



W.P.(MD)No.22836 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)No.22836 of 2015

and

M.P.(MD)No.1 of 2015

T.Suryanarayana Reddy

...Petitioner

Vs

1.The Principal Secretary,
Transport Department,
Government of Tamil Nadu,
Secretariat,
St.George Fort,
Chennai – 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Limited,
Kumbakonam.

3.The Project Director,
National Highways Authority of India,
PIU IIInd Floor, Subramaniyapuram IIIrd Street,
Karaikudi,
Sivagangai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus, directing the second respondent to pay the statutory User Fee arrears with interest to the petitioner for crossing Lembalakudi Toll Plaza on NH-210 within a time frame and to pay the User Fee regularly in advance in future.

For Petitioner : Mr.J.Selvam

For R-1 : Mr.R.Suresh Kumar
Additional Government Pleader

For R-2 : Mr.S.C.Herold Singh

For R-3 : Mr.S.Sankarapandian

ORDER

Heard Mr.J.Selvam, learned counsel for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader for the first respondent, Mr.S.C.Herold Singh, learned counsel for the second respondent and Mr.S.Sankarapandian, learned counsel for the third respondent.

2. This Writ Petition has been filed praying for a Mandamus, directing the second respondent to pay the statutory User Fee arrears with interest to the petitioner for crossing Lembalakudi Toll Plaza on NH-210 and to pay the User Fee regularly in advance in future.



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3. The Writ Petition had been filed by the concessionaire who was successful in the tender floated by the third respondent. The petitioner is entitled to collect the toll fee in the National Highway-210 between Trichy and Karaikudi at Lembalakudi Toll Plaza. The case of the petitioner is that the second respondent herein had not remitted the toll fees payable by it as per the provisions of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. He would also place reliance upon the judgment of the Division Bench of this Court in W.P.Nos.16218 and 21637 of 2013 dated 03.02.2015, wherein a similarly placed concessionaire had approached this Court. He would submit that in the aforesaid judgment, the Division Bench had directed the State Government to pay the charges within a period of six weeks, failing which the NHAI and the concessionaire were free to stop plying of the Government buses. It is the case of the petitioner that during his tenure as concessionaire for the period between 24.03.2015 to 23.03.2016, the second respondent had failed to make payment for using the National Highways for crossing the said toll. Therefore, he had approached this Court by filing the present Writ Petition.



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4. The learned counsel for the petitioner would further submit that the second respondent had requested the petitioner to allow the buses to pass through toll plaza and assured that the actual notified payment dues would be made at the beginning of each month for all the vehicles. Since it was for the public utility service owned by the Tamil Nadu State Government, the petitioner had allowed the vehicles to use the project highway without insisting on spot payment with regard to the buses belonging to the second respondent transport corporation. He would further submit that the second respondent had paid consolidated payment for each bus which would entitle them to carry out 50 journeys per month and each of the buses plying more than 50 trips, the second respondent are liable to make payment. In the present case, for the excess trips made by the second respondent buses, the second respondent due to sum of Rs.56,92,860/- as on 31.10.2015. Hence, he had sought for a direction to the second respondent to pay all the statutory dues and fees and arrears together with interest.

5. Countering his contentions, the learned counsel appearing for the second respondent would submit that the prayer sought for in the Writ Petition would not be maintainable, as disputed question of facts



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arise in the Writ Petition. In the affidavit filed in support of the Writ Petition, a statement had been made by the petitioner that the respondent buses had utilized the service of National Highways by crossing Lembalakudi toll plaza more than 50 journeys permitted. No details have been given by the petitioner as to which bus had exceeded to 50 trips permitted under the consolidated payment and what was the excess trip made by each of the buses for arriving at the figure of nearly Rupees 50 lakh stated in the affidavit. He would further submit that the said claim is also disputed by the first respondent. He would further submit that this disputed issue can only be decided by filing civil suit by the petitioner not by filing Writ Petition under Article 226 of the Constitution. He would further indicate that the judgment of the Division Bench relied upon by the petitioner was made as early as on 03.02.2015 and the petitioner took over as concessionaire only after the said order. The said order indicates that without payment of toll fees as determined, the concessionaire and the NHAI have right to stop the plying of buses. Therefore, he would submit that the petitioner had right to stop the buses for making trip beyond the consolidated payment in respect of each buses. Therefore, the learned counsel for the second respondent seeks dismissal of the Writ Petition.



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6. The learned Additional Government Pleader appearing for the first respondent would also support the stand taken by the second respondent. However, the learned counsel appearing for the third respondent would support the case of the petitioner.

7. I have considered the submissions made on either side and perused the materials available on record.

8. Even though the Writ Petition had been filed, as rightly pointed out by the learned counsel appearing for the second respondent that the Writ Petition does not give in detail the trips that has been made in excess of the consolidated payment by the second respondent. The petitioner also has to give in detail the number of buses which were permitted under the consolidated payment and the details of buses which have exceeded the said 50 trips per month. However, the petitioner had made a claim of Rs.56,92,860/- only as on 31.10.2015. It is also an admitted case of the petitioner that he had license for collecting toll fees till 23.03.2016. If such payments have not been made atleast from the date of filing the Writ Petition, the petitioner should not allow the second



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respondent to make trips beyond the allowed trips under consolidated payment.

9. Since these disputed question of facts arises for considering the claim made by the writ petitioner, this Court is of the view that the prayer sought for in the Writ Petition cannot be granted by exercising power under Article 226 of the Constitution of India. For such a relief, the petitioner can approach the Civil Court by filing a suit for recovery of arrears liable to be paid. If the petitioner approaches the Civil Court, the period of pendency of the Writ Petition shall stand excluded, in view of Section 14 of the Limitation Act.

10. With the above liberty, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:
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Chennai – 600 009.
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K.KUMARESH BABU, J.

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