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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-27101-2017
Date of Decision : 29.11.2017

Hardeep ...... Petitioner

Versus

The State of Haryana and others ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
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Present : Mr. Amit Jhanji, Advocate
for the petitioner.
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AJAY TEWARI, J. (ORAL)

By this petition the petitioner has challenged the action of the respondents to claim bid money for the period from 01.02.2004 to 30.09.2005 and 05.12.2007 to 31.03.2009.

Brief facts of the case are that the respondent-State of Haryana had framed Scheme in the year 2001 under which permits would be obtained by a process of bidding. One Sadhu Ram obtained a permit from Barwala to Agroha by the bidding process. That Scheme was challenged in this court by way of writ petition bearing CWP No.17112 of 2002 and by judgment and order dated 02.12.2008 (Annexure P-2) this Court set aside the Scheme holding as follows:-

"Furthermore, the concern of the State that an efficient and

> *adequate transport system is evolved, will also be a casualty. Grant of permits on the basis of bid will become a mode of revenue generation. It was incumbent upon the State to determine the merits of each applicant, taking into consideration antecedents and verification of the past performance track. Punctuality, adherence to the route, condition of the vehicle, customer care, past satisfactory performance, financial stability, issuance of tickets and non-evasion of tax, are various factors, which can be taken into consideration while allotting permit. These factors cannot be put in water tight jackets. Depending upon each area route, safety of passengers, amenities and facilities to be provided by the operator ought to have been the concern of the State, than to allot permits on the basis of maximum bid without ensuring providing of better service to the passengers. Say, for example, hardened criminals cannot be permitted to be the drivers and conductors on the routes, which are to be used by the girls to reach educational institutions. Examples and illustrations can be many. Since the sole criteria is, to give maximum bid, that being contrary to the provisions of the Act, cannot be upheld. Therefore, allotment of the route permits on the basis of bid alone, being bad, cannot be sustained."*

The Court then dealt with the argument raised by the operators that they be absolved of their financial liability to pay bid amount and rejected it in the following terms:-

> *"This argument is fallacious. In the present case, operators, knowing fully well, for promotion of their business, had made the bid and obtained the permits. To participate in the bid was their conscious decision. They had the choice not to participate in the bid. Once, knowing fully well the terms and conditions spelt out in the scheme, they came forward to bid and obtain the permits, they cannot now turn their back and say that having ousted others from the process of bidding, they will*

have the cake and eat it too. There was no compulsion on their part to participate in the bid. The petitioners were all along aware that they have to pay the bid amount. They calculated and computed the cost to be incurred by them for plying the vehicles taking into account the bid money. They have devised their margins of profits. Therefore, it is too naive on their part to state that they will not pay the bid amount. Petitioners were in the business of providing transport services for profit. They being entrepreneurs, knowing fully well the consequences, had made the bid. They had exploited the situation to their advantage by making bid and ousted others from the competition. Had it been known to others that later bid is to be held bad and they do not have to pay the amount, they would have also acted in the fashion, in which petitioners intend to do. Those, who had not participated in the bid or had given the lower bid and made a quit from the bidding process, were those citizens, who wanted to adhere to the rule of law. Therefore, petitioners cannot be permitted to say that having obtained the permits on the basis of bid, simply because the scheme was bad, they are absolved of their responsibility to pay the bid amount. If the argument of the counsel for the petitioners is accepted that State cannot enrich itself by levying bid amount, petitioners can also not enrich themselves by participating in the bidding process and then later to run away from their financial commitment. This view is also supported by a Division Bench judgment of this Court rendered in 'M/s Trishul Industries v. State of Haryana and another' 2006 (4) RCR (Civil) 367. Counsel for the petitioners, in order to support his contention, has relied upon 'Mafatlal Industries Ltd. and others v. Union of India and others' 1997 (5) SCC 536, which, in the facts and circumstances of the present case, is not attracted.

Therefore, it is held that the grant of the permits on the basis of bid cannot be sustained. However, those, who

> *participated in the bidding process, cannot escape from paying the amount of bidding, which they are bound to pay."*

Ultimately the Court directed the State to frame a new Scheme within three months. Among others, Sadhu Ram filed LPA No.93 of 2009 which was dismissed by judgment and order dated 10.02.2010 (Annexure P-3). It is thereafter that the State of Haryana notified the new Scheme dated 12.08.2013. In that Scheme, however, the following provision was added:-

> *"Provided that the existing permit holders under the 1993 and 2001 Schemes, who have no road tax, passenger tax and bid money pending towards them on the date of application, shall first be given an option to obtain permit under this Scheme in lieu of their existing permit as per the following procedure:...."*

A perusal of this provision showed that the State brought in from the back-door what had been held illegal in the 2001 Scheme because those persons who had obtained permits under the illegal 2001 Scheme were given a preferential right to obtain permits not only for other routes but also routes on which they were already operating. During this pendency there were two periods i.e. from 01.02.2004 to 30.09.2005 and 05.12.2007 to 31.03.2009 when the bus could not be operated due to circumstances beyond the control of the operator and by orders Annexures P-4 and P-6 the road tax and the bid money for those periods were exempted. Pursuant to this Scheme the petitioner purchased the permit of Sadhu Ram. After more than a decade the impugned order (Annexure P-10) was passed on 29.08.2016 informing the petitioner that in the Motor Vehicles Taxation Rules there was a provision for exemption from paying road tax but there was no such provision for exemption from paying bid money. The petitioner challenged that order and ultimately this Court directed him to file a representation before the Secretary, Regional Transport Authority, Hisar with a direction to the officer to pass a speaking order and it is pursuant thereto that the present impugned order has been passed.

Counsel for the petitioner has argued that this is completely an illegal order. As per him, even till date the order Annexure P-6 by which the exemption was originally granted has not been set aside. Moreover, this order was passed after a period of more than one decade. He has also relied upon the judgment of the Supreme Court in the matter of ***State of Gujarat and others vs. Kaushikbhai K. Patel and another, (2000) 5 Supreme Court Cases 615*** and has drawn the attention of this Court to para 8 of the judgment which is quoted herein below:-

> *"8. We have considered submissions of the learned counsel for the parties. The facts that are not in dispute are; the Respondent No. I filed Form NT declaring non-use of the vehicle in question for the period 1.7.95 to 31.3.96; the report submitted by the motor vehicle Inspector regarding non-user of the vehicle for three months from 1 July, 1995 to 30 September, 1995 was accepted and refund of tax was ordered. For the remaining period refund was not granted as the Director of Transports was not satisfied of the non-user of the vehicle for reasons beyond the control of the respondents. It is well-settled in law that the tax imposed on vehicle under the Act is compensatory in nature for the purpose of raising revenue to meet the expenditure for making and maintaining the roads and regulation of traffic. To put it differently, the taxes are levied on the vehicles using the roads or in any way forming the part of the flow of traffic on the roads which is required to be regulated and not on the vehicles which do not use the roads at all. What is material and relevant is use of road by vehicles for*

> *levy of tax under the Act. The reasons or non-use of roads is immaterial and irrelevant when the nature of the tax itself is compensatory for use of roads. It follows from sub-section (2) Section 3 of the Act that where a motor vehicle is not using the roads no tax is levied thereon. If any tax has been paid in relation to such vehicle then the fax for the period during which it was not put on the road is refundable. In order to avoid evasion of tax the State can compel the owner to pay tax in advance. In fact sub-section 5(a)&(b) of Section 3-A speak of refund of tax that had been collected earlier."*

In my opinion, the petition must fail. Though on first instance the arguments of the counsel for the petitioner seem to be extremely persuasive but this Court can not lose sight of the fact that Sadhu Ram was beneficiary of an illegal allotted permit. That Scheme itself was set aside by the Court in very strong terms as has been quoted above and a direction had been issued to the State to frame a new Scheme. To my mind, it is obvious that any new Scheme which was framed could not incorporate the same illegal feature and though the main body of the Scheme did not incorporate the illegalities like bid money yet, as noticed above those beneficiaries of the illegal bid money Scheme were given a backdoor entry.

Counsel for the petitioner has further informed me that even the 2013 Scheme was challenged and the State of Haryana responded to that challenge by informing the Court that they were re-looked the entire Scheme. This also shows that there were some fundamental fault-lines even in the 2013 Scheme. To my mind, the proviso which has been quoted above clearly reveals that the State was trying to perpetuate the monopolistic tendencies and the benefits which had been earlier given on illegal basis.

In the totality of circumstances, though the grounds of challenge raised in this petition may have prevailed in the case of a person who had obtained a permit by a method which was non-vitiated, the same grounds would not suffice in the case of a person like the petitioner who can at best be termed as a continuing beneficiary on the basis of illegal permit.

Consequently, the petition is dismissed.

Since the main case has been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

November 29, 2017
ashish

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No