BOMBAY HIGH COURT

Gainda Mal

Vs.

State of H.P

Civil Writ Petn. No. 52 of 1971

(R.S. Pathak, C.J., T.U. mehta, and C.R. Thakur, J.)

04.08.1977

JUDGMENT

T.U. Mehta, J.

1. The petitioner herein is a registered partnership firm and carries on, inter alia, the business of transportation of goods as carriers in Punjab, Haryana, Union Territory of Chandigarh and Himachal Pradesh. By this writ petition it has challenged the vires of Sections 3 and 4 of the Act called Himachal Pradesh Passengers and Goods Taxation Act, 1955 (Act 15 of 1955) (which is hereinafter referred to as "the Act") and second proviso to Rule 9 of the Rules framed under the Act on 13th, March, 1970.

2. The matter first came up before me sitting as a single Judge on 5th May, 1977. Since it was found that the petitioner had challenged the validity of the provisions contained in Sections 3 and 4 of the Act, all the three Judges of this Court were required to determine the question about the said vires as provided in sub-art. (3) of the Article 228 (a) of the Constitution. Accordingly this Full Bench was constituted to consider the following three questions which were referred to it.

> 1. Are Sections 3 and 4 of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 *ultra vires* and void either because they infringe Article 19 (1) (f) and (g) or because they infringe Article 301 of the Constitution of India?
> 2. Do these provisions incorporate excessive delegation to tax in favour of the Government and are they void on that account?

3. Is Rule 9 of the Himachal Pradesh Passengers and Goods Taxation Rules void on account of any of the grounds stated above?

> 4. Short facts of the case leading to this writ petition are as under :
> Prior to the re-organization of States of Punjab and Himachal Pradesh on 1st November, 1966, the petitioner was a permit-holder for carrying goods from one place to another in its carriers on roads. At that time Kalka and Simla were forming the parts of the erstwhile

State of Punjab. In the year 1952 the erstwhile State of Punjab had enacted the Punjab Passengers and Goods Taxation Act, 1952 after receiving the assent of the President on 30th August, 1952. The Himachal Pradesh Vidhan Sabha, thereafter passed the present Act, the provisions of which are in dispute in this writ petition. This Act was passed "to provide for levying a tax on, passengers and goods carried by road in certain motor vehicles". Section 3 of the Act which is the charging section and which is challenged by this writ petition has been amended from time to time but when this writ petition was filed it was in the following terms :

3. (1) "These shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at such rates not exceeding one sixth of the value of the fare or freight, as the case may be, and the Government may, by notification, direct subject to a minimum of two paise in any one case, the amount of tax being calculated to the nearest paisa".

Explanation - When passengers are carried and goods are transported by a motor vehicle, and no fare or freight whether chargeable or not has been charged the tax shall be levied and paid as if such passangers were carried or goods transported at the normal rate prevalent on the route.

(2) .....

(3) Where passengers are carried or goods transported by a motor vehicle from any place outside the State or from any place outside the State to any place outside the State but through the State or from any place within the State to any other place within the State but through the intervening territory of another State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in sub-section (1) and shall be calculated on such amount as bears the same proportion, to the total fare and freight as the distance covered is the State bears to the total distance of the journey."

Then follows Section 4 which stipulates the method of collection of tax. This is another section which is under challenge in this writ petition, and the same was as under at the relevant time:

"4. The tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner:

Provided that in case of public carriers or private carriers the Government may accept a lump sum in lieu of the tax chargeable on freight in the manner prescribed;

Provided further that in case of contract carriages the Government may accept a lump sum in lieu of the tax chargeable on fare in the manner prescribed. So far as the above cited second proviso to Section 4 is concerned, the same is not relevant for our purpose in this writ petition.

4. It is evident from these two sections of the Act that while Section 3 stipulates the charge of tax at ad valorem rates, Section 4 stipulates the method of the collection of the said tax in lump sum in lieu of the tax chargeable at ad valorem rate under Section 3.

5. Section 22 of the Act enables the State Government to make Rules for securing the payment of tax. Under these rule-making powers, the State Government has framed Rules of 1957, and Rule 9 thereof, the vires of which are also under dispute in this writ petition, provides for the method of payment of tax. This rule is also amended from time to time. On 30th March, 1970 this Rule was amended in exercise of the power conferred by above referred Section 22 read with Section 4 of the Act. The relevant amendment which is under challenge, is as under:

> "Provided that with effect from 1st April 1970 the owner of the public carrier or a private carrier may pay to the Government the sum of Rs. 1,500/- (Rupees one thousand five hundred) per annum in lump sum in lieu of the tax chargeable on freight with effect from 1st April, 1970.
>
> The lump sum tax shall be payable in equal quarterly instalment commencing from 1st April 1970 each year and shall be paid within 15 days of the commencement of the quarter concerned."

6. Now the contention of the petitioner in this writ petition is that the tax imposed by Section 3 and proposed to be levied in lump sum by Section 4 read with the above referred amendment, is unreasonable inasmuch as it infringes the provisions contained in Art 19 (1) (f) and (g) as well as the Article 301 of the Constitution. According to the petitioner these provisions also incorporate excessive delegation of power to tax in favour of the Government. In this connection the petitioner has further pointed out that while it had to pay only the amount of Rs. 1215/- per annum for the entire State of Punjab, it is now required to pay the amount of Rs. 1215/- per annum to the State of Haryana, Rs. 600/- to the State of Punjab, Rs. 360/- to the Union Territory of Chandigarh, and Rs. 1500/- to the State of Himachal Pradesh. According to the petitioner, therefore, this amount of tax levied by four different authorities is excessive and heavy.

7. It is found that above referred Rule 9 was further amended on 22nd June, 1972 and by virtue of that amendment the owner of a public or private carrier became liable to pay to the Government a sum of Rs. 2500/- per annum by way of lump sum in lieu of the tax with effect from 1st July, 1972. The vires of this amendment came to be considered by a Division Bench of this Court in *Sardar Karam Singh v. State of Himachal Pradesh*[1] In that case the challenge to the said amendment of Rule 9 was given on the basis of Article 14 of the Constitution. This challenge was on the ground that Rule 9 nowhere made any distinction between the lump sum payable by a motor vehicle owner operating in part only of Himachal Pradesh and motor vehicle owner operating in the whole of Himachal Pradesh and the amount of lump sum was the same for all.

8. Dealing with this challenge, this court has observed in that case as under (at p. 1924 of Tax LR) :

> "The next question is whether the Government when prescribing a lump sum, has violated Article 14 of the Constitution by imposing the same amount by way of a lump sum on all motor vehicle owners, whether they operate in part only or in the whole of Himachal Pradesh. There can be little doubt that the determination of the lump sum must be left to the government. Although the proviso to Section 4 speaks of it as a "lump sum in lieu of

the tax", there can be no dispute that payment of the lump sum is payment of a tax. In its essential nature, it is a tax levied by the Act. When the proviso to Section 4 speaks of it as "a lump sum in lieu of the tax" it declares that instead of paying the tax calculated on the basis of

[1](decided on September 18, 1973) reported in ILR (1973) 2 Him Pra 1107

actual freight according to the provisions of Section 3 (1) what can be paid is a lump sum by way of tax. It is well settled that the rate at which tax may be levied is a matter resting with the legislature, or, if the Act so provides, with the government. Nonetheless, the levy of the tax must conform to Article 14 of the Constitution. It is not open to the legislature or the Government to create an invidious discrimination between persons and persons by prescribing different rates of tax in respect of persons similarly situated or the same rate of tax in the case of persons not similarly situated".

Proceeding further the Court has observed in that case as under (at pp. 1924- 1925 of Tax LR) :

"The lump sum, in other words, should be so graded that it is related to the distance travelled by the goods. It is a lump sum only in so far as it is fixed without reference to the actual volume of goods carried by the motor vehicles from day to day. Accordingly, if the motor vehicle can ply in part only of Himachal Pradesh, it should not be made liable to pay a lump sum which is the same as that payable by a motor vehicle operating throughout Himachal Pradesh. To the extent that the second proviso to Rule 9 makes no provision for such distinction, it violates Article 14 of the Constitution".

Accordingly, I hold that proviso (b) to Rule 9 is *ultra vires* in so far as it imposes the same amount of tax by way of a lump sum on the petitioner as in the case of motor vehicle owners operating throughout Himachal Pradesh. The requirement that the petitioner must pay a sum of Rs. 2,500/- per annum on account of tax as a lump sum cannot be sustained."

9. In view of these findings, this Court in that case did not go into the question whether the impugned imposition contravened Articles 301 and 304 of the Constitution.

10. During the course of the hearing of this appeal, the learned Advocate of the petitioner stated that if, in view of the above decision of the Division Bench of this Court, the impugned amendment to Rule 9 made on 30th March, 1970 which is similar to clause (b) of Rule 9 which has been struck down by the above decision, is also struck down in this case, it would not be necessary to go into the question of vires of sections 3 and 4 of the Act. The learned Advocate General, however, contended that since this matter is already referred to this Full Bench, the State Government would like to urge the reconsideration of the above referred decision given by the Division Bench and to hold that the impugned amendment of Rule 9 in this case is not invalid, on the ground of its infringement of Article 14 of the Constitution. In view of this we shall first confine our attention to the question whether the view taken by this court in the above referred decision of the Division Bench should be reversed. We, therefore, add one more question to the above quoted three questions which are referred to us. This additional question is

as under:-

> 4. Whether impugned amendment to Rule 9 is *ultra vires* the provision of Article 14 of the Constitution.

11. A perusal of the provisions contained in Sections 3 and 4 of the Act shows that the charging provision contained in Section 3 proposes to levy tax "at such rates not exceeding one sixth of the value of the fare or freight". Thus the tax is levied on the basis of the fare or freight realized by a transport undertaking. But, for the purpose of convenience, section 4 gives an option to the owners of carriers to pay the tax in lump sum. The method of levying lump sum amount of tax is prescribed by the Government by Rule 9 which is amended from time to time. According to the impugned notification which amends Rule 9, this lump sum is fixed at Rs. 1500/- irrespective of the question whether the carrier plies on only a part of the territory of Himachal Pradesh or on the whole of that territory. It is no doubt true that this particular method of calculation of tax in lump sum is devised only for administrative convenience, and as held by the Supreme Court in *R. C. Jall Parsi v. Union of India reported in*[2] so long as the method of calculation of tax does not affect the essence of the duty, but only relates to the machinery of the calculation for administrative convenience the said method cannot be successfully challenged. It should also be conceded that so long as this machinery for calculation of tax has some rational or intelligent nexus between the tax calculated, and the fares and freights collected, it would not be open to a citizen to contend that the tax is ultra vires, and not justified under entry 56 of List two of the Constitution. The question, however, is whether a flat rate of levying tax in lump sum without making any distinction between two classes of operators not similarly situated, would offend the provisions of Article 14 of the Constitution or not.

12. It should be noticed that the lump sum tax contemplated by Section 4 of the Act is in lieu of the tax which is chargeable under Section 3. If again a reference is made to the provisions contained in Section 3, it becomes evident that in ordinary course the tax is chargeable only on the value of fare on freight. Sub-section (3) of Section 3 makes it further clear that in cases where goods are permitted to be transported not in the whole of the area of Himachal Pradesh State, the tax becomes payable in respect of the distance covered within the State of Himachal Pradesh calculated on such amount as bears the same proportion to the total fare and freight as the distance covered in the State bears to the total distance of the journey. This sub-section (3) therefore, emphasizes the intention of the legislature to levy tax which is proportionate to the area covered by the transport vehicle in question. Thus the tax policy which is revealed from the scheme of Section 3, makes distinction between the carriers which are operating in the whole of the territory of the State, and the carriers which are operating only in a part of this territory. Now if the tax is to be realized in lump sum, and in lieu of the tax which would become chargeable under Section 3, it must follow that the lump sum tax so levied must be based on the same principle on which ad valorem tax to be levied under Section 3, is based. If that is not done, and if all the carriers are charged to the same tax in lump sum irrespective of the question whether they transport goods in the whole territory of Himachal Pradesh, or in only a part of that territory, the result would be that the two classes of cases which do not stand on equal footing are treated equally. This would not only infringe the principle of Article 14 of the Constitution, but would also go against the intention expressed by the legislature in the above referred provisions of Section 3 which is the main charging section. In these circumstances, we see no justification for

revising the view which this court has taken in the above referred case of Sardar Karam Singh, (1974 Tax LR 1921) (Him Pra).

13. The learned Advocate General, however, drew our attention to the decision given by

[2] AIR 1962 SC 1281

the Supreme Court in *M/s. Sainik Motors, Jodhpur v. State of Rajasthan, reported in*[3] In that case the Supreme Court considered similar provisions contained in Section 4 of the Rajasthan Passengers and Goods Taxation Act (18 of 1959) and Rules 8 and 8-A framed thereunder. Section 4 of the Rajasthan Act enables the State Government to accept a lump sum in lieu of the tax chargeable on freight, and Rules 8 and 8A made provision for the payment of lump sum in lieu of tax on freight. These provisions were, therefore, similar to those with which we are concerned in this matter. The contention which was raised before the Supreme Court was the Rules 8 and 8A made the payment of lump sum compulsory and, therefore, these rules and the notification issued by the Government were repugnant to Section 4. Dealing with this contention, the Supreme Court held that the proviso attached to Section 3 was enabling in nature and lump sum payment was convenient mode by which an amount was payable per year irrespective of the question whether the tax would be more or less if calculated on actual fares or freights. The rates which were prescribed for lump sum per year were for those who wished to avail of them, and therefore, even though the mandatory language was used to fix the amount of lump sum, the Rules 8 and 8A as well as the notification issued thereunder could not be said to override the section to which they were subordinate. The Supreme Court therefore, found that these rules and the Notification issued thereunder were not repugnant to Section 4. Another contention which was raised in that case before the Supreme Court was that the power to fix lump sums in lieu of tax has been conferred upon Government without guidance and the said conferment of power was unconstitutional. The Supreme Court rejected this argument on the footing that payment of lump sum was not obligatory and the person concerned could elect to pay the tax calculated on actual fares and freights. In other words there was no compulsion for any operator to elect to pay a lump sum if he did not choose to do so.

14. None of these observations of the Supreme Court in the above referred decision has any bearing on the facts of the present case. Here what we are considering is the challenge to the fixation of the lump sum on the test of Article 14 of the Constitution, in other words, on the test as to whether this provision seeks to make any distinction between the two classes of operators who are not similarly situated, and therefore, could not be governed by the same measure of taxation. No such question was involved in the above referred decision given by the Supreme Court. In our opinion, therefore, that decision has no application to the point under our consideration and hence we see no reason to depart from the view which this Court has taken in the above referred case of Sardar Karam Singh (1974 Tax LR 1921) (Him Pra).

15. It is clear from the points which are referred to us that the third point is with regard to the challenge given by the petitioner to the amendment made in Rule 9 on the ground of infringement of Article 19 (1) (f) and (g) as well as on the ground of excessive delegation. It is evident however, that this challenge should fail for two reasons, namely, (1) the realization of tax in lump sum is merely a method of its collection and such methods can be adopted for administrative convenience and (2) there is nothing on the record to show that the quantum of lump sum tax which is fixed under this rule is so highly unreasonable that it could be said to be infringing the fundamental right of the petitioner under Article 19 (1) (f) and (g). The mere fact

that the petitioner who plies his carrier in four different territories having different jurisdictions, and has, therefore, to pay tax to four different

[3] AIR 1961 SC 1480

authorities, is totally irrelevant to this consideration.

16. Since we are of the view that the impugned amendment of Rule 9 is *ultra vires* the provisions of Article 14, the learned Advocate of the petitioner has not pressed petitioner's contention relating to questions Nos. 1 and 2 which are referred to us. We, therefore, need not go into these questions.

17. The conclusion therefore, is that the amendment made to Rule 9 by Annexure A is declared ultra vires, void and inoperative, and therefore, it is further declared that no tax can be collected under this amendment. It is however, clarified that this does not prevent the authorities concerned from realizing tax, if any, at the rates prescribed in Section 3 of the Act.

18. The rule is accordingly made absolute without any order as to costs.

Rule made absolute.