

(1956) 11 AHC CK 0018

In the Allahabad High Court

Case No : Civil Misc. Writ No's. 1087 and 1093 of 1955

Hindustan Vanaspati Manufacturing Co. Ltd.

APPELLANT

Vs

Municipal Board Ghaziabad and Others

RESPONDENT

Date of Decision : 12-11-1956

Acts Referred:

Constitution of India, 1950 — Article 265

Uttar Pradesh Municipalities Act, 1916 — Section 128, 128(1), 153

Uttar Pradesh Municipalities Regulation, 1916 — Regulation 1, 10

Citation : AIR 1957 All 155 : (1957) 27 AWR 193

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : G.S. Pathak and R.S. Pathak, for the Appellant; Brijlal Gupta and Jagdish Sahai and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—The petitioner is a joint stock company incorporated under the Indian Companies Act, 1913. Its registered office is situate at Scindia House, Ballard Estate, Bombay, and one of the branch offices is situate at Lever House, Ajmeri Gate, New Delhi. The petitioner has factories at various places in India, including one at the Grand Trunk Road, Ghaziabrd, Uttar Pradesh. The petitioner manufactures Vanaspati in the factory and commodities like vegetable oils are supplied to the factory.

Some consignments of soaps manufactured by M/s Lever Brothers (India) Limited, the associate of the petitioner, are also received at this factory for storage. The goods are brought into the factory by railway wagons over an Assisted Railway Siding which branches off the main railway line and then passing through the factory boundary ends inside the premises of the factory.

The factory is situate within the limits of the Ghaziabad Municipality. Subsequent to the agreement between the Government of India and the Vanaspati Industries Limited, Ghaziabad, the Assisted Railway Siding was construed and the factory

was acquired by the petitioner from the said Vanaspati Industries Limited. A fresh agreement was then required by the Government of India to be entered into regarding this railway siding.

On the 10th of September 1953 a fresh agreement was entered into between the President of India acting through the Northern Railway Administration and Messrs. Hindustan Vanaspati Manufacturing Company Limited, Ghaziabad. The land for the siding was acquired by the Railway Administration and vests in it. The construction, maintenance and operation of the whole of the siding and all works in connection therewith were, and are carried out by the Railway Administration, whether done inside or outside the factory limits.

The Commissioner of the Meerut Division made certain rules under the U. P. Municipalities Act for the Ghaziabad Municipality and they were published by the Notification dated the 22nd of June 1922, and these rules were amended from time to time. In the year 1952, Rule 1, read as follows:--

"No person shall bring within the limits of the Ghaziabad Municipality any laden vehicle or laden animal in respect of which a toll is leviable until the toll due in respect thereof has been paid to such persons, and at such barriers, as the Board may from time to time appoint."

Rule 10 of the Rules provides as follows:--

"10 (a). If the toll has not been paid according to Rule 1 it may be realised from the owner of the vehicles or animal and from the owner of goods it is laden with.

(b) When it is proposed to proceed under the rule the Executive Officer shall serve a written notice of the demand on all or any of the persons mentioned in Sub-clause (a) calling upon him or them jointly to pay the amount within fifteen days from the date of receipt of such notice.

(c) The person so served with notice under Sub-clause (b) above shall, unless he is able to produce satisfactory evidence that he is not liable under these rules to prove that he was not the owner of the vehicles, animals or goods, as the case may be, pay the amount of demand by such notice within the period specified above."

The penalty was then provided under another rules framed u/s 299(1) of the Act. In April 1952 a notice was issued by the Executive Officer, Municipal Board, Ghaziabad, to the petitioner informing it that it had not paid any toll in respect of goods received by the factory from outside. The petitioner wrote back on the 23rd of April 1952 that the petitioner was not liable to pay toll on goods despatched to the factory from outside the limits of Ghaziabad Municipality and delivered by the railway at the factory siding and it was pointed out that Rule 1 did not refer to the entry of laden railway wagons and that the Municipal Board was not competent to make rules relating to the movement of goods by rail.

Subsequently a notification was issued on the 3rd of July 1954 amending Rule 1

and by the amendment other laden conveyances were also included within its ambit. Explanation to Rule 1 added by the amendment specifically provided that other laden conveyances included laden railway wagons. Corresponding amendments were made in Rule 10 and in the penalty clause. A letter was then issued dated the 17th of July 1954 to the petitioner informing it that under the amended rules the goods entering through the Railway Siding in the factory premises were liable to payment of toll with effect from the 20th of July 1954.

The petitioner wrote back to the Municipal Board that the amendments were ultra vires so far as they related to railway wagons. In December 1954 a criminal complaint was filed in the court of the Sub-Divisional Magistrate, Ghaziabad, against the petitioner alleging that the petitioner was importing various commodities into the premises of the factory by railway wagons and was liable to pay toll and it was guilty of the contravention of Rule 10 of the Rules. A written reply was filed.

Another complaint was filed in February 1955 against the petitioner for the same offence. Being harassed by these criminal proceedings a civil suit was instituted in the court of the Civil Judge, Meerut, on the 11th of March 1955, for a declaration that the respondents Nos. 1 and 2 were not entitled to levy a toll on the laden conveyances including laden railway wagons. That suit is still pending and written statements were filed.

During the pendency of the suit the petitioner applied for an interim injunction which was granted. An appeal was preferred against that grant of interim injunction and was allowed on the 9th of July 1955 by the District Judge, Meerut. After the grant of the interim injunction the Sub-Divisional Magistrate, Ghaziabad, ordered the record of the two criminal cases to be consigned pending the decision of the civil suit.

On the 13th of September 1955 the opposite party No. 2 filed a third complaint against the petitioner on the ground that the petitioner had violated Rule 1, and the petitioner thereupon filed this petition on the 8th of November 1955 for the following reliefs: --

(a) A writ in the nature of mandamus directing the respondents Nos. 1 and 2 not to levy toll upon, or to realise it from, the petitioner in respect of the entry of laden railway wagons on the Assisted Railway Siding into the premises of the petitioner's factory.

(b) A Writ in the nature of prohibition restraining respondent No. 3 from proceeding further with the Criminal cases instituted by the respondents Nos. 1 and 2 against the petitioner and pending before him.

(c) A writ in the nature, of certiorari quashing the proceedings already taken in the aforesaid criminal cases by the respondent No. 3.

(d) Such other writ order or direction may be issued by this Court as it may deem just and proper.

2. Petition No. 1093 of 1956 which has been connected with this petition has been filed under Article 228 of the Constitution praying that the criminal cases instituted on the 27th of December 1954 the 1st February 1955 and the 13th of September 1955 and pending in the court of the Sub-divisional Magistrate, Ghaziabad. be withdrawn from that court and be decided by this Court as certain questions of law set out in the above application arise in the case for decision.

3. The main contention raised by the petitioner is that as the Municipal Board does not maintain or contribute to the maintenance of or render any service in respect of the Assisted Railway Siding in fact or under law it is not entitled to law toll in respect of the entry of railway wagons on this railway siding, the law of toll contravenes Articles 31 and 265 of the Constitution.

Shortly put, the argument of the petitioner is that the word "toll" had acquired a particular meaning under the common law and the Constitution when it used that word construed the meaning of the word "toll" in the same sense in which it was accented by the common law. The toll necessarily implies a corresponding duty or service rendered by a public body.

In the absence of any rendering of service by the public body it cannot levy any toll and any levy made by the public body without providing for facilities or without rendering service is ultra vires. A very large ground was covered by the counsel for the parties in the argument in this case; but it is not necessary for the purposes of disposing of this case to go into all the grounds.

4. In Halsbury Laws of England, II edition, Volume 16, page 254, under the heading "Tolls" Law has been laid down that:

"The common law recognises two classes of tolls payable under a grant or presumed grant from the Crown in respect of the passage of a highway or bridge, namely, "tolls-traverse" and "tolls-thorough."

A toll-traverse is a toll taken in respect of the original ownership of the land crossed by the public though now perhaps severed therefrom), such land having been at the date of the grant 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 ownership of the soil by the original grantee, the consideration necessary to support it being usually the liability to repair the particular highway or bridge. A toll reasonable in amount, but varying from time to time according to the value of money, is valid in law."

In Lord Simonds' Halsbury's Laws of England, third edition, volume 7, paragraph 685, heading "Taxes and tolls" the law is thus laid down:

"The Crown cannot by grant impose new taxes or enlarge old ones. In certain cases, however, where the grant is for the public utility and there is a quid pro quo to the public, a grant of the right to take a toll is valid. Thus, grants of pontage and murage are valid; markets, fairs, ferries, and harbours may be

granted with the right to take tolls or dues; and tolls on the highway may be claimed by grant or prescription, though they may not, it is said, be granted at the present day.

All such tolls and dues must, in general, have a reasonable commencement, and be fair and moderate in their amount; otherwise the franchise Will be void."

Section 128 of the Municipalities Act under which the toll was imposed provides as follows: --

"128. (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 any part of a municipality are-

- (i) a tax on the annual value of buildings or lands or of both;
- (ii) a tax on fares and callings carried on within the Municipal limits and deriving special advantages from, or imposing special burdens, on municipal services;
- (iii) a tax on trades, callings and vocations Including all employments remunerated by salary or fees;
- (iv) a tax on vehicles and other conveyances paying for hire or kept within the municipality or on boats moored therein;
- (v) a tax on dogs kept within the municipality;
- (vi) a tax on animals used for riding, driving, draught or burden, when kept within the municipality;
- (vii) a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality;
- (viii) an octroi on goods or animals brought within the municipality for consumption, use or sale therein;
- (ix) a tax on inhabitants assessed according to their circumstances and property;
- (x) a water-tax on the annual value of buildings or lands or of both;
- (xi) a scavenging tax;
- (xii) a tax for the cleaning of latrines and privies;
- (xiii) a tax on goods imported into or exported from any municipality in which an octroi was in force on the sixth day of July, 1917, or with the previous sanction of the Central Government, any other municipality;
- (xiv) any other tax which the State Legislature has power to impose in the State under the Constitution;

(2) Provided that taxes under Clauses (iii) and (ix) of Sub-section (1) shall not be levied at the same time, nor shall an octroi on goods under Clause (viii) of

Sub-section (1) and a tax under Clause (xiii) of Sub-section (1) be levied at the same time.

Provided also that no tax under Clause (iv) of Sub-section (1) shall be levied in respect of any motor vehicle.

(3) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution:

Provided that a board which immediately before the commencement of the Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament." The power to impose a toll tax is to be found in Sub-section (vii) of Section 128; a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality. Sub-section (xiv) also gives power to the Board to levy any other tax which the State Legislature has power to impose in the State under the Constitution.

The Seventh Schedule, List II of the Constitution which deals with the State-List, Entry 59 provides "tolls". The Government of India Act, 1935 Item 53 of List II also provided for tolls. The Board therefore had power u/s 128 to impose a toll tax. The argument of the petitioner is, as I have already indicated that at the word "toll" has acquired a meaning which necessarily implies an idea of quid pro quo under the common law when the Constitution used that word it necessarily used it in that context and the word "toll" in Section 128, Sub-section (vii) cannot be given a different meaning from that in the Constitution.

No objection can be taken to the proposition of law urged by the petitioner that the words used in the Constitution must be interpreted So as to give the same meaning which was given to these words under the common law and the framers of the Constitution must be interpreted to have used this word in the same sense.

Reference may be made in this connection to the case of Raja Suryapalsingh and Others Vs. The U.P. Govt., , where X a Full Bench of this Court was dealing with the word "compensation" as used in Article 31 of the Constitution and there it was observed as follows:--

"If the Legislature uses a term which has a well settled meaning, that meaning must, in the absence of any indication to the contrary, be given to it. The relevant provisions of Article 31(2) of the Constitution so closely follow those of Section 299 of the Government of India Act, 1935, the words being almost identical that it is impossible to escape the conclusion that the word "compensation" was intended to have the same meaning in the Article as in the section."

5. The question, however, to be determined is what is the meaning which was given to the word "toll" under the common law. Emphasis was laid by the counsel for the petitioner on the fact that the word "toll" necessarily implied an element of quid pro quo. It was a levy authorised for the purpose of rendering

service and if from the circumstances or from the nature of the vehicle used it appears that the local body was not in a position to render any service for the use of that vehicle no toll can be levied.

The argument in effect is that as the Assisted Railway Siding is the property of the Railway Administration, the maintenance is exclusively done by the railway and as at no stage the railway wagons which bring in the goods have to use the municipal bridges or roads no service in fact or in law is rendered by the Municipal Board in respect of these wagons and consequently no toll could be levied. It is true that the toll necessarily implies an idea of *quid pro quo*. The power to levy a toll is granted to the local bodies as a consideration for their rendering service. But it does not follow that any bye-law by which a toll has been levied on any vehicle entering into the precincts of the Municipal Board laden with goods is *ultra vires* as not coming within the ambit of Section 128, Sub-section (vii).

If the argument of the petitioner is accepted, no toll can be levied on any vehicle at the point of entry because till then it is not known whether the vehicle is in fact going to use the roads or the bridges constructed and maintained by the Board. The power has been given to the Board to impose a tax on any vehicle entering within the precincts of the Municipal Board as the Board has to maintain bridges and roads within its limits which are likely to be used by the vehicles entering its precincts.

It can also not be said that under no circumstances a railway wagon is likely to utilise the roads or the bridges constructed by the Municipal Board. There may be cases where the railway itself passes through the municipal limits and has to cross a culvert; the land may belong to the railway but the culvert may have to be maintained by the Board. It cannot, therefore, be said that in this particular case because the railway wagon has not to pass through any municipal land or over the roads and bridges maintained by the Board the Board had no power to impose a toll tax.

The contention of the petitioner is not that because the bye-law does not itself make provision for the service to be rendered by the Board in respects of the land over which the wagons pass such a bye-law is *ultra vires*. There is also no limitation placed in Section 128 on the amount of the toll tax leviable in respect of any conveyance. The section does not provide that the amount of toll tax should be enough to meet the expenses incurred by the Board in order to maintain the roads or bridges likely to be used by that vehicle.

To my mind the power has been given to the Board to levy toll tax as a consideration for its maintaining roads and bridges which may be likely to be used by the vehicle. It does not mean that there should be a service rendered by the Board to every vehicle before it can impose a tax on that vehicle.

6. It was urged by the counsel for the Municipal Board that as the Legislature has put toll on a par with other taxes in Section 128 of the Municipalities Act and has

recognised toll as a kind of tax the idea of quid pro quo is eliminated. I do not think that there is any substance in this argument. Every levy is a tax in its generic sense and in the matter of imposition and other matters because the Legislature has thought to put toll together with other taxes, it does not necessarily mean that any different meaning is to be given to the word "toll" than the meaning which has been given to it by the common law.

But as I have already observed in deciding the validity of the bye-law the criterion will not be whether in a particular case no service is rendered by the Board, but the criterion will be whether the Board had power to levy toll under the statute. In my opinion therefore there is no force in the contention of the petitioner that the bye-law levying a toll on any other vehicle or conveyance coming within the limits of the Municipal Board laden with goods, including a railway wagon, is ultra vires.

7. The next point which was urged was that in any case the petitioner could not be required to pay the toll tax in respect of the goods brought within the precincts of the factory in railway wagons. Section 153 of the Municipalities Act provides as follows:--

"153. 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 limit;
- (b) the prevention of evasion of taxes;
- (c) the system on which refunds shall be allowed and paid;
- (d) the fees for notices demanding payments on account of a tax and for the execution of warrants of distress;
- (e) the rates to be charged for maintaining live-stock distrained; and
- (f) any other matter relating to taxes in respect of which this Act makes no provision or insufficient provision and provision is, in the opinion of the State Government necessary."

Certain rules have been framed by the Municipal Board, Ghaziabad, in the exercise of its power under the regulations framed u/s 153 and Regulation 1 provides that:

"No person shall bring within the limits of the Ghaziabad Municipality any laden vehicle or laden animal in respect of which a toll is leviable until the toll due in respect thereof has been paid to such persons, and at such barriers, as the board may from time to time appoint."

Rule 10(a) provides that:

"If the toll has not been paid according to rule No. 1 it may be realised from the

owner of the vehicles or animal or from the owner of goods it is laden with."

8. The contention of the petitioner is that as the regulation empowers the Board to realise a toll from the owner of the goods with which a particular vehicle is laden it is really a tax on the goods and is not a toll levied on the vehicle. Section 128, Sub-section (vii) gives power to the Board to levy a toll on vehicles and other conveyances, animals, and laden coolies entering the municipality.

Primarily, therefore, a toll is a tax on the conveyance and Section 153 provides for framing regulations for the determination of the toll. The regulation, when it provides for recovery of the tax from the owners of the goods, cannot be said to be providing for the determination of the toll. Under Rule 1 there is a prohibition for bringing any laden vehicle within the municipal limits unless the toll has been paid to such persons and at such barriers as the Board may from time to time appoint.

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*.

9. In the result, therefore, the petitioner is not entitled to a mandamus directing the opposite parties Nos. 1 and 2 not to levy any toll upon the railway wagons entering the municipal precincts; but it is entitled to a relief in the nature of prohibition restraining the opposite party No. 3 from proceeding further with the criminal cases and from realising the toll from the petitioner under Rule 10.

10. A number of preliminary points were raised by the opposite parties, but to my mind they have no substance. It was urged that the petitioner has an alternative remedy to raise these points in the criminal prosecutions which are going on and further that those points will be decided in the suit itself which is pending. I do not think that the remedy of agitating these points in the criminal courts or in the suit is an equally adequate remedy in the circumstances of the

case.

The petitioner is now challenging the validity of certain bye-laws of the Municipal Board which affected the fundamental rights of the petitioner and as the decision may affect a large number of similarly situate people the remedy suggested by the opposite parties cannot be regarded as an equally adequate remedy as the remedy by means of a written petition under Article 226 of the Constitution.

11. I, therefore allow this petition in so far that a writ of mandamus be issued restraining the opposite party No. 3 from proceeding further with the criminal cases against the petitioner and the opposite parties are further restrained from realising the toll from the petitioner under Rule 10 of the Rules framed. In other respects the petition is rejected. As the petitioner has only partly succeeded the parties will bear their own costs.