

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2020

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THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

W.P.No.7493 of 2020

and

Connected Writ Miscellaneous Petitions

V.Munikrishnan

... Petitioner

Versus

1.Union of India,  
Represented by its Secretary to the Government,  
The Ministry of Road Transport & Highways Department,  
Transport Bhavan,  
No.1, Parliament Street,  
New Delhi-110 001.

2.The Chairman,  
National Highways Authority of India,  
G5 & 6 Sector-10, Dwarka,  
New Delhi-110 075.

3.The National Highways Authority of India,  
Regional Office,  
SRI Tower, 3<sup>rd</sup> Floor,  
DP-34, SP Industrial Estate,  
Guindy, Chennai-600 032.

4.The State of Tamil Nadu,  
Represented by the Principal Secretary to the Government,  
Secretariat,  
Chennai-600 009.

... Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, to forbear the respondents from collecting toll fee till lifting lockdown due to CORONA VIRUS OR COVID-19 pandemic.

For Petitioner : Mr.E.Sathiyaraj

For R1 to R3 : Mr.G.Karthikeyan  
Additional Solicitor General

For R4 : Mr.V.Jayaprakash Narayanan  
Government Pleader

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ORDER

This Writ Petition, styled as a Public Interest Litigation, is filed by a resident of Sengadu Post, Cheyyar Post, Thiruvannamalai District. According to the petitioner, he is eking out his livelihood by carrying on agricultural operations. The petitioner would state among other things that COVID-19, is spreading his tentacles all over the world and as a

consequence, almost all the countries, are being affected, on account of the pandemic virus.

2. According to the petitioner, in this country, the first case of Corona Virus was confirmed on 30.01.2020 and insofar as the State of Tamil Nadu is concerned, it was confirmed on 07.03.2020 in Kancheepuram District, through a returnee from the Gulf State of Oman Government.

3. The petitioner would further aware that on account of the announcement of National Wide Lockdown, to prevent the on-spread of the said virus, the respondent took a fair decision, to stop collection of tolls, for a period of 21 days and that has been extended till 03.05.2020. On account of the said lockdown, the farmers and others who are carried out agricultural purposes, could not sell their products due to lack of transportation, and availability of labour and therefore, in areas, where the requirements of vegetables from groceries, are required, the price of the said items had gone up, manifold and people having poor economic background/below poverty line have also been put to extreme hardship and loss.

4.It is the stand of the petitioner that the National Highways Authority of India, by taking advantage of the partial lifting lockdown for movement of the essentials started levying, toll fee once again and adding salt to the wound, it has also increased the percentage of fee.

5.The learned counsel appearing for the petitioner would submit that on account of the hike in collection of toll fee, price of essential items once again got increased very many times and it also affects everybody and therefore, made a plea that till the lockdown is completely lifted the on- set of pandemic virus is completely erased, there shall not be any toll collection and hence, prays for appropriate direction.

6.Mr.G.Karthikeyan, learned Assistant Solicitor General accepts notice on behalf of respondents 1 to 3 and would submit that since the levy of toll is having a statutory backing in the form of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, it is open to the said authority to collect the toll and since it is in the nature of fee, would

further submit that there is a corresponding obligation cast upon the said authority to maintain roads properly and shall ensure free flow of traffic in the tolls located across the State.

7.This Court paid its best attention to the rival submissions and also perused the materials placed before it.

8.2015-4-L.W.98 (Division Bench) in the case of **Govind Chandrasekhar Versus the Union of India, Represented by its Secretary, Ministry of Road Transport and Highways, New Delhi and others**, a Writ Petition was filed as a Public Interest Litigation, forbearing the respondents from collecting Toll Fee at its Toll Plaza Paranur, Chengalpet. The plea of the petitioner therein was that establishment of the said toll plaza was illegal and the collection of toll fee was also exorbitant. The Division Bench, on taking note of the factual submissions as well as the legal position/statutory rules in the form of National Highway Fee (Determination of Rates and Collection) Rules, 2008, as well as the Section 7 of the National Highways Act, 1956, Rules 3, 5 and 11 of National Highways (Fee for the use of

National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997, had found that the petitioner therein did not make a challenge to the notification fixing the rates of toll payable by vehicles crossing the subject toll plaza, but seeks for a blanket relief from this Court, forbearing the respondents from collecting toll fee as its toll plaza at Paranur, Chengalpet and expressed doubt as to whether such a relief sought for by the petitioner, could be granted. This Court also found that the collection of toll fee is having a statutory background and however, if there is a strange incident of any collection of excess toll than the rates prescribed and duly notified, it was well open for the person crossing the toll plaza to bring into the notice of either the concessionaire or NHAI and for such reason, this Court by way of a Public Interest Litigation cannot forbear the respondent from collecting toll fee.

9.In paragraph No.17 of the said decision it was observed that the toll roads have been established throughout the country to ensure smooth flow of traffic at reasonable speeds subject to limitations and for the purpose of such facility, the travelling public is charged. The Division Bench also

reiterated the legal position that toll fee is compensatory in nature and be collected by the State to reimburse itself the amount, it has spent on the construction of the road/bridges etc. However, it cannot be a source of revenue to the State. If that be the case, NHAI is bound to maintain the toll roads to facilitate smooth and safe movement of traffic for which purpose, NHAI has to ensure that all roads leading from town and villages, which have to necessarily access to the toll road/National Highway has to be clearly barricaded and it is essential not only to regulate the flow of traffic, but also to keep the cattle at bay and also issued a direction, directing the NHAI, to clearly barricade the National Highway/toll road and the travelling public in the villages and towns near the National Highway are sensitized not to cross the National Highways except in places designated, as they are putting their life to peril.

10. In the considered opinion of the Court, in the light of the said authoritative pronouncement as to the legal position with regard to collection of toll, the prayer sought for by the petitioner, praying for blanket order of restrain, forbearing the NHAI from collecting the toll cannot be

granted.

11.The learned Assistant Solicitor General appearing for NHAI would also fairly submit as and when any representations is submitted in this regard, the NHAI would definitely consider the said representations in the light of the present factual scenario and take, appropriate action. It has been repeatedly pointed out to the National Highway Authority of India since the toll is in the nature of the, there is an element of quid pro quo on the part of NHAI to maintain the road worthy and all weather condition and NHAI is directed to do the needful and also carryout the directions issued in the above cited decision reported in *2015-4-LW page 98*.

12.In the result, the Writ Petition stands dismissed. If the petitioner is so advised and it is permissible under law, he is at liberty to submit a detailed representation to NHAI to defer the decision to collect the toll till the pandemic virus of COVID-19, is completely erased and as and when such a representation is received, it is open to the NHAI to consider the same on merits and in accordance with law and give a disposal as

expeditiously as possible and communicate the decision taken, to the writ petitioner. Consequently, the connected miscellaneous petitions are closed.

No costs.

(M.S.N.,J) (M.N.K.,J)  
21.04.2020

Internet : Yes

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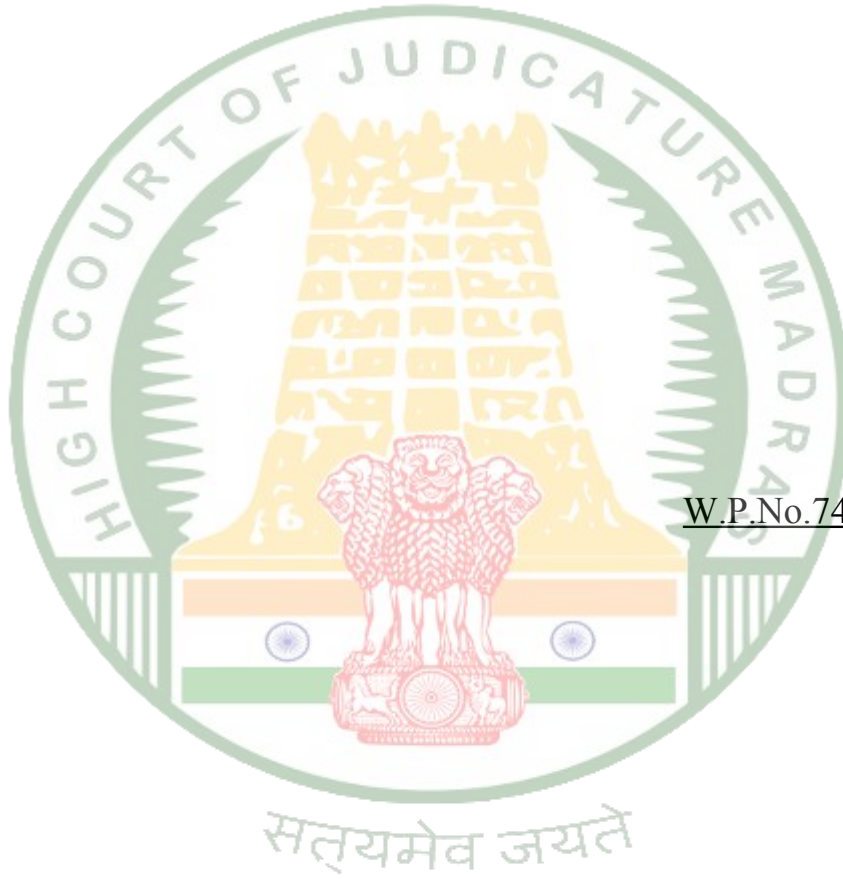
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