

(1975) 07 CAL CK 0012

In the Calcutta High Court

Case No : C.R. No's. 7105 (W) and 8335 (W) of 1974 and 3873 (W) and 7295 (W) -7296 (W) of 1975

Sushan Chandra Pal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 21-07-1975

Acts Referred:

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

Citation : AIR 1976 Cal 32

Hon'ble Judges : Amiya Kumar Mookerji, J

Bench : Single Bench

Advocate : Madan Mohan Saha, in C.R. No. 7105 of 1974, Arun Prakash Sircar, in C.R. Nos. 7295 W-7296 W of 1975, Somnath Chatterjee and Samir Ghosh, in C.R. No. 3873 W of 1975 and Madan Mohan Mallick and Rabilal Mitra, in C.R. No. 8335 W of 1974, for the Appellant; Paritosh Mukherjee, for Opposite Parties Nos. 1 and 4, Pritosh Mukherjee in C.R. Nos. 7295 (W)-7296 (W) of 1975, Dipankar Gupta, Standing Counsel, G.N. Roy, Maloy Kumar Bose and Suprakash Banerjee, in C.R. No. 7015 (W) of 1975 and C.R. No. 3873 of 1975 and Paritosh Mukherjee in C.R. No. 8335 (W) of 1974, for the Respondent

Judgement

Amiya Kumar Mookerji, J.—The petitioners are the members of the Mindnaipore District Bus Owners' Co-ordination Committee. They challenge a notification issued by the Public Works Department, Government of West Bengal dated 21st October, 1974 by which the tolls were levied with respect to seven bridges mentioned in the schedule to the said notification. A notice in vernacular has also been issued by respondents Nos. 2 and 3 stating that all machine driven vehicles driving from the Deshapran Sashmal Setu near Midnepore and Rasulpur Bridge near Contai were required to pay bridge toll according to the schedule rates with effect from 1st December, 1974. The said seven bridges differ widely in their size, circumference and engineering skill. The cost of construction of those bridges or repairs thereof also widely varies. The cost of construction or repairs of each bridge has not been stated in the said notification and consequently the

rates of toll that have been levied, have no correlation to the expenses incurred in the construction of each bridge or repairs thereof. It is stated by the petitioner in the petition that even a bus crosses one of the said bridges only once in one trip it would have to pay tolls at the rate of (one up and one down) Rs. 6 per day and the annual toll would come to Rs. 2,190 which is higher than annual road tax which an owner is required to pay for one single bus. According to the petitioners, the impugned notification is ultra vires of Section 2 of the Tolls Act as it has been made and published without any reference or consideration of the respective cost of construction as also the cost of repairs in respect of the said seven bridges. The said notification is also arbitrary and the tolls fixed are highly excessive, oppressive, unreasonable and are not based on consideration of the aforesaid cost of construction and repairs. Furthermore it has left the tolls to be levied by an unknown authority which is illegal and not valid. The petitioners being aggrieved moved this Court under Article 226 of the Constitution and obtained the present Rule.

2. The other rules were also obtained by the bus owners of Arambagh and Birbhum challenging the levy tolls with regard to Dwarakeswar, Mayurakshi and Ajoy Bridges. It is unnecessary to state the facts of each individual case, since common points of law arise in all the Writ Petitions. So my order in this Rule shall govern all these Writ Petitions.

3. An affidavit-in-opposition has been filed on behalf of the respondents and affirmed by Suhrit Kr. Deb, Dy. Secretary, Public Works Department, Government of West Bengal wherein it is stated that the State Government has insufficient resources in the budget for catering to the needs of ever increasing public demand for bridging of numerous rivers throughout the State. Hence in order to mobilise additional resources, toll in respect of the seven bridges in question was introduced. The collection of toll from the said bridges is to be utilised for construction of new bridge in the State and the said collections have no relation to cost of construction and/or repair of the bridges from which the toll revenue is earned. In order to mobilise additional resources, a revolving fund known as "State Bridge Fund" has been created out of the revenues from tolls realised from some of the existing bridges. The progressive accumulation in the fund will be utilised for construction of more and more bridges in the State. This has no relation to the costs of construction or repairs to the respective bridges from which toll revenues are earned.

4. It is contended by the learned counsel, appearing on behalf of the petitioners that the impugned notification is ultra vires Section 2 of the Tolls Act, 1851 as there being no mention of the costs of construction or repair of the respective bridges and the tolls imposed upon those bridges were not on consideration of the same, toll for all the seven bridges is arbitrary, excessive and not based on or related to the costs of construction of the said bridges. In support of the contentions, reliance is placed upon a Bench decision of Patna High Court, Maheshwari Singh Vs. State of Bihar and Others, , and a single Bench decision of

Allahabad High Court, Mohammad Ibrahim Vs. State of U.P. and Others, .

5. The impugned notification reads as follows:--

No. 6-W (SBF). 8th October 1974.--Whereas the bridges named in column (2) of Part I of the schedule below were made and are, from time to time, repaired at the expenses of the Government of West Bengal;

Now, therefore, in exercise of the power conferred by Section 2 of the Indian Tolls Act, 1851 (Act 8 of 1851) the Governor is pleased hereby to direct that rates of tolls specified in Part II of the said schedule shall be levied on each of the aforesaid bridges and that the collection of tolls in respect of each such bridge shall be placed under the management of such officer as is specified in column (3) of part I of the said schedule against each bridge.

SCHEDULE

Part- J

Serial No Name at bridge Collection of tolls placed under management of

1 2 3

1.

Mahananda Bridge, Siliguri. district Darjeeling.

Executive Engineer (P.W.D.), Darjeeling Division.

2.

Kaljani Bridge, Alipurduar, district Jalpaiguri.

Executive Engineer (P.W.D.). Alipurduar Construction Division.

3.

Mayurakshi Bridge, Sainthia, district Birbhum.

Executive Engineer (P.W.D.), Birbhum Division.

4.

Dwarakeswar Bridge, Bankura.

Executive Engineer, P. W. (Roads). Bankura Construction Division.

5.

Deshpuran Sashmal Setu (Cossye Bridge) Midnapore.

Executive Engineer (P. W. D.), Midnapore Division No. 1.

6.

Ajoy Bridge, Illambazar, District Birbhum.

Executive Engineer, P. W. (Roads), Birbhum Construction Division.

7.

Rasulpur Bridge, Bhaitgarh. district Midnapore.

Executive Engineer, P. W. (Roads), Midnapore Construction Division No. 1.

Rs.

17,43,703

Less : Rebate on 2% of export sale, i.e., 2% of Rs. 26,16,093 @ 46.63% (i.e., 46-63% on Rs. 52,322)

24,398

17,19,305

(Average rate of tax for rebate on export profit =

$17,43,703 \times 100$

$37,83,090 = 46.09\%$)

Less : Rebate on export profit @ 1/ 10th of 16.00% on Rs. 25,25,489 (as per para (20) of A. A.C.'s order)

1,16,173

16,03,132

Section 2 of the Tolls Act reads as follows:--

"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."

6. In Maheshwari Singh Vs. State of Bihar and Others, , Narasimham, C.J. observed that 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. 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 of the Supreme Court in the The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, .

7. Section 2 of the Tolls Act empowers the Government to cause levy of tolls upon any road or bridges which has been made or shall, hereafter be made or repaired at the expenses of the Central or any State Government,

8. Therefore, in my view, it is not necessary for the State Government to state in the notification the actual costs of construction or repairs of each of the seven bridges mentioned in the said notification. Powers to levy tolls can be validly exercised u/s 2, for the purpose of creating "fund" for construction of new bridges and roads in future and maintenance of the existing roads and bridges.

9. The Division Bench of the Bihar High Court has nowhere laid down that without mentioning cost of the construction of a particular bridge no toll can be imposed upon that bridge.

10. It is contended that the impugned notification not having named the authority which is to impose the toll and not specified the date from which the imposition is to be effective, is bad and cannot be given effect to.

11. It appears from the impugned notification that in exercise of the powers conferred by Section 2 of Indlen Tolls Act, the Governor directed that the rates of toll specified in Part II of the schedule shall be levied on each of the aforesaid bridges. The said notification was signed by the Deputy Secretary to the Government of West Bengal by order of the Governor. So the authority has been clearly stated in the notification. The notification was issued on the 8th of October, 1974 and it was published in the Calcutta Gazette extraordinary on 21st of October, 1974. So the imposition of tolls came into force when the said notification was made viz. on the 8th October, 1974. Under the second part of the said notification, the collection of tolls in respect of each bridge was placed under the management of certain officers specified in column-3. The particulars complied the requirements of the second part of Section 2. Obviously, after the issuance of the said notification, it would take some time to set up the machineries for collecting the tolls. That is why a notice la vernacular was issued in names of the collecting officers and 1st December, 1974, was fixed as the date when the actual collection of tolls with respect to seven bridges were to be made. So, in my view, there is no substance in the point raised by the petitioner.

12. It is urged that as the rate of toll is not correlated with the actual expenses incurred for the construction or repairs of a particular bridge, the levy of toll @ Rs. 3/- for every bus loaded or unloaded for each trip is excessive and arbitrary.

13. The power to levy toll u/s 2 of the Act is not restricted only upon the cost of

construction or repairs of a particular bridge upon which the toll is sought to be levied. The imposition of toll however, must have a nexus either with the expenses already incurred or to be incurred for the maintenance and construction of roads and bridges in future. In the instant case it has been disclosed in affidavit-in-opposition that the State Government has insufficient resources in the budget for catering to the needs of ever increasing public demand for bridges on numerous rivers throughout the State. Hence in order to mobilise additional resources, toll in respect of the seven bridges in question was introduced. Users and owners of vehicles and public motor vehicles in particular stand on a different footing. They have direct relations to the bridges and they derive a special and direct benefit from them. So it is not unreasonable that they should make a special contribution to the construction and maintenance for the bridges over and above the annual rate of tax for plying the buses. Toll charged at the rate of Rs. 3/- per every bus loaded and unloaded cannot be said to be excessive or arbitrary.

14. My attention was drawn to the decision of Allahabad High Court in *Mohammad Ibrahim v. State of U.P.* AIR 1937 All 24 at p. 26, wherein it is observed that since the object of the levy is to compensate the State Government for the monies spent on the repairs or construction of the bridges it is obvious that the levy has to be correlated to the expenses incurred for the construction of each of bridge. That observation was made in the context to repel the arguments of the petitioner that the impugned notification offended Article 14 of the Constitution on the ground that the classification of the bridges had been made therein according to their cost.

15. In my opinion, it is not necessary that the rate of toll must be correlated to the actual expenses of the construction or maintenance of a particular bridge upon which the toll is levied.

16. Mr. Chatterjee, appearing on behalf of the petitioner in Civil Rule 3873(W) of 1975, contended that the original Section 2 of the Act contained a schedule which prescribed a maximum rate of levy to be imposed under the said section but the said schedule having been repealed there was no guideline, principle and/or criterion for fixing and/or calculating the rate of levy. The rate of toll to be levied was left to the complete discretion of the executive authority without any guidance in the Act, as such Section 2 of the Act suffered from excessive delegation of legislative powers.

17. This identical point was raised before the Allahabad High Court in *Mohammad Ibrahim Vs. State of U.P. and Others*, . Mathur, J., following the principle as laid down by the Supreme Court in *Corporation of Calcutta and Another Vs. Liberty Cinema*, , observed, "Toll is well understood to be a charge or 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 or maintenance of the

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 or tolls valid. 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."

18. So, the question for consideration is, whether subsequent decisions of the Supreme Court have in any way altered or modified the principle as laid down in *Liberty Cinema*'s case.

19. The leading decision on the subject of delegated legislation is *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, . In that case Section 6 (2) of the Berar Sales Tax Act, 1947, which empowered the State Government to amend the schedule to the Act providing for exemption from Sales Tax, was challenged on the ground of excessive delegation of legislative power. Venkatarama Aiyar, J., said:

"Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the work of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which is to be charged in respect of different classes of goods, and the like."

20. It was further observed that the fixation of rates of tax being not an essential legislative function could be validly delegated to a non-legislative body but where it was delegated to such a body, the legislature must provide guidance for such fixation.

21. In *Corporation of Calcutta and Another Vs. Liberty Cinema*, , the validity of Section 548 (2) of the Calcutta Municipal Act, 1951, which empowered the Corporation to levy fees "at such rates as may from time to time be fixed by the Corporation" was challenged on the ground of excessive delegation as it provided no guidance for the fixation of the amount. The Supreme Court held that *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, was an express authority for the proposition that the fixing of rate of tax may legitimately be left by a statute to a non-legislative authority, and there was no distinction in principle between delegating a power to fix rate of taxes to be charged on different classes of goods and a power to fix rates simpliciter. Accordingly, the Supreme Court held that Section 548 of the Calcutta Municipal Act was not void because it left it entirely to the Corporation to fix the amount of tax and gave no guidance in the matter. The Supreme Court found the guidance in the monetary needs of the Corporation for carrying out the functions and entrusted to it under the Act.

22. In *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, , question arose whether Section 5 of the East Punjab General Sales Tax Act, 1948, which empowered the State Government to fix a Sales Tax at such rate as it thought fit was bad. The Supreme Court struck down the Section on the ground that the legislature did not lay down any policy or guidance to the

Executive in the matter of fixation of rates. The Supreme Court observed that the needs of the State and the purposes of the Act would not provide sufficient guidance for the fixation of rates of tax. Subba Rao, C. J., observed that an overburdened Legislature of controlled by a powerful Executive may unduly overstep the limits of delegation. It may not lay down any policy at all: it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the Executive; it may confer an arbitrary power on the Executive to change or modifying the policy, the policy laid down by it without reserving for itself any control over subordinate legislation. This self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation

23. In *V. Nagappa Vs. Iron Ore Mines Cess Commissioner and Another*, , the questions arose whether Section 2 of the Iron Mines Labour Welfare Cess Act suffered from vice of excessive delegation in as much as in the Section the Central Government was given a blanket power to fix the rate of excise duty. It was contended that the Section, while leaving it to the Central Government to fix the rate and change it from time to time, has failed to give sufficient guidance to the Government in the matter of fixing the rate, nor has it indicated the basis for fixation or the relevant consideration to be taken into account for fixing the rate. The Supreme Court held that the Government was not given an uncontrolled discretion in the matter of fixing the rate of cess on iron ore. The necessary guidance for fixing the rate can be found in the amount of expenditure necessary for carrying out purposes of the Act.

24. In *M.K. Papiiah and Sons Vs. The Excise Commissioner and Another*, , the contention was raised before the Supreme Court that Section 22 of Karnataka Excise Act provides for delegation of the power to fix the rate of the excise duty to the Government by making Rules and since no guidance has been furnished to the Government by the Act for fixing the rate, there was abdication of essential legislative function by the legislature and therefore, the Section is bad. The Supreme Court held that the power to fix the rate of excise duty conferred by Section 22 of the Act is valid. The dilution of Parliamentary watchdogging of delegated legislature may be deplored but in the compulsions and complexities of modern life, cannot be helped.

25. Now tested in the light of the decisions referred to hereinabove, I am of opinion that the Act has furnished definite guidelines for the Government u/s 2 of the Act to fix the rate of toll to be levied.

26. In the preamble of the Act, it is stated, an Act enabling Government to levy tolls in public roads and bridges. So, the policy of the Act has clearly stated the purpose for which the tolls should be collected and spent. The guidance for fixing the rate can be found in the amount of expenditure for the purpose of repairs as well as for construction of future roads and bridges and the rate should be fixed at such rate as would bring in the amount necessary to meet such expenses. Power for fixing the rate has been conferred upon the State Government which is

a relevant factor to be taken into account. It eliminates the chance of fixing the rate arbitrarily. Therefore, in my opinion, Section 2 of the Indian Tolls Act, 1851 does not suffer from the vice of excessive delegation of the legislative powers even after the schedule fixing the maximum rate of toll has been repealed.

27. It is strenuously argued that advance realisation of toll for the purpose of construction of bridges in future in other parts of the State cannot be said to be a compensatory tax, in reality it is a tax and it is being imposed without any authority of law.

28. In *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , the Supreme Court said that it would not be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used for providing any facilities. A working test for deciding whether a tax is compensatory or not. Is to enquire where the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test and in the nature of things that cannot be done.

29. In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, , the imposition, of tax on contract carriages by the Government of Tamil Nadu from Rs. 30/-per seat/per quarter to Rs. 100/- per seat/ per quarter was challenged on the ground that it offended Articles 14 19(g) 301 and 304(b) of the Constitution. The Supreme Court held that the tax being compensatory could not operate as an unreasonable restriction upon the fundamental rights of the appellants to carry on their business, for, the very idea of the compensatory tax is service more or less, commensurate with the tax levied,

30. Toll is imposed only upon those persons who get benefit from using the bridges and not from others. It is true that the toll proceeds are not applied to meet the expenses already incurred or to maintain or repair the bridges, as disclosed in the affidavit-in-opposition filed on behalf of the State, but it does not lose its compensatory character for the purpose of creating a "fund" for construction of future bridges in the State because such purpose cannot be said to be a purpose for which the toll cannot be levied.

31. In the result, all the points raised by the petitioners fail. These Rules are discharged but there will be no order for cost. All interim orders are vacated.