

No. RW/NH-37011/31/97-D.I

Dated, the 13th July, 1999

To

The Secretaries of PWD of all States/UTs dealing with National Highways; Director General (Works), Central Public Works Department; Director General, Border Roads Organisation; Chairman, National Highways Authority of India.

Subject : National Highways (Fees for the use of National Highway Section and Permanent Bridge - Public Funded Project) Rules, 1997

I am directed to say that on a reference received from National Highways Authority of India regarding the rate of fee and the tenure applicable in respect of a bridge on National Highway-9 in Andhra Pradesh, the applicability and scope of the rules mentioned above has since been examined in consultation with the Ministry of Law & Justice (Department of Legal Affairs). A copy of their advice in this regard is enclosed herewith for information and necessary action.

[Enclosure to Ministry's Circular No. RW/NH-37011/31/97-D.I dated 13/7/1999]

Advice of Ministry of Law & Justice (Department of Legal Affairs) dated 3.6.1999 regarding the scope and applicability of National Highways (Fees for the use of National Highway Section and Permanent Bridge - Public Funded Project) Rules, 1997.

- (1) The administrative department has sought our opinion as to whether levy of fees should be continued in respect of Keesara Bridge in perpetuity as per the 1997 Rules.
- (2) The department has stated that Keesara Bridge was opened to traffic and started collection of toll w.e.f. 1.5.1994.
- (3) The department has placed on record a copy of National Highways (Fees for the use of Permanent Bridge) Rules, 1992.
- (4) Rule 8 of the said rules provides that levy of fees shall be discontinued in respect of bridges costing more than Rs. 25 lakhs and upto Rs.100 lakhs completed and open to traffic on or after 1st day of April, 1976, but before the 1st day of May, 1992, on National Highways forthwith or after the expiry of the existing contract period in cases where contracts have been entered into fee collection.
- (5) The levying of fee shall also be discontinued in respect of projects costing more than Rs. 100 lakhs completed and open to traffic on or after 1st day of April, 1976, on National Highways as soon as the full cost of bridge or group of bridges including the cost of approaches, cost of structure to be put up for the collection fees, guide bunds and protective work including interest thereon as also the maintenance and special repairs expenditure thereon, upto the date of discontinuance of the levy is recovered.
- (6) The National Highways (Fees for use of Permanent Bridge) Rules, 1992, has been superseded vide the National Highways (Fee for use of National Highways Section and Permanent Bridge - Public Funded Project) Rules, 1997, notified vide GSR 490(E) dated 27.8.1997.
- (7) Rule 11 of the said rules provides that the fee shall be collected in perpetuity by the executive agency.
- (8) Rule 1997 were notified on 27.8.1997 as such these rules came into force on 27.8.1997. We do not see any provisions in the notification dated 27.8.1997 which shows that these will also be applicable retrospectively.
- (9) Vide letter No. RW/NH-11012/2/92-DOI pt. dated 4.8.1998 the department has taken a decision in similar matter/in respect of toll collection on Jejrnau-Ganga Bridge on NH-25 as under :-

"Since the new rules viz. the National Highways (Fees for the use of National Highways Section and Permanent Bridge - Public Funded Project) Rules, 1997 came into force from 27.8.1997, only bridges opened after 27.8.1997 should be charged toll in perpetuity.

This has the approval of Director General (Road Development) & Additional Secretary."

- (10) In view of the above, we are of the view that Rules, 1997, will be applicable in respect of bridges which were opened to traffic on or after 27.8.1997.
- (11) In the present matter since Keesara Bridge was opened to traffic w.e.f. 1.5.94 and fee is being collected as per the Rules, 1992, we are of the view that new Rules, 1997, will not be applicable in the present matter.
- (12) In view of the facts and circumstances mentioned above we are of the opinion that department may discontinue to collect the fee in respect of bridge which was opened to traffic w.e.f. 1.5.1994, if the fee as provided under Rule 8 of the National Highways (Fees for use of Permanent Bridge) Rules, 1992, is recovered.