
(1987) 08 MP CK 0032

In the Madhya Pradesh High Court

Case No : M.P. No. 916 of 1986

Madhya Pradesh State Road Transport Corporation, Indore

APPELLANT

Vs

Cantonment Board, Mhow and Another

RESPONDENT

Date of Decision : 25-08-1987

Acts Referred:

Cantonments Act, 1924 — Section 60

Madhya Pradesh Motor Vehicles Taxation Act, 1947 — Section 6

Madhya Pradesh Municipalities Act, 1961 — Section 127

Citation : AIR 1988 MP 166 : (1988) MPLJ 373

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : V.W. Dabir, for the Appellant; R.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Cantonment Board, Mhow and Another Vs. M.P. State Road Transport Corpn., (1997) 1 ACC 586 : AIR 1997 SC 2013 : (1997) 4 JT 561 : (1997) 3 SCALE 484 : (1997) 9 SCC 450 : (1997) 3 SCR 813 : (1997) AIRSCW 1801 : (1997) 4 Supreme 36

N.D. Ojha, C.J.

This writ petition has been filed by the Madhya Pradesh State Road Transport Corporation, Habibganj, Bhopal, constituted under the Road Transport Corporations Act, 1952, challenging the notification dated 19-12-1979, a copy whereof has been annexed as Annexure "A", whereby the Cantonment Board, Mhow (the respondent No. 1) imposed entry tax on motor vehicles. The particulars and the rate per entry of the tax so imposed are shown in the schedule to the notification. This tax purports to have been imposed by the Cantonment Board in exercise of the powers conferred by Section 60 of the Cantonment Act, 1924(hereinafter referred to as "the Act").

It has been urged by the learned counsel for the petitioner that in view of

Section 6 of the M. P. Motor Vehicle Taxation Act, 1947 (hereinafter referred to as the Taxation Act, 1947), the Cantonment Board had no authority to impose the impugned entry tax on motor vehicles. Reliance in support of this submission has been placed on a Division Bench decision of this court dated 3-5-80 in Sagar Tobacco Merchants Association v. Cantonment Board, Sagar, M. P. No. 379 of 1974 decided on 3-5-1980. In that case also a similar notification had been issued by the Cantonment Board, Sagar in exercise of the powers conferred by the same Section 60 of the Act and the said notification imposing the said tax was quashed on the ground that on account of the bar created by Section 6 of the Taxation Act, 1947, the Cantonment Board was not competent to levy the impugned tax. It has been urged by the learned counsel for the Cantonment Board that the power u/s 60 of the Act to impose the tax could not be curtailed by the Taxation Act, 1947. inasmuch as jurisdiction to legislate in regard to Cantonment Boards vests only in the Parliament in view of entry 3 of 7th schedule to the Constitution. According to the learned counsel, the State Legislature of Madhya Pradesh was not competent in any way to impinge upon the power of Cantonment Board in the matter of levying tax conferred by the Parliament. In support of his submission, the learned counsel has placed reliance on another Division Bench decision of this Court dated 3-9-1975 in Fateh Ali v. Cantonment Board, Mhow. M. P. No. 493 of 1972.

It was urged by the learned counsel for the Cantonment Board that there have been conflicting views expressed by the two Division Bench decisions referred to above on the point and, therefore, the matter deserves to be referred to a Full Bench. It was also urged by the learned counsel for the Cantonment Board that SLP has been filed before the Supreme Court against the decision of this Court in the case of Sagar Tobacco Merchants Association (supra) and consequently, the hearing of the present petition may be deferred till disposal of the appeal pending in the Supreme Court.

After having gone through the two decisions of this Court in the cases of Sagar Tobacco Merchants Association and Fateh Ali, we are of the opinion that for the reasons to be stated shortly there is really no conflict in these two decisions and consequently, no reference to a larger Bench is called for on this score. As regards pendency of the appeal before the Supreme Court against the judgment of this Court in the case of Sagar Tobacco Merchants Association (supra), it may be pointed out that hearing of the writ petition was adjourned on several dates on the ground aforesaid in the hope that the point may be decided by the Supreme Court. The last such adjournment of the case was made on 4-7-1987.

The learned counsel for the Cantonment Board, however, has today made a statement before us on the basis of a letter sent by the counsel for the Cantonment Board in the Supreme Court that the matter in the Supreme Court will take another 3 to 4 years for final hearing. In this view of the matter, it has not been considered expedient to adjourn the hearing of the writ petition any more. We have accordingly heard the learned counsel for the parties on merits of

the writ petition.

In order to decide the question as to whether on the points which are involved in the present writ petition, there is any conflict in the two Division Bench decisions referred to above, it will be expedient to consider the scope of the power of the Cantonment Board to levy entry tax on motor vehicles as has been levied in the instant case. Relevant section in pursuance whereof the notification has been issued, as seen above, is Section 60 of the Act. The said section reads as hereunder :

"60. General power of taxation.-- (1) The Board may, with the previous sanction of the (Central Government), impose in any cantonment any tax which under any enactment for the time being in force, may be imposed in any municipality in the (State) wherein such cantonment is situated :

* * *

(2) Any tax imposed under this section shall take effect from the date of its notification in the (Official Gazette)."

Its perusal indicates that the Cantonment Board is empowered to impose any tax which under any enactment for the time being in force may be imposed in any municipality in the State wherein such cantonment is situated. Consequently, the respondent Cantonment Board could, by the impugned notification dated 19-12-1979, impose entry tax on motor vehicles in the State of M. P. where the Cantonment Board is situated, if such a tax could be imposed in any municipality in the State of Madhya Pradesh. Section 127 of the Madhya Pradesh Municipalities Act is the relevant section whereby entry tax is imposed. Section 127 of the M. P. Municipalities Act deals with taxes which may be imposed by a municipality. Clause (iii) of Sub-section (1) of Section 127 reads :

"a tax on vehicles, boats and animals used as aforesaid entering the limits of the Municipality but not liable to taxation under Clause (ii)."

In the instant case, Clause (ii) is not attracted. Since tax on motor vehicles may be imposed in any municipality, under Clause (iii) aforesaid, the same tax could be imposed by the Cantonment Board also in exercise of the powers conferred on it by Section 60 of the Act. Such power of the Board, however, will be co-extensive with the power of imposition of tax in any municipality. It is, therefore, to be considered as to whether the tax on motor vehicles was imposed in any municipality in the State of Madhya Pradesh on 19-12-1979 when the impugned notification was issued. It is only if an entry tax could be imposed in any municipality in the State on 19-12-1979 that the respondent Cantonment Board could have imposed the impugned entry tax on that date.

Before dealing with the submissions made by learned counsel for the parties, we shall first like to consider the question as to whether the decisions of this Court in case of Sagar Tobacco Bidi Merchants' Association and Fateh Ali (supra) are inconsistent with each other in so far as the power of a Cantonment Board to

levy entry tax is concerned. The question of the power of a Cantonment Board to levy entry tax came up squarely for consideration in case of *Sagar Tobacco Beedi Merchants' Association* (supra). Relying Section 6 of the M. P. Motor Vehicles Taxation Act, 1947 which created a bar on imposition of tax by a local authority, it was held in that case that the Cantonment Board was not competent to levy the said tax. In that case it was urged by learned counsel for the Cantonment Board that it is only Section 127 of the M. P. Municipalities Act which could be referred to for finding out what taxes could be imposed by the Cantonment Board and the provisions of the M. P. Motor Vehicles Taxation Act, 1947 could accordingly be not taken into consideration. Repelling this argument, it was held as under :

"The argument of the learned counsel for the respondents is that we can refer to only Section 127 of the Municipalities Act for finding out what taxes a Cantonment Board can impose and we cannot see any other enactment to find out whether taxes mentioned in Section 127 can really be imposed by a Municipality or not. We are unable to accept this argument. The words "any tax which under any enactment for the time being in force, may be imposed in any Municipality" as they occur in Section 60(1) of the Cantonments Act. require us to see whether the tax imposed by the Cantonment Board could have been actually imposed by a Municipality under any enactment. It is not sufficient for us to see whether Section 127 of the Municipalities Act authorises imposition of such a tax. Even if Section 127 so empowers, and some other enactment takes away that power, it cannot be said that such a tax can be imposed under any enactment for the time being in force. The power of a Municipality to impose a tax . u/s 127 has to be read along with the restriction on that power contained in Section 6 of the Motor Vehicles Taxation Act. It may have been competent for a Municipality to impose toll tax or entry tax on vehicles entering the municipal area under Clauses (iii) and (xxiii) of Section 127, but this power was taken away in so far as motor vehicles are concerned, by Section 6 of the Motor Vehicles Taxation Act. It was so held by a Division Bench of this Court in *M/s. Orient Paper Mills Ltd., Amlai v. Municipal Council, Shahdol* 1971 MPLJ 872 : (1972 Tax LR 1629).

Fateh Ali's case (supra) on the other hand, was a case where the power of a Cantonment Board to levy not entry tax on motor vehicles, but property tax came up for consideration. The argument which was advanced in that case on behalf of the petitioner was that in view of the bar created by Section 36(1) of the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam 1964, no municipality could impose property tax and consequently that Cantonment Board also was not entitled to impose property tax. Repelling this argument, it was pointed out that in view of Section 36 of the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam 1964, a municipality was debarred from imposing property tax. Property tax as such, had not been abolished in any local area. In other words, the power to impose property tax had been merely abrogated so far as the local authorities were concerned and the same had been exclusively vested in the State

Government and "consequently it could not be said that the property tax as such had been altogether abolished from the areas of a municipality.

In this connection emphasis was placed on the circumstance that Section 60(1) of the Act did not mention imposition of tax by any municipality, but mentions that a tax which could be imposed in any municipality, could be imposed by a Cantonment Board with the previous sanction of the Central Government. According to the learned Judges, since property tax continued to be imposable within a municipality, though by a different authority, namely the State Government and not by the municipality itself, property tax was a tax which continued to be a tax which "may be imposed in any municipality in the State" within the meaning of Section 60 of the Act and consequently, the power of the Cantonment Board to impose property tax was, in no way, taken away by the bar created by Section 36 of the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam, 1964. In this connection, it was also pointed out that since the Cantonments Act was an Act of Parliament, Section 36 of the M.P. Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 which was an Act of the State Legislature of M.P. could not have, in any way, curtailed the power of a Cantonment Board to levy property tax.

Coming to the fact of the instant case, it would be seen that here the Motor Vehicles Taxation Act, 1947 does in no way, purport to curtail the power of the Cantonment Board to impose entry tax on motor vehicles. The effect of Section 6 of the Motor Vehicles Taxation Act 1947, as has been pointed out by a Division Bench of this Court in case of Sagar Tobacco (supra) was that entry tax ceased to be leviable within a municipality in so far as motor vehicles were concerned. This being so, after the bar created by the Motor Vehicles Taxation Act, 1947 in the matter of levy of entry tax on motor vehicles within a municipality, it was apparently not open to a Cantonment Board to levy the said entry tax.

In the instant case, the impugned notification is dated 19-12-1979. This was obviously much after the commencement of the Motor Vehicles Taxation Act, 1947 whereby the bar of imposition of entry tax within a municipality had been created. The effect of the said bar was that entry tax on motor vehicles could not be imposed in any municipality in the State after the date of the bar so created. Since a Cantonment Board, in exercise of power conferred on it by Section 60 of the Act is competent with the previous sanction of the Central Government to impose in any Cantonment any tax which under any enactment for the time being in force may be imposed in any municipality in the State wherein such cantonment Board is situated, it obviously ceases to have any power to impose entry tax on motor vehicles inasmuch as the said power was taken away in so far as imposition of this tax in any municipality in the State was concerned.

On the question which is to be considered in the instant case, namely the power of a Cantonment Board to levy entry tax after the bar created by the Motor Vehicles Taxation Act, 1947, there is obviously no conflict in the two decisions of this Court in cases of Sagar Tobacco and Patch Ali (supra). It is for this reason that

we have not found it necessary to refer the case to a larger Bench. The instant one is a case where the law laid down in the case of Sagar Tobacco (supra) is squarely applicable and in view of that decision, the impugned notification could not have been issued by the respondent Cantonment Board on 19-12-1979.

It was, however, urged by learned counsel for the Cantonment Board that since no corresponding amendment has been made in Section 127 of the M.P. Municipalities Act, 1961 and since entry tax within a municipality could be imposed only by a municipality, in order to find out the scope of the power of a Cantonment Board for imposing such a tax u./s. 60 of the Act, it was the Municipalities Act alone which could be referred. We find it difficult to agree with this submission, in as much as almost a similar submission was made and as pointed out above, was repelled in the case of Sagar Tobacco (supra). Para 6 of the order of that case has already been quoted above.

Learned counsel for the petitioner in this connection placed reliance on the decision of the Supreme Court in Municipal Council Palai Vs. T.J. Joseph and Others, where it was held "that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of law existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. This presumption will be rebutted (sic) the provisions of the new Act are so inconsistent with the old ones that the two cannot stand together."

Coming to the facts of the instant case, it would be seen that the effect of Section 6 of the Motor Vehicles Taxation Act, 1947 is that no entry tax on Motor Vehicle can be imposed by a municipality. On the other hand, the effect of Section 127(i) (iii) is that such a tax could be imposed by a municipality. Both the provisions obviously cannot stand together.

For the reasons recorded in case of Sagar Tobacco (supra), the provisions contained in Clause (iii) of Section 127 (1) of the Municipalities Act will have to yield before the provisions contained in Section 6 of the Motor Vehicles Taxation Act, 1947 in so far as the power of levying entry tax on Motor Vehicles is concerned. Clause (iii) of Section 127(1) of the M.P. Municipalities Act, as seen above, contemplates a tax on buildings, boats and animals. Notwithstanding the bar created by Section 6 of the Motor Vehicles Taxation Act, 1947, the power of a municipality to impose the relevant tax on boats and animals as also on vehicles other than motor vehicles, has remained untouched and it may be for this reason that no specific provision making any amendment in Section 127 of the M.P. Municipalities Act, 1961 may have been considered expedient. The power of imposition of tax on motor vehicles, as distinguished from other vehicles alone, was taken away by Section 6 of the Motor Vehicles Taxation Act, 1947 and it appears that in view of the language employed in this behalf in Section 6 of the Motor Vehicles Taxation Act, 1947, it was considered sufficient that the said power could, after the enactment of Section 6 aforesaid, not be exercised in so far as entry tax on motor vehicles is concerned by a municipality. It is a case

where the provision of imposing entry tax by a municipality on motor vehicles is deemed to have been impliedly repealed by Section 6 of the Motor Vehicles Taxation Act, 1947.

Learned counsel for the Cantonment Board then invited our attention to Section 7 of the Motor Vehicles Taxation Act 1947 and urged on the basis of the proviso to that section that the Cantonment Board still had the power to impose entry tax even on Motor vehicles notwithstanding the bar created by Section 6 of the Act. We find it difficult to agree with this submission also.

To appreciate the submission made by learned counsel for the Cantonment Board, Sections 6 and 7 of the M.P. Motor Vehicles Taxation Act, 1947 are reproduced hereunder :

"6. Bar of imposition of tax by any local authority -

(1) Notwithstanding anything contained in any other enactment for the time being in force, no local authority shall, after the commencement of this Act, impose or enhance a tax, toll or licence fee in respect of a motor vehicle and if any local authority has imposed such tax, toll or licence fee since before the 1st day of April 1942 and the same is still in force at the commencement of this Act, any person who is liable to pay such tax, toll or licence fee to such authority, shall be deemed to have paid it.

(2) Nothing contained in Sub-section (1) shall affect the imposition, enhancement or recovery of an octroi tax levied hereafter by any local authority or a terminal tax levied and in force on the 1st January 1937, within the local area under the jurisdiction of any local authority.

S. 7. Grant to local authorities -

(1) The State Government shall, at the close of the financial year 1947-48 and of each financial year thereafter, make to every Cantonment Board, Municipal Committee and notified area committee which was imposing a tax, toll or licence fee in respect of motor vehicles, before the 1st day of April 1942, a grant of the same as was being paid by the State Government to such board or committee immediately before the commencement of this Act :

Provided that no sum shall be payable to Cantonment Board unless it agrees not to recover any tax, toll or licence fee in respect of motor vehicles.

(2) Any sum payable under Sub-section (1) shall be charged on the Consolidated Fund of the State."

The first part of Sub-section (1) of Section 6, on the one hand, by using the non obstante Clause "notwithstanding anything contained in any other enactment for the time being in force" takes away the power of a local authority after the commencement of the Motor Vehicles Taxation Act, 1947 to impose or enhance a tax, toll or licence fee in respect of Motor vehicles, the second part thereof on the other hand, provides that if any local authority has imposed such tax, toll or

licence fee since before the 1st April 1942 and the same is still in force at the commencement of this Act, any person who is liable to pay such tax, toll or licence fee under such authority, shall be deemed to have paid it.

Sub-section (1) of Section 7, on the other hand, purports to safeguard the interests of the local authority in regard to which it has been provided for in Section 6(1) that the tax payable by any person shall be deemed to have been paid to the local authority concerned. The interest of the local authority has been safeguarded by making a provision in Section 7(1) that the State Government shall, in the manner provided therein, make a grant of the same as was being paid by the State-Government to such Board or Committee immediately before the commencement of the Act to a Cantonment Board, Municipality and Notified Area which was imposing a tax, toll or licence fee in respect of motor vehicles before the 1st of April 1942.

It is thus apparent that the second part of Sub-section (1) of Section 6 as well as Sub-section (1) of Section 7 of the Motor Vehicles Taxation Act, 1947 deal with tax, toll or licence fee which was being imposed since before 1-4-1942. It is in regard to such payment as contemplated by Section 7(1) that the proviso to Section 7 enacts that no sum shall be payable to Cantonment Board unless it agrees not to recover any tax, toll or licence fee in respect of motor vehicles. Thus a tax which was imposed by a Cantonment Board prior to 1-4-1942, continued to be a valid tax, the same having been imposed not after the commencement of Section 6 of the Motor Vehicles Taxation Act, 1947, but prior to it. Consequently neither Section 7 nor its proviso has any bearing on the scope of the power of Cantonment Board to levy entry tax on a motor vehicle after the commencement of Section 6 of the Motor Vehicles Taxation Act, 1947.

In view of the foregoing discussion, we are in respectful agreement with the view taken by a Division Bench of this Court in case of Sagar Tobacco Bidi Merchants' Association (supra) and in our opinion, the said decision does not require reconsideration.

In this context, we may consider the effect of the appeal which is said to be pending before the Supreme Court against the aforesaid decision in case of Sagar Tobacco (supra). In Eknath Shankarrao Mukkavar Vs. State of Maharashtra, in regard to the question as to whether an appeal by the State was not competent u/s. 377(1) of the Criminal P. C. a learned single Judge of the Bombay High Court had given a decision. Ignoring that decision, another learned Judge gave a contrary decision and it appears that the said contrary decision was given on the ground that against the earlier decision, an appeal was pending in the Supreme Court. It was held as under :

"Our attention is drawn to a disquieting feature in the procedure adopted by the learned single judge (G.N. Vaidya J.) in disposing of the appeal. The learned Judge ignored the decision of another single Judge of the same Court (J. M. Gandhi) who had earlier held in a similar case that the appeal by the State was

not competent u/s 377(1) Cr. PC. It is true that the decision is pending before this court in appeal by special leave. That, however, cannot be sufficient reason for the learned Judge to ignore it and observe that it is "unnecessary to keep back this matter till the Supreme Court decides the matter". When there was a decision of a co-ordinate court, it was open to the learned Judge to differ from it, but in that case, the only judicial alternative was to refer it to a larger Bench and not to dispose of the appeal by taking a contrary view. Judicial discipline as well as decorum (sic) should suggest that as the only course."

Since as already noticed above it was brought to our notice by learned counsel for the Cantonment Board that the appeal pending in the Supreme Court was not likely to be decided before three or four years and since we are in agreement with the decision of the Division Bench in the case of Sagar Tobacco (supra), we have proceeded to decide this writ petition on merits notwithstanding the pendency of the appeal in the Supreme Court.

In the result, this writ petition succeeds and is allowed. The impugned notification dated 19-12-1979 (Annexure A) is quashed. There shall be no order as to costs. The outstanding security amount, if any, be refunded to the petitioner.