Raghbir Singh vs Municipal Board Of Hardwar Union, ... on 26 September, 1955

Equivalent citations: AIR1956ALL324, AIR 1956 ALLAHABAD 324

ORDER

Mehrotra, J.

1. These petitions Have been filed on behalf of the owners of motor vehicles plying their vehicles on Hardwar Rishikesh route for following reliefs under Article 226 of the Constitution :

> 1. A writ in the nature of Mandamus directing the respondents to withdraw the orders contained in Notification No. 830/XXIJI-16(C)-53-54 dated 22-2-1955 and to suspend the operation of the order container in Notification No. 4188/XI-416-41 and No. 4188(7)/XI-416-41 dated 29-10-1941 to the extent that they purport to levy toll taxi on vehicles entering the limits of the Hardwar Union Municipality with passengers.
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> 2. A writ in the nature of Mandamus directing the respondent 1 not to levy toll tax on the petitioners in respect of the motor vehicles on their entering or leaving the limits of Hardwar Union Municipality with passengers.

2. In the affidavit filed in support, of the petition it is alleged that from 24-3-1955 whenever the applicants' vehicles carrying passengers goes from Rishikesh to Hardwar they are stopped at the Toll Barrier at Kharkhari a place within the limits of Hardwar and are required to pay toll tax on the motor vehicle to the toll clerk of the Municipal Board Hardwar Union at the rate of -/4/- per passenger.

They have also got to pay a similar toll When they are carrying passengers from Hardwar to Rishikesh at the Toll Barrier. The toll is realised from the applicants under the provisions of the notification dated 29-10-1941 as amended by a subsequent notification of 22-2-1955. The said notifications affect the right of the petitioners to carry on, business.

It works great hardship on the applicants inasmuch as, as a result of this levy the applicants have to increase the fare between Hardwar land Rishikesh and the road transport service has become more or less unpopular as compared to railway service and, the passengers in general prefer now to go by the train rather than by the road transport service.

3. A counter-affidavit' has been filed in the case on behalf of the Municipal Board in which it is 'alleged that the toll is levied against the passengers and that the business of the applicants has not at all been affected by the levy of the toll tax. It is also alleged in the counter-affidavit that the passengers travelling through rail have also got to pay tax in the shape of pilgrim tax and consequently it cannot be said that the imposition of the toll tax has led to any discrimination. The notification is not hit by Article 14 of the Constitution.

It is also alleged in the counter-affidavit that a representative suit was filed by five motor owners under Order 1, Rule 8 in the court of Munsif Hawaii, district Saharanpur for a permanent injunction restraining the defendants from giving effect to the notification and realising the toll tax. An interim injunction was prayed for and an ex parte injunction was granted at the first instance.

Subsequently upon the objections of the answering respondents the ex parte injunction was discharged. A number of preliminary objections have been raised by the counsel appearing for the opposite parties. Firstly it is urged, by him that the petitioners have an alternative remedy available to them and in the present case they have not only an adequate and equally efficacious remedy available to them but they have availed of such a remedy and consequently this Court should not exercise its powers under Article 226 of the Constitution, in favour of the petitioners.

Secondly, it is contended that the petitioners have suppressed the fact in their petitions that the passengers travelling through rail have to pay the pilgrim tax. This is a suppression of material fact and disentitles the petitioners to any relief. In the writ petitions Nos. 326 and 327 it is further contended that the petitioners are not entitled to any relief as they surprised the fact that a suit for the same relief was already pending at the time when the petition was filed and that the interim injunction granted by the Munsif at the first instance had been vacated. Reliance has been placed by the counsel for the opposite party on the case of -- 'Radha Kissen v. E. Rajaram Rao', AIR 1955 Cal 241 (A), and particular reference was made to the following observations at p. 244 of the report:

> "It is quite true that when there is an alternative remedy the mere existence of such a remedy is not an absolute bar to the entertainment of an application under Article 226, but far different is the case when the party moving the court under Article 226 has already availed himself of the alternative remedy and whether or not he is entitled to any relief in that chain has not yet been decided."

In my opinion this case goes no further than laying down that in the case where an equally efficacious, speedy and adequate remedy is available, the power under Article 226 of the Constitution should not be exercised. The case where the alternative remedy has already been available it will only lead to an inference that an alternative remedy is equally adequate. But it does not lay down that in all cases where an alternative remedy is available this court will not exercise its power under Article 226 of the Constitution.

The powers under Article 226 of the Constitution are very wide. In cases where taxing statute is challenged, this court will not refuse relief to the petitioner on the mere ground that an alternative remedy is available to him. In the case of -- 'Buddhu v. Municipal Board Allahabad', AIR 1952 All

753 (FB) (B), it was held by this Court that "in every case in which a fundamental right is involved a decision should be given by the Court on merits of an application under Article 226. There may be cases in which the existence of an alternative remedy may be a ground for the rejection of the application. The circumstances of each case should be considered and then a decision should be taken whether or not the discretion should be exercised.

Where a general question of some public importance has been raised and it is desirable that it should be speedily decided and the parties should not remain under suspense for a long time and on the determination of the question the decision" of the petitioner and others of his class whether to continue in the present avocation or to take to some other will depend, the High Court can entertain the petition under Article 226, even though an alternative remedy by way of a suit for injunction is available to the petitioner."

4. In this case a certain bye-law framed by the Municipal Board was challenged. As the interests of a large number of people were affected by the bye-law, it was held by this Court that even though an alternative remedy existed, a relief could be granted to the petitioner under Article 226 of the Constitution.

The powers under Article 226 of the Constitution are no doubt discretionary and it has been held by almost all the High Courts that such a discretion should ordinarily be not exercised in cases where an equally efficacious and adequate remedy is available to the petitioner. But it cannot be held that the existence of an alternative remedy by itself is a bar to the exercise of the discretion under Article 226 of the Constitution, There may be cases where an alternative remedy may not be considered equally expedient and adequate.

In these cases this Court will always' exercise its power under Article 226. There may be cases where a person's fundamental right is affected and an alternative remedy even if available to him may not be equally adequate. Under those circumstances this Court should not refuse to exercise its discretion under Article 226 of the Constitution.

There may be cases in which the alternative remedy may be regarded as equally efficacious and speedy, but there may be other circumstances such as the importance of the question involved and the fact that the decision of the question will affect the rights of a large number of persons and that a taxing statute has been impugned which may be relevant for the exercise of the power under Article 226 of the Constitution.

The present case to my mind is a case in which it cannot be said that the alternative remedy available to the applicant is equally adequate and efficacious and that this Court should not exercise its jurisdiction under Article 226 of the Constitution. There is therefore no force in this preliminary objection.

5. The second objection taken to the maintainability of the present petition by the opposite party is that there has been suppression of material facts in the two petitions Nos. 326 of 1955 and 327 of 1955. It is stated that the fact that a suit on behalf of a large number of owners was pending was not

mentioned in the petition.

The omission to mention a particular fact does not necessarily disentitle the petitioner to get a relief unless the fact which has been omitted to be mentioned is material to the relief claimed by the applicant. The case of the petitioners is that they are entitled to a relief under Article 226 in spite of the existence of an alternative remedy and in spite of the fact that the alternative remedy has been availed of in this case.

As the existence of an alternative remedy in the present case is no bar to the relief being granted to the petitioner the omission to mention the fact that a suit is pending is no omission of a material fact and the writ cannot be rejected on that ground.

6. The next contention that there has been suppression of material fact in all the applications inasmuch as it has not been mentioned that the passengers who travel on railways have to pay pilgrim tax also, cannot be accepted. It is not suppression of any material fact and a writ cannot be refused on this ground. There is therefore no force in any of the preliminary objections.

7. It is also contended by the counsel for the opposite party that the applicants are not entitled to any relief as their rights have not been affected by the notification. The toll is charged from the passengers and the right of the bus-owners has not been affected by the said notification.

Reliance has been placed on the Full Bench decision of this Court reported in -- 'Budh Prakash v. Sales Tax Officer, Kanpur', AIR 1952 AH 764 (C) and -- 'Surendra Transport and Engineering Co. v. State of Punjab', AIR 1954 Punj 264 (D). These cases are distinguishable from the facts of the present case. The applicant's contention is that the buses belonging to the petitioners were stopped at the toll barrier, and the owners were compelled to pay the tax. The amount of tax payable by them was no doubt at the rate of -/4/- per passenger but the liability to pay the tax was on the applicants.

On the perusal of notification dated 29-10-1941 which is enclosure E to the petition it appears that no person could bring within or carry outside the limits of the municipality any motor vehicle or tonga laden with passengers unless he has paid the tax in respect of the passengers. The liability to pay the tax was on the person who carried persons to or outside the limits of the Municipality by any vehicle. The applicants therefore had a right to challenge the notifications referred to above.

(8) In the year 1941 a notification was issued by the State Government in the following words :

> "It is hereby notified under Sub-section (2) of Section 135 read with Section 136, United Provinces Municipalities Act, 1916 (2 of 1916) that the Municipal Board of Hardwar Union, in exercise of the powers conferred by Section 128 (1) (xiv) of the said Act has imposed the following tax in the Hardwar Union Municipality with effect from 1-11-1941."

On 22-2-1955 another notification was issued by the State Government by which it was notified under Section 135 (2) that in exercise of the powers conferred by Section 128 (1) (vii) of the aforesaid

Act the Municipal Board Hardwar, district Saharanpur had made certain amendments in the toll schedule. The amendments had been sanctioned by the Commissioner under Section 133 (1) of the said Act, By the amendment the rate of tax was increased from -/2/- to -/4/- and Clause (c) of the original notification was deleted. The first notification was issued in exercise of the powers conferred by Section 128, Sub-section (1) (xiv) which provides that the Municipal Board can impose any other tax which the provincial legislature has power to impose in the province under the Government of India Act, 1935.

The present amendment has been made in the exercise of the powers under Clause (1), Sub-section (vii) of Section 128 of the Municipalities Act which provides that a Municipal Board can impose toll on vehicles and other conveyances, animals, and laden coolies entering the Municipality. The words "entering the Municipality" indicate that the toll is charged on vehicles for the use of the roads within the Municipal area. No provision is made in the Act, for imposing a toll tax on vehicles going out of the limits of the Municipality. The word "toll" has not been defined in the Act.

In the Strouds Judicial Dictionary, III Edition, "toll" has been defined as a sum of money which is taken in respect of some benefit, the benefit being the temporary use of land. Wharton's Law Lexicon defines "toll" as a, tribute or custom paid for passage. It is, therefore, clear from the two definitions that the "loll" is a tax levied for the use of the public roads and it cannot, as indicated by Section 128 CD (vii), be imposed on the vehicles going out of the limits of the Municipal Board.

It was further contended by the petitioner that under Section 128 (1) (xiv), U. P. Municipalities Act, the Municipal Board had power in 1941 to impose any other tax which the Provincial Legislature had power to impose in the province under the Government of India Act, 1935. Schedule 7, List II, Item No. 52, Government of India, Act provided that a Provincial Legislature could legislate on dues on passengers and goods carried on inland waterways'.

Item No. 53 of the same List provides for "tolls". The Municipal Board, therefore, under Clause (xiv) of Section 128, U. P. Municipalities Act, could impose a toll tax and the question which arises for consideration is whether the tax, which had been imposed by the Municipal Board by the notification of 1941, could be regarded as a toll tax.

The main argument, as already pointed out, by the applicants' counsel is that the toll tax could be imposed on the vehicles entering the limits of the Municipal Board. A toll tax does not mean a tax payable by the vehicles going out of the limits of the Municipal Board and as such the notification of 1941 went beyond the powers of the Municipal Board.

9. It was next contended by the applicants that the impugned notification is hit by Article 14 of the Constitution inasmuch as the passengers going to Hardwar by rail do not pay any tax, whereas the passengers going to Hardwar by means of motor vehicles nave to pay toll tax. The toll tax, as I have already pointed out, is imposed on vehicles coming within the municipal limits as the Municipal roads are used by such vehicles.

It is not a tax on passengers. The measure of the tax is no doubt the number of passengers carried by the vehicles but the tax has to be paid by the owners of the vehicles. The train does not enter the Municipal limits and does not use the Municipal roads and as such no tax can be imposed on the passengers travelling by train, and the impugned notification is not hit by the provisions of Article 14 of the Constitution.

10. I, therefore, allow this petition in part and issue direction, to the respondent 1 not to levy toll tax on the vehicles of the applicants on their leaving the limits of the Hardwar Union Municipality. The stay order is discharged.

11. In the circumstances of the case, the parties will bear their own costs.