(2013) 02 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8221 of 2012

Arjun Singh APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:
Rajasthan Panchayati Raj Act, 1994 — Section 65

Citation : AIR 2013 Raj 136

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : R.P. Garg, for the Appellant; Sanjeev Sogarwal, Jinesh Jain, Govt. Counsel and G.S. Gill, for the Respondent

Judgement

Mohammad Rafiq, J.—By this writ petition, the petitioner has approached this Court challenging the resolution of the Gram Panchayat, Sihod, Panchayat Samiti, Khetri dated 5-3-2012, agreement executed by Gram Panchayat, Sihod dated 21-3-2012 and agreement executed by Gram Panchayat, Mehada dated 30-3-2012. The Gram Panchayat, Sihod by the aforesaid resolution dated 5-3-2012 decided to charge certain amount as tax for transportation of the minerals such as bajri, bajri rodi, crasher rodi, crasher dust, masonry stone etc. A Committee was constituted by the Gram Panchayat for auctioning the contract for collection of tax. The contract for collection of the tax was eventually awarded to respondent No. 5 Rakesh S/o Khushal Singh vide agreements dated 21-3-2012 (Annexure-3) and 30-3-2012 (Annexure-4). The Gram Panchayat issued a notice on 21-2-2012 to general public inviting objections, if any, informing that sum of Rs. 100 shall be charged from the tractors, Rs. 300/- from trucks having 6 wheels, Rs. 400/- from trucks having 10 wheels and Rs. 600/- from bigger trucks or turbos, which carry the aforesaid minerals and passed through the territory of Gram Panchayat.

2. Shri R.P. Garg, learned counsel for the petitioner has argued that such a tax cannot be imposed by a Gram Panchayat because Section 65 of the Rajasthan

Panchayati Raj Act, 1994 only empowers the Gram Panchayat to levy tax on the goods that are brought within its area for consumption or re-use whereas admittedly both the Gram Panchayat Sihod and Mehada have passed the similar resolution on 14-12-2010 charging tax in the name of vehicle development tax for carrying bajri, bajri rodi, crasher rodi, crasher dust, masonry stone etc., which are minerals excavated within the panchayat circle and transported to other places. The Gram Panchayat have no authority under law to levy tax in the name of vehicle development charges.

3. Learned counsel for the petitioner has referred to Section 65(1)(c) and argued that though according to it, the Gram Panchayat may impose one or more tax referred to therein subject to rules and any orders by State Government including vehicle tax except on those vehicles which are used for the purpose of cultivation. Third proviso to Section 65 categorically provides that the tax under clause (c) of sub section (1) of Section 65 shall not be levied on a motor vehicle as defined in the Motor Vehicles Act, 1988 or any other mechanically propelled vehicle. Under the categories of vehicles, which have been included for charging the tax in the name of development transportation charges are all motor vehicles as per the definition of ''motor vehicle'' in Section 2(28) of the Motor Vehicles Act.

4. Shri R.P. Garg, learned counsel for the petitioner has argued that the Gram Panchayat have gone beyond their competence and, therefore, resolution passed by them to the said effect is bad, ab initio and without jurisdiction. No prior sanction of the Government in terms of Rule 61 of the Rajasthan Panchayati Raj Rules, 1996 has been taken for imposing vehicle development tax. Minerals excavated by the mining lease holders are already subject to payment of dead rent and royalty, therefore, it cannot be again subjected to any tax. Learned counsel submitted that this question was examined by coordinate bench of this Court in Narendra Singh v. The Sub-Divisional Officer, Chirawa & Ors. 2012 WLC (Raj) UC 403 : (AIR 2012 (NOC) 338 (Raj)) in the context of Section 65 and it was held therein that Gram Panchayat has no authority to levy and realise tax on excavation of minerals.

5. Shri Jinesh Jain, learned Government Counsel for State and Shri G.S. Gill, learned counsel for the respondents have opposed the writ petition and submitted that clause (c) of sub-section (1) of Section 65 of the Rajasthan Panchayati Raj Act, 1994 empowers the Gram Panchayat to impose vehicle tax except on those vehicles, which are used for the purpose of cultivation. The vehicles on which the tax has been levied by the Gram Panchayat in the present case cannot be said to be vehicles used for cultivation. Third proviso does not in any way restrict or limit the power of the Gram Panchayat to levy tax. It is argued that no prior sanction of the State Government was required by the Gram Panchayat to levy such tax because Section 65 merely provides that such levy shall be subject to Rules and any other orders by the State Government, whereas there is no contrary Rules or order by the State Government. Thus the resolution of the Gram Panchayat has rightly been implemented.

6. On hearing learned counsel for the parties and perusing the impugned order, I deem it appropriate to reproduce Section 65 of the Act of 1994 asunder:

65. Taxes which may be imposed by a Panchayat. (1) Subject to the rules and any orders by State Government in this behalf, a Panchayat may impose one or more of the following taxes, namely:

(a) a tax on buildings owned by persons not exceeding such rate as may be prescribed;

(b) an octroi on animals or goods brought within the Panchayat Circle for consumption or use therein;

(c) vehicle tax except on those vehicles which are used for the purpose of cultivation;

(d) pilgrim tax;

(e) a tax for arranging the supply of drinking water within the Panchayat Circle;

(f) a tax on commercial crops;

(g) any other tax which the State Legislature has, under the Constitution, power to impose in the State and which has been sanctioned by the Government.

(2) The taxes under sub-section (1) shall be imposed, assessed and raised in such manner and paid or realised at such times, as may be prescribed.

(3) The State Government may, by notification in the Official Gazette, require any Panchayat to impose, subject to the provisions of sub-section (2), any of the taxes specified in sub-section (1) from such date at such rates, as may be specified in the notification.

(4) While any notification under sub-section (3) is in force, the Panchayat shall proceed to impose the tax or taxes therein specified, as if a resolution of the Panchayat had been passed for the imposition thereof and it shall not be lawful for it to abandon, modify or abolish any tax so imposed;

Provided that the State Government may at any time cancel any such requisition or modify it in any respect;

Provided further that when any tax has been imposed upon the requisition of the State Government under sub-section (3), any other tax of like nature previously imposed by the Panchayat without such requisition shall cease to be levied and realised from the date from which the tax imposed upon the said requisition is to be levied and realised;

Provided further that the tax under clause (c) of sub-section (1) shall not be levied on a motor vehicle as defined in the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) or any other mechanically propelled vehicle.

Explanation: For the purpose of this Section "Commercial Crops" are chillies, cotton, mustard, sugarcane, zeera and groundnut.

7. Perusal of the aforesaid Section 65(1)(c) shows that Gram Panchayat may impose vehicle tax except on those vehicles which are used for the purpose of cultivation, but such a levy would be subject to third proviso to Section 65 which clearly provides that tax under clause (c) of sub-section (1) shall not be levied on a motor vehicle as defined in the Motor Vehicles Act, 1988 or any other mechanically propelled vehicle. Not only that the tractors, trucks with six wheels or ten wheels or bigger trucks/turbos are motor vehicles within the definition of Section 2(28) of the Motor Vehicles Act, but they are all mechanically propelled vehicles. The authority to levy tax on such vehicle vests in the State Government alone. In any case, the tax which has been sought to be realised by the Gram Panchayat in the name of vehicle development tax is analogous to road tax, which is; leviable only by the State Government. There cannot be any duplicity of such tax. Even otherwise, though as it is, the Gram Panchayats have not been able to show authority to levy such tax, the tax can be levied and realised only under the authority of law. In the absence of expressed authority conferring the power upon the Gram Panchayat, such tax could not be levied. The co-ordinate bench of this Court in Narendra Singh, supra held that the Gram Panchayat could not levy tax on the excavation of the minerals within its jurisdiction.

8. Here in the present case, the Gram Panchayats have though not directly levied the tax on excavation of minerals, but indirectly it leads to this only because they have levied the tax on passage of only such vehicles through their territory, which are found to carry the minerals excavated. In other words, the vehicles, though similar in nature, but if not found carrying any of those minerals, would not be subject to levy of tax.

9. In my considered view, no such power is conferred upon the Gram Panchayats to levy this type of tax either u/s 65 or elsewhere under any other Statute or the Rules framed thereunder. In the result, this petition deserves to succeed and is accordingly allowed. The impugned resolution dated 5-3-2012 and agreements dated 21-3-2012 and 30-3-2012 are quashed and set aside and the action of the respondent Nos. 3 and 4 in seeking to realise vehicle development tax is declared illegal and unconstitutional.

