

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on :05.02.2025
Pronounced on:25.02.2025**

**WP(C) PIL No.12/2023
CM Nos.7653/2023 &
7654/2023**

Sugandha Sawhney, Age 29 years
D/O Kamal Sawhney,
Office Address:Ajay Gandotra & Associates
216, Adarsh Enclave-II, Sector I,
Ext. Trikuta Nagar, Jammu.

.....Petitioner

Through: Petitioner-in-person

versus

1. Union of India, through Secretary,
Ministry of Road, Transport & Highways,
Transport Bhawan 1, Parliament Street,
New Delhi – 110001
2. National Highway Authority of India
(NHAI), through Chairman,
G-5 & 6, Sector 10, Dwarka,
New Delhi – 110075
3. Union Territory of Jammu and Kashmir,
through Chief Secretary,
2nd Floor, Main Building,
Civil Secretariat, Jammu 180001

.....Respondents

Through: Mr. Karan Sharma, Advocate

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M.A. CHOWDHARY, JUDGE**

JUDGMENT

(Per Tashi Rabstan – CJ)

1. The petitioner through the medium of this Public Interest Litigation seeks a direction to the respondents to exempt the Toll Tax at Lakhanpur Toll Plaza, Kathua; Thandi Khui Toll Plaza and Ban Toll Plaza, Nagrota, Jammu till the National Highway commencing from Pathankot to Udhampur under the project, titled, Delhi-Amritsar-Katra Expressway gets fully operational for smooth utilization of the public.

2. It is averred that the stretch of National Highway-44 from District Pathankot (Punjab) to District Udhampur (UT of J&K) is undergoing construction under the project Delhi-Amritsar-Katra Expressway and about 60% to 70% of this stretch is under construction since December, 2021, yet the general public is being charged Toll Tax at Lakhanpur Toll Plaza, Thandi Khui Toll Plaza and Ban Toll Plaza despite the fact that such collection of fee levied ought to be commenced within 45 days from the date of completion of the section of National Highway in terms of Rule 3(1) and 3(2) of National Highways Fee (determination of Rates and Collection) Rules, 2008. Further, it is averred that there are grave hurdles, diversions due to complete destruction of National Highway. Not only this, the daily travel time for the residents in the region has significantly increased between three to four hours due to the construction activities leading to improper road availability, which has further led to extra burden on the fuel consumption in addition to causing wear and tear to the vehicles. Therefore, it is averred that the respondents in terms of the

rule position cannot charge toll tax at these three Toll Plazas before the completion of the project.

3. Objections have been filed on behalf of respondents. It is averred that as regards collection of toll tax at Thandi Khui Toll Plaza, the same has been closed with effect from 26.01.2024 by redistributing the influence length from Lakhanpur to Udhampur among Lakhanpur and Bann Toll Plazas. It is further averred that only the brown field portion is undergoing widening or construction of elevated structures wherein service road/diversions have been provided for the movement of traffic. Further, only 32 km stretch is undergoing widening from Kunjwani to Udhampur out of the total completed 4-lane stretch of 80 kms. The project from Pathankot to Jammu commenced on 26.09.2022 and from Jammu to Katra commenced in June 2023. NHAI is collecting user fee for completed 4-lane stretch of NH-44 from Pathankot to Udhampur at Lakhanpur, Thandikhui and Bann Toll Plazas at the rates applicable as per NH Fee Rules. It is further averred that the Government of India Gazette Notification No.H-25016/2/2011-P&P (Toll) dated 16.12.2013 stipulates reduction of user fee rates by 25% for the stretches under widening. Further, National Highway Authority of India has reduced the toll rates separately after damage caused to the Tarhan Bridge over Ujh River in July 2023 and no toll, is being charged for the bridge as well as its 8.8 km long approach road which was officially closed for the purpose of diversion through existing BRO road. Also, requisite reduction for stretches under widening to six lane expressway has already been done. National Highway Authority of India (NHAI) was collecting user fee for completed 4-lane stretch of NH-44 from Pathankot to Udhampur at Lakhanpur, Thandikhui and Bann Toll Plazas at the rates applicable as per NH Fee Rules. NHAI acknowledges the

discomfort on account of widening along with existing highway and, therefore, reduction in toll rates as per MoRTH guidelines to 75% of the applicable rates has already been done at the toll plazas.

4. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the file.

5. The main thrust of this Public Interest Litigation is for exemption of Toll Tax at Lakhanpur Toll Plaza; Thandi Khui Toll Plaza and Ban Toll Plaza, till the National Highway, commencing from Pathankot to Udhampur under the project - Delhi-Amritsar-Katra Expressway, gets fully operational for smooth utilization of the public, as currently this particular highway is in a deteriorated condition.

6. The stand of respondents is that from Pathankot to Jammu only the brown field portion is undergoing widening or construction of elevated structures wherein service road/diversions have been provided for the movement of traffic; whereas from Kunjwani to Udhampur only 32 km stretch is undergoing widening out of the total completed 4-lane stretch of 80 kms, therefore, no question arises for exemption of toll tax at Lakhanpur Toll Plaza and Bann Toll Plaza. However, requisite reduction for stretches under widening to six lane expressway has already been done. As regards collection of toll tax at Thandi Khui Toll Plaza, the same has been closed with effect from 26.01.2024 by redistributing the influence length from Lakhanpur to Udhampur among Lakhanpur and Bann Toll Plazas.

7. Now it is to be seen whether the toll tax ought to be exempted or reduced when National Highway-44 from District Pathankot (Punjab) to

District Udhampur (UT of J&K) is undergoing extensive construction under the project Delhi-Amritsar-Katra Expressway.

8. Admittedly, the respondents have themselves asserted that National Highway-44 from Pathankot to Udhampur is undergoing construction of elevated structures under the project Delhi-Amritsar-Katra Expressway, besides many sections of this highway are also being upgraded from four-lane to six lane. Not only this, at many places Nalas at both sides of the highway are also being constructed. The respondents have also averred that due to different nature of construction works being carried out at this highway, service roads/diversions have been provided for the movement of traffic; meaning thereby the four-lane National Highway at most of the places has been reduced to single lane, actually dirt-path has been cleared for the vehicles to use the only alternative, as a result of which the daily use of this under construction stretch with such deteriorated conditions adds to wear and tear of vehicles. Otherwise too, it is not a hidden thing nor the learned counsel appearing for respondents has denied this that National Highway-44 from Pathankot to Bann Toll Plaza to Domel (Katra) is in a poor and deteriorated condition, there are grave hurdles, potholes and diversions due to complete destruction of this particular National Highway. Thus, the commuters are being unfairly charged as they are not receiving the value they are paying for in terms of quality infrastructure. Once this very highway is in bad shape due to different nature of construction activities, the National Highways Authority of India (NHAI) or the concessionaire managing the toll road cannot collect toll tax from commuters using the highway. This is based on the principle that tolls are collected to provide users with the benefit of well maintained infrastructure. If this highway is in a deteriorated condition and uncomfortable to drive on, it is

considered unfair for commuters to continue paying tolls, rather the same is violation of fair service. Certainly, the commuters and drivers must be feeling frustrated by the poor state of this particular highway they are paying to use. The basic premise is that tolls should be a form of compensation for road users in exchange for smooth, safe, and well-maintained highways.

9. Therefore, due to different nature of construction activities being carried on this particular highway, it was expected from the Government or the concerned Ministry or NHAI to suspend the toll collection until Delhi-Amritsar-Katra Expressway gets fully operational, but to the utter dismay of commuters that instead of suspending the toll collection, the respondents have increased the toll fees at Lakhanpur Toll Plaza and Bann Toll Plaza on the same day when Thandi Khui Toll Plaza came to be closed on 26.01.2024 in order to adjust the toll fees of Thandi Khui Toll Plaza. Not only this, hefty toll fee is being charged from commuters at Bann Toll Plaza, when the fact of the matter is that the distance between Sarore Toll Plaza to Ban Toll Plaza is near about 47 kilometers. It seems the general public is being made to suffer on both counts, i.e., bad highway due to construction activities and hefty toll. Thus, in this way the general public/commuters are feeling cheated as they are being forced to pay tolls for the highway which at present is in a poor and shabby condition that too when in ending June, 2024 Union Minister for Road, Transport and Highways Mr. Nitin Gadkari at a Global Workshop on Satellite-based tolling said that there is no justification of highway agencies charging toll, if roads are not in good condition or not upto their standards and people continue to face problems. He further said that highway agencies are in hurry to start tolling to collect user fees so as to protect their interest. The Minister

emphasized the agencies to ensure good quality service first before initiating toll fee collection.

10. A somewhat similar controversy had arisen before the Apex Court in Civil Appeal Nos.6781-6782 of 2015 (arising out of SLP(C) Nos.34705-34706 of 2014), titled as, DSC-Viacon Ventures Pvt. Ltd. vs Lal Manohar Pandey, in which their Lordships vide order dated 27.08.2015, while deciding the question whether recovery of reduced toll fees at 40% of the earlier rate as stipulated under Notification dated 02.03.2015 was just and fair, has held as under:

“16. Having said that the question is what should be the extent of reduction on account of poor maintenance of the road. It is nobody’s case that the entire length of 26 Kms. is poorly maintained. At least the report submitted by the Committee does not suggest so. There are patches which are extensively damaged and require repair causing inconvenience to the users. That does not, however, necessarily mean that the entire charge towards toll must be wiped out. The reduction, in our view, should be proportionate to the extent of damage suffered by the road or the failure to maintain the same. Having said that we must hasten to add that there is no empirical data to indicate the extent of road length and the resultant inconvenience to the users of the road. A certain amount of guess work is, therefore, unavoidable in the matter of determining the extent of relief which the road users may be entitled to. Keeping all these factors in view, we are of the opinion that the rate of toll/fee prescribed in terms of notification dated 02.03.2015 should be reduced to half of what is stipulated in the notification. This means that instead of 40% levied by the Government the rate shall be 20% of the rates earlier in force. We order accordingly. The reduced fee shall be recoverable till such time the road is repaired and a report certifying the repair to be satisfactory submitted to the Govt. by a Committee appointed by the Government of India.”

11. Further, as per National Highways Fee (Determination of Rates and Collection) Rules, 2008, the spacing between two adjacent toll plazas should be 60 kms, i.e., any other fee plaza on the same section of National Highway and in the same direction shall not be established within a distance of sixty kilometer. Here, the distance between Sarore Toll Plaza to Bann Toll Plaza

using NH-44 is near about 47 kms, which is certainly against the rule position and this position has not even been denied by the learned counsel appearing for respondents. Thus, in this way the respondents and the contractors have accumulated crores of rupees illegally from the general public.

12. Further, any commuter/pilgrim, who goes to Katra/Vaishno Devi, if uses the National Highway-44 from Sarore Toll Plaza in his/her own car upto Domel, from where he/she has to leave the National Highway-44 to reach Katra/Vaisho Devi or vice versa, in such a case he/she is bound to cross two toll plazas, i.e., Sarore Toll Plaza and Bann Toll Plaza and, interestingly, the distance between Sarore Toll Plaza to Domel is nearly about 54 kilometers; meaning thereby for covering the distance of just 54 kilometers from Sarore Toll Plaza to Domel every commuter is bound to pay at two Toll Plazas, i.e., Rs.85.00 at Sarore Toll Plaza and Rs.165.00 at Bann Toll Plaza for one side journey through light motor vehicle – totaling Rs.250.00 for single journey as on 01.04.2023, which has now been increased. Respondents knew very well that millions of millions people/pilgrims visit Katra every year to pay obeisance at the shrine of Mata Vaishno Devi. Therefore, to mint money from these pilgrims, the respondents have purposefully established Bann Toll Plaza before Domel without adhering to the rule position regarding spacing between two adjacent toll plazas at 60 kms. This is nothing but loot of public money illegally and the commuters are being burdened unduly. Though the Thandi Khui Toll Plaza came to be closed on 26.01.2024 but on the same very date the respondents increased the toll fees at Lakhanpur Toll Plaza and Bann Toll Plaza in order to adjust the toll fees of Thandi Khui Toll Plaza despite the fact that Bann Toll Plaza was already charging hefty toll fee from the general public/commuters. Otherwise too, the respondents have not closed/removed the

Toll Plaza at Thandi Khui permanently but the same has been closed temporarily only due to the construction activities being going on the National Highway-44 and have not stated that they would not establish new Toll Plaza near Thandi Khui.

13. Further, the distance between Nagrota to Domel using NH-44 is just 15 kilometers. Now any commuter or general public residing in Jammu City or nearby areas/towns/villages if visit Katra/Vaishno Devi or nearby areas in their own cars, they use only 15 kilometers of NH-44 from Nagrota to Domel, from where they have to leave the National Highway-44 to reach Katra/Mata Vaisho Devi/other areas or vice versa. But, for using only 15 kilometers of NH-44 they are being forced to pay an hefty amount of Rs.165.00 at Bann Toll Plaza for one side journey through light motor vehicle plus increased toll fee also, which was imposed by the respondents with effect from 26.01.2024 by redistributing the influence length from Lakhanpur to Udhampur among Lakhanpur and Bann Toll Plazas after closing of Thandi Khui Toll Plaza so as to adjust the toll fee of Thandi Khui Toll Plaza. But, the fact of the matter is that the commuters from Jammu City and nearby areas never use NH-44 from Thandi Khui Toll Plaza to reach Katra/Mata Vaishno Devi, then why they are being forced to pay the increased toll fee for such section of NH-44 which these commuters never use. This is nothing but highhandedness on the part of respondents for obvious reasons. One can easily understand such undue enrichment of toll contractors and why the respondents are levying hefty toll fees arbitrarily. Respondents must understand the concept of levying toll fee as tolls are a way to make road users contribute to the costs of maintaining and improving transportation infrastructure but the same must be fair enough.

14. During arguments, learned counsel appearing for respondents did not deny that the distance between Thandi Khui Toll Plaza and Bann Toll Plaza is much less than 60 kms. Although the learned counsel stated at the Bar that the respondents would have no objection to return the excess toll fee collected from the commuters/pilgrims if the distance between both these toll plazas is less than 60 kms., but how they could find those commuters/pilgrims who have paid or have been paying excess fees. It is very sorry state of affairs that though the learned counsel for respondents did not deny that the distance between Thandi Khui Toll Plaza and Bann Toll Plaza is much less than 60 kms. and that the respondents are ready to return the excess fees, yet, even as on today they are charging the same toll fee from the general public.

15. The respondents have filed the toll collection detail which reveals Bann Toll Plaza collected Rs.659.54 crores during the period 20.03.2015 to 24.12.2024, whereas Lakhanpur Toll Plaza collected Rs.355.77 crores between the period 22.07.2020 to 24.12.2024 and Thandi Khui Toll Plaza collected Rs.227.88 crores between the period 11.10.2019 to 26.01.2024.

16. The toll collection detail reveals that during the aforementioned period the respondents collected more than rupees 1243 crores from these three toll plazas. As per the news reports, the toll revenue of National Highway Authority of India in 2020 was Rs. 24000 crores, and with the facilitation of FAS Tags from January 2020, toll gate charges or revenue in 2021 was anticipated to reach Rs. 34000 crores. Though the toll fees at the toll plazas contribute to the construction, maintenance, enhancement of high quality road infrastructure, highways, expressways and toll fee is essential for infrastructure development, however, the respondents must ensure for fair and equitable

tolling fee and that establishment of these toll plazas should not serve merely as a revenue-generating mechanism or to mint money from the general public. Further, rapid increase in toll plazas raises several concerns among the general public. The respondents must ensure that toll plazas are not placed at every nook and corner of the state. There should not be mushrooming of toll plazas.

17. It has also come to our notice that the contractors have illegally employed number of individuals (gunda elements) with criminal backgrounds at toll plazas. This is a serious matter that involves both law enforcement and public safety concerns.

18. Therefore, in view of above discussion, we deem it proper to allow the present PIL. Accordingly, this PIL is allowed with the following directions:

- i.** Respondents are directed to withdraw the order/direction regarding redistributing the influence length from Lakhanpur to Udhampur among Lakhanpur and Bann Toll Plazas with effect from 26.01.2024 after the closure of Thandi Khui Toll Plaza. Respondents to withdraw the said order/direction positively within a period of one week from today.
- ii.** Respondents are directed to levy only 20% of the toll fee with immediate effect, i.e., the toll fee at Lakhanpur Toll Plaza and Bann Toll Plaza shall be 20% of the rates earlier in force before 26.01.2024 till the National Highway from Lakhanpur to Udhampur gets fully operational for smooth utilization of the public. Respondents to charge the full toll at both these toll plazas only after the issuance of a certificate in this regard by an independent surveyor.
- iii.** Respondents are directed not to establish any toll within 60 kms of the National Highway-44. Further, if there is any toll plaza in the UT of J&K or in the UT of Ladakh within 60 Kms on the National Highway, respondents to remove the same within two months from today. Further, there should not be mushrooming of toll plazas in the UT of J&K and the UT of Ladakh only with the sole aim and objective of minting money from the general public.
- iv.** Further, respondents are charging hefty toll fees at Bann Toll Plaza, whereas toll fees at other Toll Plazas are also high. Thus, not only the treasures of NHAI are being filled with thousands of crores of rupees, the private contractors are also enriching themselves by accumulating crores of rupees. Since the toll fee must be fair enough for the general public and should not be a source of revenue-generating mechanism,

respondents, particularly the concerned Union Ministry, are directed to reconsider levying of fair and genuine toll fees at the toll plazas thereby slashing the existing toll fees at all the toll plazas as the current toll fees is at higher side. The decision in the regard be taken positively within a period of four months from today.

- v. Respondents as well as the contractors of the Toll Plazas are directed not to employ any person at the toll plazas having criminal background. Respondents as well as the contractors to deploy the persons at the Toll Plazas only after verification of such employees by the concerned police agency. In case of any deviation in this regard, the concerned SHO/Incharge shall be personally responsible for the same.

19. Registry to send a copy of this judgment to the concerned Union Minister, Ministry of Road, Transport and Highways, Government of India.

Jammu
25.02.2025
(Anil Sanhotra)

(M.A. Chowdhary)
Judge

(Tashi Rabstan)
Chief Justice

Whether the order is reportable ?
Whether the order is speaking ?

Yes
Yes