(2015) 11 AHC CK 0141

In the Allahabad High Court

Case No : Writ - C No. 26454 of 2009

Jai Singh and Others APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Citation : (2015) 11 ADJ 675 : (2016) 114 ALR 742

Hon'ble Judges : Krishna Murari and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Abhishek Mishra, Navin Sinha and Rahul Mishra, for the Appellant; A.K. Nigam and Isa Khan, for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—The petitioners, who are partners of partnership firm M/s. Jai Singh Vaibhav Kumar, have approached this Court challenging the demand notice dated 25.03.2009 issued by the Chief Executive Officer, Cantonment Board, Meerut for recovery of a sum of Rs. 2,50,58400/- along with 3% development charge from the petitioners, failing which, security deposit of Rs. 40.00 lacs shall be forfeited and the balance shall be realized by sale of immovable property in accordance with Cantonment Act. A further relief of mandamus has also been claimed to command the respondents to release/return Rs. 40.00 lacs deposited by the petitioners as security in pursuance of the tender notice.

2. We have heard Sri S.D. Singh, learned Senior Advocate assisted by Sri Rahul Mishra, appearing for the petitioner and Sri Prashant Mathur appearing for the respondents No. 2 and 3. Though, the case has been called out in the revised list but no one has appeared on behalf of respondent No. 1.

3. Facts, giving rise to the dispute, are as under:

Respondent-Cantonment Board, Meerut invited tenders for collection of toll tax from commercial vehicles entering or passing through the limits of Meerut Cantonment Board for a period of eleven months by publishing a tender notice dated 19th/20th December, 2007 in different newspapers. The last date for submission of application was 2nd January, 2008 and the date for issuance of tender form after scrutiny was 5th January, 2008. The petitioners purchased the tender form which was accompanied with terms and conditions of the tender. In paragraph 3 of the terms and conditions, six existing toll collection points were specified. However, in para 4 of the terms and conditions, it is mentioned that bids were invited for collection of toll tax from all commercial vehicles as specified in the gazette notification entering into or passing through any route into the limits of Meerut Cantt. The total collection points as per para 4 of the terms and conditions is eleven in number. Eight persons, including the petitioners, purchased the tender form, out of which only seven submitted their tenders. All the bidders submitted two bids. One bid was for existing six toll collection points mentioned in paragraph 3 of the terms and condition and the other bid was for total 11 collection points as per para 4 of the terms and conditions. The bids submitted by the petitioner for Rs. 1,06,200/- per day for the six already existing toll collection points and of Rs. 1,71,000/- per day for eleven toll collection points was found to be highest and the same was placed before the Cantonment Board for approval. The Cantonment Board vide resolution No. 334 dated 17.01.2008 resolved to invite highest bidder for negotiation for upward revision of the bid offered and the result of such negotiation to be placed before the Board in the next meeting.

4. In pursuance of the aforesaid resolution, negotiation was held with the petitioners on 29.01.2008. During the negotiation, the petitioners increased their bids for eleven toll collection points from Rs. 1,71,000/- per day to Rs. 1,85,000/- per day. The revised offer made by the petitioner was placed before the Cantonment Board, Meerut in its meeting dated 29.01.2008 which was approved vide resolution No. 342. In pursuance of the aforesaid resolution, the petitioners were granted license dated 31.01.2008 by the Chief Executive Officer, Meerut Cantt. for collection of toll tax from commercial vehicles entering or passing through Meerut Cantonment from all the eleven toll collection points with immediate effect for a period of eleven months. As required, the petitioners deposited a sum of Rs. 40.00 lacs towards security money in the shape of demand draft and F.D. Rs in favour of Chief Executive Officer, Cantonment Board, Meerut and thereafter they were granted certificate of authorization dated 01.02.2008 to collect toll tax from the commercial vehicles entering into the limits of Meerut Cantonment for eleven months with effect from 01.02.2008. The certificate for authorization dated 01.02.2008 specifies the following eleven points for collection to toll tax.

1. Delhi Road at appropriate place.

2. Roorkee Road

3. Mawana Road

4. Sardhana Road

5. Rohta Fatal Road

6. City Station Road

7. Boundary Road

8. Road from Mahmudpur village to Grass Farm Road,

9. Road from Katkhana Bridge to Double Gate R.A. Bazar 10. Road near Oil Depot

11. Road from Kankerkhera near Railway Crossing (Liquor Factory).

5. As soon as the petitioners started collecting the toll tax from the specified eleven points, District Magistrate, Meerut issued a letter dated 10.02.2008 asking the Chief Executive Officer, Cantonment Board, Meerut to stop the collection of toll tax at all eleven points within the limit of Meerut Cantonment Board on the ground of alleged protest of general public and for maintaining law and order. In pursuance of the aforesaid order of the District Magistrate, the petitioners were stopped from collecting the toll tax at all the eleven points with effect from 6:00 PM of 10.02.2008. Another letter dated 11.02.2008 was written by the District Magistrate, Meerut to the Secretary, Ministry of Defence, New Delhi for stopping collection of toll on five new collection points i.e. (1) National Highway No. 119, Mawana Road, (2) National Highway No. 58, Roorkee Road, Meerut, (3) Oil Depot near old RTO office, (4) near Central Distillery Crossing and (5) Khatkana near Kaseru Kheda. Chief Executive Officer, Cantonment Board, Meerut vide letter dated 12.02.2008 informed the petitioners that District Magistrate has modified its earlier order regarding collection of toll tax and has permitted collection of toll at the six old points. The petitioners vide their letter dated 12.02.2008 expressed their inability to carry on collection of toll at six earlier collection points at the rate of Rs. 1,85,000/-. They, however, expressed their willingness to carry out collection at the six old collection points in accordance with the bid of Rs. 1,06,200/- per day offered by them with effect from 12.02.2008 at 11:00 PM. Cantonment Board vide resolution dated 15.02.2008 permitted the petitioners to collect toll from six old toll collection points plus development charges. It further resolved to issue a fresh tender notice for collection of toll tax from six toll collection points. The petitioners challenged the said tender notice by filing Writ Petition (Tax) No. 575 of 2008, Jai Singh Vaibhav Kumar Versus Union of India and others. Vide order dated 19.03.2008, a Division Bench of this Court granted an interim order staying the operation of the tender notice dated 26th February, 2008. The order dated 19.03.2008 is being extracted hereunder:

"Issue notice.

The contention of learned counsel for the petitioner is that the petitioner was authorized to collect toll tax on payment of Rs. 1,85,000/- per day and the petitioner is collecting the same since 12th February, 2008. Since the petitioner''s contract is continuing to collect toll tax, according to the petitioner, there is no justification to grant contract to third person.

In view of the contentions made by learned counsel for the petitioner, the matter requires consideration. We, therefore, stay the operation of the tender notice No. R/108/Toll Tax, dated 26th February, 2008 till further orders."

6. In pursuance of the aforesaid order passed by this Court, the petitioners continued to collect toll tax till 31.12.2008 and deposited a sum of Rs. 1,06,200/- per day as was agreed between the petitioner and the Cantonment Board.

7. After the period of contract was over, the Chief Executive Officer, Cantonment Board, Meerut issued a demand letter requiring the petitioners to pay a sum of Rs. 2,50,58,400/- towards collection of toll alleging that petitioners were under obligation to pay at the rate of Rs. 1,85,000/- per day. The aforesaid demand was towards the difference of amount paid by the petitioner at the rate of Rs. 1,06,200/- per day and Rs. 1,85,000/- being claimed by the respondents-Cantonment Board.

8. Sri S.D. Singh, learned Senior Advocate appearing for the petitioners submits that bid of Rs. 1,85,000/- was offered by the petitioners for eleven toll collection points and Rs. 1,06.200/- for already existing old six toll collection points and after imposition of ban by the Collector, Meerut regarding realization of toll tax on five new created toll tax points, the petitioners made an offer to continue to collect the toll tax on six already existing toll collection points at the rate offered by them in the bid which was accepted by the Cantonment Board vide its resolution No. 342 dated 15.02.2008, which has been filed as Annexure ''10'' to the writ petition. It is further submitted that the impugned demand towards difference of the amount is patently illegal and arbitrary in as much as the petitioners were only permitted to carry on the collection of toll tax on six collection points to which they consented at the rate of Rs. 1,06,200/- per day which was offered by them initially and the same was accepted by the Cantonment Board and now they are not entitled to charge at the rate of Rs. 1,85,000/- per day and that too after the period is over.

9. In reply Sri Prashant Mathur, learned counsel appearing for the Cantonment Board, points out that petitioners continued under the interim order dated 19.03.2008 wherein it is recorded that petitioner was authorised to collect toll tax at the rate of Rs. 1,85,000/- per day and since the deposit has been made only at the rate of Rs. 1,06,200/- per day, the difference is being realized from the petitioners. A counter affidavit has been filed on behalf of the respondents wherein in paragraph 18, it has been stated that the petitioner has categorically voluntarily admitted before this Court in Civil Misc. (Tax) Writ Petition No. 575 of 2008 that he has contract with him for Rs. 1,85,000/- per day in respect of right of collection of toll tax on all collection points situate within the limits of Meerut Cantt.

10. The entire case set up by the respondents-Cantonment Board in the counter affidavit and the arguments advanced on its behalf centres round the fact

recorded in the order dated 19.03.2008 passed on Writ Petition (Tax) No. 575 of 2008. Referring to the fact recorded in the order dated 19.03.2008 that the petitioner was authorized to collect toll tax at the rate of Rs. 1,85,000/- per day, Sri Prashant Mathur appearing for the Cantonment Board vehemently contends that since the petitioners themselves made a statement before the Court that they were authorized to collect toll tax at the rate of Rs. 1,85,000/- per day, now they cannot be permitted to resile from the said admission and they are liable to pay toll tax at the said rate.

11. Sri S.D. Singh, learned Senior Advocate appearing for the petitioners, submits that pleadings of Writ Petition (Tax) No. 575 of 2008 go to show that it was categorically stated that the petitioners expressed their willingness to carry on collecting toll tax at six old points at the rate of Rs. 1,06,200/- per day as offered by them in their initial bid which was duly accepted by the Cantonment Board vide resolution No. 342 dated 15.02.2008 (Annexure ''10 to the writ petition). No where in the pleadings, the petitioners made any admission with respect to their willingness to deposit a sum of Rs. 1,85,000/- per day for only six collection points. The bid of the said sum was offered for eleven collection points and since they were not permitted to carry out collection at five newly created points, thus, in the change scenario, they offered to collect toll tax at the six old points as per the bid amount offered by them, which was accepted by the Cantonment Board and thus, it is not now entitled to recover anything further. He further submits that mere recording of a sum of Rs. 1,85,000/- in the order dated 19.03.2008 which, apparently, was a mistake, which could not be pointed out to the Court for being corrected will not legally entitle the respondents-Cantonment Board to make any recovery of any outstanding amount on the said basis. He further submitted that the said writ petition (tax) came to be dismissed as infructuous vide order dated 27.07.2015 and with the dismissal of the writ petition, the interim order dated 19.03.2008 already became nonest and stood discharged.

12. We have considered the arguments advanced by the learned counsel for the parties and perused the record.

13. The facts recorded above are undisputed. The only issue for our consideration is whether the respondents-Cantonment Board is entitled to recover from the petitioners any amount at the rate of Rs. 1,85,000/- per day on the strength of the said figure being recorded in the order dated 19.03.2008. Record of Writ Petition (Tax) No. 575 of 2008 has been placed before us along with this writ petition. In paragraph 18 of the said writ petition, it has been clearly stated that since the petitioners have been permitted to collect toll at six points instead of eleven points, the petitioners will start collecting toll with effect from the night of 12.02.2008 at the rate of their highest bid of Rs. 1,06,200/- per day for six collection points. It may be relevant to extract paragraph 18 of the Writ Petition (Tax) No. 575 of 2008:

"That after receiving the aforesaid letter dated 12.02.2008 the petitioner had sent a letter dated 12.02.2008 to the Chief Executive Officer, Cantonment Board, Meerut Cantt. informing him that by said letter dated 12.02.2008 he had authorized the petitioner to collect the toll on the old 6 toll collection points instead of 11 toll collection points though petitioner''s revised highest bid of Rs. 1,87,500/- per day was approved for 11 toll collection points. Since petitioner was permitted to collect toll at 6 points only instead of 11 points therefore petitioner will start to collect the toll from the night of 12.02.2008 @ their highest bid of Rs. 1,06,200/- per day for 6 collection points. A true copy of the letter dated 12.02.2008 of the petitioner sent to Chief Executive Officer, Cantonment Board, Meerut Cantt. is being filed herewith and marked as Annexure No. 11 to this writ petition."

14. The aforesaid offer made by the petitioners was duly rectified by the Board vide resolution dated 15.02.2008, filed as Annexure ''10 to the writ petition. The relevant part of the said resolution is extracted hereunder:

"Further resolved that fresh tenders be invited for such points for which there is no dispute, meanwhile, the existing contractor will continue collection of toll tax for the time being at the rate of Rs. 1,06,200/- per day plus development charges till fresh tender is accepted by the Board."

15. Fresh tender came to be stayed by this Court vide order dated 19.03.2008. It appears to us that while recording arguments of petitioners that they were authorized to collect toll tax by inadvertent mistake sum of Rs. 1,85,000/- per day was mentioned in place of Rs. 1,06,200/- per day. Since the same appears to have been incorporated in the order by inadvertent mistake as it has never been the case either of the parties in the said writ petition at any point of time that the petitioners did not offer and were not authorized by the Cantonment Board to collect toll tax at the six already existing points on its initial bid at the rate of Rs. 1,06,200/- per day, the amount of Rs. 1,85,000/- came to be incorporated by inadvertent mistake in the order.

16. Admittedly, the petitioners have deposited the amount with the Cantonment Board at the rate of Rs. 1,06,200/- per day, in our opinion, the respondent-Cantonment Board would not be entitled to recover the amount from the petitioners treating the rate to be Rs. 1,85,000/- per day. Having once permitted the petitioners to continue the collection of toll at the rate of Rs. 1,06,200/- per day, the respondents-Cantonment Board cannot be permitted to take ''U'' turn and charge any other rate from the petitioners only on account of some inadvertent error due to which different amount came to be recorded in the order dated 19.03.2008.

17. There is another aspect of the matter, the interim order dated 19.03.2008 passed by this Court in Writ Petition (Tax) No. 575 of 2008 on the basis of which the respondents-Cantonment Board alleges to realize the difference automatically lapsed on dismissal of the writ petition as infructuous. Once the writ petition was dismissed, the interim order passed thereon automatically

stands discharged and become non-existent and inoperative. Identical issue came up for consideration before the Hon''ble Apex Court in the case of Bileshwar Khan Udyog Khedut Shahakari Mandali Limited etc.AIR 1999 1198 (SC) . Hon''ble Apex Court in paragraph 5 of the reports held as under:

"Coming to the first argument, the contention of the appellant''s counsel is that since the interim order passed by the High Court on the basis of which the appellants made excess realisation having not been set aside by the appellate or high court, the realisation made by the appellants would not fall within the ambit of Section 2(b)(ii) of the Act. The contention is that interim orders passed in writ petitions although automatically lapsed on dismissal of the writ petitions, the interim orders passed therein automatically stood discharged. The ordinary meaning of the words "set aside" is to revoke or quash, the effect of which is to make the interim order inoperative or non-existent. In the present case, when the High Court dismissed the writ petition, the interim order passed therein became non-existent and inoperative, the effect of setting aside an order or automatic discharge consequent upon the dismissal of writ petition is the same. In fact the expression "set aside" used in Section 2(b)(ii) means the interim order has come to an end and has become inoperative. We, therefore, reject the first argument of learned counsel for the appellant."

18. In view of the aforesaid facts and discussions, it is clear that eleven toll collection points, on which the petitioners'' offer of Rs. 185,000/- was accepted, was later on reduced to Rs. 1,06,200/- for six collection points which was duly accepted by respondents-Cantonment Board. The respondents-Cantonment Board erred in construing the interim order of the Court dated 19.03.2008 passed on writ petition (Tax) No. 575 of 2008 in making a demand of Rs. 1,85,000/- per day and they are not entitled to recover any further amount from the petitioners. Thus, the impugned recovery notice dated 25.03.2009 (Annexure ''13'' to the writ petition) is not liable to be sustained and is, hereby, quashed. A mandamus is issued commanding the respondents-Cantonment Board to release/ return the security amount of Rs. 40.00 lacs made by the petitioners in the form of FDR/Demand Draft in pursuance of the tender notice within a period of three weeks from the date of receipt of a certified copy of this order. Writ petition stands allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

