

State of Assam & Ors.

Vs

Labanya Probha Debi

Civil Appeal No. 38 of 1967

(CJI K. Subha Rao, M. Hidayatullah, C. A. Vaidialingam, R. M. Bachawat, J. M. Shelat JJ)

11.04.1967

JUDGMENT

SUBBARAO C.J.

This appeal by certificate is directed against the order of the High Court of Assam declaring that the Assam Motor Vehicles Taxation (Amendment) Acts of 1963 and 1966 were repugnant to the Assam Motor Vehicles Taxation Act, 1936 (Assam Act 9 of 1936), hereinafter called the Principal Act, and, therefore, void as they were made in contravention of the provisions of Art. 254(2) of the Constitution.

The facts are in a small compass and they are as follows : The Principal Act came into force on March 1, 1937. The assent of the Governor-General in Council was given under section 35 of the Government of India Act, 1935. This Act imposes tax on motor vehicles in the Province of Assam. In 1955 the Principal Act was amended by Assam Act IV of 1956 and it had received the assent of the President. Subsequently the Principal Act was amended by Act 15 of 1963, but the Bill was introduced in the Assam State Assembly with the previous sanction of the President and it came into force on April 1, 1963. Subsequent to the filing of the petition, out of which the present appeal has arisen, the Principal Act was again amended in the year 1966 and it came into force on April 1, 1966. The tax on the stage carriage motor vehicles was gradually raised under each amendment and under the last of the amendments a sum of Rs. 56/- was imposed per seat. Under the last amendment Act the petitioner respondent had to pay a sum of Rs. 1680/- as tax for the stage carriage she was plying.

The respondent filed a petition under Art. 226 of the Constitution in the High Court for declaring the amending Acts void and for other reliefs.

The petition was heard by a Division Bench of the High Court and the learned Judges delivered two separate but concurrent judgments. They held that the Amending Acts of 1963 and 1966 were void and gave the petitioner-respondent the reliefs asked for. Hence the present appeal.

The main question in the appeal is whether the said Amending Acts increasing the rate of tax are void for constitution incompetence. The High Court in effect held that the provisions of the said Amending Acts were inconsistent with those of the existing law, namely, the Principal Act and, therefore, as they had not received the assent of the President, were void under Art. 254 of the Constitution. This conclusion was arrived at on the ground that the Amending Acts were made in respect of the matter contained in entry 35 of the Concurrent List.

To appreciate the contentions it will be convenient to read at the outset the relevant Articles of the constitution.

Entry 57 of List II of the Seventh Schedule to the Constitution :

Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including transfers subject to the provisions of entry 35 of List III.

Entry 35 of List III

Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

Art. 254 (1) If any provision of law made by the Legislature of a State is repugnant..... to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2)..... the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, the the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

Art. 366(10) Existing law means any law, ordinance or bye-law, rule or regulation passed or made before the commencement of the Constitution by any Legislature, authority or person having power to make such a law, ordinance or bye-law, rule or regulation.

The application of the said provisions to the subject-matter of the present appeal leads to the following result. The Principal Act was an existing law. If the Amending Acts were made under entry 35 of the Concurrent List and if they were in conflict with any of the provisions of the existing law, to the extent of the inconsistency the said amendments would be void. But, on the other hand, if the Amending Acts were passed under entry 57 of List II of the Seventh Schedule, they would fall outside the scope of Art. 254 of the Constitution, as Art 254 would apply only to a conflict between the provisions of an "existing law" and those of the post-constitution law in respect of matters enumerated in any of the entries of the Concurrent List.

The learned Solicitor General raised before us two points, namely, (i) Art. 254 of the Constitution posits the existence of two parallel laws-one an "existing law" and the other a post- Constitutional Law-in respect of any one of the entries in the Concurrent List and the provisions thereof are in conflict with each other; but it has no application to a case where the State Legislature within the scope of its legislative competency, amends an existing law so as to extinguish a part of it. (2) The amending Acts were only made under entry 57 of List II and, therefore, there is not scope for invoking the provisions of Art. 254 of the Constitution.

Learned counsel for the respondent, on the other hand, contended that there was no distinction between an amending Act and a new Act in the matter of application of Art. 254 of the Constitution, as in either case the provisions of the said Acts would be inconsistent with the existing law. He further argued that the Amending Acts introduced new principles of taxation and, therefore, fell

squarely within the scope of entry 35 of the Concurrent List.

As we are holding in favour of the appellant on the second point, it is not necessary to express our view on the first.

The short question, therefore, is whether any of the provision of the Amending Acts is repugnant to any of the provisions of the existing law with respect to any of the matters enumerated in the Concurrent List. Under the existing law, i.e., Act 9 of 1936, no motor vehicle could be used in the Assam Province unless the owner thereof had paid in respect of it a tax at the appropriate rate specified in the Schedule to the Act and, save as therein specified, such tax should thereafter be payable annually notwithstanding that the motor vehicle might from time to time cease to be used (see s. 4). As aforesaid, the Schedule annexed to the Principal Act was amended from time to time by different amending Acts and the rate was increased. Under the 1963 amending Act, apart from other provisions which do not relate to any principles of taxation, a new Schedule laid down any principles of taxation in respect of motor vehicles. So too, the amending Act of 1966 substituted the Schedule of the Act by another Schedule. A perusal of the aforesaid Schedule only disclose that different rates were fixed; that is to say, the amended Schedule does not lay down any principles on which taxes on motor vehicles are to be levied within the meaning of entry 35 of the Concurrent List it is solely concerned with taxes on vehicles within the meaning of entry 57 of List II. The two entries deal with two different matters though allied ones—one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. When two entries in the Constitution, whether in the same list or different lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning cannot the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation. We, therefore [space] come into conflict with the existing law in respect of any problems of taxation, but only deal with a subject-matter which is exclusively within the legislative competence of the State Legislature. In this view, there is no scope for the application of Art. 254 of the Constitution.

Even so, learned counsel for the respondent intended that the amending Act offend the provisions of Art. 301 of the Constitution. Article 301 reads :

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

The scope of this Article has been authoritatively defined by this Court in *The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan*. There the majority held that regulatory measures or measures imposing compensatory taxes for the use of trading facilities did not hamper trade, commerce or intercourse but rather facilitate them, and, therefore, were not hit by the freedom declared by Art. 301. There, by virtue of section 4 of the Rajasthan Motor Vehicles Taxation Act, 1951, read with the Schedules, no one could use or keep a motor vehicle in Rajasthan without paying an appropriate tax for it and, if he did so, he has made liable to the penalties imposed under s. 11 of that Act. This Court by majority held that such taxes were compensatory and regulatory taxes which did not hinder the freedom of trade. In the present case the respondent in her petition questioned the validity of the provisions of the amending Acts on the following grounds :-
(i) The Act abolished the permit fee previously payable on such motor vehicles. She alleges that as a result of the rationalisation of tax and the introduction of a single point levy, the tax fixed irrespective of road condition, distance travelled, region catered for imposes crushing burden on the petitioner and the other stage carriage permit-holders plying their vehicles in the short distance route

and gives discriminatory weightage in favour of the State Carriage, Inter-State public carriers and other vehicles plying in longer distance routes. It will be seen that the averments are general and vague. On the other hand, the State has filed a detailed affidavit. The following figures show the expenditure incurred on new roads and maintenance of old roads and the income from motor vehicles for same year. In 1962-63 the expenditure was Rs. 671.60 lakhs and the income was Rs. 75.58 lakhs. In 1965-66 the expenditure was Rs. 1499.77 lakhs and the income was Rs. 137.96 lakhs. From the said figures it is clear that the State is charging from the users of motor vehicles some thing in the neighborhood of 11% and 10% respectively for the said two years of the cost it has to incur in maintaining and making roads. From Annexure D to the said affidavit it appears that in some cases tax under the 1963 Act had been increased by 50% under the 1966 Act and in some cases the tax under 1963 Act has been increased by 40% under 1966 Act. It is obvious that comparatively small proportion of the general expenditure is realised throughout the impugned taxation. In the circumstances, we must hold that the said Acts were only regulatory measures imposing compensatory taxes for facilitating trade, commerce and intercourse. The Acts are, therefore, not hit by art, 301 of the Constitution.

In the result the order of the High Court is set aside and the appeal is allowed. The petition filed by the respondent in the High Court is dismissed with costs here and in the court below.

Appeal allowed.

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