

(1981) 08 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No's. 5481 to 5492 etc. of 1979 and 8509 of 1980

K. Mahadevappa and

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 301, 302, 304

Karnataka Taxation and Certain other Laws (Amendment) Act, 1979 — Section 4, 4 (1)

Citation : AIR 1982 Kar 113 : (1981) ILR (Kar) 1512 : (1982) 1 KarLJ 28

Hon'ble Judges : D.M. Chandrashekhar, C.J;N. Venkatachala, J

Bench : Division Bench

Advocate : M. Rangaswamy and Sorabjee, for K.J. Shetty, H.S. Jois, S.J. Srinivasan, M.R.V. Achar, C.S. Shanthamallappa, P. Viswanatha Shetty, P.R. Srirangaiah, C. Narasimhachar, H.R. Venkataramaniah, H.N. Narayan and A.S. Vishwanath, for the Appellant; B.S. Keshava Iyengar, General, for the Respondent

Judgement

D.M. Chandrashekhar, C.J.—These petitions under Article 226 of the Constitution, have been referred to a Division Bench.

2. The petitioners in Writ Petitions Nos. 7595, 7791, 7792, 7794, 7373, 8125, 8129 to 8131 and 8431 of 1979, are Industrial Establishments which run Omni Buses and/or Mini-Omni Buses for conveying their employees from their houses to their respective factories and vice versa. The petitioners in Writ Petitions Nos. 5481 to 5492, 5508 to 5513, 5580 to 5587, 5844 to 5860, 5935 to 5942, 6333 to 6339, 6576 to 6579, 6866, 6867, 9134 to 7141, 7326 to 7328, 7820 to 7833, 7837, 7838, 7854, 7874 to 7876, 7886 to 7897, 8055, 8056, 8067 to 8071, 8074, 8077, 8078, 8105, 8106 8107, 8110 to 8113, and 8.509 of 1979, are all operators of stage carriages in Karnataka. Both categories of petitioners have challenged in these petitions the enhancement of the tax on their motor vehicles under the Karnataka Taxation and Certain Other Laws (Amendment) Act, 1979 (hereinafter referred to as the Taxation Amendment Act).

3. Before referring to and dealing with the contentions of the petitioners, it is

useful to set out the law relating to the levy of tax on motor vehicles in Karnataka State.

4. After the formation of the new State of Mysore (now Karnataka), uniform law for levy of tax on motor vehicles, was brought about by the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as the Act).

5. Section 2 of the Act contains definitions. Clause (j) in sub-s. (1) in that Section states that the words and expressions used, but not defined under the Act, shall have the same meaning assigned to them under the Motor Vehicles Act, 1939.

6. Section 3 of the Act provides for levy of a tax at the rates specified in Part A of the Schedule on motor vehicles suitable for use on roads.

7. Section 3A which was inserted by the Motor Vehicles Taxation (Amendment) Act, 1975 provides for levy of a surcharge at the rate of 10 per cent of the tax levied under S. 3.

8. Section 17A which was inserted by the Motor Vehicles Taxation (Amendment) Act, 1976 provides for establishment of a fund called the Karnataka Roads and Bridges Fund to which the amount of surcharge collected under S. 3A, shall be transferred for the purpose of maintenance of roads and bridges in the State.

9. Section 19 provides that no local authority shall levy a tax or toll on any motor vehicles registered in the State of Karnataka or in any other State or Union Territory in India.

10. Section 20 provides for assignment of proceeds of the tax collected under the Act to local bodies to compensate them, obviously, for taking away their power to levy tax or toll on motor vehicles.

11. The Taxation Amendment Act amended several tax laws in the State of Karnataka. Sub-s. (1) of S. 4 of that Act inserted a new section, S. 3B in the Act providing for levy of additional surcharge at the rate of ten per cent of the tax levied under S. 3 of the Act. The proviso to sub-section (1) of Section 4 of the Taxation Amendment Act, states that nothing in that Section shall apply to motor vehicles other than transport vehicles. Transport vehicle as defined in clause (33) of S. 2 of the M. V. Act, means a public service vehicle or a goods vehicle.

12. Section 4 of the Taxation Amendment Act also amended the Schedule to the Act. The Schedule so amended, provides, inter alia, that Omni Buses permitted to carry not more than 10 persons (excluding the driver), shall be liable to pay Rs. 50 per quarter for every person which the vehicle is permitted to carry and that the Omni Buses permitted to carry 11 persons or more (excluding the driver), shall be liable to pay Rs. 100 per quarter for every person which the vehicle is permitted to carry.

13. We shall now refer to and deal with the contentions of petitioners.

14. All the petitioners have contended that even before the enhancement of tax on motor vehicles under the Taxation Amendment Act, the State Government was deriving from the tax on motor vehicles more than what was required by the State Government to meet the cost of construction and maintenance of roads and bridges in the State and hence there was no justification for further enhancement of the tax on motor vehicles by the Taxation Amendment Act. The petitioners have further contended that the levy of tax in excess of what is required for the upkeep of roads and bridges, would constitute a restriction on freedom of trade, commerce and intercourse throughout the territory of India guaranteed by Art. 301 of the Constitution and that hence the Taxation Amendment Act, in so far as it enhances tax on motor vehicles, should be struck down as being unconstitutional.

15. The petitioners have also challenged the validity of the demand for enhanced tax for the period 1-3-1979 to 31-3-1979. They have contended that since the Taxation Amendment Act came into force only on 31-3-1979, the enhancement of the motor vehicle tax brought about by that Act, could not have been given retrospective effect from 1-3-1979.

16. The petitioners who are running Omni Buses and Mini-Omni Buses, have also challenged the validity of the demand for additional surcharge under S. 3B which was inserted by the Taxation Amendment Act. According to them, the additional surcharge cannot be levied on Omni Buses and Mini-Omni Buses, since they are not transport vehicles within the meaning of sub-section (33) of S. 2 of the M. V. Act.

16-A. We shall first take up the contention regarding the validity of the levy of additional surcharge u/s 3B on Omni Buses and Mini-Omni Buses. The learned Advocate General who appeared for the respondent-State, conceded that Omni Buses and Mini.

Omni Buses which are used by industrial establishments exclusively for conveying their employees, cannot be regarded as public service vehicles and hence do not come within the ambit of the term "transport vehicles" and that the levy of additional surcharge on them is not warranted by S. 3B of the Act. On 3-8-1981 a memo was filed by the learned Government Advocate on behalf of the respondent State to the effect that the additional surcharge under S. 3B of the Taxation Amendment Act, is not being enforced against Omni Buses and Mini-Omni Buses. In view of the concession made by the learned Advocate General and the memo containing the undertaking given on behalf of the State, it is unnecessary to consider the question of issue of any writ or a direction restraining the levy of additional surcharge on Omni Buses and Mini Omni Buses.

17. We shall next take up the second contention, namely, that the enhanced tax on motor vehicles under the Taxation Amendment Act, cannot be levied for the period 1-3-1979 to 31-3-1979.

18. The Taxation Amendment Act received the assent of the Governor on

31-3-1979 and was first published in the Karnataka Gazette (Extraordinary) Dt. the 31st Mar. 1979. Sub-section (2) of Section 1 of that Act provides that that Act shall come into force at once. Hence, that Act came into force only on 31-3-1979. There is nothing in S. 4 of that Act which gives retrospective effect to the provisions of that Act. Hence, the enhancement of the tax on motor vehicles, under that Act became effective only on 31-3-1979, and as such, there was no liability to pay the enhanced tax for the period 1-3-1979 to 31-3-1979. We uphold the contention of the petitioners that the demand made by the Motor Vehicles Tax Authorities on the petitioners to pay enhanced tax for the period 1-3-1979 to 31-3-1979, was without the authority of law. It follows that such authorities should be restrained from demanding such enhanced tax under the Taxation Amendment Act for the period 1-3-1979 to 31-3-1979.

19. Before dealing with the first contention, namely, that the enhancement of tax on motor vehicles by the Taxation Amendment Act, is violative of Art. 301 of the Constitution, we shall briefly state the law on the point as enunciated by the Supreme Court.

20. In *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , the levy of tax on motor vehicles by the State of Rajasthan, had been impugned on the ground that such levy imposed a restriction on the freedom of trade, commerce and intercourse throughout the territory of India as guaranteed by Art. 301 of the Constitution and hence such levy was violative of that Article. The Supreme Court, by a majority, held thus at p. 1420:

""The collection of a toll or a tax for the use of a road or for the use of a bridge or for the use of an aerodrome is no barrier or burden or deterrent to traders who, in their absence, may have to take a longer or less convenient or more expensive route. Such compensatory taxes are no hindrance to anybody's freedom so long as they remain reasonable; but they could of course be converted into a hindrance to the freedom of trade. If the authorities concerned really wanted to hamper anybody trade, they could easily raise the amount of tax or toll to an amount which would be prohibitive or deterrent or create other impediments which instead of facilitating trade and commerce would hamper them. It is here that the contrast, between freedom" (Art. 301) and "restriction" (Arts. 302 and 304) clearly appears: that which in reality hampers or burdens trade and commerce is a restriction, It is the reality or substance of the matter that has to be determined. It is not possible a priori to draw a dividing line between that which would really be a charge . for a facility provided and that which would really be a deterrent to a trade but the distinction if it has to be drawn, is real and clear. For the tax to become a prohibited tax it has to be a direct to the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hindrance."

(Underlining is ours)

21. In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, , the

Supreme Court reiterated its above earlier view and added thus at p. 587 :

"The expression "reasonable compensation" is convenient but vague. The standard of reasonableness can only be in the severity with which it bears on traffic and such evidence of extravagance in its assessment as comes from general considerations. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the state for the actual use made of the physical facilities provided "in the shape of a road."

(Underlining is ours)

22. In *International Tourist Corporation v. State of Haryana* AIR 1981 SC VY4, the Supreme Court held that even the expenditure incurred by the State in providing various facilities like lighting, traffic control, halting places for buses and trucks and amenities into account to find out whether imposition of a tax on motor vehicles, is compensatory and regulatory.

23. In the light of the aforesaid statement of law, the material question that arises for determination in these petitions, is whether the pecuniary burden placed upon owners and operators of motor vehicles by the levy of the Motor Vehicles Tax including the enhancement of such tax by the Taxation Amendment Act, can be regarded as going beyond a proper recompense to the State for the benefits provided to motor vehicular traffic in the shape of roads, bridges and other facilities.

24. The petitioners have referred to the Statement of Objects and Reasons appended to the Karnataka Motor Vehicles Taxation (Second Amendment) Bill, 1979, which reads thus :

"Government have announced their decision to abolish Octroi. To compensate for the loss of Revenue on local bodies resulting from the abolition of Octroi Levy and also to provide for the developmental activities of the State in general, it is intended to mobilize resources by revising certain existing rates of taxes under the Motor Vehicles Taxation Act."

25. Relying on the above Statement of Objects and Reasons appended to the Motor Vehicles Taxation (Second Amendment) Bill, the petitioners contended that for the purpose of compensating the loss of revenue resulting from the abolition of octroi which used to be levied by Municipalities and other local bodies, the State Legislature had already enacted the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale Therein Act, 1979 (hereinafter referred to as the Entry Tax), that the Taxation Amendment Act, was intended merely to augment the general revenues of the State and not for meeting any increase in the cost of construction and maintenance of roads and bridges and that hence the tax on motor vehicles, as enhanced by the Taxation Amendment Act, could not be justified as being regulatory and compensatory.

26. In the present petitions, what has been impugned is the validity of the

Taxation Amendment Act and not of the Motor Vehicles Taxation (Second Amendment) Act, 1979, We fail to see how the Statement of Objects and Reasons appended to the Motor Vehicles Taxation (Second Amendment) Bill, 1979, is relevant for judging the validity of the Taxation "Amendment Act. The Statement of Objects and Reasons appended to the Taxation Amendment Bill, 1979, reads -

"In order to augment the revenues Of the State, it is proposed to amend taxation and other laws. Opportunity is taken to make some other amendment also".

The above statement that the proposed amendment to taxation laws, was intended to augment the revenues of the State, has reference not only to the amendment of the Motor Vehicles Taxation Act, but also to the amendments Of other tax laws. From the above Statement of Objects and Reasons, it does not follow that the enhancement of the motor vehicles tax is not needed for meeting the growing expenditure on construction and maintenance of roads and bridges in the State and that such enhancement of the motor vehicles tax is intended only for augmenting the general revenues of the State. Moreover, what is contained in the Statement of Objects and Reasons appended to a Bill is not conclusive and we have to examine independently of such statement whether the enhancement of the motor vehicles tax by the Taxation Amendment Act, is justified as being compensatory or regulatory.

27. In these petitions, the petitioners have referred to the State Budgets in recent years and have pointed out that in each of those years, the total receipts from motor vehicles tax, have exceeded the total expenditure on construction and maintenance of roads and bridges, leaving a large surplus of such receipts over such expenditure. The petitioners, hence have contended that the enhancement of the motor vehicles tax by the Taxation Amendment Act, could not be justified as being regulatory or compensatory in character.

28. As these petitions were presented about two years ago, the figures of the annual receipts from the motor vehicles tax and of the annual expenditure incurred by the State Government on construction and maintenance of roads and bridges, given in the writ petitions as well as in the statement of objections filed on behalf of the State, were not up to date. Hence, we got compiled latest figures of such receipts and expenditure for three years from the Budget Memoranda for the last three years. Those figures are as follows:

1979-80 1980-81 1981-82

Item (Actuals) (Revised (Budget
Estimate) Estimate)

(Rs. in Crores) (Rs. in Crores) (Rs. in Crores)

1. Receipts from Motor Vehicles Tax. 40.62 44.90 50.98

II. Expenditure on Roads &

Bridges (Both Plan & Non-Plan)

And collection charges. ... 33.68 39.14 43.22

Excess of Receipts over

Expenditure. 6.93 5.75 7.76

The above figures of expenditure do not include what the State Government has been spending for control of traffic and for construction and maintenance of Bus Stations. No separate figures are available as regards those, two items of expenditure. The total expenditure incurred by the State on Police during the last three years, is as follows :

1979-80

(Actuals) Rs. 28.55 Crores

1980-81

(Revised Estimate) ... Rs. 36.59 Crores

1981-82

(Budget Estimate) ... Rs. 43.71 Crores

It is a matter of common knowledge that not an insignificant part of the Police force in the State, is engaged in control of road traffic. Even if a fraction of the total annual expenditure on Police in this State, is treated as the expenditure incurred for control of traffic and added to the expenditure on construction and maintenance of roads in the State, there would be hardly any surplus of receipts from Motor Vehicles Tax over the total expenditure on construction and maintenance of roads and bridges and on control of road traffic. In our opinion, it is not necessary that there should be absolute equality between such receipts and such expenditure and that there should not be even a negligible surplus.

29. Thus, we are unable to hold that the Motor Vehicles Tax, as levied in Karnataka, imposes a pecuniary burden which goes beyond a proper recompense to the State for the benefits it provides for motor vehicular traffic in the shape of roads and bridges and control of traffic and other facilities. Hence, we reject the contention of the petitioners that the Motor Vehicles Tax, as enhanced by the Taxation Amendment Act, ceases to be a regulatory or compensatory tax, and constitutes a restriction on the freedom of trade, commerce and intercourse guaranteed by Art. 301 of the Constitution.

30. In the result, we allow these petitions partly and issue a writ in the nature of mandamus restraining the State and its officers from levying on motor vehicles any tax at the rates as enhanced by the Taxation Amendment Act for the period 1-3-1979 to 31-3-1979. In other respects, we dismiss these petitions.

31. However, we direct the parties to bear their own costs.

32. After we pronounced our common order in the above writ petitions, learned counsel for the petitioners made oral applications for grant of certificates of fitness to appeal to the Supreme Court from our common order.

33. In our common order, we have followed the three rulings of the Supreme Court. On a comparison of the figures of receipts from the Motor Vehicles Tax and the total expenditure incurred by the State on construction and maintenance of roads and bridges and control of traffic, we have come to the conclusion that such tax is no more than a proper recompense for the benefit conferred by the State for the motor traffic by providing roads, bridges and control of traffic. Hence, in our opinion, no substantial question of law of general importance which needs to be decided by the Supreme Court, can be said to arise from our common order.

34. Accordingly, we decline to grant the certificates prayed for and reject the oral applications.

35. Order accordingly.