Nazeria Motor Service etc.

Vs

State of Andhra Pradesh and Another

Civil Appeal Nos. 69, 112 and 113/1968

(CJI J.C. Shah, V. Ramaswami-I, A.N. Grover JJ)

21.08.1969

JUDGMENT

GROVER, J. -

1. These appeals by certificate from a judgment of the Andhra Pradesh High Court which disposed of several petitions under Article 226 of the Constitution including the petitions filed by the appellants involve the question of the constitutionality of the Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) (Amendment and Validation) Act, 1961, Andhra Pradesh Act XXXIV of 1961.

2. The appellants hold permits either for stage carriage or for public-carriers issued under the Motor Vehicles Act, 1939. They ply these vehicles on different routes in the State as also on some of the inter-State routes. They were subject to tax levied under the Madras Motor Vehicles Taxation Act, 1931.

3. In 1952 the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 (Act XVI of 1952) was enacted by which every operator had to pay Rs. 12.50 per seat per quarter or 37 naye Paise per seat per mile over and above the tax payable under the Madras Motor Vehicles Taxation Act, 1931. Under that Act the operators were paying tax of Rs. 30/- per seat per quarter. The validity of Act 16 of 1952 was challenged before the Madras High Court. In Mathurai Pillay v. The State of Madras ((1954) 1 MLJ 110) its validity was upheld except as to the proviso to Section 3 of the Act. After the formation of Andhra Pradesh State the Governor promulagted an Ordinance amending Madras Act 16 of 1952 in the light of the above judgment. The provisions contained in the Ordinance were subsequently re-enacted as Presidents Act 11 of 1954. The operators, therefore, paid taxes imposed under Act 16 of 1952 as amended in the State of Andhra Pradesh. By means of Act 21 of 1959 the Legislature of Andhra Pradesh amended Act 16 of 1952. Section 3 of Act 16 of 1952 as amended read as follows :

> "In clause (a) of sub-rule (i) of Rule 1 in the schedule to the Principal Act, for the words 37 nP. per seat per year per mile the words Rs. 1.48 nP. per seat per year per mile and for the words Rs. 12.50 nP. per seat per quarter the words Rs. 50/- per seat per quarters shall be substituted and clause (b) of the said sub-rule for the words Rs. 22.50 nP. per month the words Rs. 45/- per month shall be substituted."

The validity of the Amending Act 21 of 1959 was challenged by means of writ petitions before the High Court. A Division Bench struck down the impugned provision as unconstitutional and ultra vires on the ground that since that Act imposed a restriction on the operators' freedom of trade and

commerce under Article 301 of the Constitution the previous sanction of the President was necessary under the proviso to Section 304(b) and because that had not been obtained the Act was legally inoperative : Venson Transport v. The State of Andhra Pradesh. ((1961) 1 AWR 351). Subsequently Act 34 of 1961 was enacted after the sanction of the President was obtained to the Bill under the proviso to Article 304(b). It validated two Acts, namely, Act 21 of 1959 and Act 22 of 1959 and also amended Act 16 of 1952 and substituted sub-section (3) of Section 3 of that Act by a new sub-section. If further validated the realisation of the tax paid or payable and the fee paid or payable and other action taken under Act 21 of 1959 and Act 22 of 1959. It empowered the Government to levy additional tax at the rate of Rs. 50/- per seat per quarter from May 8, 1959 to January 16, 1961. Thereafter from January 17, 1961 to November 3, 1961 the rate was fixed at Rs. 12.50 per seat per quarter. After the commencement of the Validating Act 34 of 1961 the rate was to be Rs. 37.50 per seat per quarter. This was to be operative till April 1, 1962 when the Act would cease to have any effect.

4. The validity and constitutionality of Validating Act 34 of 1961 were challenged by means of various petitions under Article 226 of the Constitution. It was sought to be contended before the High Court that the impugned legislation was not regulatory in character. The sole object was to augment the revenues of the State. This brought the statute within the mischief of Article 301 of the Constitution. The High Court was of the view that the question whether the statute was regulatory or compensatory was relevant in the context of Part XIII of the Constitution only in the event of non-compliance with the proviso to Article 304(b) of the Constitution. As the previous sanction of the President had been obtained in terms of the proviso such points could no longer be canvassed. The challenge on the ground of Article 14 before the High Court also failed. An argument was addressed that the impugned Act was repugnant to Article 19(1)(g) of the Constitution. The reasonableness of the restriction within the meaning of Article 304(b) also came up for consideration. The High Court, in the light of the facts and figures placed before it, held that the increase in surcharge of the fares and freights contemplated by the impugned Act did not constitute an impediment to the trade of the transporters and that the restriction in the shape of additional imposts was not unreasonable. It is unnecessary to refer to the other points agitated before and decided by the High Court.

5. Counsel for the appellant has urged the following points before us :

> (1) The impugned Act imposed a tax for augmenting the revenues of the State. It was neither regulatory nor compensatory in nature and it fell directly within the mischief of Article 301 of the Constitution.
>
> (2) Even though there had been compliance with the proviso to Article 304(b) in the matter of obtaining the requisite sanction it was open to the Court to go into the question of reasonableness both with reference to the aforesaid provision and Article (19)(1)(g), read with clause (6) of that Article. The Court was equally entitled to determine whether the imposition was in the public interest.
>
> (3) The impugned Act violated Article 14 of the Constitution and was discriminatory inasmuch as (a) it had not been made applicable to the Telengana area although it was applicable to the Andhra area and (b) the vehicles on inter-State routes on permits granted by other States had not been subjected to tax.

6. In order to decide these points the principles which have been settled by this Court with regard to Article 301 and Article 304(b) may be noticed. According to the majority view in Automobile

Transport (Rajasthan) Ltd. v. The State of Rajasthan & Others ((1963) 1 SCR 491) if a tax is compensatory in character it cannot be said to fall within the mischief of Article 301. Subba Rao, J. (as he then was), who concurred in the majority decision but delivered a separate judgment preferred to rest his view on the regulatory nature of such taxing statute as would escape the mischief of Article 301. In Khyerbari Tea Co. Ltd. and Another v. The State of Assam ((1964) 5 SCR 975) the difference between the view expressed in The Automobile Transport (Rajasthan) case ((1963) 1 SCR 491) and an earlier decision in Atiabari Tea Co. Ltd. v. The State of Assam and Others ((1961) 1 SCR 809) with regard to the scope and effect of the provisions of Article 304(b) was noticed. It was observed that according to the majority view expressed in Atiabari Tea Co. case ((1961) 1 SCR 809) if the Act is passed under Article 304(b) and its validity is impeached the State may seek to justify the Act on the ground that the restrictions imposed by it are reasonable and in public interest and in doing so it may rely on the fact that the taxes levied by the impugned Act are compensatory in character. On the other hand, according to the majority decision in the Automobile Transport (Rajasthan) case ((1963) 1 SCR 491) compensatory taxation would be outside Article 301 and cannot fall under Article 304(b). Since it was not urged that the tax was of a compensatory nature in Khyerbari Tea Co. Ltd. case ((1964) 5 SCR 975) this Court proceeded to examine whether the restrictions imposed by the statute impugned in that case were reasonable and in public interest within the meaning of Article 304(b). The effect of compliance with the provision of the proviso to Article 304(b) by obtaining the previous sanction of the President to the Bill was also considered and it has been laid down that notwithstanding the sanction the question of the restrictions being reasonable and in public interest is open to examination by the Court. The Act can be held to be valid only if it is shown that the restrictions imposed by it are reasonable and in public interest.

7. It has not been contended on behalf of the State that the impugned Validating Act imposes a tax which is by way of a regulatory or compensatory measure. It has, therefore, to be seen whether the restrictions imposed are reasonable and in public interest within the meaning of Article 304(b). Before the High Court an attempt was made on behalf of the appellants to show that by raising the rate of tax the burden had been increased to such an extent that the business of the appellants had been virtually annihilated. According to some of the affidavits filed on behalf of the writ petitioners, profits derived in recent years did not exceed an average of Rs. 2,000/- per stage carriage even without the additional burden which had been imposed and the transporters would suffer heavy losses if the tax as increased by the impugned legislation were to be realized. The High Court referred to the computation of the income by the Income tax department of some of the transporters in whose assessments the income in regard to each bus had been calculated at a figure of Rs. 7,000/- annually, which showed that the profits were much higher than Rs. 2,000/-. It was not disputed before the High Court that the transporters had been permitted to enhance the fares. If the fares could be enhanced it was obvious that the burden would not fall on the transporters. It was urged that owing to competition from the railways and from operators whose vehicles had been registered in the Madras State and who could charge lower rates the appellants were not in a position to collect extra fares which they had been permitted to do. This argument also cannot hold and was rightly repelled by the High Court on the ground that if the operators were not prepared to charge higher rates as a matter of policy or for the purpose of business competition that could not impinge on the reasonableness of the restriction. Apart from a faint attempt to repeat some of the arguments which were addressed before the High Court on this point nothing new has been brought to our notice which would justify the view that the tax which has been imposed exceeds the limits of permissible reasonableness. As regards public interest we are unable to find nor has any attempt been made to satisfy us that the provisions of the impugned Validating Act with regard to imposition of tax are not in public interest.

8. This is sufficient to dispose of the challenge under Article 19(1)(g) as well. We may in this connection refer briefly to the conclusion of the High Court which was reached on a consideration of the affidavits filed before it. It has been found that there is no material which would warrant the conclusion that the increase in the surcharge of the fares and freight contemplated by the impugned validating Act would constitute an impediment to the trade. The utmost that could be said was that it would result in the diminution of profits. Even on the assumption that the profits would be diminished or greatly reduced it cannot be held that there is any infringement of Article (19)(1)(g).

9. Coming to the attack on the ground of violation of Article 14 reference may be made to the background relating to taxation of passengers and goods carried in motor vehicles in the State prior to the formation of Andhra Pradesh. It appears that there was no law in the erstwhile Hyderabad State imposing any tax on passengers and goods. After the merger of Telengana and Andhra areas the laws in operation in the Telengana region continued to remain in force by virtue of the provisions of Section 119 of the States Reorganisation Act, 1956. By Act X of 1958 the State of Andhra Pradesh amended Act XII of 1952 inter alia extending that Act, to the Telengana area. This Act (Act X of 1958) also amended the principal Act by adding Section 19 according to which the Government could grant an exemption by means of a notification in respect of any motor vehicle running in a particular area. On November 4, 1961 a notification was issued exemption passengers, luggage and goods carried in stage carriages from payment of tax under the aforesaid Act within the Telengana area. There can be no manner of doubt that this exemption was given to the operators in the Telengana region for the reason that before the extension of the parent Act to this area no tax similar to the one levied under the parent Act was payable in that area and that this exemption was granted under a different enactment. It is apparent that for these reasons the challenge under Article 14 cannot succeed. The same is the position with regard to the tax payable by the appellants and that which the transporters having permits for inter-State routes have to pay. As has been pointed out in the affidavits filed on behalf of the State, the laws in the two States, Madras and Andhra Pradesh are different and persons having primary permits from Madras are naturally governed by the laws operating in that State. No question of discrimination can arise when taxes are being imposed under two different sets of laws in different States or geographical areas.

10. The appeals, therefore, fail and are dismissed with costs. One hearing fee.

</html