4 lanes of Ennore Expressway	Phase I : 1.6 km (Km 0/000 to Km 1/600 in harbour area) Phase II: 5.9 km length (Km 7/000 to Km 12/900)
II	Improvements to Manali Oil Refinery Road	5.4 Km (from km 0/000 to 5/400)
III	Improvements to Northern Segment of Inner Ring Road	8.1 Km (from Km 17/500 to 25/600)
IV	Widening to 4 lane and strengthening of Tiruvottiyur-Ponneri-Panchetti (TPP) Road	9.0 Km (from Km 4/500 to 13/500)

7. It is stated that the cost of the project stretch of 29.138 kms, is Rs.600.00 Crore. Work has been completed in the locations where lands were handed over to the contractor, free from encroachments and encumbrances.

8. It is categorically stated by the respondents No. 1, 2 and 4 respectively that the road concerned is not a National Highways and lands are with the State Government. It was further stated that, since it is not a National Highway, the power to levy toll is with the State Government and the impugned G.O has been issued by the Government of Tamil Nadu under Indian Toll Act 1851. According to the respondents, there is no violation of the rules, relied on by the petitioner. For the abovesaid reasons, respondents have prayed for dismissal of the writ petition.

9. Heard the counsel for the parties.

10. Rule 7(2) of 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 and Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, are extracted:-

"Rule 7 (2) Toll collection shall be done only at one place within a distance 0f 80 kms. from a point at the beginning of first National Highway Section or approach of entry of the first permanent bridge to be crossed under the jurisdiction of the same executing agency, regardless of number of projects falling within the length in order to facilitate free and unhindered movement of traffic. Where it is not

feasible to do so, the number of collection point shall be kept minimum and shall be decided with the approval of Central Government. The fee may be collected from the driver, owner or person in-charge of a vehicle on the first National Highway Section or permanent bridge which is intended to be crossed by such vehicle. The driver, owner or person in-charge of the vehicle holding the receipt of such payment shall be allowed to pass through other Sections and bridges of such Highway unhindered after showing the receipt to the Fee Inspector posted on other sections or bridges. Details of such Sections and bridges shall be displayed at a conspicuous place near the fees collection booths of the Sections or bridges covered under this sub-rule legibly written or printed in English, Hindi and the regional language of the area in which such sections or bridges are situated."

"Rule 8(2) Any other [fee plaza] on the same section of national highway and in the same direction shall not be established within a distance of sixty kilometres:"

11. Rule 7(2) of the National Highways (Collection of Fees by any Person for the Use of the Section of National Highways / Permanent Bridge / Temporary Bridge on National Highways) Rules, 1997 and Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, were brought into force, in exercise of powers conferred under Section 9 of the National Highways Act and these Rules have been framed for levy of toll for the use of National Highways bridges and roads.

12. Rule 7(2) of 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, applies only to National Highways and not to any other road. Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, applies to a Section of National Highways, if there is a toll plaza (fee collection plaza). The respondents have categorically stated that the road on which the toll plazas have been located are not National Highways.

13. In view of the above, there is no impediment on the State Government to bring out the impugned G.O. Though the petitioner has filed a rejoinder, he is not able to controvert the assertion made by the respondents that the road concerned is only a State Highway. For the reasons stated supra, we are of the view that the writ petition is not maintainable. Prayer cannot be granted.

14. As per the above said rule, no toll plaza should be established in the same direction within a distance of 60 kms. Two issues to be decided by us, on the facts placed by the petitioner, Party-in-Person and the respondents, are whether the road, on which toll plaza is established, whether is on a National Highway, or a Section of National Highways and whether who is competent to levy toll? It is the categorical statement of the respondents in their common counter affidavit that the toll plaza,

is not a National Highway nor on the Section of National Highways. If toll plaza is located on the above, then the Central Government is the Competent Authority to determine the distance and the rate of collection of toll. But the toll plaza is stated to be established on State Highways, for which Central Government has no authority to decide, either the distance or the toll fee. Giving due consideration to the pleadings, with reference to the rules relied on by the petitioner, we are of the considered view, rules relied on, cannot be made applicable to the facts on hand.

15. Hence, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

(S.M.K., J.) (S.P., J.)
.04.2019

Index: Yes/No
Internet: Yes/No
Speaking/Non speaking
Pkn

S.MANIKUMAR,J.
AND
SUBRAMONIUM PRASAD, J.

Pkn

To

1. The Government of India,
   Department of Road Transport and
   Highway, New Delhi.

2. The Chairman,
   National Highways Authority of India,
   G-5 & 5, Sector-10 Dwarka, New Delhi-110075.

3. State by Additional Chief Secretary to
   Government of Tamil Nadu,
   Highways and Minor Ports Department,
   Secretariat, Chennai - 9.

4. Chennai Ennore Port Road Company Ltd,
   Sri Tower, 3rd Floor, DP-34, (SP) Industrial
   Estate, Guindy, Chennai - 32.

5. Ennore Tank Terminals Private Ltd,
   Chengalvaraya Naicker Maligai,
   23, Rajaji Salai, 3rd floor,
   Chennai-1

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