BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD) Nos.25947, 25948, 26879 of 2019, 1304 & 1323 of 2020
and
W.M.P.(MD) Nos.22474, 22475, 22476, 23222 of 2019, 1056 & 1070 of 2020

W.P.(MD) No.25947 of 2019:

K.Immanuel ... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by the Additional Chief Secretary
Highways Department
Secretariat, Fort St.George
Chennai-9

2.The State of Tamil Nadu
rep.by the Secretary
Highways Department
Secretariat, Fort St.George
Chennai-600 009

3.The Superintending Engineer
Tamil Nadu Road Infrastructure
Development Corporation
No.735, Anna Salai
4th Floor, LLA Building
Chennai-600 002

4.The District Collector
Collectorate
Madurai District-20

5.The Commissioner
Madurai Corporation
Arignar Anna Maligai
Madurai City-625 002

6.The Project Director
The National Highways Authority of India
H.No.83/1 – SBI
1st Colony Extension
Bypass Road
Madurai City

7.Sri Balaji Tollways (Madurai) Private Limited
Plot No.218/1A2
Karuvelampatti
Thiruparankundram Taluk
Madurai District-605 008 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in G.O.(Ms) No.17, Highways and Minor Ports (HS-1) Department, dated 27.03.2017, on the file of the first respondent in favour of the seventh respondent and quash the same as illegal and consequently directing the respondents to remove the Toll Plazas viz., Sivagangai Junction (Mastanpatti), Sinthamani Junction and Valayamkulam Junction (Parambupatti), located within a distance of 27 KM extending from the Madurai – Sivagangai Ring Road to Kappalur.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.P.Thilakkumar
Government Pleader for R1 to R4
Mr.T.S.Mohammed Mohideen for R5
Mr.C.Arul Vadivel @ Sekar for R6
Mr.S.Ashok Kumar, Senior Counsel
assisted by Mr.S.Palani Velayutham for R7

W.P.(MD) No.25948 of 2019:

J.Vijayaraja ... Petitioner

-vs-

1.The Secretary to Government
Highways and Minor
Ports Department
Secretariat
Chennai-600 009

2.The Chairman and Managing Director
Tamilnadu Infrastructure
Development Corporation
Chennai-600 002

3.The Chief Engineer
(Construction and Maintenance)
Highways Department
Chennai-600 025

4.The Accountant General
Chennai-600 016

5.The District Collector
Madurai District

6.The Commissioner
Madurai Corporation
Madurai City

7.The District Treasury Officer
Madurai District
Madurai

8.The Manager / Officer-in-Charge
M/s.Sri Balaji Tollways
(Madurai) Pvt. Limited
No.218/1A2, Karuvelampatti
Thiruparankundram Taluk
Madurai District ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the impugned Government order MS.No.121, highways and Minor Ports (HS1) Department, dated 04.11.2019 and quash the same or issue any other appropriate writ or direction directing the respondents consequently to remove the 3 newly formed Toll Plaza at Madurai Ring Road to forbear the eighth respondent from collection of toll fee in the name of widening of Madurai ring road from double lane to four.

[Amended vide Court order dated 23.01.2020 made in W.M.P.(Md) No.1101 of 2020]

For Petitioner : Mr.S.Pakalavan

For Respondents : Mr.P.Thilakkumar
Government Pleader for R1 to R3, R5 & R7
Mr.P.Gunasekaran for R4
Mr.T.S.Mohammed Mohideen for R6
Mr.S.Ashok Kumar, Senior Counsel
assisted by Mr.S.Palani Velayutham for R8

W.P.(MD) No.26879 of 2019:

Lorry Vurimaiyalargal Sangam
No.231, Keela Marret Street
Madurai-625 001 ... Petitioner

-vs-

1.The Government of Tamil Nadu
rep.by its Principal Secretary to Government
Highways and Minor Ports (HS-1) Department
Secretariat, Fort St.George, Chennai-9

2.Balaji Tollways (Madurai) Private Limited
Plot No.218/1A2, Karuvelampatti
Thiruparankundram Taluk
Madurai-605 008

3.The Deputy General Manager-cum-
Project Director
National Highway Authority of India
Plot No.3, Surya Towers
II Floor, 1st East Street
K.K.Nagar, Madurai-625 020 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the first respondent made under G.O.Ms.No.17, Highways and Minor Ports (HS-1), dated 27.03.2017 and published in the Tamil Nadu Government Gazette Extraordinary No.80, Part II, Section 2, dated 27.03.2017 enabling the second respondent to collect the user fee on the stretch from Meenakshi Mission Hospital to Kappaloor Privu and quash the same.

For Petitioner	:	Mr.Muthu Geethaiyan for Mr.D.Srinivasaragavan
For Respondents	:	Mr.P.Thilak Kumar Government Pleader for R1 Mr.A.Sasidharan for R2 Mr.C.Arul Vadivel @ Sekar for R3

W.P.(MD) No.1304 of 2020:

Madurai District Bus Owners Association
rep.by its President
No.153, North Veli Street
Madurai-1 ... Petitioner

-vs-

1.The Government of Tamil Nadu
rep.by its Principal Secretary to Government
Highways and Minor Ports (HS-1) Department
Secretariat, Fort St.George
Chennai-9

2.Balaji Tollways (Madurai) Private Limited
Plot No.218/1A2, Karuvelampatti
Thiruparankundram Taluk
Madurai-605 008

3.The Deputy General Manager-cum-
Project Director
National Highway Authority of India
Plot No.3, Surya Towers
II Floor, 1st East Street
K.K.Nagar, Madurai-625 020 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the first respondent made under G.O.Ms.No.17, Highways and Minor Ports (HS-1), dated 27.03.2017 and published in the Tamil Nadu Government Gazette Extraordinary No.80, Part II, Section 2, dated 27.03.2017 enabling the second respondent to collect the user fee on the stretch from Meenakshi Mission Hospital to Kappaloor Privu and quash the same.

For Petitioner	:	Mr.Muthu Geethaiyan for Mr.M.Palani
For Respondents	:	Mr.P.Thilakkumar Government Pleader for R1 Mr.S.Ashok Kumar, Senior Counsel assisted by Mr.S.Palani Velayutham for R2 Mr.C.Arul Vadivel @ Sekar for R3

W.P.(MD) No.1323 of 2020:

Virudhunagar District Bus Owners Association
Rep.by its Secretary
No.1/291, Pravin Sarvin Complex
Collectorate Post
Virudhunagar District ... Petitioner

-vs-

1.The Government of Tamil Nadu
rep.by its Principal Secretary to Government
Highways and Minor Ports (HS-1) Department
Secretariat, Fort St.George
Chennai-9

2.Balaji Tollways (Madurai) Private Limited
Plot No.218/1A2, Karuvelampatti
Thiruparankundram Taluk
Madurai-605 008

3.The Deputy General Manager-cum-
Project Director
National Highway Authority of India
Plot No.3, Surya Towers
II Floor, 1st East Street
K.K.Nagar, Madurai-625 020 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the first respondent made under G.O.Ms.No.17, Highways and Minor Ports (HS-1), dated 27.03.2017 and published in the Tamil Nadu Government Gazette Extraordinary No.80, Part II, Section 2, dated 27.03.2017 enabling the second respondent to collect the user fee on the stretch from Meenakshi Mission Hospital to Kappaloor Privu and quash the same.

For Petitioner	:	Mr.Muthu Geethaiyan for Mr.M.Palani
For Respondents	:	Mr.P.Thilakkumar Government Pleader for R1 Mr.S.Ashok Kumar, Senior Counsel assisted by Mr.S.Palani Velayutham for R2 Mr.C.Arul Vadivel @ Sekar for R3

COMMON ORDER

[Order of the Court was made by R.MAHADEVAN, J.]

Since the issues involved in all these writ petitions are one and the same, they have been clubbed, heard and are being disposed of by this common order.

2. The prayer made in the respective writ petitions would run thus:

W.P.(MD) No.25947 of 2019

to issue a writ of certiorarified mandamus to call for the records pertaining to G.O.(Ms) No.17, Highways and Minor Ports (HS-1) Department, dated 27.03.2017, passed by the first respondent in favour of the seventh respondent, quash the same and consequently, direct the respondents to remove the Toll Plazas situated at Sivagangai Junction (Mastanpatti), Sinthamani Junction and Valayamkulam Junction (Parambupatti), located within a distance of 27 Kilometers, extending from the Madurai - Sivagangai Ring Road to Kappalur.

W.P.(MD) No.25948 of 2019

to issue a writ of certiorarified mandamus to call for the records pertaining to G.O.(Ms) No.121, Highways and Minor Ports (HS1) Department, dated 04.11.2019, quash the same and consequently, direct the respondents to remove the three newly formed Toll Plazas in Madurai Ring Road and forbear the eighth respondent from collecting toll fee in the name of widening Madurai Ring Road from double lane to four lane.

W.P.(MD) Nos.26879 of 2019, 1304 & 1323 of 2020

to issue a writ of certiorari to call for the records of the first respondent relating to G.O.(Ms) No.17, Highways and Minor Ports (HS-1) Department, dated 27.03.2017, enabling the second respondent – Commissionaire to collect the user fee on the stretch from Meenakshi Mission Hospital to Kappalur Junction and quash the same.

3. The necessary facts leading to the filing of these writ petitions may be set out hereunder:

3.1. According to the petitioner in W.P.(MD) No.25947 of 2019, While he was travelling from Madurai to Tirunelveli by car, he saw an operation of new Toll Plaza near Vikram Hospital, at a distance of three Kilometers from Mattuthavani Integrated Bus Terminus. Two other Toll Plazas are also functioning in close proximity to the said new Toll Plaza. Owing to the long queue of vehicles, as they are situated in the city limits, it consumes more time for the commuters to cross the Toll Plazas *viz.*, Sivagangai Junction (Mastanpatti), Sinthamani Junction and Valayamkulam Junction (Parambupatti) (hereinafter shortly referred to as "the subject toll plazas"). The subject Toll Plazas are situated within a distance of 27 Kilometers from Madurai – Sivagangai Ring Road to Kappalur and are functioning without fulfilling any of the mandatory basic facilities.

3.2. At the behest of the Tamil Nadu Road Infrastructure Development Corporation (TNRIDC), the ring road from Uthangudi to Kappalur has been converted into a four-lane highway and after the said conversion, four Toll Plazas near Vikram Hospital, have been opened. Already, there are Toll Plazas at Chittampatti, Eliyarpathi on Thoothukudi Road and Kappalur near Tirumangalam, under the control of the National Highways Authority of India (NHAI), for a quite longtime. In view of opening of these Toll Plazas in the Ring Road, the commuters, who come from the other Districts, are compelled to pay toll fee in five Toll Plazas from Chittampatti to Kappalur and in four Toll Plazas in Chittampatti to Eliyarpathi, in Madurai District alone. The object of forming the four-lane roads and ring roads is to reduce the vehicle traffic as well as the travelling time, however, due to these Toll Plazas, the said object gets defeated.

3.3. The petitioner further stated that there are eight lanes in the Toll Plazas which come under the control of NHAI, however, the subject Toll Plazas have been formed with only four lanes, as a result of which, the commuters suffer from traffic and the emergency services like, Ambulance and Fire Service etc., face hindrance, since there are many Multi-Specialty Hospitals, Airport and Temples in Madurai – Tirumangalam Road. The services and facilities that the commuters should get in return of their toll fee, have not been provided to them. The petitioner also stated that the Roads are laid on contract basis and when the commuters pay toll fee, they indirectly enter into a public contract with the Government which is *quid pro quo* in nature. When the services are not provided, the agreement between the commuters and the Government becomes invalid. Thus, such public contracts are against the fundamental rights and Directive Principles of the State Policy enshrined under the Constitution. However, without considering all these aspects, G.O.(Ms).No.17, Highways and Minor Port (HS-1) Department, dated 27.03.2017 came to be passed by the first respondent.

3.4. By way of an additional affidavit, the petitioner stated that as per the aforesaid G.O., the Government has prescribed the toll fee to be collected in the Toll Plazas between the two points viz., Meenakshi Mission Hospital and Kappalur (27.2 KM) for the year 2019-2020 at Rs.29.376 and it has been increased to Rs.31.05 vide G.O.Ms.No.121, Highways and Minor Ports (HS1), dated 04.11.2019. However, instead of Rs.31.05, Rs.55/- is being collected for 27 KM which is against the guidelines issued in G.O.Ms.No.121, dated 04.11.2019. That apart, the total distance of the ring road is only 27.2 Kilometers, but, in G.O.Ms.No.121, it has been mentioned as 36 Kilometers, without any basis. Stating so, the petitioner sought to quash the Government Order impugned in this writ petition.

3.5. According to the petitioner in W.P.(MD) No.25948 of 2019, who is a practicing Advocate, Madurai Corporation/6th respondent completed the ring road project in the year 2000 at the cost of Rs.25 Crores. Subsequently, they formed four Toll Plazas to collect toll fees in between the circle of 27.2 km of Madurai Ring Road, and collected toll fees for fifteen years and they were closed as per the order of this Court dated 31.10.2014, passed in W.P.(MD) No.6216 of 2011. Thereafter, pursuant to G.O.(Ms) No.82, Highways and Minor Ports (HS1) Department, dated 16.05.2018, Madurai Corporation handed over the ring road to the State Government for widening the same from two-lane to four-lane, through TNRIDC. Pursuant to the same, the TNRIDC entered into an agreement with Sri Balaji Tollways (Madurai) Private Limited (hereinafter, referred to "the Concessionaire") to complete the project of widening the ring road at the cost of Rs.243 Crores. However, before completion of the project work, the TNRIDC started collection of toll fee from 22.11.2019 by forming the subject Toll Plazas, wherein, no facilities much less basic amenities, have been given for two-wheelers, on account of which, they get messed with traffic jam. Further, there is no notification regarding fee details as per the National Highways (Collection of Fees) Rules, 1997 (in short, "the Collection of Fee Rules"), which is against the law. On these grounds, the petitioner has challenged the aforesaid G.O.(Ms) No.121, dated 04.11.2019.

3.6. According to the petitioners in W.P.(MD) Nos.26879 of 2019, 1304 & 1323 of 2020, Madurai Ring Road was formed, operated and maintained by Madurai Corporation and the toll fee was permitted to be collected for five years by G.O.Ms.No.149, Municipal Administration and Water Supply (MC-II) Department, dated 23.10.2000. While so, toll fee collected after the expiry of five years, was challenged by filing W.P.(MD) Nos.3161 & 3162 of 2010. Though the said writ petitions were dismissed, on appeals, the action of the Madurai Corporation was held to be illegal and without jurisdiction. During the pendency of the writ appeals, the State Government issued a notification dated 31.01.2011 ratifying the collection of toll fee for the period from 01.11.2005 to 31.10.2010, which was challenged in W.P.(MD) Nos.6216 & 6217 of 2011. This Court quashed the said notification, however, rejected the prayer for refund of the amount so collected by the Corporation, by order dated 30.10.2014. Aggrieved by the same, W.A.(MD) Nos.1501 & 1502 of 2014 were filed.

3.7. Thereafter, the Corporation handed over the ring road to the State Government for the project of expansion of road from two-lane to four-lane. However, before the project work is completed fully, the State Government issued a notification dated 27.03.2017 enabling the Concessionaire to collect toll fee from the commuters. Based on the said notification, the Concessionaire has formed three Toll Plazas on the stretch of 27.2 Kilometers. In view of the same, the commuters, who come from Trichy to go to either Tuticorin or Tirunelveli, are driven to pay toll at the subject Toll Plazas, apart from the toll fee paid in Chittampatti and Kappalur Toll Plazas, which come under the control of NHAI. The ring road forms part of two National Highways, viz., NH38 and NH44 and therefore, no toll fee could be collected by the State Government in the subject Toll Plazas. On these grounds, the petitioners have challenged the aforesaid G.O.Ms.No.17, dated 27.03.2017.

4. Denying the averments made in the writ petitions, the respondents filed their counter affidavits, the relevant contents of which are stated as follows:

4.1. The Tamil Nadu Road Infrastructure Development Corporation (TNRIDC), Chennai stated that vide G.O.(Ms) No.74, Highways and Minor Ports (HS1) Department, dated 14.07.2015, the Government ordered to take up the project of four laning of Madurai Ring Road within a distance of 27 Km starting from Meenakshi Mission Hospital to Kappalur, through TNRIDC. The agreement with the concessionaire (contractor) was entered on 29.02.2016 and the work commenced on 17.04.2017 to carry out the project under Build, Operate and Transfer (BOT) for the concession period of 20 years including 2 years for the construction. As per the concession agreement, toll fee notification was made vide G.O.(Ms.) No.17, Highways and Minor Ports (HS1) Department, dated 27.03.2017 to recover the capital cost of the project, after completion of the construction by providing toll booths at five locations and the said notification was published in Tamil Nadu Government Gazette Extraordinary No.80 dated 27.03.2017 to levy toll as per the Indian Tolls Act 1851 (Central Act VIII of 1851), since it is a State Government Road. There is no provision for providing number of Toll plazas under the said Act.

4.2. It is also stated by the TNRIDC that considering the public requests to reduce number of toll booths and anticipated time delay in the same, necessary amendment to G.O(Ms)No.17, Highways and Minor Ports (HS1) Department, dated 27.03.2017 has been made by the Government to reduce the toll booths to 3 at Vandiyur (Masthanpatti), Chinthamani & Valayangulam villages vide G.O.(Ms.)No.121 Highways and Minor Ports (HS1) Department, dated 04.11.2019.

4.3. The counter affidavit further proceeds to state that in the earlier notification of Tamil Nadu Government Gazette Extraordinary No.80 dated 27.03.2017, the length of the road was given as 27.20 km, as per the schedule R of concession agreement. But as per the amendment to National

Highways Fee (Determination of Rates and Collection) Rules, 2008 dated 16.01.2014, the rate of fee for use of standalone structure as well as structures forming part of a linear highway / Expressway, shall be calculated by converting the length of structure into an equivalent length of Highway / Expressway by multiplying by a factor of ten. Hence, the tollable length of road has been increased to 36.019 km due to major bridge structure across river Vaigai and two road over bridges at Viraganur and Kappalur, which are forming part of the linear Highway, having length more than 60m, in accordance with the provisions of Concession Agreement. Accordingly, G.O. (Ms.) No.121 Highways and Minor Ports (HS1) Department, dated 04.11.2019 has been issued and the same has been published in Tamil Nadu Government Gazette Extraordinary Notification No.417 dated 04.11.2019.

4.4. It is also stated by the TNRIDC that the facilities at the available width of land have been provided to the road users, even though this respondent has land constraints. In the available land, this respondent has provided separate way for two wheelers at all three toll booths. For the ambulance vehicles, necessary instructions have been given to the concessionaire to immediately clear off the way. Further, temporary toilet facilities have also been provided at the toll booth locations.

4.5. It is further stated that the commuters are paying toll fee for the completed section of National Highways, even though they use part or whole of the project highway. For cars, toll fee is collected at the rate of Rs.85/- for the distance of 63.89 Kilometers at Chittampatti Toll Plaza, at the rate of Rs.70/- for the distance of 64.03 Kilometers at Eliyarpathy, and at the rate of Rs.75/- for the distance of 52.30 Kilometers at Kappalur. Even though NHAI is collecting toll fee for the above mentioned Kilometers, they have set up toll booths near Madurai City at the viable locations to avoid evasion of fee and collecting toll fee for the entire length of different section of national highways as per the toll policy of NHAI. Whereas in Madurai Ring Road, when a car travels from Madurai to Rameshwaram, the commuter has to pay Rs.10/-, from Madurai to Aruppukottai Rs.30/- and from Madurai to Kappalur Rs.40/- for single journey for the actual distance of travel. Even though there is no separate toll policy for the State Government, the Government is collecting tolls in some of the State Government roads, such as, Rajiv Gandhi Salai in Chennai and Chennai Ennore – Manali Road Improvement Project (EMRIP) as per the Indian Tolls Act, 1851. The Fee Determination Rules stipulates the limitation of 60 Kilometers for location of Toll Plazas in the same section of National Highways, which could be relaxed under the special circumstances. Such limitation is applicable only to the same section / road of National

Highways and not for different National Highways. Therefore, the Toll Plazas located in Chittampatti, Valayankulam and Kappalur are in the National Highways, based on the toll policy of NHAI and not related to Madurai Ring Road. As per the Fee Determination Rules, the rate of Rs.0.65 per Kilometer for the vehicles, like, Car, Jeep, Van, is for the year 2007-2008 and such rate has been calculated at Rs.1.1537 per kilometer for the year 2019-2020 and adopted for the State Toll Road. The same rate of fee per Kilometer has been adopted for NHAI roads also. The State Government has issued orders to levy toll fee under the provisions of the Indian Tolls Act, 1851 and not as per the toll policy of NHAI, since the Ring Road is vested with the State Government. Further, considering the hardship of the local residents, exemption has been granted to the motor vehicles owned for their personal use, with a discount at the rate of Rs.265/- per month. Thus, according to this respondent, this writ petition is not sustainable either in law or on facts and it is liable to be dismissed.

4.6. As regards the averments made in WP.(MD)No.25948 of 2019, the TNRIDC stated that the nature of the works involved is widening the road from two lane to four lane, construction of two over bridges in addition to the existing over bridges to cater to the four lane traffic at Viraganur and

Kappalur and construction of an additional river bridge, in addition to the existing two lane high level bridge across Vaigai River to cater to the present day traffic. In terms of the concession agreement, the Concessionaire is eligible to collect toll fee on completion of 85% of project work. Since 99% of the project work has been completed, the TNRIDC authorized the contractor to collect toll from 22.11.2019 at three locations for the completed length only and hence, the action of collecting toll fee by the contractor could not be said to be illegal. Further, in the subject Toll Plazas, the facilities of Ambulance, Recovery Crane and Highway Patrol have been provided to ensure effective functioning of toll booths as per the terms of the Contract Agreement. The four-lane road was formed in the available land and *vide* notification dated 07.03.2019, land acquisition proceedings to acquire 1.73 Hectares were initiated to provide a separate lane exclusively for the electronic toll collection and a lane for ambulance / exempted vehicles / over dimensioned vehicles. However, acquisition proceedings were stalled in view of the orders of this Court in W.P.(MD) No.6328, 6648 & 10822 of 2019 filed by the land owners. Therefore, there were constraints in providing additional facilities to the commuters.

4.7. It is also stated that the rate of toll fee for car, jeep, van, LCV, Bus, 2/3 multi axle truck and over sized vehicles has been fixed as per the provisions of the Fee Determination Rules, calculated for the year 2019-2020 and adopted for the State Toll Road and hence, the provisions of the National Highways (Rate of Fees) Rules, 1997 do not apply to this project. The amount of toll fee to be collected for the vehicles is the rate per kilometer multiplied by the effective length of project highway. The same has been notified in the Government Gazette dated 04.11.2019. Hence, there is no illegality in passing the Government Orders impugned herein.

4.8. According to the Project Director, NHAI, Madurai, they have been entrusted with the task of development, maintenance and management of National Highways all over the State. The counter affidavit further proceeds to state that the stretch of Madurai – Turicorin [NH-45B, new NH-38] and the stretch of Madurai – Kanyakumari [NH7, new NH-44] come under the Project Implementation Unit of NHAI. However, the stretch of Pandikovil – Chinthamani – Madurai Airport – Karuppasamy Kovil does not come under the control of NHAI and it comes only under TNRIDC. It is also stated that the Toll Plaza located at Kappalur is for collecting user fee for the stretch of Madurai – Virudhunagar [NH-7, new NH-44]. In Kappalur Toll Gate, there is no collection of toll fee for the stretch of Pandi Kovil – Karuppasamy Kovil – Kappalur Junction, as it is not part of NH-44. Thus, according to this respondent, the stretch of Pandikovil – Chinthamani – Madurai Airport – Karuppasamy Kovil – Kappalur junction is in no way connected with the Project implementation Scheme of NHAI.

4.9. The Project Director, NHAI, PIU, Trichy in his counter affidavit, stated that the stretch of NH 45B from Trichy – Melur – Madurai section was entrusted to NHAI as per the Ministry of Road Transport & Highways notification dated 16.11.2004 for a length of 125 kms, starting from Trichy at 0/000 Km and ending at Madurai at Km. 124/840 near Madurai – Sivagangai four road junction. Whereas, the stretch between Meenakshi Mission Hospital and Kappalur for a distance of 27.2 Kilometers is in no way connected with the said project entrusted with NHAI as per the notification dated 16.11.2004 and the toll plazas at Boothakudi & Chittampatti is located at Km 21/020 & 113/630 in the Trichy- Melur – Madurai section of NH 45B. Therefore, no user fee is collected for the ring road section. It is further stated that under the National Highways Act, 1956 r/w the NHAI Act, 1988, the Concessionaires are entitled to collect toll fee for maintaining the roads and bridges in a good condition. Under the National Highways Act, 1956 and the Rules thereof, the collection of toll fee is only for the services and benefits rendered by the Government in relation to the use of the permanent bridges and the section of National Highway. Therefore, the collection of toll fee at the toll plazas established on the National Highway roads, is maintainable. It is also submitted that the distance criteria between the Toll Plazas is applicable in the same stretch / direction in respect of the Highways maintained by NHAI. The places mentioned by the petitioner are located at different locations / stretches and also in different sides and directions. The impugned Government Order has been issued by the State Government for collection of toll fee for the road constructed and maintained by the State Highways Department and the provisions of the Indian Tolls Act and NHAI are in no way connected with the said impugned Government Order. Therefore, the respondent prayed for dismissal of the writ petition.

4.10. Adopting the averments made in the counter affidavit filed by the TNRIDC and NHAI, the Managing Director of the Concessionaire viz., Sri Balaji Tollways (Madurai) Pvt. Ltd., stated that they have invested a huge amount in the subject project by availing loan to the tune of Rs.125 crores from the Bank and they have to repay the debt and meet out the operation and maintenance cost, which would be achieved only from the toll revenue. The counter affidavit further proceeds to state that as per the contract, they have to recover their invested amount within the concession period of twenty years, which includes the construction period of two years, and also maintain the road in the same condition by periodical renewal. Therefore, unless they are allowed to operate the subject Toll Plazas without any difficulty and hindrance, they would be put to great hardship and loss.

5. Mr.I.Pinayagash, learned counsel for the petitioner in WP(MD)No. 25947 of 2019 submitted that the subject Toll Plazas have been established in total disregard to the guidelines issued by this Court *vide* order dated 12.12.2017 in W.P.(MD) No.11837 of 2017. Adding further, the learned counsel submitted that as per Rule 8 of the Fee Determination Rules, there should be a distance of 60 Kilometers between one Toll Plaza and the another Toll Plaza. But, the subject Toll Plazas have been formed within a stretch of 27 Kilometers. Further, Rule 8(1) envisages that Toll Plazas shall be established beyond a distance of 10 Kilometers from a municipal or local town area limits. However, the subject toll Plazas have been established within the city limit. It is also submitted that the Toll Gates are located in NH-45, which starts at Trichy and ends at Thoothukudi, and the provisions of the National Highways Act would be applicable. Therefore, the impugned G.O.(Ms) No.17, dated 27.03.2017, is *per se* arbitrary and contrary to law.

6. Continuing further, Mr.S.Pakalavan, learned counsel for the petitioner in WP(MD)No.25948 of 2019 submitted that there is no basic facilities in the subject Toll Plazas as per the Collection of Fee Rules and the collection of toll fee at the tollgate without the completion of project work within 500 Meters from the first Toll Plaza is highly illegal.

7. Mr.MuthuGeethaiyan, learned counsel representing Mr.D.Srinivasaragavan, counsel for the petitioners in other writ petitions submitted that as per Section 2 of the Indian Toll Act, 1851, toll fee can be collected only after completion of the project work, but, in the present case, the impugned G.O.(Ms) No.17, dated 27.03.2017 has been issued even before completion of the project work enabling the Commissionaire to collect toll fee from the commuters. Further, the entire ring road forms part of NH7 (NH44) and a part of the ring road forms part of NH38 (NH45B). Therefore, the provisions of the National Highways Act would be applicable and the State Government has no jurisdiction to issue the impugned Government Order and they could not entrust the project work with the respondent – contractor. Hence, the formation of the subject Toll Plazas is totally arbitrary, erroneous and improper.

8. Per contra, Mr.P.Thilak Kumar, learned Government Pleader, appearing for the State, on instructions, submitted that the relief sought for in

the present writ petitions have become infructuous as the contractor has duly complied with the interim order dated 26.02.2020, passed by this Court. The learned counsel further submitted that since there is no separate toll policy, the State Government has adopted the provisions of the Indian Toll Act for collection of toll fee in the subject Toll Plazas. Further, all the deficiencies pointed have been rectified and separate lane for ambulance etc. have been provided now. Therefore, according to the learned counsel, the action of the State Government entrusting the project work with the respondent – Concessionaire and collecting toll fee, cannot be found fault with as there is no illegality.

9. Mr.T.S.Mohammed Mohideen, learned Standing Counsel for the Madurai Corporation, on instructions, submitted that originally, the ring road was under the control of the Madurai Corporation and thereafter, in order to provide a better road facility to the commuters, the State Government has taken a decision to widen the Madurai Ring Road from two lane to four lane through TNRIDC and accordingly, it has been handed over to the State Government. Therefore, the learned counsel submitted that the ring road is under the control of the state Government.

10. Mr.C.Arul Vaidvel @ Sekar, learned counsel for the NHAI, submitted that Madurai Ring Road does not come under the control of NHAI

and it comes only under TNRIDC and therefore, NHAI has no *locus standi* in the subject matter at all.

11. Mr.S.Ashok Kumar, learned Senior Counsel, assisted by Mr.S.Palanivelayutham, learned counsel for the Concessionaire, submitted that as per the permission accorded by the State Government, they entered into a contract for the project work of widening the ring road from two lane to four lane and by availing loan, they have completed the project and by 22.11.2019, 99% of the project work has been completed and therefore, they started collection of toll fee. Thus, according to the learned counsel, there is no illegality on the part of the Concessionaire for collecting toll fee.

12. This court considered the submissions made by the learned counsel on either side and perused the materials available on record, carefully and meticulously.

13. Shorn of unnecessary details, the facts that remain undisputed are that after completion of two lane Madurai Ring Road, in the year 2000, the Madurai Corporation placed four toll plazas along the distance of 27.2 km and collected toll fees, till the same were closed, as per the order of this court

dated 31.10.2014 made in WP(MD)No.6216 of 2011. Subsequently, in order to provide better road infrastructure to the public, the Government passed GO.(Ms) No.74, Highways and Minor Ports (HS1) Department, dated 14.07.2015, to take up the project of widening Madurai Ring Road from two lane to four lane, starting from Madurai Meenakshi Mission Hospital to Kappalur through TNRIDC under Build, Operate and Transfer using suitable viability gap funding. Consequently, they entered into an agreement with the concessionaire on 29.02.2016, the work commenced on 17.04.2017 and it was scheduled to be completed within a period of two years. While so, in terms of the conditions prescribed in the said agreement, the Government has to issue fee notification and accordingly, G.O.(Ms.)No.17 Highways and Minor Ports (HS-1) Department, dated 27.03.2017 came to be issued, in which, the levy of toll at five toll plazas, to use the said road after its completion, was determined. Thereafter, at the request of the TNRIDC based on the representations made by the public, the number of toll plazas determined in the earlier G.O. (Ms) No.17 dated 27.03.2017, was reduced to three by way of amendment and G.O.(Ms).No.121 Highways and Minor Ports (HS1) Department, dated 04.11.2019 came to be passed to that effect. While so, the petitioners have challenged these two Government Orders in these writ petitions. In other words, the dispute that arises for consideration herein, is with respect to collection of toll fees in the toll plazas viz., Sivagangai Juncion (Mastanpatti), Sinthamani Junction and Valayamkulam Junction (Parambupatti), located within a distance of 27 km from the Madurai Sivagangai Ring Road to Kappalur, *vide* G.O.Ms.No.121 Highways and Minor Ports (HS1) Department, dated 04.11.2019, amending the earlier G.O.(Ms.)No. 17 Highways and Minor Ports (HS-1) Department, dated 27.03.2017.

14. The main plank of attack raised on the side of the petitioners, are as under:

(i)All the toll plazas were established on the Madurai - Thoothukudi Road, which comes under the National Highways Act and hence, the state Government has no authority to encroach any portion of the National Highway, take possession of it and manage the affairs. However, without any authority of law, the impugned G.O.(Ms.)No.17 Highways and Minor Ports (HS-1) Department, dated 27.03.2017 came to be issued, for levy of tolls under section 2 of the Indian Tolls Act, 1851, for the use of the Madurai Ring Road between Meenakshi Mission Hospital and Kappalur.

(ii)According to Rule 8 of the National Highways Fees Determination of Rates and Collection Rules, 2008, there should be distance of 60 km between the two plazas, whereas, in the present case, toll plazas have been constructed within a stretch of 27 km. Further, Rule 8(1) prescribes that toll plazas shall be established beyond a distance of 10 kilometers from a municipal or local town area limits, but the establishment of the present toll plazas is well within Madurai city limits itself. That apart, as per Rule 4, a toll of 0.65 paise per 1 km should be collected for vehicles like cars, jeeps and vans. But, in the case at hand, a total of Rs.60/- (up and down) is collected at the three toll plazas for a distance of just 27 km. Thus, the Government orders passed by the first respondent are without following Rules 4 and 8 of the National Highways Fees Determination of Rates and Collection Rules, 2008 and hence, the same are arbitrary and illegal.

(iii)Without providing basic amenities and infrastructure facilities, that too, without completing the project, the subject toll plazas have been established for collection of toll fee from the users of the road, which is in violation of the order of this court dated 12.12.2017 passed in WP(MD)No. 11837 of 2017, wherein, the toll plazas shall follow 15 guidelines including a separate, dedicated expressway for ambulances, vehicles of emergency services and exempted vehicles, appointment of security personnel for the same and a full time officer to ensure that the fee collection is smooth and vehicles are sent without waste of time and proper maintenance of the toll plaza, etc.

15.1. With respect to the first contention, it is seen that vide

G.O.Ms.No.17 dated 27.03.2017 the state Government, in exercise of the powers conferred by clause (c) of sub section (1) read with clause (c) of sub section (2) of section 2 of the Indian Tolls Act, 1851 (Central Act VIII of 1851), levied tolls on motor vehicles for the use of the Madurai Ring Road between Meenakshi Mission Hospital and Kappalur, after the completion of the Project of widening the ring road from double to four lane by the Concessionaire. For better appreciation, section 2 of the Indian Tolls Act, is extracted below:

"2. Power of State Government to levy tolls on roads and bridges-

1. The State may levy tolls in respect of -

(a)any road or bridge made, improved or repaired at their expense after the 1st April, 1931;

(b)any road or bridge made, improved or repaired after the 1st April, 1931, partly at the expense of the State Government and partly at the expense of a local body or bodies, or solely at the expense of a local body or bodies, provided that the total expense incurred on the road or bridge shall not be below such limit, if any as the State Government may by rules determine; and

(c)any road or bridge made, improved or repaired at the expense of any person or body or association of individuals, whether incorporated or not, provided that the total expenditure incurred on the road or bridge shall not be below such limit, if any, as the State Government may, by rules, determine.

Further, Section 2(2)(c) of the Tolls Act, as amended by Tamil Nadu Act 35 of 2000 with effect from 4.10.2000, reads as follows:

(c) In case of tolls levied under clause (c) of sub-section (1) for

> *the recovery of the amount expended upon the road or bridge by the person or body or association of individuals concerned, together with the interest thereon at such rate as the State Government may fix and such other amount as the State Government may determine."*

Thus, it is clear from the above that the State Government has power to deal with the levy of toll, and they may cause such rates of toll to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the local body or any State Government.

15.2. According to the petitioners, the toll plazas are located in the Madurai ring road which forms part of the National Highways and hence, the National Highways Act would be applicable, whereas, it is the stand of the Project Director, NHAI, Madurai, that the stretch from Pandikovil - Chinthamani - Madurai Airport - Karuppusamy Kovil is not under the control of NHAI and comes under the TNRIDC. According to them, the stretch from Pandikovil to Karuppasamy Kovil Ring Road - Kappalur junction is not taken for calculation of toll fee for Kappalur toll plaza in Madurai - Kanyakumari section of NH-7 (New NH No.44) as it is not a part of NH-44 and hence, the same is in no way connected with the NHAI. Similarly, the Project Director, NHAI, Trichy, has categorically stated in his counter affidavit that the G.Os impugned herein, have been issued by the State Government with regard to the collection of toll fee for the road constructed and maintained by the State Highways Department under the Indian Tolls Act and the NHAI has no relation with the said G.Os. According to them, the stretch between Meenakshi Mission Hospital and Kappalur for a distance of 27.2 km as mentioned in the writ petition, is in no way connected with the project entrusted with NHAI as per the MoRTH (Ministry of Road Transport and Highways) notification dated 16.11.2004 and they have not collected any user fee for the ring road section. Thus, it is lucid that the NHAI has no control over the ring road. In such circumstances, this court is of the view that since the Madurai Ring Road is not a National Highway and does not come under the control of the National Highways Authority of India, the State Government has power to levy toll under the Indian Tolls Act, for the purpose of road development, repair and maintenance.

15.3. In similar situation, a Division Bench of this court in an order dated 15.07.2015, made in W.P.No.29648 of 2008, dealt with the question relating to legislative competence of the state government to levy tolls on state highways. Referring to section 2 of the Tolls Act, as amended by the Tamil Nadu Acts, it was held that the state government was very much empowered to levy tolls in respect of roads/bridges which have been repaired or improved. The following paragraphs from the said order may be relevant:

"16.One important aspect which cannot lost sight of and as pointed out by the learned Additional Advocate General is the amendment to section 2 of the Central Act done by the Tamil Nadu State Legislature and for better appreciation, the same is quoted hereunder:

2. Power of State Government to levy tolls on roads and bridges-

1. The State may levy tolls in respect of -

(a)any road or bridge made, improved or repaired at their expense after the 1st April, 1931;

(b)any road or bridge made, improved or repaired after the 1st April, 1931, partly at the expense of the State Government and partly at the expense of a local body or bodies, or solely at the expense of a local body or bodies, provided that the total expense incurred on the road or bridge shall not be below such limit, if any as the State Government may by rules determine; and

(c)any road or bridge made, improved or repaired at the expense of any person or body or association of individuals, whether incorporated or not, provided that the total expenditure incurred on the road or bridge shall not be below such limit, if any, as the State Government may, by rules, determine.

Further, Section 2(2)(c) of the Tolls Act, as amended by Tamil Nadu Act 35 of 2000 with effect from 4.10.2000, reads as follows:

(c) In case of tolls levied under clause (c) of sub-section (1) for the recovery of the amount expended upon the road or bridge by the person or body or association of individuals concerned, together with the interest thereon at such rate as the State Government may fix and such other amount as the State Government may determine."

17.The above amendment was made by the Tamil Nadu Act 6 of 1938, which is in substitution of section 2 as it originally stood under the Central Act. By virtue of the said amendment brought about empowers the State Government to levy the toll in respect of any road or bridge made, improved or repaired at the existence of any person or body or *association of individuals, whether incorporated or not, provided that the total expenditure incurred on the road or bridge shall not be below such limit, if any, as the State Government may, by Rules, determine. The further amendment by virtue of Tamil Nadu Act 35 of 2000 with effect from 04.10.2000, states that in case of tolls levied under clause (c) of sub-section (1), for the recovery of the amount spent upon the road or bridge by the person or body or association of individual concerned, together with interest thereon as the State Government may fix and such other amount as the State Government may determine.*

18.Thus, by virtue of the amendment made by the Tamil Nadu State Legislature, any person or body or association of individuals, whether incorporated or not which has made, improved or repaired any road or bridge would also fall within the ambit of the levy of toll, for which State Government has been empowered in terms of the said amended provision. Therefore, we do not agree with the submissions made on behalf of the petitioners that the levy of toll on the subject Highway lacks legislative competence."

15.4. In an identical case, in WP.No.7642 of 2019 dated 12.04.2019, a co-ordinate bench of this court dealt with the similar issue of power of the state government to levy toll, and ultimately, dismissed the said writ petition. The following paragraphs of the said order are reproduced for easy reference:

"10.Rule 7(2) of the National Highways (Collection of Fees by any Person for the Use of Section of National Highways / Permanent Bridge / Temporary Bridge on National Highways) Rules, 1997 and Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, are extracted:

"Rule 7 (2) Toll collection shall be done only at one place within a distance of 80 kms from a point at the beginning of first National Highway Section or approach of entry of the first permanent bridge to be crossed under the jurisdiction of the same executing agency, regardless of number of projects falling within the length in order to facilitate free and unhindered movement of traffic. Where it is not feasible to do so, the number of collection point shall be kept minimum and shall be decided with the approval of Central Government. The fee may be collected from the driver, owner or person in-charge of a

vehicle on the first National Highway Section or permanent bridge which is intended to be crossed by such vehicle. The driver, owner or person in-charge of the vehicle holding the receipt of such payment shall be allowed to pass through other Sections and bridges of such Highway unhindered after showing the receipt to the Fee Inspector posted on other sections or bridges. Details of such Sections and bridges shall be displayed at a conspicuous place near the fees collection booths of the Sections or bridges covered under this sub-rule legibly written or printed in English, Hindi and the regional language of the area in which such sections or bridges are situated.

Rule 8(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"

11. Rule 7(2) of the National Highways (Collection of Fees by any Person for the Use of the Section of National Highways / Permanent Bridge / Temporary Bridge on National Highways) Rules, 1997 and Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, were brought into force, in exercise of powers conferred under Section 9 of the National Highways Act and these Rules have been framed for levy of toll for the use of National Highways bridges and roads.

12. Rule 7(2) of the National Highways (Collection of Fees by any Person for the Use of Section of National Highways / Permanent Bridge / Temporary Bridge on National Highways) Rules, 1997, applies only to National Highways and not to any other road. Rule 8(2) of the National Highways Fee (Determination of Rates and Collections) Rules, 2008, applies to a Section of National Highways, if there is a toll plaza (fee collection plaza). The respondents have categorically stated that the road on which the toll plazas have been located are not National Highways.

13. In view of the above, there is no impediment on the State Government to bring out the impugned G.O. Though the petitioner has filed a rejoinder, he is not able to controvert the assertion made by the respondents that the road concerned is only a State Highway. For the reasons stated supra, we are of the view that the writ petition is not maintainable. Prayer cannot be granted.

14. As per the above said rule, no toll plaza should be established in the same direction within a distance of 60 kms. Two

issues to be decided by us, on the facts placed by the petitioner, Party-in-Person and the respondents, are whether the road, on which toll plaza is established, whether is on a National Highway, or a Section of National Highways and whether who is competent to levy toll? It is the categorical statement of the respondents in their common counter affidavit that the toll plaza, is not a National Highway nor on the Section of National Highways. If toll plaza is located on the above, then the Central Government is the Competent Authority to determine the distance and the rate of collection of toll. But the toll plaza is stated to be established on State Highways, for which Central Government has no authority to decide, either the distance or the toll fee. Giving due consideration to the pleadings, with reference to the rules relied on by the petitioner, we are of the considered view, rules relied on, cannot be made applicable to the facts on hand.

15. Hence, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed."

Thus, the above reasons and the ratio are squarely applicable to the cases before this Court. For the rules to be applicable, both the conditions have to be satisfied. It is clear from the facts, that the roads in which toll plazas have been established and toll is collected, do not fall within the ambit of NHAI and that the toll is not collected for the routes/roads in same direction. Therefore, this court finds no illegality in the action of the State Government in collecting toll fee in the subject Toll Plazas by issuing G.Os impugned herein.

16.1. As regards the second contention, it is the stand of the TNRIDC that the toll fees have been calculated as per the National Highways Fee (Determination of Rates and Collection) Rules, 2008. There is no provision for providing number of toll plazas under the Indian Tolls Act, 1851. However, considering the public requests to reduce number of toll booths and anticipated time delay, the TNRIDC have reduced it to three numbers at required places with the consent of the concessionaire, by way of amendment to G.O.(Ms.)No.17 dated 27.03.2017 vide G.O.No.121 dated 04.11.2019. Accordingly, three toll booths at Vandiyur, Chinthamani and Valayangulam villages have been set up to collect the toll fee from the road users for the distance travelled / to be travelled. Even then, the road users will have to pay toll at any one point. It is further stated by the TNRIDC that in terms of the concession agreement, the concessionaire is eligible to collect toll on completion of 85% length of road. As the concessionaire has completed 99% of project road, the TNRIDC has authorized the concessionaire to collect toll from 22.11.2019 for the type of vehicles and rates as per the Tamil Nadu Government Gazette Extraordinary Notification No.417 dated 04.11.2019 at 3 locations at km 3/000, 9/400 and 18/200 for the completed length only. That apart, the TNRIDC stated that as per the amendment to the National Highways Fee (Determination of Rates and Collection) Rules, 2008 dated 16.01.2014, the rate of fee for use of standalone structure as well as structures forming part of a linear highway/expressway, shall be calculated by converting the length of structure into an equivalent length of Highway/ Expressway by multiplying by a factor of ten. Hence, the tollable length of road has been increased to 36.019 km due to major bridge structure across river Vaigai and two road over bridges at Viraganur and Kappalur, which are forming part of the linear Highway, having length more than 60m, in accordance with the concession agreement. It is also stated that the rate of toll fee for the type of vehicles such as car, jeep, van, LCV, Bus/2/3/multi axle truck and over sized vehicles has been fixed as per the National Highways Fee (Determination of rates and collection) Rules, 2008 and calculated for the year 2019-20 and adopted for this State toll road. Thus, the amount of toll fee to be collected for the type of vehicles is the rate per km multiplied by the effective length of project highway.

16.2. The Project Director, NHAI, Trichy, has categorically stated in his counter affidavit that the distance criteria between the toll plazas are applicable in the same stretch / direction in respect of the Highways maintained by NHAI and the places mentioned by the petitioner are located at different locations / stretches and also in different sides and directions and hence, there is no violation in establishing toll booths and determining the toll fees in the ring road.

16.3. It is also stated by the Concessionaire that the distance of 36 km is calculated as per the Rules and Regulations and as per the G.O. and the distance covered by construction of over bridges and river bridges are calculated by multiplying the length by 10 times. On this basis, major bridge of 276 metres length on Vaigai river, road over bridge of 517.64 metres length and another road over bridge of 264.04 metres length are calculated by multiplying 10 times and in this manner, the distance of 36 km have been correctly calculated and arrived at. That apart, 650 metres (0.65km) which is part of National Highway at Sivagangai Road Junction, is not a part of the Madurai Ring Road (subject road) and the said distance has been excluded while calculating the distance to arrive for collecting toll fee. It is also the submission of the respondents that the nature of the works involved is widening the road from two lane to four lane, construction of two over bridges in addition to the existing over bridges to cater to the four lane traffic at Viraganur and Kappalur and construction of an additional river bridge in addition to the existing two lane high level bride across Vaigai River to cater to the present day traffic. Since the nature of the project is build, operate and transfer, the Concessionaire has to realize the revenue by means of collecting toll fee from the project highway for the amount he spent, repayment of the loan amount and maintaining the road for the concession period of 18 years.

16.4. For the sake of clarity, the toll plaza locations and effective section length tabulated in the G.Os. impugned herein, are reproduced below:

G.O.(Ms) No.17 dated 27.03.2017

Sl.No. (1)	Location of Toll Booth (2)	Effective Length in Km (3)
(1)	At Km 0/3000	2.2
(2)	At Km 3/000 (to capture the turning traffic from Sivagangai road)	3.3
(3)	At Km 8/400 (to capture the turning traffic from Ramnad road)	3.1
(4)	At Km 9/400 (to capture turning traffic from Nedungulam cross road)	9.3
(5)	At Km 18/200 (to capture turning traffic from Aruppukottai road)	9.25

G.O.(Ms).No.121 dated 04.11.2019

Sl.No. (1)	Location of Toll Booth (2)	Effective Length in Km (3)
(1)	At Km 3/000	7.334
(2)	At Km 9/400	17.059
(3)	At Km 18/200	11.626

Thus, it is revealed from the above tables, that the establishment of 5 toll plazas in the first G.O., has been reduced to 3, in the second GO., considering the plight of the public and anticipated delay. Further, the distance and the rate of toll fee have been determined, according to the Fee Determination Rules. As such, the contention of the petitioners that in the absence of the rules, no toll can be levied, is also untenable.

16.5. When the substantial law, enables the state government to levy toll, it cannot be said that only after the rules are framed, such a levy can be made. Until such time, the rules are framed, it is open to the state government to issue appropriate orders. The only condition is that they must not be in contravention of the provisions of the Act, which this court has already found, not to be so. The judgment of the Hon'ble Supreme Court in ***Surinder Singh v. Central Government*** **[(1986) 4 SCC 667]** is relevant in this context, the relevant passage of which can be extracted below:

> "***6.*** *The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. [(1961) 63 Punj LR 75] The Division Bench in Bishan case [(1961) 63 Punj LR 75] took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issue administrative directions providing for the transfer of the urban agricultural land by auction-sale. In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in*

accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute. In T. Cajee v. U. Jormanik Siem [AIR 1961 SC 276 : (1961) 1 SCR 750] the Supreme Court reversed the order of the High Court whereby the order of District Council removing Siem, was quashed by the High Court on the ground that the District Council had not framed any rules for the exercise of its powers as contemplated by para 3(1)(g) of 6th Schedule to the Constitution. The High Court had taken the view that until a law as contemplated by para 3(1)(g) was made there could be no question of exercise of power of appointment of a Chief or Siem or removal either. Setting aside the order of the High Court, a Constitution Bench of this Court held that the administration of the district including the appointment or removal of Siem could not come to a stop till regulations under para 3(1)(g) were framed. The view taken by the High Court that there could be no appointment or removal by the District Council without framing of the regulation was set aside. Similar view was taken by this Court in B.N. Nagarajan v. State of Mysore [AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 Lab LJ 698] and Mysore State Road Transport Corpn. v. Gopinath [AIR 1968 SC 464 : (1968) 1 SCR 767 : (1968) 2 Lab LJ 144] In U.P. State Electricity Board v. City Board, Mussoorie [(1985) 2 SCC 16 : AIR 1985 SC 883 : (1985) 2 SCR 815] validity of fixation of Grid Tarrif was under challenge. Section 46 of the Electricity (Supply) Act, 1948 provide that tariff known as the Grid Tariff shall be fixed from time to time in accordance with any regulations made in that behalf. Section 79 of the Act conferred power on the Electricity Board to frame regulations. The contention that Grid Tariff as contemplated by Section 46 of the Electricity (Supply) Act could not be fixed in the absence of any regulations laying down for fixation of tariff, and that the notification fixing tariff in the absence of such Regulations was illegal, was rejected and this Court observed: (SCC pp. 20-21, para 7)

> "*It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made is this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff.*"

> ***7.*** *As noted earlier Sections 8 and 20 of the Act provides for payment of compensation to displaced persons in any of the forms as specified including by sale to the displaced persons of any property from the compensation pool and setting off the purchase money against the compensation payable to him. Section 16 confers power on the Central Government to take measures which it may consider necessary for the custody, management and disposal of the compensation pool property. The Central Government had therefore ample powers to take steps for disposal of pool property by auction-sale and for that purpose it had authority to issue administrative directions. Section 40(2)(j) provides for framing of rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. Neither Sections 8, 16, 20 nor Section 40 lay down that payment of compensation by sale of the pool property to a displaced person shall not be done unless rules are framed. These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotment of pool property to them in accordance with rules, if any. Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. If the legislative intent was that until and unless rules were framed power conferred on the authority under Sections 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of rules, could not be a condition precedent for the exercise of power."*

It is also not to be forgotten at this juncture that the Tolls are collected for the purpose of road development, repair, and maintenance and that, the concessionaire has invested huge sum by availing loan from the bank and they have to repay the same, which would be achieved only from the toll revenue. Therefore, in overall analysis, this court is of the view, that the respondent authorities are justified in passing G.O.s with respect of levy of toll for the use of the ring road, which do not call for any interference.

17.1. With respect to the third contention, it is the categorical stand of the TNRIDC in its counter affidavit dated 10.12.2019 that in the available land width, they have provided separate way for two wheelers at all three toll booths. For the ambulance vehicles, necessary instructions have been given to the concessionaire, to immediately clear off the way. Further, at toll booth premises, they have kept facilities of ambulance recovery crane and Highway patrol vehicles with necessary key personnel to ensure effective functioning of toll booths as per the terms of concession agreement. In addition, temporary toilet facilities have been provided at toll booth locations to the road users even though they have constraints in land. That apart, they have given necessary instruction to the concessionaire to implement the fastag mode of toll fee collection, in order to reduce the traffic congestion considerably.

17.2. At this stage, it would be relevant to refer to the earlier order of this court dated 26.02.2020, passed in these writ petitions, which read as under:

"Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

2.The learned counsel appearing for the petitioners in the writ petitions submitted that the seventh respondent in WP(MD)No.25947 of 2019, who is the eighth respondent in WP(MD)No.25948 of 2019 has not provided any facility in the toll plazas and also not completed the entire road widening work and in spite of the same, they started collecting the toll fees at three plazas viz., Vandiyur, Chinthamani and Valayankulam. Further, the learned counsel appearing for the petitioners submitted that they have started collecting the toll charges without even providing a separate lane for the ambulance and two wheelers.

3.It is brought to the notice of this court that in respect of the land acquisition proceedings pending before this court in WP(MD) No.6238 of 2019 in respect of Vandiyur toll plaza, today (ie) 26.02.2020, the learned single Judge had granted two weeks time enabling the parties to initiate and arrive at a settlement in acquiring the land for the expansion of toll plaza.

4.Mr.S.Ashok Kumar, learned senior counsel appearing for M/s.Sri Balaji Tollways (Madurai) Pvt. Limited, submitted that they are taking effective steps to complete the work and also provide a separate lane for the ambulance and two wheelers in the toll plazas. Further, the learned senior counsel submitted that till the negotiations are completed with regard to the acquisition of the land for the widening of the toll plaza at Vandiyur, his client shall not collect any toll fee in Vandiyur toll plaza from 9.00am on 27.02.2020. Further, the learned senior counsel submitted that the toll charges in respect of Vandiyur toll plaza shall not be collected indirectly in other toll plazas viz., Chinthamani and Valayankulam.

5.Recording the submissions made by the learned counsel appearing on either side and also recording the undertaking given by the learned senior counsel for M/s.Sri Balaji Tollways (Madurai) Pvt. Limited that they shall not collect any toll fee at Vandiyur toll plaza and also shall not indirectly collect any toll fee in respect of the said toll plaza in other toll plazas viz., Chinthamani and Valayankulam from 09.00am on 27.02.2020, the writ petitions are adjourned to 26.03.2020 for hearing. It is open to the parties to make their submissions with regard to all issues involved in the writ petitions on 26.03.2020."

17.3. During the course of argument, it was stated by the learned Government Pleader appearing for the respondent authorities that the aforesaid order of this court dated 26.02.2020 has been complied with. He also drew the attention of this court to the additional affidavit filed by the TNRIDC dated 31.08.2021, wherein, it is *inter alia* stated that based on the order dated 17.02.2020 in WP(MD)No.6328 of 2019, the District Administration made efforts to arrive at a consensus with Society of St. Marys Madurai, owner of the land, and the consent letter of the land owner was obtained by the District Administration on 29.05.2020 and the same was communicated to the TNRIDC to proceed with the work. Based on the consent of the landowner vide letter dated 29.05.2020, the concessionaire was requested to proceed with the additional toll lane work at toll plaza-1 at Vandiyur Bit-1 village. Now, the Independent Engineer in their letter dated 15.07.2021 has informed that the concessionaire has completed the expansion works of toll plaza-1 (Vandiyur Toll plaza) at km 3 + 100 in all respects, including provision of separate lane for ambulance/ VVIP lane and two wheeler paths on both directions and are now functioning. In support of the same, they produced the photographs showing the completed infrastructure facilities. It is further stated therein that the Independent Engineer has informed that the expansion work of TP2 (Chinthamani) at km 9

+400 an TP3 (Valayankulam) at Km 18 + 300 are almost completed and balance work will be completed in another one month time i.e., by the end of August 2021, which was delayed due to remobilization of resources due to Covid-19. Pointing out the same, the learned counsel submitted that now, the entire work was completed by the concessionaire.

17.4. Conceding the above averments made by the TNRIDC, the learned counsel for the concessionaire submitted that the required facilities have been made by the concessionaire now and the land acquisition proceedings for acquiring lands for further widening of the road is on and the facilities will be made on permanent basis.

17.5. It is also to be recollected here that the learned counsel for the respondent authorities categorically stated that the respondent authorities have completed the work and also provided a separate lane for the ambulance and two wheelers in the toll plazas. It was also submitted earlier that till the negotiations are completed with regard to the acquisition of the land for the widening of the toll plaza at Vandiyur, his client shall not collect any toll fee in Vandiyur toll plaza from 9.00am on 27.02.2022. Further, the toll charges in respect of Vandiyur toll plaza shall not be collected indirectly in other toll plazas viz., chinthamani and Valayankulam, until completion.

17.6. Thus, it could be seen that the respondent authorities have complied with the order of this court and provided all the basic amenities and infrastructure facilities as pointed out and hence, they are eligible to collect toll fee now at the toll plazas at the admissible rate, in the opinion of this court.

18. Pertinently, it is to be pointed out that traffic congestion is increasing day-by-day in urban areas, which causes slower speeds, longer trip times, and vehicular queuing, and in order to resolve the same, the State Government took a decision to widen the Ring Road and in the process of execution of the road widening project which was not an arbitrary decision made in a hasty manner, but after comprehensive deliberations at various levels which took place over a long period of time and proper application of mind. The project has been extensively examined, reviewed, analyzed and approved by the concerned Departments of the Government. Therefore, no arbitrariness can be attributed to the decision making process of the State Government.

19. It is a settled law that the policy decision of the State Government should not be interfered with by the courts unless it is vitiated by bias, illegality and is violative of the fundamental rights of the citizens. At this juncture, it is apt to refer to the decision of the Hon'ble Supreme Court in ***Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737]***, in which, in para 16, it was held as under:

> *"The scope of judicial review of government policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy and not the wisdom or soundness of the policy is the subject of judicial review (vide Asif Hameed v. State of J&K 1989 Supp (2) SCC 364, Sitaram Sugar Co. Ltd. v. Union of India (1990) 3 SCC 223, Khoday Distilleries Ltd v. State of Karnataka (1996) 10 SCC 304, BALCO Employees' Union v. Union of India (2002) 2 SCC 333, State of Orissa v. Gopinath Dash (2005) 13 SCC 495, and Akhil Bharat Goseva Sangh v. State of A.P. (2006) 4 SCC 162]."*

Applying the aforesaid legal position to the facts of the present case, the G.Os. impugned herein arising out of the policy decision of the Government, do not call for any interference by this court.

20. It may not be out of place to note that public interest litigations

cannot be allowed to be misused in such a manner so as to act as a means for the parties to exit the long-term contracts entered into on the basis of the Public Private Partnership to develop a large Scale Infrastructure facility. In the event of allowing of such act, the entire State mechanism will be stalled and such type of activities must be curtailed then and there, in view of the development of the State at large. Thus, viewing from any angle, the grounds raised by the petitioners do not merit acceptance.

21. In the upshot, all the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

[R.M.D., J.] **[J.S.N.P., J.]**

16.11.2022

Index : Yes / No
Internet : Yes / No
krk

To

1.The Principal Secretary to Government,
Highways and Minor Ports (HS-1) Department,
Government of Tamil Nadu,
Secretariat, Fort St. George, Chennai-9.

2.The Additional Chief Secretary,
Highways Department,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-9.

3.The Secretary,
Highways Department,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.

4.The Superintending Engineer ,
Tamil Nadu Road Infrastructure
Development Corporation,
No.735, Anna Salai,
4th Floor, LLA Building,
Chennai-600 002.

5.The District Collector,
Collectorate,
Madurai District-20.

6.The District Treasury Officer,
Madurai District,
Madurai.

R.MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

krk

W.P.(MD) Nos.25947, 25948, 26879 of 2019, 1304 & 1323 of 2020
and
W.M.P.(MD) Nos.22474, 22475, 22476, 23222 of 2019, 1056 & 1070 of 2020

16.11.2022

(2/2)