(1997) 04 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Amended C.W.P. No. 4002 of 1982

Associated Cement Co. Ltd., Surajpur — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Citation : (1998) 1 RCR(Civil) 203

Hon'ble Judges : G.S.Singhvi, J

Advocate : Mr. Pradeep Bhandari, Advocates., Mr. Vivek Bhandari, Advocates for appearing Parties

Judgement

G.S. Singhvi, J.

1. The petitioner has challenged the constitutional validity of Section 3(i) of the Punjab Passengers and Goods Taxation Act, 1952 (as applicable to Haryana). It has also challenged the levy of passenger tax and has prayed that the proceedings taken by the respondents to recover the passenger tax from it be quashed.

2. In the writ petition, as it was originally filed, the petitioner had challenged the jurisdiction of the respondents to levy passenger tax. On March 23, 1993, the Deputy Advocate General, Haryana, invited the attention of the Court to the provisions contained in the Punjab Passengers and Goods Taxation (Haryana Amendment and Validation) Act, 1988. Thereafter the petitioner applied for amendment of the writ petition which was accepted on 17.5.1993. This is how the amendment made in the Act of 1952 has been challenged in the writ petition.

3. In order to appreciate the points raised by the petitioner, it is necessary to notice the factual background of the case. The petitioner is engaged in the manufacture of cement in its 18 Units situated at different places in the country, one of which is located in Surajpur, tehsil Kalka, district Ambala. The petitioner owns Buses No. HYA 9620 and HRE 1292. These buses have been granted private carrier permit by the Regional Transport Authority, Ambala. According to

the petitioner, the buses are used for carrying employees and their children from their staff quarters at Mallah to Bhupendra Cement Works at Surajpur and for this the Company does not charge any fare or contribution from the staff. During the year 1972, an issue arose whether the petitioner is liable to pay passenger tax. On being noticed by the Excise and Taxation Officer (Enforcement) Ambala Cantt, the petitioner submitted a reply and pleaded that no passenger tax can be levied on its buses because the same were being used only by the employees and their children for going to the factory and the school and no fare was charged by the Company from them. This plea of the petitioner found favour with the Excise and Taxation Officer who filed the case vide order dated 12.12.1972. After about nine years the Taxation Inspector, Passengers Goods Taxes issued notice to the petitioner for violation of the provisions of the Act of 1952. Thereafter the Assessing Authority issued notice to the petitioner for making assessment under Sections 6(2) and 6(4) read with Section 9(4) of the Act of 1952. On 9/10th of August, 1982 the petitioner submitted a representation and pleaded that no tax was payable by it in respect of the two buses. A representation dated 19th of August, 1982 was also made by the petitioner through its counsel to the Excise and Taxation Officer (Enforcement) Ambala Cantt. Thereafter the petitioner instituted this petition and made the prayers as aforementioned.

4. The Act of 1952 was enacted by the legislature with a view to provide for levying tax on passengers and goods carried by roads in certain motor vehicles. The present State of Haryana came into existence with effect from 1.11.1966 and along with other legislative instruments, the Act of 1952 was also adopted by the newly created State. The provisions relating to levy of passenger tax on vehicles used by Companies to carry their employees to factory area were challenged before this Court in M/s. Bharat Steel Tubes Ltd. v. The State of Haryana, A.I.R 1977 Punjab and Haryana 289. A Full Bench upheld the validity of the Section 2(f), Section 2(i) and Section 3 of the Act of 1952. The Full Bench also held that the levy of tax on the Company which provides bus to its employees for going to the factory area was legally justified. It appears that the decision of the Full Bench has been reversed by the Supreme Court on 31.8.1987. This fact has been revealed from the file No. Ka5620050 produced by the learned Assistant Advocate General. At page No. 11 of the file there is a reference to the decision of the Supreme Court dated 31.8.1987 in M/s. Bharat Steel Tubes'' case (supra) and the decision of the Government to bring about validating legislation so as to remove the defect as pointed out in the judgment of the Supreme Court. The Governor of Haryana promulgated Punjab Passengers and Goods Taxation (Haryana Amendment and Validation) Ordinance, 1987 which was subsequently replaced by the Punjab Passengers and Goods Taxation (Haryana Amendment and Validation) Act No. 2 of 1988.

5. For the purpose of this decision, it will be useful to refer to the relevant provisions of the Constitution and the Act of 1952 (unamended as well as amended) Entry 56 of List II of the 7th Schedule of the Constitution, the

Preamble, Section 2(f), Section 2(i) and Section 3(1) of the 1952 Act as it stood prior to the Amendment of 1988, the Preamble of the Amending Act, Section 2(f), Section 2(i) and Section 3(1), as it stands after the 1988 Amendment are reproduced below for reference purposes :

Entry 56 of List II 7th Schedule .

"Taxes on goods and passengers carried by road or an inland waterways."

Act of 1952 (unamended)

"An Act to provide for levying a tax on passengers and goods carried by road in certain motor vehicles.

Section 2(f)

"passenger" means any person travelling in a public service vehicle, but shall not include the driver or the conductor or an employee of the owner of the vehicle travelling in the bona fide discharge of his duties in connection with the vehicle.

Section 2(i)

''Motor vehicle'' means a public service vehicle, public carrier, private carrier or a trailor when attached to any vehicle;

Section 3(1)

Levy of Tax :

There shall be levied, charged and paid to the State Government a tax at such rate not exceeding sixty per centum of the value of :

(i) fare or freight as the case may be, on all passengers and goods carried by a motor vehicle other than a private carrier; and

(ii) freight as calculated on the basis of freight rate fixed for public carriers by the competent authority under the Motor Vehicle Act, 1939 (Central Act 4 of 1939), on all goods, carried by a private carrier, as the State Government may by notification, direct, the amount of tax being calculated to the nearest multiple of five paise by ignoring two paise or less and counting more than two paise as five paise :

Provided that in case of contract carriages, public carriers and private carriers, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods respectively, in the manner prescribed :

Provided further that in case of stage carriages, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods, in the manner and subject to such conditions as may be prescribed :

Provided further that :

(a) no such tax shall be levied, charged and paid on goods, including minerals and mineral ores, proved to be exported out of the territory of India, whether by one transaction or by a series of transactions;

(b) in respect of minerals and mineral ores carried to any place within the territory of India, such tax shall be levied, charged and paid at the rate of onetwentieth of the value of the freight;

(c) the rate of tax on all passengers and goods carried by motor vehicles in hilly areas or submontane areas, specified in this behalf by the State Government, by notification, shall be onesixth of the value of the fare or freight as the case may be.

EXPLANATION :

When passengers and goods are carried by a motor vehicle other than a private carrier, and no fare or freight is charged the tax shall be levied and paid as if such passengers and goods are carried at the normal rate prevalent on the route or at the rate fixed by the competent authority under the Motor Vehicles Act (Central Act 4 of 1939), whichever is higher."

Act of 52 of 1988 Amendment

" AN ACT

to amend the Punjab Passengers and Goods Taxation Act, 1952, and to validate certain actions already taken in its application to the State of Haryana.

Section 2(f)

''passenger'' means any person travelling in a motor vehicle other than a private and public carrier but shall not include the driver or the conductor or an employee of the owner of the vehicle travelling in the bona fide discharge of his duties in connection with the vehicle;

Section 2(i)

''motor vehicle'' means a public service vehicle and includes public carrier, private carrier or a trailor when attached to any such vehicle and omnibus used by an employer other than the Government, for carriage of his employees;

Section 3(1)

Levy of Tax :

(1) There shall be levied, charged and paid to the State Government a tax at such rate not exceeding sixty per centum of the value of :

(i) fare or freight, as the case may be, on all passengers and goods carried by a motor vehicle other than a private carrier; and

(ii) freight as calculated on the basis of freight rate fixed for public carriers by the competent authority under the Motor Vehicle Act, 1939 (Central Act 4 of

1939) on all goods carried by a private carrier, as the State Government may by notification, direct, the amount of tax being calculated to the nearest multiple of five paise by ignoring two paise or less and counting more than two paise as five paise :

Provided that in case of contract carriages, public carriers and private carriers, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods respectively, in the manner prescribed :

Provided further that in case of stage carriages, the State Government may accept a lump sum in lieu of the tax chargeable on passengers and goods, in the manner and subject to such conditions as may be prescribed :

Provided further that :

(a) no such tax shall be levied, charged and paid on goods, including minerals and mineral ores, proved to be exported out of the territory of India, whether by one transaction or by a series of transactions;

(b) in respect of minerals and mineral ores carried to any place within the territory of India, such tax shall be levied, charged and paid at the rate of onetwentieth of the value of the freight;

(c) the rate of tax on all passengers and goods carried by motor vehicles in hilly areas or submontane areas, specified in this behalf by the State Government, by notification, shall be onesixth of the value of the fare or freight as the case may be.

EXPLANATION :

When passengers and goods are carried by a motor vehicle other than a private carrier, and no fare or freight is charged or only token or concessional fare or freight is charged, the tax shall be levied and paid as if such passengers and goods are carried at the normal rate prevalent on the route or at the rate fixed by the competent authority under the Motor Vehicles Act (Central Act 4 of 1939), whichever is higher."

We may also quote Sections 2(22), 2(25) and 2(33) of the Motor Vehicles Act, 1939 which contain the definitions of expression "private carrier", ''public service vehicle'' and ''transport vehicle'' because these expressions have not been defined in the Act of 1952. The same read as under :

"Section 2(22)

''private carrier'' means an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport, or who uses the vehicle for any of the purposes specified in subsection (2) of Section 42;

Section 2(25)

"public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage;

Section 2(33)

''transport vehicle'' means a public service vehicle or a goods vehicle."

6. Shri Bhandari, learned counsel for the petitioner relied on the decision of the Supreme Court in M/s. Tata Engg. and Locomotive Co. Ltd. v. Sales Tax Officer, Poona, AIR 1979 SC 343 and argued that the employees who use the facility provided by the petitioner in the form of buses cannot be treated as passengers for the purpose of the Act, 1952. He argued that the element of hire or reward which is inherent in cases of the passengers who travel in public service vehicles is missing in the case of the petitioner and its vehicles are registered as private carrier, no tax can be levied by virtue of the amended Section 2(f) read with Sections 2(i) and 3. Learned counsel submitted that even after the coming into force of the Amending Act, 1988 no tax is recoverable from the petitioner because no fare or freight is charged by the petitioner from its employees. Shri Bhandari also argued that the impugned amendment is beyond the legislative competence of the State of Haryana and therefore the Amending Act is liable to be struck down. Shri Bhandari submitted that the legislature has tried to do away with the effect of the judgment in M/s. Bharat Steel Tubes'' case and this is impermissible in law. He also placed reliance on the decision of the Supreme Court in Rai Ramkrishna and others v. State of Bihar, A.I.R. 1963 S.C. 1667. Ms. Ritu Bahri argued that in view of the Amending Act of 1988 by which the Act of 1952 has been amended with retrospective effect from 1.4.1965 the lacuna, if any, in the unamended Act of 1952 stands removed and now there is no impediment on the recovery of tax from the petitioner in respect of the passengers who travel in its buses. Ms. Bahri argued that by amending the definition of passenger the legislature has brought within the purview of the Act any person travelling in a motor vehicle which includes a private carrier like the bus used by an employer for carriage of his employees and therefore, the petitioner cannot claim immunity from payment of passenger tax. Learned Assistant Advocate General submitted that the decision of the Supreme Court in M/s. Tata Engg. and Locomotive Co. Ltd. v. Sales Tax Officer, Poona (supra) is distinguishable because the Bombay Motor Vehicles (Taxation of Passengers) Act, 1958 was enacted with a view to levy passengers carriage tax on certain vehicles of public service whereas Act of 1952 was enacted to provide for levy of tax on passengers and goods carried by road in certain motor vehicles. She also pointed out that there is no provision in the Bombay Act parallel to Explanation appended below Section 3(1) of the 1952 Act.

In view of the fact that the decision of the Full Bench in M/s. Bharat Steel Tubes'' case (supra) stands reversed by the Supreme Court, it is not proper for me to delve deep into the issue whether in view of that decision the judgment of the Supreme Court in M/s. Tata Engg. and Locomotive Co. Ltd. (supra) is distinguishable and the same cannot be applied for interpreting the provisions of 1952 Act, though I find considerable force in the argument of Ms. Bahri that looking to the preamble of the Act of 1952 and the definition of the word ''passenger'' and ''motor vehicles'' as also the Explanation appearing below Section 3(1) of the Act of 1952, the judgment of the Supreme Court cannot be of any help to the petitioner''s case. I shall examine the entire issue in the light of the submission made at the bar with regard to the legislative competence of the State.

7. After the coming into force of the Punjab Passengers and Goods Taxation (Haryana Amendment and Validation) Act, 1988 the definition of passenger has undergone a drastic change. Under the unamended provisions only a person travelling in a public service vehicle was covered by the definition of the passenger. The amended definition of motor vehicles and the new explanation appended below Section 3(1) have brought within the ambit of the charging section even those persons who travel in motor vehicle without paying fare or by paying concessional fare. Thus the employees of a Company like the petitioner who travel in the buses of the petitioner without paying fare come within the amended definition of passenger and in my opinion the petition cannot derive any benefit from the judgment of the Supreme Court in M/s. Tata Engg. and Locomotive Co. Ltd. case (supra).

8. I shall now consider the argument of Shri Bhandari that the Amending Act No. 2 of 1988 is ultra vires to the legislative competence of the State and the legislature cannot nullify the effect of the judgment rendered by the Apex Court by using the mechanism of amendment.

9. The power of the legislature of the State to levy tax on passengers cannot be disputed. Entry 56 of List II of the 7th Schedule empowers the State Legislature to enact for imposition of tax on passengers and goods. By enacting Act No. 2 of 1988 the legislature of the State has merely removed the defect/lacuna in the definition of the word ''passengers'' and the expression ''motor vehicles'' and also enlarged the scope of the charging section i.e. Section 3 of the Act of 1952. By doing so the Legislature cannot be said to have acted beyond its competence. Likewise, there is nothing illegal or unconstitutional in giving retrospective effect to Amending Act No. 2 of 1988 because it is a settled proposition of law that the Legislature can enact laws prospectively as well as retrospectively.

10. The question whether the legislature has the power to validate a piece of legislation which has been struck down by the Court and whether the legislature can undo the effect of a judgment of the Court has come up for decision in several cases. In Rai Ramkrishana''s case the vires of the Bihar Taxation on Passengers and Goods (carried by Public Transport Motor Vehicles) Act, 1961 was challenged. Prior to the coming into force of the Act, 1961 the levy of passengers tax under the Bihar Finance Act was challenged. The challenge was upheld by the Supreme Court. Thereafter Bihar Ordinance (II) of 1961 was issued and the provisions which were earlier struck down by the Supreme Court were validated

and brought into force retrospectively from the date when the earlier Act had come into force. Later on the Legislature enacted Act No. 17 of 1961. While rejecting the challenge their Lordships held "where the Legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent for the appropriate Legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed."

11. The Court also held that "the entries in the Seventh Schedule of the Constitution of India conferring legislative power on the Legislature must receive the widest interpretation. Entry 56 of the Second List in Schedule VII refers to taxes on goods and passengers carried by road or on inland waterways. By this entry the State Legislatures are authorised to levy taxes on goods and passengers. It is not on all goods and passengers that taxes can be imposed under this entry; it is on goods and passengers carried by road or on inland water ways that taxes can be imposed. The expression ''carried by road or on inland waterways'' is an adjectival clause qualifying goods and passengers, that is to say, it is goods and passengers of the said description that have to be taxed under this entry. Nevertheless it is obvious that the goods as such cannot pay taxes, and so, taxes levied on goods have to be recovered from some persons, and these persons must have an intimate or direct connection or nexus with the goods before they can be called upon to pay the taxes in respect of the carried goods. Similarly, passengers who are carried are taxed under the entry. But, usually, it would be inexpedient, if not impossible, to recover the tax directly from the passengers and so, it would be expedient and convenient to provide for the recovery of the said tax from the owners of the vehicles themselves."

12. In Prithvi Cotton Mills Ltd. and another v. Borach Borough Municipality and others, (1969) 2 S.C.C. 283, a Constitution Bench examined the vires of Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. Rejecting the challenge to the competence of the Legislature to enact the validating law so as to nullify the effect of the judgment of the Supreme Court in Patel Gordhandas Hargovindas v. Municipal Commissioner, Ahmedabad, (1964) 2 S.C.C. 608, the Supreme Court held "if the legislature has the power over the subjectmatter and competence to make a valid law, it can at any time make such a valid law and make it applicable retrospectively so as to bind even past transactions. The validity of a validating law depends upon whether the Legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defects which the Courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the Tax."

13. In Bhubaneshwar Singh and another v. Union of India and others, (1994) 6 S.C.C. 77, the Supreme Court considered the validity of the Coal Mines Nationalisation Laws (Amendment) Ordinance and Act, 1986. The Apex Court upheld the amendment and observed :

"Parliament and State Legislatures have plenary powers of legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned.

The Validating Acts are enacted to validate the action taken under the particular enactments by removing the defect in the statute retrospectively because of which the statute or the part of it had been declared ultra vires. The exercise of rendering ineffective the judgments or orders of competent courts by changing the very basis by legislation is a wellknown device of validating legislation. Such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power. At the same time, any action in exercise of the power under any enactment which has been declared to be invalid by a court cannot be made valid by a Validating Act by merely saying so unless the defect which has been pointed out by the court is removed with retrospective effect. The validating legislation must remove the cause of invalidity. Till such defect or the lack of authority pointed out by the court under a statute is removed by the subsequent enactment with retrospective effect, the binding nature of the judgment of the court cannot be ignored."

14. In Mahe Beach Trading Co. and others v. Union Territory of Pondicherry and others, (1996)3 S.C.C. 741, Comorin Match Industries (P) Ltd. v. State of T.N., (1996) 4 S.C.C. 281, Indian Aluminium Co. and others v. State of Kerala and others, 1996(1) RRR 652 (SC) : (1996)7 S.C.C. 637, and P. Kannadasan and others v. State of T.N. and others, the Supreme Court considered the challenge made to different validating statute and upheld the same by following the principles laid down in Prithvi Cotton Mills case (supra). Some of the observations made in Indian Aluminium Co. and others v. State of Kerala and others (supra) are quite instructive and, therefore, the same are extracted below :

"The validity of the Validating Act is to be judged by the following tests : (i) whether the legislature enacting the Validating Act has competence over the subject matter; (ii) whether by validation, the legislature has removed the defect which the court had found in the previous law; (iii) whether the validating law is consistent with the provisions of Chapter III of the Constitution. If these tests are satisfied, the Act can validate the past transactions which were declared by the court to be unconstitutional.

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In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty (sic)."down in the above mentioned case I further hold that there is no infirmity in the giving of retrospective effect to the Amending Act.

For the reasons mentioned above, the writ petition is dismissed. The interim stay passed by this Court stands automatically vacated. The respondents shall now be free to recover the amount of passenger tax from the petitioner along with interest in accordance with the provisions of law.

