SUPREME COURT OF INDIA

Hardeo Motor Transport

Vs.

State of M.P.

C.A.Nos.4557 with 4558 of 2006

(S. B. Sinha and Dalveer Bhandari, JJ.)

19.10.2006

JUDGEMENT

S. B. SINHA, J:-

1. Leave granted.

2. Constitutional validity of Clause (g) of Entry IV of the First Schedule of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (for short "the 1991 Act") as amended by Madhya Pradesh Motoryan Sanshodhan Adhiniyam, 2004 read with Explanation (7) of the First Schedule thereof is in question in these appeals which arise out of a judgment and order dated 28.06.2005 passed by a Division Bench of the High Court of Madhya Pradesh at Jabalpur.

3. Appellants herein are holders of contract carriage permits. On allegations that they have been using their vehicles as stage carriage permits, the vehicles were detained. They were asked to pay

duty as if the vehicles were being plied without any permit.

4. The Parliament enacted Motor Vehicles Act, 1988 (for short "the 1988 Act") to consolidate and amend the law relating to motor vehicles in exercise of its legislature power under Entry 35, List III of the Seventh Schedule of the Constitution of India. The said Act is a self-contained code.

5. "Permit" has been defined in Section 2(31) to mean "a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under this Act authorizing the use of a motor vehicle as a transport vehicle".

6. "Stage carriage", "contract carriage" and "tourist vehicle" have been defined under Sections 2(40), 2(7) and 2(43) of the 1988 Act as under :

"2(40) "stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey;

2(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another,

and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes -

(i) a maxicab; and

(ii) a motorcar notwithstanding the separate fares are charged for its passengers;

2(43) "tourist vehicle" means a contract carriage, constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;"

7. Section 66 of the 1988 Act deals with grant of permit. Section 72 of the 1988 Act provides for grant of stage carriage permit. In terms of sub-section (1) thereof, a stage carriage permit may be granted or refused to be granted in accordance with the application but subject to the provisions of Section 71 and with such modification as it deems fit. Sub-section (2) of Section 72 provides for the conditions as enumerated therein for grant of such permit. Section 74 of the 1988 Act provides for grant of contract carriage permit on almost similar terms. Sub-section (2) of Section 74 provides for grant of such permits on one or more of the conditions enumerated therein including :

(i) use of the vehicle in a specified area or on a specified route or routes;

(ii) specified rates of hiring should not exceed specified maximum rates; and

(iii) number of passengers.

8. Clause (ix) of sub-section (2) of Section 74 of the 1988 Act empowers the Regional Transport Authority to vary the conditions of permit or attach to the permit further conditions. Clause (xii) of sub-section (2) of Section 74 reads as under :

"(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;"

9. Sub-section (3) of Section 74 reads as under :

"(3)(a) The State Government shall, if so directed by the Central Government, having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of contract carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs.

(b) Where the number of contract carriages are fixed under clause (a), the Regional Transport Authority shall, in considering an application for the grant of permit in respect of any such contract carriage, have regard to the following matters, namely:-

(i) financial stability of the applicant;

(ii) satisfactory performance as a contract carriage operator including payment of tax if the applicant is or has been an operator of contract carriages; and

(iii) such other matters as may be prescribed by the State Government"

10. Section 192A of the 1988 Act provides for a penal clause stating :

"(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of Section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than three months or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both :

Provided that the court may for reasons to be recorded, impose a lesser punishment.

(2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose :

Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use.

(3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was

made."

11. The 1988 Act, thus, contains penal provision for violation of the provisions of the said Act and/or violating the terms and conditions of the permit. A penalty can be imposed by a Court. An order of penalty is an appellable one. The Central Government in exercise of its power conferred upon it made rules known as the Central Motor Vehicle Rules, 1989. Rules 85 and 85A of the Rules provide for additional conditions of tourist permit.

12. The 1988 Act and the Rules made thereunder provide for a complete Code. The matter relating to the imposition of tax, however, is provided for under the statutes enacted by each State. The State of Madhya Pradesh for the said purpose enacted the 1991 Act. Section 2(c) of the 1991 Act defines 'tax' to mean a tax leviable under the Act. Section 3 provides that a tax shall be leviable on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. Section 16 provides for power of entry, seizure and detention of motor vehicles in case of non-payment of tax. Sub-sections (1) to (5) of Section 16 of the 1991 Act read as under :

"16. Power of entry, seizure and detention of Motor Vehicles in case of non-payment of tax : (1) The Taxation Authority or any other officer, authorised by the State Government in this behalf, may at all reasonable time enter into and inspect any motor vehicle or premises where he has reason to believe that a motor vehicle is kept for the purpose of verifying whether the provisions of this Act or any rules made thereunder are being complied with :

Provided that no officer shall be authorised under this sub-section with respect to motor cycles and motor cars :

(2) Any person driving a motor vehicle in any public place shall, on being so required by the Taxation Authority or any officer authorised in this behalf by the State Government, produce-

(a) the certificate of registration;

(b) the token in evidence of the payment of tax ; and

(c) the certificate of insurance relating to the use of the vehicle and shall keep such vehicle stationary for such time as may be required by such authority or officer to satisfy himself that the

tax in respect of such motor vehicle has been paid :

Provided that in the case of a motor vehicle other than a transport vehicle; the certificates so required shall be produced for inspection within such period and in such manner as may be prescribed under sub-section (4) of Section 130 of the Motor Vehicles Act, 1988.

(3) The Taxation Authority or any officer authorised by the State Government in this behalf may if he has reason to believe that a motor vehicle has been or is being used without payment of tax, penalty or interest due, seize and detain such motor vehicle and for this purpose take or cause to be taken any step as may be considered proper for the temporary safe custody of such motor vehicle and for the realisation of tax due.

(4) Where a motor vehicle has been seized and detained under sub-section (3), the owner or the person in-charge of such vehicle may apply to the Taxation Authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and if such authority or officer after verification of such documents, is satisfied that no amount of tax is due in respect of that vehicle, may by an order in writing release such vehicle.

(5) Where a motor vehicle has been seized and detained under sub-section (3), the Court taking cognizance of the offence shall not release such vehicle."

13. Section 23 of the 1991 Act empowers the State to amend the Schedule in regard to the rates of tax by not more than fifty per cent of the rates specified therein. As noticed hereinbefore, the rate of tax is specified in the First Schedule appended to the said Act. Entry IV of the First Schedule provides for public service vehicle. The relevant portions of Clauses (d), (f) and (g) of Entry IV of the First Schedule read as under :

14. Explanation (7) of the First Schedule reads as under:

"Explanation (7) - The words "plying without permit" in Clause (g) shall include plying of a public service vehicle on an authorised route or making a trip not authorised by a permit granted under the Motor Vehicles Act, 1988 but shall not include the plying of a public service vehicle under circumstances laid down in sub-section (3) of Section 66 of the Motor Vehicles Act, 1988."

15. Sub-clause (3) of Clause (f) and Clause (g) of Entry IV of the First Schedule were amended in the following terms :

"(3) Vehicle permitted to carry more than six passengers and plying as contract carriage covered by all India Tourist permit issued by other State under sub-section (9) of Section 88 of the Motor Vehicles Act, 1988 for each seat (other than the driver) which the vehicle is permitted to carry - Rs. 200.00 per seat per week or part thereof till the vehicle remains in Madhya Pradesh."

"(g) Motor vehicle plying without permit;

A. Vehicle permitted to carry upto 12 passengers (excluding driver) - Rs. 1000.00 per seat per month in accordance with the entire registered seating capacity.

B. Vehicle permitted to carry more than 12 passengers (excluding driver) - Rs. 1500.00 per seat per month in accordance with the entire registered seating capacity."

16. Tax imposed on motor vehicles in terms of the provisions of the 1991 Act is a regulatory one. It was so held in Bolani Ores Ltd. v. State of Orissa [(1974) 2 SCC 777] stating : AIR 1975 SC 17 at P. 28, Para 29

".....If the vehicles do not use the roads, notwithstanding that they are registered under the Act, they cannot be taxed...."

17. We may, however, hasten to add that even if a vehicle is roadworthy and can be plied on a road, a tax may be imposed, but if a vehicle is not capable of being plied on the road, no tax would be leviable.

18. In Automobile Transport (Rajasthan) Ltd. etc. v. The State of Rajasthan and Others [1963 (1) SCR 491], it is stated : AIR 1962 SC 1406, Para 21

"We were addressed at some length on the distinction between a tax, a fee and an excise duty. It was also pointed out to us that the taxes raised under the Act were not specially ear-marked for the building or maintenance of roads. We do not think that these considerations necessarily determine

whether the taxes are compensatory taxes or not. We must consider the substance of the matter and so considered, there can be no doubt that the taxes imposed are no hindrance to the freedom of trade, commerce and intercourse. If a statute fixes a charge for a convenience or service provided by the State or an agency of the State, and imposes it upon those who choose to avail themselves of the service or convenience, the freedom of trade and commerce may well be considered unimpaired. In such a case the imposition assumes the character of remuneration or consideration charged in respect of an advantage sought and received."

19. The power of the State of Madhya Pradesh to seize a vehicle in terms of Section 16(6) of the 1991 Act came up for consideration before this Court in M.P. AIT Permit Owners Assn. and Another v. State of M.P. [(2004) 1 SCC 320]. The question which arose for consideration therein was that having regard to the fact that the Parliamentary Act provides for a lesser penalty as specified in Section 192A thereof, can the State by reason of the taxing statute impose a higher penalty? It was held : 2003 AIR SCW 6600, Para 9

"Section 192-A of the MV Act provides that if a motor vehicle is driven in contravention of Section 66(1), that is, if a vehicle is driven or caused to be driven as a transport vehicle without permit, or in contravention of any condition thereof relating to the route on which or the area in which or the purpose for which the vehicle may be used, the user is punishable with fine for the first offence and imprisonment for the subsequent offence but this section does not provide for confiscation of the vehicle. Section 16(6) of the Act provides that subject to the provisions of sub-section (8), where upon receipt of report about the seizure of the vehicle under sub-section (3), the taxation authority is satisfied that the owner has committed offence under Section 66 read with Section 192-A of the MV Act of plying vehicle without permit and he may by order in writing and for reasons to be recorded confiscate the vehicle seized under the said provision. Under Section 16(3) of the Act, a vehicle seized for non-payment of tax or other dues is liable to be returned on showing that tax has been paid. Thus, if tax with regard to the seized vehicle is paid that vehicle has got to be released. So far as the link that is sought to be established with taxation procedures is concerned, it snaps the moment tax is paid and vehicle is released. In such an event also motor vehicle can be confiscated on a report that such vehicle has been seized. The cause or basis for confiscation of motor vehicle is driving such vehicle contrary to Section 66 of the MV Act read with Section 192-A of the MV Act and a report of seizure under Section 16(3) of the Act."

20. The said decision, however, was rendered on the premise that the State Act is repugnant to the Central Act.

21. It is, however, not in dispute that the 1991 Act has received the assent of the President of India. While considering the question of constitutionality of the provisions of the 1991 Act, therefore, Article 254(2) of the Constitution of India may not have any role to play.

22. We may at this juncture notice that the concepts of tax, compensatory tax and fees having regard to diverse decisions rendered by this Court over a number of years were referred to a Constitution Bench. The decision of the Constitution Bench of this Court is since reported in Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. [JT 2006 (4) SC 611]. The Constitution Bench of this Court made a deep analysis of the nature of tax, principles of imposition of tax, compensatory tax and levy of fee and stated the law, thus : 2006 AIR SCW 3396, Para 38

"Tax is levied as a part of common burden. The basis of a tax is the ability or the capacity of the taxpayer to pay. The principle behind the levy of a tax is the principle of ability or capacity. In the case of a tax, there is no identification of a specific benefit and even if such identification is there, it is not capable of direct measurement. In the case of a tax, a particular advantage, if it exists at all, is incidental to the States' action. It is assessed on certain elements of business, such as, manufacture, purchase, sale, consumption, use, capital etc. but its payment is not a condition precedent. It is not a term or condition of a licence. A fee is generally a term of a licence. A tax is a payment where the special benefit, if any, is converted into common burden."

23. In regard to compensatory tax, it was opined : 2006 AIR SCW 3396, Para 40

"A tax can be progressive. However, a fee or a compensatory tax has to be broadly proportional and not progressive. In the principle of equivalence, which is the foundation of a compensatory tax as well as a fee, the value of the quantifiable benefit is represented by the costs incurred in procuring the facility/services which costs in turn become the basis of reimbursement/recompense for the provider of the services/facilities. Compensatory tax is based on the principle of "pay for the value". It is a sub-class of "a fee". From the point of view of the Government, a compensatory tax is a charge for offering trading facilities. It adds to the value of trade and commerce which does not happen in the case of a tax as such. A tax may be progressive or proportional to income, property, expenditure or any other test of ability or capacity (principle of ability). Taxes may be progressive rather than proportional. Compensatory taxes, like fees, are always proportional to benefits. They are based on the principle of equivalence. However, a compensatory tax is levied on an individual as a member of a class, whereas a fee is levied on an individual as such. If one keeps in mind the "principle of ability" vis-a-vis the "principle of equivalence", then the difference between a tax on one hand and a fee or a compensatory tax on the other hand can be easily spelt out. Ability or capacity to pay is measurable by property or rental value. Local rates are often charged according to ability to pay. Reimbursement or recompense are the closest equivalence to the cost incurred by the provider of the services/facilities. The theory of compensatory tax is that it rests upon the principle that if the Government by some positive action confers upon individual(s), a particular measurable advantage, it is only fair to the community at large that the beneficiary shall pay for it. The basic difference between a tax on one hand and a fee/compensatory tax on the other hand is that the former is based on the concept of burden whereas compensatory tax/fee is based on the concept of recompense/reimbursement. For a tax to be compensatory, there must be some link between the quantum of tax and the facility/services. Every benefit is measured in terms of cost which has to be reimbursed by compensatory tax or in the form of compensatory tax. In other words, compensatory tax is a recompense/reimbursement.

24. Opining that compensatory tax being a judicially evolved concept, it was observed that the scope and effect thereof must be construed within the said parameters.

25. In G. K. Krishnan and Others v. State of Tamil Nadu and Others [(1975) 1 SCC 375], Mathew, J. stated the law, thus : AIR 1975 SC 583, Para 17

"Strictly speaking, a compensatory tax is based on the nature and the extent of the use made of the roads, as, for example, a mileage or ton-mileage charge or the like, and if the proceeds are devoted to the repair, upkeep, maintenance and depreciation of relevant roads and the collection of the exaction involves no substantial interference with the movement. The expression "reasonable compensation" is convenient but vague. The standard of reasonableness can only lie in the severity with which it bears on traffic and such evidence of extravagance in its assessment as come from general considerations. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the State for the actual use made of the physical facilities provided in the shape of a road. The difficulties are very great in defining this conception. But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and a burden placed upon transportation in aid of the general expenditure of the State. It is clear that the motor vehicles require, for their safe, efficient and economical use, roads of considerable width, hardness and durability; the maintenance of such roads will cost the government money. But, because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them, it seems not unreasonable that they should be called upon to make a special contribution to their maintenance over and above their general contribution as taxpayers of the State. If, however, a charge is imposed, not for the purpose of obtaining a proper contribution to the maintenance and upkeep of the road, but for the purpose of adversely affecting trade or commerce, then it would be a restriction on the freedom of trade, commerce or intercourse."

26. We are not oblivious of a recent decision of this Court in Vijayalashmi Rice Mill and Others v. Commercial Tax Officers, Palakol and Others [(2006) 6 SCC 763], although we are not strictly concerned therewith, but we notice that herein the application of Jindal Stainless Ltd. (supra) was kept limited stating : 2005 AIR SCW 4031, Para 26, 2006 AIR SCW 3396

"It may be noted that the decision in Jindal Stainless was given in connection with Article 301 of the Constitution, and it was not regarding the nature of a fee. Hence, it cannot be regarded as an authority explaining the nature of a fee."

27. We, however, feel that this Bench is bound by the Constitution Bench decision of this Court.

28. The issue which arises for our consideration in the light of the aforementioned authoritative pronouncement, as noticed hereinbefore, is whether the impugned provision specifies the test laid down by the Constitution Bench.

29. Section 3 of the 1991 Act is the charging section. It provides that the tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified in the First Schedule. The levy of tax, therefore, is on the motor vehicles. Its rate may vary keeping in view its use or the nature thereof. However, the use of a motor vehicle so far as public service vehicles are concerned would depend upon the nature of permit held by it. It is not in dispute that Appellants herein have been granted permit for plying their buses as contract carriage. Allegation against this is that they have been violating the terms and conditions of the permit by plying their vehicles as stage carriage. It is, however, not in dispute that the rate of tax of a contract carriage permit is more than the stage carriage. Clause (g) of Entry IV specifies the rate of tax of motor vehicle plying without permit at the rate of Rs. 1500/- per seat per month.

30. Explanation (7) of the First Schedule of the 1991 Act does not create any legal fiction. It provides for a inclusive definition stating that the words "plying without permit" in Clause (g) shall include plying of a public service vehicle on an authorized route or making a trip not authorized by a permit granted under the 1988 Act.

31. The role of an explanation of a statute is well-known. By inserting an explanation in the Schedule of the Act, the main provisions of the Act cannot be defeated. By reason of an explanation, even otherwise, the scope and effect of a provision cannot be enlarged. It was so held in S. Sundaram Pillai, etc. v. R. Pattabiraman [AIR 1985 SC 582 : (1985) 1 SCC 591] in the following terms : At P. 593, Para 52 of AIR

"Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is-

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment,....."

[See also Swedish Match AB and Another v. Securities and Exchange Board of India and Another, (2004) 11 SCC 641]

32. We have noticed that the Constitution Bench categorically states that compensatory tax cannot be progressive. We have furthermore noticed that, according to the Constitution Bench, imposition of tax cannot be a term or condition of a licence. If a permit has been granted, the holder of a permit is liable to comply with the conditions of permit. If he violates the terms and conditions of permit, law will take its own course. A permit is granted under the 1988 Act. If there is violation of the terms of permit, the consequences, therefor, shall ensue as contained in Section 192A of the 1988 Act. A distinction must be borne in mind that a tax cannot be imposed by way of penalty although penalty can be imposed for non-payment of tax or evasion of tax. The State may make suitable legislations in this behalf. But the same would not mean that while specifying a rate of tax, the executive government of the State can indirectly levy a penalty which it cannot do directly.

33. Our attention has been drawn to a decision of this Court in State of U.P. and Others v. Sukhpal Singh Bal [(2005) 7 SCC 615] and in particular the following passage: 2005 AIR SCW 4325, Para 12

"In the case of State of Madras v. V.G. Row (AIR at p. 200, para 15) this Court observed as follows (SCR p. 607) : AIR 1952 SC 196

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

34. Kapadia, J. in that case was dealing with the constitutionality of a penal provision. It was stated that before a penalty can be imposed, mens rea on the part of the defaulter is required to be established. The said decision is merely an authority for the proposition that a statute may provide for a fixed penalty or minimum penalty. But it was not laid down therein that penalty can be imposed without giving an opportunity of hearing to the defaulter or without satisfying the other conditions laid down therefor. [See also State of T.N. v. M. Krishnappan and Another, (2005) 4 SCC 53]. 2005 AIR SCW 1718

35. The transport authorities of the State indisputably have a power to check a vehicle so as to ascertain whether payment of tax is being evaded. They have been conferred with the power to detain a vehicle. They can release the vehicle only when tax as demanded is paid. Even the power of the court to release the vehicle has been taken away unless tax is paid and the court can satisfy itself as to whether a tax is paid or not only on the receipt of the certificate issued by the transport authorities of the State. The power of the transport authorities, therefore, is very wide. We, however, do not mean to suggest that only because a wide power has been conferred the same by itself would lead to a presumption that the same is capable of misuse or on that count alone the provisions of Article 14 of the Constitution of India would be attracted. But, when a statute confers a wide power upon a statutory authority, a closer scrutiny would be required.

36. The 1991 Act also does not make any provision for compliance of the principles of natural justice or for determination of a question as to whether the conditions of permit have been violated by an independent authority.

37. Appellants have paid tax. They have paid tax as specified for in permits granted in their favour as a contract carriage. The rate of tax payable by a contract carriage is higher than the rate of tax imposed on a stage carriage. For non-payment of tax or for payment of tax for a wrong purpose, a penalty can be imposed but it is difficult to conceive that a different rate of tax which is not contemplated under Section 3 of the 1991 Act can be imposed by way of penalty.

38. The interpretation clauses contained in the 1988 Act are incorporated in the 1991 Act by reference. The interpretation of the expressions "permit", "contract carriage" and "stage carriage" must, thus, be understood on the premise that the said expressions carry the same interpretation as contained in the 1988 Act.

39. A distinction between "contract carriage" and "stage carriage" has been noticed by this Court in State of A.P. and Others v. B. Noorulla Khan and Another [(2004) 6 SCC 194] stating : 2004 AIR SCW 2901, Para 13

"The distinction between a stage carriage permit or a contract carriage permit as envisaged by the legislature has to be maintained as the two types of permits are intended to meet different requirements. The contract carriages are for those who want to hire the vehicle collectively or individually for a group or a party for their transport to a destination/destinations. The vehicle has to be hired as a whole for the carriage of passengers mentioned in the contract. There has to be only one contract for carrying the passengers mentioned in the contract from one destination to another. An agent or a group of persons/individuals cannot hire a public service vehicle for going from one place to another with passengers having different purposes. If such a construction is put then there would be no distinction between stage carriage or contract carriage permits. If contract carriage permit-holder is permitted to pick up an individual or a few of them from the starting point of the journey and drop them at the last terminus of the route it would virtually be a stage carriage with corridor restriction. Stage carriage is intended to meet the requirements of the general public travelling from one destination to another having different purposes whereas a contract carriage is meant for those who want to hire a public service vehicle as a whole collectively for their transport from one destination to another having the same purpose....."

40. As a logical corollary the mode and manner in which the permits are granted must necessarily be considered to be part of the provisions of the 1991 Act. Article 254(2) of the Constitution of India as such may not be attracted but it is a trite law that the executive while fixing a rate of duty cannot be permitted to usurp the legislative power and make a provision which would be inconsistent with the substantive provision of the statute. In other words, the provisions contained in the Schedule must be in consonance with the substantive provisions in the main Act. It must be in conformity with the charging Section. As in terms of Section 3 of the 1991 Act, the legislature directed that the tax can be levied on motor vehicles subject to the rates fixed; by taking recourse to Explanation (7), firstly, no new definition could be introduced and, secondly, an owner of a vehicle having one kind of permit could not have been treated as having no permit at all only because the transport authorities have reasons to believe that the conditions of permit have been violated. By way of example we may notice that recently a Constitution Bench of this Court in State of Kerala and Others v. Maharashtra Distilleries Ltd. and Others [(2005) 11 SCC 1] has laid down guidelines for reading of the entries in the Schedule vis-a-vis the provisions of the Act. 2005 AIR SCW 2944

41. For the reasons aforementioned, Clause (g) of Entry IV of the First Schedule of the Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 (for short "the 1991 Act") as amended by Madhya Pradesh Motoryan Sanshodhan Adhiniyam, 2004 read with Explanation (7) of the First Schedule is declared unconstitutional. The appeals are allowed. No costs.

Appeals allowed.