

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2002

CORAM

THE HONOURABLE MR. JUSTICE K.P.SIVASUBRAMANIAM

WRIT PETITION No.21278 of 2000 and WP.No.21949 of 2000
and
W.P.M.P.Nos.31861 and 31862 of 2000

Kodaikanal Motor Bus Owners'
Association, represented by
its Secretary, R.Jayamanohar Petitioner in
WP.21278/2000

Kodaikanal Motor Bus Owners'
Association, represented by
its Secretary, S.M.Chandrasekar Petitioner in
WP.21949/2000

-Vs-

1. Government of Tamil Nadu,
represented by its Secretary
to Government, Highways Department,
Chennai-9.

2. The District Collector,'
Dindigul.

3. The Commissioner,
Kodaikanal Municipality,
Kodaikanal.

4. Jayabalan Respondents in
both cases.

Petitions filed under Article 226 of the Constitution of India
praying for the issue of a writ of certiorari as stated therein.

!For petitioner in 2
W.P.No.21278 of 2000 : Mr.M.Krishnappan

For petitioner in
W.P.No.21949 of 2000 : Mr.V.Raghupathy

For respondents 1 and 2 : Mr.R.Thirugnanasambandam,
Special Government Pleader

For 3rd respondent : Mr.V.Radhakrishnan

For 4th respondent : Mr.K.R.Thiagarajan

:ORDER

In both the writ petitions, the petitioners, Kodaikanal Motor Bus owners' Association and Kodaikanal Lorry Owners' Association respectively have questioned the validity of G.O.(D) 51, Highways Department, dated 14.6.2000 in so far as it imposes the levy of toll in respect of buses and

lorries operated by the petitioners Associations. Both the petitioners are aggrieved by the impugned order levying toll for using the Kodaikanal ghat road.

2. For convenience it will be sufficient to refer to the affidavit filed in respect of W.P.No.21278 of 2000 considering that identical issues are raised in both the writ petitions.

3. The petitioner Association is a registered Association.

The rate of levy in respect of buses by virtue of the impugned order is at Rs.75/- per bus per day. The members of the petitioner Association are plying their vehicles through Dindigul - Kodaikanal road and therefore, they will be subjected to levy of toll every day. It is further submitted that the toll is provided for under the Indian Tolls Act, 1851, hereinafter called "the Act". The Act has been amended in its application in the State of Tamil Nadu by substituting Section 2 of the said Act. Under Section 2 of the Act, the State Government is authorised to levy toll in respect of any road or bridge made, improved or repaired at their expense after 1.4.1931. The Government is authorised to collect the toll only for the recovery of the amount expended upon the road or bridge. Under Highways Act, 1956 also toll is leviable in respect of road or bridge on the National Highway. The Motor Vehicles Taxation Act, 1931, was enacted for the purpose of abolishing such levy of tolls in the State of Tamil Nadu as existing from the commencement of the Act and also for abolishing the levy of taxes on motor vehicles by the local bodies. Section 10 of the Act provides for utilisation of the proceeds of the motor vehicles tax thus collected. The Taxation Act, 1931, was repealed with effect from 1.4.1974 under 1974 Act. Section 17 of the 1974 Act, provides for the utilisation of the tax collected. Therefore, according to the petitioner after the Taxation Act had been enacted, the levy of toll cannot be continued and any toll could be only in respect of the expenditure incurred in the construction of any permanent bridge or approach road coming within the purview of the National Highways Act. It is further contended that levy of toll was made earlier under G.O.Ms.No.134, Municipal Administration and Water Supply Department dated 29.5.1992 and the said order was challenged before this Court. In the decision reported in 1993 Writ L.R., 86, the said levy was upheld holding that it is compensatory and that necessary guidelines were also available. The levy of toll was for a period of one year and subsequently, it

has been continued year after year, and at present the said levy is for the period of one year from 15.6.2000 to 14.6.2001. The fourth respondent has been given the right to collect the toll for the period from 1.11.2000 to 14.6.2001 for a sum of Rs.32,05,000/-.

4. According to the petitioner, in the counter filed by the first respondent in the year 1992, which was the subject matter of the decision in 1993 Writ L.R., 86, it was stated that a sum of Rs.103.78 lakhs have been spent by the State Government for maintenance of road during 1989-1990 to 1991-92. The petitioner further states that according to his information, the respondents have realised the following toll collection.

1992-93 to 1995-96 : Figures not available.

1996-97 : Rs.62 lakhs.

1997-98 : Rs.54 lakhs.

1998-99 : Rs.39 lakhs

1999-2000 : Figures not available.

Total : Rs.1,55,00,000/-

5. According to the petitioner, the first respondent was entitled to collect the amount only for the actual services rendered till the period the full amount is realised and on the figures stated above, the amount claimed to have been spent by the first respondent has already been recovered and therefore, the continued collection of toll was contrary to the provisions of the Act. It is further stated that from the year 1992 onwards the Government has not constructed any new road or approach road or any permanent bridge on the DindigulKodaikanal road till date and therefore, the first respondent not having incurred any expenditure, there was no necessity to

collect the toll. The first respondent has been making only minor repairs on the existing roads and that the Motor Vehicles Tax which is being collected would be more than sufficient to meet the said expenditure.

6. It is further stated that the petitioner had challenged the earlier levy of toll for the period 1998-99 and 1999-2000 in W.P.Nos.6193 of 1999 and 13882 of 1999 before this Court. When the writ petitions came up for orders, the said writ petitions were dismissed as infructuous.

7. In the counter filed by the Government, namely, the first and second respondents, it is contended that the levy of toll was necessitated due to the fact that huge amounts were required to be spent for every year for the improvement in repairs of the road and bridges leading to Kodaikanal Town. The climatic conditions and the ravages of the natural calamities of rain, landslide etc., caused frequent damages to the roads every year. Taking into account, the increased rate of tourists every year, special attention is being given to the ghat roads and it was found not possible to meet the expenditure from the normal revenue. This Court by order dated 14.12.1992 dismissed a batch of writ petitions holding that the toll levied by the Government was not only for recovering the expenses incurred by them, but also for future maintenance and repairs of the roads.

8. The impugned G.O. was passed after considering the proposals to enable the third respondent to levy and collect toll at the said rates as provided in the notification. The following is the total fee collection for the period from 1.4.1992 to 31.12.2000:-

Toll Gate Collection (Yearwise abstract)

Sl.No. Year Amount

Rs.

1.	1992-93	51,72,442
2.	1993-94	51,67,175
3.	1994-95	32,12,080
4.	1995-96	63,82,153
5.	1996-97	62,23,062
6.	1997-98	53,52,531
7.	1998-99	47,95,279
8.	1999-2000	27,42,820
9.	2000-2001	16,22,800

4,05,70,942/-

It is further stated that the said amount was given to the Highways as well as to the Kodainkanal Municipality for the expenditure towards the repairs and maintenance of the roads and bridges. Following is the expenditure incurred by the Highways Department and the Kodaikanal Municipality:

EXPENDITURE

Sl.No. Year Amount

Rs.

1.	1992-93	0.65 lakhs
2.	1993-94	Nil
3.	1994-95	163.31
4.	1995-96	24.56
5.	1996-97	57.04
6.	1997-98	101.50
7.	1998-99	32.90
8.	1999-2000	29.06
9.	2000-2001	90.36

462.38 lakhs

9. By an amendment under Tamil Nadu Act 35 of 2000, the Government was empowered to levy toll in respect of the roads or bridges partly at the expenses of the local body or solely at the expenses of the local body. The length of the roads within the Municipal limits is 12 K.M. The total population is about 30,000/- whereas floating population during the season is nearly 1 lakh. The infrastructure such as roads, bridges, etc., are used by the tourist vehicles. Therefore, keeping in mind, the population of the municipality, the income of the Municipality, it was found to be very limited and grossly insufficient to meet the huge expenditure. It is further stated that the stretch of Perumal Malai to Kodaikanal (12 K.M. Ghat road)

was widened in the year 1997-98 and a stretch of 3 K.Ms. from Silver Cascade to Shenbaganur was widened in the year 1997-98 out of the toll funds with an expenditure of Rs.20,00,000/-. Many roads within the Municipal limits leading to the various Tourist spots are being widened. Existing surface of many earthen roads had been improved with block type roads and pavements. The renewal of the damaged black-top road is a major work. In fact during the current year, 28 road works were taken up at a cost of Rs.51.66 lakhs by the Municipality and the works relating to nine roads to the tune of Rs.47.50 lakhs had been taken by the Highways Department. The said expenditure was met out of the toll fees. It is further stated that in respect of the expenditure incurred for the years from 1996 to 2000, a total amount of Rs.103.36 lakhs was spent. Therefore, a total sum of Rs.285.56 lakhs had been incurred during the past 12 years.

10. It is further stated that the process of maintenance of roads is a continuous one which has to be taken up every year and the department's funds are not sufficient to take up such works. But as on date, works numbering about 37 works to the tune of Rs.99.16 lakhs are under progress. More proposals sent by the Municipality or Highways Department are pending for want of sufficient allocation. It is true that the Motor Vehicles taxes collected by the Government are also used by the local bodies for the maintenance of the road. However, same was not sufficient to meet the huge requirements. The petitioner was making a comparison of ghat road leading to Kodaikanal and National Highways Road. As far as the National Highway roads are concerned, the Central Government was maintaining the same. Kodaikanal is a tourist spot and being a hilly area, there is a heavy rush during summer holidays. Also due to rainy season and climatic conditions, roads and bridges are heavily damaged. Apart from improving the existing surface of the roads, it is also necessary to strengthen the walls, parapet walls, widening the existing roads, are also required to be complied with.

11. In the counter affidavit filed by the third respondent, the Commissioner of Kodaikanal Municipality also the very same contentions raised in the counter of the second respondent are reiterated. It is stated that keeping in mind the population of the Municipality, and the income of the Kodaikanal Municipality being very limited are grossly insufficient to meet the huge expenditure and investment required to maintain the roads. Huge expenses are involved as a result of frequent rains and landslides, and roads are damaged frequently than in the plains. The expenditure for the repair is almost double when compared to the expenditure involved in repairing the roads in the plains. Therefore, the contention of the petitioner that the amount necessary for services rendered till the period mentioned in the affidavit has already been recovered, is not correct and misleading. The need to maintain the roads and bridges is a continuous process. It is further stated that Perumalmalai - Kodaikanal stretch (62 K.Ms.) of ghat road was widened in the year 1997-98. Many other roads leading to Tourist spots were also renewed with pavements.

12. It is further stated that the basic objects of the Act are clearly satisfied. All the roads leading to the Kodaikanal are extensively used by the vehicles belonging to the Association of the

petitioner. Keeping in mind occupancy in the bus, the amount of toll, which is levied, the levy is negligible.

13. A separate counter has been filed by the fourth respondent who has taken the contract for the collection of toll. The stand already taken by the Government and the local authority is reiterated in the said counter. It is stated that the Government is not only entitled to collect the toll for recovery of the amounts, but they are also entitled to collect toll for keeping up to maintain the roads and bridges in good condition.

14. A reply affidavit has been filed by the petitioner in W.P.No.21 278 of 2000. As regards the figures shown by the respondents in the counter that the respondents have stated that they have realised a sum of Rs.4,05,70,942/- towards toll collection for the period from 1.4.1992 to 31.12.2000, the petitioner had disputed the same. But at the same time, they have also mentioned that a sum of Rs.462.36 lakhs was incurred as expenditure from 1992 to 2000-2001. No proper details have been stated as to whether the entire expenditure has been spent only for improving, maintaining or constructing the ghat roads alone or whether it included the expenditure incurred for maintenance, repair of other Municipal roads within that Town. It is further stated that in the recent past, there was no landslide. There was also no improvement of the ghat road and therefore, the toll collected from the petitioner cannot be diverted for maintaining other roads by the Municipality. As far as the road from Dindigul to Kodaikanal, was concerned, there was absolutely no necessity to collect toll since no expenditure was involved in maintaining the roads. It is further stated that under the provisions of the Motor Vehicles Taxation Act, 10 per cent of the tax is reserved for establishing Rural Road Development Fund. Further, the local authority also receives a share in the Motor Vehicles Taxation under Section 17 of the Act. It is further stated that the toll thus collected cannot be used for augmenting the general State revenue and the same should be utilised only for the purpose for which it was levied. In the said background, the statement relating to the amounts collected and the expenditure incurred would be abnormal. No substantial expenditure had been incurred for maintaining ghat roads alone. It is further stated that the toll of Rs.75/- per bus per day would amount to a collection of Rs.3,00,000/- per year. The operators would be paying only four quarterly tax; but the petitioners are compelled to pay five quarterly tax in effect. The amount of Rs.3 lakhs would be insignificant considering the other collections by way of toll. No prejudice which would be caused to the Government financially by exempting the 11 buses which are represented by the petitioner Association in W.P.No.21278 of 2000.

15. On behalf of the petitioner in W.P.No.21278 of 2000 Mr. Krishnappan appears and for the petitioners in W.P.21949 of 2000 Mr.V. Raghupathy Advocate appears and contended that the impugned levy or toll was not only illegal, but was also not a bona fide exercise of the power. The following points are raised by Mr.Krishnappan.

(i) After the Motor Vehicles Taxation Act, 1974, the levy of toll cannot be continued and the toll can be collected only in respect of the actual expenditure involved in constructing any permanent bridge or approach

road coming with the purview of the National Highways Act. The provisions of the Toll Act cannot be invoked for the maintenance of the already existing roads and bridges.

(ii) The levy was only compensatory in nature and hence cannot be attributed to any other factor or diverted for any other purpose. The respondents can collect the Toll only to the extent of the actual amounts spent for the purposes specified under the Toll Act. On the other hand, statistics would reveal that excessive amounts have been collected far more than the amount actually spent for the maintenance of the roads.

(iii) The non-levy of tax in respect of the private vehicles within the Municipal areas was glaringly discriminatory and inconsistent with the stand taken by the respondents themselves namely, that the amounts were collected only for the maintenance of the road. If so, there was no proper reason for treating the private vehicles as different from the other vehicles.

(iv) As provided under the Motor Vehicles Taxation Act, 10 per cent of the said tax was reserved for establishing Rural Road Development Fund. Therefore, there was no necessity for the State to collect toll in addition to the tax collected under the Motor Vehicles Taxation Act.

16. Reliance was placed on the following judgments in support of the contention that toll can be collected only towards the actual expenses involved in the maintenance of the road and that the tax was only compensatory in nature.

(i) KODAIKANAL LORRY OWNERS ASSOCIATION v. STATE OF TAMIL NADU & OTHERS (1993 Writ L.R., 86).

(ii) STATE LORRY OWNERS' FEDERATION, TAMIL NADU v. SUPERINTENDING ENGINEER (NH) (1998 Writ L.R., 789).

17. In support of their contention that while imposing the toll, amounts actually spent towards the maintenance of the road alone could be collected and not for any other expenditure of the State or local body, reliance is placed on the judgment of the Supreme Court in STATE OF U.P. v. DEVI DAYAL SINGH (A.I.R.2000 S.C., 961).

18. Mr.Krishnappan further contended that the details given in the counter affidavit regarding the expenses were not correct. The amounts shown as expenditure for maintaining the roads were actually spent for the roads inside Kodai Town and not for the ghat roads, as claimed by the respondents. The toll can be used only for the maintenance of the ghat roads alone. Merely repeating the contentions that the maintenance of ghat roads were expensive and that there were frequent landslides etc. are not at all correct. In the recent past, there was no landslide at all in Kodaikanal area. Learned counsel also took me through the statistics furnished on behalf of respondents and contended that the alleged expenditure and total toll amount collected did not tally with each other. According to him, no materials have been placed to show that the expenditure justified the collection of the toll. Mr.Krishnappan further contended that with the introduction of Motor Vehicles Taxation Act, sufficient provision was made for the maintenance of the roads and 10 per cent of the tax thus collected was earmarked for the Rural Road Development Fund. Hence, the collection of toll in addition to the Motor Vehicles Tax, was totally unjustified. The attempt

was only to augment revenue for all and general purposes and not for the specific purpose of maintenance of the roads as claimed by the respondents.

19. Learned Additional Government Pleader appearing for the State and Mr.V.Radhakrishnan appearing for the Municipality contended that the issues raised in these writ petitions had already been raised and considered by this Court on earlier occasions and have been held against the petitioners. It has been repeatedly held by this Court that the imposition and the collection of the tax was justified and had the required statutory backing. In the said context, reference was made to the very same judgments relied on by the petitioners themselves namely, 1993 Writ L.R., 86. and 1998 Writ L.R., 789, supra.

20. Reference was also made to the judgment of the Supreme Court in AVINDER SINGH v. STAE OF PUBJAB (1979 (I) S.C.C., 137) dealing with the Legislative competence of the levy of tax.

21. In the context of the exemption granted to the private vehicles plying within the Municipal area, reliance was placed on the judgment of the Supreme Court in SRI KRISHNADAS v. TOWN AREA COMMITTEE (1990 (3) S.C.C., 645). In that case, a contention was raised that the levy was discriminatory in view of the exemption granted to some of the products and to those products which were transported by Rail or motor transport, the Supreme Court held that it was for the Legislature or for the Taxing Authority to determine the question of need, the policy to collect the fees or for the purpose of taxation and that the Courts cannot review such decision.

22. I have considered the submissions of both sides. The issue which has been raised in these writ petitions relating to the collection of toll for the year 2000-2001 had been considered by this Court in the context of the previous years at least in two judgments of this Court. In the case reported i 1993 Writ L.R., 86, supra, AR. Lakshmanan,J., as he then was, after analysing the provisions of the Indian Tolls Act, 1851, held that the levy of toll on vehicles entering Kodaikanal Township, was in the nature of a compensatory tax. Recovery of expenses already incurred and also for future maintenance and repairs of the roads did not amount to a restriction on the freedom of Trade and Commerce and was not violative of Article 301 and 304(b) of the Constitution of India. The learned Judge also held that the levy was neither disproportionate nor arbitrary. In that case also, the Government Order expressing their desire to levy toll in respect of the roads in Kodaikanal Town was questioned as being ultra vires of the provisions of the Indian Tolls Act. One of the contentions which was raised was that the toll being levied at an exorbitant rate without actually ascertaining the quantum of expenditure either to carry out or to be utilised for repairs, maintenance etc. and that the State Government had no power to levy toll for augmenting the general revenue of the State. The learned Judge held that benefits were provided to the members of the public by repairing and maintaining the roads in the hill area in question. It was for the benefit of the public in general and the road users. There was also no dispute that the roads are being maintained by the State authorities. Toll was levied by the Government only for recovering the expenses incurred by it and was also intended for future maintenance of the repairs of the road. The petitioners

who had benefited by using the roads cannot complain that the compensatory character of the toll was lost because of the creation of the fund for the future maintenance and repairs of the roads.

23. P.Sathasivam,J. also had occasion to deal with the same issue in the case reported in 1998 Writ L.R., 789, supra. The learned Judge referred to the judgement in 1993 Writ L.R., 86 and while agreeing with the views expressed in the said judgement also held that the collection of tax under the Motor Vehicles Taxation Act cannot be equated with the fees levied under the National Highways Rules. The learned Judge held that though the Motor Vehicles Taxation Act, 1974 was an Act to consolidate and amend the law relating to levy of tax on Motor Vehicles, the collection of fees under the National Highways Rules, 1992, framed by the Central Government was collected only for the services and benefits rendered by the Government in relation to the use of permanent bridges on National Highways.

24. Therefore, the basic issue raised by the petitioners namely, the right of the Government as well as the local authority to collect the toll for the proper maintenance of the road is no more res integra and had been found against the petitioners in the above mentioned two judgments. All the issues raised before me had been dealt with in the said judgments. I do not find any reason to differ from the views expressed by both the learned Judges in the above mentioned judgments.

25. The further contention of learned counsel for the petitioners that the amounts collected by the respondents by way of toll was far in excess of the actual expenditure involved in the maintenance of the road cannot also be sustained. In fact, as held in the judgment reported in 1993 Writ L.R., 86, it was impossible to judge the compensatory nature of the tax by a meticulous test of the figures. Before this Court sufficient materials such as statement showing Toll Fund Amount received by the Collector during the year from 1997-98 to 2000-2001 and details of expenditure incurred by Municipality have been placed by the respondents showing that repairs and maintenance work have been carried on periodically and that the said figures of expenditure do justify the imposition of collection of the toll under the impugned Government Orders. No contrary material has been placed by the petitioners to disprove the figures.

26. The only other ground which remains to be considered is the alleged discrimination shown in favour of the private vehicles plying within the Municipal area of Kodaikanal Township. I am inclined to hold that the differentiation is based on rational criteria. There can be no comparison with the private users of the road and the vehicles which are plying on a commercial basis. It is also needless to emphasise that the lorries and buses which carry heavy weight compared to private transport vehicles do result in causing greater damage to the roads. Further the commercial exploitation involved in the transport vehicles and lorries and the profits earned by them are also reasonable grounds for treating them differently. The exemption granted in favour of the private vehicles whose user of the roads are lesser and damage caused by them would also be lesser, and not being commercial cannot be characterised as discrimination as would violate Article 14 of the

Constitution of India. Therefore, I am unable to sustain any of the grounds raised by the petitioners.

27. In the result, both the Writ Petitions are dismissed. No costs. Connected miscellaneous petitions are also dismissed as unnecessary.

Index: Yes. 30.04.2002

Internet/Yes.

sai/-

To

1. The Secretary
to Government, Highways Department,
Government of Tamil Nadu,
Chennai-9.

2. The District Collector,'
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