

2025 LiveLaw (SC) 819

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

B.R. GAVAI; CJI., K. VINOD CHANDRAN; J., N.V. ANJARIA; J.

AUGUST 18, 2025

Civil Appeal No..... of 2025 (@Special Leave Petition (C) No. 22579 of 2025)

National Highways Authority of India and Anr. versus O.J. Janeesh & Ors.

Citizen's right to unhindered roads - Toll suspension – Held, NHAI or its agents can't levy toll if road is pothole ridden - Public's obligation to pay a user fee for roads is based on assurance that their travel will be free of hindrances - When public pays a toll, they acquire a corresponding right to safe, unhindered and regulated access to the road - Upheld order of High Court's decision to suspend toll collection for 4 weeks - High Court's approach was 'citizen centric approach' and that hardship faced by citizens such as long waits in traffic, strained environment and waste fuel was of greater concern - Supreme Court refused to order a proportionate reduction in toll, noting that the issue was a total lock jam and not just minor repairs in patches - Appeal dismissed and held that citizens should be free to travel on roads for which they have already paid taxes 'without further payment to navigate the gutters and pot-holes, symbols of inefficiency'. [Paras 11, 12, 17]

With Civil Appeal No..... of 2025 (@Special Leave Petition (C) No. 22655 of 2025) Civil Appeal No..... of 2025 (@Special Leave Petition (C) No. 22673 of 2025) Civil Appeal No..... of 2025 (@Special Leave Petition (C) No. 22732 of 2025) Civil Appeal No..... of 2025 (@Special Leave Petition (C) No. 22612 of 2025) Civil Appeal No..... of 2025 (@Special Leave Petition (C) Dy. No.45902 of 2025

[Arising out of impugned final judgment and order dated 06-08-2025 in WP(PIL) No. 35/2025 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s): Mr. Tushar Mehta, Solicitor General Mr. Ankur Mittal, Adv. Mr. Abhay Gupta, Adv. Signature Not Verified Ms. Paromita Majumdar, AOR Mr. Ankur Saboo, Adv. Mr. Ashish Gajwani, Adv. Ms. Meenakshi Vimal, Adv. Mr. Nikhil Goel, Adv. Mr. Shyam Divan, Sr. Adv. Mr. Ankur Chawla, Adv. Ms. Smriti Veena, Adv. Mr. Aditya Samaddar, Adv. Mr. R.K. Mohit Gupta, Adv. Mr. Sudipto Sirkar, Adv. Mr. Pranay Shridhar Chitale, AOR

For Respondent(s): Mr. Jayanth Muth Raj, Sr. Adv. Mr. Mohammed Sadique T.A., AOR Mrs. Anu K Joy, Adv. Mr. Alim Anvar, Adv. Mr. Santhosh K, Adv. Mr. Shyam Divan, Sr. Adv. (for R-7) Mr. Ankur Chawla, Adv. Ms. Smriti Veena, Adv. Mr. Aditya Samaddar, Adv. Mr. R.K. Mohit Gupta, Adv. Mr. Sudipto Sirkar, Adv. Mr. Pranay Shridhar Chitale, AOR

ORDER

Leave granted.

2. In desperation, since there was no positive response despite a number of remonstrations, the High Court passed the impugned order. That, in a democracy, roads are laid on Build Operate and Transfer (BOT) contracts to ensure that the cost is collected from the users, when motor vehicle tax is remitted for their use on roads, is a sad reflection of free market. That, the successful bidder extracts much more than what is spent on construction and maintenance, is a comedy of errors. That, the roads fall into disrepair due to vagaries of nature and often rank neglect, is the stark reality. That, the toll collectors at the booths, often due to understaffing and overwork, behave like satraps, is a fact of life. That, the poor citizen is bound to wait for hours, in queue and in a cramped space, with the engine running but hardly moving, is a tragedy. That, the toll is really on the purse and the patience of the citizen, as also the environment, is the downside.

3. The High Court in seisin of the situation said: brace yourself, make repairs and resolve the jam in four weeks, during which period the tolls were suspended. Piqued to

the quick, the NHAI and the Concessionaire are before us on separate appeals with different grounds.

4. The learned Solicitor General appearing for the National Highways Authority of India¹ points out, with the aid of a map, that the total length of the road constructed by the Concessionaire is 64.94 kms. The Concessionaire who had the contract for construction has also been entrusted with the task of maintenance, to defray the expenses of both, the toll is collected. The stretch, which is subjected to toll starts from Ernakulam and ends at Mannuthy travelling through the districts of Ernakulam and Trissur.

5. It is contended that due to local pressure, there had to be intersections made in the roads, which otherwise local people indiscriminately opened up, leading to a number of accidents. Four black spots are pointed out, before the toll booth is reached; which are at Amballur, Perambra, Muringur and Chirangara, where the construction of under passes and fly overs are going on. The service roads have fallen into despair, more because of the monsoon and hence, there is traffic block at such black spots which however does not affect the main carriageway, in the balance length of the National Highway.

6. The learned Solicitor General also pointed out that the NHAI is more aggrieved with paragraph 22 of the impugned order which directed that any loss sustained by the Concessionaire can be raised from the NHAI in an appropriate manner, if they are otherwise entitled to claim. It is urged that the traffic block occurs only at the four black spots where work is going on and that cannot lead to a blanket order prohibiting the Concessionaire from collecting the toll from the vehicles passing through the road. Minor hardships are for the larger good of the citizens and it is pointed out from **DSC-Viacon Ventures Private Limited (Now Known as DSC Ventures Private Limited) v. Lal Manohar Pandey and Others**², that this Court in a similar situation had directed that if at all the roads are damaged and require repair, causing inconvenience to the users, there can be proportionate reduction without wiping out the entire toll charged.

7. Shri Shyam Divan, learned Senior Counsel appearing for the Concessionaire read extensively from the additional affidavit dated 06.07.2025, of the NHAI, filed before the High Court of Kerala to vehemently contend that the Concessionaire is not at all responsible for the present deadlock. Despite the work going on in the black spots pointed out by the NHAI, the Concessionaire is obliged to carry on the maintenance of the balance carriage way, where there is smooth running of traffic without any impediment. The money for regular maintenance of the main carriageway is sourced from the revenue collected from the toll booths. The toll collection is not only to defray the construction cost, but also the expenditure incurred for maintenance, during the contract period, before the transfer is effected to the NHAI.

8. It is pointed that the NHAI for best reasons known to them had contracted the work at the black spots to another contractor who was not impleaded in the proceedings before the High Court. It is strenuously urged that since the NHAI had absolved the Concessionaire of any liability, it was not possible for the High Court to invoke Article 226 of the Constitution of India and interfere with contractual responsibilities, rights and liabilities which could put the entire carriageway into more despair, visiting the citizen with further hardship. It is pointed out that every day there is a loss of Rs.49 lakhs as revenue and it is the lifeline which enables the Concessionaire to maintain the roads.

¹ the, 'NHA'

² (2015) 15 SCC 509

9. Shri Jayanth Muthuraj, learned Senior Counsel appearing for the Writ Petitioners on the other hand points out from Annexures P-13 and P-14 orders of the High Court that repeated directions were issued to the NHAI and since nothing moved on the ground, the impugned order was issued. It is also pointed out that during the last weekend, there was a 12-hour traffic block in the National Highway between Ernakulam and Trissur.

10. After hearing the parties and on an overview of the facts and circumstances, we are not convinced that any interference can be made to the order, at this stage, especially when the arguments of the NHAI and the Concessionaire gloss over the citizen centric approach, the High Court took in the matter. As we observed at the outset and as pointed out by the learned Senior Counsel appearing for the Writ Petitioners, the High Court had issued various directions which did not evoke the response it should have, and it was in that circumstances that the impugned order was passed. We are also surprised that the further constructions on the road, constructed on BOT basis is entrusted to another Contractor, when the obligation to maintain the entire stretch is on the Concessionaire under the BOT agreement; on which we speak no further, since it is the commercial wisdom of the NHAI.

11. We cannot but agree with the reasoning of the High Court that: *“The obligation of the public to pay a user fee under statutory provisions is premised on the assurance that their use of the road will be free from hindrances. When the public is legally bound to pay a user fee, they simultaneously acquire a corresponding right to demand unhindered, safe, and regulated access to the road. Any failure on the part of the National Highways Authority or its agents to ensure such access constitutes a breach of the public’s legitimate expectations and undermines the very basis of the toll regime”* (sic).

12. The NHAI is aggrieved with the reservation made by the High Court with respect to the liability for damages occasioned, due to the suspension of toll for four weeks. The Concessionaire, however, has specifically pointed out that their operations and maintenance would be put in jeopardy if the toll is suspended. The NHAI clearly absolves the Concessionaire from the liability or responsibility for the present situation. NHAI also does not raise any ground regarding any defect in the maintenance of the main carriageway having not been carried out. The categorical case is that it is the further work on the black spots that has led to the traffic jam on the roads.

13. The statement made by the High Court in paragraph 22, only states the obvious, but we clarify that it is not a finding of absolute liability mulcted on the NHAI. If any damages are claimed, it would definitely depend upon the causation of the blockage and congestion, leading to the impasse and the issue could be agitated before the appropriate forum and for determination of the same, the rival contentions of the parties would be left open.

14. Apart from the arguments and counter arguments made by the NHAI and the Concessionaire, we are more concerned with the plight of the harried citizen, the strained environment and the abject wastage of fuel. Both parties also blame the Contractor who has not properly taken up the work of service roads, at the black spots identified by the NHAI, who, as rightly pointed out by the Concessionaire is not a party before the High Court or this Court. We would not hence make any observation regarding the responsibility or otherwise of the said Contractor as of now.

15. We are clear in our minds that there is no cause for interference to the interim order and we are convinced not only that the order be sustained, but the Division Bench also be requested to monitor the situation to ensure ease of traffic. We also request the Division

Bench to implead the contractor who is carrying out the work on the black spots, namely M/s. PST Engineering and Constructions, Namakkal. We are not inclined to make any proportionate reduction in toll since the cited decision took note of repairs in patches and not a total lock jam, as is the case herein. Even if only 5 kms at the black spots in the 65 kms stretch is affected, the fact remains that the cascading effect of the traffic jam at the black spots compounds the hours to traverse the entire stretch. As far as who is responsible for such blockage and congestion, it would be best left to be agitated in an appropriate proceeding initiated by the parties. However, the black spots also have to be kept in good condition and proper repair, which shall be monitored by the High Court.

16. The learned Solicitor General has assured us that the work of maintenance of the service roads is proceeding on a war footing and smooth traffic would be ensured soon. The minute smooth traffic is resumed, the NHAI or the Concessionaire would be entitled to pray for lifting the prohibitory order, even before the four-weeks as ordered by the High Court. Insofar as the Concessionaire and the damages occasioned, a claim could be raised before the NHAI or they could even seek for extension of period of operation, with or without the responsibility of maintenance.

17. In the meanwhile, let the citizens be free to move on the roads, for use of which they have already paid taxes, without further payment to navigate the gutters and pot-holes, symbols of inefficiency.

18. The appeals are dismissed with the above observations and reservations.

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