

**(1988) 03 PAT CK 0031**

**In the Patna High Court**

**Case No :** Civil Writ Jurn. Case No. 4112 of 1987

Hari Shanker and Others

APPELLANT

Vs

Lodging House Committee, Rajgir and Others

RESPONDENT

**Date of Decision :** 16-03-1988

**Acts Referred:**

Bihar and Orissa Places of Pilgrimage Act, 1920 — Section 13, 20, 21

**Citation :** AIR 1989 Patna 91 : (1989) 37 BLJR 68 : (1988) PLJR 1009

**Hon'ble Judges :** S.B. Sinha, J

**Bench :** Single Bench

**Advocate :** B.P. Pandey, Choubey Jawahar and Dinesh Kumar Singh, for the Appellant; J.N. Pandey, A.A.G. and Dharni Dhar Prasad Sinha, Jr. Counsel A.A.G., for the Respondent

**Final Decision :** Allowed

## Judgement

S.B. Sinha, J.—In this writ petition the petitioners have prayed for the following reliefs : --

- (a) The petitioners may be permitted to prosecute on behalf of public in general.
  - (b) Respondents 1, 2 and 4 be called upon to show cause the authority in law to impose tax on parking the vehicle within the Kund Area at Rajgir and thereupon permit the petitioners to amend his pleading by making prayer to quash those resolution/order.
  - (c) Thereupon restrain the authority from levying/imposing any tax in parking the vehicle within Kund Area at Rajgir and thereby restrain respondent 5 from collecting vehicle parking tax and grant such other relief or reliefs as deem fit and proper in the interest of justice.
2. The facts of the case lie in a very narrow compass and are not much in dispute.
  3. For the purpose of making better provision for the control and sanitation of places of pilgrimage and for the regulation of houses therein in which pilgrims

are accommodated the legislature of Bihar enacted the Bihar and Orissa Places of Pilgrimage Act, 1920 (hereinafter to be referred to as the said Act). The said Act came into force with effect from 31st Mar., 1920.

4. By reason of the provisions of the said Act provisions have been made to impose Terminal Tax on passengers. In this connection, Section 18, which is the relevant provision may be referred to and which reads as follows : --

" 13. Power to impose terminal tax : -- The State Government may impose a terminal tax on passengers of one or more of the following classes, namely, ,

(a) Passengers, brought by railway to any railway station,

(b) Passengers taken by railway to any railway station,

(c) Passengers brought by steam vessel to any landing place,

(d) Passengers taken by steam vessel from any landing place, in or near a place of pilgrimage :

Provided that no terminal tax shall be imposed on passengers of class (a) or (b) after the commencement of the Constitution which was not lawfully being imposed immediately before such commencement, and any tax so imposed on passengers of those classes shall only be leviable until provision to the contrary is made by Parliament."

5. In terms of Section 20 of the said Act a tax or levy which may be collected in terms of the said Act is required to be deposited in a fund known as Lodging House Fund.

6. The petitioners have allegedly visited Rajgir on different occasions and they have been subjected to the levy of parking fee. The petitioners have asserted that the respondent 1, Committee, has been imposing a sum of Rs. 5/- on Bus, Mini Bus, Truck, Tractor etc. from the area Jwala Devi to Japaniset Temple, Mukhdumkund and Vanuvan; a sum of Rs. 2/- on Trekker, Bullock Cart, Matadoor, Tempo, Maxi, Taxi, Jeep etc. for the same area; whereas a sum of Re. 1/- on Car, Jeep etc.

7. According to the petitioners, the respondent 1 had been making settlements of the areas in question to various private individuals for the purpose of collection of the aforementioned parking tax from, the owners of the vehicles. One such settlements have been made by Annexure 3.

8. The learned counsel appearing for the petitioners has raised a very short question. According to the learned counsel no parking tax can be imposed by the respondent 1, Committee as it does not come within the purview of the aforementioned Section 13 of the said Act. In this connection the learned counsel has relied upon an unreported judgment of this Court in Lachhmi Chand Upadhya v. Rajgir Lodging House Committee through its Secretary, S.D.O., Bihar (C.W.J.C. No. 392 of 1969) disposed of on 13th Jan., 1972. In the said decision it has been

held as follows: --

"The main contention, which has been raised by the learned counsel appearing for the petitioners is that the Lodging House Committee has no authority to levy any marriage tax and as such the two resolutions of the Rajgir Lodging House Committee are invalid. There is substance in the contention. Section 13 of the Act empowers the State Govt. to impose a terminal tax on passengers of certain classes specified therein. Under Sections 14, 16 and 17 of the Act penalty can be imposed for commission of certain acts and for certain contravention of the Act. u/s 21 of the Act, provisions have been made as to how and for what purpose the Lodging House Fund shall be applied. u/s 22 of the Act, the State Government is empowered to make rules for carrying out the purposes of the Act. There is no provision in the entire Act authorising the Committee appointed by the State Government under Sub-section (2) of Section 20 for the purpose of administering the Lodging House Fund to impose any tax. The only power which has been given to them is to administer the Lodging House Fund. Learned Standing Counsel No. 2, appearing for the opposite party, could not point out any provision from the Act or the Rules under which the Committee could legally impose a tax or levy a fee on marriage performed on the Rajgir Kund or any place in Rajgir. The two resolutions of the Rajgir Lodging House Committee dt. the 13th June, 1966 and 27th Nov., 1967, therefore, must be held to be illegal."

9. The learned counsel has further relied upon another Division Bench in Prahlad Upadhya v. Notified Area Committee, Rajgir reported in 1978 BUR 664 : (1978 Tax LR 2399). In the said decision it has been held that the provisions of Section 210 of the Bihar and Orissa Municipal Act, 1922, have no application to the realisation of tax or fees proposed to be realised in terms of the resolution dt. 22-6-1974 of the Notified Area Committee, Rajgir from the parties celebrating marriage in Kund Chhetra at Rajgir.

10. The learned Additional Advocate General, on the other hand, has drawn my attention to the memo issued by the Urban Development Department of the State of Bihar dt. 8-6-1978 bearing memo No. 3581 and submitted that the Council of Ministers approved the realisation of the terminal tax in respect of the town of Deoghar, Jasidih and Rajgir. According to the learned Additional Advocate General, the parking tax or fee is being levied on the basis of the aforementioned decision of the Council of Ministers as contained in Annexure "A" to the counter-affidavit.

11. From a perusal of the aforementioned order it is evident that the same is recommendatory in nature and nothing has been brought on record for the purpose of showing as to whether any terminal tax on fact was imposed in terms of Section 13 of the said Act or not.

Section 13 of the said Act empowers only the State Government to impose a terminal tax. Such tax has to be imposed on passengers of one or more of the following classes, namely,--

- (a) Passengers brought by railway to any railway station,--
- (b) Passengers taken by railway from any railway station,--
- (c) Passengers brought by steam vessel to any landing place,--
- (d) Passengers taken by steam vessel from any landing place -- in or near a place of pilgrimage.

12. The said Act was amended by an amending order to the effect that no terminal tax shall be imposed on passengers of Class (a) or Class (b) after the commencement of the Constitution which was not lawfully being imposed immediately before such commencement, and any tax so imposed on passengers of those classes shall only be leviable until provision to the contrary is made by Parliament.

13. From a perusal of Section 13 of the Act, it is evident that the terminal tax could be imposed by the State Government only on such class of passengers mentioned therein. Parking of a vehicle does not come within the purview of Section 13 of the said Act. Further, as mentioned hereinbefore, the said Act has also got to be imposed by the State of Bihar by issuing an appropriate notification in this regard and/or in accordance with law. Even admittedly that has not been done. Although the object of levying parking fee may be laudable or the same may be required for the purpose of application for the Lodging House Fund in terms of Sections 20 and 21 of the said Act, the levy itself cannot be upheld as the Lodging Committee apparently has no jurisdiction in relation thereto.

14. It is a well settled principle of law that the tax can be imposed or fee can be levied only when a power therefore is vested in the authority concerned. It is also a well settled principle of law that a person can be subjected to a fiscal liability only in accordance with law and not otherwise.

15. In view of the aforementioned finding, it must be held that the respondent 1, Committee had no jurisdiction to levy any tax or fee on vehicle as is purported to be done by reason of Annexure 3 to the writ petition.

16. In the result, this writ petition is allowed but without any order as to costs.