Rai Ramkrishna and Others

Vs

State of Bihar

Civil Appeals Nos. 16 and 17 of 1963

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

11.02.1963

JUDGMENT

GAJENDRAGADKAR J. -

The short question which these two appeals raise for our decisions is in regards to validity of the retrospective operation of the Bihar Taxation on Passengers and Goods (Carried by public Service Motor Vehicles) Act, 1961 (No XVII of 1961) (hereinafter called "the Act"). It is true that the two writ petition Nos. 916 of 1961 and 918 of 1961 field by the appellants, Rai Ramkrishna and others and M/s Road Transport Co., Dhanbad and others, respectively in High Court at Patna along with 18 others under articles 226 and 227 of the Constitution had challenged the validity of the whole of the Act. The High Court has held that the Act is valid both in its prospective as well as its retrospective operation. In their appeals brought to this court by special leave against the said judgment, the appellants do not challenge the conclusion of the High Court that the Act is valid in so far as its prospective operation is concerned; they have confined their appeals to its retrospective operation. Eight

Before dealing with the points raised by the appellants, it is necessary to set out briefly the background of the present dispute : On March 30, 1950, the Bihar Legislature passed the Bihar Finance Act, 1950 (Bihar Act XVII of 1950); this Act levied a tax on passengers and goods carried by public service motor vehicles in Bihar. Nearly a year after this Act came into force, the appellants challenged its validity by instituting a suit No. 60 of 1951 in the Court of the First Subordinate Judge at Gaya on May 5, 1951. In this suit, the appellants prayed that the provisions of Part III of the said Act were unconstitutional and asked for an injunction restraining the respondent, the State of Bihar, from levying and realising the said tax. It appears that a similar suit was instituted (No. 47 of 1951) on behalf of the passengers and owners of goods for obtaining similar reliefs against the bus operators. This latter suit was filed by the passengers and owners of goods in a representative capacity under Order 1, ru

The respondent then issued an ordinance (Bihar Ordinance No. 11 of 1961) on August 1, 1961. By this Ordinance, the material provisions of the earlier Act of 1950 which had been struck down by this court were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of the said Ordinance were incorporated in the Act which was duly passed by the Bihar Legislature and received the assent of the President on September 23, 1961. As a result of the retrospective operation of this Act, its material provisions are deemed to have come into force on April 1, 1950, that is to say, the date on which the earlier Act of 1950 had come into force. That, in brief, is the background of the present legislation.

The appellants and the other petitioners who had joined by filing several petitions in the Patna High Court had challenged the validity of the Act on several grounds. The High court has rejected all these grounds and has taken the view that the Act in its entirety is valid. The High Court has found that the provisions of the Act no doubt take it within the purview of Part XIII of the Constitution; but it has held that the Act has been passed with the previous sanction of the President and the restrictions imposed by it are otherwise reasonable, and so it is saved under article 304(b) of the Constitution. The plea made by the respondent that the taxing provisions of the Act were compensatory in character and were, therefore, valid, was rejected by the High Court. The High Court held that the principle that a taxing statute which levies a compensatory or regulatory tax is not invalid, which has been laid down by the majority decision of this court in the case of Automobile Transport (Rajasthan) Ltd. v. State o

At this stage, it is necessary to refer to the material provisions of the earlier Acts and examine the scheme of the Act impugned. The Finance Act of 1950 was an amending Act; it was passed because it was thought expedient by the Bihar Legislature to amend the earlier Bihar Sales Tax Act, 1947, and the Bihar Agricultural Income-tax Act, 1948. Section 12 of the said Act levied a tax on passengers and goods carried or transported by public service vehicles and public carriers. Section 12(1) prescribed the rate of the said taxation at two annas in a rupee on all fares and freights payable to owners of such motor cabs, stage carriages, contract carriages or public carriers, as carried the goods and passengers in question. Sub-section (2) dealt with the cases where any fare or freight was charged in a lump sum either for carrying goods or by way of contribution for a season ticket, or otherwise; and sub-section (3) provided that every owner of the public vehicle shall pay into the Government Treasury the full amo

In 1954, an amending Act was passed (Bihar Act XI of 1954), and section 14 of this amending Act added and Explanation to section 12 of the Act of 1950. By this Explanation, every passenger carried by the public vehicle and every person whose goods were transported by a carrier was made liable to pay to the owner of the said carrier the amount of tax payable under sub-sections (1) and (2) of section 12, and every owner of the vehicle or carrier was authorised to recover such tax from such passenger or person. In other words, whereas before the passing of the amending Act, the owners of public vehicles may have been entitled to raise their fares or freight charges in order to enable them to pay the tax levied under section 12 of the Act of 1950, after the amending Act was passed, they became entitled to recover the specific amounts from passengers and owners of goods by way of tax payable by them under the said section.

After the Act as thus amended was struck down by this court on December 12, 1960, an Ordinance was passed and its provisions were included in the impugned Act which ultimately became the law in Bihar on September 25, 1961. The Act consists of 26 sections. Section 1(3) expressly provides that the Act shall be deemed to have come into force on the first day of April, 1950. Section 2 defines, inter alia, goods, owner, passenger and public service motor vehicle. Section 3 is the charging section. Section 3(1) provides that on and from the date on which this Act is deemed to have come into force under sub-section (3) of section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle. Then the sub-section prescribes the rate at which the said tax has to be paid. There is a proviso to this sub-section which it is unnecessary to set out. Sub-section (2) lays down that every owner shall, in the manner prescribed in section 9, pay to the Sta

"Notwithstanding any judgment, decree or order of any court, tribunal or authority -

(a) any amount paid, collected or recovered or purported to have been paid, collected or recovered as tax or penalty under the provisions of Part III of the Bihar Finance Act, 1950 (Bihar Act XVII of 1950), as amended from time to time (hereinafter referred to as the "said Act"), or the rules made thereunder during the period beginning with the first day of April, 1950, and ending on the thirty-first day of July, 1961, shall be deemed to have been validly levied, paid, collected, or recovered under the provisions of this Act; and

(b) any proceeding commenced or purported to have been commenced for the assessment, collection or recovery of any amount as tax or penalty under the provisions of the said Act or the rules made thereunder during the period specified in clause (a) shall be deemed to have been commenced and conducted in accordance with the provisions of this Act, and, if not already completed, shall be continued and completed in accordance with the provisions of this Act."

There is a proviso to this section which is not relevant for our purpose. Sections 24 and 25 deal with repeals and savings; and section 26 provides that if any difficulty arises in giving effect to the provisions of the Act, the State Government may pass an order in that behalf, subject to the limitations prescribed by the said section. That, broadly stated, is the scheme of the Act.

In order to appreciate the merits of the contentions raised by Mr. Setalvad on behalf of the appellants, it is necessary to specify clearly the limited character of the controversy between the parties in appeal. The appellants concede that the Act in its prospective operation is perfectly valid. They also concede that section 23(a) which validates the acts done under the earlier Act of 1950 is valid. It would be noticed that apart from the general retrospective operation of the Act for which a provision has been made by section 1(3), section 23 itself makes a clear retrospective validating provision, and it is not disputed that the acts validated by section 23(a) have been properly validated. With regard to the validating provision contained in section 23(b), it has been urged that the said provision in so far as it refers to proceedings commenced under the earlier Act but not completed before the impugned Act came into force is invalid. The rest of the provisions of section 23(b) are also not challenged. In

In dealing with this controversy, it is necessary to bear in mind some points on which there is no dispute. The entries in the Seventh Schedule conferring legislative power on the legislatures in question must receive the widest denotation. This position is not disputed. Entry 56 of the Second List refers to taxes on goods and passengers carried by road or on inland waterways. It is clear that the State Legislatures are authorised to levy taxes on goods and passengers by this entry. It is not on all goods and passengers that taxes can be imposed under this entry; it is on goods and passengers carried by road or on inland waterways that taxes can be imposed. The expression "carried by road or on inland waterways" is an adjectival clause qualifying goods and passengers, that is to say, it is goods and passengers of the said description that have to be taxed under this entry. Nevertheless, it is obvious that the goods as such cannot pay taxes, and so, taxes levied on goods have to be recovered from some persons

The other point on which there is no dispute before us is that the legislative power conferred on the appropriate legislatures to enact law in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively. Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no

doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the courts as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. This position is treated as firmly established since

It is also true that though the legislature can pass a law and make its provisions retrospective, it would be relevant to consider the effect of the said retroactive operation of the law both in respect of the legislative competence of the legislature and the reasonableness of the restrictions imposed by it. In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the legislature competence to enact the law; or, it may be open to it to contend in the alternative that the restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under article 19(1)(f) and (g). This position cannot be, and has not been, disputed by Mr. Sastri who appears for the respondent : vide State of West Bengal V. Subodh Gopal Bose and Express Newspape

In view of the recent decisions of this court Mr. Sastri also concedes that taxing statutes are not beyond the pale of the constitutional limitations prescribed by articles 19 and 14, and he also concedes that the test of reasonableness prescribed by article 304(b) is justiciable. It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute,the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the

It is in the light of these principles of law which are not in dispute between the parties before us that we must proceed to examine the arguments urged by Mr. Setalvad in challenging the validity of the retrospective operation of the Act. Mr. Setalvad contends that one has merely to read the provisions of section 3(3) to realise that the character of the tax has been completely altered by its retrospective operation. It would be recalled that section 3(3), inter alia, provides that every passenger carried by a public service motor vehicle shall be liable to pay to the owner thereof the amount of tax payable under the said sub-section because the scheme of the Act is that the tax is paid by the passenger to the owner and by the owner the State; and both these provisions are retroactive. However, in respect of passengers carried by the owner between April 1, 1950, and the date of the Act, how can the owner recover the tax he is now bound to pay to the State, asks Mr. Setalvad ? Prima facie, the argument appea

We may, in this connection, incidentally refer to some decisions of this court, where a similar argument was urged in regard to the retrospective operation of some Acts. It appears that in those cases, the argument proceeded on a distinction between direct and indirect taxes. It is well-known that John Stuart Mill made a pointed distinction between direct and indirect taxation and this distinction was reflected in section 92(ii) of the British North America Act which gave to the legislature of the provinces exclusive power to make laws in relation to direct taxation within the

province. No such distinction can be made in regard to the legislative power conferred on the appropriate legislatures by the respective entries in the Seventh Schedule of our Constitution, and so it is unnecessary for us to consider any argument based on the said distinction in the present case. However, this argument was urged before this court in challenging the validity of some Acts by reference to their retrospective operation. In

In J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh, the argument that the character of the sales tax as enacted by the U. P. Sales Tax Act, 1948, was radically altered in its retrospective operation, was likewise rejected. The same argument in respect of an excise tax raised before this court in the case of Chhotabhai Jethabhai Patel & Co. v. Union of India was for similar reasons rejected. The position, therefore, appears to be well settled that if in its essential features a taxing statute is within the legislative competence of the legislature which passed it by reference to the relevant entry in the List, its character is not necessarily changed merely by its retrospective operation so as to make the said retrospective operation outside the legislative competence of the said legislature, and so we must hold that the challenge to the validity of the retrospective operation of the Act on the ground that the provision in that behalf is beyond the legislative competence of the Bihar Legislature, must be

That takes us to the question as to whether the restriction imposed on the appellants' right under article 19(1)(f) and (g) by the retrospective operation of the Act is reasonable so as to attract the provisions of article 19(5) and (6). The same question arises in regard to the test of reasonableness prescribed by article 304(b). Mr. Setalvad contends that since it is not disputed that the retrospective operation of a taxing statute is a relevant fact to consider in determining its reasonableness, it may not be unfair to suggest that if the retrospective operation covers a long period like ten years, it should be held to impose a restriction which is unreasonable and, as such, must be struck down as being unconstitutional. In support of this plea, Mr. Setalvad has referred us to the observations made by Sutherland."Tax statutes", says Sutherland, "may be retrospective if the legislature clearly so intends. If the retrospective features of a law is arbitrary and burdensome, the statute will not be sustained.

We do not think that such a mechanical test can be applied in determining the validity of the retrospective operation of the Act. It is conceivable that cases may arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional; but the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. We may have a statute whose retrospective operation covers a comparatively short period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the statute, though long, will not introduce any such infirmity. Take the case of a Validating Act. If a statute passed by the legislature is challenged in proceedings befor

Take the present case. The earlier Act was passed in 1950 and came into force on the 1st of April, 1950, and the tax imposed by it was being collected until an order of injunction was passed in the two suits to which we have already referred. The said suits were dismissed on the 8th May, 1952, but the appeals preferred by the appellants were pending in this court until the 12th December, 1960. In other words, between 1950 and 1960 proceedings were pending in court in which this validity of the Act was being examined, and if a validating Act had to be passed, the legislature cannot be blamed for having awaited the final decision of this court in the said proceedings. Thus,

the period covered between the institution of the said two suits and their final disposal by this court cannot be pressed into service for challenging the reasonableness of the retrospective operation of the Act.

It is, however, urged that the retrospective operation of the Act during the period covered by the orders of injunction issued by the trial court in the said two suits must be held to be unreasonable, and the argument is that in regard to the said period the retrospective operation should be struck down. Similarly, it is urged that the said retrospective operation should be struck down for the period between December 12, 1960, when this court struck down the earlier Act and 1st August, 1961, when Ordinance II of 1961 was issued. We do not think it would be appropriate in the present case to examine the validity of the retrospective operation by reference to particular periods of time covered by it in the manner suggested by Mr. Setalvad; and so we are not prepared to accept his argument that the retrospective operation of the Act is invalid so far as the period between December 12, 1960, when the earlier Act was struck down by this court, and the 1st August, 1961, when the Ordinance was issued, is concerned.

In this connection, it would be relevant to refer to another fact which appears on the record. Along with the appellants, 18 other bus owners had filed writ petitions challenging the validity of the Act. These petitioners have not appealed to this court presumably because their cases fall under the provisions of section 23(a) of the Act. It is likely that they had paid the amounts, and since the amounts paid under the provisions of the earlier Act are now deemed to have been paid under the provisions of this Act, they did not think it worthwhile to come to this court against the decision of the High Court. Apart from that, it is not unlikely that other bus owners may have made similar payments and the appellants have, therefore, come to this court because they have made no payments and so their cases do not fall under section 23(a), or, may be, their cases fall under section 23(b). The position, therefore, is that the retrospective operation of section 23(a) and (b) cover respectively cases of payments actua

There is only one more point to which reference must be made. We have already noticed that the High Court has rejected the argument urged on behalf of the State that the tax imposed by the Act is of a compensatory or regulatory character and, therefore, is valid. Mr. Sastri wanted to press that part of the case of the State before us. He urged that according to the majority decision of this court in the case of the Automobile Transport (Rajasthan) Ltd., it must now be taken to be settled that "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by article 301 and such measures need not comply with the requirements of the proviso to article 304(b) of the Constitution" (page 1424). On the other hand, Mr. Setalvad has argued that this doctrine of compensatory or regulatory taxation which is mainly based on Australian decisions cannot be extended to the present case, and he contends that if the doctrine of r

In the result, the appeals fail and are dismissed with costs.

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