

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

(Under Article 137 of the constitution of India).

REVIEW PETITION (CIVIL) No.                      of 2021

in

Civil Appeal No.3992 of 2020  
(arising out of SLP(C) 18585 of 2020)

(Arising out of order dated 08-12-2020 passed by this Hon'ble Court in Civil Appeal Nos. 3976-3977 of 2020 as a Common Order/Judgment passed along with Civil Appeal 3992 of 2020 and 23 other Civil Appeals)

**BETWEEN**

POSITION OF PARTIES  
HIGH COURT / THIS HON'BLE COURT

1).YuvarajS(M/42)  
S/oN.V.Soundararajan  
6/192 MariammankoilStreet  
Masinaickenpatti  
Ayodhyapattanam(Post)  
Salem, TN- 636103

Petitioner

Pettitioner

**VERSUS**

1). Union of India  
Rep. by its Secretary  
Ministry of Road Transport and Highways  
Transport Bhavan  
1, Parliament Street  
New Delhi – 110001

Resp No.1

Contesting  
Resp No.1

2). Chairman  
National Highways Authority of India  
G-5 & 6, Sector – 10  
Dwarka  
Tiruppur Corporation.  
Tiruppur. Tamil Nadu.

Resp No.2

Contesting  
Resp No.2

3). The Comptroller and  
Auditor General of India  
Pocket – 9, DeendayalUpadhyay Marg  
New Delhi – 110124

Resp No.3

Contesting  
Resp No.3

4). State of Tamil Nadu

Rep. by its Chief Secretary Fort St. George Chennai, TN – 600009	Resp No.4	Contesting Resp No.4
5). State of Tamil Nadu Rep. by its Secretary Highways and Minor Ports Department Fort St. George Chennai, TN – 600009	Resp No.5	Contesting Resp No.5
6). State of Tamil Nadu Rep. by its Secretary Revenue Department Fort St. George Chennai, TN – 600009	Resp No.6	Contesting Resp No.6
7). M/s Feedback Infra Pvt. Ltd. Rep. by its Managing Director 15 <sup>th</sup> Floor, Tower 9B DLF Cyber City – Phase III Gurugram, Haryana – 122002	Resp No.7	Contesting Resp No.7

**PETITION UNDER ARTICLE 137 OF THE CONSTITUTION OF INDIA**

TO,

The Hon'ble Chief Justice of India  
and his Companion Judges of the  
Hon'ble Supreme Court of India.

The Review Petition of the Petitioner above named

**MOST RESPECTFULLY SHOWETH:-**

**1.** The Petitioner most respectfully submits this Petition seeking Review of the Order dated 08-12-2020 passed by this Hon'ble Court in Civil Appeal No. 3992 of 2020 (arising out of SLP (C) 18586 of 2020) in the challenge against the Impugned Judgment and Order dated 08-04-2019 passed by the Hon'ble Madras High Court in Writ Petition WP.No. 21242 of 2018 as a Common Judgment along with and over 16 other Writ Petitions.

1a. Statements in terms of 3(5) of SCR 2013:

The petitioner submits that, against the afore said impugned order of this Hon'ble Court, no letters patent appeal, or writ appeal lies before the Supreme court for remedies except before this Hon'ble Court for review.

**2. QUESTIONS OF LAW**

Short substantial questions of law that arises before this Hon'ble Court for consideration is that:

- (a) Whether the violations of the larger policy (Bharatmala-I) by the 1<sup>st</sup> Respondent requires Judicial Review of Public Policy as per the law laid down by this Hon'ble Court in the 2007 Delhi Development Authority case reported in 2008 (2) SCC 672?
- (b) Whether the acts of the 1<sup>st</sup> Respondent beyond the powers delegated requires Judicial Review of Public Policy as per the law laid down by this Hon'ble Court in the 2007 Delhi Development Authority case reported in 2008 (2) SCC 672?
- (c) Whether the acts of the Respondent in the inclusion of /replacement with the Chennai-Salem Expressway project under the present facts and circumstances detailed form a "declared change in Policy" that was supported by reason and whether that declared change in policy was done fairly and was NOT done acting with any ulterior motive or arbitrarily as per decisions of this Hon'ble Court in the 1980 Col. A.S.Sangwan case and 2003 Cipla Case?
- (d) Whether a mere decision to form a green-field road/highway/national highway taken in a committee meeting makes it a policy decision in "public purpose" when it can yet be

in violation of law laid down on "public purpose" by this Hon'ble Court in the DwarkadasMarfatia and Sons case reported in 1989 (3) SCC 293 and in the 2011 RadhyShyam's case 2011(5) SCC 553?

- (e) Whether "Highways" forms a separate form of communication not specified in the State List and Concurrent List and over which the Union gets legislative competence on the strength of Entry 97 of the Union List when Entry 13 of the State List provides that States get the legislative competence over all forms of communication like roads that which are not specified in the Union List?
- (f) Whether "Highway" in the expression in Entry 23 of the Union List ought to be given the meaning in the commonsense point of view as understood by common people for whom the Constitution is made and, in terminology as understood by the framers of the Constitution as required under the law laid down by the 7-Judge Constitution Bench of this Hon'ble Court in Synthetics and Chemicals Ltd. Case reported in 1990 (1) SCC 109?
- (g) Whether interpretation of "Highway" in the expression in Entry 23 of the Union list must be as they are and NOT as what they are capable of or able to become (plain land / non-existent road becoming Highway) in conformity with the law laid down by this Hon'ble Court in the 7-Judge Constitution Bench in Synthetics and Chemicals Ltd. Case that specifically EXCLUDED industrial alcohol capable of human consumption as tyres, etc. and denatured spirit capable of being converted as alcohol fit for human consumption from coming under the entry "Alcoholic liquors for human Consumption" under the State List and Specifically interpreting it to be only such alcoholic liquor which, as it is, is consumable in the sense capable of being taken by human beings as such as beverage of drinks?
- (h) Whether Art.257 specifically provides for the Union's Executive Powers w.r.t. roads only in a limited set of circumstances and

therein eliminates the power to lay green-field roads that are not for national or military importance?

- (i) Whether "matters connected therewith" in the expression "An Act to provide for the declaration of certain highways to be national highways and for matters connected therewith" in the Objects and Preamble of the National Highways Act, 1956 refers to matters subsequent to the declaring of an existing highway to be a national highway, like acquiring land and building it to the standards and specifications of a National Highway as prescribed by Indian Road Congress under the 1<sup>st</sup> Respondent and its operation and maintenance and NOT for acquiring land to build a green-field road/highway/national highway?
- (j) Whether "Highways" referred to in Sec.2(2) of the National Highways Act, 1956 refers to an existing road/highway and NOT plain land / non-existent road?
- (k) Whether Sec.3A(1) Notification of intent to acquire land for building, maintenance, management or operation of a National Highway is meant for the purpose of upgrading the highway declared to be a national highway to the standards and specifications of a National Highway (Right of way, Carriageway, Median, Shoulders, etc.,) as prescribed by Indian Road Congress under the 1<sup>st</sup> Respondent, by acquiring land necessary for that purpose or for building a green-field road/highway/national highway?
- (l) Whether the Competent Authority (from the State Executive machinery, for Land Acquisition purpose) is Competent to decide on the question of stated "Public Purpose" in the land acquisition given that the Statute only requires for the Competent Authority to enquire into objections to the use of the land for the "purpose mentioned in the Sec.3A(1)" Notification and more rationally because the office of the Competent Authority is not equipped to enquire into a stated "Public Purpose" without the data the

Competent Authority has no access to and without the powers vested under protocol / hierarchy in Administration?

(m) Whether the Comptroller and Auditor General, a Constitutional Authority, with the mandate to Audit the Respondents and their projects as in the instance case, in exercise of its powers under Art.149, Sec.14 of the CAG (Duties, Powers and Conditions of service) Act, 1971 and the Guidelines of CAG Public Audit Guidelines on PPP in Infrastructure Projects failed its role to Audit the Respondents and the project formulation and approval stages?

(n) Whether the violations of various applicable Guidelines have the effect of arbitrariness in the implementation of the project?

### **3. DECLARATION IN TERMS OF RULE 3(2)**

The Petitioner states that no other petition seeking Review of Order of this Hon'ble Court dated 08-12-2020 in Civil appeal No. 3992 of 2020 arising out of SLP (C) 18586 of 2019 as been preferred by him under Article 137 of the Constitution of India.

### **4. DECLARATION IN TERMS OF RULE 5**

No Annexure produced along with the Review Petition are true copies of the pleadings/documents that formed part of the records of the case in the Courts/Tribunal below against whose order the leave to appeal was/is sought and form part of this Review Petition.

### **5. GROUNDS**

Review of the Order dated 08-12-2020 passed by this Hon'ble Court in Civil Appeal No. 3992 of 2020 (arising out of SLP (C) 18586 of 2020) as a Common Order passed along with and over 25 other Civil Appeals in the challenge against the Impugned Judgment and Order dated 08-04-2019 passed by the Hon'ble Madras High Court in Writ Petition WP.No.

21242 of 2018 as a Common Judgment along with and over 16 other Writ Petitions is sought to be Reviewed on the following

**A.** That, the Order dated 08-12-2020 passed by this Hon'ble Court in Civil Appeal No. 3992 of 2020 (arising out of SLP (C) 18586 of 2020) as a Common Order passed along with and over 25 other Civil Appeals

- (1) is with Errors Apparent on the face of the Record;
- (2) is with sufficient reasons of non-consideration; and
- (3) results in a gross miscarriage of Justice

as detailed *infra* and therefore deserves to be reviewed *de hors* the findings therein and ordered *de novo*

**B.** That, this Review Application is primarily premised on that the Learned Judges of the Full bench of this Hon'ble Court did NOT have the occasion to consider the

- (1) Law laid down by this Hon'ble Court for Judicial Review of purported "Public Policy" when there is violation of a larger policy (Bharatmala-I)
- (2) Law laid down by this Hon'ble Court for Judicial Review of purported "Public Policy" when there Delagatee acts beyond his delegated powers
- (3) Law laid down by this Hon'ble Court for Judicial Review of purported "Public Policy" done without "declared change in Policy" that which was NOT supported by reason, NOT done fairly and done acting with any ulterior motive or arbitrarily
- (4) Law laid down by this Hon'ble Court for Judicial Review of purported "Public purpose" when there is lack of Public Interest, when it is unreasonable or contrary to professed standards, even when done *bona fide*

(5) Law laid down by this Hon'ble Court for Judicial review of purported "Public Purpose" when the concept of public purpose is lost without the ensuring of maximum benefit to the largest number of people through attempt of promoting public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people

(6) Respondent's violation of Constitutional provisions w.r.t. Roads in Entry 23 of the Union List and Entry 13 of the State List together with Art.257 as ought to have been seen in terms of the law laid by the 7-Judge Constitutional bench of this Hon'ble Court for interpretation of Constitutional provisions specially dealing with delimitation of powers

(7) Respondent's violation of Statutory provisions (Sec.2(2) and sec.3A(1)) as ought to have been seen in terms of the law laid by the 7-Judge Constitutional bench of this Hon'ble Court for interpretation of Constitutional provisions specially dealing with delimitation of powers

**C.** That Judicial Review of Public Policy (contrary to *Rex non potest peccare*) is permissible when Delegatee acts beyond delegated powers as prescribed in the law laid down by this Hon'ble Court in 2007 Delhi Development Authority Case << 2008 (2) SCC 672>> and this Hon'ble Court did NOT have the occasion to consider the ground that the Respondent acted beyond powers delegated, by

(1) NOT Obtaining the Ministry of Finance – Department of Expenditure ("DoE") prescribed "Appraisal" by Public Investment Board ("PIB") for projects that cost more than INR 500 Crore

(2) NOT Obtaining the Ministry of Finance – Department of Economic Affairs ("DoEA") prescribed "Appraisal" by Public-Private-Partnership-Appraisal Committee ("PPPAC") for projects with Civil Construction Cost of more than INR 1000 Crore



(3) NOT Obtaining the DoE as well as DoEA and additionally Bharatmala-I Policy prescribed "Approval" by Cabinet Committee on Economic Affairs ("CCEA") for individual projects with Civil Construction Cost of more than INR 1000 Crore / INR 2000 Crore

(4) NOT submitting to Comptroller and Auditor General ("CAG") prescribed "Audit of Project Formulation and Approval" in the case of Infrastructure Projects under Public-Private-Partnership

all of which are effectively the inherent check and balance mechanism within the Executive and by the Constitutional Authority (CAG) to oversee the "Public Purpose" in the spending of public money under the cover of Public Policy after the project first being "Appraised" (= being evaluated) for need, feasibility, viability, possibility, priority in terms of "public purpose" satisfaction by the PIB and PPPAC as per MoF-DoE and MoF-DEA Circulars (*supra*) and then the need for "CCEA Approval" of the Project (individual Projects) followed by the "CAG Audit" of Project Formulation and Approval all of which MoRTH and NHAI are bound to follow when proposing to spend public money on projects. And, this Hon'ble Court did not have the occasion to consider whether these requirements were satisfied and whether there was a "public purpose" in the need for a 7<sup>th</sup> Road Route (detailed *infra*) between Chennai and Salem with only 16,000 PCU to 19,000 PCU between them (as per 7<sup>th</sup> Respondent Consultants Feasibility Report, detailed *infra*) with the purported inclusion of /replacement with the Chennai-Salem Expressway project.

**D.** That Judicial Review of Public Policy for Violation of a Larger Policy (Bharatmala-I, in this Case) is permissible per law laid down by this Hon'ble Court in 2007 Delhi Development Authority Case << 2008 (2) SCC 672>> and this Hon'ble Court did NOT have the occasion to consider the ground that the Respondent acted in Violation of such Larger Policy, by

- (1) Violating the prescribed Criteria of existing traffic being greater than 50,000 PCUs Annualized Average Daily traffic ("AADT") for a Green-field Expressway
- (2) Violating the prescribed Criteria that there be Constraints in capacity Augmentation (even as 8 capacity Augmentation projects are under progress) in the section for which a Green-field Expressway is proposed
- (3) Violating the prescribed Condition that the concerned State bear at least 50% of the Land Acquisition Cost for the project to be subsequently included (after the initial list of projects was listed on 25-10-2017) in Bharatmala-I
- (4) Proposing Chennai – Salem Expressway as a solution under the "National Corridor Efficiency Improvement" component of Bharatmala-I for the declared choke/congestion points identified in the suburbs of Salem (Omalur Toll) and in the suburbs of Chennai (Paranur Toll) when there are 8 Capacity Augmentation projects to specifically address the congestion at those points and where prescribed interventions (under Bharatmala-I) for addressing the congestion are controlling access on the corridor, uniform corridor tolling, development of by-passes, ring-roads, fly-overs at the choke point and the proposed Chennai-Salem Expressway is neither a prescribed solution nor an effective solution addressing the choke points at the suburbs of Chennai and Salem when the Traffic from and between Chennai and Salem is less than 10% of the traffic at those choke points (detailed infra).
- (5) Violating the 11-point criteria applied as policy "for declaring Highways to be National Highways" that has been applicable and followed by the 1<sup>st</sup> Respondent MoRTH until now and that which requires that only existing roads/highways be declared as National Highways

and, this Hon'ble Court did not have the occasion to consider whether there was this violation of prescribed policy (a ground for Judicial Review as per law laid down by this Hon'ble Court in the 2007 Delhi Development Authority Case) and whether there was any "declared change in Policy" that was supported by reason and whether that declared change in policy was done fairly and was NOT done acting with any ulterior motive or arbitrarily (as per decisions of this Hon'ble Court in the 1980 Col. A.S.Sangwan case and 2003 Cipla Case) with the purported inclusion of /replacement with the Chennai-Salem Expressway project under the present facts and circumstances detailed.

**E.** That Judicial Review of Public Purpose is permissible when there is lack of Public Interest, when it is unreasonable or contrary to professed standards, even when done *bona fide* as per decision of this Hon'ble Court in 1989 Dwarkadas Marfatia and Sons case <<1989 (3) SCC 293>> and this Hon'ble Court did NOT have the occasion to consider the facts that

(1) there are 6 existing roads / routes between Chennai and Salem (3 fully National Highway Routes and 3 partially State Highways routes (with 40% of the distance in NH)

(2) the total traffic between Chennai and Salem on all the 3 National Highways Routes "put together" is only 16,000 PCUs to 19,000 PCUs maximum even as per the Consultant Feedback Infra's (7<sup>th</sup> Respondent) Feasibility Report

(3) if a proposed 7<sup>th</sup> Route is deemed necessary between Chennai and Salem when having only 16,000 to 19,000 PCU Traffic from 3 National Highways, would not the originally proposed widening of the existing 4-lanes to 6-lanes in the Chennai-Madurai Economic Corridor that carries 43,617 PCU Traffic in that single National Highway alone (being with the Highest Traffic among all 44 Economic Corridors nation-wide and more than 2.7 times the traffic between Chennai-Salem) be a critical infrastructure necessity and thus make the replacement of the Chennai-

Madurai Economic Corridor 6-laning with the Chennai–Salem green-field 7<sup>th</sup> Route an unreasonable exercise.

- (4) That the existing 3 National Highways between Chennai and Salem are only running at 32% to 45% of Traffic on the designed capacity in the 4-laned sections and 32% to 44% of Traffic on the designed capacity in the 6-laned sections.
- (5) That some sections in the 4-laned National Highways Routes continue to remain as 2-lanes and are yet to be upgraded to 4-lanes, there are 8 other capacity augmentation projects in the 3 National Highway routes between Chennai and Salem.
- (6) That with the proposed Chennai–Salem Expressway coming up with 70 Meters Right of Way ("RoW") and stated to be necessary for developing it into 10-lanes in the future (from the 70 Meters RoW), the already existing 60 meters Right of Way in all the 3 existing National Highways between Chennai and Salem would be more than enough for 8/10-laning with no further need for land acquisition.
- (7) That the comparative analysis of the Project Consultant Feedback Infra (7<sup>th</sup> Respondent) in the Feasibility Report is premised on the need for upgrading the 3 existing National Highway Routes to 100 Meters RoW (40 additional Meters of RoW) to build 12-lanes when the existing traffic on the existing 3 National Highways between Chennai and Salem are only running at 32% to 45% of Traffic on the designed capacity in the 4-laned sections and 32% to 44% of Traffic on the designed capacity in the 6-laned sections and is thus an Unreasonable basis and contrary to professed standards to arrive at a Policy Decision on the guise of Public Purpose arising out of existing routes being congested, which is factually blatantly untrue and misleading and which needs to be reviewed objectively in conjunction with data and information already placed on record before this Hon'ble Court.

- (8) That the Chennai – Madurai Economic Corridor identified, under Bharatmala–I, to be with the highest traffic among 44 Economic Corridors nation-wide being left out without any planning for addressing the existing / future traffic even after an original plan to upgrade it to a 6-laned Economic Corridor, is Unreasonable, irrational and contrary to professed standards
- (9) That the need for an new Green-field Expressway between Chennai and Salem when the existing traffic between Chennai and Salem is only 16,000 PCU to 19,000 from 3 National Highways combined is premised on stated traffic beyond designed capacity based on wrongful and misleading data on traffic
- (a) Wrongful and Misleading Data that the Chennai – Krishnagiri section is being congested with the Traffic from Chennai to Salem (i.e. the mere 4000 PCU that takes the Chennai – Krishnagiri section to reach Salem even as per survey of Project Consultant as opposed to the total 53,261 PCU that use that Chennai – Krishnagiri 6-lane section, predominantly to reach Bangalore) even when the 6-laned section is running at only at 32% to 44% of designed capacity and there is room for 8/10-laning even with the existing 60 Meters RoW and also the existence of an alternative Chennai – Bangalore Expressway proposed for that Chennai - Bangalore bound traffic that presently uses the Chennai – Krishnagiri section predominantly.
- (b) Wrongful and Misleading Data that the Chennai – Ulundurpet section is being congested with the Traffic from Chennai to Salem (i.e. the mere 8000 to 10,000 PCU that takes the Chennai - Ulundurpet section to reach Salem even as per survey of Project Consultant as opposed to the total 72,000 PCU (59,180 PCU as per NHAI Data) at Tindivanam Toll and 47,000 PCU (39,125 PCU as per Consultant's Data) at Ulundurpet Toll that use that Chennai – Ulundurpet 4-laned section, predominantly to reach

Madurai) even when the 4-laned section is an Economic Corridor with the Highest Traffic among all 44 Economic Corridors nation-wide and which is a critical infrastructure upgradation requirement when there is room for 8/10-laning even with the existing 60 Meters RoW.

(c) That the need for a new Green-field Expressway between Chennai and Salem when the existing traffic between Chennai and Salem is only 16,000 PCU to 19,000 PCU from 3 National Highways combined is premised on the ancillary purposes / benefits of expected Development and reduced Carbon Foot-print tied to the creation of the Chennai – Salem Expressway, which is also wrongful and misleading because

(i) Research publication of IMF establishes that there is no direct and definitive correlation between Economic growth and infrastructure development that which is further substantiated in the data (on District Domestic Product that went down after 4-laning) placed before this Hon'ble Court. And, that mere land value appreciation due to policy decision is not / cannot constitute economic development.

(ii) Development (on Human Development Index "HDI" basis) comprising Access to Education, Access to Healthcare, Standard of Living is more a factor of government providing access (NOT being a road as access BUT being physically built hospital, education institutions and economic opportunity that provides for income, existence and affordability) to people living in that region and not dependent on creation of an Elevated expressway (that is in fact cut-off for access by most common people in that region through which the Chennai – Salem Expressway passes through after their own lands have been acquired for building it)

(iii) Reduction in the Carbon Foot-print equivalent estimated with the creation of the Chennai – Salem Expressway at a cost of more than INR 10,000 Crore can be achieved with mere INR 33 Crore (by replacing 2.2 Million Incandescent Light Bulbs with LEB Bulbs), or with INR 264 Crore by installing 33 Mega Watt power generation capacity Windmills and other cheaper possibilities as per equivalency calculator of the US Environmental Protection Agency that has been placed before this Hon'ble Court.

**F.** That Judicial Review of Public Purpose is permissible when the concept of public purpose is lost without the ensuring of maximum benefit to the largest number of people through attempt of promoting public purpose to benefit a particular group of people or to serve any particular interest at the cost of the interest of a large section of people especially of the common people as per decision of this Hon'ble Court in 2011 RadhyShyam's case <<2011(5) SCC 553>> and this Hon'ble Court did NOT have the occasion to consider the facts that

- (1) The Chennai – Salem Expressway with an elevated design excludes access to 2-wheelers. 3-wheelers. Cycles, animal-drawn carriages and other slow moving vehicles
- (2) The Chennai – Salem Expressway with an elevated design has only 11 Entry / Exit Point including those that at Chennai and Salem (9 Exit / Entry Points otherwise) along the proposed 277 KM Stretch making it inaccessible and useless to the locals along the entire section for whom economic development is stated to occur.
- (3) The Chennai – Salem Expressway becoming an Additional / Competing Tollway to the existing Chennai – Krishnagiri section and Chennai – Ulundurpet section under existing Concession Agreement Clauses will trigger

- (a) Longer toll paying periods by road users in the 2 existing NH Routes with 7 Tollways (4 Tollways in the Chennai – Ulundurpet – Salem Route and 3 Tollways in the Chennai – Krishnagiri – Salem Route) and 13 Toll Plazas
- (b) Higher Tolls payable (33% higher) in the proposed Chennai – Salem Expressway as triggered by Concession Agreements with existing Tollway Concessionaires
- (c) Loss to NHAI when it becomes obligated to compensate existing tollway Concessionaires for loss of traffic due to coming into existence of the Chennai – Salem Expressway as an Additional / Competing Tollway
- (d) Lost opportunity to road users in the 2 existing NH Routes to pay only 40% of Toll Rates after Concessionaire has recovered capital cost as per NHAI terms
- (e) Lost opportunity and loss of revenue to NHAI when it cannot tolls that would have accrued to NHAI when traffic exceeds 120% of designed capacity due to coming into existence of the Chennai – Salem Expressway as an Additional / Competing Tollway
- (f) Lost opportunity and loss of revenue to NHAI when it cannot terminate existing Concession Agreements when traffic exceeds 100% of designed capacity for 3 years due to coming into existence of the Chennai – Salem Expressway as an Additional / Competing Tollway

that which all benefits only the to-be-awarded Concessionaire of the Chennai–Salem Expressway and a small section of road users contrary to the decision of this Hon’ble Court in 2011 RadhyShyam’s case <<2011 (5) SCC 553>>



**G.** That "Public Purpose" would have to be decided on the facts and circumstances appearing in each case therein as per decision of this Hon'ble Court in 1956 Nanji Case <<AIR 1956 SC 294>> and this Hon'ble Court did NOT have the occasion to consider facts other than that there would be a reduction of 40 KM distance as per a decision of a committee which alone cannot make it a public purpose (just like how a committee bona fide deciding that a dam for hydro-electric power generation be built in the middle of Thar desert will NOT make it a public purpose with application of mind on other available data/information) and did NOT Consider any of the above mentioned facts, data, information that would take away the purported notion of "Public Purpose" when seen in the context of the Judgments of this Hon'ble Court.

**H.** That the Competent Authority (from the State Executive machinery, for Land Acquisition purpose) is NOT competent to decide on the question of stated "Public Purpose" in the land acquisition given that the Statute only requires for the Competent Authority to enquire into objections to the use of the land for the "purpose mentioned in the Sec.3A(1)" Notification and more rationally because the office of the Competent Authority is not equipped to enquire into a stated "Public Purpose" without the data the Competent Authority has no access to and without the powers vested under protocol / hierarchy , like the

(1) Data relating to only 16,000 PCU existing Traffic between Chennai and Salem together in all the 3 National Highways

(2) 50,000 PCU Requirement under Bharatmala – I

(3) Appraisal by PIB and PPPAC as evaluation of the need for the project as a "Public Purpose"

(4) Approval by CCEA as an acceptance of the need for the project as a "Public Purpose"

(5) Audit of the "Project Formulation and Approval" as a confirmation for money spend on a "Public Purpose"

(6) Seeing the land acquisition requirement in the context of the Judgments of this Hon'ble Court on "Public Purpose", etc.

that which are necessary, amongst other data and information, to arrive at the satisfaction of the states "public purpose".

**I.** That Judicial Review of Public Policy for its "Violation of the Constitution" is permissible per law laid down by this Hon'ble Court in 2007 Delhi Development Authority Case << 2008 (2) SCC 672>> and this Hon'ble Court ought to have seen through the findings of the 7-Judge Constitutional Bench in the 1990 Synthetics and Chemicals Ltd. Case <<1990 (1) SCC 109>> that

(1) That Expression of a Constitution must be understood in its common sense AND Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made and, in terminology as understood by the framers of the Constitution and also as viewed at the relevant time of its interpretation and must be as they are and NOT as what they are capable of or able to become.

(2) That the word "Highway" in the Expression "Highways Declared to be National Highways" (Entry 23 of Union List of Seventh Schedule under Art.246) ought to be given only the commonsense meaning of "Road Connecting important towns/cities" per common Dictionary meanings found in Oxford, Cambridge, Collins, Mariam's-Websters Dictionaries and where the word "Road" is given the meaning of "a paved path" in the same Dictionaries for the common man.

(3) That the word "Highway" even as per Venkataramaiya's Law Lexicon (per quote in the Judgment) is also given the meaning of

- Physical track along which a vehicle travels
- Way leading from one market town or inhabited place to another

and thus follows the meaning for "Highway" as found in the English Dictionaries for the common man

(4) That P.RamanathaAiyar's Advanced Law Lexicon (per quote in the Judgment)

- Gives "Highway" the meaning as "National Highway declared under Sec.2 of National Highways Act, 1956

and as such only gives a Statutory Definition and NOT in a broad commonsense point of view as understood by common people as found in English Dictionaries for the common man.

(5) That "Highway" does not form a separate uncovered/left-out area/field of legislative topic (in the Seventh Schedule under Art.246) but is only a category of road (along with village road, other district road, major district road, state highway) covered under Entry 13 of the State List of the Seventh Schedule under Art.246 which is very relevantly obvious from the wordings of the Entry 13 which reads "Communications, that is to say, roads, bridges, ferries and other means of communication NOT SPECIFIED in LIST-!....." and thus legislative topic of "Highways" which is NOT specified either in the Union List or the Concurrent List is only covered as a form of communication like roads under Entry 23 of State List.

(6) That Entry 23 of the Union List only states the power to legislate on the topic of "Highways Declared by or under law made by Parliament to be National Highways" which in simple terms means that the Union can

- Legislate w.r.t. Highways Declared to be National Highways by Parliament
- Legislate w.r.t. Highways Declared to be National Highways by an Act of Parliament

and in any case the Union can Legislate only w.r.t. Highways Declared to be National Highways (language used in the absence of a definition for "National Highways" in the Constitution or any statute at the time Seventh Schedule was created) and where "Highway" as per commonsense meaning as understood by common man is an existing road (paved path) that connects important towns/cities and which has been declared to be a National Highway under Sec.2 of NH Act, 1956, and thus there is a clear demarcation in the topics of legislation where

- (a) States Legislate w.r.t. Roads which includes Highways that is only a category of Road and in any case NOT separate a class of communication (like roads) Specified in the Union List (as required under Entry 13 of State List)
- (b) Union Legislates w.r.t. "Highways that have been declared as National Highways" where "Highway" under commonsense meaning as understood by common people means a paved path for connecting important towns/cities, essentially an existing road.

and thus the areas/topic of legislation are very clear and specific and without any ambiguity, duplicity, conflict, over-ride, cross-over, encroachment (incidental or otherwise), etc. in the entries (Entry 23 of Union List and Entry 13 of State List) and therefore Courts are NOT free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory (Theory of Pith and Substance, in the instant case) and Constitutional Adjudication is NOT strengthened by such attempt

but it must seek to declare the law but it must NOT try to give meaning on the theory of what the law should be.

- (7) That the framers of the Indian Constitution have used the words "Highways" in 3 places, "Roads" in 13 places and "National Highways" in 2 places with legislative wisdom to mean that they mean different things and are not inter-changeable and have only gone on to state/describe the legislative topic of National Highways as legislative powers w.r.t. "Highways declared by or under law made by Parliament" (Entry 23 of Union List) at a time when there is no definition for "National Highways" in either the Constitution or any other Statute present at that time of framing the Indian Constitution and its Seventh Schedule and therefore went on to describe a National Highway as a "Highway declared to be a National Highway by Parliament or by an Act of Parliament" and this is further reflected in the Schedule (under Sec. 2) of the National Highways Act, 1956 which has a list of Highways Declared to be National Highways by Parliament (under Constitutional powers reflected in Sec.2(1) of the Act) at the time of the Act's enactment (all of such declared National Highways being existing roads) and from the powers under Sec.2(2) to declare any other Highway as a National Highway under Sec.2(2) of the NH Act, 1956 (Act of Parliament) at later times.
- (8) That the Courts are NOT free to stretch or to pervert the language of an enactment in the interest of any legal or constitutional theory and Constitutional Adjudication is NOT strengthened by such attempt but it must seek to declare the law but it must NOT try to give meaning on the theory of what the law should be given that the 7-Judge Constitutional Bench Judgment clearly did not attribute a meaning to "alcoholic liquor for human consumption" as anything other than that of alcohol meant for direct physical intake and very specifically EXCLUDED alcohol that is used for making products like tyres that are in turn Consumed (by purchase for use in cars) by humans or alcohol (denatured spirit) which can be, by appropriate

cultivation or application or admixture with water or with others, be transformed into "alcoholic liquor meant for human consumption"

(9) That the finding in Para 28 that

"28.....  
.....This empowers the Parliament to declare any stretch/section as Highway "for" being designated as a National Highway....."

purports to attribute powers on the Union to first declare plain-land / non-existent road as a Highway and then go on to further declare / designate that plain land so designated as a "Highway" to thereafter be declared as a "National Highway" and which is an error apparent on the face of the record given the language of the Constitution in Entry 23 of Union List and Entry 13 of State List (which assumes all topics of legislation related to communications like road that are not specified in the Union List) being clear, specific and unambiguous and the finding in above referred Para 28 being contrary to the law laid down by the 7-Judge Constitutional Bench in the 1990 Synthetics and Chemicals Ltd. case.

(10) That in Art.257 and very specifically Art.257(2) and its *proviso*, the Executive Powers of the Union w.r.t. Roads is clearly stated to be

- (a) Directions to States for construction of roads declared to be of national or military importance, as per Art.257(2)
- (b) NOT taking away the power to declare Highways as National Highways and power of the Union w.r.t. Highways so declared, as per Proviso to Art.257(2)

(c) Power of the Union to construct Roads "as part of its functions with respect to Naval, Military and Air Force works", as per Proviso to Art.257(2)

(d) State to get reimbursed for costs incurred for carrying out construction of roads under Directions from the Union under Art.257(2) that which it would not have incurred but for such Direction from the Union, as per Art.257(4)

leaving construction of new roads by the Union only by directing the state to do so or only in the case of armed forces requirements and so the reasoning / finding in Para 28 (page 57) and Para 37 (page 71) that

"37.....notifications issued by the Central Government under sec.2(2) of the 1956 Act on the ground of being ultra vires the Constitution derived Executive Powers is also devoid of merits"

is error apparent on the face of the record.

**J.** That Judicial Review of Public Policy for "Violation of the Statutory provision" is permissible per law laid down by this Hon'ble Court in 2007 Delhi Development Authority Case << 2008 (2) SCC 672>> and this Hon'ble Court ought to have seen through the findings of the 7-Judge Constitutional Bench in the 1990 Synthetics and Chemicals Ltd. Case <<1990 (1) SCC 109>> that

(1) That the Object and Preamble to the National Highways Act, 1956 that reads

"An Act to provide for the Declaration of certain Highways to National Highways and for matters connected therewith"

is clear and unambiguous that the Act is meant only for Declaration of certain "Highways" to be "National Highways" (power derived from Entry 23 of Union List) where "Highways" can only mean an existing road in a commonsense point of view as understood by the common man (per 1990 Synthetics and Chemicals Ltd. case) AND "matters connected therewith" can only refer to the things to be necessarily done to first transform the "Highway that was declared as a National Highway" to the actual and required standards and specifications of a National Highway (in terms of Right of Way, Carriageway, median, shoulders, etc.) as specified by the Indian Road Congress ("IRC", under the 1<sup>st</sup> Respondent MoRTH) which requires building, maintenance, management or operation of National Highway (as upgrade from the standard of a mere Highway) after necessary land acquisition (for expanded ROW, Carriageway, Median, Shoulder, etc.) that can be carried out through Sec.3A(1).

(2) That this is further established from the fact that a "mere" Declaration of a Highway (or plain land / non-existent road) to be a National Highway under Sec.2(2) will not magically transform the existing Highway (or plain land / non-existent road) to the IRC specifications and standards of a National Highways unless it is coupled with land acquisition, building, maintenance, management and operation to the IRC specified standards and specifications.

(3) That the finding in para 35 that

"35.....the 1956 Act, as amended and applicable to the present case, is an Act to authorize Central Government to declare the notified stretches/sections in the State as a Highway to be a National Highway; and for matters connected therewith including acquisition of "any land" for building or construction of a new highway (which need not be an existing road/highway). The substance of this Act is



ascribable to Entry 23 of the Union List and matters connected therewith”

purports to attribute powers on the Union to first declare plain-land / non-existent road as a Highway and then go on to further declare / designate that plain land so designated as a “Highway” to thereafter be declared as a “National Highway” to the presence of the words “and matters connected therewith”, AND also purports to attribute powers on the Union to acquire “any land” for building or construction of a new highway (which need not be an existing road/highway) are errors apparent on the face of the record given the language of the Constitution in Entry 23 of Union List and Entry 13 of State List (which assumes all topics of legislation related to communications like road that are not specified in the Union List) being clear, specific and unambiguous and the finding in above referred Para 35 being contrary to the law laid down by the 7-Judge Constitutional Bench in the 1990 Synthetics and Chemicals Ltd. case (decision on Commonsense meaning of words as understood by common man and NO freedom to stretch or pervert the language of an enactment in the interest of any legal or constitutional theory, like the “theory of pith and substance” gone in to in this case even though there is clear demarcation and no ambiguity in terms of Entry 23 of Union List and Entry 13 of State List that effectively assumes topics of legislation on all forms of communication like roads that are NOT Specified in the Union List, like Highways, which is only a category of road and not a separate class / category for legislative topic that cannot be said to be left-out/uncovered)

- K.** That Constitutional question on the Power of the Union vis-à-vis the State to lay green-field road/highway/national highway in terms of permissible legislative topics in the demarcation of powers w.r.t. roads under Entry 23 of the Union List and Entry 13 of the state List of the Seventh Schedule under Art.246 and Art.257 was not part of Nambirajan case or the Jayaram case referred and hence applying them to arrive at powers of the Union to lay green-field

road/highway/national highway is an error apparent on the face of the record

**L.** That the Meeting convened by the 1<sup>st</sup> Respondent (MoRTH) on 19-01-2018 and attended by the 2<sup>nd</sup> Respondent (NHAI) in which it was deliberated and decided to replace the 6-laning of a section of Chennai–Madurai Economic Corridor with the Green-field Chennai–Salem Expressway cannot be true and only be a post facto justification through made-up/built records given that such a decision to implement the Green-field Chennai–Salem Expressway was NEVER in the scheme of things

(1) When Bharatmala-I shelf of projects were reviewed by the 1<sup>st</sup> Respondent in a meeting on 24-01-2018 (5 days after the decision to replace project)

(2) When Minister of State – MoRTH replied to questions in Rajya Sabha on 05-03-2018 about new National Highways projects under various stages of implementation

(3) When MoS – MoRTH replied to questions in Lok Sabha in Lok Sabha on 08-03-2018 about new Expressway projects under various stages of implementation

(4) When the State of Tamil Nadu (4<sup>th</sup> Respondent) has never come forward, until the time of Sec.3A(1) Notification and to date, to bear at least 50% cost of the land acquisition cost for the subsequent inclusion of the as required under Bharatmala–I Policy.

and this Hon'ble Court did not have the occasion to consider the veracity of the Minutes of the Meeting dated 19-01-2018 in the context of the above facts and by which the Petitioner herein claims that the purported meeting on 19-01-2018 and the Minutes of the Meeting record thereof is only a post facto made-up/built-up record.

**M.** That Minutes of the Meeting dated 19-01-2018 stating that CCEA would be "Appraised" of the proposed change in projects (including the inclusion of the Chennai – Salem expressway) in the forthcoming "bi-annual update" giving rise to a meaning that MoRTH/NHAI will update CCEA by way of giving the information of the change WHEREAS the Requirement is for a "CCEA Approval" of the Project (individual Projects) after the project first being "Appraised" (= being evaluated) for need, feasibility, viability, possibility, priority in terms of "public purpose" satisfaction by the PIB and PPPAC as per MoF-DoE and MoF-DEA Circulars (*supra*) the MoRTH and NHAI are bound to follow when proposing to spend public money on projects. And, this Hon'ble Court did not have the occasion to consider these requirements to be satisfied with the purported inclusion of /replacement with the Chennai–Salem Expressway project.

**N.** That the Consultant Feedback Infra (7<sup>th</sup> Respondent) appointed for a different scope of work / project (6-laning of Chennai – Madurai Economic Corridor) and being given the opportunity to continue for a wholly different project (Chennai – Salem Expressway) without calling for competing Tenders and to the exclusion of others who may even have better experience and skills at a lower cost than the 7<sup>th</sup> Respondent (who has a history of being de-barred by World Bank and UP Government) is in violation of the MoRTH "Guidelines for Procurement, Preparation, Review and Approval of DPR" dated 22-08-2016. And, this Hon'ble Court did not have the occasion to consider these violations in the light of the Consultant's Feasibility Report being

(1) Devoid of analysis of implication of Chennai – Salem Expressway becoming an additional / Competing Tollway to 7 other Tollways (*supra*)

(2) Containing unreasonable analysis on costs for 12-laning 3 existing NH Routes with costs for proposed Chennai – Salem Expressway when the presently available RoW in the 3 existing NH Routes are sufficient to build 8/10-laned Highways without the need to additional land acquisition costs.

- (3) Devoid of analysis on the implication to present road users with longer toll paying periods in the existing 3 Highways and the need to pay at least 33% higher Tolls in the proposed New Chennai – Salem Expressway
- (4) Devoid of analysis on the expected loss in revenue to NHAI, lost opportunity to terminate Concession Agreements, need to compensate existing tollway concessionaires for loss of traffic, etc.

only for the purpose of justifying and bringing on this Chennai – Salem project in a pre-determined fashion to the benefit of the unknown or for a wasteful expenditure from the public exchequer. And, this Hon'ble Court did not have the occasion to consider these facts in the matter of the Consultant continuing works in violation of Guidelines above referred.

- O.** That these Grounds for Review, primarily the challenges to the Constitutional permissibility / legislative competence of the Union to create new / green-field roads in the sphere of delimitation of powers between the Union and the State is a Constitutional Question that has never earlier been decided by any of the Superior Courts and is an issue that has to be dealt in the context of the law laid down by this Hon'ble Court's 7-Judge Constitutional Bench in the 1990 Synthetics and Chemicals Ltd. Case and the 2007 Delhi Development Authority cases primarily. And, any holding/finding contrary to the law laid down in the above 2 decisions ought to be done only by a Bench of similar strength or a larger strength.
- P.** That the finding/holding that a "Highway" would include plain-lands that are capable of / necessary for being built into a Highway will draw an analogy to that "voters" would include children under the age of 18 as they are capable of becoming / will necessarily become 18 and eligible voters and will result fallacy in the interpretation of statutes and thus necessary to being reviewed in the context of the earlier Judgments of this Hon'ble Court (*supra*)

**Q.** That the finding of this Hon'ble Court with Errors Apparent on the face of the record, sufficient reasons of non-consideration and resultant miscarriage of justice ought to be reviewed in the light of the persuasive instances detailed hereinabove and because there is no further or other legal remedy over the decision from highest court of the land in the above detailed circumstances.

## **6. GROUNDS FOR INTERIM RELIEF**

-Nil-

## **7. MAIN PRAYER**

In the aforesaid circumstances and for the abovementioned reasons, it is Prayed that this Hon'ble Court may be pleased to

(a) Allow this Review Petition filed against the Order dated 08-12-2020 passed by this Hon'ble Court in Civil Appeal No.3882 of 2020 (arising out of SLP (C) 18586 of 2019) in the challenge against the Impugned Judgment and Order dated 08-04-2019 passed by the Hon'ble Madras High Court in Writ Petition WP.No. 21242 of 2018 as a Common Judgment along with and over 16 other Writ Petitions before the Hon'ble Madras High Court.

(b) Pass such further or other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

## **8. PRAYER FOR INTERIM RELIEF**

-N.A.-

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Drawn ON: .01.2021

Filed by: -

Filed ON:.01.2021

(P.SOMASUNDARAM)

ADVOCATE FOR THE PETITIONER