**(1972) 07 AHC CK 0007**

**In the Allahabad High Court**

**Case No :** Sp. A. No. 402 of 1964

City Board of Mussoorie APPELLANT

Vs

Amolak Ram Oberai RESPONDENT

**Date of Decision :** 12-07-1972

**Acts Referred:**

**Citation :** (1972) 42 AWR 690

**Hon'ble Judges :** Satish Chandra, J;N.D. Ojha, J

**Bench :** Division Bench

**Advocate :** S.N. Misra, for the Appellant; S.N. Kacker and S.C., for the Respondent

**Final Decision :** Allowed

## Judgement

Satish Chandra, J.—Of this group of nine Special Appeals 8 have been filed by the City Board Mussoorie. The ninth one is a cross-appeal filed by Shri Amolak Ram Oberai. Shri Oberai along with one Khem Chand had filed a group of writ petitions challenging the demand and levy of toll tax on account of the fact that Khem Chand while driving the vehicle owned by Mr. Oberai took it on a strip of land which the City Board claimed vested in it.

2. It appears that Mr. Oberai is a resident within the municipal limits of Dehra Dun. He owns a godown at Rajpur within the Dehra Dun Municipality. There are some limestone quarries in village Karwa in the district of Dehra Dun. The quarries are situate outside the limits of the City Board, Mussoorie. Mr. Oberai had employed Khem Chand as his driver. Khem Chand used to drive the private carrier owned by Mr. Oberai from his residence or godown to the quarry and return from there. The private carrier passes through a strip of land which the City Board claims vests in it. According to the City Board Mussoorie the Appellant was liable to pay toll on the vehicle when it enters the disputed strip of land. The Board also levied toll on the driver of the vehicle in addition to the toll levied on the vehicle. The Appellant, however, refused to pay toll whereupon the City Board launched a large number of criminal prosecutions in the Court of the SDM,

Mussoorie and the Naib Tehsildar, Mussoorie in relations to each strip that the Appellant''s vehicle made while going to and returning from the quarry.

3. The learned Single Judge held that under the rules framed by the City Board, Mussoorie, no toll was leviable on the driver but that toll was payable on the vehicle, even though it was empty, when it passed through the disputed strip of land. He also held that the Transit Pass Rules were not applicable to empty motor vehicles. The learned Judge did not go into the factual controversy whether the disputed strip of land vested in the City Board and proceeded on the assumption that it did.

4. Two questions which arise for consideration in these appeals are whether the Transit Pass Rules are applicable to empty vehicles and secondly whether toll is leviable on the driver of a vehicle in addition to the toll that may be levied on the vehicle.

5. On 7th September, 1955 the State Government issued a notification promulgating a new set of rules which were called the Transit Pass Rules for the municipalities levying toll. These Rules came into force from October 15, 1955. The preamble to the Rules stated that in exercise of the powers conferred by Section 296 read with Section 153 of the Municipalities Act the Governor is pleased to make the following rules for the transit of goods and vehicles etc. through the limits of Municipalities for outside destinations. The second rule provides that they will come into force with effect from October 15, 1955 in all the municipalities levying or which may thereafter levy a toll on vehicle and other conveyances, animals and laden coolies u/s 128(1)(vii) or an octroi on goods or animals u/s 128(1)(viii) of the U.P. Municipalities Act. By the third rule it was provided that if there was any conflict between these rules and other existing rules in the various municipalities these rules will prevail. The result of this rule is that if in a given situation the Transit Pass Rules are applicable then no toll could be levied under any other existing rules.

4. Every vehicle or other conveyance or animals laden solely with goods meant for immediate export or laden coolies or animals, merely passing in transit through the municipality to an outside destination, shall be permitted to pass through it, under cover of a transit pass in the prescribed forms, subject to the payment of a security equal to the amount of toil or octroi, as the case may be leviable thereon and the transit fee as detailed in the "schedule" and in accordance with the procedure prescribed hereafter:

Provided that in cases where the octroi on toll leviable on any goods or loaded vehicle is less than the transit fee the Board shall charge only a transit fee equal to such octroi or toll and no security shall be taken:

Provided further that no security or transit pass fee shall be leviable on goods loaded on vehicle etc. the property of which vests in Government, if they are accompanied by a certificate from an officer (who should ordinarily be a Gazetted Officer) of the Government Department concerned, that the goods are the property of Government that the vehicle carrying the goods is not on hire and are/is for transit through the municipality.

The remaining rules provide the procedure for carrying into effect the provisions of Rule 4. The Schedule by entry No. 2 provides:

2. Loaded Vehicle drawn by one animal loaded push cars, loaded hand thelas, bicycle loads, animal loads, loaded rickshaws and any other vehicle or conveyance not falling under any other heads mentioned in the Schedule.

At the end of the Schedule there is a declaration form. The form provides:

I...as person incharge of the goods/conveyance which I am taking into this municipality hereby declare that the goods/conveyance are meant for immediate export/is in transit through it and are/is being taken by me to... I further declare that the goods or any part thereof that I am carrying shall not be unloaded within the limits of the....municipality.

These rules also provide the form of the transit pass. It has several entries. Serial number 4, is meant for description of goods, vehicle or conveyance. Serial number 3 provides for the rate of octroi or toll leviable on the goods, vehicle or conveyance.

6. It will be seen that the obvious object of these Transit Pass Rules is to substitute for the levy of octroi or toll upon goods or vehicles or other conveyances, the transit fee. If a particular vehicle or conveyance is in transit through a particular municipality it is liable to pay only the transit fee and in that event will not be liable to pay the toll that may be leviable by the municipality on the vehicle or on the goods carried on it. The second rule provides that these rules shall come into force in all the municipalities levying or which may thereafter levy a toll on vehicle and other conveyances, animals and laden coolies u/s 128(1)(vii). Under this provision admittedly toll can be levied on vehicles simpliciter, even though they may not be loaded. The City Board, Mussoorie is charging toll under item 10(b) on empty vehicles. In fact the learned Single Judge has held that toll is payable under that clause on empty carriers. Rule 2 clearly postulates that those rules will apply in relation to vehicles which could be subject to toll u/s 128(1)(vii). This indicates that the rules were intended to apply to vehicles simpliciter also and that it was not necessary that the vehicles must be laden with goods, before these rules becomes applicable to them.

7. This intention is further clarified by the declaration form that the person incharge of the vehicle has to give in order to obtain a transit pass. In the declaration it has to be said that he was the person incharge of the goods/ conveyance. The phrase is not goods on the conveyance.

8. The Schedule lays down the rate of the transit fee for different kinds of things. Entry No. 2 which has been quoted above mentions various kinds of loaded vehicles or conveyances and then says any other vehicle or conveyance not

falling under any other heads mentioned in the Schedule. The other entries in the Schedule refer to vehicle as well as loaded tracter up to 2 tons or up to 4 tons. Thus all kinds of loaded vehicles and conveyances have been specifically dealt with in the various entries to the schedule. In that context the residuary provision in the second part of entry No. 2, namely, "any other vehicle or conveyance not falling under any other heads" mentioned in the Schedule obviously will include all other kinds of vehicles or conveyance including the vehicles or conveyances which are not loaded with goods or other things. In our opinion this residuary clause includes in its scope empty vehicles or conveyance.

9. Rule 4, in our opinion, should be interpreted and construed in a manner which may not frustrate the purpose and object of the rules, or'' the specific provisions of the various other rules and the Schedule which attracts the applicability of the rules to empty vehicles. Rule 4 purports to provide that if a vehicle or any other conveyance is laden with goods which are meant exclusively for immediate export shall have to pay not only the transit fee but also a security equal to the amount of toll or octroi levied on the goods laden on the particular vehicle. The object of Rule 4 was merely to provide for the security for the toll leviable on the goods that were laden on the vehicle. The person incharge of the vehicle was, in any case, liable to pay transit fee but in addition he was liable to pay security in relation to the goods carried on the vehicle. The main object was to safeguard the interest of the municipalities in relation to payment of toll on the goods. The two provisos clarify this. By the first proviso it was provided that if the amount of toll or octroi was less than the transit fee the Board shall charge only transit fee equal to such octroi or toll and no security need be taken. The provisos deal only with the question of security in relation to the toll. They do not throw any light upon the main rule on the question whether that rule applies to empty vehicles also. No doubt Rule 4 is inartistically framed. But its meaning is clear.

10. In our opinion Rule 4, read in the context of other rules and the Schedule applies to an empty vehicle or conveyance merely passing through the municipality, enroute to an outside destination. Such a vehicle is liable to pay a transit fee and as such, Under Rule 3 is not liable to pay toll.

11. The second question involves the decision of the question whether a driver is liable to pay toll. The learned Single Judge held that he is not liable because he was not the person conveyed "on the vehicle" within the meaning of item 10(b) of the Rules. Since the vehicles which are only in transit, as is the case before us, are liable to pay transit fee and consequently are not liable to pay toll, obviously the driver of such vehicle could not be held liable to pay toll when transit fee was been paid. In this situation whether the driver of such a vehicle is liable to pay under Item 10(b) toll is a question merely of academic interest. The learned Single Judge held that driver was not "a person carried" within the meaning of that item. We have doubt as to the correctness of that view, but we need not express any final opinion on the point.

12. Before the learned Single Judge, the counsel appearing for the City Board

 

gave an undertaking that the Board shall withdraw the criminal cases pending against Khem Chand, the driver. Mr. Kacker, stated before us that in spite of this undertaking the City Board did not withdraw the criminal complaints panding against Khem Chand. In view of our finding that the drivers of the Appellant''s vehicles were not liable to pay toll while they were carrying the vehicles through the land of the City Board Mussoorie enroute to or from the quarry, the prosecutions launched by the Board were entirely without jurisdiction and are liable to be quashed.

13. In the result, the appeal filed by Mr. Oberai is partly allowed with costs. The direction of the learned Single Judge that the City Board should charge toll on empty vehicles is set aside. The Board is restrained from doing so. The various prosecutions mentioned above launched against Khem Chand are quashed. The other appeals which have been filed by the City Board, Mussoorie are dismissed, but without any order as to costs.

 