

Mrs Meenakshi Alias Rama Bai and Others

Vs

State of Karnataka and Others

Civil Appeals Nos. 2878-87, 3415, 3662-69(N) and 3270-84 of 1981 and 664-668 of 1982 and Special Leave Petitions (Civil) Nos. 10498-501 of 1981 and 8927 of 1982.

(D. A. Desai, A. Varadarajan JJ)

20.09.1983

JUDGMENT

DESAI, J. –

1. Next only to liquor licensees but almost comparable with them are the transport operators who have flooded this Court complaining of some imaginary or untenable grievances, the sole purpose being to snatch some interim relief under one or the other pretext.
2. Petitioners and appellants in this group of appeals and special leave petitions are either operators of omnibuses, mini buses or stage carriages in the State of Karnataka. They have a grievance against the enhancement of tax on their vehicles levied under the Karnataka Taxation and Certain Other Laws (Amendment) Act, 1979 ('Taxation Amendment Act' for short). They filed writ petitions in the High Court of Karnataka challenging the Taxation Amendment Act on diverse grounds but the central point of attack was that the collection of the tax since prior to its impugned enhancement was sufficient to meet the construction and maintenance of roads and bridges in the State and hence the tax imposed at the enhanced rate under the Taxation Amendment Act, 1979 is violative of freedom of trade, commerce and intercourse guaranteed by Article 301 of the Constitution and the enhanced tax is not shown to be compensatory in character and hence not saved. The second contention was that the impugned Taxation Amendment Act was brought into force with effect from March 31, 1979, yet the petitioners were made liable to pay tax from March 1, 1979 and this limited retrospectivity given to the impugned legislation is impermissible and must be struck down.
3. The Division Bench of the High Court while partly allowing all the petitions held that the enhanced tax under the impugned legislation was compensatory in character and was not violative of Article 301 of the Constitution. The second contention of the petitioners found favour with the High Court and it was held that as the impugned Act came into force from March 31, 1979, the petitioners did not incur any liability to pay enhanced tax under Section 4 of the Act from March 1, 1979 and if any such demand is made the same is without the authority of law and the authority under the taxing statute was restrained from demanding such enhanced tax under the Taxation Amendment Act for the period from March 1, 1979 to March 31, 1979 and to this limited extent, the rule was made absolute. The High Court declined to grant certificate under Article 134 of the Constitution and hence these appeals by special leave.
4. Mr. Shanti Bhushan who led on behalf of the appellants canvassed three contentions in support of these appeals. They are : (i) the total tax that would be realised at the enhanced rate levied under Taxation Amendment Act, would be far in excess of the requirement for smooth and unhampered

transport and therefore the enhanced tax has ceased to be compensatory in character and is accordingly violative of Article 301 of the Constitution and cannot be sustained; (ii) if the tax at the enhanced rate is to be treated as compensatory, the burden of enhanced tax must be equitably distributed on owners of different classes of transport vehicles so that the liability to pay enhanced tax has a nexus to the facility enjoyed by that class of vehicles on which higher tax is levied and should not be disproportionate to the quantum of facility enjoyed by the owners of different classes of transport vehicles; and (iii) in the case of passenger vehicles, the fare structure is subject to statutory regulation under Motor Vehicles Act, 1939 and therefore, there must be direct nexus between the tax structure and the fare structure, otherwise, the passenger transport business would become uneconomic. As the fare structure has not been proportionately raised keeping in view the rise in tax and other operational costs from 1966 to 1979, the unilateral enhancement of tax without proportionate increase in fare is arbitrary and therefore, violative of Article 14 and would impose an unreasonable restriction on the fundamental freedom to carry on business guaranteed by Article 19(1)(g).

5. Article 301 guarantees freedom of trade, commerce and intercourse throughout the territory of India. This is subject to the other provisions of Part XIII of the Constitution. Petitioners contend that levy of tax on transport vehicle used for carriage of passengers at an usually high rate interferes with the freedom of trade, commerce and intercourse throughout the territory of India. Whether levy of a tax computed according to sitting capacity of a transport vehicle used for carriage of passengers by itself without anything more restricts or thwarts freedom of trade, commerce and intercourse throughout the territory of India guaranteed by Article 301 is no more *res integra*. It was in fact conceded that revenue collected by such tax if employed for purposes which would not only not restrict or impede but facilitate smooth and unhampered trade, commerce and intercourse throughout the territory of India, such tax would not be violative of Article 301 of the Constitution. Thus regulatory measures or measures imposing compensatory taxes for the use of trading facility are outside the purview of Article 301 of the Constitution. This in fact was not disputed and could not be disputed in view of the decisions of this Court in *Atiabari Tea Co. Ltd. v. State of Assam* ((1961) 1 SCR 809 : AIR 1961 SC 232), *Sainik Motors, Jodhpur v. State of Rajasthan* ((1962) 1 SCR 517 : AIR 1961 SC 1480 : (1963) 1 SCJ 292), *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan* ((1963) 1 SCR 491 : AIR 1962 SC 1406) and *Malwa Bus Service (Pvt.) Ltd. v. State of Punjab* (AIR 1983 SC 634 : (1983) 3 SCC 237 : 1983 SCC (Tax) 162 : (1983) 2 SCR 1009). Expanding the concept of what are called compensatory taxes as to be outside the purview of Article 301, it can be said that the augmentation of revenue by such taxes which would be available for laying of new roads and maintenance of existing roads in proper shape and form, setting up of terminal facility for passengers, but stands, other facility which make travel more comfortable and enjoyable, encourage and facilitate travel in its various elements, easy and unimpeded transport of goods by road transport would be comprehended within what are styled as compensatory taxes. Simultaneously, it is necessary to administer a caution that in order to justify the tax on goods and passenger vehicles as being compensatory, it is not necessary for the authority levying the tax that the entire revenue collected from the levy of tax is spent or is expendable only on construction and maintenance of roads and providing other facilities for making free flow of traffic smooth and enjoyable. If *quid pro quo* is to be established from the receipt of the tax and the expenses on maintenance and construction of roads, the tax would take the nature of a fee and this was expressly rejected by this Court in *International Tourist Corporation v. State of Haryana* ((1981) 2 SCR 364 l: (1981) 2 SCC 318 : 1981 SCC (Tax) 103 : AIR 1981 SC 774 : 1981 Tax LR 289). This Court speaking through one of us (Chinnappa Reddy, J.) observed as under : [SCC para 8, pp. 327-28 : SCC (Tax) p. 112]

But to say that the nature of a tax is of a compensatory and regulatory nature is not to say that the measure of the tax should be proportionate to the expenditure incurred on the regulation provided and the services rendered. If the tax were to be proportionate to the expenditure on regulation and service it would not be a tax but a fee.

At another stage, it was observed a *sunder* : [SCC para 9, p. 328 : SCC (Tax) p. 112]

What is necessary to uphold a regulatory and 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. If 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.

6. Petitioners contend that the object behind the Taxation Amendment Act was not to collect more revenue for the purpose of facilitating trade, commerce and intercourse intra-State as well as inter-State but the objects and the reasons while introducing the Taxation Amendment Act would clearly reveal the motivation behind the amendment which was to augment the general revenue which suffered depletion on account of abolition of octroi. While publishing the Karnataka Motor Vehicles Taxation (Amendment) Bill, 1980, simultaneously the Statement of Objects and Reasons was published which may be extracted :

Statement of Objects and Reasons. - In view of the abolition of octroi in the State, Government increased the Motor Vehicles Tax in respect of goods vehicles by the Karnataka Motor Vehicles Taxation (Second Amendment) Act, 1979. Aggrieved by this enhancement, the lorry owners in the State went on strike on September 27, 1979 to protest against the hike in the Motor Vehicles Tax. The entire issue was reconsidered and it is decided to reduce the tax under the above Act to the previous level with effect from October 1, 1979 upto March 31, 1980.

After referring to the Statement of Objects and Reasons hereinabove extracted, it was urged that the motivation behind enhancement of tax only on transport vehicles used for carriage of passengers was the subjugation of the Government against the combined action of the owners and players of transport vehicles used for carriage of goods and the loss of revenue on account of abolition of octroi. Says Mr. Shanti Bhushan that to replenish the loss in revenue of the State suffered on account of set-back in the attempt to raise tax on goods vehicles and abolition of octroi, under the Taxation Amendment Act passenger tax was raised to Rs 130 per quarter per seat in every vehicle and to Rs 45 per passenger other than seated passenger. It was pointed out that paying the tax at this rate, the owner of the omnibus having a sitting capacity of 50 persons and standing capacity of 10 persons plus driver and conductor has to pay Rs 8340 per quarter against the tax payable at Rs 3554 per quarter in the year 1966. It was therefore contended that if the object behind levy of enhanced tax was to compensate for the loss suffered on account of abolition of octroi as well as the inability to equitably distribute the tax burden on different kinds of transport vehicles in face of stubborn opposition by owners of goods vehicles the enhanced tax could not qualify for being treated as regulatory or compensatory.

7. If tax was enhanced to meet the loss suffered on account of abolition of octroi, one can say without the fear of contradiction that the abolition of octroi facilities both inter-State and inter-State movements of goods and passengers. Every local body from Municipal Corporation to Gram Panchayat in every State enjoys the power to levy octroi. A goods vehicle or a passenger vehicle

will have to pass through different areas under the jurisdiction of various local authorities. If at every octroi station, the goods vehicle or the passenger vehicle is stopped and enquiry made or octroi either collected or deposit insisted upon with a right to claim refund, one has to experience through this agonising journey to appreciate what a pernicious influence octroi has on transport of goods and passengers. Karnataka took the lead and abolished octroi. One can take judicial notice of a universal demand for abolition of octroi as an evil. Therefore, if tax was enhanced on passenger vehicles to fill in the dent made in the revenues of the State by the abolition of octroi, it can be said without fear of contradiction that thereby trade, commerce and intercourse received a fillip and free, smooth, unimpeded flow of goods and passenger vehicles was considerably facilitated and the abolition of octroi was welcome in trade and business circles. Therefore, not only the enhanced tax does not lose the character of being compensatory on the ground that it was enhanced to compensate the loss suffered by the State in its revenues on account of abolition of octroi, but as a matter of fact on this very ground it acquires the character of being compensatory.

8. The second limb of the submission was that as the State failed to maintain the levy of enhanced tax on goods vehicles against the combined resistance by the operators of the goods vehicles, it backtracked in the face of it and passed on the burden on the docile owners of passenger vehicles who are small in number and not well organised. There may be some truth in the submission but thereby the tax does not lose the character of being regulatory and compensatory if it is otherwise so. In the matter of taxation, the Constitution gives a wide latitude to the Legislature in classification for taxation. In *East India Tobacco Co. v. State of Andhra Pradesh* ((1963) 1 SCR 404 : AIR 1962 SC 1733 : (1962) 13 STC 529) this Court approved Wills : Constitutional Law to the effect :

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably....

Therefore, if the Legislature after considering various aspects of the matter decided to enhance tax on the passenger vehicles on the ground that it was not possible to raise tax on goods vehicles for a short period on that account alone it cannot be said that the tax if it is otherwise compensatory, would cease to be one. On the contrary, if augmentation of the revenues by raising the tax was necessary for facilitating inter-State trade, commerce and intercourse and it was attempted by levying enhanced tax on goods vehicle which for certain reasons did not fructify, the shortfall was sought to be made good by enhancing the tax on the passenger vehicles because a larger amount was necessary for facilitating inter-State trade, commerce and intercourse.

9. It was then urged that at any rate, the revenue collected the enhanced tax is disproportionately higher than what is required to be spent on maintenance and construction of roads and other facilities connected with free flow of traffic both goods and passengers. Mr Shanti Bhushan submitted that the impact of tax is so high that there is a gradual reduction in the number of passenger vehicles applying for registration in the State of Karnataka. A chart was submitted for our perusal showing the gradual fall in registration of new passenger vehicles. Statistics have either the tendency to provide window-dressing or if not meticulously analysed, they have the tendency to misled. A question was posed whether when optimum number of passenger vehicles are plying on the roads by the increase in number of vehicles from year to year, would it not be possible (sic) for diminishing return. After all there will be a direct correlation between the travelling public and the availability of vehicles and capacity of the roads for to and for movement of vehicles before a saturation is reached. Once the optimum number is reached, further competition may be uneconomic or the authority for the safety of travelling public may not grant more permits. Unless

passenger survey is undertaken which would show that more passengers are available and proportionately the number of vehicles have not increased, this chart submitted by Mr Shanti Bhushan has little to inform or teach us and throes no light on the vexed question under discussion. No useful inference can be drawn this incomplete information.

10. It was however, pointed out that from year to year, the figures available from the State budget clearly indicate that the difference between the receipt of revenue and the expenditure on maintenance and construction of roads is widening with the result that the surplus goes into augmenting the general revenue of the State which is impermissible. The figures are viewed from a refractory media. The figures from the budget do not take into account expenditure on other facilities such as abolition of octroi, construction of approach roads, passenger facilities, construction of tourist bungalows which may be accounted under heads and therefore, such bald figures are far from convincing. On the other hand, Mr R. P. Bhatt, learned counsel for the State of Karnataka gave us the following figures which when not controverted would be sufficient to repel the contention of the appellants.

# EXPENDITURE (IN CRORES)-----											
-----Sl		Year		Receipt On PWD For Irrigation, Estt. Total		No. (In crores)		Roads		Forest	
roads, expen-		Taluka Board		ses		roads-		grants-----		-----	
-----1	1980-81	47.37	37.47	1.50	1.24	40.212	1981-82	55.30	43.26	2.00	
	1.51	46.773	1982-83	59.91	47.59	2.50	2.00	52.094	1983-84	55.00	3.00
	(Estimated)									2.48	60.48
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Note. - The expenditure incurred on traffic police, construction of bus stands, road lighting are not included in the total expenditure. Figures for these heads are not readily available with Transport Commissioner.

Again this chart does not account for the dent made in the revenue by abolition of octroi and that in our view was a further facility granted by the State of Karnataka for free flow of inter-State and inter-State trade, commerce and intercourse. Therefore, the first contention that since enhancement, the tax has ceased to be compensatory must be negated.

11. It was next contended that if the tax at the enhanced rate is to be treated as compensatory, the burden of enhanced tax must be equitably distributed on owners of different classes of transport vehicles so that the liability to pay enhanced tax has a nexus to the service rendered to that class of vehicle on which higher tax is levied and should not be disproportionate to the quantum of facility enjoyed by the owners of different classes of transport of transport vehicles. The contention can be traced to the withdrawal of the hike in the motor vehicles tax imposed on goods vehicles for the period October 1, 1979 to March 31, 1980 that is for a period of six months. No statistical information was supplied to the Court as to the total quantum of loss of revenue by withdrawal in the hike of enhanced tax levied under Karnataka Motor Vehicles Taxation (Second Amendment) Act, 1979 on the goods vehicles, It was also not made clear whether the higher tax levied by the aforementioned Act was continued after March 31, 1980. The statement in the Statement of Objects and Reasons that the Government decided to reduce the tax under the aforementioned Act to the previous level with effect from October 1, 1979, upto March 31, 1980 by itself would show that the enhanced tax would be payable by owners of goods vehicles subsequent to March 31, 1980. It was nowhere suggested that the enhanced tax was withdrawn as a whole and for all time.

12. It was, however, urged that even now the tax on passenger vehicles is disproportionately high

compared to the tax on goods vehicles. Simultaneously, it was urged that the laden weight of goods vehicles compared to that of the passenger vehicles is very high with the result that goods vehicles cause greater wear and tear in the roads and realistically they should be subjected to higher tax. Therefore, it was urged that the levy of enhanced tax on passenger vehicles is discriminatory or at any rate the enhanced tax on passenger vehicles is neither regulatory nor compensatory. As stated earlier, in the matter of taxation the rate of tax and the objects to be taxed are to be determined by the Legislature and unless it is found to be so unreasonable, the Court would not interfere with the latitude enjoyed by the Legislature in this behalf. Now when a passenger tax is raised, the individual passenger may have to pay the same as and when there is upward revision of fare structure. But when tax on goods vehicles is raised the incidence of enhanced tax would fall on consumers of commodities transported. The transported goods may comprise essential commodities like foodgrains, sugar, fuel and the common man would have to pay the higher price. Further even in the matter of taxation, goods vehicles and passenger vehicles, even on account of use of the same road would not form the same class, and no statistical information was supplied to the Court as to the degree of wear and tear inflicted by the goods vehicles passing over roads than by the use of the road by the passenger vehicles. In the absence of this factual information, it is difficult to entertain the contention of the petitioners and the same must be negated.

13. The last contention on behalf of the appellants was that the operators of omnibuses are not entitled to revise their fare structure either unilaterally or suo motu whenever the tax on passenger vehicles is raised and that the fare structure is determined by the authorities under the Motor Vehicles Act, 1939. Proceeding along this line, it was urged that unless there is an upward revision of the fare structure corresponding to the enhancement in the tax on passenger vehicles, the transport business would become uneconomic. It was urged that the operational costs of a passenger vehicle has shot up by 367 per cent. and the fare structure has hardly kept pace. It was also submitted that any economic activity must ensure a reasonable return on the capital invested and the enhanced tax has resulted in a net loss in the passenger transport business or at any rate it has become uneconomic and therefore, the Taxation Amendment Act must be quashed as levying an unreasonable restriction on the fundamental freedom to carry on trade guaranteed by Article 19(1)(g) of the Constitution. Without accepting the submission that every economic activity must result in some profit to be determined at any given point of time, in this case, we repeatedly asked Mr Shanti Bhushan to show the Profit and Loss Account of the appellants and the petitioners. We repeatedly called upon the petitioners and appellants to produce their income tax returns or some tangible evidence showing that since the enhancement of the tax, the trading activity of the owners and plyers of omnibuses has resulted in a net loss or not a working profit. We waited for the answer in vain and none was forthcoming. We cannot accept a theoretical answer to a proposition that is required to be established by unimpeachable facts. In the absence of requisite facts, the contention must be negated without further examination on the ground that the appellants and petitioners have failed to support the submission by requisite documentary evidence.

14. Before we conclude, we must take note of one request made by Mr Shanti Bhushan on behalf of the petitioners and appellants. It was urged that while obtaining special leave to appeal against the Division Bench of the Karnataka High Court the appellants and the petitioners obtained interim relief to the effect that the future tax shall be paid regularly but for the arrears, 50 per cent. of the tax in arrears had to be deposited as directed by the Court and for the balance of 50 per cent., security to the satisfaction of the concerned authority was to be given. Mr Shanti Bhushan urged that if none of his contentions finds favour with the Court and the petitions are likely to be dismissed, some time should be given to the petitioners to pay the balance because the burden would be unbearably heavy if the tax in arrears has to be paid forthwith. We find this request to be quite

reasonable. We therefore, direct that the balance of the tax in arrears shall be paid by the petitioners and the appellants in two equal instalments of six months' duration, meaning thereby that the balance will be paid within one year; the first instalments being half the amount payable shall be paid by March 31, 1984 and the balance by September 30, 1984.

15. Having examined all the contentions meticulously we find no merit in any of them and therefore all these appeals and special leave petitions fail and are dismissed with costs in each. The balance of the tax in arrears for which security was given under the orders of this Court shall be paid as herein indicated.

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