(1965) 09 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ No. 1809 of 1961

Mohammad Ibrahim APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 21-09-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 245, 301, 305
Tolls Act, 1851 — Section 2

Citation : AIR 1967 All 24

Hon'ble Judges : G.C. Mathur, J

Bench : Single Bench

Advocate : S.C. Khare, for the Appellant; P.C. Gupta and N.C. Rajvanshi and Gopinath, Jr. S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

G.C. Mathur, J.—These petitions have been filed by certain bus operators challenging the levy of toll on their vehicles crossing the Hindon Bridge Shri S.C. Khare, learned counsel for the petitioners and Shri Gopi Nath, learned Junior Standing Counsel, have both stated that it is unnecessary to consider the facts of each individual case since common questions of law arise in all the writ petitions and their decision rests upon the answers to be given to those questions. This order will govern all these writ petitions.

2. The petitioners ply their stage carriages on the Muzaffaranagar--Budhana--Kandhla--Isoopur route. This route crosses two rivers, namely river Hindon at Budhana and river Krishna at Rajpur Chhajpur A new bridge was constructed over river Hindon by the State Government and it was opened to traffic from September 21, 1960. Toll is being levied on vehicles crossing this bridge by the State Government under certain notifications issued by it under the Indian Tolls Act, 1851 (Act No. 8 of 1851). There is another bridge over the Krishna river at Rajpur Chhajpur and toll is being levied on vehicles crossing this bridge by the Antarim Zilla Parishad. Muzzaffarnagar. In these writ petitions, the levy of toll on

vehicles crossing the Hindon bridge alone is challenged.

3. The Indian Tolls Act, 1851, is an Act for enabling the Government to levy tolls on public roads and bridges. It appears that u/s 3 of the Indian Tolls Act, 1864, empowering it to do so the State Government, by a notification dated October, 30, 1956, extended the provisions of the Indian Tolls Act, 1861, to the whole of Uttar Pradesh. The relevant portion of Section 2 of the Indian Tolls Act, 1851, is as follows :

"2. 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 ---------------"

On November 1, 1956, the State Government issued a notification u/s 2 of the Indian Tolls Act, 1851. This notification was published in the U. P. Gazette of November 10, 1956, and reads as follows :

"No. 5495(3) C/XXIII-PWA-217-C-53-- In exercise of the powers conferred by Section 2 of the Indian Tolls Act, 1851 (Act VIII of 1851), the provisions whereof have been extended to whole of Uttar Pradesh by notification No. 5495 C/XXIII-PW A-217-C-53, dated October 30, 1956, the Governor is pleased to order that with effect from the date of issue of this notification tolls at the rates specified in the Schedule annexed hereto shall be payable by all persons using the permanent bridges as may hereafter be notified under para 2 herein living on roads under the control and management of the State Public Works Department subject to the following conditions :

(i) all permanent bridges constructed and opened to traffic on or before July 21, 1956, shall be exempt from the levy of tolls:

(ii) all permanent bridges the span whereof is 200 feet or less, or the cost whereof does not exceed Rs. 2.50 lakhs shall also be exempt from the levy of tolls:

(iii) the tolls on any particular bridge shall be levied for so long only as the total costs of its construction has not been realised in full or for a period of twenty years from the date of the first levy of tolls on the bridge whichever is earlier;

(iv) where a number of new bridges fall within the distance of 30 miles of each other on the same road toll shall be levied on only one of them Persons, vehicles and beasts of burden returning by the midnight of the following day shall not be charged any toll on their return journey if a toll has been realised on outward journey.

"2. The bridges which shall be subject to levy of tolls shall be notified from time to time. "

The Schedule divides the bridges into two categories;

(i) those costing more than Rupees five lacs; and

(ii) those costing Rupees five lacs or less

Different rates are prescribed for various types of vehicles using the bridges. It is unnecessary to give details of the Schedule as this schedule has been subsequently amended by a notification published in the U. P. Gazette of January 5, 1957, the Schedule to the first notification was amended. The amended Schedule divides bridges into three categories :

(i) bridges costing Rupees twenty-five lacs and above;

(ii) bridges costing between Rupees eight lacs and Rupees twenty-five lacs; and

(iii) bridges costing more than Rs. 2.50 lacs and less than Rupees eight lacs.

The petitioners ply stage carriages which have a carrying capacity of more than 12 passengers. Under this Schedule such stage carriages are liable to pay a toll of Rs. 7-8-0 in respect of a bridge of the first category, a toll of Rs. 5-10-0 in respect of a bridge of the second category and a toll of Rs. 3-12-0 in respect of bridges of the third category. By another notification published in the U. P. Gazette of July 20, 1957. this Schedule was further amended but the rates for motor buses carrying more than 12 passengers remained the same. On July 19, 1960, the State Government published a notification, which was published in the U. P. Gazette of July 30, 1960, and which reads as follows :

"In exercise of the powers conferred by Section 2 of the Indian Tolls Act, 1851 (Act VIII of 1851) and in pursuance of the provisions of paragraph 2 of Government Notification No. 5495 (3)C/XXIII-PWA-217-C-58, dated November 1, 1956, the Government of Uttar Pradesh is pleased to notify the bridge over the Hindon River at Budhana on Muzaffarnagar Budhana Road in Muzaffarnagar District as a bridge which shall be subject to the levy of tolls from the date it opens to traffic on the terms and conditions laid down in the aforesaid notification as amended from time to time. "

4. It is under these provisions that the petitioners have been required to pay tolls for crossing the Hindon Bridge According to the petitioners, the State Government collects a toll of Rs. 5-62 P (Rs. 5-10-0 as mentioned in the Schedule) from each stage carriage for crossing the Hindon Bridge and also a toll of the same amount when the stage carriage returns and re-crosses the bridge. The petitioners have challenged the levy of toll on four broad grounds, namely.

(1) that Section 2 of the Indian Tolls Act, 1851 is unconstitutional The constitutionality is challenged on two grounds :

(a) that Section 2 offends Articles 301 and 305 of the Constitution, and

(b) that Section 2 makes an excessive delegation of legislative power

(2) that the notifications issued u/s 2 by the State Government are invalid for two reasons:

(a) the power u/s 2 is exercisable separately in respect of each bridge and cannot be exercised generally in respect of an the bridges: and

(b) that the classification of bridges in these notifications according to their costs offends Article 14 of the Constitution

(3) that, on a proper interpretation of the notifications, no toll was leviable from the stage carriages on the return journey if the re-crossing was completed by the midnight of the next day; and

(4) that the cost of the Hindon Bridge was less than Rupees eight lacs and that the State Government was entitled to recover toll at the rate of Rs. 3-75 P (Rs. 3-12-0 as mentioned in the schedule) prescribed for bridges costing between Rs. 2.50 lacs and Rs. 8 lacs, and not at the rate of Rs. 5.62 P.

5. I will first deal with the constitutionality of Section 2 of the Act. Shri S. C. Khare, learned counsel for the petitioners fairly con-ceded that, in view of the decision of the Supreme Court in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, the attack on the validity of Section 2 on the ground of violation of the provisions of Articles 301 and 305 of the Constitution cannot be sustained I have, therefore, to consider only the question whether Section 2 makes an excessive delegation of legislative power. The contention of learned counsel is that Section 2 of the Act does not itself prescribe the rates at which tolls may be levied, nor does it prescribe the maximum or minimum rates at which tolls may be levied; it does not specify the roads or bridges which may be subjected to the levy and it does not specify the vehicle on which the levy of toll is to fall but leaves everything to the determination of the State Government.

According to learned counsel for the petitioners, this delegation of power in favour of the State Government is unlawful as no guiding principles have been laid down by the Act for the exercise of the power So far as the roads and bridges, which are to be subjected to the levy, are concerned, there is sufficient specification in the Act that it is such roads and bridges as are made or repaired at the expense of the Central or any State Government which may be subjected to the levy It was neither necessary nor possible for the Act itself to name all the roads and bridges that may be subjected to the levy Nor was it necessary for the Act itself to specify the persons, vehicles and beasts of burden which may be required to pay the toll for using the roads or bridges In different States, different types of vehicles and different beasts of burden are used In my opinion, in leaving the selection of persons, vehicles and beasts of burden to the State Government the Act did not make any excessive delegation of legislative power (See Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others,

It has then to be considered whether the delegation of the power to fix the rates of lolls to the State Government amounts to an invalid delegation of legislative power It is now well settled that the fixation of rates of taxes may be left to the executive, provided some guiding principles are laid down by the Corporation of Calcutta and Another Vs. Liberty Cinema, In that case, Section 548 of the Calcutta Municipal Act, which empowered the Calcutta Corporation to levy fees on cinema houses and left the fixation of rates to the Corporation itself, was challenged as unconstitutional on the ground of excessive delegation of legislative power. The Supreme Court was of the view that that section, in fact, permitted the levy of a tax and not a fee and that it was permissible to delegate the power to fix rates of taxes to a delegatee, provided sufficient guidance was given by the Legislature in that behalf.

The Supreme Court further held that, for a statutory provision for raising revenue for the purposes of the delegatee the needs of the taxing body for carrying out its functions under the statute, for which alone the taxing power was conferred on it, afforded sufficient guidance to make the power to fix the rate of tax valid In the present case, the power has been conferred to fix the rates of tolls. Toll is well understood to be a charge or a payment for the use of roads, bridges, market places and the like. It cannot be equated with a general tax It is if at all a tax, a compensatory tax for the use of certain facilities From its very nature, the levy is for the purpose of compensating the Government for the expenses incurred in the construction of maintenance of roads and bridges The need of the State Government for compensating itself for the expenses incurred in the construction or maintenance of the roads and bridges is sufficient guidance to make the power to fix rates of tolls valid.

Indeed, from the original notification of November 1, 1956, it appears that tolls have been levied on the bridges for the purpose of recovering the costs of their construction. In my opinion, Section 2 of the Indian Tolls Act, 1851, does not suffer from the vice of excessive delegation of legislative power and is not unconstitutional on that ground.

6. The next contention of learned counsel for the petitioners that arises for consideration is whether the notification issued by the State Government u/s 2 of the Act is invalid by reason of the fact that it has been issued generally in respect of all the bridges in Uttar Pradesh In other words, the contention is that Section 2 merely empowers the State Government to levy toll on bridges individually Section 2 empowers the State Government to levy a toll upon" any road or bridge" I am unable to read these words as directing the State Government to issue a separate notification in respect of each road and each bridge. Since the section empowers the State Government to levy tolls in respect of all roads and all bridges made or repaired at the expense of the Central or State Government, it is open to the State Government to make the levy on all the roads or all the bridges by one notification.

7. The Notification is then challenged on the ground that the classification of bridges therein according to their costs offends Article 14 of the Constitution There is no substance in this contention either. Since the object of the levy is to compensate the State Government for the money spent on the repairs or construction of the bridges it is obvious that the levy has to be co-related to the expenses incurred in the construction of each bridge. In my opinion, this classification is a perfectly valid and legal classification.

8. Having held that Section 2 of the Indian Tolls Act is not unconstitutional and that the notifications issued by the State Government under the section have been validly issued, I have now to consider the third submission of Shri Khare that no toll was leviable under the notifications from stage carriages on their return journey if the re-crossing of the bridge was completed by the midnight of the following day The original notification of November 1, 1956, expressly provides:

"persons, vehicles and beasts of burden returning by the midnight of the following day shall not be charged any toll on they return journey if a toll has been realised on outward journey."

In the Schedule annexed to the notification, as modified subsequently, the toll payable in respect of the return journey is mentioned as :

"Yadi dusre din ko ardh ratri take Poori Ki gani ho, mool ticket dikhaya jane par."

This clearly shows that, if the return journey is completed by the midnight of the day following the date of the outward journey, no toll shall be payable if the receipt of the payment of the toll for the outward journey is shown. The express provisions in the notification and the Schedule itself show that no toll was payable if the return journey was completed by the midnight of the following day. I, therefore, hold that respondents Nos. 1 and 2 were not authorised to levy toll on the petitioners in respect of their return journey when such return journey was completed before the midnight of the day following the outward journey.

9. II might be mentioned here that, after Shri Khare had finished his arguments, Shri Gopi Nath asked for time to produce a subsequent notification of the State Government amending the previous notifications made u/s 2 of the Indian Tolls Act I granted him time, and, he, on the next date of hearing produced a notification dated March 22, 1963 This notification purports to supersede the notification of November 1, 1956, as amended from time to time, and lays down a fresh Schedule of rates of tolls. Shri Khare thereupon prayed for time to file a supplementary affidavit and to make an application for adding fresh grounds to his petition challenging this modification of 1963 also The time prayed for was granted and Shri Khare has filed a supplementary affidavit and an application In his application, he has raised two grounds against this notification, namely.

(1) that this notification was issued mala fide to defeat the writ petitions; and

(2) that the notification was bad on account of excessive delegation of legislative power.

I have already dealt with the question regarding excessive delegation of legislative power and my decision on this point governs this notification also the other ground is also without any substance. On a close examination of this notification, it appears that, in so far as the petitioners are concerned, it does not alter the situation at all either with respect to the rates of tolls or with respect to the exemption from payment of toll on the return journey completed by the midnight of the following day. The Schedule to this notification clearly provides that no toll is payable on the return journey if completed by the midnight of the following day if the original ticket was shown.

10. The last question that falls for consideration is whether the State Government is entitled to recover toll from the petitioners for the use of the Hindon Bridge at the rate of Rs. 5.62 P. or only at the rate of Rs. 3.75 P. The answer to this question depends on the cost incurred by the State Government in the construction of this bridge. The State Government is charging a toll in respect of this bridge on the footing that the cost of construction thereof is above Rs. 8 lacs The petitioners contend that, on the showing of the State Government itself, the cost of construction of this bridge is below Rupees eight lacs. In a pamphlet issued by the State Government on the occasion of the opening ceremony of this bridge which is annexed to C. M. Writ No. 1809 of 1961 as Annexure '' E''. the expenses incurred by the State Government in respect of this bridge are mentioned as

"(a) Costs of the bridge . . . .

Rs. 4,24,000

(b) Approach Roads. . . . .

Rs. 1,41,000

(c) Protection Dam . . . .

Rs. 2,08,000

(d) Road from Budhana to the judge. . . . .

Rs. 39,000

Total

Rs.

8,09,000. "

According to learned counsel for the petitioners, the cost of the construction of the road from Budhana Town to the Hindon Bridge (Rs. 39,000) cannot be taken to be a part of the cost of the Hindon Bridge. This contention has force. It will be noticed that, in the expenses incurred, the cost of construction of the approach roads amounting to Rs. 1,41,000 has also been included The cost of the construction of the approach roads may be included in the cost of the bridge but, by no stretch of the imagination, can the cost of construction of the road from Budhana Town to the Hindon Bridge be included in the cost of the bridge. If this sum of Rs. 39,000 is deducted, then the cost of the bridge comes to an amount less than Rupees eight lacs in my opinion, the cost of the Hindon Bridge is below Rupees eight lacs and the State Government is not entitled to charge toll from the petitioners at the rate of Rs. 5-62 P per vehicle which is the rate for bridges costing between Rupees eight lacs and Rupees twenty-five lacs, but it is entitled to recover toll in respect of this bridge at the rate of Rs. 3.75 P from each vehicle of the petitioners passing over it.

11. The writ petitions are partly allowed Respondents Nos. 1 and 2 are directed not to recover toll at a rate higher than Rs. 3.75 P from the petitioners in respect of their stage carnages having a carrying capacity of more than 12 passengers for using the Hindon Bridge. They are further directed not to charge any toll in respect of stage carriage or a motor bus on its return journey if the return journey is completed by midnight of the following day and the toll receipt for the outward journey is produced Since respondents Nos. 1 and 2 have been recovering toll from the petitioners at the rate of Rs. 5.62 P per vehicle while they were entitled to recover toll only at the rate of Rs. 3.75 P per vehicle, the petitioners have become entitled to a refund of the amount of toll paid in excess On July 13, 1961, the Junior Standing Counsel appearing on behalf of respondents Nos. 1 and 2 had given an undertaking that, if these writ petitions were allowed, the Respondents would refund the amount of toll which would become refundable The respondents Nos. 1 and 2 shall now refund the amount of excess toll collected by them from the petitioners upon their applying for the same. Since the petitioners have partly succeeded and partly failed. I direct parties to bear their own costs of these petitions.