**(1996) 10 PAT CK 0005**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 1514 of 1984

Baldeo Choudhary and Others APPELLANT

Vs

State of Bihar and Others RESPONDENT

**Date of Decision :** 17-10-1996

**Acts Referred:**

**Citation :** (1996) 10 PAT CK 0005

**Final Decision :** Allowed

## Judgement

D.P. Wadhwa, C.J.—These three writ petitions raise common questions of law as to the validity of the tolls levied by the State on certain bridges under the Indian Tolls Act, 1851 (For short the Act).

2. In C.W.J.C No. 1514 of 1984 the petitioners are engaged in the business ol transport and in course of the business their buses have to cross two bridges one at Burhi Candak in North Muzaffarpur and the other on river Bagrnati at Muzaffarpur-Darbhanga route. They claim that both the bridges are within a distance of 40 K.M. from each other. There are two respondents-the first respondent is the State of Bihar through the Commissioner-cum-Secretary Road Construction Department and the second respondent is Bihar Rajya I''ul Nirman Nigam Limited (for short the Nigam), a Government Company within the meaning of Section 617 of the Companies Act, 1956. The petitioners have sought a writ, order or direction that Sections 2 and 9 of the Act and Rule 10 (a), 10 (a) (ii), 10 (a) (iv), 10 (a) (v), 12, 13, 14 and 75 of the Bihar Tolls Rules, 1979, are ultra vires. They further seek quashing of the notification dated February 15, 1984, levying toll on all the bridges in the State of Bihar as void, which notification came into force with effect from April 1, 1984.

3. In C.W.J.C. No. 532 of 1984 (R), there are five petitioners. The first petitioner as the name shows is a society registered under the Societies Registration Act. The other petitioners are owners of certain trucks which they are using as public carrier vehicles in their transport business. The Respondents are in effect the same as in C.W.J.C. No. 1514 of 1984. The petitioners say that they ply their

vehicles from Ranchi to Calcutta on National Highway No. 32 and on this route there is a bridge over river Suvarnarekha, which bridge was constructed and completed in 1969-70 period and declared open for public use. Here also the petitioners have challenged the notification dated February 15, 1984 under which the Respondents have levied toll at the rate of Rs. 15/- for every vehicle passing over any of the bridge within the State of Bihar except Mahatma Gandhi bridge at Patna. The petitioners seek restraint on the respondents from acting in pursuance to the aforesaid notification.

4. In C.W.J.C. No. 6989 of 1988, the two petitioners operate their buses on the route of Muzaffarpur-Darbhanga. They also seek a writ, order or direction prohibiting the respondents who are again in effect two in number, from realising any further toll on Akharaghat bridge on Sitamarhi-Muzaffarpur Road, one bridge at river Burhi Gandak on Muzaffarpur lateral project and one bridge on river Bagmati near Darbhanga on the said route.

5. The State of Bihar has not filed any counter affidavit in any of the three writ applications and only the second respondent, namely, Bihar Rajya Pul Niraman Nigam Limited has filed a counter affidavit in CWJC No. 1514 of 1984.

6. Before we consider the rival contentions, we may set out the impugned notification dated February 15, 1984, as under:

"In exercise of the powers vested under Rules 12, 16 and 18 of the Bihar Tolls Rules, 1979, the Governor of Bihar revises the rate of toll in respect of the bridges falling on State-road except Mahatma Gandhi bridge, Patna, as mentioned in Appendix-1 of that rule, which was effective from 26.2.1980, with effect from 1.4.1984, as below:

Details of rate of collectable tolls on the bridges falling on State-road mentioned in Appendix-1.

SI. No. Name of Vehicles/conveyances Rate of toll (Rs.) 1. Motor cycle Rickshaw or scooter 1.00 rickshaw 2. Tempo (6 passengers) or car taxi 5.00 3. Private car, Jeep, Pick-up, Station- wagon Land Roaver or Jonga Petrol 3.00 4. Tractor (only engine) 1.50 5. Tractor (with trailor) 2.50 6. Bus or other heavy machine or earth- moving (Dozer) 15.00 7. Truck 15.00 8. Minibus 10.00

2. There will be no change in the special toll rate on Mahatma Gandhi bridge.

By order of Governor of Bihar, S/d/- Nishikant Sinha Commissioner and Secretary, Road Construction Department, Bihar, Patna."

7. We may also note that in the course of arguments, it was submitted before us that during the pendency of the writ petitions, the State of Bihar issued a new notification dated October 10, 1991, superseding the impugned notification dated February 15, 1984, and increased the rate of toll. We pointed out that irrespective of the fact that toll tax had been increased, the question remained if the State Government could at all charge the toll tax in the circumstances of the

case. A cursory glance at the new notification dated October 10, 1991, would show that toll has almost been doubled than what was levied under the impugned notification dated February 15, 1984. It appears to us rather odd that the State Government has come up with the new notification when the earlier notification which is now impugned before us has, in effect, been quashed earlier by a decision of this Court in the case of ''The Tula Iron and Steel Co. Ltd. (For short TISCO) v. The State of Bihar and Ors. [C.W.J.C. No. 1088 of 1984 (R)] decided on September 20, 1990. In that case the petitioners had challenged the impugned notification dated February 15, 1984, levying the amount of toll from users of the bridges particularly Mohulbani bridge on the river Damodar in the district of Dhanbad,. The petitioner had complained

that the State Government had revised the rate of toll for all the bridges except Mahatma Gandhi Setu at Patna raising it to Rs. 15/- per truck whether loaded or unloaded. The petitioner in that case (TISCO) had challenged the impugned notification on various grounds. One of the grounds was that the rate prescribed at Rs. 15/- per truck was clearly arbitrary, capricious and in utter violation of the Act and Rule 14 of the Rules, which provided that the cost of construction of the birdge shall form the principal element in determining the rte or rates of toll. Exemption of certain persons from payment of toll was also challenged as contained in Rules 74 and 75 of the Rules. It was submitted that the flat rate of toll of Rs. 15/- per truck was unreasonable and it had no co- relation with the cost of construction of the bridge and, as such, it was a tax, which could not be levied. The Court observed that the toll could not partake the shape of tax and was not permissible to be levied for augmenting the general revenue of the State. The State had not filed any counter affidavit in that case as well and the Court was left in dark as to what was the cost of construction of the bridge and maintenance thereof. The Court then observed that when a levy of toll was imposed, amended or modified, the State Government must show the break-up figures to justify as to what balance amount was left for imposing higher or lower levy than what was fixed at the earlier point of imposition. The Court then pointed out that the bridge Mahulbani was constructed in the year 1981 and earlier for crossing the bridge a loaded truck was to pay Rs. 8/- per trip and for empty truck the rate was Rs. 4/- per trip. This toll was increased to Rs. 15/- per truck irrespective of the fact whether the truck was loaded or unloaded. The Court observed that no reason had been assigned as to why there was an abrupt increase in the levy of toll for the bridge in question. The Court noted that the State Government could not specify as to what consideration prevailed upon it to increase the toll although by the time the impugned notification was issued, the cost of construction and its maintenance must had partly been realised. Subsequent increase of toll on that bridge would be for increasing the general revenue of the State, which was not permissible in law, and that the imposition of increased rate of toll was without any rational basis and so the imposition of such toll was unjustified. The Court then observed as under:

"Before increasing the tolls as indicated above, it was the duty of the State to disclose the cost of construction that was left to be realised for that particular bridge. It should be noted in this connection that there is a clear averment in paragraphs 42 to 48 of the writ application that the rate of toll is arbitrary and not compensatory and the cost of construction and repairs of that bridge have been recovered, the State Government has not refuted or denied this allegation and has also not filed any counter affidavit. If the cost of construction and its maintenance have already been realised then there was no justification for imposing the tax on that bridge in respect of any vehicle as it is an admitted position that the tolls cannot be continued to be levied for an indefinite period or for all times, to increase the general revenue of the State."

The Court thus held that increase in the levy of toll appeared to be illegal, unreasonable and arbitrary. The Court, therefore, quashed the notification

dated February 15, 1984, and a direction was issued to the State Government that until a fresh notification was issued giving the break-up figures of the cost of construction of the bridge, its repairs and maintenance, as also the balance amount in relation thereto yet to be realised, the petitioner shall pay the toll at the old rate Two months time was granted to the State Government to issue such a notification and if no such notification was issued within the said time, it would be deemed that the entire cost of construction of the bridge in question and other expenses connected thereto had been realised and in that event the petitioner (TISCO) would no be liable to pay any toll for plying its vehicles over the said bridge.

8. Thus in spite of the clear exposition of law by the Court, the Respondent-State has come up with the notification dated October 10, 1981'', enhancing the tolls on all the bridges in the State. This is nothing but a clear violation of the law laid down by this Court which tantamounts to committing contempt of this Court. We called upon the learned Advocate General who appeared for the Respondents, as to how the State Government was allowing levy of toll on the bridges when the notification impugned has been quashed and the State Government had not appealed against the judgment rendered by this Court He had no answer except to say that the issue involved needed reconsideration by a Division Bench as the earlier judgment was rendered by a Single Judge. This submission seems to be rather inappropriate.

9. During the course of arguments, various judgments have been referred to as to what is the law on tolls. We now deal with those decisions separately.

10. In the case of Kamaljeet Singh and others Vs. Municipal Board, Pilkhwa and others, the Court said that usually the consideration for a toll was some amenity, service, benefit or advantage which the person entitled to the toll undertakes to provide for the public in general or the person liable to pay the toll. In this case the Municipal Board, Pilkhwa, had levied toll tax on the vehicles and others conveyances etc. but had provided no facility to the owners of the vehicles, which were making use of the National Highway though passing through the

 

municipal limits. The Court said that the toll tax levied by the Municipal Board, Pilkhwa, could not be treated as compensatory tax and was liable to be struck down as ultra vires. The Court also observed that the National Highway was being maintained by the Government and the approach road thereto from the town of Pilkhwa had been built by the Public Works Department though part of the National Highway had been included within the municipal limits.

11. We do not think that the decision of the Supreme Court in the case of The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, can be of much use to the State. In this case there was challenge to certain provisions of the Rajasthan Motor Vehicles Taxation Act, 1951. imposing tax on the motor vehicles as unconstitutional and void as contravening the freedom of trade, commerce, and intercourse within the territory of India. The demand of tax by the State of Rajasthan was, therefore, sought to be held illegal. The Court observed that regulatory measure or measures imposing compensatory taxes for the use of trading facilities did not come within the purview of restrictions contemplated by Article 301 of the

Constitution and that such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution.

12. Similarly the decision of the Supreme Court in the case of India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, is also not relevant as the question involved therein was whether the levy of cess and royalty was within the competence of the State legislature.

13. Learned Advocate General laid stress on the decision of the Supreme Court in the case of State of Bihar v. Bihar Chamber of Commerce 1996 (1) PLJR 105 (SC). In this case there was challenge to the Constitutional validity of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993, which provided for levy of tax on entry of scheduled goods into a local area for consumption, use or sale therein at a rate not exceeding 5% as might be specified by the State Government The High Court held that there was no material to show that the impugned tax was either compensatory or regulatory in nature and, therefore, the impugned levy was impeding freedom of trade, commerce or intercourse as guaranteed by Article 301 of the Constitution and that the State also could not invoke the protection of clause (b) of Article 304 for the reason that it had not established that the said tax constituted a reasonable restriction imposed in public interest within the meaning of the said clause though it was true that the president had assented to the bill. The Supreme Court, however, reversed the judgment of the High Court and upheld the constitutional validity of the Act.the judgment by the Court is confined to the provisions of that very Act and so we are unable to see as to how the observations made therein can be extended to the present case.

14. In the case of Shanti Swarup and Ors. v. State of Uttar Pradesh and Ors. 1982 All LJ 1085 (DB), the petitioner had challenged the notification issued by

 

the State Government u/s 2 of the Indian Tolls Act, 1851, and sought a mandamus commanding the State Government not to include the cost of construction of Bandit approach roads, miscellaneous expenses and interest on the construction of the two bridges. The Court held that since in the construction of the bridges no loan was taken by the Stale Government from any financial institution and no interest was paid by the State Government the stand taken by the State Government that the interest on the amount spent on the construction of the bridges should also be taken into consideration did not appear to be justified.

15 In the case of Lal Bahadur Ram Vs. State of Uttar Pradesh and Others, there was challenge to the levy of toll tax for crossing and re-crossing over Chopan bridge situated on river Sone even after 30 years from the date it was handed over to the Public Works Department for realisation of cost of construction. R.M. Sahai, J.., (as his Lordship then was) observed that the construction of bridge etc. was a part of welfare activity of the State and it could not be undertaken as a profiteering business or as a commercial entity yielding profit. The Court observed that the State Government had failed to establish that any amount was still due which was spent on the construction of the bridge Sahai, J., further held as under:

"Right to realise toll tax, an important part of public finance and recognised by Indian Constitution for compensating Government to recover the expenditure made on construction of a bridge, etc. is recognised under

Toll Act, 1851 read with Tolls Act XV of 1954. But it is not a power which can be called in aid'' by the State Government for augmenting its general revenue. Although while compensating for the amount spent on cost of construction the Government may realise collection charges and the amount spent on maintenance but it cannot claim to realise interest unless the Government or its instrumentality borrows money from the financial institution and agrees to pay interest."

16. In the case of Jiya Lal and Others Vs. State of U.P. and Another, there was challenge to levy of toll for a bridge constructed on river Hindan by the State Government. The Court found that though the cost incurred by the State Government was Rs. 6,70,000/- in the year 1965 when the bridge was constructed and after the end of 1978-79 period, the State Government had already realised a sum of Rs. 6,74,259/-. The Court thus held that the State Government had already been duly compensated for the amount spent by it on the construction of bridge and its approach road as well as the cost of the staff appointed to realise the toll tax,and the State Government was not entitled to realise any further toll tax in respect of the bridge in question. The Court observed that the cost of construction of the bridge would not include nay sum which had been spent on the maintenance of the bridge or road and that no toll was chargeable u/s 2 of the Indian Tolls Act of 1851 to meet the expenses incurred on the maintenance.

 

17. In the case of Mohammad Ibrahim Vs. State of U.P. and Others, it was held that since the object of the levy of toll tax was to compensate the State Government for the money spent on the repairs or construction of the bridges, it was obvious that levy had to be corelated to the expenses incurred in the construction of the bridge.

18. In the case of Maheshwari Singh Vs. State of Bihar and Others, a Bench of this Court upheld the constitutional validity of Section 2 of the Act. It was stated that the expression ''tolls'' in the Act meant levy for providing fund for the maintenance of roads and bridges and repayment of the loan, if any, taken for their construction. The Court referred to the Encyclopedia Americana and Encyclopaedia Britannica to understand the meaning of ''toll''. The Court said as under:

"The word ''toll'' is not a new expression but has a well defined meaning in public finance. Tolls have been levied over bridges and roads for several centuries in England and Europe and the levy was made primarily not for increasing the general revenue of the authorities concerned but for the purpose of recouping the expenses incurred in constructing the roads and bridges and in maintaining the,."

19. In the case of Sushan Chandra Pal and Others Vs. State of West Bengal and Others, there was challenge to the notification by which the State of West Bengal had levied tolls with respect to seven bridges. The notification was attacked on various grounds and one of the grounds was that the notification was arbitrary and the tolls fixed were highly excessive, oppressing, undreasonable and were not based on consideration of the cost of construction and repairs. The Court negatived the contention and observed as under:

"Toll is imposed only upon those persons who get benefit from using the bridges and not from others. It is true that the toll proceeds are not applied to meet the expenses already incurred or to maintain or repair the bridges, as disclosed in the affidavit-in-opposition filed on behalf of the State, but it does not loose its compensatory character for the purpose of creating a ''fund'' for construction of further bridges in the State because such purpose cannot be said to be a purpose for which the toll cannot be levied."

The Court also said that it was not necessary that the rate of toll must be conrelated to the actual expenses of the construction or maintenance of a particular bridge for which the toll is levied.

20. In the case of Mandsaur Transport Association Vs. State of M.P. and Another, it was contended that since the date of opening of the bridge for traffic the State Government started realising toll from the vehicles passing over the bridge and that the cost of the bridge had been recovered long back. It was also stated that the State Government had been auctioning the right to recover toll tax on the bridge and, as a matter of fact, auction money for one year itself was more than the cost of the bridge. It was contended that the State Government did not have

 

arbitrary and unfettered power to levy any amount of toll merely for augmenting general revenue of the State, and that the right of levy should be such as to meet the cost of repairs of roads and bridges and also for liquidating the actual expenses incurred in their construction within a reasonable time. It was also contended that as the toll tax recovered by the State was different from other taxes the element of quid prop quo which distinguished fees from taxes was also implied in the expression ''tolls'' and though it might not be a fee it would clearly come within the scope of compensatory tax. The Court considered its earlier judgment and also referred to the decision of the Patna High Court in the case of Maheshwari Singh Vs. State of Bihar and Others, and also the decision of the Supreme Court in the case of The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, and observed as under:

"Therefore, if aforementioned observations of the Supreme Court, views expressed by Madhya Pradesh High Court and the Dictionary meaning of the term ''toll'' are considered along with Section 8. of the Indian Tolls Act, as it stood at the time of the enactment itself, we gather that the legislature intended to levy toll tax by enacting Tolls Act, 1851, for the purpose of creating a fund for the construction, repair and maintenance of the roads and bridges within the State in which such tax was levied. However, by amending ordinance of 1937 the rider of using the net proceeds of the toll tax was also lifted and the net proceeds of the tax collected by the State became a part of public revenue for applying it to the welfare activities of the State. As such we find it difficult to agree with the contention that toll is recovered for reimbursing the cost of a particular bridge and once the cost of construction has been recovered, the State has no powers to levy toll tax on such a bridge, the cost of which is recovered." The Court went on the observe as under:

"It is true that tolls tax being compensatory in nature in view of the quid pro quo element being present in that tax viz, providing facility of a

bridge or road for transportation, its maintenance and repair The rates of tax should be corelated to the expenditure incurred for providing such facility and also for its repair and maintenance but that cannot be construed to mean that the intention.of the legislature in Jewing the toll tax on bridges and roads was to recoup the cost of construction of that particular bridge or road. Therefore, in view of the discussion made hereinabove, we are unable to subscribe to the arguments advanced by the learned Counsel Shri Chafekar that the State Government after the recovery of the cost of construction of the Shivana bridge could not recover any toll tax from those passing over the bridge. We hold that the toll tax is levied not only for recovering the cost of construction of the bridge but for construction, maintenance and repairs of roads and bridges in the State and also for expenditure on the other welfare activities in the State."

The Court, therefore, negatived the plea of the petitioner. It is, however, difficult for us to agree with the views expressed by the Calcutta and Madhya Pradesh High Courts considering the statement of law as it existed at the time of the enforcement of the Act and the law enumerated in various judgments.

21. Yet another decision of the Supreme Court in the case of Sasa Musa Sugar Works and Ors. v. State of Bihar and Ors. Civil Appeal No. 7431 of 1994 reported in 19 (2) PLJR 170 was also referred to by the learned Advocate General- However, that decision centres round the constitutional validity of Sections 4A and 4B of the Bihar Agricultural Produce Markets (Amendment) Act, 1992. That, decision we do not find of any relevance to the present case.

22. The Act authorises the State Government to levy tolls on public roads and bridges. Toll has not been defined under the Act. But in ordinary parlance toll is levied by way of reimbursement of the amount spent by the State on the construction of roads and bridges by those who enjoy the benefit of using those roads and bridges constructed at the cost of the State exchequer. Toll is not a source of revenue for the State and once the cost of the roads and bridges is recovered levy of toll ceases. Even a toll cannot be levied unless it is to recover the cost of repairs actually carried out.

23. Sections 2 and 8 of the Act would be relevant for our purpose and these are as under:

2. Power to cause levy of tolls on roads and bridges with in certain rates, and to appoint Collectors, Collector''s responsibilities.--The State Government may cause such rates of toll, as it thinks fit to be levied upon any road or bridge which has been or shall hereafter be, made or repaired at the expense of the Central or any State Government, and may place the collection of such tolls under the management of such persons as may appear to it proper; and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue.

8. Application of proceeds of tolls.--The tolls levied under this Act shall be deemed public revenue.

24. The Act was amended by the Indian Tolls (Bihar Amendment) Act, 1965. Section 9 was inserted which empowers the State Government to make

rules for carrying out the purposes of the Act. In exercise of that powers, the State Government framed Bihar Tolls Rules, 1979. Rules 4, 5, 6, 6, 9, 10, 11, 12, 14, 15, 16, 18 and 24 relevant for our purposes and are set out as under:

4. Bridges belonging to the Central Government or any other department of the State Government qualifying for levy of tolls thereon may be transferred to the Public Works Department for the purpose after being notified by the Central Government or the department concerned as the case may be, to the said effect.

5. The State Government, may for any reason, by a notification, at any time, order stoppage of collection of tolls on any bridge on a permanent or a temporary basis.

 

7. The State Government will transfer all such bridges to the Bihar Rajya Pul Nirman Nigam Limited and entrust to the Corporation with the charge of collection of tolls on their behalf.

9. Commencement of collection of tolls on a bridge will be notified to the general public as widely as possible at least one fortnight ahead of the actual date of commencement of the collection of toll.

10. (a) Tolls shall be collected by the Corporation on behalf of the State Government and shall be deposited with a scheduled bank or banks by the Corporation under a separate and distinct head "Bihar Bridge Development Fund" created for the purpose. The amount lying in the Fund will be utilised to meet the following expenditure according to the priority indicated below:

(i) Directed expense connected with the toll collection.

(ii) 15 percent of the gross amount of toll to meet over heads of the Headquarters'' establishment. This percentage may increase or decrease with the prior approval a of State Government.

(iii) Cost of maintenance and repairs of bridges.

(iv) Cost of Construction of new bridges approved by the State Government.

(v) For any other purpose with the prior approval of the State Government.

(vi) The corporation shall send a yearly statement of the amount of toll tax collected to the State Government.

11. The State Government or the Corporation will collect tolls either departmentally or by settlement of the right to collect tolls with a person or a group of persons of a Firm or a Cooperative Society by auction conducted in open and public manner.

12. The State Government or the Corporation subject to prior approval of the State Government may fix such rate or rates of toll on a bridge as is considered reasonable to be levied.

13. The cost of construction of the bridges phased suitable into one or more groups together with the cost of annual maintenance and repairs of the bridge or bridges shall form the principal element in determining the rate or rates of tolls.

14. The rates of tolls for the kinds of traffic as determined by the State Government for the time being are listed in Appendix I. Such traffic will not be charged anything more or less than the rate prescribed.

15. The Corporation subject to the approval of the State Government may for reasons to be recorded in writing, reduce the rate of toll or increase the rate of toll after a rate has remained in force for not less than three years.

18. The State Government may order toll to be levied from any such item of

 

traffic on the bridges which is not named in Appendix 1 subject to the proviso that such an order has been published in the Bihar Gazette and also in the press for the information of the general public.

24. In case it is decided by the State Government or the Corporation to put the right of collection of tolls to auction for settlement on lease the period of lease shall be one year or less than one year terminating on the 31st March of the coming year.

25. Under Rules 74 and 75 toll is not to be levied from the Government servants or from officers of the Bihar Rajya Pul Nirman Nigam Limited while on duty or on the vehicles owned by the State Government or Central Government or by Bihar Rajya Pul Nirman Nigam Limited. The toll is also not to be levied from Members of the Bihar Legislative Assembly or Council or Members of the Parliament or Defence Personnel.

26. The State Government can levy toll under Entry 59 of List II (State List) of the 7th Schedule of the Constitution. As noted above, what is ''toll'' has not been defined. We, therefore, have to consider as to what the toll is understood in common parlance and what is its meaning in the dictionary. As per Oxford dictionary ''toll'' is a charge payable for permission to pass a barrier or use a bridge or road etc. Toll may not be a fee and the element of quid pro quo may not exist. However, toll is not a tax. It is compensatory tax although, it can not be a source to augment the revenue of the State and can be levied only by way of reimbursement of the amount spent by the State on the construction and repairs of bridges and roads and is levied on the user thereof. Once the cost towards making and repairs of the bridge and road is recovered levy of toll must cease. Toll cannot be levied to augment the revenue of the State for construction of more bridges and roads or for development of the State. That would be against he import for what the tolls meant for we may not subscribe to the view of the learned Single Judge in the TISCO case, referred to above, that the notification regarding increase in the levy of toll must justify the reason as to on what basis it was increased. We may also not subscribe to the view expressed therein that the notification should also specify the cost of construction of the bridge or road. But any such decision fixing the levy must be reflected in the record of the state and should be arrived at on relevant considerations. Perhaps in these days of demand for transparency in public actions, it may be advisable to give the cost of construction. This may not be a legal requirement but then in the democratic set-up it would be better to keep the public informed of the amount spent on the construction of bridge or road for the purpose of fixing the toll or increasing levy therefor. Further it is not correct to say that maintenance of road and bridge would be a continuing process and the State can go on levying toll though at a reduced rate for that purpose. Only when repairs have been actually carried put then toll can be imposed to recover that cost. The Rules cannot enlarge the scope of the Act. Section 2 of the Act is specific. Toll can be levied only to recover the cost of construction or repairs of the bridge and road

 

and the expenses incurred for the collection of the toll and for no other purpose. That the finances of the State are not in good shape or that more revenue is required to meet welfare activities of the State or for construction of more bridges and road cannot make the Court to expand the meaning, scope and extent of toll under the Act. One has to see the law as it existed at the time of the enactment and also at the time when we adopted the Constitution to understand the meaning of tolls as contained in Entry 59, of List II of Schedule VII of the Constitution. For that one necessarily has to see the English Law, the legal encyclopaedia, the judgments of the courts and the dictionaries of English Language.

27. It was submitted, with reference to the bridges in question in these writ applications, that costs had been recovered much earlier. As regards one of the bridges called Akharaghat bridge, it was constructed in the year 1950 and the cost was fully realised by the year 1970 and realisation of toll was stopped on that bridge in the year 1971 but again in the year 1976 the toll was reimposed and then increased by the impugned notification. This was pointed out to show as to how the State Government without understanding the scope of toll has been levying the same in contravention of the provisions of law only to augment its revenue.

28. In the Supplementary Affidavit filed by the petitioner in C.W.J.C No. 1514 of 1984, details have been given as to how many vehicles of the State Road Transport Corporation ply on the bridges subject matter of the writ applications and also those private parties including the petitioners and how much tolls collected. The amounts so collected amounted to lacs of rupees. As noted above, the State of Bihar has not come up with any counter affidavit. We have, therefore, to refer to the counter affidavit filed on behalf of Bihar Rajya Pul Nirman Nigam Limited, the second respondent. There has not been any specific denial of the averments made by the petitioners and, as a matter of fact, it stands admitted that the costs incurred on the bridges have been recovered many times over.

29. The Nigam in its Affidavit has taken the following stand:

(1) The Government has entrusted the Nigam with the work of construction and maintenance of bridges and roads in the State;

(2) The resources of the Nigam for the purpose are three, namely, (a) collection of toll over bridges; (b) raising of loans from financial institutions etc. and (c) grants from annual budget of the P.W.D. (Road Construction Department). The Nigam has not taken any loan and depends on only two resources i.e. collection of toll over the bridges and grants released from the Road Construction Department.

(3) Tolls are raised by the Nigam for distinct object for construction of more and more bridges in the State in the public interest and in the general welfare of the State. Toll being a tax, a part of public revenue, it cannot be

 

confined to a particular bridge. If the toll is stopped after the realisation of the cost of construction of a bridge, there can not be any further construction of new bridges and also for the upkeepment, maintenance and repairs of the existing bridges. Since the cost of construction and maintenance of bridges have gone very high, it could not be said that the rate of toll has been arbitrarily enhanced. The enhancement is in public interest to augment the public revenue. Since the Rule also provides for enhancement, there being a great distinction between ''fee'' and ''tax'' any such comparison between ''fee'' and ''tax'' would be misplaced.

30. There is no reply to the suplementary affidavit filed by the petitioners and it could not be disputed that the costs of construction of the bridges hav e since been recovered long time ago. At certain point of time toll on bridge was abolished but reimposed after a few years without any explanation. There is also no reason for coming to a decision as to why the toll has been enhanced on the bridges.

31. The stand of the Nigam which would perhaps also be the stand of the State Government is not correct. The Respondents have a wrong conception that the toll is a tax and forms part of the public revenue. We are really surprised al the stand taken by the Respondents in view of the clear language of Toll'' and exposition of law on the subject. The notification under challenge and that dated October 10, 1991, enhancing the toll do not specify any particular bridge. These are general notifications applicable to all the bridges irrespective of cost and the dates of the constructions of the bridges and as to how much tolls have since been realised. The respondents have with-held all these details. We have held that toll can be levied only to recover the cost of construction and cost of repair of the bridge and also expenses incurred for collecting the toll. Rule 10 of the Rules so far it authorises the amount of toll collected to be utilised for the purposes other than those above mentioned is to be held ultra vires of the Act and has to be struck down. No arguments were advanced by the petitioners as to how other rules are ultra vires the Act.

32. The question then arises as to how the relief is to be moulded in these writ applications.

33. To repeat the notifications dated February 15, 1984, and October 10, 1991, under challenge have to be struck down as they are too general in nature and are applicable to all the bridges of the State irrespective of their cost of construction and the cost of repairs carried out on them as also the amount of tolls so far collected on each and every bridge. The State Government could have issued a fresh notification in respect of those very bridges in respect of which costs of construction and repairs have not been realised so far after the judgment in TISCO case (supra). In the absence of any such notification being issued the two notifications aforesaid can be resorted to realise toll on all or any of the bridges of the State. The State can still come up with a notification fixing toll on the bridges as per law and as explained above. Time spent in bringing out

 

a new notification can not be of any disadvantage to the State inasmuch as the period for collection of the toll can be extended to recover the cost of the bridge or the cost of repairs carried out.

34. In C.W.J.C. No. 6989 of 1988 it was directed by an interim order dated October 6, 1988, that in case of success, the petitioners would be entitled to refund of the amount paid by them as toll. At this stage, we do not think it proper to direct the State Government or the Nigam to refund the tolls collected over and above the costs of construction of the bridges or the cost spent on their repair, as we feel that the petitioners would have fastened the burden to the ultimate consumers.

35. Accordingly, these writ petitions are allowed. The notification dated February 15, 1984 and October 10, 1991 are quashed. The rule is made absolute.

 