(2014) 04 GAU CK 0023

In the Gauhati High Court

Case No : W.P.(C) No. 4735 of 2012

Momin Ahmed APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-04-2014

Acts Referred:

National Highways Act, 1956 — Section 5, 7, 8A(2), 9, 9(2)(b)

Citation : (2014) 2 GLD 283 : (2014) 2 GLT 442

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : M.U. Mondal, Mr. R. Islam and Mr. H.R. Ahmed, Advocate for the Appellant; R. Sarma, ASG, Mrs. V.L. Singha, SC and Mr. Y.S. Mannan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.—The prayer in this writ petition is to quash the notification of the Chief Engineer, PWD (Roads), Assam, issued about 30 years back and, to be precise, on 27.03.1983 (Annexure-2). By the said notification, the authority, exercising the powers conferred by Section 9 of the National Highways Act, 1956 (in short, ''the NH Act, 1956'') declared the particular bridge, namely, Gangadhar Bridge, on National Highway No. 31 at Golokganj, over river Gangadhar, as a toll bridge w.e.f. 01.04.1983. According to the petitioner, he is a registered owner of the vehicle Bolero-SLX bearing registration No. AS-17-A-5079. He has filed the writ petition for the greater interest of the society. Referring to the aforesaid notification dated 26.03.1983, the petitioner has asserted that the authority has been illegally collecting toll fee, as specified in the said notification, for plying vehicles over the said bridge. He has attributed illegality, on the part of the respondents, in view of the fact that the cost of construction of the bridge has long been recouped and, thus, there is no requirement of collecting further toll for plying vehicles over the said bridge by engaging lessees for collection of toll. Referring to the RTI application, dated

05.09.2011, and the reply thereto, dated 22.09.2011, the petitioner has stated that the cost of the bridge having already been realized by collecting tolls, there is no question of collecting further tolls.

2. The respondents have filed their counter-affidavit. In the affidavit filed by the respondent No. 6, it has been stated that the Gangadhar Bridge had been declared as a toll gate on 26.03.1983 as per the guidelines of the Govt. of India, in the Ministry of Road, Transport and Highways. In the affidavit, the said respondents has brought on record the Annexure-''A'' letter, dated 13.10.2010, of the Govt. of India, addressed to the Chief Engineer (NH), PWD, on the subject of collection of toll for the bridge over river Gangadhar, on NH 31, in the State of Assam. By the said letter, it was communicated that the collection of fees for the bridge shall be in perpetuity as per Rule 11 of the National Highways (Fees for the Use of National Highways, section and Permanent Bridge - Public Funded Projects) Rules, 1997 (hereinafter referred to as ''the Rules of 1997''). Referring to the various provisions of the National Highways Act and also the Rules of 1997, it has been stated that there is no illegality in collecting tolls. In this connection, the State respondents have also referred to the National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011, providing that after the recovery of the capital cost through the user fee realised, in respect of a public funded project, the fee leviable would be reduced to 40% of the user fee for such section of National Highways, bridge, tunnel, or pipes, as the case may be, shall be revised annually in accordance with the rules.

3. The petitioner has also filed a rejoinder-affidavit to the counter-affidavit filed by the respondent No. 6 reiterating and reaffirming the statements made in the writ petition.

4. I have heard Mr. M. U. Mondal, learned counsel, along with Mr. R. Islam, learned counsel, representing the petitioner. I have also heard Mr. R. Sarma, learned ASG, Mrs. V. L. Singha, learned State counsel, and Mr. Y. S. Mannan, learned Standing counsel, PWD, who have made submissions in reference to the stand taken in the aforesaid counter-affidavits.

5. Learned counsel for the petitioner, in support of his arguments, has placed reliance on four decisions of the Apex Court, reported in MSK Projects (I) (JV) Ltd. Vs. State of Rajasthan and Another, , State of U.P. and Others Vs. Devi Dayal Singh, , (2001) 9 SCC 328 : Mandsaur Transport Association Vs. State of M.P. & Ors. and State of Orissa and Another Vs. Mamata Mohanty, .

6. Mr. R. Sarma, learned ASG, submits that as per the provisions of the NH Act, 1956, and also the aforesaid Rules of 1997, the fee shall be collected in perpetuity by the executing agency. He also submits that since the provisions in the said Act and the Rules, empowering the authority to levy toll, are not under challenge, the notification issued way back in 1983 is not liable to be interfered with.

7. The learned counsel representing the other respondents have also adopted the

said argument of Mr. Sarma, learned ASG They also submit that the petitioner, as a single individual, cannot espouse the cause of the users of the toll bridge without being authorised to do that.

8. I have considered the submissions of the learned counsel for the parties and I have also considered the entire materials on record. My findings and conclusions are as follows:

9. Learned counsel for the petitioner has referred to the provisions of Section 7 of the NH Act, 1956, as well as Rule 3(1) of the National Highways Fee (Determination of Rates and Collection) Rules, 2008. For a ready reference, the said provisions are quoted below:

7. Fees for services or benefits rendered on national highways-

(1) The Central Government may, by notification in the Official Gazette, levy fees at such rates as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, permanent bridges the cost of construction of each of which is more than rupees twenty-five lakhs and which are opened to traffic on or after the 1st day of April, 1976, temporary bridges and tunnels on national highways and the use of sections of national highways.

(2) Such fees when so levied shall be collected in accordance with the rules made under this Act.

(3) Any fee leviable immediately before the commencement of this Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on any highway specified in the Schedule shall continue to be leviable under this Act unless and until it is altered in exercise of the powers conferred by sub-section (1).

Provided that if the Central Government is of opinion that it is necessary in the public interest so to do, it may, by like notification, specify any bridge in relation to the use of which fees shall not be leviable under this sub-section.

Rule 3. Levy of fee.-

(1) The Central Government may, by notification, levy fee for use of any section of national highway, permanent bridge, bypass or tunnel forming part of the national highway, as the case may be, in accordance with the provisions of these rules.

Provided that the Central Government may, by notification, exempt any section of national highway, permanent bridge, bypass or tunnel constructed through a public funded project from levy of such fee or part thereof, and subject to such conditions as may be specified in that notification.

10. On the other hand, the respondents have referred to Section 5 and Section 9(2)(b) of the aforesaid Act, which are also quoted below:

5. Responsibility for development and maintenance of national highways. - It

shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government of to the State Government.

9. Power to make rules.-

(1) *** *** ***

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely,-

(a) *** *** ***

(b) the rates at which fees for services rendered in relation to the use of ferries, permanent bridges, temporary bridges and tunnels on any national highway and the use of sections of any national highway may be levied, and the manner in which such fees shall be collected, u/s 7.

11. As per Section 5 of the Act, it shall be the responsibility of the Central Government to develop, maintain in proper repair of National Highways. The Central Government may, by notification, make rules for carrying out the purpose of the Act (Section 9), which includes making provision for the rates at which fees for services rendered, in relation to the use of ferries, permanent bridges, temporary bridges and tunnels etc. on National Highway is leviable.

12. Learned counsel for the petitioner has emphasised on Section 8A(2) so as to argue that levy of fees at such rates, for the service or benefits rendered, must be in reference to the expenditures involved in building, maintenance, management and operation of the whole or part of such National Highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement. According to the petitioner, such levy of toll cannot be in perpetuity. As noted above, it is the stand of the petitioner that the cost of construction of the bridge having already been met with, there is no need to continue to levy tolls for use of the bridge. In this connection, the petitioner has also referred to the Annexure-10 letter, dated 08.02.12, by which one Sri Mominuddin Ahmed was informed by the Assistant Executive Engineer, Government of India, in the Ministry of Road, Transport and Highways, that the matter of collection of toll at the bridge over the Gangadhar river, in Dhubri District, was under consideration in the Ministry.

13. The decisions on which the learned counsel for the petitioner has placed reliance are on the principle regarding entitlement of to recover toll fee. In MSK Projects India (JV) Limited (supra), the Apex Court observed that the State authorities cannot be permitted to use the collection of toll fee as augmenting

the State revenue. In that case, the Apex Court was concerned with the toll fee under the Tolls Act, 1851, which was compensatory in nature, wherein the Government can reimburse itself the amount, which it had spent on construction of road/bridge etc. Referring to the provisions of the aforesaid Act, it was held by the Apex Court that the State is competent to levy/collect toll fee only for the period stipulated in the statute or till the actual cost of the project with interest etc. is recovered. It was further held that the same cannot be the source of revenue for the State.

14. In Devi Dayal Singh (supra) also, the Apex Court was concerned with the provisions of the Tolls Act, 1851. The Apex Court held that the State Government would take into account the purpose of levying any toll, under the particular notification in respect of the road or bridge constructed by it, statutory cost, interest on statutory cost and maintenance etc.

15. In Mandsaur Transport Association (supra), dealing with the levy of cess, tolls and miscellaneous taxes and the period of continuance thereof, the Apex Court held that collection of toll cannot continue where the cost of construction and even the cost of maintenance have already been recovered by the State Government.

16. Mamata Mohanty (supra) has been placed reliance on so as to argue that if there is any violation of the statutory provisions, any circular, notification and/or order, even without any formal challenge to the same, cannot hold the field. In the said decision, the Apex Court has held thus:

68 (xxi) The submission on behalf of the respondents that government orders/ circulars/letters have been complied with, therefore, no interference is called for, is preposterous for the simple reason that such orders/circulars/letter being violative of statutory provisions and constitutional mandate are just to be ignored in terms of the judgement of this Court in Ram Ganesh Tripathi.

17. Needless to say that the ratio of any decision will have to be understood in the background of the fact situation of each and every case. It has been said a long time ago, in Ambica Quarry Works Vs. State of Gujarat and Others, ,

...........The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathern, 1901 AC 495).............

18. In the instant case, the impugned notification was issued way back in 1983 and, to be precise, on 26.03.83. According to the petitioner, he has filed the instant writ petition for greater interest of the society. It is in this context the learned counsel for the respondents have argued that if the petitioner is desirous of espousing the cause of the public, he will have to do so by taking recourse to other legal remedies and not in the form of the present writ petition.

19. On a total reading of the aforesaid provisions of the Act and the rules, as

described and discussed in the counter-affidavit filed by the respondent Nos. 1, 2 and 3, it cannot be said that with the realization of the cost of construction of the bridge, built on the National Highway, the authority is denuded and/or divested of its power to levy toll fee. As disclosed in the counter-affidavit, filed by the respondent Nos. 1, 2 and 3, as per the letter dated 20.07.2012, of the Government of India, in the Ministry of Road, Transport and Highways, the fee will continue to be levied at a reduced rate of 40% of user fee of the bridge over river Gangadhar, on NH 31, in the State of Assam in accordance with Rule 3 of the National Highway Fee (Determination of Rates and Collection) Rules, 2008. Such a course of action has been adopted as per the provision of Rule 11 of the aforesaid Rules of 1997, in terms of which the fee shall be collected in perpetuity by the executing agency.

20. Above apart, on a total reading of the provisions of the NH Act, 1956, it cannot be said to be a case of total banning of levy of toll fee once the cost of construction is realized. The authority empowered to levy toll is also shouldered with the responsibility for development and maintenance of the National Highways. u/s 9 of the Act, the Central Government is also authorized to make rules, which includes framing of rules for fixation of rates at which fees for serves rendered, in relation to use of permanent bridges, is to be fixed. It is not a case of issuance of any orders/notifications by the competent authority in deviation of the provisions of the Act and the Rules. Rather, the provisions of the Act and the Rules themselves permit the authority to levy tolls in respect of the bridge(s) on the National Highways. Above being the position, the decisions, on which the learned counsel for the petitioner has placed reliance, are of no help to the case of the petitioner. The particular action having been taken and continued as per the aforesaid provisions of the Act and the Rules and, in absence of any challenge to the same, the impugned action of the respondents cannot be interfered with. Consequently, the writ petition stands dismissed without, however, any order as to costs.