

(2003) 03 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3035 of 1982

Vishkarma Stone Crusing Co.

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Haryana Municipal Act, 1973 — Section 70(1), 74(8)

Citation : (2003) 135 PLR 300 : (2003) 3 RCR(Civil) 194

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : U.D. Gaur, for the Appellant; N.K. Joshi, AAG, for the Respondent No. 1 and J.S. Yadav, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of Mandamus directing the respondents not to operate notification Annexure P-I dated May 4, 1982 issued by the Local Government Department of the Haryana State after declaring the same to be illegal. The notification has Inter alia, imposed toll tax on the entry of loaded trucks in the municipal limits of Sohana.

2. The facts in brief are that the petitioners have been bringing truck loaded with stone for the purposes of crushing and for its use in building and other construction. They pay octroi duty at the time of their entry in the municipal limits of Municipal Committee, Sohana, Tehsil and District Gurgaon. It is further asserted that after the crushing operation, substantial quantity of stone is sent back to the place from where it has been received. Under Clause (vi) of Sub-section (1) of Section 70 of the Haryana Municipal Act, 1973 (for brevity "the Act") an express prohibition has been engrafted by the legislature from imposing a toll on vehicles other than motor vehicles and other conveyance entering the municipality. However, respondents 1 and 2 have justified imposition of toll tax on the entry of loaded trucks in the municipal area by relying on Clause (xv) of

Sub-section (1) of Section 70 read with Sub-section (8) of Section 74 of the Act. However, it has been challenged on the ground that once legislature in its wisdom has excluded the loaded vehicles from the imposition of toll tax, the same cannot be reintroduced by taking shelter of Clause (xv) of Sub-section (1) of Section 70 read with Sub-section (8) of Section 74 of the Act.

3. In the written statement filed by respondent No. 1, the stand taken is that on April 4, 1986, Clause (vi) of Sub-section (1) of Section 70 of the Act has been amended and now stands substituted by a newly inserted clause and the prohibition imposed on imposition of toll tax on the entry of vehicle in the municipal area has been deleted and the tax has been permitted to be imposed. Besides the substitution of Clause (vi) of Sub-section (1) of Section 70, validation clause has also been enacted validating the toll tax imposed and collected under Clause (vi) of Sub-section (1) of Section 70 of the principal Act since July 2, 1973. In other words, if despite the judgment and decree, or the order of any Court, the toll tax imposed and collected on the entry of the vehicle under Clause (vi) of Sub-section (1) of Section 70 of the principal Act, would be deemed to be collected under the substituted clause. Similar stand has been taken by respondent No. 2 in its written statement and it is sought to justify the imposition of tax by the impugned notification dated May 4, 1982 (Annexure P-I) on the basis that such a course is available to the State Government and tax could have been imposed despite the express prohibition contained in Clause (vi) of Sub-section (1) of Section 70 of the Act.

4. I have heard Mr. U.D. Gaur, learned counsel for the petitioner, who has submitted that once the legislation has expressly prohibited by Clause (vi) of Sub-section (1) of the Section 70 imposition of a toll tax on any vehicle other than the motor vehicles entering the municipal area then under Clause (xv) the State Government would not be entitled to grant sanction for imposition of that tax because expression "any other tax, toll or fee, used by Clause (xv) of Sub-section (1) of Section 70 of the Act would necessarily mean the tax, which is not mentioned in the preceding clause. The learned counsel has further submitted that such a course would not be open to the execution authorities because it would nullify the legislative dictates. In support of his submission, the learned counsel has placed reliance on a Constitution Bench judgment of the Supreme Court in the case of Municipal Board of Hardwar Vs. Raghubir Singh etc., . Regarding the Amending Act passed by the Haryana Legislature on April 4, 1986. the learned counsel has submitted that the validation clause would apply only to cases where the tax was imposed and collected. According to the learned counsel in the present case, the tax was not collected because there is an interim order passed by a Division Bench of this Court on July 20, 1982. Therefore, the validation clause would not apply in a case where the tax has not been collected. He has further submitted that even after the amendment and validation, a new resolution by the Municipal Committee-respondent No. 2 is required to be passed because the provision of Section 70 is an enabling provision and would not operate automatically resulting in imposition of toll tax.

5. Mr. N.K. Joshi, learned Assistant Advocate General, Haryana, has submitted that once a retrospective legislation is made by the State legislature, then it has to be given full effect and the notification issued on April 4, 1986 has become operative from July 2, 1973. He has further submitted that if the notification amending Clause (vi) of sub-section (1) of Section 70 is given effect from July 2, 1973, then the impugned notification issued on April 4, 1986 must be considered to have been issued from that date and would be valid. He has further submitted that there would be no necessity to issue a fresh notification by the State Government authorising the collection of tax by the Municipal Committee as it would be deemed to have been done by the notification issued on April 4, 1986. In support of his submission, the learned State counsel has placed reliance on various judgments of the Supreme Court, namely, *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*, *Satnam Overseas (Export) through its partner v. State of Haryana*, 3 2002(4) LRI 753 and *J.K. Synthetics Limited and Birla Cement Works and another Vs. Commercial Taxes Officer, State of Rajasthan and another*, .

6. Mr. J.S. Yadav, learned counsel for respondent No. 2 has submitted that the case of the petitioner is completely covered by a judgment of this Court in the case of *T.S. Shergil and ors. v. State of Punjab and ors.* 5 (1971) 73 PLR 232, where under similar residency clause like Clause (xv), the tax was sought to be imposed despite the prohibition from imposing toll tax and imposition of such toll tax was upheld by this Court. The learned counsel has further argued that the tax is deemed to have been collected but for the interim order passed by the Division Bench of this Court. Therefore, according to the learned counsel, the interim order of this Court would not stand in their way to collect the tax because there is no final adjudication of the rights of the parties in the present case.

7. I have thoughtfully considered the respective submissions made by learned counsel for the parties and am of the view that this petition deserves to be allowed. Sub-section (1) of Section 70 of the Act reads as under:-

"Tax that may be imposed:

70(1) Subject to any general or special orders of the State Government in this behalf and to for the purposes of this Act, impose in the whole or any part of the municipality any of the following taxes, tolls and fees, namely:-

(i) a tax on professions, trades, callings and employments;

(ii) a tax on vehicles, other than motor vehicles, plying for hire or kept within the municipality;

(iii) a tax on animals used for riding, draught or burden, kept for use within the municipality, whether they are actually kept within or outside the municipality;

(iv) a tax on dogs kept within the municipality;

(v) a show tax;

- (vi) a toll on vehicles, other than motor vehicles, and other conveyance entering the municipality;
- (vii) a tax on boats moored within the municipality;
- (viii) a tax on the consumption of electricity at the rate of one paise for every unit of electricity consumed by any person within the limits of the municipality;
- (ix) a fee with regard to pilgrimages;
- (x) a fee with regard to drainage;
- (xi) a fee with regard to lighting;
- (xii) a fee with regard to scavenging;
- (xiii) a fee for cleansing of latrines and privies;
- (xiv) a fee in the nature of costs for providing internal services under the scheme framed u/s 203;
- (xv) with the previous sanction of the State Government, any other tax, toll or fee which the State Legislature has power to impose in the State under the Constitution of India."

8. A perusal of the aforementioned section shows that a municipal committee like respondent No. 2 is empowered to impose in the whole or any part of the municipal area, the taxes, tolls and fees enumerated from Clauses (i) to (xv) of Sub-section (1) of Section 70 of the Act. Under Clause (vi), no toll tax on motor vehicles could be imposed. However, Clause (xv) permits the imposition of any other tax toll or fee which the State Legislature may have the power to impose in the State under the Constitution. The expression used in the Clause (xv) is any other tax, toll or fee which in common parlance would mean that categories of taxes which have been enumerated from Clauses (i) to (xiv) would not be within the domain of the State Government and as such the State Government cannot by impugned notification impose a tax which the Legislature itself has excluded. The intention of the Legislature has been expressed by the plain words used and the expression "any other tax, toll or fee has to be given its plain meaning, otherwise those words would be rendered otiose. The notification dated 4.5.1982 Annexure P-I, therefore, cannot be protected by placing reliance on Clause (xv) of sub-section (1) of Section 70 of the Act. Another reason for taking this view is that once the Legislative Assembly in its wisdom has excluded the motor vehicles from tax fee or a toll, then it would not be permissible to erode that exemption by allowing the executive authority to exercise that power by notification dated 4,5.1982, Annexure P-I. It is well settled that under Article 265 of the Constitution, no tax could be imposed without the authority of law. The scheme of Section 70 of the Act appears to be to permit imposition of tax by the municipal committee and also allowed the State Government to grant sanction if the municipal committee passes a resolution for imposition of a tax other than the one enumerated in Clauses (i) to (xiv). The sanction is required to be

accorded under Sub-section (8) of Section 74 of the Act. The questions to whether the municipalities or the executive authorities could take shelter of a residuary clause for imposition of an exempted tax by the preceding clause came up for consideration before a Constitution Bench of the Supreme Court in the Municipal Board of Hardwar's case (supra). In that case the Municipal Committee tried to justify the power of imposition of toll on vehicles leaving the municipal limits which in fact was prohibited by Section 128(I)(vii) of the U.P. Municipalities Act, 1916 (for brevity, 1916 Act). The residuary Clause (xiv) of Sub-section (1) of Section 128 of 1916 Act was relied upon to justify for imposition of toll on the exit of a motor vehicle. The relevant portion of Section 128 of 1916 Act reads as under:-

""128 Taxes which may be imposed.

(1) Subject to any general rules or special orders of the Provincial Government in this behalf, the taxes which a Board may impose in the whole or any part of a municipality are -

* * * * * (vii) a toll on vehicles and other conveyances, animals and laden colliers entering the municipality;

* * * * * (xiv) any other tax which the Provincial Legislature has power to impose in the Province under the Government of India Act 1935."

The above provisions were interpreted by their Lordships of the Constitution Bench in the following words:-

"..... The difficulty in accepting the first notification in respect of toll on vehicles leaving the municipality which is sought to be supported under Clause(xiv) is this: the Provincial Legislature expressly gave a limited power to levy toll on vehicles entering the municipality. Power which flowed from entry 53, whatever it might have been, was made over to the municipal Board to be exercised in a particular manner and that manner was stated in Clause (vii). If the matter is confined to Clause (vii) it is clear that the Board could levy toll only on vehicles entering the municipality and not on vehicles leaving the municipality. The Legislature having expressing so limited the power of the Board, we think that no extension of that power could be contemplated under Clause (xiv) even if it may be right to say that tolls as such can be levied on vehicles leaving the municipality as well as vehicles entering the municipality - a point which we do not decide. The larger power, if any, must be held to be cut down by necessary implication. To permit tolls to be levied on vehicles leaving the municipality would render ineffective that part of Clause (vii) which lays emphasis on vehicles entering the municipality. Such an extension of power through Clause (xiv) cannot be supported. When the Board amended the notification in 1955 the position regarding tolls remained unaltered. The power of the Legislature derivable from entry 59 of the Constitution was not available because the tax was not a tax on passengers but on vehicles and the power to levy tolls continued to be restricted to vehicles entering the municipality. That restriction

made it impossible to extend the power regarding tolls in respect of vehicles leaving the municipality. The second notification also drew power from Clause (vii) only and that was patently wrong because that clause limited the power to levy tolls on vehicles entering the municipality. The third notification was irrelevant as it came after the petitions were filed in the High Court and it was also subject to the same restriction."

9. If the notification dated 4.5.1982 is examined in light of the principles laid down by the Constitution Bench of the Supreme Court in *Municipal Board of Hardwar*'s case (supra), then it is evident that Clause (vi) of Sub-section (1) of Section 70 of the Act incorporates an express prohibition and the same is sought to be justified by relying on Clause (xv) of Sub-section (1) of Section 70 read with Sub-section (8) of Section 74 of the Act. The aforementioned observations of the Constitution Bench fully applies to the case in hand.

10. Learned State counsel has referred to a notification dated April 4, 1986 which is styled as Haryana Municipal (Amendment and Validation) Act, 1986 whereby Clause (vi) was substituted by the following clause:-

"(vi) a toll on vehicles and other conveyances entering the municipality."

He further pointed out that it has been specifically mentioned that the aforementioned clause would be deemed to have come into force from 2.7.1973 and the toll in vehicles imposed by notification dated 4.5.1982, Annexure P-I is validated. He has further pointed out that respondent No. I has placed on record a copy of the Ordinance dated 21.12.1990 showing that Clause (vi) of Sub-section (1) of Section 70 of the Act stands substituted. The aforementioned Ordinance was replaced by an Act being Haryana Act No. 10 of 1991 published in the Haryana Government Gazette on 25.4.1991. There is no dispute that no liability to pay any toll tax would arise after 21.12.1990 when the Ordinance deleting Clause (vi) was issued, which is further evident from the letter dated 10.12.2002 addressed by respondent No. I to the Advocate General, Haryana. However, the dispute remains about the liability to pay toll tax on the vehicles entering the municipal limits from 20.7.1982 to 20.12.1990.

11. The aforementioned argument would also not be acceptable because if the power of the municipal committee recognised by the newly substituted Clause (vi) of Sub-section (1) of Section 70 of the Act, then Annexure P-I would not be covered by that clause because the impugned notification is sought to be justified by virtue of residuary power conferred by Clause (xv) of Sub-section (1) of Section 70 read with Sub-section (8) of Section 74 of the Act. A new notification cannot be deemed to have been issued under the newly substituted Clause (vi) of Sub-section (1) of Section 70 of the Act. Moreover, the directions issued by this Court on 20.7.1982 staying the imposition of toll tax on the vehicles of the petitioner cannot be interfered with by the Legislature by operating the amendment made on April 4, 1996 w.e.f. 2.7.1973. Therefore, the notification dated 4.5.1982 Annexure P-I in so far it adversely affects the

petitioner is liable to be set aside.

12. For the reasons recorded above, this petition is allowed. The impugned notification dated 4.5.1982, Annexure P-I is set aside and it is held that the petitioner is not liable to pay any tax on the entry of vehicles for the period commencing from 20.7.1982 to 20.12.1990.