

Case :- WRIT - C No. - 32852 of 2017

Petitioner :- Zila Panchayat Banda Thru Chairman And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rakesh Pande, Ravindra Singh

Counsel for Respondent :- C.S.C.

Hon'ble Bala Krishna Narayana, J.

Hon'ble Shailendra Kumar Agarwal, J.

The arguments of this case concluded on 22.9.2017 and we had made the following order:

"Heard Sri Rakesh Pandey, learned Advocate assisted by Sri Ravindra Singh for the petitioners and learned Standing Counsel for the respondents.

We will give reasons later. But we make the operative order here and now.

This writ petition is allowed. The impugned order dated 17.05.2017 passed by the District Magistrate/ Collector, Banda, respondent no.2 (Annexure no. XI) and the orders dated 17.05.2017 and 27.06.2017 passed by the Chief Development Officer, Banda (Annexures no. X & VI) are hereby quashed.

The respondents shall permit the petitioners to realize transit fee (Tah Bazari) from vehicles engaged in transporting minor minerals and other minerals within the limits of Zila Panchayat, Banda subject to the condition that the petitioners would not put any barrier on the National/ State Highway and in case there is any other legal impediment in collection of transit fee (Tah Bazari), then the same shall be communicated to the petitioners by means of a written order within three weeks from the date of receipt of certified copy of this order.

There shall, however, be no order as to costs."

Now here are the reasons:-

This writ petition has been filed by the petitioners with the prayer to issue a writ, order or direction in the nature of certiorari

quashing the impugned order dated 17.5.2017 (Annexure XI to the writ petition) passed by the District Magistrate / Collector, Banda, respondent no. 2 and the orders dated 17.5.2017 and 27.6.2017 (Annexures X and XV) passed by the Chief Development Officer, Banda, respondent no. 3. A further prayer has been made by the petitioners to issue a writ, order or direction in the nature of mandamus restraining the respondents from interfering with the realization of "tah bazari fee" by the petitioner Zila Panchayat, Banda or its contractor.

Briefly stated facts of the case, as emerging out from the perusal of the writ petition are that the petitioner no. 2 is the elected President / Chairman of the Zila Panchayat, Banda (petitioner no. 1) constituted under the provisions of U. P. Kshetra Panchayat and Zila Panchayat Act, 1961 (hereinafter referred to as the 'Act'). Zila Panchayat has framed bye-laws in compliance of the provisions for realizing 'tah bazari' fee from the vehicles engaged in transporting minor and other minerals within the limits of Zila Panchayat which were notified in the gazette of Uttar Pradesh on 11.12.2013. In pursuance of the said bye-laws Zila Panchayat had been realizing 'tah bazari' from the vehicles plying and transporting minor and minerals within its territorial limits. Bye-law (5) of the bye-laws stipulate that Zila Panchayat could realize 'tah bazari' fee through its own employees or through its contractors. It is noteworthy that contract for realizing 'tah bazari' fee for the year 2016-17 had been settled in favour of one Sri Singh, S/o of Mangal Singh for an amount of Rs. 2,94,63,000/-. A notice inviting tender for grant of contract for realizing 'tah bazari' fee under the bye-laws for the year 2017-18 was published on 16.3.2017 which was amended on 24.3.2017 fixing 30.3.2017 for holding auction. However, before the auction could take place, the respondent no. 1 issued a notice restraining the petitioner from inviting tenders till further orders as a result, the auction scheduled to take place on 30.3.2017 could not take place. Since the contract for realizing 'tah bazari' fee for the year, 2017-18 could not be settled due to aforesaid notice, the

petitioner permitted erstwhile contractor to realize 'tah bazari' fee on a temporary basis enhancing the same by 10% by order dated 31.3.2017 (Annexure VI to the writ petition) with a clear rider that the contractor would not put any obstruction for realizing 'tah bazari' fee. The respondent no. 1 by letter dated 19.4.2017 (Annexure V to the writ petition) informed all the Zila Panchayats that settlement of contracts for realizing 'tah bazari' fee henceforth be made through E-tendering along with open bidding under the supervision of the representative of the District Magistrate and the practice of inviting tenders was discontinued. However, in the meantime because of change of the Government in the State of U. P. the local level politicians and contractors associated with the new ruling party, started obstructing the contractors from realizing 'tah bazari' fee. The aforesaid fact was intimated by the contractors by letter dated 27.4.2017 (Annexure VI to the writ petition). As a result, Zila Panchayat took a decision to realize 'tah bazari' fee through its own employees as the process of issuance of fresh tenders and adoption of E-tendering as per the direction of the State Government was likely to take sometime. By an order dated 29.4.2017 issued in this regard by Uppar Mukhya Adhikari, Banda (Annexure VII to the writ petition) w. e. f. 1.5.2017 the task of realizing 'tah bazari' fee was entrusted to the employees of Zila Panchayat, Banda. Since the employees of Zila Panchayat, Banda entrusted with the duty of realizing 'tah bazari' fee, were facing difficulty in realizing 'tah bazari' in the absence of road barriers as the truck drivers avoided payment of 'tah bazari' fee, additional employees were sought to be deputed for realizing 'tah bazari' fee in order to prevent loss of revenue by letter dated 6.5.2017. Accordingly, Uppar Mukhya Nagar Adhikari, Banda deputed additional staff for realizing fee through Zila Panchayat's own employees till the regular settlement of contract through auction (Annexure IX to the writ petition). The Chief Development Officer, Banda by his order dated 17.5.2017 (Annexure X to the writ petition) stayed the order dated 15.5.2017 (Annexure IX to the writ petition) passed by Uppar Mukhya Adhikari

on the ground that the Hon'ble High Court had by its order passed in Writ Petition No. 66438 of 2015; M/s Sai Baba Builders Versus State of U. P. put a stop on realization of 'tah bazari' by putting barriers or obstructions on national or state highways. Identical order was also passed by the District Magistrate, Banda on 17.5.2017 (Annexure XI to the writ petition). Since on account of the orders passed by the Chief Development Officer, Banda and District Magistrate, Banda, Zila Panchayat, Banda was suffering huge financial loss, a representation was made by the Uppar Mukhya Adhikari, Banda to the respondent no. 3 (Annexure XIV to the writ petition) on which the Chief Development Officer, Banda wrote a letter to Uppar Mukhya Adhikari, Banda seeking a clarification from him as to why there was an inordinate delay in grant of contract for collection of 'tah bazari' fee through E-tendering despite lapse of two months from the date of the order passed by the State Government on 19.4.2017 in this regard and why importance was being given for realizing 'tah bazari' fee through its employees as a short-term measure by letter dated 17.6.2017 (Annexure XIV to the writ petition).

Learned counsel for the petitioners has submitted that the impugned orders are founded upon a wholly erroneous premise that Zila Panchayat, Banda was realizing 'tah bazari' fee by putting barriers. He has next submitted that the petitioner has not installed any barriers for stopping vehicles for the purpose of realizing 'tah bazari' fee and right to recover 'tah bazari' fee by the Zila Panchayat through its own employees is one of the two valid modes of realization of 'tah bazari' fee available to Zila Panchayat under its bye-laws. The High Court vide its order dated 4.1.2016 passed in Writ-C No. 66438 of 2016; M/s Sai Baba Builders Versus State of U. P. and others had restrained Zila Panchayats from realizing 'tah bazari' fee by putting barriers on national / state highways and even otherwise at no point of time petitioner had put road barriers on national / state or any other highways for the purpose of realizing 'tah bazari' fee nor any such finding has been recorded in the impugned orders.

Per contra, learned Standing Counsel has submitted that the impugned orders do not suffer from any illegality or infirmity.

After having heard learned counsel for the parties and perused the averments made in the writ petition and the material available on record including the order dated 4.1.2016 passed by this Court in Writ-C No. 66438 of 2016; M/s Sai Baba Builders Versus State of U. P. and others we find that the Chief Development Officer, Banda as well as the District Magistrate, Banda by impugned orders dated 17.5.2017 stayed the operation of the order dated 15.5.2017 passed by Uppar Mukhya Adhikari, Zila Panchayat, Banda by which he had decided to realize 'tah bazari' fee through the employees of Zila Panchayat, Banda on the ground that no barrier can be put on national / state highways without recording any finding therein that the petitioner was realizing 'tah bazari' fee by putting barriers on national / state highways.

Thus, it is apparent that the impugned orders dated 17.5.2017 (Annexure XI to the writ petition) passed by the District Magistrate / Collector, Banda and the orders dated 17.5.2017 and 27.6.2017 (Annexure X and XV to the writ petition) passed by the Chief Development Officer, Banda are vitiated on account of total non-application of mind to the facts and circumstances of the case. In the absence of any finding recorded by the respondent nos. 2 and 3 in their orders that the petitioners were realizing 'tah bazari' fee by putting barriers on national / state highways, it was not at all open to them to have put an embargo on the right of the petitioners to recover 'tah bazari' fee from the vehicles passing through the roads within its jurisdiction.

These are the reasons for which we had allowed the writ petition.

Order Date: 22.9.2017

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