

(1959) 06 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No's. 204 etc. of 1959

Damodaran and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-06-1959

Acts Referred:

Constitution of India, 1950 — Article 245, 265

Travancore-Cochin Vehicles Taxation Act, 1950 — Section 18(1), 3, 3(1)

Citation : AIR 1960 Ker 58

Hon'ble Judges : T.K. Joseph, J; S. Velu Pillai, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer, T.K. Narayana Pillai, V. Rama Sheoni, K.K. Mathew, K.S. Sebastian, M.S. Kurien, P.R. Balachandran, V.P. Srinivasan, K.S. Paripoornan, S. Narayanan Potti, N.K. Varkey, A. hariharasubramoniam, George Vadakkal, C.V. Narayana Iyer, K.V. Kuriakose, K. Neelakanta Menon, C.N. Vasudevan Bhattathiripad, G. Viswanatha Iyer, T.S. Venkiteswara Iyer, R.C. Plappilli, M. Bhaskara Menon, Thomas Attippetti, L.J. George, Annamma Alexander, K. Velayudhan Nair, V. Sankara Menon, V.P. Joseph, P.C. Parameswaran, P.P. Prathapan, K. Sridharankutty Menon, R. Balakrishna Pillai, S. Neelkanta Iyer, M. Raman Pillai, M.V. Poulouse, E.V. Abraham, D. Narayanan Potti, P.N. Sarojini Devi, P.A. Mohamed, Panampilli Govinda Menon, P.K. Krishnanankutty Menon, P. Narendra Menon and M.B. Kurup, for the Appellant; M.U. Issac, Government Pleader, for the Respondent

Judgement

Velu Pillai, J.—These are one hundred and eighty-two petitions under Article 226 of the Constitution preferred by operators of stage carriages on several routes in the erstwhile Travancore-Cochin State, for the issue of a writ of certiorari, or other appropriate writ, direction or order, quashing the notification, TB-2/146G7/57/PW dated 24-9-1957, made by Government, by virtue of the power conferred on them by Section 18(1) of the Travancore-Cochin Vehicles Taxation Act, 1950, referred to hereinafter as the Act. The Act has provided for the levy of a tax on every vehicle using any public road in the Travancore-Cochin area, and has prescribed in Schedules I and III thereof the maximum tax leviable

for each class of vehicles. Section 3, Sub-Sections (1) and (2) of the Act authorised Government, to specify, by notification inter alia the rate at which, the tax shall be levied for each class of vehicles, which, under the proviso to that section, "shall not exceed the maxima specified in Sch. I in the case of motor vehicles, and the maxima specified in Sch. III in the the case of vehicles other than motor vehicles." Pursuant to this, Government issued notifications specifying the rate.; at which tax was to be levied, which, for certain classes of vehicles, were lower than the corresponding maxima specified in the Act. Section 18 of the Act provided as follows:

Sub-section (1) "Government may by notification in the Gazette, amend, alter, add to, or cancel in part, or the whole, of Schs. I, II or III appended to this Act."

Sub-section (2) "All references in this Act to Schedule I or Schedule II or Schedule III shall be construed as referring to such schedule as for the time being amended in exercise of the powers conferred by Sub-section (1)."

On 24-9-1957, Government issued the notification, which is now impugned, the effect of which was to enhance the maxima specified in Schedules I and III of the Act substantially, for certain classes of vehicles and to fix the rates for them accordingly.

2. The chief contention of the petitioners was, that the delegation of power to Government u/s 18(1) of the Act "to alter, add to, cancel in part or the whole of Schedule I, II or III" exceeded the permissible limits, and is invalid, and that the impugned notification is therefore, ultra vires. Some of the petitioners have also contended that the Act, imposing as it does, a restriction on "trade, commerce and inter-course," within the meaning of clause (b) of Article 304 of the Constitution, is wholly void, not having been passed after complying with the condition prescribed by the proviso to that clause, which reads:

"Provided, that no Bill or " mendment for the purpose of cl. (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President."

A third contention was formulated, but was not developed, that the enhancement of the tax to the extent specified by the impugned notifica- tion, is violative of the petitioners" fundamental right under Article 19(1)(g) of the Constitution. In view of the importance of the questions raised, the petitions were referred to a Division Bench, and were heard by us.

3. At the outset, it is necessary to dispose of an argument, advanced on behalf of a few of the petitioners with some earnestness, that Section 18(1) of the Act must be read subject to the proviso to Section 3, on the principle of harmonious construction of dit-ferent parts of a statute, that so understood, Section 18(1) could not be deemed to confer a power on Government, to enhance the maxima specified in Schedules I and III, of the Act and that therefore the notification is ultra vires. There is no substance in this argument. The proviso to Section 3 was

intended to confine the power delegated to Government u/s 3(1) and (2), which was to fix the rates of the tax, within prescribed limits, while Section 18(1) was inserted to delegate to Government, a different power, which was to alter the limits themselves to any extent. There could be no conceivable objection to the former delegation, u/s 3(1) and (2), while the objection raised to the latter delegation u/s 18(1) deserves close examination.

However this may be, it is clear, that the pin-poses intended to be served are distinct and different, and the two provisions can very well stand together, whatever be their validity. There is no disharmony between them, and therefore no scope, for applying the principle of construction referred to. Textually also, the construction is inadmissible, for, on a plain reading. Section 18(1) warrants any kind of alteration of Schedules I to III being made including their cancellation, and substitution by different schedules. Conversely, if as the contention assumes the maxima prescribed in Schedules I and III are unalterable, the proviso, to Section 3 alone would have sufficed, and there was no need for the conferment of a further power by Section 18(1) in such wide terms. The learned Government Pleader was of course not prepared to accept this restricted interpretation of Section 18(1). but contended for the absolute power of Government under it, not only to make any alterations in the schedules, but also to supersede them wholly and substitute others in their stead, should the need arise. We think, that Section 18(1) does in terms purport to confer such power on Government.

4. The question, to which we shall therefore address ourselves, is whether the delegation of power u/s 18(1) is valid. The rule relating to delegation, of legislative powers may be taken to be settled by the three cases. In re Article 143, Constitution of India and Delhi Laws Act (1912) AIR 1951 SC 332 , Rajnarain Singh Vs. The Chairman, Patna Administration Committee, Patna and Another, and Harishankar Bagla and Another Vs. The State of Madhya Pradesh, all decided by the Supreme Court. It has been stated thus, in the last of the above cases, at p. 468 of the report;

"Essential! powers of legislation cannot be delegated in other words, the legislature cannot delegate its function of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles, which are to control any given case, and must provide a standard to guide the officials or the body in power, to execute the law. The essential legislative function consists in the determination or choice of the legislative policy and of formally enacting that policy, into a binding rule of conduct."

5. It is indisputable, that the imposition or the levy of a tax, is an essential legislative function; this is implied in Article 265 of the Constitution, and has been held to be so, in Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others, The chief characteristics of a tax are of course, its quantum, its incidence, meaning the person or class of persons on whom it is imposed, and

the mode of its recovery or collection. Thus, in matters of taxation, it is a vital policy, and one in which the legislature is keenly interested from the standpoint of the tax-payer and of the Revenue alike, to fix the per capita tax-burden at a suitable level. To this end, the legislature may formulate a policy, either by itself prescribing the rate of taxation or a ceiling to it beyond which it cannot rise, or by delegating to an extraneous body in which it has confidence, the power to ascertain and determine the appropriate tax level, by applying principles and standards which may be settled by it. It is obvious, that to support a delegation of that kind, the policy or the principles or the standards evolved, must bear an intimate relation to the nature and scope of the power delegated. In testing the validity of the delegation, the attempt must therefore be, to discover what the legislature has purported to do, and how it has discharged its own responsibility.

Under the Act, though by Section 3(1) and (2) and the proviso, the legislature had formulated a policy that the maxima shall in no case be exceeded, in conferring the power u/s 18(1), it laid down no policy, settled no principle, furnished no standard, and prescribed no limit, but permitted and sanctioned any inroad being made into its own policy. It appears to us that a delegation of that kind is objectionable, and cannot be maintained. It is also a matter for consideration, whether the grant of a power, so "uncanalised and uncontained" would not amount to "abdication and self-effacement" on the part of the legislature, or to the setting up of a "parallel legislative body" in the delegate.

6. *Sarat Chandra Ghatak and Others Vs. Corporation of Calcutta and Another, and Liberty Cinema Vs. The Commissioner, Corporation of Calcutta and Another*, both decided by 13. N. Sinha. J of the Calcutta High Court, appear to us to be in point. The first of these cases was decided on the terms of Section 229 of the Calcutta Municipal Act, 1951, which provided for the levy of fees for the issue of licences for the exhibition of advertisements at such rate, and in such manner, and subject to such exemption, as the Commissioner may by rules prescribe, with the approval of the State Government. The fee was held to be in the nature of a tax and not of a licence fee. No rate for the levy, not even a ceiling was fixed, and no policy or standard prescribed, as to how it was to be determined; the object of imposing it was expressly to augment the general revenue of the Corporation, which was said to be "formidable." The second case was decided u/s 548(2) of the same Act, which without formulating a policy or standard provided for the levy of a fee also held to be a tax, "at such rate as may be fixed by the Commissioner."

The delegation was struck down in both cases. In *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*, Mootham, C. J., held the terms of the delegation to the State Government to fix rates subject to a prescribed maximum, to be in order. Certain general observations made by the learned Chief Justice, on which the Government Pleader relied, must be understood, having regard to this central fact in that case. *Hampton Jr. and Co. v. United States* (1927) 276 U. S. 394, was another case in which the delegation of

power to fix a rate within the maximum set by the, legislature, was upheld. It may be noted, that the delegation in the cases of *Kunwar Murli Manohar Vs. State of Uttar Pradesh and Others*, and *. ton Ir. and Co.. (1927) 276 US 394*, corresponds really to the delegation u/s 3(1) and (2) and the proviso to Section 3 of the Act and is unexceptionable.

7. It was contended, that decided cases have recognised the delegation of authority to fix rates or taxation as valid in law; but the limitations to such delegation are also deducible from them. The point decided in *V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another*, that a delegation to the Rule-making authority under the Madras General Sales-tax Act to determine at what single point in the series, the tax ought to be levied, was competent docs not arise here. But it was also observed in the judgment, that authority in America is uniform, that legislation entrusting power to outside bothes to fix rates is not invalid, as constituting delegation of legislative power. Two of the American cases cited were *Georgia Railroad and Banking Co. v. Smith (1887) 128 US 174*, and *United States v. Illinois Central Railroad Co. (1933) 291 US 457*, in both of which, as a part of the delegation of authority to fix railroad freights of through-tariffs, Commissions, in the nature of tribunals, were constituted to determine rates in accordance with a prescribed procedure. There appears to be a "mistake in the citation of the third case as *Oregan Railroad and Navigation Co. v. Camprbell (1912) 230 US 525*, but the passage extracted, does not lay down, a contrary rule. *Powell v. Apollo Candh Co.. (1885) 10 AC 282*, was another case of the same category as above. It is unnecessary to multiply cases; far from laying down a contrary rule, they serve only to establish the limitation to which the doctrine of delegation of legislative power is subject. That limitation has been stated in (1927) 270 US 394 in the following 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 an 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 If Congress shall lay down by legislative Act, an intelligible principle to which the person or body authorised to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative-power."

8. It is an accepted principle, and perhaps is a corollary to what has been discussed above, that no delegation of power which amounts to "abdication" total or partial, and to "self-effacement" on the part of the legislature, or the effect of which, is the "creation of a parallel legislative body," can be permitted. See AIR 1951 SC 332. We think, that by leaving it to the uncontrolled discretion of Government to fix its own rates regardless of any principle, even superseding what the legislature had in its wisdom, thought fit to impose on the tax-payers, and at the same time, by retaining no control over it, in what it might or might not do, the legislature had abdicated its Functions, and effaced itself to that

extent. The omission too of the legislature to formulate a policy, to re-truluate the exercise of the power conferred by it spells in the region of abdication. The delegate could have been ordained to lay the proceedings taken by it "on the table" of the legislature, and even prohibited from enforcing them without its approval, as under the Madras Motor Vehicles Taxation Act, III of 1951, As held by Venkitarama Iyer. J. in V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another, a check of this kind, would have negated a charge of self-effacement against the legislature. If, as the learned Government Pleader contended, whatever tax is fixed by the legislature could be unsettled the next moment by Government u/s 18(1) of the Act, the result would be nothing less than the creation of a parallel legislative body.

9. A limitation, which is deducible from the rule against "abdication and self-effacement," is that the power delegated must be canalised and confined within proper limits. In *Schechter Poultry Corporation v. United States* (1935) 295 US 495, a delegation conferring power on certain trade groups to frame "a code of fair competition" was struck down, as not being "canalised within banks that keep it from overflowing. It is unconfined and vagrant." But it was argued, that in the present case, the power of Government to fix the tax level is always subject to the limit implied by Article 19(1)(g) of the Constitution. Though this limit pertains to a fundamental right which can never be violated, it is not always capable of precise definition, and its ascertainment is often dependent upon various considerations, such as, the nature of the activity carried on its volume, and so on, that it can hardly, if ever, be thought of as furnishing an unerring standard to the exercise of delegated power; even so, we venture to think, that it is not always proper or legitimate for a delegate, to carry things to the breaking point. It was suggested, that an executive authority like the Government, may be trusted to act with a sense of propriety and fairness, and that in any case, there can be no presumption, that it will act otherwise. It is only necessary to quote the following observations in *Panama Refining Co. v. Ryan* (1934) 293 US 388 at p. 420 as furnishing an effective answer to this:

"The question whether delegation of legislative power by the Constitution is permitted, is not answered by the argument, that it should be assumed, that the President has acted, and will act for what he believes to be the public good. The point is not one of motives, but of constitutional authority, for which the best of motives is not a substitute."

We may add, that the possibility of abuse of the power delegated, was also accepted as one of the tests of the validity of the delegation, by Sinha J. in the Calcutta case cited.

10. Another objection to the delegation in the present case is, what has been indicated earlier, that it authorised the delegate to modify or repeal the policy of the legislature. The law on this point has been stated thus by the Supreme Court in *Rajnarin Singh Vs. The Chairman, Patna Administration Committee, Patna and Another*, of the report:

"In our opinion, the majority view was, that an executive authority can be authorised to modify either existing or future laws, but not in any essential feature. Exactly what constitutes an essential feature cannot be enunciated in general terms, and there was some divergence of view about this in the former case, but this much is clear from the opinions set out above; it cannot include a change of policy".

It seems to us not open to doubt, that the alteration of the prescribed maxima of the rates in a taxing statute is nothing less than a change of policy. It may be observed in this connection, that though in the Bombay Motor Vehicles Tax Act, Act XXXIV of 1955, the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, Act XVI of 1952 and the Punjab Motor Vehicles Tax Act, Act IV of 1924, the rates or their maxima are specified, there is no delegation of power whatever to alter them.

11. Very strong reliance was placed by the learned The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, and on Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, on the former, as illustrating the application of certain principles to delegation of powers and on the latter as supporting the delegation in the present case by reason of certain observations in the judgment in it, but not as authorities directly covering the points now before us. If these cases do lay down a principle which is of application to the present case, there is no question that they must be followed by us; but we do not think that they do so.

12. The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, was decided on the provisions of the Bombay District Municipal Act 1901; Section 59, Clause (xi) of that Act conferred a power on the Municipality, subject to certain conditions, to impose "any other tax, to the nature and object of which, the approval of the Governor in Council shall have been obtained, prior to the selection contemplated in Sub-clause (i) of Cl. (a) of Section 60". The objection raised to the delegation so made, and considered by the court was that the "legislature had delegated essential legislative power to the Municipality to determine the nature of the taxand that the power thus delegated is unguided, uncanalised and vagrant, for there is nothing in the Act to prevent the Municipality from imposing any tax it likes, even say, Income Tax." The objection was overruled chiefly on three grounds, which bear on the nature of the tax, and no question was raised before Their Lordships, as to the delegation of power to prescribe the rate of the tax itself. Perhaps an objection of that kind was not open in view of the elaborate provisions in Sections 46, Clause (i), 59 to 62 and 74 of that Act for fixing the rate. The more important ground of distinction appears to us to be, that the Bombay Act did not fix the rate of the tax, and at the same time delegate the power to alter it and thereby supersede the policy, which the Act had itself laid down.

13. Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, was decided under the provisions of the Central Provinces and Berar Sales-Tax Act,

Act XXI of 1947. For the purpose of that Act, which was to impose sales-tax, goods were classified into two schedules, schedule I relating to those, on the sale of which tax was leviable, and Schedule II, to tax-free goods. By Section 5, a tax of twelve pies in the rupee was fixed for goods specified in Part I of Schedule I, of three pies in the rupee for goods specified in Part II of Schedule I, and of six pies in the rupee for goods not comprised in either Schedule. Section 6(1) declared, that goods specified in Schedule II were tax-free. Section 8, Sub-section (2), the scope of which the court had to examine, was as follows:

"The State Government may, after giving by notification not less than one month's notice of its intention so to do, by a notification after the expiry of the period of notice mentioned in the first notification, amend either Schedule, and thereupon such Schedule shall be deemed to be amended accordingly."

By virtue of certain legislative enactments, which need not be mentioned, "goods sold to or by the State Government" were brought under Schedule II; later in the exercise of the power conferred by Section 6(2), the State Government issued a notification the effect of which was to take away the benefit of the exemption in respect of "goods sold to Government". The first point decided was, that under the building or works contract in that case, no sale by the contractor of the materials used for the building could be predicated. Venkitarama Iyer, J., who delivered the Judgment of the court, considered it desirable, to deal also with the constitutional aspect of the delegation of legislative power u/s 6, Sub-section (2) of that Act, as there might be "works contracts," under which, on account of special features, a sale of the materials could be implied; but Bose, J., preferred not to express any opinion upon it.

14. The actual decision in the case on the legality of the delegation, was not relied on by the learned Government Pleader so much, as the following observations in the judgment of His Lordship:

"Now the authorities are clear, that it is not unconstitutional for the legislature, to leave it to the executive to determine details relating to the working of taxation laws, such as, "the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like".

The learned Government Pleader construed the expression "the rates at which it is to be charged in respect of different classes of goods" in the above passage, as permitting or sanctioning unqualified delegation of legislative power to Government to fix the rates of tax in any manner, even in supersession of what the legislature itself might have done by fixing them. In the context in which the observations were made, we do not think, that this interpretation of the above passage is warranted. The case before Their Lordships really turned on the power of delegation, to make a selection and classification of goods to be brought within the scope of particular provisions in the enactment; no question of an abstract right in Government, consequent on the delegation, to fix the rate at whatever level it may think fit, much less to supersede those fixed so unalterably

by Section 6 of that Act, was raised or decided. Section 6 prescribed three different rates, which were to be applied according to the classification of goods in the different schedules.

A policy was thereby indicated and was also discernible in the scheme of classification in the Act, Schedule I comprising what may be called luxury goods, such as silks, motor vehicles etc., in Part I, bullion and specie in Part II, and Sch. II comprising non-luxury goods or essential articles such as food grains, cotton cloth etc. On the principles already discussed, an alteration in the classification of goods, or even in the rates within the framework of the Act and in conformity with its policy, could be made in pursuance of the delegation. A change in the classification of goods might also involve a change in the rates of tax applicable to them, but this was only an indirect result and was within the framework and the policy of the Act. The three cases referred to in the judgment were (1885) 10 AC 282 (1927) 276 US 394, and V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another, which we have held, are distinguishable. In our opinion Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, did not decide the point arising in this case, or lay down a principle which is of direct application here.

15. The scope of the delegation of power u/s 18(1) of the Act is wider than the fixation of rates, as it has conferred a power to make alterations or amendments in other parts of Schs. I, II and III; for example, additions to the list of vehicles or removal of some of those already in the list, in column 1 may be made. We conceive, that on the authority of Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others, such changes within the framework and the policy of the Act, would be competent.

16. We have tested the validity of the delegation from various aspects, but it must be noted, only in relation to the power of Government to fix rates, in violation or modification of the policy of the legislature embodied in the proviso to Section 3 of the Act, and we have reached the conclusion, that the delegation u/s 18(1) must be struck down, but only to this extent. The impugned notification is therefore, ultra vires the power of Government. A contention was advanced by Sri V. Kama Shenoji on behalf of the petitioner in O. P. 436 of 1959 that no additional taxation could be imposed, except in accordance with the procedure prescribed by the Constitution for the passing of Money Bills by the legislature. In the view we have expressed above, we do not feel called upon to consider the point, though we may observe, that a similar argument was repelled by the House of Lords in (1885) 10 A. G. 282.

17. In the view we have taken above, it is not necessary to deal with the next contention advanced on behalf of some of the petitioners, that the Act in its entirety is an invalid piece of legislation, for the lack of the previous sanction of the President prescribed by the proviso to Article 304(b), which has been quoted in an earlier part of this judgment; however, for the sake of finality, we proceed to record our opinion, Assuming, as held by the Supreme Court, in Saghir Ahmad

Vs. The State of U.P. and Others, that the business of plying stage carriage for hire, is "trade or business" within the meaning of Article 19(1)(g)," and that the imposition of tax on such vehicles, amounts to a reasonable restriction on that activity, the question would still be, whether it is a restriction within the scope of Article 304(b) so as to attract the proviso; in other words, whether it is a restriction on "trade, commerce and intercourse"" according to the true meaning of this expression in that Article. The Supreme Court has not so far pronounced itself on the meaning of this expression; though the point arose in *Saghir Ahmad Vs. The State of U.P. and Others*, it was left undecided, the case having been decided on another ground. A division bench of this court in *M. K. Parameswaran Nair v. Sub-Magistrate, Koothattukulam* 1938 Ker LT 631: (AIR 1958 Ker 398), has taken the view, that this very Act does not fall within the scope of Article 304(b) and is not therefore hit by the proviso-It was there held, that the pith and substance of the Act was not to tax "trade or commerce" within the meaning of Article 304(b); but was only to impose a tax on vehicles using any public road in the State, a matter which was within the legislative competence of the State, under Entry 57, in List II, of the Seventh Schedule, of the Constitution.

18. Though the Supreme Court has not decided the point, there are the weighty observations of *The State of Bombay Vs. R.M.D. Chamarbaugwala*, at pages 713 to 718, in support of the view, that while Art. 19(1)(g) of the Constitution is intended to protect the freedom of the individual citizen to carry on his trade or business. Article 301, subject to Articles 302 to 305, is intended to proclaim the freedom of trade, commerce and intercourse throughout the territory of India in order to emphasise the unity of the country and to ensure, that no barriers might be set up, to break up that unity. In the case cited. His Lordship, also gave a warning to Courts in India against relying too much on decisions based on Section 92 of the Commonwealth of Australia Act, and on the "Commerce Clause" in the American Constitution, which are not in pari materia.

19. The point has been directly decided by the Rajasthan High Court by *Wanchoo. C. J.*, as he then was. in *Automobile Transport (Raj) Ltd. and Others Vs. State of Rajasthan, Jaipur and Others*, a case under the Rajasthan Motor Vehicles Taxation Act of 1951 by the Bombay High Court by *Chagla, C. J.* in *Bapubhai Ratanchand Shah and Others Vs. State of Bombay and Another*, by the High Court of Madhya Pradesh by *Samvatsar, J.* in *Haji Usman Haji Mohammad Vs. State*, and by the Allahabad High Court by *Malik, C. J.* in *Motilal v. State of U. P.* AIR 1051 All 257 (FB).. The distinction between Article 19(1)(g) and Article 301 of the Constitution has been stated thus by *Malik. C. J.*:

"While Article 301 contemplates the right of trade, business or intercourse in motion. Article 19(1)(g) secures the right of occupation, trade, or business at rest".

We feel, that no useful purpose will be served by covering the same ground over again, and we respectfully adopt the observations made by the learned Chief Justice of India in the case cited. Speaking with respect, we are also in entire

agreement with the cases decided by the High Courts and referred to above. The arguments addressed to us based on the interpretation of the terms "trade", "commerce" and "intercourse", in Section 92 of the Commonwealth of Australia Act and of the words "regulate commerce" in the Commerce Clause (Article 1, Section 8, Cl. 3) of the American Constitution, have no bearing, as pointed out in the cases cited, on the true interpretation of Arts. 19(1)(g) and 301 to 304 of the Constitution. We are also satisfied, that the trade or business in which the petitioners are engaged, cannot, on a reasonable view, be brought within the scope of the expression "trade, commerce or intercourse" interpreted as above. We therefore, overrule this contention.

20. As a result of the foregoing discussion, we quash the notification impugned as ultra vires the powers of Government; we also declare, that the delegation of power u/s 18(1) of the Act, to the extent that it authorises Government to fix rate in excess of the maxima prescribed in Schs. I and III of the Act as passed by the legislature, is bad in law. and is void and ineffectual. These petitions are allowed in the above terms; but in the nature of the questions raised, we do not think it proper to make any orders as to the costs of the petitions.