

(1997) 05 AHC CK 0147

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1216 of 1980

Hindustan Sugar Mills Limited

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 285, 285(1)
Railways (Local Authorities Taxation) Act, 1941 — Section 3
Uttar Pradesh Municipalities Act, 1916 — Section 128(1), 153

Citation : (1998) 1 UPLBEC 221

Hon'ble Judges : D.P. Mohapatra, C.J; R.A. Sharma, J

Bench : Division Bench

Advocate : R.N. Trivedi, for the Appellant; Ashok Nigam, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioner has a sugar mill at Gola Gokaran Nath in which it manufactures sugar and for that purpose it brings sugarcane in railway wagons from various can purchasing centres outside Gola Gokaran Nath into the factory premises. Municipal Board, Gola Gokaran Nath, has imposed toll tax on laden vehicles including loaded railway wagons, which enter the limits of the Municipality. Being aggrieved, the petitioner has filed this writ petition, challenging the imposition of toll tax by the Municipal Board.

2. The learned Counsel for the petitioner has made two submissions in support of this writ petition, namely, (i) the impugned Rules, which provide for realisation of the toll tax from the owners of the goods brought within the municipal limits in railway wagons, is ultra vires being in contravention of the provisions of Section 153(a) of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act); and (ii) Section 3 of the Railways (Local Authorities Taxation) Act, 1941 prohibits the levy of toll tax by a Municipal Board on the goods brought in railway wagons within the territorial limits of the municipality. Learned Counsel for the Municipal Board and the learned Standing Counsel have disputed the said contentions.

3. Section 128 of the Act empowers the Municipal Board to impose taxes. One of such taxes is toll tax provided for by Section 128 (1) (vii), which is reproduced below :

"128. Taxes which may be imposed.-(1) Subject to any general rules or special orders of the State Government in this behalf, the taxes which a board may impose in the whole or part of a municipality are--

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(vii) a toll on vehicles and other conveyance, animals and coolies laden with goods other than household of passengers, which enter the limits of the municipality and unload such laden goods or any part thereof within such limits."

For imposing the tax u/s 128 the Municipal Board is required u/s 131 to frame a preliminary proposal and to make the draft of the Rules, which it desires the State Government to make u/s 296 in respect of the matters referred to in Section 153. The preliminary proposal and the draft Rules are thereafter published inviting objections. u/s 133 the Prescribed Authority, after considering the objections can sanction or refuse to sanction the proposal. If the proposal is sanctioned by the Prescribed Authority or the State Government, as the case may be, the State Government, after taking into consideration the draft Rules submitted by the Municipal Board, frames Rules u/s 296 in respect of the tax. The Rules so framed are sent to the Board by the Government and thereupon the Municipal Board directs the imposition of tax u/s 134. The resolution imposing the tax is published in the Official Gazetted u/s 135. Section 135 (3) has declared that "A notification of the imposition of a tax under sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act."

4. Section 153 (a), which requires the matters referred to therein to be regulated and governed by the Rules, is also reproduced below :

"153. Rules as to assessment, collection and other matters.-The following matters shall be regulated and governed by Rules except in so far as provision therefore is made by this Act, namely,

(a) the assessment, collection or composition of taxes, and (in the case of octroi, or toll, the determination of octroi or toll limits.)"

It is in respect of these matters referred to in Section 153 that the Municipal Board is required to make draft Rules under sub-section (2) of Section 131. Thereafter the State Government, after taking into" consideration the draft Rules prepared by the Municipal Board, frames the Rules u/s 296, which are required to be published u/s 100.

5. The Municipal Board has imposed the tax in accordance with the procedure prescribed by the Act and the Government has also framed Rules, which have been duly published. The relevant Rules are Rules 4 and 15. Rule 4 as translated

into English is as under :

No person shall bring within the limits of the Municipal Board SIR BAHANGI, animal or any vehicle loaded with goods either himself or through any other person or employee until the toll in respect has been paid to the authorised person at the toll barriers installed by the Board.

Explanation-Any vehicle includes railway wagon loaded with goods.

Item Nos. 10, 11 & 12 of the Schedule appended to the Rules have fixed the toll limit as under:

10. Loaded Railway Wagons of 4-wheelers Rs. 5/-

11. Loaded Railway Wagons of 6-wheelers Rs. 7/-

12. Loaded Railway Wagons of 8-wheelers Rs. 10/-

Rule 15 provides that if a person does not pay the toll at the barrier or enters the municipal limits without paying such tax, the Inspecting Officer shall take the vehicle including the goods in his possession will continue to retain them in his possession till the toll is paid. Rules also provide for punishment for non-payment of toll tax.

6. The contention of the learned Counsel for the petitioner is that the impugned Rules do not relate to determination of toll but in reality they impose tax on the owners of the goods and not on vehicles and are, therefore violative of Section 153 (a). In his support the learned Counsel has placed reliance on a decision of a learned Single Judge in *Ajab Singh Vs. State of U.P. and Others*, . In that case the goods were brought into the factory premises by the petitioners therein in railway wagons. The Municipal Board, Ghaziabad imposed toll tax on the laden vehicles including the loaded railway wagons. The validity of the said tax was challenged by means of a writ petition. The learned Single Judge upheld the levy of the tax but declared a part of Rule 10 (a) framed by the Government u/s 296 of the Act as ultra vires on the ground that it did not provide for determination of the toll but imposed the tax on the owners of the goods brought in railway wagons. The relevant extract from the said judgment of the learned Single Judge in the aforesaid case is reproduced below :

"It may be that the persons at the barrier may insist upon taking toll from anybody who intends to bring in the wagon but if the wagons had already entered and action is taken to recover the toll under Rule 10 it will have to be seen how far the provisions of Rule 10 are intra vires, and to my mind when the Board provided that the toll may be demanded and realised from the owners of the goods a vehicle is laden with it is going beyond the powers given u/s 153 of the Municipalities Act.

It is in fact taxing the owners of the goods and not the vehicles and also it is not providing for the determination of the tax. Cases where the amount of toll may be determined on the basis of the weight of the goods with which the vehicles

are laden with may be different but when a rule provides for the realisation of the amount of toll from the owners of the goods it is laden with it cannot be said to be providing "for the determination of the toll" as contemplated by Section 153. In my opinion therefore that part of Rule 10 (a) which provides for the realisation of the amount from the owners of the goods with which a vehicle is laden goes beyond the provisions of Section 153 and is ultra vires."

Against the aforesaid judgment of the learned Single Judge Special Appeal was filed before a Division Bench. There being difference of opinion between the two Hon"ble Judges, constituting the Division Bench, the following question was referred to a learned third Judge :

"Whether the tax, which the respondent Board is seeking to impose on the appellant is a toll?"

The learned third Judge upheld the imposition of the toll tax but the question relating to the validity of Rule 10 (a), part of which was struck down by the learned Single Judge, was not dealt with. This decision is reported in Hindustan Vanaspati Manufacturing Co., Ltd. Vs. Municipal Board and Others, .

7. Section 153 does not confer any power on the rule making authority to impose a tax. It only requires that the matters referred to therein are to regulated and governed by the Rules. A Division Bench of this Court in The United Provincial Transport Co., Allahabad and Ors. v. State of UP. and Ors. 1975 UPTC 172, while interpreting Section 219 of the UP. Nagar Mahapalika Adhiniyam, 1959, which is in pari Materia with Section 153 of the Act has held as under :

"Section 219, however does not confer any power on the rule making authority to impose a tax or to fix the rate thereof. All that is concerned with is to prescribe the mode of assessment, collection or composition of tax and the determination of octroi or toll limit."

According to Section 153(a) the assessment, collection or composition of taxes as well as the determination of octroi or toll limits are to be regulated and governed by the Rules. As regards the toll tax, this Section merely requires the Rules to fix the "toll limits" and method/manner of its collection. If the Rules have fixed the toll limit and have provided for the Method/manner of its collection and have also specified the persons from whom it is to be collected, Section 153(a) stands complied with. Toll tax on loaded vehicles/wagons is essentially a tax on the vehicles under Suction 128 (1) (vii) of the Act. It does not cease to be a toll on vehicles merely because it is realised from the person, who is incharge of the vehicle or from the person, who is the owner of the goods with which the vehicle is laden with. In this connection reference may be made to the decision of this Court in Mahadeo Prasad v. Tanda Municipal Board 1959 ALJ 270, wherein it was laid down as under :

"A toll tax on vehicles etc. entering the municipality has been imposed and I do not see any force in the contention that it is not a toil on vehicle etc. but is a toll

on goods. Merely because there is a reference In the bye-law to the nature of goods, to the liability of the importers to have the goods examined and to exemption of certain goods from the payment of toll it cannot be said that what is imposed is not a toll on vehicles but a toll on goods. What is material is that the toll must be payable on vehicles etc. entering into the municipal limit. It is open to a Municipal Board to fix different rates of toll for vehicles etc. containing or laden with different kinds of goods. There is nothing in the Act to prevent the Municipal Board from differentiating between one kind of goods and another kind of goods, fixing different rates of toll for different kinds and exempting certain goods from payment of any toll. Provided that the toll is in very case made payable on vehicles and other conveyance entering into the municipality, it is a valid imposition u/s 128(1) (vii) even though different rates of toll are prescribed for different kinds of goods carried in the vehicles and other conveyance."

A Division Bench in *Basti Sugar Mills Co. Ltd. v. State of U.P.* 1983 UPLBEC 207, considered the similar Rules imposing the toll tax on laden vehicle by a Municipal Board. In that case the submission of the learned Counsel for the petitioner therein to the effect that such a tax in respect of vehicle laden with goods is in reality a tax upon goods was rejected by the Division Bench. Here reference may also be made to a decision of Supreme Court in *Municipal Board, Mainpuri v. Kanhaiya Lal* 1959 ALJ 882. In that case the Mainpuri Electric Supply & General Mills Co. Ltd., which used to bring coal in railway wagons from places outside Mainpuri, challenged the imposition of the toll tax u/s 128 (1) (vii) of the Act, when it was being prosecuted for an offence relating to non-payment of toll tax. Supreme Court, after considering the provisions of Section 128 (1) (vii), Section 153 (a) and the Rules framed in connection therewith, which were almost in part materia with the Rules in the instant case, laid down as under :

"The following ingredients of the offence may be gathered from a combined reading of the said provisions : (1) The toll is on vehicles; (2) a person cannot bring a laden vehicle without paying the prescribed toll within the limits of the Municipality from without; (3) the person in charge of such vehicle must pay a toll at the barrier; and (4) if he does not pay, he is liable to punishment. It is clear from the wording of the provisions that they are designed for collecting toll from laden vehicles entering the municipal limits from without."

In the instant case the Rules provide for realisation of the toll from the person, who brings the goods in vehicles/wagons. Such a person may or may not be an owner of the goods with which the vehicle is loaded. These Rules are, therefore, in conformity with Section 153 (a) and no exception can be taken to such Rules. The decision of the learned Single Judge in *Hindustan Banaspati Manufacturing Ltd. v. Municipal Board, Ghaziahad* (supra), does not lay down correct law and is, therefore, overruled. The first submission of the Seamed Counsel for the petitioner is, accordingly rejected.

8. The second contention of the learned Counsel for the petitioner is, however, liable to be accepted. u/s 128(1)(vii) of the Act the Municipal Board can impose

toll tax "on vehicles" laden with goods which enter and unload the laden goods within the local area. Toll is thus, a tax on the vehicles and is not a tax on the goods a vehicle is laden with. As according to the impugned rules "vehicle" includes railway wagon loaded with goods, the Municipal Board is, entitled u/s 128 (1) (vii) of the Act to impose toll tax on railway wagon loaded with goods which enters and unload such goods in the local area. But the railway wagons, being the properties of the Railways, belong to the Central Government and Article 285 of the Constitution of India, which is reproduced below, exempts the property of the Union from the taxes imposed by a State or by any authority within a state.

"285(1). The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in Clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union of which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State.

The Union property is, therefore, immune from State taxation and such are immunity can only be withdrawn by law made by the Parliament. The Parliament has not made any law withdrawing the immunity of the properties of the Railways from the State taxation. The present case is not covered by Clause (2) of Article 285, because the impugned Rules levying toll on the vehicles were published for the first time in 1978. Therefore, the railway wagons cannot be subjected to tax by the Municipal Board."

9. Supreme Court in Union of India (UOI) Vs. City Municipal Council, Bellary, , while dealing with the power of a Municipal Board to subject the Railway property to tax has, after quoting Article 285 of the Constitution, laid down as under :

"The property of the Union is exempt from all taxes imposed by a State or by any authority within a State. But the Parliament may law provide otherwise and then any tax on the property of the Union can be imposed and levied in accordance with the said law."

Before the commencement of the Constitution of India, the Railways (Local Authorities" Taxation) Act, 1941 was enacted Section 3 of which laid down that the property of the Railway Administration shall not be liable to any tax in aid of the funds of any local authority in the absence of a notification by the General Government, declaring the said property to be so liable. Section 3 of the said Act is reproduced below :

"3. Liability of railways to taxation by local authorities.--(1) in respect of property vested in the Central Government, being property of a railway, a railway administration shall be liable to pay any tax in aid of the funds of any local

authority, if the Central Government, by notification in the Official Gazette, declares it to be so liable.

(2) While a notification under Sub-section (1) is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or in lieu thereof such sum, if any, as a person appointed in this behalf by the Central Government may, having regard to the services rendered to the railway and all the relevant circumstances of the case, from time to time, determine to be fair and reasonable. The person so appointed shall be a person who is or has been a Judge of a High Court or a District Judge."

Supreme Court in Union of India (UOI) Owner of the Eastern Railway Vs. The Commissioner of Sahibganj Municipality, , while considering the effect of Section 3 of the aforementioned 1941 Act has held as under :

"Section 3 provides that any railway property vested for purposes of the Central Government shall be liable to pay tax in aid of the funds of a local authority if the Central Government by notification declares it to be so liable. This Section, therefore, requires a notification declaring liability to pay. The notification under the 1941 Act creates a liability for railway property coming into existence after 1941 Act. But no such notification was issued."

In the instant case it is admitted that no notification has been issued by the Central Government u/s 3 of the 1941 Act making the railway property liable to pay any tax. But after the commencement of the Constitution of India the immunity granted by Article 285 of the Constitution to the Union property from State "Taxation is effective and no law other than , the law made by the Parliament can withdraw such immunity. Supreme Court in Union of India v. The City Municipal Council, Bellary (supra), has held that the aforementioned Act of 1941 making the railway liable to State taxation by means of a notification is repugnant to clause (1) of Article 285. in this connection the relevant extract of the Supreme Court decision is reproduced below :

"The argument of Mr. Ramamurthi with reference to Article 372 of the Constitution for taking out the case of the respondent from the general bar of clause (1) of Article 285 can be briefly disposed of first. The Railway (Local Authorities Taxation) Act, 1941 continued in force as an existing law under Article 372. Clause (1) thereof provides :

"372. (1) Notwithstanding the repeal by this Constitution of the enactments referred to in Article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

But the continuance in force of such an existing law is subject to the other provisions of this Constitution". In other words if the said law contravenes or is repugnant to any other provisions of the Constitution then it has to give way to

such provision of the Constitution and its continuance in force after the commencement of the Constitution is affected to the extent it contravenes or is repugnant to the said provision. The Act of 1941 creating the liability of the Railways to taxation by local authorities was passed by the then Central Legislature which was a Federal Legislature of India. The present Central Legislature, namely, the Parliament has not enacted any law after coming into force of the Constitution making any provision affecting the exemption of the property of the Union from all taxes imposed by a State or by any authority within a State. The 1941 Act is repugnant to clause (1) of Article 285. It is neither a law made by Parliament nor a law made by the Central Legislature after the advent of the Constitution. In either view of the matter it is not a law covered by the phrase "save in so far as Parliament may by law otherwise provide" occurring in clause (1) of Article 285."

10. There is neither any notification u/s 3 of 1941 Act making the railway property liable to the State taxation nor is there any law made by Parliament under Article 285(1) of the Constitution of India withdrawing the immunity of the railway property from the State Taxation. Therefore, the toll tax in question cannot be imposed on "railway wagons even though they are vehicle within the meaning of Section 128 (1) (vii) of the U.P. Municipalities Act.

11. The writ petition is accordingly allowed. The impugned bye-laws, so far as they impose toll tax on railway wagons laden with goods are quashed. In view of the facts and circumstances of the case, there shall be no order as to costs.