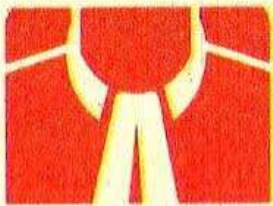


# SC Upholds HC Order to Halt Toll Collection on DND Flyway

Indu Bhan

**New Delhi:** The Supreme Court (SC) on Friday upheld a 2016 decision by the Allahabad High Court that halted the collection of toll charges on the Delhi-Noida Direct (DND) flyway, a vital route connecting Delhi and Noida in Uttar Pradesh.

While dismissing the appeal of Noida Toll Bridge Company Ltd (NTBCL) against the high court order, a bench led by justices Surya Kant and Ujjal Bhuyan held that there was no infirmity in the order and “we find no reason to interfere with it”.



**The contract awarded to NTBCL through a concession agreement by state authorities and Noida was unfair**

The DND flyway, which has been operational since 2001, has drastically reduced traffic congestion and travel time between Delhi and Noida. Before the high court decision, commuters were charged ₹28 for a one-way trip or ₹56 for a round trip.

Criticising the New Okhla Industrial Development Authority (Noida) for allowing a toll company to exploit users indefinitely, the apex court said that when a state engages in public work, it must be free of arbitrariness. It said that the contract awarded to NTBCL through a concession agreement by state authorities and Noida was unfair, unjust and inconsistent with constitutional norms and that Noida exceeded its authority by delegating the power to levy fees or impose tolls to the company, “rendering such delegation invalid”.

“There was no tender from other interested companies and no competitive bidding was done,” the SC said

The judgment said that some of the clauses in the concession agreement contravened public policy and was, therefore, liable to be severed from the agreement. “NTBCL has recovered the project costs and substantial profits, eliminating any justification for the continued imposition or collection of user fees or tolls,” said the judges.



# DND flyway to remain tax-free: SC

**IN A RELIEF** to lakhs of commuters plying between Delhi and Noida, the Supreme Court on Friday upheld that the DND flyway will remain toll-free and castigated the NOIDA author-

ity and the Uttar Pradesh and Delhi governments saying the blatant misuse of power and breach of public trust have profoundly shocked its conscience.

—PTI

# SC upholds the Allahabad HC order ending toll collection on DND flyway

**ANANTHAKRISHNANG.**  
NEW DELHI, DECEMBER 20

THE SUPREME Court on Friday upheld the Allahabad High Court order ending toll collection by Noida Toll Bridge Company Limited (NTBCL) on the DND (Delhi-Noida Direct) flyway connecting Delhi to Noida.

Dismissing the appeal filed by NTBCL against the HC's October 26, 2016 order, a bench of Justices Surya Kant and Ujjal Bhuyan said, "NTBCL has recovered the project costs and substantial profits, eliminating any justification for the continued imposition or collection of user fees or tolls." It added there is no infirmity in the HC judgment and that it found no reason to interfere with it.

The SC further said that the contract awarded to NTBCL through the concession agreement by state authorities and New Okhla Industrial Development Authority (NOIDA) was "unfair, unjust and inconsistent with Constitutional norms". It added that NOIDA "exceeded its authority by delegating the power to levy fees or impose tolls to NTBCL, rendering such delegation invalid".

The origin of the flyway dates back to April 1992, when NOIDA and the Delhi administration entered into a memorandum of understanding (MoU) with IL&FS, intending to construct the bridge. The concession agreement was executed on November 12, 1997, designating NOIDA and IL&FS -- which constructed the flyway --

as the "sponsors" and NTBCL as the "concessionaire".

The HC ruling came on a plea filed by the Federation of Noida Resident Welfare Association, which claims to espouse the cause of NOIDA residents, particularly civic issues. The association had moved the HC nearly 15 years after the execution of the concession agreement. It sought a direction to discontinue toll charges from those who used the DND flyway, saying NTBCL had already recovered the project costs.

Agreeing with the HC's findings, the SC said that "no person or entity can be allowed to make an undue and unjust profit from public property, at the cost of the public at large."

It referred to the findings of the Comptroller and Auditor

General (CAG) audit report, which said: "...the annual toll income of NTBCL during 2001-2016 was Rs 892.51 crore. NTBCL has been making profits for the last 11 years... has no accumulated losses as of 31.03.2016; has paid dividends of Rs 243.07 crore till 31.03.2016 to its shareholders and repaid all its debt with interest. NTBCL had thus, by 31.03.2016, recovered the project costs, the maintenance costs, and a significant profit on its initial investment."

The order said that "an exhaustive reading of the CAG report highlights the extent to which the public has been defrauded..." This, it added, "could not have been done but for the collusion of then officers of the two state governments and of NOIDA..."



# SC upholds decision barring toll collection on DND flyway

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**NEW DELHI:** The Supreme Court on Friday upheld a decision barring the collection of toll charges on the Delhi-Noida Direct (DND) flyway, and reprimanded the Noida authority for enabling a toll company to “defraud” and “exploit” commuters indefinitely through an arbitrarily drafted agreement.

A bench comprising justices Surya Kant and Ujjal Bhuyan affirmed the 2016 judgment of the Allahabad high court, which directed the Noida Toll Bridge Company Ltd (NTBCL) to cease toll collection from vehicles using the DND flyway, which connects Delhi with Noida.

“...no person or entity can be allowed to make an undue and unjust profit from public property, at the cost of the public at large,” said the bench, coming down hard on the lapses in governance and financial improprieties in the flyway project.

The Supreme Court found that NTBCL had already recovered both the cost of constructing the flyway and a reasonable profit since the expressway opened in 2001.

“Since NTBCL has recovered the costs of the project and substantial profits thereon by virtue of imposition of user fees/tolls and given the existing position of law, we find no error in the high court’s judgment and its directions in restraining the imposition and collection of user fees/tolls...There is no rhyme or reason for the collection of user fees/tolls to continue,” stated the judgment authored by justice Kant.

The court observed that the indefinite continuation of toll collection was “rooted in the deliberately crafted language of the concession agreement” and constituted a breach of public trust.

## Apex court’s strong statements

The top court reprimanded the Noida Authority for enabling a toll company to “defraud” commuters indefinitely

### What SC said

The selection of NTBCL to execute the contract was not transparent.

Indefinite continuation of toll collection was ‘rooted in deliberately crafted language’ of the agreement between Noida authority and NTBCL

There was ‘blatant misuse of power and breach of public trust’ in the deal

NTBCL and Noida both ‘indulged in trickery’ and introduced regulations as an ‘afterthought’

### Timeline

**January 1999**  
Construction on DND begins

**February 7, 2001**  
Flyway opens

**November 2016**  
Toll removed on court orders

**₹28**  
last toll collected (car)

**9.2km**  
Total length

**13,000**  
estimated vehicular traffic on DND in 2001

**250,000**  
estimated vehicular traffic on DND in 2018\*



\*Latest survey; All data collected by NTBCL

The judgment also pointed to collusion between NTBCL, government officials, and the Noida authority, enabling misuse of public funds.

“The public has been forced to part with hundreds of crores by IL&FS and NTBCL, under the guise of providing necessary public infrastructure... The facts speak for themselves,” the court remarked.

It further suggested that the Prevention of Corruption Act could have been invoked had it not been for the long passage of time, holding: “This blatant misuse of power and breach of public trust has profoundly shocked the conscience of this court.”

Scrutinising the financial arrangement under the concession agreement, particularly the

formula used to calculate the total project cost, the court endorsed findings from the Comptroller and Auditor General (CAG) report, which highlighted serious lapses, including inflated project costs and an assured return rate of 20%, far above market rates.

### ‘Public defrauded’

“An exhaustive reading of the CAG report highlights the extent to which the public has been defrauded,” stated the judgment, adding that very selection of NTBCL to execute the contract was not transparent and violated constitutional principles. “The contention by NTBCL that there were no suitable companies capable of undertaking such infrastructural development dur-

ing that period lacks any substantiation or material on record to support such sweeping claims,” the judgment stated.

Criticising the Noida authority, the bench noted that the agreement with NTBCL lacked a defined time frame for toll collection, effectively allowing the concessionaire to charge users perpetually.

The court further held that the Noida authority exceeded its statutory powers by delegating the ability to levy and revise toll fees to NTBCL under the agreement.

“Noida overstepped its authority by delegating the power to levy fees to NTBCL through the concession agreement and regulations, exceeding the scope of its powers... The responsibility to determine the amount and rate

of fees lies with Noida; by delegating this function to NTBCL via the concession agreement and reinforcing it through the regulations, Noida exceeded its authority moored under the Uttar Pradesh Industrial Area Development Act.”

The court held this delegation of power as a clear violation of the statute and concluded that “NTBCL and Noida have indulged in trickery,” introducing regulations as an “afterthought” to justify actions that were not permissible under law.

The court also validated the public interest litigation (PIL) filed in 2012 by the Federation of Noida Residents’ Welfare Associations, which challenged the “levy and collection of toll in the name of user fee” by NTBCL. The bench concluded that the PIL was legally sound and rightly adjudicated by the high court.

The DND flyway, operational since 2001, significantly reduced travel time between Delhi and Noida, easing traffic congestion in the region. Prior to the high court judgment, commuters were charged ₹28 per trip or ₹56 for a round trip for using the expressway, which was touted as a smoother and faster route within the Delhi-NCR region.

The Noida authority welcomed the order.

“[The order] will benefit the thousands of commuters who daily use this stretch. Now the commuters can use the DND smoothly without paying any toll in future as SC has settled this issue,” said Lokesh M, chief executive officer of the Noida authority.

Gautam Budh Nagar District Development Residents Welfare Association president NP Singh, who filed the Allahabad high court plea in the matter, said: “We are extremely happy that today the Supreme Court has taken a decision in favour of DND users... We welcome the order.”



# Public forced to part with hundreds of crores under guise of infra: SC

►Continued from P1

Writing a 53-page judgment that rejected every argument of NTBCL advanced through senior advocate A M Singhvi, including the demand for recovery of an additional Rs 30 crore, Justice Surya Kant said the money recovered by NTBCL was much higher than the project cost, resulting in “unjust enrichment of NTBCL at the cost of public suffering”.

The bench, also comprising Justice Ujjal Bhuyan, said the contracts with NTBCL were loaded with terms, which were so unfair and unreasonable that “they truly baffle this court, are undoubtedly opposed to public policy and must be adjudged void”.

It said NTBCL had by March 31, 2016, recovered the project cost, maintenance cost, and a significant profit on its initial investment and, hence, there was no reason for collection of user fee/toll to continue thereafter.

Explaining the defrauding of the public, Justice Kant said, “The public has been forced to part with hundreds of crores of rupees by IL&FS and NTBCL, under the guise of providing necessary public infrastructure. This could not have been done but for

the collusion of the then officers of the two state govts and of Noida, who closed their eyes while the contractual obligations were incurred.”

Commenting harshly on the formula through which yearly project cost escalation was computed and the lease to recover user fee was extended, the bench said, “It is inconceivable that multiple layers of the govts, advised by some of the most astute financial minds, failed to foresee that this formula would impose an undue and unfair burden on the users — the public.

“The manner in which some senior bureaucrats manipulated the siphoning of project funds for their personal gains clearly make out a fit case for investigation under the Prevention of Corruption Act, 1988, although the ship might have sailed for such action at this stage.”

The bench further said, “The CAG report shockingly reveals that the directors of NTBCL, including Pradeep Puri (who it seems was a senior bureaucrat), apparently did not perform any responsibility, yet all their expenses, including high-end remuneration, were added in the total project cost.”



# SC's DND Flyway order gives blow to IL&FS shareholders

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**Jaisalmer:** The DND Flyway order by the Supreme Court has come as a blow to shareholders led by IL&FS, who were hoping to garner as much as Rs 2000 crore from the sale of the company, banking on its toll revenue and development rights sought by Noida Toll Bridge Company. While lenders too stand to be hit as their exposure is now said to be in the range of Rs 50-60 crore now.

While there were not too many big players in the fray, several small companies had evinced interest in taking over the company, which had two decades ago set up a marquee project, improving connectivity between Delhi and Noida, then a sleepy suburb. Based on the interest, beleaguered IL&FS had budgeted for anything between Rs 200 crore and Rs 500 crore from

the sale to help it improve its receipts and reduce the burden on banks, which were adversely hit by its strained finances.

While Noida Toll Bridge Company refrained from commenting on the judgment as the order had not been uploaded, it expressed concern over the decision. "NTBCL is a NSE/BSE-listed entity and has over 55,000 public shareholders who own approximately 71% of the company, in addition to several financial institutions that have significant exposure to NTBCL either directly or through other IL&FS entities. The judgment is likely to serve as a guidance to developers for all ongoing and future Infrastructure projects under PPP model as they may need to reassess project risks, factoring in the implications of this judgment and plan accordingly," it said.

# SC upholds HC's 2016 ruling to scrap toll on DND flyway

'Excessive User Fee Defrauded Public'

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**New Delhi:** Supreme Court on Friday ruled that DND Flyway would remain toll-free. It pulled up UP and Delhi govts as well as Noida Authority for illegally awarding the project to Noida Toll Bridge Company Ltd (NTBCL) and rapped the company for levying excessive user fee in "collusion" with bureaucrats, resulting in people being defrauded.

Upholding an Allahabad HC ruling that had stopped collection of user fee from 2016, SC said, "The contract awarded to NTBCL... was unfair, unjust and inconsistent with constitutional norms."