made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act and is wholly misconceived, specially in the case of employees in a public utility service. * * *. Therefore, the tendency to condone what has been declared to be illegal by statute must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers."

In view of the foregoing discussion, it is evident that the Tribunal failed to notice the necessary legal results that flow from a strike given without the requisite statutory notice; had arrived at findings without any evidence; and was further motivated by extraneous considerations of factual justifiability in determining the issue of legality of the strike. These are errors of law apparent on the face of the record necessitating interference under Article 226 of the Constitution of India. I would, therefore, accept this writ petition and quash the impugned award. In the circumstances of the case, there will be no order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

T. S. SHERGIL, ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 2934 of 1970

November 4, 1970.

Punjab Municipal Act (III of 1911)—Sections 61(1)(c) and 61(2)—Toll-tax on loaded motor vehicles entering the limits of a Municipal Committee—Whether can be levied under section 61(1)(c)—Such tax—Whether valid under section 61(2).

Held, that under clause (c) of sub-section (1) of Section 61 of Punjab Municipal Act 1911, as introduced by section 5 of Punjab Act II of 1940, tax cannot be levied by a municipal committee for keeping motor vehicles within the limits of a municipality. This exemption introduced in the year 1940 was in consonance with the scheme of the Motor Vehicles Act which created independent authorities for exercise of control over the parking of motor vehicles whether within a municipality or otherwise. Moreover, a tax made payable by an owner of a vehicle only on entering the limits of the Committee loaded with goods, does not fall within the scope of clause (c) of Sub-section (1) of Section 61, which provides for a different class of cases. Plying on hire and keeping a vehicle as envisaged in the said provision of law are two distinct and separate matters and one cannot be mixed up with the other. To keep a vehicle or an animal as referred to in clause (c) of sub-section (1) of Section 61 so as to incur liability for the payment of a tax within the limits of the Committee involves an idea of having some sort of control over or retention of the vehicle or the animal, more or less of a permanent character, within those limits and does not include entry of the vehicle for a short period within such limits merely for the purpose of transport of goods. The levy of toll tax on loaded vehicles only on entering the limits of committee cannot, therefore, be supported under section 61(1)(c). But a Committee with the sanction of the State Government is empowered to impose any tax not specified in sub-section (1) of Section 61 in which clause (c) appears, provided such tax is within the competence of the State Legislature to impose under the Constitution. The State Legislature can by virtue of entry 59 in List II of Seventh Schedule of the Constitution levy tolls. The word "tolls" has a variety of meanings and commonest of them is where a Committee or a local authority prescribes a levy for vehicles, men and animals passing over roads, ferries, bridges, etc., within the control of that authority. The person made liable for such a toll which is a sort of tax derives some benefit from the use of the same. Thus where the Committee provides sanitation facilities, cleaning of roads, public water taps, etc., for the benefit of the transporters and a place has been carved out for the parking of trucks engaged in the transport of goods, the levy of toll tax even on loaded motor vehicles entering the limits of a Committee is valid in view of the power given to the Committee under sub-section (2) of Section 61 of the Act. (Para 4)

Petition under Article 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the notification dated July 24, 1970, and order contained in Annexure 'B' or in the alternative the respondents be directed from realizing the toll tax from the petitioners transporting fertilizer from and limestone to the Nangal Fertilizer Factory and also praying that during the pendency of the writ petition, the operation of the impugned notification be stayed.

B. S. KHOJI, ADVOCATE, for the petitioners.

H. L. SIBAL, ADVOCATE-GENERAL, PUNJAB WITH S. S. KANG, DEPUTY ADVOCATE-GENERAL, PUNJAB & S. C. SIBAL, ADVOCATE, for the respondents.

JUDGMENT

SODHI, J.—(1) The petitioners are truck-owners, who transport goods from and to Nangal Fertilizers Factory, Nangal, and for that purpose their vehicles have to pass on the road between Ropar and the said factory situate in Nangal Township. The township is a Notified Area Committee (hereinafter referred to as the Committee), declared as such under section 241 of the Punjab Municipal Act, 1911 (Punjab Act III of 1911), hereinafter called the Act. Section 242 of the Act empowers the State Government to impose within the limits of the Committee any tax which could be imposed by a Municipal Committee under the provisions of section 61 if the notified area were a municipality. A notification, Annexure 'A', dated 16th July, 1970, published in Punjab Government Gazette, dated 24th July, 1970, was accordingly issued whereby a tax in the nature of toll was levied on loaded vehicles entering the limits of the Committee. It is the validity of this notification that has been challenged in the writ petition and it is necessary to reproduce the same hereunder in extenso for facility of reference:—

> "No. 977-6CII-70/16055—In exercise of the powers conferred by section 242 of the Punjab Municipal Act, 1911, the Governor of Punjab is pleased to impose within the limits of Notified Area Committee, Nangal Township, in the Rupar District, a tax in the nature of toll at the rates specified in column 3 of the sub-joined schedule on the loaded vehicles mentioned in column 2 thereof, when entering the limits of the aforesaid Notified Area Committee.

This shall come into force with effect from the 1st September, 1970.

Schedule

S. No.	Description of vehicles	Rate of Toll per vehicle per trip
1.	All loaded Trucks	Re 1.00 paise
2.	All loaded Tempos	Re 0.30 paise

(2) The constitution of the Committee was also challenged in the writ petition and section 242 of the Act was alleged to suffer from the infirmity of excessive delegation of legislative functions but Mr. B. S. Khoji, learned counsel for the petitioners, does not press these two points.

(3) The main ground of attack on the notification is that section 61(1)(c) exempts motor vehicles from the levy of tax by the Committee and that sub-section (2) of the same section which is of a residuary nature cannot be resorted to for expanding the scope of the provisions of the said section 61(1)(c) rendering the exemption granted therein nugatory. Section 61(1)(c) reads as under :—

> "61. Subject to any general or special orders which the State Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:—
>
> (1) * * *.
>
> (c) a tax, payable by the owner, on all or any vehicles other than motor vehicles, animals used for riding, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality;"

It is equally necessary to state in verbatim the provisions of sub-section (2) of section 61 of the Act which are in the following terms:—

> "61. (2) Save as provided in the foregoing clause, with the previous sanction of the State Government any other tax which the State Legislature has power to impose in the State under the Constitution."

(4) A plain reading of the above quoted relevant provisions of law will show that clause (c) of sub-section (1) of section 61 provides for the levy of a tax payable by the owner of a vehicle other than a motor vehicle only if he keeps the vehicle within the limits of the Committee. Owners of Motor Vehicles were not exempted under section 61(1)(c) till the Motor Vehicles Act, 1939 came into force since for the parking of motor vehicles which expression includes goods vehicles, arrangements were to be made by the municipal

committees. It was after the enforcement of the Motor Vehicles Act that different types of stands had to be maintained by various authorities including a municipality and for that purpose taxes as contemplated by that Act and the rules made thereunder could be imposed. To avoid conflict amongst different authorities in the matter of taxation over the parking of vehicles within the limits of a municipality, an amendment was introduced in clause (c) of sub-section (1) of section 61 of the Act by section 5 of Punjab Act II of 1940, as a result whereof tax could no longer be levied by a municipal committee for keeping motor vehicles within the limits of a municipality. This exemption introduced in the year 1940 was in consonance with the scheme of the Motor Vehicles Act which created independent authorities for exercise of control over the parking of motor vehicles whether within a municipality or otherwise. Under the impugned notification, tax in the nature of toll has to be paid by an owner of motor vehicle only if the vehicle enters the limits of the Committee loaded with goods. Such a tax does not fall within the scope of clause (c) of sub-section (1) of section 61 which provides for a different class of cases. It is nobody's case that the vehicles of the petitioners are kept within the limits of the Committee, and a person plying a truck on hire within its limits cannot be said to be keeping the same there within the meaning of clause (c) referred to above. The expression "kept" cannot be reasonably stretched so as to include plying of a vehicle on hire. Plying on hire and keeping a vehicle as envisaged in the said provision of law are two distinct and separate matters and one cannot be mixed up with the other. To keep a vehicle or an animal as referred to in clause (c) of sub-section (1) of section 61 so as to incur liability for the payment of a tax within the limits of the Committee involves an idea of having some sort of control over or retention of the vehicle or the animal, more or less of a permanent character, within those limits and does not include entry of the vehicle for a short period within such limits merely for the purpose of transport of goods. The levy of the toll by the impugned notification cannot, therefore, be supported under section 61(1)(c), but the Committee was competent to do so under sub-section (2) of the same section. The Committee with the sanction of the State Government is empowered to impose any tax not specified in sub-section (1) of section 61 in which clause (c) appears, provided such tax is within the competence of the State Legislature to impose under the Constitution. The State Legislature can by virtue of entry 59 in List II of Seventh Schedule of the Constitution levy tolls. The

word "tolls" has a variety of meanings and commonest of them is where a Committee or a local authority prescribes a levy for vehicles, men and animals passing over roads, ferries, bridges, etc., within the control of that authority. The person made liable for such a toll which is a sort of tax derives some benefit from the use of the same and in the case before us, the Committee has in its return made an averment that it is providing sanitation facilities, cleaning of roads, public water taps, etc., for the benefit of those transporters and that a place has been carved out for the parking of trucks which are engaged in the transport of goods. The validity of the impugned notification is, therefore, unchallengeable in view of the power given to the Committee under sub-section (2) of section 61.

(5) The argument of Mr. B. S. Khoji, learned counsel for the petitioners, is that in view of the observations of their Lordships of the Supreme Court in *Municipal Board of Hardwar* v. *Raghubir Singh, etc.*, (1), the larger residuary power as envisaged in sub-section (2) of section 61 of the Act cannot expand the scope of the specific provision as contained in clause (c) of sub-section (1) of section 61. This contention of the learned counsel in the present context is wholly misconceived. There is no conflict between the two provisions and the cases provided for in clause (c) stand by themselves. In *Raghubir Singh's case* (1), the Hardwar Union Municipal Board issued a notification in exercise of the powers conferred on it under section 128 of the U. P. Municipalities Act, 1916 (U.P. Act 2 of 1916), whereby a toll on motor vehicles and tongas entering or leaving the municipal limits with passengers was imposed. Section 128(1)(vii) of the said Act authorised, the levy of such a toll only on vehicles and other conveyances, animals and laden coolies *entering* the municipality. Clause (xiv) of that section, which is almost in the same terms as sub-section 2 of section 61 of the Act, empowered the said Board to impose any other tax which the State Legislature could impose in the State under the Constitution. The validity of the notification was challenged in a writ petition before the High Court of Allahabad. A learned Single Judge of that Court upheld the validity of levy of toll but only with regard to vehicles entering the municipal limits. A Division Bench hearing the appeal maintained the order of the learned Single Judge though it was modified by adding a direction that the Board should not levy toll on

(1) A.I.R. 1966 S.C. 1502.

vehicles leaving the municipal limits which had paid the same on entering into the municipality. Their Lordships of the Supreme Court held on further appeal that the decision of the learned Single Judge was correct and that no toll could be levied under the U.P. Municipalities Act on vehicles leaving the municipal limits. Clause (vii) of sub-section (1) of section 128 of the said Act clearly provided that a toll on vehicles could be levied only when they entered the municipality. An argument was raised on behalf of the Board that the power to impose toll on vehicles leaving the municipal limits was available under the residuary clause (xiv). It was in these circumstances that their Lordships observed that the larger power as contained in clause (xiv) must be held to be cut down by necessary implication because of the clear and unambiguous language used in clause (vii) which permitted levying only on vehicles entering the municipality. The facts of that case are clearly distinguishable from those in the case before us. Cases provided for in clause (c) of sub-section (1) of section 61 of the Act as already stated constitute a distinct and separate class. It cannot, therefore, be said that any power which flowed from entry 59 in List II of Seventh Schedule of the Constitution had been made over to the Committee to be exercised in a particular manner as specified in section 61(1)(c) and that such power is sought to be enlarged by relying on residuary power given in sub-section (2). Toll has been imposed by the Committee in the instant case on vehicles importing goods within the limits of the Committee which is not at all provided for in clause (c) of sub-section (1) of section 61.

(6) For the foregoing reasons, the writ petition fails. The parties are, however, left to bear their own costs.

B. S. G.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

GURSEWAK SINGH AND OTHERS,—*Petitioners.*

versus

VICE-CHANCELLOR, GURU NANAK UNIVERSITY AND OTHERS,—*Respondents.*

Civil Misc. No. 6198 of 1970

in

Civil Writ No. 2716 of 1970

November 4, 1970.

Constitution of India (1950)—*Article* 226—*Code of Civil Procedure* (*Act V of* 1908)—*Sections* 133 *and* 141—*Writ preceedings involving civil rights*—*Section* 133 *of the Code*—*Whether applies*—*Minister of State*—*Whether*