



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P (MD)No.13593 of 2018

and

W.M.P (MD)No.12380 of 2018

S.Joel

... Petitioner

Vs.

- 1.The Union Government of India,
Rep. By its Secretary,
Department of Road Transport and Highways,
Transport Bhavan, No.1,
Parliament Street,
New Delhi - 110 001.
- 2.The Chairman,
National Highways Authority of India,
G5 & 6, Sector - 10,
Dwarka,
New Delhi - 110 071.
- 3.The Chief General Manager,
National Highways Authority of India,
Tamil Nadu,
SRI Tower, 3rd Floor,
SP Industrial Estate,
Guindy, Chennai - 600 032.
- 4.The Project Director, NHAI,
Plot No.3, Surya Towers,
II Floor, 1st East Street,
K.K. Nagar,
Madurai - 625 020.
- 5.The District Collector,
Office of the District Collector,
Thoothukudi District,
Thoothukudi.



6.M/s.Madurai-Tuticorin Expressways Limited,
"Madhucon House",
No.8-2-293/82-A, Plot No.1130/1, II Floor,
Sraya Towers, Road No.36,
Jubilee Hills,
Hyderabad.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 5 to shift the existing toll plaza constructed at Km 254.940 located in the Project Highway viz., Madurai-Tuticorin Expressway NH-45B to its original location at 252.300 km as per the concession agreement dated 24.07.2006.

For Petitioner : Mr.V.R.Balasubramanian

For R - 1 : Mr.S.Jeyasingh
Central Government Standing Counsel

For RR 2 & 3 : Dr.Rajagopal

For R - 4 : Mr.C.Arul Vadivel Alias Sekar

For R - 5 : Mr.K.P.Krishnadass
Special Government Pleader

For R - 6 : Mr.N.GA.Natraj

ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

There is no representation for the petitioner.

2.We have heard Mr.S.Jeyasingh, learned Central Government Standing Counsel for the first respondent, Dr.Rajagopal, learned counsel appearing for the respondents 2 and 3, Mr.C.Arul Vadivel Alias Sekar, learned counsel appearing for the fourth respondent, Mr.K.P.Krishnadass, learned Special Government Pleader appearing for the fifth respondent and Mr.N.GA.Natraj, learned counsel appearing for the sixth respondent.

3.This is a Public Interest Litigation filed by a person stating to be a State Youth Wing Deputy Secretary, which is a political party.



4.The prayer sought for in the Writ Petition is to direct the respondents 1 to 5 to shift the existing toll plaza constructed at Km 254.940 located in the Project Highway viz., Madurai-Tuticorin Expressway NH-45B to its original location at 252.300 km as per the concession agreement, dated 24.07.2006.

5.The Writ Petition was filed in the year 2018. We have perused the order sheet and find that the Writ Petition has been adjourned periodically and no interim orders have been issued in the Writ Petition. Admittedly, toll plaza has been functioning in the said location from the year 2011 onwards. The petitioner before us, on an earlier occasion, had filed W.P.No.29389 of 2010, dated 20.04.2015 (S.Joel Vs. the Secretary to Government of India and others) before the Principal Bench of this Court for a direction to the National Highways Authority of India (NHAI) not to grant approval of collection of toll for the vehicles by the sixth respondent herein before the proper completion of the Project Highway, as per the specific standards of India Road construct and till the replacement of toll plaza constructed at 254.940 km on the Project Highway as per Rule 8 of the Highways Fee (Determination of Rates and Collection) Rules, 2008.

6.The said Writ Petition was heard by the Hon'ble First Bench of this Court and by order, dated 20.04.2015, the Writ Petition was dismissed and one of us (TSSJ) was a party to the said decision.

7.Though the prayer sought for in the said Writ Petition was slightly different, but concerns the very same toll plaza. While considering the said Writ Petition on various grounds and on which the submissions were made, the Court also considered as to the power of judicial review in such decision and held that in the absence of any allegation of malafide, no malice in law could be inferred. Further, the Court had also examined as to whether the Court in a proceedings under Article 226 of the Constitution of India cannot examine the decision of the experts in the matter of location of the toll plaza and whether any direction can be issued to shift the location and further considering the legal position and the facts, it was held that no such direction can be issued to shift the toll plaza. The relevant portion reads as follows:-

"17. Coming to the first issue, it was argued by the learned counsel appearing for the petitioner that the reasons assigned for shifting second Toll Plaza from the original location to the present location is wholly unjustified and arbitrary and amounts to penalising the public of Tuticorin, who are compelled to pay huge



amount as toll for using less than 2kms of the highway. Before examining the factual justification put forth by NHAI and the Concessionaire, it has to be first examined as to whether this Court exercising jurisdiction under Article 226 of the Constitution of India could go into the correctness of the statement made by NHAI for relocating the second Toll Plaza.

18. It is settled legal position that this Court exercising power of judicial review would not interfere with the decision or discretion exercised by an authority, unless it is shown that the decision was wholly arbitrary and actuated by bias and malafides. In the case on hand, the petitioner has not alleged any bias or malafide, but would state that the action of the respondent in shifting the Toll Plaza to the present location amounts to malice in law. This argument steams out of the proposition advocated by the petitioner that the relocation of the second Toll Plaza contravenes Rule 8 of the Rules. In the preceding paragraphs, we are outrightly rejected such contentions raised by the petitioner and held that the Rule 8 would have no application to the facts of the present case. In the absence of any allegation of malafide, no malice in law could be inferred. Thus the only question that remains to be considered is whether there is any arbitrariness or infirmity in the decision making process.

19. Admittedly, the location of the Toll Plaza is pursuant to an exercise done by experts in the field and this Court in a proceedings under Article 226 of the Constitution cannot examine the decision as the appellate forum and it is best that such decisions are left the experts. The reasons assigned and the necessity for the relocation, as stated by the respondent is that the first Toll Plaza was proposed as Ch.143.580 and due to site conditions to avoid nearby junction at Ch.151.420 on Madurai side and regarding the second Toll Plaza, it was shifted from Ch.252.300 and established at Ch.254.940, due to the location of a minor bridge, which is located at Ch.251.540, with a level difference between the carriage way and a junction road at Ch.252.945. Nothing has been placed on record by the petitioner to state that the above explanation given by the NHAI and the Concessionaire are either factually incorrect or palpably false. In such circumstances, this Court cannot examine the decision of the experts in the matter of location of the Toll Plaza. On this aspect, we are in respectful agreement with the decision of the Madhya Pradesh High Court in the case of **Manish Jaiswal & Anr. (supra)**, as pointed out therein the decision with



regard to location of the Toll Plaza has been arrived at by the experts after taking into account, the relevant factors mentioned in the agreement and the fixation of alignment and identification of the spot for location of Toll Plaza are the matters within the domain of the authority mentioned in the agreement and this Court in the proceedings under Article 226, cannot sit in appeal over the decision of fixation of the alignment and the identification of the spot for locating the Toll Plaza and therefore, it is better to leave the decision to experts, who are familiar with the issue to decide the location of Toll Plaza."

8. Furthermore, we note that the change of location was also one of the grounds canvassed in the said Writ Petition and the same was dealt with and the issue was decided against the petitioner and the operative portion of the order reads as follows:-

"16.....The change of location is not a fresh contract, but a decision taken by the NHAI while implementing and in furtherance of the contract dated 24.07.2006. Secondly Schedule C of the Concession Agreement, which deals with project facilities while dealing with location of Toll Plaza provides for minor adjustment of the Toll Plaza location which could be proposed in consultation with independent consultant and NHAI. This is for the reason that while in the course of implementation of the project, NHAI and the Concessionaire have been given leverage to adapt to the contingencies and other requirements. Therefore, the location initially proposed could not be taken to be a rigid fixation and sufficient discretion has been vested to be proposed by the Concessionaire in consultation with the independent consultant with the prior approval of the NHAI. It is not in dispute that such proposal was made through the independent consultant and NHAI has granted approval after which the second Toll Plaza has been located in the present location. Thus, the action taken is in pursuance to the Concession Agreement executed in 2006 and relocation being not a fresh grant, but in the process of implementation of the project pursuant to the Concession Agreement executed in 2006. Therefore, the Rules which were prevalent on the date of the Concession Agreement, shall bind the parties and Rule 8 of the said Rules could have no application in the light of the Rule 1 (3) of the Rules. That apart the first proviso to Rule 8 empowers



NHAI, to locate or allow the Concessionaire locate a toll plaza within ten kilometer of such Municipal or local area. This power is vested with the Executing Authority (NHAI) to take care of contingencies which may arise in the course of implementation of the project. Even this power is not unguided as there is a restriction of five kilometer distance. Therefore, even assuming for the sake of argument Rule 8 is attracted, the decision take with regard to location of the second toll plaza at Ch.254.940 cannot be faulted. Accordingly, issue No.(ii) is decided against the petitioner."

9.In the light of the above, the relief sought for in the Writ Petition cannot be granted and accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ps

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Union Government of India,
Rep. By its Secretary,
Department of Road Transport and Highways,
Transport Bhavan, No.1,
Parliament Street,
New Delhi - 110 001.

2.The Chairman,
National Highways Authority of India,
G5 & 6, Sector - 10,
Dwarka,
New Delhi - 110 071.



3.The Chief General Manager,
National Highways Authority of India,
Tamil Nadu,
SRI Tower, 3rd Floor,
SP Industrial Estate,
Guindy, Chennai - 600 032.

4.The Project Director, NHAI,
Plot No.3, Surya Towers,
II Floor, 1st East Street,
K.K. Nagar,
Madurai - 625 020.

5.The District Collector,
Office of the District Collector,
Thoothukudi District,
Thoothukudi.

+1 CC to M/s.N.GA.NATRAJ, Advocate (SR-15769[F] dated 15/04/2021)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-15693[F] dated 09/04/2021)

+2 CC to M/s.R.RAJAGOBAL, Advocate (SR-15723[F] dated 09/04/2021)

+1 CC to M/s.SPL GP (SR-15841[F] dated 15/04/2021)

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-15780[F] dated 15/04/2021)

**ORDER MADE IN
W.P(MD)No.13593 of 2018
09.04.2021**

na(CO)
TR(17.05.2021) 7P 12C