
(2012) 01 AHC CK 0497

Allahabad High Court

Case No: Writ Tax No. 1732 of 2011

Gayatri Projects Limited
and Another

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: Jan. 12, 2012

Acts Referred:

- Forest Act, 1927 - Section 41(1)
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 15

Hon'ble Judges: Sunil Ambwani, J; Manoj Misra, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. We have heard Sri R.N. Singh assisted by Sri S.K. Chaturvedi for the petitioners. Learned Standing Counsel appears for the State-respondents.

2. The petitioner is a Private Limited Company incorporated under the Companies Act, engaged in the business of infrastructure development and construction.

3. It is stated that the petitioner has entered into Contract for widening the existing 2 lane portion from Km. 700 to km. 99.005, a section from Talbahat to Lalitpur (the entire stretch fall within the district of Lalitpur), covering 49.305 km on National Highway No.26 (NH-26) in the State of U.P., to 4 lanes through a concession under North-South Corridor (NHDP Phase-I) on Build Operate and Transfer (BOT) on a annuity basis, and a Concession Agreement to that effect has been duly executed between the National Highways Authority of India with the petitioner on 26th September, 2006. In order to execute the works in the Contract, the petitioner is procuring and transporting raw materials like boulders, stones etc. from the quarries situated at (i) plot no. 2/1 Khand "J" area comprising of 6.37 acres, and (ii) plot no. 93/1E, Khand area 4.22 acres, both in the village Lakhanpur, Pargana Bansi, Tehsil Lalitpur, District Lalitpur, after payment of

royalty, which is regulated in accordance with the U.P. Minor Minerals Concession Rules, 1963, framed by State of U.P. in exercise of the power u/s 15 of the Mines and Minerals (Regulations and Development) Act, 1957.

4. The petitioners have challenged the imposition of levy of transit fee by the Forest Department on the transportation of the raw materials, under the U.P. Transport of Timber and other Forest Produce Rules-1978, made u/s 41(1)(c) of the Indian Forest Act, 1927; as amended by the 4th Amendment to the Rules in 1978 notified 13.12.2010; and the 5th amendment to the Rules of 1978, notified on 04.06.2011. It is submitted that the petitioner do not transport the building materials like gitti, boulders either found in nor brought from the forest areas so notified or the forest as it is understood, and thus the Company is not liable to pay the transit fee on the transportation of gitti, boulders which are minor minerals.

5. A number of other arguments have also raised, namely, that the State Government does not have the legislative competence to levy transit fee to minor minerals.

6. All the grounds raised by the petitioner in this writ petition were subject matter of the batch of the writ petitions in NTPC Ltd. & Anr. v. State of U.P. & Ors. (Writ Tax No. 327 of 2008) and other the writ petitions, which were decided by the judgment 11.11.2011. The Court upheld the Rules, that legislative competence of the State Government to levy the transit fee on forest produce, including minor minerals. The definition of forest, and the forest like areas and the forest as a concept was considered in detail. The Court partly allowed the writ petitions and declared the 4th Amendment and the 5th Amendment Rules increasing the transit fee as illegal and ultra-vires of the Act. The other issues were also discussed and decided against the petitioners.

7. We are of the opinion that all the issues raised in this writ petition are covered by the judgment in NTPC Ltd. & Anr. v. State of U.P. & Ors. (supra) decided on 11.11.2011, and consequently, the petitioner is not entitled to any other relief. The petitioner is liable to pay the transit fee on the forest produce including the minor minerals at the rate prevailing and the charged prior to the 4th Amendment to the Rules notified on 20.10.2010.

8. We are informed that the judgment in NTPC Ltd (supra), has been challenged in the Supreme Court in M/s. Anand Coal Agency & Ors. v. State of U.P. & Ors, in Special Leave to Appeal (Civil) Nos. 34909-34916 of 2011, in which on 05.01.2012, an interim order has been passed to the effect that " In the meantime, there will be stay of recovery of the Transit Fees".

9. Since, this Court has already decided all the issues raised in this writ petition, we do not find any good reason to take a different view or to keep the writ petition pending.

10. The writ petition is, accordingly, disposed of on the same terms and conditions as in the case of NTPC Ltd. & Anr. V. State of U.P. & Ors (supra) decided on 11.11.2011.