
(2011) 09 AHC CK 0045
In the Allahabad High Court
Case No : C.M.W.P. No. 40596 of 2011

Changa Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 239

Citation : (2011) 114 RD 667

Hon'ble Judges : Bharati Sapru, J; Ashok Bhushan, J

Bench : Division Bench

Judgement

Ashok Bhushan, J.—Heard Sri P.N. Saxena, learned Senior Advocate assisted by Sri Vishal Mohan Gupta for the petitioner, Sri S.P. Shukla learned Counsel appearing for the respondents No. 6 and 7 as well as Sri Neeraj Upadhyaya, learned Additional, Chief Standing Counsel representing the respondents No. 1 to 5. Counter affidavit and rejoinder affidavit have been exchanged between the parties and with the consent of the learned Counsel for the parties, the writ petition is being finally decided.

2. By this writ petition, the petitioner has prayed for quashing the order dated 29.5.2011 passed by the District Magistrate, Mahoba, directing the Upper Mukhya Adhikari to get unauthorized barriers closed and take action against the concerned persons who are realizing Tahbazari more than the prescribed rate and are making realisation forcibly by stick. The order dated 15.6.2011 of the Upper Mukhya Adhikari has also been challenged by which the petitioner has been directed that he may not use any kind of force for realization of Tahbazari fee from vehicles carrying Balu, Bajra, Moram, Patthar, Gitti etc. The petitioner has been also directed not to realise the fee in excess to the prescribed rate.

3. The brief facts of the case as emerged from the pleadings of the parties are; the petitioner was granted a contract for the year 2011-12 for realization of Tahbazari fee from the vehicles carrying sand, Bazra, Moram taken out from the rivers flowing in the rural area and gittis and boulders which are being taken out

in vehicles through the rural area of Mahoba. The contract specifically provides that no realization be made by putting any barriers and further at the specified places rate board shall be put and the realization be made only from the places as mentioned in the contract. The petitioner's case is that in pursuance of the contract he has been realizing the Tahbazari from the vehicles carrying sand, Moram, Bajra, boulders and gitti coming out from the rural areas of Mahoba. However, on incorrect and frivolous complaint, the District Magistrate passed the order dated 29.5.2011 addressed to the Upper Mukhya Adhikari that from the inquiry report of the Sub-Divisional Officer, Mahoba, it is revealed that the petitioner is realizing fee in excess to prescribed rate and the petitioner is also using force by stick for stopping the vehicles. In pursuance of the order of the District Magistrate dated 29.5.2011, the Upper Mukhya Adhikari wrote a letter on 15.6.2011 to the petitioner directing him not to use any force for realization of the Tahbazari fee from the vehicles and not to realise fee in excess to one which is prescribed. The petitioner's case in the writ petition is that the petitioner has not put any barriers and he is realizing the Tahbazari fee from the vehicles from the places which has been mentioned in the contract, copy of which has been filed as Annexure-1 to the writ petition. It is further submitted that the petitioner is not realizing any fee in excess to the prescribed rate. The inquiry which was got conducted by the District Magistrate through Sub-Divisional Officer was an ex-parte inquiry with regard to which the petitioner was never made aware. The petitioner's case is that on 10.7.2011, Tahsildar along with police force came and stopped the petitioner's workers from realizing any Tahbazari. A counter-affidavit has been filed on behalf of the respondents No. 2 to 5 duly sworn by the Tahsildar, Mahoba stating that the petitioner has never been stopped from realizing any Tahbazari. It has been stated in the counter-affidavit that the petitioner has been realizing fee more than the one which was prescribed. Certain receipts have been brought on record in which different rates are printed for example Rs. 40/- for truck and Rs. 20/- for Matador & Tractor Trolley whereas there is a seal of Rs. 100 and the allegation in the counter affidavit is that the petitioner is realizing the amount of Rs. 80/- and 100/- which is in excess to the amount fixed by the Zila Panchayat. It is stated in the counter-affidavit that petitioner and his agents are stopping the vehicles using force by sticks which causes resentment in the vehicle owners, transporters and other public in general. It is stated in the counter-affidavit that report was submitted by the Sub-Divisional Officer, Mahoba on 26.5.2011, copy of which has been filed as Annexure-1 to the counter-affidavit stating that the petitioner is making realization in violation of the terms and conditions of the contract and bye-laws.

4. Rejoinder affidavit has been filed by the petitioner and paragraphs 18 to 21 of the counter-affidavit wherein the allegation of charging excess amount has been made, has been replied in paragraph 15. Allegations in the rejoinder affidavit in paragraph 15 are that the petitioner has never violated any terms of agreement and never realized Tahbazari at the rate of Rs. 100/-. It is stated that the petitioner has realized Tahbazari at the prescribed rate and no force is being

utilized in realization of Tahbazari nor any barriers or obstruction has been put by the petitioner.

5. We have heard learned Counsel for the parties and have perused the record.

6. Zila Panchayat has framed bye-laws u/s 239 of the U.P. Kshetra Panchayat and Zila Panchayat Act, 1961 for collection of fee from vehicles which are transporting minor minerals from the territory of Zila Panchayat, Mahoba. From the contract which has been filed by the petitioner as Annexure-1 to the writ petition, it is clear that the contract was granted to the petitioner to realize Tahbazari fee from vehicles carrying out sand, Bajra, Moram from the rivers and ponds in the rural area of the district. Further similarly, the petitioner was allowed to realize Tahbazari from the vehicles carrying out Gitti and boulders from the hills in the rural areas of Mahoba. The right to realize Tahbazari is thus confined to the vehicles which are taking out sand, Moram and Bazra from the rivers and ponds of the district and similarly from the vehicles taking out boulders and gitti from the hills/lease area situated in the rural area of district Mahoba. The petitioner himself has brought on record, a copy of the Government Order dated 147.2010 by which Upper Mukhya Adhikari, Zila Panchayat, Mahoba has been informed that under the Government Order dated 7.7.2008, Zila Panchayat cannot realize any fee/tax royalty etc. by putting barrier. The Government Order however, clarified that there is no restraint on realizing fee without putting barriers. The question of right of realizing of Tahbazari fee according to the bye-laws framed u/s 239 of 1961 Act by Zila Panchayat came for consideration before the Division Bench of this Court in Subhash Tiwari v. State of U.P. and others 2010 (109) RD 578 (H.C.). The Division Bench had occasion to consider the Government order dated 7.7.2008 by which the State Government has directed removal of all barriers in the State. A contractor of Zila Panchayat, who was granted contract for collection of fee from the vehicles carrying Gitti, Patthar, Boulder, Surkhi, Chuna, Koyla, Bhassi etc. from the mining area situated within the rural areas of Zila Panchayat, Sonebhadra, challenged the Government Order dated 7.7.2008 on the ground that the Government Order dated 7.7.2008 cannot take away right of contractor to realize Tahbazari as per the contract granted by Zila Panchayat by putting the barriers. This Court upheld the Government Order by which State Government has directed removal of all the barriers. This Court held that although contractor has no right to make any realization by putting barriers but there is no prohibition in realization of revenue/ tax, fee, royalty etc. Following was laid down in paragraph 32:

The Government Order dated 7th July, 2008 although refers to the aforesaid Government Order dated 29th April, 2000 and 10th February, 2003 but subject-matter of the Government Order dated 7th July, 2008 is entirely different. The subject matter of the Government Order dated 7th July, 2008 is prohibition of barriers for realisation of any kind of fee, revenue, tax, royalty etc. by the Zila Panchayats of the State. The substance of the Government Order is thus prohibition of establishment of barriers for realisation of fee. The Government

Order does not prohibit realisation of fee, revenue, tax, royalty etc. but the sole object and purpose of the Government Order is prohibition of barriers. In the second supplementary counter-affidavit filed by the State the proceedings dated 2nd July, 2008 have been brought on the record as Annexure SCA-1. The decision taken in meeting dated 2nd July, 2008, which was attended by the Panchayati Raj Minister and the Principal Secretary, Panchayati Raj along with other Ministers and Secretaries of other departments. The said proceedings reveal that decision was taken to abolish the check posts and barriers of all departments except 37 identified barriers of the Trade Tax Department. It has been pleaded by the State in the second supplementary counter-affidavit that the Government Order dated 7th July, 2008 has been issued in pursuance of the decision taken by the Government on 2nd July, 2008. The Government Order dated 7th July, 2008 has to be read in the light of the proceedings dated 2nd July, 2008. The petitioner himself has brought on the record copy of the Government Order dated 2nd July, 2008 issued by the Principal Secretary, which was sent to the Conservator of Forest and other officers of the Forest Department. From the above, it is clear that various departments issued Government Order relating to their department after the decision dated 2nd July, 2008 of the State Government. From the aforesaid, it is clear that the order dated 6th July, 2009 issued by the Collector, Sonbhadra directing the Sub-Divisional Magistrate, Robertsganj and Duddhi to stop operating of barriers/check posts was clearly in accordance with the Government Order dated 7th July, 2008 and could not be faulted with.

7. Learned Counsel for the petitioner has submitted that infact the petitioner has not put any barrier for realization of Tahbazari. It is submitted that even according to the respondents as per inquiry report and the counter-affidavit, no barrier has been put by the petitioner. In the counter-affidavit, two allegations have been made against the petitioner; firstly that the petitioner is realizing the amount in excess to the amount which is prescribed by the Zila Panchayat and secondly that the petitioner is stopping the vehicle using force by stick. From the above, it is clear that there is no allegation that any barrier has been put by the petitioner. The agreement entered into between the petitioner and Zila Panchayat specifically provides that petitioner shall realize the fee as prescribed according to the bye-laws dated 26.8.1993. The petitioner thus, has no right to realize any Tahbazari in excess of one which has been fixed by the Zila Panchayat under the bye-laws. The receipts which have been filed along with the counter-affidavit do indicate that the amount has been mentioned as Rs. 20/- and 40/- whereas the seal has been put for amount of Rs. 100/- and 80/. The petitioner being not entitled to realise any amount in excess to one which is prescribed, it is always open for the Zila Panchayat and administration to prohibit the petitioner from realizing any amount in excess to the amount fixed. It is further relevant to note that even according to the contract, the petitioner is obliged to put a board mentioning the prescribed fee which is to be realized from the vehicles and the allegations in the report submitted by the Sub-Divisional Magistrate was that

petitioner has not put any board mentioning the fee to be paid. No exception can be taken to the directions of the Zila Panchayat as well as Upper Mukhya Adhikari directing the petitioner not to realize the fee in excess to one which has been prescribed under the byelaws. Now comes to the second issue that stopping of the vehicles by use of force. As observed above, the right of the petitioner to realize Tahbazari is from the vehicles carrying out sand, Bazra, Moram from the rivers and ponds situated in the rural area. For carrying out sand, Moram, Gitti and boulders, the vehicles are to be loaded with such minor minerals at river side or quarry side. Zila Panchayat is required to fix the specified points at places from where vehicles start for onwards journey carrying the sand and Moram, Gitti/boulders. The identification of places has to be such that neither there is any obstruction in traffic nor any occasion arises to stop a running vehicle. The right of the petitioner is confined to take Tahbazari from vehicles taking out the sand, Moram, gitti from the rural area of the district. The petitioner under the contract has no right to stop any vehicles carrying out any minor minerals which is passing through a district and which has not loaded any minor minerals from the rural area of the district Mahdba. Under the agreement, the places have been specified from which places, the contractor is entitled to realize Tahbazari. We are of the view that the fixing of places from where the petitioner is entitled to realize Tahbazari, have to be places which are the starting point of vehicles after loading the minor minerals since realizing of Tahbazari at such places shall not give any occasion to stop a running vehicle or give any occasion to use force for stopping the vehicles.

8. In view of the foregoing discussions, we are of the view that ends of justice would be served in disposing of the writ petition with following directions:

(i) The petitioner shall not realize any Tahbazari in excess to the rate prescribed by the Zila Panchayat, Mahoba.

(ii) The petitioner shall establish appropriate boards at the places from where the petitioner has been authorized to realize Tahbazari giving the details of the various rates prescribed for realization of fee from different kind of vehicles so that transporters, vehicle owners may know the amount which they are required to pay.

(iii) In the event, the places which have been specified in the contract are not places from where the vehicles start after loading the minor minerals, it shall be open for the Zila Panchayat to identify such places from where the vehicles start after loading the minor minerals and if required, may execute a supplementary agreement with the petitioner for the purpose of realizing of Tahbazari fee from such specified places.

(iv) Subject to the petitioner's carrying out the realization in accordance with the terms and conditions of the agreement and as per the directions issued above, the respondents shall permit the petitioner to realize the Tahbazari fee as per prescribed rate from specified places.

9. The writ petition is disposed of accordingly.