(2000) 01 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No''s. 3754, 3877, 3879, 3880, 3883, 3884, 3885 and 6006 of 1999 and Civil Application No. 7028 of 1999 in Writ Petition 3754/99

Vinayak V. More etc. — APPELLANT

Vs

Maharashtra State Road Development Corporation Ltd. and Another etc. — RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:
Bombay Motor Vehicles Tax Act, 1958 — Section 20

Citation : AIR 2000 Bom 309 : (2000) 2 ALLMR 511

Hon'ble Judges : Y.K. Sabharwal, C.J;Ranjana Desai, J

Bench : Division Bench

Advocate : Y.S. Jahagirdar and P.S. Dani, Maharukha Adenwalla, S.A. Bhalwal, S.S. Patwardhan, P.V. Bapat, R.S. Apte, V.P. Navare, N.V. Limaye, for the Appellant; C.J. Sawant and R.M. Sawant and P.C. Kansara, Asstt. Govt. Pleader, for the Respondent

Judgement

Y. K. Sabharwal, C.J.—Writ Petition No. 3879 of 1999:

This Petition and connected Petitions challenge the Notifications dated 29th September, 1999 issued by the Government levying toll on vehicles passing through the section of the concerned highway and Which has been constructed, reconstructed, improved or repaired and also the flyover bridges constructed on such road and approach roads therein at the rates specified against each class of vehicles for a period of 28 years with effect from such date as the State Government separately notifies, at the collection centre, as specified in the Notification. It would suffice to only notice the facts in respect of Writ Petition No. 3879 of 1999, which concerns Eastern Express Highway (Vasantrao Naik Marg) in Mumbai and Thane Districts. The impugned Notification has been issued in exercise of the powers conferred by Sub-sections (1-A), (1-B), (1-C), (1-D) and (1-E) of Section 20 of the Bombay Motor Vehicles Tax Act, 1958 (''the Act'', for short) and in supersession of the Government Notification dated 21st June, 1999.

The earlier Notification dated 21st June, 1999 specified a higher amount of toll. The impugned Notification has reduced the rate of toll. Different rates of toll have been prescribed for various classes of vehicles. The Notification does not levy any toll on motorcycle, scooter, moped or any other two-wheeler, tractor with unladen trolley and auto-rickshaw registered to carry three persons, excluding driver. The rate prescribed for cars and jeeps is Rs. 15/-, mini-bus or any other similar vehicles Rs. 20, truck-bus Rs. 40/- and heavy motor vehicles as defined in the Act such as trucks-trailers, etc., Rs. 50/-. In the four Notifications issued on the same date in relation to different areas, the rate of toll on different classes of vehicles is same.

2. The power to levy and collect toll is derived from Section 20 of the Act. The said section has been various amendments in last nearly three decades. The original Section 20, inter alia, stipulated that no toll shall be levied and collected, except as provided in the statutory provisions mentioned in the section. The first amendment relevant for considering the controversy in the present Petition was effected in the year 1969 by Maharashtra Act No. 43 of 1969. By the said Act, the following proviso was added to Sub-section (1) of Section 20 of the Act :--

"Provided that, the State Government may levy and collect tolls on motor vehicles and trailers drawn by such vehicles on any bridge including any approach road thereto (being a bridge constructed, reconstructed or repaired after the commencement of the Bombay Motor Vehicles Tax (Amendment) Act, 1969 and in respect of which the capital cost incurred is not less than ten lakhs of rupees or being a bridge which in the opinion of the State Government is of special service to the public) at such rate and for such period as the State Government may, by notification in the Official Gazette, specify in this behalf, but so however, that not more than the capital cost of such construction, reconstruction or repairs of the bridge is recovered within such period as that Government may determine."

As will be seen from the aforesaid proviso, the State Government was empowered to levy and collect tolls, however limited to not more than the capital cost of such construction, reconstruction or repairs of the bridges. It was with a view to enable the Government to recover capital cost within such period as that Government may determine.

3. The above proviso came up for consideration before a Division Bench of this Court in Bungalow Plot Owners (Sector 8) Association and Others Vs. State of Maharashtra, . The Bench held that under the said proviso, the State Government is not authorised to recover anything more than the capital cost of construction, reconstruction or repair of bridge or tunnel and the expenditure on collection of toll. The word ''incurred'' is clearly used in the past tense. The argument that the word ''incurred'' must also include the expenses ''to be incurred'' in future was not accepted. It was held that the proviso puts a limit on the power of the Government with regard to the total amount to be recovered. It also held that, first, the bridge or tunnel has to be constructed, reconstructed or

repaired after the coming into force of the amending Act and, secondly, the recovery cannot be in excess of the capital cost of construction, reconstruction or repairs of a bridge or tunnel plus the expenses for collection. The Bench came to the conclusion that the recovery could be made only after the expenses had been incurred.

4. With a view to overcome the law laid down in the aforesaid judgment, further amendments to Section 20 were made in terms of Maharashtra Act No. 13 of 1987. By this amendment, the proviso inserted in the year 1969 was deleted and other amendments were made including insertion, after Sub-section (1), of Sub-sections (1-A), (1-B), (1-C) and (1-D). Section 20, as it stood after amendment of 1987, reads as under :--

"20. (1) Except as provided in the Bombay Ferries and Inland Vessels Act, or that Act as applied to the Kutch area of the State of Bombay, or the Hyderabad Ferries Act, or the Northern India Ferries Act, 1878 and subject to the provisions of Sub-sections (1-A), (1-B), (1-C) and (1-D) on and after the commencement of this Act, no tolls shall be levied and collected-

(a) on any vehicle, animal or person by the State Government or by any local board,

(b) on any motor vehicle, by any other local authority;

(1-A) Notwithstanding anything contained in Sub-section (1), but subject to the provisions of Sub-sections (1-B), (1-C) and (1-D), the State Government may levy tolls on motor vehicles and trailers drawn by such vehicles passing over any bridge or through any tunnel including an approach road thereto or any section of new road or any bypass, so however, that such toll may be levied :--

(a) in respect of a bridge or tunnel Including approach road or section of new road or by-pass which is constructed, reconstructed, improved or repaired, as the case may be, after the commencement of the Bombay Motor Vehicles Tax (Amendment) Act, 1987, and the total capital outlay of which construction, reconstruction, improvement or repairs, as the case may be, is not less than ten lakhs of rupees; or

(b) in respect of a bridge or tunnel including approach road or section of new road or by-pass, which, in the opinion of the State Government, is of special service to the public.

Explanation.-- For the purposes of this section, the expression "capital outlay" shall include the anticipated cost of certain essential on goings or Imminent works, like improvements, strengthening, widening, structural repairs, maintenance, and also, interest on such outlay at such rate as the State Government may fix.

(1-B) The toll levied under Sub-section (1-A) shall be levied at such rate and for such period as the State Government may, from time to time, by notification in the Official Gazette, declare.

(1-C) The State Government may itself or through its agent collect the toll levied under Sub-section (1-B) and, where such collection is made through agent, such agent or his servants shall be deemed to be persons empowered to collect tolls under this Act :

Provided that, not more than the capital outlay and expenses of collection of toll shall be collected under this section.

(1-D) Where any additional bridge or tunnel, being the bridge or tunnel on or below the same stream, river or creek or road or rail-track including any approach road thereto is constructed as augmentation of the facility of the use of the existing bridge, tunnel or road, as the case may be, then the net work of such bridges or tunnels including approach roads thereto shall be deemed to be one single entity for the purpose of levy of toll, so however, that not more than the capital outlay of such additional bridge or tunnel Including any approach road thereto and the expenses of collection of toll shall be recovered.

(2) Notwithstanding anything contained in any law for the time being In force, but subject to the provisions of Sub-sections (1), (1-A), (1-B), (1-C) and (1-D) and this subsection, no local authority shall, after the commencement of this Act impose or increase any taxes on motor vehicles:

Provided that-

(a) any taxes, other than tolls, on motor vehicles which immediately before the commencement of this Act were being lawfully levied by any local authority, may continue to be levied and collected until provision to the contrary is made by the State Legislature by law;

(b) nothing in this sub-section shall affect the power of any local authority to Impose, increase or recover in respect of motor vehicles a tax falling under Entry 52 in List II in the Seventh Schedule to the Constitution."

5. Another amendment to Section 20 was effected by Maharashtra Act No. 29 of 1991 inter alia deleting the word ''new'', wherever it occurred. Clause 2 of this amending Act reads as under :--

"2. In Section 20 of the Bombay Motor Vehicles Tax Act, 1958, in Sub-section (1-A),-

(a) after the words, brackets and figure "in Sub-section (1)" the following shall be inserted, namely:--

"and Section 3 of the Tolls on Roads and Bridges Act, 1875 or any other law for the time being In force";

(b) the word "new", wherever it occurs, shall be deleted;

(c) in Clause (a),--

(i) for the words "road or by-pass which is" the words "road or by-pass which is newly" shall be substituted;

(ii) after the figures "1987", the words "at the expense of the State Government or at the expense of any person or body or association of Individuals whether incorporated or not or at the expense of both, that is to say, the State Government and any such person or body or association" shall be inserted;

(d) in the Explanation, after the words "may fix" the words "until the full amount of such outlay is recovered" shall be added."

6. Section 20 was further amended in the year 1996 by Maharashtra Act No. 20 of 1998, thereby amending Sub-section (1A) and Sub-section (1C) of Section 20. Clause 2 of that amending Act reads as under :--

"2. In Section 20 of the Bombay Motor Vehicles Tax Act, 1958 (hereinafter referred to as "the principal Act").-

(1) in Sub-section (1A), in the Explanation, for the words "and also Interest" the words "management, operation, reasonable returns and Interest" shall be substituted;

(2) in Sub-section (1C), after the existing proviso, the following proviso shall be added, namely:--

"Provided further that the person or body or association of persons at whose expense, either full or partial, the road is constructed, reconstructed, improved or repaired, shall be deemed to be the agent entitled to collect and retain the whole or part of the amount of such toll, as may be determined by the State Government, from time to time, by issuing general or special order in this behalf."

7. Having referred to the statutory provisions as aforesaid, we may now briefly notice the facts:

8. Respondent No. 1, Maharashtra State Road Development Corporation, is a Government Company solely held by State Government and its nominees. It is stated to have been established for the object of executing road development projects in the State of Maharashtra. The claim of the Corporation is that it has on its Board of Directors experts from the field of Road Construction, Engineering, Finance, Urban Development, etc. The Corporation claims to be executing various important projects, like the Mumbai-Pune Expressway and construction of large number of flyovers at various locations in the Mumbai Metropolitan area by way of improvements of the various sections of roads, besides construction/reconstructions/repairs thereof. The Corporation stand, briefly, is as follows :--

(a) Due to growing traffic congestion in Mumbai, with the resulted problems like increase in pollution, more time needed to travel, increase in consumption of petrol, etc., various studies were carried out by the Public Works Department of the State Government, which revealed that the major roads or arterial roads which bring traffic into Mumbai are The Sion-Panvel Highway, the Eastern Express Highway, the Western Express Highway and Lal Bahadur Shastri Marg. Considering the extent and type of traffic, the available roads were found to be inadequate, also keeping in view that the traffic was bound to increase in the years to come. Considering the traffic and other resultant problems, it was necessary to provide grade separator at these junctions, whereby separating the traffic at cross directions to achieve fast traffic movement to enable the vehicles to move at a constant speed, causing considerable saving of time, less pollution and fuel saving. In this view, Government of Maharashtra decided to construct about 50 flyovers and take other traffic improvement measures at the important Junctions to ease the flow of traffic and avoid traffic congestion in Mumbai. The cost for the purpose of carrying out the programme of further road improvement etc. in respect of various highways is as under :--

"Section of Road Total cost (in Rs. Crores)

Western Expressway 293.62

Eastern Expressway 236.29

Sion-Panvel Highway 204.57

LBS Marg 102.78"

(b) Each above section of roads has been treated as a single entity. The actual expenditure for each of the above sections of the roads incurred till June, 1999 by the Corporation is as follows :--

"Section of Road Total cost (in Rs. Crores)

Western Expressway 164.67

Eastern Expressway 133.14

Sion-Panvel Highway 104.18

LBS Marg 12.90"

(c) Petitioner''s contention that he and others would be made to pay for the entire capital outlay at one collection centre is not correct. The flyovers, etc., are being constructed by applying the Build, Operate and Transfer (B.O.T.) Principle, which means that the entrepreneur who would invest on the construction is allowed to recover the cost by levying toll. The Corporation is the said entrepreneur which has been allowed to collect toll by State Government at the rates fixed by the Government. It is because of financial constraints the construction and improvements have been made by applying the B.O.T. Principle.

9. The power to levy toll is derived from Section 20 of the Act. In fact, there is no challenge whatsoever to the power to levy toll or to the legality and validity of Section 20 of the Act. The challenge of the Petitioner is to the working out of the capital outlay. The contention is that capital outlay of all the 50 flyovers has been

taken together and treating it as one integrated project, toll amount has been worked out.

10. The Corporation has placed on record amount of cost incurred and to be incurred in respect of the different projects as set out above. It has been explained that the cost of the construction of all flyovers, roads, section of roads, etc. falling on a particular Express Way and/or Highway alone had been taken into consideration to work out the amount of the toll leviable. For example, if there are 14 flyovers on Eastern Express Highway, only the cost of the said 14 flyovers and the other cost of improvements of the road or sections of the roads on the said Express Way has been taken into consideration and not the cost of flyovers, roads or sections of roads on Western Expressway or any other Highway and so on and so forth.

11. With the assistance of learned counsel for the parties, we have perused different affidavits and other material placed on record. We do not find any admission to the effect that all the 56 flyovers were taken as one integrated project for the purpose of arriving at the amount to be levied and collected as toll. We have also perused the cash flow statements setting out the total expenditure incurred/to be incurred by the Corporation in respect of different highways. The said statements show the cost of project, administrative cost, repair and maintenance cost, expected toll income. Government of Maharashtra contribution and expected real estate/advertisements income. These statements show the working as to how, within a span of 29 years, the expenditure incurred would be recovered by collection of toll from vehicles. On the record, as it stands, we find no ground to doubt the veracity of the facts and figures supplied by the Respondent-Corporation. It also deserves to be noticed that, in the affidavits filed by the petitioners, no serious challenge has been made to the details of the facts and figures given by the Corporation. It is evident that the accounts of the Corporation are subject to audit by the Central Government and Comptroller & Auditor General of India. Under these circumstances, we are unable to accept the contention that there is no justification for fixation of the toll amount. We are further unable to accept the contention that some committee should be appointed to go into the question as to what toll amount should be charged. Ordinarily, it is not for this Court to go into these aspects, except, of course, in a case where it could be clearly shown that the fixation of the toll amount is wholly arbitrary. In this view, we also do not consider it necessary to appoint a committee to examine the accounts of the Corporation and to go into the question of the toll amount to be fixed.

12. In relation to the toll amount fixed for Lal Bahadur Shastri Marg, relying on the affidavit of Mr. Dandawate stating that, if toll was to be fixed at a lesser rate for Lal Bahadur Shastri Marg, the traffic would have been diverted in the said road, it was contended that this shows that the extraneous considerations were taken into consideration for fixing the toll amount. The aforesaid statement in the affidavit cannot be considered in isolation and is to be understood in the context

of the ether; relevant facts in record. The grievance of the petitioners was that the same amount of toll has been notified for Lal Bahadur Shastri Marg as has been fixed for other flyovers, though the total cost on this Marg is even less than half of the costs on other highways. Though the total cost is less, but at the same time it has to be borne in mind that the average traffic, as per the study of the Respondents on the said Marg, is also much less. It can be seen from the cash flow statement in respect of Lal Bahadur Shastri Marg that the total toll income from the said Marg is much less and that explains as to why, despite the less expenditure, the same toll amount has been fixed, stated to be recoverable as per the cash flow in 20 years.

13. It was also faintly suggested that there are other modes and methods of recovery of the expenditure, and levy of toll is not the only method. That may be so; but it is not for this Court to decide whether the recovery of the amount of expenditure should be by way of levy and collection of toll on the vehicles or by some other method. The levy and collection of toll to recover the expenditure in connection with the expenditure of the like in question is a well-recognised method. The Government has power to levy toll. Thus, we reject this contention as well.

14. With reference to Section 20 of the Act, it was contended that it is only the users of the flyovers who are liable to pay the toll. There can be no quarrel about this proposition, except that the user has to be of flyover or road or such other improvement, etc., as postulated by Section 20, including the user of the section of the road. It is nobody''s case that a non-user, altogether, would be required to pay the toll. It is a different matter that a user may be of a flyover or of a road or a section of the road.

15. Learned counsel for the petitioners took strong objections to the location of the Toll Stations. We have perused the plans and sketches placed before us by the parties. Regarding the location of Toll Stations, it has been explained that the aspects taken into consideration for the said purpose were :--

(a) Availability of land for construction of Toll Plaza, which includes the plaza structure, office building, installation equipment, etc.

(b) Availability of land for widening of road at plaza location to provide additional lanes to ensure smooth flow of traffic and to avoid traffic jams. For example, on the Eastern Express Highway, which is six lanes wide, there are twelve lanes at plaza location.

(c) The distance from signals, petrol pumps, bus terminus, etc., which cause disruption to smooth flow of traffic.

Some or the other persons are bound to have objection to the location of the Toll Collection Centres wherever the same are located, but the location of the said centres cannot be quashed merely on a ground personal to some or the other individuals so long as the action is not arbitrary or mala fide. The considerations kept in view for location of the said Collection Centres have been explained to us, one major consideration being smooth flow of traffic, which was also one main object for construction of the flyovers. We find no arbitrariness in fixing the location of toll collection centres.

16. In view of the above, we find no ground to quash the Notifications in question. The result is that all the Writ Petitions are dismissed, leaving the parties to bear their own costs.

17. The Civil Application for review is disposed of, in view of this judgment.

18. We find no ground to stay the operation of this judgment.

