

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.624 of 2012

***Dhaneswar Rath Institute of
Engineering and Medical Sciences
(DRIEMS)***

....

Petitioner

Mr. G.M. Rath, Advocate

-versus-

Union of India and others

....

Opposite Parties

Mr. Amitav Das, Advocate for NHAI

Mr. B.P. Das, Advocate for O.P. No.6

**CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN**

Order No.

**ORDER
29.11.2022**

06. 1. On 9th May 2012, the following order was passed in the present writ petition i.e., W.P.(C) No.624 of 2012:

“The aforesaid writ petition has been filed by the Dhaneswar Rath Institute of Engineering and Medical Sciences (DRIEMS), situated at Kairapari, Tangi in the district of Cuttack, challenging the Notification dated 19.10.2011 issued by the O.P. No. 1 and letter dated 24.11.2011 under Annexure-6 issued by the National Highways Authority of India (NHAI) enhancing the toll fees at Manguli Toll Plaza on N.H.No.5 for six laning stretch of road without completing the same. Petitioner further challenges the collection of toll fees at the said plaza by the opposite party No. 6 on the enhanced rate.

2. It is the case of the petitioner-institution that it is plying number of its buses for the purpose of providing conveyance to its students located within 3 k.m. of the toll plaza in question from their respective destination to the institution and vice versa and for which the buses of the petitioner-institution are to

cross the toll plaza number of items in a day. On the basis of Clause-3 of the circular dated 5.8.2002 issued by the NHAI, which provides that monthly passes for the school buses for school students for crossing toll plaza may be issued @1,000/- after obtaining the written request of the Principal of the School, the O.P. No.3-NHAI while establishing the toll plaza in question for four lane road in the year 2008 granted the concessions stated above to the buses of the petitioner institution and it was paying the toll fees at a concessional rate i.e. @1000/- per month per vehicle. However, by virtue of the impugned notifications opposite party No. 6 is collecting the toll fees from the petitioner at the enhanced rate from 14.12.2011 without giving any concession as was given to the petitioner before 14.12.2011 on the basis of the aforesaid circular.

3. The present Misc. Case has been filed by the petitioner-institution seeking issuance of an interim direction to the opposite party Nos. 5 and 6 to collect the toll fees in respect of the buses of the petitioner-institution at a concessional rate as was collected from the petitioner and not at the enhanced rate pending consideration of the writ petition.

4. A writ petition being WP(C) No. 31946 of 2011, in the nature of Public Interest Litigation, has also been filed before this Court challenging the self same impugned notifications and the collection of enhanced toll fees at the toll plaza in question. This Court, considering the prayer made in the Misc. Case No. 19249 of 2011 arising out of the said writ petition, today i.e. on 9.5.2012 has stayed the collection of the enhanced toll fees at the toll plaza in question and directed the opposite parties-authorities not to collect the enhanced fees at the toll plaza in question till disposal of the writ petition.

5. In this view of the matter, no detail order is required to be passed in this present Misc. Case again. Therefore, in terms of the order passed today i.e. on 9.5.2012 in Misc. Case No.19249 of 2011, as an interim measure, we direct the opposite party Nos. 5 and 6 herein not to collect the toll fees from the

petitioner's buses at the enhanced rate but continue to collect the toll fees at the rate as was collected before 14.12.2011 pending consideration of the writ petition.

Urgent certified copy of this order be granted on proper application.”

2. The above order along with the orders in W.P.(C) No.31946 of 2011 questioning the same toll fee notification for the same toll plaza were challenged before the Supreme Court of India in four civil appeals i.e., Civil Appeal Nos.5744-47 of 2015. On 27th July 2015, the following order was passed in the said civil appeals by the Supreme Court:

“1. Leave granted.

2. These appeals are directed against the judgment and order passed by the High Court of Orissa, Cuttack in Miscellaneous Case No.19294 of 2011 in Writ Petition Civil No.31946 of 2011, interim order dated 09.05.2012 in Writ Petition Civil No.31946 of 2011, Interim order dated 09.05.2012 in Writ Petition (C) No. 624 of 2012 and the order passed in Misc. Case No. 463 of 2012 dated 09.05.2012 in Writ Petition Civil No. 624 of 2012.

3. We have heard learned counsel for the parties to the lis.

4. It is not in dispute nor it can be disputed that the Petition(s) filed by the respondent-herein is still pending before the High Court. In that view of the matter, we can only request the High Court to dispose of the Writ Petition(s) pending before it.

5. In view of the above, we request the High Court to dispose of the Writ Petition(s) pending before it as expeditiously as possible.

6. The interim order passed by this Court shall ensure to the benefit of the appellants till the disposal of the Writ Petition(s) that is pending before the High Court.

7. The Civil Appeals are disposed of accordingly.”

3. While the Supreme Court interfered with interim orders in the connected writ petitions, it is not in dispute that those connected writ petitions had already been disposed of. The only surviving matter is the present writ petition in which no stay was granted of this Court's interim order by the Supreme Court.

4. For some reasons, these cases were not listed before this Court till 10th August 2022, when the following order was passed by this Court:

“1. Learned counsel appearing for Opposite Party No.6 as well learned counsel appearing for the NHAI states that the factual situation has changed since the filing of the writ petition and therefore this petition has become infructuous. Both of them undertake to file affidavit in this regard within two weeks with an advance copy to learned counsel for the Petitioner, who is permitted to file a response thereto before the next date.

2. List on 29th November 2022 along with WP(C) No. 31946 of 2011. The interim order passed earlier shall continue till then.”

5. Today, both the counsel appearing for the NHAI as well as Opposite Party No.6 seek more time to file an affidavit. As already noted, the Supreme Court had in its order dated 27th July 2015 requested this Court to expeditiously dispose of the writ petitions. More than three months ago, time had already been granted to both the aforementioned parties to file their respective affidavits. In the circumstances, the Court does not consider it reasonable to grant them further indulgence in the matter.

6. As already noted, the interim direction passed by this Court not to collect toll fees from the buses of the Petitioner in the present writ petition has continued for over ten years and the Supreme Court of India was also not persuaded to interfere with that order.

7. That arrangement has continued for over ten years now. Both learned counsel for the NHAI and Opposite Party No.6 inform that the toll plaza has already been shifted from its original location. This Court is of the view that accounting for this changed scenario, the issue of toll fees will have to be re-visited. Accordingly, the following directions are issued:

(i) The interim order passed by the Court staying collection of toll fees from the Petitioner in the present writ petition i.e., W.P.(C) No.624 of 2012 will continue till such time the NHAI undertakes a fresh exercise of re-determining the toll fees in terms of Rule 9 (3) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008.

(ii) For the above purpose, a proper procedure will be followed by inviting objections to the proposed draft proposal from all concerned including the present Petitioner, by giving them sufficient time and giving them a hearing before finalizing the fresh revised toll fees in accordance with law.

(iii) The above exercise be completed within a period of six months from today.

(iv) It is reiterated till the exercise is completed, the interim order passed by the Court as affirmed by the Supreme Court will continue.

8. The writ petition is disposed of in the above terms.

9. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge

S.K. Guin

