

(1986) 11 PAT CK 0017

In the Patna High Court

Case No : C.W.J.C. No"s. 990 and 991 of 1986 (R)

Harihar Prasad Debuka and etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-11-1986

Acts Referred:

Bihar Finance Act, 1981 — Section 31

Constitution of India, 1950 — Article 269, 269(1), 301, 304

Citation : AIR 1987 Patna 175 : (1987) PLJR 106 : (1987) 66 STC 178

Hon'ble Judges : S.S. Sandhawalia, C.J.;Satyeshwar Roy, J;S.N. Jha, J

Bench : Full Bench

Advocate : S.B. Gadodia, B. Saran Lal and M.S. Mittal, for the Appellant; R.B. Mahto, General, S.B. Sinha, Government Advocate, S.K. Chattopadhyay, Govt. Pleader No. 1, P.K. Prasad, Jr. Counsel to Govt. Advocate and R.N. Sahay, Jr. Counsel to Govt. Pleader No. 1, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Bihar and Others Vs. Harihar Prasad Debuka and Others, AIR 1989 SC 1119 : (1989) JT 34 Supp : (1989) 1 SCALE 464 : (1989) 2 SCC 192 : (1989) 1 SCR 796 : (1989) 73 STC 353 : (1989) 1 UJ 684

S.S. Sandhawalia, C.J.—The significant issue that emerges for adjudication in this reference to the Full Bench is whether the Notification No. S.O. 1432, dt. 28th Nov., 1985, issued in exercise of the powers conferred by Sub-section (2a) of Section 31 of the Bihar Finance Act (hereinafter referred to as "the Act") prescribing the declaration form to be carried on a goods carrier or a vessel for transporting goods through the State of Bihar during the course of inter-State trade, is violative of the freedom of trade guaranteed by Articles 301 and 304 of the Constitution ? Equally at issue is a minor cleavage of judicial opinion within this Court betwixt two Division Bench orders passed at the motion stage.

2. In the context of the aforesaid pristinely legal question, the facts inevitably

pale into relative insignificance. These may, therefore, be briefly noticed from Civil Writ Jurisdiction Case No. 990 of 1986 (R). The petitioner therein is the proprietor of M/s. Jai Durga Industries -- a firm which regularly imports foodgrains from other States to its business premises situated at Jamshedpur. The said firm is registered under the Bihar Sales Tax Act as well as under the Central Sales Tax Act. It is averred that the petitioner purchased 165 bags of mustard (sarso) from M/s. Kapur Chand Girish Chand Jain at Dhaulpur in the State of Rajasthan, and was transporting the same therefrom to Jamshedpur in the State of Bihar in Truck No. RSG 533. On the 13th Feb., 1986 the officers of the Investigation Bureau, Jamshedpur Division, inspected the said truck and all necessary papers including a load permit in Form XXVIII for the 165 bags of mustard (sarso) were produced at the time of inspection. Nevertheless, the inspecting officers seized the goods loaded in the aforesaid truck and detained it at Mango Mufassil Police Station at Jamshedpur, on the allegation that the Bill number was not mentioned in Column No. 9 of the road permit in Form XXV11I-B, and issued show cause notice to the petitioner as to why penalty should not be imposed u/s 31(3) of the Act. The petitioner was directed to appear before the inspecting officer on the 14th of February, 1986. The petitioner being a member of the Singhbhum Chamber of Commerce and Industry, moved the said organisation to agitate the matter before the authorities and the said Chamber presented a representation in pursuance whereof the truck and the goods therein were released on the 15th Feb., 1986. However, in reply to the notice issued against the petitioner for the imposition of penalty, he took the stand that no permit in the required form was necessary and in any case it was violative of the Constitutional right of the freedom of inter-State trade and commerce. The petitioner's stand was, however, rejected and respondent 3 is averred to have arbitrarily and without any jurisdiction imposed a penalty of Rs. 8,330/- vide the order Annexure 5, dated the 29th of May, 1986 and the consequential demand Notice No. 986 (Annexure 6), dated the 2nd of June, 1986. Aggrieved thereby, the present petition has been filed challenging, inter alia, the very constitutionality of the impugned notification on the ground of its infraction of the freedom , of trade guaranteed by Articles 301 and 304 of the Constitution.

3. The case along with C.W.J.C. 991 of 1986(R), (Chetani Trading Company v. State of Bihar and Ors.) in which closely similar issues of fact and law are involved came up for admission before a Division Bench. On behalf of the petitioners firm reliance was placed on Civil Writ Jurn. Case No. 1079 of 1985(R), (Lohia Machine Ltd. v. State of Bihar) decided on 4-9-85 which in turn was rested on 1980 BRLJ 110, (Bhagwan Prasad v. Officer-in-Charge, Hathidih Check Post, Mokameh), for contending that in inter-State trade no permit under Rule 42 was required to be carried. However, on behalf of the respondent State the recent Division Bench judgment in C.W.J.C. 1625 of 1986, (Madan Mohan Tiwary and others v. State of Bihar) disposed of on the 14th of May, 1986, was relied upon for contending that the relevant provisions were intra vires and warranted the requirement of a permit to be carried. Noticing a conflict of judicial opinion in the

judgments aforesaid, the matter was referred to a larger Bench and that is how it is before us now. It is common ground that the issues in both the connected cases are identical and learned counsel for the parties are agreed that these would be disposed of by this common judgment.

4. Before advertng to the rival contentions it seems apt and indeed necessary to make some reference to the legislative history. It would appear that the unamended provisions of Sub-section (2a) of Section 31 of the Act had held the field for a considerable time within the State. However, an amendment thereof was apparently deemed necessary and by Section 9 of the Bihar Finance Act, 1984, enforced on the 2nd April, 1984, the present Sub-section (2a) was substituted in place of the earlier provision. For ease of reference the amended and the unamended provision may be juxtaposed below :

Amended provision Unamended provision

"(2a) A person transporting goods shall carry a declaration in form as may be prescribed by the commission supported by either a cash memo, bill or a challan. in case the movement is otherwise than as a result of sale, in respect of goods carrier, or a vessel and shall produce such challan, cash memo or bill along with the afore-said form of declaration on demand before the prescribed authority :

"(2a) A person transporting goods shall carry either a cash memo or bill issued by a selling dealer or a challan in case of movement otherwise than as a result of sale in respect of goods which are being transported on a goods carrier, and shall produce such challan or cash memos or "bill on demand before the prescribed authority.

Provided that the Commissioner, by notification in this respect, may prescribe a form of declaration or adopt a form of declaration or permit prescribed for the purpose of Sections 34 and 35 of this part, and he may also prescribe in the said notification, the manner in which such declaration or permit shall be utilised for verification and assessment of tax payable under this part :

Provided further that the Commissioner may exempt any person or dealer or class of registered dealers from the requirement of this sub-section."

It is somewhat plain from the above that the present amended provisions of Sub-section (2a) more comprehensively authorise the prescription of a declaration form which must be carried, inter alia, by motor vehicles carrying goods in transit through the State even in the course of inter-State trade. In exercise of the power conferred thereby the impugned notification was issued which in terms runs as follows :

"Dated 28 December, 1985

S. O. 1432 -- In exercise of the powers conferred by Sub-section (2a) of Section 31 of the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) Part-I, the Commissioner adopts forms XXVI1IA and XXVIIIB as the declaration for the purpose of the

aforesaid sub-section which a person shall carry in respect of goods being transported for the purpose of verification and assessment of tax payable and prescribes the following manners in which such permit shall be utilized for verification and assessment of tax payable under Part I of the said Act: --

(i) A person transporting goods, exceeding the quantity notified u/s 35, on a goods-carrier or a vessel shall carry Form XXVIII A or XXVIII B duly filled up in respect of goods being brought into the State or being sent out of the State.

(ii) In case a form is found blank or not containing all the particulars, it shall be deemed to be a violation of the provisions of Sub-section (2a) of Section 31 of the said Act.

(iii) The prescribed authority, after verification of the consignment, shall make appropriate endorsement in respect of the result of verification on both the copies, counterfoils or form XXVIII A or XXVIII B, as the case may be, and retain one copy or original counterfoil and return the other copy or duplicate counterfoil to the person transporting the goods.

(iv) The copy or the original counterfoil retained by the inspecting authority shall be forwarded for verification and for assessment of tax to the circle in which the dealer is registered or has his place of business :

(v) The concerned dealer shall preserve the other copy or duplicate counterfoil of XXVIII A or XXVIII B, as the case may be, for production before the assessing authority or for inspection at any time before or after assessment.

2. This notification shall come into force with effect from 1st Jan. 1986.

5. It remains now to advert to the Form XXVIII A and XXVIII B adopted by the Commissioner which also merits a notice in extenso:

"FORM XXVIII A

Permit

(See Rule 41)

No.

I hereby permit the transport of the consignment detailed overleaf. This permit will be valid for one month from the date of issue.

Place..... Signature.....

Date Designation.....

Details of consignment permitted to be transported

Description of goods Quantity Dated signature of the authority issuing the permit

1 2 3 4

Results of checking on the route

Designation and headquarters of the authority by whom transport of consignment was checked Description of goods Quantity of the goods actually transported Dated signature of the authority mentioned in column-I

1 2 3 4

FORM XXVIII-B

Form of permit

(See Rule 42(2) of the Bihar Sales Tax Rules, 1983)

(Original -- Not transferable)

Serial No.

(To be filled in by the permit-holder before transport of goods)

1. Name of dealer to whom the permit is granted with registration certificate numbers.

2. Name and address of the consignor.

3. Name and address of the consignee.

4. Place of despatch.

5. Designation.

6. Name of notified railway station/other places, from where delivery is to be taken.

7. Number and date of?

(i) Railway receipt

(ii) Other document

8. Description of Consignment?

Name of goods Value Quantity

9. Seller's invoice, forwarding note, number and date.

10. Mode of transport (vehicle No.).

"I/We hereby declare that the above statements are correct and complete in the best of my /our knowledge and belief.

Signature of dealer/declared manager

Date

Result of checking on the route

Designation and headquarters of the authority by whom the transport of the consignment was checked. Description of goods Quantity of the goods actually transported Dated signature of the authority mentioned in Column I and place of checking

Note: (1) Separate form should be used for each consignment.

(2) (a) In case of transport across or beyond checkpost, a copy of the form should accompany the consignment.

(b) In case of delivery of consignment from any notified railway station/either such place the original copy of the form shall accompany the consignment in transit and thereafter shall be sent to the appropriate authority of the Commercial Taxes."

6. It is neither in dispute nor possibly could be, that the notification and the forms are applicable in respect of goods being brought into the State and being sent out of the State in excess of the quantity notified u/s 35 by every goods carrier or vessel. The impugned notification in express terms say so. It would thus be common ground that it includes within its sweep the transport of all goods even in inter-State trade through the State of Bihar. Further, Clause (ii) of the notification prescribes that if the prescribed form is found blank and even if it does not contain all the minute particulars required in every column therein, it would be deemed to be a violation of the provisions of Subsection (2a) of Section 31 of the Act and consequently carry heavy penalties for the infraction thereof.

7. To clear the decks for a meaningful consideration of the challenge to the notification based on Articles 301 and 304, it is apt to first dispose of an argument raised on behalf of the petitioners which does not appear to me as tenable. Rather, curiously Mr. Gadodia, the learned counsel for the petitioners, opened his attack somewhat off the mark by assailing the impugned notification on the ground of the same being violattve of Article 269(1) and on the absence of the competence of the State Legislature by virtue of Entry 92B of List I of Sch. VII of the Constitution. Counsel contended that the wide sweep of Sub-section (2a) makes it applicable not only to the transactions of sate but even to the transport of goods by an owner himself during the course of their inter-State movement. Reliance was sought to be placed on a Division Bench judgment of the Punjab High Court reported in Bata India Limited Vs. The State of Haryana and Another, .

8. The challenge on the lines aforesaid appears to me as not well-conceived. This is plainly so because neither Section 31(2a) of the Act nor the impugned notification even pretends to levy any tax on the goods in the course of inter-State trade. The very heading and the contents of Article 269 would leave no manner of doubt that it pertains to the imposition of taxes in the course of inter-State trade and their allocation betwixt the Centre and the respective States. The position remains the same with regard to the recently inserted sub-Clauses (g) and (h) of Clause (1) of Article 269. To my mind, it is somewhat plain enough

that the penalty imposable by virtue of Clause (ii) of the impugned notification is merely a sanction for the enforcement of the requirement of carrying the requisite declaration forms. It cannot by any stretch of imagination, be described as a tax on the goods in the course of inter-State trade. For example, the Legislature could well prescribe that for the violation of the requirement of carrying the requisite declaration forms, the person infracting the same would be liable to pay a fine or even suffer imprisonment. Merely because the sanction provided for such enforcement would be a penalty assessable as if it was a violation of the provisions of Sub-section (2a) of Section 31 of the Act, would not make it a tax on goods and thereafter to be overzealously brought within the ambit of Article 269 which pertains to the levy of taxes. Equally a plain look at the newly added I provisions of Sub-clauses (g) and (h) of Article 269(1) would indicate that these pertain to the levy of taxes *stricto sensu*. Now once it is held, as it must be, that the notification and the prescription of the form is in no way an imposition of a tax, the very foundation of the attack rested on Article 269 disappears. The contention rested thereon must be rejected and consequently fails.

9. However, learned counsel for the petitioners was on much firmer ground in assailing the impugned notification for imposing unwarranted restrictions on interstate trade and commerce the freedom whereof stands guaranteed. Herein the very corner-stone of the argument is rested on the ratio of *Hans Raj Bagrecha Vs. State of Bihar and Others*, . Equally the harsh and stringent, if not impossible, restrictions imposed on the inter-State movement of goods by the impugned notification and the prescribed forms were highlighted. Counsel contended with force and plausibility that the present case presented such an identity that it cannot possibly be taken out of the sweep and ambit of the ratio in *Hans Raj Bagrecha's* case (*supra*).

10. I am inclined to take the view that the submission aforesaid is indeed impeccable and the matter herein is virtually covered on all fours by the binding precedent in *Hans Raj Bagrecha's* case (*supra*). Therefore, it would be somewhat wasteful to launch on any digression on first principles. However, before advertng to the applicability of the precedent aforesaid, the sweep and nature of the restrictions clearly imposed on inter-State trade by the impugned notification would call for pointed notice.

11. Now it is manifest from Clause 1(i) of the notification itself that any person transporting the goods on a carrier or vessel which are being brought into the State or being sent out of the State must carry thereon Form XXVIII A or XXVIII B duly filled in already. That these provisions apply directly to inter-State trade or commerce is thus not in doubt. A reference to Form XXVIII B would then indicate that the primal requirement is that it must be filled in by the permit-holder before the transport of goods. The names and addresses of the dealer and the consignor as well as the consignee must be filled therein and equally the vehicle number of a goods-carrier where the same is used. Learned counsel for the

petitioners highlighted that in the present day inter-State trade and commerce goods may well originate either from far off Jammu and Kashmir in the northwest or from Kerala in the deep south, which may have to pass through the State of Bihar onwards to West Bengal or Assam. The requirement that such a form should be filled in before the transport of the goods may sometimes, if not always, require that the same must be first sent to the consignor in the State where they originate and as in the present case to Rajasthan itself. The particulars therein have to be filled up in advance including the number of the goods-carrier etc. which may not reasonably be visualised in the State of origin in some cases. On long haulage, goods may have to be transhipped from one vehicle to another and it is difficult, if not impossible, to postulate all the details required by the various columns of the prescribed form. It was then pointed out that Form XXVIII B is required to be with the driver of the vehicle when he enters the State. This may sometimes be difficult if not impossible of performance. In the context of inter-State trade, for innumerable reasons, the goods which may earlier have been designed to pass through another State may be diverted in transit and may be required to pass through the State of Bihar. This may become necessary by floods, damage to roads or any other reasons for diversion of the route over the long lines of inter-State trade and commerce in a vast country like ours. However, a stone-wall of blockage, though not impassable, is thereby placed on the free movement of goods in inter-State commerce. Counsel highlighted that such a form is required even in a case where there may be no sale transaction whatsoever involving the imposition of any tax and the owner may be doing nothing more innocuous than transporting his own goods from one State to another. In such a case there would be no incidence of any sales tax or any other tax and to require such an owner to comply with the requirements of the notification and the forms would be impeding the free inter-State movement of the goods even by the owner thereof himself. Noticing all this one may refer back to Clause I(ii) of the notification itself which in stringent terms lays down that in case any column of the form is blank or does not contain all the particulars, it shall be deemed to be a violation of the provisions of Sub-section (2a) of Section 31 of the said Act. This the penalty of heavy financial hazards including three times the value of the goods themselves, apart from other consequences, of the infraction of the provisions aforesaid.

12. Yet again reference to Form XXVIII A would indicate that it is not merely that a form has to be carried on the vehicle but a permit must also be secured by the carrier for the inter-State movement of the goods. It is only after the concerned authority with the requisite designation has issued and signed the permit under Form XXVIII A that the goods can possibly be allowed to enter and leave the State of Bihar. Such permit is mentioned to be valid for one month from the date of issue and in the case of the goods being held up would probably require further modes of extension or renewal. It seems unnecessary to labour the point further but the onerous requirements of Form XXVIII B and of securing the permit in Form XXVIII A even in the context of the free inter-State movement of goods

(on which no State sales tax is leviable) are too manifest to require further elaboration.

13. It is in the light of the above that one may now revert in some detail to the applicability and ratio of *Hans Raj Bagrecha Vs. State of Bihar and Others*, . That was also a case from Bihar primarily under the Bihar Sales Tax Act, 1969. Therein apart from other provisions a challenge was laid to Rule 31-B framed u/s 42 of the Bihar Sales Tax Act. The said rule was in the terms following :

"31-B (1) No person shall tender at any railway station, steamer station, air-port, post-office or any other place, whether of similar nature or otherwise, notified u/s 42, any consignment of such goods exceeding such quantity, as may be specified in the notification, for transport to any place outside the State of Bihar, unless such person has obtained a despatch permit in Form XXVIIIID from the appropriate authority referred to in the Explanation to R, 31 and no person shall accept such tender unless the said permit is surrendered to him."

Their Lordships struck down the aforesaid rule and the notification issued thereunder as being plainly unauthorised and violative of the freedom of inter-State trade and commerce. In holding so it was unequivocally observed as under:

".....A provision which is made by the Act or by the Rules which seeks to prevent evasion of liability to pay intra-State sales or purchase tax would therefore be within the competence of the Legislature or the authority competent to make the rules. But the State Legislature has no power to legislate for the levy of tax on transactions which are carried on in the course of inter-State trade or commerce or in the course of export. Section 42 of the Bihar Sales Tax Act, 1959, prevents any person from transporting from any railway station, steamer station, air-port, post office or any other place any consignment of such goods exceeding the quantity specified with a view to ensuring that there is no evasion of tax payable under the Act. But the power u/s 42 can only be exercised in respect of levy, collection and recovery of intra-State sales or purchase-tax. It cannot be utilised for the purpose of ensuring the effective levy primer-State sales or purchase tax.

xx xx xx xx The power of the State Legislature is restricted to legislate in respect of intra-State transactions of sale and purchase and to matters ancillary or incidental thereto: it has no power to legislate for levy of tax on sales and purchase in the course of inter-State transactions. The power conferred by Section 42 authorising the imposition of restriction on transport or movement of goods may only be exercised in respect of transactions which facilitate levy, collection and recovery of tax on transactions of intra-State sale or purchase. When Rule 31-B seeks to prohibit transport of goods to any place outside the State of Bihar unless a certificate is obtained from the appropriate authority, it seeks to prohibit transport of goods pursuant to transactions which may not even be to the natuic of sale or purchase transactions; in any case it restricts transport pursuim to transactions which are in the course of inter-State trade or

commerce. The operation of the rule is not restricted only to transactions in the course of intra-State trade and commerce. The rule authorises restrictions on inter-State transactions and is on that account unauthorised. For the same reasons the notification issued on Dec. 26, 1967, must be regarded as also unauthorised"

14. From the aforesaid authoritative enunciation it is somewhat clear that herein the issue also is so similar as to be almost legally identical. To notice the applicability of the ratio in Bagrecha's case (*supra*), it deserves highlighting that Section 42 of the Bihar Sales Tax Act, 1959 is in *pari materia* with Section 35 of the Bihar Finance Act. In the said case Rule 31-B framed in pursuance of Section 42 was struck down on the ground that it infringed the freedom of inter-State movement of goods, and consequently the interstate trade and commerce, primarily because it required a despatch permit for the movement of those goods. Herein again u/s 35 of the Finance Act the notification prescribes the stringent requirements of the form of the permit under Form XXVIIIB and the securing of a transport permit from the designated authority under Form XXVIII A. As in Bagrecha's case so here, no tax is being levied. Equally it deserves highlighting that therein the prescribed forms were identical in content and in any case closely similar.

15. Now once it is found as above, it seems plain that the present case cannot be taken out of the ambit of the ratio of Bagrecha's case. Undoubtedly the goods merely passing in transit through the State of Bihar are not exigible to any State sales tax. Consequently as held in *Hans Raj Bagrecha Vs. State of Bihar and Others*, the State of Bihar has no competence or power of ensuring the effective levy of inter-State sales tax or to prohibit the transport of goods pursuant to transactions which may not even be of the nature of sale or purchase transaction. That being so, it follows that the present case is even on a firmer and stronger ground than that in Bagrecha's case. Therein what was sought to be obstructed was the movement of goods from within the State to outside the State. The impugned provisions herein even go further and seek to impose; onerous restrictions on goods both being brought into the State and being sent out therefrom. I have already noticed the harsh and stringent, though perhaps not impossible, conditions imposed by the notification and the forms prescribed thereby. These result in impeding and obstructing, though not perhaps, prohibiting the movement of goods which may neither originate in the State nor are intended to be consumed within the State and are not exigible to any State sales tax being primarily in the course of inter-State trade and commerce. The present case, to my mind, comes squarely within the sweep of the rule authoritatively laid in Bagrecha's case and this Court is bound by the same.

16. In all fairness, one must notice the stand of the learned Advocate General who could only assist us very briefly in the matter. With illimitable fairness he took the stand that if the notification and the prescribed forms are construed as applicable to inter-State trade in the sense of goods entering, Bihar from another

State and going out therefrom to yet another, then the impugned notification would plainly come under the mischief of Bagrecha's case. However, he somewhat ingeniously attempted to contend that the impugned notification may be read down as applicable only to the cases where the goods originate in the State of Bihar and are being sent out therefrom. In that eventuality he had submitted that the State would be legislating not with regard to inter-State trade and commerce but primarily with regard to the export of goods from the State of Bihar.

17. To my mind, even the somewhat diluted stand taken by the learned Advocate General seems to have an Achilles heel which is somewhat plainly vulnerable. Even the movement of goods from the State of Bihar to another State would be as much part of inter-State trade as those which are purely in transit, as in the case of entering from Uttar Pradesh and going on to West Bengal. The concept of inter-State trade does not necessarily involve a tripartite movement between three States but would be equally applicable to a bipartite movement from one State to another. If the learned Advocate General's fair concession with regard to the tripartite movement is accepted, the rule would equally hit the bipartite movement with regard to the export of goods originating from Bihar but going outside the State. Therefore, far from in any way aiding the State's stand, the submission of reading down in a way boomerangs upon the respondents' stand. It is well to recall that *Hans Raj Bagrecha Vs. State of Bihar and Others*, primarily related to the export or the movement of goods from within the State of Bihar to outside places, yet the impugned provisions were unhesitatingly struck down by their Lordships.

18. Even otherwise it is not easy to subscribe to the argument of reading down the provisions in the present context. The notification leaves the issue in no manner of doubt. In express terms it talks of goods being brought into the State and being sent out of the State. Such expressive language applicable clearly to the inter-State movement of goods cannot be read with blinkers and construed as if it appertained only to intra-State trade. Reading so would be doing violence to the plain and categorical language of the provisions and, in the celebrated words of a distinguished jurist, would involve a naked usurpation of the legislative function in the thin garb of interpretation.

19. Mr. S.B. Sinha who bore the main brunt of defending the impugned notification, had placed primal reliance on *Sodhi Transport Co. and others Vs. State of U.P. and others*, for contending that the impugned provisions were regulatory in nature and intended to prevent and plug the evasion of the State sales tax. Counsel sought to point out that Section 36 of the Bihar Finance Act was broadly in line with Section 28B of the U.P. Sales Tax Act and Section 34 of the Bihar Finance Act was virtually in pari materia with Section 28 of the U.P. Act. On this analogy the present case was sought to be brought within the protective cloak of *M/s. Sodhi Transport Co.'s case (supra)*.

20. I am inclined to the view that the case of *M/s. Sodhi Transport Co.* is plainly

distinguishable. Therein the primal challenge was directed merely to a transit pass on entering the State of U.P. and surrendering it at the exit checkpost. A perusal of the judgment therein would indicate that the basic attack was directed against the very competence of the State Legislature to legislate on the subject which was upheld. What was next assailed therein was the presumption of sale raised in Section 28B o beyond the competence of the State Legislature. The requirement of a mere transit pass was found to be not onerous and not violative of Article 19(1)(g) of the Constitution. It is true that in the barely ten lines of paragraph 18 of the Report there is a reference to Article 301, but it appears that this aspect was not pointedly pressed and their Lordships otherwise opined that the restrictions imposed had not been shown to be unreasonable. Nevertheless their Lordships granted substantial relief by directing that the assessing authority would pass fresh order of assessment in accordance with law uninfluenced by the previous orders which may have been made not only in the case of the petitioners but others also, with further rights of appeal and revision. I am, therefore, of the view that Sodhi Transport Co. and others Vs. State of U.P. and others, does not in any way advance the case of the respondent State. Assuming entirely for the sake of argument that there is some conflict of judicial opinion, this Court is obviously bound by the larger Bench of three Judges in Hans Raj Bagrecha Vs. State of Bihar and Others, . As I have already shown earlier, the later case which arose in the context of the Bihar Sales Tax Act is directly applicable and there is thus a virtual identity with the present case and it cannot be taken out of the ratio of Bagrecha's case.

21. In fairness to Mr. S.B. Sinha I would notice that he relied on a number of judgments on the point of reading down of a provision in order to uphold its constitutionality. He also cited authorities with regard to validity of extraterritorial legislation. There is no quarrel with these settled propositions and it is, therefore, unnecessary to refer to individual authorities. Counsel placed pointed reliance on AIR 1969 SC 147 (State of Madras v. N.K. Nataraja Mudaliar) G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, (Kakoshi Vibhag Buffalo Salvage Commission Agent, Dist. Mehsana, v. State of Gujarat) and State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, . In my view, these authorities are somewhat off the mark and hardly relevant to the pointed issue we are called upon to adjudicate.

22. It remains to advert to the order, to which I was a party, in Civil Writ Jurisdiction Case No. 1625 of 1986 (Madan Mohan Tiwary & others v. State of Bihar ? others), decided on 14-5-1986 at the admission stage itself. It would appear that the said order was coloured by the fact that admittedly out of the 80 packages seized, 28 packages were in intra-State movement which would well have been exigible to the State sales tax. A perusal of the said order would indicate that the learned counsel were sorely remiss in not bringing to the notice of the Bench the binding judgment in Hans Raj Bagrecha Vs. State of Bihar and Others, . Thus in a way the order was rendered per incuriam. Even otherwise the matter was not correctly presented with regard to the movement of goods in

inter-State trade and commerce and the applicability of Articles 301 and 304. The onerous and stringent conditions imposed by the notification and the prescribed forms were not at all projected. Basic reliance on behalf of the petitioners therein was placed only on *The Check Post Officer and Others Vs. K.P. Abdulla and Bros.*, which was not a case of inter-State trade and commerce and was otherwise found to be not applicable or distinguishable. Learned counsel also failed to bring to the notice of the Bench the earlier orders of the Court in *Bhagwan Prasad's case* 1980 BRLJ 110 (supra) and Civil Writ Jurisdiction case No. 1079 of 1985 (R) passed on 4-9-85 Reported in 1987 BLT (Rep) 31 (supra). For the detailed reasons recorded above, it must be held with respect that the order in *Madan Mohan Tiwary's case* (supra) is not good law and is hereby overruled. The earlier view in 1980 BRLJ 110(supra) is hereby affirmed.

23. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative and it is held that Notification No.S.O.1432, ssistant Settelement Officer (Condolidation) it appears that he has applied his mind ti the documentary and oral evidence on the the State of Bihar during the course of inter-State trade, is violative of Articles 301 and 304 of the Constitution. The said notification is consequently quashed hereby.

24. As a necessary result, the impugned orders imposing penalty and the demand notices (Annexures 5 and 6) in C.W.J.C. No. 990of 1986(R) and Annexures6 and 7 in C.W.J.C. No. 991 of 1986 (R) are hereby set aside. Accordingly, both the writ petitions are hereby allowed, but in view of the difficult legal issues involved and the conflict of judicial opinion, the parties are left to bear their own costs.

Satyeshwar Roy, J.

25. I agree.

S.N. Jha, J.

26. I entirely.