"REPORTABLE"

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1091 OF 2010
(Arising out of SLP (C) No. 11462 of 2007)

Cantonment Board, Meerut & Anr. …. Appellants

Versus

K.P. Singh & Ors. …. Respondents

J U D G M E N T

V.S. SIRPURKAR, J.

1. Leave granted.

2. Correct scope and applicability of the maxim *actus curiae neminem gravabit* falls for consideration in this appeal. This appeal has been filed challenging the judgment in Civil Miscellaneous Writ Petition No.60135 of 2006 passed by the High Court of Judicature at Allahabad. The High Court, by the impugned order, has held that the respondents herein,

namely, Shri K.P. Singh and Gaurav Traders would be entitled to the refund of the amount deposited by them over and above the bid given by them. Cantonment Board, the appellant herein has been directed to dispose of the application made by respondent Nos. 1 and 2 for refund expeditiously. Needless to say, in the light of the observation made by the High Court favouring the refund of amount, few facts would be necessary.

3. Under Section 60 of the Cantonment Act, the Cantonment Board was empowered to impose toll tax. Accordingly, on 08.01.2005, a Gazette Notification was issued for the imposition of the toll tax on such commercial motor vehicles passing through the Meerut Cantonment.

4. In pursuance of this, a tender was floated and bids were invited relating to 2005-2006 for levying toll tax upon the entry of the commercial motor vehicles within the territorial limits of Meerut Cantonment in the sense that the bidders were expected to pay the agreed amount to the Cantonment Board and the successful bidder was entitled to levy and collect toll tax upon the entry of the commercial motor vehicles in the territorial limits of Meerut. Twenty persons submitted their tenders in response to the notice inviting tenders whereupon the tender submitted by respondent Nos.1 and 2 herein jointly came to be accepted. The highest offer by respondent Nos. 1 and 2 for the collection between 01.10.2005 to 04.10.2006 was for 3,57,30,000/-. This was challenged by one Gajraj

Singh. Earlier, validity of the imposition of tax on the commercial vehicles by the Cantonment Board was challenged by the Civil Writ Petition Tax No.1601 of 2005. That Writ Petition was allowed and the High Court quashed the Notification dated 08.01.2005. The Cantonment Board filed a Special Leave Petition against the impugned order of the Allahabad High Court dated 23.03.2006 and leave was granted resulting in the main Notification authorizing the appellant to collect toll tax remaining intact.

5. The appellant, therefore, issued a fresh Notification inviting tenders, on 14.09.2006. By this, the contract for collection of tolls for the period of one year w.e.f 05.10.2006 to 04.10.2007 was advertised. Again, respondent Nos.1 and 2 herein stood as the highest bidders in the auction dated 27.09.2006 and offered the highest bid of Rs.3,61,57,727/- (Rs.1,02,000/- per day) for the said period of one year. This was approved by the appellant vide its resolution No.229 dated 29.09.2006. After the finalization of the tender, respondent No.5 Umesh Kumar submitted an application offering to pay 1,05,000/- per day with the advance deposit of 5 days at the said rate in the account of the Cantonment Board. A Writ Petition was filed by respondent No.5 being Writ Petition No.60135 of 2006 claiming therein a Writ of Mandamus commanding the appellant herein to start the process of holding fresh auction or tenders for letting out the rights to collect toll tax from the commercial motor vehicles passing

through the territorial limits of Meerut Cantonment by issuing advertisement within the stipulated time. It was further prayed that till the finalization of fresh auction, respondent No.5 should be allowed to pay at the rate of 1,25,000/- per day for the collection of toll tax.

6. Ordinarily, this Writ Petition should never have been entertained. However, it was actually entertained and the High Court at the time of passing the orders on the application for stay found that though respondent No.5 was willing to pay Rs.1,25,000/- per day for the right to collect toll tax, yet respondent Nos.1 and 2 herein had *suo motu* made an offer to pay Rs.1,31,000/- per day for the right to collect toll tax. The High Court as an interim order directed respondent Nos.1 and 2 to deposit Rs.1,31,000/- per day to levy and collect the toll tax during the interregnum. Some other orders were also passed with certain directions. This order was passed on 08.11.2006.

7. The Writ Petition was opposed by the appellant on the ground that the claim made by respondent No.5 was contrary to the terms of the tender and that in fact, there was collusion between the respondents who had colluded and quoted lesser price and that was to result into losses to the appellant-Cantonment Board.

8. It so happened thereafter that the said auction not having been approved by the senior officers, a fresh auction was ordered for letting out the rights to collect the toll. In that view, the Writ Petition was not pressed by respondent No.5, and as a result, the petition was dismissed as not pressed. However, the High Court did not stop at that and noted that the original bid by respondent Nos.1 and 2 was only for Rs.1,02,000/- w.e.f. 09.11.2006 for which they had been given the right of collection of toll tax. The High Court, therefore, took the view that since the petition was dismissed, the interim order, if any, more particularly dated 08.11.2006 would merge with the final order and if the petition was dismissed, it would mean as if the petition had not been filed and if any of the parties had gained something under the interim order that effect of the interim order should be neutralized. Since the petition had been dismissed as not pressed, the interim order dated 08.11.2006 accepting the bid of the respondent Nos. 5 and 6 of Rs.1,31,000/- would merge with the final order and respondent No.1 and 2 would be entitled to get refund of the excess amount of Rs. 29,000/- per day since their final offer which was accepted by the Cantonment Board was only of Rs.1,02,000/-. The Court took the view that in view of the maxim *actus curiae neminem gravabit,* no party could be allowed to take benefit of its own wrongs by getting the interim orders and thereafter blaming the Court. In that view, the High Court directed refund in favour of respondent Nos. 1 and 2 of the excess amount

i.e. Rs. 29,000/- per day w.e.f. 09.11.2006 till the end of the contract period. It is this order which has fallen for our consideration at the instance of the Cantonment Board.

9. It was argued by the learned Additional Solicitor General of India, Shri G. Banerjee that the High Court was completely in error firstly, in relying upon the maxim *actus curiae neminem gravabit* and on that basis ordering the refund of the amount. According to Shri Banerjee, there was no question of any prejudice being caused to respondent Nos.1 and 2 on account of any order passed by the High Court much less the order dated 08.11.2006. He pointed out that in fact, the High Court was only guarding the interests of the Cantonment Board inasmuch as the petitioner before the High Court (respondent No.5) had offered to pay at the rate of Rs.1,25,000/- as against the accepted bid of Rs.1,02,000/- by respondent Nos.1 and 2 herein. It was the voluntary offer of respondent Nos.1 and 2 who matched the offer by Shri Umesh Kumar and accepted it for the amount of Rs. 1,31,000/- per day. In lieu thereof, respondent Nos.1 and 2 acquired the rights to collect the toll tax. This offer was given by these respondents with open eyes and there was no question of prejudice being caused because of the interim arrangement ordered by the High Court by the interim order dated 08.11.2006 and, therefore, the High Court was

completely unjustified in ordering the refund merely because the Writ Petition was dismissed as not pressed.

10. As against this, Dr. Dhawan, learned Senior Counsel supported the order, contending that but for the order, the petitioners would have been required to pay at the rate of Rs. 1,02,000/- per day and ultimately the Writ Petition in which the said order was passed as the interim arrangement thereby was dismissed. The respondent Nos.1 and 2 would have a right to refund of the amount paid by them in excess of their original offer because that would be the natural result of the dismissal of the Writ Petition.

11. In our view, the High Court has completely misunderstood the maxim *actus curiae neminem gravabit* and has committed an error in applying it to the facts of the present case. For applying the maxim, it has to be shown that any party has been prejudiced on account of any order passed by the Court. We do not find any prejudice having been caused to the respondents herein. If the High Court had decided to entertain the Writ Petition filed by the 5th respondent, ordinarily, it could have stayed the whole process thereby depriving the first and the second respondents of their rights to collect the toll tax on the basis of their bid in the tender. However, the High Court did not want to stop the process of tax collection. The tax had to be collected since the Notification imposing the tax was intact (thanks to the orders passed by this Court in SLP No.7682/2006).

Then it was a question as to at what rates should the rights to collect the toll tax be leased out and to whom. The respondent No.5-petitioner had made an offer of Rs.1,25,000/- per day. This offer was matched by respondent Nos.1 and 2 by raising the bid to Rs.1,31,000/- per day. We are sure that respondent Nos.1 and 2 thus got into this arrangement with the open eyes. Nobody could even think that the respondents would unnecessarily suffer losses for matching and exceeding the offer made by respondent No.5, after all they were doing business and they would certainly not be interested in suffering the losses by matching the offer made by the 5th respondent and exceeding the same by Rs.6,000/- per day. They entered into this arrangement with absolutely open eyes. Even ultimately, the petition was not dismissed as being a merit less petition. The respondent No.5 chose not to press the petition in view of the fact that a fresh auction was ordered by the appellant herein perhaps because the higher authorities did not choose to give sanction for all this exercise by the appellant. Therefore, there was no question of respondent Nos.1 and 2 suffering any prejudice because of the interim order passed by the High Court. They were welcome not to make any offers. All that would have happened was that respondent No.5 would have then acquired the rights to collect the toll tax and not the respondent Nos.1 and 2. But they did not want to lose their right to collect the toll tax and it is with this idea that they matched the offer of respondent No.5 and exceeded it by Rs.6,000/- per

day. There is, thus, no question of any prejudice having been suffered by respondent Nos.1 and 2. The High Court, in our opinion, has completely misread the law laid down in ***Karnataka Rare Earth & Anr. v. Senior Geologist Department of Mines & Geology & Anr.*** **[2004 (2) SCC 783]**. The concerned paragraph which has also been quoted by the High Court is as under:

> "The doctrine of *actus curiae neminem gravabit* is not confined in its application only to such acts of the Court which are erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in only gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand;(a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost."

12. Applying the principles in the above paragraph, it was not on account of respondent No.5 that the Court was persuaded to pass an order. In fact the 5th respondent had given its offer. However, the first and second respondents not only matched that offer but they exceeded the

same. This was the voluntary action on the part of respondent Nos.1 and 2 and they were not directed by the order to match the order of respondent No.5. It was their voluntary act which was well calculated to earn profits by winning the rights to collect the toll tax. Secondly, the Writ Petition was not held to be untenable nor was it held that respondent No.5 was not entitled to file the Writ Petition, in fact, respondent No.5 did not press the Writ Petition at all.

13. There was no question of respondent Nos.1 and 2 having suffered any impoverishment which they would not have suffered but for the order of the Court and the act of respondent No.5. In fact, it was on account of the voluntary act of respondent Nos.1 and 2 that the Court was persuaded to pass the order dated 08.11.2006 allowing respondent Nos.1 and 2 to collect the toll tax. There was no question of any benefit having been earned by respondent No.5 under the interim order nor was there any question of making restitution of anything that was lost by respondent Nos.1 and 2 since they had lost nothing.

14. In the above reported decision, the leases in favour of the appellants were challenged by way of the public interest litigation and grants in their favour were quashed. They filed Writ Appeals and approached this Court. When they approached this Court, there was an interim order by which this Court had directed that the renewals of the exceeding grants in favour of

the appellants would continue till the next date of hearing. This order was also modified and the lease hold rights were directed to continue till further orders of the Court. The Karnataka Government, after the dismissal of appeals, issued orders calling upon the appellants to pay the price calculated at the minimum rates. The order was challenged by way of a Writ Petition which was dismissed and that is how the matter reached this Court. It was argued that the act of the appellants quarrying the granite stones and exporting the same was accompanied by payment of royalty and issuance of transport permits by the authorities of the State and though done under the interim orders of this Court was nevertheless a lawful and *bona fide* act. According to the appellant, the mining lease in favour of the appellants were bound to be held to be valid in view of the interim orders passed by this Court that they could not be held liable for the payment of price of granite blocks. The Court held that the demand of the State of Karnataka of the price of mineral could not be said to be a levy of penalty or penal action. It was further observed that though the appellants were allowed the mining by way of an interim order during the pendency of the earlier appeals, ***the factual transport permits were obtained by the appellants only after the dismissal of their appeals.*** The court recorded a final order that the appellants' plea that they were ignorant of the dismissal of the appeals could not be accepted and entertained. The Court then referred to the decision in ***South Easter***

Coalfields Ltd. v. State of M.P. & Ors. **[2003 (8) SCC 648]** where the doctrine of *actus curiae neminem gravabit* was considered and elaborated, holding this doctrine to be the principle of restitution. Considering the facts of the case in paragraph 11, this Court observed that:

> " but for the interim orders passed by this Court there was no difference between the appellants and any other person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-Section(5) of Section 21. ***As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court.*** The Court affirmed the High Court's finding that the appellants were liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders."

15. We have already explained the observations of this Court in paragraph 10 in the light of the facts of this case and it is clear that the appellants cannot take advantage and claim refund because of the fact that this was their voluntary offer and they were not directed to pay the amount that they did. In view of this, we find that the High Court's order is quite unsustainable. We therefore, set aside that order and hold that the Cantonment Board would not be liable to refund anything in favour of respondent Nos.1 and 2 who have enjoyed the rights of collection of toll on the basis of their own voluntary offer made before the High Court which the High Court has merely accepted by its order dated 08.11.2006. With this

observation, the appeal is allowed. It shall not now be necessary for the respondent to consider the representation made by respondent Nos.1 and 2. The direction to that effect by the High Court is also set aside. Costs are estimated at Rs.50,000/-.

……..J.
[V.S. SIRPURKAR]

……..J.
[DR. MUKUNDAKAM SHARMA]

New Delhi;
February 1, 2010.

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Case No.	:	Civil Appeal No……. of 2010 (Arising out of SLP (Civil) No. 11462 of 2007)
Date of Decision	:	1.2.2010
Cause Title	:	Cantonment Board, Meerut & Anr. Vs. K.P. Singh & Ors.
Coram	:	Hon'ble Mr. Justice V.S. Sirpurkar Hon'ble Dr. Justice Mukundakam Sharma
Judgment delivered by :		Hon'ble Mr. Justice V.S. Sirpurkar
Nature of Judgment :		Reportable