

Kamaljeet Singh and Others

Vs

Municipal Board, Pilkhwa and Others

Civil Appeals Nos. 1969-70 of 1972

(A. P. Sen, B. C. Ray JJ)

02.09.1986

ORDER

1. The short question that arises in these appeals by special leave is as to the validity of the imposition of a toll tax by the Municipal Board, Pilkhwa on vehicles and other conveyances, animals and laden coolies entering the municipal limits under Section 128(1)(vii) of the U.P. Municipalities Act, 1916. The High Court has upheld the levy of the toll tax relying upon the decision of this Court in *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* [(1963) 1 SCR 491 : AIR 1962 SC 1406] as being compensatory in nature. In *Automobile Transport* case [(1963) 1 SCR 491 : AIR 1962 SC 1406], the majority held that regulatory measures imposing compensatory taxes for the use of trading facilities do not hamper trade, commerce or intercourse, but rather facilitate them and therefore are not hit by the freedom of trade and commerce guaranteed by Article 301 of the Constitution. The toll tax in question however cannot be treated to be a compensatory tax for the use of trading facilities. The Municipal Board provides no facilities whatever to the owners of vehicles like stage carriages making use of National Highway No. 24. The township of Pilkhwa is off the national highway and is quite at some distance. It is connected by a road and a part of the national highway has been included within the municipal limits. Merely because stage carriage operators like the appellants ply their stage carriages on permits issued on the inter-statal route Delhi-Garhmukteshwar which falls on the national highway and stop their buses for the facility of passengers going to and coming from Pilkhwa, or that the Municipal Board has set up two electric poles at the toll barriers for facility of collection of the toll tax, does not justify the imposition of a toll tax. Usually, the consideration for a toll is some amenity, service, benefit or advantage which the person entitled to the toll undertakes to provide for the public in general, or the persons liable to pay the toll. The national highway is being maintained by the government and the approach road built by the Public Works Department. There is a nallah constructed by the Municipal Board for flow of the sewage water from the town of Pilkhwa, but that does not entitle the Board to levy a toll tax on stage carriage operators like the appellants as a compensatory tax. Even assuming that the Municipal Board has to incur expenditure on maintenance of the connecting road and the nallah, but they are facilities provided for the residents of the town for which it recovers various taxes. Furthermore, maintenance of roads, bridges etc. are statutory duties of the Municipal Board under Section 7 of the Act. The levy of the toll tax by the Municipal Board must therefore be struck down as ultra vires.

2. We are informed by learned counsel for the respondents that the State Government by notification dated April 4, 1979 has withdrawn the transit tax on vehicles and other conveyances, animals and laden coolies who are merely passing through the municipal limits. Our attention has been drawn to a letter dated April 25, 1979 which shows that the State Government has taken a decision that all passenger vehicles like buses, cars, taxis and tempos etc. shall not be made to pay the transit tax.

3. The result therefore is that the appeals must succeed and are allowed with costs. The judgment and order of the High Court are set aside and the impugned notification dated May 1, 1970 levying the toll tax is struck down as ultra vires.

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