

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION (PIL) No.89 OF 2019

ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The petitioners before this Court, who are advocates, have filed the present writ petition by way of Public Interest Litigation stating that they are owners of motor vehicles, they have paid road tax at the time of purchase of the vehicles and the respondents are compelling them to pay toll tax, which is in addition to the lifetime tax paid by the petitioners. The petitioners' contention is that the collection of toll tax at National Highway Toll Booths is a mafia type operation controlled by top rank politicians belonging to the Government in power and therefore, payment of toll tax be declared as illegal and unjust.

2. The petitioners have also raised a grievance in respect of non-payment of toll tax by certain dignitaries and the contention of the petitioners is that the exemption from payment of toll tax by certain dignitaries is in violation of Article 14 of the Constitution of India. The petitioners have given certain examples of collection of toll tax at GMR – Vijayawada Expressway. It has been further stated that in and around Hyderabad also, toll tax is being collected and the action of the respondents in collecting toll tax even after seventy two years of Independence in a democratic country

deserves to be quashed. The petitioners have prayed for the following relief:-

“It is therefore prayed that this Hon’ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents herein in notifying majority of the roads connecting various places in the country as National/State Highways and thereby compelling the petitioners several other crores of common people like such to use only highways by paying huge amounts towards toll taxes in addition to the life tax (road tax) paid during the purchase of mechanical vehicle under the guise of facilitating the raising of additional sources for development of Highways without providing an alternative way/road as being illegal and arbitrary and consequently to struck down the collection of toll system or collection of life tax from the citizens of this country in the interest of justice and to pass such other order or orders as are deemed fit and property in the circumstances of the case.”

3. The petitioners have subsequently filed Additional Affidavit furnishing a list of officials/dignitaries who are exempted from paying toll tax and the contention of the petitioners is that keeping in view the Report of the Committee of Secretaries on Review of Toll Policy for National Highways submitted to the Government of India in May, 2009, alternative road (toll free road) should be made available to a common man. In the Additional Affidavit, again a prayer has been made for quashment of the system of collecting toll fee on State and National Highways.

4. A detailed and exhaustive counter affidavit has been filed by the National Highways Authority of India (NHAI). It has been stated that keeping in view the financial crunch, which was coming in the way of development of Highways/Highway Projects by NHAI, the Central Government took a policy decision in order to ensure that funds are made available and created National Level Infrastructure of Roads and accordingly the National Highways Act, 1956 was amended and Section 8A was incorporated vide Act No.26 of 1995 with effect from 16.06.1995. The amendment empowered the NHAI to enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a National Highway. Section 8A further provided that any person with whom an agreement has been entered into can collect and retain fees for services or benefits rendered by him as the Central Government may provide by Notification, having regard to the expenditure involved in building, maintenance, management and operation of National Highways, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

5. It has been further stated that the Government of India has launched a National Highways Development Project (NHDP) which is the largest development project undertaken

by a single Authority in the world i.e., NHAI with an aim and object of widening, upgradation, strengthening and rehabilitation of about 55,000 kilometres of roads and most of the projects are on the basis of Public Private Partnership (PPP). The respondents have further stated that the levy of fees is governed by the National Highways Fee (Determination of Rates and Collection) Rules, 2008, 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 the National Highways (Fees for the use of National Highways section and permanent bridge – Public Funded Project) Rules, 1997.

6. The contention of the respondents is that the Government of India in exercise of powers conferred under Section 9 of the National Highways Act, 1956 has issued G.S.R.950 (E), dated 03.12.2010, whereby to amend the National Highway Fee (Determination of Rates and Collection) Rules, 2008 and exemption is available only for NHAI or any other Government Organisation using such vehicles for inspection, survey, construction of National Highways and maintenance thereof. Rule 11 of the aforesaid Rules exempts certain class of persons from payment of fees and the issue in the matter of grant of exemption has already been adjudicated by Karnataka High Court in the

case of **Narasimha Vasudeva Mahale v. Executive Engineer, National Highway Division**¹. Reliance has also been placed upon the Judgment delivered by the Madras High Court in the case of **State Lorry Owners' Federation, Tamilnadu v. the Superintending Engineer**², wherein it has been held that “*the collection of tax under the Motor Vehicles Taxation Act and levy of fees under the National Highway Rules do not amount to double taxation*”. The respondents in the counter affidavit explained the formula for calculating the toll tax. The respondents have prayed for dismissal of the writ petition.

7. Heard the learned counsel for the parties and perused the record. The matter is being disposed of at motion hearing stage itself with the consent of the parties.

8. The petitioners before this Court, who are advocates and owners of Hyundai Creta and Hyundai I-20 and they have stated that while purchasing the cars, they have paid taxes as required under the Motor Vehicles Act and they cannot be forced to pay toll tax, which amounts to double taxation. The petitioners have also raised a serious objection in respect of exemption granted to certain class of persons from paying the toll tax. The undisputed facts reveal that the Government of India took a policy decision in order to provide road infrastructure throughout the country through

¹ AIR 2001 KARNATAKA 95

² AIR 1999 Mad 181

the mechanism of Public Private Partnership (PPP) in the matter of construction, widening, upgradation and strengthening of roads and based upon the policy decision of the Government of India, amendment was carried under the National Highways Act, 1956. Section 8A of the aforesaid Act is reproduced as under:-

“8A. Power of Central Government to enter into agreements for development and maintenance of National Highways:-

(1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in section 7, the person referred to in sub-section (1) is entitled to collect and retain fees at such rate, for services or benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 (59 of 1988) on the national highway forming subject matter of such agreement, for proper management thereof.”

9. The aforesaid statutory provision of law empowers the NHAI to enter into an agreement with any person in relation to the development and maintenance of the whole or part of a National Highway. It also empowers any person, with whom such agreement has been entered into, to collect and

retain fees for services or benefits rendered by him as the Central Government may provide by Notification having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such National Highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement. The facts also make it very clear that NHAI has developed various sections of the National Highways by private financing under Public Private Partnership (PPP) broadly under the following framework:-

“(i) Build, Operate and Transfer (BOT)/Design, Build, Finance, Operate and Transfer (DBFOT) – Investment by private firm and return through levy and retention of use fee, i.e., toll revenues;

(ii) Build, Operate and Transfer (Annuity) – BOT (Annuity) – Investment by private firm and return through semi-annual payments from NHAI as per bid.”

10. The Rules framed under the National Highways Act provides for collection of toll tax. The following Rules have been framed from time to time:-

“(i) 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;

(ii) The National Highways (Fees for the use of National Highways section and permanent bridge – Public funded Project) Rules, 1997; and

(iii) The National Highways Fees (Determination of Rates and Collections) Rules, 2008.”

11. The petitioners have not challenged the constitutional validity of Section 8A of the National Highways Act, 1956 or the constitutional validity of the Rules framed thereunder and therefore, this Court, once the constitutional validity of the Rules have not been challenged, is of the opinion that the action of the NHAI, which is in consonance with the Act and the Rules framed thereunder, cannot be interfered with.

12. Rule 11 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 provides for exemption in respect of certain dignitaries and the same reads as under:-

“11. Exemption from payment of fee:-

No fee shall be levied and collected from a mechanical vehicle:-

(a) transporting and accompanying -

- (i) the President of India;
- (ii) the Vice-President of India;
- (iii) the Prime-Minister of India;
- (iv) the Governor of a State;
- (v) the Chief Justice of India;
- (vi) the Speaker of the House of People;
- (vii) the Cabinet Minister of the Union;
- (viii) the Chief Minister of a State;
- (ix) the Judge of the Supreme Court;
- (x) the Minister of State or the Union;
- (xi) the Lieutenant Governor of a Union Territory;
- (xii) the Chief of Staff holding the rank of full General or equivalent rank;
- (xiii) the Chairman of the Legislative Council of a State;
- (xiv) the Speaker of the Legislative Assembly of a State;
- (xv) the Chief Justice of a High Court;
- (xvi) the Judge of a High Court;
- (xvii) the Member of Parliament;

- (xviii) the Army Commander or vice-Chief of Army Staff and equivalent in other services;
 - (xix) the Chief Secretary to a State Government within concerned State;
 - (xx) the Secretary to the Government of India;
 - (xxi) the Secretary, Council of States;
 - (xxii) the Secretary, House of People;
 - (xxiii) the Foreign dignitary on State visit;
 - (xxiv) the Member of Legislative Assembly of a State and the Member of Legislative Council of a State within their respective State, if he or she produces his or her identity card issued by the concerned Legislature of the State;
 - (xxv) The awardee of Param Vir Chakra, Ashok Chakra, Maha Vir Chakra, Kirti Chakra, Vir Chakra and Shaurya Chakra, if such awardee produces his or her photo identity card duly authenticated by the appropriate or competent authority for such award;
- (b) used for official purpose by:-
- (i) the Ministry of Defence including those which are eligible for exemption in accordance with the provisions of the Indian Toll (Army and Air Force) Act, 1901 and Rules made thereunder, as extended to Navy also;
 - (ii) the Central and State armed forces in uniform including para military forces and police;
 - (iii) an executive Magistrate;
 - (iv) the fire-fighting Department or organisation;
 - (v) the National Highways Authority of India or any other Government organisation using such vehicle for inspection, survey, construction or operation of national highways and maintenance thereof;
- (c) used as ambulance; and
 - (d) used as funeral van.
 - (e) Specially designed and constructed for use of a person suffering from some physical defect or disability.”

13. The Karnataka High Court in the case of **Narasimha Vasudeva Mahale** (supra) has dealt with the issue involved in respect of exemption of high dignitaries and in the considered opinion of this Court, the exemption is granted to high dignitaries as a policy matter keeping in view various factors like security etc. Not only this, vehicles of even fire fighting departments, ambulances, funeral vans have also been exempted from payment of tax and therefore, the ground canvassed by the learned counsel for the petitioners regarding violation of Article 14 of the Constitution of India does not arise.

14. The other important aspect of the case is that service roads are available adjoining the various Highways and short distance travellers can freely avail the facility of service roads. The counter affidavit filed by the National Highway Authority of India also reveals that toll fee is levied keeping in view the distance and for short distances as well as for daily users, reasonable fees is being charged. The counter affidavit also reveals that fixation of fees does not depend upon the sweet will of the contractor and it is fixed keeping in view the statutory provisions as contained in the National Highways Fee (Determination of Rates and Collection) Rules, 2008 and therefore, in the considered opinion of this Court, the question of interference by this Court in the peculiar facts and circumstances of the case does not arise. Not only

this, in the case of **State Lorry Owners' Federation, Tamilnadu** (supra), the Madras High Court has upheld the collection of fees towards cost of construction of bridges and roads and therefore, keeping in view the totality of the circumstances of the case, this Court does not find any reason to grant the reliefs as prayed for by the petitioners and no case is made out for interference in the matter.

Resultantly, the Public Interest Litigation is dismissed. Miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

N.TUKARAMJI, J

18.02.2022

Pln