

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-PIL-No.28839 of 2017 (O&M)
Date of Decision :27.08.2019**

Aseem Takyar

.....Petitioner

Versus

Union of India and another

..... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Johan Kumar, Advocate for the petitioner.

Mr. Alankrit Bhardwaj, Advocate for respondent No.1.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Agarwal, Advocate for NHAI.

KRISHNA MURARI, CHIEF JUSTICE (Oral):

This writ petition in the nature of PIL has been filed seeking the following main relief:-

“Issuance writ of certiorari, mandamus or any other suitable writ, order, or direction as this Hon'ble Court may deem fit in the facts and circumstances of the case especially in the nature of mandamus directing the respondents to remove the Toll Plaza at K.M. 29 to K.M. 86 (Bhagan Toll Plaza) at Murthal District Sonipat maintained by respondents being illegal, void and against notification dated 05.12.2008 (Annexure P-2), in the interest of justice”.

The aforesaid relief is being claimed in the background of the fact that the toll plaza should be situated beyond the distance of 10

kilometers from a municipal or local town area limits whereas in the case in hands it is within the municipal area of Sonipat.

The other ground on which the petition has been filed is that Rule 8.2 of the NHAI Rules, 2008 stipulates that distance between two toll plazas of same section of national highway and in the same direction shall not be less than 60 kilometers whereas the Toll Plaza in question is situated in Gharaunda in District Karnal and Panipat are within 60 kilometers, and thus, illegal. It is also alleged that toll is being levied before completion of construction work and has been established before completion of the construction of 8 lane.

Mr. Chetan Mittal, learned Senior counsel appearing for NHAI submits that Rule 8.1 stipulates that the Executing Authority shall establish a toll Plaza beyond a distance of 10 kilometers from a municipal or local town area limits. However, two provisos of the rule give a power of relaxation of this norm of 10 kilometers in stipulated situation. It is submitted that the toll plaza in question squarely falls under the proviso of Rule 8.1, and thus, is not violative of Rule 8.1. It may be relevant to reproduce Rule 8.1 of the Rules of 2008 which read as under:-

“8.Location of toll plaza.

(1)The executing authority or the concessionaire, as the case may be, shall establish a toll plaza beyond a distance of ten kilometers from a municipal or local town area limits:

Provided that the executing authority may, for reasons to be recorded in writing, locate or allow the concessionaire to locate a toll plaza within a distance of ten

kilometers of such municipal or local town area limits, but in no case within five kilometers of such municipal or local town area limits:

Provided further that where a section of the national highway, permanent bridge, bypass or tunnel, as the case may be, is constructed within the municipal or town area limits or within five kilometers from such limits, primarily for use of the residents of such municipal or town area, the toll plaza may be established within the municipal or town area limits or within a distance of five kilometers from such limits”.

A perusal of the aforesaid provision goes to show that two provisos carve out a exception for relaxing the norm of prescribed distance of ten kilometers from municipal or local town area limits prescribed by Rule 8.1.

Learned Senior counsel appearing for respondent-NHAI further submits that the toll plaza was initially established by notification dated 03.11.2014 and has fallen within the municipal area on account of extension of the municipal limits subsequently, in 2015. It is submitted that the municipal limits which shall prevalent on the date of notification is to be taken into consideration at the time of establishment of notification of the toll plaza and in case the municipal limit changes by way of extension or reduction the location of the tool plaza would not be rendered illegal.

In respect of issue No.2 with regard to the distance between the two toll plazas on the same section of national highway and in the same direction being not less than 60 kilometers, it may be relevant to reproduce Rule 8.2 prescribing prohibition of establishment of two toll plazas on the

same section and in the same direction within the distance of 60 kilometers.

Rule 8(2) is as under:-

“8. Location of toll plaza:-

1.....

2. Any other toll plaza on the same section of national highway and in the same direction shall not be established within a distance of sixty kilometers:

Provided that where the executing authority deems necessary, it may for reasons to be recorded in writing, establish or allow the concessionaire to establish another toll plaza within a distance of sixty kilometers:

Provided further that a toll plaza may be established within a distance of sixty kilometers from another toll plaza if such toll plaza is for collection of fee for a permanent bridge, bypass or tunnel”.

Again a perusal of the above quoted rule goes to show that no doubt there is a bar on two toll plazas being established within 60 kilometers within one section of the National Highway. However as learned Senior counsel appearing for the Highway points out that in the case at hands the section for which the toll is levied is from 29.300 Km to 86 Km and there is no other toll for the said section and the other different sections of national highway cannot be joined together for the purpose of Rule 8.2. To support the contention reliance is placed on the Division Bench judgment of the Allahabad High Court in **Chetna Society (Regd.) and Anr. Vs. Chief General Manager (Technical) and 2 others 2015 SCC Online All 6270**, wherein it has been held that the different sections of national highway cannot be joined together for the purpose of rule 8.2, it may be

relevant to extract the following from the said judgment.

“9. We shall next deal with the challenge on the ground that under Rule 8(2), the distance between two toll plazas should not be less than sixty kilometers on the same section of a national highway and in the same direction. The crucial words of Rule 8(2) are “any other toll plaza on the same section of national highway and in the same direction”. In other words, where one section of the national highway is being developed under a concession agreement, the distance of another toll plaza on that section should not be within sixty kilometers. Evidently, this requirement of Rule 8(2) is not breached in the present case. The error on the part of the petitioners lies in connecting two separate sections of the national highway and treating them as if they are one. Two separate concession agreements have been entered into by NHAI, one for the Moradabad-Bareilly section from kilometer 148.00 to 262.000 which was awarded on 19 February 2010. The second and distinct section is for the stretch from Bareilly to Sitapur falling from kilometer 262.000 to 413.200 of NH 24 for which a concession agreement was executed on 22 June 2010. There are two separate concession agreements for the development of two separate sections of NH 24. Hence, the requirement of Rule 8(2) is not breached. The toll plaza which is being established at kilometer 267.000 is on the Bareilly-Sitapur section and hence, for the purpose of computing the distance within the meaning of Rule 8(2), the toll plaza on the Moradabad-Bareilly section would be of no relevance. The provisions of Rule 8(2) have, therefore, not been breached”.

The last issue raised in this PIL is that according to Rule 3(2)

the collection of fees shall commence within 45 days from the date of completion of section of national highway whereas in the case in hand it is contended that the fees is being collected even before completion of construction. Learned Senior counsel for NHAI submits that toll was established for collecting of fee when there was 6 lane road and now the road is being widen by making it 8 lane road whereas construction of 6 lane was completed in 2001 and it is only thereafter the toll was being collected, and thus, any future expansion in the width of the road will not render collection of toll fees at plaza existing on the already completed project illegal.

In view of the aforesaid facts and discussion none of the grounds raised in this PIL challenging the establishment and running of the toll plaza appears to be tenable and the petition does not serve any public interest at all and the same accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.08.2019

Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No