

Form No: HCJD/C-121
ORDER SHEET
***IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT***

ICA No.267/2024

Jamshaid Ahmad Dasti

Versus

Government of Punjab, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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14.11.2024

Mr. Tariq Mehmood Dogar, Advocate for the appellant.

Mr. Khalid Masood Ghani, AAG.

This order shall dispose of I.C.A. No. 268 of 2024 along with the titled appeal as similar questions of law and facts are involved.

2. Through these Intra Court Appeals, the appellant has called in question consolidated order dated 31.10.2024 passed by learned Single Judge-in-Chambers, whereby constitutional petitions (W.P. Nos.3093 and 3897 of 2024) filed by the appellant were dismissed.

3. Main grievance raised by the appellant against impugned orders is that caretaker Government was not authorized to issue contract to collect toll tax and toll plazas have been established at distances between 10-20 kilometers in violation of paragraph No.16 of NHA Tolling Policy issued under National Highway Authority Act, 1991 which provides for distance of 35-60 kilometers between each successive toll plaza on the road and is also beyond the power vested under Section 3 of the Punjab Tolls on Road and Bridges Ordinance, 1962.

4. The Section 3 and 4 of The Punjab Toll on Roads and Bridges Ordinance, 1962 empowers the Government of Punjab to levy toll tax on roads and bridges for the purpose of its maintenance and Section 10(2) of National Highway Authority Act, 1991 authorizes the framing of policy for charging toll tax, hence, there is no violation of law to that extent.

5. On inquiry respondents have informed us that not only toll plaza has been established but the contract for collection of toll has also been awarded. It has been noticed by this Court that although proceedings were initiated by the caretaker Government but the same were finalized when the elected Government was holding the office, which not only issued the contract but impliedly endorsed the action of caretaker Government for creation of toll plaza and leasing out rights for collection of toll and this was purely a policy decision, which cannot be interfered by this Court unless shown to be suffering from any illegality or violation of law, which has not been shown from the record.

6. As regards the claim of the appellant that the distance between successive toll plazas is 10-20 kilometers which was violation of paragraph No.16 of NHA Tolling Policy reproduced below:

“Interval between Toll Plazas (Open tolling)

16. The distance between two successive toll plazas on national highways, strategic roads should be 35 to 60 Km depending upon the traffic volume, traffic density and prevailing highway capacity. The toll plaza should be placed keeping in view that no diversions or loops are available from where traffic can take a detour. However, toll plazas should be provided on every entry/exit point on a closed loop tolling system regardless of any fixed distance. NHA may also levy toll on bridges and tunnels, etc, besides toll collection on national highways, strategic roads & motorways. For this, minimum

distance requirement as stated earlier for national highways should not be considered.”

Suffice it to observe that the afore-referred paragraph while providing minimum distance for establishment of toll plazas also provides exceptions where requirement of minimum distance is not to be considered. In the present case the ground that toll plazas established at lesser distances without there being any supporting material to show that whether the case falls within the exception or not is a factual controversy requiring determination of disputed facts, which is not permissible in constitutional jurisdiction of this Court and, hence, we are not inclined to pass any direction regarding afore-referred aspect of the matter which grievance, if advised, may be raised before any appropriate forum.

7. In view of the above, this appeal failing to disclose any illegality or jurisdictional defect in the impugned order does not warrant interference by this Court and is **dismissed** accordingly.

(Asim Hafeez)
Judge

(Muzamil Akhtar Shabir)
Judge

Imran/*