

A. S. Karthikeyan and Others

Vs

State of Kerala and Another

Guruvayur Bus Transport and Others

Vs

State of Kerala and Others

Writ Petitions Nos. 326 of 1972 and 203 of 1973

(CJI A. N. Ray, K. K. Mathew, P. N. Bhagwati, Y. V. Chandrachud, A. Alagiriswami JJ)

20.11.1973

JUDGMENT

RAY, C.J. –

1. These matters raise questions on the validity of legislative measures of levy and collection of tax on passengers and goods carried by stage carriages and public carrier vehicles. Stage carriages carry passengers and public carriers carry goods. The validity of the Kerala Motor Vehicles (Taxation of Passengers and Goods Amendment) Act, 1970 for the sale of brevity called Act 18 of 1971 as well as the Motor Vehicles (Kerala third Amendment) Act, 1971 for the sale of brevity called Act 34 of 1971 is challenged.
2. The petitioners in the writ petitions and the appellants in Civil Appeals are operators of stage carriages in the State of Kerala.
3. The questions which fall for consideration in these matters are these. First, does Act 18 of 1971 levy a tax on passengers or does it levy a tax on the income of operators ? Second is the retrospective validation of levy and collection of taxes by Act 18 of 1971 legal ? Third is it competent to the Legislature to amend Section 43 of the Motor Vehicles Act, 1939 called the 1939 Act by Act 34 of 1971 to include retrospectively tax within fare ?
4. Section 43 of the 1939 Act lays down that the State Government may, from time to time by notification in the Official Gazette, issue directions to the State Transport Authority regarding fixing of fares and freights for the stage carriages, contract carriages and public carriages. Section 44 (3) of the 1939 Act requires the State Transport Authority to give effect to such directions issued by the Government. It is in exercise of these powers that the fare structure for stage carriages is fixed from time to time.
5. The State of Kerala came into existence with effect from November 1, 1956 by the Reorganisation of States comprising the Malabar area of the former madras state and the Travancore-Cochin area. The fare structure in force in the malabar area as on November 1, 1956 was 3.90 P. per mile and the minimum fare was 31 P. for distances less than 8 miles. The fare

structure in Travancore-Cochin area prior to November 1, 1956 was 3.90 P. per mile and the minimum was 19 P. There was a difference only in the minimum fare between Malabar and Travancore-Cochin areas.

6. In 1958 the difference between the minimum fare of the two was eliminated. The Kerala Government on April 15, 1958 increased the rate of fare to 4 P. per mile and the minimum fare was 16 P.

7. Prior to July 1, 1963 there was no provision for the levy of tax on passengers and goods in the Travancore-Cochin area. In the Malabar area the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 was in force over and above the madras Motor Vehicles Taxation Act. In the Travancore-Cochin area there was only the Travancore-Cochin Vehicles Taxation Act 12 of 1950. The incidence of tax on stage carriages and public goods carriages was the same after the information of the Kerala State in 1956. In the Malabar area a tax of Rs. 25 seat per quarter was levied under the Motor Vehicles Taxation Act and a compounded rate of Rs. 12.50 per seat per quarter under the Motor Vehicles (Taxation of Passengers and Goods) Act. The aggregate of the two taxes in the Malabar area was Rs. 37.50 per seat per quarter in respect to stage carriages. In the Travancore-Cochin area the rate of vehicles tax under the Vehicles Taxation Act was Rs. 37.50 per seat per quarter equal to the total incidence of tax in the Malabar area for stage carriages.

8. The fare structure throughout the Kerala State after 1958 was 4 P. per mile and the minimum was 16 P. In 1961 the Government of Kerala continued the fare at 4 P. per mile but reduced the minimum from 16 P. to 10 P.

9. In this background, the Government of Kerala on consideration of proposals made by the Transport government decided in the month of February, 1963 first to increase the motor vehicles tax throughout the State; second, to introduce tax on passengers and goods throughout the State; and third, to increase the fare structure suitably for stage carriages. The incidence of tax at Rs. 37.50 per seat quarter prevalent in the Kerala State was low compared to the incidence of vehicle tax in the three neighboring States of Madras, Mysore and Andhra Pradesh. In madras, the total incidence of vehicle tax per seat quarter was Rs. 40 and composition fee under Taxation of Passengers and Goods Act was rs. 25 aggregating Rs. 65 in 1962. In Mysore, the rate was Rs. 57.50 per seat quarter comprising vehicle tax and composition fee under Taxation of Passengers and goods Act. In Andhra Pradesh, the total comprising the taxation of passengers and vehicle tax was Rs. 67.50 in 1963.

10. In 1963 the Kerala Motor Vehicles (Taxation of Passengers and goods) Act, 1963 for the sake of brevity called Act 25 of 1963 was enacted. Section 3 of the Act 25 of 1963 provided that "there shall be levied and paid to the government a tax on all passengers, luggage and goods carried by stage carriages and on all passengers, luggage and goods carried at the rate of 10 P. in the rupee on the fares and freights payable to the operators of such stage carriages and at the rate of 5 P. in the rupee on the freights payable to the operators of such public carrier vehicles". The Act, 5 of 1963 was published on April 15, 1963 in the Kerala Gazette Extraordinary and was brought into force with effect from July 1, 1963. The Act 25 of 1963 contained assessable on him in circumstances and conditions mentioned therein. The operator is required to submit returns in prescribed forms. The operator is to pay tax every month. There are provisions for assessment, penalty, production of accounts.

11. The State government of Kerala published a draft notification on March 4, 1963 for revising the fare structure. After hearing the representations and objections of the operators and the public, the

final notification was issued on June 13, 1963 and was published in the Gazette on June 18, 1963. By this notification, the fare was fixed at 3 P. per kilometre and the minimum fare was fixed at 20 P.

12. The rate of tax under the Kerala Motor Vehicles Taxation Act, 1963 was fixed at Rs. 35 per seat per quarter in respect of vehicles where the total distance permitted to be operated did not exceed 200 kilometers and Rs. 40 in respect of vehicles where the total distance permitted to be operated per day exceeded 200 kilometers. The composition fee payable under Act 25 of 1963 was fixed at Rs. 25 per seat per quarter. Therefore, the total incidence of the two taxes under Motor Vehicles Taxation Act and the Taxation of Passengers and Goods Act was Rs. 60 per seat per quarter for vehicles not operating in excess of 200 Kilometers a day and Rs. 65 per seat per quarter in respect of vehicles operating in excess of 200 kilometers a day.

13. As a result of Act 25 of 1963, the fare structure with effect from July 1, 1963 was 3 P. per kilometre and the minimum was 20 P. Prior to July 1, 1963, the rate of fare was 2.5 per kilometre and the minimum was 10 P.

14. After the fixation of fare structure on July 1, 1963 there were repeated representation from operators to increase the fare and representations from the public for reduction of the minimum of 20 P. A Transport High Level committee was constituted with Shri C. M. Mathew that there was no need to raise the fare structure but it recommended a reduction of the minimum fare from 20 P to 10 P. Presumably pursuant to the recommendation a notification was issued on April 24, 1964 reducing the minimum from 20 P. to 10 P.

15. From the years 1963 to 1966, the operators paid to the Government taxes under Act 25 of 1963. The operators collected tax on passengers and goods.

16. But in 1966 the operators agitated for enhancement of fare. Eventually the operator went before the Kerala High Court. The operators challenged Act 25 of 1963. The main contention of the operators was that Act 25 of 1963 imposed the tax not on the passengers or consignors of the goods but on the operators who carry the passengers or the goods. The decision of the Kerala High Court in E. A. Thomman & Ors. v. The Regional Transport Officer, Ernakulam & Anr. was on March 4, 1968. The High Court held that the tax is a tax on the passengers and goods. The High Court expressed the view that there was no satisfactory provision for the collection of the tax from the passenger as tax specifying the quantum calculated and computed on the basis of the provision of the Act.

17. Soon after the decision in Thomman case (supra), the State Government issued a notification dated April 29, 1968 and published at on April 30, 1968. This notification was to the effect that the fare with effect from July 1, 1963 was inclusive of the tax leviable under Act 25 of 1963. There was also a draft amendment to the Kerala Motor Vehicles (Taxation of Passengers and Goods) Rules, 1963. A new rule numbered Rule 3 (2) was inserted. That new rule was to the following effect :-

"The fares and freights collected from the passengers of goods in the case may be may include in it, such proportion of the tax as is payable under Section 3 of the Act and the prescribed authority while making the assessment under sub-rule (i) shall calculate the tax due to the Government under the Act from the fares and freights on the same proportion."

18. The purpose of the 1968 notification was that the fare already fixed and which was effective

from July 1, 1963 was inclusive of the tax and that such tax was being collected from the passengers and the consignors of the goods.

19. The 1968 notification was also challenged in the Kerala High Court. The government represented that no tax would be collected without complying with directions in Thomman case (supra). On this representation of the State, the Kerala High Court dismissed the writ petitions.

20. Thereafter a bill was introduced in the Assembly to amend Act 25 of 1963. The Bill was published in the Gazette on August 11, 1969. The Bill was to have come up for consideration on January 9, 1970. It was not taken up for consideration on that day. Instead an Ordinance (Ordinance No. 1 of 1970) was promulgated on January 4, 1970 introducing amendments to Act 25 of 1963. This 1970 Ordinance was challenged in the Kerala High Court. On January 19, 1970 the High Court passed an order that "collection of tax under Act 25 of the 1963 as amended by Ordinance 1 of 1970 is stayed in respect of the period prior to its publication in the Kerala Gazette on January 5, 1970 to the extent operator has not collected the same during the said period". The operators resolved to collect 10 per cent extra over the face from the month of January, 1970. The Transport Commissioner asked them not to do so. On February 2, 1970 a conference was held by the Minister of Transport. The operators agreed that no enhanced amount would be collected by them passing the decision of the Kerala High court. The government issued instructions on February 24, 1970 that until further orders from the government "the operators shall not be required to pay the tax under Act 25 of 1963 for the period from January 5, 1970 in rendering services in respect of the concerned vehicle such as issue and renewal of permits etc".

21. The impugned Act 18 of 1971 was passed by the Legislature on February 28, 1970 and received the assent of the governor on June 1, 1971. Act 18 of 1971 introduced two sub-sections to Section 3 of the Act 25 of 1963. Act 18 of 1971 was enacted to clarify the position with regard to levy of and collection of taxes from passengers and consignors of goods in accordance with the observations of the Kerala High Court in Thomman case (supra). The High court observed in that case that provision should be made for the collection of the tax from the passenger as tax specifying the quantum calculated and computed on the basis of provision in the Act. The High Court also observed that the tax would be payable to the operator who was liable to pay the same to the State. It is in the background that 25 of 1963 was amended by Act 18 of 1971. Act 25 of 1963 contained inter alia the provisions that "there shall be levied and paid to the Government a tax on all passengers, luggage and goods. " This provision was amended by Act 18 of 1971 by substituting the words "there shall be levied a tax" in place of the words "there shall be levied and paid to the government a tax". The result of the amendment was that "there shall be levied as tax on all passengers, luggage and goods". The former wording of Section 3 that "there shall be levied and paid to the government a tax on all passengers, luggage and goods" was said by the High Court to

22. The two new subsections introduced to Section 3 by Act 18 of 1971 are first that the tax levied under sub-section (1) shall be paid by the passengers or the consignors of the goods as the case may be to the operators along with the fares or freights payable to the operators of the stage carriages or the goods vehicles. The second introduction is that the operator shall be liable to pay the tax levied under sub-section (1) on all passengers, luggage or goods carried by stage carriages and on all goods carried vehicles of which he is the operator to the government in the manner provided in this Act.

23. The other provisions in Act 18 of 1971 is validating section which is as follows :-

"Notwithstanding any judgment, decree or order of any court, all taxes levied or

collected or purported to have been levied or collected under the Principal Act before the date of commencement of this Section shall be deemed to be and to have always been levied or collected in accordance with law as if Section 3 of the principal Act as amended by this Act was in force at all material times when such a tax was levied or collected, and no such levy or collection shall be called in question or purported to have been levied but not collected may be collected in accordance with the provisions of the principal Act as amended by this Act :

Provided that nothing in this Act render any person liable to be convicted of any offence of anything done or omitted to be done by him before the 5th day of January, 1970 if such act or omission was not an offence under the principal Act before the aforesaid date but for the provisions of this Act."

24. The validating Section in Act 18 of 1971 stated that taxes levied or collected shall be deemed to be and to have always been levied or collected in accordance with law as if Section 3 of Act 25 of 1963 and amended by Act 18 of 1971 was in force at all material time. The validating Section became necessary to render levy as well as collection lawful.

25. Act 18 of 1971 received the assent of the Governor on June 1, 1971. On the same day, Ordinance No. 15 of 1971 was passed. This Ordinance was replaced by Act 34 of 1971. Act 34 of 1971 effected two principal changes. First it amended Section 43 of the Motor Vehicles Act, 1939 by adding subsection (1-A) to Section 43 of that regarding the fixing of fares and freights prospectively or retrospectively might provide by passengers or consignors of goods". The other change effected by Act 34 of 1971 is that it validated inter alia the direction relating to fares issued on or after March 1, 1963 or thereafter to be inclusive of the tax payable under Act 25 of 1963.

26. The challenge by the operators to the validating Sections in Act 18 of 1971 and Act 34 of 1971 is primarily based on the ground that the operators did not and could not collect tax from the passengers because the fare fixed with effect from July 1, 1963 did not include the tax imposed by Act 25 of 1963. The other challenge is that the directions issued by the State government before the amendment of Section 43 of the 1939 Act about fixing of fare did not include tax and, therefore, retrospective validation of fare to be inclusive of tax was to levy tax on fare.

27. The three principal contentions on behalf of the operators with regard to the legality of Acts 18 and 34 of 1971 are these. First the impugned provisions amount to a tax not on passengers and goods but not on the income of operators. Second, the impugned provisions as to retrospective validation of levy and collection are a tax on amounts fare and fare alone. Third the retrospective validation is unreasonable because the operators are made liable for tax which they did not in fact collect. All these contentions turn on the question as to whether tax was included as an element in the fare, which became effective from July 1, 1963.

28. The question whether the statutes, viz., Act 25 of 1963 and Act 18 of 1971 impose a tax on passengers and owners of goods or is a tax on the income of operators has been rightly held by the Kerala High Court in Thomman Case (supra) and this case to be a tax on passengers and goods. The Court in Messrs. Sainik Motors, Jodhpur & Others v. the State of Rajasthan construed the Rajasthan Passengers and Goods Taxation Act, 1959 and held that the incidence of the tax was upon passengers and goods and not upon the income of the operators of state carriages though "the measure of the tax is furnished by the amount of fare and freight charged". The power to enact such legislative measure is derived from Entry 56 of the State List. The Entry provides "Taxes on goods

and passengers carried by road or an inland waterways". In Sainik Motors case (supra) Section 3 provided "there shall be levied charged and paid to the State government a tax on all fares and freights in respect of passengers carried and goods transported by motor vehicles at such rates which are thereafter set out". Section 4 in Sainik Motors case (supra) provided that the "tax should be collected by the owner of the motor vehicles and paid to the State government in the prescribed manner". Though there is no comparable provision in the present case to Section 4 in Sainik Motors case (supra) as to method of collection of tax the various provisions like levy and payment before amendment of Section 3 and levy and collection after amendment of that Section, composition of tax in Section 4, submission of return in Section 5, procedure where no payment is made in Section 7, fares and freights escaping assessment in section 8, penalty for non-payment of tax in Section 9 indicate that the tax is on passengers and owners of goods and the operators collect the tax. It is obvious that when passengers and owners of goods pay the tax the government requires an agency to collect such tax because these taxes are payable to the government. The operators of stage carriages and public carriers are agents of the government to collect these taxes. The composition of tax which is allowed to operators also shows that it is a tax on passengers and owners of goods and the composition is a convenient mode of payment by operators who collect the tax.

29. The agitation of the operators for increase of fare which had been going on particularly since the year 1966 led to the formation of two committees for investigation into that question. One of the committees was with Sri S. K. Sankaran, a retired chief Justice of Kerala High Court as chairman and the other committee was with the Minister of Revenue and Labour as chairman. The Government on consideration of the recommendation of these committees revised the rate of fare with effect from October 15, 1971. The rate of fare was raised from 3 P. per kilometre. The minimum fare which had been fixed on July 1, 1963 at 20 P and reduced to 10 P on April 24, 1963 was raised to 20 P with effect from October 15, 1971. The government considered revision of fare on account of several factors.

30. The operators paid to the government taxes on passengers and goods from July 1, 1963 up to the month of July, 1966. The operators have also been paying to the government taxes on passengers and goods from October 15, 1971. The entire controversy between the operators on the one hand and the State on the other is for the period July, 1966 to October 14, 1971.

31. The heart of the matter is whether tax was included in the fare and, therefore paid by passengers particularly in the disputed period between July 1966 and October, 1971. If no tax has in fact been paid between July 12, 1966 and October, 1971. If no tax has in fact been paid by passengers or owners of goods the retrospective validation by Acts 18 and 34 of 1971 of levy and collection of tax and retrospective inclusion of tax within fare could be contended to be unreasonable unworkable and unconscionable according to the operators.

32. To say whether the liability imposed by the Act had or had not been absorbed by the increase of fare with effect from July 1, 1963. The provision in the Act is that there shall be a tax at the rate of 10. P in the rupee on the fares and freights payable to the operators of stage carriages and at the rate of 5 P. in the rupee on the freights payable to operators of public carriers vehicles. The machinery for the collection of the tax is the same as for the collection of the fare. The provision of tax at the rate of 10 P in the rupee as also 5 P in freights. There is no difficulty in ascertaining the quantifying the tax collected by the operator with the fare from the passengers. To illustrate if the fare paid is 110 paise the tax levied is 10 paise. The fare to the appropriated by the operator is 100 paise and the tax of 10 paise is collected by the operator and paid to the Government.

33. The contemporaneous evidence on the question whether the State Authorities at the time of fixing the fare in the month of July, 1963 included the tax imposed under Act 25 of 1963 within the fare fixed is furnished first by the letter of the director of Transport dated April 2, 1963, second by the representation of the operators dated April 3, 1963 and third by the notes of hearing prepared by the Secretariat under the heading "Motor Vehicles Stage Carriages Fare Revision File".

34. The Director of Transport in his aforementioned letter set out in paragraph 2,3 and 4 thereof as follows :

"2. At the existing rate of fares, the earning per mile (E.P.M.) worked out for the year 1962-63 comes to 123 P. The present proposal to increase the basic rate as 3 P per head per kilometre will result in about 20 per cent increase in the rate of fares. From the actual figures of the previous years the Department could expect only about 8 per cent in the E.P.M. from the services at the proposed rate of fares. Thus 133 P seems to be a fair estimate of the E.P.M. which the department expect to get for the year 1963-64 after the fair increase.

3. As against the increased E.P.M. of 133 P. the expenditure worked out will come to 130 P. per mile. The increased operational cost is estimated by the Department taking into account the enhanced rate of vehicle tax, the new imposition of passenger tax under the T.P.G. Act and such other duties. Consequent to the proposed levy of tax on passenger, there will be more than 60 per cent increase in the rate of tax to be paid by the department. All these factors were taken into consideration in estimating the operational cost.

4. No doubt the increased rate of tax, the levy of passenger tax and such other duties reduce the profit margin and the return on capital outlay to a considerable extent. Despite the incidence of higher rate of tax, levy of passenger tax and other duties, I feel that the Department could still operate its services profitably at the rate of fares contained in the draft the expenditure per mile could be by 2 to 3 P per mile and the earnings increased by rationalisation of services. So further enhancement of fare is unnecessary".

35. The statements in the letter of the Director of Transport indicate that the increased operational cost was estimated and considered by the Department after taking into account the enhanced rate of vehicles tax, the new imposition of the passenger tax and other duties.

36. The representation of the operators was in answer to draft directions contained in notification dated March 4, 1963 containing proposals to revise the face rates. The draft notification proposed maximum fare at the rate of 3.75 P. per head per kilometre as a services in the case of Ghat roads and 3 P. per head per kilometre as a maximum fare for ordinary services in the case of the other roads. The operators set out the wide disparity between the increase in operational cast on the one hand and the inadequacy of the proposed fare rates on the other. The operators estimated their daily expenses under several heads. One of the heads estimated by the operators was "increase in tax at the revised rate as envisaged by State budget". That is referable to tax on passengers and goods. The operators stated that the maximum fare should be raised to 3.5 per Kilometre. This was after taking into account the tax element.

37. The representation of the operators shows that the tax on passengers and goods was one of the

elements in the fare structure. This becomes apparent in the hearing notes of the Carriage Fare Revision file prepared by the Secretariat. It was calculated that the proposal to increase from the existing fare of 2.5 P. per kilometre to 3 P. per kilometre would bring an additional income of Rs. 40 per day for an ordinary bus of 40 seats operating 200 kilometres per day. The occupation ration the average additional income worked at rs. 30 per vehicle of 40 seats. The existing motor vehicles tax per seat per quarter at the time of the fixation of fare was Rs. 37.50 per seat per quarter. The then proposed enhanced tax on vehicles was at Rs. 60 per seat per quarter. The existing motor vehicles tax worked at 41. 6 P per day. The enhanced tax worked at 41. 6 per day. The enhanced tax worked out 66. 6 P per day. The increase in motor vehicles tax would impose an additional tax burden of 25 P. per seat per day. The increase in motor vehicles tax would be at Rs. 10 per bus of 40 seats a day. The additional cost of operation on account of increase in cost of fuel spare parts came to 12 P. per mile or 8 P per kilometre. The operational cost of a bus of 40 seats came to Rs. 16 per day. The total additional cost per day of a bus of 40 seats on account of vehicles tax and cost of fuel and spare parts came to rs. 26. The additional income as already indicated came to Rs. 30 per day. Therefore, the operator was not hit by the proposal for taxation which was taken into consideration. The operators and the Chairman of the State Transport Board demanded further of fare is ample proof of the fact that the incidence of the increase in the rate of fare. The entire evidence at the time of the fixation of fare is ample proof of the fact that the incidence of the increase in motor vehicles tax, the increase in tax liability on account of tax on passengers and goods, and additional cost of operation on account of increase in cost and spare parts were all taken into consideration in fixing the fare with effect from July 1, 1963.

38. Counsel on behalf of the operators contended that Act 34 of 1971 imposed a new levy for these reasons, fares were formerly exclusive of tax. As a result of Act 34 of 1971, fares were made inclusive of tax. The character of the fare was altered by retrospective piece of legislation. A deeming provision subjected the amount collected by operators as fare to a deduction of tax. Reliance was placed on the decision of this Court in *Rai Ramkrishna & Others v. the State of Bihar* in support of the contention that the character of the tax was altered by its retrospective operation.

39. In *Rai Ramkrishna* case (supra) the Bihar finance Act 1950 levied tax on passengers and goods carried by public motor service in Bihar. The owners of motor vehicles challenged the validity of the Act. The Act was struck down by this Court. The State thereafter issued an Ordinance. The provisions of the Act which had been struck down by this Court were validated and brought into force retrospectively by the Ordinance from the date when the earlier Act had purported to come into force. The provisions of the Ordinance were thereafter incorporated in the Bihar Taxation on Passengers and goods Act, 1961. The validity of the Act of 1961 was challenged. The owners of vehicles contended there that retrospective operation completely altered the character of the tax proposed to be retrospectively recovered.

40. The contention in *Rai Ramkrishna* case (supra) were two fold First retrospective recoveries did not have legislative competence. Second the owners could not recover tax from passengers carried by them between April 1, 1950 and the date of the retrospective validation of the Act in 1961. Therefore, the tax was unreasonable. It may be stated here that future recoveries were not challenged in that case. As a matter of fact, the right to make future recoveries was conceded. In the present case the prospective future recoveries are also not challenged. The challenge is confirmed to retrospective validation only.

41. This court said in that case "If the scheme of Section 3 for the levy and recovery of the tax is valid under Entry 56 of List II so far as future recoveries are concerned, it is not easy to see how it

can be said that the character of the tax is radically changed in the present circumstances because it would; be very difficult if not impossible for the owners to recover the tax from the passengers whom he has carried in the past. The tax recovered retrospectively like the one which will be recovered prospectively still continues to be a tax on passengers and it adopts the same machinery for the recovery of the tax both as to the past as well as to the future". 42. The decision in Rai Ramkrishna case (supra) does not support the contention of the operators. The decision on the other hand shows that tax recovered retrospectively as well as recovered prospectively is the same tax. The character of the tax is not altered. The position is identical in the present case.

43. The contention of the operators is fallacious of these reasons. No tax is imposed or collected under Act 34 of 1971. The tax is imposed by Act 25 of 1963. The character as well as incidence of the tax is determined by Act 25 of 1963. The machinery for collection of the tax which was implicit in Act 25 of 1963 was made explicit by act 18 of 1971. The State Government under Chapter IV of the Motor Vehicles Act, 1939 having regard to various factors mentioned in Section 43 (1) of the 1939 Act issues directions to the State Transport Authority relating to the fixing of fares and freights including the maximum and minimum in respect thereof for stage carriages, contract carriages and public carriers. The provisions of Act 34 of 1971 are that while fixing the fares, the Government may take into account the tax, if any payable by the passengers or consignors of goods to the operators under any law dealing with the matter. Under Section 44 of 1939 Act, the State Transport Authority shall give effect to the directions issued by the State Government under Section 43 of the Act. Fare could be fixed either exclusive or inclusive of Tax. The State government fixed the fare on July 1, 1963 after taking into account the element of tax on passengers and goods imposed by Act 25 of 1963. The operators in collecting fare from passengers in fact collected the tax due from passengers under Act 25 of 1963 along with the fare. Section 43 (1-A) of the Motor Vehicles Act, 1939 was, therefore, introduced with retrospective effect to clarify the factual basis. There was neither imposition of the character of the tax which had already been imposed. In the present case, the principal Act 25 of 1963 levied the tax. Acts 18 and 34 of 1971 were for the purpose of dispelling doubts expressed in Thomman case (supra).

44. In the recent decision in S. Srikantiah & Others v. The Regional Transport Authority Anantpur & Others this Court considered the validity of a notification under Section 43 of the Motor Vehicles Act, 1939. The Madras Vehicles (Taxation of Passengers and Goods) Act, 1952 became applicable to Andhra Pradesh. In 1959 the Andhra Pradesh Legislature enacted the Motor Vehicles (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act. BY that amendment the rates were increased. The State Authority was directed by the Government to fix maximum fares inclusive of the leviable tax under the Act for the State carriages. The Andhra Pradesh Amendment Act was challenged. The Andhra Pradesh High Court struck down the Act as unconstitutional. The Legislature thereafter passed a validating Act in 1961. The operators again questioned the Amendment Act on the ground that they had not collected the fare on the enhanced rate fixed by the Transport Authority. The contention in that case was that the enhanced surcharge which became operative on coming into force of 1961 Act could not be sustained without amending the conditions of the permit dealing with the fares leviable by the operators. This Court held that the notification under the Motor Vehicles Act in that case issued under Section 43 of the Act fixing the maximum fare inclusive of the tax leviable as a condition of permit. Therefore, it is competent to the Legislature to amend the Motor Vehicle Act by enacting that directions regarding fares can be inclusive of tax.

45. The arguments advanced on behalf of the operators fail in view of the cardinal fact that tax was an element included in the fare structure. The retrospective validation cannot be said to be unjust

because the operators collected the entire amount. The tax has always been paid by passengers and owners of goods. The tax is not on the income of the operators. There was and is no lack of machinery for collection of the taxes. The operators collected tax as well as fare. The directions regarding fare were validated by Act 34 of 1971 by reason of the litigation between the operators and the State.

46. For these reasons, the contentions of the operators fail. The petitions and appeals are dismissed. The decision of the Kerala High Court in civil Appeal No. 1875 of 1972 and other appeal is upheld. In view of the fact that the High Court directed the parties to bear their respective costs, parties will bear their own costs in these matters.

</html