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W.P.No.2205 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2205 of 2022

and

W.M.P.No.2371 of 2022

M.Damodaran
S/o.M.Markandan

... Petitioner

Vs.

1. The Union of India,
Represented by the Secretary to Government,
Ministry of Road Transport and Highways,
Transport Bhawan, 1 Parliament Street,
New Delhi - 110 001.

2. The National Highways Authority of India,
No.259/1, Salem Main Road,
Near KARC Petrol Bunk,
Krishnagiri - 635 001.

3. M/s.Krishnagiri-Wallajahpet Toll Way Ltd.,
Pallikonda Toll Plaza,
528, Chennai - Bangalore Highway (NH-48),
Pallikonda - 635 809.
Vellore District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India



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praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in NHAI/11026/2/PIU-K' Giri/2021/1611 dated 22.11.2021 and quash the same and direct the respondents to consider the petitioner's representation taking into consideration the provisions contained in Rule 9 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 and to consider removal of the restriction to a maximum of fifty trips for the monthly pass (Fastag) for the mini buses.

For Petitioner : Mr.T.N.Sugesh

For Respondent : Mr.Su.Srinivasan for R2
No appearance for R1 and R3

O R D E R

This petitioner challenges the order passed by the second respondent dated 22.11.2021 rejecting the representation submitted by the petitioner on 15.11.2021 requesting for levy of single toll charge at the minimal rate for trips permitted for plying mini bus from Pallikonda to Anaicut and from Anaicut to Pallikonda. He had earlier submitted the representation to the National Highways Authority which was also not considered by the said authority stating that the levy of toll is being collected



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as per the Fee Rules, 2008, vide Gazette No.2057, SO 2417(E) dated 05.10.2020 and however, the petitioner was requested to contact the Concessionaire M/s.Krishnagiri Wallajahpet Toll Way Pvt. Ltd., Pallikonda (third respondent herein) for appropriate action. Accordingly, the petitioner preferred representation to the second respondent on 25.09.2021 making a similar request to levy a single toll charge at the minimal rate for plying mini bus in the aforesaid route while passing through the National Highway NH44 for certain distance and to fix a monthly charge based on such minimal rate.

2. The brief facts which are required for the disposal of the writ petition is that the petitioner is plying mini bus between Anaicut and Pallikonda and in this journey, approximately 1Km is via National Highway NH44, for which the petitioner was required to pay toll for every trip to and fro. Hence, the petitioner was finding difficult to pay the toll charge at time of lesser occupancy of passengers and therefore, he submitted a representation to the District Collector and other authorities. He also



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submitted a representation to the National Highways Authority, for which he received a reply dated 05.03.2021 stating that the levy of toll is being collected as per the Fee Rules, 2008, vide Gazette No.2057, SO 2417(E) dated 05.10.2020. Thereafter, the petitioner preferred a further representation on 25.09.2021 addressed to the Concessionaire, namely, M/s.Krishnagiri Wallajahpet Toll Way Pvt. Ltd., Pallikonda (third respondent herein) requesting for levy a single toll charge for minimal rate for the trips permitted for the mini bus plying from Pallikonda to Anaicut and from Anaicut to Pallikonda while passing through the National Highway NH44 for a certain distance and to fix a monthly charge based on such minimal rate. In the meantime, the second respondent passed an impugned order rejecting the request of the petitioner. Challenging the same, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner who reiterated the averments made in the affidavit filed in support of the writ petition and submitted that the impugned order is passed in an arbitrary manner without



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considering the difficulties faced by the petitioner.

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4. A counter affidavit has been filed by the second respondent, namely, the National Highways Authority of India, wherein the second respondent has categorically stated that, the petitioner is not entitled for any concession as sought for by him and the toll fees are being levied and collected in toll plaza as per the Government of India Notification in line with NH (rate of fee) Rules, 2008 and vide Gazette No.2057 SO.2417, dated 05.10.2010. The notifications are in accordance with the base rate of fee contemplated under Rule 4 of the Rules, 2008.

5. The third respondent has filed a separate counter affidavit stating that there exists alternative route viz., Pallikonda-Keelachur-Anaicut and that for accessing the destination through the said route, the petitioner need not have to pay any user fee to the third respondent. The third respondent further submits that the District Collector, Vellore has already passed an order to erect a Police Check Post to monitor 24 x 7 and to prevent



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any anti-social activities in the said route and therefore, since the petitioner has an alternative route to ply his vehicles, the petitioner cannot seek for levy of minimal toll charges.

6. This Court has carefully considered the submissions made by the learned counsel for both sides and the counter affidavit filed by the respondents 2 and 3.

7. Admittedly the petitioner is plying his vehicle through the National Highways even when there is an alternative route as stated by the third respondent. It is also evident from the counter affidavit filed on behalf of the respondents 2 and 3 that, the toll charges are being collected as per the Government of India Notification in line with NH (rate of fee) Rules, 2008 and vide Gazette No.2057 SO.2417, dated 05.10.2010. That apart, Rule 3A of the National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 vide Gazette No.14, G.S.R.15(E) dated 12.01.2011, reads as follows:



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"3A. A person who owns a commercial vehicle (excluding vehicle plying under National Permit) registered with address on the Registration Certificate of a particular district and uses such vehicle for commuting on a section of national highway, permanent bridge, tunnel or bypass, as the case may be which is located within that district, shall be levied user fee on all (fee plazas) which are located within that district, at the rate of fifty percent of the prescribed rate of fee.

Provided that no such concession shall be provided, if a service road or alternative road is available for use by such commercial vehicles."

8. It is evident that there is a provision in the aforesaid rule that no concession shall be provided, if a service road or alternative road is available for use by such commercial vehicles. Admittedly as stated by the third respondent in the counter affidavit that there exists an alternative route to reach the destination namely, Pallikonda-Keelachur-Anaicut, therefore this Court feels that the impugned order need not be interfered with and the petitioner has not projected any case to issue a writ of certiorarified



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mandamus.

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9. Accordingly, the Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

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