

**HIGH COURT OF MADHYA PRADESH:**  
**JABALPUR**

Writ Petition 4149/2014 (PIL)  
Manish Jaiswal and Another  
v.  
State of M.P. and Others

Writ Petition 4153/2014 (PIL)  
Bangla Rahawashi Sangh Mhow  
v.  
Union of India and Others,

Writ Petition 4231/2014 (PIL)  
Bane Singh Thakur  
v.  
State of M.P. and Others

Writ Petition No.4841/2014  
Emerald Heights School Society and Another  
v.  
State of M.P. and Others

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**Coram**

**Hon'ble Mr. Justice A.M. Khanwilkar, Chief Justice**  
**Hon'ble Mr. Justice Alok Aradhe, J.**

Date of Hearing: 16.07.2014

Date of the Order: 23.07.2014

Whether approved for reporting ? Yes

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Mr. Naman Nagrath, learned Senior Advocate along with Mr. Himanshu Mishra, Advocate for the petitioners in W.P. No.4149/2014 and W.P. No.4231/2014.

Mr. Siddharth Gupta, learned counsel for the petitioner in W.P. No. 4841/2014.

Mr. Swapnil Ganguli, learned Deputy Government Advocate for the respondent – State.

None for the petitioner in W.P. No.4153/2014.

Mr. P.K. Kaurav, learned counsel for the Madhya Pradesh Road Development Corporation.

Mr. S.C. Bagadiya, learned Senior Counsel along with Mr. P. Bagadiya and Mr. Abhishek Arjariya, Advocates for the private respondent.

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**ORDER**  
 (23/07/2014)

*Per: Alok Aradhe, J.-*

In this bunch of writ petitions, since common questions of law and facts are involved, they were heard analogously and are being decided by this common order. The issues which arise for determination are: (i) whether the concessionaire can be permitted to collect the toll from the users without completion of 75% of the total length of the Rau-Mhow-Mandleshwar road on the basis of provisional certificate issued by an independent engineer; (ii) whether the toll plaza has been set up contrary to the express provisions of the concession agreement executed between the respondents; (iii) whether the petitioners in W.P. No.4841/2014 are entitled to seek exemption from payment of toll in respect of school buses plied by them on the ground that the same are being used for non-commercial purposes; and (iv) whether there is any element of public interest involved in these writ petitions. In order to answer the issues involved in the writ petitions, few facts need mention, which are stated infra.

2. The M.P. Road Development Corporation Ltd. invited the global tender for construction of Rau-Mhow-Mandleshwar road on BOT basis, pursuant to which bid of Mhow Agroh Pathways Pvt. Ltd. (hereinafter referred to as 'the concessionaire') was accepted and a concession agreement (in short 'the agreement') was executed on 28<sup>th</sup> July, 2011. Under the aforesaid agreement, Rau-Mhow-

Jaamghat-Mandleshwar which forms a segment of old National Highway-3 and State Highway-1 was to be constructed. The project road consists of two existing sections, namely, Rau-Gawli Palasia-Mhow forming part of old National Highway-3 having total length of 20.40 kilometres and Mhow-Jaamghat-Mandleshwar forming part of State Highway-1 having length of 54.20 kilometres.

**3.** Admittedly, the project road from Rau-Gawli Palasia-Mhow 20.40 kilometres has been constructed by the concessionaire and under clause 14.3.1 of the agreement, an independent engineer has issued provisional certificate of completion to it on 3.2.2014. It is also not in dispute that pursuant to the aforesaid provisional certificate, the concessionaire has been collecting toll from the users in respect 20.40 kilometres of the project Highway which has been constructed by the concessionaire.

**4.** Learned senior counsel for the petitioners while inviting the attention of this Court to various clauses of the agreement, in particular, clause 14.3.2 has submitted that the concessionaire has no authority under the agreement to collect toll until and unless 75% of the total length of the project road is completed. Clause 15.1 has been brought to our notice and it has been pointed out that the commercial operation date of the project shall be the date on which such completion certificate or provisional completion certificate is issued. While referring to clause 27.1.1, it is argued that on or from the date of commercial operation, the concessionaire shall have the right to collect the fee from the users in accordance with the agreement. It is also urged that

under clause 14.2, upon completion of the construction work, an independent engineer determining the tests to be successful, shall forthwith issue to the concessionaire and the government a certificate substantially in the form set forth in the Schedule, and under clause 4.1.1 the entire length of the project is proposed for reconstruction. Clause 6 of the draft notification has been pointed out to contend that levy and collection of toll on the land or part thereof of homogeneous section shall commence from the date of provisional completion of the project highway in accordance with the provisions contained in the agreement. It is further submitted that for the purpose of collecting toll, the project has been classified in two homogeneous sections and permitting the concessionaire to collect the toll on completion of 20.40 kilometres road, amounts to alteration of the terms and conditions of the contract after its execution. It is also argued that under the agreement, the concessionaire has furnished one bank guarantee as well as performance guarantee, therefore, concessionaire cannot be permitted to collect the toll on completion of part of project which is not even 75% of the total length of the project road, and there cannot be two appointed days/commercial operation dates in respect of one agreement. The project facility forming part of two-lane have to be completed on or before project completion date.

5. It is also highlighted that the commercial operation and maintenance of the project cannot be only for one section i.e. 20.40 km. It is also submitted that by permitting the concessionaire to collect the toll and setting the toll plaza at its present location is an instance of arbitrariness and apparent subversion of the

agreement, after its execution at the implementation stage for extending undue benefit to the concessionaire. It is further canvassed that while ascertaining the location of the toll plaza, the requirement mentioned in clause 10.2 of Schedule 'C' to the agreement has been overlooked and location of toll plaza between three to four kilometres of the project highway has been finalized in contravention of the terms and conditions of the agreement and particularly in view of availability of Government land. It is also urged that by permitting the concessionaire to collect the toll, undue benefit is being extended to him and he is being allowed to repay the amount of loan taken by him without completion of the work. In support of his submissions, learned senior counsel has placed reliance on the decisions in ***Shivajirao Nilangekar Patil v. Mahesh Madhav Gosavi and Others***, (1987) 1 SCC 227, ***Akhil Bhartiya Upbhokta Congress v. State of M.P. and Others***, (2011) 5 SCC 29, ***Krishan Lal Gera v. State of Haryana and Others***, (2011) 10 SCC 529 and ***Soma Isolux NH One Tollway Private Limited v. Harish Kumar Puri and others***, (2014) 6 SCC 75.

6. Mr. Siddharth Gupta, learned counsel for the petitioners in W.P. No.4841/2014, submitted that school buses of the petitioner-society are being plied for facilitating journey of the students and staff and are not being used for commercial purposes therefore, the school buses plied by the petitioners for non-commercial purposes should be exempted from payment of toll. In support of the aforesaid proposition, reliance has been placed on the decision of the Supreme Court in the case of ***M.C. Mehta v. Union of India***, (2000) 9 SCC 519.

7. On the other hand, Mr. P.K. Kaurav, learned counsel appearing for the M.P. Road Development Corporation Ltd. contended that toll is the subject matter covered under Entry 59 of List II of the Seventh Schedule to the Constitution of India. It is further submitted that under Section 2 of the (Indian) Tolls Act, 1851 the State Government has the power to cause levy of toll. It is also pointed out that the State Government in exercise of power conferred by Section 2 read with Section 4 of the aforesaid Act has issued notification dated 31.1.2014 by which the State Government has granted sanction for levy of toll at per trip per vehicle basis for the road or part thereof from the date of issuance of the provisional certificate, which includes the road in question, and clause 7 of the aforesaid notification permits levy and collection of toll on a road or part thereof upon completion/ provisional completion of the construction of the project highway. It is urged that provisional certificate issued by the independent engineer has been issued after inspection of the site on 3.2.2014. While pointing out Annexure I of Schedule 'C' to the agreement, it is urged that for the purposes of tolling, the project is classified as two homogeneous sections to meet the requirement of collection of toll.

8. It is also submitted that clause 48 of the agreement which deals with location of the toll plaza, uses the expression 'ordinarily' which connotes tentative location. Under clause 10.2 of Schedule 'D' to the agreement, the location of the toll plaza has been decided by taking into account the factors mentioned therein after inspection made by the team of independent engineers and one representative each of the Corporation and the

concessionaire. Thus, the location of the toll plaza has been finalized in accordance with the terms and conditions of the agreement. Our attention has been invited to clause 31.3.1 of the agreement and it has been pointed out that the amount collected by way of toll has to be deposited in Escrow account and be appropriated first towards all the taxes due and payable by the concessionaire for and in respect of the project highway. Thus, the amount deposited by way of toll is not to be deposited in the account of concessionaire, but goes to the public exchequer. It is further contended that at the instance of the petitioners, the terms and conditions of the agreement executed between the corporation and concessionaire cannot be interpreted as it may affect the rights of the parties to the agreement. It is further urged that there is no pleading with regard to public interest in the writ petitions, which have been filed as public interest litigations, and the agreement executed between the Corporation and the concessionaire has to be read as a whole. It is also pointed out that notification dated 31.1.2014 has not been challenged by the petitioners. It is also submitted that the decision to issue the provisional completion certificate does not constitute violation of either any provisions of the agreement or law. In support of his submissions, learned counsel for the Corporation has placed reliance on the decisions in ***Raunaq International Ltd. v. I.V.R. Construction Ltd. and Others***, (1999) 1 SCC 492, ***Dr. Ambedkar Basti Vikas Sabha v. Delhi Vidyut Board***, AIR 2001 Delhi 223, ***Jagdish Mandal v. State of Orissa and Others***, (2007) 14 SCC 517, ***Villianur Iyarkkai v. Union of India***, 2010 AIR SCW 4123, ***Rosemerta Technologies v. State of M.P.***, 2014 (I) MPJR 62, ***Soma Isolux HN One Tollway***

**(P) Ltd. (supra), Vinayak V. More v. Maharashtra State Road Development Corporation Ltd.,** (Writ Petition No.3879/1999 decided on 19.1.2000) and decision of the High Court of Kerala in **O.E. Joseph and Others v. National Transportation Planning and others,** [WP (C) No.33522/2007 decided on 22.10.2008]

9. Mr. S.C. Bagadiya, learned senior counsel while supporting the submissions made by Mr. P.K. Kaurav, has urged that there is no element of public interest in these writ petitions and nominal amount is being charged as administrative expenses from local traffic and commuters who travel from Indore to Mhow are not subjected to any toll, but only commercial vehicles are liable to pay toll tax. Therefore, these writ petitions cannot be termed as public interest litigations. It is also submitted that location of toll plaza was finalised after inspection by the team consisting of independent engineers and one representative each of the Corporation and the concessionaire and this Court under Article 226 of the Constitution of India cannot review the decision taken by the team of experts with regard to location of the toll plaza, as the same has neither been shown to be arbitrary nor mala fide. Lastly, it is urged that school buses plied by educational institutions do not fall within the purview of either local traffic or local use as defined in the notification dated 31.1.2014 and therefore, are not entitled for exemption from payment of toll.

10. We have considered the respective submissions made by learned counsel for the parties. Paragraph 1 of Schedule 'A' to the agreement states as under:

“The project road consists of following two existing sections.

1. Rau-Gawli Palasia- Mhow (old NH-3) length - 20.40 Km.
2. Mho-Jaamghat - Mandleshwar (SH-1) length - 54.20 Km.”

Clause 14.3 deals with provisional certificate. Clauses 14.3.1 and 14.3.2 of the agreement read as under:

“ 14.3.1. The independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule- J (the “Provisional Certificate”) if the Tests are successful and the Project Highway can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “Punch List”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Government.

14.3.2 The parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Highway, if at least 75% (Seventy Five per cent) of the total length of the Project Highway has been completed. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.”

The Provisional Certificate as prescribed in Schedule - J to the agreement reads as under:

**“PROVISIONAL CERTIFICATE**

1. I, .... (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ..... (the ‘Agreement’) for development of the .... section (km... to...) of State Highway No. 38 (the ‘Project Highway’) on build, operate and transfer (BOT) basis, through .... (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule – I of the Agreement have been undertaken to determine compliance of the Project Highway with the provisions of the Agreement,
2. Constructions Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the MPRDC or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reason attributable to the Concessionaire,) I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project Highway pending completion thereof.
3. In view of the foregoing, I am satisfied that the Project Highway can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project Highway is hereby provisionally declared fit for entry into commercial operation on this the ... day of .... 200..

ACCEPTED, SIGNED SEALED  
SIGNED SEALED  
AND DELIVERED

ACCEPTED,  
AND DELIVERED

For and on behalf of  
of  
Concessionaire by:  
ENGINEER by:

For and on behalf  
INDEPENDENT

(Signature)  
(Name and Designation)  
Designation)  
(Address)

(Signature)  
(Name and  
(Address)''

**11.** If clauses 14.3.1 and 14.3.2 as well as Schedule 'J' to the agreement are read harmoniously it is evident that the provisional certificate can be issued by an independent engineer on kilometer basis if he is satisfied that the project highway can safely and reliably be placed for commercial operation. Learned counsel for the petitioners were unable to point out any express prohibition in the agreement that provisional certificate cannot be issued in respect of the operating part of the project highway. In the instant case, an independent engineer has issued a provisional completion certificate on 3.2.2014, in which, it is mentioned that the State Highway No. 1 admeasuring 20.40 kilometres in length can safely be placed for commercial purposes for the users thereof. It is relevant to mention here that it is not the case of the petitioners that the aforesaid segment of the project highway is unfit for commercial service of the users or the completion certificate is forged. Therefore, the submission made by learned counsel for the petitioners that concessionaire cannot be permitted to collect the toll unless 75% of the total length of the

project highway is completed, does not deserve acceptance and accordingly, the same is rejected.

**12.** Now, we may deal with the contention of the petitioners with regard to location of the toll plaza. The relevant extract with regard to location of the toll plaza as mentioned in Schedule 'C' reads as under:

“(a) Toll Plazas: The project road is envisaged to be developed on commercial basis. Direct tolling method of revenue generated by constructing user fee plazas have been proposed. Based on the traffic study Two toll plazas are proposed at suitable location given in table below:

Table C-1: Location of Toll Plaza

Sr. No.	Location of Toll Plaza (Design Chainage)	Homogenous Section (Design Chainage)	Length (K m)
	Km 3.000 to Km 4.000	Rau – Mhow (Km 0.00 to Km 20.50)	20.50
	Km. 63.000 to 64.000	Mhow – Mandleshwar (Km 20.50 to 74.40)	54.00

For the purpose of tolling, the project is classified as two homogeneous sections to meet the requirement of toll notification. The toll plaza shall be provided as per standard set-forth in Schedule 'D' having all facilities like lighting, water supply and fire fighting system etc. Exact location of toll plaza between the specified chainage will be finalized as per clause 10.2 of Schedule 'D'. The land required for toll plaza shall be assessed by Concessionaire and agreed to by MPRDC.”

“Toll Plaza” means the structures and barriers erected near each of the two ends of the Project Highway for the purpose of regulating the entry and exit of the vehicles in accordance with the provisions of this Agreement and shall include all land, buildings, equipment, and other facilities required in accordance with or incidental to the provisions of this Agreement; provided that such Toll Plaza(s) shall not ordinarily be located within a distance of 10 (ten) kilometers from the limits of the municipal or local area of the nearest city or town respectively, as applicable on the date of this Agreement, and shall be situated at location(s) specified in the Bid or within a distance of 1 (one) kilometer thereof.

Clause 10.2 of Schedule ‘D’ to the Agreement reads as under:

“10.2 Location of Toll Plaza

The location of toll plaza is indicated in Schedule – C of the Concession Agreement. Their exact locations shall be decided keeping in view the following factors:

- (i) Land availability,
- (ii) Stream of traffic on Toll Plaza,
- (iii) Visibility for the approaching traffic,
- (iv) Reasonably away from road intersections and/or rail crossings,
- (v) Free from risk of flooding and submergence, etc.”

**13.** Thus, from perusal of Schedule ‘C’ and Clause 10.2 of Schedule ‘D’ it is evident that under Schedule ‘C’ to the agreement, location of the toll plaza is proposed whereas exact location has to be finalized by taking into

account the factors mentioned in clause 10.2 of Schedule 'D'. It is well settled in law that the courts should show deference to the decision taken by the experts and no endeavour should be made to sit in appeal over the decisions of the experts unless mala fide is alleged. [See: **Basavaiah (Dr.) v. Dr. H.L. Ramesh and Others**, (2010) 8 SCC 372 ] The courts in exercise of power of judicial review would not interfere with the decision of an authority unless the same is found to be arbitrary and it is best left to the decision of the expert body. [See: **MIG Cricket Club v. Abhinav Sahakar Education Society and Others**, (2011) 9 SCC 97 and **Union of India and Another v. Talwinder Singh**, (2012) 5 SCC 480] In the instant case, the site was inspected by a team consisting of three independent engineers, one representative each of the Corporation and concessionaire on 13.11.2013 and an inspection note (Annexure R-3) was prepared. The aforesaid team inspected the site and found that if toll plaza is constructed between km. 3 to 4 of the project highway the crossing/approach road of the colonies/villages will be interrupted and a lot of 'pucca' structure would be required to be demolished. It was further found that the said stretch of the road is densely populated and in future it will become denser, resulting in environment problems to the residents. It was further noticed that no additional land is available for construction of toll plaza complex and other facilities like office building, medical aid post and traffic aid post between km. 3 to 4 of the project highway. The team finalised the location of the toll plaza between km. 0 to 1 of the project highway after taking into account the following factors:

- “(1) At this location there is a link road with NH-3 New Bypass having right of way 40 m.  
 (2) There is no any habitation along the road.  
 (3) Area from Ch. 3.0 to Ch. 4.0 is highly populated. It is not advisable to locate toll plaza in thickly populated area due to environment problem.  
 (4) There is no intersection with any minor road of village/ residential colony.  
 (5) There is no high tension line or such hindrance.  
 (6) If toll plaza is constructed between km. 0 to 1 there will be minimum area of land acquisition.  
 (7) The traffic intensity between km 0 to 1 and between km. 3 to 4 is the same.”

Thus, from the above narration of the facts, it is graphically clear that the team of experts has taken into account the factors enumerated in clause 10.2 of Schedule 'D' to the agreement and has decided to construct the toll plaza between km. 0 to 1 instead of km. 3 to 4 of the project highway. The decision with regard to location of the toll plaza has been arrived at by the experts after taking into account the relevant factors mentioned in the agreement. The fixation of alignment and identification of the spot for location of Toll Plaza are the matters within the domain of the authority mentioned in the agreement and this court in proceeding under Article 226 cannot sit in appeal over the decision of fixation of the alignment and the identification of the spot for locating the Toll Plaza. Therefore, it would be better for us to leave the decision to experts who are familiar with the issue to decide the location of toll plaza.

**14.** In the case at hand, the petitioners have not alleged any mala fide on the part of the respondents while

deciding the location of the toll plaza. The petitioners have also not been able to demonstrate any arbitrariness on the part of the respondents in deciding the location of the toll plaza. Accordingly, we do not find any fault with the decision of the respondents with regard to location of the toll plaza at its existing place.

**15.** The State Government in exercise of power under Section 2 read with Section 4 of the Indian Tolls Act, 1851 has issued a notification dated 31.1.2014. Paragraph 4 of the aforesaid notification deals with exemption from payment of toll. The relevant extract of the aforesaid paragraph reads as under:

“4.....For the purpose of such exemption, Local Traffic will mean the traffic on account of commuting by a private Car/Jeep or equivalent vehicle by means of the Project Highway; provided that such private care is owned by a person who resides within a distance of 20 (twenty) Km. from the Toll Plaza; provided that any vehicle that uses the part of Project Highway but crosses more than one Toll Plaza will not be reckoned as Local Traffic.....”

Similarly expression ‘local user’ has been defined in the agreement as under:

“Local User” means a person using a vehicle registered for non-commercial purposes and used as such for commuting on a section of the Project Highway, provided that (a) such vehicle is owned by a person who resides within a distance of 20 km (twenty kilometers) from the nearest toll plaza; (b) its use of such section of the Project Highway does not extend beyond a Toll Plaza other than such nearest Toll Plaza; and (c) such section of the Project Highway has

no service road or alternative road; and shall include a vehicle that uses a section of the Project Highway but does not cross a Toll Plaza.”

**16.** Paragraph 11 of the agreement deals with the categories of vehicles which are exempted from payment of toll. It reads as under:

“11. The State Government further declares that following categories of vehicle will be exempted from payment of toll while crossing these roads:-

- (1) All vehicles belonging to the Government of India, Government of Madhya Pradesh and those on Government duty.
- (2) Vehicle belonging to the Hon'ble Member of Parliament and Member of Legislative Assembly.
- (3) All vehicles belonging to the Indian Army on duty.
- (4) Ambulances.
- (5) Fire Brigades.
- (6) Vehicles belonging to the Indian Posts and Telegraph Department.
- (7) Vehicles belonging to Ex-Member of parliament and Member of Legislative Assembly.
- (8) Tractor-Trolleys used for agriculture purpose.
- (9) Auto Rickshaws, Two Wheeler and Bullock carts.
- (10) Freedom fighters and accredited journalists.”

**17.** Thus, it is apparent, the buses plied by the petitioners in W.P. No.4841/2014 are not covered under the exemption clause either in the notification or under the agreement. Besides that validity of the notification dated 31.1.2014 is not under challenge in the aforesaid

writ petition. The decision relied upon by learned counsel for the petitioners in ***M.C. Mehta(supra)*** has no application to the facts of the case. The petitioners charge the users for commuting the buses and toll road is used by the buses of the petitioners like all other buses therefore, buses plied by the petitioners are not entitled to any exemption from payment of toll.

**18.** The expression 'public interest' has been defined in Oxford English Dictionary as "the common well being ...also public welfare". In Strouds Judicial Dictionary, Vol. IV (4<sup>th</sup> Edn.) 'public interest' is defined thus:

"Public interest- 1. A matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected." (Per Cambel C.J. in R. v. Bedfordshire, 24 LJ QB 84)

In Black's Law Dictionary (6<sup>th</sup> Edn.) 'public interest' is defined as follows:

"Public Interest - Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government...."

**19.** In ***Dattaraj nathuji Thaware v. State of Maharashtra and Others***, (2005) 1 SCC 590 it has been

held by the Supreme Court that public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It has further been held that the court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. Similar view has been reiterated by the Supreme Court in the case of ***State of Uttaranchal v. Balwant Singh***, (2010) 3 SCC 402.

**20.** On the touchstone of the aforesaid well settled legal principles, we may again advert to the facts of the case. Admittedly, it is not the case of the petitioners that segment of Project Highway 20.40 kilometres has either not been constructed or is not in pliable condition. It is also not the case of the petitioner that they are compelled to pay toll in respect of the road which has not been constructed. From perusal of clause 4.1 of the agreement, it is evident that the amount collected by way of toll has to be deposited in Escrow account and has to be appropriated first towards all the taxes due and payable by the concessionaire for and in respect of the project highway. The construction of the Project Highway is in public interest and the amount which is realized by way of toll is being appropriated towards the amount due to the Corporation, which has given subsidy to the concessionaire. It is also pertinent to mention here that shifting of location of the toll plaza from km. 0 to 1 kilometer instead of km. 3 to 4 of the project Highway is

beneficial to the local users. Besides that, only nominal amount of Rs.50 (Rupees Fifty) is being charged as administrative expenses from local traffic, and commuters who travel from Indore to Mhow are not subjected to toll, but only commercial vehicles are liable to pay toll. Therefore, we have no hesitation in holding that there is no element of public interest in these writ petitions. The Supreme Court in ***Orix Auto Finance (India) Ltd. v. Jagmander Singh and Another***, (2006) 2 SCC 598 has held that scope of interference in public interest litigation with regard to contractual matters is practically non-existent. It is equally well settled legal proposition that though the courts, at times, may overlook the technicalities coming in the way of issuance of any direction which may conflict with or jeopardize public interest, but such power cannot be allowed to affect the contractual agreement itself. [See: ***Soma Isolux HN One Tollway (P) Ltd. (supra)***] Therefore, we refrain ourselves from expressing any opinion with regard to interpretation of terms and conditions of the agreement except as already stated hereinabove.

**21.** In view of the preceding analysis, we do not find any merit in the writ petitions. The same fail and are hereby dismissed. However, there shall be no order as to costs.

(A.M. Khanwilkar)  
Chief Justice

(Alok Aradhe)  
Judge