



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2022

CORAM:

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
THE CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE PARESH UPADHYAY

W.A. (MD) No.357 of 2022

and

C.M.P. (MD) No.3575 of 2022

The Project Head
M/s.Madurai Kanyakumari Tollways Ltd.,
SPV Office of
Madurai - Kanyakumari Section,
No.Amaithi Solai Road,
Sundar Nagar, Opposite to Vetrivinayagar Kovil
Madurai District. ... Appellant

-vs-

- 1.Jayakrishna Flour Mill
No.82/3 Maravankulam
Thirumangalam
Madurai - represented by its
Managing Director namely
R.K.Mohan ... 1st Respondent/Writ Petitioner
- 2.The Government of India
Rep. By its Secretary
Ministry of Surface/Road Transport and Highways
New Delhi
- 3.The Project Director
National Highways Authority of India
H.No.83/1, SBI 1st Colony Extension
Bye-pass Road, Madurai
- 4.The Authorized Representative
M/s.Raima Toll Road (P) Ltd.,
410 Boomerang
Chandiveli Farm Road,
Near Chandiveli, Mumbai.



5.The District Collector cum
Regional Transport Authority,
Madurai District
Madurai.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 08.04.2022, passed in W.P.(MD) No.5617 of 2014.

Prayer in WP(MD). 5617/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Mandamus to direct the respondents 1 and 2 to exempt the petitioners mill and its hired vehicles from paying toll fee in NH 208 at Kappalur Toll Plaza, Thirumangalam, Madurai District .

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel
for Mr.C.Sasikumar

For Respondents: Mr.C.Pon Karthikeyan for R1
Mr.Jeyasingh
Sr. Panel Counsel for R2
Mr.C.Arul Vadivel @ Sekar for R3
Mr.J.Ashok
Additional Government Pleader for R5

J U D G M E N T

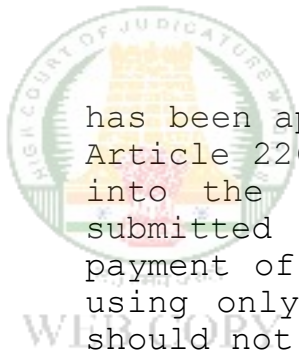
[Judgment of the Court was made by The Hon'ble CHIEF JUSTICE]

By this writ appeal, challenge is made to the order dated 08.04.2022, wherein, the learned single Judge passed the following order and Paragraph No.5 is noted hereunder:

"5.Considering the rival submissions made, this Court, in order to ascertain the actual and factual matrix, is inclined to appoint an Advocate Commissioner. Accordingly, Advocates Mr.R.Gandhi (Enrol.No.1231/1998, Ph.No.9842155509), Mr.H.Arumugam (Enrol.No.947/2009, Ph.No.94420-26880) and Mr.P.Murugesan (Enrol.No.2178/06, Ph.No.94423-08463) are appointed as Commissioners. The remuneration to the learned Advocate Commissioners is fixed as Rs.25,000/-, each, apart from other incidental expenses, which shall be payable and borne by the petitioner."

2.The learned counsel for the appellant submits that before ascertaining the actual and factual matrix, the Court Commissioner

<https://hcservices.ecourts.gov.in/hcservices/>



has been appointed, whereas, while exercising the jurisdiction under Article 226 of the Constitution of India, this Court would not enter into the question of facts. Even coming on the merits, it is submitted that the writ petition was filed seeking exemption from payment of toll fee on NH-208 on the pretext that the petitioner is using only service lane and not the main road and therefore, they should not be compelled to pay the toll fee.

3.The learned counsel for the appellant further submits that there exists no service lane, as claimed by the petitioner, otherwise everybody would come to the service lane to seek exemption from payment of toll fee, even if they are using the highway. Because it may be difficult rather impossible to ascertain, who is using the main road and who is using the service lane alone and therefore, whenever toll plazas are constructed, it is without a provision for service lane. Exemption to pay the toll fee is given only to certain categories notified for that and for emergency, a separate lane is kept, but it is not considered to be a service lane. Therefore, the claim made by the petitioner in the writ petition itself is not tenable.

4. The learned counsel for the first respondent, with regard to the factual issues raised by the learned counsel for the appellant, submits that there exists a service lane and accordingly, the writ petition was filed to seek exemption for payment of toll fee, as the petitioner company is not using the main road / highway but the service lane.

5. We find the facts narrated by both the parties show a question of fact, which cannot be determined by the Court, while exercising the powers under Article 226 of the Constitution of India. But at this stage, we would not further comment on the facts of this case, as the writ petition is pending consideration before the learned Single Judge. But considering paragraph 5 quoted above, we find necessity to cause interference therein because this Court, while exercising jurisdiction under Article 226 of the Constitution of India, should not enter into the actual and factual matrix to be ascertained, otherwise we are reducing the High Court to that of a civil Court. The Court Commissioner cannot be appointed to create evidence in favour of the party and accordingly, finds a case in favour of the appellant to cause interference with the order and accordingly the order dated 08.04.2022 passed by the learned Single Judge is interfered and quashed. The Writ Appeal is allowed with the above.

6. It is made clear that any observation or comment thus given should not be taken adverse by any of the parties rather the writ petition pending before the learned Single Judge may be addressed, after considering the legal issues involved therein, if any. No costs. Consequently connected Miscellaneous Petition is closed.



7. Registry is directed to place the writ petition before the learned Single Judge in the second week of June 2022, if the matter is not finally decided today by the learned Single Judge.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

To:

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Thirumangalam
Madurai - represented by its
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Madurai.

Copy to
The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.



+1 CC to M/s.SPL.GP. (SR-21698[F] dated 27/04/2022)

+1 CC to M/s.S.JEYASINGH, Advocate (SR-20932[F] dated 25/04/2022)

+1 CC to M/s.R.PONKARTHIKEYAN, Advocate (SR-20963[F] dated 25/04/2022)

+2 CC to M/s.C.SASIKUMAR, Advocate (SR-20953[F] dated 25/04/2022)

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nsn(CO)

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