

Jagdish Prasad Meena Vs State Of Rajasthan And Others

Court: Rajasthan High Court, Jaipur Bench

Date of Decision: April 8, 2022

Acts Referred: Rajasthan State Highways Fee (Determination Of Rates And Collections) Rules, 2015 " Rule 3(5), 4, 4(6), 8, 8(1)

Rajasthan State Highways Act, 2014 " Section 5, 18, 19, 19(1)

Hon'ble Judges: Manindra Mohan Shrivastava, J; Vinod Kumar Bharwani, J

Bench: Division Bench

Advocate: Sehban Naqvi, Rajendra Prasad, Ashish Sharma, Rajesh Maharshi, Udit Sharma, Krishna Verma, Sukriti Kasliwa

Final Decision: Dismissed

Judgement

Manindra Mohan Shrivastava, J

1. This petition, styled as Public Interest Litigation, has been filed by the petitioner seeking to challenge construction and operation of Toll Plaza named

Chomu Chandwaji Tollways constructed by concessionaire, respondent no.6 arrayed along with his operators, respondent nos.7 & 8 at Kushalpura at

Chomu Chandwaji SH-08 B.

2. The petitioner, who claims to be a public spirited person has filed this petition on the allegation as contained in the pleadings in the writ petition that

respondent nos.1 to 5 entered into agreement with concessionaire i.e. respondent nos.6 to 8 for construction of Toll Plaza at Chomu Chandwaji State

Highway No.8 in violation of statutory provisions contained in Rajasthan State Highways Act, 2014 (hereinafter referred to as "the Act of 2014")

and Rules framed thereunder known as Rajasthan State Highways Fee (Determination of Rates and Collections) Rules, 2015 (hereinafter referred to

as "the Rules of 2015"). According to the petitioner, the location where Toll Plaza has been constructed, made operational, is surrounded by

densely populated area of several villages and dhanis and the authorities ought not to have been allowed construction of Toll Plaza at the location in

dispute. Further pleadings of the petitioner is that the location where Toll Plaza has been constructed, there are five adjoining local town area and

Panchayats within a distance of 5 kms and no permission was obtained from Tehsildar and Sub-Divisional Officer. It is further stated that the disputed

Toll Plaza is situated in District Chomu which is already surrounded by four other Toll Plazas namely Tatiyawas Toll Plaza on Jaipur Chomu National

Highways 52, Maharkala Toll Plaza on Chomu Ajitgarh State Highway, Mehroli Toll Plaza on Sikar Chomu State Highway Near Mehroli and another

under constructed Toll Plaza on Chomu Renwal Road.

3. Further case of the petitioner is that looking to the density of population in nearby adjoining villages and dhanis, the restrictions by way of keeping

minimum distance from municipal area/local area as contained in the Act of 2014 have to be construed widely and liberally to include within a

municipal/local area not only the limits of the municipality but also limits of various surrounding and adjoining villages and dhanis. Referring to the

provisions contained in Rule 8 of the Rules of 2015, it has been contended that the Rules prohibiting establishment of Toll Plaza within a distance of 5

kms or the limits of a municipal or local town area, on liberal and wide meaning, would include not only the limits of municipal or local area in district

but also Panchayat area and dhanis, though, technically it may be situated outside municipal or local town area.

4. The other pleadings are that the location of Toll Plaza is in violation of norms laid down by the Department of Public Works of Rajasthan contained

in the order dated 27.12.2004 which stipulates that the distance from the check barriers/toll plaza should be at least 1 km and no check barriers/toll

plaza would be installed within one km of fuel stations/rest area. Further, referring to the guidelines issued by Indian Road Congress (IRC),

Government of India guidelines, it has been averred that while establishing and operating Toll Plaza at the disputed site, various guidelines have also

been violated as the Toll Plaza is situated within the prohibited distance from already existing petrol pump.

5. It is also the grievance ventilated through this petition that collection of toll fee is at a rate which is in contravention of the prescribed rule under the

Rules of 2015 and directions issued in this regard from time to time by the State Authorities. It is, therefore, contended that the Toll Plaza is required

to be removed from the existing location and established at a safe distance beyond the prohibited distance as stated in circular dated 27.12.2004 of the

IRC, Government of India guidelines issued in this regard.

6. On the other hand, learned counsel for the respondent-State as also learned counsel appearing for the concessionaire (respondent nos.6 to 8) would

argue that the petitioner is not a public spirited person but is a criminal. He has established a ration shop in the nearby area. Action was taken against

him by the authorities for violating guidelines and conditions in the matter for running of ration shops. It is further averred that against the petitioner

number of criminal cases are also pending. All these facts were suppressed by the petitioner and falsely claiming him to be pro bono publico, the

petitioner has filed this petition for ulterior motive.

7. It is further raised as common submission on behalf of the aforesaid respondents that establishment of Toll Plaza is governed by statutory provisions

contained in the Act of 2014 as also the Rules of 2015. The toll notification was already issued on 08.12.2016 by the Government. The Toll Plaza is

not located within the densely populated area in Chomu Tehsil but it is situated at a distance of about 8.89 km from Chomu Municipal Limit and a

certificate to that effect has also been issued on 10.01.2017 by the Executive Officer, Nagar Palika Chomu clearly stating that on Chomu Chandwaji

Road, the municipal limits of Chomu only extended till Morija-Bypass Flyover at a distance of 1.5 kms from the Chomu Bus Stand.

8. The official respondents i.e. respondent nos.1 to 5 have stated that in order to construct and operate the public road for the conveyance of the

public, State entered into Concession Agreement on Design, Build, Finance, Operate and Transfer (DBFOT) basis to develop a section of State

Highway No.08B from Km 0.000 to Km 15.450. The State Highway extend from Jatawali-Kaladera via Chomu having a total length of 25.50 km.

The present location of disputed Toll Plaza i.e. Khushalpura Toll Plaza is neither from densely populated area of Chomu Tehsil nor situated within the

prohibited distance as prescribed under Rule 8 of the Rules of 2015.

The Toll Plaza and the road side amenities have been constructed strictly under Section 19 of the Act of 2014. In this regard, reference has been

made to Section 19 which empowers the State Government or the Authority to enter into agreement with any person in relation to the development

and operation of the highway and submitted that in exercise of such powers, concession agreement was entered into with the respondent nos.6 to 8

and the location of the Toll Plaza has also been notified vide notification dated 08.12.2016 which is in accord with the statutory provisions. The

allegation of recovery of toll at roads in violation of law has been denied. The official respondents in their reply have stated that toll rates have been

determined in accordance with Rule 4 of the Rules of 2015 and the base rate fee per km for car, jeep or LMV is fixed at Rs.1.05/Km for the base

year 2015-16. It is further submitted that as per Rule 3(5), the fee notified by the State Government under these rules has to be rounded off and levied

in a multiple of the nearest of Rs.5. Therefore, the levy of toll fee is in accordance with the Rules of 2015. The return of the official respondents

further declares that w.e.f. 01.04.2018, the toll fee is not being levied on category of private vehicles and the tractors carrying agriculture produce

which are also exempted from levy of toll fee. The Toll Plaza has been legally constructed provided with all the safety measures. The grievance of the

local residents as reflected from the letter dated 27.02.2018 of Sarpanch Kushalpura (Basa) was duly responded and private vehicles have already

been exempted from the toll fee w.e.f. 01.04.2018.

9. In addition, the private respondent nos.6 to 8 have opposed the petition not only on the ground as has been raised by the official respondents but it

has also been pleaded that the official respondents have entered into concession agreement for development of road. On terms and conditions imposed

under the agreement they have made investment of more than 40 crores after taking loan of 25.5 crores from the bank. It is further pleaded that toll

fee is being collected only from mechanical vehicles at specified rates and no fee is levied for the use of toll roads for tractors trolley carrying

agriculture produce and animal drawn vehicles in terms of Rule of 2015. The establishment of Toll Plaza and collection of toll fee by the respondents

is in accordance with the Act of 2014 and Rules of 2015. It has further been pleaded that the norms laid down by the Government circular dated

27.12.2004 are only guidelines and do not have any statutory force but were issued in accordance with the then prevailing Rajasthan Highways Act,

1995 which has now been substituted by Rajasthan State Highways Act, 2014 where under Rules of 2015 have been framed and there is clear

provision with regard to the location of the Toll Plazas. In the matter of establishment and location of Toll Plaza, none of the provisions contained in

the Act or Rule have been violated. The Government circular dated 27.12.2004 has lost its significance and force as the aspect of location of toll plaza

is completely governed by the provisions of the Act and the Rules. Respondent nos.6 to 8 have also questioned the maintainability of the writ petition

on the ground that petitioner having not challenged the legality and validity of the toll notification dated 08.12.2016 nor having challenged the same

while filing petition and not even when this was disclosed by the respondents, the petition deserves to be dismissed on this ground. It has also been

stated that petition suffered from delay and laches as notification of Toll Plaza dated 08.12.2016 establishing Toll Plaza was never challenged and the

petitioner approached the Court after two years when construction had been raised and huge amount invested, therefore, on the ground of delay also,

the petition is liable to be dismissed.

10. A separate reply has been filed by the respondent "Bharat Petroleum Corporation Limited stating that no relief is sought against it and it has

been wrongly impleaded as a party. According to the averments made in their reply, the distance between the Toll Plaza and Bharat Petroleum

Corporation retail outlet of M/s Kamal Mani Fuel Services is 175 meters.

11. Learned counsel for the petitioner would argue that the establishment of Toll Plaza and its location being construed in densely populated adjoining

villages and dhanis is liable to be removed as it endangers public safety. It is further submitted that State Government's circular dated 27.12.2004 has

been violated, insofar as location of the Toll Plaza is concerned because it is within the prohibited distance from the petrol pump outlet.

12. The other submission based on the pleadings is that the location of Toll Plaza, upon rational construction of the expression "municipality/local

town area" including Panchayat village area and dhanis, is in violation of the provisions contained in Rule 8 of the Rules of 2015. Reference has been

made to IRC guidelines which have been filed along with the petition that siting of fuel station near existing check barriers should be avoided and that

it should be at least 1 km away from the check barriers. As the petrol pump was already erected prior to coming into existence of the Toll Plaza, while

locating and constructing toll plaza, the aforesaid guidelines of IRC ought to be strictly applied with which has not been done.

13. Thus, according to the petitioner, location of Toll Plaza is in violation of the State Highways Circular dated 27.12.2004, IRC guidelines and Rule 8

of the Rules of 2015. On public safety consideration, appropriate order be issued for removal of the Toll Plaza. In support of his submission, learned

counsel for the petitioner places reliance upon Indian Oil Corporation Ltd. and Others Versus Arti Devi Dangi reported in MANU/SC/1304/2015,

Maliram Versus Bharat Petroleum Corporation Limited and others reported in MANU/Rh/0558/2019, Aditya H.P. Centre and Others Versus Union

of India and Others reported in MANU/HP/0366/2021, Dalpat Singh Versus Union of India & others reported in RLW 2006 (1) RAJ 161 and Neeraj

Kachhawaha Versus State of Rajasthan and Others reported in MANU/RH/0577/2013.

14. According to the respondents, what has been pleaded by them in their respective reply is that construction of Toll Plaza is beyond the prohibited

distance as provided under Rule 8 of the Rules of 2015. The expression "municipality area/local town area" cannot be extended to include all

other area of Panchayats and Dhanis in the absence of there being any specific provision in that regard contained either in the Act or in the Rules.

According to the respondents, the IRC guidelines are non-statutory and have been issued mainly to restrict operations/establishment of petrol pump

outlets. As location of Toll Plaza is governed by the statutory provisions contained in the Act of 2014 and Rules of 2015, the legality of the action is to

be adjudged within four corners of the statutory provisions and not on the basis of the guidelines which have no statutory force. The State circular

dated 27.12.2004 was issued prior to coming into force of enactment of the Act of 2014 and the Rules of 2015. These are merely administrative

orders of the authorities of the PWD which lost its force and significance after promulgation of the Act and the Rules. Such guidelines could not be

made a basis to issue mandamus for removal of Toll Plaza when Toll Plaza is not violating any statutory guidelines. It has also been submitted that the

toll notification being statutory act notified vide notification dated 08.12.2016, having not been challenged nor any relief sought, therefore, the petition

was liable to be dismissed.

15. It is also highlighted that safety certificate have also been issued by the competent authority and no independent material has been placed on

record to show as to how location of Toll Plaza endangers public safety. The petitioner has failed to demonstrate by any cogent material that

establishment of Toll Plaza has affected the public interest and public safety. In support of their submissions, respondents relied upon Arun Kumar

Acharya and Ors. Versus National Highway Authority of India and Ors. reported in MANU/OR/0206/2020, G. Sasikala Versus The Additional

District Administrative, Krishnagiri District and Ors. reported in MANU/TN/0848/2019, M.G. Saravanan Versus The Commissioner of Police, Trichy

City Police Office and Ors. reported in MANU/TN/5718/2020, Federation of Gujarat Petroleum Dealers Association and 2 Ors. Versus State of

Gujarat and 11 Ors. reported in MANU/GJ/8102/2006 and Indian Oil Corporation Ltd. and Ors. Versus Collector and District Magistrate, Jajpur and

Ors. reported in MANU/OR/0600/2017.

16. We have gone through the records of the case, pleadings made by the learned counsel for the parties and submissions made as also various

decisions relied upon by both the sides.

17. The challenge to the location of Toll Plaza is based on the ground that it is in violation of Rule 8 of the Rules of 2015. The second ground to

challenge is that it is in violation of IRC guidelines. The third ground to challenge is that the location of Toll Plaza is in violation of Public Works

Department instructions dated 27.12.2004. It has also been challenged on the ground that it endangers public safety as Toll Plaza is surrounded by

several adjoining villages and dhanis with dense population.

18. The Act of 2014 has been enacted to provide for the declaration, development, operation, safety and regulation of State Highways and use of land

pertinent thereto, acquisition of land for highways and other roads, constitution of Rajasthan State Highway authorities and for matters connected

therewith or incidental thereto. The provisions of the Act of 2014, authorizes to develop certain highways to be State highways; Section 5 thereof

empowers acquisition of land; under Section 19 thereof, the State is empowered to enter into an agreement with any person in relation to the

development and operation of the whole or any part of a highway and such agreement may, if deemed necessary, include the terms and conditions for

development of wayside amenities, habitations, townships or industrial corridors in the vicinity of such highway. Sub-Section 2 thereof provides that a

person with whom concession agreement has been entered into shall be entitled to collect and retain fees in such a manner and at all such rates as

may be prescribed by rules made under Section 18 and in accordance with the terms of the agreement referred to in sub-section (1) of Section 19. In

exercise of powers under Section 18 of the Act, Rules have been framed known as Rules of 2015. Rule 8 thereof, being relevant is reproduced

hereinbelow:-

8. Location of toll plaza.- (1) The executing authority or the concessionaire, as the case may be, shall not establish a toll plaza within a distance of

five kilometers from the limits of a municipal or local town area:

Provided that the executing authority may, for reasons to be recorded in writing, locate or allow the concessionaire to locate a toll plaza within a

distance of five kilometers of such limits of a municipal or local town area, but in no case within two kilometers of such limits of a municipal or local

town area.

Provided further that where a section of the state highway, permanent bridge, bypass or tunnel, as the case may be, is constructed within the

municipal or town area limits or within two kilometers from such limits, primarily for use of the residents of such municipal or town area, the toll plaza

may be established within the limits of the municipal or town area or within a distance of two kilometers from such limits.

(2) Any other toll plaza on the same section of state highway and in the same direction shall not be established within a distance of forty kilometers:

Provided that where the executing authority deems necessary, it may for reasons to be recorded in writing, establish or allow the concessionaire to

establish another toll plaza within a distance of forty kilometers.

Provided further that a toll plaza may be established within a distance of forty kilometers from another toll plaza if such toll plaza is for collection of

fee for a permanent bridge, bypass or tunnel.

Provided also that two toll plazas on the same state highway may be established within a distance of forty kilometers if they are located on different

sides of a town having a population exceeding twenty thousand. Provided also that the restrictions specified in this rule shall not apply to a section of

the state highway specified in sub-rule (6) of rule 4.

19. According to this Rule, a Toll Plaza shall not be allowed to be established within a distance of 5 kms from the limits of a municipal or local town

area. Proviso, further, empowers the authority to allow concessionaire to locate a Toll Plaza within a distance of 5 kms of limits of municipal or local

town area, for reasons to be recorded in writing. It further provides that in any case, such permission for location of Toll Plaza shall not be allowed

within two kms of limits of municipal or local town area. Under further proviso, in exceptional cases, Toll Plaza may be established within the limits of

the municipal or local town area within the distance of two kms from such limits. Rule also provides for rates of fee and also contains certain

exemption clause from payment of fee.

20. The statutory scheme of the Act of 2014 and the Rules of 2015 particularly Rule 8 restricts location of Toll Plaza within prohibited limits of

municipal area/local town area and in only exceptional cases, covered under the proviso to Sub-Rule (1) of Rule 8 thereof, Toll Plaza could be allowed

to be established within the prohibited limits. Except this statutory prohibition, there is no statutory prohibition in terms of distance of the Toll Plaza

from the municipal limits or from the local town area. The expression municipal area/local town area has not been defined either in the Act of 2014 or

the Rules of 2015. In the absence of any definition of such term under Rajasthan General Clauses Act, 1955, this expression has to be understood in

terms of the provisions contained in the Rajasthan Municipalities Act which defines municipal area. Under the Rajasthan Municipality Act,

“municipal area” has been defined as below:-

“municipal area” means the territorial area of a Municipality as notified by the State Government from time to time;

21. The expression municipal area/local town area, therefore, would not include within its scope and ambit Panchayat area/village area.

22. The contention of learned counsel for the petitioner that for the purposes of the Act, expression municipal area/local town area as used in Rule 8

of the Rules of 2015 should be given a liberal interpretation to include Panchayat and village area cannot be accepted in the absence of there being

anything in the Act of 2014 and Rules of 2015 in that regard.

23. The expression municipal or local town area, in the absence of that expression defined under the Act of 2014 or the Rules of 2015 will take its

meaning from the provisions contained in the Municipality Act only and cannot be given or assigned any meaning other than that which has been

provided under the local laws of the State namely Municipality Act. There is no compelling reason for us to include Panchayat area or dhanis within

the expression “municipal or local town area” for the purpose of establishment of Toll Plaza as provided under Rule 8 of the Rules of 2015. If the

argument of learned counsel for the petitioner is accepted, the provisions will be rendered completely unworkable as the State Highway on either side

are adjoining various panchayats and village areas and dhanis, therefore, argument in this regard is liable to be rejected.

24. The other argument of learned counsel for the petitioner that as there are various adjoining villages and in any case, it would endanger public

safety if Toll Plaza is erected in such vicinity is liable to be rejected because there is no such legal impediment either under the Act of 2014 or the

Rules of 2015. The statutory prohibition is only with reference to distance of Toll Plaza from municipal area/local town area. The rule making authority

in its wisdom, allowed construction of Toll Plaza maintaining safe distance of at least 5 kms and in exceptional case even less than 5 kms, from more

densely populated area of municipal and local town area rather than imposing any restrictions in terms of distance from village or panchayat area or

dhanis.

25. The statutory scheme is very clear. Therefore, in the absence of any statutory prohibitions, establishment of Toll Plaza could not be faulted only on

the ground that the Toll Plaza is in the vicinity of adjoining villages and dhanis. In the absence of any statutory provisions, only on that ground, location

of Toll Plaza cannot be said to be illegal.

26. One of the main argument on which the learned counsel for the petitioner laid great emphasis was that there are guidelines issued by IRC and

therefore, establishment of Toll Plaza on State Highway is required to be erected in compliance with those guidelines. The guidelines issued by the

Government of India on 24.07.2013 have also been referred to.

27. The IRC guidelines which have been annexed along with the petition as Annexure 24 are recommended practice for location and layout of

roadside motor fuel and motor fuel filling cum service stations. The Clause 1.1 reads as under:-

“1.1 The following principles have been laid down by the Specifications and Standards Committee (personnel given on the inside front and back

cover) for general adoption after carefully considering the views of the representatives of major distributors of motor fuels.

28. Clause 4.4 thereof states that siting of fuel filling stations near existing check barriers should be avoided and they should be at least 1 km away

from the check barrier.

29. Further Appendix 1 to the Government of India guidelines/norms dated 24.07.2013 (Annexure-25) provides for norms for Location, Layout and

access to Fuel Stations alongwith National Highways. Clause 4.7 thereof, restricts location of fuel station within the distance of 1000 meters from any

barrier including that of Toll Plaza and railway level crossing. It provided that no check barriers or Toll Plaza should be located within 1000 meters of

a fuel station. These guidelines, however, relate to national highways and not to State Highways.

30. The IRC guidelines are recommendations for being adopted and that too in the matter of establishment of petrol pump outlet. These guidelines are

not statutory guidelines but only recommendations. Clause 2 thereof, lays down the basic principles that the governing consideration for norms are to

be minimize, as much as possible, interference to normal flow of traffic on the road by vehicles using the amenity and also to ensure safety. Therefore,

such guidelines are for consideration of the State Authorities.

31. Taking into consideration all other relevant factors to minimize as much as possible, interference to normal flow of traffic on the road by vehicles

using amenity and also to ensure safety, such recommendations are made. Guidelines, however, do not have the force of law.

32. Much emphasis has been laid by the petitioner on various judgment which have been cited at bar particularly the decision of the Supreme Court in

the case of Indian Oil Corporation Ltd. and Others Versus Arti Devi Dangi (supra). That was a case where on facts, it was found that IRC guidelines

were adopted by the PWD of Madhya Pradesh. The clause in the advertisement required the tenderer to fulfill all the requirements under the Rules

and the Sub-Rule of Public Works Department and having found that IRC has been adopted by the concerned State would construe the terms of the

advertisement and pre-conditions for the tenderer to fulfill eligibility criteria, the argument that the IRC guidelines are not mandatory, was not

sustained, keeping in mind the provisions of the advertisement, purports and objects of the norms, uniform application of the same to all the tenderers

by the corporation and the requirement of public interest.

33. The other decision in the case of Maliram Versus Bharat Petroleum Corporation Limited and others (supra) was based on the decision in the case

of Neeraj Kachhawaha Versus State of Rajasthan and Others (supra) wherein taking into consideration that the condition in NOC have to be strictly

adhered to for compliance of guidelines of IRC, the guidelines were found to be mandatory for that reason as the conditions of NOC. The decision in

the case of Aditya H.P. Centre and Others Versus Union of India and Others (supra) is also on its own facts.

34. None of the aforesaid cases, relied upon by the petitioner, related to establishment of Toll Plaza but only with regard to establishment of petrol

pump/outlets.

35. In the present case, establishment of Toll Plaza is governed by certain statutory provisions and statutory prohibition contained in Rule 8 of the

Rules of 2015 would be applicable.

36. Learned counsel for the respondents have referred to various decisions including decisions of the Supreme Court in the case of Chief Commercial

Manager, South Central Railway, Secunderabad and others Versus G. Ratnam and Others reported in (2007) 8 SCC 212 where it has been held that

administrative instructions, guidelines, regulations which have no statutory force cannot be enforced in courts of law. The writ petition against any

breach would not be maintainable, though the said breach may expose the authorities to disciplinary or other appropriate action. The decisions in the

cases of Federation of Gujarat Petroleum Dealers Association and 2 Ors. Versus State of Gujarat and 11 Ors. (supra) and M.G. Saravanan Versus

The Commissioner of Police, Trichy City Police Office and Ors. (supra), G. Sasikala Versus The Additional District Administrative, Krishnagiri

District and Ors. (supra) and Arun Kumar Acharya and Ors. Versus National Highway Authority of India and Ors. (supra) as also in the cases of S.

Shanmugharaja Versus The District Collector Puducherry District and Others reported in MANU/TN/2714/2017 and Saroj Bhatia Versus Indian Oil

Corporation Ltd. reported in MANU/MP/0743/2014 have laid down that IRC guidelines are only administrative and not statutory.

37. The cases cited by the petitioner dealt with case where the location of the petrol pump outlet was not governed by any statutory provision and the

terms and conditions of eligibility in the advertisement impliedly or expressly included compliance of IRC guidelines.

38. We therefore come to the conclusion that, on facts, compliance of IRC guidelines was not mandatory, therefore, the present case where the

location of Toll Plaza is governed by statutory provisions contained in the statutory Rules of 2015 framed in exercise of statutory powers under the

Act of 2014 will hold the field and in the absence of there being statutory provisions under the law regulating location of Toll Plaza, there being no

condition incorporated either in the advertisement or in the terms and conditions of eligibility for erection of Toll Plaza or in the concession agreement

between government and the concessionaire, establishment of Toll Plaza cannot be said to be illegal or opposed to law.

39. In the present case, it being an admitted position that Toll Plaza is beyond the prohibited distance under Rule 8 of the Rules of 2015 and there

being no violation of any statutory provisions governed, only on the ground of violation of the certain guidelines which are principle based,

establishment of Toll Plaza cannot be said to be in violation of law.

40. Safety certificate has also been issued in favour of the respondent, copy of which has been placed on record which is annexed by respondent

nos.6 to 8 as R/6-5 issued by the Chief Coordinator of Civil Engineering Department on 23.01.2018.

41. Upon satisfaction arrived at on the basis of the compliance report on safety audit preliminary report and inspection held on 22.01.2018 which

verified compliance of observations in that certificate, it has been observed that M/s. Chomu Chandwaji Tollways Pvt. Ltd. has complied all the

observations and the project highway is safe and reliable for commercial operations.

42. Much emphasis has been laid on the State circular dated 27.12.2004 issued by the Chief Executive Engineer PWD Rajasthan, Jaipur. That

instruction was issued prior to promulgation of the Act of 2014 and Rules of 2015. Once the location of Toll Plaza is regulated by the statutory

provisions contained in Rules of 2015, prior circular could not be made a basis to contend that the location of Toll Plaza is illegal or opposed to law.

43. When the provisions with regard to location of Toll Plaza are regulated by the statutory rules, administrative norms issued prior to promulgation of

Rules cannot be read into Rules to expose the terms of restrictions with reference to distance from the petrol pump. There being statutory regulation

to regulate the location of Toll Plaza, guidelines as contained in IRC guidelines and the State Government letter dated 27.12.2004, by itself, would not

bind the contractor.

44. Though vague pleadings have been made with regard to collection of toll fee in contravention of the rates prescribed under the Rules, reply of the

respondent particularly official respondents is that collection of toll fee is in accordance with the Rules and the petitioner has failed to demonstrate

with regard to specific rates that there is illegal levy of toll fee. Moreover, w.e.f. 01.04.2018 all the private vehicles have otherwise been exempted

from levy of toll fee and it has been clearly stated that tractors, tractors with trolley carrying agriculture produce are also exempted from toll fee.

45. Except pleadings that there are violation of certain guidelines, no specific material has been placed in the petition to satisfy this Court that the

location of Toll Plaza as such, endangers public safety and therefore, it should be directed to be removed. The distance of petrol pump is stated to be

about 175 meters from the Toll Plaza.

46. Respondent nos.6 to 8 cannot be faulted because they have acted in accordance with the Rules and there is no case of violation of the terms and

conditions of concession agreement between the concessionaire and the respondents. Guidelines which have no statutory force or the administrative

instructions could not be made basis to issue writ of mandamus to respondent nos.6 to 8 to remove Toll Plaza because such conditions were neither

incorporated in the advertisement for construction of roads on PPP basis nor any condition was imposed on respondent nos.6 to 8 in line with the IRC

guidelines or letter dated 27.12.2004 in the agreement. Respondent nos.6 to 8 is not bound by such instructions unless it is incorporated in the

agreement or eligibility criteria laid down in the process of award for construction of State Highways.

47. Even though serious allegations against the petitioner were levelled by the respondents in their reply stating that the petitioner is not a law abiding

citizen and against him action was taken for violation of the terms and conditions for operating ration shops and against him number of criminal cases

have been registered, we examined the issue raised in this petition as to whether the location of Toll Plaza is against public interest.

48. In the result, we do not find any merits in the petition. The petition is, therefore, dismissed.