

Sri Satya Narain Singh

Vs

District Engineer, P. W. D. and Another

C.A. No. 435 of 1958

(CJI B. P. Sinha, J. L. Kapur, M. Hidayatullah, J. C. Shah, J. R. Mudholkar JJ)

08.02.1962

JUDGMENT

MUDHOLKAR, J. -

This is an appeal by certificate from the judgment of the High Court of Allahabad reversing the decision of a single Judge of that Court directing the issue of a writ of Mandamus against the respondents under Art. 226 of the Constitution. The points which arise for consideration in the appeal are whether the appellant who was at the relevant time the lessee of a right to collect tolls from persons, vehicles etc., crossing the river by public ferry at Pipraghat, District Ballia was bound to allow State carriage buses belonging to the Government of Uttar Pradesh to cross the river by the ferry without collecting any toll or was entitled to claim abatement of rent from the Government under the proviso to s. 15 of the Northern India Ferries Act 1878 (hereafter referred to as the Act).

In order to appreciate the points a few facts need to be stated. There is a ferry at the village Pipraghat, district Ballia for crossing the river and the right to collect tolls in respect of that ferry is put to public auction annually. The highest bidder at the auction gets the right. The rent or licence fee is collected from him in monthly instalments during the year with respect to which the right was purchased by the licensee. The appellant was the highest bidder for the year 1954 and the licence fee payable by him was Rs. 31,751/-. The practice right upto 1954 was to allow the lessee to collect a toll of Rs. 5-1-0 from every stage carriage bus. Till March 9 of that year only privately owned stage carriage buses used to ply on the route in which the ferry crossing was comprised. Thereafter the route has been taken over by the Roadways Department of the State of Uttar Pradesh. From March 9 to March 16, the appellant realised tolls at Rs. 5-1-0 from the State owned stage carriage buses when he was informed by a letter by the first respondent that he should allow the Roadways buses to use the ferry for crossing and recrossing the river on credit till March 31, 1954 and should thereafter submit his bill with respect to the tolls to the Roadways Department of the Government. He was also informed that further orders will be issued on April 1, 1954. The appellant accordingly allowed the Roadways buses to use the ferry for crossing and recrossing the river and submitted his bill to the Roadways Department on March 31, 1954. That bill was, however, not paid.

On April 1, 1954 he received two communications from respondent No. 1 by one of which he was informed that no toll is leviable on the Roadways vehicles and by another he was asked to pay the monthly instalment of the licence fee without making any deduction therefor consequent upon the exemption of the Roadways buses from tolls.

The appellant had moved the High Court of Allahabad under Art. 226 of the Constitution for the issue of a writ directing the respondent "to refrain from precluding the petitioner from charging tolls

from the Roadways buses", to issue a writ commanding the respondents to allow abatement to the appellant and to issue an interim direction to the respondents asking them to refrain from realising the unpaid monthly instalments of the licence fees till the decision was given. Before the petition was decided the appellant's licence had run out and, therefore, at the hearing the appellant confined himself to one relief, that is, commanding the respondents to allow rebate one account of the exemption of the Roadways buses from liability to pay the tolls. The petition was, however, not amended. We may incidentally mention that apart from the reliefs above referred to, the appellant claimed two more reliefs, one of which was to pass any such other and further order as may be deemed fit and proper.

The learned single Judge of the High Court who decided the petition in the first instance came to the conclusion that the appellant was entitled to abatement of rent under the third paragraph of s. 15 of the Act and directed the issue of a writ to the respondents directing them to "perform their statutory duty relating to abatement of rent" payable by the appellant consequent on the exemption of Roadways buses from payment of tolls under the aforesaid provision before claiming or recovering arrears of rent from him. The respondents preferred an appeal under the Letters Patent which was heard by a Division Bench of the Allahabad High Court. The learned Judges held that a licensee is not entitled to abatement of rent unless the Government makes a declaration under s. 15 of the Act subsequent to the grant of licence to him. It pointed out that the G.O. No. 1946/17-51 dated December 11, 1951 upon which relevance was placed by the learned single Judge being prior in point of time to the grant of the licence to collect tolls to the appellant, did not entitle him to claim abatement. It, however, held that the appellant may be entitled to claim abatement of rent or licence fee under the general law but that such a relief could be claimed only in a suit but not a proceeding under Art. 226 of the Constitution. They thus allowed the appeal and dismissed the petition.

Section 15 of the Northern India Ferries Act, 1878 runs thus :

"Toll, according to such rates as are from time to time fixed by the State Government, shall be levied on all persons, animals, vehicles and other things crossing any river by a public ferry and not employed or transmitted on the public service :

Provided that the State Government may from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been let under section 8, any such declaration, if made after the date of the lease, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Commissioner of the division or such other officer as the State Government may, from time to time, appoint in this behalf by name or virtue of his office."

The proviso to the section confers upon the State Government power to declare from time to time any persons, animals, vehicles etc., exempt from payment of such tolls. Before the question of allowing abatement of rent or licence fee can arise it must first be established that there was a valid exemption with respect to any vehicles etc., under s. 15 of the Act. The section also provides that where such declaration is made subsequent to the grant of licence to collect tolls under s. 8 the licensee is entitled to abatement of rent :

The Government order to which reference has been made in the two judgments of the High Court runs as follows :

"Subject : Exemption from payment of toll.

I am desired to say that a question has been raised whether the Roadways Motor Vehicles should be exempt from payment of ferry tolls while crossing any river by a public ferry. Government have given their full consideration to this matter and have come to the conclusion that the motor vehicles run by the Roadways with the operational staff accompanying them on duty fall under the exemption granted from payment of ferry toll in paragraphs 2(a) of notification No. 252/IX-209/(10) dated March 16, 1925 (published on page 347 of the District Board Manual).

2. I am, however, to observe that the passengers travelling in these vehicles with their goods and all the private goods, being transported in the Roadways trucks shall be liable to the payment of tolls as heretofore according to the rates fixed by the Local Government.

3. The District Magistrate, District Board and ferry contractors in your division may please be informed accordingly."

It may be pointed out that this order, if what appears to be merely a communication addressed to certain authorities can be regarded as a Government order, does not itself confer any exemption with respect to the buses run by the U.P. Roadways but sets out the opinion of the Government that such buses must be regarded as being exempted under a notification of March 16, 1925 issued under s. 15 of the Act. That notification reads thus :

"2. The following shall be exempt from the payment of tolls :

(a) All persons animals and vehicles crossing any river by a public ferry when employed or transmitted on the public or District Board service."

Admittedly at that date the State was not running any bus services in the United Provinces (now the State of Uttar Pradesh). May be there were no Government-owned buses at all in any other province of India at that time. Moreover it would not be reasonable to assume that a State enterprise of this kind was even in the contemplation of the U.P. Government at that time. At that time, apart from running some railways the State had not entered the commercial field. It is in the light of these facts that the language of the notification of March 16, 1925, must be interpreted. What the notification exempts is a vehicle crossing the river on 'public or district board service'. Could it be said that plying motor buses by way of commercial activity is running it on a public service ? It is undoubtedly not easy to define what is "public service" and each activity has to be considered by itself for deciding whether it is carried on as a public service or not. Certain activities will undoubtedly be regarded as public services, as for instance, those undertaken in the exercise of the sovereign power of the State or of governmental functions. About these there can be no doubt. Similarly a pure business undertaking though run by the Government cannot be classified as public service. But where a particular activity concerns a public utility a question may arise whether it falls in the first or the second category. The mere fact that that activity may be useful to the public would not necessarily render it public service. An activity however beneficial to the people and however useful cannot, in our opinion, be reasonably regarded as public service if it is of a type which may be carried on by private individuals and is carried on by government with a distinct profit motive. It may be that plying stage carriage buses even though for hire is an activity undertaken by the Government for ensuring the people a cheap, regular and reliable mode of transport and is in that

sense beneficial to the public. It does not, however, cease to be a commercial activity if it is run with profit motive. Indeed even private operators in order to attract custom are also interested in providing the same facilities to the public as the Government undertaking provides. Since that is so, it is difficult to see what difference there is between the activity carried on by private individuals and that carried on by Government. By reason of the fact that a commercial undertaking is owned and run by the State it does not ipso facto become a 'public service'. It is not disputed before us that the Roadways department of the Government of U.P. is running a profit making and a profitable activity by excluding every kind of competition. In the circumstances, therefore, we find it impossible to hold that its vehicles crossing over ferries can be regarded as crossing on public service. They are, therefore, not entitled to any exemption under the notification of March 15, 1925. Since they are not entitled to any exemption the question of abatement of rent does not arise.

It is true that the petitioner, as already stated, confined himself at the stage of arguments in the High Court to the relief of abatement because of change of circumstances which took place between the date of filing his petition and its hearing. He did so evidently upon a misunderstanding of the legal position with regard to the scope of the notification of March 16, 1925. However, the appellant has raised an alternative contention in his Statement of the case to the effect that the Roadways buses which carry passengers are used by the Government for carrying on a commercial undertaking and that; therefore they do not come within the exemption made by the notification of the year 1925. In view of this and of the fact that the petition which contains a prayer for grant of 'other relief' has not been amended and is thus in its original form we see no difficulty in granting appropriate relief to the appellant.

In the result we allow the appeal and set aside the judgment of the Division Bench as well as of the single judge of the High Court of Allahabad and direct that a writ in the nature of mandamus shall issue to the respondents directing them to pay to the appellant full tolls with respect to every crossing of the Roadways buses over the ferry between March 16, 1954, and the date on which the licence favour of the appellant expired.

The costs of the appellant here and in the High Court will be borne by the respondents.

Appeal allowed.

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