



W.P.No.29396 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.29396 of 2016

Anaithu Vyaparigal Sangam
Rep. by its Secretary (S.No.361 of 2002)
No.41, Kudiyatham Salai
Pallikonda, Vellore District.

.. Petitioner

Vs

- 1 The Government of India
Rep. by the Secretary
Ministry of Surface/Road Transport
New Delhi - 110 010.
- 2 The National Highways Authority of India
Rep. by its Chairman
G-5 & G6, Sector 10
Dwaraka, New Delhi - 110 075.
- 3 The Chief General Manager (Coord-I & Public Grievances)
National Highways Authority of India
G-5 & G6, Sector 10
Dwaraka, New Delhi - 110 075.
- 4 The Project Officer
National Highways Authority of India
Krishnagiri



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5 The District Revenue Officer
Office of District Collectorate
Sathuvachari, Vellore.

6 L & T Krishnagiri Walajahpet Tollway Ltd
Pallikonda Toll Plaza, KM 98
520, Chennai-Bangalore Highway (NH-46)
Pallikonda-635 809.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 1 to 5 to relocate the Pallikonda Toll Plaza KM 98, 520 Chennai-Bengaluru Highway (NH-46), Pallikonda-635 809, from its present location to a different location within a stipulated time.

For the Petitioner	: Mr.S.Ashwin Prashanth for M/s.Pass Associates
For the Respondents	: Mr.K.Srinivasamurthy, SPCCG for 1 st respondent
	: Mr.Su.Srinivasan for respondents 2 to 4
	: Mrs.R.Anitha Special Government Pleader for 5 th respondent
	: Mr.Srinath Sridevan Senior Counsel for Mr.Thriyambak J.Kannan



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ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard Mr.S.Ashwin Prashanth, learned counsel for the petitioner; Mr.K.Srinivasamurthy, learned Senior Panel Counsel for the first respondent; Mr.Su.Srinivasan, learned counsel for respondents 2 to 4; Mrs.R.Anitha, learned Special Government Pleader for the fifth respondent; and Mr.Srinath Sridevan, learned Senior Counsel for the sixth respondent.

2.1. Learned counsel for the petitioner submits that the toll plaza is erected and established within the periphery of two kilometers of the town. The same is prohibited as per Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 [for brevity, "*the Rules*"].

2.2. Learned counsel for the petitioner further submits that there was no impediment for the respondents to establish the toll plaza beyond ten kilometers as is required. More than 16,000



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persons of the said town use the said road and hardship is caused to them in view of collection of fee/toll.

2.3. Learned counsel for the petitioner relied upon a judgment of a Division Bench of this Court in the case of *R.Murali and another v. The Chairman, National Highways Authority of India and others*, CDJ 2014 MHC 3208.

2.4. Learned counsel also relies upon the Circular dated 2.11.2018 issued by the Government of India, Ministry of Road Transport and Highways.

3.1. Learned Senior Counsel for the sixth respondent submits that the judgment of the Division Bench of this court in *R.Murali and another*, on which reliance was placed by learned counsel for the petitioner, has been overruled by the Supreme Court in the case of *The Chairman, National Highways Authority of India and others v. R.Murali and another*, (2015) 15 SCC 647.



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3.2. According to learned Senior Counsel for the sixth respondent, the toll plaza was in existence since the year 2005. The two-laning road was being converted into four-laning and, subsequently, a concession agreement was entered into in the year 2010, valid for a period of 30 years.

3.3. It is further submitted that second proviso to Rule 8 of the Rules, permits establishment of the toll plaza even within five kilometers. It is also submitted that concession/discount as contemplated under Rule 9 of the Rules is also provided.

4. Learned counsel for the National Highways Authority of India submits that the Rules are being followed. Two-wheelers and three-wheelers are not being charged any toll/fee. That apart, the vehicles meant for transportation of agricultural produce, such as tractors, are also not being charged any toll/fee. Toll/fee is collected only from four-wheelers and heavy vehicles.

5. The National Highways Authority is required to consider all



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the pros and cons for establishment of the fee plaza. The second proviso to Rule 8 of the Rules provides that where a section of the national highway is constructed within the municipal or town area limits or within five kilometers from such limits, primarily for use of the residents of such municipal or town area, the plaza may be established within the the municipal or town area limits or within a distance of five kilometers from such limits.

6. Rule 9 of the Rules provides for the discounts. As per Sub-Rule (1) to Rule 9 of the Rules, the executing authority or the concessionaire, as the case may be, provide for multiple journey to cross the toll plaza within the specified period at the rates specified in Sub-Rule (2) to Rule 9 of the Rules.

7. The circular dated 2.11.2018 issued by the Government of India, Ministry of Road Transport and Highways, provides that, as a one-time measure, all the fee plazas established in deviation to Rule 8 of the Rules may be notified as temporary fee plazas, with the condition that the executing agency shall relocate the fee plaza as



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per the provisions of the Rule within a period of two years. However, the same appears to be a circular and not an amendment to the statutory rules.

8. Moreover, the National Highways Authority is the competent authority to consider whether, and in what manner, discounts are to be granted to the local residents and what would be effect on the concessionaire.

9. No doubt, as per the second proviso to Rule 8 of the Rules, Fee Plaza/Toll Plaza can be established within a distance of five kilometers from the municipal or town area limits and under Rule 9 of the Rules, discounts are also recognised. However, it is for the National Highways Authority to consider the statistics/data with regard to the collection of the fee/toll from the local residents and also other aspects while determining the discounts.

10. The Apex Court in the case of *The Chairman, National Highways Authority of India and others*, supra, has observed about



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the permissibility of establishment of the toll plaza within a distance of five kilometers from the municipal or town area limits and also with regard to the discounts available under Rule 9 of the Rules.

11. In the case of *National Highways Authority of India and others v. Madhukar Kumar and others*, 2021 SCC OnLine SC 791, the Apex Court observed that under Article 14 of the Constitution of India, no State action can pass muster if it is found to be arbitrary, but, then, a different or even an incorrect decision, would not make an otherwise lawful decision vulnerable to judicial scrutiny. The relevant paragraphs of the said judgment read thus:

"99. It is the case of the Writ Petitioners that the decision to locate site of toll plaza at 194 kilometre is arbitrary. Under Article 14 of the Constitution, no State action can pass muster, if it is found to be arbitrary. But, then, a different or even an incorrect decision, would not make an otherwise lawful decision vulnerable to judicial scrutiny. An arbitrary decision would be one which is bereft of any rationale or which is capriciously wrong, and not merely an erroneous view, in the perception of the Court. Any



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other view would tantamount to substituting its view for that of the Authority. Judged by the said standard, and also the nature of dispute, it cannot be held that toll plaza, having been located at a point where there was sufficient space and which would prevent the leakage of traffic, and also noticing that stretch itself consisted of a little over 50 kilometres, quite clearly, the case based on arbitrariness, is only to be repelled.

100. We have found that the Executing Authority is the Competent Authority to take decision under the second proviso to Rule 8 of the Rules. We, no doubt, have found, there is no duty to record reasons. In paragraph-77 of our Judgment, we have explained the duty of the Executing Authority. In the light of this, the Executing Authorities must maintain record, which must contain the decision to locate a toll plaza, invoking the second proviso.

101. Rule 9 of the Rules provides for discounts. The appellants and the Concessionaire are duty bound to extend the concessions to the local residents, in particular. We have noticed the stand of the appellants that this Court may issue appropriate



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direction in this regard as this Court finds fit. We notice that there is no appeal by the Concessionaire against the impugned order.”

12. In the light of the above said decision, we may not pass any orders in the present writ petition. We, however, expect the National Highways Authority to consider the collection of fee/toll, so also the rate that can be collected from the local residents.

With these observations, the writ petition is disposed of. There will be no order as to costs.

(S.V.G., CJ.)

(P.D.A., J.)

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Index : Yes/No
Neutral Citation : Yes/No
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THE HON'BLE CHIEF JUSTICE
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