

(2003) 12 BOM CK 0054

In the Bombay High Court

Case No : Writ Petition No. 4378 of 2003

Avinash Tarawade and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 127
Cantonments Act, 1924 — Section 60

Citation : (2004) 5 BomCR 913 : (2004) 2 MhLj 511

Hon'ble Judges : N.V. Dabholkar, J;F.I. Rebello, J

Bench : Division Bench

Advocate : P.M. Shah, instructed by R.F. Totla, for the Appellant; K.B. Choudhari, A.G.P. for respondent No. 1, Shreehari Aney and D.V. Soman, for respondent No. 2, S.V. Advant, for respondent No. 3, Vilas Sonawane and P.V. Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

F.I. Rebello, J.—The petitioners have filed the present petition to challenge the action of respondent No. 2, the Cantonment Board, Aurangabad, which has imposed a tax styled as "Vehicle Entry Tax". The petitioners aver that they are residents of Aurangabad and are engaged in the business of transport. Respondent No. 3 is the Contractor, to whom the contract to collect vehicle Entry Tax has been allotted. Respondent No. 4 is Union of India who, according to the petitioners, has granted sanction to respondent No. 2 to impose the Vehicle Entry Tax. The petitioners are engaged in transport business and use their vehicle for transportation of the employees of various industries situated at Waluj Industrial area from Aurangabad to Waluj and from Waluj to Aurangabad, The vehicles of the petitioners when used for that purpose, are required to use the Aurangabad-Pune Road, which passes through Aurangabad Cantonment Area, Aurangabad. The respondent No. 2 Cantonment Board had issued draft notification for imposing the vehicle entry tax on entry of vehicle within the limits of Aurangabad Cantonment which was published on 24-4-2003. Objections were invited by the

said notification as also suggestions from all persons likely to be affected thereby within a period of 60 days from the date of publication of the notification. The Board thereafter, in exercise of the powers conferred on it under the Cantonments Act, 1924, was pleased to impose tax, to be known as Vehicle Entry Tax on commercially loaded vehicles entering and passing through the limits of Aurangabad Cantonment, Aurangabad, to be paid by the owners of the vehicles. This applies to vehicles carrying both passengers and goods. There are some exclusions in terms of the said notification. The collection of the Vehicle Entry Tax commenced from 11-10-2003. The contention of the petitioners is that, considering, Section 20 of the Bombay Motor Vehicles Act, 1958, the Cantonment Board has no authority to impose the impugned Vehicle Entry Tax on motor vehicles. Consequently, the action of the 2nd respondent is without jurisdiction and is violative of Articles 14 and 19(1)(g) of the Constitution of India. It is further averred that the Cantonment Board is neither the owner nor is having any control over the Aurangabad Pune Road as well as Aurangabad Nashik Road, which are under the control of the State and, as such, levying Vehicle Entry Tax for plying on the road not maintained by the Cantonment Board is incompetent, invalid and interferes with the freedom of trade, commerce and intercourse guaranteed by Article 301 of the Constitution and, therefore, the reliefs, as prayed for.

2. Respondent No. 2 has filed affidavits. It is pointed out that the Cantonment Board, Aurangabad, was established in the year 1890 and is looking after all civic amenities, including water supply, sanitation, health care, maintenance and development of road and electrification of the streets, etc. The Board has meager source of income and is facing severe financial constraints. It has not received grant in aid from the State Government. The Central Government releases small amount which can hardly meet its day to day expenditure. It is then pointed out that u/s 60 of the Cantonment Act, 1924, the Board is entitled to impose tax with prior permission of the Central Government. Considering these circumstances, respondent No. 2 passed resolution No. 14, dt. 13-10-2001, to impose vehicle entry tax in the Cantonment area of Aurangabad. As required, a detailed proposal for imposition of vehicle entry tax along with the Board Resolution and draft notification was sent to the Central Government. The Central Government vetted the same and granted approval. It was only after that, the notification was published. Reliance is placed also on the bye-laws as framed for the purpose of collection of the vehicle entry tax. It is contended that the vehicle entry tax is imposed legally and as per the provisions of law. It is pointed out that there is no bar either under the Bombay Motor Vehicles Act for levying of the vehicle entry tax. It is also pointed out that the Aurangabad Municipal Corporation as well as many other Municipal Corporations for the State of Maharashtra are levying similar type of taxes in the name of transit fee or escort duty.

respondent No. 5 has also filed its reply wherein it is pointed out that the Corporation has imposed the octopi toll on the goods entering in the Municipal

limits and transit fee which they were entitled to under the law. It is also pointed out that the Cantonment Board through their agents are imposing and collecting entry tax from the vehicles which are passing through the State Highway when the same are entering into the Cantonment area. It is also pointed out that the Cantonment Board has no authority or power to impose entry tax on vehicles which are passing on the State Highway. No power is conferred on Cantonment Board to that effect.

Reply has also been filed on behalf of Principal Director, Estates, Ministry of Defence, Government of India, which is respondent No. 4. In that affidavit, it is set out that the Cantonment Board, Aurangabad had passed a resolution dated 30-10-2001, bearing resolution No. 14, proposing levy of the vehicle entry tax. That was sent to the Central Government for approval. The Ministry of defence, in concurrence with the Ministry of Law, Government of India, had considered the proposal and accorded sanction. On the issue of law, it is contended that the bar contained under the Bombay Motor Vehicles Tax Act is not applicable.

3. A rejoinder has been filed on behalf of the petitioner, in which it is pointed out that the Cantonment has no inherent right to tax, not being a sovereign body nor has it attributes of the sovereign powers. Its authority is entirely delegated and exercises those powers which are conferred on it by the legislature. It is pointed out that the name of the tax is vehicle entry tax; the taxable event is the entry of Motor vehicle in the local area from the flowing traffic on the highway. The State Highways from which the vehicles are passing, it is contended, cannot be made subject to such entry tax as the road does not vest in the Cantonment Board. Cantonment Board also does not render any service nor are any special benefits offered by the Cantonment Board to the vehicles subjected to the impugned tax. The power of the Cantonment Board is coextensive with the powers of Municipal Corporation relating to imposition of tax. The principle embodied is that there should not be any conflict with the State Laws. If the vehicle entry tax imposed by the Cantonment Board, it is contended, if allowed to be continued, in that case, it would amount to double taxation. The petitioners, under the provisions of Bombay Motor Vehicles Tax Act, are depositing the amount with the Regional Transport Officer and until and unless such tax is paid, no vehicle can be used on the road unless tax leviable has been paid as per the provisions of Motor Vehicles Tax Act. The imposition of the tax under the head of vehicle entry tax by the Cantonment Board will amount to double taxation penalising the petitioners as well as the public at large. The stand of the respondent No. 2 is then sought to be highlighted. It is not necessary to deal with the averments considering the stand of respondent No. 2 that what they are charging is a tax.

There are affidavits in reply filed by respondent No. 2 and also Sur-Rejoinder by the petitioners.

4. At the hearing of the petitioner, on behalf of the petitioners, the principal contention argued by the learned Counsel is, that it is only u/s 60 of the

Cantonment Act, 1924, that the Board can impose in any Cantonment any tax, which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated. Insofar as respondent No. 5 is concerned, it is governed by the provisions of Bombay Provincial Municipal Corporations Act, 1949. u/s 127 of the Bombay Provincial Municipal Corporations Act, 1949, a Corporation can impose a tax as set out under Sub-section (1) and (2). However, under Sub-section 2(A) no tax or toll can be levied on motor vehicles save as provided by Section 20 of the Bombay Motor Vehicles Tax Act notwithstanding anything contained in Sub-section (1) or Sub-section (2). Under Bombay Motor Vehicles Tax Act, no tax or toll shall be levied and collected from any vehicle under Sub-clause 1(A) and under Sub-clause 1(B) on any motor vehicle by any other local authority. It is, therefore, contended that considering the provisions of Section 20 of the Bombay Motor Vehicles Tax Act, 1958, the respondent No. 2 cannot collect the same and to that extent the notification will have to be struck down.

On behalf of the respondent - Cantonment Board, their learned counsel contends that Section 60 of the Cantonment Act permits imposition of any tax which may be imposed in any municipal area where cantonment is situated under any enactment. This section is not limited only to tax imposed by municipality but extends to taxes which could be imposed in a municipal area by the State Legislature. It is then submitted that the bar of Section 127(2)(A) of the Bombay Provincial Municipal Corporations Act is limited to levying of tax and toll on motor vehicle. Therefore, what is barred is a tax or toll on the motor vehicles except as provided u/s 20 of the Motor Vehicles Tax Act. It is then submitted that the bar u/s 20 of the Motor Vehicles Tax Act is the bar to levy toll on the motor vehicles by the local authorities. The levy imposed by respondent No. 2 is not toll. It is not a tax on motor vehicle, but a tax on entry motor vehicles. Secondly, the only requirement to be fulfilled is of Section 60 itself. The test to be applied is can the entry tax be imposed in any Municipality in Maharashtra? There is legislative competence in the State to impose such an entry tax under entry 5, list II, VIIth Schedule read with entry 52, list II, VIIth Schedule and for that purpose reliance is placed in the case of Jaika Automobiles (Private) Limited and another Vs. State of Maharashtra and another (And Other Cases), and Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others, . It is also contended that in case of conflict between the Cantonment Act which is a Central Act and the Motor Vehicles Tax Act which is the State Act, the Central Act will prevail under Article 254(1). Judgments have been relied upon, which will be adverted to the extent necessary.

5. From the submissions, the questions to be answered are as under:

(1) Is the imposition of vehicle entry tax by the Cantonment Board barred by the provisions of Section 20 of the Bombay Motor Vehicles Tax Act, 1958?

(2) Does Section 60 of the Cantonments Act read with Section 127 of the B.P.M.C. Act permit imposition of tax in any cantonment not only under an

enactment for the time being in force but the expression means, that if there be legislative competence for the State to impose the tax, then also the Cantonment Board can levy such a tax.

6. For the purpose of discussion, we may gainfully reproduce Section 60 of the Cantonment Act, 1924, which reads as under:

60. The Board may, with the previous sanction of the Central Government, impose in any cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the State wherein such cantonment is situated.

The relevant portion of Section 127 of the Bombay Provincial Municipal Corporations Act, 1949 hereinafter referred to as the Corporation Act are reproduced:

"127(1) For the purposes of this Act, the Corporation shall impose the following taxes, namely :--

(a).....

(b) a tax on vehicles, boats and animal.

(c).....

(d).....

(e) a toll on animals and vehicles entering the city.

(f) any other tax not being a tax on professions, trades, calling, and employments, which the State Legislature has power under the Constitution to impose in the State.

(2A) Notwithstanding anything contained in Sub-section (1) or Sub-section (2), no tax or toll shall be levied on motor vehicles save as provided in Section 20 of the Bombay Motor Vehicles Tax Act, 1958.

The next relevant section is Section 20 of the Bombay Motor Vehicles Tax Act, 1958, which may now be reproduced as under:

20(1). Except as provided in the Bombay Ferries and Inland Vessels Act, 1868 or that Act as applied to the Kutch area of the State of Bombay, or the Hyderabad Ferries Act, or the Northern India Ferries Act, 1878, and subject to the provisions of Sub-sections (1A), (1B), (1C) and (1D) on and after the commencement of the Act, no tolls shall be levied and collected :-- (a) on any vehicle, animal or person by the State Government or by any local board, (b) on any motor vehicle, by any other local authority.

With the above, we will now first consider the second contention as raised by respondent No. 2 by their learned counsel namely that for the Corporation or Cantonment to levy tax, it is sufficient if there be legislative competence in the

State to levy the tax from the local areas and it is not necessary that there must be an enactment in force under which the tax can be levied. Section 60 uses the expression under any enactment for the time being in force. In other words, there must be a law under which law a tax or a toll can be imposed in any municipal area in the State where such Cantonment is situated, then only can the Cantonment Board impose any tax or toll. u/s 127(1)(f) a Corporation can levy a tax, other than on profession, trade, calling and employment, which the State Legislature can impose under the Constitution. The Corporation, therefore, is empowered u/s 127(1)(f) to impose a tax which the State Legislature has power to impose. In other words, the Corporation Act permits imposition of such other tax in a local area, not specified in Section 127(1) which the State Legislature could enact for a local area and has conferred such powers on the Corporation by virtue of Section 127(1)(f) of the Corporation Act.

Can the municipality then impose a tax on entry of vehicles under the Corporations Act, 1949. A municipal corporation can impose a tax on vehicles, boats and animals and in addition can impose by way of a tax what is described as a toll on animals and vehicles entering the city as also any other tax not being a tax on professions, trades, calling and employments, which the State Legislature has power under the Constitution to impose in the State. Insofar as limited extent of Section 127(1)(f) is concerned, it is power conferred to impose a tax if the State Legislature has powers under the Constitution to impose in the State. There is, therefore, in this part a power to impose a tax by the Corporation not specified in Section 127(1). Such a power can therefore, be exercised only in respect of tax which a State could impose in an area of a local body. The power to impose a vehicle tax is no longer *res judicata*. Such a tax imposed by the State of Maharashtra was in issue firstly before this Court in *Jaika Automobiles (Private) Limited and another Vs. State of Maharashtra and another (And Other Cases)*, . This Court held that the levy of entry tax in the local area imposed on a vehicle was valid. This view has been confirmed by the Apex Court in the case of *Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others*, . Before the Apex Court the issue was the Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987. The Apex Court upheld the levy of such a tax. The Court held there that the taxable event is not entry of vehicle in any area of the State but in a local area. In other words, the State Legislature could impose an entry tax on a vehicle in a local area. The Corporation thus by virtue of power conferred u/s 127(1)(f), could impose a tax and also to an extent u/s 127(1)(b). There must however be an enactment for that purpose. Without an enactment, Cantonment Board cannot impose a tax or toll. The second contention urged on behalf of the Cantonment Board must be rejected.

7. We now come to the first question. u/s 127(1) of the Bombay Provincial Municipal Corporation Act, is it possible for the Corporation to impose various taxes. However, considering Section 127(2A), such a tax cannot be levied save as provided u/s 20 of the Bombay Motor Vehicles Tax Act. We will, therefore,

examine whether the tax as levied could be levied. A tax could be levied and also a toll. What Section 20 prohibits is the levy of a toll. The bar is on levying of a toll on any vehicle, animal, or person by the State Government or by any local board as also on any motor vehicle, by any other local authority. The section specifically does not bar the imposition of a tax, though Section 127(2A) of the Corporation Act states that no tax or toll shall be levied on motor vehicle. u/s 127(1) of the Provincial Municipal Corporation Act, a Corporation can impose the taxes, which includes a toll on the entry of vehicles within its area. Under the Tax Act, Section 20(1) bars levy of a toll on any vehicle/motor vehicle. Therefore, the Taxation Act in Section 20(1) uses the expression toll and not tax. What the Act therefore, bars is a toll. What then is the meaning of the expression toll.

Toll in Legal Thesaurus, Regular Edition by William C. Burton is defined as under:

TOLL (Tax), noun, assessment, charge, exaction, excise, fare, fee, impost, levy, payment, portorium, tithe, vectigal.

In State of U.P. and Others Vs. Devi Dayal Singh, . The concept of toll has been set out in paragraph 7 of the judgment of the Apex Court, which sets out the concept of toll is derived from English jurisprudence and shorn of connotation which are historically irrelevant in this country, a toll may be defined as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, the Apex Court observed that for the valid imposition of a toll, there must be a corresponding benefit in the form of a liberty, privilege or service.

Insofar as the Bombay Provincial Municipal Corporations Act, 1949 is concerned, both tax as also a toll can be charged on animals and vehicles. It is no doubt true that the roads do not belong to the Cantonment. Reliance for that purpose was placed on behalf of the petitioner u/s 20 of the Bombay Highways Act, 1955 to point out that all lands forming part of a Highway which do not already vest in the State Government shall, for the purpose of this Chapter, be deemed to be the property of the State Government. It is pointed out that the roads either belong to the State Government or Central Government and, therefore, the Cantonment Board cannot charge an entry tax on vehicles passing on that road. The tax is on the entry of a vehicle on a road which passes through the Cantonment area. Therefore, even assuming that the land on which the road passes or the road itself belongs to the State or Central Government whether it be a State Highway or National Highway or otherwise, yet it passes through the local area of a Cantonment. In other words, therefore, the local body i.e. the Cantonment Board in respect of the Cantonment area can charge a tax considering Section 127 of the Corporation Act and is not barred from imposing such a tax merely because the property belongs to the State or Central Government, unless there be an express prohibition on the Cantonment Board in imposing the tax. The taxable event is not passing on a road belonging to the Central or State Government. The taxable event is when a vehicle enters a Cantonment area, may be through

the State or National Highway.

The only question, therefore, is whether the said tax can be imposed. Insofar as the language of Section 20 of the Bombay Motor Vehicles Tax Act, 1958 is concerned, what cannot be charged is the toll on any motor vehicle by any local authority or on any vehicle by the State Government or by the local Board. Section 20 does not use the expression tax, though in the very section, under the proviso to Section (2) of Section 20, both the expressions tax and toll is used. There the expression used is, any taxes other than tolls. A toll may partake of a tax, but it is a tax with a corresponding benefit in the form of a liberty, privilege or service. A tax may be imposed without a benefit to the tax-payer. A look of the provisions of Section 20(1A), (1B), (1C) and (1D) would show that the toll collected is in the nature of a levy for use of the road, bridges, tunnel or the like. Therefore, the express bar is charging of a toll on the vehicle. What Section 127(2)(A) of the Bombay Provincial Municipal Corporations Act, 1949 prohibits is what cannot be charged u/s 20. Therefore, insofar as the Cantonment Board is concerned, it would have no jurisdiction to charge a toll on a vehicle. If the scheme of the Bombay M.V. Tax Act is seen, it would be clear from Section 3 that it contemplates payment of a tax on motor vehicles kept for use or used in the State. The taxable event therefore, is the keeping for use or using a vehicle in the State and not for entering in a local area.

8. As noted earlier, what has been charged is not a tax on the motor vehicle, but what is been charged is a tax on entry of a motor vehicle, which is distinct and different from a tax on a motor vehicle. On behalf of the respondents, their learned counsel has placed reliance on the judgment in the case of Cantonment Board, Mhow and Another Vs. M.P. State Road Transport Corpn., . There the Cantonment Board has charged a vehicle entry tax u/s 60 of the Cantonment Act. In that judgment the real issue as can be seen as formulated in para 8 was whether there was repugnancy between the provisions of Motor Vehicles Taxation Act and the Municipalities Act in relation to imposition of tax on motor vehicles entering the limits of the municipality. The challenge was upheld by the Madhya Pradesh High Court. The Apex Court in the appeal preferred by the Central Government reversed the judgment of the Madhya Pradesh High Court holding that there was no repugnancy. The imposition of tax by the Cantonment Board, it was held was in respect of entry of motor vehicles whereas the Tax Act did not provide for such imposition. In other words, it is open to the Municipality to charge a vehicle an entry tax and if a Municipality can do it, a Cantonment Board also can do it. Whether there is another enactment barring imposition of a tax is a different question. We have noted that Section 20 does not bar imposition of a tax but bar charging of a toll. The judgment is sought to be distinguished on behalf of the petitioner by contending that in Madhya Pradesh there was no express bar as provided by Section 20 of the Bombay Taxation Act. As pointed out earlier, the issue is not of a bar, but whether there was power to levy the tax. Such a power exists on a reading of Section 127 of the Provincial Municipal Corporation Act and is not barred by the provisions of the Bombay Motor Vehicles

Tax Act.

On behalf of the petitioner, learned counsel placed reliance on the judgment of Narain and Another Vs. Cantonment Board, Nasirabad, . There the issue was whether the levy of terminal tax is in contravention of the provisions of Section 21 of the Rajasthan Motor Vehicles Taxation Act, 1951. That view was taken on the facts of the case and law as applicable there. That would not apply to the facts of this case.

9. On a reading of Section 60 of the Cantonments Act, 1924, the Cantonment Board has jurisdiction to levy and impose the tax which can or may be imposed under any enactment, by the Corporation u/s 127 of the Bombay Provincial Municipal Corporations Act, 1949. Under the Corporation Act, a tax can be charged on an entry of a vehicle. The Board under the Bombay Motor Vehicles Tax Act, 1958 is only prohibited to charge a toll on vehicles. In the instant case, tax charged is on entry of motor vehicles and not a toll.

10. Considering the above, Rule discharged. AH interim orders stand vacated. Petition stands dismissed. There shall be no order as to costs.