A

SHAIK MADAR SAHEB AND ORS. ETC.

v.

STATE OF ANDHRA PRADESH & ORS.

December 14, 1971

B [S. M. SIKRI, C.J., J. M. SHELAT, I. D. DUA, H. R. KHANNA AND G. K. MITTER, JJ.]

Andhra Pradesh Motor Vehicles Taxation Act (5 *of* 1963), *ss.* 3 *and* 17—*Interstate routes—Enhancement of tax—Validity.*

Constitution of India, 1950, *Arts.* 301 *and* 304—*Tax if should be reasonable and in public interest.*

C Under s. 3 of the Andhra Pradesh Motor Vehicles Taxation Act, 1963, the State Government is empowered by notification to direct that the tax should be levied on every motor vehicle used or kept for use in a public place in the State, subject to the maximum specified in the First Schedule. Section 17 of the Act vests in the State Government the power to amend the Schedules in the manner prescribed.

D In 1963, the State Government issued a notification increasing the taxes and, in 1968, the State Government amended the First Schedule and increased the maximum tax payable and issued a notification directing the substitution of the higher rates. Both the increases were challenged by the appellants but the High Court dismissed the petitions.

In appeal to this Court it was contended that : (1) the restrictions imposed by the tax were unreasonable having regard to Art. 19(1)(g) read with cl. (6) and Art. 301; (2) since part of the route lay outside E the respondent-State the levy in respect of the entire mileage could not be of compensatory nature; and (3) there was no justification for levying tax on spare buses.

Dismissing the appeals,

HELD : (1) (a) The facts and figures disclosed in the counter affidavits of the State do not justify a conclusion that the levy was a general F one for augmenting the revenues of the State. Even after the levy the total receipts from the tax fell short of expenditure on roads and allied purposes. The enhancement was only intended to meet the expanding requirements of maintenance of old roads and development of the road system as a whole and is therefore only a compensatory measure. [862 G-H]

(b) Further, the impost would not result in bus operators running G their business at a loss, especially when they had been permitted to increase the fares. [862 H]

(c) The figures relied upon by the appellants in the report of the Road Transport Taxation Inquiry Committee do not give a completely accurate picture relevant to the present case. [860 E-G]

Nazeeria Motor Services v. *Andhra Pradesh*, [1970] 2 S.C.R. 52, H followed.

(2) There were reciprocal arrangements between the States and consequently the provisions made by the other States in regard to the

free movement on their roads constituted a compensatory measure for the tax even though it was wholly levied by the respondent State. [862 F-G] A

(3) It was imperative for the owner of a fleet of buses to maintain spare vehicles to be available for substitution in case of breakdown. Accordingly, the levy of tax on such buses which can at any time be put on the road is justified and s. 3 empowers the State to levy such a tax on a motor vehicle kept for use. [863 A-C] B

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 932 to 934 of 1968.

Appeals from the judgment and order dated September 6, 1963 of the Andhra Pradesh High Court in Writ Petitions Nos. 361, 430 and 706 of 1963 and Civil Appeals Nos. 1439 to 1441 of 1968. C

Appeals from the judgment and order dated April 26, 1968 of the Andhra Pradesh High Court in Writ Petitions Nos. 1792, 1818 and 1819 of 1968 and Writ Petitions Nos. 164 and 166 of 1968. D

Under Article 32 of the Constitution of India for the enforcement of the Fundamental Rights.

S. V. Gupte, K. Srinivasamurthy, Naunit Lal and *Swaranjit Sodhi,* for the appellants (in all the appeals) and the Petitioners (in both the Petitions). E

P. Ram Reddy and *G. Narayana Rao,* for respondents Nos. 1 and 2 (in C.A. No. 932 of 1968).

P. Ram Reddy and *A. V. V. Nair,* for the respondents (in C.A. Nos. 933 and 934 of 1968). F

P. Ram Reddy and *K. Jayaram,* for the respondents (in C.A. Nos. 1439 to 1441 of 1968 and W.Ps. Nos. 164 and 166 of 1968).

The Judgment of the Court was delivered by G

Mitter, J. All these appeals and Writ Petitions are directed against the Andhra Pradesh Motor Vehicles Taxation Act (V of 1963) and notifications issued thereunder. In the first group of appeals, the notification challenged is G.O.Ms. No. 601 Home (Transport II) Department dated 27th March, 1963. In the second group of appeals Nos. 1439-1441/68 and in the two writ petitions the impugned notification is numbered as G.O.Ms. No. 435 Home (Transport II) Department dated March 28, 1968. H

A The appellants and the writ petitioners all carry on transport business in the State of Andhra Pradesh under stage carriage permits granted by the Transport authorities under the Motor Vehicles Act IV of 1939. Their complaint against the ever increasing burden of taxation they are called upon to bear which is said to have passed the breaking point. A short history of the taxes B levied in the area which came to Andhra Pradesh from the State of Madras and the increase thereof from stage to stage by the new State based on the seating capacity of buses with stage carriage permits referred to in the pleadings is recited in the judgment of this Court in *Nazeeria Motor Service* v. *A. P. State*(1). The latest legislation on the subject which was before this Court in C that case was Validating Act of 1961 raising the rate to Rs. 37-50 per seat per quarter per bus effective from April 1, 1962. The Court upheld the impost. Thereafter, the Andhra Pradesh Motor Vehicles Taxation Act (Act V of 1963) came into force on the 20th March of that year after receiving the assent of the President on February 2, 1963. This is the Act now in force. It is an Act to consolidate and amend the law relating to levy a tax on D motor vehicles in the State of Andhra Pradesh. Under s. 3(1) of the Act the State Government is empowered by notification from time to time, to direct that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State. Under sub-s. (2) of s. 3 the notification is to specify the class of motor vehicles on which, the rates for the periods of which and E the date from which, the tax is to be levied. Under the proviso to the sub-section the rates of tax are not to exceed the maximum specified in column (2) of the First Schedule. S. 17 of the Act vests in the State Government power to amend the schedules in the manner prescribed.

On March 27, 1963 a notification No. G.O.M. 601 was issu- F ed by the State Government in its Transport Department imposing a tax of Rs. 60 per seat per quarter on vehicles running less than 100 miles per day and Rs. 67-50 on vehicles covering a higher mileage. A crop of writ petitions was filed before the High Court in the year 1963 praying for the issue of a writ restraining the State from enforcing the provisions of the Act of 1963 and of the G notification dated March 27, 1963. By a common judgment and order dated September 6, 1963 the High Court dismissed all the writ petitions. The first group of appeals arises out of this judgment.

It was contended on behalf of the petitioners before the High Court in that case, the appellants in the first group of appeals H before us, that the statute was inconsistent with the doctrine of freedom of trade and commerce embodied in Part XIII of the Constitution and secondly that it infringed the equality clause

(1) [1970] 2 S.C.R. 52.

enshrined in Art. 14. An attempt was made on behalf of the petitioners by reference to certain figures regarding the income of the State from this source of tax and the expenditure pertaining to this topic that the taxes were levied more for purposes of general revenue of the State than as a benefit for the facilities afforded to the operators of transport vehicles, since the taxes were far in excess of the requirements for the construction of new roads and bridges and the maintenance of existing ones. The High Court found itself unable to accept the above submission and on a scrutiny of the budget estimates for the year 1963-64, the receipts under the Taxation Act, the amount collected by way of taxes on the sale of motor spirits allocable to this head, came to the conclusion that the whole revenue would not exceed Rs. 6 crores while the expenditure incurred would exceed Rs. 8,54,00,000. The finding of the High Court was that

> "far from there being any surplus over the expenditure, the taxes collected under this head were insufficient to meet the demands in this respect."

According to the High Court the object of the Act being only to raise the money required to afford facilities to the operators of the transport vehicles, the tax levied answered the description of compensatory tax and did not interfere with the freedom of trade and commerce. As such the taxes were held not to offend Art. 301 of the Constitution. The High Court further took the view that it had not been shown that "the power ceded to the State Government by this legislative measure was in any way detrimental to the public good or that it was opposed to the well-recognised principles underlying taxation." The High Court turned down the contention that the taxes in question were arbitrary or oppressive or that they constituted an unbearable burden so as to destroy the very business of the writ petitioners. On the facts before the court as disclosed in the affidavits it did not feel disposed to hold that the operators were doing business at a loss. It also took the view that the increase in the fares sanctioned simultaneously with the raising of the taxes had proved beneficial to the operators. Reference was made to the fact that even subsequent to the enhancement of the tax there had been considerable competition for securing permits whenever any proposal was mooted by the transport authorities which according to the court went to show that the operators themselves considered that it would be a profitable business. In the opinion of the High Court, the increase in the taxes was more than offset by the sanctioned increase in the fares and the grievance of the operators that the taxes were an unreasonable restriction was negatived. Finally the High Court held that the impugned Act had survived the test laid down by Art. 304(b) of the Constitution and had not transgressed the limits of reasonableness.

A It is not necessary for the disposal of these appeals and writ petitions to go into the question of violation of Art. 14 as that point was not canvassed in view of the decision of this Court in *Nazeeria Motor Service* case(1).

On March 22, 1968 the Government of Andhra Pradesh purported to amend the First Schedule to the Act by notification No. B 434 by increasing the maximum quarterly tax in respect of sub-items (iii) and (iv) of item 4 to Rs. 121 in respect of buses plying exclusively within municipal limits and to Rs. 135 in the case of other buses. On the same day the State Government issued notification No. 435 in exercise of the powers conferred by sub-s. (1) of s. 9 of the Act directing the substitution of higher C taxes in respect of buses covered by the aforementioned sub-items of item 4 of the First Schedule. The new notification No. 435 provided for different rates according to mileage; at the lower end of the scale i.e. for a distance of 50 miles per day the rate was Rs. 40 per quarter per seat while in the case where the distance exceeded 200 miles the tax was raised to Rs. 110 per seat D per quarter. In effect, the petitioners contended, the incidence of tax was increased by about 50 per cent. It was also claimed that the procedure adopted for the levy of the tax had been changed and instead of a flat rate of levy on the basis of the number of seats it was now made to relate to the actual mileage per day covered by the vehicles. A challenge was made to the additional impost on spare buses which bus operators running more E than a certain number of buses per day were obliged to reserve for use in the event of any break-down. It was asserted that even for these buses, no matter whether they were actually used or not, tax was levied at the rate of Rs. 30 per seat per quarter.

The points of law raised by this set of writ petitioners before the High Court were :—

F (a) that prior sanction of the President as required under Art. 304(b) was not obtained in respect of the levy inasmuch as such sanction was given in February and the levy was made towards the end of March. As such it was said G.O.M. 435 was unconstitutional and void.

G (b) the proposed increase in the rate of tax was not in public interest but only a revenue yielding measure. Since it did not comply with the provisions of Part III and Part XIII of the Constitution it was illegal and unconstitutional. and

(c) the levy of tax on spare buses was illegal.

By a common judgment and order dated April 26, 1968 the H High Court rejected the contentions raised and dismissed this group of writ petitions. This had led to the filing of the second group of appeals before us.

(1) [1970] 2 S.C.R. 52

The two writ petitions filed in this Court under Art. 32 raise identical questions.

In *Nazeeria Motor Service* case(1) the central question was the constitutionality of the Andhra Pradesh Motor Vehicles (Taxation of Passengers and Goods) Amendment and Validation Act XXXIV of 1961. The points urged in that case before this Court were :—

1. The Act imposed a tax for augmenting revenues of the State. It was neither regulatory nor compensatory in nature and fell directly within the ban of Art. 301 of the Constitution.

2. Even though there had been compliance with the proviso to Art. 304(b) in the matter of obtaining the requisite sanction, it was open to the Court to go into the question of reasonableness both with regard to the said provision as also Art. 19(1)(g) read with cl. (6) of that article. The Court was entitled to determine whether the imposition was in public interest.

3. The Act violated Art. 14 of the Constitution inasmuch as it was not made applicable to all the areas under the State and vehicles on inter-State routes on permits granted by other States had not been subjected to tax in the same way.

In deciding that appeal this Court referred to the views expressed in *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan & Ors.*(2), *Khyerbari Tea Co. Ltd. & Anr.* v. *State of Assam*(3) and *Atiabari Tea Co. Ltd.* v. *State of Assam*(4) and held that notwithstanding compliance with the provisions of the proviso to Art. 304(b) by obtaining the previous sanction of the President to the Bill an Act of this nature could be held to be valid only if it was shown that the restrictions imposed were reasonable and in public interest.

It was not contended on behalf of the State in that case that the impugned Validating Act imposed a tax which was by way of regulatory or compensatory measure. The Court therefore addressed itself to the question whether the restrictions imposed were reasonable and in public interest within the meaning of Art. 304(b). Taking into consideration the finding of the High Court that the computation of income by the Income-tax Department of some of the transporters, the income in regard to each bus was of the order of Rs. 7,000 per annum as well as the fact that although permitted to charge higher rates the bus operators had not either as a matter of policy or for purpose of business competition done so, the Court took the view that the restriction imposed was not unreasonable. Nothing was shown either before the High Court

(1) [1970] 2 S.C.R. 52
(2) [1963] 1 S.C.R. 491.
(3) [1964] 5 S.C.R. 975.
(4) [1961] 1 S.C.R. 809.

A or before this Court to establish that the impugned Validating Act with regard to imposition of tax was not in public interest. "The utmost" according to this Court "that could be said was that it would result in the diminution of profits."

The Court also turned down the contention based on the vio-
B lation of Art. 14.

In the first set of appeals now before us learned counsel for the appellants submitted that in view of the earlier decision of this Court the only question left for consideration was whether the restriction imposed by the tax was reasonable and permissible having regard to Art. 19(1)(g) read with cl. (6) and Art. 301.
C According to counsel the rate of tax fixed at Rs. 67.50 per seat per quarter was an unreasonable burden and not a restriction which could be said to be reasonable either in terms of Art. 19 or Part XIII of the Constitution. It was urged that s. 3 of the Act empowering the levy of such an unreasonable impost would be *ultra vires* the aforementioned provisions of the Constitution.
D Attempt was made to show that the impost was purely for the purpose of making revenue and was not a compensatory measure. Reliance was placed on the fact that before the raising of the impost to Rs. 67.50 per quarter the rate of tax was Rs. 50 per seat per quarter. Our attention was drawn to annexure 'A' attached to the counter affidavit of Writ Petition No. 361 of 1963 out of which appeal No. 932 has arisen, giving a chart of quarterly taxes
E payable per seat per quarter on the basis of mileage done prior to 1-4-1963 and subsequent to the said date. But this chart hardly helps the appellants' cause. The chart shows the motor vehicle tax and the surcharge per seat per year per mile on the total daily mileages from 50 miles to 130 miles and the tax under Andhra Pradesh Motor Vehicle Taxation Act, 1963. It is clear that the
F rise in the rate of impost excepting in the case of buses with a permitted daily mileage of 50 was not considerable and in the higher mileage groups the increase was slight. According to the counter affidavit of the State, there were few, if any, buses covering less than 50 miles per day. In that view of the matter there is no case of distinction so far as the first group of appeals is concerned from the decision of this Court in Nazeeria Motor Company's case.
G Besides nothing was shown to induce us to disregard the figures in the budget estimates referred to by the High Court in its judgment and order dated September 6, 1963, namely, that whereas the whole revenue from this source was not likely to exceed Rs. 6 crores, the expenditure proposed to be incurred on road making, road repairing etc. was expected to overtop Rs. 8,54,00,000.

H Mr. Gupte however tried to draw a picture different from the above in the second set of appeals. He referred us to a report of an Enquiry Committee styled the Road Transport Taxation

Enquiry Committee constituted by the Government of India published in November 1967 purporting to show a huge surplus of revenue over expenditure on roads etc. in the State of Andhra Pradesh during the years 1964-67. The relevant portion of the report is given below :

"Statement showing the expenditure on Roads by Andhra Pradesh State during the years 1964-67."

"State Revenue from Road Transport and Expenditure on Roads by Andhra Pradesh State during the years 1964-67.

*Figures in lakhs of Rupees

Year	Revenue	Expenditure		Total	Surplus	
		Original works	Maintenance			
1964-65*	744·35	200·51	439·50**	694·01	50·34	page 206
1965-66	1059·60	225·98	490·25	716·23	343·37	page 208
1966-67	1170·00	186·98	398·14	585·12	548·88	page 208

NOTE : Figures of expenditure relate to those which are spent directly by the State Government and do not include grants given to local bodies for road construction and maintenance.

**Estimated figures do not include amounts given to local bodies."

Apparently the figures in the end column purport to show considerable surplus in the revenue from road transport over expenditure on roads by the State of Andhra Pradesh during the years mentioned. Our attention was however drawn to the additional counter affidavit of the State affirmed before the High Court on April 24, 1968 wherein it was said that the report relied on was misleading and the chart which was taken from the annexures to the report of the Road Transport Taxation Enquiry Committee showing surplus was contrary to the prevalent state of affairs. It was categorically stated that

"the figures given in the annexures to the Report are incorrect and the Government of Andhra Pradesh was not responsible for the mis-statements relating to the State of Andhra Pradesh found in the said annexures to the said Report of the said Taxation Enquiry Committee."

It was also asserted in the said affidavit that the questionnaire sent to the Government of Andhra Pradesh which was dated 3-12-1965 did not ask and could not have asked for information regarding the year 1966-67. It was also said that in the reply dated 12-1-1966 by the State Government the estimated figure for the construction of roads was Rs. 2,49,45,200/- and the cost of maintenance was Rs. 6 crores and the total expenditure was thus of the order of Rs. 8.50.00,000/-. It was reiterated that the Taxation Enquiry Committee did not ask for the figures for 1966-67.

A The High Court went into this question in some detail and found that as per the budget estimates of 1967-68 the yield under the said head 'taxes on motor vehicles under the Motor Vehicles Act', receipts under the Provincial Motor Vehicles Taxation Act and other receipts was estimated to add up to Rs. 9,55,53,396/- while the details of the expenditure under the several heads was of B the order of Rs. 9,81,65,411/-. With regard to the budgetary figures for 1968-69 the aggregate of the items including works on repairs and maintenance expenditure on States Highways, road development fund works, capital outlay on roads works came to Rs. 8,75,87,900/- and taking into account the figures on the receipt side in the budget estimates, the court was of the view G that the total receipts would fall short of the anticipated expenditure by about Rs. 50 lakhs. The High Court also scrutinised the statistical data available in the report of the Road Transport Enquiry Committee and the explanation put forward by the State and observed :

> D "the figures given in the report of the Road Transport Taxation Enquiry Committee do not give a completely accurate picture which is relevant to the present discussion."

The High Court concluded that the petitioners had not been able to give any statistical data or adduce any sound reasons to persuade it to reject the data furnished by the budgetary estimates and E the analysis thereof given on behalf of the State and accordingly held that the proposed enhancement of tax was not designed to augment the general revenues of the State but was intended to meet the expending requirements of maintenance of old roads and development of the road system as a whole. On these facts the High Court concluded that there was no warrant for the charge that the F increased levy ceased to be a compensatory measure.

In the second group of petitions, the High Court also negatived the contention raised on behalf of the petitioners that the increase in taxation would virtually throw them out of the transport business. It was argued before the High Court that the increase in the tax being of the order of 50% over the pre-existing levy there G was bound to be an enormous addition to the total revenues of the State and this addition could not be said to be for the purpose of providing additional amenities to motor operators in particular but was one for adding to the general revenues of the State.

As against this it was submitted on behalf of the State before H the High Court that to meet the increase in the operational cost of the operators Government had permitted an increase in fares to be charged by the operators by another order bearing the same date as that of the impugned order. Reliance was also placed on the

fact that on previous occasions the operators had not been slow in utilising similar permission to raise the fare structure. It was further submitted on behalf of the State before the High Court that "the Motor Vehicles Taxation had undergone changes to make it conform to and subserve the development of improved means of communication, by the development of roads and control of transport etc." The Court also noted the submission on behalf of the State that the general condition of roads in the State was poor and if the State were to provide facilities for trade and commerce equal to or comparable with the facilities for easy communication available in other States, a large outlay for construction of new roads as also the improvement of the existing road system was inevitable. The High Court thus found justification for the additional levy in the conditions obtaining in the State.

It was submitted before us, as was done before the High Court. that taxation by reference to mileage specially in regard to bus operators who had to ply their vehicles in other States where the rate of taxation was much lower was an anachronism and an unreasonable restriction. Our attention was drawn to Annexure 2 to the Writ Petition No. 1792 of 1968 where the total mileage covered by various bus operators including the break-up thereof showing the mileage in Andhra area, in Madras and Mysore were given and it was said :

> "While the buses used by the petitioners are taxed on the basis of the total mileage covered by them, the actual user in the State of Andhra Pradesh, is much less and in some cases it constitutes so low a fraction as one third of the total mileage;"

It was therefore contended that the levy in respect of the entire mileage was incompatible with the compensatory nature of the tax. The High Court accepted the explanation on behalf of the State that "there were reciprocal arrangements between the States and consequently the provisions made by the other States in regard to the free movement on their roads, constituted a compensatory measure for the tax even though it is wholly levied by the State of Andhra Pradesh" We see no reason to take a view different from the above.

The facts and figures disclosed do not justify us in coming to the conclusion that the levy was a general one for augmenting the revenues of the State. On the other hand the figures disclosed show that the total receipts from the tax even now fall short of the expenditure on roads and allied purposes. We are also not satisfied on the material before us that the impost has resulted in bus operators running their business at a loss.

A The only question left is whether there was justification for levy of an impost at the rate of Rs. 30/- per quarter per seat on spare buses. While it is true that the spare buses are not allowed to be run regularly we see no reason to hold that because of this the levy is unjustified, or ceases to be a compensatory tax. As was pointed out by the High Court, under s. 3 of the Act the State B Government was empowered by notification to direct that a tax shall be levied on every motor vehicle used or kept for use in a public place in the State and a vehicle kept for use as a standby was therefore subject to levy under the taxing provisions. It was absolutely imperative for the owner of a fleet of buses to maintain some spare vehicles to be available for substitution in the case of C a break-down. Every owner having five buses is required to maintain one spare bus and operators having more than ten buses are to keep two such buses available. Although they cannot be allowed to run regularly it is essential for the proper regulation of the transport business that some spare buses should be available to avoid inconvenience or hardship to passengers. Accordingly the levy of a tax on such buses which can at any time be put on the D road is justified in like manner as in the case of regular buses as a compensatory levy.

In the result, the appeals and the writ petitions fail and are dismissed with costs. One set of hearing fee.

V.P.S. *Appeals and petitions dismissed.*