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(1957) 04 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3 of 1956

Mrs. K.K. Wadhwani APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 24-04-1957

Acts Referred:

Constitution of India, 1950 — Article 265, 366, 366(28)
Rajasthan Motor Vehicles Taxation Act, 1951 — Section 20, 21

Citation : AIR 1958 Raj 138 : (1957) RLW 541

Hon'ble Judges : K.L. Bapna, J;K.K. Sharma, J

Bench : Division Bench

Advocate : J.P. Jain, for the Appellant; M.C. Chhabia, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.L. Bapna, J.—This is a petition under Article 226 of the Constitution of India.

2. The petitioner, Mrs. K.K. Wadhwani, holds a permit for a stage carriage operating on the Jaipur-Tonk route commencing from 5th September, 1955, to 4th September, 1958. On this route there is a bridge about 5 miles from Tonk City on the river Banas, which is known as Frazer Bridge.

This was constructed in 1937 in the erstwhile State of Tonk. The State of Rajasthan, into which the former Tonk State has integrated, demands annas -/12/- for the passing or repassing of any public vehicle on that bridge. She had to pay Rs. 24/- for passing and re-passing the said bridge between the period of 28-9-1955, when she put her bus No. RJL 3705 on the road, and 15-12-1955, at the rate of 12 annas for each passing or repassing the bridge, according to the statement furnished by her,

It is contended on her behalf that the said imposition of annas 12 is by way of tax, and is not authorised by law, and the State of Rajasthan be prohibited from collecting the said tax when her stage carriage passes or repasses the Frazer

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Bridge on the Jaipur-Tonk route.

3. The reply on behalf of the State is that prior to the construction of the Frazer Bridge, the Municipal Board of Tonk used to construct a lair-weather road over the bed of the river Banas to facilitate the crossing of the river by the public, and a toll was charged according to a certain schedule of rates in respect of all sorts of vehicles and animals passing over that fair-weather road, and on the construction of the bridge this toll was ordered to be realised by the Public Works Department of the State by the Government of Tonk State.

It was alleged that the levy of 12 annas from every public vehicle which passes over the bridge is a fee to meet the cost of construction of the bridge and its maintenance, and was formerly realised under orders of His Highness the Nawab of Tonk, who was the sovereign authority in the State, and the same right to levy has been acquired by the State on account of the merger of that State into the greater State of Rajasthan, It was contended that toll was not a tax. It was used to be realised under the authority of law in the former Tonk State, and its realisation now is not invalid.

4. Article 265 of the Constitution lays down that no tax shall be levied or collected except by authority of law. Article 366, item 28, defines "taxation" as including "the imposition of any tax or impost, whether general or local or special", and "tax" to be construed accordingly.

5. The Frazer Bridge has been constructed over the Banas as part of the road from Jaipur to Tonk and beyond. It is part of the highway, the common definition whereof is that it is a way leading from one marked town or inhabited place to another inhabited place, and which is common to all the subjects of the Sovereign. Public bridges are highways so far as the right of passage is concerned, (Halsbury''s Laws of England, Volume 16, Paragraph 1).

This bridge is not the private property of an individual, but is the property of the State, and is a public bridge. There may be some distinction between a toll and a tax, when the former is being realised by a private individual; but whatever be the name, the demand of annas 12 for each passing and repassing over the Frazer Bridge of a motor vehicle by the Government is nevertheless an imposition, and is a tax within the wide definition of Article 366 of the Constitution.

A large number of cases have been cited in which a distinction has been made between a tax and a fee, but in all those cases the fee is for rendering a particular service, and the funds realised are not to be used towards the general revenues of the State. No account has been produced by the State to show how much collections were made each year, and what amount was spent on repairs of the bridge. We are, therefore, of opinion that Article 265 is applicable.

6. Learned counsel for the State relied on Section 20 of the Rajasthan Motor Vehicles Taxation Act 1951 (Act No. XI of 1951) in support of the demand of the

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toll in respect of the Frazer Bridge. That section is as follows:

"Notwithstanding anything contained in this Act it shall be lawful for the Government to levy tolls on motor vehicles under any law or usage for the time being in force, such rates as it may from time to time fix --

(i) for the use of any bridges, or

(ii) on any bridge constructed, reconstructed or repaired after the commencement of this Act."

7. Section 20 by itself does not authorise the levy of tolls, but only declares that if under any law or usage for the time being in force the Government has power to levy tolls, it may do so. The section refers to two contingencies for the demand of tolls, (1) if authorised under any law, and (2) if authorised under any usage.

The second contingency is directly in contravention of Article 265 of the Constitution, which! says that the tax can only be imposed by authority of law. It rules out the levy or collection of tax by usage. It is, therefore, to be seen whether there is any law under which the toll in dispute could be levied by the State.

8. No Act or statute has been cited by the State under which the imposition may have been authorised to be made. The documents that have been produced on behalf of the State show that the State Council of Tonk had before them a note of the Judicial Member dated 4-7-1936, as to whether the toll at Frazer Bridge would continue to be a Municipal Tax or whether it should be considered to be State tax after the opening of the Bridge, and the State Council decided on 6-7-1936 that the toll on the Frazer Bridge should be a State tax, and the P. W. D. should be responsible for its collection.

There is no reference to any law or enactment under which the State Council may have decided to collect this tax on the Frazer Bridge. (Vide document Section 1). It may be mentioned that prior to this there was no bridge on the Banas. There was a temporary causeway which used to be built up and repaired by the Municipality of Tonk, and a certain toll was realised from laddhis (big carts), ordinary carts and even if any cart crossed the river within a distance of 500 yards of the temporary road, the said toll had to be paid. On 9-12-1935, however, the State Council decided to abrogate the latter rule (Vide document Section 3).

In respect of lorries and cars, the rule appears to be to charge a few annas as wheel tax, if the lorry of Tonk City even reaches the edge of the river, or a lorry from outside crosses the causeway. (Vide document Section 6 of 15-1-1934). The State Council, however, decided that whatever realisations were formerly made by the Municipality should now be made by the State, and were considered as a sort of tax, according to the above resolution dated 6-7-1936.

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9. It appears that the collection by the P. W. D. did not find favour, and the Council decided on 13-7-1936, that the collection of the tax should be made through a contractor. Certain conditions were drafted, which included the collection of a tax at 12 annas per lorry and 4 annas per car, and a recommendation was made for exempting cars of certain persons.

This proposal was put up before His Highness the Nawab of Tonk, who agreed to the proposal but made certain additions to the list of exemptions by order of 21-7-1936 (vide document Section 2). This contract was given to various persons from time to time, and the position now is that the Government collects this amount through its own agency.

10. In the Tonk State the sovereign authority was His Highness the Nawab of Tonk in whom centered the executive, Judicial and legislative functions. The mode of legislation was often by promulgation of an Act, as for instance the Tonk Stamp Act of 1913, and possibly in some cases by a rule, regulation or notification haying the sanction of His Highness the Nawab of Tonk. But that does not mean that all executive actions should be considered to be judicial actions as well, if they emanated from His Highness the Nawab of Tonk.

One of the important conditions of the promulgation of a law would seem to be its proper publication, and not merely a sort of order on a file, which may remain in office. It may not have been possible to challenge such an order while His Highness the Nawab of Tonk continued to be the sovereign authority in his State, but the constitutional changes and the guarantees laid down by the Constitution have now given the privilege to every citizen of India to challenge the legality of any imposition.

Even the proposal to levy the tax does not seem to have been squarely laid before His Highness ''the Nawab of Tonk, but Is contained in the conditions of the grant of the Theka, and an approval of such proposal cannot be said to have been done in exercise of the legislative functions of the sovereign authority. There is thus no authority of law for the imposition of the tax of annas 12 for each passing and repassing of a bus on the Frazer Bridge.

11. It may be mentioned that Section 21 of the Motor Vehicles Taxation Act, 1951, directly prohibits any local authority from imposition of any toll, and the State cannot fall back on the previous collection of some sort of toll on vehicles, by the Municipality of Tonk which maintained the causeway.

12. In conclusion it may only be said that even if the present imposition be a fee, it also can be levied only under a law, and there being no law under which it has been imposed the conclusion to which we have reached would be the same as we have arrived at by holding that the said toll is a tax.

13. The petition is, therefore, allowed, the State Government is prohibited from realising the toll from the petitioner in respect of her motor bus for passing and repassing over the Frazer Bridge, and any amount received from her shall be

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refunded. The petitioner will receive her costs from the State.

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