
(1979) 07 MP CK 0023

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 703 of 1973

Rewa Transport Service, Rewa and others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 23-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226
Tolls Act, 1851 — Section 2

Citation : (1979) JLJ 738

Hon'ble Judges : G.P. Singh, C.J;U.N. Bhachawat, J

Bench : Division Bench

Advocate : S.Q. Hasan, for the Appellant; M.V. Tamaskar, Govt. Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, J.—The petitioners who are operators of Motor Vehicles, by this petition Under Article 226 of the Constitution, challenge the validity of the notification published in the Government Gazette dated 3rd November 1972 levying toll tax on the bridges costing rupees five lacs and above constructed under the Second, Third and Fourth Five Year Plans and under the various development plans as mentioned in the First Schedule and at the rates specified in the Second Schedule to the notification. This notification was issued by the State Government in exercise of its powers u/s 2 of the Tolls Act, 1851.

2. The only argument of the learned counsel for the petitioners is that as section 2 does not specify the maximum rate at which the toll can be levied by the State Government and as it leaves the fixation of rates solely at the discretion of the Government, it confers uncanalized power and is invalid on the ground of excessive delegation. Learned counsel for the petitioners relied upon the case of Corporation of Calcutta and Another Vs. Liberty Cinema, in support of his submission.

3. Section 2 of the Act provides that 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. Section 2 does not in terms prescribe the maximum limit of the rate of toll that may be levied by the State Government. It may generally be stated that when authority to tax at such rate as the Government may specify without the Legislature fixing any maximum is conferred, it would be invalid on the ground of excessive delegation if no other guideline is indicated, for when tax is levied for the benefit of the Government, no implied limitation of quantum of tax can be inferred because the Government's needs are unlimited. In contrast, when a power to levy tax is conferred on a Municipal Corporation without prescribing the maximum, the taxing power can be upheld on the ground that the power to tax conferred on a Corporation is necessarily limited by the expenses required to discharge its functions. It was on this principle that the Supreme Court held invalid section 5 of the Punjab General Sales Tax Act, 1948, in *M/s Devi Das v. State of Punjab* A I R 1967 S C 1107 and upheld the validity of section 548 (2) of the Calcutta Municipalities Act, 1951, in *Corpn. of Calcutta v. Liberty Cinema* (supra). The question to be seen is whether section 2 of the Tolls Act gives any guideline to the State Government in fixing the rates of toll. In our opinion, the guideline is furnished by the nature of the toll itself. The power u/s 2 is to levy toll in respect of the roads and bridges made or repaired by the Government. "Toll" is a sum of money which is taken in respect of some benefit; [See Strouds Judicial Dictionary (Fourth edition) Vol. 5, p. 2785]. The concept of toll is a charge or a payment for the use of roads, bridges, market places and the like Toll cannot be equated with a general tax. It is in the nature of a compensatory tax for the use of certain facilities. From its very nature, toll u/s 2 is levied for the purpose of compensating the Government for the expenses incurred in the construction and maintenance of roads and bridges. The need of the Government for the construction and maintenance of roads and bridges is not unlimited and furnishes sufficient guidance for fixation of rates of toll which the State Government can levy u/s 2. Section 2, therefore, cannot be held to suffer from excessive delegation. Our attention was drawn to a decision of the Allahabad High Court in *Mohammad Ibrahim Vs. State of U.P. and Others*, where on similar reasoning section 2 was held to be valid.

4. The petition fails and is dismissed, but without any order as to costs. The security amount be refunded to the petitioners.