



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On	16.07.2024
Pronounced On	02.08.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.28227 of 2023

and

W.M.P.(MD)Nos.24292 and 24293 of 2023 and 2743 of 2024

and

Cont.P.(MD)No.462 of 2024

W.P.(MD)No.28227 of 2023:-

M/s.TVS Srichakara Ltd.,
Rep. by its Company Secretary,
Perumalpatti Road,
Vellarippatti,
Melur Taluk,
Madurai District -625 122.

... Petitioner

Vs.

- 1.Union of India,
Rep. by its Secretary,
Ministry of Road Transport and Highways,
New Delhi.
- 2.National Highways Authority of India,
Ministry of Road Transport and Highways,
Rep. by its Secretary,
G5 and 6, Sector 10,
Dwaraka, New Delhi - 110 075.



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

3.The Project Director,
National Highways Authority of India,
6/44, I Floor, Pon Nagar, II Main Road,
Trichy - 620 001, Tamil Nadu.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent made in S.O.No.2382(E) published in the Government of India Gazette dated 05.07.2019 by the Ministry of Road Transport and Highways, New Delhi, for collection of user fee in respect of section Trichy - Thuvarankurichi - Melur - Madurai which forms part of NH 45B, quash the same and direct the respondents 1 and 2 to collect the user fee by granting concession for multiple singles per month *i.e.* multiplication of 30 days by single journey user fee, as granted to the stage carriage operators operating on the section NH 45B Trichy – Madurai.

For Petitioner : Mr.M.Palani

For R1 : Mr.V.Malaiyendran
Central Government Standing Counsel

For R2 : No Appearance

For R3 : Mr.M.K.Sachin Rahul
for M/s.Arulvadivel Associates

Cont.P.(MD)No.462 of 2022:-

M/s.TVS Srichakara Ltd.,
Rep. by its Company Secretary,
Perumalpatti Road,
Vellarippatti,



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

Melur Taluk,
Madurai District - 625 122.

... Petitioner

Vs.

1.Sh.Anurag Jain,
Secretary,
National Highways Authority of India,
Ministry of Road Transport and Highways,
G5 and 6, Sector 10,
Dwaraka, New Delhi -110 075.

2.A.N.Praveen Kumar,
The Project Director,
National Highways Authority of India,
6/44, I Floor, Pon Nagar, II Main Road,
Trichy - 620 001, Tamil Nadu.

... Respondents

Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying to punish the Contemnors/Respondents 2 and 3 for willful disobedience of the order of this Court made in W.P.(MD)No. 28227 of 2023, dated 08.12.2023.

For Petitioner : Mr.M.Palani

For R2 : Mr.M.K.Sachin Rahul
for M/s.Arulvadivel Associates

COMMON ORDER

By this common order, both the Writ Petition and the Contempt Petition are being disposed of.



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

2. The petitioner is before this Court seeking to quash the impugned Gazette Notification dated 05.07.2019 issued by the first respondent in S.O.2382(E) for the collection of user fee in respect of section Trichy - Thuvarankurichi - Melur - Madurai which forms part of NH 45B and consequently, direct the respondents 1 and 2 to collect the user fee by granting concession for multiple singles per month *i.e.* multiplication of 30 days by single journey user fee as granted to the stage carriage operators operating on the section NH 45B Trichy – Madurai.

3. At the time of admission, this Court has granted an interim order on 08.12.2023, which reads as under:-

"The petitioner is having a factory adjacent to the National Highways 45B (Trichy-Madurai), near Sithampatti Toll Plaza.

2. The case of the petitioner is that their factory is situated at Vellaripatti at a distance of 1 Km from Sithampatti Toll Plaza. The distance between the two toll plazas, viz., Sithampatti and Thuvarankurichi is 63.890 kms, for which, the toll fee of Rs.145/- per single is collected by the Toll Plaza for commercial vehicles. The petitioner Company has made a request in the year 2009 for concession, since they were using the toll road to a stretch of 6 to 11 Kms only and at the relevant point of time, a concession was provided to the petitioner till 2013.



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

Now, the National Highways Authority has taken over the maintenance of Toll plaza and is collecting the toll charges from the year 2019. The petitioner Company, with a grievance that the concession which was provided to them earlier in the year 2013, has not been provided to them now, has approached this Court challenging the Notification issued by the first respondent in S.O.No.2382 (E), which was published in the Government of India Gazette dated 05.07.2019 for collection of user fee.

3. The learned counsel appearing for the petitioner submits that the petitioner Company is using the toll road to an extent of 5 Kms only and they are also paying 50% of toll charges for single journey, whereas, the third respondent is collecting a sum of Rs.6,300/- (Rupees Six Thousand Three Hundred only) as monthly toll charges from the private bus sectors who are plying the vehicles from the toll plaza. The private bus sectors who are using the toll road to the extent of 9 Kms are provided concession and therefore, the petitioner has made a request for concession on par with the private bus sectors and it has not been considered by the respondents. Therefore, this Writ Petition has been filed.

4. Mr.C.Arul Vadivel @ Sekar, learned Senior Standing Counsel appearing for the respondents 1 and 2 submits that the third respondent is entitled to collect the toll charges as per Rule 9(2) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. The learned Senior Standing Counsel has relied on the provision under Section 9(3A) of the said Act and submits that a person who owns a concession. The concession which has been referred by the petitioner to certain private bus operators is pursuant to the order passed by this



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

Court in W.P(MD).No.15449 of 2020 etc., dated 06.07.2022 and as against the said order, the third respondent has preferred an appeal and the same is pending before this Court in W.A.(MD).No.1198 of 2022 and therefore, the learned Senior Standing Counsel suggested this Court to list this matter along with the said writ appeal. The learned Senior Standing Counsel further submits that the concession which has been provided to the stage carriage vehicles cannot be equated with the petitioner, since the stage carriage vehicles are used for public purpose.

5. This Court considered the rival submissions made by both sides and perused the materials available on record.

6. Pursuant to the order passed by this Court in a batch of writ petitions in W.P(MD).No.15449 of 2020 etc., dated 06.07.2022, concession has been provided to the private bus operators who are plying the vehicles in the toll road to an extent of 9 Kms. The petitioner Company claims that they are using the toll road to the extent of 5 Kms only. The stage carriage operator is a private bus operator and if the concession has been provided to the private bus operator, the same concession can be given to the petitioner who is also providing some employment in a rural area like Melur. Though the respondents have preferred a writ appeal, it appears that the Hon'ble Division Bench of this Court has not passed any interim order against the order passed by this Court in W.P(MD).No.15449 of 2020. Since the respondents are providing some concession to the private bus operators, similar concession has to be provided to this petitioner also, pending disposal of this Writ Petition.

7. Post the matter on 22.12.2023."



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

4. Alleging non-compliance of the above said order, the petitioner has filed the above Contempt Petition.

5. By the impugned Notification, for multiple journeys on the Highway section, rates have been prescribed for plying the vehicles on NH45B between Trichy Bypass – Thuvarankurichi - Madurai as under:-

"5. For multiple journeys on the highway section, passes shall be issued at the following rates, namely:-

Table - 5		
Amount Payable	Maximum number of one way journeys	Period of validity
	allowed	
One and one-half times of the fee for one way journey	Two	Twenty four hours from the time of payment
Two-third of amount of the fee payable for fifty single journeys	Fifty	One month from the date of payment

6. Fee for commercial vehicle (excluding vehicles plying under National permit) registered in the district where the fee plaza falls shall be 50% of the specified rate for that category of vehicle provided no service road or alternative road is available for use of such commercial vehicles."



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

6. This very Notification was subject matter of challenge before this Court in **W.P.(MD)No.15449 of 2020 etc. batch** [Madurai District Private Bus Owners Association, Rep. by its Secretary vs. Union of India, decided on 06.07.2022]. The prayer in W.P.(MD)No.15449 of 2020 reads as under:-

"To issue a a Writ of Certiorarified Mandamus, calling for the records of the first respondent made in Notification bearing S.O.No. 2382(E), published in the Government of India Gazette, dated 05.07.2019 by the Ministry of Road Transport and Highways, New Delhi, for collection of the user fee in respect of section Trichy – Thuvrankurichi – Melur – Madurai, which forms part of NH45B and quash the same and direct the 1st and 2nd respondents to collect the user fee, as prescribed in the notifications in respect of similar 4 way lanes Chengalpet – Tindivanam, dated 26.03.2009, Ulundurpet – Padalur, dated 24.07.2009, Padalur to Trichy, dated 26.10.2009, which forms part of NH45 and Madurai – Aruppukottai, dated 16.06.2011 and Salem – Ulundurpet, dated 13.01.2012 on NH45B."

7. After elaborate consideration of the competing submissions of the parties in W.P.(MD)No.15449 of 2020 etc. batch, this Court took a balanced view and concluded as follows:-

"118. For all these reasons stated above, this Court is inclined to dispose of these writ petitions



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

with the following orders :

(i) *W.P.(MD).Nos. 4252 of 2010, 4253 of 2010, 4254 of 2010, 8644 of 2010, 8645 of 2010, 18616 of 2013, 18617 of 2013, 18618 of 2013, 18619 of 2013, 18620 of 2013 and 18622 of 2013 since have become infructuous, these writ petitions are dismissed as infructuous.*

(ii) *In respect of other writ petitions, i.e., W.P.(MD).Nos.15449 of 2020, 15465 of 2020, 15470 of 2020, 15474 of 2020, 18440 of 2020, 5118 of 2021, 5121 of 2021, 6527 of 2021, 4886 of 2014, 4887 of 2014, 4893 of 2014 and 8646 of 2010 are concerned, the challenge made in these writ petitions against the respective notifications as well as sub-rule (2) of rule 9 of 2008 Rules is concerned, that challenge also cannot be sustained, therefore these writ petitions are also to that extent are liable to be rejected, accordingly, they are dismissed.*

(iii) *However in view of the discussions made herein before, where it is to be noted that, the vehicles owned by the members of the petitioners association in this batch of cases are the stage carriage permit vehicles for the public transportation and they have to ply the vehicle in the permitted route every day for 4 to 6 singles or even more, they have to necessarily cross the section of the highway or toll booth multiple times. Therefore the monthly pass by way of discount or concession given in each of these notifications, only for 50 trips for 30 days can be modified and accordingly, depending upon the number of singles permitted by the Transport Authority in respect of each of the stage carriage permit, it shall be permitted*



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

with concession rate and in this regard, a suitable modification may be made either in the notifications which are impugned herein or individual orders can be passed by the authorities, i.e., the respondents herein to whom individual request / representation can be made by each of the stage carriage permit holder detailing the number of trips they have to undertake every day as per the permit conditions and accordingly, the monthly pass concession can be extended to them not restricting with only 50 trips or 50 singles permissible for 30 days as envisaged or provided in the impugned notifications but extending the same for number of singles as per the condition of stage carriage permit."

8. The reasoning for the above direction are in Paragraph Nos.113

to 115 of the said order, which read as under:-

"113. However, insofar as the modification made in respect of the monthly pass between 1997 Rules and 2008 Rules is concerned, this Court feel that, there may be some justification on the part of the petitioners to project that point, because, admittedly these vehicles are stage carriage permitted vehicles and they have to ply the vehicles for the permitted trips in the given route as per the transport permit given by the authorities concerned. While so, they have to take atleast 4 to 6 trips per day, therefore it become inevitable to have a multiple entry in every day in a particular section of the highway or toll plaza.

114. Moreover these vehicles are public utility services and are being plied for the public interest. When that being so, the monthly pass concession, which infact has been given under rule 9 of the 2008



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

Rules under the heading “Discounts”, should be extended to them, enabling them to make use of these concession for the entire trips or single they have to undertake for the whole month, i.e., 30 days as per the permit conditions.

115. In this regard, even though the rule 9 of 2008 Rules has made it clear that, the driver, owner or person incharge of a mechanical vehicle who makes use of the section of a national highway shall have to pay fee in accordance with the following rates, i.e., 2/3rd of amount of the fee payable for 50 single journeys in one month, the same can very well be extended depending upon the requirement of the stage carriage permitted pubic transport vehicles like the petitioners and in this regard, no rigid rule need to be follow."

9. It is noticed that the petitioner had obtained an interim order from this Court on 08.12.2023 by directing the respondents to extend the concession given to the private bus operators albeit stage carrier to the petitioner also, as the petitioner is only using about 6 to 9 Kilometres for transporting its Staffs from the Madurai City and the neighbouring Taluks surrounding its Factory in Vellarippatti, Madurai District and therefore, the petitioner's vehicles have to pass through NH-45B through Chithampatti Toll Plaza.



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

10. It is submitted that the conditions of the impugned Notification are onerous and therefore, are liable to be interfered with. It is further submitted that Rule 9 of the National Highways Fee [Determination of Rates and Collection] Rules, 2008, vide G.S.R. 838(E), dated 05.12.2008, provides for discounts.

11. The definition of "Executive Authority" as defined in Rule 2(f) of the said Rules as follows:-

"2(f) "executing authority" means an officer or authority notified by the Central Government under Section 5 of the Act;"

12. The learned counsel for the petitioner submits that the petitioner owns 20 vehicles, which are used for transporting its Staff. It is submitted that even with above discount in terms of Rule 9 of the said Rules, the amount that is to be paid by the petitioner is onerous. In this connection, a reference was made to the following averments made by the petitioner in the affidavit filed in support of this Writ Petition:-

"24. I respectfully submit that as we are operating 6 to 8 singles per day and for each vehicle, per single we are paying Rs.175/- and in the case of 6 singles we have to pay the user fee at the rate to Rs.1,050/- per day and for 30 days Rs.31,500/- and



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

for 20 vehicles it comes to around Rs.6,30,000 per month."

13. Explaining further, the learned counsel for the petitioner submits that though in terms of sub-rule 3-A of Rule 9 of the above said Rules, such concession *viz.*, 50% of the user fee has to be given with reference to 50 singles per month, as on date, the petitioner is paying a sum of Rs.175/- per single which is 50% of Rs.350/-, which is the user fee demanded by the third respondent.

14. It is further submitted that the petitioner is operating 6 singles in a day and the said vehicles are passing through the National Highway for a distance of 6 or 11 Kms., as the case may be, and for the same, the petitioner is paying 50% of the single journey user fee, though the petitioner is entitled for a concession of 50% of the user fee meant for 50 singles, as seen from sub-rule 3-A of Rule 9 of the said Rules, which is extracted above.

15. It is further submitted that the petitioner has sent a representation on 14.07.2023 claiming similar concession as was ordered



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

by this Court in its order dated 06.07.2022 in **W.P.(MD)No.15449 of 2020 etc. batch** in the case of **Madurai District Private Bus Owners Association, Rep. by its Secretary vs. Union of India**. However, no action has been taken by the respondents on the said representation.

16. It is further submitted that since for 1 vehicle, the petitioner has to pay Rs.1,050/- per day and per month Rs.31,500/- and for 20 vehicles, the petitioner is paying a sum of Rs.6,31,500/- per month, the amount collected from the petitioner is highly exorbitant, considering the fact that the usage of NH-45B by the petitioner is for a small distance of 6 to 8 Kms.

17. It is further submitted that despite the interim order passed by this Court, the respondents are not granting relief to the petitioner and therefore, the same is in flagrant violation of the interim order passed by this Court on 08.12.2023 and therefore, the respondents are liable to be punished for contempt.



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

18. On the other hand, the learned counsel for the third respondent submits that against the remarks in Paragraph No.118 of the order of the learned Single Judge dated 06.07.2022, Writ Appeals have been filed before this Court in W.A.(MD)No.1198 of 2022 etc. batch and the same are pending.

19. The learned counsel for the third respondent further submits that although no interim stay has been obtained, the concessions beyond the statutory rate cannot be extended contrary to the provisions of the Act and the Rules. It is submitted that once Rule 9(2) of the said Rules is upheld, no concession can be extended either to the petitioner or to the parties to W.P.(MD)No.15449 of 2020 etc. batch.

20. The learned counsel for the third respondent submits that the petitioner is challenging the entire S.O.2382 (E) dated 05.07.2019, which is unsustainable. S.O.2382 (E) deals with the calculation method for toll fees at one half time of the base distance from Trichy Bypass – Madurai via., Thurvarankurichi. Along this route, there are two fee Toll Plazas i.e., one at Km.21/020 of NH-45 B near Boothakudi Village in Pudukkottai



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

District and another at Km.113/630 of NH-45B near Chittampatti Village in Madurai District. The contention of the petitioner that they are aggrieved by the collection of toll fees only at the Toll Plaza at Km. 113/630 near Chittampatti and therefore, challenging the entire S.O.2382 (E), dated 05.07.2019 is unsustainable.

21. It is further submitted that in the interim order, it was mentioned that concession has been provided to the private bus operators. However, apart from the concession provided as per Notification dated 05.07.2019 in S.O.2382 (E), no additional concession has been given to the private bus operators by the respondents (NHAI). The petitioner knowing fully well that no concession has been provided by the NHAI to the private bus operators / Stage carriage vehicles, has made this allegation without proper records.

22. It is further submitted that the concession bill attached by the petitioner in the typed set of papers at Page No.220 clearly depicts the name of the Collecting Agency Sri Sai Enterprises. Therefore, suppressing the fact and without making the Collecting Agency Sri Sai



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

Enterprises as party in this Writ Petition, the petitioner has misled this Court and obtained an interim order.

23. It is further submitted that the order in W.P.(MD)No.15449 of 2020 etc. batch, dated 06.07.2022, is confined to Stage Carriages. It is submitted that the order dated 06.07.2022 in W.P.(MD)No.15449 of 2020 etc. batch has been appealed before the Division Bench of this Court in W.A.(MD)No.1198 of 2022 etc. batch and the same are pending. Whereas, it is clear from the definitions that the petitioner's vehicles are used for personal use for the benefit of its business and they do not serve any public purpose. Further, there are various conditions mentioned in Section 72 of the Motor Vehicles Act, 1988, for obtaining a Stage Carriage Permit, such as the minimum and maximum number of daily trips to be provided in relation to any route or area, generally or on specific days and occasions. Such conditions enable the tracking of the vehicle's usage in specified areas and the number of times, the vehicles uses the road. However, for obtaining a Private Service Vehicle Permit under Section 76 of the Motor Vehicles Act, 1988, no such conditions are specified regarding the number of trips in a specified area. Therefore, there is no way to track the usage of the petitioner's vehicles.



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

24. It is further submitted that the Stage Carriage Vehicles / Private Bus Operators fall under the category of Commercial Vehicles. If they are registered in the District, where the fee Toll Plaza falls, the fee shall be 50% of the specified rate for that category of vehicle. Likewise, it is incumbent upon the petitioner to take steps to prove that their vehicles fall under the category of Commercial Vehicles and are registered in the District of Madurai to avail 50% concession at the Chittampatti Toll Plaza. Otherwise, they are only eligible for the monthly concession for 50 singles at the rate of $2/3^{\text{rd}}$ of amount of the fee payable.

25. It is also submitted that the Stage Carriage Operators / Petitioners in W.P.(MD)No.15449 of 2020 etc. batch made individual representations to the respondents on 11.07.2022 and the same are kept pending without passing any order, since Writ Appeals are filed against the common order dated 06.07.2022 in W.P.(MD)No.15449 of 2020 etc. batch.

26. By way of rejoinder, the learned counsel for the petitioner submits that the application for modification of the said order was also rejected. It is submitted that there is also no stay operating against the



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

order as on date and therefore, the respondents as statutory authorities are bound by the order of the learned Single Judge of this Court.

27. I have considered the arguments advanced by the learned counsel for the parties.

28. The challenge to the impugned Gazette Notification dated 05.07.2019 issued by the first respondent in S.O.2382(E) cannot be countenanced in the light of the order dated 06.07.2022, passed in W.P. (MD)No.15449 of 2020 etc. batch.

29. As far as the petitioner is concerned, the petitioner is a holder of private service vehicle permit issued under Section 76 of the Motor Vehicles Act, 1988. Section 76 of the Motor Vehicles Act, 1988, reads as under:-

"76. Application for private service vehicle permit.-

(1) A Regional Transport Authority may, on an application made to it, grant a private service vehicle permit in accordance with the application or with such modification as it deems fit or refuse to grant such permit:

Provided that no such permit shall be granted



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

in respect of any area or route not specified in the application.

(2) An application for a permit to use a motor vehicle as a private service vehicle shall contain the following particulars, namely:-

- (a) type and seating capacity of the vehicle;*
- (b) the area or the route or routes to which the application relates;*
- (c) the manner in which it is claimed that the purpose of carrying persons otherwise than for hire or reward or in connection with the trade or business carried on by the applicant will be served by the vehicle; and*
- (d) any other particulars which may be prescribed.*

(3) The Regional Transport Authority if it decides to grant the permit may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:-

- (i) that the vehicle be used only in a specified area or on a specified route or routes;*
- (ii) the maximum number of persons and the maximum weight of luggage that may be carried;*
- (iii) that the Regional Transport Authority may, after giving notice of not less than one month-*
 - (a) vary the conditions of the permit;*
 - (b) attach to the permit further conditions;*
- (iv) that the conditions of permit shall not be departed from, save with the approval of the Regional Transport Authority;*
- (v) that specified standards of comforts and cleanliness shall be maintained in the vehicle;*
- (vi) that the holder of the permit shall furnish to the Regional Transport Authority such periodical returns, statistics and other information as the State Government may, from time to time, specify; and*



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

(vii) such other conditions as may be prescribed."

30. The Motor Vehicles Act, 1988 defines the expression "private service vehicle", "public service vehicle", and "stage carriage", which read as under:-

2(33)	2(35)	2(40)
"private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes;	"public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage;	"stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

31. As far as concession/discount which the petitioner seeks in the light of the order dated 06.07.2022 in W.P.(MD)No.15449 of 2020 etc. batch is concerned, this Court is of the view that the modification of either



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

the impugned Notification issued in the light of the provisions of the National Highways Act, 1956 or in derogation of Rule 9 of the National Highways Fee [Determination of Rates and Collection] Rules, 2008, cannot be countenanced. In any event, the order passed by this Court in W.P.(MD)No.15449 of 2020 etc. batch, dated 06.07.2022, will apply only if the vehicle plied by the petitioner fall under the category of mechanical vehicle registered for non-commercial purposes and uses it as such for commuting on a section of national highway, permanent bridge, bypass or tunnel. The discount under Rule 9(2) of the said Rules is subject to a caveat under proviso to Rule 9(3) of the said Rules. As per the said Rule, Pass shall be issued only if such driver, owner or person in charge of such mechanical vehicles resides within a distance of twenty kilometres from the fee Plaza specified by such person and the use of such section of National Highway, permanent bridge, bypass or tunnel, as the case may be, does not extend beyond the fee Plaza next to the specified fee Plaza.

32. As far as 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



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

WEB COPY

commuting on a section of the 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 per cent of the prescribed rate of fee.

33. As per proviso to sub-rule 3-A to Rule 9 of the said Rules, no such concession shall be provided if a service road or alternative road is available for use by such commercial vehicles.

34. Rule 9 of the above said Rules reads as under:-

"9. Discounts.- (1) *The executing authority or the concessionaire, as the case may be, shall upon request provide a pass for multiple journeys to cross a fee plaza within the specified period at the rates specified in sub-rule (2) of Rule 9.*

(2) *A driver, owner or person in charge of a mechanical vehicle who makes use of the section of national highway, permanent bridge, bypass or tunnel, may opt for such pass and he or she shall have to pay the fee in accordance with the following rates, namely:-*

Amount Payable	Maximum number of one way journeys allowed	Period of Validity
----------------	--	--------------------



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

One and half times of the fee for one way journey	Two	Twenty-four hours from the time of payment
Two-third of amount of the fee payable for fifty single journeys	Fifty	One month from the date of payment

(3) A person who owns a mechanical vehicle registered for non-commercial purposes and uses it as such for commuting on a section of national highway, permanent bridge, bypass or tunnel, may obtain a pass, on payment of fee at the base rate for the year 2007-2008 of rupees one hundred and fifty per calendar month and revised annually in accordance with Rule 5, authorising it to cross the fee plaza specified in such pass:

PROVIDED that such pass shall be issued only if such driver, owner or person in charge of such mechanical vehicle resides within a distance of twenty kilometres from the fee plaza specified by such person and the use of such section of national highway, permanent bridge, bypass or tunnel, as the case may be, does not extend beyond the fee plaza next to the specified fee plaza:

PROVIDED further that no such pass shall be issued if a service road or alternative road is available for use by such driver, owner or person in charge of a mechanical vehicle.

(3-A) 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



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

vehicle for commuting on a section of the 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 per cent 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.

(4) No pass shall be issued or fee collected from a driver, owner or person in charge of a mechanical vehicle that uses part of the section of a national highway and does not cross a fee plaza."

35. Therefore, the challenge to the impugned Gazette Notification insofar as the petitioner is concerned, merely because the petitioner is using a section of the Highway cannot be countenanced. That apart, under Section 8-A of the National Highways Act, 1956, the Central Government is empowered to enter into agreement with any person not only in relation to the development and maintenance of the whole or any part of a National Highway.

36. In this case, the maintenance of the National Highway has been hived off to Sri Sai Enterprises, the concessionaire, who has not been impleaded in this Writ Petition. Unless a special concession is given to the petitioner under a specific Notification under the National Highways Fee



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

[Determination of Rates and Collection] Rules, 2008, the petitioner cannot claim any exemption.

37. As far as the petitioner is concerned, the petitioner's case is squarely covered by Sub-Rule 3-A to Rule 9 of the above said Rules, which has been extracted above. Merely because the petitioner owns 25 vehicles, *ipso facto* would not justify a further concession as the benefit that has been conferred by this Court for Stage Carriage in W.P.(MD)No. 15449 of 2020 etc. batch, dated 06.07.2022, cannot be extended to the petitioner. Therefore, this Writ Petition is liable to be dismissed and accordingly, is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

38. In view of the above, I find no merits in the Contempt Petition and therefore, the same is also liable to be dismissed and accordingly, is dismissed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
smn2

02.08.2024



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

To
WEB COPY

- 1.The Secretary,
Union of India,
Ministry of Road Transport and Highways,
New Delhi.
- 2.The Secretary,
National Highways Authority of India,
Ministry of Road Transport and Highways,
G5 and 6, Sector 10,
Dwaraka, New Delhi - 110 075.
- 3.The Project Director,
National Highways Authority of India,
6/44, I Floor, Pon Nagar, II Main Road,
Trichy - 620 001, Tamil Nadu.



WEB COPY



W.P.(MD) No.28227 of 2023 and
Cont.P.(MD)No.462 of 2024

C.SARAVANAN, J.

smn2

Pre-delivery common order in
W.P.(MD)No.28227 of 2023
and
Cont.P.(MD)No.462 of 2024

02.08.2024