(1964) 09 KL CK 0032

In the High Court Of Kerala

Case No : O. P. No. 1128 of 1963

Thrivikrama Pai — APPELLANT

Vs

Fort Cochin Municipality and Another — RESPONDENT

Date of Decision : 09-09-1964

Acts Referred:

Citation : (1965) KLJ 753

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Advocate : C.K. Viswanatha Iyer, V. Rama Shenoi and R. Raya Shenoi, for the Appellant; S. Narayanan Potti, N.K. Varkey for 1st Respondent and Government Pleader for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, J.—The main question arising for determination in this writ application is whether the imposition authorised by Section 10 of the Madras Canals and Public Ferries Act, 1890 is the imposition of a lax or a fee. Section 10 in its entirety is appended to this judgment.

It is not controverted that if the levy imposed by the 1st respondent, Fort Cochin Municipality, by a resolution passed by the council and which is called a "toll," following the expression used in the statute, is really a tax, section 10 is bad due to excessive delegation of legislative powers in the light of the principles laid down by this Court repeatedly in three decisions reported in Damodaran v State of Kerala (1959 K.L.J.651), Standard Motor Union (Pte.) Ltd. v State of Kerala (1961 K.L.J. 1235) and M. T. Kumaran & Co. v Secretary, Malabar Market Committee (1964 K. L. T. 369). But the argument on behalf of the State, the 2nd respondent, and the Fort Cochin Municipality, the 1st respondent, is that the levy contemplated by the Section is only an imposition of a fee.

2. In sub-section (2) of section 10, the word used is "fees" and in subsections (3) and (4), the word used is "tolls." Sub-section (4) further states that

the ''net revenues'' derived from the management of the ferry shall be distributed between the authorities maintaining approach roads at other end of the ferry......

From the use of the word "fees" in sub-section (2), the word "tolls" in sub-sections (3) and (4) and the words "net revenues" in sub-section (4), it is contended by counsel on behalf of the petitioner that he has no doubt that the word "toll" means, at any rate in the context in which it is used in this section, a tax. He also invited my attention to entries 59 and 66 in List II of the Seventh Schedule to the Constitution and contended that the distinction between "fees" and "tolls" is recognised and maintained by the Constitution as well. Fntry 59 is "Tolls" and entry 66 is in these terms:

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

There may be a distinction between "fee" and "toll." If toll meant tax and nothing else, I see no reason why entry 59 should have used the word "loll" instead of "taxes." 1 am not able to say that toll means tax. My attention has been invited to Volume IV of the Stroud''s Judicial Dictionary at page 3043, where it is said generally that "toll" means a sum of money which is taken in respect of some benefit. Particularising on this, it is further said that

......the benefit being the temporary use of land e.g. FAIR OR MARKET TOLLS, TOLL THOROUGH, TOLL TRAVERSE, ANCHORAGE TOLL, and harbour tolls.

And in Ballentine''s Law Dictionary, it is said that the word

toll is sometimes used to designate the charge for services rendered as in the case of tolls taken by a miller or a ferryman, but the most usual meaning of the word is that of a payment for a liberty or privilege, and it is in this sense that it is used in connection with toll roads.

It is true, as stated by counsel on behalf of the petitioner, that there can be compensatory taxes. But I do not think, it is correct to contend that "toll" must invariably and at all times, exclusively mean tax. I think the question has to be determined with reference to the purpose for which levies are made and the services rendered must also be taken into account in determining whether the impost is really a tax or is only a collection of fee. The levy in this case is directly linked to the services rendered by a Public Ferry provided either by the Government or by its assignee who may be a local authority. It is difficult in these circumstances to come to the conclusion that the imposition is a tax. In the light of the above, I am of the view that Section 10 of the Madras Canals and Public Ferries Act, 1890, does not authorise imposition of any tax and that the Section is therefore not bad as evidencing another example of excessive delegation of legislative power. It is next contended that the impost is excessive and unreasonable. I do not think that the materials disclosed are capable of giving rise to the inference that the fee imposed has no relation whatever to the services rendered. I dismiss this petition with costs.

APPENDIX

1 Section 10 of the Madras Canals and Public Ferries Act, 1890 :

10. (1) The State Government may-

(a) provide for the management of any public ferry,

(b) authorise any person to convey passengers, animals, vehicles or goods across a channel by means of vessels at any public ferry, or

(c) assign the management of any public ferry to a local board or municipal council.

(2) All vessels used by a person authorised under clause (b) of sub-section (1) shall be licenced, and the State Government may fix the fees payable for such licence.

(3) In the cases referred to in clauses (a) and (b) of sub-section (1), the Stale Government may levy tolls at such rates as they may fix upon passengers, animals, vehicles and goods conveyed across the ferry.

(4) Where under clause (c) of sub-section (I), the management of a public ferry is assigned to a local board or municipal council, the local board or municipal council may levy tolls upon passengers, animals, vehicles and goods conveyed across the ferry at such rates as it may, subject to the control of the State Government, fix. The net revenues derived from the management of the ferry shall be distributed between the authorities (including the State Government) maintaining approach roads at either end of the ferry, in such proportions and subject to such conditions as the State Government may, from time to time, by notification, direct.

(5) A notice in English and in the language of the district specifying the tolls leviable at a ferry under sub-section (3) or sub-section (4), as the case may be, shall be exhibited to public view on each side of the ferry.