B. A. Jayaram and Others

Vs

Union of India and Others

D. P. Sharma and Others

Vs

Union of India and Others

Civil Writ Petitions Nos. 1854-60, 1868, 3929, 2008 and 2328 of 1981; 2125, 2224, 2829, 2858, 2859, 4920-4923, etc. of 1982 and 5356-64, 531-532, 533-534, 377-378, 535, 8347-48 etc. of 1983 and special leave petitions nos. 11243-46 of 1983

(D. A. Desai, O. Chinnappa Reddy JJ)

12.08.1983

JUDGMENT

CHINNAPPA REDDY, J :-

1. Prior to 1969 there was no concept of what may be termed as an 'All-India Permit' which would be valid for the whole of India and which would enable the holder of the permit to ply his contract carriage throughout India. Section 63(1) of the Motor Vehicles Act, provides that, except as may be otherwise prescribed, a permit granted by the regional transport authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the regional transport authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the regional transport authority concerned. The procedure prescribed for obtaining the counter - signature of the transport authorities of other regions and States was cumbersome and was not conducive to the development of all-India or inter-State tourist traffic. In order to remedy the situation and promote all-India and inter-State tourist traffic, the Parliament amended the Motor Vehicles Act and introduced Section 63(7) by amending Act 56 of 1969. This new provision enables the State Transport Authority of every State to grant permits valid for the whole or any part of India, in respect of such number of tourist vehicles as the Central Government may, in respect of that State specify in that behalf. Preference is to be given, to applications for permits from the Indian Tourism Development Corporation, a State Tourism Development Corporation, a State Tourist Department and such operators and tourist cars or such travel agents as may be approved in that behalf by the Central Government. This was but the first basic step towards encouraging all-India or inter-State tourist traffic. There were other hurdles to be cleared before any scheme for granting all-India permits could be effectively implemented. One of the hurdles was this : Under Entry 57 of List II of the Seventh Schedule to the Constitution, the State Legislature is empowered to levy "Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III". Entry 35 of List III reads : "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied". A coherent reading of Entry 57 of List II and Entry 35 if the List III makes it abundantly

clear that the power to levy taxes on vehicles suitable for use on roads vests solely in the State Legislature though it may be open to the Parliament to lay down the principles on which taxes may be levied on mechanically propelled vehicles. In other words the Parliament may lay down the guide-lines for the levy of taxes on mechanically propelled vehicles but the right to levy such taxes vests solely in the Legislature. Now there are twenty-two States and nine Union Territories in India, specified in the First Schedule to the Constitution. Each of the States has the right, within its territory, to levy a tax on motor vehicles. If a tourist vehicle holding an 'All-India Permit' under Section 63(7) of the Motor Vehicles Act chooses to visit half a dozen States in the course of a round trip from, say, Delhi to Kanyakumari or Srinagar to Hyderabad tax will ordinarily have to be paid in all the half a dozen or so States. The burden will surely be intolerable and the whole object of Section 63(7), namely promotion of all-India or inter-State tourist traffic will be frustrated. The Central Government was alive to the problem and referred the matter to the Transport Development Council for its advice. The Transport Development Council is a non-statutory body constituted by the Central Government and consists of the representatives of the Governments of all the States. The Transport Advisory Council advised the Central Government that there should be single-State taxation on tourist vehicles holding permits under Section 63(7), that is, tax should be paid in the 'home State' and the vehicle should be exempted from payment of tax in States other than the home State. This could be done by the respective State Governments issuing notifications under their taxation legislation exempting tourist vehicles registered in other States from payment of tax, if tax has already been paid in the home State. The Government of India accepted the suggestion and requested the State Governments and Union Administrations to issue necessary notifications. The suggestion ran into trouble right from the start. While the Governments of Andhra Pradesh, Bihar, Goa, Daman and Diu, Maharashtra, Nagaland and Uttar Pradesh readily agreed to issue such notifications on the basis of reciprocity, there was no such ready response from some other States. The Government of Karnataka was in particular opposed to the grant of any such exemption. Finally, the Government of Karnataka and the Governments of other States too were persuaded to agree to issue such notifications. In the meanwhile the Government of India, in exercise of its power under Section 63(7) of the Motor Vehicles Act, issued notifications specifying the number and class of tourist vehicles in respect of which each of the State Transport Authorities of the States could grant all-India permits. The last of the notifications specified that each State Transport Authority could issue 50 permits for tourist omnibuses.

2. Pursuant to the request of the Central Government to which all the State Governments finally agreed, notifications were issued exempting tourist vehicles holding permits under Section 63(7) from payment of tax, if tax had been paid in the home State. We are particularly concerned in these cases with the notifications issued from time to time by the Government of Karnataka, since that is where the trouble started. The first of the notifications issued by the Government of Karnataka was on September 18, 1972 and it exempted, from payment of taxes payable under the Karnataka Motor Vehicles Taxation Act, 1957, tourist motor cabs and tourist omnibuses registered in the States other than the State of Karnataka done plying in the State of Karnataka under permits which were valid without counter-signature in the State of Karnataka, provided that the tax payable in respect of such vehicles had been paid to the State in which the vehicles were registered and provided further that the said State granted similar exemption to tourist motor cabs and tourist omnibuses whose permits were endorsed in the State of Karnataka under Rule 123-A of the Karnataka Motor Vehicles Rules. On July 15, 1976, the Government of Karnataka issued a notification reducing the tax payable under the Motor Vehicles Taxation Act, 1957, in respect of tourist vehicles for which permits had been issued under Section 63(7) or endorsement granted under Rule 123-A of the Karnataka Motor Vehicles Rules. On December 20, 1976, a further notification was issued in partial modification of

the earlier notification dated September 18, 1972. Exemption from payment of tax was given to tourist motor cabs and tourist omnibuses registered in States other than the State of Karnataka and plying in the State of Karnataka under the authority of a permit granted under Section 63(7), provided that the tax payable in respect of the vehicle to the State in which it was registered had already been paid and provided further that similar exemption from payment of tax was granted in respect of similar vehicles of the State of Karnataka.

3. This scheme for the grant of 'All-India Permits' designed as it was to promote all-India and inter-State tourist traffic, soon fell into abuse at the hands of scheming transport operators. Within the scheme itself lay the seeds for abuse. The scheme enabled the State Transport Authority of each State, to issue fifty all-India permits, uniformly, irrespective of the size of the State, its recourses, its accessibility, its communications, its facilities, the availability of transport services and operators in the State with the necessary expertise, experience and finance to operate all-India tourist services and a host of such other factors. Apparently it was thought undesirable to make a distinction between State and State on what were perhaps thought to be elusive criteria and possibly the scheme was expected to give a boost to the transport business in the smaller and less advanced States. And, of course, it was necessary to obtain the agreement and cooperation of all the States. But, the result was that transport operators from big and comparatively prosperous and advanced States, well versed in the intricacies of the transport business very soon flocked to small and comparatively poor and less advanced States like Manipur and Nagaland to apply for and obtain all-India permits from the State Transport Authorities of those States. It is conceded before us that a large number of persons holding all-India permits from some of these small States do not belong to these States at all, but are transport operators coming from far off States. Another factor which appears to have influenced the flocking of transport operators from other States to States like Nagaland and Manipur is the nationalisation of contract carriage service in States like Karnataka. Once the permits were obtained and the vehicles were registered, these small States saw the last of the operators. Having obtained the permits, the operators with their vehicles flocked back to the parent State of the operators (not of the vehicles) or to a State like Karnataka where all contract carriages having been nationalised no private contract carriage was available and there was therefore a great opportunity to ply the vehicles as contract carriages within the State.

4. States like Karnataka were swamped by tourist vehicles from all over the country, registered in other States. These tourist vehicles practically 'colonised' Karnataka and like States and started operating more or less as stage carriages within the particular State, never and rarely if ever, moving out of the State. There was no thought or question of undertaking all-India or inter-State tours, and out went the worthy object of Section 63(7). Quick and easy money with the least trouble and in the shortest time, by whatever method, was the only object. In the counter-affidavit filed on behalf of the State of Karnataka in some of the writ petitions, it is stated :

Though the vehicles were registered outside the State of Karnataka, they have been permanently stationed in the State of Karnataka and particular at Bangalore, and the vehicles were all being plied as stage carriages. Though All-India Tourist Permits were obtained by the residents of other States, the permits were used by taking the vehicles and keeping them in the State of Karnataka. The operators run their tourist buses at fixed timings from particular place like the stage carriages operated by the Karnataka State Road Transport Corporation (hereinafter called the KSRTC) and other private stage carriage operators. On checking of the vehicles and verification of the passengers, it was found that the passengers found in the vehicle were not genuine tourists and the drivers or the persons in charge of the vehicles were not in a position to produce the trip sheet, name list with whom they entered into contract. It was also found that the passengers found in the vehicles

had boarded the buses from one point without any contract or otherwise and without they being tourists. The passengers found in the tourist buses were regular passengers going from one place to another for purposes other than tourism. These vehicles were found catering to the needs of general travellers who can make use of the stage carriages operated by the KSRTC, or other private stage carriage operators. The respondent produces herewith statements as Annexures 1 to 9 showing the clandestine operation of the vehicles covered by All-India Tourist Permits, the remarks and irregularities noticed by the Motor Vehicles Inspectors while checking the vehicles covered by All-India Tourist Permits, the frequent detection of these vehicles running as stage carriages by collecting individual fares and picking passengers from one point and setting down them at another point and bringing different passengers in the return journey. From the statements enclosed, it is clear that the operators of the tourist buses covered by All-India Tourist Permits have misused the tourist buses by running them as regular stage carriages, competing with the KSRTC buses and other private stage carriages within the State. As a result of indiscriminate misuse of the vehicles as stage carriages even though the permits were obtained under Section 63(7) of the Central Act for tourism, the State Government has suffered considerable loss in Revenue. These buses actually made use of the passengers which would have normally gone to the KSRTC buses and other private carriages. The very object of obtaining permits under Section 63(7) of the Central Act, which intended to promote tourism has been misused by these operators of the tourist buses by playing their vehicles regularly as stage carriages. Most of the permits obtained under Section 63(7) of the Central Act in the States other than the State of Karnataka are made use of for the purported use of running the tourist buses, but actually the permits were misused to run the tourist vehicles either as stage carriages or as contract carriages.

A survey made by the Transport Commissioner of Maharashtra revealed a similar state of affairs. The Transport Commissioner submitted a report to the Government of Maharashtra, a copy of which has been made available to us. It is stated in the report :

Our estimate is that out of these 1300 permits anything between 300 to 400 buses are operating in Maharashtra with Bombay as the main centre. Most of these buses for all practical purposes operate as stage carriage services masquerading as contract carriages. In Maharashtra the ordinary passenger transport by stage carriages and contract carriages has been completely nationalised. The all-India tourist buses on the other hand are exploiting the loopholes available in the law and operate point to point passenger services on routes where the volume of traffic is heavy viz. routes like Bombay-Kolhapur, Bombay-Mangalore (Mangalore), Bombay-Panji, Bombay-Belgaum, Bombay-Ahmedabad and Bombay-Indore ...

> On April 9/10, 1983, the Transport Commissioner had personally visited the Charoti Check Naka which is our border check post bordering Gujarat on the Bombay-Ahmedabad road. From the records of the check post he found that as many as 115 all-India tourist buses are regularly plying on this route. After making an analysis of these 115 all-India tourist buses, he found that 41 permits had been issued by the State Transport Authority of Manipur 17 had been issued by State Transport Authority, Nagar Haveli, 8 by the State Transport Authority, Meghalaya and 5 by the State Transport Authority, Nagaland. A large number of all-India tourist buses operating with their base in Bombay appear to have been issued by Manipur, Nagaland and the Union Territory of Dadra, Nagar Haveli.

The petitioners, who are transport operators holding all-India permits, deny that any of them was guilty of any malpractice or misuse of the permits held by them. But, notwithstanding the

petitioners' denial we do not have the slightest doubt that the allegations of misuse and malpractice made in the counter-affidavit, filed on behalf of the Karnataka Government, are generally and substantially correct. Complaints about the abuse of the scheme appear to have been made to the Central Government and the Transport Advisory Council also. We are also told the question of meeting the challenge posed by these abuses is receiving the attention of the Central Government.

5. The Government of Karnataka, apparently the worst sufferer, reacted sharply. The concession given to the holders of all-India permits by way of exemption the all-India tourist vehicles, registered in other States, from payment of the Karnataka Tax, if tax had already been said in the home State was withdrawn by a notification dated March 31, 1981. It is this notification and the consequences of the notification that are in question in these several writ petitions. We are informed that the State of Andhra Pradesh has also issued a notification that similar to that of the State of Karnataka withdrawing the exemption which it had granted earlier to vehicles operating on permits issued under Section 63(7) and registered in other States. Other States have not withdrawn the exemption granted by them to vehicles registered in other States and operating on permits issued under Section 63(7). But as the examination granted by most of them is on a reciprocal basis, the withdrawal of exemption by the States of Karnataka and Andhra Pradesh has the effect of making vehicles registered in Karnataka and Andhra Pradesh has the effect of making vehicles registered in Karnataka and Andhra Pradesh, immediately subject to payment of tax in every one of those States through which they pass. The collection of tax by the other States is also resisted in these writ petitions. The power of the State Legislature to levy the particular tax, the power of the State Government to grant exemption from payment of tax under the authority delegated to it by the Legislature and the implied power of the Section Government to withdraw an exemption granted by it are conceded. Yet a number of ingenious and platitudinous submissions have been made though we must confess that many of them have only to be stated to be rejected. Some of them served no better purpose than occupy the time of the Court, time which has become dear and precious because of the mountainous arrears of cases awaiting the decision of this Court. We do wish it is remembered that the Supreme Court is the highest Court in the land and its time is not to be frittered away in listening to hopeless arguments advanced just for the sake of argument. The time has come for Judges and lawyers to make a determined effort to chop certain arguments and prune certain others - judgments following suit. In fairness to the counsel who appeared in the cases before us, we must say that everyone was brief and none overstated his case.

6. It was submitted that Section 63(7) of the Motor Vehicles Act was designed to promote all-India and inter-State tourist traffic and thus to advance trade, commerce and intercourse throughout the territory of India. It was implicit in Section 63(7) that the States would exercise their power of taxation in such a way as not to impose an additional burden on tourist vehicles registered in other States and plying on permits issued under Section 63(7), over and above the tax paid in the home State. In other words, it was implicit that all the States would exempt from taxation tourist vehicles registered in other States and plying on permits issued under Section 63(7). By withdrawing the exemption, the object of Section 63(7) was defeated and therefore, freedom of trade, commerce and intercourses throughout the territory of India, guaranteed by Article 301 of the Constitution was impaired. The withdrawal of exemption was, therefore, unconstitutional and bad in law. The transport operators of Karnataka who were not directly hit by the withdrawal of the exemption by the Government of Karnataka advanced a subtler argument and suggested that they were in fact the worst hit. The argument was that though despite the withdrawal of the exemption, they were paying no more tax to the State of Karnataka than they were paying hitherto, the withdrawal of the exemption had created a situation which denied them the benefit of exemption granted by the Governments of all other States, since those exemptions were reciprocal in condition. The situation

indirectly created by the action of the Government of Karnataka imposed an intolerable burden on them by compelling hem to pay taxes in every State other than Karnataka through which their vehicles passed and thus virtually denied to them the freedom of trade, commerce an intercourse throughout the territory of India guaranteed by Article 301 of the Constitution.

7. We are wholly unable to see any force in these submissions. The learned counsel for the parties one either side invited our attention to Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan ((1963) 1 SCR 491 : AIR 1962 SC 1406) Bolani Ores Ltd. v. State of Orissa ((1975) 2 SCR 138 : (1974) 2 SCC 777 : AIR 1975 SC 17 : 1975 Tax LR 1208), G. K. Krishnan v. State of Tamil Nadu ((1975) 2 SCR 715 : (1975) 1 SCC 375 : AIR 1975 SC 583), International Tourist Corporation v. State of Haryana ((1981) 2 SCR 364 : (1981) 2 SCC 318 : 1981 SCC Tax) 103 : AIR 1981 SC 774 : 1981 Tax LR 289) and Malwa Bus Service (Pvt.) Ltd. v. State of Punjab (AIR 1983 SC 634 : (1983) 3 SCC 237 : 1983 SCC (Tax) 162) to explain the extent the limits of the freedom of trade, commerce and intercourse throughout the territory of India proclaimed by Article 301 of the Constitution. We do not propose to refer to any of these cases since the law appears to us to be well-settled.

8. Taxes of a compensatory and regulatory character are outside the expanse of Article 301 of the Constitution. Regulatory measures and compensatory taxes far from impending the free flow of trade and commerce, often promote such free flow of trade and commerce by creating agreeable conditions and providing appropriate services. All that is necessary to uphold a tax which purports to be or is claimed to be a compensatory tax is, "the existence of a specific, identifiable object behind the levy and a nexus between the subject and the object of the levy. It the object behind the levy is identifiable and if there is sufficient nexus between the subject and the object of the levy, it is not necessary that the money realised by the levy should be put into a separate fund or that the levy should be proportionate to the expenditure. There can be no bar to an inter mingling of the revenue realised from regulatory and compensatory taxes and from other taxes of a general nature nor can there be any objection to more or less expenditure being incurred on the object behind the compensatory and regulatory levy than the realisation from the levy" ((1981) 2 SCR 364 : (1981) 2 SCC 318). It should be patent that "it would ordinarily be well-nigh impossible to identify and measure, with any exactitude, the benefits received and the expenditure incurred and levy the tax according to the benefits received and the expenditure incurred" (Id. SCC at p. 328, para 9). Nor is the Court to interpose itself by assuming the role of a cost accountant and attempt to balance meticulously the cost of the services, benefits and facilities against the realisation from the levy. And, if the levy as a whole is justified by the need generally, it does not have to be separately justified with reference to every group of persons claiming to require and receive less service than others. Once the nexus between the levy and service is seen, the levy must be upheld unless the compensatory character is shown to be wholly or partly, a mere mockery and in truth a design which is destructive of the freedom of inter-State trade, commerce and intercourse.

9. By virtue of the power given to them by Entries 56 and 57 of List II every one of the States has the right to make its own legislation to compensate it for the services, benefit and facilities provided by it for motor vehicles operating within the territory of the State. Taxes resulting from such legislative activity are by their very nativity and nature, cast (sic caste) and character, regulatory and compensatory and, are therefore, not within the vista of Article 301, unless, as we said, the tax is a mere pretext designed to injure the freedom of inter-State trade, commerce and intercourse. The nexus between the levy and the service is so patent in the case of such taxes that we need say no more about it. The Karnataka Motor Vehicles Taxation Act and the Motor Vehicles Taxation Acts of other States are without doubt regulatory and compensatory legislations outside the range of Article

301 of the Constitution.

10. It is true that the object of enacting Section 63(7) by the Parliament was to promote all-India and inter-State tourist traffic. But 'taxes on vehicles ... suitable for use on roads' is a State legislative subject and it is for the State Legislature to impose a levy and to exempt from the levy. True again, Entry 57 of the State List is subject to Entry 35 of the Concurrent List and, as explained by us at the outset, it is therefore open to the Parliament to lay down the principles on which taxes may be levied on mechanically propelled vehicles. But the Parliament while enacting Section 63(7) of the Motor Vehicles Act refrained from indicating any such principles, either expressly or by necessary implication. The State's power to tax and to exempt was left uninhibited. It may be that a State legislation, plenary or subordinate, which exempts "non-home-State tourist vehicles" from tax would be advancing the object of Section 63(7) of the Motor Vehicles Act and accelerating inter-State trade, commerce and intercourse. But merely by Parliament legislating Section 63(7), the State Legislatures are not obliged to fall in line and to so arrange their tax laws as to advance the object of Section 63(7), be it ever so desirable. The State is obliged neither to grant an exemption nor to perpetuate an exemption once granted. There is no question of impairing the freedom under Article 301 by refusing to exempt or by withdrawing an exemption. Not to pat on the back is not to stab in the back. True, straw by straw, the burden of taxation on tourist vehicles increases as each State adds its bit of straw, but, then, each State is concerned with its confers and has the right to tax vehicles using its roads; and, the contribution which a tourist carriage is required to make to its treasury is no more than what other contract carriages are required to make. We are family of the view that there is no impairment of the freedom under Article 301. The special submission on behalf of the 'Karnataka Operators' that the withdrawal by the Karnataka Government of the exemption granted to 'outsiders' has resulted in the 'Karnataka Operators' having to pay tax in every State in the country and, therefore, the withdrawal has impaired the freedom under article 301 is but the same general submission, seen through glasses of a different tint. It does not even have the merit that the withdrawal of the Karnataka exemption affects them directly. The submission is rejected.

11. One of the submissions made to us was that if there was a misuse of the all-India permits, the remedy was to punish the wrongdoers by taking appropriate action against the wrong-doers by canceling the permit, if necessary, but not to withdraw the benefit of the exemption altogether, even in the case of honest operators. That is a matter for the Legislature and its delegate to decide but not for the Court. If the situation had become so malignant that drastic action was called for, it is not for the Court to substitute its judgment to say that the object could perhaps be well achieved by adopting a less drastic procedure.

12. It was submitted that all-India tourist vehicles do not use the roads of the State as much as the contact carriages operating in the State and therefore, the State was wrong in treating them alike. It was said that treatment of unequals as equals had resulted in an infringement of Article 14 of the Constitution. It was also submitted that vehicle holding inter-State permits under inter-State agreements were still exempt from tax and this was also a violation of Article 14 of the constitution. Another contention raised was that there was some sort of promissory estoppel which prevented the State Government from withdrawing the exemption. Yet another argument was that the withdrawal of the exemption was arbitrary and therefore, judicial review was necessary. These and other like submissions which were made to us, in our opinion, fall in the category of arguments, which, we mentioned earlier, have only to be stated to be rejected. The answers are self-evident. The submissions are totally without merit and we see no justification for increasing the length of our judgment by further futile discussion. All the writ petitions are dismissed with costs and the interim orders are vacated.

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