

Municipal Board of Hardwar

Vs

Raghubir Singh Etc

Civil Appeals Nos. 311 to 366 of 1964

(CJI P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanarayan Raju JJ)

06.12.1965

JUDGMENT

HIDAYATULLAH, J. -

These appeals involve a short common point of law and to appreciate it the narration of a few simple facts will be sufficient.

On October 29, 1941, the Hardwar Union Municipal Board (for brevity called the Board in this Judgment) issued a notification (No. 4188/XI-416-41) by which it imposed a toll on motor vehicles and tongas entering or leaving the municipal limits with passengers, at the rate of 2 annas per passenger. There were nine classes of persons who were exempted and one such class was persons travelling in motor vehicles and tongas from Rishikesh. Exemption certificates valid to the end of the calendar year were available in respect of some of the other classes. The notification purported to be issued in exercise of powers conferred by s. 128(1)(xiv) of the U.P. Municipalities Act 1916 (U.P. Act 2 of 1916). Accompanying the notification were rules for the levy and collection of the toll. On February 22, 1955, a second notification was issued (No. 830/XXIII-16(C)-53-54), this time in exercise of the powers conferred by s. 128(1)(vii) of the Act, and it increased the toll from 2 annas to 4 annas per passenger and added rickshaws to the vehicles. This notification also removed the exemption in favour of persons travelling from Rishikesh. The Board established a toll-barrier on the Rishikesh/Hardwar road at a place called Kharkhari within the limits of Hardwar Municipality. Toll was collected at that barrier from vehicles entering the municipal area or departing from it, at the rate of 4 annas per passenger travelling by motor car, tonga or rickshaw. On September 18, 1957, a third notification (No. 2706-B-(a)XI-C-57) was issued, once again in exercise of powers conferred by s. 128(1)(xiv) and the Board amended the description of the toll in the notification of 1941 and deleted the exemption which had been granted to persons travelling between Rishikesh and Hardwar. The final description of the tax reads :

"In the Description of the tax -

(i) . . . . .

"A toll tax on motor vehicles, rickshaws and tongas entering or leaving the limits of the Hardwar Union Municipality with passengers to be levied at the rate of annas 4 per passenger".

(ii) Delete the clause (c) 'All persons travelling in motor vehicles and tongas from

and to Rishikesh' given under the proviso 2 to paragraph 1."

The last notification was issued after the respondents who are owners of motor vehicles plying between Rishikesh and Hardwar had filed their petitions under Art. 226 of the Constitution challenging the toll.

The judgment, which is impugned here by the Board as appellant, is by a Divisional Bench consisting of Mootham C.J. and Shrivastava J. in a special appeal decided on December 6, 1957. The special appeal was filed against a judgment of Mehrotra J. dated September 26, 1955. Mr. Justice Mehrotra had held that toll could not be levied at all on vehicles going outside the Municipal limits and he issued a writ ordering the Board to desist from collecting toll on vehicles leaving Hardwar Union Municipality. He upheld the levy of toll on vehicles entering the municipal limits. Other contentions against the notifications which sought to have the levy of toll in any shape or form declared illegal were rejected. The Divisional Bench maintained the order but held that although toll could be levied on vehicles leaving the municipal area, it could not be levied on the same vehicle if it had been once levied on its entry into the municipal area. The Divisional Bench modified the order by adding a direction that the appellant Board should not levy toll on vehicles leaving the municipal limits, which had paid toll on entry into these limits. The Bench observed further -

"We think, therefore, with respect, that the learned Judge went too far when he said that a toll cannot be levied on a vehicle going out of the limits of the Municipal Board.....".

Following its own decision the Divisional Bench dismissed the other special appeals but certified all cases as fit for appeal to this Court and that is how these fifty-six appeals are before us.

Now it has been ruled on many an occasion in this Court that local authorities like the Board do not act as legislatures when they impose a tax but as the agent of the State Legislatures. Their powers and the extent of these powers must be found in the statute which erects them and endows them with such powers. This proposition is so indisputable that Mr. Setalvad for the Board did not seek to contradict it in any way. We must, therefore, look at the U.P. Municipalities Act first. Section 128(1) of the Act read in 1941 as follows :-

"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 -

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(vii) a toll on vehicles and other conveyances, animals and laden collies entering the municipality.

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

(The word "Provincial Legislature", "Province" and "the Government of India Act 1935" have now been replaced by the words "State Legislature", "State" and "the Constitution" respectively.)

Mr. Setalvad has relied upon both the clauses of s. 128(1) quoted above. He has further relied upon the concept of tolls which according to him envisages collection both on entry and departure. He has drawn particular attention to the first and the third notification in which cl. (xiv) is mentioned as the source of power and has contended that the clause being residuary and enabling can bring the full amplitude of the power of the legislature to levy tolls to the aid of cl. (vii) which is restricted in its operation. We shall now consider these arguments.

The scheme of s. 128 is that it enumerates by name certain taxes, and confers power on the Boards to levy them and then it enacts cl. (xiv) which is intended to cover other taxes which the Provincial (now that State) Legislature has authority to impose but which are not in the enumeration. In this way the delegated powers of the Board are equated to the legislative powers of the Legislature of the Province (now the State). Since tolls were first imposed in Hardwar in 1941, we must view cl. (xiv) in the light of the Government of India Act 1935. The powers of the Provincial Legislature in this context could flow from entries 52 and 53 only of the Provincial Legislature List in the Seventh Schedule of the Constitution Act of 1935. These entries read :

52 - "Dues on passengers and goods carried on inland waterways;"

53 - "Tolls".

The corresponding provisions under the Constitution are to be found in entries 56 and 59 of the State List. They read :

56 - "Taxes on goods and passengers carried by road or on inland waterways;"

59 - "Tolls".

It will thus be seen that in 1941 the Provincial Legislature had no power to impose a tax on passengers carried over inland roads and whether or not the levy we are considering could be regarded at all as a tax on passengers, it could not be so regarded in 1941. It could be justified as a toll only under entry No. 53. The difficulty in accepting the first notification in respect of toll on vehicles leaving the municipality which is sought to be supported under cl. (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 cl. (vii). If the matter is confined to cl. (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 expressly so limited the power of the Board, we think that no extension of that power could be contemplated under cl. (xiv) even if it may be right to say that tolls as such can be levied on vehicles leaving the municipality as well as on 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 cl. (vii) which lays emphasis on vehicles entering the municipality. Such an extension of power through cl. (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 cl. (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.

We were referred to dictionaries and to rulings of the English Courts in an attempt to widen the meaning of the word "toll". There were many kinds of tolls and all, of course, must be taken to be comprehended by the entry relating to tolls in the Government of India Act, 1935 or the Constitution. There were for example toll-thorough and toll-traverse which were the two main subdivisions and there was toll-stallage. The first was a levy prescribed by towns for animals or men that went through highways of a town or over ferries, bridges etc. belonging to it. Toll-traverse was charged for passing over a private person's ground. Toll-stallage was a charge for occupation of land by pitching stalls in fairs and markets. A toll was thus a tribute or customs paid for a privilege, generally for passage over or for using a bridge, road, ferry, railway and sometimes for occupation of market, port, anchorage etc. The justification for tolls was that the person charged enjoyed a privilege and the amount went towards the construction, improvement or upkeep of these things. Toll roads were a common feature of mediaeval Europe and England and toll roads and turnpike roads were so common that it was impossible to go any distance without having to pay some charge. Toll roads went out of fashion and were abandoned because they were very unpopular and the charges for maintenance of roads, bridges, ferries etc. were directly levied as taxes. They lingered for sometimes as octrois which were picturesquely described as "ingate" tolls being collected at the gates of a town or toll-barriers. Even octrois have disappeared in Europe and England but they have continued to persist in India.

Whether such tolls were collected only on entry or only on departure or both on entry and departure it is not easy to say. Mr. Setalvad could give no instance of any practice in which they were levied both on entry and exit on the same vehicle. The better view appears to be that they can be collected only once and at the point of entry only though for convenience, they may be collected at any one end as for example toll for crossing a bridge which allows either entry to the bridge or takes the toll after the bridge is traversed. It is taken from those about to enter and from those about to leave but not twice.

We need not concern ourselves with this problem which was placed before us by Mr. Setalvad because toll as such can only be collected under the Municipalities Act from vehicles entering the municipal limits. This, in our opinion, exhausts all the power delegated by the Legislature to the municipal Boards and that power cannot be extended either by considerations derived from the nature of tolls or from the residuary cl. (xiv). It is, therefore, sufficient to say that in the Hardwar Municipality the power to collect tolls was limited in 1941 by cl. (vii) of s. 128(1) and that power continues to be so limited.

In this view of the matter the distinction made by the Divisional Bench between vehicles which need not pay toll on leaving the municipal limits because they have paid toll on entry and vehicles which have not paid any toll till leaving, may not be quite correct. Mr. Setalvad contended that this distinction must not continue because the amount of toll is dependent on the number of passengers in the vehicle and the vehicle may enter with few passengers and leave with many more. That in our opinion is an irrelevant consideration because the right to levy toll is confined to vehicles entering

the municipality and no question of vehicles leaving the municipality can enter the discussion. The Divisional Bench was in error in introducing this consideration and the decision of Mehrotra J. was right in all the circumstances of the case. As, however, the owners of vehicles have not appealed or objected, we will only dismiss the appeals and order no modification in the order of the Divisional Bench. The appellant Board shall bear the cases of this appeal. One hearing fee.

Appeals dismissed.

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