(2003) 01 AHC CK 0091

In the Allahabad High Court

Case No : C.M.W.P. No. 31 of 2003

Mahipal Singh Yadav and Others — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Motor Vehicles Act, 1988 — Section 67(2)
Uttar Pradesh Motor Vehicles Taxation (Amendment) Act, 2001 — Section 5

Citation : (2003) 1 AWC 545

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : A.D. Saunders, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard Shri Arun Saunders, learned counsel for the petitioners, and learned standing counsel.

2. The petitioners are stage carriage operators, plying their stage carriages on the route in question. By Section 5 (a) of the U. P. Motor Vehicles Taxation (Amendment) Act, 2001 (U. P. Act No. 25 of 2001), the Fourth Schedule of the U. P. Motor Vehicles Taxation Act, 1997, has been amended.

3. We have carefully perused the impugned amendment and find no unconstitutionality in the same. It may be stated that to challenge the constitutional validity of a provision of an Act, only one argument is available to the petitioners, namely, that the provision in the said Act is ultra vires some provision of the Constitution.

4. Learned counsel for the petitioners submitted that the impugned amendment is violative of Article 19(1)(g) of the Constitution since it is arbitrary and unreasonable. He further submitted that u/s 67(2) of the Motor Vehicles Act, 1988, the State Government can fix the fares which shall be inclusive of the tax

payable by the passengers. Learned counsel for the petitioners stated that by the Impugned amendment the additional tax has been enhanced while there is no corresponding increase of the fare u/s 67(2) of the Motor Vehicles Act, 1988.

5. In our opinion, there is no substance in the argument of the learned counsel for the petitioners. An amendment cannot be said to be arbitrary or violative of Article 19(1)(g) of the Constitution merely because it imposes some additional burden, which cannot be passed on the passengers.

6. It often happens that the burden of a tax cannot be passed on to the customers, but this does not necessarily make it violative of the Constitution. For example, Sales Tax or excise laws are often amended retrospectively but this does not necessarily make the amendment unconstitutional merely because the burden cannot be passed on to the customer vide Kanthi Enterprises and Others Vs. State of Karnataka and Others, Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, Rai Ramkrishna and Others Vs. The State of Bihar, Jawaharmal Vs. State of Rajasthan and Others, etc. We do not find the impugned amendment to be arbitrary or unreasonable.

7. There is no merit in this writ petition. The writ petition is dismissed.