

(1995) 03 PAT CK 0033

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 3224, 5420, 5512, 5651, 6515, 8010, 8600, 10084 and 10644 of 1993

Bihar Chamber of Commerce and etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Citation : (1995) 03 PAT CK 0033

Judgement

A.K. Ganguly, J.—This batch of writ petitions, were heard analogously and most of the questions of law are common in all these cases and as such they are dealt with and decided by this common judgment. There are of course some points which are relevant only in some particular case and those aspects have been dealt with separately.

2. The main challenge is on the constitutional validity of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Ordinance, 1993 which was later on converted into the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 (hereinafter referred to as the said Act).

3. In C. W. J. C. No. 10084 of 1993 the petitioners have given details of manner in which they carry on business of the manufacture, production, distribution and sale of cigarette and smoking mixtures which are known as Tobacco Products. Those factual aspects relating to the nature of business carried on by the petitioner's company are not disputed and are not very much at issue between the parties.

4. In exercise of powers conferred under Article 213 of the Constitution of India, an Ordinance was promulgated and published on 22-2-1993 in the Extraordinary Gazette of Bihar. The said Ordinance is numbered as Bihar Ordinance No. 11 of 1993. By a subsequent notification being S. O. No. 37 dated 25-2-1993 the entry tax was introduced in the State of Bihar and the said notification was made effective from the date of its issue, namely, 25-2-1993. After the said Ordinance

i.e. Bihar Ordinance No. 11 of 1993 lapsed, there was another Ordinance styled as The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Second Ordinance, 1993" (Bihar Ordinance No. 19 of 1993). Thereafter the said Second Ordinance became an Act styled as "The Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993" (Bihar Act 16 of 1993). Section 3 of the said Act which is the charging Section is set out below:--

"3. Notwithstanding anything contained in Sub-sections (1) and (2) of this Section and subject to the provisions of this Ordinance there shall be levied and collected a tax on the entry of any motor vehicle into any local area for use or sale therein which is liable for registration in the State under the Motor Vehicles Act, 1988. The rate of tax shall be at such rate or rates as may be specified by the State Government by a notification published in the official gazette on the purchase/import value of motor vehicle but not exceeding the rate prescribed for sale tax for such Motor Vehicles under the Bihar Finance Act, 1981.

Provided that no tax shall be levied and collected in respect of any motor vehicle which was registered in any other State or Union Territory under the Motor Vehicles Act, 1939 for a period of fifteen months or more before the date on which it is registered in the State under that Act."

5. Under the Ordinance No. 11 of 1993 the following notification dated 25-2-1993 was issued certifying the rates at which and the conditions subject to which the taxes on entry of Scheduled goods shall be levied and paid on entry in any local areas of the State of Bihar from any other local areas or a place outside the State of Bihar. The said notification No. S. O. 37 dated the 25th February, 1993 is also set out below :--

"S. O. 37 dated the 25th February, 1993 --In exercise of the powers conferred under Sub-section (1) of Section 3 of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Ordinance, 1993 (Bihar Ordinance No. 11 of 1993) and proviso to Sub-section (i) of Section 12 of the Bihar Finance Act, 1981, the Governor of Bihar is pleased to specify the rates at which and the conditions subject to which the tax on entry of scheduled goods shall be levied and paid on Entry in any Local Areas of the State of Bihar from any other Local Areas or place outside the State of Bihar.

Sl. No. Description of the Scheduled Goods Rates of Tax

1. Motor Vehicles 4%
2. Tobacco Products (excluding Biris) 3%
3. Indian made Foreign Liquor 5%
4. Vegetable and Hydrogenated Oil 5%
5. Cement 5%

6. Crude Oil 2%

2. Where an importer of Indian made foreign liquor, Vegetable Hydrogenated Oil or Cement is liable to pay tax under Subsection (2) of Section 3 of the Ordinance becomes liable to pay tax under the Bihar Finance Act, 1981 by virtue of sale of such Scheduled goods, his liability under the Bihar Finance Act, 1981 shall be reduced to the extent of tax paid under the Ordinance.

3. The Scheduled goods shall be subject to Entry Tax only at the first point of Entry in local areas and at the subsequent Entry in any other local areas the scheduled goods shall not be subject to tax under the Ordinance provided the subsequent importing dealer produces before the assessing officer the original copy of the Cash Memos or Bill or Challan of the dealer from whom he purchased or received the goods supported by a declaration in the form and manner prescribed.

4. This notification shall come into force with effect from the date of issue."

6. Under the provisions of the said Act, a set off is available to an importer of a motor vehicle who is a dealer in motor vehicles and is liable to pay tax under the Bihar Finance Act or by virtue of sale of such motor vehicles. In fact the set off is available in respect of sales tax paid on motor vehicles against the levy of entry tax. Section 6 of the said Act provides for grant of exemption from the levy of tax to any class of dealers, persons or importers. Section 6 of the said Act is set out below :--

"Section 6 Exemption from tax -- The State Government may by notification and subject to such conditions and restrictions as it may impose exempt from levy of tax any class of dealers, persons or importers."

7. The constitutional questions which are raised in this batch of cases are serially dealt with as follows :--

8. (a) Legislative Competence of the said Act: It is common ground that under Entry 52 of List II of the 7th Schedule of the Constitution, the said Act has been enacted. Entry 52 List II of the 7th Schedule of the Constitution reads thus:--

"Taxes on the Entry of Goods into Local Areas for Consumption, Use or Sale Therein."

9. The principal submission of the learned counsel for the petitioners in various writ petitions is that Entry 52 of List II as construed by the Supreme Court authorises the imposition of a Tax which is popularly known as "Octroi". The said Entry has been construed by various judgments of the Supreme Court and it has been given a defined and narrow construction to mean that the said tax can be imposed only for the benefit and use of local authority or in other words, the said tax is imposed to swell the revenue of a local authority but in the instant case, the said Act has not been brought about to achieve the said purpose. In order to substantiate this claim, the petitioners have placed reliance on the Objects and

Reasons of the said Act which are set out below :--

"To collect funds for various public welfare schemes and to implement various financial recommendations of the State Government, taxation according to the existing financial conditions is highly essential.

With a view to fulfil the above object and to make the provisions of the Bihar Finance Act more workable it is essential that tax is levied and collected on certain goods entering the local areas of the State for consumption, use or sale. Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Second Ordinance, 1993 (Bihar Ordinance No. 19 of 1993) has been promulgated incorporating the aforesaid provisions.

The object of this Bill is to get the essential provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Ordinance, 1993 substituted by an Act of the Legislature."

10. It was contended on behalf of the petitioners that apart from the aforesaid Objects and Reasons, from the statements contained in the affidavit filed by the State Government in this proceeding also it appears that the said Act has been enacted for the purpose of augmenting the State revenue and not for the purpose of or for the benefit of any local authority. Therefore, relying on the aforesaid materials the contentions raised by the petitioners' Counsel are that the said Act is ultra vires the provisions contained in Entry 52 of List II of the 7th Schedule of the Constitution. The said Act, as it is claimed to have been enacted on the authority of the said Entry, therefore, suffers from the lack of Legislative Competence. In support of the aforesaid contention, learned counsel for the petitioners have placed reliance on the following decisions of the Supreme Court, namely,

- (a) The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., .
- (b) The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, .
- (c) Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another, .
- (d) Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, .
- (e) Kunwar Ram Nath and Others Vs. Municipal Board, Pilibhit, .
- (f) Hiralal Thakorlal Dalal Vs. Broach Municipality and Others, ; and
- (g) Tata Engineering and Locomotive Company Limited and another Vs. The Municipal Corporation of the City of Thane and others, .

11. Relying on the aforesaid decisions of the Supreme Court, learned counsel for the petitioners contended that Entry 52 of List II of the 7th Schedule of the Constitution of India has been historically construed to authorise the levy of a tax

which is for the benefit and purpose of a local authority. As the levy under the said Act does not achieve the said purpose or rather it is not at all meant for achieving the said purpose, it is ultra vires Entry 52 List II of the 7th Schedule of the Constitution and thus suffers from lack of legislative competence.

12. The other aspect of the question which has been urged by the learned counsel for the petitioners is that Entry 52 has been consistently construed by the Supreme Court not only on a literal or plain reading of its language but in a highly restricted and truncated manner having regard to the historical background of the said Entry. Therefore, no legislation on the strength of the said Entry under List II of the 7th Schedule of the Constitution can be made for the general fiscal purpose of imposing a levy as is done in the instant case.

13. This Court is unable to accept the aforesaid contentions advanced by the petitioner for the reasons stated hereinbelow :

14. It is not disputed by anybody that acting on the said Entry 52 of List II of the 7th Schedule of the Constitution the State Government can either impose a levy of entry tax itself or the State Government can authorise the municipality to impose a similar levy. It is also not disputed that just because the levy is imposed by the State Government acting on the said Entry, it becomes invalid. Keeping the aforesaid premises in our view if we examine the argument of the legislative competence it will be clear that the said argument proceeds on the basic assumption that Entry 52 of List II of the Constitution is to be construed in a narrow and truncated manner. This Court finds no justification to introduce such limitation on the said entry. It is hardly necessary to emphasise that Entries in the three lists in the 7th Schedule which confer legislative competence on the legislature in question must receive the widest possible interpretation.

15. It is equally well settled that the power of legislation of the State Legislature under the legislative Entries is plenary and is only subject to the provisions of the Constitution. Constitution postulates that subject to its provisions, Article 245 enumerates the extent of the legislative power of the Parliament and the State Legislature and Article 246 distributes the legislative power between the Parliament and the State Legislature with reference to the three legislative lists under the 7th Schedule. As has already been noted, these legislative entries have received the widest interpretation by all Courts as these are different heads of legislation empowering either State or the Union Legislature as the case may be, to legislate on the subjects mentioned therein.

16. The reason behind giving the widest meaning to the words used for the grant of legislative power is merely not to make any attempt to define or confine the words to a narrow meaning when the Constitution itself has not tried to either define or confine the entries to any narrow meaning.

17. The next reason which has weighed with the Court in not unduly curtailing the width of the entries is that the power of the legislature being plenary anybody alleging a limitation on the exercise of such power must show

affirmatively that such limitation on exercise of power must exist either expressly or by necessary implication from the terms of the Constitution, namely, fundamental rights and other rights enjoined in the Constitution. In the instant case, the alleged limitation sought to be imposed on the width and ambit of Entry 52 has not flowed from any limitations imposed on it by the Constitution but the argument proceeds on the basis of an alleged historical interpretation given to the said Entry in several different judgments of the Supreme Court,

18. It is submitted with respect that no presumption of a limited grant of power in respect of the entries can be made by a Court for the simple reason that to limit the grant of legislative power is a constituent function and not a judicial one. About the extent of judicial scrutiny to decide the limits of legislative power, this Court sets out the lucid exposition of the said principle by quoting the classic observation of Lord Salborne in the decision of Privy Council in the case of the *Queen v. Burah* reported in 1878 5 IA 178 :--

"The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

19. Even though the decision in *Burah's* case (*Supra*) was rendered on the interpretation of conditional legislation, the principles of that case have been followed by the Supreme Court in a series of decisions. In the Constitution Bench judgment in the case of *Deep Chand Vs. The State of Uttar Pradesh and Others*, , Subba Rao, J., at page 22 of the report quoted with approval the above passage of Lord Salborne from the judgment in *Burah's* case (*Supra*).

20. In elucidating the said concept further Subba Rao, J., at p. 23 of the said report quoted with approval the crisp observations of Earl Loreburn, Lord Chancellor, which are reproduced here :

"If the text is explicit the text is conclusive alike in what it directs and what it forbids".

The observations were made by the learned Lord Chancellor in the case of *Attorney General for Ontario v. Attorney General for Canada* reported in 1912 AC 571 of the report.

21. Subsequently also the Supreme Court in the case of *Udai Ram Sharma and Others etc. Vs. Union of India (UOI) and Others*, , while dealing with the question of legislative competence relied upon the aforesaid observation of Lord Salborne

in Burah's case (supra) and held that powers of Legislatures while acting under the limits set down by Indian Constitution are plenary in nature.

22. Questions of policy or of jurisprudence cannot decide matters relating to legislative competence or the vires of an Act which is otherwise competent. This Court is, in this connection, reminded of the weighty observations of Viscount Simon, Lord Chancellor in the judgment of the Privy Council in the case of AIR 1945 48 (Privy Council) . of the said report the learned Chancellor on behalf of the Judicial Committee was pleased to lay down (at p. 53 of AIR):

"With the greatest respect to these eminent judges, their Lordships feel bound to point out that the question whether the ordinance is intra vires or ultra vires does not depend on considerations of jurisprudence or of policy. It depends simply on examining the language of the Government of India Act and of comparing the legislative authority conferred on the Governor-General with the provisions of the Ordinance by which he is purporting to exercise that authority. It may be that as a matter of wise and well framed legislation it is better, if circumstances permit, to frame a statute in such a way that the offender may know in advance before what court he will be brought if he is charged with a given crime; but that is a question of policy, not of law. There is nothing of which their Lordships are aware in the Indian Constitution to render invalid a statute, whether passed by the Central legislature or under the Governor-General's emergency powers, which does not accord with this principle."

23. The reason for giving such wide meaning to the entry in the list empowering legislature is also indicated in an illuminating judgment given in the case of Bank of New South Wales v. Commonwealth reported in 76 Commonwealth Law Report 1. At p. 333 of the said report, it has been said : --

"The purpose of the enumeration of powers in Section 51 is not to define or delimit the description of law that the Parliament may make upon any of the subjects assigned to it. Speaking generally, the legislative power so given is plenary in its quality. The purpose of the enumeration is to name a subject for the purpose of assigning it to that power. The names or descriptions employed are usually of the briefest kind.

xxx xxx xxx To borrow the words of Gray, J. delivering the opinion of the Supreme Court in *Juilliard v. Greeman* (2) : "the Constitution by apt words of designation or general description, marks the outlines of the powers granted to the National Legislature; but it does not undertake, with the precision and detail of a code of laws, to enumerate the sub-divisions of those powers, or to specify all the means by which they may be carried into execution."

24. This being the accepted legal position about the interpretation of legislative Entry in the Constitution, the width or content of the said Entry cannot be cut down on the supposed historical interpretation which, according to the learned counsel for the petitioners, has been acquired by the term known as "Octroi" or Entry Tax from different judicial pronouncements.

25. In fact none of the judgments which have been cited by the learned counsel for the petitioners in the aid of their submissions about the legislative incompetence has held any enactment on the strength of Entry 52 to be beyond the legislative competence of the State Legislature. In other words in none of those judgments, the legislative competence of a legislation on an interpretation of Entry 52 of List II was at issue, Therefore, those judgments cannot be said to be an authority for the aforesaid proposition advanced by the learned counsel for the petitioners. As has been stated in the celebrated decision of the House of Lords in the case of *Quinn v. Leathern* reported in 1901 AC 495 (also reported in 1900-1903 (reprint) of All England Reports page 1) "a case is only an authority for what it actually decides. It cannot be quoted for a proposition that may seem to follow logically from it," Keeping the aforesaid dictum in mind, this Court is unable to hold that the judgments cited by the learned counsel for the petitioners on the question of lack of legislative competence of the said Act can be of any assistance to establish the aforesaid contention.

26. The aforesaid argument about legislative incompetence also suffers from another fallacy, namely, the said argument is based on what according to the learned counsel is or should be the spirit or essence of Legislation on Entry 52 List II of the 7th Schedule of the Constitution. It is well settled that in pronouncing upon the constitutional validity of the statute, the Court is not concerned with the justice of the law or injustice of it. Nor is the Court concerned with the question of legislative wisdom or the lack of it behind the law and no argument found on what should be the just spirit or essence of the law can be accepted when there is no warrant for the same from the clear words of the Constitution. The following observations of Das, J., speaking for the majority in the Constitution Bench judgment of the Supreme Court in the case of *Keshavan Madhava Menon Vs. The State of Bombay*, make that position clear :

"An argument founded on what is claimed to be the spirit of the Constitution is always attractive, for it has a powerful appeal to sentiment and emotion; but a court of law has together the spirit of the Constitution from the language of the Constitution, What one may believe or think to be the spirit of the constitution cannot prevail if the language of the Constitution does not support that view."

27. Similar view has been expressed recently by the Supreme Court in the case reported in *Shaktikumar M. Sancheti and Another Vs. State of Maharashtra and Others*, . In the above case while dealing with the question of validity of tax imposed under Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987, in paragraph 3 at page 354 the Hon"ble Judges of the Supreme Court considering the Object and Reasons of the said Act were pleased to observe as follows :--

"The legislature, therefore, clearly intended to avoid any loss of legitimate sales tax revenue by the State. But the levy cannot be held to be bad because the legislature intended to avoid any loss of sales tax in the State so long it is not found to be invalid either because of any constitutional or statutory violation. It

is not the intention or propriety of a legislation but it is legality or illegality which renders it valid or invalid."

28. The argument of Legislative Incompetence has been sought to be developed by placing reliance on (1) Objects and Reasons of the Act and (2) some averments made in the affidavit. The statements of Objects and Reasons have already been extracted before. How far can the Objects and Reasons of an Act be an aid to the interpretation of the Statute itself has received the attention of the Supreme Court in a number of cases. The leading judgment on this aspect has been delivered in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, . In paragraph 32 of the said judgment the following observations have been made by the Constitution Bench :

"As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what Objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by the members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of a Statute."

29. The subsequent Constitution Bench judgment of the Supreme Court in the case of *The State of West Bengal Vs. Subodh Gopal Bose and Others*, has struck a slightly different note. Das, J., at paragraph 36 at page 104 of the report while referring to the previous judgment in the case of *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, has been pleased to observe as follows :--

"It is well settled by this court that the statement of objects and reasons is not admissible as an aid to the construction of the statute (See -- *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, & I am not, therefore, referring to it for the purpose of construing any part of the Act or of ascertaining the meaning of any word used in the Act but I am referring to it only for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which he sought to remedy. Those are all matters which, as already stated, must enter into the judicial verdict as to the reasonableness of the restrictions which Article 19(5) permits to be imposed on the exercise of the right guaranteed by Article 19(1)(f)."

30. It is an admitted position that the statement of Objects and Reasons can be

resorted to only for ascertaining a limited purpose in some case. As in the case of *The State of West Bengal Vs. Subodh Gopal Bose and Others*, it was resorted to for ascertaining the reasonableness of restrictions on the rights guaranteed under Article 19(1)(f) of the Constitution. In the famous *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, Subba Rao, J., while delivering the judgment for the majority, resorted to the Objects and Reasons for the purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which the amendment was made. Relevant excerpts from the judgment of Subba Rao, J., at p. 899 of the report are set out below:--

"This Court has held in *Ashwini Kumar Ghose v. Arabinda Bose* that the statement of objects and reasons is not admissible as an aid to the construction of a statute. But we are referring to it only for the limited purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which the amendment was made."

31. Therefore, the consistent view of the Supreme Court is that the statement of objects and reasons are to be referred to for a very limited purpose as stated above. But the same cannot be relied upon to advance an argument of legislative incompetence, inasmuch as the competence of State Legislature can only be examined with reference to the provisions of the Constitution and nothing else. It goes without saying that affidavits can not be relied upon to advance an argument of Legislative incompetence. This position is far too well settled to require any citation of precedents.

32. This Court, therefore, is unable to hold that the Legislature of the State was suffering from any Legislative incompetence in enacting the said Act.

(b) Colourable piece of Legislation:--

33. The said Act has been assailed as a piece of colourable legislation also. The Doctrine of colourable legislation has been very lucidly dealt with in the case of *K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa*, . The relevant observations made at pages 10 and 11 in the said judgment are set out below (at p. 379 of AIR) :--

"It may be made clear at the outset that the doctrine of colourable legislation does not involve any question of bona fides or mala fides on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motive does not arise at all. Whether a statute is constitutional or not is thus always a question of power."

The said principle is further explained in pages 19 and 20 of the said judgment (at p. 381 of AIR):

"The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. If a legislature is competent to do a thing directly, then the mere fact that it attempted to do it in an indirect or disguised manner, cannot make the Act invalid."

34. The decision in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, has been followed by the Supreme Court as laying down the correct principles relating to the doctrine of colourable legislation in the following cases:--

(a) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, .

(b) The State of Vindhya Pradesh (Now Madhya Pradesh) Vs. Moradhwaj Singh and Others, .

(c) R.M.D.C. (Mysore) Private Ltd. Vs. The State of Mysore, . Similar instances can be multiplied but is not necessary at all in this case.

35. In the case of T.G. Venkataraman, etc. Vs. State of Madras and Another, , relying on the principle in K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, the Supreme Court held at p. 305 of the report "if, the Legislature has the power to impose the tax, its authority is not open to challenge on a plea of colourable exercise of power."

36. In this case also it cannot be said that the Legislature in question has no authority to impose the tax in question. Therefore, applying the aforesaid principles, this Court cannot hold that the said Act is a colourable one.

(c) Violation of Rights under Articles 301 and 304 of the Constitution :--

37. The next question is that the said Act is violative of the freedom under Article 301 of the Constitution of India and particularly the restrictions under Article 304 of the Constitution.

38. The said Act having been admittedly enacted under Entry 52 List II of the 7th Schedule is a tax on entry of goods. It is not disputed that the tax imposed under the said Act is one on trade and commerce and it is also clear that the tax being on entry of goods into a local area for certain specified purpose is a tax directly on movement of goods. Thus the tax imposed creates a barrier between one State and another which cannot be crossed except on payment of the impugned levy. In this connection reference may be made to the decision of the Supreme Court in the case of State of Karnataka and Another Vs. Hansa Corporation, . In paragraph 32 it has been stated "to the extent the impugned tax is levied on the entry of goods in the local area, it cannot be gainsaid that its impact would be on movement of goods and the measure would fall within the inhibition of Article 301 of the Constitution of India.

39. As such the said Act directly affects the freedom which is guaranteed under Article 301 of the Constitution. The question is whether such restrictions are reasonable and can pass the tests under Article 304 of the Constitution of India.

40. It is of course true that the freedom guaranteed under Article 301 of the Constitution is not an absolute one. The main object of Article 301 obviously is to ensure free flow of trade, Commerce, intercourse throughout the territory of India and the said freedom, as stated above, is not an absolute freedom from the operation of all laws. It would appear from perusal of the different entries in the three Lists that both the Parliament and the State Legislatures have been given power to legislate in respect of trade, commerce and intercourse which obviously includes a power to legislate on taxation. Therefore, the freedom envisaged under Article 301 of the Constitution is not a freedom from the incidence of taxation. Reference in this connection may be made to Entries 89 and 92-A of List I, Entries 52,54,56 to 60 in List II and Entry 35 in List III. But the said power of taxation is to be so exercised as not to erect trade barriers or tariff walls. In other words, the levies are to be imposed in such a way that it may not have dampening effect on the free flow of trade, commerce and intercourse.

41. Keeping in view the above principles, if one analyses the provisions of Articles 301 to 304 of the Constitution, the following position emerges:--

(a) Article 301 imposes a general limitation on all legislative power in order to ensure that trade, Commerce and Intercourse throughout India is free. This limitation on power is relaxed under Article 302 of the Constitution in favour of the Union Legislation in public interest.

(b) Restriction is, however, put on this relaxation under Article 303(1) which prohibits the Parliament from giving preference to one State over another and making or authorising the making of any discrimination between and State and another.

(c) Article 303 (2) of the Constitution, is an exception to the restriction imposed under Article 303(1) on the Parliament and that exception applies only to Parliament and to be resorted only in a specified situation indicated in Article 303(2) of the Constitution.

(d) Each clause of Article 304 of the Constitution operates as a proviso to the provisions under Articles 301 and 303 of the Constitution in the following way:--

(i) Article 304(a) of the Constitution authorises imposition of tax on the goods imported from the neighbouring State at par in such a manner as not to create any discrimination between similar goods manufactured and produced inside the State with regard to State taxation within the allocated field.

(ii) Article 304(b) of the Constitution is analogous to Article 302 for it makes the State power contained in Article 304(b) of the Constitution free from the prohibition contained under Article 301 of the Constitution in view of the opening words of Article 304 of the Constitution. But there is also a difference between the powers under Article 302 and those under Article 304.

(e) The difference is that under Article 302 of the Constitution restrictions are not subject to the test of reasonableness or is it coupled with the requirement of a

previous sanction from the President as is introduced in the proviso to Article 304(b) of the Constitution. The legislation mentioned in Article 304(b) of the Constitution is thus made subject to these requirements (i) test of reasonable restriction and (ii) prior sanction of the President.

42. In view of the aforesaid constitutional dispensation, this Court is to consider whether the said Act satisfies those twin requirements of Article 304(b) of the Constitution. Before testing the constitutionality of the said Act on the touchstone of the requirements under Article 304(b) of the Constitution, it may not be out of place to consider the constitutional and economic background of those provisions under Part XIII of the Constitution under the heading "Trade, Commerce and Intercourse within the territory of India" for a comprehensive appreciation of those provisions. In this aspect we can do no better than set out the observations of Gajendragadkar, J., speaking for the majority in the Constitution Bench judgment of the Supreme Court in the case of *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, of the report the following observations have been made :

"It is a matter of common knowledge that before the Constitution was adopted, nearly two third of the territory of India was subject to British Rule and was then known as British India, while the remaining part of the territory of India was governed by Indian Princes and it consisted of several Indian States. A large number of these States claimed sovereign rights within the limitations imposed by the paramount power in that behalf, and they purported to exercise their legislative power of imposing taxes in respect of trade and commerce which inevitably led to the erection of customs barriers between themselves and the rest of India. In the matter of such barriers British India was governed by the provisions of Section 297 of the Government of India Act, 1935, To the provisions of this section we will have occasion later to refer during the course of this judgment. Thus, prior to 1950 the flow of trade and commerce was impeded at several points which constituted the boundaries of Indian States. After India attained political freedom in 1947 and before the Constitution was adopted the historical process of the merger and integration of the several Indian States with the rest of the country was speedily accomplished with the result that when the Constitution was first passed the territories of India consisted of Part A States which broadly stated represented the Provinces in British India and Part B States which were made up of Indian States. This merger or integration of Indian States with the Union of India was preceded by the merger and consolidation of some of the States inter se between themselves. It is with the knowledge of the trade barriers which had been raised by the Indian States in exercise of their legislative powers that the Constitution makers framed the Articles in Part XIII. The main object of Article 301 obviously was to allow the free flow of the stream of trade, commerce and intercourse throughout the territory of India."

43. It has been held in the majority judgment *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, that the freedom contemplated under Article 301 is not a

"mere platitude" as "the expression of a pious hope" of a declaratory character. It is also not a mere statement of a directive principles of the State Policy. The majority judgment held at page 246 of the report that "it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country."

44. The said judgment in the case of *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, was re-examined in the subsequent larger Constitution Bench decision of the Supreme Court in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . In the case of *Automobiles (supra)* the majority judgment in *Atia Bari's case (supra)* was upheld, with minor clarification to the following effect (at p. 1424) :--

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

45. In view of the aforesaid clarification given in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , the settled legal position is that the State while imposing tax in exercise of its legislative power on a field like the present one, which attracts the provisions of Part XIII of the Constitution, can only do so after complying with the requirements of Article 304(b) of the Constitution. It is settled principle that the freedom contemplated under Article 301 of the Constitution covers both Inter State and Intra State trade. Another settled position in law in this area is that reasonable restrictions contemplated under "Article 304 (b) are justiciable before a Court of Law.

46. It is, therefore, clear that in order to pass the test of reasonableness, the levy imposed by such law must be for regulatory measures or for measures imposing compensatory taxes for the use of trading facilities. In the said decision in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, S. K. Das, J., speaking for the majority indicated the working test for deciding whether the impugned levy is compensatory or regulatory in the following observations at p. 1425 of the report:-- .

"It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having ,the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities."

47. In his concurring judgment in the said decision in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, Subba Rao, J., further

elaborated on what can be called a regulatory measure and what cannot be called a regulatory measure. In paragraph 36 at p. 1430, his lordship held as follows :--

"If a law directly and immediately imposes a tax for general revenue purposes on the movement of trade, it would be violating the freedom, On the other hand, if the impact is indirect and remote, it would be un-objectionable."

48. Therefore the question which the court has to consider in dealing with the Constitutional validity of a provision like the present one is obviously whether the onus of showing that the restrictions imposed under the impugned law are reasonable has been discharged and what is the basis and yardstick for discharging the said onus. On this aspect of the question, substantial light has been thrown in the subsequent constitution Bench judgment of the Supreme Court in the case of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, Gajendragadkar, J., speaking for the majority said (at p. 939 of AIR) :--

"Mr. Setalvad has fairly conceded that in view of the decision of this Court in the case of Saghir Ahmad Vs. The State of U.P. and Others, , it would not be open to him to contend that even after the invasion of the fundamental right of a citizen is proved under Article 19(1)(g), the onus would not shift to the State. In our opinion, the said decision is a clear authority for the proposition that once the invasion of the fundamental right under Article 19(1) is proved, the State must justify its case under Clause (6) which is in the nature of an exception to the main provisions contained in Article 19(1). The position with regard to the onus would be the same in dealing with the law passed under Article 304(b). In fact, in the case of such a law, the position is some what stronger in favour of the citizen, because the very fact that a law is passed under Article 304(b) means clearly that it purports to restrict the freedom of trade. That being so, we think that as soon as it is shown that the Act invades the right of freedom of trade, it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in the public interest within the meaning of Article 304(b). This enquiry would be of a similar character in regard to Clause (6) of Article 19. That naturally takes us to the question as to whether the respondent has shown that the restrictions imposed by the Act by levying a tax on the movement of tea can be said to be reasonable and in the public interest. The decision of this question will inevitably involve the balancing of the importance of freedom of trade as against the requirements of public interest. Article 304(b) necessarily postulates that consideration of public interest may require and justify the imposition of restrictions on the freedom of trade, provided they are reasonable. In determining the reasonableness of the restrictions we will have to bear in mind again the importance of freedom of trade and the requirements of public interest. It is a question of weighing one relevant consideration against another and harmonising both the competing interests so as to serve the public interest in the end. This process of assessment may not always be easy, but, nevertheless we must Try to weigh the pros and

cons urged before us by both the parties and decide whether the tax levied by the Act satisfies the requirement prescribed by Article 304(b) "

49. In a subsequent Constitution Bench judgment of the Supreme Court in the case of *Kalyani Stores Vs. The State of Orissa and Others*, it has been held that reasonable restrictions which can validly be imposed under Article 304(b) of the Constitution can mean restrictions which seek to protect public health, safety, morals and property within the territory. As the impugned levy in that case was purely a fiscal measure the learned Judges held that the same "cannot be said to be a reasonable restriction on the freedom of trade in the Public Interest." (page 1691 of the report).

50. In another subsequent decision of the Supreme Court in the case of *State of Karnataka and Another Vs. Hansa Corporation*, , Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act was challenged. In the said judgment the Hon"ble Judges of the Supreme Court upheld the said levy on the ground that the said levy was imposed to compensate the loss suffered for abolition of "Octroi". Hon"ble Supreme Court was pleased to hold that the very people who were paying "Octroi" without any objection will have to pay a very modest levy on entry of goods into the Local Areas for financing the Municipality.

51. In the instant case the levy has been admittedly imposed as a general fiscal measure and as a supplementary provision to Bihar Finance Act which is obviously a sales tax legislation.

52. In this case no attempt has been made by the State to sustain the levy as either compensatory or regulatory in character. Nor has any material been disclosed in the affidavit of the State how the impugned levy, in any way, be of any benefit to the free flow of trade or commerce. Therefore, the onus which falls squarely on the State has not been discharged at all. It is of course true that the" said onus need not be discharged with "mathematical accuracy" but a rough approximation is necessary. In this connection, the observations of Mathew J., in the case of *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, of the report are very pertinent and are set out below :--

"The collection of toll or tax for the use of roads, bridges or aerodromes etc. do not operate as barriers or hindrance to trade. For a tax to become a prohibited tax, it has to be a direct tax, the effect of which is to hinder the movement part of the trade. If the tax is compensatory or regulatory it cannot operate as a restriction on the freedom of trade and commerce."

53. In this batch of writ petitions in one of the analogous cases in *C.W.J.C, No. 3224 of 1993 (Bihar Chamber of Commerce v. State of Bihar)* in a supplementary counter affidavit filed by one Sri Hargouri Prasad Verma, Deputy Commissioner, Commercial Taxes, Bihar, it has been asserted :

"The Entry Tax Ordinance was thought to be promulgated in view of the loss of

the revenue on cess due to decision rendered by the Hon''ble Supreme Court in the case of India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, as well as several decision of the Hon''ble Patna High Court following that decision" (para 2).

54. On an examination of the said explanation it appears that the decision reported in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, invalidated imposition of cess on royalty as beyond the competence of State Legislature in view of the fact that Section 9 of the Central Act covers the field. Their Lordships of the Supreme Court in that case were of the view that cess on royalty cannot be sustained under Entry 49 of List II of the Constitution.

55. Without going to any controversy it can be said that the levy in question in that case, namely, cess on royalty was one relating to land revenue and has nothing to do with the freedom of trade and commerce contemplated under Part XIII of the Constitution. It cannot be said relying on the principle in Hansa Corporation's case, (AIR 1981 SC 453) (supra) that it is same people who were paying the said cess on royalty and to pay the levy of entry tax. Therefore, the impugned levy of entry tax sought to be imposed under the said Act cannot be said to be either compensatory or regulatory but it admittedly impedes the free flow of trade and commerce.

(d) Absence of Prior Approval of the President of India under the Proviso to Article 304(b) of the Constitution :--

56. Learned counsel appearing on behalf of the Indian Oil Corporation Limited argued by placing reliance on the decision in the case of Saghir Ahmad Vs. The State of U.P. and Others, that in respect of the said Act there was no prior approval of the President of India either to the ordinance or to the Act. As such the said Act is ultra vires the provisions contained in Article 304(b) of the Constitution having regard to the requirements of the proviso. The said question has been dealt with in paragraph 31 of the case of Saghir Ahmad (supra) and the relevant observation is quoted below :--

"The question of reasonable restrictions could not also arise in this case,, as the bill was not introduced with the previous sanction of the President as required by the proviso to section 304 (b). It is true that the consent of the President was taken subsequently but the proviso expressly insists on the sanction being taken previous to the introduction of the bill."

57. At paragraph 34 of the judgment in Saghir Ahmad Vs. The State of U.P. and Others, the learned Judges of the Supreme Court made it clear that the observation at paragraph 31 of the said judgment was merely a possible view that could be taken but no final opinion has been given on the said view. It is pertinent to set out the said observation of the learned Judges at paragraph 34 of the said judgment with reference to the views expressed in paragraph 31 :--

"We have thus indicated only the points that could be raised and the possible

views that could be taken but as we have said already, we do not desire to express any final opinion on these points as it is unnecessary for purposes of the present case."

In that view of the matter, the expression of opinion in paragraph 31 of the said judgment cannot be considered to be a precedent.

58. In a subsequent Constitution Bench judgment of the Supreme Court in the case of *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, the correct position has been specifically pointed out while dealing with the provisions under Article 304(b) of the Constitution which is set out below :--

"Thus there are three conditions which must be satisfied in passing an Act under Article 304(b), the previous sanction of the President must be obtained, the legislation must be in the public interest and it, must impose restrictions which are reasonable. It is of course true that if the previous sanction of the President is not obtained that infirmity may be curued by adopting the course authorised by Article 255."

59. This Constitution Bench judgment in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, considered the decision of the Supreme Court in *Saghir Ahmad Vs. The State of U.P. and Others*, . Subsequently also the Hon"ble Supreme Court in the case of *A.B. Abdul Kadir and Others Vs. State of Kerala*, considered this question at p. 191 of the report wherein it has been stated as follows :--

"We may observe that the requirement of the proviso regarding the sanction of the President been satisfied. It is no doubt true that the assent of the President was given subsequent to the passing of the bill by the legislature but that fact would not affect the validity of the impugned Act in view of the provisions of Article 255 of the Constitution."

60. Similar observation has been made in the judgment of the Supreme Court in the case of *State of Karnataka and Another Vs. Hansa Corporation*, and at p. 475 of the judgment it has been also observed as follows :--

"If prior Presidential sanction is a *sine qua non*, the requirement of the proviso is not satisfied but in this context it would be advantageous to refer to Article 255 which provides that no Act of Parliament or of the legislature of a State and no provision in any such Act shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given if assent to that Act was given by the President. Now, in this case it is common ground that the President did accord his sanction to the impugned Act. Therefore, the requirement of the Proviso is satisfied."

61. It is also common ground here that subsequently the President has granted assent to the said Act and as such the aforesaid argument of the invalidity of the Act in absence of the prior approval of the President of India cannot be sustained.

62. For the reasons aforesaid this Court holds that the impugned levy under the said Act is neither regulatory or compensatory and does not satisfy the requirement under Article 304(b) of the Constitution, inasmuch as it is not a reasonable restriction within the meaning of Article 304(b) of the Constitution. This Court consequently declares that Section 3 of the said Act is ultra vires the provisions of Articles 301 and 304(b) of the Constitution.

(e) Challenge on the ground of Article 14 :--

63. There is another aspect of the matter, namely, both in the proviso to the charging Section 3 and also in the section relating to grant of exemption u/s 6, the impugned Act does not prescribe any guideline or criteria for the exercise of power by the executive authority and as such it purports to authorise the Executive Authorities with un-canalised and unguided power to exercise its discretion and, therefore, is unreasonable and discriminatory and is also violative of the provisions contained in Article 14 of the Constitution. In this connection reference may be made to the decision of the Supreme Court in the case of Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . While dealing with the provisions for exemption in respect of imposition of tax, the Supreme Court has been pleased to hold relying on the observation of another Constitution Bench Judgement in the case of Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, as follows. The relevant excerpts from paragraph 8 at p. 558 of the report are set out below :--

"A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the Statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the Statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the Statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that therefore, the discrimination is inherent in the Statute itself,"

64. In the instant case there is no guideline the basis of which the State Government will exercise its discretion in the matter of grant of exemption. Section does not indicate as to on what ground the exemption will be granted. Therefore, it is an arbitrary power given to the Government in the matter of exercise of its discretion in the grant of exemption by vesting the executive authority with such unguided discretion offends Article 14 of the Constitution.

65. In another judgment in the case of Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, the similar position has been reiterated. The observations of the Supreme Court at pp. 608 and 1609 of the report are set out below :--

"The enactment or the rule might not in terms enact a discriminatory rule of law but might enable on unequal or discriminatory treatment to be accorded to persons or things similarly situated. This would happen when the legislature vests a discretion in an authority be it the Government or an Administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with un guided and arbitrary powers enabling it to discriminate."

xxx xxx xxx xxx "In such circumstances the very provision of the law which enables or permits the authority to discriminate, offends, the guarantee of equal protection afforded by Article 14."

66. The aforesaid observation of the Constitution Bench judgment of the Supreme Court has again been referred to and relied upon by the Supreme Court in the subsequent decision of another Constitution Bench in the case of Naraindas Indurkha Vs. The State of Madhya Pradesh and Others, . In paragraph 21 of the said judgment, the aforesaid passage from the case of Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, has been quoted and the Supreme Court has again in 1974 followed the same principles at p. 1249. Bhagwati, J., as His Lordship then was, speaking for the majority said :--

"If power conferred by statute on any authority of the State is vagrant and unconfined and no standards or principles are laid down by the Statute to guide and control the exercise of such power, the Statute would be violative of the equality clause because it would permit arbitrary and capricious exercise of power, which is the antithesis of equality before law. Such a case, would fall within the second proposition laid down by this Court in Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi, ."

67. In this case the guidance cannot be had even from the statements of Objects and Reasons inasmuch as the statement of Objects and Reasons will show that the impugned levy is only for the purpose of swelling general revenue. Therefore, we cannot find any guidance for the exercise of discretion given to the State Government either under the provisions contained in proviso to Section 3 or u/s 6 of the said Act. In that view of the matter, both the proviso to Section 3 as extracted above and Section 6 are declared ultra vires Article 14 of the Constitution of India. In this connection reference may be made to the decision of the Supreme Court in the case of Municipal Board of Abu Road Vs. Jaishiv and Ors, . In that case a challenge was made to the effect that imposition of Octroi in respect of different Municipalities have been made on varying basis and as such it was alleged to be discriminatory. The Supreme Court repelled the said

challenge by referring to the provisions contained in Section 104(2) of the Act which is set out below :--

"Every Board shall levy, at such rate and from such date as the State Government may in each case direct by notification in the official gazette and in such manner as is laid down in this Act and as may be provided in the rules made by the State Government in this behalf the following taxes, namely,

(i) ...

(ii) An octroi on goods and animals brought within the limits of the municipality for consumption use or sale therein; and

(iii) ...

(2) A direction under Sub-section (1) may provide for the levy of taxes at different rates in different Municipalities having regard to their varying local conditions and needs, and on the same considerations and by a like direction, the State Government may from time to time

(i) vary uniformly or differently in relation to different municipalities, the rates of taxes levied, or

(ii) ...

68. On the basis of the said provision u/s 104(2), the Supreme Court came to the conclusion that under the said section a guidance has been given for levying different rates for different municipality having regard to the varying local consumption and needs of different municipality. In the instant case, there is no such guideline. On the other hand, the levy which is sought to be imposed here is not a levy for satisfying the needs of the Municipality but it is a levy made for the purpose of swelling general revenue and the intrinsic evidence from the provisions of the said Act will show that the said levy has a nexus with the payment of sales tax.

69. Therefore, that is no guidance or guidelines given under the Act either for levy of varying rate of tax under the proviso to Section 3 or for the grant of exemption u/s 6 of the said Act. As such proviso to Sections 3 and 6 of the said Act are declared violative of Article 14 of the Constitution of India.

70. Apart from the aforesaid constitutional questions certain incidental questions have also been argued, namely, (1) the impugned levy has been imposed ignoring the letter and spirit of Additional Duties of Excise (Goods of Special Importance) Act, 1957. This argument would have been of much relevance if the impugned levy had been a Tax on sale and purchase of the concerned commodity, here it is tobacco. Since this Court has held that the impugned levy is not on sale and purchase of goods but is a levy on entry of goods, this Court need not discuss this question any further in view of the discussion made by the Supreme Court in the case of State of Karnataka and Another Vs. Hansa Corporation, . This point was argued on behalf of the learned counsel for I.T.C.

71. Another incidental question argued on behalf of the Counsel for Indian Oil Corporation, namely, that crude oil is merely refined at the Barauni Refinery of Indian Oil Corporation and therefore, it does not undergo any process which can be called "manufacture". A further subsidiary question argued is that the Barauni Refinery of Indian Oil Corporation is not situated within any "local area" as defined under the said Act and, therefore, entry of goods in that area does not attract any levy under the said Act. Any decision on these questions will involve a detailed investigation into factual questions which this Court is not called upon to undertake in view of its decision already arrived at on the Constitutional questions as stated above.

72. For the reasons aforesaid, these writ petitions succeed to the extent that this Court declares that the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 does not satisfy the requirement under Article 301 read with Article 304(b) of the Constitution and Section 3 of the said Act is ultra vires Articles 301 and 304(b) of the Constitution of India. This Court further declares that Proviso to Section 3 and the provisions of Section 6 of the Act, are ultra vires Article 14 of the Constitution of India. The Respondent State of Bihar, be restrained from enforcing the provisions of the said Act any further.

72A. Let appropriate Writs issue. There shall be no order as to cost.

K. Venkataswami, C.J.

73. I agree.