



W.P.(MD).No.15449 of 2020 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.11.2021

Pronounced on : 06.07.2022

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

**W.P.(MD)Nos.15449 of 2020, 15465 of 2020, 15470 of 2020,
15474 of 2020 and 18440 of 2020,
4252 of 2010, 4253 of 2010, 4254 of 2010, 8644 of 2010,
8645 of 2010, and 8646 of 2010,
18616 of 2013, 18617 of 2013, 18618 of 2013, 18619 of 2013,
18620 of 2013 and 18622 of 2013
4886 of 2014, 4887 of 2014, 4893 of 2014,
5118 of 2021, 5121 of 2021 and 6527 of 2021
and connected miscellaneous petitions**

W.P.(MD).No.15449 of 2020

Madurai District Private Bus Owners Association
Rep. by its Secretary,
No.2, West Ponnagaram,
7th Street, Madurai – 625 016.

..... Petitioner

-VS-

1. Union of India
Rep. by its Secretary
Ministry of Road, Transport and Highways,
New Delhi.
2. National Highways Authority of India
Ministry of Road Transport and Highways,
Rep. by its Secretary,
G5 & 6, Sector 10,
Dwaraka, New Delhi – 110 075.



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3. The Project Director

National Highways Authority of India,
6/44, First Floor, Ponnagar, II Main Road,
Trichy – 620 001, Tamil Nadu.

..... Respondents

Prayer in W.P.(MD).No.15449 of 2020 : Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent made in Notification bearing S.O.No.2382(E), published in the Government of India Gazette, dated 05.07.2019 by the Ministry of Road Transport and Highways, New Delhi, for collection of the user fee in respect of section Trichy – Thuvarankurichi – Melur – Madurai, which forms part of NH45B and quash the same and direct the 1st and 2nd respondents to collect the user fee, as prescribed in the notifications in respect of similar 4 way lanes Chengalpet – Tindivanam, dated 26.03.2009, Ulundurpet – Padalur, dated 24.07.2009, Padalur to Trichy, dated 26.10.2009, which forms part of NH45 and Madurai – Aruppukottai, dated 16.06.2011 and Salem – Ulundurpet, dated 13.01.2012 on NH45B.

For Petitioners : Mr.M.Palani

For Respondents : Mr.R.Sankaranarayanan,
Additional Solicitor General
assisted by Mr.S.Sivakumar,
Standing counsel for R1
Mr.C.Arul Vadivel @ Sekar,
Standing counsel for R2 and R3



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COMMON ORDER

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In this batch of writ petitions, various notifications issued by the Government of India, Ministry of Road Transport and Highways at various point of time are under challenge, except in W.P.(MD).No.8646 of 2010, where rule 9(2) of National Highways Fee (Determination of rates and collection) Fees Rules 2008 was sought to be declared as ultra vires and unconstitutional.

2. Though number of such notifications as stated supra have been under challenge in this batch of cases, some of the notifications which were issued by the Central Government earlier, i.e., in the year 2010, 2012 and 2013 since have been superseded by subsequent notifications which are also under challenge in this batch of cases, it was brought to the notice of this Court by the learned Standing counsel appearing for the National Highways Authority of India that, 11 writ petitions, i.e., five of the year 2010 and six of the year 2013 in this batch of cases have become infructuous.



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3. In order to delve into the said plea raised by the respondents, as to the issue with regard to the infructuous nature of the prayer sought for in those writ petitions, the said writ petitions with their respective prayers were verified, accordingly, the following were found out.

4. In W.P.(MD).Nos.8644 and 8645 of 2010, the notification bearing S.O.No.12(E), dated 05.01.2010 was under challenge. However, the said notification, dated 05.01.2010 was subsequently, superseded by notification bearing S.O.No.409(E), dated 13.03.2012, which reads that, this is in supersession of the notification of the Government of India in the Ministry of Road Transport and Highways, S.O.No.12(E), dated 5th January 2010, except as respects things done or omitted to be done before such supersession.

5. In view of this notification, dated 13.03.2012 in notification bearing S.O.No.409(E), the challenge made against notification bearing S.O.No.12(E), dated 05.01.2010 has become infructuous, accordingly, these writ petitions can be treated as infructuous.



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6. Like that, in W.P.(MD).Nos.4252, 4253 and 4254 of 2010 are

concerned, they challenge the notification bearing S.O.No.3040(E), dated 27.11.2009. However this notification also was superseded by the subsequent notification bearing S.O.No.455(E), dated 16.03.2012 which states that, this is in supersession of the notification of the Government of India in the Ministry of Road Transport and Highways in S.O.No.3040 (E), dated 27.11.2009 as respects things done or omitted to be done before such supersession. Therefore that very challenge made in these writ petitions challenging the notification bearing S.O.No.3040(E), dated 27.11.2009 have become infructuous. Accordingly, these writ petitions also can be treated as infructuous.

7. In W.P.(MD).No.18616 of 2013, the notification bearing S.O.No. 409(E), dated 13.03.2012 was under challenge. However by Notification bearing S.O.No.1355(E), dated 24.05.2013, the notification issued by the Government of India, Ministry of Road Transport and Highways bearing S.O.No.409(E), dated 13.03.2012 has been superseded. Therefore it can also be construed that the prayer sought for in this writ petition has become infructuous.



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8. In W.P.(MD).No.18622 of 2013, notification bearing S.O.No. 455(E), dated 16.03.2012 was under challenge. However by subsequent notification bearing S.O.No.1355(E), dated 24.05.2013, the notification, dated 16.03.2012 in S.O.No.455(E) was superseded. Therefore the prayer sought for in this writ petition also has become infructuous.

9. Like that, in W.P.(MD).Nos.18617, 18618, 18619 and 18620 of 2013, the challenge was against the notification bearing S.O.No.1355(E), dated 24.05.2013. However, by subsequent notification bearing S.O.No. 2382(E), dated 05.07.2019, the earlier notification bearing S.O.No.1355(E), dated 24.05.2013 was superseded. Therefore the prayer sought for in these writ petitions also since have become infructuous, it can be treated that these writ petitions also have become infructuous.

10. Hence the aforestated writ petitions since have become infructuous, they are liable to be dismissed as become infructuous.

11. The writ petitions filed in the year 2014, 2020 and 2021 and also W.P.No.8646 of 2010 are surviving.



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12. In these batch of cases, W.P.(MD).No.15449 of 2020 was treated as a lead case and accordingly, arguments were advanced by both sides. Therefore the facts pertaining to W.P.(MD).No.15449 of 2020 as projected by both parties are traversed hereunder.

13. As per the affidavit averments made in support of the said writ petition, the case, as projected by the petitioners, are as follows.

14. In this writ petition and in W.P.(MD).Nos.15465 of 2020, 15470 of 2020 and 15474 of 2020, the very same notification, namely notification bearing S.O.No.2382(E), dated 05.07.2019 issued by the Government of India, Ministry of Road Transport and Highways is under challenge.

15. The petitioner in this writ petition is a registered association, its members are stage carriage bus operators. They claimed to be small bus operators in Sivagangai District and are operating within the Madurai District as well as on the adjoining inter district routes in between Madurai and Sivagangai. These vehicles are covered by the respective inter district permits issued by the Regional Transport Authority. These vehicles are



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operating on the routes from Madurai to Devakottai, Madurai to Pon Amaravathi, Madurai to Sivagangai, Madurai to Pudukottai and Madurai to Kalaiyarkoil. These vehicles while operating on these inter-district routes necessarily have to pass through the National Highways 45B, i.e., NH45B in between Melur outer – Melur Agricultural College for a distance of 14.5 kms.

16. The first respondent laid a four way lane road on the NH45B starting from Trichy to Madurai. The four way lane also passes on the part of their route from Madurai Agricultural College to Melur outer, which is a distance of 14.5 kms. The four way lane road was thrown open for public use from 27.03.2010 as per the public notice issued in this regard in paper on 25.03.2010.

17. Only in order to reimburse the expenditure incurred for the purpose of building, operating and maintaining the four way lane between Trichy and Madurai, the first respondent initially issued notification, dated 27.11.2009 under Section 7 of the National Highways Act (herein after referred to as “the NH Act”) enabling the second respondent, i.e., National



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Highways Authority of India, (in short “NHAI”) to collect the user fee as prescribed in the said notification from the mechanically propelled vehicle owners, who make use of the section. This section is applicable to the Public Funded Project, as it has been built by the second respondent.

18. As per the notification, a person who is using the entire stretch of four way lane from Thuvarankurichi to Madurai for a distance of 63 kms has to pay in case of bus or truck for a single trip Rs.155/- and if such vehicle is having a return trip, the user fee is fixed at Rs.230/- and in case the road is used regularly by a person, i.e., multiple entry, a monthly user fee has also been fixed to the extent of Rs.5160/- subject to use of maximum of 50 single trips.

19. In this case, they further projected that, since they are stage carriage operators, they have to operate at least 4 to 6 singles per day as per the permit given by the Transport Authority. Therefore, every stage carriage bus has to make a trip of 120 to 180 singles per month. Therefore if more than 50 trips since these stage carriage buses have to pay either Rs.155/- as single trip or 230 for two trips in a single day, it has to pay another sum of



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Rs.930/- per day to complete their singles apart from the monthly pass of maximum 50 trips, therefore such an exorbitant amount cannot be paid by stage carriage buses, which is a public utility service.

20. In this context, their further case is that, though once the notification already was issued by the first respondent exercising the power under Section 7 of the NH Act, subsequently by invoking the power under Section 8-A, the Central Government issued the notification, thereby the notification empowered the second respondent to collect the user fee as fixed in this regard and such a power now vested with the NHAI, i.e., the second respondent through the notification issued on 05.07.2019 is detrimental to the users like the public transport vehicle, i.e., the stage carriage vehicles run by these petitioners members as they have to necessarily undertake 4 to 6 singles everyday as per the transport permit to carry the public in the given route, where in fact they take only 14.5 kms in the four lane system, for which claiming the user fee for the whole stretch of 60 kms is arbitrary.



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21. That apart, the concession given to them under rule 9 of the National Highways Fee (Determination of Rates and Collection) Rules 2008, (in short “the 2008 Rules”) by way of monthly pass since have restricted only 50 singles for one month by paying 2/3rd of the user fee is also inadequate or insufficient to cater the need of the public carriages like the petitioner's vehicle as they have to incur heavy expenses every day beyond the two trips which are maximum permitted under the notification. Therefore for these alleged infirmities, the notification, dated 05.07.2019 is under challenge in these writ petitions.

22. Like that, in W.P.(MD).No.18440 of 2020, the notification bearing S.O.No.2787(E), dated 25.08.2017 is under challenge. Also in W.P. (MD).Nos.5118 of 2021, 5121 of 2021 and 6527 of 2021, the notification bearing S.O.No.2606(E), dated 26.08.2013 is under challenge and in W.P. (MD).Nos.4886 of 2014 and 4887 of 2014, the notification bearing S.O.No. 3518(E), dated 26.11.2013 is under challenge and in W.P.(MD).No.4893 of 2014, the notification bearing S.O.No.2606(E), dated 26.08.2013 is under challenge.



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23. If we make a broad categories of these surviving writ petitions, it can be categorised as follows :

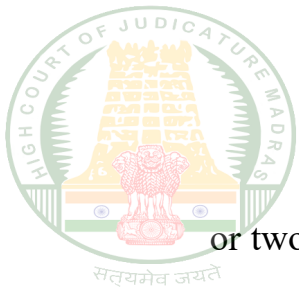
(i) In category-I, W.P.(MD).Nos.15449, 15465, 15470 and 15474 of 2020 would come, where the notification bearing S.O.No.2382(E), dated 05.07.2019 is under challenge.

(ii) In category-II, W.P.(MD).No.18440 of 2020 would come, where the notification bearing S.O.No.2787(E), dated 25.08.2017 is under challenge.

(iii) In category-III, W.P.(MD).Nos.4886 and 4887 of 2014 challenging the notification bearing S.O.No.3518(E), dated 26.11.2013 are categorised; and

(iv) In category-IV, in W.P.(MD).Nos.4893 of 2014, 5118, 5121 and 6527 of 2021, the notification bearing S.O.No.2606(E), dated 26.08.2013 since is under challenge, these four writ petitions can be categorised under this category.

24. Therefore under these four broad categories, four different notifications issued by the Government of India, Ministry of Road Transport and Highways pertaining to the National Highway stretches, four way lane



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or two way lane as the case may be with regard to the fixation and collection of user fee are under challenge.

25. Mr.M.Palani, the learned counsel appearing for the writ petitioners in this batch of writ petitions have made the following submissions.

26. There are four National Highways involved in this batch of cases, which according to him are NH45B, NH7, NH210 and NH226. Under the provisions of the National Highways Act, namely Section 2 and 4, the Highways specified in the schedule are declared to be the National Highway and the Central Government may, by notification in the Official Gazette declare any other highway to be a national highway and all national highways so declared shall vest in the union. Under Section 5 of the Act, it shall be the responsibility of the Central Government to declare and maintain the Highways and under Section 7 of the Act, the Central Government, may by notification in the official Gazette, levy fees at such rates as may be laid down by rules made in this regard for services or benefits rendered in relation to the use of the Highways.



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27. Under Section 8-A which was inserted w.e.f., 16.06.1995, the

Central Government, may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a National Highway. Sub-section (2) of Section 8-A makes it that, the person with whom the Central Government entered into an agreement under sub-section (1) is entitled to collect and retain fees at such rates, for services or benefits rendered by him as the Central Government may by notification in the Official Gazette specified.

28. Section 9 of the Act providing the rule making power to the Central Government who in particular and without prejudice to the generality of the foregoing power may provide for all or any of the following matters, namely, the manner in which, and the conditions subject to which any function in relation to the development or maintenance of a national highway, the manner in which the amount shall be deposited with the competent authority, the rates at which fees for services rendered in relation to the use of the highway and the manner in which such fees shall be calculated under Section 7. In respect of these areas, rules can be framed by the Central Government.



29. Accordingly, in exercise of the powers conferred by Section 9 of

the Act and in supersession of the 1964 and 1997 Rules, the Central Government framed a Rules, called the National Highways Fee (Determination of Rates and Collection) Rules 2008 (in short “the 2008 Rules”) which came into effect from 12.10.2011, wherein in Rule 2(d), it has been defined the word "Concessionaire", that means, a person with whom an agreement has been entered into under Section 8-A of the Act.

30. Rule 3 speaks about levy of fee, wherein rule 9 speaks about discounts, i.e., concession, where rule 9(1) says that, the executing authority or the concessionaire as the case may be, provide for multiple journeys to cross a toll plaza within the specified period at the rates specified in sub-rule (2) of rule 9. Sub-rule (2) says a driver, owner or person incharge of a mechanical vehicle who makes use of the section of the national highway, shall have to pay the fee in accordance with the rates, namely 1 ½ times of the fee for one way journey. The maximum number of one way journey allowed is two within 24 hours. Like that, 2/3rd amount of the fee payable for 50 single journeys, maximum number of one way journeys allowed is 50 within a period of one month.



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31. Based on this rule, now almost in all the notifications which are under challenge in these writ petitions, such a discount rate or concession rate has been provided under which, those who wants to make a multiple entry can have a monthly pass by paying $2/3^{\text{rd}}$ of the amount, where the maximum number of one way journeys allowable is only 50 for the whole month or 30 days. Therefore per day, a little less than two single trips would be allowed for a monthly pass holder and for which, the concession rate of $2/3^{\text{rd}}$ of the amount would be collectable.

32. Only in this context, Mr.M.Palani, learned counsel for the petitioners contended that, insofar as the members of the petitioners' association in various writ petitions herein, all are stage carriage buses having the stage carriage permit issued by the Transport Authority and invariably in respect of these stage carriages, at least 4 to 6 singles were permitted per day and they are taking the same route covering these four highways, therefore, if they have to make 4 to 6 singles per day, every stage carriage permit holder have to operate 120 to 180 trips at least per month, i.e., 30 days.



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33. However, under rule 9(2), the concession given is only in respect of 50 trips, that too, $\frac{2}{3}$ rd of the amount payable as user fee, thereby there is a great deprivation on the part of the members of the petitioner who operate the stage carriage buses, since only for $\frac{1}{3}$ rd of the trips which they undertake for the whole month, such a concession now has been provided and for the remaining $\frac{2}{3}$ rd and more of their single trips they have to undertake as per the transport permit given by the Transport Authority, the concession has been denied.

34. That apart, it is the further contention of the learned counsel appearing for the petitioners that, in almost all the four highways, which are covered in this batch of cases, only a short distance are used. For instance in NH45B only 14.5 kms are used by these stage carriage buses and in NH7 only $1\frac{1}{2}$ kms are being used, like that, in NH210 as well as NH226 also only a limited distance these stage carriage buses are using and since it is a definite route and every trip these stage carriage buses have to ply only in the said route, as per the transport permit. Knowing well these factors, the respondents, especially, NHAI has not come forward to give the concession, corresponding to the usage and therefore, the user fee being collected from



the petitioners' members is not inconsonance with the *quid pro quo* and therefore, it is an exorbitant extraction of user fee from these stage carriage buses operators and hence, on that ground also, these notifications are arbitrary and discriminatory, he contended.

35. If a notification already been issued under Section 7 of the Act by the Central Government, subsequent notification issued under Section 8-A of the Act cannot supersede the notification issued under Section 7 of the Act, as the very purpose of Section 7 is entirely different from the purpose of Section 8-A.

36. In this context, the learned counsel appearing for the petitioners wants to point out that, under Section 7 of the Act, the Central Government, by notification can levy fees at such rates, as may be, laid down by rules made in this behalf for services or benefits rendered, which means whatever services and benefits rendered by the Central Government through the NHAI, for which, what shall be the fee which can be levied and the rates also which can be laid down by the rules made in this behalf can be levied by the Central Government and only that fee alone can be collected. Since



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these projects are Public Funded Projects, as there has been no concessionaire prior to the built of these roads making it as four lane system, the subsequent action on the part of the Central Government entering into an agreement with private parties by way of concessionaires under Section 8-A of the Act and accordingly, the power and permission vested or granted in favour of the concessionaire to fix and collect the user fee with the rates quoted in this regard, that too in a Public Funded Project is not inconsonance with the provisions of the Act, as such kind of functions could have been undertaken only under Section 7 and not under Section 8-A. Therefore on that ground also, the learned counsel would contend that, the impugned notifications are unlawful.

37. Under rule 5 of 2008 Rules, every year 3% of enhancement voluntarily being made and this is also being paid by the commuters. Under notification, dated 26.08.2013, all the earlier four notifications since were superseded and the Central Government entertained a third party concessionaire, a concessionaire by name, Madurai – Kanyakumari Toll Way Ltd., a third party concessionaire was entrusted with all the four stretches of NH7 to collect toll fee from 18.11.2020.



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38. In respect of the bus operators, i.e., stage carriage buses who take the route in NH7, they hardly take only 2 kms, i.e., less than 2 kms and therefore for the said purpose or the said benefit extended to them, whether the respondents including the concessionaire are entitled to collect the whole user fee for the entire stretch is the question.

39. Earlier upto 31.10.2020, the monthly pass was made available to all the members of the association and subsequently, such an availment has become redundant or not extended. Like that, in NH210 also, i.e., Trichy – Karaikudi, two way lane, the notification, dated 26.11.2013 made the same thing restricting the monthly pass only to 50 singles per month. In most of the cases, when these notifications were under challenge, interim orders were granted and the old rate were directed to be collected.

40. In 1997 Rules, namely, The National Highways (Fees for the use of National Highway Section and Permanent Bridge - Public Funded Projects) Rules, 1997 (in short “the 1997 Rules), rule 7(4) made it possible for a monthly pass for multiple entry. However, that concession has now been taken away or done away under the 2008 Rules, wherein it has been restricted only to 50 trips per month.



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41. The members of the association are operating buses between Madurai - Rajapayalam, Madurai – Sankarankovil, Madurai - Peraiyur, Madurai – Vadhrarp and Madurai - Alangulam. All these stage carriage buses take only 1.67 kms in NH7 crossing Kappalar Toll plaza. However, the stretch between Kappalur to Ettur vattam, i.e., for 54 Kms, the user fee is being collected, it is not based on the *quid pro quo*.

42. Therefore making these submissions, the learned counsel appearing for the petitioners would contend that, these notifications which are under challenge in this batch of cases are liable to be interfered with or set aside.

43. In support of his contention, the learned counsel appearing for the petitioners relied upon the following decisions :

(i) Indian Mica and Micanite Industries v. State of Bihar, (1971) 2 SCC 236

(ii) State of U.P v. Devi Dayal Singh, (2000) 3 SCC 5

(iii) Mohan Meakin Ltd., v. State of H.P. (2009) 3 SCC 157

(iv) M.Chandru v. Chennai Metropolitan Development Authority, (2009) 4 SCC 72



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(v) MSK Projects (I) (JV) Ltd., v. State of Rajasthan, (2011) 10 SCC

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44. In response to these arguments advanced on behalf of the petitioners, Mr.R.Sankaranarayanan, learned Additional Solicitor General and Mr.Arul Vadivel @ Sekar, learned standing counsel appearing for NHAI made submissions. They would contend that, the contention that the Public Funded Project since is governed by Section 7 of NH Act, no concessionaire can be appointed in respect of such project is devoid of merits. They would contend that, the right to collect toll under certain contingencies dates back to 1964, the National Highways Act was amended in the year 1995 and the objects and reasons of such amendment are very much relevant to appreciate the rules as stated under National Highways Amendment Act, 1995. They relied upon the statement of objects and reasons for 1995 amendment to National Highways Act.

45. In the statement of objects, it was therefore proposed to enable the Central Government (1) to enter into an agreement with any person in relation to the development and maintenance of the whole or part of a



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National Highway; (2) to levy fees and authorise the person who has undertaken to develop the whole or any part of a National Highway to collect such fee; and (3) to empower such person to regulate traffic on such National Highway.

46. The learned Additional Solicitor General would also submit that, Section 8 as it stood was originally dealt with agreements with the State Government and the Municipalities, however, in 1995 Amendment, Section 8 was omitted and 8-A was introduced. Section 8-A consisting of three parts. The first part, i.e., sub-section (1) of Section 8-A, deals with the power of the Central Government to enter into an agreement with any person in relation to the development, maintenance of the whole or any part of a National Highway. Sub-section (2) speaks with *non obstante* clause that, notwithstanding anything contained in Section 7, the person referred to in sub-section (1) is entitled to collect and retain the fees at such rate for services or benefits rendered by him, as the Central Government may by notification specifies. Sub-section (3) states that, a person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions of the Motor Vehicles Act, 1988.



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47. By relying upon Section 8-A, learned ASG would contend that, sub-section (1) & (2) of Section 8-A, as both the sub-sections beginning with the word notwithstanding, which is a *non obstante* clause, made it very clear that, the Central Government is empowered to enter into an agreement with any person for development and maintenance of the Highway and once such agreement is entered into, such person is entitled to collect and retain fees.

48. The learned Additional Solicitor General therefore would contend that, since there is a *non obstante* clause in both sub-sections (1) and (2) of Section 8-A, what has been stated under Section 7 under the same Act would be overridden by the *non obstante* clause of sub-sections (1) & (2) of Section 8-A. Therefore the very basis of the arguments advanced by the learned counsel for the petitioners that, in Public Funded Project of National Highway only under Section 7, fee is to be fixed and collected and not under Section 8-A cannot have any legal backing and therefore, that argument is to be rejected, he contended.



49. Since 2008 Rules were framed on 05.12.2008 and rule 6(1)

authorises a concessionaire to collect the fee and Section 2(d) defines the concessionaire to mean a person with whom an agreement is entered under Section 8-A and rule 1(4) makes the rule applicable to the public funded projects, the argument of the petitioners side cannot be accepted, he contended.

50. The learned Additional Solicitor General and the learned Standing counsel appearing for the NHAI would further submit that, Section 11 of the National Highways Authority of India Act, 1998 (in short “ the NHAI Act”) empowers the Central Government to entrust any national highway or any stretch thereof to NHAI. Section 14 of the NHAI Act empowers the authority to enter into and perform any contract necessary for the discharge of its function under the Act.

51. Sub-section 2(h) of Section 16 empowers NHAI to engage or entrust any of its function to, any person on such terms and conditions as may be prescribed. Therefore the learned ASG would submit that, it is thus clear that, Section 8-A over rules Section 7 of the National Highways Act in



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addition, Section 14 and 16(2)(h) of the NHAI Act also empowers appointment of concessionaire even in the Public Funded Project.

52. He would also submit that, under rule 8 of 2008 Rules, the location of fee plaza has been stated, under which, no toll plaza can be established within 10 kms from Municipal Corporation limit and the distance between one toll plaza and another should be not less than 60 kms in the same direction of the same section of the Highway.

53. Insofar as the NH45B is concerned between Trichy and Madurai, starting from 10 kms from Trichy Municipal Corporation, as the section consist of Trichy, Viralimalai, Thuvarankurichi, Melur and Madurai, no toll plaza has been placed in violation of rule 8. This rule cannot be applied in another National Highways which deviates and enters into Dindigul and reaches Madurai, they do not belongs to the same section. Therefore the toll plaza located in the other Highway may not be compared for the purpose of invoking Article 14.

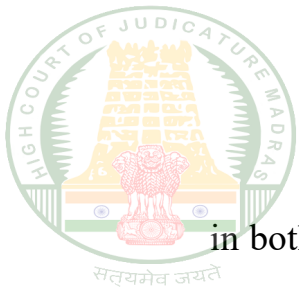


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54. Insofar as the fixation of fee is concerned, the learned Additional

Solicitor General would submit that, the investment is for the whole stretch or the entire section and it cannot be differentiated or truncated. The concept of toll fixation is that, every person who crosses the toll takes the burden of the investment made in the entire section of the toll but not a part of it.

55. Insofar as the differentiation between the “tax” and “fee” as projected by the petitioners side that, if it is a tax, it may be a compulsory extraction, but if it is a fee, it must be only based on the service rendered or on the basis of the *quid pro quo*, the learned Additional Solicitor General relied upon two decisions of the Hon'ble Supreme Court. One is the latest decision, where it was held that, the distinction between a tax and fee has been considerably obliterated and therefore as of now, in view of the development taken place in all these areas, the earlier theory of distinction between the tax and fee is gone now and now both the tax as well as the fee are categorised as compulsory extraction and in both the cases, the benefits or *quid pro quo* are involved and it cannot be stated that in respect of extraction of tax, there is no theory of benefit or *quid pro quo* is involved as



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in both the cases, it may be a general benefit or general *quid pro quo*, hence the argument advanced by the petitioners side that, the toll fee or user fee collected by the respondents, must be only on the basis of *quid pro quo* and accordingly, the rate fixed and the fee collected for the user who use the stretch of a Highway only for the short distance are arbitrary exercise, cannot be countenanced, he contended.

56. In support of his contention, the learned Additional Solicitor General relied upon the following decisions :

(i) Jalkal Vibhag Nagar Nigam & Ors v. Pradeashiya Industrial and Investment Corporation and another, 2021 SCC Online SC 960

(ii) State of H.P and Ors. v. Shivalik Agro Poly Products & Ors, (2004) 8 SCC 556

57. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



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58. In this batch of cases, there are 23 writ petitions, out of which, as stated supra, 11 writ petitions have become infructuous. With regard to the remaining 12 writ petitions, in W.P.(MD).No.8646 of 2010, rule 9(2) of the 2008 Rules is under challenge.

59. In respect of other 11 writ petitions, four different notifications were under challenge and those challenge are dealt with herein notification vice.

60. Notification bearing S.O.No.3518(E), dated 26.01.2013. This notification relates to NH210, i.e., Trichy – Karaikudi, two way lane National Highway. The notification says that, under Section 11 of the National Highways Authority of India Act, 1988, the Central Government entrusted the stretch of this highway to the NHAI. In exercise of the powers under Section 9 of the NHAI Act, the Central Government framed the rules, i.e., 2008 Rules, for collection of fee for use of sections of National Highways. Therefore in exercise of the powers conferred by Section 7 of the NH Act r/w rule 3 of 2008 Rules, the Central Government, thereby levy the fee at 60% of the rate specified in Column 2 of the Table I for net road section length for use of two lane with paved shoulders.



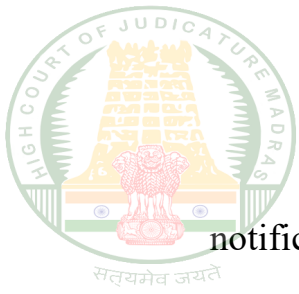
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61. In that notification, the main concern of the petitioners in W.P. (MD).No.4886 of 2014 and 4887 of 2014 as in those writ petitions only the said notification was under challenge, that in clause 4 for multiple journey on the highway section, it was stated that, passes shall be issued at the following rates, namely, 1½ times of the fee for one way journey maximum number of one way journey allowed would be two within 24 hours. Like that 2/3rd of the amount of the fee payable for 50 single journeys would be collected for one month pass, within which, only 50 singles were to be allowed.

62. This is the major hurdle for the members of the petitioners as they are stage carriage permit holders having multiple entries in every day and therefore, the restriction of 50 single entries for the one month pass at the 2/3rd rate is not enough for the requirement and therefore that is the main concern of the petitioners.

63. The other notification which is under challenge is Notification bearing S.O.No.2606 (E), dated 26.08.2013. This relates to NH7, i.e., from Madurai to Kanyakumari section consisting of 231 kms. In the said



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notification, which was also issued by the Central Government by exercising its power under Section 7 of the NH Act and rule 3 of the 2008 Rules, the earlier four notifications issued in this regard were superseded and this notification has been issued, where the Central Government by exercising the powers conferred by Section 8-A of the NH Act read with rule 3 of the 2008 Rules and in supersession of the earlier notifications issued in this regard by the Government of India, it notifies that, there shall be levied and collected fee on mechanical vehicles for the use of said section at the rate specified in Column No.2 of Table I.

64. In this notification also, in clause 4, the following has been stated:

"4. For multiple journey on the highway section, passes shall be issued at the following rates namely : -

Amount payable	Maximum number of one way journeys allowed	Period of validity
One and half times of the fee for one way journey	Two	Twenty-four hours from the time of payment



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Amount payable	Maximum number of one way journeys allowed	Period of validity
Two-third of amount of the fee payable for fifty single journeys or more	Fifty or more	One month from date of payment

This notification is under challenged in W.P.(MD).Nos.4893 of 2014, 5118, 5121 and 6527 of 2021.

65. The next notification which is under challenge is notification bearing S.O.No.2382(E), dated 05.07.2019. This notification relates to NH45B between Trichy and Madurai. In this notification, the Central Government in exercise of the powers conferred by Section 7 of the NH Act r/w rule 3 of 2008 Rules and in supersession of the earlier notifications, levies the fee on mechanical vehicles at the rate specified in Column No.2 of Table I for net road section length of 94.98 kms for the use of 4 and more allowed section. In this notification also, apart from the rate fixed for various types of vehicle, clause 5 speaks about the monthly pass which reads thus :



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"5. For multiple journeys on the highway section, passes shall be issued at the following rates namely : -

Table - 5		
Amount payable	Maximum number of one way journeys allowed	Period of validity
One and one-half times of the fee for one way journey	Two	Twenty-four hours from the time of payment
Two-third of amount of the fee payable for fifty single journeys	Fifty	One month from date of payment

This notification is under challenge in W.P.(MD).Nos.15449, 15465, 15470 and 15474 of 2021.

66. The last notification which is under challenge in W.P.(MD).No. 18440 of 2020 is Notification bearing S.O.No.2787(E), dated 25.08.2017. This notification relates to NH226 between Thanjavur and Manamadurai. Here the Central Government in exercise of the powers conferred by Section 7 of the NH Act, 1956 r/w rule 3 of the 2008 Rules, levies the fee at 60% of the base rate specified in Column No.2 of Table I for the net road section length of 46.96 kms.



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67. In this notification also, in clause 5 with regard to the multiple

journey on the Highways section passes shall be issued with the fixed rate

which reads thus :

"5. For multiple journeys on the highway section, passes shall be issued at the following rates namely : -

Amount payable	Maximum number of one way journey allowed	Period of validity
One and half times of the fee for one way journey	Two	Twenty-four hours from the time of payment
Two-third of the amount of the fee payable for fifty single journeys	Fifty	One month from date of payment

68. Therefore those remaining 12 writ petitions, out of which W.P. (MD).No.8646 of 2010 challenging rule 9(2) of 2008 Rules, all other 11 writ petitions as stated supra challenge four different notifications issued on different dates by the Central Government in exercise of the power vested in them under the provisions of the National Highways Act, 1956.



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69. The sum and substance of the contention made on behalf of the petitioners is that, in respect of two aspects, the members of the petitioners' association are affected, which according to them is that, in the first case, the members are having the stage carriage permit and as per the permit conditions imposed by the Transport Authority who issued the stage carriage permit, they have to run the trip, i.e., single, which invariably between 4 to 6 or even more per day in the given route. When that being so, when they take the trips how much of distance is being utilised by those stage carriage permit vehicles in the notified built and operated either 4 way or 2 way National Highways is concerned, according to them, it is very minimum.

70. For instance, in NH45B, they say that invariably all the vehicles which use this NH45B between Madurai outer and Melur outer is only 14.5 kms, thereafter they have to take a diversion towards various destinations, for which, permit was given to them. Therefore, for the use of a small stretch of 14.5 kms, all these people are compelled to pay the user fee for the entire stretch of 60 kms between Madurai and Thuvarankurichi.



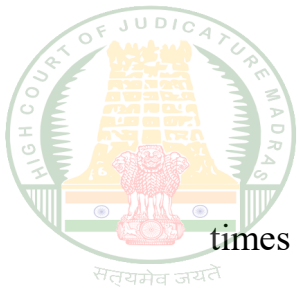
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71. Like that in respect of NH7 between Madurai and Kanyakumari, it

is their case that, the vehicles plying in that route from Madurai to various destinations, according to the permit given to them, will take only 1 ½ kms in the said NH7 before crossing the Kapalur Toll Plaza and in that regard, they had to pay the full user fee for 49 kms of that stretch of NH.

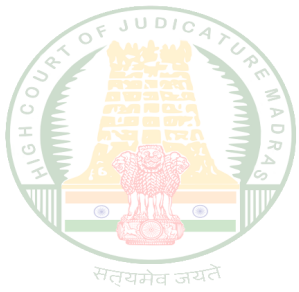
72. Secondly, their contention is that, these public transport vehicle, i.e., stage carriage vehicle meant for general public cannot be equated, while giving the monthly pass for 30 days, with any other vehicle. In this context, they would submit that, the permit being issued to the stage carriage buses by the transport department depending upon the need of the public in a particular locality and accordingly, number of trips also is earmarked in the very permit itself. In this context, invariably 4 to 6 trips, i.e., 4 to 6 singles are to be undertaken by each of the stage carriage permit holder in the particular route, for which, the permit is given and in some routes, even the single may be more than 6 trips.

73. In that case, these stage carriage permit vehicle have to necessarily cross the user fee collection booth more than once, i.e., 4 to 6



times or even more than 6 times per day. When that being so, for the whole month, i.e., 30 days, minimum they have to cross 120 times and it may be at least maximum of 180 trips per month or even more in respect of some routes.

74. When that being so, in each of these notifications, when they provide for a monthly passes, they fix the amount, that whatever the amount payable for the total single trips permitted, i.e., the maximum 50 singles, 2/3rd of the said fee shall be paid, for which, the monthly pass will be given for 30 days, within which, only 50 singles are permitted, which means, if a stage carriage permit holder is given a monthly pass with 50 singles and stage carriage permit vehicle has to cross the toll booth 6 times per day, even on the 8th day or 9th day, the 50 trips pass for month would be exhausted and thereafter for each trip, the stage carriage permit holder has to pay the user fee to the authority concerned or concessionaire concerned who collect the fee. By thus a huge amount every day has to be paid or incurred by the stage carriage permit holder, which causes great loss to them, they contended.



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75. In the year 1997, in exercise of the powers conferred by Section 9 of the National Highways Act, 1956 and in supersession of the National Highways (Fee for use of Permanent Bridges) Rules, 1992, the Central Government made the rules called the National Highways (Fees for the use of National Highway Section and Permanent Bridge - Public Funded Projects) Rules, 1997 (in short be called as “the 1997 Rules”). In the said Rules, rule 7(4) reads thus :

"When the same vehicle has to cross the National Highway Section or bridge more than once in a day, the user shall have the option to pay one and a half times of rate notified by the Government while crossing such section or bridge in the first trip itself, or if the vehicle has to use the section or bridge frequently the vehicle owner can have a monthly pass on the payment of charges equal to 30 single rates."

76. Relying upon this sub-rule (4) of rule 7 of 1997 Rules, it was the vehement contention on behalf of the petitioners that, under the 1997 Rules, there was a concession given to those who has to use the section or bridge frequently, that the vehicle owner can have a monthly pass on the payment of charges equal to 30 single trips. It means, a vehicle like the stage carriage



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permit vehicle of the petitioners members has to necessarily cross multiple entries to use the section of the highway and in such case, they can take a monthly pass by paying the rate equal to 30 single trip rates. For instance, for a single trip in a section of the NH, if it is Rs.100/- and the vehicle has to take a multiple entry of that stretch, they can take the monthly pass and pay 3000 Rupees per month, i.e., equal to the rate of 30 single trips and can make use of the said section by crossing the toll booth any number of time, i.e., multiple trips.

77. These concession was available under the 1997 rules and under which, the monthly pass of 30 days was given to these people or these people had enjoyed the monthly pass by paying the rate equal to 30 trips and accordingly, they operated the stage carriage vehicle for multiple trips throughout the month.

78. Whereas in the 2008 Rules, the 1997 Rules since has been superseded, a similar provision should have been brought in, however they brought a rule called rule 9 under the heading “Discounts”, where they say that, a mechanical vehicle who makes use of the section of national highway



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shall have to pay the fee in accordance with the rates, namely, 1 ½ times of the fee for one way journey, for which, two single trips would be permitted within 24 hours. Like that, 2/3rd of amount of the fee payable for 50 single journeys would be permitted, for which, 50 single journeys alone would be allowable within one month from the date of payment.

79. Therefore under rule 9(2) of 2008 Rules, the monthly pass has been made to only 50 trips, that too, at the rate of 2/3rd amount for the 50 trips shall be paid. Thereby the 1997 monthly pass system has been done away and the 2008 system has been introduced under 2008 Rules, whereby the monthly pass was restricted only to 50 trips, whereas this stage carriage permit holders have to run the vehicle for multiple entry or multiple trips depending upon the permit conditions which normally would provide for at least 4 to 6 trips every day, that means 4 to 6 singles. Therefore minimum 120 to 180 singles have to be undertaken by these stage carriage permit holders, for which, absolutely there is no monthly pass available under the present set up, i.e., under 2008 Rules.



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80. This is the main concern of the members of the petitioners' association in various associations, who filed this batch of cases, which triggered them to file these writ petitions challenging these notifications referred to above.

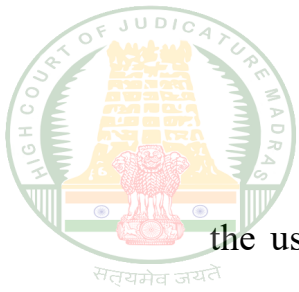
81. In this context, when the legal position has been evaluated on the basis of the submissions made by both sides and also having gone through the relevant provisions of the 1956 Act and 1988 Act, i.e., National Highways Act as well as the National Highways Authority of India Act as well as the 1997 Rules and 2008 Rules, this Court has found that, the rule making power of the Central Government is provided in Section 9 of the Act, which says that, the Central Government may by notification in the official Gazette makes rule for carrying out the purposes of the Act. Sub-section 2(b) of Section 9 speaks about the rates at which fees for services rendered in relation to the use of National Highway and the section of National Highway that can be levied and the manner in which such fee shall be collected under Section 7 also can be dealt with by the Rules to be framed by the Central Government by exercising its power under Section 9.



82. Only under the exercise of this power, the 1997 Rules was framed, which was in vogue for sometime. However, in the year 2008, the Central Government thought it fit to supersede the 1997 Rules and it framed the fresh rule called 2008 Rules, under which, some modifications have been made in the rules which includes Rule 9 under the heading “Discounts”.

83. Therefore insofar as framing of the 2008 Rules by exercising the rule making power of the Central Government under Section 9 of the Act, cannot be found fault with, as such power is always vested with the Central Government who by exercising such power only framed the 2008 Rules. Hence the Rules for any other reason cannot be tinkered with.

84. It is the further contention of the petitioners side that, if it is a public funded project, the fee or toll collection has to be undertaken only by the Central Government or the National Highways Authority of India, not by any concessionaire and therefore, if any agreement entered into between the Central Government and any third party or a person under Section 8-A of the Act, pursuant to which, if a concessionaire is given the right to collect



the user fee, that would run contra to Section 7 of the Act, as Section 7, according to the petitioner's counsel is the enabling provision to fix or levy the fee and to collect the same by the Central Government or its agent like NHAI.

85. Insofar as the said arguments is concerned, it is the contention of the learned Additional Solicitor General on the other hand, to state that, the very object of the Amendment Act of 1995 of National Highways Act is only to bring private investments under the national highways sector. If we look at the objects for the 1995 Act, it reads as follows :

"Proper development of road infrastructure is essential for economic development of the country. However, due to constraint of resources, it has not been possible to allocate sufficient funds for the development of road sector in the country. Therefore, a need has been felt to tap private entrepreneurship and private resources in the development of road sector. With this in view, the Government has taken a number of measures like the declaration of road sector as an industry and infrastructure facility and certain other concessions. A number of private investors including foreign investors have shown interest in the proposal to open the road



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sector for private investment. However, in the absence of an enabling provision in the National Highways Act, 1956, it is not possible to enter into agreements with private investors for the development of roads.

2. It is, therefore, proposed to enable the Central Government:-

- (i) to enter into agreement with any person in relation to the development and maintenance of the whole or any part of a national highway;
- (ii) to levy fees and authorise the person who has undertaken to develop the whole or any part of a national highway to collect such fee;
- (iii) to empower such person to regulate traffic on such national highway."

86. By relying upon these objects, it was the contention made on behalf of the respondents that, Section 8-A which was inserted w.e.f., 16.06.1995 by Act 26 of 1995 having the *non obstante* clause, by name, notwithstanding, both under sub-section (1) as well as sub-section (2) stating that, notwithstanding anything contained in this Act, notwithstanding anything contained in Section 7.



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87. Therefore the entire provisions in the Act as well as the Section 7 of the Act have been excluded or overridden by the provisions of Section 8-A by virtue of these *non obstante* clauses.

88. Therefore the arguments of the respondent side was that, Section 8-A gives exclusive and enormous power to the Central Government to act upon as has been stated in the said section, in which the Section 7 has no role to play in view of the *non obstante* clause. The said argument is to be accepted.

89. The next main argument advanced by the petitioners side was that, the 2008 Rules replacing the 1997 Rules cannot be made applicable to a public funded project. In order to meet the said argument of the petitioners side, it was the contention of the respondents that, rule 1(4) of the 2008 Rules makes it clear that, under the heading short title and commencement, that the rule shall apply to the agreement and contracts executed and bids invited relating to public funded projects and the built operate and transfer projects prior to the publication of the said Rules.



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90. The word “Concessionaire” has been defined in rule 2(1)(d) of the 2008 Rules defining that, concessionaire means the person with whom an agreement has been entered into under Section 8-A of the Act.

91. Therefore the argument that, the 2008 Rules shall not apply to public funded projects and also the concessionaire with whom an agreement is entered into under Section 8-A by the Central Government cannot be given the power or authority to collect the fee or levy the fee, as argued by the learned counsel appearing for the petitioners is liable to be rejected.

92. Moreover if we look at all the 4 notifications, which are impugned in various writ petitions in this batch as referred to above, they were made by exercising the power under Section 7, Section 8-A of the Act as well as rule 3 of the 2008 Rules.

93. In rule 3 of 2008 Rules, the Central Government is empowered to issue notification for levy of fee for use of any section of national highway in accordance with the provisions of the said Rules.

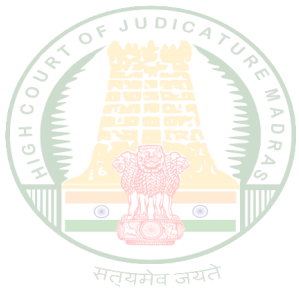


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94. Therefore it is not only in the rule but also in the Act, such a power since is vested with the Central Government, in exercise of such power, the Central Government if at all entered into an agreement with any person under Section 8-A of the Act, who can be treated as concessionaire within the meaning of rule 2(1)(d) of the 2008 Rules and such concessionaire would be entitled to collect the user fee as fixed by the Central Government in the notification being issued from time to time within the framework of 2008 Rules.

95. Insofar as the location of the toll plaza or fee plaza is concerned, rule 8 of 2008 Rules speaks about the location of fee plaza, where, there are two restrictions, one is that, within 10 kms from the border of the municipality no toll plaza shall be located. Like that, between two toll plazas in the same section on the same direction there must be 60 kms.

96. However, these two restrictions are having exemptions, for which, there are two provisos, in each, sub-rule (1) and sub-rule (2) of 2008 Rules. Therefore, insofar as the location of the fee plaza is concerned, it cannot be stated that, the toll plaza cannot be fixed in a particular place provided, if it is not in violation of 2008 Rules.

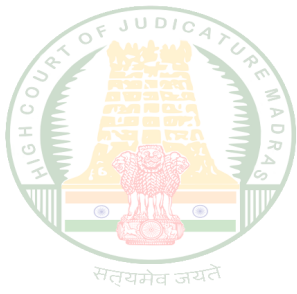


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97. The next important argument that was advanced by the petitioners side is that, what is being collected from these people, i.e., road users in the national highways section is a toll or fee, therefore it cannot be equated to the term “tax”. In case of tax, it may be a compulsory extraction, for which there need not be any *quid pro quo*. However in respect of collection of fee or toll is concerned, it must be based on the *quid pro quo*, in other words, there must be a benefit provided to the users and corresponding to the benefit provided to the users only, the fee to be levied can be collected not otherwise.

98. In support of this argument, the learned counsel appearing for the petitioners has relied upon certain decisions. Though number of Judgments have been relied upon by the learned counsel appearing for the petitioners, he was very particular about four such decisions which are being dealt with herein.

98.1. **Indian Mica and Micanite Industries v. State of Bihar** reported in (1971) 2 SCC 236. In the said decision, the learned counsel appearing for the petitioners relied upon the following passages :



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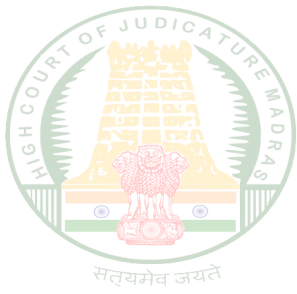


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"4. The distinction between fee and levy came up for the first time for consideration by this Court in *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar of Sri Shrur Mutt* [AIR 1954 SC 282 : (1954) SCR 1005] . Therein this Court speaking through Mukherjea, J. (as he then was) quoted with approval the definition of “tax” given by Latham, C.J., of the High Court of Australia in *Mathews v. Chicory Marketing Board* [60 CLR 263] . In that case the learned Chief Justice observed:

“ ‘A tax’ is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.”

5. Dealing with the distinction between “tax” and “fee” Mukherjea, J., observed thus in the above mentioned case: “It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular



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individual, there is, as it is said no element of *quid pro quo* between the taxpayer and the public authority. Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.

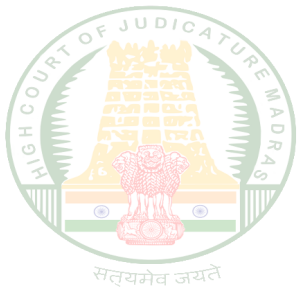
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Coming now to fees, a 'fee' is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

* * *

If, we as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services."

6. The same view was reiterated by this Court in *Mahant*



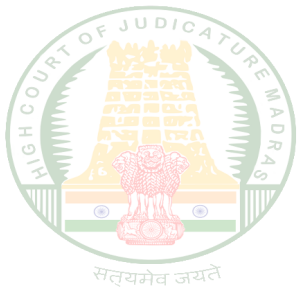
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Sri Jagannath Ramanuj Das v. State of Orissa [AIR 1954 SC 400 : (1954) SCR 1046] and in *Ratilal Panachand Gandhi v. State of Bombay* [AIR 1954 SC 388 : (1954) SCR 1055] .

7. The nature of “a fee” again come up for consideration before this Court in *Hingir Rampur Coal Co. Ltd. v. State of Orissa* [AIR 1961 SC 459 : (1961) 2 SCR 537] . Therein this Court observed that although there can be no generic difference between a tax and a fee since both are compulsory exactions of money by public authorities, there is this distinction between them that whereas a tax is imposed for public purposes and requires no consideration to support it, a fee is levied essentially for services rendered and there must be an element of *quid pro quo* between the person who pays it and the public authority that imposes it. While a tax invariably goes into the consolidated fund, a fee is earmarked for the specified services in a fund created for the purpose. Whether a cess is one or the other would naturally depend on the facts of each case. If in the guise of a fee, the Legislature imposes a tax, it is for the court on a scrutiny of the scheme of the levy, to determine its real character. The distinction is recognised by the Constitution which while empowering the appropriate Legislatures to levy taxes under the Entries in the three lists refers to their power to levy fees



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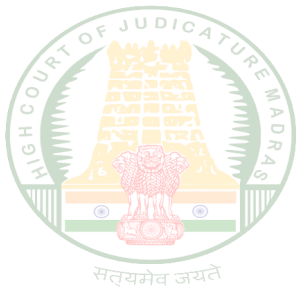
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in respect of any such matters, except the fees taken in court, and tests have been laid down by this Court for determining the character of an impugned levy. In determining whether a levy is a fee the true test must be whether its primary and essential purpose is to render specific services to a specified area or class, it being of no consequence that the State may ultimately and indirectly be benefited by it."

98.2. State of U.P v. Devi Dayal Singh, reported in **(2000) 3 SCC**

5. In this decision, the following has been relied upon by the petitioners counsel :

"7. The concept of "toll" is derived from English jurisprudence. Shorn of connotations which are historically irrelevant in this country, a "toll" may be defined as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. (See in this connection *Hammerton v. Earl of Dysart* [(1916) 1 AC 57, 58 : 85 LJCh 33 : 113 LT 1032 (HL)],



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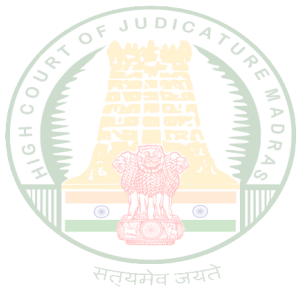


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Brecon Markets Co. v. Neath & Brecon Rly. Co. [(1872) 7 CP 555 : 41 LJCP 257 : 27 LT 316], *Hindustan Vanaspati Mfg. Co. Ltd. v. Municipal Board, Ghaziabad* [AIR 1962 All 25 : 1960 All LJ 651 (SB)], *Maheshwari Singh v. State of Bihar* [AIR 1966 Pat 462 (DB)], *Mohd. Ibrahim v. State of U.P.* [AIR 1967 All 24 : 1967 All LJ 195] and *Kamaljeet Singh v. Municipal Board, Pilkhwa* [(1986) 4 SCC 174 : AIR 1987 SC 56].)

8. The public benefit envisaged under Section 2 of the Tolls Act, 1851 is the making or repairing of any road or bridge at the expense of the State Government. For the advantage obtained by the public by the construction of the roads and bridges, the State Government is entitled to reimburse itself for providing the service.

9. Although the section has empowered the State Government to levy rates of tolls “as it thinks fit”, having regard to the compensatory nature of the levy, the rate of toll must bear a reasonable relationship to the providing of the benefit. No doubt, by virtue of Section 8 of the Act, the tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll



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cannot be used for otherwise augmenting the State's revenue."

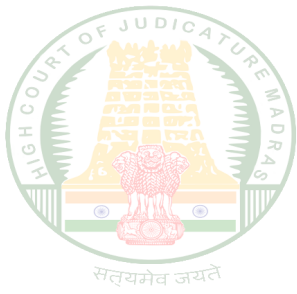
98.3. M.Chandru v. Chennai Metropolitan Development

Authority, reported in **(2009) 4 SCC 72**. In this decision, the following passage have been relied upon :

"24. It is not contended before us that IDC is not a fee but a tax. If it is a fee, the principle of *quid pro quo* shall apply. Like a State, all other authorities which are statutorily empowered to levy the same must spell out as to on what basis the same is charged. The State has not placed any material before the High Court. The High Court has also not addressed itself properly on the same issue. It failed to pose unto itself a relevant question. It proceeded on the basis as if overall development charges by itself is sufficient to levy a fee without spelling out how the services rendered will satisfy the equivalence doctrine for the purpose of levy and collection of fees.

25. In *Krishna Das v. Town Area Committee, Chirgaon* [(1990) 3 SCC 645 : 1990 SCC (Tax) 374] this Court observed: (SCC p. 652, paras 22-24)

“22. A fee is paid for performing a function. A fee is not ordinarily considered to be a tax. If the fee is merely to compensate an authority for services



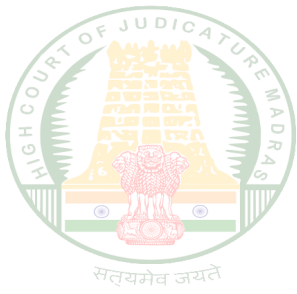
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performed or as compensation for the services rendered, it can hardly be called a tax. However, if the object of the fee is to provide general revenue of the authority rather than to compensate it, and the amount of the fee has no relation to the value of the services, the fee will amount to a tax. In the words of Cooley, 'A charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the Government whose officer or officers collect the charge is not a fee but a tax.'

23. Under the Indian Constitution the State Government's power to levy a tax is not identical with that of its power to levy a fee. While the powers to levy taxes is conferred on the State Legislatures by the various entries in List II, in it there is Entry 66 relating to fees, empowering the State Government to levy fees 'in respect of any of the matters in this list, but not including fees taken in any court'. The result is that each State Legislature has the power, to levy fees, which is co-extensive with its powers to legislate with respect to substantive matters and it may levy a fee



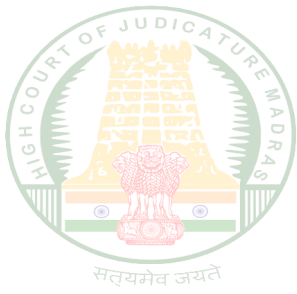
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with reference to the services that would be rendered by the State under such law. The State may also delegate such a power to a local authority. When a levy or an imposition is questioned, the court has to inquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax, and vice versa. The question to be determined is whether the power to levy the tax or fee is conferred on that authority and if it falls beyond, to declare it ultra vires.

24. We have seen that a fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all taxpayers. A fee is a payment made for some special benefit enjoyed by the payer and the payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue. Where, however, the service is indistinguishable from the public services and forms part of the latter it is necessary to inquire what is the primary object of the levy and the essential purpose which it is intended to achieve.



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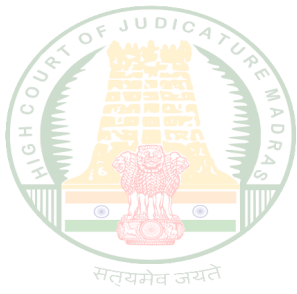
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While there is no *quid pro quo* between a taxpayer and the authority in case of a tax, there is a necessary co-relation between fee collected and the service intended to be rendered of course the *quid pro quo* need not be understood in mathematical equivalence but only in a fair correspondence between the two. A broad co-relationship is all that is necessary.”

98.4. MSK Projects (I) (JV) Ltd., v. State of Rajasthan, reported in **(2011) 10 SCC 573**. In this decision, the following has been relied upon :

"34. The Court is not oblivious to the fact that the State authorities cannot be permitted to use the collection of toll fee as augmenting the State revenues. In *State of U.P v. Devi Dayal Singh* [(2000) 3 SCC 5 : AIR 2000 SC 961] this Court defined “toll” as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. The Court further held: (SCC p. 10, para 9)

“9. Although the section has empowered the State Government to levy rates of tolls ‘as it thinks fit’,



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having regard to the *compensatory nature* of the levy, the rate of toll must bear a reasonable relationship to the providing of benefit. No doubt, by virtue of Section 8 of the Act, the tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll cannot be used *for otherwise augmenting the State's revenue.*”

(emphasis added)

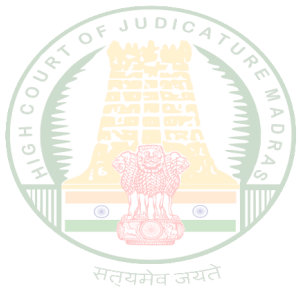
35. In fact, the toll fee under the Tolls Act, 1851 is compensatory in nature wherein the Government can reimburse itself the amount which it had spent on construction of road/bridge, etc.

36. Clause IV(a) of the statutory Notification dated 10-2-1997 which entitled the Government to give the present road on toll is reproduced below:

“IV(a). The toll of any of the aforesaid facilities/constructions shall be levied *only for so long as the total cost of its construction and maintenance including interest thereupon, and the total expenditure in realisation of toll has not been realised in full* or for a period of 30 years.”

(emphasis added)

It is evident that Clause IV(a) of the Notification dated 10-2-1997 envisages that toll can only be collected as



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long as the total cost of construction and maintenance including interest thereupon is recovered. A person is debarred by law and statutory inhibition as contained in Clause IV(a) of the notification from collection of toll beyond the recovery of the cost of construction.

37. Thus, from the abovereferred provisions, it is evident that toll fee is compensatory in nature and can be collected by the State to reimburse itself the amount it has spent on construction of the road/bridge, etc. The State is competent to levy/collect the toll fee only for the period stipulated under the statute or till the actual cost of the project with interest, etc. is recovered. However, it cannot be a source of revenue for the State.

38. In common parlance, “reimbursement” means and implies restoration of an equivalent for something paid or expended. Similarly, “compensation” means anything given to make the equivalent. (See *State of Gujarat v. Shantilal Mangaldas* [(1969) 1 SCC 509 : AIR 1969 SC 634] , *Tisco Ltd. v. Union of India* [(2001) 2 SCC 41 : AIR 2000 SC 3706] , *GDA* [(2004) 5 SCC 65 : AIR 2004 SC 2141] and *HUDA v. Raj Singh Rana* [(2009) 17 SCC 199 : (2011) 2 SCC (Civ) 136 : AIR 2008 SC 3035] .) However, in *Dwaraka Das v. State of M.P.* [(1999) 3 SCC 500 : AIR 1999 SC 1031] it was held that a claim by a contractor for recovery of amount as damages as



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expected profit out of contract cannot be disallowed on ground that there was no proof that he suffered actual loss to the extent of amount claimed *on account of breach of contract.*"

99. Relying upon these decisions, the learned counsel appearing for the petitioners would contend that, there is a vast difference between tax and fee. Under the provisions of the Tolls Act, 1851, toll fee is a compensatory in nature, wherein the Government can reimburse itself the amount which it had spent on construction of road or bridge. Since it is a compensatory in nature, it can be collected by the State to reimburse itself the amount it has spent on construction of road and bridge and in common parlance reimbursement means and implies restoration of an equivalent for something paid or expended.

100. For the valid imposition of a toll, there must be a corresponding benefit. Fee is a payment levied by an authority in respect of services performed by it for the benefit of the payer, while a tax is payable for the common benefits conferred by the authority on all tax payers. A fee is a payment made for some special benefits enjoyed by the payer and the



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payment is proportional to such benefit. Money raised by fee is appropriated for the performance of the service and does not merge in the general revenue.

101. It was the further contention by relying upon these decisions by the learned counsel appearing for the petitioners that, the concept of toll is derived from the Indian Jurisprudence. A toll may be defined as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. Though the law empowered the State Government to levy rates of tolls, as it thinks fit, having regard to the compensatory nature of the levy, the rate of toll must bear a reasonable relationship to the providing of the benefit.

102. He has further argued on this line, that although there can be no generic difference between the tax and a fee, since both are compulsory extraction of money by public authorities, this distinction is there between them that, whereas a tax is imposed for public purpose and requires no



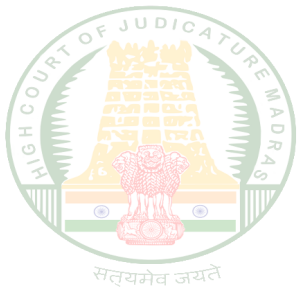
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consideration to support it, however, a fee is levied essentially for services rendered and there must be an element of quit pro quo between the person who pays it and the public authority who imposes it.

103. In order to meet these arguments advanced on the side of the petitioners, the learned ASG had relied upon two decisions of the Hon'ble Supreme Court, one is of the the year 2004 and another one is the recent one, i.e., of the year 2021.

104. The first decision is State of H.P and Ors. v. Shivalik Agro Poly Products & Ors, reported in (2004) 8 SCC 556, where their Lordships have held in paragraph 14 and 15 which reads thus :

"14. In a recent judgment rendered in *B.S.E. Brokers' Forum v. Securities and Exchange Board of India* [(2001) 3 SCC 482] by a Bench of three learned Judges, the challenge levelled against the registration fee levied by the Securities and Exchange Board of India on stockbrokers came up for consideration. The Bench after review of a number of earlier decisions, including the Constitution Bench decision in *Shirur Mutt case*



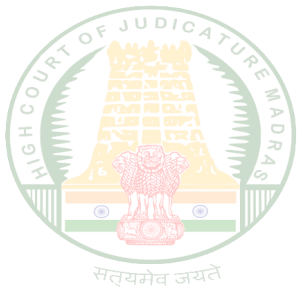
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[AIR 1954 SC 282 : 1954 SCR 1005] took note of the fact that in determining whether a levy is a fee or not, emphasis must be on whether its primary and essential purpose is to render specific services to a specified area or a class and if in that process it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. After examination of the relevant Act and the Regulations, the Court held that since the amount collected under the levy account in the said case was being spent by the Board on various activities of the stock and securities market with which the petitioners are directly connected, the fact that the entire benefit of the levy does not accrue to the contributors i.e. the petitioners, would not make the levy invalid.

15. It will be thus seen that the statement of law made in *Shirur Mutt case* [AIR 1954 SC 282 : 1954 SCR 1005] regarding the attributes of fee has undergone a sea change. The consistent view now is that there is no generic difference between a tax and a fee which are both compulsory exaction of money by public authorities. The relationship between the levy and the services rendered should be one of general character and not of



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mathematical exactitude. Further, the broad and general correlationship between the totality of the fee on the one hand and the totality of the expenses of the services on the other, will be sufficient to justify the levy. The levy will not fail only on the ground that the measure of its distribution on the persons or incidence is disproportionate to the actual services rendered by them. The true test being the comprehensive level of the value of the totality of the services set off against the totality of the receipts. The character of the fee is thus established. The vagaries in its distribution amongst the class do not detract from the concept of a fee as such."

105. The another decision relied by the respondent side is the latest decision made in **Jalkal Vibhag Nagar Nigam & Ors v. Pradeashiya Industrial and Investment Corporation and another**, reported in **2021 SCC Online SC 960**. In the said decision, the following has been heavily relied upon by the learned ASG :

"D.4 Tax and fee



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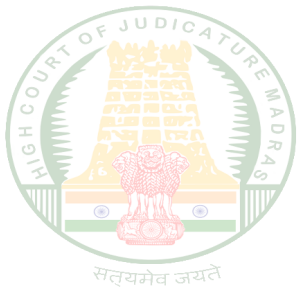


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54. Ms. Divan's submission that the tax which is imposed in Section 52(1)(a) is truly speaking a fee is premised on the argument that a true tax on lands and buildings under Entry 49 of List II

- (i) should be agnostic as between owners and occupiers;
- (ii) should make no differentiation between those who do and do not consume water; and
- (iii) should contain no provision for a separate fund into which the revenue of the Jal Sansthan is earmarked.

55. The distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence. At one time, it was possible for courts to assume that there is a distinction between a tax and a fee : a tax being in the nature of a compulsory exaction while a fee is for a service rendered. This differentiation, based on the element of a *quid pro quo* in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. For one thing, the payment of a charge or a fee may not be truly voluntary and the charge may be imposed simply on a class to whom the service is made available. For another, the service may not be provided directly to a person as distinguished from a general service which is provided to the members of a group or class of which that person is a part. Moreover, as the law has progressed, it has come to be recognized that there need not be



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any exact correlation between the expenditure which is incurred in providing a service and the amount which is realized by the State. The distinction that while a tax is a compulsory exaction, a fee constitutes a voluntary payment for services rendered does not hold good. As in the case of a tax, so also in the case of a fee, the exaction may not be truly of a voluntary nature. Similarly, the element of a service may not be totally absent in a given case in the context of a provision which imposes a tax.

56. The gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject matter of several decisions of this Court.

57. In *Southern Pharmaceuticals and Chemicals, Trichur v. State of Kerala* [(1981) 4 SCC 391] Justice AP Sen speaking for the Court held:

“24. The distinction between a “tax” and a “fee” is well settled. The question came up for consideration for the first time in this Court in the *Commissioner, H.R.E., Madras v. Lakshmindra Thirtha Swamiar of Shirur Mutt* [AIR 1954 SC 282 : 1954 SCR 1005 : 1954 SCJ 335].

[...]

25. “Fees” are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that

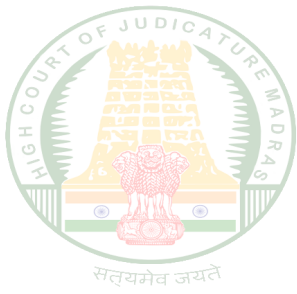


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the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. **It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of *quid pro quo* stricto sensu is not always a sine qua non of a fee. It is needless to stress that the element of *quid pro quo* is not necessarily absent**



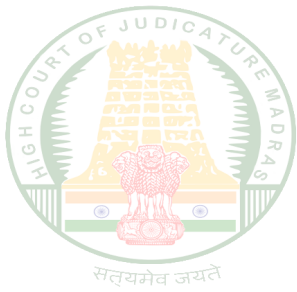
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in every tax. We may, in this connection, refer with profit to the observations of Seervai in his *Constitutional Law*, to the effect : [HM Seervai *Constitutional Law of India*, 2nd Edn, Vol. 2, p 1252, para 2239].

“It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, the character of the imposition would not change because under Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the



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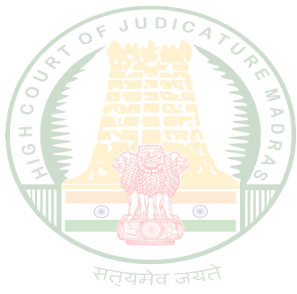
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element of quid pro quo is not necessarily absent in every tax.”

Our attention has been drawn to the observations in *Kewal Krishan Puri v. State of Punjab* [(1980) 1 SCC 416, 425 : (1979) 3 SCR 1217, 1230] : (SCC p. 425, para 8)

“The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.”

To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs. 2 per every hundred rupees to Rs. 3. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of *quid pro quo*



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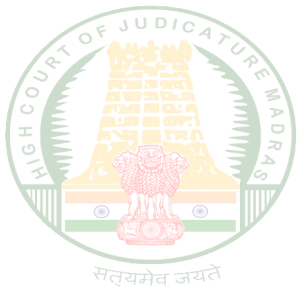
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must always be present in a fee. The traditional concept of *quid pro quo* is undergoing a transformation.”

(emphasis supplied)

58. In *Municipal Corporation of Delhi v. Mohd. Yasin* [(1983) 3 SCC 229)], Justice O Chinnappa Reddy, while speaking for two judge Bench of this Court, referred to the decision in *Southern Pharmaceuticals* (supra) and observed:

“9. What do we learn from these precedents? We learn that there is no generic difference between a tax and a fee, though broadly a tax is a compulsory exaction as part of a common burden, without promise of any special advantages to classes of taxpayers whereas a fee is a payment for services rendered, benefit provided or privilege conferred. Compulsion is not the hallmark of the distinction between a tax and a fee. That the money collected does not go into a separate fund but goes into the consolidated fund does not also necessarily make a levy a tax. Though a fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere causal relation may be enough. Further, neither the incidence of the fee nor the service rendered need be uniform. That others besides those paying the



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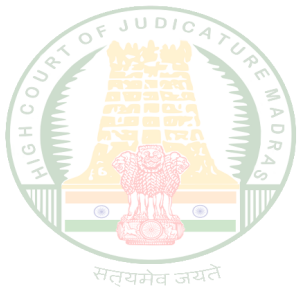


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fees are also benefitted does not detract from the character of the fee. In fact the special benefit or advantage to the payers of the fees may even be secondary as compared with the primary motive of regulation in the public interest. Nor is the court to assume the role of a cost accountant. It is neither necessary nor expedient to weigh too meticulously the cost of the services rendered etc. against the amount of fees collected so as to evenly balance the two. A broad co-relationship is all that is necessary. *Quid pro quo* in the strict sense is not the one and only true index of a fee; nor is it necessarily absent in a tax.”

59. In *Sreenivasa General Traders v. State of Andhra Pradesh* [(1983) 4 SCC 353], a three judge Bench of this Court held:

“32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each



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individual who obtains the benefit of the service. It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the *Shirur Mutt case* [(1980) 1 SCC 416 : AIR 1980 SC 1008 : (1979) 3 SCR 1217] was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of *quid pro quo* in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of *quid pro quo* is not necessarily absent in every tax : *Constitutional Law of India* by H.M. Seervai, Vol. 2, 2nd Edn., p. 1252, paras 22, 39.”

(See also in this context, the decision in *Sirsilk Ltd. v. Textile Committee* [1989 Supp. (1) SCC 168]).

60. In view of this consistent line of authority, it emerges that the practical and even constitutional, distinction between a tax

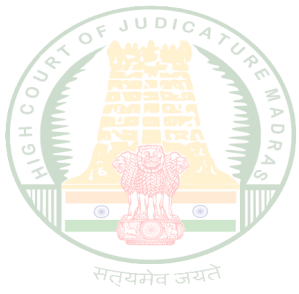


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and fee has been weathered down. As in the case of a tax, a fee may also involve a compulsory exaction. A fee may involve an element of compulsion and its proceeds may form a part of the Consolidated Fund. Similarly, the element of a *quid pro quo* is not necessarily absent in the case of every tax. In the present case, the tax has been imposed by the legislature in Section 52 on premises situated within the area of the Jal Sansthan. The proceeds of the tax are intended to constitute revenue available to the Jal Sansthan to carry out its mandatory obligations and functions under the statute of making water and sewerage facilities available in the area under its jurisdiction. The levy is imposed by virtue of the presence of the premises within the area of the jurisdiction of the Jal Sansthan. The water tax is levied so long as the Jal Sansthan has provided a stand post or waterworks within a stipulated radius of the premises through which water has been made available to the public by the Jal Sansthan. The levy of the tax does not depend upon the actual consumption of water by the owner or occupier upon whom the tax is levied. Unlike the charge under Section 59 which is towards the cost of water to be supplied by the Jal Sansthan according to its volume or, in lieu thereof on a fixed sum, the tax under Section 52 is a compulsory exaction. Where the premises are connected with water supply, the tax is levied on the occupier of the premises. On the other hand, where the premises are not so connected, it is the owner of the premises



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who bears the tax. The levy under Section 52(1) is hence a tax and not a fee. Moreover, for the reasons that we have indicated above, it is a tax on lands and buildings within the meaning of Entry 49 of List II."

106. These two decisions have been heavily relied upon by the respondents side to establish that, there could be no much distinction between the concept of tax and the concept of fee or toll. If we look at these decisions, the earlier theory as has been culled out from the decisions referred to above on behalf of the petitioners from the law courts was that, there must be a distinction between the tax and fee and the earlier one is the compulsory extraction for the general revenue of the State but the later is only for *quid pro quo*, that is the service rendered or the benefit rendered to the fee or toll payer.

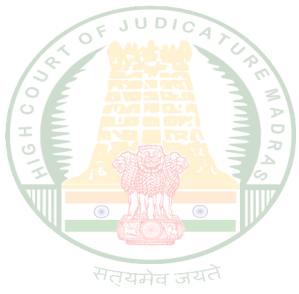
107. However this has been considerably modified or changed over the years, as the law develops and this has been specifically mentioned by the Hon'ble Supreme Court in the latest decision in Jalkal Vibhag Nagar Nigam's case cited supra.



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108. The Court has stated that, the distinction between tax and fee has substantially been effaced in the development of our Constitutional Jurisprudence. The differentiation based on the element of *quid pro quo* in the case of a fee and in the absence in the case of tax has gradually, yet, steadily been obliterated to the point where it lacks any practical or Constitutional significance. As the law progress, it has come to be recognised that, there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realised by the State.

109. The gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject matter of several decisions of the Court, where (1981) 4 SCC 391, (1983) 3 SCC 229, (1983) 4 SCC 353 and 1989 Suppl (1) SCC 168 have been relied up on. Ultimately the Hon'ble Supreme Court has said that, it emerges that, the practical and even constitutional distinction between tax and fee has been weathered down. As in the case of tax, a fee may also involve a compulsory extraction. A Fee may involve an element of compulsion and its proceeds may form a part of the consolidated fund. Similarly, the element of *quid pro quo* is not necessarily absent in the case of every tax.

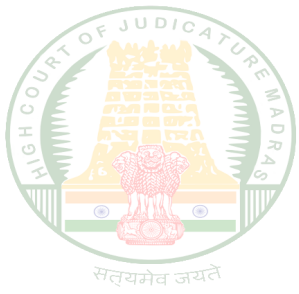


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110. These latest decisions of the Hon'ble Supreme Court has made it clear that, the distinction between the tax and the fee has been effaced. In both cases, there would be compulsory extraction of money by the authorities concerned. Even in case of tax, there may be a theory of *quid pro quo* in general and it cannot be stated that, in the case of tax, such kind of benefaction or *quid pro quo* may not be available.

111. In view of the development of the jurisprudence, where there could be no major distinction between the tax and fee to be collected by the authorities concerned, the theory of *quid pro quo* cannot be evaluated or imposed in *stricto sensu* in case of collection of toll fee or user fee by the authorities concerned under the provision of the National Highways Act, National Highways Authority of India Act as well as the 2008 Rules, which were framed under the rule making power of the Central Government vested in them under Section 9 of the NH Act.

112. Therefore the usage of minimum stretch of a section of national highway theory by invoking the *quid pro quo* principle for levying the lesser amount of fee or toll cannot be employed by the petitioner's side as has been projected in these cases.



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113. However, insofar as the modification made in respect of the monthly pass between 1997 Rules and 2008 Rules is concerned, this Court feel that, there may be some justification on the part of the petitioners to project that point, because, admittedly these vehicles are stage carriage permitted vehicles and they have to ply the vehicles for the permitted trips in the given route as per the transport permit given by the authorities concerned. While so, they have to take atleast 4 to 6 trips per day, therefore it become inevitable to have a multiple entry in every day in a particular section of the highway or toll plaza.

114. Moreover these vehicles are public utility services and are being plied for the public interest. When that being so, the monthly pass concession, which infact has been given under rule 9 of the 2008 Rules under the heading “Discounts”, should be extended to them, enabling them to make use of these concession for the entire trips or single they have to undertake for the whole month, i.e., 30 days as per the permit conditions.

115. In this regard, even though the rule 9 of 2008 Rules has made it clear that, the driver, owner or person incharge of a mechanical vehicle who

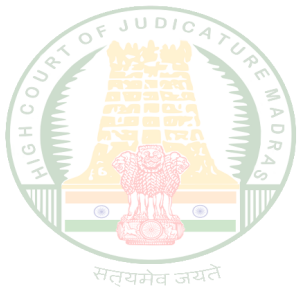


W.P.(MD).No.15449 of 2020 etc., batch

makes use of the section of a national highway shall have to pay fee in accordance with the following rates, i.e., 2/3rd of amount of the fee payable for 50 single journeys in one month, the same can very well be extended depending upon the requirement of the stage carriage permitted public transport vehicles like the petitioners and in this regard, no rigid rule need to be followed.

116. Except these concession, no other benefit can be expected by the petitioners and in this context, the challenge made in toto against these impugned notifications, in view of the aforestated reasons and discussions have to fail and therefore they yield to the power vest with the authorities concerned including the Central Government to make the rules for levy and collection of toll.

117. Insofar as the challenge made in W.P.(MD).No.8646 of 2010 with regard to the challenge of rule 9(2) of the 2008 Rules is concerned, that challenge also would fail in view of the aforestated reasons, therefore that writ petition is liable to be dismissed.



118. For all these reasons stated above, this Court is inclined to

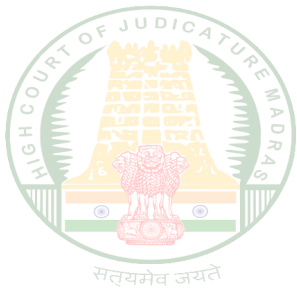
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dispose of these writ petitions with the following orders :

(i) W.P.(MD).Nos. 4252 of 2010, 4253 of 2010, 4254 of 2010, 8644 of 2010, 8645 of 2010, 18616 of 2013, 18617 of 2013, 18618 of 2013, 18619 of 2013, 18620 of 2013 and 18622 of 2013 since have become infructuous, these writ petitions are dismissed as infructuous.

(ii) In respect of other writ petitions, i.e., W.P.(MD).Nos. 15449 of 2020, 15465 of 2020, 15470 of 2020, 15474 of 2020, 18440 of 2020, 5118 of 2021, 5121 of 2021, 6527 of 2021, 4886 of 2014, 4887 of 2014, 4893 of 2014 and 8646 of 2010 are concerned, the challenge made in these writ petitions against the respective notifications as well as sub-rule (2) of rule 9 of 2008 Rules is concerned, that challenge also cannot be sustained, therefore these writ petitions are also to that extent are liable to be rejected, accordingly, they are dismissed.

(iii) However in view of the discussions made herein before, where it is to be noted that, the vehicles owned by the members of the petitioners association in this batch of cases are the stage carriage permit vehicles for the public transportation and they have to ply the vehicle in the permitted route every day for 4 to 6 singles or even more, they have to necessarily cross the section of the highway or toll booth multiple times. Therefore the monthly pass by way of discount or concession



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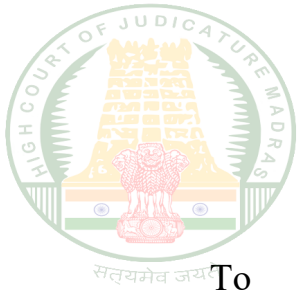
W.P.(MD).No.15449 of 2020 etc., batch

given in each of these notifications, only for 50 trips for 30 days can be modified and accordingly, depending upon the number of singles permitted by the Transport Authority in respect of each of the stage carriage permit, it shall be permitted with concession rate and in this regard, a suitable modification may be made either in the notifications which are impugned herein or individual orders can be passed by the authorities, i.e., the respondents herein to whom individual request / representation can be made by each of the stage carriage permit holder detailing the number of trips they have to undertake every day as per the permit conditions and accordingly, the monthly pass concession can be extended to them not restricting with only 50 trips or 50 singles permissible for 30 days as envisaged or provided in the impugned notifications but extending the same for number of singles as per the condition of stage carriage permit.

119. With these directions, all these writ petitions are disposed of as stated supra. However there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.07.2022

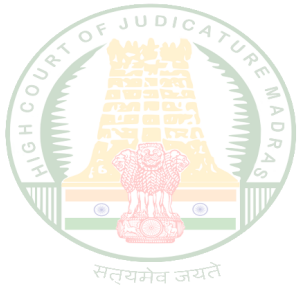
Index : Yes / No
Speaking order / Non-speaking order
tsvn



W.P.(MD).No.15449 of 2020 etc., batch

To
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1. The Secretary
Union of India
Ministry of Road Transport and Highways,
New Delhi.
2. The Secretary
National Highways Authority of India
Ministry of Road Transport and Highways,
G5 & 6, Sector 10,
Dwaraka, New Delhi - 110 075.
3. The Project Director
National Highway Authority of India,
6/44, First Floor, Ponnagar, II Main Road,
Trichy - 620 001, Tamil Nadu.



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W.P.(MD).No.15449 of 2020 etc., batch

R.SURESH KUMAR, J.

tsvn

**Common Order
in
W.P.(MD).No.15449 of 2020
etc., batch**

06.07.2022