
(1964) 12 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ No. 649 of 1964

Ghevarchand

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-12-1964

Acts Referred:

Motor Vehicles Act, 1939 — Section 36(1)
Rajasthan Motor Vehicles Taxation Act, 1951 — Section 2(27), 35(1), 4(1)

Citation : AIR 1965 Raj 175 : (1965) RLW 395

Hon'ble Judges : D.S. Dave, C.J.; Kan Singh, J

Bench : Division Bench

Advocate : M.M. Vyas, in Civil Writ 649/64, M.C. Bhoot, K.L. Kapur, B.L. Maheshwari, J.C. Chhangani, N.L. Chhangani, R.L. Jangid, K.S. Chaudhary, A.L. Chopra, B.S. Sharma, J.K. Jain, Basti Chand, A.G. Ghaswala, Rewachand, Babulal, G.B. Nahta, K.M. Singhvi, Dashratmal, M.M. Singhvi, H.N. Kalla, C.K. Garg, R.N. Bishnoi Yudhistr, Bhanwerlal, B.B. Mirdha, A.L. Mehta, R.P. Goyal, Manekchand, Ram Ratan, S.L. Mirdia, M. Fasihuddin, Akalraj, Mahendrapal and Jagdishraj, for the Appellant; Narayan, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Kan Singh, J.—These are 275 writ petitions before us under Article 226 of the Constitution, and as they raise common questions of law, it will be convenient to dispose them off together. For facility of understanding the points arising for consideration, we may narrate the facts with reference to Writ Petition No. 649 of 1964--Ghevarchand v. The State of Rajasthan &c.

By this petition, a writ of mandamus is sought to restrain the respondents from levying or realizing any increased or additional tax under the Rajasthan Motor Vehicles Taxation Act, 1951 (Act No. XI of 1951) (hereinafter to be referred to as "the Taxation Act" for the sake of brevity), in excess of what is properly leviable according to the load carrying capacity as mentioned in Registration Certificate and Permit of Public Carrier Truck No. RJZ. 745, which plies for hire. As according to the petitioner, the respondents are withholding the token and fitness

certificate of the vehicle with a view to compelling the payment of this unauthorised tax, they also pray for a direction asking the respondents to return these documents. According to the petitioner, he has a valid registration certificate for his vehicle and has also a permit for it valid upto 6-11-1966 and that the maximum laden weight thereof had been entered in the registration certificate and according to this weight, the petitioner had been regularly paying the tax. The petitioner states that the Government had issued a notification on 2-3-1959 u/s 38 of the Motor Vehicles Act wherein it has been laid down that the maximum safe laden weight for vehicles of 1952 models and of earlier years would be increased to 112.5 per cent of the gross vehicle weight as certified by the manufacturers and for vehicles of later models, the maximum safe laden weight was to be 125 per cent of the gross vehicle weight according to the petitioner, although the notification was issued much earlier, it was not acted upon for almost five years, but very recently on 6-1-1964, the Regional Transport Officer issued an order to all the Transport Inspectors, Sub-Inspectors and other officials to realise the tax according to the increased maximum safe laden weight as laid down in the notification dated 2-3-1959. The additional tax was being realized with retrospective effect and this according to the petitioner was illegal. The petitioner also submits that the notification dated 2-3-1959 could not be made the basis for increasing the tax retrospectively. The notification is also challenged before us on the ground that it does not fulfil the requirements of Section 36 of the Motor Vehicles Act.

2. The writ petition has been opposed on behalf of the respondents. It is contended on their behalf that the notification dated 2-3-1959 has ipso facto the effect of increasing the safe laden weight of the vehicles and without doing anything more by way of amending the registration certificate, or the permit, the respondents were justified in realizing the tax under the Taxation Act.

3. Learned counsel for the petitioners have addressed us on the following points :

(i) That the notification of the Rajasthan Government dated 2-3-1959 purporting to be issued u/s 36 of the Motor Vehicles Act was bad inasmuch as it was not in accordance with law;

(ii) That the Rajasthan Government could not have issued the notification without the approval of the Government of India, and as the required approval was lacking, the notification cannot be held to be a valid one;

(iii) That the operators were never informed as to what was the maximum carrying capacity of the vehicles, as fixed by the manufacturers for particular makes and models of the vehicles.

(iv) That Section 36(1) of the Motor Vehicles Act contemplates consideration of other relevant factors such as engine condition, condition of road and condition of tyres but the authorities had not taken these factors into consideration and have thus failed to perform their statutory duty;

(v) That the increased or the additional tax could not be realised without a proper amendment of the registration certificate and the permits of the vehicle;

(vi) Lastly it was argued that the tax cannot be increased retrospectively.

4. Before we deal with the several points enumerated above, we would like to refer to the notification dated 2-3-1959 which has given rise to the problem posed before us. It runs as follows :

Home "B" Department.

Notification.

Jaipur, March, 2, 1959

No. D. 1452/F.16(4)(2)HB/57.--In exercise of the powers conferred by sub-section (1) of Section 36 of the Motor Vehicles Act, 1939 (Central Act 4 of 1959) the Governor of Rajasthan is pleased to notify, with the approval of the Central Government, that the maximum safe laden weight of Transport Vehicles, other than motor cabs and the maximum axle weight of each axle of such vehicles shall be as follows :

Particulars of the vehicles. Maximum safe laden weight. Maximum safe axle weight

1. Vehicles of 1952 and earlier models of all makes. 112½% of the gross vehicle weight certified by the manufacturer. 112½% of the maximum axle weight certified by the manufacturer.

2. Vehicles of 1953 and later models of all makes 125% of the gross vehicle weight certified by the manufacturer. 125% of the maximum axle weight certified by the manufacturers.

This notification was issued in exercise of the powers u/s 36 of the Motor Vehicles Act which is also reproduced hereunder for facility of reference :

"36. Special provisions in regard to transport vehicle :

1. Having regard to the number, nature and size of the tyres attached to the wheels of a transport vehicle, other than a motor cab, and its make and model and other relevant considerations, a State Government may, with the approval of the Central Government, by notification in the Official Gazette, specify in relation to each make and model of a transport vehicle the maximum safe laden weight of such vehicle and the maximum safe axle weight of each axle of such vehicle,

2. A registering authority, when registering a transport vehicle other than a motor cab, shall enter in the record of registration and shall also enter in the certificate of registration of the vehicle the following particulars, namely :

(a) the unladen weight of the vehicle;

(b) the number, nature and size of the tyres attached, to each wheel;

(c) the registered laden weight of the vehicle and the registered axle weights pertaining to several axles thereof; and

(d) if the vehicle is used or adapted to be used for the carriage of passengers solely or in addition to goods, the number of passengers for whom accommodation is provided;

and the owner of the vehicle shall have the same particulars exhibited in the prescribed manner on the vehicle.

3. There shall not be entered in the certificate of registration of any such vehicle any laden weight of the vehicle or a registered axle weight of any of its axles in excess of that specified in the notification under Sub-section (1) in relation to the make and model of the vehicle and to the number, nature and size of the tyres attached to its wheels; Provided that where it appears to a State Government that heavier weights than those specified in the notification under Sub-section (1) may be permitted in a particular locality for vehicles of a particular type, the State Government may, by order in the official Gazette, direct that the provisions of this sub-section shall apply with such modifications as may be specified in the order.

4. When by reason of any alteration in such vehicle, including an alteration in the number, nature or size of its tyres, the registered laden weight of the vehicle or the registered axle weight of any of its axles no longer accords with the provisions of Sub-section (3), the provisions of Section 32 shall apply and the registering authority shall enter in the certificate of registration of the vehicle revised registered weights which accord with the said Sub-section.

5. In order that the registered weight entered in the certificate of registration of a vehicle may be revised in accordance with the provisions of Sub-section (3), the registering authority may require the owners of transport vehicles in accordance with such procedure as may be prescribed to produce the certificates of registration within such time as may be specified by the registering authority."

5. Now the notification clearly recites that it was issued with the approval of the Central Government. This recital has not been challenged in the writ petition as incorrect. Learned counsel for the petitioners of course drew our attention to letter No. 26-T (36)/ 56, dated the 8th of November, 1958, from the Government of India to the State Governments, including that of Rajasthan (Ex. 1 on the record) and argued that the State Government only carried out the instructions contained in this general letter but had never submitted the draft of the notification for the approval of the Central Government. We are however, not impressed by this argument. A clear recital in the notification should be presumed to be correct till the contrary is established, and as the petitioners have not challenged the recital, we are not persuaded to underscore the recital in the notification. We, therefore hold that the notification does not suffer for want of approval by the Central Government.

The crux of the matter seems to be whether the notification could automatically result in increasing the load capacity of the vehicles so that it could furnish a proper basis for levying tax under the Taxation Act. The provisions of the Motor Vehicles Act to which learned counsel on either side directed their attention, viz. Sections 22, 26, 28 and 36 and which will be discussed hereinafter at the appropriate place do not deal with matters relating to taxation at all. What we are concerned with here is about the legality of the action of the respondents in calling upon the petitioners to pay tax at the increased rate on the basis of the notification dated 2-3-1959. The Taxation Act was enacted in 1951 to provide for the imposition of tax on motor vehicles throughout Rajasthan. Section 4 thereof which is the charging section, provides that

"1. Save as otherwise provided by this Act or by rules made thereunder or by any other law for the time being in force, no motor vehicle shall be used in any public place or kept for use in Rajasthan unless the owner thereof has paid in respect of it, a tax at the appropriate rate specified in the schedules to this act within the time allowed by Section 5 and, save as hereinafter specified, such tax shall be payable annually notwithstanding that the motor vehicle may from time to time cease to be used."

According to this section, it is the act of using a motor vehicle in any public place, or keeping of it for use in Rajasthan that would attract the tax liability, but the rate of the tax has to be found out from the schedule appended to the Act. It is nobody's case that the petitioners are not paying the tax, or that they are not liable for any tax whatsoever. The only controversy centres round the rate of the tax. Now for vehicles other than transport vehicles, the rate of tax is provided in schedule I with which we are not concerned and for transport vehicles fitted with pneumatic tyres, rates are provided in Schedule II. As the petitioners are the owners of transport vehicles, Item "B" of Schedule II will govern their case. The relevant portion of that schedule runs, as under :

"B. Goods vehicles plying under Public Carriers" permit.

Rate of tax Rs.

IV. A delivery van plying : 1. Within Municipal and cantonment limits.

200 per annum

2. Within a radius of 40 miles

400 per annum

V. Goods vehicles : --(a) For a general permit to use all roads in Rajasthan --

(i) Load carrying capacity up to 2 tons.

1,250

(ii) Load carrying capacity-more than 2 tons up to 5 tons.

1,500

(iii) Load carrying capacity above 5 tons.

2,000

(b) To ply within the limits of any region

(i) Load carrying capacity up to 2 tons.

750

(ii) Load carrying capacity more than 2 tons up to 5 tons. ...

1,000

(iii) Load carrying capacity above 5 tons.

1,250

VI. To ply on a fixed route in any one region--(i) Load carrying capacity up to 2 tons.

400

(ii) Load carrying capacity more than 2 tons.

600

(iii) Load carrying capacity above 5 tons. ... 750" * * * * * The rate of tax for transport vehicles is based on the load carrying capacity of the vehicle. The nub of the matter thus is as to how the load carrying capacity of the vehicle is to be arrived at for the purposes of determination of the rate of tax within the meaning of Schedule II of the Taxation Act. We have to ask ourselves and answer the question :

1. Whether it is the physical capacity of the vehicle irrespective of any other consideration like that of safety that should be considered by the Taxation authorities, or
2. the load carrying capacity as given in the registration certificate or a permit has to be taken as the load carrying capacity for purposes of this schedule, or
3. the notification dated 2-3-1959, could be resorted to for the purpose of seeing the load carrying capacity of the vehicle.

The problem of interpretation is created because of the expression "load carrying capacity". Were these words to stand alones they could very well mean the physical capacity of a vehicle, but we find that this will be an extreme view to take in the light of the scheme of legislation in question. Though the Taxation Act is an independent measure making provision for imposition of taxes on motor vehicles, the State Legislature in enacting this law could not have been oblivious of the provisions of the Motor Vehicles Act The term "load carrying capacity", as

used in Schedule II of the Taxation Act could only mean such load carrying capacity upto which the vehicle could properly be utilized for the purpose of carrying goods in accordance with the Motor Vehicles Act. The term "load carrying capacity," to our mind should be taken to mean the carrying of such quantum of goods as can lawfully be carried by the owner of the motor-vehicle in his vehicle. In other words, what maximum quantity of goods can lawfully be carried in a particular vehicle will be taken to be the load carrying capacity of that vehicle for the purposes of taxation under the Taxation Act. This will be clear from the provisions of the Taxation Act, also. The data the Taxation Officer has to collect and act on for the purposes of determining the tax liability in respect of any motor vehicle will furnish the clue. u/s 8 of the Taxation Act, the owner of every motor vehicle is required to make a declaration in the prescribed form and he is required to pay the tax which appears from such declaration. The form to be filled in and filed is Form No. M. T. A., the relevant items of which are, as under :--

- "1. Trade name (i.e. Ford, Chevrolet, etc.) ..
2. Year of manufacture.
3. Horse Power.
4. No. of cylinders.
5. Engine No.
6. Chassis number.
7. Width and class of each tyre (pneumatic resilient or non-resilient).
8. Unladen weight. lb.
9. Registered laden weight lb.
10. Axle weights : Front axle lb.
- Rear axle lb"

The Taxation Act does not contain any provision about the mode of determining the capacity of a vehicle for the purpose of assessment of the tax, and since the basis of computation of tax liability is only the information contained in Form M. T. A. cited above, it is permissible to infer that it is the difference between the registered laden weight of a vehicle and its unladen weight that will determine the load capacity of the vehicle. The term "registered laden weight" has been defined by statute and cannot be construed otherwise. u/s 2 (27) of the Motor Vehicles Act, this term means "the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle". Now unless a particular weight has been certified and registered by the registering authority, it cannot be treated as the registered laden weight for the purposes of the declaration under the Taxation Act. It is not asserted that the registration certificate, or the permit of the vehicle had been altered in any manner

subsequent to the issuing of the notification. The question then arises--"Whether the notification dated 2-3-1959 can ipso facto result in increasing the load capacity of a vehicle as is contended for by Shri Raj Narain, the learned Dy. Government Advocate.

Shri Raj Narain placed his reliance on the provisions of Sub-section 4 of Section 36 of the Motor Vehicles Act and Section 9 of the Taxation Act. Section 36 of the Motor Vehicles Act has already been reproduced above. We may now refer to Section 9 of the Taxation Act, which is as under:--

"9. Payment of additional tax.--Where any motor vehicle in respect of which the tax has been paid is altered in such a manner as to cause the vehicle to become a vehicle in respect of which a higher rate of tax is payable, the owner thereof shall be liable to pay an additional tax of a sum which is equal to the difference between the tax already paid in respect of such vehicle and the tax which is payable in respect of such vehicle after its being so altered".

Now to our mind Section 36 (4) or for that matter Section 9 of the Taxation Act obviously deals with physical alterations of a vehicle, including alteration in the number, nature or size of the tyres. It cannot mean any other kind of change. The notification that is issued u/s 36 (1) of the Motor Vehicles Act, is only an enabling provision. It may, after the necessary changes have been made in the registration certificate and the permit, enable the owner of the vehicle to carry more load in the vehicle, but there is no compulsion on the part of the owner of the motor vehicle to get his vehicle certified for the carriage of greater load than hitherto done. Nor does it empower the authority to alter the registration certificate in any manner on its own without there being any request by the owner of the motor vehicle. It cannot be forgotten that the provisions of Section 36 occur in Chap. III of the Motor Vehicles Act relating to registration of motor vehicles. Provisions for registration of vehicles are enacted with a view to helping the authorities in controlling the use of motor vehicles. The automobiles, while on the one hand afford a modern means of transport ministering to the needs of the community, their introduction on the roads at the same time results in a potential risk to the life of its occupant as well as other users of the road. These elaborate provisions are, therefore, designed for the purposes of ensuring the safety and convenience of both the users of the vehicles as well as others. This Chapter does not deal with the topic of taxation at all. Section 36 (1) enables the State Government to specify in relation to each make and model of a transport vehicle the maximum safe laden weight. This to our mind is done with a view to ensuring the safety in the use of that vehicle on the road. Prior to this amendment in 1956 the section stood as under :--

"36. Special requirement for registration of transport vehicle.--(1) A registering authority shall refuse to register any transport vehicles other than a motor cab, unless the application for registration is accompanied by a document in Form F as set forth in the First schedule signed by the maker of the vehicle or an assembler duly authorised by the maker in this behalf stating the greatest laden

weight and greatest axle weights for which the vehicle is and the several axles are designed :

2. Where a transport vehicle or chassis, as the case may be, has affixed to it a metal plate, bearing the stamp of the maker or assembler and identified as appertaining to the particular vehicle or chassis to which it is attached, which contains the particulars specified in Sub-section 1, that plate may at the discretion of a registering authority be deemed to be the documents referred to in Sub-section (1)",

Under the old section, Form "F" was to be filled in and that Form was to be signed by the maker of the vehicle or assembler duly authorised by the maker in this behalf and the maximum laden weight and the maximum axle weight was required to be given. This was the basis on which registration certificate used to be issued, This procedure had obviously given rise to some abuses and the Legislature had to step in to remedy them. It will be useful to quote the Objects and Reasons, appended to the Motor Vehicles (Amendment) Act, 1956, which resulted in Section 36 being altered in its present form.-

"Under the provisions of Sections 36 and 37 of the Act, a registering authority has to rely upon a document signed by the maker or assembler of the vehicle for determining the maximum laden weight and axle weights for which the vehicle and axles are designed. It is thus possible for a manufacturer to bid up as a "selling point", the certified weights to the limit of the capacity of the tyres, as somewhat liberally allowed in the Seventh Schedule. Misunderstanding and confusion have also been caused owing to technical defects in these sections in respect of the load distribution. It is, therefore, now proposed that State Governments should be empowered to specify the maximum safe laden weight and axle weight in relation to any make or model of transport vehicle and that the registering authorities shall enter in registration certificates the laden weights, etc. as specified by the State Government. It is proposed that the Central Government shall obtain recommendations reg. laden weights, etc., from motor vehicle manufacturers in India, and work them out within the limits of weight specified by the manufacturers on the basis of a formula approved by the Technical committee of the Transport Advisory council. A consolidated list will then be furnished, to the State Governments for their guidance in notifying specifications. The Seventh Schedule will be deleted. The amendments proposed are expected to serve as a check on the growing tendency to certify exaggerated weights, ignoring safety margin, and also to safeguard against the possibility of fixation of maximum permissible weights at an unwarrantable figure by merely fixing tyres of large sizes. In consequence, some vehicles on the road will have a registered laden and axle weight in excess of that allowed in respect of vehicles registered after the date on which this provision becomes law; the clause (see Sub-section (5)) therefore provides that the registering authorities may require certificates of registration to be revised in accordance with these new provisions."

A perusal of the Objects and Reasons shows that the amendment was designed

to check the growing tendency amongst manufacturers to certify exaggerated weights by ignoring safety margin and also to safeguard against the possibility of fixation of maximum permissible rates at an unwarrantable figure by merely fixing tyres of large sizes. This amendment was, therefore, not made with any other consideration, such as to enable the Exchequer to collect more taxes.

Shri Raj Narain, the learned Deputy Government Advocate has contended that the Statement of Objects and Reasons accompanying a Bill cannot be used to determine the true meaning and effect of the substantive provisions of the statute, and he relies on *State of West Bengal Vs. Union of India*, in this connection. It may be stated at once that we are not unmindful of this legal position. Reference to the Statement of Objects and Reasons of a piece of legislation cannot be made to determine the meaning of a statute. But it has also been recognised by their Lordships of the Supreme Court in this very authority that they can be used for the limited purpose of understanding the background and the antecedent state of affairs leading upto the legislation. We are not doing anything more.

Section 36 (1) of the Motor Vehicles Act to our mind is not ambiguous, but in order to examine the contention that the fixation of the safe laden weight by the notification of the 2nd of March, 1959 ipso facto results in changing the load carrying capacity of a vehicle as per registration certificate, we have to see as to what prompted the Legislature in making this change in the law and for that the Statement of Objects and Reasons can be looked into. We do not find that this provision was designed to help the State Governments to levy and collect more taxes for the exchequer. The prime consideration was one of safety for the use of the vehicle. Raising of the maximum limit of the safe laden weight may enable an owner to get his registration certificate suitably altered to enable him to carry more load but if the owner wants to carry only that much load as was formerly authorised, then he is under no obligation to get his registration certificate revised in that connection only with a view to helping the authorities to collect more taxes from him. A certain owner may always be utilizing his vehicle to carry a specified load just as owners of tank lorries would do and they may not find it necessary to get their load carrying capacity increased.

Section 36 or the notification issued thereunder cannot be so construed as to derogate from the rights of the owner to use his property in the way he likes to do. If the maximum safe laden weight is increased with a view to ensuring the safety, then certification of less weight for the carriage of goods in any particular vehicle will not derogate from the considerations of safety in that to carry less goods in a vehicle is certainly safer than to carry more goods in that vehicle. Unless there is a particular provision compelling an owner to get his maximum load capacity suitably increased, he cannot be asked to do so against his wishes.

It is the fundamental right of a person to use his property in the way he likes subject to the restrictions imposed by any law in the interest of the general public. What is fundamental is right, and not the restrictions which too are not

there under the law. Sub-section 4 of Section 36 of the Motor Vehicles Act, as observed by us above, relates to physical or structural alterations in the condition of a vehicle as would result in the change of its laden weight. This may necessitate changes in the registration certificate but this provision does not contemplate any change in the registration certificate consequent to the issuance of the notification like that issued on 2nd March, 1959. Now before a transport vehicle can be utilized, it is necessary that it should have (1) a registration certificate and (2) a proper permit, vide Section 42 of the Motor Vehicles act.

Now a comparison of Sub-section (1) and Sub-section 3 of Section 36 of the Motor Vehicles Act shows that while Sub-section (1) enables the State Government to fix the maximum safe laden weight of vehicles, Sub-section 3 only prohibits the registering authorities from entering the laden weight of the vehicle in excess of the maximum fixed. But this does not mean that the registering authority must always mention the maximum safe laden weight as laid down in the notification. It only confers a discretion in the registering authority to fix the appropriate laden weight bearing in mind the make and model of the vehicle and the number, nature and tyres attached to its wheels. This reinforces our observations that the notification cannot ipso facto result in increasing the load capacity of a vehicle to the maximum indicated in the notification. Such a conclusion will militate against the scheme of Section 36 itself.

Now u/s 56 of the Motor Vehicles Act, the laden weight of any vehicle is not to exceed the specified maximum. The form of the application for the permit for a public carrier also indicates that load capacity and the laden weight of the vehicle has to be mentioned in the application and the permit that is issued in Form P. Pu. C. also mentions the load capacity and the laden weight of the vehicle. The conditions of the permit can only be varied by the Regional Transport Authority. Section 72 of the Motor Vehicles Act forbids driving of any motor vehicle in any public place the unladen weight of which exceeds the registered laden weight specified in the registration certificate. It will thus be evident that the carrying of more load than what is laid down in the registration certificate is clearly forbidden by law. Mere specification of the maximum safe load of a vehicle by Government notification cannot save a person from the clutches of law if he carries more load than what is authorised in the documents of the vehicle viz. the Registration certificate and the permit. We are thus satisfied that in construing the term "load carrying capacity" as used in Schedule II of the Taxation Act, we have to take the load capacity as is mentioned in the registration certificate, or the permit of the vehicle. The learned Deputy Government Advocate in making the submission that the issuing of a mere notification under Sub-section (1) of Section 36 results in increasing the load carrying capacity of a vehicle irrespective of anything else has clearly overlooked the provisions of Sub-section (2) of Section 36 of the Motor Vehicles Act. It is the duty of the Registering Authority to examine the condition of each vehicle, its make and model and the condition of its tyres, and after taking into

consideration other relevant factors like the kind of route and area where the vehicle has to be used that it has to certify its carrying capacity. Any other consideration to our mind will not be in keeping with the scheme of Section 36 of the Motor Vehicles Act.

Learned Deputy Government Advocate further submits that as it is the Registering Authority which issues the registration certificate, it is open to it to review its orders, after observing the necessary formalities of law like giving of notice to the permit-holder. We regret our inability to assent to such a broad proposition. In an appropriate case it may be open to the registering authority to do so. But we are clearly of opinion that it is not permissible to do so only with a view to helping the exchequer to collect more taxes. That will be a clear abuse of the provisions of the statute which are designed for the purpose of ensuring of safety in the use of the vehicles. The intention of the Parliament in framing Section 36 in the manner it chose to do was only to lay down that where the maximum safe laden weight has been determined by the Government, that limit has not to be exceeded but it was not the intention to fix a firm line which every registering authority had to.

6. Let us now turn to the provisions of the Taxation Act. Section 5 of that act shows that tax has to be paid in advance on or before the 15th day of January, in each year. We have already noted the provisions about declaration to be made by the owner and that the tax has to be paid as per the declaration. Section 9 provides for payment of additional tax but this section is attracted only where there has been an alteration in the vehicle so as to make it liable to be taxed at a higher rate. The owner is then made liable to pay an additional tax so as to cover the difference between the old rate and the new rate. The Taxation Act nowhere lays down that where only the maximum safe laden weight is determined by the Government, that will bring in an additional liability to pay tax. In making provision for levy of additional tax, the Legislature has provided only for the contingency, where the vehicle is altered and for no other contingency. Thus, once a proper tax has been paid, there is no provision in the Act to enhance that tax subsequently. The petitions before us cover two types of transport vehicles, (1) public carriers which carry sundry goods; (2) public carriers fitted with petroleum tanks which carry limited volume of petroleum products in the tank.

7. These are writ petitions-

1. 1263/64 Jethanand Wadhumal v. State.

2. 1638/64 Jhalani Brothers Kedalganj v. State.

3. 1652/64- Abdul Latif v. State.

4. 1681/64- Naushakhan v. State. We fail to understand how the authorities can treat that the load carrying capacity of even such vehicles stood increased by the fiat of the notification without there being alterations in the body of the vehicle, or for that matter without any change having been made in the registration

certificate.

8. There is one more writ petition No. 1262/64-Rajasthan Roadways (Private) Limited v. The State. In this case, the vehicle is a stage carriage. We fail to understand how the authorities were demanding additional tax in respect of this vehicle. The learned Deputy Government Advocate candidly conceded that he was in no position to resist the writ petition and we feel that the action taken by the respondents regarding a stage carriage was indefensible.

9. On a careful consideration of the whole matter therefore we are satisfied that the respondents are clearly in error in calling upon the petitioners to pay tax under the Rajasthan Motor Vehicles Taxation Act, 1951, in excess of what was truly leviable according to the load capacity as entered in the registration certificates and the permit thereof. The action of the authorities in withholding the tokens and fitness of certificates to compel the payment of the additional tax is also not justified. Consequently, we accept the writ petitions and hereby forbid the respondents from levying any tax under the Rajasthan Motor Vehicles Taxation Act from the petitioners in excess of what is leviable according to the load carrying capacity as entered in their respective registration certificates and permits till they are varied in accordance with law. We also direct that the respondents shall return the tokens and fitness certificates to the petitioners if they have not already returned.

10. We pass no order as to costs.