

(1952) 05 PAT CK 0002

In the Patna High Court

Case No : Titles Suits No's. 1 and 3 of 1952 and 5 of 1951

Atma Ram Budhia

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-05-1952

Acts Referred:

Bihar Finance Act, 1950 — Section 12, 12(1), 26
Constitution of India, 1950 — Article 14, 19, 23, 23(2), 246

Citation : AIR 1952 Patna 359

Hon'ble Judges : Sarjoo Prosad, J; Narayan, J; Das, J

Bench : Full Bench

Advocate : Sultan Ahmad, Sarwar Ali and Shamsul Hussain, in No. 3/52 and Sultan Ahmad, Baldeva Sahay, J.P. Chowdhury, Shivanugrah Narain and Chhatrapati Kumar Sinha, in No. 5/51, for the Appellant; Government Pleader and Lakshman Saran Sinha in No. 3/52 and Government Pleader and Lakshman Saran Sinha, in No. 5/51, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prosad, J.—These three suits have been heard together because they raise a common question of law, viz.; whether Part III of the Bihar Finance Act, 1950 (Bihar Act, XVII of 1950) is without jurisdiction. This Act will be hereinafter called the impugned Act.

2. Title Suits Nos. 1 and 3 of 1952 were originally instituted in the court of the Subordinate Judge at Ranchi, while Title Suit No. 5 of 1951 was instituted in the court of Subordinate Judge at Gaya; but, in view of constitutional question involved in all these suits, they have been transferred to this Court for disposal. In Title Suit No. 1 of 1952 the plaintiff is the co-sharer partner of one Radhe Shyam Bus Service, Ranchi, and he also calls himself the President of the Bihar Motor Congress, an Association which, according to him, has been formed to look after and safeguard the interest of "transport owners". In Title Suit No. 5 of 1951 there are a large number of plaintiffs who claim to hold licenses and permits for plying motor cabs, public service vehicles and public carriers for hire

on different routes mentioned in their licenses. In other words, these suits are by the "owners" of motor vehicles as defined in the "impugned Act".

The plaintiff in Title Suit No. 3 of 1952 is one Satya Narayan Chowdhary who styles himself a member and President of the Bihar Motor Travellers' Association, resident of Ranchi, and he claims that, in course of his duties, he has to travel a great deal by motor buses and taxis and has to transport goods by "public carriers". It may be mentioned here that the term "public carriers" as used in the Act refers to vehicles and is different in its import from the meaning given to it under the Motor Vehicles Act (Act IV of 1939). He has, therefore, instituted the suit as a passenger carried by these vehicles. The principal defendant in all these suits is the State of Bihar. The plaintiffs have substantially sued for a declaration that the impugned Act is "ultra vires" the Bihar Legislature and for permanent injunction restraining the defendant, its-servants and agents from realising any tax under the Act, or calling upon the plaintiffs to file returns as "owners" or to deposit security or to maintain accounts in pursuance, or in furtherance of the provisions of the said Act,

3. The Bihar Finance Act, 1950, received the assent of the Governor on the 27th of March, 1950, and was published in the Bihar Gazette, Extraordinary, on the 30th of March, 1950, and it came into operation on the 1st of April following. Acting under Part III of the Act. the State of Bihar has levied a tax on all passengers and goods carried by motor vehicles and "public carriers" at the rate of 2 annas in the rupee on all fares and freights payable to the owners of such vehicles and "public carriers". The Act also provides for the framing of rules to give effect to the purpose of the Act, and, in pursuance of that provision, rules were framed which were notified on the 24th of July, 1950, and published in the Bihar Gazette Extraordinary on the 25th of that month. The plaintiffs allege that taking advantage of the provisions of the Act, the State of Bihar and the officers of the Commercial Taxing Department of the State had been insisting upon the plaintiffs for the payment of those taxes and have realised such taxes from them. They have also compelled the plaintiffs, who are owners of such vehicles, to file returns and to do certain other acts prescribed by the aforesaid statute.

The plaintiffs submit that the Act nowhere provides for payment of the taxes by passengers" and consignors of goods, nor is there any provision in the Act making passengers or consignors of goods liable for the payment of the tax either to the owner or to the State Government. It is, therefore, stated that the acts of the State Government are all illegal and arbitrary though made under cover of the provisions of the impugned legislation. They further contend that the tax imposed under the said Act was beyond the legislative competence of the State Legislature and was not covered by any of the Entries in List II or III of the Seventh Schedule of the Constitution of India. They also allege that the aforesaid Part III of the Bihar Finance Act, 1950, and the rules made thereunder are null and void and are also opposed to various provisions of the Constitution of India dealing with fundamental rights. According to the plaintiffs, the defendant had no

right to impose duties and obligations upon the plaintiffs of a drastic character without any corresponding advantage to them and there was no warrant in the Constitution for the imposition of such obligations on the citizens engaged in lawful avocation.

4. The defendant, on the other hand, has endeavoured to protect the Act and has asserted that the Bihar Finance Act, 1950, as also the rules framed thereunder are valid and within the competence of the respective authorities; that the tax imposed on goods and passengers carried by road, comes within Entry No. 56 of List II of the Seventh Schedule of the Constitution of India; and the fares and freights have been used merely to determine the measure of the tax which is to be collected through the owners of the vehicles concerned. The defendant also contends that the Act impugned does not in any manner offend against the provisions of the Constitution of India and is not in any way opposed to it, and that there has been no delegation of any essential legislative function.

5. On these pleadings the following issues were framed by my learned brother Das, J. for determination :-

" 1. Is the tax imposed by part III of the Bihar Finance Act, 1950, beyond the legislative competence of the State Legislature?

2. Do the provisions of Part III of the said Act contravene any of the fundamental rights guaranteed under Articles 14 19 & 23 of the Constitution of India?

3. Are the provisions of Part III of the said Act against the provisions of Part XIII of the Constitution of India, particularly Article 301 and the proviso to Article 304?

4. Are the provisions of Part III of the said Act unconstitutional by reason of delegation of legislative function?

5. To what reliefs, if any, is the plaintiff entitled?"

6. The case has been ably and fully argued on both sides. I will take up the issues in their order; but to appreciate the arguments of the parties, it would be better to examine at the outset the scheme of the impugned Act and its relevant provisions. The preamble to the Act shows that it purports to be an Act to amend certain existing taxing statutes of the State and also "to levy a tax on passengers and goods carried or transported by public service vehicles and public carriers". Part III which is the part dealing with this object of the statute is headed exactly in similar terms as already quoted. Section 11 gives certain definitions. Then comes Section 12 which is the most important section and has figured prominently in the debates at the Bar. The section is divided into three sub-sections. The first sub-section provides for the levy and payment of tax on all passengers and goods carried by motor vehicles at the rate of two annas in the rupee on all fares and freights payable to owners of such vehicles; Sub-section (2) provides for payment of tax where the fares and freights are chargeable in a lump; while the third sub-section enjoins that the owners of such vehicles shall pay into the Government treasury the tax realised and furnish returns thereof

from time to time. Section 13 deals with the assessment of tax on the basis of those returns or where the returns are unsatisfactory. Section 14 enables the owners of motor vehicles to compound for the tax payable. The other sections which follow deal with the registration of "owners", the deposit of security by them, maintenance of time-tables and tables of fares and freights. Section 18 enacts that the arrears of tax are realisable as public demand. Section 20 provides for appeals, Section 21 for penalties for offences against the law and Section 26 for the making of rules by State Government to give effect to the provisions of the Act.

7. Both parties agree that Section 12 is the charging section and it requires very careful consideration. The first sub-section of Section 12 runs as follows:

"From and after the commencement of this Act, there shall be charged, levied and paid to the State Government, a tax on all passengers carried by motor cabs, stage carriages and contract carriages and on all goods transported by public carriers at the rate of two annas in the rupee on all fares and freights payable to owners of such motor cabs, stage carriages, contract carriages or public carriers".

8. I have quoted this sub-section in full because the contentions of the parties have been focussed upon the interpretation of this provision. Evidently, this sub-section can be split up into two parts; (1) that there shall be charged, levied and paid a tax on all passengers and on all goods carried or transported by motor vehicles; and (2) that the tax levied shall be at the rate of two annas in the rupee on all fares and freights payable to owners. It is significant to note that the first part mentions a tax "on all passengers carried....." and "on all goods transported....." The repetition of the words "on all" with reference to passengers and goods connected by the conjunctive "and" emphasises that the tax was to be on all passengers and on all goods. This is also in consonance with the preamble to the Act and the heading of Part III itself. List II of the State List in the Seventh Schedule to the Constitution of India provides in item No. 56 that State Legislature under Article 246 is entitled to legislate in regard to taxes on goods and passengers carried by road or on inland waterways. Evidently, therefore, in legislating on this subject, the State legislature was acting within the field of its legislative competence.

9. The contention of the plaintiffs, however, is that the intention was not really to levy tax on passengers and goods carried by road but the intention actually was to impose a tax on "fares and freights" payable to owners. According to the plaintiffs the language of the sub-section has been simply camouflaged to make a show of legislative competence. It is pointed out that the levy of taxes on fares and freights is not within the competence of the State legislature, and if at all, they fall either under item 89 of List I of the Union List or under the residuary powers of the Union legislature as provided in item 97 of that List. It may be observed at the outset that item No. 89 of List I refers to tax on "railway" fares and freights. It does not specifically refer to any tax on other fares and freights.

The above argument is however sought to be founded upon the latter part of Sub-section (1) of Section 12 which provides that the tax shall be levied at the rate of two annas in the rupee on all "fares and freights" payable to owners.

Reference is also made to various other provisions of the Act on the basis of which it is contended that the tax is not payable by passengers carried and goods transported but payable by "owners", and is more in the nature of an Income Tax which is not permissible in law for the State legislature to impose. Subsection (2) of Section 12 says that where any fare or freight charged is a lump sum paid by a person as a subscription or contribution for a season ticket or for any privilege, right or facility, the tax shall be levied on the amount of such lump sum or on such amount as appears to the prescribed authority to be fair and equitable, and Sub-section (3) further provided that every owner shall, in the prescribed manner, pay into a Government treasury "the full amount of tax due from him" under Sub-section (1) or Sub-section (2), as the case may be, and shall furnish returns within a prescribed period. Section 13 again speaks of assessment of the amount of "tax "due from the owner"" on the basis of certain returns. Section 14 similarly says that the State Government may permit an "owner" under certain circumstances to compound for the "tax assessable on him" by paying, in lieu thereof, a fixed fee. It is contended with reference to these provisions that the tax due was "a tax due from the owner" and was "assessable on the owner"; therefore, it was urged that it was a tax on the "owner" of these motor vehicles and not really a tax on goods and passengers carried by those vehicles.

It was further argued by Mr. Baldeva Sahay followed by Dr. Sultan Ahmad that the Act nowhere provides for the recovery of the tax from the passengers or consignors of goods as would have been the case if the intention of the statute actually was that the tax was to be levied on goods and passengers carried by motor vehicles. In this connection reliance has been placed upon the language of various other statutes where such a provision has been specifically made; and it is contended that in the absence of any specific provision, either creating the liability to pay the tax on passengers and goods carried or authorising the owners to collect the tax from them, it must be held that the tax was upon the "owners" of motor vehicles themselves. It is further argued that if it were a tax on passengers and goods, then it would be a fixed amount and not a variable quantity whereas the section contemplates that the tax would vary in proportion to the fares and freights payable to the owners. The plaintiffs, therefore, submit that construing the various provisions of the Act, the tax is evidently upon the "owner" and is not a tax upon "passengers" and "goods" carried by motor vehicles.

10. I have no doubt that in finding put the purposes of a legislation or in construing the same all the various provisions of the Act have to be examined as a compact whole and not merely a few sections thereof in their isolation. It must be conceded that there is apparently a lacuna in the Act, in that there is no

specific provision authorising the owners of motor vehicles to realise the tax from passengers and goods carried on those vehicles. Such a provision, for instance, occurs in the Cess Act (vide Section 41 of the Act): in the Bihar Entertainment Tax Act; in the Bihar Electricity Act (vide Sections 3 and 4) and also in the Bengal Ferries Act (Act 1 of 1885). To my mind, however, the key to the whole statute lies in Section 12 of the Act which is the main section, the others being in the nature of corollaries. Sub-section (1) of Section 12 specifically provides that the tax shall be on all passengers and on all goods transported. The latter part of the sub-section only indicates the measure of the tax. There is nothing in law to prohibit the tax being a variable quantity. Such a construction is in consonance with the purpose of the Act and any other construction for which the plaintiffs contend would defeat that purpose. It is well settled that where two constructions are possible, then the one which leans towards the constitutionality of the legislation should be accepted in preference to the one which has the effect of destroying it. If this construction is adopted, then there is not much difficulty in understanding the subsequent provisions of the statute which work out the manner in which the tax is to be realised through the owners of such vehicles.

The most convenient way in which a tax of this nature could be levied and realised was through the instrumentality of the owners of such motor vehicles and since they have been put in charge of it, the statute requires that they should collect and pay it to Government, submit returns of the realisations made and be subject to certain penalties in case of their omission to conform to the requirements of the law. The words, therefore, as used in the various sections of the Act, namely "tax due from owners" or "tax assessable on them", must in the context be understood to be tax which has been collected by these owners and thus became payable to the State Government, the collection being on behalf of the State by the "owners".

11. It is true that there is absence of a direct provision authorising the "owners" to collect the tax from the passengers and consignors of goods, but the word "payable" occurring in Sub-section (1) of Section 12 with reference to "Owners" may be stretched to apply not only to the fares and freights but also to the tax realisable. The learned Government Pleader concedes that such a construction may not be strictly and grammatically accurate but nevertheless he submits that even if the language required a little stretching in order to give effect to the purpose of the Act, that should be constitutionally permissible. There is no warrant for the assumption that the tax imposed should necessarily be a fixed quantity or a fixed sum of money payable; it may vary in proportion to the fares and freights paid by the travellers or consignors of goods. The learned Government Pleader has relied in this connection upon a decision of the Federal Court in AIR 1949 81 (Federal Court) where the tax was on buildings and lands, and it was contended that the tax was in substance a tax upon the income of the owner. This contention was not accepted, Their Lordships summed up their conclusion as follows:--

"In the first place, we have to look into the charging section of the statute, because as was pointed out in "PROVINCIAL TREASURER OF ALBERTA v. KERR" (1933) AC 710: 102 LJPC 137 "the identification of the subject-matter of the tax is only to be found in that section". The charging section in the present case is Section 3, which in clear terms levies not a tax on income but a tax on buildings and lands. It is true that we must look not to the mere form but to the substance of the levy, and the tax must be held to be invalid, if in the guise of a property tax it is really a tax on income. There is, however, nothing in the impugned Act to show that there was any intention on the part of the Legislature to get at or tax the income of the owner from the building. It is true that the annual value was used as the basis, but it was very different from the annual value which may be used for getting at the true profits or income. The annual value, as has been pointed out, is at best only notional or hypothetical income and not the actual income. It is only a standard used in the Income Tax Act for getting at income, but that is not enough to bar the use of the same standard for assessing a provincial tax. If a tax is to be levied, on property, it will not be irrational to correlate it to the value of the property and to make some kind of annual value the basis of the tax, without intending to tax income."

Here the charging section is Section 12, and Sub-section (1) of the section quite clearly provides that the tax is upon the passengers and goods and not upon the income of the owners and the fares and freights realisable by them. The fares and freights have been used merely as a standard for calculating the tax, and there is nothing irrational in doing so. This measure of the tax cannot convert it into a tax on the income of the owners themselves. Reference may also be made in this context to a passage in Willoughby on the Constitution of the United States, Vol. 2, page 669, Section 378, headed "Measurement of Taxes" where the learned author observes:--

"The courts have firmly fixed the proposition that, for the determination of the amounts of taxes to be assessed upon individual persons, corporations, or pieces of property, any reasonable standard of measurement may be selected, and that the intrinsic character of the tax is not determined by the mode of measurement thus selected."

Therefore, the fact that the tax is to be measured in proportion to the fares and freights realised does not alter the nature of the tax or affect its "intrinsic character" which is actually a tax upon the goods and passengers carried on the motor vehicles. The standard of measurement adopted is not an unreasonable standard regard being had to the primary purpose of the Act which is to obtain revenue for the State; and the constitutional right to adopt the standard of measurement is derived from the constitutional authority of the legislature which authorises the tax to regulate the matter in question. In this case, I have already referred to item 56 of the State List which authorises the State Legislature to levy a tax of this character.

12. Though the language of Section 12 (1), is not altogether clear, it can be

ascertained with reasonable certainty that it intended to impose a tax on all passengers and goods carried by Motor Vehicles, and it also placed a corresponding obligation on the owners of the motor vehicles to realise the tax from the passengers and goods carried by them, such an obligation being implicit in this section as also in the subsequent sections of the Act.

"Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. "Cui jurisdictio data est. ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potuit." Thus, an Act which empowered justices to require persons to take an oath as special constables, and gave them jurisdiction to inquire into an offence, impliedly empowered them to apprehend the persons who unlawfully failed to attend before them for those purposes":

(See Maxwell on Interpretation of Statutes, 9th Edition, page 360). Again the learned author observes:--

"Sometimes the express imposition of one duty impliedly imposes another. Thus, when it was enacted that no licence for the sale by retail of beer, cider, or wine, .not to be consumed on the premises, should be refused except on one or more of four specified grounds, the obligation was imposed by implication on the justices of stating on which of the specified grounds they based their refusal.....

A duty or right imposed or given to one may also cast by implication a corresponding burthen on another."

Here the obligation of the tax is placed on, passengers and on all goods carried by motor vehicles. There is also an obligation upon the "owners" to pay the tax so realised to the State Government. Therefore, although the statute does not expressly authorise the owners to collect the tax from the passengers and consignors of goods, yet the statute must be construed to have implicitly granted the power and the right to the "owners" to collect the tax in order to make the statute effective.

13. Sometimes it may be even necessary to modify the language of the statute in order to give effect to its meaning. I will again refer to a passage from Maxwell at page 236:--

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the Legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless

language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. The rules of grammar yield readily in such cases to those of common sense."

14. It was, therefore, rightly contended by the learned Government Pleader that although, the word "payable" used in Section 12 (1) of the Act may grammatically refer only to the fares and freights payable to the owners, yet to give effect to the meaning of the statute, it should be held to mean that it refers not only to the fares and freights but also to the tax payable to owners by the passengers and consignors of goods carried by motor vehicles belonging to such owners. The main object and intention of the statute in this case is quite clear and the mere unskilfulness or ignorance of the draftsman cannot reduce the statute into a nullity except where the language was absolutely intractable which is not the present case. Rules of grammar have to yield to common sense. I realise that there are risks involved in the application of these rules of construction, and Courts of Law should not be too prone to resort to them unless the exigencies of the case pre-eminently call for their application. It must never be forgotten that they are rules of construction only and are not meant to cure inherent defects in a legislation. I have pointed out already that in the present case the preamble to the statute, the heading of Part III itself, and the language of Section 12(1) or the various other provisions of the Act show that the tax was levied on goods and passengers; and, therefore, impliedly the law conceded to the owners of motor vehicles also the right to collect this tax from those passengers and consignors of goods. I am also fortified in this view by a Full Bench decision of the Bombay High Court in *Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay*, where Beaumont, C J. observed: --

"If a power to impose the tax is conceded, power to collect the same is necessarily implied. The Provincial Legislature within the province being supreme there appears to be no reason why, it should not appoint or name any person to collect the tax".

15. The learned Government Pleader submits that whatever obscurity there may have been in the statute, the rules framed u/s 26 of the Act appear to have removed that obscurity. He says that what was implicit in the Act has been explicitly worked out in the Rules. For instance, Rule 9 provides that the ticket for the carriage of a passenger and his luggage in excess of the free luggage allowance shall contain certain particulars; one of those particulars specifically mentioned is "fare and "tax", if any". Similarly, in regard to the goods' ticket, Rule 10 provides for the mention of the particulars in the ticket, one of them being "total freight and "tax", if any". So does Rule 13, which relates to registers of ticket issued. To my mind, these rules indicate unmistakably that the "owner" is not technically the assessee in respect of the tax payable, but, he is an assessee only in so far that he has realised the tax and is liable to pay the same

to the State Government. The other provisions of the statute are, therefore, quite consistent with the main purpose of the statute, namely, realisation and collection of the tax and the payment thereof to the State Government. These rules may be taken into account for the purpose of construing the language of the Act itself and removing any ambiguity that may arise therefrom. It cannot be said that these rules are inconsistent with or beyond the authority of the Act. These rules have been framed by the State Government in exercise of the powers conferred by Section 26 of the Act, and they owe their legal efficacy to that section, and therefore they have the force of law. It was pointed out in "EX-PARTE WIER" (1871) 6 Ch A 875 by Mellish, L. J. that

"where the construction of the Act is ambiguous and doubtful on any point, recourse may be had to the rules which have been made by the Lord Chancellor under the authority of the Act, and if we find that in the rules any particular construction has been put on the Act, that it is our duty to adopt and follow that construction."

Mr. Baldeva Sahay has vehemently urged that when the statute itself has not in express terms authorised the owners to recover the tax from the passengers, the rules even if they had provided for it would be open to question on the ground of being in excess of the statutory powers. He also points out that even the rules do not make any specific provision for the recovery of the tax by the owners. He contends that the right to realise the tax should have been granted in unequivocal terms and he submits that the principle of necessary intendment should not be invoked in cases of taxing statutes. He cites in support of his submissions Craies on Statute at page 146-47:

"Where the language of an Act is ambiguous and difficult to construe, the Court may, for assistance in its construction, refer to rules made under the provisions of the Act. especially where such rules are by the statute authorising them directed to be read as part of the Act."

* * * "Rules made for the Courts may be regarded as judicial expositions of the Act. But too much stress cannot be rested upon rules, inasmuch as they may be questioned as being in excess of the powers of the subordinate body to which Parliament has delegated authority to make them."

and a decision of this Court in *The Liquidators, Pursa Ltd. Vs. Income Tax Officer, Special Circle*, . I have already shown that the Act and the rules framed thereunder complement and supplement each other and fully bring out the meaning of the statute and the purpose for which it has been framed. It is true that the principle of necessary intendment should not be ordinarily extended to taxing statutes and where the question only is whether a particular item of property has or has not been taxed, the Act must expressly and unequivocally supply the answer. Where, however, as in this case, the "vires" of the statute itself is being assailed and it is said that the statute is beyond the legislative competence of the State, the rules can be certainly called in aid in order to

understand the scheme and purpose of the legislation. The first issue, therefore, must be answered in favour of the defendant, and it must be held that it was not beyond the legislative competence of the state Legislature to impose the tax by Part III of the Bihar Finance Act, 1950.

16. I shall now take up the next issues, namely, whether Part III of the impugned Act contravenes any of the fundamental rights guaranteed under the Constitution and whether the provisions of Part III of the impugned Act offended against Part XIII of the Constitution of India. It is contended on behalf of the plaintiffs that the statute imposes gratuitous burdens and onerous duties upon the owners of motor vehicles, and those duties are obligations, which have been by virtue of the statute placed upon the owners, substantially interfere with their right of freedom to carry on their trade and business. It has been also contended that the duties imposed are not only onerous and unreasonable, but there is no "quid pro quo" for the obligations with which the owners of motor vehicles have been burdened under the statute. In this connection, reference has been made to the relevant provisions of the impugned Act in order to show that those provisions impose unnecessary and wide restrictions on the plaintiffs' right to trade.

Now, Article 23(2) of the Constitution clearly makes an exception in favour of the State and enables the State to impose compulsory service for public purposes provided such an imposition is not vitiated on grounds of discrimination. No discrimination has been suggested here. The Legislature, therefore, is entitled to impose burdens on citizens in the interest of the public. This is particularly so, in the case of a taxing statute where the Legislature has to levy taxes for the purposes of the State revenue and has to collect these taxes through the most convenient and efficient channels. In doing so, the State would be justified in imposing obligations upon the citizens concerned to assist in the collection of those taxes. The levying of a tax, that is to say, the determination that a given tax shall be imposed, assessed and collected in a certain manner is a legislative function provided it is exercised within, the permissible bounds of legislation as given in the Constitution. Therefore, the Legislature having the power to authorise the tax, it must "a fortiori" possess also the power

"to prescribe the means by which the tax shall be collected, and to designate the officers through whom its will shall be enforced;"

(Willoughby on the Constitution of the United States, Vol. 2 p. 666). I need not of course call it a sovereign right of the Legislature because here in India the rights of the Legislature flow from the Constitution itself and are conditioned and circumscribed by the provisions of the Constitution. I have already shown that Article 23(2) of the Constitution itself saves the power of the State to impose burdens on citizens in public interest. In "BUTLER v. PERRY" (1916) 240 U S 328, the Supreme Court of America, while dealing with the effect of the 13th Amendment which declared that neither slavery nor involuntary servitude shall exist, observed as follows:

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

Taxes have been defined to mean

"burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes" (Cooley. Constitutional Limitations. 7th Edition, page 678).

They of course differ from

"forced contributions, loans and benevolences of arbitrary and tyrannical periods in that they are levied by authority of law, and by some Rule of proportion which is intended to insure uniformity of contribution and a just apportionment of the burdens of Government:"

(Cooley, Taxation, Chapter I). Therefore, the owners of motor vehicles cannot justly complain of the duties which under the provisions of the impugned Act the State has imposed upon them in public interest to insure and secure the collection of taxes and their payment to the State Government. I again feel tempted to advert in this context to the dictum of Beaumont, C. J. in *Sir Byramjee Jeejeebhoy, Kt. Vs. The Province of Bombay*, already quoted by me earlier in this judgment. I, therefore, find neither precedent nor principle to sustain the contention that the Act imposes unjustified and unwarranted duties and penalties upon the "owners" of motor vehicles; nor do I find that, the provisions of the impugned Act infringe the fundamental rights of those "owners" guaranteed under the Constitution.

17. It is next contended that by imposing those restrictions the Act affects the right of free "trade or business" which the citizens enjoy under Article 19(g) of the Constitution. This argument fails to take notice of the main purpose of the Legislature which is to tax goods and passengers carried by road. The subject of "trade and commerce within the State" falls under item 26 of List II of the Seventh Schedule of the Constitution and is quite distinct from item No. 56 of the said list relating to taxes on goods and passengers. The indirect effect of the taxation or the incidents thereof may be to interfere with the trade of motor transport, What has to be looked into is the pith and substance of the legislation and not the indirect effects thereof. It is well settled that the Legislature in framing the legislation on a particular "subject may incidentally encroach upon certain other fields of legislation but that will not affect the "vires" of the legislation so long as the legislature is acting within the bounds of the constitutional field allotted to it, and the primary object of the legislation falls within that bound. That is what is called the pith and substance rule: and the rule, in my opinion, applies with equal force to different subjects of legislation in

the same list. Taxation is not a restraint on trade unless it is discriminatory in its character and is) levied with the object of helping one person or" party against the other. The Court will, therefore, be reluctant to declare a taxing statute unconstitutional merely because it is claimed that the legislation may result in some kind of interference with trade or commerce which may be indirectly the unavoidable consequence of all taxing statutes. If the subject of the legislation is within the taxing authority of the legislature concerned, that should be sufficient to sustain it; see, for instance, "ERR v. C. T. DOREMUS" (1919) 249 U S 86 at 89 and "J. W. BAILEY v. DREXEL FURNITURE CO." (1.922) 259 U S 20.

The question whether a particular object of the statute is direct or indirect has to be determined by a consideration of the nature of the statute itself and the character of the act and the transaction which it affects. In the present case the statute professes and in fact is an Act to tax "goods and passengers" and does not profess to regulate "trade or commerce".; The acts and the transactions on which it operates are not actually commercial dealings or the trade of transportation itself because no one is prevented or restricted from going anywhere he likes by road or motor vehicle nor is any one prevented from transporting goods by such vehicles; nor is the owner of the vehicle prevented or obstructed in any manner from carrying on his trade of transportation. The statute has only come into being for the purpose of imposing a tax on such passengers and goods which are carried by motor vehicles and provides a machinery for the realisation and payment of the tax to the State Government thereby laying certain duties and creating certain obligations on individuals which were incidental and essential to the frame of the legislation itself. An illustration in point is a decision of the High Court of Australia in "O. GILPIN LTD. v. COMMISSIONER FOR ROAD TRANSPORT AND TRAMWAYS" 52 Comw L R 189.

The learned Government Pleader has also relied upon certain passages in the decision of the Supreme Court in A.K. Gopalan Vs. The State of Madras, , and so has Dr. Sultan Ahmad on behalf of the plaintiffs. The case deals with the subject of preventive detention, and, in that connection their Lordships dealt with the scope and application of Articles 19 301 and 304 of the Constitution. It is, however, not necessary for me to enter into an elaborate examination of all those passages. For the purposes of the present discussion it would be enough to say that the real test in such cases should be to examine whether the legislation is directly in respect of any of the rights mentioned in Article 19. It is only then that the question whether that legislation is saved, by appropriate saving clauses of Article 19 will arise. If, on the other hand the legislation is not directly in respect of these subjects, but by the operation of the statute incidentally or remotely some of the rights are affected or infringed, the application of Article 19 does not at all arise. As Kania, C. J. observed in that case:

"The true approach is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid on the mode of the detenu's life."

I am further fortified in this view by another decision of the Supreme Court in "STATE OF BOMBAY v. F.N. BALSARA" AIR 1951 S C 318 at p. 323:

"The short question therefore to be asked is whether the impugned Act is in pith and substance a law relating to possession and sale etc. of intoxicating liquors or whether it relates to import and export of intoxicating liquors. If the true nature and character of the legislation or its pith and substance is not import and export of intoxicating liquor but its sale and possession etc. then it is very difficult to declare the Act to be invalid. It is said that the prohibition of purchase, use, possession, transport and sale of liquor will affect its import. Even assuming that such a result may follow, the encroachment, if any, is only incidental and cannot affect the competence of the Provincial Legislature to enact the law in question."

Dr. Sultan Ahmad has laid great stress on the Articles in Part XIII of the Constitution and has vehemently urged that the impugned Act is hit by the provision of that part of the Constitution. Part XIII of the Constitution deals with "Trade, commerce and intercourse with in the territory of India". It provides that such trade shall be free, and it is open to Parliament only to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest; subject to this that neither the Parliament nor the Legislature of any State shall have power to make any law giving or authorising preference to one State over another or any discriminatory legislation to that effect on account of the subjects relating to trade and commerce mentioned in the different Lists. This exception again is made subject to another condition that such. preference or discrimination can be made by legislation where it is necessary for the purpose of dealing with the situation arising from, scarcity of goods in any part of the territory of India.

The most important article, however, on which, emphasis has been laid by the learned Counsel for the plaintiffs is Article 304(b) and the proviso to that article. Article 304(b) enacts that the State Legislature may by law 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": and the proviso says 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."

The contention is that a law imposing restrictions on the freedom of trade or commerce "with or within the State" also falls within the scope of that article. Therefore, the law must fulfil two essential requirements as provided by that article. The first is that the restrictions must be reasonable and such as may be required in the interest of the public, and the second is that the bill for the purpose of making such a law must have received the previous sanction of the President before it was introduced or moved in the Legislature of the State

concerned. It is argued that the second requirement was wholly absent in the present statute, and therefore it could not be regarded as a law at all, because the proviso creates a bar even to the introduction or moving of the bill in the State Legislature without the previous sanction of the President. It has been urged that Article 301 of the Constitution is analogous to section 92 of the Commonwealth Constitution of Australia and reliance has been placed upon the decision in "JAMES v, COMMONWEALTH OF AUSTRALIA (1936) A C 578. The learned Counsel has also relied upon a decision of the Supreme Court in Chintaman Rao Vs. The State of Madhya Pradesh, where their Lordships dealt with the question of reasonable restriction contemplated by Article 19(6) of the Constitution and pointed out thus:

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word, "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between - the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

If Article 304 applied to the case there is no doubt that this law could not be regarded as a law at all, it not having satisfied the requisites demanded under that article; and further the question whether restrictions imposed were "reasonable restrictions" required in public interest would also have to be examined in the light of the tests laid down in the decisions on which the learned Counsel has relied. At the outset, however, it seems to me very doubtful if the words "trade and commerce with or within the State" as used in Article 304(b) apply to such trade and commerce which are carried on within the four corners of the State or they apply only to such trade and commerce with or within the State which have their interstate ramifications throughout the territory of India or have inter-state importance. This latter view seems to be more in accord with the heading of Part XIII itself which relates to freedom of trade, commerce and intercourse within the territory of India. In regard to a trade of this character undoubtedly the primary authority to legislate is Parliament. This is further supported by item 42 of List I of the Union List in the Seventh Schedule of the Constitution which specifies "Inter-State trade and commerce". "Prima facie", therefore, the trade and commerce within "the State referred to in Article 304(b) of the Constitution appears to contemplate such trade and commerce with or within the State which has to be understood in the nature of an inter-State trade and commerce having its branches in different States. The States can by legislation regulate such trade and communication subject to the limitations imposed by Part XIII of the Constitution. It is, however, unnecessary to give any final decision on the point, because, in my opinion. Part XIII of the Constitution has no application whatsoever for the very reasons which have led me to hold

that Part III of the Constitution has no application to the present case. I have already held that the impugned Act is a legislation directly dealing with the imposition of tax on goods and passengers and it does not profess to impose any restrictions whatsoever either on inter-State trade or on trade with or within the State. I would, therefore, hold that on this short ground the contentions of the learned Counsel based on Part XIII of the Constitution do not at all arise in the present case. Issues 2 and 3, therefore, have also to be decided against the plaintiffs and in favour of the validity of the impugned legislation.

18. I shall now turn to the last issue which bears on the point of delegation. In this connection, the contention of the learned Counsel for the plaintiffs is that the Act provides that the "prescribed authority" shall determine the fair and equitable amount of tax as required by Section 12(2) of the Act. The Act also requires that the payment of tax shall be at such intervals and returns shall be furnished by such dates as the said "authority" might prescribe. The "prescribed authority" is further empowered u/s 13 to require the presence of the owner for the production of evidence in support of his return, and he is authorised to assess the tax due on the basis of such returns, and if he is not so satisfied about the correctness of the returns, he can compel the owner to produce further evidence in respect of the returns and assess the tax due. The Act also requires that applications for registration have to be made to the "prescribed authority", and it is for him to grant a certificate of registration in a prescribed form, and in case the authority finds that an owner has wilfully failed to apply for registration though he was liable to pay tax, he may assess the tax to the best of his judgment and direct the owner to pay also a penalty in addition to the amount so assessed. The authority is also given the power to call for deposits of security and the owners are to furnish to the "prescribed authority" a table of fares and freights and a table regulating timings of arrival and departure of vehicles with such other particulars as the "authority" may require. These provisions, therefore, show that the "prescribed authority" enjoys large powers under the Act for the purpose of assessing and collecting the tax but the rank or the status or the designation or even the qualifications of the "prescribed authority" have not been defined in the Act at all. The State Government can thus entrust those duties to any officer who may be either worthless or incompetent to perform those duties or may perform them in an utterly highhanded and arbitrary manner thereby causing serious harassment to the owners of motor vehicles and subjecting them to the caprices of an official who may be utterly unfit for the responsibilities of the office.

19. The next branch of the submission relates to the provision for appeal against the order passed under Part III of the impugned Act. Here again, it is submitted that the enactment only says that the appeal shall lie to any officer especially empowered by the State Government by notification to hear such appeals and the decision of that officer shall be final. The rank and status of the officer is not again mentioned and the State Government can by notification, therefore, appoint an officer of the meanest rank and status to discharge these responsible

duties. Dr. Sultan Ahmad in support of his contention has cited a decision of the Calcutta High Court in "KHAGENDRA NATH v. DISTRICT MAGISTRATE, DINAJPUR" 55 Cal W N 53. The statute there under consideration was the West Bengal Security Act of 1950 which u/s 21 gave power to the State Government to make order respecting movements or action of any person, if satisfied that he was doing or likely to do any subversive act. The question therefore, arose whether the restrictions put by the Act on the exercise of the rights mentioned in Article 19(1)(d) were reasonable restrictions and whether the procedure laid down in the Act also provided reasonable safeguards for the liberty of the citizen or it gave an unrestricted power to the Executive to interfere with the fundamental rights of the people. In that connection their Lordships relied upon the Supreme Court decision in Dr. N.B. Khare Vs. The State of Delhi, where it was held that the Court must not only have regard to the nature of the restrictions imposed, but it must also have regard to the procedure by which those restrictions were imposed: and in that context they quoted the famous dictum of Kania, C. J.:

"While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law."

20. In that light, their Lordships examined some of the provisions of the statute impugned before them, and they observed that one of the powers conferred by the Act was the power of making an externment order, and u/s 38 of the Security Act in question Government could delegate that power to any officer or authority subordinate to the State Government.

"Officers or authorities subordinate to the State Government," their Lordships pointed out, " may be officers or authorities of a high standing or they may be officers or authorities of a comparatively lowly kind. The order before us was made by a District Magistrate who of course is the senior executive officer in a District. He is clearly an officer of Government, but so would be a Sub-Deputy Collector and this section clearly entitles Government to authorise a Sub-Deputy Collector to make an order of externment or indeed to make any of the other orders which the Government are empowered to make under this Act. A Commissioner of Police in the city of Calcutta or a Superintendent of Police in the Mofussil is, I think, clearly an officer or authority subordinate to the State Government and so is a Sub-Inspector. It appears to me that Section 38 is framed wide enough to allow the Government to authorise a Sub-Inspector to make these orders. A Havildar is a lowly and humble officer of Government. He certainly is a servant of Government and I do not think that the term "officer" has any precise meaning. Servants of Government are frequently classified as gazetted or non-gazetted officers or ministerial or non-ministerial officers. All are however officers, no matter what the qualifying adjective may be."

In that view, their Lordships held that Section 38 of the Act was so widely framed as to permit Government to delegate their powers to officers who would be

wholly unfit to be entrusted with the powers of making such orders. Legally, Government by a notification could delegate the power to the humblest class of officers subordinate to them within the sanction of the law, and therefore they held that such a provision was clearly unreasonable.

21. The above case is no authority for the proposition that the statute in question was held to be "ultra vires" on the ground of its being bad for delegation of statutory powers to bodies other than the Legislature itself. Section 38 of that Act was held "ultra vires" on the ground that the procedure laid down in that section was unreasonable. Presumably, their Lordships did so because under the provisions of Article 19(5) of the Constitution they had to consider whether the restrictions imposed were reasonable restrictions. In the present case, we have to remember that the statute is merely a taxing statute and has nothing to do with any of the fundamental rights guaranteed under Part III of the Constitution. I have shown that this is the main object of the Legislation. Even in Khare's case, Kama, C. J. sounded a note of warning against any assumption that the Provincial Government would necessarily act improperly or without due regard to its sense of responsibility in entrusting its officers with responsible duties provided under the statute.

His Lordship said:

"Moreover, this whole argument is based on the assumption that the Provincial Government when making the order will not perform its duty and may abuse the provisions of the section. In my opinion, it is improper to start with such an assumption and decide the legality of an Act on that basis. Abuse of the power given by a law sometimes occurs; but the validity of the law cannot be contested because of such an apprehension."

22. The constitutional legality of the Act, therefore, could not be decided on the assumption that the prescribed authorities, or the appellate authority under the impugned Act will be some one wholly unfit to discharge those responsibilities & too lowly or humble in his rank and position to wield the powers which the statute contemplates. There is no delegation of legislative powers if the choice of the officer is left by the statute to the State Government, and there is no constitutional limitation debarring the executive authorities from nominating such a person; see, for instance, "EMPEROR v. BENOARI LAL" 72 Ind App 57

23. Our attention has been drawn to several other Provincial Acts where similar provisions have been made, and it has been left to the State Government to prescribe the authority to decide certain questions arising under those Acts, and where no rank and designation of the authority concerned have been indicated in the Act itself, yet there has been no complaint in regard to those statutes that Government had entrusted the powers to an officer of the meanest rank or an officer wholly unworthy to undertake those responsibilities. To leave the appointment of the "prescribed authority" or the "appellate authority" to the State Government does not involve a delegation of any essential legislative

function to the Executive Government. In *Mohammad Anzar Husnain Vs. State of Bihar and Others*, I pointed out in agreement with my other colleagues that the Legislature could not possibly provide for all the administrative details and eventualities that the Executive Government was likely to face in giving effect to the law, and it was, therefore, wise and expedient to leave a certain amount of discretion to the executive authorities. Even if there may be some risk involved, the growth of a democratic Government demands that the discretion of the executive should not be unduly hidebound and fettered & the citizens of the land can put their trust in the checks and balances which public opinion founded on a healthy criticism of government always provides for keeping the executive in its proper place and not indulging in abuse of powers. I agree that to avoid all criticisms it would have been better if the rank and designation of the authorities concerned had been indicated in the statute itself; but it is another thing to say that the Vires" of the legislation can be attacked on the ground that the omission to do so tantamounts to delegation of legislative functions to executive hands.

24. The other ground on which this question of delegation has been presented to us rests on the frame of Section 26(g) of the Act. Section 26(g) says that the State Government may make rules for securing the payment of tax and for the purpose of carrying into effect the provisions of this Part in respect of

"any other matter for which there is no provision or insufficient provision in this Part for which provision is, in the opinion of the State Government, necessary for giving effect to the purposes of this Part."

Apparently, this provision may be open to exception, but it is unnecessary to decide the point. In the first place, our attention has not been drawn to any specific Rule framed by the State Government which could be held to be beyond the authority of the Act. In the second place, this provision in the law is severable from the other provisions of the statute.

25. On a careful analysis of the arguments advanced on this question of delegation and for the reasons which I have stated above, I find it impossible to hold that the impugned Act is bad on the ground of delegation of legislative powers to the State Government, and this issue also must accordingly be decided against the plaintiffs.

26. The net result of my discussions is that the plaintiffs are not entitled to any relief. The suits must, therefore, be dismissed with costs in favour of the State Government.

Das, J.

27. I agree with my learned brother Sarjoo Prosad, J. in the conclusions which he has reached on the various issues, for substantially the same reasons as have been so well and elaborately explained by him. No useful purpose will be served by repeating those reasons in different words.

28. The only point on which I entertain a somewhat different view is as respects

the meaning of Article 304(b) particularly, the expression "within that State" occurring therein. I am inclined to think that the expression is wide enough to include freedom of trade within the State. But the important point to note is that the impugned Act does not interfere with freedom of trade (I emphasise the word "freedom") within the State, nor with the citizen's right to carry on any occupation, trade or business. It merely imposes a tax on passengers and goods; but does not profess to restrict, nor does it actually restrict, freedom of trade or the right to carry on any occupation, trade or business; therefore, Article 19 or Article 304 have no application.

29. The suits must, in my opinion, be dismissed with costs.

Narayan, J.

30. I also fully agree with the conclusions arrived at by my learned brother Sarjoo Prosad J. and with the reasonings which he has adopted in support of those conclusions.

31. The Act with which we are concerned in this case cannot be regarded as an ably drafted Act, and the argument that it contains no specific provision sanctioning the collection of taxes by the owner from the passengers and with regard to the goods carried at first sight appears to be a quite plausible one. This is a serious lacuna in the Act and for sometimes I felt very much exercised over it. But if we look to the charging section which in this case is Section 12(1) it will be plain and manifest that the tax is a tax on passengers and goods and not a tax on the owner or a tax on fares and freights.

The task of interpretation does not really arise when the language is plain and admits of only one meaning. It is a cardinal Rule of construction to "intend the Legislature to have meant what they have actually expressed" and it is not permissible to interpret what has no need of interpretation. Another cardinal principle is that whatever be the consequences the meaning of the words must be given their full effect. The main object and intention of the Statute being clear, the draftsman's unskilfulness, which in this case is apparent, would not, in any way, alter the situation. The criticisms that have been levelled against the language used in Sub-section (3) of Section 12 are not absolutely unjustified, because the subsection says that every owner shall pay into a Government treasury the full amount of the tax "due from him" under Sub-section (1) or Sub-section (2) as the case may be and that he shall furnish return. Certainly, what is charged under Sub-section (1) is not a tax due from the owner, and therefore the expression "due from him" is a very unhappy expression. But still I am not able to agree with the counsel for the plaintiffs that the expression "due from him" in any way nullifies the effect of the clear and the unambiguous language used in Sub-section (1).

The preamble shows that a tax was to be levied on passengers and goods carried by public service vehicles and public carriers and Sub-section (1) of Section 12 gives expression to this intention in clear terms. Sub-section (1) cannot be

rendered a nullity on the ground that the Statute does not contain a distinct provision authorising the owner to collect the taxes. The person to be assessed is one who uses the carrier, and this obligation is really not transferred to the owner, who, as the language used clearly indicates has to collect the taxes and then deposit them in the Government treasury. The meaning that is being attributed to the other provisions and especially to Sub-section (3) is not at all justified by the context, and for purposes of construction even rules of grammar have to yield to those of common sense. No human agency can be regarded as perfect, and a more extended or restricted meaning have at times to be given to particular words provided the context justifies it.

32. In taxation we have to look simply at what is clearly said.

"There is no room for any intendment; there is no equity about a tax;you read-nothing in; you imply nothing; but you look fairly at what is said and at what is said clearly and that is the tax."

33. And the mode of assessment of a tax does not alter its character. As was observed by Broomfield J. in "BYRAMJEE JEEJEEBHOY v. PROVINCE OF BOMBAY" ILR (1940) Bom 58 , we have to discover what is the "essential character" of the tax, what it is in "pith and substance" apart from the machinery by which it is assessed, and we are to look mainly at the charging sections of the Act for this purpose. Kania J. (as he then was) quoted with approval the following observation made in "PROVINCIAL TREASURER OF ALBERTA " v. KERR" (1933) A C 710

"The identification of the subject-matter of the tax is naturally to be found in the charging section of the statute, and it will only be in the case of some ambiguity in the terms of the charging section that recourse to other sections is proper or necessary"

34. I should like to quote another passage from this judgment which runs as follows:

"Generally speaking, taxation is imposed on persons, the nature and amount of the liability being determined either by individual units, as in the case of a poll tax, or in respect of the tax-payers' interests in property or in respect of transactions or actings of the tax-payers."

Here the person liable is the passenger or the individual who transports his goods. The imposition is in respect of his transactions or actings. Therefore, looking at the essential character of the tax from the legal point of view it cannot but be regarded as a tax on passengers and goods. A legislation with regard to it is certainly within the competence of the State Legislature.

35. So far as the question of delegation is concerned, the most attractive argument advanced was that the rank, status and qualification of the "prescribed authority" which has been given such wide powers under the Act have not at all been indicated in the Act and that the taxpayers can be left even at the mercy of

officials of a very inferior status who may be utterly unfit to discharge the responsibilities of such an office. In this connection, I would like to quote some passages from the recent decision of the Supreme Court in "CONSTITUTION OF INDIA AND DELHI LAWS ACT, (1912) ETC." In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, . His Lordship Kania C. J. differed from the majority view in this case, and the answers which he gave are that all the three sections mentioned in the three questions are ultra vires of the Legislatures, functioning at the relevant dates, to the extent power is given to the Government (executive) to extend Acts other than Acts of the Central Legislature. It is very important that even from the judgment of his Lordship the Chief Justice it appears that it is no delegation if the choice of the prescribed authority is left entirely to the State Government. His Lordship observed:

(1) "It is obvious that such authority "is ancillary to legislation" and without it an attempt to provide for varying details and machinery to carry them out might become oppressive or absolutely fail.....It was argued at the Bar that a Legislature committing important "regulations" to agents or delegates effaces itself. That is not so. It retains its power intact and can whenever it pleases destroy the agency it has created and set up another to take the matter directly into his own hands. How far it shall seek the aid of subordinate agencies and how long it shall continue them are matters for the legislature and not for the Courts of law to decide.

(2) "While a legislature, as a part of its legislative functions, "can confer powers to make rules and regulations for carrying the enactment into operation and effect", and while a legislature has power to lay down the policy and principles providing the Rule of conduct and while it may further provide that on certain data or facts being found and ascertained by an executive authority, the operation of the Act can be extended to certain areas or may be brought into force on such determination, which is described as conditional legislation, the power to delegate legislative functions generally is not warranted under the constitution of India at any stage."

His Lordship Mahajan, J. did not also agree with the majority view, but there are certain important observations in the judgment of his Lordship as well which have got a bearing in the question raised before us. His Lordship quoted a passage from the judgment of Ranney J. of the Supreme Court of Ohio, and the quotation is in these terms:

"The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."

There is another important quotation in his Lordship's judgment which runs as follows;

"To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know". The proper distinction the Court said was this: "The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government, There are many things upon which wise and useful legislation must depend which cannot be known to the law-making power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation."

His Lordship has further pointed" out that delegation is incidental to the exercise of all power inasmuch as it is necessary to delegate for the proper discharge of the public duties.

"No public functionary can himself perform all the duties he is privileged to perform, unaided by agents and delegates, but from this circumstance it does not follow that he can delegate the exercise of his judgment and discretion to others."

Fazl Ali J. who delivered one of the leading majority judgments, summed up his views as follows:

"(1) The legislature must normally discharge its primary legislative function itself and not through others. (2) Once it is established that it has sovereign powers within a certain sphere, it must follow as a corollary that it is free to legislate within that sphere in any way which appears to it to be the best way to give effect to its intention and policy in making a particular law, and that it may utilize any outside agency to any extent it finds necessary for doing things which It is unable to do itself or finds it inconvenient to do. In other words, it can do every thing which is ancillary to and necessary for the full and effective exercise of its power of legislation. (3) It cannot abdicate its legislative functions, and therefore while entrusting power to an outside agency, it must see that such agency acts as a subordinate authority and does not become a parallel legislature. (4) The doctrine of separation of powers and the judicial interpretation it has received in America ever since the American Constitution was framed, enables the American Courts to check undue and excessive delegation but the Courts of this country are not admitted to that doctrine and cannot apply it in the same way as it has been applied in America. Therefore, there are only two main checks in this country on the power of the legislature to delegate, these being its good sense and the principle that it should not cross the line beyond which delegation amounts to "abdication and self-effacement"."

His Lordship also made some general observations on the subject of delegated legislation which, in my opinion, should be of great help to us in determining the question raised in this case.

"I wish to make a few general observations here on the subject of "delegated legislation" and its limits, using the expression once again in the popular sense. This form of legislation has become a present day necessity, and it has come to stay--it is both inevitable and indispensable. The legislature has now to make so many laws that it has no time to devote to all the legislative details, and sometimes the subject on which it has to legislate is of such a technical nature that all it can do is to state the broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex schemes of reform are to be the subject of legislation, it is difficult to bring out a self-contained and complete Act straightway, since it is not possible to foresee all the contingencies and envisage all the local requirements for which provision is to be made. Thus, some degree of flexibility becomes necessary, so as to permit constant adaptation to unknown future condition's without the necessity of having to amend the law again and again. The advantage of such a course is that it enables the delegated authority to consult interests likely to be affected by a particular law, make actual experiments when necessary, and utilize the results of its investigations and experiments in the best way possible. There may also arise emergencies and urgent situations requiring prompt action and the en-trustment of large powers to authorities who have to deal with the various situations as they arise. There are examples in the Statute books of England and other countries, of laws, a reference to which will be sufficient to justify the need for delegated legislation.....(after quoting certain instances his Lordship proceeds)..... I have referred to these instances to show that the complexity of modern administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions."

His Lordship Patanjali Sastri J. (as he then was) quoted with approval the observations made in "HODGE v. QUEEN" (1883) 9 AC 117 decided by the Privy Council in the year 1883, and I should like to quote that observation here again.

"It was further contended that the Imperial Parliament had conferred no authority on the local legislature to delegate those powers to the Licence Commissioners, or any other persons. In other words, that the power conferred by the Imperial Parliament on the local legislature should be exercised in full by that body, and by that body alone. The maxim "delegatus non potest delegare" was relied on. It appears to their Lordships, however, that the objection thus raised by the appellants is founded on an entire misconception of the true character and position of the provincial legislatures. They are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and, that its legislative assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in Section 92, it conferred powers not in any sense to be exercised by delegation from or as agents of the Imperial Parliament, but authority as

plenary and as ample within the limits prescribed by S. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme..... It was argued at the bar that a legislature committing important regulations to agents or delegates effaces itself. That is not so. It retains its power intact, and can, whenever it pleases, destroy the agency it has created and set up another, or take the matter directly into its own hands. How far it can seek the aid of subordinate agencies, and how long it shall continue them, are matters for each legislature, and not for Courts of law, to decide."

Mukherjea J. observed as follows: --

"As said already, it is within powers of Parliament or any competent legislative body when legislating within its legislative field, to confer subordinate administrative and legislative powers upon some other authority. The question is: what are the limits within which such conferment or bestowing the powers could be properly made? It is conceded by the learned Attorney-General that the legislature cannot totally abdicate its functions and invest another authority with all the powers of legislation which it possesses. Subordinate legislation, it is not disputed must operate under the control of the legislature from which it derives its authority, and, on the continuing operation of which its capacity to function rests. As was said by Dixon J. (Vide "VICTORIA STEVEDORING AND GENERAL CONTRACTING CO. v. DIGNAN". 46 CLR 73 at p .102), "a subordinate legislation cannot have the independent and unqualified authority which is an attribute of true legislative power". It is pointed out by this learned Judge that several legal consequences flow from this doctrine of subordinate legislation. An offence against subordinate legislation is regarded as an offence against the statute and on the repeal of the statute the regulations automatically collapse."

Das J. pointed out that the power of delegation was inherent in the legislative power itself and that, short of self-effacement the legislature may exercise the widest power of delegation.

36. In my opinion, the above observations of their Lordships in "In re Article 143, Constitution of India, and Delhi Laws Act (1912) etc.," AIR 1951 S C 332 should go to demolish the argument that was advanced before us as to the delegation to the "prescribed authority". And the well-known decision of the Privy Council in "SHANNON v. LOWER MAINLAND DAIRY PRODUCTS BOARD" (1938) A. C. 708 is also quite a relevant decision on this point. The scheme of the Natural Products Marketing (British Columbia) Act, 1936, Was to enable the Lieutenant-Governor in Council to set up a central British Columbia Marketing Board, to establish or approve schemes for the control and regulation within the Province of the transportation, packing, storage and marketing of any natural products, to constitute Marketing Boards to administer such schemes, and to vest in those Boards any powers considered necessary or advisable to exercise those functions, including the power to fix and collect licence fees. This Act was regarded in pith and substance as an Act to regulate particular business entirely

within the Province, and was therefore held intra vires of the Provincial Legislature u/s 92 of the British North America Act, 1867, which has given the Provincial Legislature the exclusive right to legislate in relation to property and civil rights in the Province. Their Lordships pointed out that within its appointed sphere the Provincial Legislature was as supreme as any other Parliament and that it was unnecessary to try to enumerate the innumerable occasions on which Legislatures, Provincial, Dominion and Imperial, had entrusted various persons and bodies with similar powers to those contained in this Act.

37. The law thus is now quite clear on the subject, and if the impugned legislation is a valid legislation as contemplated by item 56 of the State List, then the powers which have been given to the "prescribed authority" cannot be questioned. It is really no delegation if the choice of the prescribed authority is left entirely to the State Government.

38. Though the learned Government Pleader had conceded in this case that the expression "within that State" as used in Article 304(b) of the Constitution of India includes freedom of trade within the State, my personal view has always been that it refers to trade, commerce or intercourse between other States or the citizens living under those States, and the State or the citizens of the State which under Article 304, has the authority to impose restrictions on the freedom of trade, commerce and intercourse. This appears to be manifest from the heading of Part XIII which runs as follows:-- "Trade. Commerce and Intercourse within the territory of India". My learned brother Sarjoo Prosad J., has agreed with my view, but my learned brother Das J. differs from it. But even if the interpretation which my learned brother Das J. has put up on this Article be the correct interpretation, the position seems to be indisputable that a taxation of the nature contemplated by item 56 of the State List, does not interfere with trade or commerce. There may be some substance in the contention that transport business comes within the expression "Trade and Commerce", but the contention that the taxation will interfere with trade and commerce is absolutely devoid of substance and force. Taxation is sanctioned by the Constitution, and generally speaking a mere taxing Statute cannot be regarded as unconstitutional. There is no restriction put upon the business itself, everyone being free to travel and to transport goods by the vehicles mentioned in the Act, My learned brother has already referred to the decision of the Supreme Court in "STATE OF BOMBAY v. F.N. BALSARA" AIR 1951 SC 318 and following the reasoning adopted in that case, the Act cannot be deemed to be unconstitutional even if it indirectly affects the business of transportation. I, therefore, hold, in respectful agreement with the views" of my learned brothers, that all these suits must be dismissed with costs.