(1979) 01 KAR CK 0026

In the Karnataka High Court

Case No : WP. 819/78

Urmila Kothari - Petitioner APPELLANT

Vs

Town Municipal Council, Kalghatgi RESPONDENT

Date of Decision : 16-01-1979

Acts Referred:

Karnataka Motor Vehicles Taxation Act, 1957 — Section 19
Karnataka Municipalities Act, 1964 — Section 94

Citation : (1979) 1 KarLJ 345

Hon'ble Judges : Puttaswamy, J

Judgement

Admittedly, the petitioner who is the owner of a fleet of motor vehicles registered under the provisions of the Motor Vehicles Act (Central Act of 1939) (hereinafter referred to as ''the 1939 Act'') and classified as public carriers or commonly called as trucks or lorries (hereinafter referred to as ''the vehicles''), is engaged in the business of transporting iron ore from the Rail yard of Hubli to the ports of Karwar and Balekeri. The vehicles are subject to taxes under the provisions of the Karnataka Motor Vehicles Taxation Act of 1957 (Karnataka Act 35/1957) (hereinafter referred to as ''the 1957 Act'') and the Rules framed thereunder. In the course of their journey, the vehicles have to pass through a small road section of a State High way situated in the town limits of Kalgatgi Town Muncipality of Dharwar District, which was formerly a part of the erstwhile State of Bombay. On their onward or return journey, the vehicles do not stop and pick up any cargo within the municipal limits of Kalgatgi Town Municipality (hereinafter referred to as ''the Municipality.''). Notwithstanding the same, the Municipality imposed a fee called ''the supervision fee'' in the purported exercise of its powers under Section 124 of the Karnataka Municipalities Act of 1964 (Karnataka Act 22/64) (hereinafter referred to as ''the 1964 Act'') at the rate of Rs. 2/- on each vehicle for the use of the road section in the municipal limits the validity of which was challenged by the petitioner before this Court successfully, the judgment of which is since reported in 1976(2) Karnataka Law Journal, page 314 and the same has been affirmed by the Supreme Court in Civil Appeal No.

1386 of 1976 decided on 20-1-1977 since reported in A.I.R. 1977 Supreme Court, page 873. Evidently with the object of collecting the same amount in another form, the Municipality in its Notification No. TMC-291-1977-78 dated 26th November 1977 published in the Karnataka Gazette Extraordinary dated 30-11-1977 (Ext. C) has inter-alia resolved to levy and collect toll tax from motor vehicles from 1st January, 1978. The class of motor vehicles and the levy of toll tax or toll rates in the said Notification read thus:

"TOLL RATES

1. Goods vehicles or a stage carriage as defined in the Motor Vehicles Act, 1939 (Central Act IV of 1939) other than those exempted from Municipal toll under the Karnataka Motor Vehicles Taxation Act 1957. Rs. 2-00.

2. Motor car as defined in the Motor Vehicles Act, 1939 (Central Act IV of 1939) other than those exempted from Municipal toll under the (Karnataka Motor Vehicles) Taxation Act, 1957. Rs. 2-00.

3. Trailer attached to a goods vehicle other than those exempted from Municipal Toll under the Karnataka Motor Vehicles Taxation Act, 1957. Rs. 1-00.

In pursuance of the said Notification, the Municipality has started collecting toll tax from the petitioner on its vehicles passing through the limits of Kalgatgi town and therefore the petitioner has again approached this Court on 16-1-1 STC challenging the levy and collection of toll tax by the Municipality.

2. The petitioner has asserted that the road passing through the town limits of Kalgatgi town is a State High way and that motor vehicles registered under the 1939 Act are absolutely exempted from payment of tolls under S. 19 of the 1957 Act and therefore the levy and collection of toll tax by the Municipality is unauthorised and is illegal. In its return, the respondent does not deny that the road section passing through the town limits of Kalgatgi is a State High way. But it has sought to justify the levy principally on 4 grounds viz., (1) that the levy is authorised by S. 94(1)(b)(iii) read with Sch. III of the 1964 Act, (2) that the provisions contained in the 1957 Act are impliedly repealed by the provisions of the 1964 Act, (3) that in the absence of exemption granted by the Government under S. 16 of the 1957 Act, the levy of toll is authorised and (4) that S. 19 has its application only to a law that was in force as on the day the 1957 Act came into force and has no application to a law that has come into force later.

3. Shri T.S. Ramachandra, learned counsel for the petitioner strenuously contended that S. 19 of the 1957 Act prohibits a Municipality from levying any tax or toll on motor vehicles registered in the State of Karnataka or any other part of India and therefore it is not permissible for the respondent to levy or collect any toll on motor vehicles owned by the petitioner. Shri B. Veerabhadrappa, learned counsel for the respondent, refuted the contention urged by Shri Ramachandra and supported the levy and (Collection of toll by the respondent on all the grounds urged in its return.

4. ''Toll'' is not defined in the 1957 Act or in the 1964, Act. Under the 1964 Act, ''tax'' includes a toll (vide S. 2(27). In the Chambers 20th Century Dictionary (Revised Edition), one of the meanings that is given to the word ''toll'' that is appropriate in the context is a tax for the liberty of using a bridge or road, selling goods in a market''. In the Dictionary of English Law by Earl Jowitt (First Edition-Second impression) the word ''toll'' has been defined as under:

"Toll: (Sax., Dut. tol; Dan. told; Wel. toll; Fr. faille), a tribute or custom paid for passage; also a liberty to buy and sell within the precincts of a manor, which seems to import as much as a fair or market.

A toll is a payment for over or using a bridge, road, ferry, railway, market, port, anchorage, etc. Frequently the right to demand tolls form'' part of a francise (q.v.), as in the case of ferries, markets, ports, etc., Turnpike, harbour and railway tolls were generally created by Act of Parliament; see e.g., the Railways Clauses Consolidation Act 1845, Ss. 3, 86, 92 (Hunt v. Great Northern Ry. (1851) 10 C.B. 900)."

In the Encyolopaedia Britannica-Micropaedia Ready Reference and Index (Vol. X), the word ''tolls'' has been defined as under:

"Tolls: sums levied on users of certain roads. Highways, canals bridges tunnels, ferries, and other conveniences, primarily to pay construction and maintenance costs. Tolls were known in the ancient world and were especially popular in the European Middle Ages, when they were widlely used to support bridges construction. The chapel on the Pont d'' Avignon served alsoas a toll station. The fee for a horse and rider was two deniers (pennies); a wagon, four deniers; a donkey, cow or sheep, one-half denier. On old London Bridge, tolls were charged both for traffic over and navigation under the bridge. A valued medival privilege, given for special services or in return for a payment was freedom from tolls.

Canal building, which became extensive in Europe and North America in the 18th and 19th Centuries, was financed chiefly by tolls, and many major roads, such as the British turnpikes, were built by private companies with the right to collect tolls. The National Road, built in the United States beginning in 1806, was financed out of sale of public land; but the maintenance problem soon caused Congress to authorise tolls. Toll roads passed out of fashion in the later 19th Century, but the idea was revived with a Pennsylvania Turnpike in the 1930s; and after World War II several U.S. states built toll expressways. The Italian autostradas (q.v.), begun in the 1920s, were toll financed. Tolls as a means of paying for longspan bridges and major tunnels have been much more prevalent in the U.S. than elsewhere One objection to tolls has been that road users are in effect subject to double taxation: gasoline taxes and road, tolls.

Canal tolls are still charged in many parts of the world but with wide variations. Such major international waterways as the Suez and Panama canals charge tolls, but many other international waterways do not. French canals charge not tolls; a few German canals do, a Belgian canals charge enough to cover maintenance) only."

From the above meanings, ''toll'' is also a tax paid for the use of a bridge, road or a ferry. In this view, it is necessary to bear in mind, the principles of construction of statutes applicable to taxing provisions to taxing statutes A taxing statute or taxing provision has to be construed strictly. As observed by Rowlatt J. in Cape Brandy Syndicate v. I.R.C, (1921) 1 KB 64, 71 which has become classical, ''in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. one can only look fairly at the language used''. In Sales Tax Commissioner v. Modi Sugar Mills, AIR 1961 SC. 1047, Shah J, as he then was, speaking for the Supreme Court has stated the same principle in these words:

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

5. Section 19 of the 1957 Act reads thus:

"19: Local authorities not to levy tax or tolls:-Notwithstanding anything contained in any other law for the time being in force, no local authority shall levy a tax or toll on any motor vehicle registered in the State of Mysore or in any other State in India are in any Union Territory in India (and any law authorising any such levy shall cease to be in force.)"

"Explanation: For the purposes of this Section ''tax'' means the tax referred to in Entries 52 and 57 of List II of the Seventh Schedule to the Constitution of India."

Section 19 of the 1957 Act commences with a non-obstante clause viz "notwithstanding anything contained in any other law for the time being in force." A non-obstante clause is generally appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the acts and provisions mentioned in the non-obstante clause. Generally it is equivalent to saying that in spite of the provision or Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment (vide South India Corporation (P) Ltd. v. Secretary, Board of Revenue, Trivandrum, AIR 1964 SC. 207, 215. The main enacting part of S. 19 viz., no local authority shall levy a tax or toll on any motor vehicle registered in the State of Mysore (Karnataka) or in any other State in India or in any Union Territory in India and any law authorising any such levy shall cease to be in force, commences with a negative term and employs the word ''shall'' and by these the legislature intended the same to be absolute in terms and should prevail without any exception."

6. A municipality constituted and functioning under the 1964 Act is a ''local authority'' is not disputed and cannot also be disputed. Even otherwise S. 3(20) of the Karnataka General Clauses Act, 1899 which defines a ''local authority'' expressly declares a ''municipality'' to be a ''local authority.''

7. S. 19 in absolute terms prohibits a Municipality from levying any tax or any toll on a motor vehicle, registered in the State of Karnataka or in any other State in India. The latter part of the section declares that any law authorising any such levy by a Municipality shall cease to be in force. A local authority cannot impose any tax or toll on a motor vehicle registered in the State of Karnataka or in any other State or Union Territory of India. The prohibition contained in S. 19 is absolute and is not subject to any exemption or restriction. In very clear, plain and unambiguous terms which is capable of only one meaning, S. 19 prohibits a ''local authority'' from imposing any tax or toll on a motor vehicle registered in the State of Karnataka or any other part of India. Where the meaning is plain, unambiguous and admits of only one construction, it is hardly necessary to refer to the legislative history or any other decision in ascertaining the meaning of such words. S. 20 of the 1957 Act providing for contributions to the local authorities from out of the taxes collected by Government on motor vehicles is not in derogation of the provision made in Section 19 of the 1957 Act, but carries out the legislative intent of 9. 19 of the Act. But out of deference to the lengthy and persistent arguments of Shri Veerabhadrappa, I consider it appropriate to notice the legislative history also.

8. The Road Development Committee appointed by the Government of India in 1927 on the levy of tolls and their continuance in the then provinces or State recommended thus.-

"In our opinion the objection to tolls goes far beyond the obstruction to motor transport. We have received ample evidence of the harassment to traffic of all kinds and there is a strong demand that tolls should be altogether abolished. It may be argued that tolls are paid in direct proportion to the use made of the road and that they are paid in small sums which the road user can afford and that they are traditional to the country and cannot be readily replaced by any other form of taxation. An additional objection is the practice of farming tolls which diverts a considerable part of the receipts to the farmer. We may, however, express a hope that tolls on all traffic will be abolished as soon as possible and, be replaced when necessary by some form of taxation that is less vexatious to road transport, (vide page 78 of Chapter VI-State Taxes on Motor Vehicles and Motor Spirit of Vol. 3 of the Report of the Taxation Enquiry Commission, 1953-54).

The Bombay Motor Vehicles Act of 1935 that came into force from 1-4-1935 appears to have carried out the recommendations of the Road Development Committee and abolished the levy of tolls in the then State of Bombay (Vide S. 15 of the Act). In enacting the uniform 1957 Act after the new State of Karnataka came into being, the Legislature has obviously taken note of the recommendations of the Taxation Enquiry Commission and the recommendations of the Road Development Committee alluded to in that report and the system prevailing in the erstwhile State of Bombay as reflected in the Bombay Motor Vehicles Taxation Act and has provided for the abolition of taxes and tolls by the ''local authorities''. An examination of legislative history also supports the above construction.

9. Shri Veerabhadrappa laid great emphasis on the words ''any other law for the time being in force'' and urged that those terms have to be, interpreted as referring to the laws that were in force as on the day the 1957 Act came into force and not the laws enacted thereafter. In support of his contention, Shri Veerabhadrappa strongly relied on the ruling of the High Court of Calcutta in East India Film Studios v. P.K. Mukherjee, AIR 1954 Cal. 41 and the ruling of the High Court of Allahabad in Rama Shankar Beware v. State, AIR 1934 All. 562.

10. The words ''any other law for the time being in force'' cannot be interpreted out of context. Their meaning has to be ascertained from the context in which they occur. In my opinion, these words in the context have to be interpreted as at the time the 1957 Act is in force and cannot be interpreted as having reference to the laws that were in force as on 1-4-1957 on which day the 1957 Act came into force. I therefore reject this contention of Shri Veerabhadrappa.

11. Shri Veerabhadrappa next contended that S. 19 of the 1957 Act is in conflict with S. 94 and other provisions of the 1964 Act and that provision is impliedly repealed by the later Act viz., 1964 Act and therefore effect must be given to the provisions contained in the 1964 Act.

12. An analysis of Ss. 19, 20 of the 1957 Act, S. 94 and Sch. III would indicate that there is no conflict in the provisions made in the earlier 1957 Act and in the later 1964 Act. S. 94 and item Nos. 1 to 3 of Sch. III of the 1964 Act expressly take note of the provisions made in S. 19 of the 1957 Act and provide therein for matters that are not covered by that provision S. 382 of the 1964 Act providing for the repeal of various enactments mentioned in sub-sec. (1) does not provide for the repeal of the 1957 Act or any of the provisions contained in that Act. There is a presumption against a repeal by implication and more so when the new Act contains a repealing Section mentioning the Acts which it expressly repeals. I therefore hold that S. 19 Of the 1957 Act is neither in conflict with S. 94 of the 1964 Act nor is it impliedly repealed by the later Act. I therefore reject this contention of Shri Veerabhadrappa.

13. Shri Veerabhadrappa contended that under clause (iii) of sub-sec. (1) of S. 94, it is permissible for a Municipality to levy toll on motor vehicles, entering a Municipality at the rates specified in Sch. III of the Act.

14. Clause (iii) of sub-sec. (1) of S. 94 expressly declares that motor vehicles that are exempted in Sch. III alone can be taxed for toll entering a Municipality. Items 1 to 3 of Sch III authorise levy of toll only on such motor vehicles that are not exempted from payment of toll by the 1957 Act. Clause (iii) of sub-sec. (1)

of S. 94 does not confer a general and unrestricted power of levying toll an all motor vehicles as contended of Shri Veerabhadrappa. I therefore reject this contention of Shri Veerabhadrappa.

15. Shri Veerabhadrappa lastly contended that the word ''exempted'' occurring in clause (iii) of sub-sec. (1) of S. 94 and Sch. III of the 1964 Act has its application only if the vehicles are exempted under S. 16 of the 1957 Act and not otherwise.

16. S. 16 of the 1957 Act reads thus:

"Exemption from or reduction of tax: (1) The State Government, if in its opinion it is necessary in public interest so to do, may by notification (and subject to such restrictions and conditions as may be specified in the notification), (a) exempt or reduce whether prospectively or retrospectively the tax payable in respect of- (i) any class of motor vehicles, or (ii) motor vehicles not used on roads.

(b) reduce the rate of tax payable in respect of any class of motor vehicles plying on any route or routes specified in the notification.

(2) Every notification under sub-sec. (1) shall be laid, as soon as may be after it is issued, before the State Legislative Assembly while it is in session, for a total period of thirty days which may be comprised in one session or in two or more sessions and if before the expiry of that period, the State Legislative Assembly makes any modification in the notification or directs that the notification shall not have effect, the notification shall thereafter have effect only in such modified form or be of no effect as the case may be.

(3) All motor vehicles designed and used solely for carrying out such agricultural operations as may be prescribed shall be exempt from the payment of tax."

By this Section, power is conferred on the State Government to exempt of reduce prospectively or retrospectively taxes payable on any class of motor vehicles or motor vehicles that are not used on roads. But S. 19, that true scope of which I have already ascertained, prohibits a Municipality from levying any tax or toll on any motor vehicle. The power conferred by S. 16 of the provision made thereto, is not in conflict with the prohibition contained in S. 19 of the Act. Ss. 16 and 19 are intended to serve different purposes. But still Shri Veerabhadrappa laid emphasis on the word ''exempted'' occurring in items 1 to 3 of Sch. III and urged that the word ''exempted'' has to be read as cases of exemptions granted under S. 16 of the Act. The word ''exempted'' derived from the word ''exempt'' is not defined in the Act or the General Clauses Act. I have therefore to ascertain the meaning of the term exempted from the context in which it occurs In the Chambers Twentieth Century Dictionary, the word ''exempt'' among Others has been defined to mean ''to free, or grant immunity (with from) taken out, not liable''. In the Dictionary of English Law-Earl Jowitt, the word ''exemption'' which is derived from the word ''exempt'' has been defined as under:

"Exemption: immunity; freedom from imposts; a privilege to be free from service or appearance."

In the context the word ''exempted from municipal toll under the 1957 Act'' occurring in Sch. III of the 1964 Act can only be interpreted as immune from taxation, or free from taxation, or not liable to taxation under the 1957 Act and cannot be interpreted as exempted by the State, Government exercising its power under S. 16 of the Act. As noticed by me earlier, absolute immunity from taxation on motor vehicles registered in the State of Karnataka and other parts of the Country is granted by S. 19 of the Act. A motor vehicle not registered in the State) of Karnataka or in an other part of India if it enters the territorial limits of a local authority cannot claim the exemption from payment of tax or toll. One such instance we may notice is vehicles that were registered in the territory of Goa, Damar and Diu when they were Portugese settlements before 20th December 1961 could not have claimed the exemption on the language of S. 19 of the 1957 Act for the reason they were not registered in the State of Karnataka or any part of India. In my opinion, the attempt made by Shri Veerabhadrappa to read the word ''exempted'' in the manner suggested by him is to literal and is opposed to all canons of construction of statutes. I have therefore no hesitation in rejecting this contention of Shri Veerabhadrappa.

17. In the light of my above discussion:

(i) I declare that motor vehicles owned by the petitioner and registered in the State of Karnataka or in any other State or in any Union territory of India, are not leviable for toll by the respondent according to the ''Toll Rates'' specified in its Notification No. TMC. 291-1977-78 dated 26th November, 1977 (published in Karnataka Gazette Extraordinary dated 30th November 1977) (Ext.C) or otherwise and the toll amounts so far collected on such vehicles are therefore liable to be refunded to the petitioner;

(ii) I also issue a writ in the nature of mandamus to the respondent not to levy and collect toll hereafter from the petitioner on motor vehicles owned by it and registered in the State of Karnataka or in any other State or in any Union territory of India and refund all the to amounts so far levied and collected on all such vehicles to the petitioner within a period of 3 months from the date of receipt of the order/writ of this Court.

(iii) Rule made absolute petitioner is entitled to its costs. Advocate''s fee Rs. 250.