

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2743 of 2022

Gobinda Chandra Khilar & Ors. ***Petitioner(s)***
Mr.S.Mohanty, Advocate

-versus-

Union of India & Ors. ***Opposite Party(s)***
Mr.M.Mishra, Senior
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
30.03.2022**

Order No.

6.

1. Heard learned counsel papering for the parties.
2. This writ petition has been filed merely on anticipation of some financial hurdles by five of the truck owners. Writ petition even did not contain any truck number the petitioners having. In spite of direction of this Court to the petitioners to submit an affidavit before the competent authority disclosing the truck numbers likely to be affected on multiple installation of fee plaza within prescribed limitation of 60 kilometers on National Highway even after passing sufficient time, no such affidavit has been filed as of now. This Court finds grave doubt in the ownership of the petitioners of any truck. Undisputedly the Toll Plaza as alleged is yet to be operational and learned Sr. Counsel appearing for the National Highway Authority brings to the notice of this Court to the provision at Rule 8 and 9 of the Rules, 2008 and claims that there is sufficient safeguards to mitigate the contingency raised herein. It is at this stage of the matter, looking to the provision at Rule-8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. This Court finds the provision at Rule-8 therein reads as follows:

“8. Location of fee plaza-(1) The executing authority or the concessionaire, as the case may be, shall establish a fee plaza beyond a distance of ten kilometres from a municipal or local town area limits:

Provided that the executing authority may, for reasons to be recorded in writing, locate or allow the concessionaire to locate a fee plaza within a distance of ten kilometres of such municipal or local town area limits, but in no case within five kilometres of such municipal or local town area limits:

Provided further that where a section of the national highway, permanent bridge, by-pass or tunnel, as the case may be, is constructed within the municipal or town area limits or within five kilometres from such limits, primarily for use of the residents of such municipal or town area, the fee plaza may be established within the municipal or town area limits or within a distance of five kilometres from such limits.

(2) Any other fee plaza on the same section of national highway and in the same direction shall not be established within a distance of sixty kilometres:

Provided that where the executing authority deems necessary, it may for reasons to be recorded in writing, establish or allow the concessionaire to establish another fee plaza within a distance of sixty kilometres:

Provided further that a fee plaza may be established within a distance of sixty kilometres from another fee plaza if such fee plaza is for collection of fee for a permanent bridge, by-pass or tunnel.”

Reading the aforesaid provision, this Court finds there is no restriction in not having further toll plaza within 60 kilometers. It is at this stage, this Court finds in the event anybody is affected in the installation or multiple toll plaza and or fee plaza within 60 kilometers, here looking to the apprehensions of the petitioners, if any, this Court finds, there is provision for discounts under Rule 9 of the Rule, 2008 which reads as follows:

“9. Discounts-(1) The executing authority or the concessionaire, as the case may be, shall upon request provide a pass for multiple journeys to cross a fee plaza within the specified period at the rates specified in sub-rule (2) of rule 9.

(2) A driver, owner or person in charge of a mechanical vehicle who makes use of the section of national highway, permanent bridge, by-pass or tunnel, may opt for such pass and he or she shall have to pay the fee in accordance with 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 hour from the time of payment
Two-third of amount of the fee Payable for fifty single journeys	Fifty	One month from date of Payment

(3) A person who owns a mechanical vehicle registered for non-commercial purposes and uses it as such for commuting on a section of national highway, permanent bridge, by-pass or tunnel, may obtain a pass, on payment of fee at the base rate for the year 2007-2008 of Rupees One hundred and fifty per calendar month and revised annually in accordance with rule 5, authorizing it to cross the fee plaza specified in such pass;

Provided that such pass shall be issued only if such driver, owner or person in-charge of such mechanical vehicle resides within a distance of twenty kilometers from the fee plaza specified by such person and the use of such section of national highway, permanent bridge, by-pass or tunnel, as the case may be, does not extend beyond the fee plaza next to be specified fee plaza;

Provided further that no such pass shall be issued if a service road or alternative road is available for use by such driver, owner or person in charge of a mechanical vehicle.

(3-A) A person, who owns a commercial vehicle (excluding vehicle playing under National Permit), registered with address on the Registration Certificate of a particular district and uses such vehicle for commuting on a section of the National Highway, permanent bridge, tunnel or by-pass as the case may be, which is located within that district, shall be levied user fee on all fee plazas which are located within that district, at the rate of fifty per cent of the prescribed rate of fee.

Provided that no such concession shall be provided, if a service road or alternative road is available for use by such commercial vehicle.

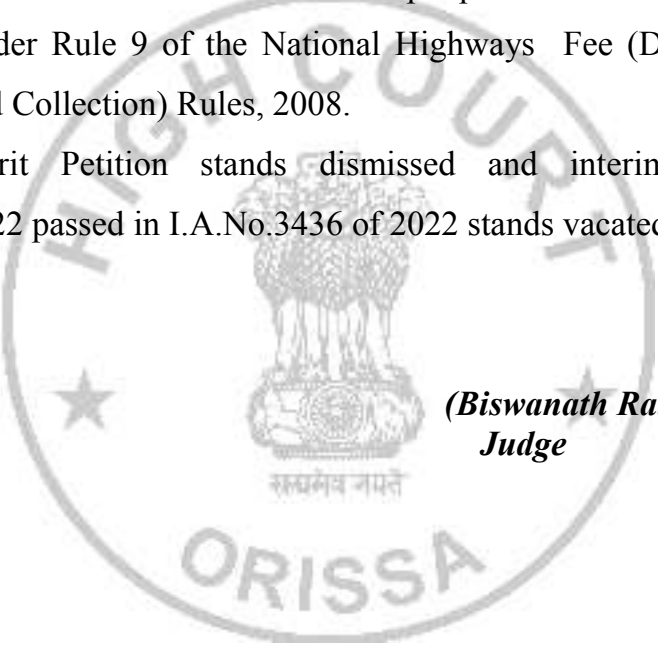
4. No pass shall be issued or fee collected from a driver, owner or person in charge of a mechanical vehicle that uses part of the section of a national highway and does not cross a fee plaza.”

Reading the aforesaid, this Court finds in the event of any inconvenience with any vehicle owner suffering on account of multiple

fee plaza for running vehicle in between such toll plaza have the option to apply for concession. Whole writ petition nowhere discloses any such endeavor before the approaching this Court and surprisingly the Petitioners instead of taking shelter of provision taken note hereinabove, have approached this Court for issuing mandamus, which is not permissible at this stage.

3. Consequently, this Court while dismissing the writ petition as not entertainable for the Petitioners have scope under Rule 8 and Rule-9 of National Highways Fee (Determination of Rates and Collection) Rules, 2008, observes in the event any of vehicle of the petitioner likely to be affected for installation of multiple plaza will have opportunity to apply under Rule 9 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008.

4. Writ Petition stands dismissed and interim order dated 21.03.2022 passed in I.A.No.3436 of 2022 stands vacated.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, flanked by two stars. Below the lion capital is the Sanskrit motto 'सत्यमेव जयते'. The word 'ORISSA' is written in a large, bold, sans-serif font at the bottom of the circle. The words 'HIGH COURT' are written in a smaller font along the top inner edge of the circle.

(Biswanath Rath)
Judge