

(1981) 01 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 96 of 1976

Jiya Lal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-01-1981

Acts Referred:

Tolls (Amendment) Act, 1864 — Section 3
Tolls Act, 1851 — Section 2

Citation : AIR 1981 All 72

Hon'ble Judges : S.J. Hyder, J;K.N. Singh, J

Bench : Division Bench

Advocate : L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hyder, J.—The controversy in this writ petition covered a wide range during the course of the arguments at the bar. We feel that it would not be necessary for us to deal with all the submissions urged on behalf of the parties as this writ petition must succeed on a short point.

2. The petitioners, who are eleven in number, are holders of Stage Carriage Permits. Their vehicles ply on Muzaffarnagar Charthawal Garni Kalan route. On the said route, just before Chartha-wal, the road crosses the river Hindan. In the year 1965, the State of U. P. constructed a bridge of sufficient strength to allow heavy vehicles to pass over it. A total sum of Rs. 6,70,000/- was spent by the State Government on the construction of the bridge and its approach roads. There is no serious controversy between the parties in so far as these facts are concerned.

3. The Indian Legislature passed Indian Tolls Act, 1851 (hereinafter referred to as the Act of 1851). It is an Act enabling the Government to levy tolls on public roads and bridges. The said Act did not initially apply to the areas now forming part of the State of Uttar Pradesh. However, the Legislature passed another Act

known as the Tolls Act (Act 15 of 1864). Section 3 of Act 15 of 1864 empowers the State Government of any area to which Act of 1851 did not apply to extend the provisions of the said Act in respect of such area. It is common ground between the parties that the Act 1851 has been extended by the State of Uttar Pradesh to the territories forming part of the State.

4. Section 2 of Act of 1851, *inter alia*, lays down that the Government may cause such toll as it thinks fit to be levied on any road or bridge which had been or was thereafter to be made or repaired at the instance of the Central Government or any State Government; and to place the collection of such tolls under the management of such persons as may appear to it proper. Section 8 of that Act also lays down that the tolls levied under this Act shall be deemed to be public revenue. The Act also contains ancillary provisions for giving effect to the provisions contained in Section 2 referred to above.

5. The concept of tolls has its roots in the history of England and was at one time closely interlinked with the feudal society which prevailed there. It will be unnecessary pedantry to trace the growth of this levy in the various forms in which it was imposed in that country. Suffice it to say that toll is now an important part of public finance and is recognised by the Indian Constitution.

6. The language of Section 2 of the Act of 1851 itself indicates the criteria on which the tolls can be levied on construction of bridges. According to the words used therein, there has to be a reasonable nexus between the levy and the amount spent by the Government in the construction or the repair of the road or bridge. (See *Maheshwari Singh Vs. State of Bihar and Others*, and *Mohammad Ibrahim Vs. State of U.P. and Others*, .

7. Toll may not be a fee in the strict sense. It is nevertheless a compensatory tax. The main object of the Act of 1851 is to arm the Government with the power to realise the amount which may be spent by it either in the construction or repair of a bridge. The power conferred on the Government under the Act of 1851 cannot be called in aid by the State Government for augmenting its general revenues. On November 10, 1965, the State Government issued a notification u/s 2 of the Act of 1851. The said notification, *inter alia*, provided that for so long as the total cost of the construction of bridge had not been realised in full or for a period of 20 years from the date of the first levy of tolls on the bridge, the Government shall continue to realise tax on all bridges which were to be constructed after July 21, 1956. A schedule of rates on the basis of which the tolls were to be realised was appended to the notification. After the said notification, number of other notifications were issued by the State Government. The matters came to a head when the State Government issued a notification dated December 3, 1975 enhancing the rate of tolls payable by public service vehicles carrying more than 12 passengers to a sum of Rs. 20/-. On the issue of the said notification, the petitioners filed this writ petition praying that a writ of mandamus may be issued commanding the State Government and its officers not to realise any toll from the petitioners. Another specific prayer made in the

petition was that a mandamus may be issued to the State Government not to realise any toll from the petitioners at the rates contained in the notification dated Dec. 3, 1975. However, during the pendency of this writ petition, which was filed in February 1976, the State Government issued another notification dated June 6, 1976, reducing the toll on the public service vehicles of the category referred to above from Rs. 20/- to Rs. 10/-. The petitioners thereupon filed a supplementary affidavit and challenged the validity of the said notification also.

8. We have already stated that Chathrawal bridge was completed in the year 1965 and the toll in respect of the said bridge was imposed immediately after it was open for traffic. Sri Sobha Ram, Upper Grade Clerk, in the office of the Executive Engineer, Provincial Division, P. W. D., Muzaffarnagar, has filed a supplementary counter-affidavit on behalf of the respondents. Annex. "A" to the said affidavit indicates the amount spent over the construction of the bridge and the toll tax realised from persons liable to pay the same from the year 1965-66 to 1978-79 (both years inclusive). In the said statement, certain other details which the respondents considered to be relevant have also been mentioned. A glance at the said statement reveals that as against the sum of Rs. 6,70,000/- spent by the Government over the construction of the bridge, the State Government had already realised a sum of Rs. 6,74,259/- as toll from the persons liable to pay it. However, the statement indicates that in spite of the realisations made, a sum of Rs. 13,32,630/- was still due to the Government under the provisions of Section 2 of the Act. This remarkable result has been achieved by adding interest on the principal amount actually spent at rates varying from 7% to 10% and also by adding the expenditure incurred on the realisation of toll and the maintenance of the bridge. The charges for collection of tolls in the year 1965-66 are shown in the statement as Rs. 5500/-. There has been a progressive increase in the collection charges until a sum of Rs. 18,312/- is alleged to have been spent under the said head in the year 1978-79. The total sum which is said to have been spent as collection charges of toll as given in the statement amounts to Rs. 181240/-. The amount alleged to have been spent on the maintenance of the bridge is constant and is placed at Rs. 3500/- per annum. The interest on the sum spent in the construction of the bridge has been worked out at Rs. 11,08,593/-.

9. The language of Section 2 of the Act of 1851 is peremptory. The collection of tolls under the said provision is permissible only to meet the cost of construction of the bridge or its approach road. It can also be levied to meet any extraordinary repair which it is considered necessary to carry out in order to maintain the stability of the bridge or road, as the case may be. The question which falls for our consideration is whether the State is justified in charging interest on the amount actually spent on the construction of the bridge and also the amount spent by it in the collection of tolls or in carrying on its ordinary repairs.

10. Now it is not in dispute that the cost of constructing the bridge and its approach road were made by the State from its general revenues. No amount was borrowed by the State Government from any financial agency for this purpose. The State Government has not paid any interest on the sum spent by it in the execution of the project. We are, therefore, of the opinion that the State Government is not justified in charging Interest varying from 7% to 10% on the actual amount spent by it. The notional interest worked out on the actual expenditure made from the general revenues in the construction will go on accumulating and the levy of toll would become perpetual so long as the bridge continues to exist. This is not the intention behind Section 2 of the Act of 1851.

11. Construction of roads and bridges is a part of the welfare activity of the State. In order to promote trade, commerce and free intercourse, it is incumbent on the State to construct more roads and bridges. With a view to usher an era of prosperity and well being, this activity must continue to be performed by the State. If a road or bridge, as the case may be, is constructed by the State from its general revenues, it is not called upon to pay interest to anybody. In making the constructions, the revenues of the State are being legitimately spent in fostering the well being of the people. There may be cases where in order to construct a bridge or a road, the Government or its instrumentality borrows money from a financial institution and agrees to pay interest thereon. It is only in such case that the interest paid by the Government or its instrumentality can be said to be included in the cost of the construction of the bridge or road. As already indicated, this has not happened in the instant case. We are, therefore, of the opinion that no interest on the actual amount spent by the Government in the construction of the bridge can be taken into account in working out the cost of the Hindan bridge in the instant case.

12. The position with regard to the collection charges is however, different. The net amount received by the Government as tolls can only go to meet the cost of its actual construction. There is a reasonable nexus between the amount charged as cost of construction and the cost incurred in the collection of tolls. On behalf of the petitioners, it has been urged that the Government has a large staff for the realisation of its revenues and the tolls could be collected by the said staff. This argument, however, is fallacious and cannot be accepted. Section 2 of the Act of 1851 itself indicates that the Central or the State Government may place the collection of tolls under the management of such persons as may appear to it proper and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land revenue. There are detailed provisions in the Act for the recovery of tolls and also for the penalty for its evasion. The collection of tolls has necessarily to be entrusted to a separate staff and the cost incurred in employing such staff is a legitimate charge which should be taken into account in working out the actual amount realised by the Government towards the cost of construction.

13. We have already pointed out that the cost incurred in the maintenance of the bridge are stated to be Rs. 3350/- per annum throughout. There is a real distinction between the cost incurred in the maintenance and the repair of a structure. The maintenance of a structure is a routine activity which has to be distinguished from its repairs. "Maintenance" means "to preserve or to keep in good condition." The object of the maintenance of a structure is to prevent its falling into decay. On the other hand, the word "repair" indicates the restoration to a good and sound condition of a structure which has been decayed or damaged. Section 2 of the Act of 1851 permits the levy of toll only if the road or bridge is repaired. It does not contemplate of a levy of toll merely on the ground of its maintenance. We are therefore, of the opinion that the amount spent towards the cost of the construction of a bridge will not include any sum which had been spent in its maintenance. No toll is chargeable under Sec. 2 of the Act of 1851 to meet the expenses incurred in the maintenance.

14. The net result of the above discussion is that whereas the State Govt. had spent a total sum of Rs. 6,70,000/-, in the construction of the bridge in question and its approach road, it has also incurred an expenditure of Rs. 1,81,240/- towards the cost of the staff appointed to realise the toll tax. The total sum thus payable to the State Government up to the end of the year 1978-79 would come to Rs. 8,50,124/-. It is admitted that a sum of Rs. 6,74,259/- had been realised by the State Government up to the end of the year 1978-79. The annual realisation of the toll tax during the year 1978-79 was to the tune of Rupees 1,50,285/-. It would be reasonable to presume that the realisation would have remained at the same level during the years 1979-80 and 1980-81, In this way, the State Government had already been duly compensated for the amount spent by it in the construction of the bridge and its approach roads as well as the cost of the staff appointed to realise the toll tax. The State Government is not entitled to realise any further toll tax in respect of the Hindan Bridge.

15. The result is that the writ petition succeeds and is hereby allowed. A writ of mandamus is issued to the respondents not to realise any toll tax from the petitioners u/s 2 of the Indian Tolls Act of 1851 read with Section 3 of the Act 15 of 1864. The petitioners are entitled to their costs from the respondents.