**(1966) 05 PAT CK 0008**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 57 of 1966

Maheshwari Singh APPELLANT

Vs

State of Bihar and Others RESPONDENT

**Date of Decision :** 05-05-1966

**Acts Referred:**

Constitution of India, 1950 — Article 19(1), 19(5)
Tolls Act, 1851 — Section 2

**Citation :** AIR 1966 Patna 462

**Hon'ble Judges :** R.L. Narasimham, C.J;Anwar Ahmad, J

**Bench :** Division Bench

**Advocate :** B.C. Ghosh and Madusudan Singh, for the Appellant; A.G., Govt. Pleader and L.M. Sharma, for the Respondent

**Final Decision :** Dismissed

## Judgement

Narasimham, C.J.—In this application under Article 226 of the Constitution the levy of toll at Haronar Bridge on the Barahiva Lakhisorai Road, Monghyr District has been challenged as unconstitutional The said bridge was constructed in 1962 by the Government of Bihar and thrown open for public use. But in November, 1966, an auction was held for the purpose of realising tolls from persons travelling in vehicles over the bridge for a period from 1st January, 1966, to 31st March, 1967, and the right to levy toll was settled with opposite parties 3 and 4. Mr. Ghosh for the petitioner urged that the levy of tolls in purported exercise of the power conferred by the Indian Tolls Act, 1851 (hereinafter referred to as "the Act") was wholly unconstitutional. He relied on Article 19 and Article 14 and also on Articles 301 and 303 of the Constitution.

2. The Indian Tolls Act, 1851, has been existing on the statute book for more than a century The preamble of the Act makes it clear that it is an Act for enabling Government to levy tolls on public roads and bridges. Section 2 is the most important section, and as its constitutional validity has been challenged I may quote it in full:

"2. Power to cause levy of tolls on roads and bridges within certain rates, and to appoint collectors. Collectors'' responsiblities.

The State Government may cause such rates of toll, as it thinks fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Central or any State Government; and may place the collection of such 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."

Sections 3, 4, 5, 6 and 7 are consequential and ancillary provisions Section 8 stated that the tolls levied under the Act shall be deemed public revenue The Bihar Legislature made an amendment to the Act by Bihar Act XIX of 1965 Section 4, which exempted police officers on duty alone from payment of tolls, was amended, and other Government servants and members of the Legislature and members of Parliament were exempted from payment of tolls This amendment saved the old Section 4 from challenge on the ground of discrimination under Article 14 Apart from the said amendment to Section 4, a new section (Section 9) was inserted in the Act, by which the State Government was conferred power to make rules for the purpose of providing for the method of collection of tolls, determination of the rate of levy of tolls, method for settlement of collection of tolls and generally for the purpose of carrying into effect the purposes of the Act These rules, when made, shall be laid before the Legislature. It is, however, conceded that rules have not yet been made u/s 9, so that for all practical purposes Section 9 has remained ineffective and a dead letter.

3. Mr. Ghosh''s contentions are two-fold:

(1) Section 2 now stands alone inasmuch as rules have not yet been made u/s 9. Section 2 confers unfettered arbitrary power on the State Government to levy tolls at anv rate which they may think fit It would therefore according to Mr. Ghosh, offend Article 14 and Article 19(1)(d) of the Constitution and is not saved by Clause (5) of Article 19.

(2) Even if Section 2 of the Act be held to be constitutional, the Government have exceeded the power conferred by that section in the notification dated the 2nd September, 1955, fixing the various amounts payable as toll by various classes of vehicles and animals using the bridge. Hence the notification must be struck down as unconstitutional.

4. Mr. Ghosh has also urged that the levy of toll would offend Arts 301 and 303 of the Constitution and that it would not be saved by Clause (b) of Article 304 inasmuch as, according to Mr Ghosh the restrictions were not reasonable or in public interest. The Advocate General, however, effectively countered this argument by referring to Article 305, which says that the provisions of Articles 301 and 303 do not apply to any existing law. The Act being a pre-Constitution

 

Act is an existing law." (see Article 366(10)) and hence by virtue of Article 305 it is saved from the mischief of Articles 301 and 303.

5. As it is admitted that no rules have been framed in exercise of the powers conferred by Section 9 (Bihar Amendment), the main question for consideration is whether Section 2 of the Act confers arbitrary and unfettered power on the Government to levy any amount by way of toll and would, therefore, be unconstitutional. Mr. Lal Narain Sinha, Advocate-General, for the Government, however, urged that even if Section 9 be completely excluded in Section 2 itself the Legislature has indicated certain principles for the guidance of the State Government in fixing the rates of lolls and that consequently the section does not confer arbitrary or unguided power on the Executive. He urged that the expression "toll" has a well defined meaning in public finance and the rate of toll must ordinarily be sufficient to recoup the actual expenses incurred in maintaining roads and bridges and also in recouping the cost incurred in the construction of the bridge within a reasonable time.

According to the Advocate General, this principle is indicated by the words "to be levied upon any road or bridge which has been or shall hereafter be made or repaired al the expense of the Central or any State Government." It was urged that by restricting the right of levy of toll only upon roads and bridges which are made or repaired at the expenses of the State Government, the Legislature gave sufficient indication of the principle that the rate of levy should bear a reasonable relationship to the cost of making the road or bridge and their periodical repairs. It is true that by virtue of Section 8 of the Act the tolls collected are part of the public revenue and absorbed in the general revenue of the State But the rate of levy of tolls could not according to the Advocate General, be made excessive like an ordinary tax which bears no relationship to the services rendered.

6. In my opinion the learned Advocate General''s contention is correct. The word "toll" is not a new expression but has a well defined meaning in public finance. Tolls have been levied over bridges and roads for several centuries in England and Europe and the levy was made primarily not for increasing the general revenue of the authorities concerned but for the purpose of recouping the expenses incurred in constructing the roads and bridges and in maintaining them Thus in the Encyclopedia of the Social Sciences. Volume XIII, edited by Edwin R. A Seligman, at page 404, it is pointed out as follows:

"From then on to 1774 Parliament passed hundreds of acts creating turnpikes. A turnpike trust was created with jurisdiction over a certain stretch of road and with authority to borrow money on the security of the tolls, which were to furnish the funds for the maintenance of the road and repayment of the loan. The tolls collected yielded barely enough to maintain the road in satisfactory condition and in relatively few instances were they sufficient to pay interest on the loan."

It was only in 1896 that the last turnpike vanished from the British soil When the Act was passed in 1851 it may be reasonably inferred that the expression "tolls" in the Act was intended to convey the same meaning as was given to the expression in Britain, namely, a levy for the purpose of providing funds for the maintenance of roads and bridges and repayment of the loan (if any) taken for their construction in the Encyclopedia Americana, Volume 26, at page 675, the expression "toll" has been defined as follows:

"Toll, the fee exacted by those who erect or maintain a bridge for the privilege of passing over the same a compensation for services especially for transportation, as canal of railway toll."

In the Encyclopedia Britannica, 1965 edition, the following note appears under the heading "Toll Bridges".

"Long-span bridges are mostly, and experience has shown that the most practicable manner in which they can be afforded is to build them as financially self-liquidating projects by charging tolls on the traffic using them."

7. Thus by merely using the expression "tolls" and by further saying that the tolls shall be levied on roads and bridges made or repaired by the Government, the Legislature in Section 2 of the Act clearly laid down for the guidance of the Government the principle that the rate of levy should be such as to meet the cost of repair of the roads and bridges and also for liquidating actual expenses incurred, in their construction within a reasonable time The quid pro quo element which distinguishes fees from taxes is also implied in the expression "toll" and though it may not be a "fee" as ordinarily understood it will clearly come within the scope of a compensatory tax as pointed out by the majority judgment in the well known Rajasthan case o( the Supreme Court in the The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others,

It is not correct to say that Section 2 gave unfettered and unguided arbitrary power to the Executive to levy any amount by way of toll merely for the purpose of augmenting the general revenues of the State. There are enough indications in the Act for the guidance of the executive power, and if in a particular case it can be shown that the rate of levy is so excessive as to make the levy not a "toll" as understood in public finance, the particular levy may be struck down as being in excess of the statutory power; but merely because there is a possibility of misuse of the statutory power by the Executive. Section 2 of the Act cannot be held to be unconstitutional. The first argument of Mr. Ghosh must, therefore, fail.

8. As regards the second point, Mr. Ghosh has not given us any material for the purpose of holding that the rate of levy is excessive. In Annexure 2 the rate of levy has been indicated and we find that the rate is very reasonable An ordinary motor-car is required to pay only Re 1, whereas a loaded truck or passenger bus is required to pay Rs. 3 and an unloaded truck or passenger bus Re. 1. For motor-cycle with side-car the rate is As. 8 and for a loaded rickshaw it is only As. 4. On behalf of the Government of Bihar an assistant of the Public Works Department has filed an affidavit stating that the rate of tolls imposed by the State Government was in consonance with the rates of such tolls prevailing in other

 

States, and even lower in some respects. He has attached to his affidavit an annexure, Annexure X, showing the rate of levy of tolls in the State of Madras when the entries in that annexure are compared with the entries in Annexure 2 it is found that the rates of toll for various classes of vehicles and animals in force in Madras do not differ very much from the rates in force in Bihar.

In most of the instances the rates are the same and in a few the Madras rate is slightly higher, whereas in respect of some vehicles and animals the Madras rate is slightly lower than the Bihar rate. But the difference is not very appreciable This affidavit of the Head Assistant of the Public Works Department to the effect that the rate of levy in Bihar compares favourably with the rate of levy in other States has not been controverted by any affidavit filed on behalf of the petitioner . Moreover in paragraph 12 of that affidavit it is stated as follows:

"The State Government has decided to levy the tolls which is compensatory for reimbursing itself to the extent of the cost of construction of this particular bridge without which it may not be possible to undertake construction of such bridges for the general and ultimate public good. The levy of tolls is in the larger interest of travelling public trade and commerce and is compensatory. The amount that will be realised by leasing the tolls has been earmarked for meeting the costs of construction of the said bridge as stated above."

The learned Advocate-General also by way of further clarification of this portion of the affidavit, said that, as soon as the entire cost of construction of the bridge is rembursed, the levy of toll for traffic over this bridge will be stopped. In my opinion, considering the rate or levy and the other factors mentioned above, it cannot be said that the Government have exceeded their power conferred on them u/s 2 of the Act. Restrictions caused to the freedom of movement must be held to be reasonable and in the interests of the public, and hence Clause (5) of Article 19 would come into operation and save the notification from the mischief of Sub-clause (d) of Clause (1) of Article 19.

9. I may also in this connection refer to the decision of their Lordships of the Supreme Court (majority) in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, to the effect that compensatory taxes were reasonable restrictions in the public interest for the purpose of Clause (b) of Article 304 of the Constitution. Though Article 304 may have no application for the reasons already stated, nevertheless the view taken by their Lordships of the Supreme Court as regards the reasonableness of the restrictions and such taxes being in public interest would equally apply in construing the same expression occurring in Clause (5) of Article 19. The other points urged by Mr. Ghosh are pure questions of fact which cannot be taken up in a writ petition in view of the vehement denial of the same by the other side.

10. For these reasons the petition is dismissed with costs. Hearing fee Rs. 100.

Anwar Ahmad, J.

 

11. I agree.

 