(2001) 01 AHC CK 0103

In the Allahabad High Court

Case No : C.M.W.P. No. 49560 of 2000

Okhla Sand Supply Co. and another — APPELLANT

Vs

State of U.P. and others — RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 144, 145, 176, 209, 239

Citation : AIR 2001 All 142 : (2001) 1 AWC 803

Hon'ble Judges : S.K. Sen, C.J;S.R. Alam, J

Bench : Division Bench

Advocate : W.H. Khan and J.H. Khan, for the Appellant; A.K. Goel and Suman Jaiswal, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S. K. Sen, C.J.—We have heard Sri W. H. Khan, learned advocate for the writ petitioners, learned standing counsel for respondent Nos. 1, 2, 3 and 6 and Sri A. K. Goel, learned advocate for respondent Nos. 4 and 5. Zila Panchayat and Upper Mukhya Adhikari, Gautam Budh Nagar.

2. Petitioner No. 1 is the holder of mining licence granted by the State of U. P. under the provisions of Minor Minerals (Concession) Rules, 1963, vide mining lease dated 2nd March. 1994 for the extraction and collection of the same from the estate of village Chak Basantpur, Tehsil Dadri, district Gautam Budh Nagar (N.O.I.D.A.), U. P. Petitioner No. 2 is operator of trucks who carries sands extracted by Writ Petition No. 1. It is asserted in the petition that the Upper Mukhya Adhikari, Zila Panchayat, Gautam Budh Nagar (N.O.I.D.A.), U. P. vide letter No. 213 dated 29th September, 2000, issued a notification dated 20th March, 1999, whereby, toll tax has been imposed by the said authority on carrying sands. On 1st April, 1999, the Special Secretary, Industrial Development Department, U. P. wrote a letter to the District Magistrate, Gautam Budh Nagar that the Zila Panchayat has no jurisdiction to frame bye laws in respect of

minerals covered by the Mines and Minerals [Regulation and Development) Act, 1957, as well as U. P. Minor Mineral (Concession) Rules, 1963. Vide order dated 25th September, 2000, respondent Nos. 4 and 5 granted licence to respondent No. 7 on his application dated 14th September. 2000. When the writ petitioner came to know on 28th September, 2000, that respondent No. 7 was claiming himself to be licensee on the strength of licence granted by Zila Panchayat authorities, Gautam Budh Nagar to realise toll tax @ Rs. 30 per truck, they immediately on the same day made a protest in writing to respondent No. 3, namely, the District Magistrate, Gautam Budh Nagar. On 12th October, 2000, the writ petitioners made an inquiry from the office of the District Magistrate about the fate of his protest/application dated 28th September. 2000. The District Magistrate informed the writ petitioners that on 12th October, 2000, the former has written two letters to the Secretary, U. P. Government as well as respondent No. 4 stating that apparently, no such toll tax can be realized by the Zila Panchayat in respect of the minerals covered by the U. P. Minor Minerals (Concession) Rules, 1963 and further seeking guidance from the State Government, reply whereof is awaited.

3. It is the contention of Mr. W. H. Khan, learned advocate for the writ petitioners that there is no authority or jurisdiction on the part of Zila Panchayat to issue such notification or to collect such toll tax as has been done in the instant case. He has also referred to Sections 144 and 145 of Uttar Pradesh Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961 (hereinafter referred to as "the Act") and has submitted that tolls for the use of bridges constructed and maintained by the Zila Panchayat can only be imposed by Zila Panchayat. He has further, submitted that in the instant case, bridge in question was constructed by Irrigation Department of the Government of U. P. and under such circumstances, the Zila Panchayat has no jurisdiction or authority to levy any toll tax.

4. Mr. A. K. Goel appearing for Zila Panchayat and Mukhya Adhikari Zila Panchayat (respondent Nos. 4 and 5 respectively) has not disputed the fact that the bridge/road in question has been constructed by the Irrigation Department and not by the Zila Panchayat. Gautam Budh Nagar. He has further submitted that even though the bridge/road has been constructed and maintained by the Irrigation Department. Zila Panchayat has under the relevant provisions of the statute power to impose tax on the minerals in question taken over through the road. He has referred to List C of subsection (2) of Section 239 and Section 145 (b) of the Act. He further submits that tax is not imposed for the use of bridge but for transportation of sands over the public road.

5. We have considered the submissions made by the learned advocates for the parties. We are of the view that the main purpose of imposition of toll tax is to recover the cost of construction and maintenance of a bridge. In the instant case, admittedly, bridge/road has not been constructed by the Zila Panchayat. The other aspects of the matter as argued by Mr. Goel is that the imposition was made for taking sands by road and the same is permissible. Section 145 (b) of

the Act provides as under :

"145. Licence fees and tolls in respect of markets.--Subject to any Rule made by the State Government in this behalf, a Zila Panchayat or a Kshettra Panchayat may impose in any market established, maintained or managed by it any one or more of the following fees or tolls.

(a) .....

(b) toll on vehicles, pack animals or porters bringing goods for sale into such a market."

6. It appears to us that the impugned notification does not relate to toll tax on vehicles, pack animals or porters bringing goods to sell in the market and as such. Section 145 (b) has no application in the facts and circumstances of the case. The notification relates to imposition of toll tax in respect of mines and minerals pertaining to U. P. Minor Minerals (Concession) Rules. 1963 and the Mines and Minerals (Regulation and Development) Act. 1957. In our considered view, it is not permissible for the Zila Panchayat to impose such tax relating to transportation of sand being a part of mines and minerals falling within the purview of the Mines and Minerals (Regulation and Development) Act. 1957, as well as U. P. Minor Minerals (Concession) Rules, 1963.

7. The relevant provisions of the statute referred by Mr. Goel, learned advocate for the Zila Panchayat, in our view, cannot apply to the facts of the present case nor can the same authorize the ZIla Panchayat to collect the tax in respect of such transportation of sand as already noted.

8. In our view, the contention of the learned counsel for the petitioners cannot be said without any basis. We may refer to Section 144 of the Act which reads as under :

"144. Certain other fees.--With the previous sanction of the State Government, a Zila Panchayat or a Kshettra Panchayat may fix and levy school fees, fee for the use of libraries and sarais and paraos, fees for the use of, or benefits derived from, any of the works or institution constructed and maintained by the Zila Panchayat or the Kshettra Panchayat originally undertaken as famine preventive or relief works, fees for the service of bulls and stallions, and for registration of animals and fees at fairs, markets, agricultural shows, and industrial exhibitions held under its authority or otherwise, to which the public is allowed access and at which the Zila Panchayat or the Kshettra Panchayat provides sanitary and other facilities for the public and tolls for the use of bridges constructed, repaired or maintained by the Zila Panchayat or the Kshettra Panchayat:

Provided that a Zila Panchayat or Kshettra Panchayat shall not fix or levy fees for the use of paraos which are not vested in it."

9. From a perusal of the aforesaid provision, it appears that tax can only be imposed in respect of the items enumerated in the section. The scope and

authority of the Zila Panchayat to frame bye-laws appears to be very much restricted and circumscribed by the provision of Section 239 of the Act in so far it is relevant for the purposes of this case, is set out below for ready reference :

"239. Power of Zila Panchayat to make bye-laws.--(1) A ZIla Panchayat may, and where required by the State Government shall, make bye-laws for its own purposes and for the purposes of Kshettra Panchayats, applicable to the whole or any part of the rural area of the district, consistent with this Act and with any Rule, in respect of matters required by this Act to be governed by bye-laws and for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the rural area of the district and for the furtherance of the administration of this Act in the khand and the district.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), a Zila Panchayat may, in the exercise of the said power, make any bye-laws described in the list below :

A. Building

....

....

B. Drains, privies, cesspools, etc.

....

....

C. Streets

(a) Determining the information and plans to be furnished to the Kshettra Panchayat u/s 176 :

(b) Permitting, prohibiting or regulating the use or occupation of any or all public streets or places by itinerant vendors or by any person for the sale of articles, or for the exercise of any calling or for the setting up of any booth or stall and providing for the levy of fees for such use or occupation :

(c) Regulating the conditions on which permission may be given by the KshettraPanchayat u/s 181 for projections over streets and drains and by the Zila Panchayat u/s 209 for the temporary occupation of streets."

10. It, therefore, appears that only in respect of the items mentioned in Section 239 of the Act quoted above, the Zila Panchayat is authorised to impose tax. Considering the facts and circumstances of the case, it does not appear to us that the notification issued in the instant case comes within the purview or ambit of the said Section. We are accordingly of the view that the Zila Panchayat has acted beyond its authority in passing the bye-laws in question.

11. Considering all aspects of the matter, we are of the view that the writ petition

should succeed and there shall be order accordingly.

12. The writ petition is allowed. The impugned notification No. 564/23-208/97-98 dated 20th March, 1999, issued by the Upper Mukhya Adhikari, Zila Panchayat. Gautam Budh Nagar (N.O.I.D.A.) U.P. is hereby quashed. Consequently, the letter No. 213 dated 29.9.2000, licence dated 22.9.2000, agreement and letter dated 25.9.2000 (Annexures-1 to 5 to the writ petition) are also quashed.