

MADHYA PRADESH HIGH COURT

M. P. Transport Co. Private Ltd.

Vs.

State of M. P

Misc. Petn.No. 111 of 1961
(P.V. Dixit, C.J. and K.L. Pandey, J.)

25.10.1961

JUDGMENT

Dixit, C.J.

1. This order shall also govern Miscellaneous petitions Nos.112 and 113, both of 1961.
2. These are three petitions under Articles 226 and 227 of the Constitution of India by transport companies holding permits under the Motor Vehicles Act, 1939, challenging the validity of the Madhya Pradesh Motor Vehicles (Taxation of Passengers) Act, 1959, (hereinafter referred to as the Act), on various grounds. The petitioners pray for the issue of a writ in the nature of mandamus for restraining the respondents from giving effect to the provisions of the Act or acting in any manner by virtue of or under the said Act. Alternatively they pray that if the Act is valid, then a direction prohibiting the respondents from enforcing the Act as against them until the State Government issues a notification under Section 43 of the Motor Vehicles Act enhancing the maximum rate of fare in respect of the stage carriages run by them, be issued.
3. The impugned Act was enacted in 1959. It came into force on 1st February 1961, which was the date appointed for the purpose by a notification issued under Section 1 (3) of the Act. The long title of the Act is "An Act to provide for the levy of a tax on passengers carried in certain classes of public service vehicles in the state of Madhya Pradesh." Section 2 is the definition Section. By Section 3 it is inter alia provided that on the commencement of the Act under section 1 (3),

"there shall be levied and paid to the State Government a tax on all passengers carried by stage carriages at a rate equivalent to ten per cent of the fare

(inclusive of tax) payable to the operator of a stage carriage."

Section 4 enjoins that save as otherwise provided by the Act, no passenger shall be allowed to travel by the operator in a stage carriage unless he is issued a ticket in the prescribed form for the journey. Sections 5 to 7 deal with the submission of returns and payment of tax by the operator every month into the Government treasury. Section 8 lays down that if the whole or any portion of the tax leviable under the Act for any month has escaped assessment, then the Tax Officer may within the prescribed period assess the tax which has escaped assessment after issuing a notice to the operator. Section 9 empowers the Tax Officer to impose a penalty if the whole or any portion of the tax payable to the State Government in respect of any stage carriage for any period has not been paid in time. Section 10 is concerned with the recovery of tax amount as arrears of land revenue from the operator. Under Section 13 every operator is required to keep and maintain accounts and registers in the prescribed form in respect of stage carriages and the fares collected in respect of passengers travelling therein. An operator is liable to punishment under Section 16 if he submits an incorrect or incomplete return or fails to submit one or if he fraudulently evades or allows to be evaded the payment of any tax due from him or fraudulently makes or allows to be made wrong entries or omissions in the accounts or registers maintained by him or if he willfully acts in contravention of any of the provisions of the Act or any of the rules made thereunder. These are the provisions with reference to which it has been contended that the Act levies a tax on operators and not on passengers and, therefore, offends against Articles 19 (1) (g), 301 and 304(b) of the Constitution.

4. In *Mahamaya Motor Transport Co. v. State of M.P.*¹ the validity of the Act was questioned on grounds similar to those taken in the present petitions. All the grounds of attack failed in that case and it was held by a Division Bench of this Court that the tax imposed by the Act is in 'pith and substance' a tax on passengers carried by road falling within Entry-56 of List II of the Seventh Schedule of the Constitution; that the liability of the tax is on the operators and not on the passengers; that the tax is payable by the passengers and the Act impliedly "did permit the operator to pass the burden of the tax on to the passengers by adding the tax to the existing fares"; that the levy of tax does not offend Articles 301 and 304 of the Constitution as the tax is for purposes of State and falls upon passengers carried by stage carriages within the State; and that it also does not infringe Article 19 (1) (g) as it does not interfere with the rights of any operator to carry on any occupation, trade or business. In holding that the imposition

of the tax did not violate Articles 301 and 304 of the Constitution, the Division Bench relied on the decision of the Supreme Court in *Sainik Motor, Jodhpur v. State of Rajasthan*,².

5. Shri Phadke, learned counsel appearing for the petitioners, submitted that the decision in M.P. No.29 of 1961, D/-25-9-1981 (MP), (Supra) required reconsideration. It was said that the decision was based on the Supreme Court's decision in Petn. No.82 of 1959, D/-22-3-1961" (AIR 1961 Supreme Court 1480), (Supra) relating to the Rajasthan Passengers and Goods Taxation Act, 1959, but the language of the Rajasthan Act was materially different from that used in the local Act; and that the features which weighed with the Supreme Court in upholding the validity of the Rajasthan Act were not to and in the impugned Act. Learned counsel argued that the Act was invalid for vagueness and uncertainty; that it did not indicate with any definiteness as to who was liable to pay the tax; that the expression, "a tax on all passengers carried by stage carriages" used in section 3 only described the taxing event", namely, the carriage of passengers that occasioned the liability of payment of tax and did not mean that the tax was to be paid by the passengers; and that the words "fare (inclusive of tax) payable to the operator of a stage carriage" used in Section 3 (1) could not be construed to mean that the tax amount was payable by the passenger; and that Sees.5 to 10 all proceeded on the basis that the liability for the payment of the tax was on the operator. It was further contended that if the tax was on the operator, then it was clearly repugnant to Articles 19 (1) (g), 301 and 304 (b); that, on the other hand, if it was a tax on passengers, then it contravened Article 23 in that the operators were required to collect the tax for payment to the Government, to keep and maintain accounts and registers, and this labour was nothing but in the nature of begar and forced labour.

6. We are not persuaded by these arguments to take a view different from that expressed in M.P. No.29 of 1961, D/-25-9-1961 (MP), (supra) on the validity of the Act. These arguments have been fully dealt with in the said case, and no useful purpose will be served by covering the same over again. It is quite true that the language of the Act, and especially of section 3, is somewhat involved and is not so clear as that of the Rajasthan Act. The impugned Act cannot be commended as a piece of skilful draftsmanship. But there can be no doubt that it imposes a tax on passengers and not on operators. The expression "a tax on passengers carried by stage carriages" is no doubt indicative of the event that occasions the liability for payment of the tax.

But the liability of the passengers to pay the tax flows not from this expression but from the wording

"there shall be levied and paid to the State Government a tax.....at a rate equivalent to ten per cent, of the fare (inclusive of tax) payable to the operator of a stage carriage."

The tax is thus a percentage of the fare inclusive of tax payable to the operator. The fare, that is to say the sum paid or to be paid by passengers for being carried, thus includes the amount of tax. The fare is clearly payable by the passenger. If the passenger is liable to pay the fare, it necessarily follows that liability for payment of the tax is also on him. The operator only collects the tax from the passengers in the shape of an extra amount added to the old fare. True, the passenger pays the extra amount qua fare. But that does not alter the fact that the liability for the payment of the extra sum is on him and that extra sum is in reality the tax amount which after collection by the operator is paid to the Government and not retained by the operator himself. Once it is recognised that under section 3 the liability for payment of the tax is on the passengers, then the provisions contained in section 5 to section 10 become provisions dealing with the operator's liability for payment of the tax as collector. Consistently with Section 3, they cannot be read as provisions throwing the incidence of tax on the operators. The tax being on passengers, there can be no question of any trade or business, in which the petitioners are engaged, being subjected to a restriction so as to offend Article 19(1)(g), or, as held by the Supreme Court in the case of Sainik Motor, Jodhpur Petn. No.82 of 1959 D/-22-3-1961 (Supra) of any inter-State trade, commerce or inter-course within the meaning of Article 304(b) being affected. The duty imposed on the operator of collection of the tax from the passengers and of paying it to the Government cannot be viewed as begar or forced labour. Nor can the maintenance and keeping of accounts and registers be regarded as a restriction on the conduct of his business. It is a duty attached to the privilege of holding a permit for the running of stage carriages.

7. In the cases before us, the real grievance of the petitioners is that even though the Act itself is valid on its face, it is invalidated on account of the manner in which the respondents are administering and enforcing it. It was urged that in order to make the imposition of the tax in reality and practice a tax on passengers, it was essential first to revise under section 43 of the Motor Vehicles Act, 1939, the maximum rate of fares in respect of stage carriages so as to include the amount of tax chargeable under section 3

of the impugned Act in the fare and give to the operator the right to recover the amount of tax as extra fare, but that the respondents were refusing to revise the fare tables thus making the tax imposed by the Act effective as a tax on the operators. In the return filed on behalf of the respondents in each case, it has been stated that the tax is to be paid by the operator, that in suitable cases he may be in a position to pass off the burden on the passengers; that it is not necessary to revise the fare tables fixed under the Motor Vehicles Act, 1939, and that there is no necessity of conferring any powers on the operator for collection of the tax amount as extra-fare from the passengers, but the operators are expected to collect the tax from the passengers.

8. We must confess that the position taken by the respondents in the returns filed on their behalf is based on a total misconception of the effect of the provisions of the Act and about the conditions necessary for the effectiveness of the Act in relation to an operator as defined in Sections 2 (3) and 4 of the Act. The 'executive' construction put by the respondents is not in accord with the provisions of the impugned Act and section 43 of the Motor Vehicles Act, 1939. If the construction were to be acted upon by the executive uniformly and persistently, then they would be administering a valid law so as to render it invalid. Learned Additional Government Advocate, however, realised this and stated before us that instructions would be issued to all the Regional Transport Authorities for a revision of fare tables under section 43 of the Motor Vehicles Act, 1939, so as to enable the operators to recover the tax amount from the passengers as extra-fare. The issue of instructions is no doubt a step in the right direction. But what needs to be emphasized is that unless and until the fare tables in respect of stage carriages are revised under section 43 so as to give authority to the operator to recover from the passengers the amount of the tax payable under section 3 of the impugned Act as an extra fare, the Act cannot become operative in relation to the operator concerned and till then the operator cannot be made liable for collection and payment of the tax.

9. It is obvious that an operator cannot recover from a passenger the tax amount by way of extra fare unless and until he has the requisite legal authority to do so. If he has no such authority, the passenger may well refuse to pay the tax amount and the burden of it then would fall on the operator himself. Now, under section 48 of the Motor Vehicles Act, 1939, the fares that an operator can charge must be in accordance with the fare table approved by the Regional Transport Authority. Such a fare table forms one of the conditions of the permit and it is not open to an operator to alter the fare

table whenever he wishes and demand from the passengers any extra fare over and above the fare given in the approved fare table, (see *Provincial Government C.P. and Berar v. Mohanlal Keshaolal*,³ Under section 43 of the Motor Vehicles Act, 1939, the State Government can issue directions to the State Transport Authority regarding the fixing of fares and freights for stage carriages. It is thus plain that until the fare tables in respect of the stage carriages are revised under section 43 of the Motor Vehicles Act so as to permit the operators to recover the amount of tax as extra fare, the operators cannot legally make any such recovery. The effectiveness of the Act in relation to any operator is, therefore, dependent on a revision of fare tables. It is true that the impugned Act does not provide for revision of fare tables required for its enforcement. But this is a matter of detail and the Act is not rendered invalid or void because of the failure of the Act to make provisions for enforcement. An Act can be carried into effect and enforced by reference to the provisions of other laws having a bearing. It has been stated in *Corpus. Juris Secundum* (vol. 82, Section 73, at p.131) that

"A Statute imposing a tax must provide workable means of ascertaining the amount of tax to be paid. But it is not necessary to make specific provisions as to such matters concerning the enforcement of the tax as may be properly provided by reference to other laws."

The Legislature is presumed to enact a valid and effective law with full knowledge and information as to the subject-matter of the statute and as to existing law and legislation bearing on the subject. Therefore, although the impugned Act does not contain a provision saying that it will become effective on the revision of fare tables, such a condition has to be implied therein. The implication of such a contingency is in no way contrary to the opening words of Section 3, namely, "On the commencement of this Act ... there shall be levied .. " In the context, the words "On the commencement of this Act" mean 'after' or 'following upon' and not 'simultaneous with' the commencement of the Act.

10. That a revision of fare table is essential before any liability under the Act can be imposed on an operator is clear also from section 16 of the Act which makes it an offence for an operator to fraudulently evade the payment of any tax due from him or to willfully act in contravention of any of the provisions of the Act or the rules made thereunder. When an act is condemned as an 'offence' or as an 'evasion' or as a 'contravention' what is meant is that it is an act done in violation of a legal condition or

obligation. There can be no obligation on an operator to collect or pay the tax or maintain or keep the accounts and do the various things required of him under the Act unless a legal duty is imposed on him in regard to these matters. That legal duty does not arise till the fare tables are revised and an obligation is cast on the passenger to pay the tax amount as extra fare and on the operator to so recover it. An operator is not liable to any prosecution under section 16 unless and until on a revision of fare table the Act becomes effective as against him.

11. The view we have taken about the effectiveness of the Act in relation to individual operators in no way runs counter to that taken in MP No.29 of 1961 D/-25-9-1961 (MP) (supra) about the validity of the Act. The Act is valid. It is not rendered void because of the reluctance of the respondents to revise the fare tables. It takes effect in relation to individual operators only on the revision of fare tables of his stage carriages. In the case of Mahamaya Motor Transport Co. M.P. No.29 of 1981 D/-25-9-1981 (MP) (Supra) the question of the effectiveness of the Act did not arise for consideration for the reason that in the return filed in that case the respondents did not take the stand that they were not obliged to revise the fare tables. While dealing with the contention that the Act altered the conditions of the permits granted to the operator under the Motor Vehicles Act, 1939, the Division Bench made the following observations.

"The contention that under section 43 the maximum fares that could be charged had already been fixed and unless these were revised as provided in that section the operator could not be permitted to charge a higher fare, proceeds on a misreading of the section which, as amended, permits the State Government to issue directions to the State Transport Authority from time to time regarding the fixing of fares for stage carriages etc. The Regional Transport Authority, therefore, can re-fix the fare table and so amend the permits as to permit the operators to charge amended fares inclusive of the passenger tax, which they were not liable to collect from the passengers as agents of the State".

These observations also are to the effect that until, the fare tables are revised there is no liability on the operator to collect the tax from the passengers, The Regional Transport Authority can under instructions of the State Government no doubt revise the fare tables as and when it likes. But so long as the fare table is not revised for enabling the operator to recover the tax amount from the passengers as extra fare, no

liability of any kind under the Act can be fastened upon the operator.

12. For these reasons, all these petitions are allowed and the respondents are prohibited from enforcing the provisions of the Act as against the petitioners unless and until the fare tables in respect of their stage carriages are revised under section 43 of the Motor Vehicles Act, 1939, so as to authorize them to recover the tax amount payable under section 3 of the impugned Act from passengers as extra fare. The petitioner in each case shall have costs. Counsel's fee in each case is fixed at Rs. 100/- . The outstanding amounts of security deposits shall be refunded to the petitioners.

Petitions allowed.

Cases Referred.

1. No.29 of 1961, D/-25-9-1961 (MP)
2. Petn. No.82 of 1959. D/-22-3-1961
3. ILR (1944) Nag 173 : AIR 1944 Nag 89