



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.75 OF 2021
WITH
INTERIM APPLICATION NO.2383 OF 2021

Arjun Raju Khanapure .. Petitioner

Versus

Union of India, Ministry of Road .. Respondents
Transport & Highways, New Delhi &
Ors.

...

Dr.Uday Warunjikar with Mr.Vijaykumar B. Dighe and
Mr.Amol Ohal for the Petitioner.

Mr.R.V.Govilkar, Senior Advocate with Mr.D.P.Singh and
Ms.Shaba Khan for the Respondent No.1-UI.

Dr.Birendra Saraf, Advocate General with Mr.Vaibhav
Charalwar, Mr.Prashant Mishra, Mr.Bharat Jadhav, Ms.Purva
Birla and Mr.Darshil Shah for the Respondent No.2.

Mr.Sahil Mate i/b Mr.Pradumna Sharma for the Respondent
No.3.

**CORAM: ALOK ARADHE, C.J. &
BHARATI DANGRE, J.**

**RESERVED ON : 10th MARCH, 2025
PRONOUNCED ON : 13th MARCH, 2025**

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JUDGMENT (Per Bharati Dangre, J.) :-

1. Co-founder of Microsoft and Computer Programmer, Bill
Gates has remarked-

*“The advance of technology is based on making it fit in, so
that you don’t really even notice it, so it’s part of
everyday life.”*

M.M.Salgaonkar

We are confronted with a somehow similar situation in this Public Interest Litigation .

2. The present Public Interest Litigation (“PIL”) raised a challenge to the Circulars dated 12/02/2021 and 14/02/2021 issued by the National Highways Authority of India, under the directions of Union of India, whereby commuters without FASTag are mandatorily required to pay double the toll fees instead of the actual toll fees, by way of penalty from 15/02/2021. It is the contention raised that conversion of cash lanes into FASTag-exclusive lanes is illegal, arbitrary and violative of due process of law. The Petition, therefore, seek quashing of these circulars and seeks a directive to keep at least one lane as a hybrid lane to allow cash payments or any other modes to the commuters to pay the toll fees.

3. We have heard learned counsel Dr.Uday Warunjikar for the Petitioner, Mr.R.V.Govilkar, senior counsel with Mr.D.P.Singh for the Union of India and Dr.Birendra Saraf, the learned Advocate General alongwith Mr.Vaibhav Charalwar for the Respondent No.2. Respondent No.3 is represented by Mr.Sahil Mate.

Since the pleadings in the Petition are complete, by consent of parties, we issue Rule, by making it returnable forthwith.

4. At the outset, Dr.Saraf appearing for Respondent No.2-NHAI has raised a preliminary objection about the Petition filed, as Public Interest Litigation, on the ground that it is a

pleaded case of the Petitioner that he is adversely impacted by the charging of double fees as fine for non FASTag cleared payment through cash. In addition, by relying upon the decision of the Apex Court *Ugar Sugar Works Ltd. Vs. Delhi Admnitration & Ors.*¹, it is his specific contention that since the decision taken by Respondent Nos.1 and 2, being a policy decision, so as to provide efficient, faster and seamless road commute and, since use of FASTag facilitate the quick and fast movement at fee plaza, which results in saving of fuel, reduction in pollution and congestion, the scope of interference for the Court is very limited unless the decision is activated with mala fide, unreasonableness, arbitrariness or is unfair.

5. For use of good quality of roads, toll is being imposed, which is a compensatory fee and it is imperative for every vehicle, which uses the said road, to pay the said fee. We have been taken through the various Notifications issued by the Ministry of Road Transport & Highways under the National Highways Act, 1956 and, in specific, the Notification dated 21/11/2014, when the Central Government made the Rules to amend the National Highways Fee (Determination of Rates and Collection) Rules, 2008, by introducing FASTag in the system.

FASTag was defined as an onboard unit (transponder) or any such device fitted on the front wind screen of the vehicle. Alongwith it, the Notification also introduced the concept of 'FASTag lane of fee plaza' as an exclusive lane in the fee plaza for the movement of vehicles fitted with 'FASTag' or any such device.

¹ (2001) 3 SCC 635

6. The Rules of 2008 permitted levy of fee for use of any section of national highway, permanent bridge, by-pass or tunnel forming part of the national highway under Rule 3. The base rate of fee was prescribed under the Rules, depending upon the type of vehicle and it also contain a provision for annual revision of rate of fee.

Rule 6 prescribes the manner of collection of fee and the relevant provision thereof read thus :-

“6. Collection of fee. (1) Fee levied under these rules shall be collected by the Central Government or the executing authority or the concessionaire, as the case may be, at the fee plaza.

(2) Every driver, owner or person in charge of a mechanical vehicle shall for the use of the section of national highway, permanent bridge, by-pass or tunnel, before crossing the fee plaza, pay the fee specified under under these rules.

(3) The fee collected under these rules shall be paid either in cash or through pre-paid payment instruments, smart card or through FASTag or on board unit (transponder) or any other like device: Provided that no additional charges shall be realised for making the payment of fee by use of a smart card or on board unit (transponder) or any other such device:

Provided that no additional charge shall be realised for making the payment of fee by use of a smart card or on board unit (transponder) or any other such device :

Provided further that user of the vehicle not fitted with "FASTag" or vehicle without valid, functional "FASTag" entering into "FASTag lane" of the Fee plazas shall pay a fee equivalent to two times of the fee applicable to that category of vehicles as per sub-rule (2) of rule 4:

Provided also that if a vehicle user with a valid, functional FASTag or any such device with sufficient balance in the linked account crossing a fee plaza installed with Electronic Toll Collection infrastructure, is not able to pay user fee through FASTag or any such device owing to malfunctioning of Electronic Toll Collection infrastructure, the vehicle user shall be permitted to pass the fee plaza without payment of any user fee. An appropriate zero transaction receipt shall be issued mandatorily for all such transactions:

Provided further that the fee payable towards discounts as under sub-rules (2), (3) and (3-A) of rule 9, shall be paid through pre-paid

instruments, smart card or through FASTag or on board unit (transponder) or any other such device.

(4)

(5) The person receiving such fee under sub-rule (2) of rule 6, shall issue to the driver, owner or person in charge of mechanical vehicle a receipt, specifying therein the date and time of such receipt of fee, total amount received, and the class of vehicle for which the fee has been received:

Provided that where the fee is paid through smart card or on board unit (transponder) or any other such device, a receipt shall be issued on demand only.”

7. On 02/11/2017, the Ministry of Road Transport & Highways, in exercise of power conferred by Section 110 of the Motor Vehicles Act, 1988, made Rules to amend the Central Motor Vehicles Rules, 1989 and inserted Rule 138A, which reads thus :-

“138A. Fitment of FASTag.-Categories M and N motor vehicles sold on and after the 1st December, 2017, shall be fitted with FASTag as may be specified by the Central Government, from time to time, by the manufacturer of the vehicle or its authorised dealer, as the case may be :

Provided that in case of any vehicle which is sold in the form of drive-away-chassis without windscreen, FASTag shall be fitted on the windscreen by the vehicle owner before the registration of such vehicles.

Explanation.-For the purposes of this rule, FASTag means an onboard unit (transponder) or any such device fitted on the front windscreen of the vehicle.”

8. With the FASTag system being introduced and even a provision was for ‘FASTag lane of fee plaza’ being provided as an exclusive lane for movement of vehicles fitted with ‘FASTag’ or any such device, Rule 6(2) contains a specific provision for user of the vehicle not fitted with FASTag, entering into ‘FASTag lane of the fee plazas’ and it is cast with a onus of

payment of a fee equivalent to two times of the fee applicable to that category of vehicle.

Noticing that increase in the users making payment of the toll in the fee plazas on the National Highways through the mechanism of FASTag is not increasing in the manner desired and this lead to payment made by cash and further increase in jams at the fee plazas, on 19/07/2019, the following directives were issued to the National Highways Authority of India.

“3. In order to promote the payment through digital mode and to provide for a seamless passage through the fee plazas, it has been decided that all thelanes in the Fee Plazas shall be declared as 'FASTag lane of Fee Plaza' by 1st of December 2019. However, in order to facilitate and monitor the over dimensional or oversized vehicles, one lane in the Fee Plaza may be kept as a hybrid lane accepting FASTag and other modes of payment as per rules which should be converted into the dedicated FASTag lane in a time bound manner.

4. Accordingly, the following may be ensured:-

- i. Above provisions of fee rules may please be strictly implemented on Fee Plazas of National Highways for promoting fee payment through FASTags.
- ii. Logistics and other implementation problems which may lead to law and order problems at fee plazas, may please be identified and resolved.
- iii. The availability of FASTag across the country in the requisite number has to be clearly spelt out and made available for moving towards no cash scenario in the fee plazas.
- iv. The provision of the civil as well as electronic infrastructure availability at the fee plazas which are not ETC enable as on date, is required to be fully assessed and provided before 1st of December, 2019.”

9. The above direction was followed by another direction issued by the Government of India to the National Highways Authority of India on 29/11/2019 in regard to the ‘Promotion of Digital Payment through RFID based FASTag’, when it directed as under :-

“2. To facilitate sufficient lead time to citizens to obtain FASTag, it has now been decided that all the lanes in the Fee Plaza shall be declared as 'FASTag lane of Fee Plaza' by 15th of December 2019. However, in order to facilitate and monitor the over dimensional or oversized vehicles, one lane in the Fee Plaza may be kept as a hybrid lane accepting FASTag and other modes of payment as per rules which should be converted into the dedicated FASTag lane in a time bound manner.”

However, a request was made to grant flexibility to convert some of these dedicated lanes to hybrid lanes for certain period of time, depending on the prevailing traffic pile up at high traffic volume fee plazas, so that hybrid lanes will, as soon as possible, be converted back to dedicated FASTag lane. It was also indicated by NHAI that all endeavour shall be made that all the lanes except one is declared as 'FASTag lane' and, thereafter, it will start charging user fee equivalent to two times of the fee applicable to that category of vehicle, if non-FASTag fitted vehicle enters the permanent 'FASTag Lane'.

10. It is on 15/05/2020, sub-rule (3) was introduced in Rule 6 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, which contained a proviso, providing for consequences of non-use of FASTag, which reads thus :-

“Provided further that user of the vehicle not fitted with “FASTag” or vehicle without valid, functional “FASTag” entering into “FASTag lane” of the Fee plazas shall pay a fee equivalent to two times of the fee applicable to that category of vehicles as per sub-rule(2) of rule 4.”

11. From the aforesaid Notifications issued by the Ministry of Road Transport & Highways from time to time, it is evident that the usage of FASTag is sought to be encouraged as it lead to reduction in waiting time, fuel consumption and pollution

levels at fee plazas and from 15/02/2021, fee collection system at all fee plazas of National Highways is directed to be processed through FASTag alone.

12. Dr.Warunjikar, learned counsel representing the Petitioner, has urged that implementation of the FASTag has in fact failed due to lack of proper technological infrastructure, resulting into undue hardship to the commuters. According to him, there may be a class of people, who are not yet introduced to technology and by restricting the movement of the vehicles used by them and being diverted to a lane and the direction to collect double toll fee for non FASTag users is arbitrary and illegal. The apprehension expressed by him is also that apart from the fact that they are illiterate, and they may not have a bank account and, therefore, being imposed with a fine/penalty for non usage of FASTag would adversely impact them, as it even violate their right under Article 19(1)(d) of the Constitution of India.

13. Learned senior counsel Mr.Govilkar representing Union of India, by relying upon the affidavit, affirmed on 27th November, 2021, would submit that the decision to implement toll transactions vide FASTag was spread over in phases, when the idea was floated in the year 2014. Some benefit was conferred on the users adopting FASTag mode for payment of toll and to provide single-stop solution for FASTag users, 'My FASTag' App on Android and iOS platforms, which provide various services, including easy recharge via UPI, linking of FASTag to bank accounts/prepaid wallet etc. In addition, App

also provided customer login page for issuer banks, search for nearby Point-of-Sale location by various banks and IHMCL/NHAI, list of operational Toll Plazas under NETC programme and customer support Toll-Free numbers.

In addition, the deponent of the affidavit has also informed the Court that in order to increase the demand of FASTag approximately 40,000 POS were set up at various locations to issue FASTag to road users and they were also made available at petrol pumps along National Highways, as well as through online e-Commerce portal and even Helpline number 1033 was also supplied to resolve the issue pertaining to FASTag.

Mr.Govilkar has submitted that currently FASTag is already operational in 199 State toll plazas and he has clarified that Aadhar is not mandatory to obtain FASTag, as the commuters are permitted to use any of the officially valid document required by KYC, such as PAN card, driving license etc. and it is not necessary to link their FASTag to bank account, as it can also be connected through any pre-paid instrument/wallet of their choice, which can be topped up/recharged without requirement of its linking to the bank account.

14. It is a trite position of law that a policy decisions can be subjected to judicial review only if they are arbitrary or violate the fundamental rights.

Courts are expected to be very slow to interfere in policy decisions, which are best left to the State Authority and their wisdom and unless and until the said decision is patently arbitrary and/or not in larger public interest, no indulgence

shall be shown. It is neither within the domain of the Courts nor the scope of judicial review to embark upon an enquiry as to whether a particular policy is wise or a better public policy could have been evolved. Nor are the Courts are inclined to strike down the policy merely because it is urged by the Petitioner that a different policy would have been fairer or wiser or more scientific or more logical.

15. The introduction of a FASTag is a policy decision aimed for providing efficient and seamless road travel. The system of FASTag being introduced in the year 2014 is there to stay and after its introduction, gradually it is implemented throughout the country and FASTags are made mandatory only after giving sufficient time to public to adopt the said change. In order to incentivize the adoption of FASTag from user fee payment, Respondent No.1 also provided for cashback ranging from 10% to 2.5% on toll transactions via FASTag from 2016 till March 2020 i.e. for a period of five years. By amending the Central Motor Vehicle Rules, 1989, it is made mandatory for category M and N motor vehicles sold on and after 01/12/2017, to be fitted with FASTag. Though initially it was directed by Respondent No.1 that all lanes in fee plaza be declared as 'FASTAag lane of fee plaza' for promoting payment through digital mode and ensure seamless passage through fee plaza. However, one lane was to remain a hybrid lane, which permitted vehicles to pass without FASTag or with a defective FASTag. The directions issued to the Regional Offices and Public Implementation Units, clearly direct that if a vehicle is found with a defective FASTag or without FASTag, it shall be

diverted towards left lane and upon entering this lane, the user shall pay a fee equivalent to two times of the fee applicable to that category of the vehicle.

16. It is a misconception of the Petitioner that the amount collected from the vehicle, which is not fitted with FASTag, is by way of penalty, as according to second proviso appended to sub-rule(3) of Rule 6 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008, a vehicle not fitted with FASTag or without valid and functional FASTag, entering into 'FASTag lane' of the fee plazas shall pay a 'fee' equivalent to two times of the fee applicable to that category of the vehicle. The argument that the two times amount is by way of penalty is thus devoid of any merit.

In any case, we find that there is no challenge to the said proviso and, since, the said provision is included in the Rules of 2008, which are framed in exercise of power conferred under Section 9 of the National Highways Act, 1956 and the national Highways (Rate of Fees) Rules, 1997, the diversion of the vehicle to the left lane, where it is permitted to pay the toll fee in cash, but double of the fee, which would have otherwise levied on the vehicle, if it was fitted with FASTag, is strictly in accordance with the Rules of 2008.

17. The contention of the Petitioner that the mandate of using FASTag violates fundamental right of citizens, is also an argument to be just referred to be rejected, as we find that the apprehension of the Petitioner that if a vehicle is not fitted with FASTag, it shall not be allowed to cross the toll plaza is an

erroneous assumption. The Notification dated 14/02/2021 has categorically stipulated that any vehicle, which is not fitted with FASTag, shall obtain a FASTag at the POS set up at the fee plaza, affix it and activate it on the spot before entering into the fee plaza lane. However, in the extreme cases, when it is inevitable, such non-FASTag vehicles should be diverted towards left most FASTag lane in each direction and a Marshall deployed would assist in diverting such vehicle to avoid inconvenience to other users. Such vehicle shall then be levied with fee equivalent to two times of the fee applicable in its category. The use of FASTag has been made user friendly, as many options are open for instant recharging like online banking/UPI/My FASTag Mobile App/Banks App/cash recharge through Bharat Bill Payment System available at POS.

18. It is difficult to fathom that the public in India is not well equipped to handle the FASTag and we find the submission of Dr.Warunjikar in that regard to be totally baseless. At present, there is rarely any person in this country, specially in cities like Mumbai, Pune, who do not use a mobile phone and when the mobiles are used, the users are also acquainted with the procedure of its recharge and, though, it is not expected that the person should be thoroughly techno-savvy for use of FASTag as it is simple procedure, which could also be worked off-line and in the backdrop of the avowed object with which the FASTag is introduced, we do not see any reason why we should interfere in the policy decision. Undisputedly, since Rule 6 of the National Highways Fee (Determination of Rates

and Collection) Rules, 2008, permitting the fee for use of any section of national highway, permanent bridge, by-pass or tunnel, to be paid either in cash or through FASTag or pre-paid payment instruments, smart card or on board unit (transponder) or any other like device, if a decision is taken by the Respondent No.1 to restrict the use of cash while making the payment of fee, since the decision, according to us, is a rationale and, since it is not found to be arbitrary or violative of fundamental right of the Petitioner as claimed, we express our disinclination to entertain the grievance of the Petitioner. We do not find any restriction on the movement of the vehicle, as claimed by the Petitioner, but in order to encourage use of FASTag, in place of cash, it is imperative for the vehicle to pay double fee.

Though a mode of payment of fee in cash is permissible, as per sub-rule (3) of Rule 6 of the Rules of 2008, the said provision will have to be read alongwith the proviso appended thereto, providing that if a vehicle is not fitted with FASTag or it is without valid, functional FASTag, it shall pay fee equivalent to two times of the fee applicable in its category.

19. Once the policy of use of FASTag on the National Highways has been rolled out, which was meticulously planned by the Respondent No.1 and implemented phase wise by the Respondent No.2, it is expected to cover each and every individual/vehicle, which intend to use the Highway of part of Highway and has to be a part of the scheme or else, he will have to be left stranded on the road or else face the provision which subject him to double rate of fee, which he would have otherwise required to pay.

Finding no justiciability to interfere in the policy decision taken by the Respondent No.1 and implemented by the Respondent No.2, we dismiss the Public Interest Litigation.

In view of the dismissal of the Public Interest Litigation, Interim Application does not survive and also stands disposed of.

(BHARATI DANGRE, J.)

(CHIEF JUSTICE)