

W.P.(MD)No.17492 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

W.P.(MD)No.17492 of 2015

and

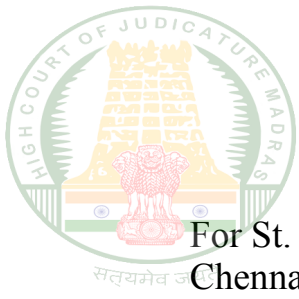
M.P(MD)No.1 of 2015

T.S.R.Venkatraman

... Petitioner

Vs.

- 1.The Union of India,
Represented by its Cabinet Secretary,
New Delhi-110 001.
- 2.The Secretary,
Ministry of Road Transport,
New Delhi-110 001.
- 3.The Secretary (Legislation),
Ministry of Law Justice & Company Affairs,
Shastri Bhawan,
New Delhi 110 001.
- 4.National Highways Authority of India,
DWARAK, New Delhi,
Through its Project Director.
- 5.State of Tamilnadu,
(Represented by its Chief Secretary),



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For St. George,
Chennai 600 009.

...Respondents

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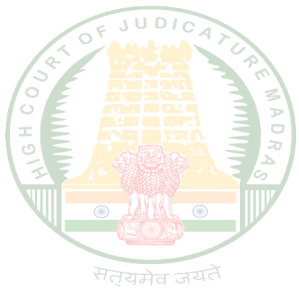
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring that Rule 8 of "The National Highway Fee (Determination of Rate and Collection) Rules, 2008 as ultra vires the Constitution of India and as null and void as the Rule suffers from excess delegation and non-existence of constitutional authority or Legislature Competency.

For Petitioner	: Mr.T.S.R.Venkataramana Party-in-Person
For R1 to R4	: Mr.AR.L.Sundaresan Additional Solicitor General of India Assisted by Mr.K.Govindarajan Deputy Solicitor General of India and C.Nandagopal Central Government Senior Panel Counsel
For R5	: Mr.V.Om Prakash Government Advocate

ORDER

(Order of the Court was made by ***S.M.SUBRAMANIAM, J.***)

This writ of declaration has been instituted to declare Rule 8 of the National Highway Fee (Determination of Rate and Collection) Rules, 2008 as ultra virus to the Constitution of India and null and void.



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2. The petitioner is an Ex-MLA and a practising Lawyer instituted the writ petition for declaration as stated above. The petitioner-in-person articulated his case mainly on the premise that collection of Toll through Toll Plaza is the exclusive power vest with the "State". Therefore, the present set of collection of fee through Toll Plaza by the National Highways Authority of India or through its agency is ultra virus to the Constitution of India.

3. To substantiate the arguments, the petitioner-in-person reminded the history regarding the development and collection of 'Toll' from pre-independence and post-independence era and certain enactments repealed were relied on by the petitioner for example, Indian Tolls Act 1851, the second Indian Tolls Act, 1864 and the third Indian Toll Act 1888. The petitioner would contend that when the history reveals collection of Toll vest with the State, Municipalities and Panchayats, the present system of collection of fee by the National Highways Authority is unknown and therefore, the impugned rule made in exercise of the powers conferred under the National Highways Act is to be declared as unconstitutional. It is contended that collection of fee in Toll Plaza are exorbitant. The distance criteria are not strictly followed. The agents, concessionaire are exceeding the terms and conditions of their agreement and for all these reasons,



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the power to collect fee by the National Highway Authorities under the impugned

Rule 8 is to be struck down.

4. In support of the contentions, the petitioner-in-person relied on the following judgments:

(i) *Union of India v. Rajendra N.Shah and another* reported in *AIR Online 2021 SC 362*;

"(ii) *Special Reference No.1 of 2001* reported in *(2004) 3 S.C.R*;

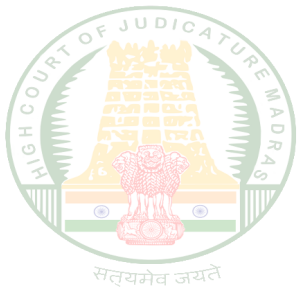
(iii) *Synthetics and Chemicals Ltd., etc., v. State of U.P. and others* reported in *AIR 1990 SC 1927*;

(iv) *Hansraj and Sons vs. State of Jammu and Kashmir and others* reported in *AIR 2002 SC 2692*;

(v) *State of U.P., vs. Devi Dayal Singh* reported in *(2000) 3 Supreme Court Cases 5*;

(vi) *Ahmedabad Urban Development Authority vs. Sharad Kumar Jayantikumar Pasawalla and ors* reported in *AIR 1962 SC 1044*;

(vii) *Government of NCT of Delhi v. Union of India* reported in *AIR Online 2023 SC 449*;"



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5. The learned Additional Solicitor General of India Mr.A.R.L.Sundaresan would oppose by stating that the issues raised by the petitioner is no more *res integra*. The Constitutional validity of the provisions of the National Highways Act, 1956 and the Rules framed thereunder were tested before the Courts and the Division Bench of the High Court of Madras in the case of ***G.Jeyakumar vs. Citizens Voice Club in W.P.Nos.20332 of 1998 etc., batch***, validated Rule 8(A) of the National Highways Act vide judgment dated 09.01.2008. Further, Rule 8 was tested by the Apex Court in the case of ***National Highways Authority of India and others vs. Madhukar Kumar and others*** reported in ***(2022) 14 SCC 661***. In view of the above judgments, the writ petition is to be rejected.

6. It is necessary to consider the provisions of the National Highways Act and the powers of the Central Government to collect fee in respect of National Highways declared under enactments. It is a settled position of law that both the Union list and the State list operate independently. Thus, the powers of the Union whether traceable under the Union list is the point to be considered. Schedule 7 List - I (Union List) Entry-23 enumerates "Highways declared by or under Law made by Parliament be National Highways". Entry 96 denotes that "fees in respect



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of any of the matters in this List but not including fees taken in any Court". A

cogent reading of two entries would reveal that Highways declared by or under Law made by Parliament as National Highways, the union is empowered to collect fees in respect of the said matters. By virtue of the powers under the Constitution, National Highways Act 1956 was enacted.

7. The petitioner-in-person would submit that the word Toll is employed exclusively in the State List and not traceable in the Union list. Thus, Toll is only a regulatory fee, however, fee is found in Entry 96. Therefore, Entry 96 r/w Entry 23 would be sufficient to form an opinion that Union is empowered to collect fee through developing Toll Plaza by way of agreement with concessionaire. Entry 59, List II reads "tolls,". However, this entry must be read contextually, not in isolation. The State's power under the Entry 59 is confined to roads and means of communication governed by Entry 13 of List II (i.e., State-controlled roads, bridges, ferries etc). Once a road is declared a National Highway, the legislative competence shifts to the Union under Entry 23, List I. Entry 96, List I and Entry 66, List II both authorize the levy of "fees in respect of any of the matters in this list. "Thus, Parliament is empowered to impose fees related to National Highways under Entry 96. Conversely, the State can impose fees under Entry 66 only in



respect of subjects that fall within List II.

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8. It is a well-established principle that legislative entries must be harmoniously construed. The theory allows both Union and State to legislate on the same subject from different aspects. Toll on National Highways, being a fee for a Union subject (Entry 23), can validly be imposed by the Union.

9. In the case of ***Hoechst Pharmaceuticals Ltd., v. State of Bihar, AIR 1983 SC 1019***, the Supreme Court clarified that the principle of federal supremacy under Article 246 operates only in the event of an "irreconcilable" conflict between the entries in List I and List II. The Court emphasized that in cases of apparent overlap, the entries must be harmoniously construed:

"The word "Notwithstanding anything contained in Clauses (2) and (d), in Article 246(1) and the words "subject to Cls. (1) and (2)" in Art.246(3) lay down the principle of Federal Supremacy viz., that in case of inevitable conflict between Union and State powers, the Union power as enumerated in List I shall prevail over the State power as enumerated in Lists II and III, and in case of overlapping between Lists II and III, the former shall prevail. But the principle of Federal Supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an "irreconcilable" conflict



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between the Entries in the Union and State Lists. In the case of seeming conflict between the Entries in the two Lists, the Entries should be read together without giving a narrow and restricted sense to either of them. Secondly, an attempt should be made to see whether the two entries cannot be reconciled so as to avoid a conflict of jurisdiction. It should be considered whether a fair reconciliation can be achieved by giving to the language of the Union Legislative List a meaning which, if less wide than it might in another context bear, is yet one that can properly be given to it and equally giving to the language of the State Legislative List a meaning which it can properly bear. The non-obstante clause in Article 246(1) must operate only if such reconciliation should prove impossible. Thirdly, no question of conflict between the two Lists will arise if the impugned legislation, by the application of the doctrine of 'pith and substance' appears to fall exclusively under one List, and the encroachment upon another list is only incidental."

10. While Entry 59 of List II gives States power over "tolls," it cannot override Entry 23 of List I, which places National Highways under Union control. Once a road is notified as a "National Highway" under the National Highways Act, the Union assumes legislative and executive competence over all aspects of its regulation including fee collection. The power to levy tolls then flows not from Entry 59 of List II but from the Union's broader control under Entries 23 and 96 of



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List I. Though tolls per se fall under Entry 59, the toll on a National Highway is a fee for a Union subject (i.e., National Highways), hence, Entry 96 applies.

11. While Entry 59 of List II empowers State Legislatures to impose tolls in respect of State roads, Bridges, and ferries, this does not oust or restrict the legislative competence of Parliament under Entries 23 and 96 of List I to regulate and levy tolls on National Highways. In case of any conflict between Parliamentary legislation and State legislation on this subject, the doctrine of federal supremacy under Article 246(1) and the scheme of the Seventh Schedule would render the Central Law Paramount. Therefore, the Parliament is well within its authority to authorize fee collection on National Highways through legislation such as the National Highways Act, 1956. Thus, the said arguments advanced by the petitioner is not persuasive and stands rejected.

12. Section 7 of the National Highways Act, 1956 speaks about the Fees for Services or benefits rendered on National Highways. Section 8(A) provides Power of Central Government to enter into agreements for development and maintenance of National Highways. Section 9 provides Power to make rules. In exercise of powers conferred under Section 9 of the National Highways Act, 1956,



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the Central Government notified rules namely the National Highways Fee (Determination of Rates and Collection) Rules, 2008. Rule 8 of the said Rules alone is under challenge in the present writ petition. Rule 2(d) defines the "Concessionaire" means a person with whom an agreement has been entered into u/s.8(A) of the Act. Rule 3 speaks about levy of fee. Rule 4 is about Base rate of Fee. Rule 5 denotes Annual revision of rate of Fee and Rule 7 is Remittance of appropriation of Fee.

13. The impugned Rule 8 enumerates Location of Toll Plaza. Sub Rule (1) to Rule 8 states that the executing authority or the concessionaire, as the case may be, shall establish a fee plaza beyond a distance of ten kilometres from a Municipal or local town area limits. This Court do not find any violation in the context of the provisions of Section 8(A) of National Highways Act. The contention of the petitioner as addressed above is only to the extent that collection of toll is exclusive power of the State. The said ground has been elaborately considered by the Division Bench of this Court as well as by the Hon'ble Apex Court. In the case of **G.Jayakumar** cited supra the Division Bench of this Court considered the validity of Section 8(A) of the National Highways Act, 1956 and the Notifications issued thereunder on 21.08.1998. In the said case, the



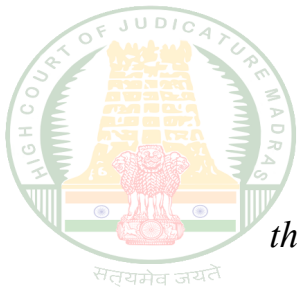
respondents therein L & T entered into a contract in a secret manner without inviting an open tender to reduce the cost of the public at large, which was questioned before the Court of law. The grounds raised by the petitioner's therein are as under:-

"(i) Section 8-A of the N.H.Act so far as it authorises a private person to collect fees without representation from the persons who pay the fees, would amount to excessive delegation of essential Legislative function between the Executive and the private person.

(j) Section 8-A of the N.H.Act insofar it imposes an obligation on a citizen in respect of a contract between the Central Government and the private person without any privity of representation from the citizens, is Constitutionally impermissible, as it violates the principle of enforceability of an agreement under the Indian Contract Act.

(k) Section 8-A of the N.H.Act is also a direct infringement between the Panchayat and the local authorities after their acquisition of Constitutional status pursuant to Constitution's 73rd Amendment.

(l) The levy of fee under Section 8-A of the N.H.Act in respect of Highways coming within the local limits of the Municipality, is ultra-vires Section 2 of the N.H.Act read with Articles 243-W and Schedule 12 of the Constitution of India, wherein the maintenance etc. of Roads and Bridges are under



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the exclusive domain of the State Government.

(m) Section 8-A of the N.H.Act insofar as it delegates a public duty to a private person for collecting the toll/fee is violative of Article 266 of the Constitution of India."

14. The Division Bench of this Court made a categorical finding at Paragraphs 10 to 13 which reads as under:-

"10. In the present case, the petitioners have questioned the Legislative competence of Central Government to enact Section 8-A of the N.H. Act, alleged to be "ultra-vires" Section 243-W of the Constitution of India. While dealing with the Legislative competence of the Parliament to enact a Law, the Supreme Court in the decision reported in 1994 (5) SCC 54 (Attorney General for India vs. Amratlal Prajivandas), noticed its earlier decision of the Constitution Bench of seven Judges, reported in 1971 (2) SCC 779 (Union of India vs.H.S.Dhillon) and observed as follows:

"23. The test evolved in the said decision is this in short: Where the legislative competence of Parliament to enact a particular statute is questioned, one must look at the several entries in List II to find out (applying the well-known principles in this behalf)whether the said



statute is relatable to any of those entries. If the statute does not relate to any of the entries in List II, no further inquiry is necessary. It must be held that Parliament is competent to enact that statute whether by virtue of the entries in List I and List III or by virtue of Article 248 read with Entry 97 of List I. "

11. To find out the Legislative competence so far as National Highways and other Roads/Bridges are concerned, one may refer to List-I-Union List and List-II-State List, of Schedule 7 and Schedules 11 & 12 of the Constitution of India and the following facts emerge from those Schedules:

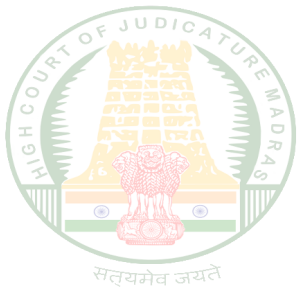
Nature of Road/Highway	List	Schedule	Entry	Legislative competence/ Competent body
1.Highway declared by or under law made by Parliament to be national highways	I	7	23	Union List/ Central Government
2.Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List-I (i.e. State Roads and Bridges)	II	7	13	State List/ State Government



3.Roads, Culverts, bridges, ferries, waterways and other means of communication (Article 243-G of the Constitution of India powers, authority and the responsibilities of Panchayat). It relates to Panchayat Roads and Bridges.	-	11	13	Panchayats
4. Roads and Bridges (Article 243-W of the Constitution of India-Powers, authority and responsibilities of Municipalities, etc.,) It relates to Municipal Roads and Bridges.	-	12	4	Municipalities

12. The Legislative powers of the Parliament and the State Legislatures, is governed by Articles 246 and 258 of Part-XI of the Constitution of India and the Parliament has exclusive power to Legislate with respect to any of the matters enumerated in List-I (Union List) of Schedule 7 of the Constitution of India; the State Legislature has exclusive power to make laws with respect to any of the matters enumerated in List-II (State List) of Schedule 7 of the Constitution of India. In the decision of the Supreme Court reported in 2005 (3) SCC 212 (Govt. of A.P. vs. J.B. Educational Society), the Supreme Court, while dealing with the Legislative competence of the Parliament and the State Legislature, observed as follows:

"10. There is no doubt that both Parliament and the State Legislature are



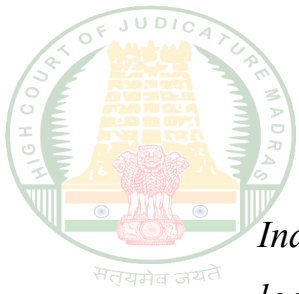
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supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List."

13. In the present case, we have noticed that there is no overriding power so far as it relates to National Highways, State Roads and Bridges, Panchayat Roads and Bridges and Municipal Roads and Bridges. They are separate and the Parliament or State Legislature or competent body has exclusive power to Legislate with respect to matters relating to the respective Roads and Bridges. For example, the National Highways is an exclusive domain of the Parliament under List-I of Schedule 7 of the Constitution of India, which can legislate with regard to the National Highway. However, in respect of the State Roads and Bridges, the State Legislature having been empowered – vide List-II of Schedule 7 of the Constitution of India, the State Legislature can legislate in respect of such State Roads and Bridges. Similar is the position so far as it relates to Panchayat and Municipal Roads and Bridges, subject to the provisions of the Constitution of



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India, and if the Legislature of the State Bye-Laws empower such local bodies."

15. In the case of the ***National Highways Authority of India and others*** cited supra, the Supreme Court of India considered the validity of Rule 8(1) and exercise of powers under the same rule. The findings of the Apex Court in Para-76 to 80 is extracted hereunder:-

"76. Rule 8(1) provides that the Executing Authority or the Concessionaire shall establish toll plaza beyond a distance of 10 kilometres from a municipal or local town area limits. In this context, it is useful to bear in mind that under Rule 6, fee levied under the Rules, has to be collected by the Central Government or the Executing Authority or the Concessionaire at the toll plaza. We have already found that the Executing Authority has been defined in Rule 2(f), as an Officer or Authority notified under [Section 5](#) of the National Highway Act. It would appear, therefore, that the Executing Authority, as defined, or the Concessionaire, is empowered to establish the toll plaza beyond a distance of 10 kilometres from a municipal or local town area limits.

77. The first proviso contemplates power with the Executing Authority to locate or allow the Concessionaire to locate a toll plaza within a distance of 10 km of such municipal or town area limits.



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However, the proviso engrafts a limitation on the power of the Executing Authority in that the exercise of power under the first proviso, should not result in the toll plaza being located within 5 kilometres of such municipal or local town area limits.

78. A closer look at the first proviso will indicate the following features. Unlike the main Rule, where the power is conferred on the Executing Authority and the Concessionaire, to locate a toll plaza, which must, indeed, be more than 10 kilometres from the municipal or local town area limits, there is no power conferred on the Concessionaire to locate a toll plaza within the distance of 10 kilometres. In other words, the Executing Authority is the only Authority, which can locate or allow the Concessionaire to locate within a distance of 10 kilometres but not less than 5 km. In other words, the exercise of power, under the first proviso, can result in the location of a toll plaza at a distance of five or more kilometres and below 10 kilometres from the municipal or local town area limits. The further important sine qua non for the exercise of the discretionary power conferred on the Executing Authority, is that, the Executing Authority must record reasons in writing at the time when he exercises the power to locate or permit the Concessionaire to locate the toll plaza within the distance as already mentioned.

79. Moving forward to the second proviso, it commences with the words “provided further”. Therefore, for all intents and purposes and at first blush, it is a proviso. More about it, a little later. Continuing the narrative, the second proviso, as it is described,



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consists of the following features. If a section of the national highway, permanent bridge, bypass or tunnel, is constructed within the municipal or town area limits, then, the toll plaza may be established within the municipal or town area limits. This is subject to the only requirement that the construction of the section of national highway, permanent bridge, bypass or tunnel, whichever may be the case, is constructed within the municipal or town area limits, primarily for the use of residents of such municipal or town area limits. If the aforesaid two requirements are fulfilled, then, the embargo that the toll plaza must be located beyond 10 kilometres from the municipal or local town area limits, contained in Rule 8, would cease to apply. Equally, the second proviso contemplates that, if a section of the national highway, permanent bridge, bypass or tunnel is located within 5 kilometres from the municipal or town area limits, then, the last limb of the proviso, would apply, and the toll plaza may be located within a distance of 5 kilometres from such limits.

80.It will be seen that whether the construction of the section of the national highway, permanent bridge, bypass or tunnel is constructed within the municipal or town area limits or within 5 kilometres from such limits, the common requirement for invoking the power under the second proviso and to locate the toll plaza, either within the municipal limits or town limits or within a distance of 5 kilometres from such limit, is that the construction in question, must



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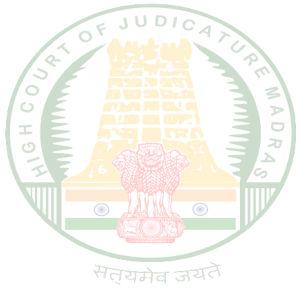
be primarily for the use of the residents of such municipal or town area."

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16. In view of the judgment of the Division Bench of the High Court of Madras and the judgment of the Supreme Court of India in the case of ***National Highways Authority of India cited supra***, re-adjudication of the legal position by the petitioner is unacceptable. The power of the Union to collect Fee through concessionaire or through National Highways Authority has been upheld and thus, the writ petition fails and stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (A.D.M.C., J.)
07.08.2025

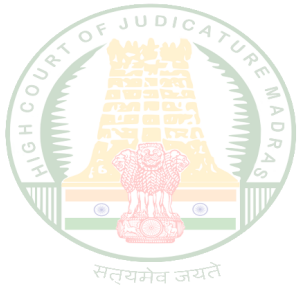
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- To*
- 1.Cabinet Secretary,
The Union of India,
New Delhi-110 001.
 - 2.The Secretary,
Ministry of Road Transport,
New Delhi-110 001.
 - 3.The Secretary (Legislation),
Ministry of Law Justice & Company Affairs,
Shastri Bhawan,
New Delhi 110 001.
 - 4.National Highways Authority of India,
DWARAK, New Delhi,
Through its Project Director.
 - 5.Chief Secretary,
State of Tamilnadu,
For St. George,
Chennai 600 009.



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