



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.08.2019

Pronounced on : 29.05.2020

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

W.P. (MD) .No.20922 of 2017

and W.M.P. (MD) .Nos.17226, 17227 and 17469 of 2017

SP.S.Ilangoo

.. Petitioner

-Vs-

1. The Union of India

Rep. by its Secretary

Ministry of Road Transport and Highways

5th Floor, Transport Bhawan,

1, Sansad Marg, Gokul Nagar,

Sansad Marg Road,

New Delhi - 110 001.

2. The Chairman

National Highways Authority of India

G5 and 6, Sector 10,

Dwaraka

New Delhi - 110 075.

3. The Project Director, PIU,

National Highways Authority of India,

SRI Tower, 3rd Floor,

DP-34, SP Industrial Estate,

Guindy, Chennai - 600 032.

4. M/s. Arunnachala Impex Pvt., Ltd.,

Rep. by its Authorized Representative,

Shenbagampettai Toll Plaza,

Sivaganga District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent Notification in S.O.1807 (E), dated 07.06.2017 and quash the same and consequently direct the respondents to remove the illegally installed Shenbagampettai Toll Plaza in Sivagangai District at National Highway-36.

For Petitioner : Mr.S.I.Muthiah

For Respondents : Mr.K.Asok Kumar Ram for R1
Mr.Arul Vadivel @ Sekar for R2 and R3
Mr.M.R.Elavarasan for R4



ORDER

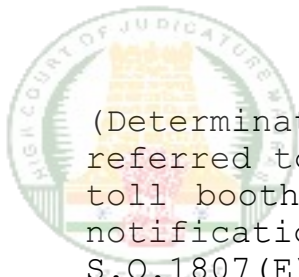
The petitioner has sought for a writ of certiorarified mandamus to call for the records in respect of the first respondent Notification in S.O.1807(E), dated 07.06.2017 and quash the same and direct the respondents to remove the toll plaza at Shenbagampettai in Sivagangai District at National Highway-36.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows :

(i) That the petitioner is a native resident of a village called Sirukoodalpatti at Sivagangai District, which is a very small village, where, he claimed that, there are no shops for getting even essential commodities and therefore for all their needs, the village people have to travel to the nearby developed village called Kilasevalpatti, which is 5.7 Kms away from the petitioner's village and also to go to the nearest town called Tirupattur, which is situated 10 Kms away from his native village.

(ii) In order to move these destinations, which is almost daily or routine movement on the part of the village people belongs to the petitioner's village, they have to travel in the National Highway-36 for few kilometres. After the said National Highway-36 was made to be a toll way, a toll fee collection booth was installed by the third respondent at a place called Shenbagampettai in Sivagangai District. It is to be noted that, the National Highway-36, which was originally the NH-226 is a National Highway starts from Vikravandi and ends at Manamadurai and in order to develop the NH Old No.226 and the New No.36, the stretch between Thanjavur and Manamadurai was taken into account for the development of two lane National Highway. Travelling in every stretch of the Highway is to be calculated and toll would be collected, therefore, in order to collect the toll fee, the third respondent authority already installed a toll collection booth in Old Kandarovakottai between Thanjavur and Pudukkottai sector and between Pudukkottai and Manamadurai sector, they wanted to establish a toll collection booth which they placed at Shenbagampettai.

(iii) It is the further case of the petitioner that, even for daily needs, the people belongs to his village since move towards the nearby village called Kilasevalpatti for purchase of essential items, they have to cross the Shenbagampettai toll booth where the toll is calculated for the entire stretch of the NH between Pudukkottai and Manamadurai sector. The petitioner also points out that, between Pudukkottai and Manamadurai, already a toll fee collection booth was established by the third respondent at Lembalakudi, i.e., beyond Pudukkottai towards Manamadurai in Old NH 226 and the New NH 36 and within a distance of 23 Kms, the second toll booth at Shenbagampettai since has been established, it is the direct violation of the provisions of National Highways Fee



(Determination of Rates and Collection) Rules 2008 (herein after referred to as " the Fee Rules 2008"). Therefore the Shenbagampettai toll booth should not have been placed and therefore the impugned notification issued by the first respondent, dated 07.06.2017 in S.O.1807(E) has to be quashed.

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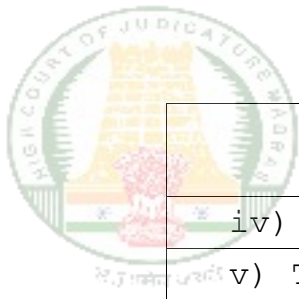
(iv) That apart, the petitioner also submits that, the local residents, i.e., the villagers of the petitioner's village and nearby area though travel only a few kilometres in the NH stretch for their daily needs, have to unnecessarily pay the entire toll fee for the whole stretch of NH 36, i.e., between Manamadurai and Pudukkottai therefore there is no *quid pro quo* attached with the said toll booth for the purpose of collecting the toll fee from the local residents, therefore on that ground also, the said toll booth installed at Shenbagampettai has to be removed, therefore the impugned notification paving the way for installation of such toll booth at Shenbagampettai has to be quashed.

3. On notice, counter affidavit have been filed on behalf of respondents 1, 2 and 3 by the third respondent and in this regard, the Deputy General Manager (Technical)-cum-Project Director, National Highways Authority of India, Project Implementation Unit, Madurai holding additional charge of Project Implementation Unit, Karaikudi has filed counter affidavit and additional counter affidavit on behalf of respondents 1, 2 and 3.

4. In the counter filed on behalf of the respondents, the third respondent has stated that, the National Highways Authority of India (herein after referred to as "the NHAI") mandated to develop the old National Highways 210, i.e., Tiruchirapalli - Karaikudi section from Km.10/000 to Km.91/054 and Old National Highways 226, i.e., Thanjavur-Manamadurai sector which was bifurcated into two packages, i.e., Thanjavur - Pudukkottai section from Km.0/000 to Km.55/228 (Total 55.228 Kms) and Thirumayam - Manamadurai section from Km.77/200 to Km.154/929 (Total 77.729 Kms) with two lane with paved shoulders.

5. The counter affidavit further stated that, the Tiruchirapalli - Karaikudi Old NH 210 is traversing in Tiruchirapalli, Pudukkotai and Sivagangai Districts, the Thanjavur - Manamadurai Old NH 226 is traversing in Thanjavur, Pudukkottai and Sivagangai Districts. These two National Highways have been assigned new National Highway numbers as indicated below :

Name of Stretch	Old NH No.	New NH No.
i) Pudukkottai - Tiruchirapalli	210	336
ii) Thirumayam - Ramanathapuram	210	536
iii) Thanjavur - Pudukkottai	226	36



Name of Stretch	Old NH No.	New NH No.
iv) Pudukkottai - Thirumayam	210 / 226*	36
v) Thirumayam - Manamadurai	226	36

* Old NH 210 overlapping with the stretch of NH 226

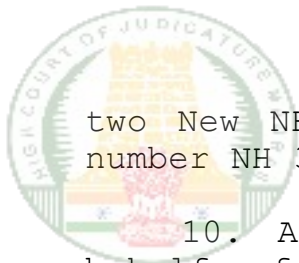
6. The counter further stated that, user fee collection centres (Toll Plazas) are functioning at the following locations :

a. Lechchumanapatti Toll Plaza at Km.19/000 of NH 210 / 336	In the Pudukkottai - Tiruchirappalli section mentioned in Sl.No.(i) above.
b. Lembalakudi Toll Plaza at Km.57/317 of Old NH 210/36	In the Thirumayam - Ramanathapuram (Trichy - Karaikudi section) mentioned in Sl.No.(ii) above
c. Palaya Gandharvakottai Toll Plaza at Km. 16/095 of Old NH 226/36	In the Thanjavur - Pudukkottai section mentioned in Sl.No.(iii) above
d. Shenbegampattai Toll Plaza at Km.92/957 of Old NH 226/36	In the above Thirumayam - Manamadurai section mentioned in Sl.No.(v) above.

7. It is the further contention of the respondents that, since the Pudukkottai - Thirumayam section of Old NH 210 is the overlapping section of Old NH 226, this section since has already been taken into consideration for user fee collection for Tiruchirappalli - Karaikudi Old NH 210 section, the toll booth has already been established at Lembalakudi in Pudukkottai-Thirumayam section for the purpose of NH 210 from Pudukkottai to Karaikudi. In so far as the Old NH 226 / the present NH 36, is concerned, the Pudukkottai-Thirumayam section has not been considered for user fee collection of Old NH 226 / New NH 36 Thirumayam - Manamadurai section.

8. It is further stated in the counter that, Shenbagapettai Toll plaza in the Thirumayam - Manamadurai section has been constructed in accordance with the location finalised by the experts in the detailed project report and as per contract agreement.

9. It is the further contention of the respondents that, the Pudukkottai - Thirumayam section is not in the Thirumayam - Manamadurai section of NH 226, i.e., New NH 36. It is further contended that, the New National Highways number has been assigned as per the Notification in S.O.542(E), dated 05.03.2010 published in the Gazette of India No.457, accordingly NH 210 has been assigned



two New NH numbers, like that NH 226 also has been assigned New number NH 36.

10. An additional counter affidavit also has been filed on behalf of the respondents, where, they have stated that, the Tiruchirappalli - Karaikudi, Old NH 210 is consisting of New NH 336, 36, 536, traversing in Tiruchirappalli, Pudukkottai and Sivagangai Districts. Therefore according to the respondents, the toll plaza put up at Lembalakudi is meant for Old NH 210 and the toll plaza in Shenbagampettai is meant for NH Old 226, New 36. Therefore the allegation made or the grounds of challenge of the petitioner that, the installation of toll plaza at Shenbagampettai is in violation of the Fee Rules 2008 especially under Rule 8(2) and therefore the said notification which is impugned herein has to be quashed, cannot be sustained, as the respondents have not violated the provisions made under the Fee Rules, especially Rule 8, particularly Rule 8(2) and therefore the writ petition is deserved to be rejected, they contended.

11. I have heard Mr.S.I.Muthiah, learned counsel appearing for the petitioner and Mr.K.Asok Kumar Ram, learned counsel appearing for R1, Mr.Arul Vadivel @ Sekar, learned Standing counsel appearing for R2 and R3 and Mr.M.R.Elavarasan, learned counsel for R4.

12. Though the prayer sought for in the writ petition as an adversary writ petition is that, the notification which is impugned herein dated 07.06.2017 issued by the first respondent for the establishment of Shenbagampettai toll plaza in Sivagangai District at NH 36 to be quashed in toto, this Court, in order to evaluate and consider the plea raised by the petitioner, in the context of the Fee Rules as well as the factual matrix, had directed the Standing counsel for second and third respondents to file a detailed counter explaining the position as to what is the exact length of Old NH 226 and its starting point as well as the ending point, like that, the exact length of Old NH 210, its starting point and ending point as well the toll plazas already installed and its operation.

13. Accordingly the aforesaid counter and additional counter affidavits have been filed, along with a rough sketch on behalf of the respondents, by the learned standing counsel for the second and third respondents.

14. Before going into the factual matrix as well as the merits claimed by the petitioner and the counter case projected by the respondents, the legal position on the issue raised in this writ petition has to be first gone into.

15. The National Highways Act, 1956 (Act No.48 of 1956) (herein after referred to as "the Act") is to provide for the declaration of certain highways to be National Highways and for matters connected



there with. Mainly the Act deals with the power of the Central Government to acquire land for the purpose of National Highways projects. The modus operandi of the land acquisition proceedings, the compensation to be determined and to be paid are the major areas dealt with under the Act. Under Section 4 of the Act, all National Highways shall vest in the Union Government. The responsibility for development and maintenance of National Highways rest with the Central Government under Section 5 of the Act.

16. Under Section 7, Fee for services or benefits rendered on National Highways can be levied by the Central Government at such rate as may be laid down by rules made in this behalf.

17. Section 9 gives power to the Central Government to make rules. Section 9(2) (b) reads that, rules can be framed on the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway may be levied and the manner in which such fee shall be collected under Section 7. Therefore this is one of the area where Central Government can frame rules under Section 9 of the Act.

18. Under the said power provided under Section 9 of the Act, the Central Government framed rules called National Highways Fee (Determination of Rates and Collection) Rules 2008, which we already called as "the Fee Rules 2008".

19. Under Rule 3, Central Government may by notification, levy fee for use of any section of national highway, permanent bridge, bypass or tunnel forming part of the National Highways. What shall be the rate of fee to be determined has been spelt at rule 4 under the heading "Base rate of fee". The base rate is based on the base year 2007-08, where under Rule 4(2), the following table has been given as base rate :

Type of Vehicle	Base rate of fee per km (in Rupees)
Car, Jeep, Van or Light Motor Vehicle	0.65
Light Commercial vehicle, Light Goods Vehicle or Mini Bus	1.05
Bus or Truck	2.20
Heavy Construction Machinery (HCM) or Earth Moving Equipment (EME) or Multi Axie Vehicle (MAV) (three to six axies)	3.45
Oversized Vehicles (seven or more axles)	4.20



20. What shall be the amount to be calculated from the base rate for a National Highway having two lanes is mentioned at sub-rule 3 of Rule 4 which reads as :

"(3) The rate of fee for use of a section of national highway, having two lanes and on which the average investment for up gradation has exceeded Rupees one crore per kilometer, shall be sixty per cent, of the rate of fee specified under sub-rule (2) of rule 4."

21. Under Rule 5, the rates specified under rule 4 shall be increased without compounding, by three per cent, each year with effect from the first day of April 2008. Under Rule 6, it become obligatory for every driver, owner or person incharge of a mechanical vehicle for the use of section of National Highway, permanent bridge, bypass or tunnel to pay the specified fee before they cross the toll plaza. Therefore that is how the Central Government under the Fee Rules 2008, fixes the toll fee to be calculated and the same shall become mandatory to be paid by every mechanical vehicle's driver, owner or person incharge of the vehicle before they crosses the toll plaza. What shall be the rate to be prescribed is mentioned under the Rule, i.e., Rule 4(2) as well as Rule 4(3) and the collection of fee is at Rule 6. In the said Fee Rules 2008 under the heading "Location of toll plaza", which is the relevant rule for the issue raised in this writ petition, the following has been provided :

"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 kilometres 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 kilometres of such municipal or local town area limits, but in no case within five kilometres 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 kilometres 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 kilometres from such limits.

(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



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 kilometres:

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

22. Therefore according to rule 8, either the executing authority or the concessionaire (contractor) can establish a toll plaza beyond 10 kilometres from a municipal or local town area, which means within 10 kilometres of local municipal area, no toll plaza shall be established. However there are two provisos to rule 8 (1), which gives exemption that under what circumstances such kind of toll plazas can be established within the municipal limits, i.e., within the 10 kilometres barrier.

23. That in so far as the toll plazas mentioned in this writ petition especially under the impugned communication since these toll plazas are not located in municipal area or there is no controversy as to whether those toll plazas have been located within the municipal area violating rule 8(1), the controversy not rests with rule 8(1).

24. However the exact controversy raised in this writ petition as to whether the respondents 1 to 3 can have toll plaza at Shenbagampettai when they already having a toll plaza in Lembalakudi as in between these two places, it is only 23 kilometres and if such toll plazas are located within the stretch of 23 kilometres, will it be justifiable or it is violating the mandatory provision under rule 8(2) of the rule is the question answered to be in this regard.

25. To delve into the matter further, let us see what has been exactly provided under rule 8(2). Sub-rule (2) of Rule 8, as has been quoted above, makes it clear that, once a toll plaza is fixed or installed in a National Highway, any other toll plaza on the same section of National Highways and in the same direction shall not be established within a distance of 60 kilometres. The meaning conveyed here is very clear and unambiguous as in the same section of the National Highway and towards the same direction in between two toll plazas, there must be a distance 60 kilometres, within which, no further or other toll plaza can be established. However, there are two provisos to rule 8(2) are provided here.

26. The first proviso to rule 8(2) is that, the executing authority, for reasons to be recorded in writing, can establish or allow the Concessionaire to establish another toll plaza within a distance of 60 kilometres. The second proviso is, the second toll plaza within the same section on same direction can be established



within 60 kilometres from the already existing toll plaza, provided, the second one shall be for the purpose of collection of fee for the permanent bridge, bypass or tunnel. Therefore under the first proviso to rule 8(2), a second toll plaza within 60 kilometres can also be established by the executing authority for the reasons to be recorded in writing. The second proviso is, for the purpose of collecting fee for a permanent bridge, bypass or tunnel, the second toll plaza can very well be established within the 60 kilometres distance. Therefore except these two provisos, no other justification can be given for establishment of the second toll plaza in a same section of National Highways and in the same direction in violation of rule 8(2) as stated above.

27. With the teeth of these legal provision, especially the rule position, whether the toll plaza established at Shenbagampettai as per the impugned notification is justified or not can be gone into.

28. In this context, it is the case of the respondents that, there are two Highways involved in the issue. One is old National Highway NH 210 and another one is NH 226. The old NH 210 is from Tiruchirappalli to Karaikudi and the old NH 226 is from Vikaravandi to Manamadurai. Both the National Highways meet at Pudukkottai in Pudukkottai District and thereafter it takes diversion beyond the point called Thirumayam. Therefore the stretch between Pudukkottai and Thirumayam roughly about 23 kilometres or less is the stretch where both the Highways, i.e., 210 and 226 are overlapping.

29. In view of this overlapping, since the NH 210 was already established between Tiruchirappalli and Karaikudi, the overlapping stretch of 22 or 23 kilometres between Pudukkottai and Thirumayam was considered to be part of NH 210 and accordingly, the toll booth was established at kilometre 57.317 in a place called Lembalakudi in Pudukkottai District apart from the toll plaza at kilometre 19 in Lachumananpettai in Pudukkottai District. According to the respondents, these two toll booths are taking care of the toll fee collection for the entire stretch of NH 210 running between Tiruchirappalli and Karaikudi.

30. In this context, it is the further case of the respondents that, NH 226 though starts from Vikravandi and ends at Manamadurai, the present work undertaken by the respondents is only related to the stretch between Thanjavur - Manamadurai, where the road laying work completed and it has been put in usage. The stretch of Thanjavur - Manamadurai in Old NH 226 has been divided into two, which are, according to the respondents, Thanjavur - Pudukkottai is one sector, Thirumayam - Manamadurai is another sector. In so far as Thanjavur - Pudukkottai, a toll booth is already established at Pazhaya (Old) Kandarvakottai, km 16/095 of Old NH 226. Like that,



plaza which is impugned herein at Shenbagampettai was established at Km 92/957 @ Old NH 226.

31. It is to be noted that, in these two toll plazas, the stretch between Pudukkottai and Thirumayam has not been taken into account, as the same was already taken into account in Old NH 210, i.e., Tiruchirappalli - Karaikudi sector. Since the toll plaza at Lembalakudi in NH 210 has already been established before the establishment of toll plaza at Shenbagampettai in NH 226, the location was not changed and the toll fee collected at Lembalakudi toll plaza is meant for toll to be paid by the motorist for travelling the NH 210 in Pudukkottai - Karaikudi sector and therefore the petitioner cannot have any grievance in having located the toll plaza at Shenbagampettai at Old NH 226 for the stretch between Thirumayam and Manamadurai, the respondents contended.

32. The aforesaid justification or reason given by the respondents / NHAI appears to be impressive, but factually this Court finds that, the respondents / NHAI has made a mistake. In order to point out the same, let us proceed further to identify the grey area where the mistake has been committed.

33. As has been claimed by the respondents in their counter affidavit, in the year 2010 itself, by issuing notification in S.O.542(E), dated 05.03.2010, the Central Government has substituted the schedule to the National Highways Act, 1956. Section 2 of the Act reads thus :

2. Declaration of certain highways to be national highways.-(1) Each of the highways specified in the Schedule 2 is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway."

34. Under Section 2, therefore, the Central Government is empowered to declare a Highway to be a National Highway and those declared National Highways are to be included in the schedule appended to the Act, which is made under Section 2. Accordingly, the schedule already been provided by the Central Government under Section 2 has been revisited and a new schedule has been substituted under Notification No.542(E), dated 05.03.2010, where a number of National Highways have been either renamed or renumbered. In this context, the relevant portion of the Notification 542(E) are



extracted hereunder for ready reference and easy understanding of the issue :

"Ministry of Road Transport and Highways
Notification

New Delhi, the 5th March, 2010

S.O.542(E) - In exercise of the powers conferred by sub-section (2) and (3) of Section 2 of the National Highways Act, 1956 (48 of 1956), the Central Government hereby substitutes the following Schedule for the Schedule to the National Highways Act, 1956, namely -

Sl.N o.	Proposed New NH No.	Description of National Highways
125	36	The highway starting from its junction with NH-132 near Vikravandi, Panruti Vadalur, Neyveli-Township, Sethiathop, Kumbakonam, Thanjavur, Gandarvakottai, Pudukottai, Thirumayam, Kilasevalpatti, Tirupattur, Madagupatti, Shivganga and terminating at its junction with NH-87 near Manamadurai in the State of Tamil Nadu.
...	...	...
127	336	The highway starting from its junction with NH-36 near Pudukkottai connecting Kiranur and terminating at its junction with NH-83 near Tiruchirappalli in the State of Tamil Nadu.
128	536	The highway starting from its junction with NH-36 near Thirumayam connecting Devakottai, Tiruvadana and terminating at its junction with NH-87 near Ramanathapuram in the State of Tamil Nadu.

35. Pursuant to the S.O.542(E) notification, the Government of India has issued letters to all concerned including the NHAI on 28.04.2010 to renumber the National Highways and the said letter is extracted hereunder :

Government of India
Ministry of Road Transport and Highways
(P&M Section)

Transport Bhawan,
No.1, Parliament Street,
New Delhi.

No.NH-14019/9/2007-P&M Dated the 28th April, 2010
To

1. The Secretary, PWD, all States / Union Territories,
2. The Chairman, NHAI, G-5&6, Sector-10, Dwarka, New Delhi - 45,



3. Border Road Organisation,
4. Regional Officer (NH) of all States / Union Territories.

Sub : - Rationalization of Numbering Systems of National Highways.

Sir,

I am directed to forward a copy of Notification S.O.542(E) published on 05.03.2010 in part II, Section 3, Sub-section (ii) in the Gazette of India, Extraordinary and to say that existing number of National highway does not give any indication of its location and direction. Therefore, Ministry has adopted a systematic numbering of National Highways vide above said notification. It will indicate the direction of National Highways whether it is East-West or North-South and also the geographical region where it is located.

It is, therefore, requested to re-number the National Highway in place of existing number of National Highway for its proper location.

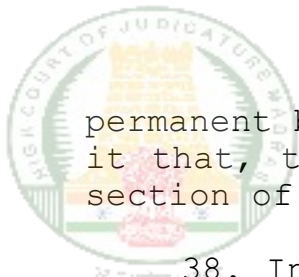
Enclos. As above

Yours faithfully,
(Poornima Rajendran)

Under Secretary to the Govt. of India
Tel.No.23711472

36. Therefore it is to be noted that, pursuant to the substitution of schedule under Section 2 of the Act by issuance of S.O.542(E), dated 05.03.2010, some of the National Highways are renamed and the renaming of the National Highways shall be given effect to immediately as directed by the Central Government by their letter, dated 28.04.2010. In the said substituted schedule, in Sl.No.125 as extracted above, the Old NH 226, i.e., the National Highway between Vikravandi and Manamadurai has been renamed as NH 36. Like that, Old NH 210 runs between Tiruchirappalli and Karaikudi has been divided into two. Accordingly, in Sl.No.127, the NH, i.e., part of Old NH 210 from Pudukkottai to Tiruchirappalli or Tiruchirappalli to Pudukkottai connecting Kiranur is renamed as NH 336. Like that, in Sl.No.128, the NH starting from Thirumayam connecting Devakottai etc., i.e., the Thirumayam - Karaikudi sector of Old NH 210 has been renamed as NH 536. Therefore from 05.03.2010, there is no National Highway called 226 or 210. The actual National Highways are 36 instead of 226, 336 and 536 instead of 210.

37. In this context, it is further to be noted that, the fee can be levied under Section 3 of the Fee Rules 2008 for any section of National Highways or permanent bridge or bypass or tunnel forming part of the National Highways. Here in the case in hand, there is no controversy as to whether the toll has been prescribed for any



permanent bridge, bypass or tunnel separately. Therefore we can take it that, the toll fixed and the toll plaza established is only for section of the National Highways.

38. In the counter affidavit, the respondents have stated that, the Pudukkottai - Tiruchirappalli stretch of Old NH 210 was renamed as NH 336, like that Thirumayam - Ramanathapuram stretch of NH 210 was renamed as NH 536, in which, the entire Old NH 210 running from Tiruchirappalli to Karaikudi, which was originally called as NH 210 includes. Like that, the stretch of Pudukkottai and Thirumayam originally was part of NH 210 was renamed as 36 and Thirumayam-Manamadurai sector of Old NH 226 also was renamed as NH 36. Therefore from 05.03.2010, the NH 36 starts from Vikravandi ends at Manamadurai, within which the Highways section of Thanjavur and Pudukkottai and Pudukkottai and Manamadurai are two separate sections. Like that, the stretch of Old NH 210 between Pudukkottai and Tiruchirappalli is the new NH 336. Like that, the Thirumayam and Ramanathapuram stretch in Old 210 is the new Highway called NH 536. Therefore the stretch between Pudukkottai and Thirumayam roughly about 23 kilometres the controversial stretch, from 05.03.2010 has become part of NH 36 and is not in either Old NH 210 or New NH 336 nor New NH 536.

39. In so far as the Old NH 210 and New NH 336, i.e., between Pudukkottai and Tiruchirappalli, there is already a toll plaza at Lachumananpettai, this is agreed by the respondents. Like that, the stretch between Thanjavur and Pudukkottai in Old NH 226 and the present NH 36, there is a toll plaza at Pazhaya Kandarvakottai, this is also accepted by the respondents.

40. Now there are two sectors remaining, one is that between Pudukkottai and Manamadurai in NH 36 and another one is between Thirumayam and Karaikudi or beyond that up to Ramanathapuram is another stretch which is called New NH 536.

41. Therefore it become very clear that, the stretch between Pudukkottai and Thirumayam does not fall either under Old NH 210 any more or under New NH 336 or New NH 536 after 05.03.2010 notification, instead, it does fall under Old NH 226, i.e., New NH 36.

42. Therefore if at all any toll plaza has to be fixed or installed in the completed two lane NH of Old NH 226 and present NH 36 between Thanjavur and Manamadurai, the entire stretch has to be taken into account and accordingly, toll plazas can be fixed of course without violating rule 8, especially in the context of rule 8(2).

43. In this context with the aforesaid facts, the import of rule 8(2), if it is applied to the present case, the first embargo for the respondents is that, once the toll plaza is established, any



other toll plaza on the same section of National Highways and in the same direction shall not be established within a distance of 60 kilometres.

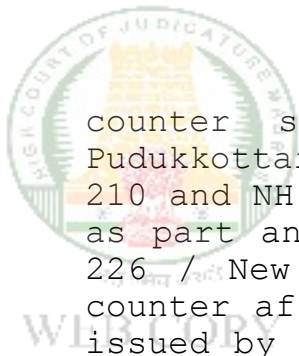
44. Part of the NH 36, i.e., Thanjavur-Manamadurai or the stretch of Thanjavur-Manamadurai in NH 36, since has been divided into two sections, i.e., between Thanjavur and Pudukkottai and Pudukkottai and Manamadurai, the toll plaza fixed at Pazhaya Kandarakottai is taking care of the stretch of NH 36 starting from Thanjavur point up to Pudukkottai. Suppose the respondents want to establish another toll plaza for the remaining stretch of NH 36 up to Manamadurai, they can very well have a toll plaza anywhere in the remaining stretch of NH 36 ofcourse following the rule 8(2). That means, the toll plaza has to be fixed beyond 60 kilometres from the Pazhaya Kandarakottai toll plaza in NH 36 for the collection of toll fee for the remaining stretch of NH 36 up to Manamadurai.

45. Here in the case in hand, they fixed Shenbagampettai as the point for establishment of another toll plaza for the purpose of NH 36. The toll plaza at Pazhaya Kandarakottai according to the respondents is fixed at Kilometre 16 and the Shenbagampettai toll plaza is fixed at Kilometre 92 at NH 36, there is 60 kilometre distance available in between. Assuming that, if the Thanjavur-Pudukkottai sector is one section of the NH 36 and Pudukkottai-Manamadurai sector is another section of the NH 36, we cannot term the Shenbagampettai toll plaza situated at Kilometre 92 as the additional or second toll booth in the same section of Highway and therefore technically the Shenbagampettai toll plaza cannot be construed as a toll plaza established in violation of rule 8(2) calculating from the toll plaza at Pazhaya Kandarakottai as both are located at NH 36.

46. However, the mistake or the error committed by the respondents / NHA is not at Shenbagampettai, taking into account the Pazhaya Kandarakottai toll plaza, but it is the mistake committed by the NHA at Shenbagampettai, taking into account the Lembalakudi toll plaza.

47. As we have already pointed out, the Lembalakudi toll plaza is situated at a stretch between Pudukkottai and Thirumayam. It is very pertinent to be noted that, sector of Pudukkottai and Thirumayam is no longer part of Old NH 210, after Notification, dated 05.03.2010, as it become part and parcel of Old NH 226 and New NH 36. This is what exactly done in the schedule as mentioned above in Sl.No.125, where the National Highway starting from junction near Vikravandi at NH 132 ends at or terminating at Manamadurai in NH 87 is New NH 36. Therefore the entire NH 36 runs between Vikravandi and Manamadurai, in between no other NH is crossing.

<https://hcservices.courts.gov.in/hcservices/> 18. It is only for the defence stake, the NHA has filed



counter stating that, the stretch of about 23 kms between Pudukkottai and Thirumayam is overlapping between NH 210 and NH 226 old numbers, therefore it was taken into account only as part and parcel of NH 210 and not as part and parcel of Old NH 226 / New NH 36. This defence taken by the respondents in their counter affidavit is in utter or complete violation of the schedule issued by the Central Government under its Notification S.O.542(E), dated 05.03.2010, where the stretch between Pudukkottai and Thirumayam has become part and parcel of New NH 36, i.e., Old NH 226.

49. Therefore while establishing the toll plazas in the stretch between Pudukkottai and Manamadurai in National Highway NH 36, the respondents / NHAI should have strictly adhered to the restrictions imposed by rule 8(2). The Pudukkottai - Manamadurai is only a section of Highway and in that stretch, if at all the respondents want to establish two toll booths, rule 8(2) should have been strictly complied with.

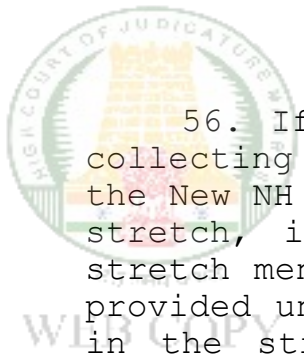
50. Here in the case in hand, what exactly happened is that, the respondents NHAI while establishing a new toll booth at Shenbagampettai also wanted to retain the old toll booth at Lembalakudi, in between these toll booths only 23 kilometres is the distance, in the very same NH 36 and in the very same direction, therefore, it become obvious that, the fixation of Shenbagampettai toll booth is certainly in violation of rule 8(2).

51. It may be argued on behalf of the respondents that, the two provisos provided under rule 8(2) may save both the toll booths, i.e., Lembalakudi as well as Shenbagampettai.

52. However the fact remains that, the second proviso is no way related to the issue as it speaks about the toll booth specifically for permanent bridge, bypass or tunnel.

53. Assuming that, under the first proviso, they can take shelter, which means the executing authority for reasons to be recorded in writing, can establish another toll plaza within the distance of 60 Kilometres is concerned, no such reasons in writing has been recorded by the NHAI at the time of establishment of Shenbagampettai toll plaza, as nothing by way of records to that effect produced before this Court.

54. In order to appreciate further and to have a better understanding as to how the respondents / NHAI have committed the mistake in retaining the Lembalakudi toll plaza still in the stretch between Pudukkottai and Thirumayan at NH 36 for collecting the toll fee for motorists who travel in NH 536 despite the fact that the said stretch of NH 36, i.e., between Pudukkottai and Thirumayam has already become part and parcel of NH 36 as per S.O.542 (E), dated



56. If at all, the NHAI wanted to establish a toll plaza for collecting toll between Thirumayam and Karaikudi or beyond that, in the New NH 536, they can establish any number of toll plazas in that stretch, i.e., between Thirumayam and Ramanathapuram, which is a stretch mentioned in New NH 536, of course within the parameters as provided under rule 8. Therefore for the purpose of collecting toll in the stretch from Pudukkottai onwards up to Thirumayam or beyond that, up to Karaikudi or beyond that up to Ramanathapuram in New NH 536, the NHAI cannot have a toll plaza in the stretch of 23 Kilometres between Pudukkottai and Thirumayam, as the same has already been made part and parcel of New NH 36. Therefore the Lembalakudi toll plaza admittedly established and continues to be in operation for the purpose of Old NH 210 and New NH 536 is completely unauthorised and therefore it has to be relocated.

57. Otherwise if the NHAI wants to retain both Lembalakudi toll plaza as well as Shenbagampettai toll plaza, they must come forward with rectification, of course with reasons to be recorded in writing in consonance with rule 8(2) first proviso by stating that, since the Lembalakudi toll plaza has already been established and Shenbagampettai toll plaza also has been established as per the spot fixed by the experts while finalising the stretch between Thirumayam and Manamadurai in Old NH 226 / New NH 36, they can retain both toll plazas. However they must revise the rate of toll by taking the Kilometres into account between Pudukkottai and Manamadurai in NH 36 and accordingly, the toll fee to be collected can be evenly distributed between these two toll plazas by entering into a new agreement if the concessionaire are there or the NHAI can on their own refix the toll fee. Otherwise the retaining of these two toll plazas both at Lembalakudi and at Shenbagampettai within the distance of 23 Kilometres in the very same NH 36 and in the very same Highways section and direction with larger toll fee is certainly violative of rule 8(2) and therefore this Court is of the view that, certain directions can be issued to the respondents, to rectify these mistakes within a time frame, otherwise the toll plaza at Lembalakudi shall be replaced or be closed.

58. In so far as the claim made by the petitioner herein that, he is the local resident and every time, he has to cross the Shenbagampettai toll plaza even for local needs, are concerned, the monthly pass proviso is already available and the same can be utilized by the petitioner. Therefore in order to redress his grievance, since there is already a provision for providing the monthly pass, the said grievance of the petitioner cannot be a reason for deciding the issue raised in this writ petition for quashment of the impugned Notification establishing Shenbagampettai toll plaza in NH 36.

59. However, for other reasons which have been discussed in detail in the foregoing paragraphs, this Court is inclined to pass the following orders in this writ petition :



(i) that the respondents 1 to 3 are hereby directed to come out with a revised notification by giving reasons in writing under first proviso to Rule 8(2) of National Highways Fee (Determination of Rates and Collection) Rules, 2008 for retaining the toll plaza both at Lembalakudi and at Shenbagampettai both located in NH 36 and accordingly revise the toll fee by taking into account the stretch / distance / kilometres between Pudukkottai and Manamadurai sector in NH 36 by correspondingly distribute or fix the toll fee, taking into account the actual kilometres or stretch, i.e., Pudukkottai and Thirumayam and Thirumayam and Manamadurai for collection of actual toll liable to be collected from the motorist who use the National Highways 36 in that sector.

(ii) In so far as the collection of toll fee in NH 536, i.e., between Thirumayam and Ramanathapuram, it is for the NHAI to establish necessary toll plazas in that stretch or section of NH 536 accordingly.

(iii) The aforesaid directives shall be undertaken by the respondents 1 to 3 within a period of 60 days from the date of receipt of a copy of this order, failing which at the end of the 60th day, the toll plaza at Lembalakudi in NH 36 shall be construed as an unauthorised toll plaza, since the collection of toll fee for Old NH 210 cannot be made possible in a toll plaza fixed at the present NH 36, as it violates rule 8 (2) of the Fee Rules 2008.

60. With the aforesaid directions and observations, this writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are closed.

61. For Reporting compliance of the aforesaid directions made in para 59, the Registry is directed to list this writ petition in the **first week of September 2020**.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsvn

ENCL : XEROX COPY OF CLEAR IMAGE OF ROUGH SKETCH.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Secretary
Union of India
Ministry of Road Transport and Highways
5th Floor, Transport Bhawan,
1, Sansad Marg, Gokul Nagar,
Sansad Marg Road,
New Delhi - 110 001.

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

3. The Project Director, PIU,
National Highways Authority of India,
SRI Tower, 3rd Floor,
DP-34, SP Industrial Estate,
Guindy, Chennai - 600 032.

4. M/s. Arunnachala Impex Pvt., Ltd.,
Rep. by its Authorized Representative,
Shenbagampettai Toll Plaza,
Sivaganga District.

Copy to: The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.ARULVADIVEL SEKAR, Advocate (SR-12992[F] dated
01/06/2020)

Order
in
W.P. (MD) .No.20922 of 2017
29.05.2020

KK/09.06.2020/ 19P- 7C