



2024 INSC 556

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2996 OF 2017

CHAIRMAN, NATIONAL HIGHWAYS AUTHORITY APPELLANT(S)
OF INDIA & ANR.

VERSUS

ARVIND KUMAR THAKUR & ANR. RESPONDENT(S)

O R D E R

This appeal by the National Highways Authority of India¹, through its Chairman and the Project Director, PIU, impugns the judgment dated 05.04.2016, whereby the writ petition filed by respondent No. 1, Arvind Kumar Thakur, was allowed with a direction that the appellant, NHAI, will not levy and collect any fee from the users at Runni Toll Plaza on Muzaffarpur-Sonbarsa section of National Highway-77 with effect from 07.07.2015. It was further directed that the appellant, NHAI, shall not levy any fee in exercise of its power under Rule 3(1) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008² till completion of the project.

Our attention has been drawn to Rule 3(1) of the 2008 Rules, which refers to the section of the national highway being complete

1 "NHAI", for short.

2 "2008 Rules", for short.

and, thereupon, the highway users can be asked to pay the prescribed fee by way of toll. The expression "section of national highway" has not been specifically defined in the National Highways Act, 1956³ or the 2008 Rules. However, in the context of the present case, we need not go into the said aspect. The aforesaid issue is left open.

Our attention has been drawn to the notification dated 26.11.2013 issued under Section 11 of the National Highways Authority of India Act, 1988, in relation to the stretch from kilometre 0.000 to kilometre 89.000 (Muzaffarpur-Sonbarsa Section of National Highway-77). The said notification states that the section length of 61.70 kilometres for use of two laning with paved shoulder had been completed. It is also stated that the length of 20.38 kilometres of the bypasses had also been completed and, therefore, the Central Government proposed to levy and collect fee from the road users. The fee prescribed for 61.70 kilometres is 60% of the base rate specified in the table given in the notification, whereas, the fee prescribed for 20.38 kilometres of the bypasses is at the rate of 90% of the base rate specified in the table given in the notification.

After issuing the aforesaid notification, an independent contractor, namely, Intercontinental Consultants and Technocrats Pvt. Ltd. examined and verified the two laning with paved shoulder of the Muzaffarpur-Sonbarsa Section of National Highway-77. It issued provisional completion certificate dated 29.06.2015.

In the present case, the toll is being collected by NHAI, as

³ "1956 Act", for short.

the highway being constructed is under "Build, Operate and Transfer" basis. The contractor responsible for laying the highway is being paid annuity, which has been fixed in terms of the contract.

Having regard to the aforesaid facts, we are of the opinion that the impugned judgment of the High Court, giving the aforesaid directions, is unsustainable. The judgment merely refers to Rule 3(1) of the 2008 Rules, but does not interpret or go into the other aspects and facts which were highlighted and pointed out by the NHAI. Moreover, in the facts of the present case, this Court, while issuing notice, *vide* order dated 25.04.2016, had stayed the operation of the impugned judgment subject to the condition that the amount collected towards toll on the completed portion of the highway/road shall be deposited in a nationalized bank. The toll users have, therefore, paid the toll which is now lying with the nationalized bank. The private contractor, who had laid the highway, has also been paid the annuity. The annuity, it may be noted, is payable at the rate specified for 15 years. The NHAI collects the toll till the actual costs are recovered with a stipulation that after recovery of the capital cost the fee leviable would be reduced to 40% of the user fee.

The toll/fee, having been collected and being available in the bank, today, it will be impossible to return the same to the road users. Any order passed by this Court, modifying the interim order, would in fact, be detrimental and harmful to the road users as additional amounts would have to be collected to make up for the cost of the highway.

The amount lying deposited in the nationalized bank along with interest may now be utilized by NHAI and would be treated as toll/fee collected from the users. It will be accounted towards the actual cost to be recovered.

Recording the aforesaid, we set aside the judgment dated 05.04.2016 and allow the present appeal. Civil Writ Jurisdiction Case no. 12858/2015 will be treated as dismissed.

Nevertheless, we deem it appropriate to observe that the Union of India and NHAI may examine the question as to whether the expression "section of national highway" requires proper elucidation and clarification in a manner permitted by law.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

.....J.
(R. MAHADEVAN)

NEW DELHI;
JULY 24, 2024.