(1968) 09 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Writ Petition No. 102 of 1966

Girdharilal Anand Saraf APPELLANT

Vs

State of Jammu and Kashmir RESPONDENT

Date of Decision : 02-09-1968

Acts Referred:

Constitution of India, 1950 — Article 246(1), 251, 254, 301, 304
National Highways Act, 1956 — Section 2, 4, 7

Citation : (1968) 09 J&K CK 0004

Hon'ble Judges : S.M. Fazl Ali, C.J;J.N. Bhat, J;Anant Singh, J

Bench : Full Bench

Advocate : I.D. Grover, for the Appellant; C.K. Daphtary, Attorney General of India, O.C. Mathur, A.N. Raina, General and Amarchand, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhat, J.—This writ petition challenges the levy of toll at Lakhanpur, Nagrota, Banihal and other places under the Levy of Tolls Act,

1995 B, (wrongly put as 1955 A D. in the Writ Petition), or under the law in force authorising such a levy. It further challenges the levy of toll of

one Rupee a maund on all goods imported into the State at Lakhanpur. The contents of the brief petition are as follows:

2. That the Petitioner who is a permanent resident of the State of Jammu and Kashmir is charged road toll at Lakhanpur, Nagrota and Banihal as

prescribed by the Levy of Tolls Act, 1995, corresponding to 1938 A.D. (wrongly put in the petition as 1955). These three places are situated on

the National Highway as declared by the National Highways Act, 1956 (Act XLVIH of 1956). The State further realises Rupee 1/- per maund on

all goods imported in the State by road. The Central Act does not authorise imposition of any levy as Road Toll on any National Highway except

in terms of Section 7 of the Act. The levies above referred to are not covered by that Section. The levy of Tolls Act has been repealed by the

National Highways Act because the National Highway vests in the Central Government. The Central Act could not levy any such toll. These two

levies are illegal. The Central Government had been moved in this behalf. It had called the comments of the State Government as far back as 1963

but the toll is being still levied. The imposition of this toll may be declared illegal.

3. This writ petition has been contested by the State. The State contends that the impost is valid and does not militate against any provision of the

Constitution. The impugned Act falls within the residuary legislative field of the State and the State was competent to levy this tax as would appear

from List II of the VI Ith Schedule of the Constitution of India (Entry 59) as applied to the State. The petition is misconceived.

4. When the case was admitted on 9-3-1966, it, was ordered that the case be heard by a Division Bench. By an order of the Division Bench

dated 13th of December, 1966, the case was ordered to be put before the Full Bench. Ultimately it was heard by the Full Bench.

5. We have heard the arguments of the learned Counsel for the parties.

6. The brief argument of the learned Counsel for the Petitioner is that the National Highways Act (Act No. XLVIII of 1956) was enacted in the

year 1956 and came into force on 15-4-1957. It applies to the State of Jammu and Kashmir also. Under the schedule to the Act, at serial No. 2

1-A the Highway connecting Jullundur, Madhopur, Jammu, Banihal, Srinagar, Baramulla and Uri has been declared to be a national Highway u/s 2

of the said Act. u/s 4 of the same Act all national highways shall vest in the Union, Mr. I.D. Grover further argued that after the national highway

had vested in the Union of India, the State Government rendered no services or benefits for which , it could charge any fee or tax. u/s 7 itself fees

could be charged by the Central Government on rendering certain service or benefits. As the State Government had nothing to do with this

highway now, the question of its rendering any service therefore does not arise and therefore the tax was illegal. After the said Act i.e., the National

Highways Act, 1956 came into force the Levy of Tolls Act of 1938 of the State stands automatically repealed because under Entry No. 23 of VII

Schedule, Union List, highways declared by or under law made by Parliament to be national highways, is a Central subject. Under Article 246(1)

of the Constitution of India, Parliament has exclusive power to make such laws with respect to any of the matters enumerated in List I in the

Seventh Schedule, Union List. Similarly under Clause (3) the State Legislature has exclusive power to make laws for such State or any part thereof

with respect to any of the matters enumerated in List II in the Seventh Schedule, State List.

Under Article 251 of the Constitution of India the State Legislature has power to make any law which under this Constitution it has power to

make, but if any provision of a law made by the Legislature of the State is repugnant to any provision of a law made by Parliament which

Parliament has under either of the said articles power to make, the law made by the Parliament whether passed before or after the law made by the

Legislature of the State shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the

law made by Parliament continues to have effect, be inoperative."" Similarly under Article 254 of the Constitution of India 'if any provision of a law

made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any

provision of any existing law with respect to one of the matters enumerated ...... the law made by Parliament, whether passed before or after the

law made by the Legislature of such State or as the case may be, the existing law shall prevail and the law made by the Legislature of the State

shall, to the extent of the repugnancy be void. u/s 7 of the National Highways Act the Central Government has the power to levy fees at such rates

as may be laid down by rules made in this behalf for services or benefits rendered in relation to the use of ferries, temporary bridges and tunnels on

national highways. The Central Government has not levied any fees under this section. The levy of Tolls Act stands repealed.

Mr. I.D. Grover further argued that this impost was a restriction on the freedom of inter-State trade and commerce and militated against Article

301 of the Constitution of India as applied to this State. Such a tax could be levied only by the Parliament or by the State Legislature with the

previous sanction of the President. Admittedly no sanction of the President has been secured for the enforcement or, in this case, for continuance of this Tolls Act. Mr. Grover has referred to two authorities State of Mysore Vs. H. Sanjeeviah, and Municipal Board of Hardwar Union,

Hardwar Vs. Sri Raghubir Singh and Another, . Therefore the tax recovered as toll at the stations men- tioned above is illegal.

7. Mr. Daphtary, Attorney General of India, who appeared for the State in this case contended that the passing of the National Highways Act and

vesting of national highway from Lakhanpore to Uri in the Union of India has in no way affected the levy of Tolls Act passed by the State

Legislature in the year 1938. Levying of Tolls is within the exclusive competence of the State Legislature. Under the State list, taxes, which a State

Legislature can levy, are contained from Entry No. 46 onwards upto Entry No. 62. Entry No. 59 pertains to tolls. He argues that the National

Highways Act had no application to the circumstances of this case and the passing of that Act in no way, even by implication, shall be deemed to

have repealed the State Tolls Act. The Act had been passed before the National Highways Act came into force. Even after the passing of the

Constitution the scope of the two acts i.e., National Highways Act and the Levy of Tolls Act was entirely different; under the former fees could be

levied for rendering service or benefits in relation to the use of ferries temporary bridges and tunnels. Even u/s 7 of the Highways Act the road as

such has been excluded. The fees could be levied in addition to any tax for the use of ferries, temporary bridges and tunnels. Under the Levy of

Tolls Act this toll was levied for the mere use of the road and it was within the competence of the State Legislature to pass such laws of levying of

toll.

Mr. Daphtary further argued that by using the expression ""national highways shall vest in the Union' the right of the State over the highway was not

taken away. Vesting in the context refers only to the management, and upkeep of the surface of the road. There was a clear difference between fee

and tax. This toll was a tax and was not covered by the term fee used la Section 7 of the National Highways Act.

8. We shall now examine the arguments in detail and refer to the law discussed and otherwise relevant to the subject.

9. The first argument of Mr. Grover that Entry 23 of the Union List in the Seventh Schedule, made the levy of this toll a Union subject is not

correct. When we read the two lists, the Union list and the State list, Entry 23 of the Union list is 'Highways declared by or trader law made by

Parliament to be national highways,"" which only means that any laws that may be passed with respect to highways can be by Parliament. There

could be no quarrel with such a power. If the Union Legislature passes any law with respect to national highways, as it has done by the passing of

The National Highways Act No. XLVIII of 956, that law will be the relevant and en- orceable law on the subject. But so far as evy of toll is

concerned that is not a Central subject but is exclusively contained in the state list at Item No. 59. Levying of any tolls is exclusively within the

jurisdiction of the State Legislature. Therefore any law passed by the State Legislature, whether before or after the enforcement of the Contitution,

which deals with tolls, is saved and is the exclusive field of the State Legislature.

10. The word 'toll"" has been described a the Webster's New International Dictionary as ""a tax or dues paid for some liberty or privilege

particularly for the privilege of passing over a highway, as a road or bridge, for that of keeping a booth, vending goods etc. in a fair, market or

other limited space as a manor, for importing or exporting goods."" In Byrine's Law Dictionary, 1923 edition 'toll' is a payment for passing over or

using a bridge, road, ferry, railway, market, port, anchorage"" etc. In Wharton's Law Lexicon, (fourteenth edition) among other things the word 'toll'

is described as 'a tribute or custom paid for passage"". Under the English Law, broadly there are two kinds of tolls recognized, which are known as

'toll traverse' and 'toll-thorough'. According to Byrne's Law Dictionary 'toll traverse' was a sum payable for passing over the private soil of another,

or ever a private road, bridge, ferry or the like, and 'toll thorough' was a sum payable for passing over the public highway: to support in claim for

such a toll (which is a franchise) the (sic) consideration must be shown i.e., repairs to the highway by the owner of the franchise. According to

Wharton's Law Lexicon, toll traverse is taken for every beast driven across a man's land. In Halsbury's Laws of England, third edition, Vol. 19,

(Simonds Edition) ""a toll traverse is a toll taken in respect of the original ownership of the land crossed by the public (though how perhaps severed

therefrom), the land having been at the date of the grant the private property of the grantee, and having been then dedicated by him to the public in consideration of the toll to be taken."" ""A toll-thorough is independent of any owner- ship of the soil by the original grantee, the consideration

necessary to support it being usually the liability to repair the particular highway or bridge. The distinction between the two classes of tolls was put

by Lord Parker of Waddington in Hammerton v. Earl of Dysart (1916) 1 AC 57.

This matter of tolls under somewhat similar circumstances came up for consideration in a recent authority reported as Hindustan Vanaspati

Manufacturing Co., Ltd. Vs. Municipal Board and Others, . There was a difference of opinion between the two learned Judges Mootham, C.J.

and Dayal, J. The matter was referred to the third learned Judge A.P. Srivastava, J. Mootham, C.J., on page 28 of the judgment said:

...In the case of the toll traverse it is the dedication of the road to the public and in the case of a toll thorough the obligation to perform some

service such as maintaining the road in repair.

Then his Lordship quotes a number of English authorities drawing out a distinction between toll traverse and toll thorough.

11. Dayal, J., in para 14 of the judgment held that the word:

toll"" is not of any recent use. There have been many a kind of toll charged in England. Different names have been given to them. The 2 tolls

recognized under the common law with respect to the passage on the highways have been given the names of toll-traverse and toll-thorough.

Then the learned Judge mentioned other tolls such as fair toll, stallage toll, canal toll, ferry toll, market toll.

At page 39 of the judgment Srivastava, J., says:

A toll thorough has no connection with the ownership of the land and is usually granted to someone who undertakes to do something for the benefit

of the person who uses the passage, i.e., makes the road or a bridge or keeps it in repairs, arranges for a ferry or provides some other facility. A

toll traverse is on the other hand connected with the ownership of the soil and is allowed to be charged for the use of the land by the person liable

for the toll....

The contention that some sort of consideration is necessary to support the levy of tolls is correct. Judicial authority on this point is so overwhelming

that it is not possible to dispute this proposition. The right to levy a toll is based either on a grant or has been acquired by prescription. Ordinarily in order to justify a toll it is necessary to aver and prove the existence of some consideration. If, however, the right had been exercised from time

immemorial its legal origin as well as consideration may be presumed. Similarly if the right has been granted by statute the consideration may be

mentioned in the statute itself and can even be presumed even if it is not so mentioned because the Legislature would not have granted the right

unless there was some consideration to justify the grant. Usually the consideration is some amenity, service, benefit or advantage which the person

entitled to the toll undertakes to provide for the public in general or the persons liable to pay the toll. Sometimes me consideration may be traced to

ownership or jus dominii. Permission by the owner of the land for the use of his land for any purpose may therefore be sufficient consideration if the

person charging the toll is the owner. If the benefit or the advantage which is the consideration is made available it is not necessary for incurring the

liability to pay the toll that the benefit or advantage should actually be utilized.

In this case the dispute was whether a toll levied by the U.P. Municipality u/s 128 of the U.P. Municipal Act could be charged from a factory, the

Appellants in that case. The Appellant company was manufacturing Banaspati and it required supply of raw-material, which was brought to the

factory. The factory premises situated within the limits of certain Municipal Board were connected with the main railway line by a branch line. The

branch line was constructed at the cost and on the land of the Company. Wagons bringing supplies to the factory passed along the railway siding in

order to reach the factory premises and in that way entered the limits of the Municipal Board. The Municipal Board claimed to levy a toll u/s 128

of the U.P. Municipal Act on the railway wagons bringing supplies to the Appellant company. The company disputed its liability to pay the tax. The

High Court held that it was not necessary that the benefit provided must be capable of being enjoyed by the vehicle or person sought to be made

liable for the toll although the company had connected its premises with the main line by its own side line. It was held that enjoyment of amenities

provided by the Municipal Board was sufficient and imposition of toll on wagons was held valid.

There are numerous English cases on the subject. Mr. Justice Willes in Brecon Markets Co. v. Neath and Brecon Rail. Co. (1872) 7 CP 555 remarked at page 566:

Accordingly it was argued that the claim in question could be maintained as a toll thorough because nothing is done by the corporation or by the

Plaintiffs towards the repair of the railway or otherwise to aid or assist the traffic or the railway company. It was, however, insisted that the claim

might be maintained as for a toll traverse which consists of a toll granted and claimed for going over the land of the grantee. A toll traverse is said

to differ from a toll thorough in this that no consideration for it need be averred. This does not, however, mean that there need be no consideration

for it; it merely expresses that, as there can be no toll traverse except in respect of going over the land of the grantee, the consideration of using the

land is implied from the character of the toll, and need not be further averred than by stating that it is a toll traverse.

In another case 1916-1 AC 57, Lord Parker of Waddington remarked:

toll are generally classified as tolls-traverse and tolls-thorough. If, apart from the franchise, no one would, have had a right to do that for which the

toll is charged the toll is a toll-traverse. If, apart from the franchise, any one would have had the right to do that for which the toll is charged, the toll

is a toll-thorough. In the former case the consideration moving to the public may be found in the right conferred on the public by the franchise. For

example, if before the creation of the franchise the road for the use of which toll is charged was a private road, the consideration may be the

dedication of the road to the public....

Mr. I.D. Grover however relied on an authority reported as Municipal Board of Hardwar Union, Hardwar Vs. Sri Raghubir Singh and Another, .

In that case two points arose for consideration. One was taxing of vehicles carrying passengers at rates fixed per passenger and the second was

whether the tax could be levied on a vehicle while entering and again while leaving the Municipal limits. It was held that tax could be levied per

passenger but tax could be recovered only once i.e., on the vehicle entering within the Municipal limits. Therefore this authority does not help the

Petitioner. The other authority cited by State of Mysore Vs. H. Sanjeeviah, also is not pertinent. In that case the point for consideration was the

rules made under the Mysore Forest Act which regulated transit of timber, firewood, charcoal and bamboos in specified areas. It was held that the provisos are not regulatory in character but restrictive of right to transport forest produce. The right to regulate was held to be valid but the right to

impose restriction on movement of timber was held not permissible being derogatory to freedom of trade under Article 301, Constitution of India.

In an authority reported as AIR 1964 Punj 506 it was held that a toll imposed by Municipal authority on vehicles entering into the Municipal limits

was covered by the term 'toll' - standing tax already being charged for parking vehicles at stand. It was held that this former tax was not a case of

double taxation as a tax on vehicles.

In this case, argued Mr. Dapthary, the ownership in the road was and continues to be that of the State of Jammu and Kashmir. That is not denied

in the pleadings of the Petitioner. All that the Petitioner states is that after the passing of the National Highways Act recovery of this toll becomes

illegal. Mr. Dapthary argued that there is no deed of transfer, or conveyance of this road by the State Government in favour of the Central

Government. Therefore the ownership in this road remains where it was namely with the State of Jammu and Kashmir and the State could levy this

tax merely because it allowed its property namely the road to be used by the vehicles which were charged this tax. No further consideration in the

shape of benefits or service was necessary for the imposition of this tax.

12. Mr. I.D. Grover laid emphasis on the word vest' in Section 4 of the National Highways Act, 1956. He said that all national highways vested in

the Union from the time of passing of this Act and this highway namely from Lakhanpore to Uri also vested in the Union, from which he argued that

the ownership and other incidents of this road were transferred from the State of Jammu and Kashmir to the Central Government. The word 'vest'

has been the subject-matter of a long series of decisions in England and in India also. In Wharton's Law Lexicon it is defined as '(1) either to place

in possession: to make possessor of; or, to give an absolute interest in property when a named period or event occurs; (2) (of a right or interest).

Its coming into the possession of any one: enuring to the benefit of any one."" Similarly in Byrne dictionary it is stated among other things to mean

where an Act of Parliament enacts that a street shall vest in an urban sanitary authority, this means that the surface of the land, and so much of the

soil as is necessary for its use as a street, shall be transferred to the authority.

The English case Coverdale v. Charlton (1878) 4 QBD 104 is considered to be the leading case on the subject and therein Bramwell, L.J.,,

observed:

I am disposed to hold that this 'street' vests without any property in the freehold of the soil. The word 'vest' may have two meanings. It may mean

that a man acquires the property 'usque ad coelum' and to the centre of the earth but I do not think that to be its meaning here. One construction of

the word vest' here is that it gives the property in the soil, the freehold, the surface and all above and below it, but that would be such a monstrous

thing to say to be necessary for the proper control of the streets by the local board, that I cannot suppose it to mean such a thing. Suppose the soil

of the freehold passes, and consequently it carries the right to the land to an indefinite extent upwards, and to the centre of the earth below the

surface; I cannot make up my mind to say that is the meaning of the word 'vest' in Section 149....What then is the meaning of the word 'vest' in this

section? The Legislature 'might have used the expression 'transferred' or 'conveyed' but they have used the word 'vest'. The meaning I should like

to put upon it is that the street vests in the local board qua street; not that any soil or any right to the soil or surface vests, but that it vests qua

street....The meaning I put upon the word 'vest' is, the space and the street itself, so far as it is ordinarily used in the way that streets are used shall

vest in the local board....That would show that 'street' comprehends what we may call the surface, that is to say, not a surface bit of no reasonable

thickness, but a surface of such a thickness as the local board may require for the purposes of doing to the street that which is necessary to it as a

street and also of doing those things which commonly are done, in or under the streets; and to mat extent they had a property in it.

There are a long series of authorities holding the same view. For instance Rolls v. Vestry of St. George (1880) 14 Ch D 785 (796), Mayor of

Tunbridge. Wells v. Baird (1896) AC 434. All these cases have been discussed at length in (1902) ILR 25 Mad 635 and the learned Judges held

after considering all these authorities that:

When a street is vested in a Municipal Council, such vesting does not transfer the Municipal authority the rights of the owner in the site or soil over

which the street exists. It does not own the soil from the centre of the earth usque ad coelum, but it has the exclusive right to manage and control

the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the

street as a street. It has also certain property in the soil of the street which would enable it as owner to bring a possessory action against

trespassers.

Similarly in another authority Gunendra Mohan Ghosh v. Corporation of Calcutta ILR 44 Cal 689 : AIR 1917 Cal 95, it has been held in this case

that:

The legal effect of statutory vesting of a street in a municipality the ownership in the site or soil over which the street exists,. The effect of the

statutory provision is merely to vest in them the property in the surface of the street, road or drain and in so much of the actual soil below and air

above as may reasonably be required for its control, protection and maintenance as a highway or drain for the use of the public. The Court will not

presume that the intention of the Legislature was to confiscate private property and vest it in a public corporation without compensation granted to

the proprietor. The right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on

the Corporation for the benefit of the public.

In this case a number of English and Indian authorities have been discussed. It was held by their Lordships of the Supreme Court in Municipal

Board, Manglaur Vs. Sri Mahadeoji Maharaj, that a public pathway vests in the Municipality by virtue of Section 116(g), U.P. Municipalities Act

but the Municipality does not own the soil. It has the exclusive right to manage and control the surface of the soil and so much of the soil below and

of the space above the surface as is necessary to enable it to adequately maintain the street as a street"". It has also a certain property in the soil of

the street which would enable it as owner to bring a possessory action against trespassers. Subject to the right of the Municipality and the public to

pass and repass on the highway, the owner of the soil in general remains the occupier of it and, therefore, he can maintain an action for trespass

against any member of the public who acts in excess of his rights.

13. The Madras authority and some other authorities have been referred to in this case. Therefore, the argument of Mr. Grover that this national

highway has vested in the Union of India does not mean that the ownership of the road has been transferred from the State of Jammu and Kashmir

to that of Union of India. The Union of India has control over this highway so far as its maintenance and proper up-keep demands.

14. The next argument of Mr. Grover that u/s 7 of the National Highways Act Central Government can levy fees for services or benefits rendered

in relation to the use of ferries, temporary bridges and tunnels on national highways. The State does nothing in the shape of benefits or services to

the Petitioner or the public it cannot recover fees in the shape of tolls under the Levy of Tolls Act.

This section empowers the Central Government to levy a fee for the use of ferries, temporary bridges, and tunnels and not the road as such. All

that it means is that in addition to any other tax a special fee may be levied for the use of these three categories of amenities namely use of ferries,

temporary bridges and tunnels. Secondly it is now very well settled that a fee is not a tax and a tax is not a fee. A fee is recovered for a certain

specified return for payment of the same. The fee must be applied to the specific purpose for which it is recovered. It must be reasonable and

proportionate to the subject or the benefit to be derived. A tax on the other hand goes to the general coffers of the State for the general benefit of

the public. No specific or even commensurate benefit need accrue for the payment of a tax or as it is to be in legal parlance no quid pro quo is

necessary for the imposition of a tax. More so it is much less so when the tax is levied by some statute as in this case by the Levy of Tolls Act,

1938.

15. Toll is a tax and not a fee as indicated in the earlier portion of this judgment. In The Commissioner, Hindu Religious Endowments, Madras Vs.

Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., their Lordships held that:

A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. This

definition brings out the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included

within it. The essence of taxation is compulsion, that is to say, it is imposed under statutory power without the tax-payers' consent and the payment

is enforced by law. The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be

conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes or general revenue which when collected

forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is no

element of 'quid pro quo' between the tax payer and the public authority. Another feature of taxation is that as it is a part of the common burden,

the quantum of imposition upon the tax-payer depends generally upon his capacity to pay. A fee is generally defined to be a charge for a special

service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the

Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily the fees are uniform and no account is

taken of the varying abilities of different recipients to pay. These are undoubtedly some of the general characteristics, but as there may be various

kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

A careful examination reveals that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and it

is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden while a fee is a payment for a

special benefit or privilege. Fees confer a capacity, although the special advantage, as for example in the case of registration fee for documents or

marriage licences, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all impositions,

but in a fee it is some special benefit which the individual receives. It is the special benefit accruing to the individual which is the reason for payment

in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action.

16. The last argument of Mr. Grover was that this Levy of Tolls Act is in contravention of Article 301 of the Constitution of India and such a

legislature if at all permissible could be made with the consent of the President under Article 304. In Rajasthan an Act known as Rajasthan

Passenger and Goods Taxation Act (18 of 1959) was promulgated in the year 1959. The constitutionality of that Act was challenged. The

Supreme Court held in Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, that:

Section 3, Rajasthan Passengers and Goods Taxation Act, 1959, in terms, speaks of the charge of the tax in respect of all passengers carried and

goods transported by motor vehicles and though the measure of the tax is furnished by the amount of fare and freight charged, it does not cease to

be a tax on passengers and goods. The explanation to Section 3(1) lays down that even if passengers are carried or goods transported without the

charge of fare or freight, the tax has to be paid as if fare or freight has been charged. This clearly shows that the incidence of the tax is upon

passengers and goods, though the amount of tax is measured by the fares and freights. Though the tax is laid on passengers and goods, the amount

varies in the case of passengers according to the distance travelled, and in the case of goods because the freight must necessarily differ on account

of weight, bulk and nature of the goods transported. The tax levied by Section 3 is in pith and substance a tax on passengers and goods and not on

income of the Petitioners or on fares and freights. The charging section does not go beyond Entry 56 of List II, Schedule 7 of the Constitution and

is not unconstitutional on that ground.

The levy of tax on passengers and goods is for the purpose of State and falls on passengers or goods carried by motor vehicles within the State.

No doubt, it falls upon passengers and goods proceeding to or from an extra-State point but it is limited only to the fare and freight proportionate

to the route within the State. For this purpose, there is an elaborate scheme in Rule 8A to avoid a charge of tax on that portion of the route which

lies outside the State. There is thus no tax on fares and freights attributable to routes outside the State except in one instance which is contemplated

by the proviso to Sub-section (3) of Section 3. The levy of tax cannot be said to offend Articles 301 and 304 of the Constitution.

17. The observations of their Lordships of the Supreme Court quoted above would clearly cover the facts of this case. The State Government is

the owner of the road called the National Highway. As such for the mere luxury of travelling on this road, the State Government is empowered to levy any tax. The tax levied will go to the coffers of the State and may be utilized for any purpose for which the revenues of the State can be

utilized. The vehicles using this road of the State, are charged the toll and as already indicated legitimately so. The other argument that it is a

restriction on inter-State trade and commerce also has no force in view of the observation of their Lordships in the Supreme Court authority just

cited namely Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, . The toll is charged for use of the road in the State and this Tolls Act

has no extra territorial application. Now the same reasoning disposes of the other argument of the learned Counsel for the Petitioner pertaining to

the charging of Re. 1/- for every maund of load carried by the vehicle. Heavier the load, greater will be the stress and strain caused to the road.

Therefore the toll is less when the laden weight of a vehicle is comparatively smaller, it increases with the load carried by any vehicle. Lesser the

laden weight, of the vehicle, lesser the tax, greater the laden weight, more the tax. This levy has no bearing on inter-State trade and commerce and

is not violative of Article 301 of the Constitution of India, and therefore, no consent of the President was necessary.

18. The result is that there is no merit in this writ petition, which is dismissed.

