

(1961) 11 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 1132, 1153, 1154, 1203, 1226, 1227, 1228, 1229, 1273, 1275, 1276, 1277, 1283, 1320 and 1367 of 1961

H.K. Swaranavar Nashar and Others

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 22-11-1961

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (d), 301

General Clauses Act, 1897 — Section 22, 23

Motor Vehicles (Taxation on Passengers and Goods) Act, 1961 — Section 21

Citation : AIR 1963 Kar 49

Hon'ble Judges : Iqbal Hussain, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : S.J. Srinivasan and T.N. Nagesha Rao, in W.P. 1132 and 1153 1273 of 61, T. Krishna Rao and R.B. Brahmavar, in W.P. 1154 of 61, T.S. Ramachandra, in W.P. 1203 and 1283 of 61, K.G. Maheswarappa, in W.P. No. 1226 and 1227/61, N.S. Narayana Rao, in W.P. No. 1228/61, Mohandas N. Hegde, in W.P. 1229/61, M. Rangaswamy, in W.P. No. 1275, 1276 and 1277/61, A.N. Anantharamiah and A. Shivaramiah, in W.P. 4320/61 and S.K. Venkataranga Iyengar, in W.P. 1367/61, for the Appellant; D.M. Chandrasekhar, for A.G. and Advocate, for the Respondent

Judgement

A.R. Somnath Iyer, J.—By consent of parties Writ Petition No. 1367 of 1961 is treated as also being on the cause list today for hearing.

2. In these fifteen cases we are principally concerned with the constitutionality of the Mysore Motor Vehicles (Taxation on Passengers and Goods) Act, 1961 (Mysore Act No. 10 of 1961) which was a law made by the Legislature of the new State of Mysore to provide for the levy of tax on passengers and goods carried in stage carriages and public carrier vehicles in the State of Mysore. This Act received the assent of the President on May 31, 1961, although it is admitted that at the stage when the bill was introduced or moved in the Legislature of the State, the previous sanction of the President had not been obtained. Under the scheme of this enactment, the constitutionality of which is impugned by the

petitioners, a tax on passengers, luggage and goods carried in stage carriages as defined by the impugned Act and a tax on goods carried by public carrier vehicles as defined again by the Act, were imposed. The tax imposed by Section 3(1) (i) on passengers, luggage and goods carried by stage carriages was a sum equal to ten percentum of the amount of fares and freights payable to the operator of the stage carriage.

It was further provided that if the operator himself levied and collected from the passengers such fares and freights inclusive of the tax payable under the Act, the operator should pay to the State Government by way of tax one-eleventh of the total amount of the fares and freights inclusive of the tax collected by him from the passengers. Clause (ii) of Section 3(1) of the impugned Act imposed on all goods transported by public carrier vehicles a tax at the rate of three naye paise in the rupee on the freights payable to the operator of a public carrier vehicle.

3. The expression "stage carriage" occurring in the Act was defined by Section 2(1) and the expression "public carrier vehicle" was defined by Section 2(9). Section 2(13) directed that the words and expressions used in the Act but not defined in it shall have the meaning assigned to them in the Motor Vehicles Act, 1939 (Central Act IV of 1939).

4. Section 4 of the impugned Act directed the operator of every stage carriage or public carrier vehicle, as the case may be, to submit periodical returns to the Tax Officer or to the prescribed officer. u/s 5, an operator was made liable to pay every month into the Government Treasury, the tax payable by him in accordance with the returns submitted u/s 4. Section 6 prescribed the procedure to be adopted where no return u/s 4 was Submitted. Section 7 provided for the assessment of the escaped tax. Section 8 imposed a penalty for non-payment of the tax and Section 9 empowered the recovery of the tax payable under the impugned Act as an arrear of land revenue.

5. The only other important section which should be noticed at this stage is Section 14 which enabled an operator to compound the tax payable under the Act.

6. The petitioners before us are either operators of stage carriages as defined by the Motor Vehicles Act or operators of contract carriers as defined by that Act for operators of public carrier Vehicles as defined by the impugned Act.

7. This first and the main challenge which was made to the validity of the Act was that the levy of the tax under the impugned Act amounted to an unreasonable restriction either on the freedom of trade which is protected by Article 301 of the Constitution or on the fundamental right to move freely throughout the territory of India guaranteed by Article 19(1)(d) of the Constitution. The unreasonableness of the impost was sought to be deduced from the fact that there was already in existence on the statute book of the State another enactment intitled the Mysore Motor Vehicles Taxation Act, 1957

(Mysore Act 35 of 1957) which according to the petitioners, had already imposed a tax on passengers, their luggage and goods carried by stage carriages as also on goods carried by public carrier vehicles. The impugned Act which, according to the petitioners, imposed an additional tax, imposed for the second time a tax in addition to the tax which had already been imposed by an earlier enactment which was prima facie so onerous that the only inference possible was that the imposition under the later Act was unreasonable restriction.

8. Since, under the impugned Act, a tax is imposed on passengers in addition to a tax on goods whether they are carried by a stage carriage I or a public carrier vehicle, it would be clear that unless the imposition of that tax can be regarded as a reasonable restriction imposed in the interest of the general public within the meaning of Clause (5) of Article 19, it would amount to an infringement of the fundamental right guaranteed by Article 19(1)(d) of the Constitution. It is equally clear that, if the impugned enactment can be regarded as one by which an unreasonable restriction was imposed on the freedom of trade for which provision is made by Article 301 of the Constitution, it will have to be struck down on the ground that it in-fringes Article 301 of the Constitution.

9. Article 301 reads:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

10. It is now clear from the pronouncement of their Lordships of the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, to which our attention was drawn by Mr. Krishnarao that the imposition of a tax in regard to the carrying on of a trade or commerce would amount to a restriction on the freedom of trade provided for by Article 301, and that no such restriction could be placed even in respect of a trade or commerce carried on inside the State, except as provided.

11. The imposition of a tax on passengers or goods carried by a person providing transport I facilities does, in my opinion, constitute a restriction on the carrying on of trade or commerce by the person providing those transport facilities, and the position is in no way different even if the passengers are carried from one point in a State to another point inside its limits, since Article 301 of the Constitution does not refer only to freedom of trade carried on by a person in one State with another in another State but also to the freedom of trade inside the limits of a particular State. That, that is so, is clear from the provisions of Article 304(b) which reads:

"Notwithstanding anything in Article 301 or Article 303, the legislature of a State may by law

(a)

(b) impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within that State as may be required in the public, interest.

Provided that no Bill or amendment for the purposes of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

12. Unless the intendment of Article 301 was that there should be freedom of trade or commerce not only between a person in one State and a person in another, but also within the limits of a particular State, it was not necessary for Article 304(b) to expressly provide for the imposition of restriction on the freedom of trade, commerce or intercourse within a State by the Legislature of that State.

13. That Article 301 provides for freedom of trade, commerce or intercourse inside a State was also the view taken by their Lordships of the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, and that declaration of the law is clearly binding on us.

14. That being the position, since the imposition of a tax such as what is imposed by the impugned Act, amounts as it does to a restriction on the freedom of trade for which provision is made by Article 301 of the Constitution, unless it could be said that that restriction is a reasonable restriction which alone is permissible under Article 304(b), its imposition would offend against the provisions of Article 301.

15. In considering, therefore, the question whether there has been an infraction of the fundamental right guaranteed by Article 19(1)(d) of the Constitution, as contended on behalf of some of the petitioners in these cases, or whether, as contended by Mr. Krishna Rao appearing on behalf of the petitioner in *W. P. 1154/61*, there has been a transgression of the provisions of Article 301, of the Constitution, the question to which we should, in my opinion, address ourselves is whether the impugned Act imposes an unreasonable restriction either on the fundamental right or on the freedom of trade as the case may be.

16. Although it was sought to be made out at one stage during the arguments that the restriction imposed by the impugned Act by the imposition of the tax was so onerous and so heavy that it led to the total annihilation of the trade carried on by the stage carriage operators or public carrier vehicle operators, and that far from being a restriction it was a measure which brought about a destruction of the trade, it had to be admitted on behalf of the petitioners that they have not placed any materials before us on the basis of which we could have come to that conclusion. It has not been demonstrated to us that the only consequence of the imposition of the tax which has been imposed under the impugned Act was total or almost entire destruction of the trade carried on by the operators referred to above.

17. The other submission, therefore, made in respect of the argument that the impugned Act imposed unreasonable restrictions was, that the tax imposed by the impugned Act was a tax in addition to a similar tax which had already been imposed by the Mysore Motor Vehicles Taxation Act, 1957 (Mysore Act 35 of

1957) which will be referred to hereafter as "the 1957 Act".

18. The argument presented before us was that when the 1957 Act was enacted by the Legislature of the State of Mysore, it repealed by its 23rd section the Madras Motor Vehicles Taxation on Passengers and Goods Act, 1952 as in force in those areas of the State of Madras which were included in the new State of Mysore when the new State of Mysore was created by the States Reorganisation Act, and, also the Madras Motor Vehicles Taxation on Passengers and Goods Act, 1952 (Madras Act XVI of 1952) as in force in the District of Bellary which was included in the former State of Mysore by the Andhra State Act of 1953.

19. It is pointed out that on the date of the enactment of the 1957 Act there were in force two laws operating in the new State of Mysore under which taxes on passengers and goods carried by road had been imposed. One of those laws was the Madras Motor Vehicles Taxation of Passengers and Goods Act, 1952 (Madras Act XVI of 1952) which under the provisions of Section 119 of the States Reorganisation Act continued to operate in those areas of the new State of Mysore which formerly were in the State of Madras. The other law was the same Madras law which was operating with certain amendments in the District of Bellary which was included in the former State of Mysore.

20. The fact that these two enactments were repealed by the 1957 Act, was according to the argument, attributable to the fact that the legislative intent when the 1957 Act was enacted, was, to impose on all passengers and goods carried by road in the new State of Mysore, in addition to tax on motor vehicles, tax on passengers and goods so carried within the entire State. The 1957 Act was, according to the argument, to some extent a surrogatum for the two Madras Acts which were repealed by the 1957 Act, the intention of the Legislature when it enacted the 1957 Act being that in the entire area of the new State of Mysore there should be imposed a tax on passengers and goods carried by road, as was being done in the areas in which the Madras Act was operating before the enactment of the 1957 Act.

21. We were asked to hold that the fact that the Madras Acts were repealed when the 1957 Act was passed, was, itself the clearest indication of the fact that the tax imposed by the 1957 Act, was also in part a taxation on passengers and goods carried by road in the new State of Mysore. It is the correctness of this submission with which we are concerned in these cases. The relevant entry in the State List under which a law can be made by the Legislature of a State imposing a tax on passengers and goods carried by road is the 56th entry in the State List. The 57th entry bestows competence on the Legislature to make a law imposing a tax on vehicles whether mechanically propelled or not, suitable for use on roads. The 35th entry in the Concurrent List corresponds to the 57th entry in the State List.

It is thus clear that under the 57th entry the Legislature of the new State of Mysore had the legislative competence to make a law imposing tax on

mechanically propelled, vehicles suitable for use on the roads of the State.

22. The preamble to the 1957 Act reads:

"An Act to consolidate and amend the law relating to the levy of tax on motor vehicles in the State of Mysore.

Whereas it is expedient to consolidate and amend the law relating to the levy of tax on Motor Vehicles in the State of Mysore;"

23. This preamble makes it abundantly clear that what the Legislature did when it enacted the 1957 Act, was, to make a law imposing within the field of the 57th entry of the State list a tax on motor vehicles which it was competent to do. We do not find in the 1957 Act, any provision imposing in addition to tax on motor vehicles, a tax on passengers and goods carried by road which might have been imposed by a law made under the 56th entry.

24. Section 3 which is the charging section of the 1957 Act reads:

"A tax at the rates specified in Part A of the Schedule shall be levied on all motor vehicles suitable for use on road, kept in the State of Mysore;

25. That the intendment of the Act was not only to impose a tax on motor vehicles suitable for use on roads but also to impose a tax on passengers and goods carried by road is not discernible from any portion of the 1957 Act. The only provisions in the 1957 Act to which our attention was drawn by Mr. Krishna Rao in support of the argument that that Act should be construed as a law imposing in addition to a tax on motor vehicles suitable for use, a tax on passengers and goods carried by road, are the third and fourth items in

Part "A" of the Schedule to that Act.

26. Mr. Krishna Rao pointed out to us that the third item in that Schedule which prescribes the tax payable in respect of goods vehicles, refers to the laden weight of those vehicles and asks us to infer from the fact that there is a reference to the laden weight of those vehicles in that entry, that the tax prescribed by the Schedule in that way was also a tax on the goods carried in those vehicles, Likewise Mr. Krishna Rao drew our attention to the fourth item in that part of the Schedule which prescribes the rate of tax payable in respect of motor vehicles referred to in it with reference to the carrying capacity of those vehicles and urged that the fact that there is a reference to the carrying capacity of the vehicle with respect to the passengers carried in that vehicle shows that the tax payable at the rates specified in the schedule is both the tax on motor vehicles as well as on passengers carried by those vehicles.

27. Since, in my opinion, what we have to consider for the purpose of ascertaining the scope and the purpose of the law is its pith and substance, it is obvious that the pith and substance of the 1957 Act, was the imposition of a tax on motor Vehicles suitable for use on roads in the new State of Mysore and not the imposition of a tax on passengers and goods carried on those roads. A

reference to the laden weight in the third item in the Schedule or the reference to the passengers in the fourth item is, in my opinion, too slender a foundation on which any argument can be constructed that the 1957 Act imposed a tax on passengers and goods also.

28. There is more than one infirmity in the argument advanced to the contrary. Now, the laden weight referred to in the third item of the Schedule having not been defined by the 1957 Act, as provided by Section 2(j) of that Act, that expression has to be understood in the way in which it is defined by the Motor Vehicles Act.

29. Now, the Motor Vehicles Act does not define "laden weight", but it defines "registered laden weight" as weight permitted to be carried as specified in the registration certificate. The third item of the Schedule, Part "A", to the 1957 Act does no more than to merely prescribe the yard stick for the computation of the tax payable in respect of the vehicles referred to in it, such computation being directed to be made in terms of the maximum weight which the goods vehicle is permitted to carry. The fact that it is so provided does not really mean that the tax payable under the 1957 Act in respect of the goods vehicles is not a tax on the goods vehicles only, but is also a tax on the goods carried by it on road.

30. That the argument to the contrary cannot stand scrutiny, is clear from the fact that, if a goods vehicle used on the roads of Mysore uses the roads but does not carry any goods, for whatever reason the operator of the vehicle is unable to carry those goods, he could not be heard to contend that since he carried no goods he is not liable to pay any tax on the goods vehicle.

31. Section 7 of the 1957 Act which contains an express provision for the refund of tax proportionate to the non-user of the vehicle on the roads, does not contain any provision for the refund of tax for the non-carriage of goods. If the 1957 Act did, as contended, also impose a tax on goods carried by a goods vehicle, it is difficult to understand why when Section 7 provided for refund of tax for non-user of the roads, it did not contain a similar provision for refund of tax for non-carriage of goods.

32. The argument resting upon the fourth item of Part "A" of the Schedule is open, in my opinion, to the same criticism. What that item does is to prescribe a tax on the motor vehicle on the basis of the capacity of that vehicle to carry passengers. That is the reason why that item refers to the seating capacity or the standing capacity and provides that the tax payable is to be computed on the basis of the carrying capacity of the vehicle. Just as in the case of a goods vehicle, the fact that the operator of a goods vehicle has not, under the Act, a right to claim a refund if he is not able to carry any goods, in the case of passenger vehicles, the operator who has to pay the tax specified in item 4 cannot also claim a refund on the ground that he carried no passengers at all during any given period of time, although he is entitled u/s 7 of the 1957 Act to claim a refund for the non-user of the roads.

33. In my opinion, the reference to laden weight in item 3 and the reference to passengers in item 4 of Part "A" of the Schedule are made purely for the purpose of the computation of the tax payable on the motor vehicles and do not justify the inference that the 1957 Act, in addition to imposing a tax on motor vehicles, also imposed a tax on passengers and goods carried by road.

34. There is yet another difficulty for the acceptance of the argument advanced. The impugned Act imposes a tax not only on passengers carried by stage carriages but also on goods and luggage carried by them. Although there is in item 3, a reference to the laden weight of goods vehicles, there is not, in item 4 of Part "A" of the Schedule to the 1957 Act, any reference to the luggage or goods carried by a stage carriage, which, in my opinion, is destructive of the contention that the impugned Act imposes additional tax on luggage and goods carried by a stage carriage.

35. We must, in my opinion, therefore reach the conclusion that the tax imposed by the impugned Act, is a new tax which had not been levied by the 1957 Act, and that whereas the 1957 Act was a law made under the 57th entry of the State List, the impugned Act was made in the field of the 56th entry of that List. If that is how we should understand the 1957 Act the argument that the impugned Act imposes unreasonable restrictions either on the freedom of movement guaranteed by Article 19(1)(d) of the Constitution or on the freedom of trade provided for by Article 301 becomes unavailable to the petitioners in so far as it rests on the attempt made to establish that the impugned Act imposed once again a tax which had already been imposed by the 1957 Act.

36. There is one more reason why we should, in my opinion, come to the conclusion that the 1957 Act did not in fact impose any tax in addition to a tax on motor vehicles, and that it did not in fact impose any tax on passengers and goods carried by road. It will be seen from the provisions of the Madras Motor Vehicles taxation Act, 1931 which was in force in some parts of the new State of Mysore before the 1957 Act was enacted, that the tax on motor vehicles imposed by that Madras Act was almost the same as the tax imposed by the 1957 Act; in respect of motor vehicles used for the transport of passengers in cities, tax had to be calculated at the rate of Rs. 23/- for every passenger and in the case of motor vehicles used for the transport of passengers outside the cities, the tax had to be calculated at the rate of Rs. 30/- for every seated passenger and Rs. 10/- for every standing passenger.

Now, under the 1957 Act, the tax payable in respect of motor vehicles used for the transport of passengers in the cities has to be calculated at Rs. 25/- for every seated passenger and in respect of motor vehicles transporting passengers in other areas the tax has to be calculated at the rate of Rs. 30/- for every seated passenger and Rs. 10/- for every standing passenger. It should be pointed out that when the Madras Motor Vehicles Taxation Act, 1931 was operating in the State of Madras there was also in force in that State, the Madras Motor Vehicles Taxation of Passengers and Goods Act, 1952, under which, in addition to the tax

payable in respect of the motor vehicles at the rates referred to above, the operator of that motor vehicle had to pay an additional sum of money by way of tax on passengers and goods carried by him. The fact that the tax imposed by the 1957 Act, is almost equal to that imposed by the Madras Motor Vehicles Taxation Act, 1931 which, it cannot be disputed, imposed a tax only on motor vehicles and not on passengers and goods, is to my mind, a very clear indication that the tax imposed by the 1957 Act, was a tax on motor vehicles simpliciter and that no part of it was a tax on passengers and goods.

37. I am likewise not impressed by the argument advanced that there is anything in the fact that the two Madras Acts were repealed, which can assist the argument advanced that the 1957 Act imposed in the entire new State of Mysore that Impost, which had been made by the two repealed Madras enactments. The reason why the two Madras enactments were repealed, is, in my opinion not because the 1957 Act imposed a tax on passengers and goods carried by road which was done by the Madras Act, but because the Legislature did not wish that the two Madras Acts which were operating in only one part of the new State of Mysore in which alone there was a tax on passengers and goods carried by road, should continue to remain, while no such impost had been made by any law in the remaining vast area of the State.

38. I shall now proceed to consider the next criticism levelled against the impugned Act, which was, that the tax imposed by it was not a tax on passengers and goods carried by road, but was really a tax on the operator of the motor vehicle by which such passengers and goods were carried. The attempt made was to establish that the impugned Act really imposed a tax on motor vehicles which had already been done by the 1957 Act, and that therefore we should hold just as we would have held if we had come to the conclusion that the impugned Act imposed a tax on passengers and goods which had already been done by the 1957 Act, that the impugned Act amounts to unreasonable restriction on the freedom of movement as also on the freedom of trade.

39. The various provisions of the impugned Act to which our attention was drawn in support of this argument were the proviso to Section 3(1) (i) of the impugned Act which refers to the collection by the operator of a motor vehicle, of the fares and freights inclusive of the tax and for its payment by the operator, the provisions of Section 4 which directs the submission of a return by the operator, Section 5 which makes the operator liable to pay the tax, Section 8 which imposes a penalty on an operator for non-payment of tax and Section 9 under which the tax could be recovered as if it was an arrear of land revenue from the operator. Section 14 which again confers on an operator the right to compound the tax was also one of the provisions to which our attention was drawn.

It was therefore urged that the purpose and the scheme of the Act were to make the operator liable for the payment of the tax imposed by it and that the incidence of tax was really on the operator without there being any corresponding right on the part of the operator to collect the tax either from the

passengers carried or from the owners of the goods carried. In that situation, we were asked to hold, that in reality and in truth, the impost made by the impugned Act was an impost on the motor vehicle owned by the operator, since, if he had not owned or operated it, he would not have become liable to pay any part of the tax imposed by the 1957 Act.

40. We should, for the purpose of examining the correctness of this argument, examine again the various provisions of the impugned Act. When we look into its preamble it will be seen that the purpose of the Act was to impose a tax on passengers and goods carried in stage carriages and public carrier vehicles.

41. Section 3(1) (i) specifies the tax payable in respect of passengers and goods carried by a stage carriage. Likewise Section 3(1) (ii) specifies the tax payable in respect of goods carried by a public earlier vehicle. It is no doubt true that the tax so imposed is payable by the operators of the motor vehicles referred to. But neither the fact that the person who was made liable to pay the tax was the operator, nor the fact that it does not contain any machinery for the collection of the tax either from the passengers direct or from the owners of the goods carried, can justify the conclusion that the tax is not a tax on passengers and goods but a tax on motor vehicles or operators owning them.

42. It seems to me that on a true construction of the provisions of the impugned Act it would be impossible for any one to suggest that the tax imposed was a tax on motor vehicles by which the passengers or goods were carried. That tax is plainly a tax imposed on the passengers and goods, and since it would be extremely unreasonable to insist upon collection of tax imposed on a passenger when he is carried, or from the owner of the goods who entrusts those goods for carriage, it is obvious that the Legislature, when it required the operator to furnish returns and maintain accounts and pay the tax imposed by the Act, did not intend to impose a tax on the operator of the vehicle, but only employed him as the conduit pipe through which the tax had to be realised.

If it is clear from the provisions of the Act, as it is to my mind, that the impost was really on the passengers and goods, the fact that the person who is liable to pay the tax so imposed, is the operator, cannot alter the character of the tax. Enactments like the impugned Act imposing a tax on a certain category of persons but making that tax payable by a different category of persons are not uncommon, and the reason why the tax collected or imposed upon one is payable by another is that the person by whom it is payable is the person through whom it can be conveniently realised.

43. It may have been possible for the petitioners to urge that if the person by whom the tax is payable is not himself able to collect that tax from the person on whom it is imposed, and, he is liable to pay the tax himself, without having a right to collect it from the person upon whom it is imposed, the tax is really one imposed upon the person who is made to pay and not upon the other.

44. But, when we look into the provisions of the impugned Act, it becomes plain

that not even that argument is available to any of the petitioners. The proviso appearing u/s 3 (1) (i) of that Act reads:

"Provided that if the operator levies and collects from the passengers fares and freights inclusive of the tax under this sub-section, the operator shall pay to the State Government on account of the tax, one-eleventh of the total amount of fares and freights inclusive of tax collected by him from the passengers;"

45. To my mind, the plain and necessary implication of this proviso is that the operator is entitled as of right to add the tax to the fare and freight and collect it from the passengers or the owners of the goods carried. I am not prepared to accept the argument that there is no such provision in the impugned Act conferring a right on the operator of a vehicle to collect the tax in that way.

46. When we look into the provisions of Section 14 which is the section under which a composition of the tax is made, there is a prohibition in Sub-section (2) of that section against the collection of tax from a passenger by an operator who has compounded the tax during the period to which such composition applies. The proviso appearing u/s 3(1) (i) read with Sub-section (2) of Section 14 makes the deduction irresistible that an operator who is liable under the provisions of Section 5 of the impugned Act to pay the tax into the Government treasury, has undoubtedly a right to collect the tax so payable by him from the passengers or from the owners of goods carried by him.

47. I do not find any real substance in the contention that what an operator collects from the passengers is not what can be regarded as tax payable under the Act, but only additional fare or freight as the case may be. This argument rested on the expression "fares and freights inclusive of the tax" appearing in two portions in that proviso. Now, if, as contended by the petitioners themselves, and in my opinion very rightly, no operator can collect as fares and freights any amounts in addition to those which were specified and fixed under the provisions of the Motor Vehicles Act, if an operator collects an amount which is equivalent to the tax payable under the Act in addition to the fares or freights, what he collects is obviously the tax imposed under the Act, which, he is liable to pay under it and cannot in any sense be regarded as an additional fare or additional freight which he charges the passengers. In my opinion, we would be placing an unduly narrow construction on the word "inclusive" appearing in the proviso if we should accept the contention to the contrary.

48. An argument similar to that presented before us, was rejected by their Lordships of the Supreme Court in *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, . That was a case in which, under the provisions of the Rajasthan Passengers and Goods Taxation Act which were very similar to those of the impugned Act, the operator of a motor vehicle carrying passengers and goods was himself liable to pay into the Government treasury the tax imposed on passengers and goods, and the contention urged was that the fact that he was made liable to pay the tax was an indication that the tax was really not one

imposed on the passengers and goods, but, that imposed on the operators. That contention was repelled for the reason that, judged by the pith and substance of the Rajasthan Passengers and Goods Taxation Act, the impost was a tax on passengers and goods and not upon the operators.

49. It was, however, pointed out to us that that Act, unlike the impugned Act, contained an express provision empowering the owner of the motor vehicle to collect the tax from the passenger or the owner of the goods carried. But, the pronouncement of their Lordships of the Supreme Court makes it plain that, if an enactment like the impugned Act contains a provision for the collection; of the tax by the owner of the motor vehicle or by the person on whom such tax is imposed, the impost cannot be regarded as any other than an impost on passengers and goods.

50. If we should therefore find it possible to understand the proviso appearing in Section 3(1) (i) of the Act as one authorising the collection of the tax from the passengers and from the owners of the goods transported, it becomes clear that the mere fact that the hand which pays the tax into the Government treasury is the hand of the operator, will not by itself justify the view that the tax is not an impost on passengers or goods.

51. We should, in my opinion, understand, as I have already pointed out, that proviso as by necessary implication conferring a right on the operator a right to add to the fare or freight as the case may be, a sum of money equivalent to the tax payable by him, and the sum so added which is dearly the tax payable under the Act cannot have the character of a fare or freight merely because it is added to the fare or freight. The cases before us are therefore indistinguishable from the case cited above, viz., *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, and it would therefore be impossible for us to hold that the impugned Act imposes a tax on motor vehicles or their operators and not upon passengers and goods.

52. If, that is the conclusion which we should draw on a proper construction of the provisions of the impugned Act, it follows that the argument that the tax imposed by the impugned Act is similar to that imposed by the 1957 Act, inasmuch as both the enactments imposed the same kind of tax, viz., a tax on motor vehicles, must fail.

53. What I have said so far, will also dispose of the criticism made of the impugned Act that its provisions amount to unreasonable restrictions inasmuch as the operators who have no right to collect the tax from the passengers or the owners of the goods carried by Stage carriages are under a liability to pay that tax from their own income. The only branch of this argument which remains to be considered is that addressed by Mr. N. S. Narayana Rao appearing for the petitioner in W.P. 1228 of 61 who is an operator of a public carrier vehicle. Mr. Narayana Rao has pointed out to us that whereas operators of stage carriages can collect as authorised by the proviso appearing u/s 3(1) (i) of the impugned

Act, as understood by us, the tax payable by the passengers or goods carried by them, the operators of public carrier vehicles are conferred no similar authority by the provisions of the Act.

54. Section 3(2) of the impugned Act specifies the tax payable in respect of goods carried by a public carrier vehicle which is 3 naye paise for every rupee of the freight charged by the operator. It is pointed out that there is no proviso under Clause (ii) of Sub-section (1) of Section 3 similar to that under Clause (i) of that sub-section, and that therefore we should hold that no authority has been conferred by the impugned Act on the operator of a public carrier vehicle to collect, in addition to the freight, the tax which he is undoubtedly liable to pay into the treasury.

55. Mr. Narayana Rao is right in pointing out to us that by a very inexplicable omission on the part of the Legislature, no proviso was added to Clause (ii) of Section 3(1) of the impugned Act similar to that appearing under Clause (i). If it had therefore been possible for us for that reason to come to the conclusion that the operator of a public carrier vehicle is prohibited from collecting from the owners of the goods carried by him, the tax imposed on those goods by the impugned Act, it would have followed that that part of the impugned Act by which the tax had been imposed on the goods carried by a public carrier vehicle, would be open to the reproach that the impost is not really upon the goods carried but upon the carrier.

56. But it seems to me on a proper construction of the entire scheme of the Act, and particularly from the provisions of Section 14, that an operator of a public carrier vehicle is as much entitled, as an operator of a stage carriage, to collect from his constituents the tax payable in respect of the goods carried. Section 14(2) of the Act which also confers the right on the operator of a public carrier vehicle to compound the tax payable by him as the operator of a stage carriage can do, prohibits the collection of tax by the operator of a public carrier vehicle, if he has entered into such composition. That, in my opinion, is how we should read Section 14(2). If the operator of a public carrier vehicle therefore enters into a composition and thereafter he is prohibited by Section 14(2) to collect from his constituents in addition to the fare or freight payable by them the tax payable under the Act, that sub-section would be unmeaning if the construction suggested by Mr. Narayana Rao is accepted, viz., that the operator of a public carrier vehicle can at no stage collect from his constituents, in addition to the freight payable by them, the tax payable by them. A provision like the one contained in Section 14(2) would be superfluous and unmeaning except on the hypothesis that the operator of a public carrier vehicle is as much entitled to collect the tax as the operator of stage carriage.

57. It is also to my mind clear that even in the absence of Section 14(2) it would have been open to us to come to that conclusion. Our duty in interpreting a statute like the impugned Act extends clearly even to the supply of careless omissions made by the Legislature, in order to give the legislation an effective

meaning and to prevent it from becoming devoid of effect. In that view of the matter, I cannot but regard the omission on the part of the Legislature to add to Clause (ii) of Section 3(1) a proviso similar to that which appears under Clause (i), as an omission attributable to forgetfulness. I am prepared to hold and I do hold that even in the absence of a very clear provision to that effect, an operator of a public carrier vehicle can add to the freight a sum equivalent to the tax payable under the Act and collect it from the owners of the goods carried by him. The fact that I can come to that conclusion will make the argument advanced by Mr. Narayana Rao that there is an imposition of unreasonable restrictions on the operators of stage carriages or operators of public carrier vehicles, unavailable to him.

58. Now if therefore, the argument that an unreasonable restriction has been imposed on the activity of trade cannot succeed, and if we come to the conclusion as, in my opinion, we should, that the restriction on the trade activity imposed by the impugned Act is a reasonable restriction, the only other question which remains to be considered is whether it is a restriction imposed in the public interest. That that restriction, even though it is a reasonable restriction, should be in the public interest, is the requirement not only of Article 304(b) but also of Clause (5) of Article 19 of the Constitution.

59. It was not contended before us on behalf of any of the petitioners, and in my opinion very rightly, that if the imposition of the tax which is assailed in these cases can be regarded as a reasonable restriction, such restriction was not one imposed in the public interest. It is a well established proposition that a tax is the contribution of the citizen for the support of the State and for all public needs. It is an enforced payment for public expenses, so that the Government may defray the expenses incurred in the common interest of all. The imposition of, a tax which is imposed for the purpose of raising revenue is therefore one imposed in the public interest. And that being so, the impugned Act which was enacted entirely in accordance with Clause (5) of Article 19 and the provisions of Article 304(b), does not expose itself to the criticism that it is one made either in infringement of a fundamental right or in transgression of the provisions of Article 304(b) of the Constitution.

60. It was next urged that even so we should strike down the impugned Act on the ground that it is discriminatory. The argument presented was that, since the 56th entry in the State List bestows competence on the State Legislature to levy a tax on passengers and goods carried by road, it was not within the competence of the State Legislature to select only those passengers and goods carried by stage carriages and public carrier vehicles as the object of taxation. Every passenger and all kinds of goods carried by road, by whatever transport, according to the argument, should have been taxed. Passengers carried by taxi cabs, it was pointed out, were not liable to pay any tax and likewise goods carried by every other transport than stage carriages and public carrier vehicles. It was argued that there was no reason why only passengers carried by stage

carriages should be selected for the payment of tax and why a person who was carried by a taxi or a motor bicycle or some other kind of similar transport was not also subjected to the payment of tax.

61. The argument that there was any hostile discrimination in respect of passengers carried by stage carriages and public carrier vehicles, should not, in my opinion, commend itself to us. It is not necessary for a Legislature which is bestowed competence, to impose a tax on persons or things of a particular class to impose it on all of them. It can impose the tax only on some of them, if they fall within a reasonable classification and for that purpose the Legislature has clearly the power to make a selection.

62. Now in these cases, the 56th entry of the State List bestows competence on the Legislature to impose a tax on passengers and goods carried by road. If the argument presented should be accepted, it means that it would not be open to the Legislature to select a particular category of passengers or goods carried by road and to impose a tax on them, and has no option if it chooses to levy a tax but, to impose such tax on all passengers and goods carried by road, by whatever transport they might have been carried. The acceptance of this argument would lead to the result that all passengers carried by road even if they are carried by bullock carts, tongas, rickshaws, bicycles, motor bicycles, or even on horse back, should be taxed, and if not no passenger or goods carried by road could be taxed.

63. It is too late now, in my opinion, for any one to contend that such is the construction we should place upon any of the entries in the Legislative Lists which are attached to the Constitution. If the Legislature has been given the power to make a law imposing a tax on passengers and goods carried by road, it need not and is not bound to impose a tax on all passengers and goods carried by road, by whatever method of transport they might have been carried. It is open to the Legislature to select passengers carried by a particular kind of transport, provided the selection rests upon a reasonable classification.

64. Now the object of the impugned Act was to levy a tax on passengers and goods carried by stage carriage and public carrier vehicles. The passengers carried by stage carriages, to my mind, are plainly those falling within a category by themselves, the classification made by the Legislature being one which cannot but be regarded as reasonable. Likewise, goods carried by public carrier vehicles also fall within a similar classification. It cannot be said that "passengers carried by a taxi and passengers carried by a stage carriage are so similarly situated that they cannot be put into different classifications. A passenger carried by a taxi who pays a higher fare, out of all proportion to the fare which a passenger carried by a stage carriage pays, belongs to a different class of persons from those composed of persons carried by stage carriages. Similarly goods carried by a transport vehicle such as a taxi or a bullock cart, or a transport drawn by a horse belong to a class entirely different from goods which are carried by a public carrier vehicle. It is obvious that it would have been open

to the Legislature if it had also imposed tax upon the goods carried by a taxi or by a bullock cart to impose such tax at a rate different from that imposed on goods carried by a public carrier vehicle which would not have been possible on any other supposition than that the goods carried by one kind of transport belong to a class different from the goods carried by another for the purpose of being taxed.

65. That being the position, and having regard to the fact that the classification made should be regarded as a reasonable classification, I am of the view that it is not possible for the petitioners to attack the impugned Act on the ground that it is discriminatory.

66. There is likewise no merit in the argument advanced that the goods carried by a stage carriage are charged under the impugned Act at a higher rate than those carried by a public carrier vehicle. The two kinds of goods, in my opinion, are clearly goods falling into different classifications for the purpose of the Act and they cannot be regarded as similar goods even though the commodity carried may be the same.

67. One more submission which was made to us by Mr. Anantharamaiah appearing on behalf of the petitioner in W. P. 1320 of 1961 was that his client who is an operator of a contract carriage is not liable under the provisions of the Act to pay into the treasury any tax in respect of the passengers carried by him. His argument was that the only passengers on whom the impugned Act imposed a tax are passengers carried by a stage carriage as defined by the Motor Vehicles Act and that since a contract carriage is not for the purpose of the Motor Vehicles Act a Stage carriage, we should hold that the impugned Act does not impose a tax on passengers carried by a contract carriage.

68. Mr. Anantharamaiah's attempt was to place reliance upon the preamble to the Act which says that the Act was a legislation to provide for the levy of tax on passengers and goods carried in stage carriages and public carrier vehicles.

69. Now, if it was possible for us to understand the expression "stage carriage" appearing in the preamble and in Section 3(1) which is the charging section as a stage carriage defined by the Motor Vehicles Act, Mr. Anantharamaiah would have succeeded in his argument. But his argument overlooks the definition of a "stage carriage" contained in Section 2(10) of the impugned Act which reads:

" "Stage carriage" means a motor vehicle carrying or adopted to carry more than six persons excluding the driver, which carries passengers for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey, and includes such carriage or other omnibus when used as a contract carriage within the meaning of the Motor Vehicles Act, 1939 (Central Act IV of 1939);"

70. This definition makes it clear that the expression "stage carnage" wherever it occurs in the impugned Act has a meaning entirely different from that which it

bears for the purpose of the Motor Vehicles Act. Whereas the Motor Vehicles Act makes a distinction between a stage carriage and a contract carriage, the impugned Act does not. The impugned Act, as can be seen from the definition, refers both to the stage carriages and the contract carriages as together belonging to the category of stage carriages.

71. For the purpose of the impugned Act, a contract carriage is as much a stage carriage as a stage carriage defined by the Motor Vehicles Act is. That is clear from the latter portion of the definition of a "stage carriage" contained in Section 2(10) of the impugned Act. I cannot acquiesce in the construction suggested by Mr. Anantharamaiah that the only contract carriage which can be regarded as a stage carriage for the purpose of the impugned Act is that stage carriage defined by the Motor Vehicles Act which is temporarily used as a contract carriage with the permission of the Transport authorities exercising jurisdiction and functioning under the Motor Vehicles Act. The expression such carriage" occurring in the latter half of the definition contained in Section 2(10) does not, as contended by Mr. Anantharamaiah, refer to the motor vehicle "which carries passengers for hire or reward at separate fares paid by or for individual passengers" but only to a "motor vehicle". In other words, the meaning of the definition is, that every motor vehicle which is used as a contract carriage within the meaning of the Motor Vehicles Act is also a stage carriage for the purpose of the Act.

72. The acceptance of the construction suggested by Mr. Anantharamaiah would lead to a very incongruous result. What Mr. Anantharamaiah asks us in effect to hold is that it is only that carriage in which the passengers pay separate fares which is nevertheless used as a contract carriage that, can be regarded as a stage carriage for the purpose of the impugned Act. The argument, in my opinion, has only to be stated to be displaced by its own unsustainability. For, there can be no contract carriage for a journey in which individual passengers can pay separate fares. The moment the passengers pay separate fares it ceases to be a contract carriage, and the definition contained in Section 2(10) which includes contract carriages within the category of stage carriages would become meaningless.

73. There is nothing either in Section 43(1) or in Section 48 or in Section 56 of the Motor Vehicles Act on which reliance was placed on behalf of the, petitioners which can assist them in these cases. Those provisions, it was pointed out to us, prohibited the collection by the operator of a stage carriage or of a public carrier vehicle from the passengers or the owners of the goods as the case may be, of any fare or freight in excess of that fixed by the authorities functioning under the Motor Vehicles Act.

74. Now, as already pointed out, the fact that the operator of a stage carriage cannot collect any fare in excess of the specified fare, can really be of no consequence, since the proviso appearing under. Section 3(1) (i) expressly authorises the operator of a stage carriage to, collect the sum referred to in it, in addition to the, fare or freight. Even otherwise, since we, should, in my opinion,

regard the additional amount collected by the operator of a stage carriage or of a public carrier vehicle not as any additional, fare or freight but only as a tax which he has a right to collect, because he is under a liability to pay, the additional amount so collected by him being neither fare nor freight does not fall within the prohibition of the provisions of the Motor Vehicles, Act.

75. I shall now turn to the provisions of Section 3(2) which, according to Mr. Ramachandra appearing for the petitioner in Writ Petition No. 1203 of 1961, are invalid provisions. His argument was that the sub-section authorised the levy of tax on passengers and goods carried outside the limits, of the State of Mysore. If that had been so, it would have been necessary for us to consider the validity of that, provision. But, the Government Pleader has told us that the State will not, under the provisions of Section 3(2), demand the payment of any tax in respect of passengers and goods carried on roads outside the State of Mysore, and that it is not the view of the State Government that any such demand could be properly made. This statement made by Mr. Government Pleader, in my opinion, makes it unnecessary for us to pursue this discussion any further.

76. Mr. Maheswarappa, appearing on behalf of the petitioners in Writ Petitions Nos. 1226 and 1227 of 1961, next contended that there was something in Section 16 of the impugned Act which placed Officers of companies in a more favourable position than partners of firms. Section 16 protects a person in charge of or responsible to a company for the conduct of its business against a prosecution for an offence committed without his knowledge, or if he had exercised due diligence for the prevention of the commission of that offence. The complaint made by Mr. Maheswarappa was that no such protection was afforded to the partner of a partnership.

77. I do not regard this complaint as substantial. It is plain that a person in charge of a company or its business and a partner of a partnership firm are not persons similarly situated, and it will also be clear from the provisions of Section 15 of the impugned Act, that most of the offences for which the delinquent may be prosecuted are offences committed wilfully or fraudulently.

78. Mr. S. J. Srinivasan, appearing for the petitioners in Writ Petition Nos. 1132, 1153 and 1273 of 1961, complained that there are some dissimilarities between the Madras Motor Vehicles Taxation of Passengers and Goods Act, and the impugned Act, inasmuch as under the Madras Act, passengers performing less than sixty miles a day had to pay a smaller tax whereas under the impugned Act the tax payable by all passengers is uniform. He pointed out to us that whereas in the Madras Act, operators of stage carriages performing less than fifty miles of journey a day were exempted from the payment of any tax, there was no such exemption in the impugned Act.

79. On the question as to whether the Legislature, when it enacted the impugned Act, would or should not have created exemptions, it is not for us to make an investigation. It is entirely a matter for the Legislature to determine whether

there should be any exemption and if so, what it should be.

80. Mr. Rangaswamy, appearing on behalf of the petitioners in Writ Petitions Nos. 1175, 1176 and 1177 of 1961, made what I regard as a very strange complaint. His complaint was that if an operator had to compound the tax payable by him, he had to compound for a definite period, as provided in the schedule to the impugned Act, whereas an operator who did not compound would be liable to pay the tax only in respect of the passengers carried by him, and that if he chose not to carry any passengers during a given period of time, he was not liable to pay any tax.

81. The answer to this argument is that Section 14 of the impugned Act is only an enabling provision, making it optional for the operator to compound without such composition being obligatory.

82. Now, before I proceed to consider a further attack made upon the Rules made under the impugned Act, under the provisions of Section 21 of that Act, I should dispose of an objection raised by Mr. Anantha Ramiah, the learned advocate appearing for the petitioner in Writ Petition No. 1320 of 1961, which rested on the provisions of Article 304(b) of the Constitution. That clause of the Constitution which empowers the imposition of reasonable restrictions on the freedom of trade, commerce or intercourse with or within a State as may be required in the public interest, directs that before any such restriction could be imposed by a law to the bill introduced or moved in the Legislature in respect of that law the previous sanction of the President should be obtained.

As already pointed out by me, such previous sanction of the President was admittedly not Obtained and what was obtained was the assent of the President to the Act after it was enacted and this assent was given on May 31, 1961. But the clear and complete answer to the argument addressed by Mr. Anantha Bamiah is what is contained in Article 255 of the Constitution, which reads:

"255. Requirements as to recommendations and previous sanctions to be regarded as matters of" procedure only. -- No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent

to that Act was given:

(c) where the recommendation or previous sanction required was that of the President, by the President".

83. This is what, in my opinion, we should say in spite of the argument addressed before us by Mr. Anantha Ramiah that the omission to obtain the previous sanction of the President, as required by Article 304(b) is not cured by the provisions of Article 255 of the Constitution.

84. What remains to be considered is the challenge made by Mr. Srinivasan,

appearing on behalf of the petitioners in Writ Petitions Nos. 1132, 1153 and 1273 of 1961, to the validity of certain rules made u/s 21 of the impugned Act. Mr. Srinivasan has pointed out to us that there was a publication in the official gazette on August 22, 1961, of the draft rules which the Government proposed to make, and September 15, 1961, was the date within which persons who are likely to be affected by those rules could make representations or send objections. Mr. Srinivasan contends that his clients did prefer their objections within that date and that although they had preferred those objections, they were not heard before the State Government published its final draft of the rules in the issue of the Gazette bearing the date September 25, 1961. The first complaint made by Mr. Srinivasan was that it was not within the competence of the State Government to make any rules without giving an oral hearing to the petitioners who had filed their objections to the draft rules.

85. It seems to me that this complaint cannot stand scrutiny. Section 21 of the impugned Act does not require the State Government, which is the rule-making authority to give any oral hearing. All that Section 23 of the General Clauses Act, which is applicable to the present cases, provides is that the draft rules should be published for the information of persons likely to be affected thereby. What the State Government did in calling for objections was to show an indulgence to the persons who were likely to be affected by those rules, which it was not bound to show. Even in the notification of August 22, 1961, all that the State Government stated was that the objections would be considered and it did not state that the objectors would be given a hearing.

86. The second submission made was that the rules had been made by the State Government even before the impugned Act came into force. It was pointed out that the impugned Act came into force only on October 1, 1961, whereas the rules were all made and completed on September 25, 1961, five days too early, and that therefore, the rules were invalid. But, it is admitted that the rules came into force only on October 1, 1961, and if what the State Government did was merely to take steps for the preparation of rules which it intended to make u/s 21 of the impugned Act, so that the Act and the Rules may together and simultaneously come into force and for that purpose, published a draft set of rules and invited objections to it, so that it may take into consideration representations made by persons likely to be affected by the Rules, it could not be said that what was only in the stage of preparation was a completed act, and that the Rules had been made by the State Government, which it had the power only to make after the Act came into force, before it could acquire that power.

87. There is yet another and more effective answer to this branch of Mr. Srinivasan's argument, which is contained in Section 22 of the General Clauses Act, which expressly confers on a rulemaking authority, in a case like the present one, where there is an interregnum between the date of the commencement of the Act and the date of its enactment, the authority to make rules even during such interregnum.

88. In the view that I take, these writ petitions must fail, and they should, in my opinion, be dismissed, and it is so ordered.

89. In the circumstances, there will be no order as to costs.

Mir Iqbal Hussain, J.

90. I agree.