(2015) 05 AHC CK 0138

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6976 of 2015

Rahul Upadhyay APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:
National Highways Act, 1956 — Section 7, 7(1), 7(3)

Citation : (2015) 5 ADJ 217 : (2015) 111 ALR 398 : (2015) 4 AWC 3530

Hon'ble Judges : D.Y. Chandrachud, C.J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : J.H. Khan, Gulrez Khan and W.H. Khan, for the Appellant; Pranjal Mehrotra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner has sought to challenge the legality of a notification issued by the Union Government in the Ministry of Road Transport and Highways on 2 January 2015 in exercise of the power conferred by Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 (Rules of 2008). By the notification, the Central Government has exempted eight bridges in the State of Uttar Pradesh from the levy of a user fee. The bridge in question to which the petition relates is at serial number four and is described as Tons (Katka-Setu) at Kilometer 430 of NH-76E (35). A contract was entered into between the petitioner and the State Government acting as an agency of the Union Government on 29 March 2014 for the collection of a fee for a period of three years from 1 April 2014 to 31 March 2017. The Union Ministry of Road Transport and Highways issued a notification on 2 January 2015 exempting the imposition of the levy of a user fee on eight bridges including the bridge covered by the contract to the petitioner. The power has been exercised under the Rules of 2008. Rule 3(1) provides as follows:

"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."

2. Two submissions have been urged on behalf of the petitioner. The first is based on the proviso to sub-section (3) of Section 7 of the National Highways Act, 1956. Section 7 provides as follows:

"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 1 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 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."

3. The submission is that the proviso which is extracted above under which the Central Government has been empowered to exempt the payment of fees in public interest leviable on any bridge is a proviso which applies to the entire Section 7 and not only to Section 7(3). The second submission is that the notification which has been issued on 2 January 2015 cannot apply retrospectively to contracts which were executed prior to the date of notification and hence, to that extent it is ultra vires in so far as it affects accrued rights.

4. Under Section 7(1), the Union Government has been empowered to levy fees at such rates as may be prescribed by rules made in that behalf for services or benefits rendered inter alia in relation to the use of ferries and permanent bridges the cost of construction of each of which is in excess of rupees twenty-five lakhs and which are opened to traffic on or after 1 April 1976, as well as temporary bridges and tunnels on national highways. Sub-section (3) deals with fees leviable immediately before the commencement of the Act for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels

on any highway specified in the Schedule. These fees under sub-section (3) were to continue to be leviable under the Act unless and until they were altered in exercise of the powers conferred by sub-section (1). The proviso which follows is evidently a proviso to sub-section (3) of Section 7. This is evident from two aspects. The first is the plain language of the proviso which stipulates that the Central Government may, if it is of the opinion that it is necessary in public interest to do so, specify that fees shall not be leviable "under this sub-section" on any bridge specified. The expression "under this sub-section" is in reference to sub-section (3). Secondly, the proviso which is preceded by a colon. A colon in grammatical use is a punctuation which is associated with what immediately precedes it. Hence, there would be no merit in the submission that the proviso qualifies the entire Section 7.

5. The power which has been exercised by the Central Government is under the proviso to Rule 3(1) of the Rules of 2008 under which the Central Government has been empowered to issue a notification exempting any section of a national highway, permanent bridge, bypass or tunnel constructed through a public funded project from the levy of such fee or part thereof.

6. The second submission is that the power to issue a notification under the proviso to Rule 3(1) of the Rules of 2008 has been exercised retrospectively by taking away accrued rights and hence, is unlawful.

7. We find no element of retrospectivity in the notification dated 2 January 2015. The notification expressly states that the Central Government "hereby exempt" all eight bridges in the State of Uttar Pradesh mentioned in the notification from the levy of a user fee. In other words, the exemption is with prospective effect, from the date of notification. The fact that the petitioner has an existing contract would not result in the notification becoming retrospective. It is trite law that an instrument of a statutory character does not become retrospective merely because it may operate on some events which may have taken place in the past. No accrued rights have been taken away. The contract provides that it is capable of being terminated. Its term can be curtailed.

8. That leads to the Court to the basic question as to the remedy which is available to a contractor, such as the one in the present case, who claims to have a contract for the collection of a toll. In the contract which has been entered into between the petitioner and the State on 29 March 2014, there is an arbitration agreement in Clause 17 of Schedule I of the contract. Basically, the petitioner is a collection agent for the State for collecting the toll on the use of the bridge under the terms of the contract. At the highest, the contractor can have a grievance that as a result of the exemption which has been granted in exercise of the power conferred by the proviso to Rule 3(1) of the Rules of 2008, the petitioner has been deprived of the benefit of the collection of the toll which would have otherwise been permissible under the terms of the contract. This is a grievance which is redressable and quantifiable in monetary terms. Such a contract cannot be enforced by specific performance. The claim of the petitioner

would sound in damages for which an arbitral remedy is provided in Clause 17 of Schedule I of the contract dated 29 March 2014. We, accordingly, leave it open to the petitioner to invoke arbitration by adopting suitable proceedings in accordance with law. For these reasons and leaving it open to the petitioner to invoke arbitration, we see no reason to entertain the petition, which is, accordingly, dismissed. There shall be no order as to costs.