
(2014) 04 AHC CK 0071

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18330 of 2014

Gitti Balu Truck Operator Association

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

Citation : (2014) 4 ADJ 384 : (2014) 3 ALJ 517 : (2014) 4 AWC 3309 : (2014) 123 RD 536 : (2014) 2 UPLBEC 1490

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : N.L. Pandey and Suyash Pandey, Advocate for the Appellant; Indresh Kumar Singh, N.L. Pandey, R.P. Srivastava, Syed Nadeem Ahmad, V.K. Chandel and V.K. Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri N.L. Pandey, learned counsel for the petitioner, Sri V.K. Singh, learned senior counsel assisted by Sri Ravi Prakash Srivastava, Sri V.K. Chandel, Sri Indresh Kumar Singh and Sri Dev Dayal for the respective Zila Panchayats who have been arrayed as respondent Nos. 6 to 9. We have also heard the learned standing counsel for the respondent Nos. 1 to 5. The issue raised in this petition is the power and authority of the respondents-Zila Panchayats to realize transportation fee from vehicles loaded with mining material which are being transported from other districts and are passing and repassing through the territorial limits of the respective Zila Panchayats.

2. The grievance of the petitioner is, therefore, confined to clause 4 of the bye-laws that have been appended as Annexure 1 to the writ petition to urge that if any mining material is being excavated from within the district and is being transported outside the district, then the Zila Panchayat of that district can realize such transportation fee, but the clause which authorises the charging of such transportation fee from vehicles coming from outside the district is ultra vires the bye-laws itself as well as Section 239 of the U.P. Kshetra Panchayat and

Zila Panchayat Adhiniyam, 1961.

3. Learned counsel submits that since the bye-laws are confined in its operation for the movement of vehicles within the Zila Panchayat limits, the same cannot be applied to vehicles that are just passing through the limits of the Zila Panchayat without involved in any activity of mining within the said district.

4. The argument is, therefore, pure and simple. If the mining activity is being carried out within the same Zila Panchayat where the vehicle is passing or repassing then only the transport fee can be charged and not otherwise.

5. The matter had been heard earlier and Sri V.K. Singh, learned senior counsel, had cited the decision in the case of B. Agarwal Stone Product Limited Vs. State of U.P. and Others, , to urge that this issue has already been answered by the Full Bench decision categorically laying down that even if the bye-laws cannot be located to the exercise of powers of framing bye-laws u/s 239 of the 1961 Act, yet the provisions of Section 142(1) of the same Act authorizes the Zila Panchayat to charge the transportation fee from any vehicle passing or repassing through the district even if the excavation or mining operations are not within the same district.

6. Having considered the submissions raised and having perused the Full Bench judgment, the ratio of the said Full Bench as answered can be gathered from a bare perusal of paragraphs 4, 48, 49 and 51 of the judgment that are extracted hereinunder:

4. The notification dated 5.12.1994 containing the bye-laws that had been framed by the Zila Panchayat, Sonebhadra was published in the U.P. Gazette on 10.12.1994. Clause 1 of the bye-laws states that the bye-laws shall be called the bye-laws empowering the Zila Panchayat, Sonebhadra to levy fee on trucks and tractors engaged for transporting "gitti", stones, boulders, "surkhi", lime, coal and coal dust collected from the mining places situated within the rural areas of Zila Panchayat, Sonebhadra to places within or outside the district. Clause 3 provides that every person who on his own or through labourers collects gitti, stone, boulders, lime, coal and coal dust from the mining places of rural areas falling within district Sonebhadra and transports them by land from the rural areas by tractor or truck shall pay the prescribed fee to the Zila Panchayat, Sonebhadra and that such fee shall be paid at the place fixed by the Zila Panchayat, Sonebhadra to such officers or contractors authorised by the Zila Panchayat. Clause 4 stipulates that the fee per trip per tractor shall be Rs. 10/- while fee per trip per truck shall be Rs. 20/-. These fees were subsequently enhanced to Rs. 15/- and Rs. 30/- respectively by the notification dated 23.8.1999. Clause 11 of the bye-laws provides that if there is any default of payment of fee while taking the aforesaid minerals for the personal use or sale the mineral shall be confiscated and Clause 12 provides that in case the fee is not paid within a period of 15 days, then the mineral shall be sold for realisation of the fees.

48. Dr. L.M. Singhvi, learned Senior Counsel for the petitioner submitted that the impugned bye-laws are beyond the powers of the Zila Panchayat as the transportation of mineral is not contemplated by Sections 142, 144 and 239 of the Zila Panchayat Act. Elaborating his submission, he contended that Section 142(1) of the Act is not attracted inasmuch under this section the Zila Panchayat can charge fee to be fixed by the bye-laws for use and occupation of any immovable property vested in, or entrusted to the management of the Zila Panchayat including any public road or place by which it allows the use or occupation whether by allowing a projection thereon or otherwise but the use or occupation which fall under the expression "or otherwise" are specifically provided for under the provision of Section 239 and do not provide for framing bye-laws for imposing fees for passing of vehicles on public roads. His contention, therefore, is that the scope of "or otherwise" mentioned in Section 142 of the Act is defined in Section 239 and for the purposes of the present case is u/s 239(2) C namely Streets but this does not contemplate the imposition of fee by Zila Panchayat merely on passing of vehicles on public road and, therefore, the levy of fees is without jurisdiction.

49. Learned Advocate General Sri S.M.A. Kazmi and Sri Ravi Kiran Jain, learned Senior Counsel for the Zila Panchayat on other hand, submitted that Section 142(1) of the Zila Panchayat Act is an independent provision which authorises the Zila Panchayat to levy fee for use or occupation of immovable property of Zila Panchayat including public roads or places and Section 239(2) has no application since bye-laws under this sub-section are framed without prejudice to the generality of the power conferred on the Zila Panchayat by Sub-section (1) or Section 239. They further contended that u/s 239(1) the Zila Panchayat could make bye-laws applicable to the whole or any part of the rural area of the district in respect of matters required by the Act to be governed by bye-laws and since u/s 142, the Zila Panchayat could charge fees to be fixed by the bye-laws for use or occupation of any immovable property vested in or entrusted to the management of the Zila Panchayat including any public road, the Zila Panchayat had validly framed the bye-laws. It was also contended by the learned Senior Counsel for the respondents that in view of the definition of public road in Section 2(37) of the Zila Panchayat Act, the Zila Panchayat was competent to levy fees every if a person had an enforceable right to use the road.

51. The contention of Dr. Singhvi, learned Senior Counsel for the petitioner is that the Zila Panchayat can impose fee u/s 142 of the Act only on such use of occupation as are prescribed u/s 239(2) of the Act. In this connection he pointed out that the limitations are prescribed under "C"-Streets contained in Section 239(2) of the Act and mere passing or repassing of the vehicles on public road is not covered under this. In our opinion, Section 142(1) is an independent section which empowers the Zila Panchayat to charge fee to be fixed by the bye-laws for use and occupation of the public road. Section 239(1) of the Zila Panchayat Act clearly empowers the Zila Panchayat to make bye-laws for its own purposes in respect of matters required by this Act to be governed by bye-laws. Thus, in view

of Section 142(1) of the Zila Panchayat Act read with Section 239(1) of the Zila Panchayat Act, the Zila Panchayat can frame byelaws for charging fees for use or occupation of any public road. Section 239(2) of the Zila Panchayat Act empowers the Zila Panchayat to make bye-laws without prejudice to the generality of the power conferred by Section 239(1) of the Zila Panchayat Act in such circumstances the contention of the learned Senior Counsel for the petitioner that the power to frame bye-laws u/s 142(1) of the Zila Panchayat Act is circumscribed by the conditions contained in Section 239(2) of the Act and in particular to "C-Streets" cannot be accepted.

7. The ratio of the said Full Bench judgment clearly states that over and above the powers conferred u/s 239, the Zila Panchayat can frame a bye-law and impose a fee as has been done in the present case as well in exercise of the powers u/s 142 of the Act. The answer of the full bench is therefore complete and squarely repels the submissions raised by the counsel for the petitioner. Thus, there is no ground to strike down the impugned bye-laws merely because Section 142 has not been mentioned in the notification. Consequently, there is no merit in this writ petition. Rejected.