

(1985) 03 KAR CK 0045
In the Karnataka High Court
Case No : Writ Petition No's. 5658 of 1976

ITI, HMT, HAL, BEL and BGML

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-03-1985

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19 (1) (f), 19 (f) (g), 226
Karnataka Motor Vehicles Taxation Act, 1976 — Section 19, 3 (1)

Citation : (1985) ILR (Kar) 1129

Hon'ble Judges : Puttaswamy, J; Narayana Rai Kudoor, J

Bench : Division Bench

Advocate : M.K. Shetty, for the Appellant; N. Santosh Hegde, for the Respondent

Judgement

Puttaswamy, J.—As the Petitioners in these cases have challenged two amending Acts to the Karnataka Motor Vehicles Taxation Act of 1957 (Karnataka Act 35 of 1957) ("the Act") on grounds that are common or inter-connected they can conveniently be disposed of by a common order. We, therefore, propose to dispose of them by a common order.

2. On the outskirts of the City of Bangalore there are 4 giant industrial undertakings of the Central Government called (i) Indian Telephone Industries Limited, ("ITI") ; (ii) Hindustan Aeronautics Limited, ("HAL"); (iii) Hindustan Machine Tools Limited, ("HMT) and (iv) Bharat Electronics Limited ("BEL") employing thousands of persons who have their residences in different parts of the City. In order to provide assured transportation facilities to their employees from their residential houses to their factories and vice-versa, these undertakings have maintained their own fleet of passenger buses. The undertakings collect a nominal amount from each employee depending on his salary or wages for the said service facility provided by them. Bharat Gold Mines Limited, ("BGML") is another Central Government under-taking that is engaged in operating the world famous Kolar Gold Fields mines in" the district of Kolar.

3. ITI is the petitioner in Writ Petitions Nos. 5658 of 1976 and 12794 of 1978,

HMT is the petitioner in Writ Petitions Nos. 5659 of 1976 and 12796 of 1978, HAL is the petitioner in Writ Petition No. 8629 of 1976 BEL is the petitioner in Writ Petition No. 12797 of 1978 and BGML is the petitioner in Writ Petition No. 39853 of 1982.

3. Prior to 1-7-1972 or even before that, ITI, HMT and HAL got their passenger vehicles registered as contract carriages with the Regional Transport Officer, Bangalore ("RTO") who was the registering authority of the area under the Motor Vehicles Act of 1939 (Central Act No. 4 of 1939 (MV Act)) and had obtained contract carriage permits u/s 51 of the MV Act from the Regional Transport Authority of the area ("RTA") which inter alia imposed a condition to the effect that they should carry their bona fide employees only and not the general public for hire or reward as the case of other contract carriage vehicles. Prior to 1-7-1972 contract carriage vehicles were subject to taxes at the rate of Rs. 35/- per seat per quarter under Entry No. 4 of the Schedule, Part-A of the Act and "omnibuses" falling within the meaning of that term occurring in Section 2(1&A) of the MV Act were subject to tax at the rate of Rs. 10/- per seat per quarter under the very same entry of that schedule. From 1-7-1972 the rate of taxes on contract carriage vehicles covered by contract carriage permits was enhanced from Rs. 35/- to Rs. 100/- per seat per quarter by the Karnataka Motor Vehicles Taxation (Amendment) Act of 1972 (Karnataka Act No. 6 of 1972) and its validity has been upheld by the Supreme Court.

4. With the sole object of avoiding the payment of heavy liability of taxes on their motor vehicles, ITI, HMT and HAL applied to the RTO to re-classify their vehicles as "omnibuses" which did not meet with success before him and the appellate authority under the MV Act. They then challenged those orders before this Court under Article 226 of the Constitution which was ultimately upheld by an Appellate Bench of this Court in Writ Appeal No. 413 of 1974 and connected cases decided on 13-6-1976 (since reported in) *Indian Telephone Industries and Others Vs. Regional Transport Officer, Bangalore and Others*, which was challenged by the State under Article 136 of the Constitution before the Supreme Court in SLP (Civil) No. 188 to 190 of 1976. On 14-4-1976 the Supreme Court rejected the said Special Leave Petitions (Exhibit-B in Writ Petition No. 12794 of 1978).

5. In order to overcome the situation created in ITI case, which naturally resulted in considerable loss of revenue the State enacted two amendments to the Act. The Karnataka Motor Vehicles Taxation (Amendment) Act of 1976 (Karnataka Act No. 38 of 1976) (The 1976 Act) which came into force on 1-7-1976 that made various amendments to the Act with which we are not concerned, inserted a new entry specifically dealing with passenger vehicles owned by industrial undertakings and the rate of tax leviable on them. In Writ Petition No. 5658 5659 and 9629 of 1976 the Petitioners have challenged the validity of the 1976 Act. The Karnataka Motor Vehicles Taxation (Amendment) Act of 1978 (Karnataka Act No. 19 of 1978) ("the 1978 Act") has been enacted to overcome or render the judgment of this Court in ITI's case, ineffective and

primarily deny the refund of taxes to which ITI, HMT, HAL and others, if any had become entitled to under the said order made by this Court. In Writ Petition s Nos. 12794, 12796, 12797 of 1978 and 39853 of 1982 (he Petitioners have challenged the validity of the 1978 Act. Both these Acts are challenged on a number of grounds. We will notice and deal with them in their order.

6. Sri K.J. Shetty, Learned Advocate has appeared for the Petitioners. Sri N. Santhosh Hegde, Learned Advocate-General has appeared for the respondents.

7. Both sides have relied on a large number of rulings in support of their respective cases. We will refer to them at the appropriate stages.

8. In Writ Petitions Nos. 12794 12797 of 1978 and 39853 1982 the Petitioners have urged that the impugned Acts were violative of Articles 19(1)(f) and (g) and 31(1) of the Constitution. Sri Shetty, in our opinion, very rightly did not pursue this contention of these Petitioners.

9. Every one of the Petitioners in the above cases is a Government Company and is a juristic person and not natural person. Article 19 of the Constitution can be invoked by natural persons and not juristic persons is well settled. Hence, these Petitioners cannot invoke Article 19(1)(f) and (g) of the Constitution and their challenge to the impugned Acts as offending those sub-articles of Article 19 is liable to be rejected.

10. Articles 19(1)(f) and 31 of the Constitution that, guaranteed right to acquire, and hold property and the right to claim compensation for the property acquired for a public purpose, have been deleted by the Constitution 44th Amendment Act that came into force on 1-8-1979 With the deletion of those Articles, these Petitioners, even if they can invoke those Articles, cannot sustain their challenge to the Acts. From this also the challenge of the Petitioners based on Articles 19(1) (f) and 31 of the Constitution is liable to be rejected.

11. We will also assume that these cases will have to be examined as if Articles 19(1)(f) and 31 are part of our Constitution and examine the case of these Petitioners on that basis also.

12. Articles 19(1)(f) and (g) and 31 of the Constitution do not guarantee immunity from taxation. Even otherwise these Petitioners have not even, alleged, much less proved that the taxes imposed are confiscatory and annihilate their trade and business even to justify an examination of that plea by this Court. On these grounds their challenge based on Articles 19(1)(f) and (g) and 31 of the Constitution is liable to be rejected. We, therefore, reject the same.

13. Sri Shetty has urged that the classification of motor vehicles made in the MV Act was absolute, unalterable and was bound to be followed by the State also for levying taxes under the Act and the same cannot be altered and a new Classification made in the Act subjecting them to a different and a higher rate of tax on the basis of such a classification and when so done, results in conflict with the MV Act, a parliamentary enactment in violation of Article 254 of the

Constitution, on which ground, the impugned Acts were liable to be struck down. In support of his contention Sri Shetty has strongly relied on the ruling rendered by us in The Road Transport Corporation [P] Ltd -v.- The Assistant Regional Transport Officer and Others.

14. Sri Hegde refuting the "contention of Sri Shetty has contended that the plenary taxing power of the State to classify, reclassify and subject them to such rates of taxes as may be decided from time to time and retrospectively also was in no way controlled by the MV Act. In support of his contention Sri Hegde has strongly relied on the ruling of the Supreme Court in B. A. Jayaram And Others - v.- Union of India And Others.

15. The 1976 Act made a number of amendments to the Act. We are concerned with Section 19 of that Act which came into force from 1-7-1976. Section 19 of the 1976 Act substituted the earlier schedule to the Act. Entry No. 6 of the new schedule introduced by the 1976 Act providing for a separate classification of motor vehicles owned by industrial undertakings registered in the State of Karnataka, with which alone we are concerned and the rates of taxes payable thereon, that is material reads thus :

Class of vehicles Quarterly tax for which fitted with pneumatic tyres.

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6. Motor Vehicles owned by industrial undertakings exclusively used for conveyance of their employees from their residence to their factories and and vice versa and permitted to carry more than five persons excluding the driver for every passenger which the vehicle is permitted to carry.

Rs. 50.00

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As a result of this specific entry in the Act, motor vehicles owned by the industrial undertakings exclusively used for conveyance of their employees from their residences to their factory and vice-versa and permitted to carry more than 5 persons excluding the driver were subjected to the rate of tax stipulated against that entry from 1-7-1976 and not in terms of the earlier entry, if any, that regulated the payment of taxes under the Act. The effect of this amendment was that from 1-7-1976, the classification of the vehicles owned by the industrial undertakings for purpose of the MV Act, became irrelevant and could not be the guiding factor or the basis for levy of taxes under the Act.

16. The statement of objects and reasons accompanying the Karnataka Motor Vehicles Taxation (Amendment) Bill 1978 (L.A. Bill No. 9 of 1978) that ultimately became the 1978 Amending Act which in very clear terms, states that the same had been introduced to overcome the decision rendered by this Court in ITI's case reads thus :

"The Karnataka Motor Vehicles Taxation Act was amended by the Karnataka

Motor Vehicles Taxation (Amendment) Act, 1972 (Karnataka Act No.6 of 1972). By this amendment the tax payable in respect of contract carriages was enhanced from Rs.35/-to Rs. 100/-per seat per quarter with effect from 1st July, 1972. Aggrieved by this enhancement, industrial undertakings like M/s Hindustan Aeronautics Ltd., Indian Telephone Industries and Hindustan Machine Tools challenged the validity of the classification of their vehicles as contract carriages used for transporting employees to and from their places / or residences to the factory and levy of the tax based on such classification. Their writ appeals were allowed by the High Court and it was held that these vehicles of industrial undertakings used for the transportation of their employees were not contract carriages within the meaning of the provision of the Motor Vehicles Act, 1939 and the special leave application filed by the State Government before the Supreme Court was dismissed on 14th April, 1976. Based on the decision of the High Court, the above three industrial undertakings have applied to Government for classification of their vehicles as contract carriages chargeable at Rs. 35/- per seat per quarter and to refund the difference of tax collected from them in respect of their vehicles. " The claim of Hindustan Aeronautics Limited comes to Rs. 35. 40, 430 and similar refund will also have to be made in respect of M/s. Indian Telephone Industries and Hindustan Machine Tools and any other industrial undertakings which may put forth such claims. Such refunds if now made would upset the resources position of the State Government and also have an adverse effect on the State revenue. It is, therefore necessary to pass a legislation to overcome the situation arising out of the decision of the High Court to avoid the refund of such considerable sums of money.

Hence, this bill."

The bill as passed by the bicameral legislature of the State received the assent of the Governor on 13-9-1978 and was first published in the Karnataka Gazette (Extraordinary) dated 15-9-1978.

17. Sections 1 to 3 of this Amending Act that are material read thus :

"1. Short title, commencement and duration,"(1) This Act may be called the Karnataka Motor Vehicles Taxation (Amendment) Act, 1978.

2. It shall be deemed to have come into force on the 1st day of July, 1972 and shall remain in force upto and inclusive of the 30th day of June, 1976.

2. Amendment of the schedule. In part "A", of the Schedule to the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957)

(i) in item 4, for the word., figures and letter "item 4A" the words figures and letters ""item 4A and 6A" shall be substituted ;

(ii) in item 4A, for the words "Motor Vehicles plying for hire or reward", the words figures and letters. "Motor Vehicles other than those referred to under item 6A plying for hire or reward" shall be substituted.

(iii) after item 6, the following item shall be inserted, namely:—"6A. Motor Vehicles owned by Industrial Undertaking. exclusively used for conveyance of their employees from their residence to their factories and vice versa and permitted to carry more than five persons excluding the driver :

for every passenger which the vehicle is permitted to carry 100-00 150-00"

3. Validation - (1) Notwithstanding anything contained in any judgment, decree or order of any Court; the levy or collection of any tax made or purported to have been made under items 4A of Part A of the schedule to the Karnataka Motor Vehicles Taxation Act, 1957 (Karnataka Act 35 of 1957) shall be deemed to be as valid and effective as if such levy or collection had been made under the relevant provisions of said Act as amended by this Act and accordingly-

(a) no suit or other proceedings shall be maintained or continued the in any Court for the refund of any such tax : and

(b) no Court shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is herein declared that nothing under subsection (1) shall be construed as preventing any person,.

(a) from questioning, in accordance with the provisions of the principal Act as amended by the is Act, the levy or collection of tax referred to in subsection (1) ; or

(b) from claiming refund of any excess of amount paid by him by way of tax under the principal Act as amended by this Act."

Sub-section (2) of Section 1 gives retrospective effect to the amending Act from 1-7-1972. Section 2 introduces a new entry viz., Entry 6A in the schedule to the Act, regulating the payment of taxes on vehicles owned by industrial undertakings at the rates stipulated therein from 1-7-1972 and not at any other rate that earlier prevailed. The effect of this amendment is that from 1-7-1972 the earlier entry viz., "omnibuses" on the basis of which taxes had been levied and collected on motor vehicles owned by industrial undertakings totally disappeared from that day and in their place those vehicles became exigible to taxes from 1-7-1972 to 30-6-1976 in terms of the new entry No. 6A of the 1978 Act. Section 3 incorporated the usual clause for rendering the judgment of this Court in ITI's case ineffective and denying the fruits of that judgment/order as confirmed by the Supreme Court. But, here itself, it is necessary to notice that on this very analysis, the judgment of this Court in so far as it granted relief prior to 1-7-1972 remains unaffected.

18. We first consider it useful to notice some of the general rules of interpretation of entries found in the seventh Schedule to the Constitution, deducible from the rulings of the Supreme Court, Privy Council and the Federal Court without unnecessarily referring to all their details.

19. The various entries in the three lists are not powers of legislation but fields of legislation. The power to legislate is given by Article 246 and other Articles of the Constitution

20. The entries in the lists are merely legislative heads and are of an enabling character. The language of the entries should be given the widest scope of which their meaning is clearly capable, because they set up a machinery of Government. Each general word should, accordingly be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. In interpreting an entry it would not be reasonable to import any limitation by comparing or contrasting that entry with any other entry in the same list. The entries in the different lists should be read together without giving a narrow meaning to any of them.

21. The entries in the legislative lists have been divided into two groups , one relating to the power to tax, and the other relating to the power of general legislation relating to specified subjects. Taxation is considered as a distinct matter for purpose of legislative competence. Bearing these principles it is now necessary to ascertain the scope of the relevant entries with a very brief back drop of the Act in the first place.

22, The Act, which is a consolidating and Amending Act was enacted by the new State of Karnataka to levy taxes on motor vehicles in exercise of the legislative powers derived from Article 246(3) and Entry 57 List-II, State List of the 7th Schedule of the Constitution. The Act came into force from 1-1-1958. In the year 1961 the State in exercise of the powers derived from Article 246(3) and Entry 56 of List-II, State List, enacted the Karnataka Motor Vehicles (Taxation on Passengers and Goods) Act, 1961 (Karnataka Act 10 of 1961) to levy taxes on passengers and goods in stage carriages and public carrier vehicles in the State. The 1961 Act has been repealed from 1-7-1976 by the Karnataka Motor Vehicles Taxation (Amendment) Act of 1976 however merging the taxes levied with the taxes levied under the Act. From 1-7-1976 the Act has provided for levy of taxes on motor vehicles and on passengers and goods.

23. Entries 56 and 57 of List-II. State List reads thus :

"56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List-III."

Entry No. 35 of List-III, Concurrent List, reads thus :

"35 Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

This entry found In the concurrent list enables both the Parliament and the States to make laws on mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. In State of Assam and Others -

v.- Labanya Probha Devi the Supreme Court explained the scope of this entry vis-a-vis Entry No. 57 of List-I State List in these words :

"Entry 35 of the Concurrent List; it is solely concerned with taxes on vehicles within the meaning of Entry 57 of List I. The two entries deal with two different matters though allied ones-one deals with taxes on vehicles and the other with the principles on which such taxes are to be levied. When two entries in the Constitution, whether in the same List or different Lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression "principles of taxation" denotes rules of guidance in the matter of taxation."

So far the Union Parliament has not enacted any law regulating the principles of taxation or the rules of guidance, of taxation on motor vehicles and, therefore, the plenary powers of legislation available to the State under Article 246(3) and Entries No. 56 and 57 of List-II, State List, the nature of taxes under those entries, being compensatory taxes (vide : Automobile Transport (Rajasthan) Ltd. Etc.-v.-State of Rajasthan and Others and M/s International Tourist Corporation Etc.-v.-State of Haryana and Others) is absolute, unrestricted and is not subject to any control by the Union Parliament or the MV Act which is only a regulatory enactment.

24. Entry 57 enables the State to make laws regulating levy of taxes on vehicles , whether mechanically propelled or not. The taxation power of the State to levy taxes on vehicles whether mechanically propelled or not suitable for use on roads including tramcars is not and cannot be controlled by the MV Act. The MV Act which is only a regulatory measure regulating the mechanically propelled vehicles or motor vehicles does not in any way affect or control the 3. AIR 1967 SC 1575 4. The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, 5. International Tourist Corporation and Others Vs. State of Haryana and Others, plenary taxing power of the State on vehicles whether they are mechanically propelled or not that are suitable for use on roads. In Jayaram's case the Supreme Court has explained the scope of Entries Nos. 56 and 57 in these words :

"9. By virtue of the power given to them by Entries 56 and 57 of List-II every one of the States has the right to make its own legislation to compensate it for the services, benefits and facilities provided by it for motor vehicles operating within the territory of the State. Taxes resulting from such legislative activity are by their very nativity and nature, cast find character, regulatory and compensatory and are therefore, not within the vista of Art 301.. unless as we said, the tax is a mere pretext designed to injure the freedom of inter-State trade, commerce and inter-course. The nexus between the levy and the service is so patent in the case of such taxes that we need say no more about it. The Karnataka Motor Vehicles Taxation Act and the Motor Vehicles Taxation Acts of

other States are without doubt regulatory and compensatory legislations outside the range of Article 301 of the Constitution.

10. It is true that the object of enacting Section 63(7) by the Parliament was to promote All India and Inter-State tourist traffic. But, "taxes on vehicles....suitable for use on roads" is a State legislative subject and it is for the State Legislature to impose a levy and to exempt from the levy. True again. Entry 57 of the State List is subject to Entry 35 of the Concurrent List and as explained by us at the outset, it is, there-fore open to the Parliament to lay down the principles on which taxes may be levied on mechanically propelled vehicles. But, the Parliament while enacting Section 63(7) of the Motor Vehicles Act refrained from indicating any such principles, either expressly or by necessary implication. The State's power to tax and to exempt was left uninhibited bited....."

On this enunciation and the enunciation made in Labanya Probha Devi's case, there cannot be any doubt on the legislative competence of the State to separately classify motor vehicles for purposes of taxation without adhering to the classification made in the MV Act.

25. The classification of vehicles for purposes of the MV Act, a regulatory enactment regulating motor vehicles has nothing to do with the classification, sub-classification or re-classification of vehicles for purpose of taxation so long as that classification, sub-classification and re-classification conforms itself with the other requirements of the Constitution. The power to classify motor vehicles for purposes of taxation, sub-classify, reclassify is not hedged or controlled by Entry 35 of the Concurrent List or the law made by the Union Parliament in respect of that entry. We see no merit in the contentions of the Petitioners that the State was bound to regulate the levy of taxes on motor vehicles on the basis of classification of vehicles made in the MV Act.

26. What emerges from the above analysis is that the question of conflict between the MV Act, a parliamentary legislation on the subject and the Act, which is a State Act does not at all arise. When there is no conflict, the question of the parliamentary enactment prevailing over the State Act and the application of Article 254 of the Constitution does not also arise.

27. In Road Transport Corporation's case, on which strong reliance has been placed by Sri Shetty, the facts in brief were these : In B. V. Subramanya Shetty - v.- Senior R.T.O. Mysore and Others a Full Bench of this Court over ruling an earlier ruling of this Court in V. Narayana Reddy -v.- Commissioner for Transport ruled thus :

"The correctness of the above view is under challenge before us. In the above decision this Court has proceeded on the assumption the at registration of motor vehicles for purposes of the Taxation Act, is different from the registration of a motor vehicle for purposes of the Motor Vehicles Act. That assumption is not, in our opinion, correct. There are no provisions relating to the issue of a certificate of registration of a motor vehicle under the Taxation Act, Section 2(j) of. the

Taxation Act treats the Motor Vehicles Act as a cognate Act by declaring that words and expression used, but not define in it, shall have the meaning assigned to them in the Motor Vehicles Act. The fiction embodied in the Explanation to Section 3(1) of the Taxation Act comes into play only when a certificate of registration is obtained under Chapter-II of the Motor Vehicles Act and 6. ILR 1984(2) KAR 85 7. 1971(2) MLJ 319 continues to operate as long as the said certificate is current. The said certificate ceases to be current only by operation of the relevant provisions of the Motor Vehicles Act. It is not in any way affected by any of the provisions of the Taxation Act. Hence, in order to find out whether a certificate of registration is current or not, we have to look to the provisions of the Motor Vehicles Act only. It follow; that there cannot be a certificate of registration which is not current for purposes of the Motor Vehicles. Act, but current for purposes or the Taxation Act, Under the Motor Vehicles Act a certificate of registration may cease to be current in several ways, it comes to an end on the expiry of the prescribed period u/s 25 of the Motor Vehicles Act. It ceases to be current by an order of suspension passed u/s 33 of the Motor Vehicles Act or by an order of cancellation u/s 34 of the Motor Vehicles Act. In the case o a transport vehicle, when it does not carry a fitness certificate, Section 38(1) states that it shall not be deemed to have been validly registered for purposes of Section 22 of the Motor Vehicles Act. That means that during the period when the transport vehicle is not carrying a fitness certificate, its certificate of registration will be inoperative or non-existent and it cannot be used for carrying passengers or good vide *Puran Singh Vs. State of Uttar Pradesh and Others*, Explanation to Section 3(1) of the Taxation Act cannot be applied to such a case (vide - *State of Karnataka -v.- Boodi Reddappa* - 1975(1) Kar. L.J. 206. We do not, therefore, agree with the view expressed in *Narayana Reddy's* cage7 on the above question.

xx xx xx On a careful consideration of all aspects of the case, we fell that the decision in *Narayana Reddy's* case which takes a view contrary to the above view, is erroneous and we overrule it."

In order to overcome this decision, the Act was also amended by the 1976 Act introducing a note to Section 3 of the Act, which is the charging section from the very inception of the Act the validity of which was challenged before this Court on two grounds (i) that the same was in conflict with the provisions of the MV Act regulating fitness certificate of vehicles and the currency of their registration under that Act and was, therefore, void, and (ii) that the Amending Act had not removed the cause of invalidity declared-by-this Court in *Subramanya Shetty's* case and had not rendered the judgment in effective. On an examination of those two questions, this Court accepted both of them. But, that is not the position in the present cases. The two amending Acts enacted in exercise of its plenary powers of legislation do not trench on the parliamentary legislation and do not conflict with the provisions made therein in respect of motor vehicles owned by industrial undertakings. We are of the view that the true ratio in *Road Transport Corporation's* case does not really bear on the point and assist the petitioners.

28. On the foregoing discussion, we see no merit in the contention of the petitioners and we reject the same.

29. Sri Shetty has next contended that the two amending Acts were colourable pieces of legislation and were therefore, liable to be struck down. In support of his contention Sri Shetty has strongly relied on the ruling of the Supreme Court in K.C. Gajapati Narayan Deo and others -v.- State of Orissa.

30. We have earlier found that the two amending Acts were within the legislative competence of the State Legislature. When once it is held that the Amending Acts were within the legislative competence of the State, the question of even examining and applying the principles of colourable legislation, the true scope and ambit of which has been explained by the Supreme Court in Gajapati Narayan Deo's case do not arise and in any event has no application at all. We see no merit in this contention of the petitioners and reject the same.

31. Sri Shetty has urged that the State had arbitrarily chosen motor vehicles owned by industrial undertakings for a different and hostile treatment and the two Acts were violative of Article 14 of the Constitution.

8. K.C. Gajapati Narayan Deo and Others Vs. The State of Orissa, 32. The vehicles owned by industrial undertakings which form a separate and distinct class, have been treated uniformly. The service the industrial undertakings render to their employees has really no relevance in subjecting their vehicles, that use the roads maintained by the State to a different treatment. In any event, that is a matter exclusively for the legislature to decide and not for the Courts. In the light of the principles enunciated by the Supreme Court in The Twyford Tea Company Limited and another -v.- The State of Kerala and another and R. K. Garg -v.- Union of India this contention of the petitioners is wholly misconceived and has no merit. We, therefore, reject this contention of the petitioners.

33. Sri Shetty has urged that the 1978 Act has really over-ruled the decision of this Court in ITI's case which was impermissible, unconstitutional and therefore the same was liable to be struck down. In support of his contention, Sri Shetty has strongly relied on the ruling of the Supreme Court in The Municipal Corporation of the City of Ahmedabad and another-v.-The New Shrock SPG. and WVG. Co. Ltd. etc.

34. Sri Hegde has urged that the 1978 Act has removed the cause of invalidity from its inception and had rendered the judgment of this Court ineffective. In support of his contention Sri Hegde strongly relied on the ruling of the Supreme Court in Shri Prithvi Cotton Mills Limited -v.-Broach Borough Municipality and other and D. Cawasji & Co. Mysore -v.- The State of Mysore and another.

35. A legislature incur Country cannot over-rule a Court decision but can legally overcome a decision is well settled. In Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, 11. The Municipal Corporation of

The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc., 12. Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others, 13. D. Cawasji and Co., Mysore Vs. State of Mysore and Another, has explained the principles that should be borne in adjudging the validity of such an enactment in these words :

"4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statute in general. When a legislature sets out to validate a tax declared by a Court to be illegally collected under ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the legislature must possess the power to impose the tax, for, it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of the judicial power which the legislature does not" possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction, Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes, the legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon Courts. The legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the Court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject matter and whether in making the validation it removes the defect which the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

In the Municipal Corporation of the City of Ahmedabad's case on which reliance is placed by Sri Shetty as also the learned Advocate General in Cawasji & Company's case, the Court has only reiterated these very principles. Bearing these principles we now proceed to examine the validity of 1978 Act.

36. We have earlier reproduced the material provisions of the 1978 Act.

37. We have earlier found that the 1978 Act was within; the legislative competence of the State for that is the very first thing the Court should examine in examine the validation Act.

38. Section 1(2) gives retrospective effect to the Act from 1-7-1972. Section 2 incorporates a new entry viz., Entry No. 6A from 1-7-1972 providing for different rate of taxes on motor vehicle owned by industrial undertakings. Sections 1 and 2 of the 1978 Act has removed the cause of invalidity noticed by this Court in ITI's case. If those provisions were on the statute book as on the day this Court rendered its judgment in ITI's case, this Court would not have rendered that judgment and the same would have been different. Section 3 then renders the judgment of this Court in ITI's case ineffective. A careful analysis of the provisions of the 1978 Act reveal that it had legally and constitutionally rendered the judgment of this Court in ITI's case ineffective and had not overruled that decision as happened in the Municipal Corporation of the City of Ahmedabad's case. The Act clearly falls within the purview of the principles enunciated by the Supreme Court in Prithvi Cotton Mills Limited's case.

39. The plenary power of the State to legislate comprehends in itself the power to make a law retrospectively. The retrospectivity given to the Amending Act does not, therefore, suffer from any infirmity (vide : Rai Ramakrishna and others Etc -v.- State of Bihar).

40. On the above discussion, we hold that there is no merit in the challenge of the petitioners to the 1978 Act. We, therefore, reject the same.

41. HAL filed its earlier Writ Petition No, 542 of 1972 before this Court on 2-3-1972 and the appellate order of this Court in Writ Appeals Nos. 413, 414 and 417 of 1974 directs refund of difference of taxes paid from the date of filing of the said Writ Petition before this Court. The 1978 Act operates from 1-7-1972 and denies refunds only from that date and not earlier. But, not with standing the same, the petitioners in these cases have not urged and sought for relief for periods prior to 1-7-1972. We find that on the terms of the earlier Order and the 1978 Act. HAL is entitled for refund from 2-3-1972 to 30-6-1972. But, for the month of March, 1972 HAL is not entitled for refund as it had used the vehicles on the first and second of that month. In this view, HAL can only claim refunds of difference of taxes only for the months of April, May and June, 1972 and not for any other period. We are of the view that this relief should also be granted to the other petitioners though none of them have claimed and urged for the same before us, which however was vehemently opposed by the learned Advocate General.

42. The statement of objects and reasons to Bill No. 9 of 1978 that became the 1978 Act shows that the State was primarily concerned in denying the benefit of refund of taxes to the vehicles owned by industrial undertakings in obedience to the directions of this Court in ITI's case. But, in enacting the 1978 Act, with

retrospective effect, the State had sought to tax vehicles at the higher rate of Rs. 100/- per seat per quarter. When we pointed out this inequity and anomaly, Sri Hegde has filed an undertaking on 20-2-1985 stating that 14. Rai Ramkrishna and Others Vs. The State of Bihar, the State would not collect over and above Rs. 50/- per seat from the petitioners, for the period from 1-7-1972 to 30-6-1976. We need hardly say that this undertaking removes the inequity and anomaly.

43. In the light of our above discussion, we make the following orders and directions :

(i) We uphold the validity of 1976 and 1978 Amending Acts and dismiss these Writ Petitions to that extent ;

(ii) We direct the respondents to refund the difference of taxes collected from the petitioners for the period from 1-4-1972 to 30-6-1972 (both days inclusive) in terms of the order made by this Court in Writ Appeal No. 413 of 1974 and connected cases decided on 13-6-1975. But, in regulating the refunds for the said period, the respondents are free to adjust those amounts for any of the amounts that are due by the petitioners for any other subsequent periods under the Act.

(iii) We record the undertaking filed by the respondents on 20-2-1985 and direct them to regulate the recoveries from the petitioners for the period from 1-7-1972 to 30-6-1976 in terms of that memo.

44. Writ Petitions are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.