

MALWA BUS SERVICE (P) LTD.

v.

STATE OF PUNJAB & OTHERS

April 28, 1983

[A. P. SEN AND E. S. VENKATARAMIAH, JJ.]

Motor Vehicles Act—Punjab Motor Vehicles Taxation Act, 1924 (as amended by the Amendment of 1981).

Section 3 and 3A—Maximum limit of tax payable on certain types of motor vehicles raised from time to time—Amendment Act of 1981 raised the maximum limit to Rs. 35,000 in respect of stage carriages—Tax—Whether expropriatory—Whether imposes an unreasonable restriction on freedom of trade, commerce and intercourse within the State.

By a notification issued under section 3A of the Punjab Motor Vehicles and Taxation (Amendment) Act, 1981 the State Government imposed on every stage carriage plying for hire and use for the transport of passengers a sum of Rs. 500 per seat subject to a maximum of Rs. 35,000 irrespective of the distance over which it operated daily.

The petitioners, in their petitions under Article 32 of the Constitution, contended that the tax was expropriatory and not compensatory in character and was being collected by the State Government for augmenting its general revenues which is forbidden by the Constitution, and that the levy was an unreasonable restriction on the freedom of trade, commerce and intercourse within the State.

Dismissing the petitions,

HELD: The impugned tax is compensatory in nature and does not contravene Articles 301 and 304(b) of the Constitution. [1023 H]

The mandate of Part XIII of the Constitution is not that trade, commerce and intercourse should be absolutely free, i.e., subject to no law and no taxes at all. Trade, commerce and intercourse should pay their way, that is, the price for the facilities provided by the State in the form of roads, bridges and many other facilities. Therefore, there is nothing inconsistent with the conception of freedom of trade and commerce if in truth what is collected by way of tax is a pecuniary charge which is compensatory in character. What is essential is that the burden should not disproportionately exceed the cost of facilities provided by the State. It is not unreasonable to ask the owners of the motor vehicles to contribute towards the cost of maintenance of roads as they happen to belong to a class having a special and direct benefit of the facilities provided. Courts

A have the power to decide whether what is recovered, by way of tax is in truth and substance either a contribution towards the construction and maintenance of roads and bridges and other facilities necessary for smooth transport service or an exaction in excess of what is needed for this purpose. They cannot, however, insist upon an exact correlation between the tax recovered and the cost so incurred because such exact correlation is in the very nature of things impossible to attain. In the case of fee if at least a good and substantial portion (two-thirds or three-fourths) collected is shown with reasonable B certainly to have been spent for rendering services to those from whom fees were collected, the Courts have upheld the levy. In law, there cannot be much difference between this principle applicable to fees and the principle that ought to govern the levy of motor vehicles tax which is claimed to be of a compensatory character. [1020H, 1021 A-H, 1023 F-G]

C *Kewal Krishan Puri & Anr. v. State of Punjab & Ors.*, [1979] 3 S.C.R. 1217; referred to.

D The petitioners have not placed before the Court sufficient material to hold that the levy suffered from the vice of discrimination. It is well settled that a legislature, in order to tax some need not tax all. It can adopt a reasonable qualification of persons and things in imposing tax liabilities. Unless a fiscal law is manifestly discriminatory the Court should refrain from striking it down on the ground of discrimination. [1025 B, 1024 E-F]

E In the instant case stage carriages which travel on an average about 260 Km every day with an almost assured quantum of traffic, belong to a class distinct and separate from public carriers which carry goods on undefined routes. The amount of wear and tear caused to the roads by any class of motor vehicles may not always be a determining factor in classifying motor vehicles for the purposes of taxation. [1024 G-H, 1025 A]

F Merely because a business becomes uneconomical as a consequence of a new levy, it cannot be said that it would amount to an unreasonable restriction on the fundamental right to carry on the business. [1025 H, 1026 A]

G ORIGINAL JURISDICTION: Writ Petitions Nos. 2617, 3837, 3973-3981, 3982-3998, 3962-3972, 4011-4015, 4016-4019, 4054-4058, 4136-4143, 4148, 4216, 4217, 4219-4226, 4287-4291, 4317-4321, 4408, 4542, 3518-3529, 3739-42, 4365-81, 8997-9017 and 9639-50 of 1982.

(Under article 32 of the Constitution of India)

H *Mohan Pandey for the Petitioners in WP. Nos. 3974-81, 3062-72, 4011-15, 4016-19, 4136-43, 4287-91, 4365-81, 9639-50, 3518-29 and 3739-42/1982,*

Shanti Bhushan, Baldev Kapoor and Mohan Pandey with him for the Petitioner in W. P. No. 3973 of 1982. **A**

Baldev Kapoor and Mohan Pandey for the Petitioner in WP. No. 3982-98 of 1982.

Y. S. Chitale and Mohan Pandey for the Petitioner in W.P. No. 2617 of 1982. **B**

A. K. Goel for the Petitioner in W. P. No. 3837/82.

Arvind Minocha for the Petitioner in W.P. No. 4054-58/82. **C**

S. K. Bagga for the Petitioner in W.P. No. 3148/82.

Vimal Dave for the Petitioner in W.P. No. 4216 & 4217/82.

Sarva Mitter for the Petitioner in W.P. 4219-26 & 4317-21/83. **D**

R. C. Kohli for the Petitioner in W.P. 4408/82.

L. N. Sinha, Attorney General, *D. D. Sharma* and *P. P. Singh* with him for the Respondents in all W.Ps.

The Judgment of the Court was delivered by **E**

VENKATARAMIAH, J. In these writ petitions filed under Article 32 of the Constitution, the petitioners have challenged the constitutional validity of section 3 of the Punjab Motor Vehicles Taxation Act, 1924 (Act No. 4 of 1924) (hereinafter referred to as 'the Act') as amended by the Punjab Motor Vehicles Taxation (Amendment) Act, 1981 (Punjab Act No. 13 of 1981) and the Notification dated March 19, 1981 issued by the Government of the State of Punjab under section 3(1) of the Act. **F**

The petitioners are owners of motor vehicles and are carrying on the business of running stage carriages in the State of Punjab. While the operation of the stage carriage services run by the petitioners is controlled by the provisions of the Motor Vehicles Act, 1939, which is a Central Act, they are liable to pay taxes on the motor vehicles owned by them under the Act. The Act is a pre-Constitutional one. After the Constitution came into force, the **G**
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A power to levy taxes on goods and passengers carried by road or on inland waterways and the power to levy taxes on vehicles, whether mechanically propelled or not suitable for use on roads including tramcars, subject to the provisions of Entry 35 of List III of the Seventh Schedule to the Constitution are assigned to the States respectively by Entries 56 and 57 of List II of the Seventh Schedule to the Constitution. While the Act is traceable to Entry 57, the Punjab Passengers and Goods Taxation Act, 1952 is enacted by the State Legislature in exercise of its legislative power granted under Entry 56. Before the commencement of the Constitution, section 3(1) of the Act which is the charging section read as follows :

C "3. (1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the first day of April, first day of July, first day of October and the first day of January at the rate specified in the schedule to this Act."

D The above provision was amended in 1954 by providing that the rates of tax levied under the Act were those specified by the State Government in a Notification to be issued by it, subject however to the maximum limit fixed by the Act, instead of the rates of tax specified by the State Legislature itself in the Schedule to the Act. E After that amendment, section 3(4) read thus :

F "3. (1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the first day of April, first day of July, first day of October, and the first day of January *at such rates not exceeding Rs. 2200 per vehicle for a period of one year as the State Government may by notification direct.*"

Emphasis added

G The maximum limit of Rs. 2200 mentioned in section 3(1) was increased by successive legislative amendments to Rs. 2750 in 1963, to Rs. 4,200 in 1965, to Rs. 10,000 in 1970 and to Rs. 20,000 in 1978. In exercise of the power conferred on it, the State Government fixed the rate of tax in the case of stage carriages at Rs. 75 per seat in 1965, at Rs. 100 per seat in 1970 and at Rs. 200 per seat in 1974, subject to the maximum prescribed by the Act. On March 31, 1978, H the State Government issued a Notification providing that on and after April 1, 1978, every stage carriage plying in the State of

Punjab should pay tax at Rs. 275 per seat where it operated upto 125 kilometres a day and Rs. 300 per seat where it operated for more than 125 kilometres subject to a maximum of Rs. 20,000 per year in both the cases. Then came the Amending Act in 1981 by which the maximum limit prescribed in section 3(1) of the Act was raised to Rs. 35,000 retrospectively with effect from October 1, 1980. Section 3 of the Amending Act inserted a new section in the Act being section 3-A of the Act which authorised the State Government to issue a Notification under section 3(1) raising the rates of tax retrospectively with effect from October 1, 1980. After the amendment in 1981, section 3(1) of the Act reads thus :

“3. (1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the first day of April, first day of July, first day of October and the first day of January at such rates not exceeding Rs. 35,000 per vehicle for a period of one year, as the State Government may by notification direct.”

Pursuant to the above section, as amended in 1981, and the newly inserted section 3-A of the Act which conferred power on it to raise the rates of tax under the Act with effect from October 1, 1980, the State Government issued the following Notification on March 19, 1981 :

“DEPARTMENT OF TRANSPORT
NOTIFICATION

The 19th March, 1981

No. S.O. 15/P.A. 4/24/S 3/Amd/81—In exercise of the powers conferred by sub-section (1) of section 3 read with section 3-A of the Punjab Motor Vehicles Taxation Act, 1924 (Punjab Act No. 4 1924) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the schedule appended to the Punjab Government, Transport Department Notification no. S.O./50/P.A. 4/24/S. 3/71 dated 10th November, 1971 with effect from the 1st October, 1980 namely :—

AMENDMENT

In the said schedule, against serial No. 5 for item (i) and entries relating thereto, the following item and entries shall be substituted, namely :

“(1) Stage carriages for hire and used for the transport of passengers, excluding the driver and conductor.	Rs. 500 per seat subject to a maximum of Rs. 35,000.”
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SADA NAND

Secretary to Government, Punjab
Department of Transport.”

The final position that emerged after the above Notification was that every stage carriage plying for hire and used for the transport of passengers (excluding the driver and conductor) had to pay per year Rs. 500 per seat subject to a maximum of Rs. 35,000 *irrespective* of the distance over which it operated daily.

The petitioners have challenged in these petitions the amendment made in 1981 increasing the maximum limit of the tax to Rs. 35,000 per year and the Notification dated March 19, 1981 raising the tax to Rs. 500 per seat on various grounds. The petitioners *inter alia* contend that the levy of tax of Rs. 500 per seat imposed by the impugned Notification is violative of Article 14, Article 19(1)(g) and Article 304(b) of the Constitution. They have also pleaded that the tax now levied is outside the scope of Entries 56 and 57 of List II of the Seventh Schedule to the Constitution. The principal point urged by them is that the tax now levied is expropriatory and not compensatory in character and is being collected by the State Government for the purpose of augmenting its general revenues which is forbidden by the Constitution. In support of their case the petitioners have furnished the following figures contained in the budget presented to the State Legislature in the year 1981-82 :

“Receipts

Taxes on vehicles	Rs. 13,86,00,000
Taxes on goods and passengers	Rs. 35,45,00,000
Total	Rs. 49,31,00,000

Expenditure

On roads and bridges	Rs. 34,03,00,000
Excess of receipts over expenditure :	Rs. 15,28,00,000"

It is contended by the petitioners that in view of the above figures, furnished by the State Government itself, there was no justification for increasing the rate of tax by the impugned Notification. The petitioners have further pleaded that the impugned levy imposes an unreasonable restriction on the freedom of trade, commerce and intercourse within the State of Punjab.

The State Government has justified the impugned levy in the counter affidavit filed in the case, the deponent of which is a Joint Secretary to the Government of Punjab, Transport Department. It is contended by the State Government *inter alia* that the plea of the petitioners that the revenue raised by the impugned Notification 'must be used only for the purpose of providing facilities pertaining to roads and bridges and/or facilities connected with the transportation of goods and passengers' was misconceived having regard to the various other responsibilities of the State Government which it has to bear in connection with road transports and if the expenditure incurred on all items of relevant expenditure is taken into consideration, it would become clear that the levy in question is not excessive. It is urged that the levy is compensatory in character and is, therefore, not hit by Article 301 or Article 304 (b) of the Constitution. The State Government has also furnished certain figures relating to the expenditure incurred by it to show that the levy is neither arbitrary nor violative of Article 19 (1) (g) of the Constitution.

We shall now proceed to examine the relevant constitutional provisions. Article 301 and Article 304 (b) which are in Part XIII of the Constitution read thus:

"301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a)

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

These provisions of the Constitution came up for consideration before a Constitution Bench consisting of five learned Judges of this Court in *Atiabari Tea Co. Ltd. v. The State of Assam and Ors.*⁽¹⁾ and the main point which arose for decision in that case was whether the taxing provisions in the Seventh Schedule to the Constitution were subject to Articles 301 to 304 and, if so, what would be their effect on taxes levied under Entry 56 of List II of the Seventh Schedule to the Constitution. Gajenderagadkar, J. (as he then was) who pronounced the judgment on behalf of himself, Wanchoo and Das Gupta, JJ. with whom Shah, J. (as he then was) agreed though by assigning a wider meaning to the freedom of trade, commerce and intercourse dealt with by Article 301 of the Constitution, observed 'at page 861 thus:

"Our conclusion, therefore, is that when Art. 301 provides that trade shall be free throughout the territory of India it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the States or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods it attracts the provisions of Art. 301 and its validity can be sustained only if it satisfies the requirements of Art. 302 or Art. 304 of Part XIII. At this stage we think it is necessary to repeat that when it is said that the freedom of the movement of trade cannot be

(1) [1961] 1 S.C.R. 809.

subject to any restrictions in the form of taxes imposed on the carriage of goods or their movement all that is meant is that the said restrictions can be imposed by the State Legislatures only after satisfying the requirements of Art. 304 (b). It is not as if no restrictions at all can be imposed on the free movement of trade."

The same question arose later on very sharply in *The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Ors.*⁽¹⁾ before a bench of seven learned Judges of this Court in which the correctness of the decision in the case of *Atiabari Tea Co. Ltd.* (supra) was questioned. In this case, the effect of Articles 301 to 304 of the Constitution on the power of the State Legislature to levy tax under Entry 57 of List II of the Seventh schedule to the Constitution arose for determination. There were three judgments in that case. The judgment of Das, Kapur and Sarkar, JJ. was delivered by Das, J. with whom Subba Rao, J. agreed in his concurring judgment. The minority judgment of Hidayatullah, Rajagopala Ayyangar and Mudholkar, JJ. was delivered by Hidayatullah, J. In that case, the contention of the appellant was that the tax levied under section 4 of the Rajasthan Motor Vehicles Taxation Act, 1951 read with its Schedules constituted a direct and immediate restriction on the movement of trade and commerce with and within the State of Rajasthan inasmuch as motor vehicles which carried passengers and goods within or through that State had to pay the tax which imposed a pecuniary burden on a commercial activity and was, therefore, hit by Article 301 of the Constitution and was not saved by Article 304 (b) inasmuch as neither the proviso to Article 304 (b) had been complied with nor was that Act assented to by the President as provided in Article 255 of the Constitution. On behalf of the State of Rajasthan, it was *inter alia* urged that a fiscal legislation enacted for the purpose of raising revenue for the maintenance of roads etc. was not hit by Article 301 and that the impugned levy which was intended for providing facilities to motor vehicles traffic did not constitute an immediate or direct impediment on the movement of trade and commerce. In the course of the hearing of that case, it was canvassed that the impugned tax being compensatory was outside the purview of Article 301 and Article 304(b). After

(1) [1963] 1 S.C.R. 491.

A examining all the views expressed in the *Atiabari Tea Co.'s* case (supra) Das, J. observed at pages 532-533 thus :

B “We have, therefore, come to the conclusion that neither the widest interpretation nor the narrow interpretations canvassed before us are acceptable. The interpretation which was accepted by the majority in the *Atiabari Tea Co.* case (1961) 1 SCR 809 is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Art. 304(b) of the Constitution.”

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D Subba Rao, J. who agreed with the judgment of Das, J. observed at pages 564-565 thus :

E “The foregoing discussion may be summarized in the following propositions : (1) Art. 301 declares a right of free movement of trade without any obstructions by way of barriers, inter-State, or intra-State or other impediments operating as such barriers. (2) The said freedom is not impeded, but, on the other hand, promoted, by regulations creating conditions for the free movement of trade, such as, police regulations, provision for services, maintenance of roads, provision for aerodromes, warfs etc., with or without compensation. (3) Parliament may by law impose restrictions on such freedom in the public interest; and the said law can be made by virtue of any entry with respect whereof Parliament has power to make a law. (4) The State also, in exercise of its legislative power, may impose similar restrictions, subject to the two conditions laid down in Art. 304(b) and subject to the proviso mentioned therein. (5) Neither Parliament nor the State Legislature can make a law giving preference to one State over another or making discrimination between one State and another, by virtue of any entry in the Lists, infringing the said freedom. (6) This ban is lifted in the case of Parliament for the purpose of dealing with situations arising out of scarcity of goods in any part of the territory of India and also

in the case of a State under Art. 304(b), subject to the conditions mentioned therein. And (7) the State can impose a non-discriminatory tax on goods imported from other States or the Union territory to which similar goods manufactured or produced in that State are subject."

It is not necessary to refer here to the views expressed in the minority judgment. The gist of the majority decision in the case of the *Automobile Transport (Rajasthan) Ltd.* (supra) is that as long as taxes levied under Entries 56 and 57 of List II of the Seventh Schedule to the Constitution are compensatory, they would fall outside the scope of Article 301 of the Constitution. But if they are not compensatory, then being a restriction on the freedom of trade, commerce or intercourse, they have to satisfy the requirements of clause (b) of Article 304. In all cases falling under Article 304(b) no bill or amendment can be introduced or moved in the Legislature of a State without the previous sanction of the President. If for any reason the requirement is not complied with, in order to be valid such law should receive the assent of the President as provided in Article 255 of the Constitution.

The main question which arises for determination now, therefore, is whether on the facts and in the circumstances of the case, the levy in question is for any reason not compensatory. In the case of the *Automobile Transport (Rajasthan) Ltd.* (supra) the circumstances when a tax on motor vehicles can be characterised as compensatory were discussed. Das, J. observed at pages 536-537 thus :

"The taxes are compensatory taxes which instead of hindering trade, commerce and intercourse facilitate them by providing roads and maintaining the roads in a good state of repairs. Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor do we think that it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used to providing any facilities.....actual user would often be unknown to tradesmen and such user may at some time be compensatory and at others not so. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having

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the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done.

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Nor do we think that it will make any difference that the money collected from the tax is not put into a separate fund so long as facilities for the trades people who pay the tax are provided and the expenses incurred in providing them are borne by the State out of whatever source it may be...

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

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The same principle is followed and reiterated in *G. K. Krishnan etc. etc. v. The State of Tamil Nadu & Anr. etc.*⁽¹⁾ and in *International Tourist Corporation etc. etc. v. State of Haryana & Ors.*⁽²⁾

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It is undeniable that there have been vast changes in the road systems of all the States in India during recent years and the State of Punjab is no exception. The roads themselves have very greatly increased in extent. There is also a like increase in road traffic. The number of motor vehicles, both passengers vehicles and goods vehicles which use the road has gone up. The cost of maintenance of roads has gone up correspondingly. The spiralling inflation has added to the mounting costs. Naturally the rates of taxes on motor vehicles have also constantly and inevitably risen in every part of the country. As mentioned earlier the mandate of the provisions in part XIII of the Constitution is not that trade, commerce and intercourse should be

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(1) [1975] 2 S.C.R. 715.

(2) [1981] 2 S.C.R. 364.

'absolutely free' i.e. subject to no law and no taxes at all. Trade, commerce and intercourse should pay their way, that is, the price for the facilities provided by the State in the form of roads, bridges, check posts, the departmental organisations intended for regulation of transport, law and order etc.. In modern communities the exercise of any trade and the conduct of any business must involve many kinds of fiscal liabilities. Merely because certain taxes are levied on them it cannot be said that trade or commerce has become unfree. Without the repair upkeep, maintenance and provision for depreciation of roads, transportation would itself become impossible. Motor vehicles which stand in direct relation to such roads should as held by this Court earlier, contribute towards the cost incurred for the aforesaid purposes. There is nothing inconsistent with the conception of freedom of trade and commerce if, in truth, what is collected by way of tax is a pecuniary charge which is compensatory in character. What is essential is that the burden should not disproportionately exceed the cost of the facilities provided by the State. It is not at all unreasonable to ask the owners of motor vehicles to contribute towards the cost of maintenance of roads etc. as they happen to belong to a class having a special and direct benefit of the facilities so provided. When they are taxed, they are paying a price for something which makes their movement safer, easier and more convenient. If a road falls into disrepair, the extent of loss they suffer will be very heavy indeed resulting in damage to their vehicles and inconvenience to the passengers and the owners of the goods they carry. There is, however, no doubt that the Courts do have the ultimate power to decide whether what is recovered by way of tax is in truth and substance either a contribution towards the construction and maintenance of the roads, bridges and other facilities that are necessary for providing a smooth transport service or an exaction far in excess of what is needed for providing such facilities. Courts, however, cannot insist upon an exact correlation between the tax recovered and the cost so incurred because such exact correlation is in the very nature of things impossible to attain. There may be in some cases a little excess recovery by way of taxes. That by itself should not result in the nullification of the law imposing the tax if the extent of such excess is marginal having regard to the total cost involved.

The petitioners have relied on certain figures furnished in the budget estimates for the year 1981-82 in support of their case that

A the State of Punjab was raising in all Rs. 49,31,00,000 from taxes on motor vehicles levied under the Act and taxes on passengers and goods levied under the Punjab Passengers and Goods Taxation Act, 1952 while the State was spending only Rs. 34,03,00,000 on roads and bridges. It is apparent that the amount of expenditure referred to above does not include the expenditure incurred by the State Government on other heads connected with road transport such as the Directorate of Transport, the transport authorities, provision of bus stands, lighting, traffic police, cost of maintenance of roads within the jurisdiction of local bodies such as Corporations, Municipalities and Gram Panchayats which are recipients of Government grants for the aforesaid purposes and other incidental items. If these items are also taken into consideration, the gap, if any, between the receipts and the expenditure on the transport would become very insignificant. The State Government has set out in detail the expenditure incurred by it for the aforesaid purposes in the affidavit sworn to by Shri Karl Reddy, I.A.S., Joint Secretary to the Government of Punjab. It has also produced the book containing the budget estimates presented to the State Legislature for the year 1983-84. It shows that the State Government has actually incurred in the year 1981-82 an expenditure of Rs. 23,32,88,000 on the maintenance of roads and bridges and Rs. 10,23,53,000 as capital out lay on roads and bridges. The total sum spent on roads and bridges alone thus came to Rs. 33,56,41,000. The actual receipts from taxes realised during the year 1981-82 both under the Act and under the Punjab Passengers and Goods Taxation Act, 1952 were, according to the State Government, Rs. 48,82,00,000. The budget estimates for the year 1983-84 show that the State Government proposes to spend during the year 1983-84 about 42 crores on roads and bridges alone though there is no expectation of any significant increase in the receipts by way of motor vehicles taxes. Even if the whole of the capital out-lay incurred by the State Government incurred during the year in connection with the construction of new roads is not included in the expenditure for the year for the purpose of determining the compensatory character of the levy (although there can be no serious objection to doing so as observed in *G. K Krishnan's* case (supra) but only a part of it is taken into account alongwith other items of expenditure which can legitimately be taken into consideration, it is obvious that a substantial part of the levy on motor vehicles under the Act as well as under the Punjab Passengers and Goods Taxation Act, 1952 is being spent annually on providing

facilities to motor vehicles operators. Moreover when once the principle of carrying forward to future year or years a part of the capital out lay on roads and bridges during any financial year is adopted in calculating the total expenditure incurred on roads and bridges during that year, it becomes inevitable that a part of the unabsorbed capital out lay on roads and bridges in the previous year or years would have to be added to the expenditure on roads and bridges during the year in question. The arithmetical result in the case before us cannot, therefore, be much different.

It may also be stated that a comparison between the total revenue from taxation on motor vehicles and the expenditure incurred on providing facilities such as roads and bridges etc. in a single year may sometimes present a distorted picture. The figures furnished by the State Government in respect of nine years i.e. 1973-74 to 1981-82 (both inclusive) show that the total receipts from the taxes levied under the Act and the taxes levied under the Punjab Passengers and Goods Taxation Act, 1952 is in the order of Rs. 2,52,26,83,000 and the total expenditure during the same period on roads and bridges alone is Rs. 2,35,66,89,000. The other relevant items of expenditure incurred in connection with road traffic are not included in the above expenditure. If they are included, the total expenditure is likely to be more than the receipts.

In *Kewal Krishan Puri & Anr. v. State of Punjab & Ors.*⁽¹⁾ where the question of a fee was involved, this Court said that if at least a good and substantial portion of amount collected on account of fees, (may be in the neighbourhood of two-thirds or three-fourths) was shown with reasonable certainty to have been spent for rendering services to those from whom the fees were collected, the levy of fees could be upheld. In law there cannot be much difference between the above principle applicable to fees and the principle that ought to govern the levy of motor vehicles tax which is claimed to be of a compensatory character. We are satisfied that the State Government has substantiated its case that the impugned tax is truly compensatory in nature. It has, therefore, to be held that it does not contravene Article 301 and Article 304(b) of the Constitution.

(1) [1979] 3 S.C.R. 1217.

A The next submission urged on behalf of the petitioners is based on Article 14 of the Constitution. It is contended by the petitioners that the Act by levying Rs. 35,000 as the annual tax on a motor vehicle used as a stage carriage but only Rs. 1,500 per year on a motor vehicle used as a goods carrier suffers from the vice of hostile discrimination and is, therefore, liable to be struck down. There is no dispute that even a fiscal legislation is subject to Article 14 of the Constitution. But it is well settled that a legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items provided it is impossible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in *Khandige Sham Bhat and Ors. v. The Agricultural Income Tax Officer*⁽¹⁾ in respect of taxation laws, the power of legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. It is one of the duties of a modern legislature to utilise the measures of taxation introduced by it for the purpose of achieving maximum social goods and one has to trust the wisdom of the legislature in this regard. Unless the fiscal law in question is manifestly discriminatory the Court should refrain from striking it down on the grounds of discrimination. These are some of the broad principles laid down by this Court in several of its decisions and it is unnecessary to burden this judgment with citations. Applying these principles it is seen that stage carriages which travel on an average about 260 kilometres every day on a specified route or routes with an almost assured quantum of traffic which invariably is over crowded belong to a class distinct and separate from public carriers which carry goods on undefined routes. Moreover the public carriers may not be operating every day in the State. There are also other economic considerations which distinguish stage carriages and public carriers from each

(1) [1963] 3 S.C.R. 809.

other. The amount of wear and tear caused to the roads by any class of motor vehicles may not always be a determining factor in classifying motor vehicles for purposes of taxation. The reasons given by this Court in *G.K. Krishnan's* case (supra) for upholding the classification made between stage carriages and contract carriages both of which are engaged in carrying passengers are not relevant to the case of a classification made between stage carriages which carry passengers and public carriers which transport goods. The petitioners have not placed before the Court sufficient material to hold that the impugned levy suffers from the vice of discrimination on the above ground.

It was lastly urged that the levy is almost confiscatory in character and the petitioners would have to close down their business as stage carriage operators. It is stated that the passenger fares were permitted to be raised by about 43 per cent just before the levy was increased in this case and it is even now open to the operators to move the State Government to increase the rates if they feel that there is a case for doing so. But on the facts and in the circumstances of the case, we feel that it is not possible to hold that the impugned levy imposes an unreasonable restriction on the freedom of the petitioners to carry on business. The considerations similar to those which weighed with this Court in upholding the Mustard Oil Price Control Order, 1977 in *Prag Ice and Oil Mills and Anr. etc. v. Union of India*⁽¹⁾ ought to be applied in this case also. Though patent injustice to the operators of stage carriages in fixing lower returns on the tickets issued to passengers should not be encouraged, a reasonable return on investment or a reasonable rate of profit can not be the *sine qua non* of the validity of the order of the Government fixing the maximum fares which the operators may collect from their passengers. It cannot also be said that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business. It is, however, open to the State Government to make any modifications in the fares if it feels that there is a need to do so. But the impugned levy cannot be struck down on the ground that the operation of the stage carriages has become uneconomical after the

(1) [1978] 3 S.C.R. 293.

A. introduction of the impugned levy. Moreover the material placed by the petitioners is not also sufficient to decide whether the business has really become uneconomical or not. We do not, therefore, find any merit in this ground also.

B. In the result these petitions fail and they are dismissed. No costs.

P.B.R.

Petitions dismissed.