
(2013) 02 P&H CK 0195
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 3360 of 2013

M/s. Zeus Consultants

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)
Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 — Section 4

Citation : (2013) 170 PLR 192

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Kanisth Ganeriwala, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—Various toll plazas have been set up at different points on State Highways crisscrossing the territory of Haryana. The petitioner was a successful bidder on 01.08.2012 as a toll agent of the government and started its operation of collection of toll w.e.f. 01.10.2012 vide letter dated 27.09.2012 for toll point no. 18 on Narnaul-Nizampur Road near the Rajasthan Border for a period from 01.10.2012 to 30.09.2013. The contract is for a period of one year. The petitioner pleads that it deposited 15% of the bid amount as security deposit in a sum of Rs. 93.5 lacs odd. The first and second installments were to be paid in advance along with security deposit.

2. The complaint in this petition is that the business of the petitioner is suffering due to the bad condition of the road surface at toll site which has further deteriorated during the monsoon even before the petitioner set about his business collecting toll tax w.e.f. 01.10.2012. Some photographs have been attached to the petition which according to the petitioner show "the pathetic condition of the road at toll point no. 18". The petitioner says that it has raised its grievance with respect to the condition of the surface of the road through e-mails dated 10.12.2012, 18.12.2012, 21.12.2012 and 07.02.2013 sent to the toll

authorities.

3. The prayer in this petition is for issuance of a writ in the nature of mandamus directing the Haryana State Roads and Bridges Development Corporation Limited - respondent No. 2 to repair the road lying at toll point 18 on the Narnaul-Nizampur segment which has allegedly developed numerous potholes and suffered major cracks. Since the petitioner has been appointed as an entrepreneur/agent to collect toll and service charges its business is being substantially affected. The petitioner has invoked its fundamental right under Article 19 (1)(g) of the Constitution of India.

4. The regulatory mechanism of levy and connection of toll in respect of use of roads facilities in the State of Haryana is governed by the provisions of the Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996 (for short "the Act"). Section 4 of the Act empowers the State Government to authorize any person who has agreed to do the following acts mentioned in Section 4, to appreciate which Section 4 needs reproduction:-

The Government may, by notification, authorize any person who has agreed to construct, reconstruct, improve, strengthen widen, tunnels, ferries, approach roads or section of new roads or by passes which has been declared as a part of the toll facilities, to demand, collect and retain tolls for such period and at such rates as may be specified in the notification for the use of such toll facilities.

The legislative object of the Act is stated in the following words:-

To construct, erect, build, re-model, repair, execute, develop, improve, administer, manager, control, maintain..... the highways, expressways, roads, paths, streets.... or any other structural or architectural work and also to do other similar construction, leveling or paving work at present being a part of the activity of the Haryana Public Works Department.....

5. Learned counsel for the petitioner argues that the respondent Corporation is bound to provide roads in good condition which are traffic worthy to facilitate transport and passenger movement and for vehicle owners to ply their vehicles on the toll road without let or hindrance. It is urged that due to the bad road, the collection at the toll point is less than the monthly installment of Rs. 53 lacs.

6. The petitioner is a business enterprise. It is driven by private motive. The condition of the road was known to the petitioner when it made a bid on 01.08.2012 after onset of monsoon, if monsoon played truant. It was conscious of the road condition and obviously must have factored that aspect while making the bid with open eyes. The contract was only for a short period of a year from 01.10.2012 to 30.09.2013. If the condition of the road was in such state of disrepair as not admitting free flow of traffic any effort during the currency of the contract by the 2nd respondent to re-carpet the State Highway at toll point no. 18 would itself lead to disruption of traffic or in its reduction which may take substantial time. The petitioner appears to be making an attempt to wriggle out

of its contractual obligations voluntarily incurred for which the Writ Court cannot act as a facilitator.

7. I asked the learned counsel for the petitioner whether there was any condition in the agreement drawn between the parties with respect to the upkeep of the road in a particular manner as a condition precedent at the time of acceptance of the bid, or on "as is where is" basis, he was unable to point out any specific provision or recital in the bid offer or contract disclosing that the road was in disrepair and would be set right before or during the contractual period.

8. The eight photographs placed on record of this case as Annexure P-5 are deliberately selective. They are in small patches and do not appear to me such as would shy away traffic. They disclose no more than what are usual conditions obtaining on Indian roads. This, however, does not mean that it is not the duty of the 2nd respondent to keep roads in good repair. That duty significantly runs but this would not give occasion to the petitioner to plead loss of business which he entered upon to undertake voluntarily. This is not a public interest litigation with a request for road repair. The prayer here is linked with a private motive. It is also not pleaded or proved on empirical or quantifiable data as to the co-relation between the state of the road and loss of business in terms of footfalls or turning wheels. Density of traffic is a factor so imponderable that it is broadly beyond the design or control of man in the normal course of life. If the petitioner, a service provider and successful bidder at an auction, is trying to make out a case in advance for relaxation in the amount payable to the Government or re-scheduling of installments, which appears to be the hidden motive, this Court cannot come to his aid. Contractual obligations voluntarily incurred are not open to judicial review in writ jurisdiction; see *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*,); *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, and *State Bank of Haryana and Others Vs. Jage Ram and Others*, for the point that inconvenience or hardship in the performance of contractual obligations cannot be invoked to avoid contractual obligations incurred voluntarily.

9. As a matter of fact, the legal principle which may govern this case would be akin to the legal principles enunciated and explained in the case of *basic amenities by the Supreme Court in Municipal Corporation Chandigarh and Others Etc. Vs. Shantikunj Investment Pvt. Ltd. Etc.*, and *U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others*, . For the foregoing reasons, this writ petition fails and is dismissed. However, nothing said in this order would absolve the 2nd respondent from carrying out its statutory duty enjoined by law in keeping State Highways in roadworthy condition, since public interest; as opposed to private interest such as that of the petitioner, demands that it must act fairly in terms of its statutory obligations under the *Haryana Mechanical Vehicles (Levy of Tolls) Act, 1996*. But the petitioner cannot be heard to obtain an advance ruling from this Court for an oblique business purpose or to be seen

to get rid of its liability voluntarily accepted under a signed contract. The petitioner may take its remaining remedies, if available, in accordance with law and this order will not be read as truncating those, including public interest litigation, if any, filed.