

(1955) 09 AHC CK 0036

In the Allahabad High Court

Case No : Misc. Writ No's. 615 and 616 of 1955

Shyam Lal

APPELLANT

Vs

District Board of Agra and Others

RESPONDENT

Date of Decision : 01-09-1955

Acts Referred:

Northern India Ferries Act, 1878 — Section 3, 4

Citation : AIR 1956 All 7

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : S.C. Khare and N.C. Upadhyaya, for the Appellant; J. Swarup and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. These are two connected petitions raising the same questions for decision and may conveniently be disposed of together.

2. The petitioners in the two petitions are permit holders for stage carriages which run on the route Agra to Tantrapur. On this route, two rivers intercept the highway. Khari river does it at mile 13 and Uttangan river at mile 23. There are permanent masonry bridges over these two rivers, but the bridges are somewhat low. There is no difficulty in the seasons other than rainy season and all the stage carriages and buses run over the pucca bridges while travelling on this route.

The difficulty only arises sometime during the rainy season, because on some days the water flows over the bridges and if the water is sufficiently deep over them, it is not possible to cross the bridges by motor transports. On those days the passengers get down from the buses and walk down to the neighbouring ferries where arrangements are made to carry passengers across the river but not the buses. Previously there used to be no levy of toll tax on vehicles crossing the bridges over the rivers Khari and Uttangan. But subsequently (the exact time

does not appear from the affidavits), the District Board of Agra started levying a toll tax on the vehicles crossing these bridges, in the rainy season.

From 1st July to 31st. October each year, the stage carriage owners or drivers have to pay a sum of Rs. 4/8/- to the District Board or to its agent as toll money, at each stream on each way of their journey. The result is that these bus owners have to pay as much as Rs. 18/- per bus if the buses go from Agra to Tantiapur and return to Agra the same day. In the petitions, the legality of this impost has been challenged, and the prayer made is that a writ of mandamus be issued to the respondents directing them to refrain from collecting any toll tax from the petitioners for taking their buses across these two bridges.

3. The first point urged in support of the petitions is that the petitioners travel on a highway and a highway cannot be declared to be a ferry under the Northern India Ferries Act. The argument is that the pucca bridges on this route form part of a highway and the District Board has no jurisdiction to levy any toll tax, because bridges cannot be called ferries. The word "ferry" itself has not been defined in Section 3 of the Northern India Ferries Act, No. XVII of 1878; it is merely said that it includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge and a temporary bridge, and the approaches to, and landing-places of, a ferry.

Section 4 authorises the State Government to declare what ferries shall be deemed to be public ferries, to take possession of private ferries and declare to be public ones, to establish new public ferries, to define and change their limits or to discontinue any public ferry. Section 14 lays down that whoever uses the approach to, or landing-place of, a public ferry is liable to pay the toll payable for crossing such ferry.

Section 15 says that tolls, according to such rates as are from time to time fixed by the State Government, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry, and not employed or transmitted on the public service. There is a proviso which says that the State Government may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

4. The first question for consideration is whether these pucca bridges over the two rivers can be said to be ferries. Only the extended meaning of the word "ferry" has been given in the Act and not what it itself means; so its meaning must be taken to be the sense in which the word is ordinarily used. Ordinarily the word means the arrangements made usually by boats for taking persons, animal and goods across a river, and sometimes it is used for the act of so carrying them.

The meaning of the word was considered in the case of -- "Newton v. Cubitt" (1862) 12 C. B. N Section 32 also reported in 142 ER 1053 (A). In this case a ferry has been called

"the exclusive light to carry passengers across a river or arm of the sea from one village to another, or to connect a continuance line of road leading from one township or village to another, and not a servitude imposed upon a district or large area of land."

The above quotation is from the headnote in the English Reports.

5. I do not think that the word in ordinary parlance includes a pucca bridge over which vehicles and persons may pass in order to cross a river. The definition in Section 3 only extends the meaning of the word so as to include the type of bridges mentioned in the section and approaches to or landing-places of a ferry. A pucca bridge is not included within the definition nor can it be said to be an approach to or landing-place of a ferry.

The bridge is a continuance of the public road which runs from Agra to Tantapur. The pucca bridges, therefore, cannot be said to be ferries in any sense of the word. u/s 4 the Government has a right to declare only ferries to be public ferries. It cannot declare pucca bridges to be public ferries, even if it purported to do so.

6. In the Hailsham Edition, Halsbury's Laws of England, Vol. 16, at pages 182 and 398, it has been said that public bridges are highways. At the top of page 398 it is said,

"Every bridge is a public highway whether it be a foot bridge, horse bridge, or a carriage bridge, and whether erected by individuals or by a public body."

At page 182 it is said,

"Public bridges are highways so far as the right of passage is concerned."

It does appear that these pucca bridges are parts of a highway and they do not come within the definition of the word "ferry", as given in the Northern India Ferries Act. It is, therefore, obvious that the Government could not declare these bridges to be ferries.

7. The next question is whether the Government has actually declared them to be ferries or not. On behalf of the respondents it is said that such a declaration was made by means of a notification issued by the Government and published at pages 109 and 110 of Part I of the North-Western Provinces and Oudh Gazette of February 17, 1883, which was issued under the Northern India Ferries Act, 1878. According to the averment in the counter-affidavit, the limit of Akola ferry over the Khari river has been fixed at 440 yards both up and down stream on either side of the ferry. (According to the respondents, this ferry over the river Khari is called Akola ferry.)

It is not contested that the ferry at Khari river is called Akola ferry and it does appear that there was also the notification relied on in the counter affidavit but I do not think it means that the bridges within the ambit of 440 yards of the ferry are also to be included in the ferry. What the notification obviously means is that

the banks of the river up and down the stream within a distance of 440 yards would be taken to be part of the Akola ferry.

The Government could never have intended to include in this ferry the bridges and public roads within this distance. The obvious meaning of the notification is that the bank of the river up to that distance would be taken to be parts of the ferry and not every article or thing situate within 440 yards of the ferry. I hold that the Government did not include the bridge or the public road within the ferry.

8. It appears from the counter affidavit, paragraph 7 that the District Board tries to defend the levy of this toll on the ground that it has to maintain a large number of boats as it has to make provision for the days when the water of the rivers may be overflowing the bridges. I do not think such a far-fetched levy of the toll tax can be justified and the contention loses all force when it is admitted (by Mr. Shanti Bhushan who held a brief for Mr. Jagdish Swarup) that this toll tax is not levied on the days when the water actually overflows the bridges.

It is levied only on those days when the petitioners' buses or stage carriages are able to cross the bridges. The fact that no toll tax is levied on these vehicles on the days that they are not able to cross the bridges and it is only levied on the days that the vehicles do cross them, clearly establishes the fact that this toll tax is levied on the vehicles only for passing over these two bridges. I have already said above that a pucca or masonry bridge cannot be taken to be a ferry and, therefore, no toll tax can be levied for crossing it.

9. The next point argued by the learned counsel for the petitioner is that the toll tax can be charged only for services to be rendered to those from whom it is levied and as far as these vehicles are concerned, no services are rendered at all by the Board to these vehicles or their owners. It is said that the road as well as the bridges are maintained by the Public Works Department of the Government and the District Board incurs no expenditure over their maintenance.

I do not think, in the view that I have taken on the first point, it is necessary to decide this question, nor do I think it is necessary to decide the third point, argued by the learned counsel for the petitioners, that the power conferred on the State Government to exempt certain persons and vehicles from toll tax is invalid inasmuch as it confers ungraded and arbitrary powers on the Government to favour some persons and discriminate against others.

10. Because of my decision on the first point I think the petitioners must succeed. I allow these petitions and direct that writs of mandamus be issued to the respondent 1 not to levy any toll tax on the vehicles of the petitioners when they cross the above mentioned two bridges over the rivers Khari and Uttangon. The District Board is further directed to return the money deposited by the petitioners in pursuance of the interim orders that I passed in these two petitions. The petitioners will be entitled to their costs from the respondent 1.