

.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.03.2021

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Rev.Application No.37 of 2021

in

W.P.No.33323 of 2019

- 1.The Chairman,
National Highways Authority of India,
G-5 and 6 Sector, 10, Dwarka,
New Delhi 110 015.
- 2.The General Manager, Public Grievances,
National Highways Authority of India,
New Delhi 110 015.
- 3.The Chief General Manager-cum-Regional Officer,
National Highways Authority of India,
Sri Towers, 3rd floor,
DP-34, South Phase,
Industrial Estate,
Guindy, Chennai 600 032.
- 4.The Project Officer,
National Highways Authority of India,
Sri Towers, 3rd Floor,
DP-34, South Phase,

Industrial Estate,
Guindy, Chennai 600 032.

...Petitioners

Vs

- 1.The Government of India.
Rep.by its Secretary,
Transport Bhavan, Parliament House,
New Delhi 110 001.
- 2.The Secretary to Government of Tamil Nadu
Highways Department,
Secretariat Colony, St.George Fort,
Chennai 600 009.
- 3.Essel Walajahpet Poonamallee Tolls Road Pvt.Ltd
(EWPTRPL),
No.513, V-Floor, Kilor Road Off: LBS Marg,
Kural (W) Mumbai-70 and
NH-4, KM, 37/800, Nemili Village,
Near Sriperumbudur,
Kancheepuram District 602 105.
- 4.The Commissioner,
Greater Corporation of Chennai,
Rippon Building, Chennai 600 003.
- 5.The Additional Commissioner of Police,
Traffic, Greater Chennai City Police,
Veppery, Chennai 600 007.

...Respondents

PRAYER :-Review Petition filed under Order XLVII read with Section 114 C.P.C against the order dated 22.01.2021 passed in W.P.No.33323/2019 (suo Motu PIL) in light of the NH Fee Rule 2008 (as amended in 2013) in

so far as it relates to the direction to the NHAI to collect only 50% of the user fee in respect of Nemili and Chennasamudram User Fee Plazas of NH-4 and permit NHAI to collect the user fee at the applicable rates as it existed prior to the reduction by 50% as per the orders of this Court.

For Petitioner : Mr.G.Karthikeyan
Additional Solicitor General
For RR4 : Mr.K.Raja Srinivas
Standing Counsel

ORDER

[Order of the Court was delivered by M.SATHYANARAYANAN, J.,]

The present Review Petition is filed to review the order dated 22.01.2021, as to the first proviso to Rule 2(ii)(b) of National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013 and it is relevant to extract the same:

"1.Short title and Commencement-(1) These rules may be called the National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013.

(2) They shall come into force on the date of their publication in the official Gazette.

2. In the National Highways Fee (Determination of Rates and collection) Rules, 2008 (hereinafter referred to as the Principal rules)-

(a) in rule 3, sub-rule (3) shall be omitted;

(b) in rule 4 of the Principal rules-

(i) Sub-rules (3) and (4) shall be omitted;

(ii) in sub-rule (6), after the proviso, the following shall be inserted, namely:-

"Provided further that in case of a section of a four-lane highway which has been taken up for upgradation to six-laning, the increase in rate of fee shall be limited to seventy-five percent of the fee as specified in sub-rule (2) and revised under rule 5 calculated on and from the date of commencement of the work relating to upgradation, till the date of completion of the project according to the agreement entered into with the concessionaire without any annual revision:....."

2. Mr.G.Karthikeyan, learned Assistant Solicitor General of India appearing for the review applicants / respondents 2, 3, 4 and 6 has drawn the attention of this Court to the order dated 22.01.2021 made in W.P.No.33323 of 2019 (suo motu PIL) and would submit that in the light of the said rule position, the above cited order results in grave hardship and financial loss and the Government Entity is incurring loss of Rs.16,29,289/- per day, due to reduction of user fee by 15% as per the above said orders.

3.This Court paid it's anxious consideration and best attention to the arguments advanced by the learned Assistant Solicitor General of India appearing for the petitioner and also perused the orders.

4. It is pertinent to point out at this juncture that the order dated 22.01.2021, is in continuation and in conjuncture with the series of earlier orders and along with some of the orders, photographs of the condition of the roads had also been enclosed. This Court has noted with anguish that the National Highways Authority of India, who is the premier agency for construction and maintenance of all weather road, is not even in a position to maintain the road in question and it is full of pot holes and craters without any signages / road furnitures and medians are also not maintained in a proper condition and thereby endangering the life of road users, especially the riders of two-wheelers during night journey. Though the learned Assistant Solicitor General of India appearing for the petitioner would submit that patch and repair works have been started, in the light of the monitoring being done by this Court, the order, which is the subject matter of review, works out great hardship to the petitioner and therefore

prays for review of the order with a permission to permit them to collect 75% of the fee specified in Sub-Rule 2.

5. In the considered opinion of this Court, the said submission lacks merits and substance for the reason that proviso would have application only, if the existing four laning road is in a proper and motorable condition. As already pointed out by this Court in the earlier orders along with the photographs that the stretch of the road between Maduravoyal and Walajapet is in a pitiable condition and only due to the monitoring by this Court, patch works have been done and in the considered opinion of this Court, it is not up to the standard laid down by the Indian Road Congress. The only explanation offered is since the six laning work is going on, there is no useful purpose in relaying four laning road. It is to be noted at this juncture that even in respect of six laning work, this Court in the earlier order noted that there is also cost and time overrun, for which, the road users cannot be put to peril and danger.

6. This Court, in the light of the above facts and circumstances, is of the view that no factual or legal tenable ground have been made out to review the order. Therefore, the Review Application is dismissed. No costs.

[M.S.N.,J] [A.A.N., J]
01.03.2021

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Index : No

Internet :Yes

To

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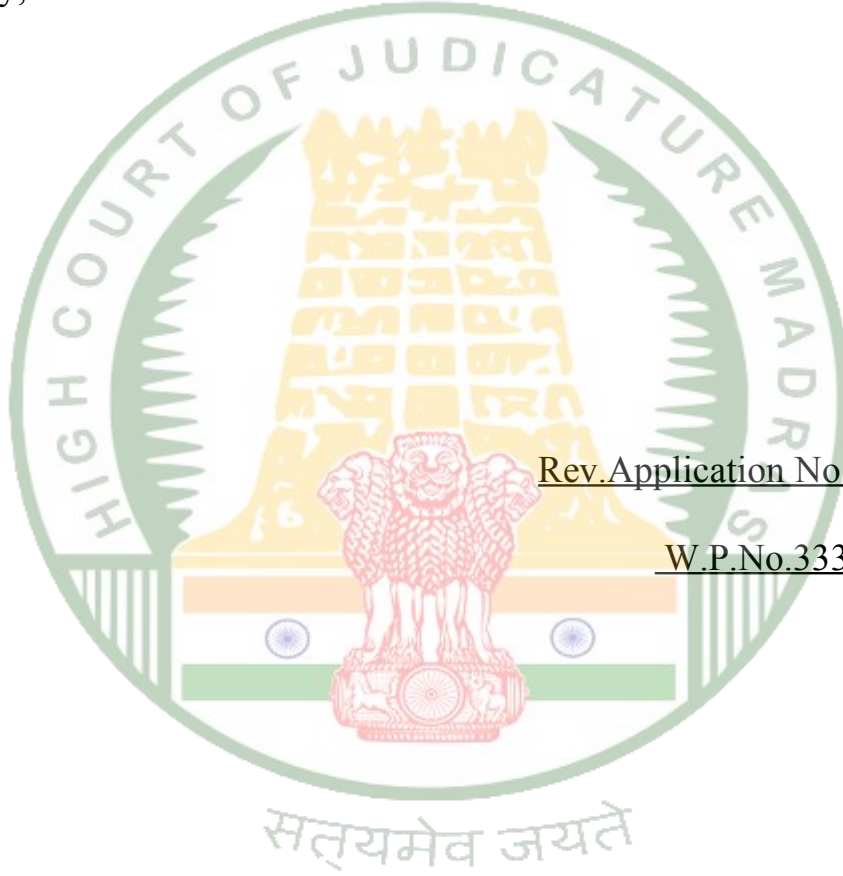
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M.SATHYANARAYANAN.,J.
and
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