BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 24.06.2022

ORDER PRONOUNCED ON : 01.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.5617 of 2014
and
MP(MD).No.1 of 2014 & W.M.P(MD)No.17387 of 2021
and
W.M.P(MD)Nos.4439,4471 and 6043 of 2022

M/s.Jayakrishna Flour Mill,
No.82/3, Maravankulam,
Thirumangalam,
Madurai,
Represented by its Managing Director
R.K.Mohan. ... Petitioner

Vs.

1.The Government of India,
Represented by its Secretary,
Ministry of Surface/Road Transport,
New Delhi.

2.The Project Director,
National Highways Authority of India,
H.No.83/1, SBI First Colony Extension,
Byepass Road,
Madurai.

3.The Authorized Representative,
M/s.Raima Toll Road (P) Ltd.,
410, Boomerang,
Chandivali Farm Road,
Near Chandivali,
Mumbai-400 072.

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

5.The Project Head,
M/s.Madurai Kanyakumari Tollway Ltd.,
SPV Office of Madurai-Kanyakumari Section,
No.11, Amaithisolai Road,
Sundar Nagar,
Opposite to Vetrivinayagar Kovil,
Madurai District-625 006. ..... Respondents

(R5 is impleaded vide Court order, dated 22.11.2021 in W.M.P(MD)No.12976 of 2021)

Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to exempt the petitioner's mill and its hired vehicles from paying toll fee in NH 208 at Kappalur Toll Plaza, Thirumangalam, Madurai District .

For Petitioner	: Mr.V.Ayyadurai Senior Counsel for Mr.R.Ponkarthikeyan
For R1	: Mr.S.Jayasingh
For R2	: Mr.C.Arul Vadivel @ Sekar

For R3	: No Appearance
For R4	: Mr.P.Thambidurai Government Advocate
For R5	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.C.Sasikumar

ORDER

The present writ petition has been filed seeking a writ of Mandamus, directing the respondents 1 and 2 to exempt the petitioner’s mill and its hired vehicles from paying toll fee in NH 208 at Kappalur Toll Plaza, Thirumangalam, Madurai District.

2. According to the petitioner, they are running a flour mill for the past 25 years and the said mill is located very nearer to Kappalur Toll Gate, Thirumangalam, approximately at a distance of 500 meters. According to the petitioner, they are procuring raw materials from North India and shifting them in bags through railway wagons and they are stored at a goods shed in Koodal Nagar. Thereafter, they are shifted to their mill/warehouse through their own lorries and through hired vehicles.

3. According to the petitioner, the lorry is reaching their mill through different roads to Thirupparankundram to their factory without crossing National Highways road. The petitioner has further contended that they never use the National Highways road, NH 208 at any point of time, but only to the extent as stated above. The petitioner has further contended that they are using only the service road without using the National Highways. According to the petitioner, while using the service road, they have to cross the Toll Gate, for a distance of just 500 meters from Toll Gate to their mill, the respondent authorities have demanding full fees.

4. The petitioner has further contended that the previous licensee had accepted their genuine request and instructed the Toll Gate authorities not to collect toll fee for the above vehicles. However, after the appointment of a new licensee, they have started demanding toll fee for the vehicles, which is against the NHAI Rules and the instruction of the fourth respondent. The petitioner has further contended that on 21.10.2013, they have forcibly seized their lorry documents and JJ forms from the vehicles, which is highly illegal. Therefore, the petitioner has lodged a complaint to the Inspector of Police, Thirumangalam regarding the unruly behavior of Toll Gate personnel and to return the documents.

5. According to the petitioner, the procurement process of wheat will start from the month of April and the raw materials will start reaching Madurai Koodal Nagar Railway yard from April onwards. Thereafter, they have to shift the entire material within 9 hours to avoid any demurrage. Hence, the petitioners are engaging their own lorries and also hired vehicles for shifting the products fastly. Due to unlawful stoppage of the consignment and the Toll Gate, the petitioner mill losses Rs.6,300/- (Rupees Six Thousand and Three Hundred only) per hour and sometimes it may go up to a maximum of Rs.3,00,000/- (Rupees Three Lakhs only) laid as demurrage charges by the railway authorities.

6. The petitioner has further contended that the very location of the Toll Plaza at Kappalur is in violation of NHAI Rules, since it is located within just 1 km from Thirumangalam Municipality. The residents in and around Thirumangalam have been vehemently opposing the collection of toll on the road claiming that they use only service road and not the four line highway to reach Madurai. Hence, the petitioner had sought for a Mandamus, directing the respondents to exempt the petitioner's mill and its hired vehicles from paying the toll fee.

7. Contentions of the learned Senior Counsel appearing for the petitioner:

(i) The learned Senior Counsel appearing for the petitioner relied upon Rule 8 of National Highways Fee (Determination of Rates and Collection) Rules, 2008 and contended that as per the first proviso, a Toll Plaza cannot be located within 5 kms from the municipality or local town area limits. In the present case, Kappalur Toll Plaza is located within 1.5 kms from Thirumangalam Municipality. Hence, he contended that the very location of the toll plaza is illegal and the same has to be relocated.

(ii) The learned Senior Counsel appearing for the petitioner relied upon Rule 3(4) of the above said Rules and contended that as per the explanation of the above said Rules, a service road should run parallel to a section of the National Highway to provide access to the land adjoining such section of the National Highway. In the present case, though the service road runs parallel to the national highways, it abruptly stops before the Toll Plaza. The respondent authorities have wantonly closed/obstructed the service road just ahead of the Toll Plaza. This act of the respondent authorities had made it mandatory on the part of the vehicle users to cross the Toll Plaza by paying toll fee. Since the service road has not been properly laid by the respondent authorities, they are compelling the general public including the petitioner/ mill to pay toll fee, even if the vehicle uses the national highways for a very small extent.

(iii) The learned Senior Counsel appearing for the petitioner had relied upon Rule 9 (3-A) and Rule 9 (4) of the above said Rules and contended that so far as commercial vehicles are concerned, if they are registered with address on the Registration Certificate of a particular district and the said vehicle is used for commuting on a section of the National Highway, permanent bridge, tunnel or bypass which is located within the district, it shall be levied user fee on all fee plazas, which are located within the district at the rate of 50% of the prescribed rate of fee. The learned Senior Counsel had further contended that unless permanent bridges are constructed in the said section of the National Highway, the respondent authorities are not entitled to collect even the 50% of the prescribed rate of fee. In the present case, the petitioner/mill is using around 500 meters of the National Highways road only for the purpose of crossing from one end to the other end. In the said section, there are no permanent bridges, tunnels or bypass and hence, the respondent authorities are not entitled to levy even at the rate of 50% of the prescribed rate of fee.

(iv) The learned Senior Counsel appearing for the petitioner had further contended that as per the proviso 2 to Rule 9(3-A) that the above said concession shall not be provided if a service road or alternative road is available for the use of such commercial vehicles. Therefore, he contended that the respondent authorities have wantonly blocked the service road and they are compelling the commercial vehicles to cross through the National Highways in order to collect toll fee.

(v) The learned Senior Counsel appearing for the petitioner had further contended that as per Rule 9(4) of the above said Rules, fee shall not be collected from the driver, owner or any person in charge of a commercial vehicle, if the vehicle uses only a part of the section of the National Highways and does not cross a fee plaza. In the present case, according to the learned Senior Counsel, they are using only a section of the National Highways and there is no necessity for them to cross the fee plaza, if the service road is opened up by the respondent authorities. The respondent authorities in order to augment the income of the licensees, have wantonly closed the service road and forcing the commercial vehicle users to use the national highways, in such a way that they have to mandatorily cross the fee plaza.

(vi) The learned Senior Counsel appearing for the petitioner had relied upon Sections 5 and 7 of the National Highways Act, 1956 and contended that it shall be the responsibility of the National Highways authorities to develop and maintain in proper repair all the national highways. He further contended that only if services or benefits rendered in relation to permanent bridges, the cost of construction of each of which is more than Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and which are opened to traffic on or after first of April 1976, the Central Government can levy fees. In the present case, no permanent bridges are there in the section of the national highways, which the petitioner is forced to use. That apart, there is no proof that the construction is more than 25 lakhs.

(vii) The learned Senior Counsel appearing for the petitioner had further relied upon Rule 3 of the National Highways Rules, 1957 to contend that a detailed estimate of the cost for the execution of the work has to be forwarded by the executive agency to the Central Government and after obtaining technical and financial sanction, the work can be commenced and completed. In the present case, there are no records to establish that the original work on the National Highways exceeds Rs.50,00,000 (Rupees Fifty Lakhs only) and any estimate was prepared for the execution of the said work. When there are no records to establish the same, the question of demanding fee at the Toll Plaza does not arise.

(viii) The learned Senior Counsel appearing for the petitioner had further relied upon Rule 1(3) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 to contend that the said Rules are not applicable, if the agreements and contracts were executed and bids were invited prior to the publication of these rules. According to the learned Senior Counsel, the rules were published on 05.12.2008. No records have been produced on the side of the respondent authorities that the agreements and contracts were executed only after 05.12.2008. Hence, the respondent authorities and the licensee are not entitled to collect toll fee without disclosing the said fact.

(ix) The learned Senior Counsel appearing for the petitioner had further relied upon Rule 3 of the above said rules and contended that the Central Government by notification, can levy fee for use of any section of National Highway. In the present case, the petitioner is forced to use only 500 meters on the National Highway in view of the blockage of the service road by the respondents. However, the petitioner/mill is being forced to pay the full toll fee, which is clearly against the above said rules.

(x) The learned Senior Counsel appearing for the petitioner had further relied upon Rule 3(4) of the above said Rules to contend that fee shall not be levied for the use of section of National Highway, permanent bridge, bypass or tunnel for the two wheelers, three wheelers, tractors and animal drawn vehicles. However, fee shall be levied for those vehicles also, if a service road or an alternative road is available in view of National Highways and despite the same, those vehicles are using a section of the National Highways. Therefore, the learned Senior Counsel contended that the respondent authorities and the licensees have wantonly blocked the service road and compelling all the vehicles to use the National Highway so as to make them to cross the toll plaza and pay the toll fee.

(xi) The learned Senior Counsel appearing for the petitioner had further contended that under first proviso to Rule 3 of the above said rules, the Central Government is entitled to exempt any section of National Highway, which was constructed through a public funded project from levy of such fee or part thereof, subject to certain conditions as may be specified in the notification. When the power is vested with the Central Government, despite several complaints from the local public, the Central Government has not come forwarded to issue any notification exempting the said section of the National Highway.

(xii) The learned Senior Counsel appearing for the petitioner had further contended that any contract entered into between the Central Government and a Contractor, should be a comprehensive one. For mere laying of the road, a toll fee cannot be charged, unless it is accompanied by permanent bridges and tunnels.

(xiii) The learned Senior Counsel appearing for the petitioner had further contended that the rights of the authorities and the licensee to collect toll fee depends upon the fact that whether there is a service road or an alternative road is available or not. In case, if there is a service road or an alternative road available and despite the availability of the same, a person uses his vehicle over the national highways, only then it is mandatory to pay toll fee. On the other hand, if the authorities and the licensee block the existing service road, which is running parallel to the highways, thereafter, they will not be legally entitled to collect toll fee. Hence, he prayed for allowing the writ petition.

8. Contentions of the learned Standing Counsel appearing for the second respondent:

(i) As per the definition of a service road in the above said rules, a service road is only meant for entering into the National Highways and exiting from the National Highways. It is only meant for rendering services to the National Highways road. It cannot be contended that service road should run parallel to the National Highways road. A service road is only meant for the purpose, under which vehicles from the town or city enter into the National Highways and vice-versa. A service road is not meant to run parallel to the National Highways road.

(ii) The learned Standing Counsel further placed reliance upon Sections 28 and 29 of the Control of National Highways (Land and Traffic) Act, 2002. He contended that no person shall have right of access to a Highway either through any vehicle or on foot by a group of five or more persons except permitted by the Highway Administration. The access to a Highway is always subject to the guidelines and instructions issued by the Central Government from time to time. In case, anyone wishes to seek permission to access to Highway, he has to apply in the prescribed form to the Highway Administration specifying the means of access to which such permission relates and shall also be accompanied with such fees as may be prescribed. Unless such person gets a license from the Highway Administration, there is no right of entry into the National Highways. Hence, he contended that a service road is not meant for a free access of entry into the National Highways. The very concept of service road is only to help the entry and exit of vehicles without causing any accident with the vehicles, which are already in movement in the National Highway.

(iii) The learned Standing Counsel further contended that there is no mandatory Rule under the Act or the relevant Rules, to have a service road running parallelly with the National Highways.

(iv) The learned Standind Counsel further contended that the Koodal Nagar Railway Station is located 20 kms from the petitioner/mill. For the entire stretch of 20 kms, the vehicles of the petitioner/mill are using the National Highways to reach the mill. Hence, the contention of the writ petitioner that they are using just 500 meters of the National Highways is not factually correct.

(v) The learned Standing Counsel further relied upon a judgment of the Hon'ble Supreme Court reported in ***(2015) 15SCC 647 (Chairman, National Highways Authority of India and Others Vs. R.Murali and others)*** and contended that the issue relating to the location of the Toll Plaza and the collection of toll fee from the local residents has already been decided by the Hon'ble Supreme Court. Hence, the present writ petition is not maintainable.

(vi) The learned Standing Counsel further contended that the plan that is produced on the side of the writ petitioner/mill is not correct and it does not disclose the correct location of the warehouse and the mill of the writ petitioner. The learned Standing Counsel had further contended that taking advantage of the interim order granted by this Court, not only the commercial vehicles, but the luxury cars of the owners of the petitioner/mill are also crossing the Toll Plaza without paying toll fee. Hence, he prayed for dismissal of the writ petition.

9. Contentions of the learned Senior Counsel for the fifth respondent:

(i) The learned Senior counsel appearing for the fifth respondent had contended that the prayer in the writ petition has been couched in such a manner that it includes the hired vehicles of the writ petitioner/mill also. Whenever a lorry is stopped in the Toll Plaza for collection of toll fee, they claim that they have been hired by the petitioner/mill and they attempt to cross the Toll Plaza without paying the toll fee taking advantage of the interim orders passed by this Court. Any hired vehicle of the petitioner/mill can never be considered to be a vehicle belonging to the local people and exemption can be sought for.

(ii) The learned Senior Counsel further contended that in the affidavit, the petitioner has categorically admitted that for a distance of 500 meters from the Toll Gate, they are using the National Highways. However, the said contention is factually incorrect. Because, the lorries are transporting the raw material from Koodal Nagar Railway Station to the warehouse of the petitioner mill for nearly 20 kms in the same National Highway section.

(iii) The learned Senior Counsel further contended that there is no service road at all in the Toll Plaza area. Hence, the contention of the writ petitioner that the service road has been abruptly blocked at the Toll Plaza is not factually correct.

(iv) The learned Senior Counsel further relied upon a judgment of the Hon'ble Supreme Court in ***(2015) 15SCC 647 (Chairman, National Highways Authority of India and Others Vs. R.Murali and others)***. He relied upon Paragraph Nos.5 and 6 of the said judgment and to contend that the said issue has already been decided by the Hon'ble Supreme Court.

(v) The learned Senior Counsel had further contended that the plan that is produced on the side of the writ petitioner does not properly locate the buildings of the petitioner/mill and the warehouse and hence, the petitioner/mill cannot rely upon the said plan to contend that they are not using the National Highways and if they are using the same, it is only for a limited extent. Hence, he prayed for dismissal of the writ petition.

10. I have carefully considered the submissions made on the side of all the counsels and perused the relevant provisions and the records placed by the authorities.

Discussion:

11. The petitioner/mill is located in national highways NH 208. According to the learned Senior Counsel appearing for the petitioner, the respondent authorities have blocked a service road running parallel to the National Highways and forcing the petitioner/mill to ply their vehicles through the Toll Plaza and collect toll fee forcibly.

12. A perusal of the writ affidavit indicates that except alleging that the Toll Plaza is located within 1.5 kms from the municipal limits and the usage of the petitioner is limited to 500 meters, no other factual allegation or legal ground has been raised in the writ affidavit.

13. The main prayer in the writ petition is seeking exemption from payment of toll fee for the petitioner/mill and its hired vehicles. The only provision that is available for granting exemption is Rule 3 of National Highways Fee (Determination of Rates and Collection) Rules, 2008. A perusal of the above said rules clearly discloses that Central Government alone is empowered to exempt any section of National Highway constructed through a public funded project from levy of toll fee or part thereof and subject to such conditions as may be specified in the notification. Hence, the power to grant exemption lies only with the Central Government and this Court has no jurisdiction to entertain such a request from the writ petitioner, exercising its powers under Article 226 of the Constitution of India. That apart, the Central Government is empowered to exempt only a section of the National Highway and they are not empowered to grant exemption to certain individuals. As far as the exemption of the vehicles belonging to individuals are concerned, they are governed by Rule 11 of the National Highways Fee

(Determination of Rates and Collection) Rules, 2008. Only for those mechanical vehicles belonging to the dignitaries enumerated under Rule 11, the Government has granted exemption from payment of toll fee. As far as other individuals are concerned, only discount or passes are made available under Rule 9 of the above said rules. Hence, the prayer of the petitioner seeking exemption from payment of toll fee for the commercial vehicles of the petitioner/mill has no legal basis whatsoever. Unless there is a legal right, the question of issuing a Mandamus, directing the respondent authorities to grant exemption will not arise.

14. The Hon'ble Supreme Court in a judgment reported in ***(2015) 15SCC 647 (Chairman, National Highways Authority of India and Others Vs. R.Murali and others)*** has already decided the issue relating to the location of the Toll Plaza and collection of toll fee from the members of the local public. The Hon'ble Supreme Court was dealing with the same Toll Plaza in the above said judgment. Paragraphs 5,6 and 7 of the above said judgment are extracted as follows:

> *5. Having heard the learned counsels for the parties at some length and upon perusal of the relevant materials on record, we disagree with the High Court on both counts. In the counter-affidavit of Respondents 1 and 2 (appellants*

herein) filed before the High Court in Writ Petition (Civil) No.13906 of 2012, there is a clear statement in Para 14 that the stretch concerned of N.H 7 has been "constructed only to give relief to Traffic congestion in Thirumangalam Town." In the face of the aforesaid statement made in the counter-affidavit of the said respondents (appellants herein), the High Court could not have come to the finding that there is no statement on record to the effect that the particular stretch of the highway was not intended for the benefit of the residents of Thirumangalam and nearby places.

6. Insofar as the limited use of NH 7 for people who really want to access NH 208 and the obligation to pay full toll is concerned, in the additional counter-affidavit filed by the Respondents 1 and 2 (appellants herein) in the Writ Petition (Civil) No.13906 of 2012, there is a clear and unequivocal averment made in Paras 11 and 12 to the effect that monthly passes for local vehicles owners @ Rs.200/- (enhanced to Rs.215/-) per month are available. There is a further statement that such exemptions have also been granted for owners of two-wheelers, three-wheelers, tractors and the vehicles carrying agricultural goods.

7. In the light of the aforesaid concession available to the owners of the different kinds of motor vehicles living in the neighbourhood, we are at a loss to understand how the High Court could have felt justified to issue the impugned directions for shifting the Toll Plaza to the location identified

> in the order. Though the learned counsel for the appellants has made an additional argument that there is an alternative road available to access NH 208 without using NH 7, we do not consider it necessary to go into the said issue in view of the provision for concessional toll as mentioned by the appellants in the counter-affidavits filed before the High Court.

15. A perusal of the judgment of the Hon'ble Supreme Court indicates that the order passed by this Court shifting the Toll Plaza to a different place has been set aside. The Hon'ble Supreme Court has further held that the location of the Toll Plaza in the present place is legally sustainable, since it is intended for the benefit of the residents of Thirumangalam and nearby place. The Hon'ble Supreme Court has also recorded the fact that monthly passes for local vehicles are being issued as contemplated under the relevant rules. Hence, in view of the above said judgment of the Hon'ble Supreme Court, the contentions of the learned Senior Counsel with regard to the location of the Toll Plaza and the manner of collection of the toll fee for the local vehicles cannot be re-agitated and it has become final.

16. As far as the contention of the learned Senior Counsel that it is mandatory for the respondent authorities to provide service road or an alternative road to travel, is concerned, under the Act, there is no such provision which mandates the authorities to create an alternative road. In case, if an alternative road is available, the commuters are entitled to use the same by avoiding the Toll Plaza. However, none of the provisions or the rules has been quoted to contend that a construction of an alternative road is mandatory. As rightly contended by the learned Standing Counsel for the second respondent herein, a service road is only to avoid sudden entry of vehicles into the National Highways and sudden exit of the vehicles from the National Highways into the town or the city. This is meant only for avoiding accident and to create a smooth flow of traffic. Hence, service roads can never be treated to be an alternative road running parallel through out the National Highways. Only where there are interjections or city or town limits get connected, the authorities are creating service roads for smooth and free flow of traffic to avoid accidents. Hence, the contention of the learned Senior Counsel that the service roads should always run parallel to the national highways is not supported by any legal provisions.

17. The respondent authorities and the licensees have categorically contended that there is no service road near the Toll Plaza and hence, question of blocking the said service road does not arise. Since there is no interjection or connecting roads nearby, no service road is available near the Toll Plaza. Hence, the contention of the learned Senior Counsel that abruptly a service road has been blocked near the Toll Plaza is not factually correct.

18. The other contentions of the learned Senior Counsel that the Government is not providing any special services or the estimate of work has not been forwarded to the Central Government do not deserve any consideration in view of lack of pleadings in the affidavit. That apart, when the prayer is only seeking exemption from payment of toll fee, the contentions referred to above are not relevant for the said prayer.

19. In view of the above said discussion, the prayer sought for in the writ petition for grant of exemption does not fall within the purview of this Court to exercise its powers under Section 226 of the Constitution of India. That apart, the exemption can be granted by the Central Government only based upon the section of the Highway and not based upon the vehicles belonging to certain individuals, except in case of the vehicles falling under

Rule 11 of National Highways Fee (Determination of Rates and Collection) Rules, 2008.

20. With the above said discussions, there are no merits in the writ petition. Hence, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

01.09.2022

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Internet : Yes/No
Index : Yes/No

To

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Ministry of Surface/Road Transport,
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2.The Project Director,
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.5617 of 2014

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