Jawaharmal

Vs

State of Rajasthan and Others

Writ Petition No. 19 of 1965

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

22.09.1965

JUDGMENT

GAJENDRAGADKAR. C.J. –

The petitioner, Jawaharmal, carries on business of plying his motor buses on four routes under the State Carriage Permits granted to him under the relevant provision of the Motor Vehicles Act. 1939. The three respondents to his petition respectively are : The State of Rajasthan, the Deputy Commissioner, Excise and Taxation [Appeals], Jaipur, and the Taxation officer, [The Rajasthan Motor Vehicles] Sikar, State of Rajasthan. It appears that respondent No. 3 passed several assessment orders imposing different amounts of tad against his five vehicles which were running on the four routes in question. The period fro which these assessment orders were passed differed from vehicle to vehicle; but on the whole, they covered the period between the 1st April, 1962 and the 30th September, 1964. The total amount of tax imposed in respect of these vehicles by the assessment orders in question is Rs. 19, 062-93 np. These orders have been passed under section 2 of the Rajasthan Passengers and Goods

Aggrieved by these orders, the petitioner filed appeals before respondent No. 2 but respondent No. 2 refused to entertain the said appeals unless the petitioner paid in advance the tax imposed by the orders under appeal. Whilst these appeals were pending before respondent No. 2, the petitioner moved for stay in respect of the recovery of the tax assessed, but the said application was rejected on the ground that there was no provision in law to entertain any such application. That is way the petitioner submitted an application before the Commissioner, Commercial Taxes Rajasthan on the 3rd February, 1962 and prayed that his buses should not be attached and sold in execution of the orders of assessment, against which he had preferred appeals, pending the hearing and final disposal of the said appeals. The Commissioner rejected this application on the 8th February 1962. Respondent No. 3 then proceeded to attach one of the buses of the petitioner, viz Bus No. RJP-854 and took possession of it. The petitioner ther

In order to appreciate the contention of the petitioner that the act is invalid, it is necessary to mention the legislative background of the Act. The legislature of respondent No. 1 passed an act in 1959 [No. 18 of 1959 known as the Rajasthan passengers and Goods Taxation Act. 1959 [hereinafter called the principal Act]. This act received the assent of the President on April 2, 1959; was published in the Rajasthan Gazette on April 30, 1959, and came into force on May 1, 1959. The validity of this act has been upheld by this court in M/s. Sainik Motors, Jodhapur and Ors. v. The State of Rajasthan. Section 3 of the principal Act authorised the State Government to levy, charge and collect tax all fares and freights in respect of all passengers carried and goods transported by motor vehicles in Rajasthan. The said section further provided that the rate of the tax shall not

exceed 1/8th of the value of fare or freight in the case of cemented, tarred, asphalted, metalled, gravel and kankar roads, and shall not ex

Section 21 of the principal Act authorised the Government of Rajasthan to frame rules consistent with the said Act for securing the payment of tax and generally for the purposes of carrying into effect its provisions. Accordingly, the Government of Rajasthan framed suitable rules which came into force on the 21st May, 1959. Thereupon, a notification was issued by respondent No. 1 on the 30th April 1959, under s. 3 of the said act and it came into force on May 1, 1959; it directed the manner in which, and the rates at which, the tax shall be charged and recovered. These rates were the same as had been prescribed by s. 3 of the same act as maximum permissible rates. This notification was made effective on and from the 1st May, 1959. There is no dispute that the principal Act is valid and that the notification issued under it is also valid.

In 1961, the Rajasthan Finance Act [No 14 of 1961] was passed. Section 8 of this Act purported to amend s. 3 of the principal Act. As a result of this amendment, the maximum rate at which the state Government could levy, charge and collect tax on fares and freights was increased from 1/12th to 10 per cent. In pursuance of the provisions of this Fiance Act, respondent No. 1 issued a notification on the 9th March 1961 levying tax at the said maximum permissible rates. Neither the bill in respect of this act received the assent of the president before it was introduced in the State Legislature, nor did this act receive his assent after it was passed.

In 1962, the Rajasthan Finance Act [No. 11 of 1962] was passed. Section 9 of the Act amended s. 3 of the principal Act and authorised the increase of the two respective taxes to 20 per cent and 15 per cent respectively. A Notifications was then issued by respondent No. 1 under the provisions of s. 9 of the said act. This notification authorised levy of taxes at the maximum rates permissible under s. 9. Neither the bill in respect of this Act before it was introduced in the State Legislature, nor this act after it was passed received the assent of the President.

Then followed the Finance Act [No. 13 of 1963]. This act purported to amend s. 11 of the principal Act; but with this amendment we are not concerned in the present proceeding.

It appears that the constitutional validity of the material provisions of the principal Act and rules and notifications issued under it as well as the constitutional validity of the Finance acts of 1961 and 962 and the notifications issued respectively thereunder was challenged by a number of bus operators by writ petitions filed by them before the Rajasthan High Court under Art. 226 of the Constitution. During the tendency of these writ petitions, the Rajasthan Ordinance No. 4 of 1964 was promulgated. later, the said ordinance was repealed and replaced by the Act with which we are concerned in the present proceedings. This act came into force on the 9th September 1964, having received the assent of the President on the 8th September 1964.

The writ petitions filed by the other bus operators were decided by the said High Court on the 30th November, 1964 vide Vijai Singh and another v. Deputy Commissioner, Excise and Taxation [Appeals], Ajmer and Kotah Divisions, Jaipur and other. Finance acts of 1961 and 1962 suffered from the infirmity that they did not comply with the requirements of art. 255 of the Constitution. It, however, did not think it necessary to finally determine the question as to whether by reason, of the said infirmity, the said earlier acts were void or not, because in its opinion, the Act of 1964, is not merely in amending and a curative Act in that limited sense, but it is really an Act which virtually re-enacts the provisions of the earlier Acts which suffered from a constitutional infirmity [p. 300]. The High Court examined the contentions raised by the petitioners that the provisions of the act

were invalid, and has rejected the petitioners case that the said provisions suffered from any constitutional infirmity. In the res

The learned Advocate - General who has appeared for the respondents in the present writ proceedings, requested us to postpone the hearing of this writ petition and take it up along with the appeals to which we have just referred. We did not, however, acceded to this request, because we thought that it would not be right to postpone the hearing of the present writ petition for an indefinitely long period, and so, we allowed the learned Advocate-General to argue the matter fully and refer us to the judgment of the Rajasthan High Court which is under appeal in the said appeals. We made it clear to the learned Advocate- General that our decision in the present writ petition would cover the decision of the said appeals in so far as it would relate of the validity of the provision of the act which are impugned before us by the present petitioner and not to that part which covered the question of penalty. Accordingly, the learned Advocate-General has elaborately addressed us on the relevant points and has taken us t

The respondents filed their written statement in the present proceeding and they urged that the petitioner challenge to the validity of the relevant provisions of the Act should not be sustained. According to them, the act is constitutionally valid and the impugned orders of assessment are fully justified by the said provisions. That is how the main question which falls to be considered in the present writ petition is whether the relevant provisions of the Act are valid or not.

Let us therefore proceed to refer to the provisions of the Act and enquire whether the petitioner is justified in challenging their validity. The Act consists of five sections. Section 1 gives its title; s. 2 amends s. 3 of the principal Act; s. 3 deals with validation of certain lump sum payments in lieu of tax; s. 4 purports to validate certain sections of the Rajasthan Acts 14 of 1961, 11 of 1962 and 13 of 163; it also purports to validate the tax levied, paid or payable and action taken or things done during the period between the 9th day of March 1961 and the date of commencement of this Act. The last section 5 repeals ordinance No. 4 of 1964. In the present proceedings we are not concerned with lump sum payments; and so, s. 3 does not fall to be considered.

At this stage it is convenient to set out sections 2 and 4; they read as under:

> " 2 In section 3 of the Rajasthan passengers and Goods Taxation Act, 1959 [Rajasthan Act 18 of 1959] hereinafter referred to as the principal Act, to sub-section [1], the following proviso shall be and be deemed always to have been added, namely:-
>
> Provided that the tax shall be charged in respect of all passengers carried and goods transported by motor vehicles:
>
> (a) during the period between the 1st day of May, 1959 and the 8th day of March 1961, at the rate of :
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> (i) One-eighth of the value of the fare or freight in case of cemented, tarred, asphalted, metalled, gravel and kankar roads and
>
> (ii) One-twelfth of the fare or freight, in other cases, subject to a minimum of one Naya Paisa in any one case, the amount of tax being calculated to the nearest Naya paisa; and.

(b) during the period between the 9th day of March, 1961 and the 25th day of March 1962, at the rate of :

(1) fifteen per cent of the value of the fare or freight in the case of cemented, tarred, asphalted, metalled, gravel and kankar roads, and

(2) ten per cent of the fare or freight in other cases subject to a minimum of one naya Paisa in any one case, the amount of tax being calculated to the nearest naya Pass.

" 4. Notwithstanding any judgment, decree or order of any Court, but subject to the provisions of this Act, section 8 of the Rajasthan Finance Act, 1961 [Rajasthan than Act 14 of 1961], section 9 of the Rajasthan Finance Act 1962 [Rajasthan Act 11 of 1962], and section 14 of the Rajasthan Finance Act, 1963 Rajasthan Act 13 of 1963] shall not be deemed to be invalid, or ever to have been invalid during the period between the 9th day of March 1961 and the date of commencement of this Act, merely by reason of the fact that the Bills, which were enacted as the acts aforesaid, were introduced in the Rajasthan State legislature without the previous sanction of the president under the proviso to Art. 304 [b] of the Constitution and were not assented to by the president and the tax levied, paid or payable, the composition fee paid or payable and any action taken or things done or purporting to have been taken or done during the period aforesaid under the Rajasthan passenger and Goods taxation Act, 1959 [Rajasthan Ac

(a) No suit or other proceedings shall be instituted, maintained or continued in any court for the refund of any tax or fee so paid or for any other relief on the ground of invalidity of the said sections of the Acts aforesaid; and

(b) No court shall enforce any decree or order directing any such refund or relief."

Mr. Tiwari for the petitioner contends that ss. 2 and 4 purport to validate the earlier invalid Finance Acts of 1961 and 1962. He argues that the failure of the legislature to comply with the provision of art. 255 of the Constitution renders the said acts void ab initio and as such, they cannot be validated by subsequent legislation. Mr. Tiwari also urges that the said earlier Acts have been held to be invalid by the Rajasthan High Court in the case of Vijai Singh and it would be incompetent to the State legislature to validate the said acts in spite of the decision of a court of competent jurisdiction.

We are not impressed by this argument. In the first place, it is not clear that the Rajasthan High Court has held that the said earlier Finance Acts are void ab initio; in fact, as we have already pointed out, the said High Court though it unnecessary to pronounce its considered opinion on that aspect of the matter, because it held that the Act of 1964 with which it was primarily dealing in the said proceedings not merely amended or cured the earlier Finance Acts, but re-enacted the provision of the said acts, and so, the provisions of the said acts become operative by their own force. Therefore, factually, it is not correct to say that the said earlier acts have been struck down as void ab initio by any court of competent jurisdiction. Besides, in assessing the validity of this arguments, it is necessary to remember that the Act was passed on September 8, 1964 and the judgment of the Rajasthan High Court was pronounced on November 30, 1964; and so, it is clear that at the time when the act was passed the ea ts had not been struck down at all.

The next question to consider is whether an Act which suffers from the infirmity that it does not

comply with there requirements of Art 255 can be validated by subsequent legislation. There are two answers to this question. Article 255 provides, inter alia, that no act of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to the act was given by the President later. The position with regard to the laws to which Art. 255 applies, therefore, is that if the assent in question is given even after Act is passed it serves to cure the infirmity arising from the initial non- compliance with its provisions. In other words, if an act is passed without obtaining the previous assent of the President, it does not become void by reason of the said infirmity; it may be said to be unenforceable until the assent is secured. Assuming that such a law is otherwise valid, its validity can

That takes us to the constructions of section 2 and 4 of the Act. It would be noticed that s. 2 in fact does not purport to validate the earlier Finance acts of 1961 and 1962. What it does is to amend retrospectively s. 13 of the principal act by inserting a proviso to sub-s. [1] of the said section. On its plain reading, s. 2 has the effects of inserting the said proviso to s. 3 [1] of the principal Act; and since the amendment so made is, in terms, retrospective, when a tax is levied for the periods covered by clauses [a] and [b] of the proviso thus introduced in s. 3 [1] of the principal act, the court must proceed to deal with the matter on the basis that these clauses had been introduced in the principal Act right up from the Commencement. We have already noticed that the principal Act has been held to be valid by this Court and so, we see no basis for the argument that in amending s. 3 [1] of the principal Act, s. 2 of the Act has contravened any Constitutional prohibition.

It is well-recognized that the power to legislate includes the power to legislate retrospectively as well as retrospectively, and in that behalf, tax legislation is no different from any other legislation. If the Legislature decides to levy a tax, it may levy such tax either retrospectively or even retrospectively. When retrospective legislation is passed imposing a tax, it may, in conceivable cases, become necessary to consider whether such retrospective taxation is reasonable or not. But apart from this theoretical aspect of the matter, the power to tax can be competently exercised by the legislature either retrospectively or retrospectively or retrospectively; and that is precisely what s. 2 has done in the present case. Therefore, there is no substance in the argument that s. 2 of the Act is invalid.

As the said s. 3 has been drafted, it appears clear that clause [a] of the proviso added by it to s. 3 [1] of the principal Act, covers the period between 1st of May, 1959 and the 8th of March, 1961, whereas clause [b] covers the period between the 9th March, 1961 and the 25th March 1962. The first period had in fact been already covered by a notification validly issued on April 30, 1959 under s. 3 of Principal Act; and so, it is not easy to understand why it was thought necessary to refer to this period by the said retrospective amendment. The second period had been attempted to be covered by Finance Act 14 of 1961 and the notification issued thereunder. In order to make the provisions of the said notification effective, the Legislature has adopted the legitimate expedient of making the said provisions a part of the amendment which has been introduced to s. 3 [1] of the principal Act; and so, the rates prescribed by clause [b] can be validly imposed during the said retrospective amendment. The second period

Section 4 consists of three parts. In its first part, it provides that the several sections of the three finance acts enumerated by it, shall not be deemed to be invalid, or ever to have been invalid. During the period there specified, merely by reason of the fact that Art. 255 of the Constitution had not been complied with. Part 2 of the said section provides inter alia that the tax levied, paid or payable during the period as amended by the said specified Acts, shall be deemed always to have

been validly levied, paid or payable and part 3 prescribes that the aforesaid enactments shall be, and be deemed always to have been, validly enacted, notwithstanding the aforesaid defects. The question which arises for out decision is whether this section is valid.

In dealing with this question, we must course, ear in mind the fact that the act and all its provisions have received the assent of the President and so, prima facie, the assent of the President to the act would help the act to validate the provisions of the earlier acts which were not enforceable by reason of the fact that they had not secured his assent as required by arts 255. But can the assent of the President to the Act serve the purpose of making s. 4 valid ? What s. 4 in truth and in substance says is that the failure to comply with the requirement of Art. 225 will not invalidate the Finance acts in question and will not invalidate any action taken, or to be taken under their respective relevant provisions. In other words the legislative seems to say be s. 4 that even though Art. 225 may not have been complied with by the earlier Finance Acts, it is competent to pass s. 4 whereby it will prescribe that the failure to comply with Art. 225 does not really matter, and the assent of the President to the

The learned Advocate-General has strenuously contended before us that we should look at the substance of the matter and not decide the validity of s. 4 merely because the words used in it may not be happy or appropriate. We agree that questions of this character must be judged on consideration of substance and not merely of form, and we have tried to read s. 4 as favourably as we can while appreciating the argument of the learned Advocate general but the words used in all the three parts of s. 4 are clear and unambiguous; they indicate that the legislature thought that it was competent to it to cure, by its own legislative process, the infirmity resulting from the non-compliance with Art. 225 when it passed the earlier Finance Acts in question, and it was probably advised that such a legislative declaration would be valid and effective, provided it received the assent of the President. In our opinion, the approach adopted by the legislature in this case is entirely misconceived. The Legislature, no doubt, ca

The learned Advocate-General strongly relied on the last part of s. 4 This part provides that the aforesaid enactments shall be, and be deemed always to have been, validly enacted, notwithstanding the aforesaid defects. The clause notwithstanding the aforesaid defects emphatically points to the fact that the legislature though that it could legislate retrospectively, and by such retrospective legislation, it could itself cure the infirmity in question. What has been overlooked by the legislature, is the fact that the infirmity in question can be cured only by obtaining the assent of the President and not by any legislative fiat. We have given our anxious consideration to the problem raised by the wording of s. 4 and we have come to the conclusion that it would not be possible to uphold its validity. On many occasions, this Court has tried to look at the substance of the matter and determine the issue in spite of the fact that the words or expressions used in the relevant provisions are either slovenly inappr

In support of his argument that the from adopted by the legislature in enacting s. 4 is not inappropriate, the learned Advocate - General has referred us to a decision of this court in M. P. V. Sunderaramier and Co. v. The State of Andhra Pradesh and Another. It is true that in that case, s. 2 of the Sales Tax laws validation act, 1956 [No. 7 of 1956], which is Central Act, used phraseology which is similar to the Phraseology adopted by s. 4 of the Act but it would be fallacious to compare the said provision with s. 4, because the ban which s. 2 of the said Act intended to lift could validly be lifted by a Parliamentary statue. Art. 286 [2] of the Constitution which was in force at the relevant time had provided, inter alia, that except in so far as parliament may be law otherwise provide, no law of a state shall impose, or authorise the imposition of, a tax on the sale or purchase

of goods where such sale or purchase takes place in the course of inter State trade or commerce. What S. 2 of the said act did w

There is one more point which still remains to be considered. Mr. Tiwari urged that the retrospective operation of the amendment made by s. 2 of the Act in s. 3 [1] of the Principal Act, should be held to be unconstitutional inasmuch as the retrospective operation of the provision prescribed by cl. [b] of the proviso added by s. 2 suffers from the infirmity that it imposes enhanced tax duty retrospectively. His argument is, where a taxing statue purports to impose a tax retrospectively, it necessarily involves an element of unreasonableness and that virtually amounts to contravention of the citizens fundamental rights guaranteed under Art. 19[1] [f] or [g] of the Constitution. For the purpose of the present writ petition, we will assume that notwithstanding the proclamation of emergency issued by the president under Art. 352, the constitution of emergency issued by the president under Art. 352, the constitutions bar created by art 358 does not operate against the petitioner inasmuch as he relies upon the con ely because a taxing statute purports to operate retrospectively, the retrospective operation per se involves contravention of the fundamental right of the citizen taxed under Art 19[1] [f] or [g]. It is true that cases may conceivably occur where the court may have to consider the question as to whether excessive retrospective operation prescribed by a taxing statue amounts to the contravention of the citizens fundamental right; and in dealing with such a question, the court may have to take into account all the relevant and surrounding facts and circumstances in relation to the taxation. In the present case, having regard to the legislative background of the provision prescribed by s. 2 there can be little doubt that there is no element of unreasonableness involved in the retrospective operation of cl. [b] of the proviso added by the said section to s. 3 [1] of the principal Act.

The result is that s. 2 of the Act is valid and the tax in question can be recovered from the petitioner for the period covered by clauses [a] and [b] of the proviso as therein prescribed by cl. [a] of the proviso is really superfluous, because the same tax could have been validly recovered at the prescribed rates under the notification issued on April 30, 1959 under s. 3 of the principal Act. But as we have already pointed out, the period between March 26, 1962 to September 9, 1964 is not covered by the provisions inserted by s. 2 in s. 3[1] of the principal act and so; the provision of s. 2 are of no assistance to the respondent in imposing a tax against the petitioner at the enhanced rates initially prescribed by s. 9 of the Finance Act 11 of 1962. If we had held that s. 4 of the Act was valid, then the imposition of the tax at the enhanced rates prescribed by the said s. 9 would also have been valid but in view of the fact that we have come to the conclusion that s. 4 is invalid, it follows that the tax

As a consequence of this conclusion, it follows that the petitioner is entitled to claim that the tax assessed against him in respect of his vehicles for the period between 26th March, 1962 and the 9th September, 1964 at the enhanced rates is invalid, and that the taxing authorities concerned will have to levy the tax at the rates prescribed by the notification issued on the 30th April, 1959 under s. 3 of the principal act as it originally stood. It is true that this result sound very anomalous, because for the period immediately preceding the period in question, the tax is validly recoverable at the enhanced rates, whereas for the period in question, it has to be recovered at a lower rate; put, for this anomaly, the defective drafting of s. 2 and s. 4 of the act is entirely responsible.

Before we part with this petition, we would like to refer briefly to two decision of this court to which reference was made during the course of the arguments before us. In Rai Ramkrishna and other v. The State of Bihar the validity of the Bihar Taxation on Passengers and Goods [Carried by Public Service Motor Vehicles] Act, 1961 [No. 17 of 1961] was challenged on the ground that it

sought to validate taxes already recovered under an invalid Finance Act. Rejecting the argument that such retrospective validation of tax illegally recovered amounts to the contravention of the citizens fundamental right under Art. 19 [1] [f] or [g], this court held that if in its essential features a taxing statute is within the competence of the legislature which passed it, its character is not necessarily changed merely by its retrospective operative so as to make the said retrospective operation either unreasonable or outside its legislative competence.

A similar view has been expressed by this court in Jaora Sugar Mills [Pvt.] Ltd. v. The State of Madhya Pradesh and others.

The result is, the writ petition is partly allowed and the impugned orders of assessment are set aside in so far as they relate to the period between 26th March 1962 and the 9th September, 1964, and we direct the assessing authorities to levy a proper assessment in the light of this judgment. The assessment orders in respect of the remaining period are valid and the petitioner's prayer that they should be set aside, is rejected. In view of the fact that the petitioner has succeeded only partially, we direct that parties should bear their own costs.

Petition allowed in part.

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