
(2002) 03 MP CK 0091

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 4739, 4622 and 5411 of 2000

Kailash Narayan Rai and Others, etc.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 11-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Madhya Pradesh Motoryan Karadhan Adhiniyam, 1991 — Section 23

Citation : AIR 2003 MP 74 : (2003) 1 MPLJ 482

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : B.K. Rawat and A.G. Dhande, for the Appellant; S.K. Seth, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

The factual matrix and the grounds of law raised being common in this batch of writ petitions, it was heard analogously and is disposed of by this singular order. For the sake of clarity and convenience, the facts in W. P. 4739/2000 are adumbrated herein.

The facts as have been uncurtained are that the petitioners are holders of stage carriage permit and plying their vehicles in various routes. Section 3. M. P. Motoryan Karadhan Adhiniyam. 1991 (hereinafter referred to as "the Adhiniyam") provides that there shall be levy of tax on every motor vehicle used or kept for use in the State as per the rate specified in the Schedule. Section 5 of the said Adhiniyam stipulates the tax is required to be paid in advance by the owner of the motor vehicles as prescribed under the said provisions. Section 5 provides for filing of declaration and determination of tax payable. In the first schedule of the Adhiniyam tax is provided for vehicles permitted to carry more than six passengers. The vehicles have been categorized into certain categories, namely, Reserved Stage Carriage, Contract Carriage and Stage Carriages. It is put forth that Section 23 of the Adhiniyam empowers the State Government to

amend the rate of tax specified in the Schedule after following certain procedure and thereafter the said Schedule stands amended. As per the said provision, the rate of tax shall not be increased by more than 50 per cent of the rate specified in the Schedule.

According to the writ petitioners, the State Government has amended the Schedule beyond 50 per cent which is contrary to the mandate of the statute. It is also set forth that such increase of rate of tax approximately by 100 per cent is arbitrary and is violative of Articles 14 and 19(1)(g) of the Constitution of India. It is also urged that the enhancing of the rate is discriminatory. It is averred that under the first Schedule, the minimum rate of tax for the stage carriage is Rs. 115/- per seat per month if the vehicle covers the distance up to 80 kms. The total tax for 50 seaters stage carriage comes to Rs. 5,750/- per month if the stage carriage is plied up to 80 kms. but it has to pay Rs. 8,000/- per month if the Stage Carriage is kept as reserved Stage Carriage. It is pleaded that the increase of the rate of tax for reserved stage carriage creates hostile discrimination. The said aspect has been highlighted in various paragraphs to show that there is violation of Article 14 of the Constitution.

It is urged in the petition that the levy of tax on motor vehicles is regulatory and compensatory for use of roads but the road condition in the State of M. P. being substandard and extremely dangerous road tax cannot be increased in the manner it has been increased. It is also put forth that the fixation of rate is violative of Articles 14, 19(1)(g) and 301 of the Constitution.

A counter-affidavit has been filed by the answering respondents contending, inter alia, that it is not the State Government that has amended the Schedule as contended by the petitioners but the same has been amended by the State Legislature and such amendment is within the legislative competence as levy of tax on motor vehicles with different variables is permissible. The distinction has been done in respect of power exercised by the State Government u/s 23 and the power of the legislature. It is put forth that the amending provision is neither arbitrary nor discriminatory. It has been accentuated that the State Legislature has enhanced the tax in respect of reserve stage carriage specifically due to misuse of the provisions by the transporters. It is put forth that the advantage was available to the owner as a concession and aid for conducting his business but it was later on found that the owners have been misusing the benefit by plying their vehicles in the same manner as they were plying the stage carriage and contract carriage and thereby putting the State exchequer to huge loss which was totally against public interest. To obviate the misuse of the said provision the Legislature has amended the Schedule. The stance of the respondents is that the amendment has been done looking to the prevailing conditions and it cannot be held to be arbitrary or irrational. The respondents have set forth that the amendment does not impose any restrictions on the owners from plying their vehicles either within the City, or inter-city.

It is the further stand of the respondents that the Motor Vehicles Act, 1988 nor

the Central Motor Vehicles Rules, 1989. define a Reserved Stage Carriage. Section 70 of the Motor Vehicles Act, 1988 provides the owner to apply for a permit in respect of stage carriage or for a reserved stage carriage. The Madhya Pradesh Motor Vehicles Rules, 1994 provides that an owner holding a reserved stage carriage vehicle can apply for authorization for using the Reserve Stage Carriage Permit as a Stage Carriage. The application is to be made in Form M.P.M.V.R. 42 (S.C.P.A.) and the permit is granted in Form M.P.M.V.R. 48-A. A holder of a Reserved Stage Carriage Permit can utilize the said carriage against any permit held by him. For the Stage Carriage Permit, the rate is Rs. 115/- per seat per month for the first 80 kms. and thereafter it increases by Rs. 10/- for every 10 kms. Thus if a transporter plies for 80 kms. he will be required to pay Rs. 5750/- per month, for 200 kms. Rs. 11,750/- per month and likewise for 300 kms. for Rs. 16,750/- per month. In other words, if the owner uses the vehicle the more he stands to gain by utilizing the vehicle. It is set forth that the owner of stage carriage is required to invest large sum of money and does not do so with the intention of keeping his vehicle idle. The object for investment is only to gain and by keeping his vehicles idle it would defeat the very purpose of the investment. It was found by the competent authority that innumerable owners were paying tax on the rates leviable on reserved stage carriage, which was far below the rate that is leviable on contract carriages and were misusing the beneficial provision. In order to prevent the aforesaid misuse and to curb the mischief necessary amendment has been brought into existence and hence, there is no question of discrimination and imposition of such tax does not amount to double taxation by any measure. It is also the stand of the respondents that by such an amendment no inconvenience is likely to be caused to the travelling public. The allegation relating to the conditions of road is also disputed. It is put forth that the construction and maintenance of the roads are in progress.

We have heard Mr. B. K. Rawat and Mr. A. G. Dhande, learned counsel for the petitioners and Mr. S. K. Seth, learned Addl. Advocate General for the State.

Learned counsel for the petitioners have raised following submissions:

(a) It is a well known fact that the roads in Madhya Pradesh are bad and one notices holes on many part of the road and at certain places there is no road and one may say that it (is) an apology for "road". When the roads are not in existence the question of imposition of tax does not arise and if that logic is applied the enhancement of tax is absolutely unsustainable. The learned counsel for the parties have placed reliance on the decision rendered in the case of Jabalpur Bus Operators Association v. State of Madhya Pradesh 1993 (2) MPLJ 479.

(b) Section 23 of the Act makes provision to amend the Schedule and once the power has been conferred on the State Government to amend the Schedule in a certain manner no other mode can be adopted for amendment of the Schedule.

(c) The Reserved Stage Carriage is kept on reserve to facilitate the business of the permit holders who have many a permit and when a vehicle breaks down the reserved stage carriage comes into aid and the travelling public do not face any difficulty. "Reserved Stage Carriage" is not permitted to ply on the roads as ordinary stage carriage and, therefore, enhancement of tax on the said type of vehicle is totally unwarranted and the reason given by the respondents in the counter-affidavit is unwarranted inasmuch as if a vehicle plies without a permit is liable to be visited with penalty and when such a provision is there then there is no reason to enhance the tax.

(d) The enhancement of road tax is quite excessive and hence, it is unreasonable, arbitrary, irrational and thereby violates the basic essence of Article 14 of the Constitution of India as the said provision of the Constitution does not embrace anything that is arbitrary or capricious.

(e) By such imposition of tax the rights of the petitioners to carry on that trade has been affected and hence, such an amendment is hit by Article 19(1)(g) of the Constitution.

Resisting the aforesaid submissions it is canvassed by the respondents as under :

(i) The imposition of tax is quite different and therefore the concept of quid pro quo is totally alien to tax and. therefore, the plea advanced by the petitioners that there is no proper road in the State and hence tax cannot be levied is absolutely sans substance or justification.

(ii) The petitioners have totally confused themselves by pleading that the power to amend the Schedule exclusively rests with the State Government, the Executive, and there is no other manner or mode by which the amendment can take place. It is put forth by Mr. Seth, learned Addl. Advocate General that in the present case the State Legislature has amended the Schedule and by virtue of inclusion of Section 23 in the statute book the power of Legislature has neither abrogated nor abridged.

(iii) In absence of any definition of Reserved Stage Carriage the petitioners cannot claim as a matter of right to pay tax at a particular rate as if they have an indefeasible right to have a permit for reserved stage carriage. A concession was given by the State Government but when the authorities found that there has been gross and crass abuse of the privilege it was thought appropriate to enhance the rate of tax so that no financial loss is caused to the State. It is propounded by Mr. Seth that the imposition of penalty is quite different than the impost of tax as both the facets relate to different spectrums. The learned State counsel has elucidated that there may be many cases where the transporters are not tracked down and they escape the penalty thereby and hence, to lessen the loss to the State exchequer the tax has been imposed and thus there is a rational behind which saves it from the vice of arbitrariness.

(iv) The challenge by the petitioners that the amount enhanced is totally

excessive and thereby smacks of arbitrariness which is the basic feature of Article 14 of the Constitution inasmuch as the tax in respect of reserved stage carriage permit has been equated with other passengers vehicles is devoid of substance inasmuch as the categories of vehicle and their purpose or utility are quite different.

(v) The stand of the petitioners to the effect that there has been violation of Article 19(1)(g) of the Constitution does not stand to reason as the said submission is inherently fallacious as it has not taken into consideration that the petitioners' right to carry on business is no way affected or curtailed or muzzled and it is open to the petitioners not to have reserve stage carriage.

We shall deal with the first contention first, Submission of Mr. Rawat is that the roads, in M. P. are in a deplorable condition and therefore, there should not be enhancement of tax. The aforesaid submission need not detain us far long Inasmuch as the Apex Court in the case of Dhenkanal Municipal Council and another Vs. A. Raja Rao and others, has held that the concept of tax has a different connotation and conceptual essence and has no connection whatsoever, with a fee and has nothing to do with the service rendered and the hypostasis of quid pro quo cannot be attracted to the substratum of tax.

In view of aforesaid enunciation of law there remains no scintilla of doubt that the tax can be imposed and question of quid pro quo is not attracted. Accordingly we repel the aforesaid submission of the learned counsel for the petitioners.

The second limb of argument relates to the power of the State Legislature to amend the Schedule. Mr. Rawat as well as Mr. Dhande have drawn our attention to Section 23 of the Adhiniyam. The aforesaid provision reads as under ;

"23. Power to amend the Schedule.--(1) The State Government may, by notification, amend the rates of tax specified in the Schedules and thereupon the said Schedules shall stand amended accordingly:

Provided that the rate of tax shall not be Increased by more than fifty per cent of the rate specified in the said Schedules:

Provided further that no notification shall be issued under this sub-section without giving in the Gazette such previous notice as the State Government may consider reasonable of its intention to issue such notification.

(2) Every notification issued under Subsection (1) shall, as soon as may be after it is issued, be laid on the table of the Legislative Assembly and the provisions of Section 24-A of the Madhya Pradesh General Clauses Act, 1957 (No. 3 of 1958) shall apply thereto as they apply to a rule."

On a bare reading of the aforesaid provision, it is crystal clear that the State Government has been conferred the power to amend the rate specified on the Schedule by notification, This Court in the case of Jabalpur Bus Operators Association v. Union of India, 1993 (2) MPJR 373 : (AIR 1994 Madh Pra 62J) came

to hold that the Act in question is not a colourable piece of legislation and intra vires the Constitution. In the said case their Lordships have referred to the case of R.J. Fouzar Bus Service, Hoshangabad and Others Vs. State of Madhya Pradesh and Others, The Division Bench dealt with the provisions of M. P. Motor Vehicles Taxation Act and considered Section 3A and Schedule III. In that case the Bench held that amendment by issuing notification is a nature of Legislative action. As in that case the notification increasing the rate of additional tax was not done taking recourse to the proviso to Section, their Lordships struck down it as ultra vires. It is apposite to mention here the proviso to Section 23-A provides that the rate of Lax shall not be increased by more than fifty per cent of the rates specified in the said Schedule. There cannot be a separate proposition of law that if any notification is issued u/s 23. it has to abide by the restrictions and constrictions enjoined in the said provision. There can be no increase of rate by more than fifty per cent of the rates specified in the said Schedule as the State Government power to issue the notification in that regard is curbed and curtailed by the proviso. But in the present case it is the State Legislature which has amended the law. In this context we may profitably refer to the decision rendered in the case of Puneet Travels v. State of M. P. 1996 MPLJ 318 : (1996 AIHC 3362). In the said decision, it is apposite to note, this Court referred to the case of R. J. Fouzdar Bus Service (supra) which had struck down one part of notification as there had been increase of rate of tax beyond fifty per cent limit prescribed in the first proviso to Section 23A(iii) by the State Government in exercise of its delegated power and keeping in view the facts and circumstances the State Legislature enacted M. P. Motoryan Karadhan (Vidhi Manyakaran) Adhiniyam (23 of 1994) to validate the act and remove and cure the defect. This Court after referring to catena of decisions of the Apex Court came to hold that the State Legislature in exercise of its plenary powers conferred under Articles 245 and 246 of the Constitution enacted the validation Act to charge the rate of tax retrospectively which was increased by the aforesaid notification. Challenge to the Validation Act was not accepted and the Court dismissed the writ petitions. We have referred to the aforesaid decision only to highlight that the Validation Act passed by the State Legislature was given the stamp of approval by this Court and it is well settled if the original power or competence did not rest with the State Legislature it could not have passed a Validation Act. A Legislature can validate an act which it could have originally passed. If the power originally is absent there cannot be an enactment of validation. We say so because we have making a distinction between the powers of State Legislature to amend the Schedule and that of the Government to amend the Schedule as envisaged of Section 23 of the Act. As two distinct compartments exist submissions made by the learned counsel for the petitioners are wholly without substance. It cannot be accepted that the State Legislature is bereft of power to amend the schedule once the power has been delegated to the executive. Needless to emphasise the executive has been given the restricted power. It is well settled in law the Legislature cannot often make rules or regulations or introduce the amendments for the purpose of carrying of affairs of the State and. therefore, there has to be

delegated Legislation. But when the essential role of Legislation has not been delegated the same cannot be questioned. On a reading of Section 23 of the Act, it is plain as noon day that safeguard has been given in the said provisions so that the executive does not travel beyond a particular territory and the notification has to be tabled in Legislative Assembly. Hence, the power given is restricted but that does not necessarily mean the powers of the State Legislature has been marginalised away or curtailed. If acceptance is given to proposition propounded by Mr. Rawat and Mr. Dhande. it would be hazardous and we do not intend to pave that path.

The next facet of proponent of the learned counsel for the petitioners is that the enhancement of tax is excessive, arbitrary, therefore it creates a dent in the conscience of Article 14 of the Constitution. Mr. Seth, learned counsel for the State has submitted that the Legislature was compelled to impose the tax to eradicate the malady inasmuch as reserved stage carriage was being utilised as ordinary passenger transport vehicle. It is put forth by him there may be an imposition of penalty for such activity but at every point of time it is not possible to book the culprits as per law. He has drawn our attention to the item No. 2 of Clause (e) to show that for ordinary bus the rate of tax is Rs. 160/- p.m., for express but it is Rs. 180/- per month and for air condition deluxe bus it is Rs. 230/- per month. Similar rate has been fixed for the reserved stage carriage which carry more than six passengers. True it is, earlier the rate of tax was quite less but that does not necessarily mean that the tax has been arbitrarily imposed. The learned Addl. Advocate General has placed reliance on the decision rendered in the case of Jagannath and Others Vs. Union of India (UOI), to highlight that the challenge to tax law on the mere ground that it is heavy cannot be entertained. The learned counsel has also placed reliance on the decision rendered in the case of Jabalpur Bus Operators Association (supra), wherein the Division Bench held as under :

"The legislature has wide discretion in matters of selection of objects. The categories of vehicles and classification cannot be said to be arbitrary. Diverse exigencies of fiscal policy determine the diverse factor. We do not find that the rate of tax imposed on the intra State Vehicles is arbitrary. The vehicles operating from outside the State are a distinct category. The vehicles of the State operating in other States are treated equally under the reciprocal agreement. The various categories of vehicles mentioned in Schedule I, Item IV-A to C, V, VI, VII are categorized taking into consideration, the diverse public interest served by it."

In view of the aforesaid exposition of law we are of the considered view that there has been no discrimination and the Legislature has a purpose to impose these taxes. Hence, we are of the considered opinion that there is no violation of Article 14 of the Constitution of India.

The last plank of submission of the learned counsel for the petitioners is that the amendment penetrates into the sphere of Article 19(1)(g) of the Constitution.

The aforesaid submission is to be noted to be rejected. There is no restriction for plying the vehicles. It is submitted by Mr. Dhande as well as Mr. Rawat, learned counsel for the petitioners that the imposition of such tax is absolutely confiscatory. It has been discussed hereinabove that the said submission is sans substance. The reserved stage carriage is kept by a permit holder who desires some vehicles to be kept in reserve to aid the public at the time of break down. It may be called a vehicle meant for utilisation when the risk occurs. It is to be utilised as a rescue operational measure. When the tax is imposed in this regard, it is reasonable and there is no ground to hold that it affects the right to carry on business on the contrary, it aids and assists the operators who want to avail the facility,

As all the submissions raised by the learned counsel for the petitioners are devoid of merit we find no substance in the writ petitions and they are accordingly dismissed without any order as to costs.