2024 INSC 539

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8985 OF 2013

M/S REWA TOLLWAY P. LTD. ...APPELLANT(S)
VERSUS

THE STATE OF MADHYA PRADESH & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.8989 OF 2013

CIVIL APPEAL NO.8986 OF 2013

CIVIL APPEAL NO.8990 OF 2013

CIVIL APPEAL NO.8988 OF 2013

CIVIL APPEAL NO.8987 OF 2013

CIVIL APPEAL NO.8991 OF 2013

CIVIL APPEAL NO.8992 OF 2013

CIVIL APPEAL NO.8993 OF 2013

CIVIL APPEAL NO.8995 OF 2013

CIVIL APPEAL NO.8996 OF 2013

CIVIL APPEAL NO.8994 OF 2013

J U D G M E N T

VIKRAM NATH, J.

1. By the impugned judgment and order dated 11.02.2010, the High Court of Madhya Pradesh at Jabalpur decided a group of twelve petitions wherein the question involved was whether a transaction where the right to collect tolls is given in lieu of the amount spent by the Concessionaire in the construction of roads, bridges etc. under the Build, Operate & Transfer (BOT) Scheme amounts to a "lease" as contemplated under Section 105 of the Transfer of Property Act, 1882[1] and Section 2(16) of the Indian Stamp Act, 1899[2]. Further challenge made in the said writ petitions was with regard to the validity of the amendment made in proviso (c) to Clause (C) of Article 33 of Schedule 1(A) as amended by the Indian Stamp (M.P.) Act, 2002, and a further prayer was made to declare Section 48 and 48(B) of IS Act, 1899, as amended by M.P. Act 24 of 1990 as *ultra vires*.

2. The Division Bench of the High Court, after considering the submissions and the material on record came to the conclusion that the writ petitions were without any merit and accordingly dismissed the same.

[1] TP Act
[2] IS Act

Aggrieved by the same, these twelve appeals have been preferred.

3. For the sake of convenience, we are referring to the facts of Civil Appeal No.8985 of 2013, which are briefly stated hereunder:

(i) Madhya Pradesh Rajya Setu Nirman Nigam Ltd.[3], (respondent no.3) is a Company incorporated and registered under the Companies Act, 1956. The State of Madhya Pradesh, vide order dated 01.02.2001, authorized MPRSNN for reconstruction, strengthening, widening and rehabilitation of a section of road on Satna-Maihar-Parasimod-Umaria Road Project to be executed through Concession on Build, Operate and Transfer Scheme.

(ii) MPRSNN, vide Advertisement dated 22.04.2002, invited tenders against the aforesaid project pursuant to which the bid of the appellant was accepted. On 8th August, 2002, Letter of Acceptance was issued by the MPRSNN to the appellant for execution of the Concession Agreement within 30 days.

(iii) The IS Act was amended in the State of Madhya Pradesh vide Amendment Act No.12 of 2002 and proviso (c) to Clause(C) was inserted to Entry No.33

[3] MPRSNN

of Schedule-1(A), which provided that there shall be levy of stamp duty @ 2% on the amount likely to be spent on the project, on the agreement to lease and right to collect the toll is given. The State of Madhya Pradesh notified the said amendment on 12.08.2002.

(iv) A Concession Agreement was signed on 15.09.2002 on a stamp paper of Rs.100 between MPRSNN and the appellant. A show cause notice dated 26.03.2004 was issued to the appellant intimating that the matter between State of M.P. and the Rewa Tollway Private Ltd. would be listed for hearing on 29.03.2004 before the Collector of Stamps, Bhopal and the appellant was required to produce the original copy of the agreement dated 15.09.2002. The appellant filed a detailed reply dated 25.04.2004 stating that the agreement executed was a Concession Agreement and, as such, it cannot be treated as a lease but as a license at best. The Collector (Stamps), Bhopal vide order dated 30.04.2004 passed an order exercising power under Section 48-B of the IS Act directing recovery of deficit stamp duty amounting to Rs.1,08,00,000/-(Rupees one crore eight lakhs) said to be payable on the Concession Agreement dated 15.09.2002. Thereafter, a recovery notice was issued on 29.05.2004 by the Collector (Stamps), Bhopal to deposit the aforesaid

amount within seven days of the receipt of the said recovery notice.

(v) On 6th June, 2004, the appellant challenged the order dated 30.04.2004 by way of a writ petition under Article 226 of the Constitution which was registered as Writ Petition No.2219 of 2004. The High Court vide order dated 03.08.2004 granted interim stay of recovery of any amount pursuant to the impugned order dated 30.04.2004. The High Court, vide judgment and order dated 11.02.2010, dismissed the said writ petition along with eleven other matters and upheld the demand raised by the Collector of Stamps by the order dated 30.04.2004.

(vi) Aggrieved by the impugned judgment of the High Court, the appellant preferred the instant appeal with connected matters before this Court on 3rd May, 2010, in which notices were issued on 14th May, 2010 and, thereafter, interim order was passed on 7th January, 2011. Later on, vide order dated 13.09.2013, this Court granted leave and further directed the interim stay granted earlier to continue.

4. We have heard Shri Dushyant Dave, learned Senior Counsel appearing for the appellants in nine (9) appeals and other learned counsels appearing for the appellants in the other three (3) appeals and Shri Saurabh Mishra, learned Additional Advocate General for the State of

Madhya Pradesh on behalf of the respondents.

5. Before we proceed further with the submissions, it would be relevant to refer to three other dates which have been referred to by Shri Dave in support of his submissions on legitimate expectation and promissory estoppel. According to Shri Dave, after the tender was invited vide Advertisement dated 22nd April, 2002, the Chief Secretary issued a Clarification dated 01.07.2002 with respect to the agreements executed under BOT Scheme stating that stamp duty would not be payable on such agreements in the State of Madhya Pradesh also and further reiterating that in order to avoid any doubts to be raised in future, it is necessary to clarify that no stamp duty shall be payable on the agreements being executed under BOT Scheme. A further clarification was issued vide letter dated 21.07.2002 by the Chief Secretary of the State with respect to the Resolution dated 01.07.2002, that no stamp duty would be levied on BOT Projects in future and such agreements would be signed on stamp paper of Rs.100/-. Shri Dave further referred to the Notification of the State Government dated 10th March, 2008 whereby the stamp duty on toll was reduced from 2% to Rs.100 i.e. the position which existed prior to the Amendment of 2002 and as clarified in the notification and the letters of 1st July of 2002 and 21st July, 2002. It was, thus, submitted that the charge of 2% stamp duty

was only applicable in the State of Madhya Pradesh between August, 2002 till March, 2008 and, thereafter, again all such Concession Agreements under BOT Scheme are to be executed on stamp paper of Rs.100. It was throughout the intention of the State of Madhya Pradesh to not charge stamp duty @ 2% and treat the Concession Agreement under BOT Scheme to be a license but unfortunately for the period referred to above, it was treated as a lease and the appellants are the victims of this period, whereas all subsequent Concession Agreements under BOT Scheme executed after 10th March, 2008 are exempt from such stamp duty.

6. Further continuing his submissions Mr. Dave, learned Senior Counsel submitted that in view of the Clarification dated 01.07.2002 and subsequent circulation vide letter dated 21.07.2002 throughout the State, once it was clarified that the Concession Agreements under the BOT Projects would be executed on stamp paper of Rs.100/-, the appellants entered into the agreement with the same impression and having calculated their project cost and also their tenders without factoring in 2% stamp duty, had legitimate expectation that the agreement would not require stamp duty @ 2% of the value, but was to be executed only on stamp paper of Rs.100/-. The subsequent demand was contrary to the legitimate expectations of the appellants

and, therefore, liable to be set aside.

7. It was next submitted that the Circular of the Chief Secretary dated 1st July, 2002 and its subsequent circulation vide letter dated 21st July, 2002, estopped the State Government from amending the IS Act and, further raising the demand @ 2% treating the Concession Agreement to be a lease, the same would be hit by principle of promissory estoppel. The State was estopped from demanding such stamp duty by treating the Concession Agreement to be a lease.

8. In support of his submissions, Shri Dave has placed reliance upon the following judgments:

(1) Navjyoti Co-op. Group Housing Society Vs. Union of India;[4]

(2) Food Corporation of India Vs. Kamdhenu Cattle Feed Industries[5];

(3) The State of Jharkhand and Ors. Vs. Brahmputra Metallies Ltd. Ranchi and Anr[6].;

(4) State of Bihar and Ors. Vs. Shyama Nandan Mishra[7];

(5) M/S Hero Moto Corp Ltd. Vs. Union of

[4] (1992) Supp.1 SCR 709
[5] (1992) Supp.2 SCR 322
[6] (2020) 14 SCR 45
[7] (2022) 11 SCR 1136

India and Ors.[8];

9. Shri Dave, learned Senior Counsel next submitted that the insertion of proviso (c) to Clause(C) under Article 33 of Schedule 1-A by the 2002 Amendment Act was *ultra vires* as it violates the mandate of Article 14 of the Constitution of India. It was submitted that the said amendment was illegal, arbitrary and bad in law as it nullified the promise made by the Chief Secretary, vide Circular dated 01.07.2002, and has taken away the vested right of the appellants of not factoring in 2% stamp duty and ultimately resulting into a demand of a huge amount of Rs.1,08,00,000/- (Rupees one crore eight lakhs) approximately. In support of his submission, he has relied upon the following two judgments:

(1) State of Gujarat and another Vs. Raman Lal Keshav Lal Soni and Ors.[9];

(2) B.S. Yadav and Ors. etc. Vs. State of Haryana and Ors. Etc.[10];

10. The next point raised by Shri Dave is that the aforesaid amendment was *ultra vires*, inasmuch as, the State had no legislative competence to bring in this amendment. Further, it was submitted that it was a colourable and excessive legislation and was a fraud on

[8] (2022) 13 SCR 592
[9] (1983) 2 SCR 287
[10] (1981) 1 SCR 1024

the Constitution of India, inasmuch as, the State itself in 2008 withdrew the Amendment of 2002. In support of his submission, he has relied upon the following judgment:

(1) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and another[11];

11. The next submission of Shri Dave is that the Concession Agreement dated 15.09.2002 is not an instrument of lease and, as such, the demand of 2% stamp duty was totally uncalled for and illegal. According to him, the ownership of the project land has not been transferred by the State to the MPRSNN and, as such, MPRSNN could not transfer any ownership or interest to the appellants. The Concession Agreement was on the concept of public, profit, partnership (PPP mode). He has further elaborated his submissions by referring to Section 105 of the TP Act. According to him, in a lease, the following three ingredients must pre-exist:

(1) There is a transfer of a right to enjoy such property.

(2) It is made for a fixed time, express or implied or in perpetuity.

(3) There has to be consideration of a price paid or promised.

12. According to Shri Dave, learned Senior Counsel for

[11] (1961) 3 SCR 77

the appellants, lease means transfer of interest in the property to enjoy the property whereas, license means transfer of property but no interest in the property. According to him, in the present case, there was no transfer of interest in the property, as such, it would not fall within the definition of lease. He has further referred to various clauses of the Concession Agreement in support of his submission.

13. It was next submitted that MPRSNN is a 50% partner in the construction of the project which indicates that the Concession Agreement is a mutual contract and, as such, would not levy 2% stamp duty as imposed by the impugned orders. According to him, out of a total project cost, 50% was to be paid by the MPRSNN. According to him, respondent no.3, MPRSNN being a 50% partner in the entire road project meant that the appellant and respondent no.3 are equal stake holders and, as such, the unilateral imposition of 2% stamp duty of the entire project cost on the appellant was illegal and unwarranted. He has further criticised the judgment of the Collector (Stamps), Bhopal whereby he held that the total project cost was Rs.110 crores whereas actually it was 54 crores, out of which, MPRSNN (respondent no.3) had granted subsidy and invested Rs.29.10 crores and the remaining Rs.24.90 crores, was invested by the appellant. As such, even if he was liable to pay 2% stamp duty, the amount

would be much less, approximately Rs.48 lakhs and odd and not Rs.1.08 crores, which was 2% stamp duty on the entire project cost.

14. The last argument raised is that once the IS Act had been re-amended on 10th March, 2008, the earlier Amendment of 2002 should be held to be illegal and arbitrary. On such submissions, Shri Dave, learned senior counsel urged the Court to allow the appeal and set aside the impugned orders imposing deficiency in stamp duty of Rs.1.08 crores.

15. On the other hand, Shri Saurabh Mishra, learned Additional Advocate General for the State of Madhya Pradesh representing all the three respondents including 'MPRSNN' submitted that the High Court had dealt with all the above arguments in great detail and had rejected them for good reasons based on statutory provisions as also the law on the point. It did not suffer from any infirmity, much less any perversity warranting interference by this Court.

16. According to Shri Mishra, all the ingredients of a document constituting a lease as defined under the TP Act were existing in the Concession Agreements under the BOT Scheme. He has also referred to various clauses of the Concession Agreement to show that possession was actually transferred to the appellants in order to recover the toll, the period of such possession was defined to be

fifteen years. It was for a consideration which was also mentioned in the agreement. Therefore, all the three ingredients were fulfilled and, as such, the Collector (Stamps), Bhopal and the High Court rightly held the Concession Agreements to be a lease. He also referred to definition of 'lease' under the IS Act, as laid down in Section 2(16), which includes any instrument by which tolls of any description are let. He also referred to the definition of 'immovable property' as defined under Section 3(26) of the General Clauses Act, 1897, which would include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. He further referred to various findings recorded by the High Court. He further placed reliance upon three judgments of this Court:-

(1) Associated Hotels of India Ltd. Vs. R.N. Kapoor[12];

(2) State of Uttarakhand and Ors. Vs. Harpal Singh Rawat[13];

(3) Nasiruddin and another Vs. State of Uttar Pradesh Thr. Secretary and Ors[14].;

17. Shri Mishra, further referred to the various provisions of the Indian Tolls (MP) Amendment Act, 1972. Insofar as to the challenge of the amendments as being

[12] AIR 1959 SC 1262
[13] (2011) 4 SCC 575
[14] (2018) 1 SCC 754

ultra vires is concerned, Shri Mishra submitted that the insertion of proviso (c) to Clause(C) to Entry-33, is only for determining the rate of charging stamp duty and, as such, the challenge was totally irrelevant. The Concession Agreement is a lease as defined under Section 105 of the TP Act as also under Section 2(16) of the IS Act and, therefore, would be chargeable to stamp duty, for which rate is provided under Schedule 1-A. It was further submitted that the submission relating to Promissory Estoppel and Legitimate Expectation are unwarranted and without any merit, inasmuch as, prior to the execution of the concession agreement, the amendment had been brought in. The communication by the Chief Secretary cannot have any overriding effect over the statutory amendments brought in by the State legislature. It is also submitted that there can be no Legitimate Expectation or application of Promissory Estoppel against statute. It is also submitted that the State was fully competent to carry out the amendments. It was next submitted that as the 2002 amendment had been reversed in 2008, cannot by itself draw any kind of presumption that 2002 amendment was illegal. It was submitted that the appeals lack merit and are liable to be dismissed.

18. Having considered the submissions advanced and having perused the material on record, we have no

hesitation in holding that the judgment of the High Court impugned in these appeals does not require any interference. We do not find any infirmity, much less any perversity warranting any interference by this Court. The High Court has dealt with all aspects of the matter considering not only the stipulations in the Concession Agreement but has also dealt with in detail with the respective arguments advanced by the petitioners before the High Court (the appellants herein) at the same time referring to the statutory provisions, the constitutional provisions as also the case-laws relied upon by the counsel for the parties. However, there is one aspect of the matter which requires clarification which we shall deal with at the end of this judgment.

19. The arguments made on behalf of the appellants relating to the vires of inserting the proviso (c) to Clause (C) to Entry 33 of Schedule 1-A of the IS Act, 1899 by the M.P. Amendment of 2002 have no merits as it neither defines the word 'lease' nor does it in any way interfere with the definition of 'lease' in any manner, either by expanding or restricting its interpretation. It is only a statutory provision as to what would be the rate of stamp duty payable on lease deeds of a particular type. But for the insertion of the proviso which is sought to be challenged, the stamp duty payable on the lease would be 8% of the market value as provided to be charged on the

conveyance under Entry-22 of Schedule 1-A. By inserting the proviso, the stamp duty chargeable on a lease under BOT Project for tolls/bridges, construction of roads etc. would be 2% of the amount spent by the lessee. In fact, insertion of this proviso reduced the rate of stamp duty to be charged to 2% instead of 8% and that too on the amount to be spent by the lessee.

20. The doctrine of legitimate expectation has been discussed and elucidated upon in several judgment by this Court. The doctrine provides a framework for judicial review of executive actions, policy changes, and legislative decisions. In **Union of India & Ors. v. Hindustan Development Corporation & Ors.** [15] **,** this Court emphasized that legitimate expectation primarily grants an applicant the right to a fair hearing before a decision that negates a promise or withdraws an undertaking from which an expectation of certain outcome or treatment arises. It does not, however, create an absolute right to the expected outcome. The protection of legitimate expectation is subject to overriding public interest, which means that even if an individual's expectation is reasonable and based on a past practice or representation by the executive or legislature, it can be denied if justified by a significant public necessity. The Court also highlighted that in matters of policy change, the judiciary

[15] (1993) 3 SCC 499

typically refrains from interfering, unless the decision is arbitrary, unreasonable, or not in public interest.

21. The judgment in **Ram Pravesh Singh & Ors. v. State of Bihar & Ors**[16]**.** defines legitimate expectation as an expectation of a benefit, relief, or remedy that arises from a promise or established practice through administrative, executive or legislative action. This expectation must be reasonable, logical, and valid; but it in no way vests any enforceable legal right. The doctrine does not elevate legitimate expectation to the level of a right enforceable by law. Instead, it is a procedural concept that demands fairness in administrative action. When an expectation is deemed legitimate, it may entitle the individual to a chance to show cause before the expectation is denied or to receive an explanation for the denial. However, legitimate expectation does not always result in relief, particularly when public interest, policy changes, or other valid reasons justify the deviation from the expected course of action.

22. The decision in **P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India & Ors .**[17] further clarifies the limited role of legitimate expectation in the context of policy changes and legislative actions. This Court observed that the government retains the authority to revise policies in

[16] (2006) 8 SCC 381
[17] (1996) 5 SCC 268

response to changing circumstances, such as potential foreign markets and the need to earn foreign exchange. Thus, the doctrine of legitimate expectation does not constrain the government from altering its policies, provided the changes are made in public interest and not through an abuse of power. The judiciary affords considerable leeway to the executive and legislature in matters of economic policy, recognizing their prerogative to prioritize different economic factors. Consequently, previous policies do not bind the government indefinitely; new policies can be adopted, if deemed necessary, for the public good. This underscores the principle that while legitimate expectation warrants fair treatment, it does not preclude the government's flexibility in policy-making.

23. Therefore, the doctrine of legitimate expectation serves only as a procedural safeguard ensuring fairness in administrative decisions and policy changes. It grants the expectant party the right to a fair hearing and an explanation but does not guarantee the realization of the expected benefit. The government's authority to revise policies in public interest remains paramount, with the judiciary intervening only in cases of arbitrariness, unreasonableness, or lack of public interest. This balanced approach ensures that while individuals can expect consistent treatment based on past practices or promises, the government retains the flexibility to

respond to evolving needs and priorities.

24. On the doctrine of promissory estoppel, since it is an equitable doctrine, it only comes into play when equity requires a party be estopped from withdrawing its promise. It has been well settled by this Court in several judgments that the principle of promissory estoppel cannot be invoked against the exercise of legislative power. In order to avoid burden on the present judgment, we are relying on the observations made by this Court in a recent judgment dealing with the doctrine of promissory estoppel. The Bench in ***Hero Motocorp Ltd vs Union of India,***[18] while relying upon other judgments of this Court in this regard, observed thus (SCC pp. 414-415, para 68)

> *"68. A common thread in all these judgments that could be noticed is that all these judgments consistently hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in the case of M. Ramanatha Pillai (supra) has approved the view in American Jurisprudence that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue*

[18] (2023) 1 SCC 386

would reveal that it is a consistent view of this Court, reiterated again in Godfrey Philips India Ltd. (supra), that there can be no promissory estoppel against the legislature in the exercise of its legislative functions."

25. In light of the observations made by this Court in the above cited judgments and several others, it is an evident position of law that a prior executive decision does not bar the State legislature from enacting a law or framing any policy contrary to or in conflict with the previous executive decision in furtherance of larger public interest. Nor can it be canvassed that the law laid down by the legislature would be hit by principle of promissory estoppel or legitimate expectation because earlier the executive had expressed its view differently.

26. Promissory estoppel or legitimate expectation can be dealt with on the same status of the executive decision when the prior as well as the subsequent decisions are both taken by the same or similarly placed authorities. Where the executive takes a decision based upon which a party acts and, later on, the executive withdraws that decision to the detriment of the party acting upon the earlier decision, it can be said to be estopped from withdrawing its promise or depriving the party from its legitimate expectation of what had been promised.

27. In situations, such as the one before us, if the previous executive decision is withdrawn, modified or

amended in any manner in exercise of legislative power in larger public interest, then the earlier promise upon which the party acts, cannot be enforced as a right and neither can the authorities be estopped from withdrawing its promise, as such an expectation does not give any enforceable right to the party. Applying the above discussion to the present facts, it is evident that the principles of legitimate expectation and promissory estoppel would not apply here, as the appellants cannot be said to have any enforceable legal right in light of the previous law or policy and executive action, which was subsequently changed by the state legislature in light of larger public interest. Thus, the submissions advanced on behalf of the appellants relating to the challenge to the M.P. Act No.12 of 2002 inserting the proviso (c) to Clause(C) to Entry 33 of Schedule 1-A of the IS Act has to be rejected. None of the case-laws relied upon on behalf of the appellants come to the rescue of the appellants and have no application in the facts and circumstances of the present case.

28. Now coming to the next submission on behalf of the appellants with regard to the question as to whether the Concession Agreement is a lease or a bond or a license. The definition of lease as given under the IS Act clearly covers any instrument by which tolls of any description are let and also under Section 105 of the TP Act, all the

ingredients of a lease are fulfilled. In the present case, we need not reiterate and repeat the same reasoning and findings as given by the High Court in great detail after considering the various clauses of the Concession Agreement. We uphold the finding of the High Court to be clearly justified and based upon a clear understanding of the terms of the concession agreement. We do not find any perversity at all in the reasoning given by the High Court to uphold the Concession Agreement to be a lease.

29. After the judgment of the High Court which is of the year 2010, two further judgments have been delivered by this Court regarding interpretation of a lease, which have been relied upon by Shri Mishra on behalf of the respondents. Out of the three judgments relied upon by Shri Mishra, the judgment in the case of **Associated Hotels of India Ltd. (supra)** has already been considered by the High Court. Further, the judgments in the case of **State of Uttarakhand and others (supra)** and in the case of **Nasiruddin and another (supra)** further reiterated the view taken by **Associated Hotel of India Ltd. (supra)**. Paragraph 17 in the case of **Nasiruddin and another (supra)** is reproduced hereunder:

> *"17. The expression "lease" under the Stamp Act has a wider meaning as compared to its original meaning contained in Section 105 of the Transfer of Property Act (for short "the TP Act"). If "lease" under*

Section 2(16) of the Stamp Act includes therein four specified categories of documents set out in sub-clauses (a) to (d), we do not find any such inclusion in Section 105 of the Transfer of Property Act. It is for this reason, we are of the view that the definition of "lease" for the purpose of the Stamp Act is extensive in nature. It is also clear from the use of the expression and includes also "in Section 2(16) of the Stamp Act. So by fiction, "any instrument by which tolls of any description are let "is considered as "lease" for the purpose of payment of stamp duty under the Stamp Act."

30. Thus, the view taken by the High Court further stands fortified by the above two judgments and the view that we are taking.

31. The only issue which requires to be considered afresh is with respect to determination of the amount spent under the agreement by the lessee. For the said purpose, we reproduce proviso(c) to Clause(C) of the proviso inserted in 2002:

"(c) an agreement to lease where the right to collect tolls is given ***in lieu of the amount spent by the lesse****e in construction of roads, bridge etc. under the Build, Operate and Transfer (B.O.T.) scheme, shall be chargeable at the rate of two percent* ***on the amount likely***

to be spent under the agreement by the lessee."

32. From a clear reading of the above proviso (c) to Clause(C), the stamp duty would be chargeable @ 2% on the amount likely to be spent under the agreement by the lessee. Thus, the lessee has no liability to pay any stamp duty on the amount not spent by the lessee but by the lessor or any other stake-holder. The amount spent by the lessee as per the agreement generally was 50% of the total cost of the project.

33. In the case of **Rewa Tollway**[19] , the total cost of the project was Rs.54 crores, out of which, approximately 50 % would be that of the lessee and 50% to be funded by the lessor i.e. MPRSNN, respondent no.3. However, further reading of the Concession Agreement reflects that the amount to be spent by the lessee was not exactly 50% but is slightly different figure. At some places, it is mentioned as Rs.24.10 crores and in other places a different amount is mentioned. We are not entering into this issue of what is the amount spent but we require that this be determined by the Collector (Stamps) / Revenue Officer of the concerned district.

34. Once, the stamp duty is payable on the amount spent by the lessee, the demand raised on the whole

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amount would be unjustified, as such, to the above extent, the demand needs to be set aside with a further direction to the Revenue Officer/Collector (Stamps) of the district concerned to re-calculate the same as observed above and, accordingly, raise the demand. In case, the appellants have deposited the demand raised on the entire project cost then the amount lying in excess with the State would be refunded to them. However, in case of any deficit in stamp duty having not been deposited, the appellants would deposit the same within two months of the fresh demand being raised by the Revenue Officer/Collector (Stamps) of the district concerned. The Collector (Stamps)/Revenue Officer is further directed to calculate the said amount in each of the cases individually and communicate the same to the appellants within a period of two months from today and where the amount is lying in excess with the State, the same shall be refunded within a period of two months of such determination.

35. The appeals stand partly allowed as above. No costs.

.....J.
(VIKRAM NATH)

.....J.
(AHSANUDDIN AMANULLAH)

NEW DELHI

JULY 19, 2024