PATNA HIGH COURT

Patna Zilla Truck Owners Association

Vs

State of Bihar

Misc. Judl. Cases Nos. 767, 916, 918, 1000, 1069, 1071 and 1085 of 196

(V. Ramaswami, C.J. and N.L. Untwalia, J.)

05.09.1962

JUDGMENT

V. Ramaswami, C.J.

1. In all these cases, which have been heard together a common question of law arises for determination, namely, whether the provisions of the Bihar Taxation on Passengers and Goods (carried by Public Service Motor Vehicles) Act, 1961 (Bihar Act 17 of 1961), are constitutionally valid and operative.

2. On the 30th March, 1950, the Bihar Legislature enacted the Bihar Finance Act, 1950, (Bihar Act 17 of 1950) by which a tax was levied on passengers and goods carried by public service motor vehicles in Bihar. The Act received the assent of the President on the 1st April, 1950. The validity of the Act was challenged by the petitioners in Title Suit No. 60 of 1951, which was instituted on the 5th May, 1951, in the Court of the 1st Subordinate Judge of Gaya. The petitioners prayed in that suit for a declaration that the provisions of Part III of the Bihar Finance Act, 1950, were unconstitutional, and for a permanent injunction restraining the State of Bihar from levying and realizing the tax. A similar suit was instituted, namely, Title Suit No. 47 of 1951, on behalf of passengers and owners of goods for similar reliefs. Both these title suits were transferred to the Patna High Court for hearing, and on be 8th May, 1952, the title suits were dismissed by a Special Bench on the ground that the provisions of Part III of the Bihar Finance Act, 1950, did not contravene Article 301 of the Constitution and the previous sanction of the President was not required for enacting such a law. The petitioners presented an appeal to the Supreme Court against the judgment of the High Court, namely, Supreme Court Appeal No. 53 1952. On the 12th December, 1960, the Supreme Court allowed the appeal, holding that Part III of the Bihar Finance Act, 1950, violated the constitutional guarantee under Article 301 of the Constitution and the petitioners were entitled to a declaration to that effect and to a permanent injunction restraining the State of Bihar from charging or realizing tax imposed under that Act. The judgment of the Supreme Court was based upon its previous decision in *Atiabari Tea Co., Ltd. v. State of Assam*[1], where a similar point was dealt with. It was held by the Supreme Court that as the previous sanction of the President was not taken, as required under the proviso to Article 304 of the Constitution, the Act was ultra vires and invalid. After the decision of the

Supreme Court the Government of Bihar promulgated Bihar Ordinance No. 11 of 1961 on the 1st of August, 1961. The Ordinance was called the Bihar Taxation on Passengers and Goods (carried by Public Service Motor Vehicles) Ordinance, 1961. Section 1, sub section (3) of the Ordinance provides that "it shall be deemed to have come into force on the first day of April, 1950". The provisions of the Ordinance were subsequently incorporated in Bihar Act 17 of 1961 which received the assent of the President on the 23rd September, 1961. It should be stated that the previous sanction of the President was obtained before Bihar Act 17 of 1961 was introduced in the Bihar Legislature.

3. It is necessary at this stage to set out the relevant provisions of the impugned statute. The title of the Act is "The Bihar Taxation on Passengers and Goods (carried by Public Service Motor Vehicles) Act, 1961." Section 1, sub-section (2) of the Act states that "it extends to the whole of the State of Bihar". Section 1 (3) of the Act provides that "it shall be deemed to have come into force on the first day of April, 1950". Section 3 imposes the charge and rate of tax and reads as follows :-

> "3. Charge and rate of tax. - (1) On and from the date on which this Act is deemed to have come into force under sub-section (3) of section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle; such tax shall be levied and paid at the rate of twelve and a half per centum of the fares and freights payable to the owner of such vehicle :
> Provided that with effect from the first day of August, 1961, no tax shall be levied on any mineral or mineral ore carried by such vehicle.
> 2. Every owner shall, in the manner prescribed in section 9, pay to the State Government, the amount of tax due under this section.
> 3. Every passenger carried by a public service motor vehicle and every person whose goods are carried by such vehicle shall be liable to pay to the owner the amount of tax payable under this section and every owner shall recover such tax from such passenger or person, as the case may be.
> x x x x x"

Section 4 empowers the prescribed authority to grant a certificate of registration to the owners of Public Service Motor Vehicles. Section 5 empowers the prescribed authority to require an owner

> "to furnish within the prescribed period as security an amount not exceeding one thousand rupees in a Government Treasury, if paid in cash, or with the prescribed authority, if paid in Government securities, which shall be refunded at the close of the business after realizing any tax found in arrears at that time."

Section 6 (1) requires every owner to furnish to the prescribed authority such returns, within such period, as may be prescribed. Section 6 (2) states that

> "if any owner fails, without any reasonable cause, to submit a return within the prescribed period, the said authority may direct that such owner shall pay, by way of penalty, a sum

not exceeding five rupees for every day, after the expiry of the prescribed period during which the owner fails to furnish the required return."

Section 7 deals with assessment of tax. Section 9 (3) enacts that

"if any owner fails, without any reasonable cause, to make payment of the tax due from him according to the return furnished under section 6, the prescribed authority may direct that the owner shall, in addition to the amount of tax payable by him, pay by way of penalty, a sum not exceeding five rupees for every day after the expiry of the period prescribed under the said section, during which the owner has failed to make such payment."

Section 11 provides for liability to pay tax, etc., in case of transfer of public service motor vehicle, and is to the following effect :

"11. Liability to pay tax, etc., in case of transfer of public service motor vehicle. - When an owner, liable to pay tax, transfers his public service motor vehicle to another person, the transferor and the transferee shall jointly and severally be liable to pay the amount of tax and penalty, if any, payable under this Act in respect of passengers or goods carried by such vehicle before such transfer and remaining unpaid at the time of the transfer."

Section 18 provides for offences and penalties and reads as follows :-

"18. Offences and penalties. - (1) Whoever -
(a) fails or neglects to comply with the provisions of section 4 or section 5; or
(b) fails, without sufficient cause, to submit any return as required by section 6 or submits a false return; or
(c) knowingly maintains or produces incorrect accounts, registers or documents or knowingly

furnishes incorrect information; or

(d) fraudulently evades the payment of any tax due under this Act; or
(e) fails or neglects to comply with the provisions of section 9; or
(f) fails or neglects to pay the tax due from him within the time prescribed; or
(g) obstructs any authority making an inspection, a search or a seizure under section 16; or
(h) closes his place of business or removes or drives away any public service motor vehicle with a view to prevent inspection or search under section 16; or
(i) fails or neglects to furnish any information required by or under this Act; or
(j) contravenes any other provisions of this Act or the rules made thereunder or any order or direction made under any such provision or rules, shall be punishable with fine which

may extend to one thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence.
x x x x x"

Section 23 is the validating section and is to the following effect :-

"23. Acts under Bihar Act 17 of 1950 to be deemed to have been done under this Act. - Notwithstanding any judgment, decree or order of any Court, tribunal or authority -
(a) any amount paid, collected or recovered or purported to have been paid, collected or recovered as tax or penalty under the provisions of Part III of the Bihar Finance Act, 1950 (Bihar Act 17 of 1950), as amended from time to time (hereinafter referred to as the 'said Act'), or the rules made thereunder during the period beginning with the 1st day of April, 1950, and ending on the thirty-first day of July, 1961, shall be deemed to have been validly levied, paid, collected or recovered under the provisions of this Act; and
(b) any proceeding commenced or purported to have been commenced for the assessment, collection or recovery of any amount as tax or penalty under the provisions of the said Act or the rules made thereunder during the period specified in clause (a) shall be deemed to have been commenced and conducted in accordance with the provisions of this Act and, if not already completed, shall be continued and completed in accordance with the provisions of this Act :
Provided that nothing contained in this Act shall render any person liable to any criminal prosecution for anything done or omitted to have been done before the first day of August, 1961."

4. The first question presented for determination is whether the provisions of Bihar Act 17 of 1961 infringe the freedom of trade and commerce guaranteed under Article 301 of the Constitution. In my opinion this question is fully covered by the decision of the Supreme Court in (1961) SCR 809 where the validity of the Assam Taxation (on goods carried by Roads and Inland Waterways) Act, 1954 (Assam Act 13 of 1954) was elaborately considered. It was contended on behalf of the appellants before the Supreme Court that the Act violated the freedom of trade guaranteed by Article 301 of the Constitution, and as it was not passed after taking the previous sanction of the President, as required by Article 304 (b) of the Constitution, it was ultra vires.
On behalf of the respondent it was urged in that case that taxing laws were not governed by Part XIII but only by Part XII, and in the alternative that the provisions of Part XIII applied only to such legislative entries in the Seventh Schedule as dealt specifically with trade, commerce and intercourse. It was held by the majority of the Judges of the Supreme Court that the Assam Act 13 of 1954 violated Article 301 of the Constitution, and since it did not comply with the provisions of Article 304 (b) it was ultra vires and void. It was also observed by the Supreme Court that the freedom of trade and commerce guaranteed by Article 301 was wider than that contained in section 297 of the Government of India Act, 1935, and it included freedom from tax laws also. It was further held by the Supreme Court that the provisions of the Assam Act directly affected the freedom of trade and commerce contemplated by Article 301 of the Constitution. In my opinion the material provisions of the Assam Act are similar to those of Bihar Act 17 of 1961

and the ratio of the decision of the Supreme Court in (1961) 1 SCR 809 must be applied to the present case. The Assam Act was passed in order to provide for the levy of taxes on certain goods carried by road or inland waterways in the State of Assam. Section 2, sub-section (11) of the Act defined a producer as meaning a producer of tea and included the person in charge of the garden where it was produced. Section 3 was the charging section. It provided that manufactured tea in chests carried by motor vehicles etc., except railways and airways, shall be liable to tax at the specified rate per pound of such tea and this tax shall be realized from the producer. The section also made similar provisions for taxation of jute. It was observed by the Supreme Court that the Act was passed by the Assam Legislature under Entry 56 in List II, and the purpose and object of the Act was manifestly to collect taxes on goods solely on the ground that they were carried by road or by inland waterways within the area of the State. It was held by the Supreme Court that the restriction placed by the Act on the free movement of the goods was writ large on its face, and it was manifest that the Assam Act had put a direct restriction on the freedom of trade and commerce. At page 863 (of SCR) of the report Gajendragadkar, J., clearly put the matter as follows :

> "This Act has been passed by the Assam Legislature under Entry 56 in List II and naturally it purports to be a tax on goods carried by roads or by inland waterways. It is thus obvious that the purpose and object of the Act is to collect taxes on goods solely on the ground that they are carried by road or by inland waterways within the area of the State. That being so the restriction placed by the Act on the free movement of the goods is writ large on its face. It may be that one of the objects in passing the Act was to enable the State Government to raise money to keep its roads and waterways in repairs; but that object may and can be effectively achieved by adopting another course of legislation; if the said object is intended to be achieved by levying a tax on the carriage of goods it can be so done only by satisfying the requirements of Article 304 (b). It is common ground that before the bill was introduced or moved in the State legislature the previous sanction of the President has not been obtained; nor has the said infirmity been cured by recourse to Article 255 of the Constitution. Therefore we do not see how the validity of the tax can be sustained."

In my opinion the provisions of Bihar Act 17 of 1961, which are impugned in the present case, are similar in material respects to those of Assam Act 13 of 1954, and the principle laid down by the majority decision of the Supreme Court in 1961-1 SCR 809 applies to the present case. It follows, therefore, that the provisions of Bihar Act 17 of 1961 directly violate the freedom of trade and commerce contemplated by Article 301 of the Constitution; and unless it is established that the provisions of Article 304 (b) of the Constitution have been complied with, Bihar Act 17 of 1961 must be held to be ultra vires and void.

5. It was submitted by the Government Advocate on behalf of the respondent that Bihar Act 17 of 1961 was enacted merely for the purpose of raising revenue and there was no element of restriction contemplated by the Act with regard to any kind of trading or commercial activity. It was submitted that taxation meant for raising revenue only does not operate as inter-State or interterritorial barrier, nor does it involve any territorial discrimination and such taxation does not come within the purview of Part XIII of the statute. To put it differently, the argument was that tax laws are governed only by Part XII of the Constitution and not by Part XIII. It was contended

that Part XII of the Constitution was a self-contained code and it made all necessary provisions, and so the validity of any taxing statute can be judged only by reference to the provisions of Part XII. It is not possible to entertain this argument in view of the decision of the Supreme Court in 1961-1 SCR 809 and the later decision of the Supreme Court in the *Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan*[1], An argument similar to that addressed by the Government Advocate in the present case was addressed before the Supreme Court in both these cases. But the argument was decisively rejected by the majority of the judges of the Supreme Court in both the Atiabari Tea Company case, 1961-1 SCR 809 and the Rajasthan case 1962-2 SCA 35 and it was held that true freedom of trade and commerce guaranteed by Article 301 was wider than that contained in section 297 of the Government of India Act, 1935, and it included freedom from tax laws also. It was further held that Article 301 provided that the flow of trade shall run smooth and unhampered by any restriction, and if any Act imposed any direct restrictions on the movement of goods it attracted the provisions of Article 301, and its validity could be sustained only if it satisfied the requirements of Article 302 or Article 304. It is necessary to state that this principle was first enunciated in the majority judgment in Atiabari Tea Company case, (1961) 1 SCR 809 and it was expressly approved by the majority judgment in the Rajasthan case, (1962) 2 SCA 35 . But one exception and only one exception was engrafted on that principle in the Rajasthan case 1962-2 SCA 35 namely, that a taxing statute which is regulatory or compensatory in nature is not within the purview of Article 301 of the Constitution. I, therefore, hold that the learned Government Advocate is unable to make good his submission on this aspect of the case.

6. It was alternatively argued by the learned Government Advocate that the provisions of Bihar Act 17 of 1961 were compensatory in character and, therefore, covered by the decision of the Supreme Court in (1962) 2 SCA 35 . It was held by the majority judgment in this case that the restrictions, freedom from which is guaranteed under Article 301 of the Constitution, are such restrictions as directly and immediately restrict or impede the free flow or movement of trade. The imposition of tax may amount to such restriction but it is only the imposition of such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. It was held by the majority judgment that regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304 (b). I am unable to accept the argument of the learned Government Advocate that the provisions of Bihar Act 17 of 1961 are compensatory in character and the principle of the majority decision of the Supreme Court in the Rajasthan case, (1962) 2 SCA 35 is, therefore, applicable. The reason is that the provisions of the Rajasthan Motor Vehicles Act, 1951 (Rajasthan Act 11 of 1951) are materially different from those of Bihar Act 7 of 1961. In the first place, the incidence of taxation in the Rajasthan Act is upon the owners of motor vehicles which are used in a public place in Rajasthan or kept for use in Rajasthan. In the Bihar Act the tax is imposed upon passengers and goods carried on a public service motor vehicle. In the Rajasthan Act the owner of the motor vehicle is himself liable, but in the Bihar Act the owner of the vehicle is the collecting agent, although he is liable to
pay the tax whether he collects or not from the passengers or the owners of goods. It is also evident that in the Rajasthan Act the tax is payable by reason of the ownership of the motor vehicles fit for use on road, but in the Bihar Act the tax is payable on carriage of passengers and goods for hire in public service motor vehicles. Again in the Rajasthan Act the quantum of tax is based upon the passenger capacity of the commercial buses and loading capacity of the transport

vehicles. It is manifest that these considerations have relation to the wear and tear caused to the roads by reason of the plying of buses and transport vehicles and, therefore, the view was taken that the tax is compensatory in character and it was a consideration charged in respect of the use of the road. But the provisions of Bihar Act 17 of 1961 are materially different. The tax levied under the Bihar Act is not based upon any theory of recompense, nor is there any attempt in the Act to apportion the charge of tax according to the actual wear and tear of the road. It is manifest that tax on passengers and goods carried by public service motor vehicles is a direct restriction on the movement of trade and commerce and, therefore, hit by Article 301 of the Constitution. In my opinion the provisions of the Bihar Act are not merely regulatory or compensatory but are direct restrictions on trade and commerce, the freedom from which is guaranteed under Article 301 of the Constitution. For these reasons I reject the argument of the learned Government Advocate that the present case is governed by the principle laid down in the majority judgment of the Supreme Court in the Rajasthan case, (1962) 2 SCA 35 .

7. I shall then proceed to deal with the question whether Bihar Act 17 of 1961 is saved by the compliance of the provisions of Article 304 (b) of the Constitution. One of the requirements has been complied with, namely, the previous sanction of the President has been taken before Bihar Act 17 of 1961 was introduced in the State Legislature. But the question still remains for determination, namely, whether the restrictions imposed by Bihar Act 17 of 1961 are reasonable restrictions within the meaning of Article 304 (b) of the Constitution. It was submitted by Mr. P.R. Das on behalf of the petitioners that the restrictions are unreasonable because Bihar Act 17 of 1961 has been made expressly retrospective for a period of ten years, namely, with effect from the 1st of April, 1950. It was pointed out by learned Counsel that there was an injunction granted restraining the State of Bihar from realizing the tax from the 9th of April, 1951, to the 8th of August, 1952, during the pendency of the title suit. It was also submitted that after the decision of the Supreme Court on the 12th December, 1960, declaring that Bihar Act 17 of 1950 was ultra vires, till the 31st of July, 1961, when Bihar Ordinance II of 1961 was promulgated, there was no law in existence empowering the collection of tax. It was submitted, therefore, that out of the period of retroactivity of ten years the petitioners could not collect tax for a period of about two years and so the provisions of Bihar Act 17 of 1961 were unreasonable. I am unable to accept the argument of learned Counsel for the petitioners as correct. It is not right to say as a general proposition that the imposition of tax with retrospective effect per se renders the law unconstitutional. In applying the test of reasonableness it is of course a relevant consideration that the tax has been imposed with retrospective effect, but that is not conclusive in itself. That is the view expressed by the Supreme Court in *Chhotabhai Jethabhai and Co. v. Union of India*[2], where the question for consideration was the constitutional validity of section 7 (2) of the Finance Act, 1951,
which imposed an excise duty on tobacco retrospectively before the date of its enactment. It was held by the Supreme Court that the mere retrospectivity in the imposition of the fax cannot by itself render the law unconstitutional on the ground of its infringing the right to hold property under Article 19 (1) (f), or depriving the person of property under Article 31 (1). At page 1022 of the report Ayyangar, J., stated as follows :-

> "It would thus be seen that even under the Constitution of the United States of America the unconstitutionality of a retrospective tax is rested on what has been termed 'the vague contours of the 5th Amendment'. Whereas under the Indian Constitution the grounds on

> which infraction of the rights to property is to be tested not by the flexible rule of 'due process' but on the more precise criteria set out in Article 19 (5), mere retrospectivity in the imposition of the tax cannot per se render the law unconstitutional on the ground of its infringing the right to hold property under Article 19 (1) (f) or depriving the person of property under Article 31 (1). If on the one hand, the tax enactment in question were beyond the legislative competence of the Union or a State necessarily different considerations arise. Such unauthorised imposition would undoubtedly not be a reasonable restriction on the right to hold property besides being an unreasonable restraint on the carrying on of business, if the tax in question is one which is laid on a person in respect of his business activity."

8. In an American case, *Welch v. Henry*[3], which related to an enactment imposing income-tax which had retrospective operation, Justice Stone observed as follows :-

> "Even a retroactive gift tax has been held valid where the donor was forewarned by the statute books of the possibility of such a levy. In each case it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.

Any classification for taxation is permissible which has reasonable relation to a legitimate end of governmental action. Taxation is but the means by which government distributes the burdens of its cost among those who enjoy its benefits. And the distribution of a tax burden by placing it in part on a special class which by reason of the taxing policy of the State has escaped all tax during the taxable period is not a denial of equal protection. Nor is the tax any more a denial of equal protection because retroactive ..... A tax is not necessarily unconstitutional because retroactive. *Milliken v. United States*[4], and cases there cited. Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute."

9. In *Untermyer v. Anderson*[5], Justice Holmes stated as follows :-

> "..... I find it hard to state to myself articulately the ground for denying the power of Congress to lay the tax. We all know that we shall get a tax bill every year. I suppose that the taxing Act may be passed in the middle as lawfully as at the beginning of the year. A tax may be levied for past privileges and protection as well as for those to come."

In the same case Justice Brandeis observed :-

> "For more than half a century, it has been settled that a law of Congress imposing a tax may be retroactive in its operation ..... Each of the fifteen income-tax Acts adopted

> from time to time during the last sixty-seven years has been retroactive, in that it applied to income earned, prior to the passage of the Act, during the calendar year ..... The need of the government for revenue has hitherto been deemed a sufficient justification for making a tax measure retroactive whenever the imposition seemed consonant with justice and the conditions were not such as would ordinarily involve hardship. On this broad ground rest the cases in which a special assessment has been upheld ..... Liability for taxes under retroactive legislation has been one of the notorious incidents of social life ..... Recently this Court recognized broadly that a tax may be imposed in respect of past benefits".

10. In a recent review of retroactive legislation in U. S. A. Charles B. Hochman has observed as follows :-

> "It is necessary that the legislatures should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called "small repairs". Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since, had the legislature's or administrators' action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect ..... The Court has been extremely reluctant to override the legislative judgment as to the necessity for retroactive taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it. Indeed, as early as 1935 one commentator observed that " 'arbitrary retroactivity' may continue ..... to rear its head in tax briefs, but for practical purposes, in this field, it is as dead as wager of law'." (73 Harvard Law Review 692 at p. 705).

In the present case the provisions of Bihar Act 17 of 1950 were field to be constitutional by a decision of the Patna High Court on the 8th May, 1952. It is true that on the 12th December, 1960, the Supreme Court allowed the appeal of the petitioners declaring that Bihar Act 17 of 1950 was invalid and ultra vires. It is
manifest that from the 1st of April, 1950, till the 12th of December, 1960, the legal position was that the provisions of Bihar Act 17 of 1950 were constitutionally valid and there was no justification for the petitioners to anticipate the decision of the Supreme Court on the 12th December, 1960, and stop collecting the taxes due from passengers and owners of goods. It was also submitted by the Government Advocate that for the period 1950 to 1960 large amounts of taxes have been paid by the owners of vehicles and deposited in the State Treasury. In this connection the Government Advocate referred to Schedule II of the counter-affidavit which contains the yearwise statement of collection of passenger and goods transport tax for the years 1951 to 1962 and shows that for all these years large amount of tax have been collected by the State of Bihar. It is true that for certain portion out of this period of retroactivity there was an injunction preventing the State of Bihar from collecting the tax from the petitioners. It was

submitted on behalf of the petitioners in this connection that for this period of injunction the petitioners have been deprived of the right to pass on the tax to the passengers and owners of goods. A similar argument was rejected by the Supreme Court in AIR 1962 SC 1006 at p. 1023 and it was held that even in such a situation the imposition of tax retrospectively cannot be held to be an unreasonable restriction. I would, therefore, reject the argument of learned Counsel on behalf of the petitioners on this aspect of the case.

11. I next turn to consider the argument addressed on behalf of the petitioners that under the impugned Act they have been appointed collecting agents of the tax with penal consequences without remuneration. It was pointed out that the petitioners are required under the Act to collect the tax from the passengers and owners of goods, to maintain proper account books and to attend assessment proceedings. It was also submitted that under Section 18 of the Act the failure of the petitioners to maintain accounts and to file returns has been made an offence punishable with fine which may extend to Rs. 1000/-. It was, therefore, submitted that the procedural machinery of the Act is harsh and oppressive and, therefore, unreasonable. It was contended that the statute imposed gratuitous burdens and onerous duties upon the owners of the motor vehicles and there was no quid pro quo for the obligations with which the owners of motor vehicles have been burdened under the statute. I am unable to accept the argument addressed on behalf of the petitioners as correct. The reason is that Article 23 (2) of the Constitution makes an exception in favor of the State and enables the State to impose compulsory service for public purposes provided that such an imposition is not vitiated on grounds of discrimination. It is manifest, therefore, that the Legislature is entitled to impose burdens upon citizens in public interest. In the case of a taxing statute, where the Legislature has to levy tax for the purpose of State revenue, it has to collect the tax through the most convenient and efficient channel. The State will hence be justified in imposing obligations upon the citizens concerned to assist in the collection of tax.

> "If the Legislature has authority to impose a tax, it has necessarily the power to prescribe the means by which a tax should be collected and to designate the officers through whom its will shall be enforced." (Willoughby on Constitution of United States, Volume 2, page 666).

In the present case the machinery for levying and collecting tax enacted in Bihar Act 17 of 1961 is a familiar legislative device for the collection of tax, and in view of Article 23 (2) of the Constitution I hold that the procedural machinery is not unreasonable. In *Butler v. Perry*[6], the Supreme Court of U. S. A. while dealing with the effect of the 13th Amendment, stated as follows :

> "It introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury etc. The great purpose in view was liberty under the protection of effective Government, nor the destruction of the latter by depriving it of essential powers."

I, therefore, hold that the owners of motor vehicles cannot justly complain of the duties which under the provisions of Bihar Act 17 of 1961 the State has imposed upon them in public interest

to insure the proper collection of taxes and their payment to the State Government.

12. I next turn to the argument addressed on behalf of the petitioners that Bihar Act 17 of 1961 is constitutionally invalid because there is a violation of Article 199 (4) of the Constitution which states that

> "there shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under Article 198, and when it is presented to the Governor for assent under Article 200, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

It was submitted by learned Counsel that the bill was transmitted to the Bihar Legislative Council without a certificate of the Speaker of the Bihar Legislative Assembly on the 14th day of September, 1961. It is stated in paragraph 19 of the writ application that the bill contained instead a certificate of Sri Ram Narain Mandal who was the "Presiding Member acting as Speaker". The argument put forward on behalf of the petitioners is that Sri Ram Narain Mandal had no authority to give a certificate under Article 199 (4) of the Constitution, and in the absence of a certificate from the Speaker the proceedings of the Legislature are to be held to be illegal and Bihar Act 17 of 1961 cannot be said to have been validly passed by the Bihar Legislature. In my opinion the argument of learned Counsel on this point must be rejected in view of Article 212 of the Constitution which states that

> "the validity of any proceedings in the legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure".

The view that I have expressed is also borne out by the decision of the Supreme Court in *State of Bihar v. Kameshwar Singh*[7], In that case one of the Ministers moved that the C. P. and Berar Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Bill as considered by the House be passed into law. Thereupon the Speaker
read the motion to the House and this was followed by several speeches welcoming the measure. The official report of the proceedings did not record that the Speaker put the question as required by rule 20 (1) of the Rules governing the legislative business and that the motion was carried. The original bill signed and authenticated by the Speaker however contained an endorsement by the Speaker that the bill was passed by the Assembly on the 5th April, 1950. The endorsement was signed by the speaker on the 10th May, 1950. The official report of the proceedings was prepared on the 21st June, 1950, and was signed by the Speaker on the 1st October, 1950. It was held by the Supreme Court in these circumstances that the omission as to the motion having been put and carried could not, in the face of the explicit statement by the Speaker endorsed on the bill, be taken to establish that the bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was no more than a mere irregularity of procedure and the validity of the proceedings of the legislature cannot, therefore, be called in question under Article 212 (1) of the Constitution.

13. On behalf of the petitioners learned Counsel stressed the argument that in any event the decision of the Supreme Court in Supreme Court Appeal No. 53 of 1952, holding that Bihar Act 17 of 1950 was unconstitutional, is res judicata in the present case. It was pointed out that the

provisions of Bihar Act 17 of 1950 and the present Act are essentially identical and the reliefs claimed by the petitioners in the previous suit and in the present writ application are of the same character. Reference was made on behalf of the petitioners to *M. S. M. Sharma v. Dr. Shree Krishna Sinha*[8] *Daryao v. State of U. P*[9]*.,* and *John Lemm v. T. A. Mitchell, 1912 AC 400*. In my opinion the present case does not come within the principle laid down in these authorities and the plea of res judicata raised on behalf of the petitioners must be rejected as misconceived. In order to apply the principle of res judicata it is an essential requirement that the actual issues in the two suits must be identical. It is manifest that this requirement is not satisfied in the present case. In the Supreme Court Appeal No. 53 of 1952 the actual issue decided was as to whether the levy and collection of similar tax under Bihar Act 17 of 1950 was constitutionally valid. The actual issue in the present writ application is whether the levy and collection of such a tax under Bihar Act 17 of 1961 is authorised by valid law. It should be noticed that Bihar Act 17 of 1950 has been repealed and in its place Bihar Act 17 of 1961 has been enacted by the Bihar Legislature after obtaining the sanction of the President under the proviso to Article 304 (b) of the Constitution. It is also obvious that the question at issue is not the same or eadem questio in the two proceedings. It follows that the principle of res judicata cannot be applied in these circumstances to the present case. This view is borne out by a decision of a Full Bench of the Bombay High Court in the *Province of Bombay v. Municipal Corporation of Ahmedabad*[10]*,* It was pointed out by the Full Bench in that case that what becomes res judicata is the matter which is decided and not the reason which leads the Court to decide the matter. Neither the reasoning nor the mental process can operate as res judicata. What could not be challenged and what had become conclusive was the actual decision given in the former suit. In that case the Municipality converted a piece of land, 60½ square yards, of public street by its incorporation in meat shops, and the Commissioner thereupon
assessed the land to payment of non-agricultural assessment and made an order that the amount of assessment should be recovered. The Municipality filed a suit challenging the assessment and contending that they were, as a matter of fact, not liable to pay the assessment which had been imposed. The question at issue was whether the levy of the tax was legal. Previous to this suit there had been a final decision in another similar suit between the same Municipality on the one hand and the Provincial Government on the other, holding that in a similar case where a police of land, 92 square yards in extent, from another street had been converted to use as a fish market it was not liable to pay non-agricultural assessment. It was held by the Bombay High Court that the decision in the previous suit between the Municipality and the Government did not operate as res judicata and the State of Bombay was not precluded from urging that the assessment was valid. The same view has been expressed by the Calcutta High Court in *Profulla Chandra v. Prabartak Trust*[11]*,* A similar view has been expressed by the Judicial Committee in *Broken Hill Proprietary Co. Ltd. v. Municipal Council of Broken Hill*[12]*,* The question for consideration in that case was as to whether an earlier decision given by the High Court of Australia between the same parties as to the valuation of a mine for a previous year was res judicata when the question had to be considered with regard to the valuation for the subsequent year. It was held by the Judicial Committee that the question was not res judicata, and at page 100 of the report Lord Carson observed as follows :

> ".....The decision of the High Court related to a valuation and a liability to a tax in a previous year, and no doubt as regards that year the decision could not be disputed. The present case relates to a new question - namely, the valuation for a different year and the

liability for that year. It is not eadem questio and therefore the principle of res judicata cannot apply."

In my opinion the principle laid down in these authorities governs the present case. I accordingly hold that the plea of res judicata raised by the petitioners must be rejected.

14. For the reasons I have expressed I hold that the constitutional objections raised on behalf of the petitioners to the validity of Bihar Act 17 of 1961 must be rejected. I hold that the petitioners have made out no case for grant of a writ under Article 226 of the Constitution. In my opinion these applications fail and must be accordingly dismissed. There will be no order as to costs with regard to any of these applications.

Untwalia, J.

15. I agree.

Petitions dismissed.

Cases Referred.

[1](1961) 1 SCR 809
[1](1962) 2 SCA 35
[2] AIR 1962 SC 1006
[3](1938) 305 US 135 at p. 146
[4](1930) 283 US 15 : 75 Law Ed 809
[5](1927) 72 Law Ed 645 at p. 647
[6](1916) 240 US 328
[7] AIR 1952 SC 252 at p. 304
[8](1961) I S. C. R. 96
[9](1962) 1 SCJ 702
[10] AIR 1954 Bom 1
[11] AIR 1954 Cal 8
[12]1926 AC 94