

Municipal Board, Nainital and Anr.

Vs

Brij Mohan Chandra and Anr.

Criminal Appeal No. 134 of 1968

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

26.10.1970

JUDGMENT

DUA, J. -

1. The short point requiring determination in this appeal on certificate of fitness granted by the Allahabad High Court under Article 134(1)(c) of the Constitution is whether toll-tax on laden motor vehicles levied under Section 128(1)(vii) of the U.P. Municipalities Act II of 1916 (hereinafter described as the Act), on their entry within the limits of Nainital Municipality can be realised from the passengers carried by them.

2. The relevant facts which lie within a narrow compass may now be briefly stated. Brij Chandra, Vice-President of the Notified Area Committee, Bhowali, District Nainital (respondent No. 1 in this Court) travelled in U.P. Government Roadways Bus from Bhowali to Nainital on 17th, 26th and 29th May, 1967. At Kaila Khan Municipal toll barrier one and a half miles from Nainital on the Bhowali-Nainital Road, toll-tax was demanded from him but he declined to pay. The Executive Officer, Municipal Board, Nainital, thereupon filed a complaint against him under Section 190(1)(c) of the Code of Criminal Procedure on the allegation that he had by entering the Municipal limits of Nainital without paying the toll dues committed breach of rule (1) of the Rules made under Section 153(a) of the Act for the assessment and collection of tolls within the municipality of Nainital. Brij Mohan Chandra's contention in reply was that the levy of toll-tax by the Municipal Board on passengers was ultra vires the taxing power of the Board. During the pendency of the proceedings in the court of Sub-Divisional Magistrate, Nainital, Brij Mohan Chandra applied to the High Court of Judicature at Allahabad under Section 561-A, Cr.P.C., for quashing those proceedings. The High Court (S. D. Singh, J.), on April 16, 1968, quashed the proceedings by the impugned order holding that clause (vii) of Section 128(1) of the Act did not authorise levy of toll-tax on passengers and that the relevant notification also levied tax only on vehicles and not on passengers. The rule imposing an obligation on the passengers to pay the toll was, therefore, struck down as ultra vires.

3. In this Court, Shri Yogeshwar Prasad, learned counsel for the appellants (the Municipal Board, Nainital, and the Executive Officer of the Board) at the outset attempted obliquely to seek support for the validity of the levy on passengers from clause (xiv) of Section 128(1) as pleaded in the memorandum of appeal lodged in this Court under Order XXI, Rule 12, of the Supreme Court Rules. But this attempt was soon abandoned and Shri Yogeshwar Prasad felt constrained to concede that in view of the clear, and precise position taken on behalf of the Board in the High Court that it had never been intended to impose toll-tax on passengers, it was not open to him in this Court to rely on clause (xiv). Shri O. P. Rana, the learned counsel for the respondent State of U.P. supporting the appeal, also did not rely on clause (xiv). We, therefore, do not propose to express any opinion on

the question whether or not a toll-tax on passengers would be permissible under clause(xiv).

4. The only point seriously pressed on behalf of the appellants is also by Shri O. P. Rana on behalf of the State of U. P. was that the toll imposed on the vehicles entering the municipality could legally be realised from the passengers carried by it because of their nexus with the entry of the vehicle. Before examining this contention we may in passing turn to clause (vii) of Section 128(1) of the Act which reads :

"128(1) Subject to any general rules or special orders of the State Government, in this behalf, the taxes which a board may impose in the whole or part of municipality are -

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

5. This clause in clear and unambiguous terms speaks of a toll on vehicles and other conveyances, animals and laden coolies entering the municipality. It does not take within its fold the passengers carried by vehicles to be taxed, with the result that imposition of tax on passengers by the Municipal Board would be incompetent under this clause. And this in fact was not disputed at the Bar.

6. The argument of nexus was also raised in the High Court; but it was repelled by that Court which observed as follows :

"It was urged that when a tax on conveyance is levied, some provision has to be made for the assessment and collection of that tax and some provision made about the persons from whom that tax may be recovered and that if there is any reasonable or rational nexus between the levy of the tax and the persons from whom that tax may be recovered, the Municipal Board would be within its rights to realise the tax from the persons so named. It is difficult, however, to apply the nexus theory in a manner so as to enable the Municipal Board to recover the toll-tax from the passengers travelling in a bus otherwise there will be no distinction left between a vehicles tax and a passenger tax. When a toll-tax is levied on a vehicle, it is levied at the point of its entry within the municipal limits. It is obviously, therefore, the person, who is in charge of the vehicle or who makes an attempt to take the vehicle inside the municipal limits who takes upon himself the responsibility for the payment of the toll-tax. There is no question of there being any nexus between the levy of the tax on the vehicle and the persons sitting inside the same. In the case of vehicles plying on hire the driver or conductor of the vehicle can, of course, charge the amount of tax which has to be paid, from the passengers in addition to the fare which is normally charged from them."

The same argument was repeated before us. The submission seems to be based largely on the policy of the law to ensure the collection of taxes by preventing fraudulent evasion. In order to appreciate its cogency we may appropriately advert to the Rules made by the State Government in 1922 under Section 296, read with Section 153(a) of the Act, with respect to the assessment and collection of tolls in the Nainital Municipality. So far as relevant for the purposes of this appeal, according to rule (1) no person can bring within the limits of the Nainital Municipality any vehicle in respect of

which the toll-tax imposed under Section 128(1)(vii) of the Act is leviable until the toll due in respect thereof has been paid to such muharrir and at such barrier as the Board may from time to time appoint. Under Rule 2(a), in the case of laden motor vehicles the load recorded in the chalan or invoice accompanying the vehicle has to be accepted by the Muharrir for purposes of assessing the toll. If no chalan or invoice accompanies the vehicle the load is to be assumed for the purposes of assessment to exceed three maunds unless it is ascertained to be less by weighment undertaken at the request of the person in charge of the vehicle. The toll on a laden motor vehicle has to be paid by the person in charge of the vehicle and toll on a passenger is to be paid by the passenger : Rule 2(b) provides that when any person in charge of a laden vehicle enters the municipal limits such person shall pay the toll to the muharrir at the barrier and the muharrir shall tender a face value ticket with coupon attached for the amount to the person paying the toll. This face value ticket can be examined by the official appointed for the purpose and the person bringing the vehicle within the municipal limits is bound under Rule 3 to permit such examination. Under Rule 2(c), every driver of a motor lorry or other vehicle plying for hire and every driver of a private motor car or vehicle carrying passengers or goods has to stop his lorry or vehicle at the toll barrier for a reasonable time to enable the toll staff to recover proper toll-tax from passengers and on the goods loaded therein. The provision contained in Rule 2(a) that the toll on a passenger shall be paid by the passenger, on which reliance has principally been placed, is of no assistance to the appellants because it postulates imposition of toll on passengers and, therefore, unless a toll has been imposed on passengers none can be demanded from them under this clause. Similarly the notification (No. 1450/XI-476-E) dated 19th August, 1921, according to which toll-tax under Section 128(1)(vii) of the Act sanctioned by the U.P. state Government under Section 135(2) of the Act is levied on motor vehicles other than cars at the rate of Re. 1/- per passenger carried by them and to the rate of Rs. 2/- per vehicle is unhelpful to the appellants. As already observed by us, no toll-tax has been imposed on passengers and indeed it was conceded on behalf of the appellants, both here and in the High Court, that the Board had never intended to impose a tax on passengers. It is also noteworthy that the toll imposed on the laden vehicles is expressly made payable by the person in charge of such vehicles and according to the scheme of the rules which provide the procedure for collecting such tolls, the person bringing the vehicle within the municipal limits (who is supposed to be the person in charge) is enjoined to permit examination of the face value ticket when demanded after the vehicles entry into those limits. No liability has been fixed on the passengers for payment of the tax imposed on the vehicles carrying them and entering the Nainital Municipality. The liability for the payment of such tax having been fixed only on the person in charge of the vehicle and not on the passengers it is difficult to appreciate how the authorities entrusted with the duty of realising the same can demand it from the passengers. Our attention was not invited to any provision of law under which the passengers can be held liable to pay the toll-tax imposed on the vehicles. Neither any precedent nor any principle was cited at the Bar in support of the submission that merely because the passengers were carried by the vehicles into the municipal limits could be demanded from them. On the facts and circumstances of this case and on the arguments addressed we are, therefore, unable to hold that the passengers carried by the vehicles entering the municipality of Nainital can be legally called upon to pay the tax imposed on the vehicles.

7. As a last resort a faint attempt was made by the appellant's counsel to rely on Section 164 of the Act in bar of the jurisdiction of the High Court in entertaining the petition under Section 561-A, Cr.P.C. and in holding the impugned assessment and liability of the passengers to be unauthorised and illegal. This argument ignores the vital point that if the impugned levy is outside the Act then this section cannot operate and the jurisdiction of the High Court to quash the proceedings relating to the levy which is ultra vires the taxing power of the Board under the Act cannot be taken away to

the prejudice of the aggrieved citizen. This submission is accordingly repelled.

8. In the final result this appeal fails and is dismissed.

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