
(2013) 09 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 11628/2013 and 11643/2013

Satyanarayan Fidoda and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Citation : (2014) 2 WLN 78

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—Heard learned counsel for the petitioners. Both these writ petition, involving similar controversy, are being decided by this common order and the facts of the CW No. 11628/2013-Satyanarayan Fidoda v. State of Rajasthan & Ors., are taken illustratively.

2. The petitioners were awarded contract for collection vehicles tax imposed by the respondent- Gram Panchayat, Randhisar, Panchayat Samiti-Sujangarh, District: Churu, for the year 2012-13. The said period of contract was extended in the case of the petitioners by the order of the Gram Sevak-cum-Secretary vide order Annex. 7 dt. 30.03.2012 (01.04.2012 to 31.03.2013). Further increasing the tender amount by 10%, the period of contract was renewed for the next year i.e. 2013-14 i.e. up to 31.03.2014 vide order dt. 12.02.2013 (Annex. P/8). However, by the impugned communication (Annex. P/14) dt. 27.08.2013, the respondent- Gram Panchayat, Randhisar, has informed the petitioner to immediately stop the collection of the said vehicles tax in pursuance of decision of this Court at Jaipur Bench in SBCWP No. 8221/2012- Arjun Singh v. State of Rajasthan & Ors., decided on 13.02.2013 by which a coordinate bench of this Court, struck down the said levy of vehicles tax by the respondent- Gram Panchayat as beyond the scope of Section 65 of the Rajasthan Panchayati Raj Act, 1994.

3. Mr. Mahesh Bora, Sr. Advocate assisted by Mr. Nishant Bora, learned counsel for the petitioners urged that the impugned order Annex. P/14 dt. 27.08.2013 has been passed by the respondent No. 4- Gram Panchayat, Randhisar, without giving any opportunity of hearing to the petitioner and thus in breach of principles of natural justice; and since the petitioner was not a party before the Jaipur Bench in SBCWP No. 8221/2012-Arjun Singh v. State & Ors., therefore, he was not bound by the said judgment and thus the contract period of the petitioner(s) could not be curtailed prior to 31.03.2014 and the impugned order, therefore, deserves to be quashed by this Court.

4. Having heard the learned counsel for the petitioners and after going through the record, this Court is satisfied and is of the firm opinion that the impugned order passed in compliance of directions of this Court in the judgment in the case of Arjun Singh (supra), dt. 13.02.2013, the impugned order dt. 27.08.2013 cannot be assailed validly. A coordinate bench of this Court at Jaipur Bench in the case of Arjun Singh (supra), has held as under:--

On hearing learned counsel for the parties and perusing the impugned order, I deem it appropriate to reproduce Section 65 of the Act of 1994 as under:

65. Taxes which may be imposed by a Panchayat (1) Subject to the rules and any orders by State Government in this behalf, a Panchayat may impose one or more of the following taxes, namely;

(a) a tax on buildings owned by persons not exceeding such rate as may be prescribed;

(b) an octroi on animals or goods brought within the Panchayat Circle for consumption or use therein;

(c) vehicle tax except on those vehicle which are used for the purpose of cultivation;

(d) pilgrim tax;

(e) a tax for arranging the supply of drinking water within the Panchayat Circle;

(f) a tax on commercial crops;

(g) any other tax which the State Legislature has, under the Constitution, power to impose in the State and which has been sanctioned by the Government.

(2) The taxes under Sub-section (1) shall be imposed, assessed and raised in such manner and paid or realised at such times, as may be prescribed.

(3) The State Government may, by Notification in the Official Gazette, require any Panchayat to impose, subject to the provisions of Sub-section (2), any of the taxes specified in Sub-section (1) from such date at such rates, as may be specified in the Notification.

(4) While any Notification under Sub-section (3) is in force, the Panchayat shall

proceed to impose the tax or taxes therein specified, as if a resolution of the Panchayat had been passed for the imposition thereof and it shall not be lawful for it to abandon, modify or abolish any tax so imposed;

Provided that the State Government may at any time cancel any such requisition or modify it in any respect;

Provided further that when any tax has been imposed upon the requisition of the State Government under sub-Section

(3), any other tax of like nature previously imposed by the Panchayat without such requisition shall cease to be levied and realised from the date from which the tax imposed upon the said requisition is to be levied and realised;

Provided further that the tax under Clause (c) of Sub-section (1) shall not be levied on a motor vehicle as defined in the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) or any other mechanically propelled vehicle.

Explanation.-For the purpose of this Section "Commercial Crops" are chillies, cotton, mustard, sugarcane, zeera and ground-nut.

Perusal of the aforesaid Section 65(1)(c) shows that Gram Panchayat may impose vehicle tax except on those vehicles which are used for the purpose of cultivation, but such a levy would be subject to third proviso to Section 65 which clearly provides that tax under Clause (c) of sub Section (1) shall not be levied on a motor vehicle as defined in the Motor Vehicles Act, 1988 or any other mechanically propelled vehicle. Not only that the Tractors, Trucks with six wheels or ten wheels or bigger Trucks/Turbos are motor vehicles within the definition of Section 2(28) of the Motor Vehicles Act, but they are all mechanically propelled vehicle. The authority to levy tax on such vehicle vests in the State Government alone. In any case, the tax which has been sought to be realised by the Gram Panchayat in the name of vehicle development tax is analogous to road tax, which is; leviable only by the State Government. There cannot be any duplicity of such tax. Even otherwise, though as it is, the Gram Panchayats have not been able to show authority to levy such tax, the tax can be levied and released only under the authority of law. In the absence of expressed authority conferring the power upon the Gram Panchayat, such tax could not be levied. The coordinate bench of this Court in Narendra Singh, supra held that the Gram Panchayat could not levy tax on the excavation of the minerals within its jurisdiction.

Here in the present case, the Gram Panchayats have though not directly levied the tax on excavation of minerals, but indirectly it leads to this only because they have levied the tax on passage of only such vehicles through their territory, which are found to carry the minerals excavated. In other words, the vehicles, though similar in nature, but if not found carrying any of those minerals, would not be subject to levy of tax.

In my considered view, no such power is conferred upon the Gram Panchayats to levy this type of tax either under Sec. 65 or elsewhere under any other Statute

or the Rules framed thereunder.

In the result, this petition deserves to succeed and is accordingly allowed. The impugned resolution dt. 05.03.2012 and agreements dt. 21.03.2012 and 30.03.2012 are quashed and set aside and the action of the respondents Nos. 3 and 4 in seeking to realise vehicle development tax is declared illegal and unconstitutional.

5. Mr. Mahesh Bora, Sr. Advocate, learned counsel for the petitioner(s) fairly submitted that there is no further appeal or interim order against the order in Arjun Singh's case (supra) of learned Single Judge to his knowledge. In view of aforesaid binding judgment of this Court, naturally, the respondent- Gram Panchayat no longer can levy any vehicles tax in exercise of its power under Sec. 65 of the Act and, therefore, the impugned order Annex. P/14 dt. 27.08.2013 is only in compliance with the orders of this Court. The said direction is a judgment in rem and not merely judgment in persona since it deals with provisions of particular Act and the power of Gram Panchayat to levy such tax.

6. As far as the petitioners' right arising out of such curtailment of period of contract is concerned, by the impugned order, it remains a contractual matter between the parties, namely, the present petitioner(s) and the Gram Panchayat-Randhisar, Panchayat Samiti-Sujangarh. The said contract has not been placed before this Court. Under the contract, if the petitioner(s) are entitled to refund of balance amount of contractual sum paid by them, if any, they can either approach the respondent- Gram Panchayat or file a civil suit, if occasion so arises. Since, such refund would depend upon the facts and terms of the contract, which are yet to be determined by the competent civil Court, therefore, the same cannot be raised before this Court at this stage particularly in the extraordinary writ jurisdiction. The impugned order is thus found to be unassailable in the facts and circumstances of the case and being in compliance with the directions of this Court in the judgment in the case of Arjun Singh (supra), no interference can be made in the present case in the impugned order.

7. As far as the contention of the learned counsel for the petitioner(s) of breach of principles of natural justice is concerned, this Court is of the opinion that in the circumstances of the case, such requirement cannot be insisted upon before passing the impugned order, which is a mere communication in compliance of the judgment of this Court. As far as the consequence or fall out of such compliance of the judgment of this Court is concerned, it is in the realm of contractual terms and establishing certain facts, on the basis of evidence, which can be done only by way of appropriate civil suit, to be instituted by the petitioner(s) and on that ground, presently the impugned order dt. 27.08.2013 cannot be quashed. The upshot of the above discussion is that the present writ petitions filed by the petitioners/contractor(s) are found to be devoid of any force and the same are hereby dismissed with no order as to costs. A copy of this order be sent to the concerned parties forthwith.