Reportable

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 1668/2002
CNR: RJHC010194892002 | URN: CW / 4892U / 2002

1. Mohd. Sharif, Advocate aged 35 years S/o Shri Abdul Karim Choudhary, R/o Jama Masjid Road, Makrana, District Nagaur, Rajasthan.
2. Mustaq Ahmed S/o Shri Suleman Sisodya, aged 48 years, R/o Bari Idgah Road, Makrana, District Nagaur, Rajasthan

----Petitioners

Versus

1. State of Rajasthan through Secretary to the Government, Public Works Department, Government of Rajasthan, Jaipur, Rajasthan

2.1 Chief Engineer-cum-OSD, PWD, Rajasthan, Jaipur, Rajasthan

2.2 Chief Engineer (Roads)/(NH), PWD, Rajasthan, Jaipur, Rajasthan

3. M/s. Roop Rajat Construction, 8 Krishna Nagar, Pali Road, Jodhpur, Rajasthan (Partnership firm formed on 13.09.2000)
4. M/s Roop Rajat Construction (P) Ltd., 8 Krishna Nagar, Pali Road, Jodhpur
5. M/s Roop Rajat Construction, 8 Krishna Nagar, Pali Road, Jodhpur, Rajasthan (Partnership firm formed on 11.10.2001)
6. M/s Jai Baba Construction Company, A-302, Maharaja Apartment, Bani Park, Devi Marg, Jaipur, Rajasthan.

----Respondents

For Petitioner(s)	:	None present.
For Respondent(s)	:	Mr. Deepak Chandak for Mr. B.L. Bhati, AAG Mr. Aishwarya Anand, DGC Mr. Rakesh Sharma for Mr. Rajesh Panwar, Sr. Advocate-cum-AAG

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR
HON'BLE MR. JUSTICE SAMEER JAIN

JUDGMENT

DATE : 16/09/2026

Sanjay K. Agrawal, CJ:

1. The Larger Bench so constituted is called upon to adjudicate and determine the substantial question of law which came to be formulated and referred for consideration pursuant to the order dated 05.11.2003. The said substantial question of law, as formulated in the aforesaid order, is reproduced hereinbelow for the sake of ready reference:-

"The question involved in the instant case pertains to the interpretation of Section 20 of the Rajasthan Motor Vehicles Taxation Act, 1951. The issue is of vital importance and has large-scale implications.

In the circumstances, we consider it appropriate to refer the matter to Larger bench of this Court. We order accordingly. Learned counsel for the parties shall be at liberty to raise all their pleas before Hon'ble the Larger bench of this Court."

2. None has marked presence qua the petitioners to put forth their contentions.

3. The undisputed facts, as emerging from the pleadings and the record of the present case, are that a Public Interest Litigation under Article 226 of the Constitution of India came to be preferred by the petitioners, who are practicing advocates at Makrana. The subject matter of the litigation pertains to the improvement of the road

namely, Manglana–Makrana–Borawar–Bidiyad Road (hereinafter referred to as "the project").

4. The Government of Rajasthan, through its Public Works Department, issued a Notice Inviting Tender (hereinafter referred to as "NIT") dated 31.08.2000, inviting bids for the development of the aforesaid project on Build-Operate-Transfer (hereinafter referred to as "BOT") basis. The Government of Rajasthan, in furtherance of its policy, expressed its desire to entrust the construction of State roads to private entrepreneurs under the liberalized economic policy of the State as well as the Central Government, having regard to the limited availability of resources, both in terms of finances and infrastructural expertise.

5. Pursuant to the aforesaid NIT dated 31.08.2000, the entire finances required for execution of the project were to be arranged by the entrepreneur/successful bidder. The successful bidder was to be permitted to recover the investment so made through levy of toll tax upon the users of the facility, at such rate as may be fixed by the Government. The total period of concession was stipulated to commence from the date of handing over of the land for the project/site and was to continue until recovery of the entire amount spent on the project or till the expiry of the period of concession, as the case may be.

6. As borne out from the petition as well as the record, the period of concession was to come to an end on 27.09.2011 and was stipulated to run for a period of 125 months. The period prescribed for construction, of the project, in the agreement inter-se the parties was in-between 01.04.2001 and 31.03.2002; however, as the work order came to be issued on 27.04.2001, the said period was directed to be in-between 28.04.2001 and 27.04.2002.

7. The present Public Interest Litigation came to be instituted seeking, *inter alia*, the following reliefs/prayers and alternative prayers:-

"It is, therefore, humbly prayed that the writ petition may kindly be accepted and by a suitable writ, order or direction:

(a) The entire project may be declared illegal, void and against the provisions of law.

(b) In the alternative, the project may be directed to be amended having regard to following points:

(i) The respondent entrepreneurs should be allowed to recover toll tax only upto the period when actual investment made by them is recovered. Other receipts accruing to the respondent entrepreneurs must be taken into account in this respect.

(ii) The investment actually made by the respondent entrepreneurs should be determined by independent agency /committee formed in this respect having representatives of State Government as well as general public.

(iii) There must be a proper control and monitoring of actual collection of toll tax, other receipts, expenditure incurred on

collection, maintenances etc. In such control and monitoring work there must be proper representation of State Government, general public, various associations etc.

(iv) Rate of interest should be fixed on the basis of current market rate. Interest on such rate should be allowed only on actual investment made during construction period. Further interest on such rate should be allowed only on actual recoverable investment determined by the independent agency/committee in accordance with the notification dated 27/10/1994.

(v) The maximum period for the recovery of toll tax and maximum recoverable investment must be determined on the basis of reasonable estimates/values

(vi) Provision for 'service road must be made effective and on such service road local light traffic must be allowed to ply without payment of any toll tax.

(vii) The compensation clause in the agreement and terms and conditions must be reconstructed as pointed out above.

(viii)Notification dated 27/10/1994 as well as the notification of Central Government (as stated in Ground 'K' above) may be declared to be void to the extent pointed out above.

(ix) Toll-plazas should be allowed to be established only at the starting point and end point ie, at kms. 400/0, 415/0 and 6/0 which are corner points of the road constructed in the project.

(x) There must be proper monitering of maintence work in future and as per standard provided for.

(c) Any other relief, which may kindly be deemed just and expedient in the facts and circumstances of the case, may kindly be granted.

(d) Cost of this writ petition may be allowed."

8. From a perusal of the pleadings, it transpires that the writ petition was instituted, *inter alia,* on the following grounds that the delegation of the right to collect toll tax for a fixed period of 125 months is void and illegal, inasmuch as there exists an inconsistency between the relevant enactment and the delegation so made; that, if the respondent-entrepreneurs are permitted to recover toll tax for a period of 125 months, the same would amount to delegation of a sovereign function and would, therefore, suffer from the vice of unreasonableness.

9. It is also stated that in the facts of the present case, there has been excessive delegation of authority, rendering the same void and illegal; that the impugned arrangement is in contravention of the general rule embodied in the maxim *delegatus non potest delegare,* and that such alleged contravention also reflects mala fide intention on the part of the authorities of the State Government.

10. Further, that the manner in which the repayment period of 125 months has been determined is perverse; that the respondents ought not to be permitted to recover toll tax in excess of the amount actually invested by them in the project, subject to the maximum amount of Rs.582.93 lacs determined by the State Government, apart from the other grounds urged in the writ petition; that the other incomes and receipts arising from the project ought also

to be taken into consideration while determining the period of concession; that the stipulation providing for payment of compensation to respondent Nos.4 and 5 is highly unfair and otherwise bad in law.

11. *Per contra,* learned counsel appearing for the respondents, on the other hand, have vehemently opposed the maintainability of the writ petition and have, apart from contesting the petition on merits, raised the following objections and submissions.

12. It is submitted that the contract in question was executed in the year 2001; that the construction period came to an end in the year 2002; and that the period of concession itself came to an end in the year 2011. Therefore, having regard to the nature of the challenge raised by the petitioners and the reliefs prayed for in the writ petition, the controversy has, by efflux of time and supervening events, ceased to present any live or subsisting issue for adjudication. The controversy has consequently become infructuous and the questions raised therein have been reduced to matters of academic importance.

13. It is, therefore, urged that this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, ought ordinarily to refrain from adjudicating upon such questions in the absence of any subsisting *lis* or effective relief capable of being granted, and may leave the questions of law open for consideration

in an appropriate case where the same arise for effective adjudication.

14. In support of the aforesaid submission, reliance has been placed upon the a catena of judgments delivered by their Lordships of the Supreme Court, *inter alia*, **Sanjeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd.**[1], **Bhut Nath Mete v. State of West Bengal**[2], **Kusum Ingots & Alloys Ltd. v. Union of India**,[3] **The State of Bihar v. Rai Bahadur Hurdut Roy Moti Lal Jute Mills & Ors.**[4], **and Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi**[5]**.** The principle underlying the aforesaid ratios is that a constitutional court ordinarily does not decide an abstract, hypothetical or academic question when the determination thereof would have no effective bearing upon the rights or obligations of the parties before it.

15. In **Rai Bahadur Hurdut Roy Moti Lal Jute Mills & Ors.** (supra), their Lordships of the Supreme Court observed that where the admitted or proved facts do not attract the impugned provision, there would be no occasion to decide the constitutional issue, and any decision on such question would be purely academic. The Court, therefore, emphasised that courts should be reluctant to decide constitutional points merely as matters of academic importance.

1 AIR 1983 SC 239
2 AIR 1974 SC 806
3 AIR 2000 SC 954
4 AIR 1960 SC 378
5 (1987) 4 SCC 161

16. Likewise, in Sanjeev Coke Manufacturing Co. (supra), the Supreme Court expressed serious reservations about answering academic or hypothetical questions and observed that courts are not authorised to make "disembodied pronouncement" on serious questions without the controversy being properly placed before them in a real *lis*. The Court further observed that it is inexpedient for a constitutional court to enter into questions which do not arise for effective adjudication.

17. The principle was also reiterated in Dhartipakar Madan Lal Agarwal (supra), wherein their Lordships of the Supreme Court held that a court should not undertake to decide an issue unless it remains a living issue between the parties and that, where an issue is purely academic and its determination would have no impact upon the position of the parties, judicial time ought not to be expended in deciding such an issue.

18. It is further submitted by learned counsel for the respondents that the controversy essentially arises out of a policy decision taken by the State Government in the sphere of economic and infrastructural development and, therefore, the scope of judicial review in respect thereof is limited. It has further been submitted that the policy decision under challenge is neither vitiated by *mala fides* nor by arbitrariness. It is contended that, under the BOT mechanism, upon the successful bidder making the

requisite investment in the project, the bidder is permitted to recover the investment by way of toll for a stipulated period, such period having been calculated and determined on the basis of scientific criteria and having statutory recognition under the Indian Tolls Act, 1851 (hereinafter referred to as "the Tolls Act") read with the Rajasthan Motor Vehicle Taxation Act, 1994 (hereinafter referred to as "the Taxation Act"), more particularly Section 20 thereof, which, according to the respondents, is also in consonance with the mandate contained in Article 265 of the Constitution of India.

19. It is further submitted that the controversy raised by the petitioners involves disputed questions of fact concerning the quantum of capital actually invested, the return thereon and the alleged under-realisation or over-realisation of toll. Such questions cannot appropriately be determined in exercise of the writ jurisdiction of this Court, particularly when the petitioners have not placed before the Court any material capable of establishing the precise financial aspects of the transaction.

20. It is lastly contended that the present proceedings, styled as a Public Interest Litigation, no longer retain the character of a genuine subsisting public interest dispute, particularly in view of the efflux of time and the completion of the project and concession period. It has also been submitted that the petitioners have not evinced

any interest in prosecuting or addressing the Court on the merits of the controversy and that continuation of the proceedings would, therefore, amount to an abuse of the process of the Court.

21. We have considered the submissions advanced by learned counsel for the respondents, have carefully perused the record and the written submissions submitted by Shri Devesh Tripathi, Advocate. The Larger Bench is called upon to examine the substantial question of law which was formulated and referred for consideration. However, before undertaking an adjudication upon the said question, it becomes necessary to examine whether the controversy continues to present a live and subsisting *lis* between the parties and whether any effective relief can, in the facts as they stand today, be granted to the petitioners.

22. The undisputed factual position emerging from the record is that on 27.10.1994, a notification came to be issued under the Indian Toll Act read with the Taxation Act, providing for collection of toll pursuant to the liberalised policy of the Government. The validity of the said notification has not been challenged in the present proceedings.

23. It is further an admitted position that the NIT for the project was issued on 31.08.2000. The period prescribed for construction, of the project, in the agreement *inter se*

the parties was in-between 01.04.2001 and 31.03.2002; however, as the work order came to be issued on 27.04.2001, the said period was directed to be in-between 28.04.2001 and 27.04.2002, whereas the concession/toll collection period was stipulated to be 125 months.

24. As borne out from the record and the facts stated hereinabove, the concession period ultimately came to an end on 27.09.2011. Thus, the contractual period in respect of which the principal challenge has been raised has already expired long ago.

25. It is equally significant that none of the petitioners has appeared before the Court to advance submissions in support of the writ petition (apart from a set of brief written submissions as mentioned above), either during the earlier proceedings or after constitution of the Larger Bench. No material has been brought to our notice which may demonstrate that, notwithstanding the expiry of the contractual and concession period, any effective or executable relief survives for consideration in the present proceedings.

26. The aforesaid factual position assumes significance in the light of the settled principle that a constitutional court does not ordinarily pronounce upon a question of law in a factual vacuum, particularly where the answer would neither alter the position of the parties nor result in any effective relief.

27. The principle has been succinctly expressed by the Supreme Court Rai Bahadur Hurdut Roy Moti Lal Jute Mills & Ors. (supra), wherein it was observed that if the admitted or proved facts do not attract the impugned provision, there is no occasion to decide the constitutional issue and any decision thereon would be purely academic. Similarly, in Sanjeev Coke Manufacturing Co. (supra), the Supreme Court observed that it is but right that no important point of law should be decided without a proper *lis* between parties properly ranged on either side and a crossing of the swords. The Court further observed that it is inexpedient for the Apex Court to delve into problems which do not arise and express an opinion thereon. The principle is even more directly applicable to the present case in view of the observations made in Dhartipakar Madan Lal Agarwal (supra), wherein the Supreme Court held that a court should not undertake to decide an issue unless it remains a "living issue" between the parties. The Court further observed that where an issue has become purely academic and its determination would have no impact upon the position of the parties, judicial time ought not to be occupied in deciding such an issue.

28. The aforesaid principle is not founded merely upon considerations of convenience but flows from the very nature and purpose of judicial adjudication. Courts exercise jurisdiction for determination of rights and obligations arising from a live controversy. The judicial

power is not ordinarily exercised for rendering an abstract opinion upon a question which, by reason of subsequent events, no longer requires determination for granting any effective relief.

29. The maxim *ubi jus ibi remedium* - where there is a right, there is a remedy, presupposes the existence of a subsisting right requiring judicial protection. Conversely, where the controversy itself has ceased to survive and no effective relief can follow from the adjudication, the exercise of judicial power to pronounce upon such an issue would serve no practical purpose. The doctrine may also be viewed in the light of the settled principle that the Court does not ordinarily decide a question in the abstract or render an advisory opinion in the absence of a live controversy. The Court is concerned with adjudicating the dispute actually brought before it and not with answering questions merely because they may have assumed legal significance in the past.

30. In the present case, the position is somewhat more compelling. The NIT was issued on 31.08.2000; the work order was issued on 27.04.2001; the construction period came to an end in the year 2002; and the concession/toll collection period of 125 months came to an end on 27.09.2011. The very contractual arrangement which forms the foundation of the petitioners' challenge has, therefore, ceased to operate. Consequently, the reliefs

sought by the petitioners, insofar as they relate to the continuation or regulation of the concession period and collection of toll under the aforesaid arrangement, cannot now have any operative effect. The passage of time has intervened in such a manner that the controversy has ceased to be one capable of yielding any meaningful or effective relief in the present proceedings. The Court is required to mould its process in aid of justice and not to undertake an exercise which, owing to subsequent events, has become purely academic.

31. We are conscious of the fact that the question referred to the Larger Bench is a substantial question of law and that ordinarily a question so referred would require consideration. However, the mere formulation or reference of a substantial question of law does not, by itself, compel the Court to pronounce upon the same irrespective of subsequent events which have rendered the controversy academic. The jurisdiction of the Court is exercised in the context of an existing *lis*. Where the *lis* itself has ceased to survive, the Court must necessarily consider whether an adjudication upon the referred question would have any consequential effect upon the rights of the parties. If the answer is in the negative, the Court would ordinarily be justified in leaving the question open to be considered in an appropriate case where the controversy is live and the determination of the question is necessary for effective adjudication.

32. This approach also accords with the settled judicial discipline that courts should not decide more than what is necessary for determination of the controversy before them. The maxim *judicis est judicare secundum allegata et probata,* meaning the judicial function is to decide according to the matters alleged and proved, underscores the necessity of adjudicating a concrete controversy on the basis of the facts obtaining before the Court. In the present case, the absence of any subsisting concession period, coupled with the completion of the contractual arrangement in the year 2011, renders the reliefs sought by the petitioners incapable of meaningful implementation at this stage. The petitioners have also not appeared to assist the Court in demonstrating any surviving cause of action or any continuing prejudice which may warrant adjudication of the referred questions.

33. Thus, what may have constituted a live controversy at the time when the petition was instituted has, by passage of time and supervening events, ceased to retain its original character. The Court cannot overlook the subsequent events which have rendered the controversy academic merely because the matter had earlier been referred for consideration by a Larger Bench.

PARTING NOTE

34. The mere pendency of a reference for a long period cannot by itself justify adjudication of an otherwise

academic question. The Court must first ascertain whether a live lis survives and whether determination of the referred question would have any operative consequence in the present proceedings. Where subsequent statutory developments, efflux of time and intervening circumstances have extinguished the controversy, the question ought to be left open for determination in an appropriate case where its adjudication would have an actual legal consequence.

35. Therefore, in view of the aforesaid discussion and keeping in view the law laid down by the Supreme Court in Rai Bahadur Hurdut Roy Moti Lal Jute Mills & Ors. (supra), Sanjeev Coke Manufacturing Co. (supra) and Dhartipakar Madan Lal Agarwal (supra), we are of the considered view that the substantial questions of law, though arising from the controversy which existed at the relevant point of time, have, in the facts and circumstances obtaining today, become matters of academic importance. The Supreme Court has consistently cautioned against deciding questions which have ceased to constitute a live controversy. In the present case, much water has flown under the bridge. The contractual arrangement was concluded long back; the construction period stood completed in the year 2002; and the concession/toll collection period came to an end in the year 2011. The cause which constituted the foundation of the Public

Interest Litigation has, therefore, ceased to subsist in its original form.

36. We accordingly hold that, in the peculiar facts and circumstances of the present case, no useful purpose would be served by undertaking an adjudication upon the substantial questions of law in the absence of a subsisting and effective controversy between the parties. The questions referred to the Larger Bench are, therefore, left open to be considered in an appropriate case where the same arise for effective adjudication upon a live controversy and the determination thereof is necessary for granting consequential relief.

37. It is clarified that leaving the substantial questions of law open shall not be construed as an expression of opinion, either way, on the merits of the said questions. All contentions in that regard are expressly kept open. Consequently, in view of the subsequent events and the fact that the contractual and concession period had come to an end long back in the year 2011, the present writ petition has become infructuous and the controversy surviving therein is of academic importance.

38. The writ petition is, accordingly, **disposed of**, leaving the substantial questions of law open for consideration in an appropriate case, if and when such questions arise for effective adjudication upon a live and subsisting

controversy. Pending applications, if any, shall stand disposed.

(SAMEER JAIN),J. (VINIT KUMAR MATHUR),J. (SANJAY K. AGRAWAL),CJ

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