State of Maharashtra and Others

Vs

Madhukar Balkrishna Badiya and Others

Bhaskar Ramkrishna Markandeya and Others

Vs

State of Maharashtra and Others

Civil Appeals Nos. 1631-33 of 1987 Special Leave Petitions (Civil) Nos. 11673-75 of 1987

(Sabyasachi Mukharji, L. M. Sharma JJ)

17.08.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. These civil appeals and special leave petitions centre around one point namely, the validity of the Bombay Motor Vehicles Tax Act, 1958 as amended by Section 3 of the Maharashtra Act, 14 of 1987 as well as Section 6 of the said Act as amended by Maharashtra Act 33 of 1987 as well as Maharashtra Act 9 of 1988.

2. The Bombay Motor Vehicles Tax Act, 1958 prior to its amendment in 1987 provided for levy of tax on vehicles annually or quarterly. In 1987, by Section 3 of the Maharashtra Act 14 of 1987, sub-section (1-C) was added to provide for levy of one time tax at 15 times the annual rate on all motor cycles used or kept for use in the State. The said provisions further provided that in case of motor cycles used or kept for use by a company or other commercial organisation, the one time tax was to be levied at thrice that rate. Section 6 of the Maharashtra Act 14 of 1987, added sub-section (6) to Section 9 of the principal Act. The new sub-section (6) enabled a registered owner of motor cycle or tricycle to obtain refund of "one time tax" in cases where (a) the vehicle is removed outside the State; and (b) the registration of vehicle is cancelled due to scrapping of the vehicle, or for a similar reason. The refund was to be paid in accordance with the Fourth Schedule. The Third and Fourth Schedules were introduced by the Maharashtra Act 14 of 1987.

3. In the case of Luna Mopeds, the one time tax comes to Rs. 2925 which according to the petitioners in the S. L. P. Nos. 11673-75 of 1987, is 86 percent of the ex-factory price of the moped. In that view the petitions were filed by the respondents in the first batch of appeals and the petitioners in the second batch challenging the amended provisions of the Bombay Motor Vehicles Tax Act, 1958. On or about July 9/10, 1987, a Division Bench of the Bombay High Court, Nagpur Bench held that the levy of one time tax was beyond the legislative competence of the State legislature and also beyond Entry 57 of List II of the Seventh Schedule. It further held that the provision for imposition of levy at thrice the rates, so far as the vehicles owned by the firm or the company, were neither discriminatory nor arbitrary. The High court, however, in view of the fact that the refund was restricted to the circumstances mentioned above, struck down Act 14 of 1987.

According to the High Court, the absence of provisions for refund in cases of temporary non-user made the Maharashtra Act 14 of 1987, confiscatory in character and not regulatory or compensatory which alone was in the competence of the State legislature. The State preferred applications for leave to appeal against the impugned judgment and the special leave having been granted, are the subject matter of Civil Appeals Nos. 1631-33 of 1987. The petitioners also filed special leave applications which are the subject matter of Special Leave Petitions Nos. 11673-75 of 1987 which have been heard along with these appeals. While the State's appeal against the High Court's judgment was pending before this Court, the Maharashtra legislature enacted Maharashtra Act of 1987. It deleted Section 3 (4) of the principal Act, as amended by Maharashtra Act 14 of 1987. That provision made the existing provisions of refund for temporary non- user inapplicable in cases of motor cycles and tricycles, restricting the right of refund to Section 9 (6) in contingencies mentioned above. It also introduced sub-section (7) of Section 9 conferring right of refund in respect of motor cycles and tricycles in accordance with the rates specified in the Fifth Schedule and prescribed the rates of refund in the Fifth Schedule. But the said Schedule did not prescribe a separate rate of refund for company-owned vehicles. Therefore the refund in respect of company-owned vehicles would be same as that payable to individual-owned vehicle, even though the tax paid on former class of vehicles was three times. Soon thereafter the Maharashtra legislature enacted Act 9 of 1988. The only relevant change for the present purpose was that the rate of refund was enhanced to three times in respect of company-owned vehicles.

4. Before the contentions are judged, it is imperative to reiterate that the tax imposed on motor vehicles or a class of motor cycles would not be valid unless it is compensatory or regulatory or does not have any nexus with the vehicles using the public roads. In such a case the levy would be violative of Article 301 of the constitution and would not be protected by Article 304 of the constitution. In this connection reference may first be made to the observations of this Court in Bolani Ores Ltd. v. State of Orissa where at page 155 (SCC pp. 793-94) this Court observed that Entry 57 of List II of the Seventh Schedule was subject to the limitations, namely, the power of taxation cannot exceed the compensatory nature which must have some nexus with the vehicles using the roads. If the vehicles do not use the roads, notwithstanding that these are registered under the Act, these cannot be taxed. More or less the same view was echoed in G. K. Krishnan v. State of Tamil Nadu.

5. See also Malwa Bus Service (P) Ltd. v. State of Punjab.

6. On behalf of the appellant-State, the learned Advocate-General submitted that the amendments enacted by the Maharashtra Acts 33 of 1987 and 9 of 1988, have brought the principal Act as amended by the Maharashtra Act 14 of 1987 within the constitutional requirement of making 'one time tax' a regulatory and compensatory tax. It was submitted by him that this development had made it unnecessary for this Court to decide if the Act, as it stood when it was challenged before the High Court, was beyond the legislative competence of the State Legislature. It was further emphasised that the fact that the Act at present, does not provide for refund in the 14th and 15th years, does not make the law outside the competence of the State legislature. It was urged that the concept of "regulatory and compensatory tax" does not imply mathematical precision. In this context one may refer to the observations of this Court in International Tourist Corporation. v. State of Haryana, where at page 374 Justice Chinnappa Reddy speaking for this Court observed as follows : [SCC pp. 327-28 : SCC (Tax) p. 112, paras 8 and 9]

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.

While in the case of a fee it may be possible to precisely identify and measure the benefits received From the government and levy the fee according to the benefits received and the expenditure incurred, in the case of a regulatory and compensatory tax 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. 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.

7. Earlier this principle had been stated in ITO v. N. Takim Roy Rymbai, where this Court observed that though taxation law could not claim immunity from the equality clause in Article 14 of the Constitution, it must be remembered that in view of the intrinsic complexity of fiscal adjustments of diverse elements, the State has a considerably wide discretion in the matter of classification for taxation purposes. The fact that the tax falls more heavily on some in the same category, is by itself no ground to render the law invalid. Similar are the observations of this Court in Mrs. Meenakshi v. State of Karnataka, Anant Mills Co. Ltd. v. State of Gujarat and Khandige Sham Bhat v. Agricultural income Tax Officer.

8. In the instant case, the impugned legislation had been subsequently amended to provide for the refund of a proportionate part of the one-time tax in the event of the vehicle not being used for a period of quarter or more than a quarter of a year as mentioned before. This was provided by substituting a new sub-section (7) to Section 9 of the Act and also substituting new Fifth Schedule.

9. Even after the amendment, however, no refund is available in respect of a vehicle which has been registered for more than 13 years. The effect of the same is that no refund at all is available in respect of the tax paid for a vehicle for the 14th and 15th years, it was urged on behalf of the respondents in the appeals and the petitioners in the SLPs. It was submitted on their behalf that so far as four wheeler are concerned, Section 9 (1) of the Act provided for refund of the proportionate amount of tax for every completed calendar month for which the vehicle has not been used. It was urged on behalf of the respondents in the appeals and the petitioners in the SLPs that there is no justification whatsoever for the non-grant of the refund of the proportionate amount of tax paid in respect of a two-wheeler or three-wheeler, which is not used in its 14th and/or 15th year. On this score, it was urged on their behalf that the impugned levy of tax ceases to be compensatory or regulatory and such is void under Entry 57 of List II and thus violative of Article 301 of the Constitution.

10. In our opinion the fact that the Act, as at present, does not provide for refund in the 14th and 15th years, does not make the law outside the competence of the State legislature. The concept of "regulatory and compensatory" tax does not imply mathematical precision of quid pro quo. This aspect was emphasised in International Tourist Corporation v. State of Haryana as noted before.

11. It was further submitted on behalf of the owners of two wheelers that the impugned one-time levy of Rs. 975 has been worked out at Rs. 65 per two-wheeler per annum for 15 years and is sought to be recovered from the two-wheeler owner as a one-time down payment at the time the two-wheeler is purchased by him. On behalf of the respondents/petitioners it was contended that having regard to the extent of road user by a two-wheeler, in comparison with the road user by a four-wheeler, the legislature considered that a tax of Rs. 65 per two-wheeler per annum would be a

reasonable and adequate compensatory levy. While the maximum annual rate of tax was fixed at Rs. 200 per annum for motor cars weighing not more than 750 kg and Rs. 360 per annum for motor cars weighing between 750 kg. to 1500 kg.; it may be noted that the tax on four-wheelers has not been increased. But as far as two-wheelers are concerned the one-time tax for the period of 15 years is exactly 15 times the amount of tax of Rs. 65 per year. It is Clear from these factors, it was submitted by the owners of the two-wheelers, that the legislature continues to consider the tax of Rs. 65 per two-wheeler per year to be an adequate compensatory tax. However, by recovering the tax for the future period of 15 years in advance as a one-time levy, the taxing authorities are in fact recovering not Rs. 65 per two-wheeler per year but in reality about Rs. 356.79 per two-wheeler per year. The respondents/petitioners sought to explain the position by submitting that if the two-wheeler owner has an amount of Rs. 975 with him at the time of purchase of the vehicle, and is not compelled to make one-time payment, then he would initially pay only Rs. 65 as the tax for the first year. That would leave a balance amount of Rs. 910 which could be invested by him at an interest yield of 15 per cent per annum. It was urged that the rate of interest that is recoverable as well as paid under the Income Tax Act is 15 per cent per annum. The said amount of Rs. 910 would yield an interest of Rs. 136.50 in the first year. Out of that amount of Rs. 136.50 an amount of Rs. 65 would be paid by the two wheeler owner as tax at the beginning of the second year. Consequently, an amount of Rs. 71.50 would be available from out of the said interest earning of Rs. 136.50, which also could be invested at a yield of 15 per cent per annum. Consequently, the amount of interest that would be earned by the vehicle owner in the second year would come to Rs. 147.23, out of which only Rs. 65 would have to be paid as tax in the beginning of the third year, leaving a balance of Rs. 82.23 available for further investment. It was submitted that by compelling the vehicle owner to make the one-time down payment of Rs. 975 at the time of the purchase of the vehicle, the owner is in reality being deprived of a total amount of Rs. 4376.19 over the said period of 15 years. If this amount is divided by 15, the resultant figure will be Rs. 291.79. The effective tax burden has thus in fact been multiplied by about 5 times only as a result of the one-time levy, it was urged. It was submitted that the said one-time levy was unreasonable, discriminatory and not regulatory or compensatory. The fact that a tax on motor vehicles must be compensatory and regulatory in order to be valid, was emphasised in the decision of this Court in State Of Karnataka v. K. Gopalakrishna Shenoy where at page 1915 of the report (SCC 662), it was observed that tax on motor vehicles is a compensatory tax levied for the use of the roads and it is not a tax on ownership or possession of motor vehicles. It was emphasised on behalf of the owners of the vehicles that the impugned legislation is based on the assumption that two-wheelers and three-wheelers have an approximate life of 15 years. It is on that basis and footing that the rates of tax have been fixed. It was contended that the life of two-wheelers and three-wheelers is as much as 25 to 30 years and therefore, the recovery of the one-time tax for the period of 15 years actually constitutes the conferment of a benefit on the owners of two-wheelers and three-wheelers. In this connection, on the other hand it is of importance to note that the Department of Heavy Industry, Ministry of Industry, Government of India, had commissioned a report from an eminent firm of Chartered Accountants on Long Term Demand Projections for Automotive Vehicles (including two-wheelers and three-wheelers). The said report concludes, after an exhaustive analysis of statistical data including the data provided by vehicle manufacturers and also studies made in the past, that the average life of scooters is 10 years, that of motor cycles 9 years and that of mopeds 5 years. But what was emphasised was that one-time levy of tax compelled owners of two-wheelers to incur a further expenditure of about 70 per cent of the cost of the vehicles purchased by them at the time they acquire the vehicle and that imposes heavy additional liabilities. It was, therefore, submitted that it was neither compensatory nor regulatory and furthermore, it was discriminatory.

12. It was further submitted that Section 3 (1-C) (c) exempts public trusts and recognised institutions. That was bad.

13. In our opinion, after the amendment the mischief mentioned in the judgment and order of the High Court of Bombay has been remedied. On an examination of the various provisions of the Act as amended, we have come to the conclusion that after the amendment the Act comes within the constitutional requirement of making the one-time tax a regulatory and compensatory tax. It is true as was emphasised that the Act has not provided for refund in the 14th and 15th years but does not make the law outside the competence of the State legislature. It is not mathematical precision that is necessary nor can it be. There is in the provisions as amended, a discernible and an identifiable object behind the levy and a nexus between the subject and the object of the levy.

14. In this matter two principles have to be emphasised, firstly, that the tax must be regulatory and compensatory and secondly, there must be no discrimination. About discrimination it is well to remember that a taxation law cannot claim immunity from the equality clause in Article 14 of the Constitution. But in view of the intrinsic complexity of fiscal adjustments of diverse elements, a considerably wide discretion and latitude in the matter of classification for taxation purpose is permissible. See the observations of this Court in ITO v. N. Takim Roy Rymbai. Also see the observations in Mrs. Meenakshi v. State of Karnataka, Anant Mills Co Ltd. v. State of Gujarat and Khandige Sham Bhat v. Agricultural Income Tax Officer. The evidence on record shows that the life of motor cycles and tricycles normally exceeds 25 years. The so-called non-refund for certain period is not conclusive of the matter. Even if mathematical precision is not possible, we cannot say that it is wholly unmathematical. The collection of tax for a period of 15 years at one point of time is a convenient method enabling the owner to use the vehicle for more than 25 years, without having to visit the office to pay the tax periodically, and pay enhanced tax that may be levied during the 25 years of life of the vehicle. Regulatory and compensatory tax can be levied to the extent the State is required to pay for rendering the services. According to the State, the evidence on record shows that the cost of services is twice the total amount recovered from all types of vehicles. The balance of expenditure is met by the State from the general revenues. Even from this half collection, the motor cycles and tricycles contribute only 6.4 per cent. The percentage of motor cycles and tricycles is 56 to 58 per cent of all vehicles. Thus, even insubstantial increase in their rates cannot be said to be not a " regulatory or compensatory" tax measure.

15. The Act, as at present, is not violative of Article 14 of the Constitution. The fact that company-owned vehicles are taxed at three times the rate payable by individuals, does not make the legislation violative of Article 14. Historically, the company-owned vehicles have always been taxed at a rate higher than the individually-owned vehicles. As appears from the records produced, the motor cycles and tricycles constituting 56 to 58 per cent of all types of vehicles contribute only 6.4 per cent of the total revenue earned through the tax imposed by the Act. It is well settles that the legislature has the power to distribute tax burden in a flexible manner and the court would not interfere with the same. The principle has been reiterated in G. K. Krishnan v. State of Tamil Nadu where this Court observed that in the context of commercial regulation Article 14 is offended only if the classification rests on grounds wholly irrelevant to the achievement of the objective and this lenient standard is further weighted in the State's favour by the fact that a statutory discrimination will not be set aside if a state of facts may reasonably be conceived by the court to justify it. Tax laws have have to respond closely to local needs and court's familiarity with these needs is likely to be limited. Therefore, the court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent upon peculiar needs and specific difficulties of the community. The needs and the difficulties of a community are constituted out of facts and

information beyond the easy ken of the court.

16. It appears that in the instant case, the State Government has specified averred that the company-owned vehicles travel more and use roads more often. No evidence have been produced to the contrary. In view of the well-settled principles, we cannot say that there was differentiation without any basis and such there was discrimination.

17. It further appears that the Government of India has liberalised the licensing policy and granted large number of industrial licences for the manufacture of two-wheelers. In Maharashtra itself following is the new registration of two-wheelers during the last four and five :

> # 1983-84 .. 1,13,949 1984-85 .. 1,24,877 1985-86 .. 1,66,124 1986-87 .. 2,01,904##

18. In 1986-87 per working day on an average 929 new two-wheelers have been registered. There was tremendous strain on Motor Vehicles Department due to increase in the number of two-wheelers. The following statistics and figures indicate the position that one-time tax on two-wheelers have beneficent effect :

> As on April 1, 1987 there were 10,93,170 two-wheelers in Maharashtra and total number of vehicles was 1841 lakhs.

In 1985-86 the total revenue by way of Motor Vehicles Tax was Rs. 98 crores out of which only Rs. 6 to 7 crores was from two-wheelers.

That means 58 per cent vehicles (three-wheelers) used to give only 6.4 per cent Motor Tax for which 22,000 man Days were required to be spent.

All the two-wheelers owners were required to come to RTO for payment of Tax every year.

Almost 70 to 75 per cent Motor Vehicle Tax arrear cases were of Two-wheelers.

Because of new system of one-time tax if the owner pays it, he is not required to pay the tax again during the lifetime of the two-wheeler.

Any further increase in one-time tax rate will not be applicable to the two-wheelers which have already paid the one-time tax.

Statistics show that the two-wheelers are being used for more than 25 years.

The rate of increase of two-wheelers because of easy availability and affordability is almost 25 per cent. The total number of Two-wheelers projections in the State will be as Follows :

> #By the end of 1986-87 .. .. 10.94 lakh 1987-88 .. .. 13.33 lakh 1988-89 .. .. 16.20 lakh 1989-90 .. .. 19.69 lakh 1990-91 .. .. 23.77 lakh 1991-92 .. .. 28.73 lakh##

Existing vehicles will have to pay one-time tax in sliding scale rate. Older the vehicles, less will be the tax.

This tax system is already in existence in Karnataka since April 1, 1986 and also in Gujarat and Rajasthan.

This new system will definitely give relief to the two-wheeler owners as they will not be required to come to RTO for annual payment.

19. Having regard to these factors and having regard to the principles applicable to taxation laws, we are of the opinion that the Maharashtra Act as amended from time to time and mentioned herein before, does not suffer from any vice of being not regulatory or compensatory taxation nor from the vice of being violative of Article 14 of the Constitution.

20. In that view of the matter, the challenge to the provisions of the Act as amended after the judgment of the Bombay High Court cannot be maintained.

21. In that view of the matter, Civil Appeals Nos. 1631-1633 of the 1987 are disposed of by saying that after the amendments noted hereinbefore the Act does not suffer from the vice mentioned in the judgment of the High Court of Bombay. The appeals are therefore, allowed and disposed of accordingly.

22. In that view of the matter the challenge made in the Special Leave Petitions Nos. 11673-75 of 1987 is dismissed. In the facts and circumstances of the case, there will be no orders to costs. Interim orders, if any, are vacated. The taxes will be realised in accordance with the Act and necessary adjustments will be made accordingly.

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