

(2014) 02 MP CK 0061

Madhya Pradesh High Court

Case No: Writ Petition No. 13777 of 2013, W.P. No"s. 1324 and 1468 of 2014

Shri Bane Singh Thakur

APPELLANT

Vs

Principal Secretary

State of M.P. Public

Works Department and

Others

RESPONDENT

Date of Decision: Feb. 21, 2014

Hon'ble Judges: A.M. Khanwilkar, C.J; J.K. Maheshwari, J

Bench: Division Bench

Advocate: A.K. Sethi, Mr. P.R. Bhatnagar, in W.P. No. 13777/2013, Mr. Vijay Sharma, Mr. Mohan Sharma, W.P. No. 1324/2014 and Mr. Jitendra Verma, in W.P. No. 1468/2014, for the Appellant; Mini Ravindran, Dy. Government Advocate for the Respondents/State, Shri Sudarshan Joshi, Advocate for Respondents-M.P. Road Development Corporation Ltd., Shri Piyush Mathur Assisted by Shri M.S. Dwivedi, Advocate for Respondent No. 7- Mhow Agroh Pathways Pvt. Ltd. and Shri Mohan Sharma, Advocate for proposed intervener, for the Respondent

Judgement

1. Heard counsel for the parties. The issue raised in this petition is about the location of Toll Plaza on the State Highways. The interim relief claimed in the petition is to restrain the respondents from setting up Toll Plaza at the proposed location. In the context of this relief, the respondents have submitted that the petitioners who are residents of village Umaria have no locus to challenge the location of Toll Plaza as they are not going to be affected in any manner. Inasmuch as, in view of clause 27.3 of the Concession Agreement, no toll/fee can be collected from the local users within the radius of 20 kms. We find force in this submission.

2. The counsel for the petitioners would then contend that besides the above issue, another incidental issue that needs to be examined in this Public Interest Litigation is about the legality and permissibility to collect toll/fee, notwithstanding the fact that the Project is not complete. The Project is pertaining to total stretch of 74.60 kms between

Rau-Mhow and Mhow-Mandleshwar. According to the petitioners, unless this entire Project work is completed, the respondents have no authority to collect the toll/fee and for which reason, installation of Toll Plaza should not be hastened by the respondents.

3. This submission is canvassed on the basis of clause 14.3.2 of the Agreement between the State and the Concessionaire. This argument completely overlooks the crucial fact that common agreement has been entered with regard to two sites; one stretch between Rau-Mhow 20.50 kms and the other between Mhow-Mandleshwar 54 kms.

4. According to the respondents, the Provisional Certificate has been issued which is indicative of the fact that the Concessionaire has completed more than 75% of the work at least in respect of one site between Rau-Mhow. The length of road of this site is 20.50 kms. From the Provisional Certificate, however, it is noticed that there are quite a few balance items in respect of Highway and Structures. The same reads thus:

Punch List for Rau-Mhow-Mandleshwar Road Project (Section-1) Ch.0+000 to 20+500

A. Highway

B. Structure

5. The question is, if these items are still to be completed, can it be said that the Concessionaire has become eligible to collect 100% toll/fee, not being commensurate with the services and benefits to be rendered on the concerned segment of Rau-Mhow.

6. Clause 14.3 pressed into service by the respondents, which forms part of the Agreement, at best, permits the Authority to issue Provisional Functionality Certificate if, at least, 75% of the total length of the Project Highway has been completed. We have already found that although it is one Agreement. There are two different sites to be constructed by the Concessionaire. For the time being, we accept the stand of the respondent/Concessionaire, that it is open to the Authority to treat each site differently and if one of the site work is completed in excess of 75%, the Concessionaire may become eligible to operate that part of the Project Highway.

7. However, the question is whether the Concessionaire can claim 100% toll/fee. The Apex Court in the case of [MSK Projects \(I\) \(JV\) Ltd. Vs. State of Rajasthan and Another,](#) has expounded that toll/fee must be commensurate with the facilities and services to be rendered between the concerned segments. The Provisional Certificate relied by the respondents is indicative of the fact that only 75% of the Project is completed. As noted earlier, the above noted balance work of the concerned Project is inextricable from the facilities to be provided to the users. If 25% of the facilities are still not in place, we fail to understand as to how the respondents/State Authorities could permit Concessionaire to collect 100% toll/fee in respect of the concerned segment. If the State Authorities have certified that 75% of the Project work is completed in the concerned segment must, in law, permit the Concessionaire to collect only 75% of the toll/fee till the 100% work is

completed and certified by the Authorities as such.

8. In the circumstances, the Notification issued by the State Government permitting the Concessionaire to collect 100% toll/fee between Rau and Mhow is stayed with liberty to the State Authorities to issue fresh notice keeping in mind the observations made in this order.

9. We place on record the submission of the learned counsel for the Concessionaire that instead of staying the entire Notification, the Court may permit the Concessionaire to collect 75% of the amount referred to in the Notification as the Notification issued by the State does not refer to the fact whether it is 100% toll/fee amount to be collected by the Concessionaire. We are not inclined to accept this submission.

10. We record the concession given by the counsel for the Concessionaire that he would collect only 75% of the permissible amount specified in the Notification until the competent Authority issues certificate of 100% completion of the concerned site work.

11. The competent Authority before issuing 100% Project Completion Certificate concerning the site Rau-Mhow, 20.50 kms, shall seek prior permission of this Court.

12. We place on record the argument canvassed before us by the counsel for the Concessionaire that, in the present petition, there is no challenge to the Notification and for which reason, question of granting interim relief which can only be in aid of the main relief does not arise.

13. We reject this argument firstly because the present petition is Public Interest Litigation and raises wider issues than limited to Notification. The Notification is incidental matter to the Agreement between the State and the Concessionaire. Secondly, now that the Concessionaire has given concession before the Court that keeping in mind the larger public interest, the Concessionaire would collect only 75% of the toll/fee amount until 100% Project Completion Certificate is issued by the competent Authority.

14. We direct the respondents to notify toll/fee amount which is 75% of the permissible amount until issuance of Certificate of 100% completion of the Project by the competent Authority so as to avoid any confusion amongst the road users.

15. We also direct the Concessionaire to display Boards on the Toll Plaza and also give wider publicity of the fact that local users within the radius of 20% kms are not liable to pay any toll/fee as per the Agreement between the Concessionaire and the State Government.

16. We appreciate the fair stand taken by the Concessionaire through counsel in agreeing to abide by the legal position expounded by the Apex Court in the case of MSK Projects India (JV) Limited (supra).

17. We place on record the presence of Shri Vivek Agrawal, Chairman, M.P. Road Development Corporation Ltd. on whose instructions the counsel for the respondents made statement across the Bard.

18. In view of above, hearing of these petitions to proceed further.

19. All the writ petitions are admitted.

20. To be heard along with other companion cases pertaining to State Highway.

21. Registry to place this matter on the administrative side for appropriate direction.
Certified copy as per rules.