(1964) 05 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 626 of 1961

Jubilee Highway Transport Private APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 13-05-1964

Acts Referred:

Constitution of India, 1950 — Article 255, 301
Punjab Municipal Act, 1911 — Section 61(2), 62(10)

Citation : (1964) 66 PLR 934

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : H.R. Sodhi, for the Appellant; K.C. Nayar, for the Respondent

Judgement

P.C. Pandit, J.—This order will dispose of three writ petitions (Civil Writs Nos. 626 of 1961, 1026 of 1961 and 185 of 1962) as common question of law are involved therein.

2. According to the allegations of the Petitioners, who are Transport Companies, they were operating passenger bus services on different routes in the hilly areas of Punjab Their vehicles had to enter the Municipal limits of Dharamsala District Kangra and had to be parked there in the course of their journey on the prescribed routes. They had been paying several taxes, besides the tax paid to this Municipal Committee for parking the vehicles the area of the stand prescribed for this purpose in September 1957, this Municipal Committee issue ed a notification imposing tax in the nature of a toll on the motor vehicles entering the limits of this Committee but the State Government, however, realised that the imposition of such a tax was illegal and rescinded this notification in April 1958 In April 1961, the Committee deputed its staff at the Octroi Barrier to claim toll from every privately-owned vehicle entering the limits of this Committee, irrespective of the fact whether that vehicle had already been taxed for using Municipal roads by entering the Municipal limits and parking the vehicles in the "Stand". This action was being taken on the basis of another

notification issued by the Committee on 22-2-1961. This led to the filing of the present petitions challenging the validity of this second notification.

3. Learned Counsel for the Petitioners has raised the following three contentions before me.

(1) that the Impugned notification was issued on 22-2-1961 and it was mentioned therein (hat the tax had been imposed with effect from 15-4-1960. This was illegal because according to the provisions of Section 62(10) of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act), such a tax could not be levied with retrospective effect. but the same had to come into force after the expiry of a period of one month from the date of the publication of the notification;

(2) that such a tax was unconstitutional as a was not covered by any entry in the State List; and

(3) that this tax also offended the provisions of Article 301 of the Constitution and reliance for this submission was placed on a Supreme Court decision in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others,

4. So far as the first contention is concern ed, it may be mentioned that the same was not raised in the writ petition. However, the learned Counsel appearing for the Committee has submitted that by virtue of a notification appealing in the Government Gazette dated 7-4-1981. it was mentioned that the words "15-4-1961" be substituted for the words "15-4-1960" in the earlier notification dated 22-2-1961 and on that basis, he contended that the tax had to be imposed with effect from 15-4-1961 and, as such it did not contravene the provisions of Section 62(10) of the Act Thereupon, learned Counsel for the Petitioners submitted that the amendment in question could only take effect from 7-4-1961 when the notification was issued in the Gazette and not from the date of the original notification namely, 22-2-1961 because the words used in the latter notification were "shall be sub stetted" and not "shall always be deemed to have been substituted".

5. There is no force in the argument of the learned Counsel for the Petitioners, because the latter notification merely corrected the clerical or printing error in the earlier notification, where the date was given as 15-4-1960 instead of 15-4-1961 and in the very nature of things such an amendment would be operative with effect from the date of the original notification viz., 22-2-1961. Since, as already mentioned above, this point was not taken by the Petitioners in their writ petition, the Committee had not given a reply to the same in the written statement, but it was argued by their learned Counsel that there was only a mistake in the date in the former notification and the same was being corrected by the latter notification. He further submitted that actually the tax was being imposed with effect from 15-4-1961 and not 15-4-1960 and, as a matter of fact, no toll had been realised so far and the Petitioners, consequently, had suffered no injury.

6. Coming to the second contention of the Petitioners that the impugned tax was unconstitutional as it was not covered by any entry in the State List, it may be stated that by virtue of the provisions of Sub-section (2) of Section 61 of the Act, the Municipal Committee, with the previous sanction of the State Government, can impose any tax which the State Legislature" has power to impose in the Slate under the Constitution. The case of the Municipal Committee is that the State Legislature can impose "tolls" by virtue of entry No. 59 of the "State List" in the Seventh Schedule of the Constitution and the tax in the present case was covered by this entry.

This tax had boon Imposed on the motor vehicles entering the limits of the Municipal Committee, Dharamsala from the Karrgra-Pathankot, Yol-Dari and Khunyara sides. Since the vehicular traffic was bound to affect adversely the general condition of the town, therefore according to the Committee this tax had been levied for the improvement of the town in general. Now, the question arises whether such a tax is covered by the word "toll" of State List Entry No. 59 This word has not been defined in the Punjab Municipal Act 1911 Therefore, we have to fall back upon its dictionary meaning in Wharton''s Law Lexicon Fourteenth Edition, it has been defined as under:

A tribute or custom paid for passage.

In the Webster international Dictionary Volume II, it means:

A tax or due paid for some liberty of 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 place, as a manor, for importing or exporting goods etc

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A compensation taken for services rendered, especially for passage or conveyance; as railway of canal tolls.

In Strouds judicial Dictionary. Second Edition, this term is described as under:

Toll or Tolnetum (or theobonio) is a sum or money which is taken in respect of some benefit--the benefit being the temporary use of land e.g. fair or market tolls:

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Toll, unless there is something in the subject or context repugnant, includes any rate or charge or other payment, payable under the special Act for any passenger animal, carriage, goods, merchandize, articles matters or things conveyed on the railway.

From the above definitions it would be manifest that toll'' is a kind of tax levied in consideration for some benefit In the present case, the vehicle owners derive the benefit from the Municipal Committee by using the roads of the Committee and the latter has to incur certain expenditure on repairs in order to keep them in proper condition. Therefore, the tax being levied by the Committee is covered by the term ''toll''.

It was contended by the learned Counsel for the Petitioners that the Committee was charging an extra tax for parking their vehicles at the ''Stand'' and. therefore, the Committee could riot impose the impugned tax because this amounted to double taxation. There is no force in this contention, because the ''Stand'' tax is meant for a specific purpose, that is, for the maintenance and the up-keep of the ''Stand'' itself, while the toll in the present case is being imposed, mainly, for the purpose of the maintenance of the roads within the area of the Municipal Committee over which these vehicles have to pass Under these circumstances, it cannot be said that such a tax was unconstitutional.

7. As regards the last contention of the Petitioners, namely, that this tax offended the provisions of Article 301 of the Constitution, it may be mentioned that this ground was not taken in the writ petitions In support of their contention, they have merely relied on the Supreme Court authority mentioned above. This authority however has application to the facts of the present case In that case what happened was that the Assam Legislature had imposed certain tax on the goods carried by road or inland waterways in the State of Assam The Petitioners, who were growers of tea, and used to carry their tea from Assam to Bengal far sale were affected by this imposition and they, consequently challenged the same on the ground that this tax was violative of the provisions of Article 301 of the Constitution inasmuch as it had interfered with their right of free trade throughout the country The Supreme Court, while dealing with the Petitioners contention based on Art 301 of the Constitution observed thus:

In that view the Assam Taxation (In Goods Carried by Roads Or inland Waters) Act. 1954, must be regarded as infringing the guarantee of freedom of trade and commerce under Art 301, because the Bill moved to the Assembly had not received the assent of the President as required by Article 301(b) proviso and the Act has not been validated by the assent of the President under Article 255(e).

In the present case, however the toll has not been levied on the goods but the same has been imposed on the vehicles entering the Municipal limits of Dharamsala Committee That being so there is no question of the infringement of Art 301 of the Constitution which deals with freedom of trade commerce and intercourse.

8. The result is that these petitions fail and are dismissed in the circumstances of this case how never will leave the parties to beat their own costs in these proceedings.