

ALLAHABAD HIGH COURT

Punjab Lime and Lime-stone Co

Vs.

Cantonment Board, Dehradun

Civil Misc. Writ Nos 1331 and 1330 of 1964

(S.K . Verma, J.)

28.02.1966

ORDER

S.K . Verma, J.

1. These are two connected writ petitions under Article 226 of the Constitution of India. The petitioners in the two cases have taken a lease of lime-stone quarry situate at Bhitarli in the District of Dehradun. The lime which is taken out of the quarry is taken to the railway station of Dehradun in trucks. While going from the quarry to the railway station the trucks have to pass over a road within the limits of the Cantonment Board of Dehradun. The Cantonment Board has erected barriers for the purpose of realizing toll on the trucks passing through the Cantonment Area. The petitioners challenged the validity of the toll levied on their vehicles. They filed an appeal which was dismissed by the Additional District Magistrate (Judicial) Dehradun. They thereupon filed a suit for an injunction restraining the Cantonment Board from realizing the toll but the suit was also dismissed. They have, therefore, filed these petitions. They pray that a writ, order or direction in the nature of certiorari be issued, quashing the notification No. S. R. O. 369 dated 1st of November, 1963, sanctioning the levy of toll tax under section 60 of the Cantonments Act. The further prayer is that a writ or direction in the nature of mandamus be issued directing the respondent Board not to realize toll tax from the petitioners on goods and laden vehicles in transit.

2. It has been contended by the learned counsel for the petitioners that the word ' toll' presupposes the rendering of some service by the authority realising the toll and as the Cantonment Board renders no service, what has been levied by it is not toll. There is

no allegation in the petition to the effect that the Cantonment Board renders no service. The relevant paragraph is number ' 3 ' which reads thus :

" 3. That as such while transporting the lime-stone from the quarry of the petitioner the Trucks have to pass through the limits of Cantonment Board Dehradun. But they are never loaded or unloaded within the Cantonment Board limits. They merely pass through the Cantonment Board to their destinations outside it, that too on M. E. S. Road and not on any road of the Cantonment Board. "

All that has been alleged is that the road is ' M. E. S., Road ' and not a road of the Cantonment Board. The reply to paragraph ' 3 ' of the petition is to be found in paragraph five of the counter affidavit Paragraph five of the counter affidavit reads as follows :

" That in paragraph 3 of the writ-petition it is only admitted that some limestone trucks do pass through the limits of cantonment Board Dehradun Rest of the paragraph is not admitted. The road referred to as the M. E. S., Road is within the Cantonment Board limits. "

3. It will thus be seen that there is no assertion by the petitioners to the effect that the Cantonment Board renders no service. This question arose in *Hindustan Vanaspati Manufacturing Co. Ltd., v. Municipal Board, Ghaziabad*, The facts were that the appellant Company's premises at Gaziabad were situate within the limits of the Ghaziabad Municipal Board. The Board claimed that it was entitled to levy a toll under section 128 of the U. P. Municipalities Act, 1916, on the railway wagons bringing supplies to the appellant company's factory and to collect the amount thereof from the appellant company. The latter disputed its liability to pay. There were certain criminal proceedings started against the appellant company and eventually a writ petition under Article 226 of the Constitution was filed in this Court. Mootham, C. J., was of the opinion that the tax in question was not a toll. Raghubar Dayal. J., took a different view and the matter was eventually laid before A. P. Srivastava, J., to whom the following question was referred for answer :

" Whether the tax which the respondent-Board is seeking to impose on the appellant is a toll. "

4. The argument was that there must be some quid pro quo or consideration to support the levy. A. P. Srivastava, J., agreed with Raghubar Dayal J., and held that the levy in question was ' toll'. He said this :

" The contention that some sort of consideration is necessary to support the levy of tolls is correct. Judicial authority on this point is so overwhelming that it is not possible to dispute this proposition. The right to levy a toll is based either on a grant or has been acquired by prescription Ordinarily in order to justify a toll it is necessary to aver and prove the existence of some consideration. If, however, the right had been exercised from time immemorial its legal origin as well as consideration may be presumed Similarly if the right has been granted by statute the consideration may be mentioned in the statute itself and can even be presumed even if it is not so mentioned because the Legislature would not have granted the right unless there was some consideration to justify the grant.

Usually the consideration 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 Sometimes the consideration may be traced to ownership or jus dominii Permission by the owner of the land for the use of his land for any purpose may therefore, be sufficient consideration if the person charging the toll is the owner. If the benefit or advantage which is the consideration is made available it is not necessary for incurring the liability to pay the toll that the benefit or advantage should actually be utilized.

" In respect of a toll of a particular kind, certainly, it can be said that it can be imposed only if the particular benefit or service for which it was authorized was provided. Thus, in respect of a market toll it can be said that it can be payable only if the facilities of a market are provided. In respect of a stallage toll it can be urged that it is payable only by the person who sets up a stall. A fair toll can in the same manner be realized from a person who attends the stall.

But when the statute authorizes a municipal corporation to levy tolls without specifying that it is to be levied in respect of a particular service rendered or benefit provided it cannot in my opinion be said that for every toll sought to be levied some specific benefit or advantages must be provided. Under the Municipalities Act the Municipal Board was enjoined to provide all sorts of advantages, conveniences and facilities. These duties have been enumerated in section 7 of the Act. Its discretionary functions are mentioned in Section 8.

All these duties and functions could not be performed without funds. It was therefore, necessary to authorize the Board to impose taxes of different kinds, including tolls. That was the purpose with which section 128 of the Act was enacted. Some of the taxes were to be imposed for specific services rendered and in respect of such taxes restrictions on the power of imposition were provided in sections 129 and 130. There was nothing either in the Government of India Act or in the Constitution which required the State Legislature if it was imposing a toll itself or was authorizing the municipal boards to impose a toll to prescribe that the imposition could be made only for specific services rendered or advantages provided. There appears to be nothing which could debar the Legislature from empowering the boards to levy general tolls in consideration of the advantages, services and benefits which were to be provided to every one under the provisions of the Municipalities Act. Had it been the intention that tolls could be levied only for specific services or benefits to be provided, there would have been some provision to that effect in Municipalities Act. Such a provision cannot be held to exist by implication simply because of the use of the word "toll." In the absence of any restrictions, therefore, it appears to have been open to the respondents to levy tolls under section 128 even in consideration of the general amenities provided in the city."

5. It may be that the Cantonment Board of Dehradun does not repair or maintain that bit of road within its limits over which the petitioners' trucks pass on their way to the railway station though there is no such allegation in the petitions.

6. Chapter VIII of the Cantonments Act (II of 1924) contains the duties and discretionary functions of Cantonment Boards. The relevant portion of section 116 of the Cantonments Act is reproduced below

"It shall be the duty of every Board, so far as the funds at its disposal permit to make reasonable provision within the cantonment for :

- (a) lighting streets and other public places;
- (b) watering streets, and other public places;
- (c) cleansing streets, public places and drains, abating nuisances and removing noxious vegetation;
- (d) -----
- (e) -----
- (f) -----
- (g) -----
- (h) -----
- (i) -----
- (j) -----
- (k) -----
- (l) -----
- (m) -----
- (n) -----
- (o) rendering assistance in extinguishing fires, and protecting life and property when fires occur;"

7. "Street" has been defined as including any way, road, lane, square, Court, alley or passage in a cantonment, whether a thoroughfare or not and whether built upon or not, over which the public have a right-of-way and also the road-way or foot-way over any bridge or cause-way.

8. It is thus obvious that the statute casts a duty upon the Cantonment Boards to render certain services in relation to the road upon which the petitioners' trucks pass on their way to the railway station. I am, therefore, not prepared to accept the petitioners' contention that the tax in question is not toll.

9. The next argument of the learned counsel for the petitioners is based on section 60 of the Cantonments Act and section 128 of the U P Municipalities Act. Section 60 of the Cantonments Act reads as follows :

"The Board may with the previous sanction of the Central Government, impose in any cantonment any tax which, under any enactment for the time being in force, may be imposed in any municipality in the State wherein such Cantonment is situated ; "

10. The relevant portion of section 128 of the U P Municipalities Act reads as follows :

" 128. Taxes which may be imposed. - (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 way or any part of a Municipality are -

(i) - - - - -

(ii) - - - - -

(iii) - - - - -

(vi) - - - - -

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

(viii to xiv) - - - - - "

(2) Provided that taxes under clauses (iii) and (ix) of sub-section (1) shall not be levied at the same time, nor shall an octroi on goods under clause (viii) of sub-section (1) and a tax under clause (xiii) of sub section (1) be levied at the same time. Provided also that no tax under clause (iv) of sub-section (1) shall be levied in respect of any motor vehicle."

"(3) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution :

Provided that a Board which immediately before the commencement of the Constitution was lawfully levying any such tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by Parliament."

11. I have also been referred to the Transit Pass Rules 1955 for Municipalities levying toll and octroi. According to these Transit Pass Rules, the Municipalities are entitled to levy only nominal transit-fee on vehicles which do not indulge in any activity within the limits of the Municipal Board but merely pass through. The argument advanced before me is that as the City Board of Dehradun could not levy toll on vehicles which are merely in transit, the Cantonment Board cannot do so either.

12. Section 60 of the Cantonments Act nowhere says that Cantonment Boards can levy taxes which can be levied by municipalities subject to the same limitations. It simply provides that the taxes which are realizable by Municipal Boards are also

realizable by Cantonment Boards. This does not mean that the limitations on the powers of Municipal Boards to levy their taxes must also be applied to taxes levied by Cantonment Boards. The procedure for realizing taxes is laid down in Sections 60, 61, 62 and 63 of the Cantonments Act. The Board is required to publish a notice specifying the tax which it proposes to impose, the persons or classes of persons to be made liable and the description of the property or other taxable thing or circumstance in respect of which they are to be made liable, and the rate at which the tax is to be levied. Thereafter, objections have to be invited and they have to be disposed of. The Board may modify its proposals or may not if it modifies the proposals they have to be republished. When the proposals have been finally settled they are to be submitted to the Central Government through the Officer Commanding-in-Chief of the Command. If the Central Government sanctions the imposition of the proposed tax the Board can levy it. The said four sections therefore, prescribe the entire procedure for the valid imposition of the tax in question. If this procedure is followed the tax would be perfectly valid notwithstanding the fact that Municipal Boards can levy the same tax with certain limitations. I should like to add that there is no allegation to the effect that the procedure laid down in sections 60 to 63 of the Cantonments Act was not followed. I do not find any force in the second argument advanced by the learned counsel for the petitioners.

13. The next contention on behalf of the petitioners is that what can be levied is not simply "toll" but "toll on vehicles entering the municipality." It has been argued that the word "entering" does not mean simply "passing through" but it implies that some activity is to be indulged in within the territory of the authority realizing the tax. In short, the contention is that as the petitioners' trucks are neither loaded nor unloaded within the limits of the Cantonment Board Dehradun, the latter cannot levy toll on the vehicles which are merely in transit. The dictionary meaning of the word "enter" is "to go or come into a place," "to pierce" or "to penetrate". I fail to see how the word "entering" is to be taken to mean that one must not only enter but must indulge in some activity within the territory entered into.

14. The learned counsel for the petitioners has relied upon *Central India Spinning and Weaving and Manufacturing Co., Ltd., v. Municipal Committee, Wardha*; ²In this case their Lordships of the Supreme Court were construing the provisions of section 66 (1) (o) of the C. P. and Berar Municipalities Act (2 of 1922). That section authorises a Municipal Board to impose "a terminal tax on goods or animals imported into or

exported from the limits of the municipality." It was held that the section did not authorize the levy of a terminal tax on goods which were in transit and are only carried across the limits of the Municipality. The word "import" cannot possibly have the same meaning as the word "entering." The decision relied upon has, in my opinion, no application to the facts of the present petitions. If we examine the provisions of section 128 (1) (iv), (v), (vi) and (viii) and contrast it with the language of section 128 (1) (vii) it will be clear that the latter provision contemplates mere entry even though for the purpose of only passing through. whereas the other provisions referred to above deal with cases where some activity is indulged in within the limits of the Municipal Board.

15. The next contention of the learned counsel for the petitioners is based upon the Legislative Lists contained in the Seventh Schedule of the Constitution of India. I have been referred to item No. 59 of List II (State List) which contains only one word, namely, "tolls". It has been argued that the Central Legislature in 1924 delegated certain powers of taxation to the Cantonment Board Today the delegator, that is the Central legislature, has no power to legislate imposing tolls and that, therefore, its delegates, the Cantonment Boards, can have no such powers.

16. Reliance has been placed upon the following observations of their Lordships of the Supreme Court in *Ram Krishna Ram Nath v. Janpad Sabha*,³

"It must however to observed that merely because the legislature is empowered under this entry to constitute local authorities and vest them with powers and jurisdiction it would not follow that these local bodies could be vested with authority to levy any and every tax for the purpose of raising revenue for the purpose of local administration. They could be validly authorized to raise only those taxes which the province could raise under and by virtue of the relevant entries in the Provincial Legislative List. This is on the principle that the province could not authorize local bodies created by it to impose taxes which it itself could not directly levy for the purposes of the Provincial Government. Now comes the question whether the Provincial Legislature was competent, by legislation, to discontinue the levy of the tax by effecting a repeal of the taxing provision contained in the Local Self-Government Act of 1920."

17. These observations were made in answer to the argument that local bodies could be vested with unlimited authority to levy any tax and their Lordships held that the

Provincial Legislature could not authorize local bodies to impose taxes which it itself could not directly levy for the purposes of the Provincial Government. I do not consider this decision to be all relevant. The provision of law really in point is Article 372 of the Constitution. The relevant portion of it is reproduced below :

"372 (1) Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) - - - - -

(3) - - - - -

"Explanation I. : The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

18. Reference may also be made to Articles 13(3) (b) and 366 (10) of the Constitution which read thus

" "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

Article 366 (10) of the Constitution reads as follows :

"existing law" means any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation;"

19. Now a Statute conferring a power is as much as "a law in force" as a Statute defining rights. I fail to see how it can be argued that section 60 of the Cantonments Act was not "a law in force" in the territory of India immediately before the

commencement of the Constitution. The Legislative Lists cannot invalidate and make void an enactment which has been in existence from before. The lists merely deal with Legislative competence. To my mind the only conditions under which an existing law could become void are to be found in Article 13 of the Constitution. In my opinion section 60 of the Cantonments Act was "a law in force" at the time of the commencement of the Constitution and it is saved by Article 372. The mere fact that now the Central Legislature cannot legislate on some subjects cannot have the effect of depriving it of the power to do something which has been conferred upon it by a valid enactment.

20. The next argument advanced by the learned counsel for the petitioners is based upon Article 301 of the Constitution. It has been contended that the toll in question contravenes the provisions of this Article as it interferes with the freedom of trade, commerce and intercourse. Article 305 saves the provisions of any existing law except in so far as the President may by order otherwise direct. I am, therefore, not prepared to accept the contention that unless the procedure laid down in Article 304 is followed no tax can be imposed by any authority even though the power to impose taxes was already there under a valid existing law.

21. The learned counsel for the petitioners has contended that what was in existence was the power to impose a particular tax, but as the tax in question was not imposed before the coming into force of the Constitution but after it, the tax is invalid. In other words what is argued is that "existing law" would be the tax itself and not the law conferring power to impose it. A similar argument was advanced in *Bangalore Woollen Cotton and Silk Mills Co., Ltd., Bangalore v. Corporation of the City of Bangalore*,⁴ but it was rejected. The same view was also taken in *Venkata Ramaiah v. State of Andhra Pradesh*,⁵ and *Surajmal Raj v. State of Rajasthan*,⁶

22. The next and the last argument advanced was that the sanction of the State Government was obtained on a misrepresentation of facts. This allegation is denied in the counter-affidavit. It is not possible for me, while entertaining a writ petition, to enter into disputed questions of fact.

23. I find no force in these petitions and they are dismissed with costs.

Petitions dismissed.

Cases Referred.

1. AIR 1962 All 25
2. AIR 1958 SC 341
3. AIR 1962 SC 1073
4. AIR 1962 SC 562
5. AIR 1964 And Pra 416
6. AIR 1954 Raj 260