

STATE OF U.P. AND ORS.

v.

DEVI DAYAL SINGH ETC.

FEBRUARY 25, 2000

[S.P. BHARUCHA, S.N. PHUKAN AND MRS. RUMA PAL, JJ.]

Indian Tolls Act, 1851 :

Sections 2 and 8—State's power to levy toll—Bridge constructed in 1968-69—Notification issued in 1976 empowered State Government to levy toll till actual construction cost is realised or for 50 years whichever is earlier—Right to collect toll leased out in 1985—Writ Petition filed before High Court challenging State's right to recover by way of toll any amount apart from construction cost—High Court held, toll could not be levied as construction cost already recovered—On appeal Held, rate of toll must bear relationship to public benefit provided—Actual construction cost, interest on such actual expenditure and cost of maintenance can only be recovered—Stationery cost (unless incurred in realisation of toll), interest on stationery cost and maintenance and interest on interest payable on account of expenditure on construction not to be recovered by way of toll.

'Constitution of India—Schedule VII—List II, Entry 59—Levy of toll—Cost of construction including interest fully recoverable—No difference between State's expenditure and amount borrowed from a financial institution—Interest chargeable only on balance of borrowed amount left unpaid—Article 246.

State of U.P. levied toll under Section 2 of the Indian Tolls Act, 1851 on a bridge constructed in 1968-69. The State Government issued a Notification in 1976 for levy of toll till the actual cost of construction, including interest on the total expenditure on the bridge, expenditure in realisation of toll and on maintenance, were realised in full or for a period of 50 years from the date of first levy of toll, whichever was earlier. In 1985, the right to collect toll was leased out to one of the appellants.

A writ petition was filed before the High Court challenging the State's right to recover, by way of toll, any amount apart from the actual cost of construction. The High Court allowed the writ petition holding that

A the State was not entitled to realise interest on the construction amount by way of toll as it had not been borrowed from any financial institution and the original cost of construction had already been recovered. A review application filed by the appellant-lessee was dismissed later on. Hence these appeals.

B Disposing of the appeals, this Court

C HELD : 1. The public benefit envisaged under Section 2 of the Tolls Act, 1851 is the making or repairing of any road or bridge at the expense of the State Government. For the advantage obtained by the public by the construction of the roads and bridges, the State Government is entitled to re-imburse itself for providing the service. However, there must be a corresponding benefit for a valid imposition of toll. Having regard to the compensatory nature of the levy, however, the rate of toll must bear a reasonable relationship to the providing of the benefit. The tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll cannot be used for otherwise augmenting the State's revenue. [1210-B-D]

Kamaljeet Singh & Ors. v. Municipal Board, Pilakwa, AIR (1987) SC 56, relied on.

E *Hindustan Vanaspati Manufacturing Co. Ltd. v. Municipal Board, Gaziabad & Others*, AIR (1962) All. 25 (SB); *Maheshwari Singh v. State of Bihar and Others*, AIR (1966) Pat. 462 (DB) and *Mohammed Ibrahim v. State of U.P.*, AIR (1967) All. 24, approved.

F *Hammerton v. Earl of Dysart*, (1916-18) A.C. 57-58 and *Brecon Markets Co. v. Neath & Brecon Rly. Co.*, (1872) 7 CP 555, referred to.

G 2. An interpretation of the relevant paragraph of the 1976 notification makes it clear that the intention to levy toll is to financially self-liquidate the construction and upkeep of bridges and roads. It allows toll to be collected only for a specified period viz. 50 years from the date of first levy or until the total cost of its construction is realised, whichever is earlier. The State Government has, under cover of the Notification, levied toll to recover not only the actual cost of construction but also the expenditure on account of stationery maintenance, interest on the cost of construction, stationery expenditure and maintenance as well as interest

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on the balance remaining after recovery of toll tax in any particular year. **The State Government has in fact charged interest on interest. The State Government in terms of the Notification could not levy toll and reimburse itself on account of stationery, nor could it charge interest on maintenance and stationery costs. There is also no provision in the Notification for charging interest on interest, it could certainly recover by way of toll from the public, the actual expense of construction, interest on such actual expense and the cost of maintenance. [1211-C-H]**

3. **The limitation on the power of the State Government to recoup fully the investment made overlooks the power conferred on the State Government generally to levy toll as a means of revenue collection under Article 246 Entry 59 of List II, Schedule VII of the Constitution. The 1976 Notification allows toll to be levied so as to recover the cost of construction including interest on the 'total expenditure' of the bridge. No distinction has been drawn between expenditure incurred out of the State Government's own revenue and expenditure incurred by borrowing money from financial institutions and others. The Government was also allowed to recover interest on all "amounts invested" in the construction of the bridge. [1213-C-E]**

4. **Section 2 of the Tolls Act only sets out the pre-conditions set as to when toll may be recovered. The only restriction is latent in the word 'toll' itself. The maintenance of the bridge in good condition is certainly a benefit, the cost of which may validly be recovered by the levy of toll. Distinction between 'maintenance' and 'repair' in the context of construction is virtually without any difference since for maintaining a bridge one would have to keep it in good repair and by repairing a bridge it is also maintained. The cost of maintenance is expressly recoverable under the 1976 Notification. [1214-E-G]**

5. **The State Government may not hereafter take into account for the purpose of levying any toll under the Notification in respect of a road or bridge constructed by it, stationery cost (unless incurred in realisation of the toll), interest on stationery cost and maintenance; and interest on the interest payable on account of the actual expenditure incurred in the construction of the road or bridge. [1215-B-C]**

Jiya Lal and Others v. State of U.P. and Others, AIR (1981) All. 72; H

A and *Lal Bahadur Ram v. State of U.P. and Others*, AIR (1988) All. 146, overruled.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 385 of 1994 Etc.

B From the Judgment and Order dated 21.2.90 of the Allahabad High Court in W.P. No. 2916 of 1988.

C A.K. Goel, Additional Advocate General, Yogeshwar Prasad, Vijay Bahuguna, T.N. Singh, R.B. Misra, Pradeep Misra, P.K. Jain Ms. Rachna Gupta and Ms. Shobha Dikshit for the appearing parties.

The Judgment of the Court was delivered by

D RUMA PAL, J. These appeals relate to the extent of the State Government's power to levy toll under Section 2 of the Indian Tolls Act, 1851. Section 2 of the Act reads as follows:

E "2. Power to cause levy of tolls on roads and bridges within certain rates, and to appoint Collectors. Collector's responsibilities. - The State Government may cause such rates of toll as it thinks fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the Central or any State Government and may place the collection of such tolls under the management of such persons as may appear to it proper, and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities as would belong to them if employed in the collection of the land-revenue."

F The bridge, in question, is the Gai Ghat bridge which was constructed by the State Government on the river Sarju, District Bahraich in 1968-69 at a total cost of Rs.39,97,000. In 1970, the bridge was opened to the public. On 7th February 1985, the State Government leased out the right to collect toll tax in respect of the bridge to one Chhotai Yadav.

G In 1988, a writ application was filed by a truck owner, Devi Dayal Singh, challenging the right of the State Government to recover by way of toll under Section 2 of the Toll Act, 1851 any amount apart from the actual cost of construction of the bridge, viz. Rs. 39,97,000 .

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On 21st February 1990, the Division Bench of the Allahabad High Court allowed the writ application. The High Court held that the State Government was not entitled to realise interest on the amount spent by the State Government in the construction of the bridge by way of toll tax unless that amount had been borrowed from any financial institution. The High Court found that the bridge had been constructed by the State Government out of its own funds and that neither the interest on the expenditure nor the maintenance charges could be realised under Section 2 of the Act. The High Court found that the State Government had already recovered the original cost of construction and accordingly directed the appellants not to realise any further toll tax in respect of the Gai Ghat bridge. In arriving at this decision, the High Court relied on two earlier decisions of the Division Bench of the Allahabad High Court, namely, *Jiya Lal and Others v. State of U.P. and Others*, AIR (1981) All. 72 and *Lal Bahadur Ram v. State of U.P. and Others*, AIR (1988) All. 146. The order dated 21st February 1990 is the subject matter of the first appeal before this Court.

The lessee (Chhotai Yadav) who had been granted the right to collect tax in respect of the bridge, moved an application for review of the order before the High Court. The review application was dismissed on 26th April 1990. Chhotai Yadav's challenge to the orders dated 21st February 1990 and 26th April 1990 is the subject matter of the second appeal before us.

On the Special Leave Petition being filed by the State Government, this Court, on 3rd September 1990, stayed the operation of the order dated 14th February 1990 and it is not in dispute that as against the initial input of Rs.39,97,000 for construction of the bridge, the State Government has recovered more than four times that amount by way of toll.

The concept of 'toll' is derived from English jurisprudence. Shorn of connotations which are historically irrelevant in this country, a 'toll' may be defined as a sum of money taken in respect of a benefit arising out of the temporary use of land. It implies some consideration moving to the public either in the form of a liberty, privilege or service. In other words, for the valid imposition of a toll, there must be a corresponding benefit. [See in this connection *Hammerton v. Earl of Dysart*, (1916-18) A.C. 57-58; *Brecon Markets Co. v. Neath & Brecon Rly Co.*, (1872) 7 CP 555; *Hindustan Vanaspati Manufacturing Co. Ltd. v. Municipal Board, Ghaziabad and*

- A *Others*, AIR (1961) All. 25 SB; *Maheshwari Singh v. State of Bihar and Others*, AIR (1966) Pat. 462 DB; *Mohammed Ibrahim v. State of U.P.*, AIR (1967) All. 24; *Kamaljeet Singh & Ors. v. Municipal Board, Pilkhwa*, AIR (1987) SC 56.

B The public benefit envisaged under Section 2 of the Tolls Act, 1851 is the making or repairing of any road or bridge at the expense of the State Government. For the advantage obtained by the public by the construction of the roads and bridges, the State Government is entitled to re-imburse itself for providing the service.

C Although the Section has empowered the State Government to levy rates of tolls 'as it thinks fit', having regard to the compensatory nature of the levy, the rate of toll must bear a reasonable relationship to the providing of the benefit. No doubt, by virtue of Section 8 of the Act, the tolls collected are part of the public revenue and may be absorbed in the general revenue of the State, nevertheless by definition a toll cannot be used for otherwise augmenting the State's revenue.

E The State of Uttar Pradesh issued Notification No. 2174/XXIII-S.N.-II-62/1976 dated 2nd June 1976 in exercise of the powers conferred under Section 2 read with Section 21 of the General Clauses Act, 1897. By the Notification, it was ordered that with effect from the date of the publication of the Notification in the Gazette, toll shall be levied and chargeable from all persons in charge of vehicles, using all such permanent bridges notified in that behalf under the control and management of the State Public Works Department subject to certain exceptions. We are not called upon to consider the exceptions in this case.

F We are, for the purpose of these appeals, concerned with paragraph III (a) and (b) of the Notification which reads:

G "(III) (a) The toll on any particular bridge shall be levied only for so long as the total cost of its construction, including interest on the total expenditure on the bridge, expenditure in realisation of toll and on maintenance, has not been realised in full or for a period of 50 years from the date of first levy of toll on the bridge whichever is earlier.

H *Explanation:* An amount equal to 0.5 per cent per annum shall be

added to the cost of the bridge on account of expenditure on maintenance. A

(b) The rate of interest shall be 10% per annum on the amount invested or to be invested in future by the Government for construction of a bridge and the amount of interest shall be calculated on the balance after repayment of the instalment of the loan, if any, taken for the construction of the bridge." B

In the writ application filed by Devi Dayal Singh, the Notification dated 2nd June 1976 has not been challenged. An interpretation of the relevant paragraph of the Notification makes it clear that the intention to levy the toll is to financially self-liquidate the construction and upkeep of bridges and roads. The Notification thus allows toll to be collected only for a specified period viz. 50 years from the date of first levy or until the total cost of its construction is realised, whichever is earlier. The total cost of construction has been defined in paragraph III (a) of the Notification as including (i) interest on the total expenditure on the bridge, (ii) expenditure in realisation of toll and (iii) maintenance. No interest is recoverable on (ii) or (iii). In terms of the Notification, it is also not permissible to recover any amount of interest on the interest chargeable on (i). D

However, the State Government has, under cover of the Notification, levied toll to recover not only (a) the actual cost of construction but also (b) the expenditure on account of stationery, (c) maintenance, (d) interest on the cost of construction, stationery expenditure and maintenance as well as (e) interest on the balance remaining after recovery of toll tax in any particular year. In calculating the balance, the State Government has included the stationery expenditure, maintenance and the interest charged on all the items. In other words, the State Government has charged interest on interest. E F

Clearly, in terms of the Notification, the State Government could not levy toll and reimburse itself on account of stationery, nor could it charge interest on maintenance and stationery costs. While there is also no provision in the Notification for charging interest on interest, the State Government could in terms of the Notification, certainly recover by way of toll from the public, the actual expense of construction, interest on such actual expense and the cost of maintenance. However, by the judgments under appeal, the right to levy the last two items was negatived. G H

A The reasons which led to such denial were based on the Bench decision in *Jiya Lal* (supra). *Jiya Lal's* case laid down the principles for charging toll tax in the State. The subsequent decision referred to by the High Court, namely, *Lal Bahadur Ram* merely followed the principles enunciated in *Jiya Lal*.

B The decision in *Jiya Lal* for the most part proceeded on certain premises which were neither supported by authority nor any principle of interpretation. Of the four principles deducible from the judgment of *Jiya Lal*, we are unable to accept three.

C The first principle has been stated in paragraph 9 of the judgment which reads as under:

"The language of Section 2 of the Act of 1851 is peremptory. The collection of tolls under the said provision is permissible *only to meet the cost of construction of the bridge or its approach road*. It can also be levied to meet *any extraordinary repair* which it is considered necessary to carry out in order to maintain the stability of the bridge or road, as the case may be".

(emphasis supplied)

E Section 2 of the Act itself contains no such limitation. Section 2 enables the State Government to levy toll at such rates "as it thinks fit". It is only with reference to the jurisprudential meaning of the word 'toll' that the State Government must justify the levy with reference to the benefit conferred on the public by the construction of the bridge. Besides, *Jiya Lal's* case did not at all consider the contents of the 1976 Notification.

F The second principle has been enunciated in paragraph 11 of the judgment as:

G "Construction of roads and bridges is a part of the welfare activity of the State. In order to promote trade, commerce and free intercourse, it is incumbent on the State to construct, more roads and bridges. With a view to usher an era of prosperity and well being, this activity must continue to be performed by the State. If a road or bridge, as the case may be, is constructed by the State from its general revenues, it is not called upon to pay interest to anybody. In making the constructions, the revenues of the State

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are being legitimately spent in fostering the well being of the people. There may be cases where in order to construct a bridge or a road, the Government or its instrumentality borrows money from a financial institution and agrees to pay interest thereon. *It is only in such case that the interest paid by the Government or its instrumentality can be said to be included in the cost of the construction of the bridge or road.*"

(emphasis supplied)

Apart from the observations being contrary to the express language of the 1976 Notification issued by the State Government, the limitation on the power of the State Government to recoup fully the investment made overlooks the power conferred on the State Government generally to levy toll as a means of revenue collection under Article 246 Entry 59 of List II, Schedule VII of the Constitution. The Notification in terms allows toll to be levied so as to recover the cost of construction including interest on the 'total expenditure' of the bridge. No distinction has been drawn between expenditure incurred out of the State Government's own revenue and expenditure incurred by borrowing money from financial institutions and others. Paragraph III (b), although unhappily drafted, also allows the Government to recover interest on all "amounts invested" in the construction of the bridge. It, however, clarifies that if the investment is made with borrowed money and the borrowed money is repayable in instalments, then interest shall be charged only on the balance of the borrowed sum after repayment of the instalment of the loan.

The third principle enunciated in *Jiya Lal's* case is found in paragraph 12 of the judgment:

"The collection of tolls has necessarily to be entrusted to a separate staff and the cost incurred in employing such staff is a legitimate charge which should be taken into account in working out the actual amount realised by the Government towards the cost of construction."

There can be no quarrel with this proposition except that in the case before us, no recovery was sought to be made under this head as the collection of tolls has been leased out to a private agency. The cost of stationery which the State Government has included is not shown to fall

A within the definition of the phrase, 'expenditure in realisation of toll' in paragraph III (a) of the Section.

The fourth and final principle enunciated in *Jiya Lal's* case has been set out in paragraph 13 of the judgment:

B "There is a real distinction between the cost incurred in the
C maintenance and the repair of a structure. The maintenance of a
D structure is a routine activity which has to be distinguished from
its repairs. 'Maintenance' means 'to preserve or to keep in good
condition.' The object of the maintenance of a structure is to
prevent its falling into decay. On the other hand, the word 'repair'
indicates the restoration to a good and sound condition of a
structure which has been decayed or damaged. Section 2 of the
Act of 1851 permits the levy of toll only if the road or bridge is
repaired. It does not contemplate of a levy of toll merely on the
ground of its maintenance. We are, therefore, of the opinion that
the amount spent towards the cost of the construction of a bridge
will not include any sum which had been spent in its maintenance.
*No toll is chargeable under Sec. 2 of the Act of 1851 to meet the
expenses incurred in the maintenance.*"

E (emphasis added)

As already noted, Section 2 of the Act does not in any way restrict
the discretion of the State Government to levy toll. It only sets out the
pre-conditions when toll may be levied. Neither of the pre-conditions set
the limit on the amount of toll which may be recovered. The only restriction
F is latent in the word 'toll' itself. The maintenance of the bridge in a good
condition is certainly a benefit the cost of which may validly be recovered
by the levy of toll. We are also of the view that the distinction sought to be
drawn between 'maintenance' and 'repair' in the context of construction is
virtually without any difference. For maintaining a bridge one would have
G to keep it in good repair and by repairing a bridge it is also maintained.
Finally, and in any event, the cost of maintenance is expressly recoverable
under the 1976 Notification, which, as already noted, was not the subject
matter of challenge at any stage of these proceedings.

H We have been informed by learned counsel appearing on behalf of
the appellants that during the pendency of these appeals the State Govern-

ment has stopped collecting any toll tax in respect of the Gai Ghat bridge. Even if that be so, it is necessary to resolve the issues raised, albeit to operate prospectively, as it would not do to allow the principles enunciated in *Jiya Lal* to continue to hold the field. A

In the circumstances, we dispose of the appeals by setting aside the impugned orders of the High Court but at the same time declaring that the State Government may not hereafter take into account for the purpose of levying any toll under the Notification in respect of a road or bridge constructed by it, stationery cost (unless incurred in realisation of the toll), interest on stationery cost and maintenance, and interest on the interest payable on account of the actual expenditure incurred in the construction of the road or bridge. There will be no order as to costs. B C

A.Q.

Appeals disposed.