

(1961) 01 PAT CK 0008

In the Patna High Court

Case No : Misc. Judl. Case No. 141 of 1959

Madan Gopal Rungta

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-01-1961

Acts Referred:

Constitution of India, 1950 — Article 265
Tolls Act, 1851 — Section 2

Citation : AIR 1961 Patna 442

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : P.R. Das and Tarni Prasad, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner is a lessee under a registered deed of lease executed by the Collector of Palamau with regard to the Nawadih Iron Mines in the district of Palamau. In pursuance of the registered deed of lease the petitioner had been working the iron mines and has been transporting iron ore from Nawadih to Daltonganj Railway Station for being despatched to Kidderpore dock, Calcutta. It appears that the iron ore is carried from village Nawadih to Daltonganj Railway Station across the dry bed of the river Koel by means of truck.

It is alleged that in April, 1958, opposite party No. 4, Dwarka Prasad obtained lease of the right to levy tolls on trucks passing across the bed of the river Koel. It appears that the lessee charges tolls for empty trucks at the rate of Re. 1/- per truck and for loaded truck at the rate of Rs. 4/-. It is alleged on petitioner's behalf that this rate is unreasonable. The petitioner also applied to the Collector of Palamau for laving mats on the river bed for the use of his own trucks, but the prayer was refused by the Collector of Palamau on the 25th of November, 1958.

The petitioner took the matter in appeal to the Commissioner of Chota Nagpur, but the appeal was dismissed by the order of the Commissioner dated the 3rd of

January, 1959. The petitioner has obtained a rule from the High Court Calling upon the respondents to show cause why a writ in the nature of mandamus should not be issued commanding the respondents not to realise tolls from the petitioner for plying the trucks across the sandy bed of the river Koel. Cause has been shown by the learned Government pleader on behalf of the Respondents to whom notice of the rule was given.

2. On behalf of the petitioner learned Counsel submitted, in the first place, that the levy of tolls by the Collector of Palamau is not based upon any legislative or statutory authority, and violates the provisions of Article 265 of the Constitution which states that "No tax should be levied or collected except by authority of law." It was conceded by the learned Government pleader on behalf of the respondents that there is no Notification by the State Government u/s 2 of the Indian Tolls Act (Act VIII of 1851) authorising the State Government to levy the tolls upon lorries plying across the sandy bed of the river Koel.

It was also conceded by the learned Government Pleader that the tolls were imposed in this case not under any legislative statutory authority, but merely in exercise of the administrative power of the Deputy Commissioner of Palamau, It was pointed out by the learned Government Pleader that the river bed is recorded as gairmajruamalik in the name of the Secretary of State in Council in the record-of-rights; but the argument of Mr. P. R. Das on behalf of the petitioner is that even if the river bed has vested in the State Government the public have a right to pass across the river bed.

It is alleged in paragraph 25 of the application that

"from time immemorial People without any qualification or limitation cross the bed of the river at any point or points and can carry goods by any vehicle, motor or otherwise, and have therefore right of usage to do so."

These facts are not controverted in the counter-affidavit filed by the State of Bihar and the other respondents in this case. It is submitted by learned Counsel on behalf of the petitioner that the right of the Government as owner cannot operate in derogation of the right of the Public which has been acquired by custom and immemorial usage.

In my opinion, the argument of learned Counsel is correct. It is true that the State Government is owner of the river bed, but the right of ownership is subject to customary right of the public to cross the river bed. The legal position has been clearly stated by the Madras High Court in C.S.S. Motor Service, Tenkasi and Others Vs. The State of Madras and Another, in the following passage which has been quoted with approval by the Supreme Court in Saghir Ahmad Vs. The State of U.P. and Others,

"The true position then is, that all public streets and roads vest in the State but that the State holds them as trustees on behalf of the public. The members of the Public are entitled as beneficiaries to use them as a matter of right and this

right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting rights of the public generally; but subject to such limitation the right of a citizen to carry on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways."

It was also pointed out by learned Counsel on behalf of the petitioner that the right to collect tolls can only be granted by legislation and in the absence of any legislative authority the Collector of Palamau has no right to impose tolls on trucks passing across the sandy bed of the river Koel. In support of this argument learned Counsel referred to Article 265 of the Constitution. Reference was also made to the passage at page 588 of Waters and Land Drainage by Coulson and Forbes, Fifth Edition that "the right to take tolls exists only by the Act of Parliament or by express grant from the Crown, or by immemorial usage, which presupposes such a grant, and from which, if uncontradicted, a grant must be presumed."

In course of the argument the learned Government Pleader conceded that this was the correct legal position. It was also conceded that the Collector of Palamau had no right to impose tolls on trucks passing across bed of the river Koel. But the point taken by the learned Government Pleader is that the imposition of fee in this case on loaded trucks by respondent No. 4 not in the nature of a toll Or a tax and is not Prohibited by Article 265 of the Constitution or by any other law.

We do not think that there is any substance in this argument. In our opinion, there is no difference between the legal character of a toll and the legal character of the imposition which is the subject-matter of the present case. The case of the petitioner is that the Collector of Palamau claimed the "right of levying tolls" and in April, 1958, respondent No. 4 obtained lease of ""the right to levy tolls" on vehicles passing across the bed of the river Koel. This allegation is contained in paragraphs 14 and 15 of the application and has not been contradicted in the counter-affidavit of the respondents.

In paragraph 13 of the application it is stated that the Collector of Palamau had given lease of the "right of realisation of tolls" to Messrs Rungta and Sons, Private, Limited, who paid a sum of Rs. 6025 to the Collector of Palamau for the right to realise tolls for one season. In paragraph 30 of the application it is stated that the levy for an empty truck at the rate of Re. 1/- and for a loaded truck at the rate of Rs. 4/- is arbitrary, excessive and unreasonable.

In our opinion the levy imposed in the present case by respondent No. 4 upon trucks plying across the sandy bed of the river Koel is in the nature of a toll, and unless there is legislative authority for the imposition of such a toll the Collector of Palamau has no right to realise the toll or lease out the right to realise toll to respondent No. 4. We see no reason why the Government itself should not act

under the statutory authority of Section 2 of the Indian Tolls Act (Act VIII of 1851) and issue an order under that section specifying such rates of toll as it thinks fit to be levied in the present case.

3. In the present case the petitioner has also claimed the right of laying that (tatar) on the river bed and passing his own trucks thereon. But in our opinion the petitioner has not proved any such usage and he has no such right. We think that the petitioner has only the right of crossing the river bed by any vehicular conveyance without laying any mat thereon. We, therefore, reject the contention of learned Counsel for the petitioner on this point. But with regard to the main question, namely, the legality of the levy of tolls, we are of opinion that the application must be allowed on this point and a writ in the nature of mandamus should be issued commanding the respondents not to impose any tolls on trucks, either loaded or empty, plying across the bed of the river Koel.

4. We accordingly allow this application to this extent. There will be no Order as to costs.