
(1997) 03 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 1733 of 1995

National Hydroelectric Power Corp. Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Himachal Pradesh Passengers and Goods Taxation Act, 1955 — Section 2
Himachal Pradesh Passengers and Goods Taxation Rules, 1957 — Rule 3, 6, 7, 8, 9
Motor Vehicles Act, 1939 — Section 10, 112, 12, 123, 15
Motor Vehicles Act, 1988 — Section 2, 2(22), 2(23), 2(25), 2(33)

Citation : (1998) 1 ShimLC 119

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : A.K. Chitle and K.D. Shreedhar, for the Appellant; Indar Singh, General, for the Respondent

Final Decision : Allowed

Judgement

M. Srinivasan, C.J.—The Petitioner is a Government of India Undertaking incorporated and registered under the Companies Act functioning under the Department of Power, Ministry of Energy, Government of India. It is engaged in the planning, promotion and organization of integrated and efficient development of hydroelectric projects in all aspects, including planning, investigation, research, design and preparation of preliminary feasibility and definite project reports, construction, generation, operation and maintenance of hydroelectric power stations and projects and sale of power generated at the hydroelectric stations in accordance with the national economic policy and objectives laid down by the Central Government from time to time. Besides other projects the Petitioner took up the construction and execution of the Chamara Hydroelectric Project in the State of Himachal Pradesh. The Project has been completed and generation of electricity has commenced. The electricity so generated is being

supplied in bulk to various Electricity Boards constituted under the Electricity (Supply) Act, 1948 including the Himachal Pradesh Electricity Board, which is a state undertaking. The Project is generating 540 MW electricity at its peak and the electricity is being supplied to various beneficiary States thorough Northern Grid. The Petitioner has invested Rs. 2016 crores in setting up the project and incurring recurring expenditure of Rs. 1.50 crores per month. The Petitioner is supplying 12 per cent of the total electricity generated by it at the aforesaid Project to Himachal Pradesh Electricity Board free of cost. The value of this free electricity was about Rs. 90 lacs per day according to the rejoinder.

2. The worksites of the Project are at Chaurha Khairi, Sherpur, Devoidhary and Baghdhar. The said work sites are not connected by any public transport system or regular taxis. The residential colonies of the staff employed in the Project are located at Banikhet, Khairi, Simblue, Sundla and Daihousie. The work sites are at the approximate distance of 10 to 42 kilometers from the residential colonies. As a welfare measure, the Petitioner has provided free transport facilities to its employees in order to enable them to reach their respective work-sites from the residential colonies and their children to and from their schools comfortably, saving time and cost. As the Project is engaged in the activity of vital importance which must be maintained continuously and efficiently at all times. The Petitioner has allowed free transport facility to the employees in order to maintain efficiency and effective working through out in national and public interest. The Petitioner has 9 buses which are used to carry the employees to and from the work-sites and their school going children to and from their schools. No member of the public is permitted to travel in the said buses. No amount is charged from the employees or their children for travelling in the buses.

3. The Himachal Pradesh Passengers and Goods Taxation Act, 1955 was enacted by the State Legislature for levying a tax on passengers and goods carried by road in certain motor vehicles. The Act has been amended from time to time, the details of which can be referred to later. The 3rd Respondent is the assessing authority under the said Act. He assessed the Petitioner to passenger tax under the Act and surcharge thereon for the period 1984-85 to 1990-91. The orders of assessment were passed only in 1992. Though there is a controversy among the parties as to the exact dates of the orders of the assessment, it is not necessary for us to go into that controversy. On account of the said assessment orders, the Petitioner was obliged to pay a total sum of Rs. 14,69,912/- by way of tax and surcharge. The Petitioner contested its liability to pay either tax or surcharge and also the proposed mode of assessment. The order of the assessment was challenged by the Petitioner in a Revision Petition filed before the 2nd respondent under the provisions of Section 16 of the Act. The 2nd Respondent dismissed the petition by his order dated 7-6-1994. Though he expressed the view that the Petitioner's remedy was to file an appeal before the appellate authority (NS) Palampur as provided in Section 15 of the Act and that the revisional power could be exercised only suo moto and not on an application, went however into the merits of the contention and held that the employees of

the Petitioner cannot be considered to be employees travelling in connection with the vehicle and therefore the Petitioner was liable to pay the tax. On those reasonings the Revision Petition was dismissed. The Petitioner filed the present writ petition on 31st of August, 1995 challenging the applicability of the relevant provisions of the Act to the Petitioner and contending that the orders of assessment passed by the third Respondent and the order of dismissal passed by the second Respondent in the Revision Petition are wholly illegal.

4. The Petitioner had earlier applied u/s 10 of the Act for exemption from the payment of tax to the 1st Respondent. That application was rejected on the ground that the Petitioner and other organizations who had applied for such exemption were being run on commercial basis. That order was passed on 11-11-1986. In the present writ petition the Petitioner has prayed for quashing of that order also and for a direction to the second Respondent to exempt the buses of the Petitioner from the applicability of the Act and Rules.

5. The contentions urged by the Petitioner are as follows:

(a) Under the Act no tax is payable by the Petitioner because the employees and their children are being carried in their buses gratis without any payment;

(b) Passenger tax can be levied only on fare paying passengers against tickets Issued by the owner of the motor vehicle who Is engaged in the business carrying passengers for hire and reward.

(c) The relevant provisions of the Act and Rules would show that the employees of the Petitioner or their children would not fall within the scope of the provisions thereof and consequently no tax can be levied on them.

(d) The explanation to Section 3(1) of the Act is not applicable and cannot be invoked by the Respondents in view of the fact that no normal rate or fare is prevalent on the routes on which the Petitioner's vehicles are plied and that no commercial transport or private vehciles plies on the routes,

(e) No rate/fares has been fixed by any authority under the Motor Vehicles Act for the said route and no contractual/fare has been agreed upon between the Petitioner and the employees.

(f) If Is also submitted that only a part of the journey undertaken by the buses of. the Petitioner is on public roads and a substantial part is within the Project sites of the Petitioner itself.

(g) The roads used by the Petitioner's vehicles were widened and metalled by the Petitioner and are being maintained by the Petitioner.

(h) The assessment made by the 3rd Respondent are wholly illegal as there is no basis whatever for the same. The 3rd Respondent has arbitrarily calculated the fare per passenger, per trip on the basis of the mileage covered by the vehicles as entered in the log books maintained by the Petitioner.

(I) There is also an erroneous assumption on the part of the 3rd Respondent that the vehicles are always full to the extent of their maximum sitting capacity and that for every seat an employee or his child was paying the fare of Rs. 1.15 per k.m.

(J) There is also no basis for making the Petitioner liable for surcharge.

(k) Section 3A is not applicable to the Petitioner and in any event it is unconstitutional and ultra vires. Section 3A suffers by excessive delegation of legislative power to the State Government. There is no guideline whatever, on the basis of which such surcharge could be levied.

(I) In any event the order of the 1st Respondent refusing to grant exemption to the Petitioner is unsustainable. The 1st Respondent has failed to apply its mind to the relevant matters which ought to have been taken into consideration for deciding an application for exemption.

6. The learned Advocate General appearing for the Respondents has contended that the provisions of the Act and the Rules are very clear and there is no escape from their applicability to the Petitioner. Even if the Petitioner allows his employees and their children to travel freely in its vehicles the liability for payment of tax on such passengers does arise under the provision of the Act. The imposition of surcharge is nothing but levy of tax on passengers by the legislation and it is well within the power of State Legislature. The order refusing to grant exemption is passed on proper reasoning and does not warrant interference by this Court under Article 226 of the Constitution of India. It is also argued that the Petitioner has not availed of efficacious alternative statutory remedy by way of an appeal u/s 15 of the Act and, therefore, the writ petition is not maintainable.

7. We can straightway reject the contention of the Respondents that the writ petition is not maintainable in view of the availability of statutory appeal against the orders of assessment. No doubt, the Petitioner could have preferred appeals against the orders of assessment, but it chose to prefer a revision u/s 16 of the Act. If the 2nd Respondent had rejected the revision petition as not maintainable in view of the availability of appeal, the contention of the Respondents could have some force. But the 2nd Respondent went into the merits of the case and held that the Petitioner was liable to pay the tax as the employees of the Petitioner, who travel in the Petitioner's vehicles do so in connection with the Project work and they cannot be equated with the employees, who travel in connection with the vehicles. Admittedly, the 2nd Respondent is an authority higher than the Appellate Authority u/s 15 of the Act. The decision rendered by the 2nd Respondent in the revision petition filed by the Petitioner on the merits would certainly be followed by the Appellate Authority automatically. Hence, any appeal by the Petitioner against the orders of assessment would be an exercise in futility. Consequently, the remedy of appeal cannot be said to be efficacious. Hence, the writ petition is maintainable.

8. Mainly, three questions are raised before us by the parties. (i) The provisions of the Act are not applicable to the Petitioner, who permits its employees to travel in its vehicles gratis from their place of residence to the work sites and return and permits their children to be carried gratis in their vehicles to and from their Schools. (ii) The Petitioner will not be liable for any surcharge u/s 3A of the Act even if it is found to be liable for payment of tax u/s 3 of the Act.

(iii) The Petitioner is entitled to get exemption under the provisions of Section 10 to the Act and the order passed by the 1st Respondent rejecting its application for exemption is wholly unsustainable.

9. The Act received the assent of the President on the 25th November, 1955. It is seen from the Reasons and Objects annexed to the Bill that the Act was passed in order to reduce the gap between revenue and expenditure incurred by the Government and to increase the Government revenue by tapping new resources. The preamble of the Act declared it as one to provide for levying of tax on passengers and goods carried by road in certain motor vehicles. It is evident from the preamble that the Act was not intended to be made applicable to passengers and goods in all motor vehicles. Section 2(a) defined the expression "business" as the business of carrying passengers and goods by motor vehicles. Section 2(c) defined fare as including sums payable for a season ticket or in respect of the hire of a contract carriage. Section 2(e) defined motor vehicle as a public service vehicle or public carrier, or private carrier or a trailer when attached to any such vehicle. u/s 2(f), the owner is defined as the owner of a motor vehicle in respect of which permit has been granted or counter-signed under the provisions of Motor Vehicles Act, 1939 inclusive of all the persons mentioned therein. Section 2(g) defined a passenger in the following terms:

"Passenger" means any persons traveling in a public service vehicle, but shall not include the driver or the conductor or any employee of the owner of the vehicle travelling in the bona fide discharge of his duties in connection with the vehicle.

Section 2(j) provided that all words and expressions used in the Act but not defined shall have the meanings assigned to them in the Motor Vehicles Act, 1939.

10. Section 3(1) is the charging section. It reads as follows:

There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at the rate of one pie per anna value of the fare or freight, as the case may be, subject to a minimum of three pies in any one case, the amount of tax being calculated to the nearest whole pies (three pie).

Explanation: When passengers are carried and goods are transported by a motor vehicle, and no fare or freight whether chargeable or not has been charged the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route.

11. Sub-section (2) of Section 3 dealt with the cases in which fare or freight charged was a lump sum paid by a person on account of a season ticket or as subscription or contribution for any privilege, right or facility, which was combined with the right of such person being carried or his goods transported by motor vehicle, without any further payment or at a reduced charge. Sub-section (3) dealt with passengers, who are carried or goods transported by motor vehicle from any place outside the state or to any place within the state etc. Section 4 dealt with the method of collection of tax and enjoined the owner of the motor vehicle to collect the tax and pay to the State Government in the prescribed manner. Section 5 provided the method of levy. Sub-section (1) read that no passenger shall be allowed to travel by the owner in a motor vehicle unless he is issued a ticket in the prescribed form for the journey, denoting that the tax had been paid. Section 6 provided for keeping of accounts and submission of returns. Section 9 provided for grant of Registration certificate.

Section 10 enables the State Government to exempt an owner from the operation of any or of all the provisions of the Act by general or special order. Section 11 compels an owner to furnish to the prescribed authority in the prescribed manner a table of fares and freights of public service vehicles and public carriers, a table regulating the motor vehicles and such other particulars connected with the business, as the prescribed authority may by order require from time to time. Section 22 empowered the Government to make rules for securing the payment of tax and generally for the purposes of carrying into effect the provisions of the Act. Sub-section (2) of the said Section enables the State Government to make Rules prescribing the manner in which and the intervals at which tax shall be paid under Sections 3 and 4 and also prescribing the manner and table of fares u/s 11 among other matters.

12. As stated earlier, the Act was amended from time to time. We are in this case concerned with the provisions of the Act, which were in force during the relevant periods of assessment. We have already referred to the fact that the assessment years are from 1984-85 to 1990-91. Upto 31-5-1988, the definition of Motor Vehicle contained in Section 2(e) remained unaltered. By Act No. 10 of 1988 in the definition Section, a new Clause, namely, Clause (dd) was added defining mini-bus as stage carriage having the capacity to carry not more than 30 passengers excluding the driver and the conductor. The definition of motor vehicle was substituted by the following:

motor vehicle" means a public service vehicle or public carrier or private carrier or a trailer when attached to any such vehicle and includes any vehicle used in contravention of the provisions of the Motor Vehicles Act, 1939 for the carriage of passengers and goods or both for hire or reward.

In Clause (g) of Section 2, the words "public service vehicle" were substituted by the words "motor vehicle", resulting in the definition of passenger reading as follows:

"Passenger" means any persons travelling in a motor vehicle, but shall not include the driver or the conductor or any employee of the owner of the vehicle travelling in the bona fide discharge of his duties in connection with the vehicle.

In Section 3, Anr. Sub-section, namely, Sub-Section 2A was added by the said Act, which provided that where a motor vehicle, other than a public service vehicle, plies for hire or reward in contravention of the provisions of the Motor Vehicles Act, 1939, the owner of such vehicle shall, without prejudice to any action which is or may be taken under that Act, be liable to pay tax at the rate specified in Sub-section (1) or such amount of fares and freights as may be determined in the prescribed manner by the prescribed authority. The said amendments came into force w.e.f. 31-5-1988.

13. The Statement of Objects and Reasons for introducing the said Amendment Act, in so far as it is relevant, read as follows:

As the tax on mini buses under the Himachal Pradesh Passengers and Goods Taxation Act, 1955 has been levied in lump sum, it has been decided to define the expression "mini-bus" for the purposes under the said Act. Further, in order to bring the private vehicles plying on hire without registration within the ambit of the Act, It has been considered necessary to broaden and amplify the existing definitions of "motor vehicle" and "passenger". Besides, provision is also necessary to bring under the tax net the owners of private vehicles plying on hire and reward in contravention of the provisions of the Motor Vehicles Act, 1939....

The remaining part of the statement of Objects and Reasons is not necessary for the purpose of this case.

14. Another amendment of the Act, which is of significance in the present case was that introduced by Act No. 8 of 1991. The relevant part of the Statement of Objects and Reasons for the said Act read as follows:

Clause (j) of Section 2 of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 provides that various expressions used have the meaning assigned to them in the Motor Vehicles Act, 1939, which stands repealed by the Motor Vehicles Act, 1988, resulting into change of numerous definitions. As such it is essential to bring the definition of "motor vehicle" in conformity with that provided in the new Motor Vehicles Act, 1988. Besides, the references to the repealed Act and its provisions also require corrections. Further, to dispel the recent controversy regarding Government's power to, recover lump sum tax from the owners of passengers vehicles, it is essential to modify relevant provisions so as to empower the Government to assess the tax on the lump sum basis after taking into consideration the registered capacity and the distance to be covered by each vehicle...

15. Clause (e) of Section 2 defining a motor vehicle was substituted by the following:

"motor vehicle" means any transport vehicle, which is mechanically propelled

vehicle and adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source or a trailer when attached to any such vehicle and includes a motor vehicle used for carriage of passengers or goods or both for hire or reward in contravention of the provisions of the Motor Vehicles Act, 1988 (Act No. 59 of 1988).

16. In Clause (j), the words sign, figures and brackets "Motor Vehicles Act, 1939 (Act No. 4 of 1939) were substituted by the words sign, figures and brackets Motor Vehicles Act, 1988 (Act No. 59 of 1988")

17. We are not concerned in this case with the other amendments introduced by the said Act. That Act came into force w.e.f. 18th April, 1991. Excepting Section 2, Clause (2) and Section 4, which were deemed to have come into force w.e.f. 1-10-1990, thus the new definition of Motor Vehicles introduced by the Act came into force from 1-10-1990.

18. It will not be out of place to mention here that by Act No. 4 of 1972, Section 3A was added providing for levy of surcharge. That was repealed by Act No. 11 of 1973. Subsequently, a new Section 3A was added w.e.f. 14-11-1977 vide Ordinance No. 6 of 1977 repealed by Act No. 1 of 1978. We will consider the provisions of Section 3A later, when we take up the question of liability of the Petitioner to pay the surcharge under the Act.

19. In exercise of the powers conferred by Section 22 of the Act, the Government had framed Rules known as Himachal Pradesh Passengers and Goods Taxation Rules, 1957. Rule 3 provided for application for registration u/s 9 to be made by the owner of the vehicle. Rule 6 related to supply of table of fares and freights and table of timings of arrival and departure. Rule 7 dealt with passengers tickets and Rule 8 dealt with goods receipts. Rule 9 provided for mode of determination of payment of tax. Rule 9-A dealt with mode of determination of payment of surcharge. Chapter IV of the Rules dealt with the Registers and Returns to be maintained by the owner of the vehicle. Chapter v. provided for payment of tax other than by stamps. The Rules also underwent some amendments. It is unnecessary for the purpose of this case, to go into the details of the Rules. It is sufficient to point out that a perusal of the Act and the Rules discloses a particular scheme by which passengers of certain kinds of vehicles only are subjected to payment of tax. It is very clear that it was never the intention of the Legislature to levy a tax on passengers of all kinds of motor vehicles. It is also evident that the Legislature sought to bring within the net of taxes only those persons, who were carrying on business of transport of passengers and goods by motor vehicles.

20. It is better that we approach the problem on hand by dividing the relevant period into three.

(i) Period prior to 31-5-1988.

(ii) 31-5-1988 to 30-9-1990.

(iii) From 1-10-1990 onwards.

The assessment for the years 1984-85 to 1987-88 will fall within the first period. The subsequent assessment years in the present case will fall within the second period and only a portion of the assessment for the last of the assessment years in this case, namely, 1990-91 will fall within the third period.

21. During the first period i.e., upto 31-5-1988, the definition of motor vehicle would not include the vehicles of the Petitioner by any stretch of imagination. According to the definition, motor vehicle meant a public service vehicle or public carrier or private carrier or a trailer when attached to any such vehicle. The expressions "public service vehicle, public carrier and private carrier" were not defined in the Act, but they were defined in the Motor Vehicles Act, 1939. Section 2(35) of the Motor Vehicles Act, 1939 defined public service vehicle as any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward including a taxi-cab, a motor-cab, contract carriage and stage carriage, it is unnecessary at this stage to refer to the definitions of public carrier or private carrier found in the Motor Vehicles Act, 1939 in view of the fact that passenger was defined by the "Act" to mean any person travelling in a public service vehicle. Section 3 (1) the charging Section enabled the State Government to levy charge and collect tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles. If the definition of passenger and the definition of motor vehicle are imported into the charging Section, there is no difficulty in holding that the levy of tax was only on persons travelling in a public service vehicle, as defined by the Motor Vehicles Act, 1939.

22. There can be no difficulty in holding that the vehicles of the Petitioners are not public service vehicles in any sense of the term. It is not in dispute that the members of the public are not allowed to travel in those vehicles and that it is used exclusively by the employees of the Petitioner.

23. A similar question arose for consideration in *Tata Engineering and Locomotive Co. Ltd. Vs. The Sales Tax Officer and Regional Transport Officer, Poona* and Another, *The Bombay Motor Vehicles (Taxation of Passengers) Act, 1958* provided u/s 3 thereof for levy and payment of tax to the State Government on all passengers carried by road in stage carriages at such rate to be fixed by the State Government. Section 2(7) of the said Act defined a stage carriage to mean a motor vehicle carrying or adapted to carry more than six persons excluding the driver, which carried persons for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for the stages of the journey. Rule 2(i) of the *Bombay Motor Vehicles Rules, 1940* defined a passenger as a person travelling in a public service vehicle other than the driver the conductor or an employee of the permit holder while on duty. The Preamble to the *Bombay Act* revealed that the dominant object of the Act was to impose tax on certain classes of public service vehicles. Taking the above factors into account, the Supreme Court held that the tax would be leviable under that Act only if the passengers were carried on a public service vehicle. The court said:

It is true that the term "public service vehicle" has not been defined either by the Act or by the Rules, but that however does not create any difficulty, because having regard to the Preamble of the Act we are of the opinion that the tax can be levied only on passengers who are carried by a stage carriage which is of the nature of a public service vehicle. The word "public" has got a well known connotation and means a carriage to which any member of the public can have free access on payment of the usual charges. It cannot be any process of reasoning or stretch of imagination be deemed to include employees of a private company who are given facilities not as members of the public but as holding a special status namely, the employees of that company. Thus, qua public the employees from a separate class and cannot be said to be public as contemplated by Rule 2(i).

24. Again the Court pointed out as follows:

Moreover, in the instant case, it is not disputed that the transport provided to the employees of the company was reserved for them only and no other member of the public even if he wanted to pay full charges could be carried on the said vehicle. In these circumstances, therefore, it cannot be said that the transport vehicle provided to the employees by the Appellants could be a public service vehicle in any sense of the term.

25. The reasoning of the Supreme Court in that case will certainly apply in the present case. Reading the definitions of motor vehicle" and "passenger" found in Sections 2(e) and 2(g) along with the definition of "public service vehicle" found in Section 2(35) of the Motor Vehicles Act, 1939, there can be no doubt whatever that the persons covered by the charging section were only the persons, who travel in a public service vehicle. The Petitioner's vehicles not being public service vehicles, there is no question of the Petitioner being liable to pay tax u/s 3(1).

26. The contention of the Respondents is that under Explanation to Section 3(1), the net of taxation is widened and for the purpose of understanding the Explanation, the definitions contained in Sections 2(e) and 2(g) shall not be applied. Reliance is placed upon the commencement of Section 2 in which it is stated that unless there is anything repugnant in the subject or context, the expressions should have the meaning assigned to them in that Section. According to the Respondents, the context in which the explanation occurs will show that the Legislature wanted to levy a tax even on the persons who were not liable to pay any fare or freight. According to them, expression" motor vehicle" used in the Explanation should not be understood in the light of the definition contained in Section 2(e), but should be given the ordinary meaning of any motor vehicle mechanically propelled by a motor.

27. The learned Advocate General has drawn our attention to the judgment of the Supreme Court in Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, and submitted that the validity of similar provisions contained in

Rajasthan Passengers and Goods Taxation Act was upheld by the Supreme Court in that case. It is argued that introduction of such explanation in the charging Section making the provision applicable to passengers of all kinds of vehicle is quite common and a recognised legislative practice. In *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, the question which arose for consideration was entirely different. The Court did not have occasion to consider whether the Act would apply to vehicles in which employees of the owner of the vehicles were being carried free of charge to and from their place of work. The Court had only to deal with the validity of certain provisions of the Act and the Rules. A copy of the Rajasthan Act has been produced before us by the learned Advocate General himself. It is seen there from that the Preamble of the Act referred to all the motor vehicles plying on roads. But the definition of passenger confined it to travellers in public service vehicles (*lok Sewa Yan*). The definition of motor vehicle also referred only to public service vehicle (*Lok Sewa Yan*). There is nothing in the judgment of the Supreme Court to help the Respondents herein in their contention that the employees who travel in the vehicles of the owner gratis to and from their work places can also be made liable for payment of tax.

28. Reliance is placed upon a judgment of the Single Judge in *The Hindustan Machine Tools Limited v. The State of Ha and Ors.* Vol. 72-1970 Punjab Law Reporter page 193. The Petitioner in that case was admittedly recovering from its employees certain amounts which they called as administrative charges for being taken to and from the places of work. After holding that the employees were being carried for reward in the vehicles by their owner, the learned Judge proceeded to invoke the principle that the definitions contained in the definition clause will operate only if there is nothing repugnant thereto in the subject or context or in any case only to the extent to which they do not become repugnant to any provision in the Act. The learned Judge said:

On the admitted facts of this case, the facility of using a transport of the company on a nominal payment on having fixed payment having no relation to the distance covered, has been provided by the Petitioner to all its employees who are living in Kalka or Chandigarh. The right of the employees of the Petitioner to get their salary while employed under the Petitioner is combined with the right of such of the employees as are living in Kalka or Chandigarh to be carried by the fleet of buses of the Petitioner without payment of any fare (even if the case of the Petitioner is admitted as stated) and on mere payment of an administrative charge. So far as the requirements of the statute are, therefore, concerned even if nothing was recovered from the employees of the Petitioner either as an administrative charge or otherwise, and if they were merely provided with free transport by the company as a facility combined with the remuneration to which they are entitled for serving the Petitioner, they would have been liable to pay tax u/s 3. It may be remembered that passenger tax levied u/s 3 of the Act is not a tax on the owner of the vehicle, but is a tax on the fare paid in respect of the passengers irrespective of the fact whether the fare is actually paid or in view of the provisions of the explanation to Sub-section

(1) or of Sub-section (2) of Section 3 is notionally deemed to have been paid. If any part of the definitions of "public service vehicle" or "passenger" are in any manner found to come into conflict with the express provisions of Section 3 of the Act, the definition in question would by operation of the opening words of Section 2 not operate to that extent on account of its repugnancy to Section 3.....It is, therefore, held:

(i) That there is an error apparent on face of the order of the Excise and Taxation Commissioner (Annexure J), in so far as it has been held there under that the issue whether the company's vehicles are public service vehicles or not, is clinched by the mere fact that those vehicles are registered as public service vehicles under the Motor Vehicles Act, and are not registered as private vehicles;

(ii) that it is not the class of vehicles under which a motor vehicle is registered which determines whether it is at a particular time being used as a vehicle of that type for purposes of the Punjab Passengers and Goods Taxation Act or even for the purposes of determining liability under Sections 112 and 123 of the Motor Vehicles Act, but it is the actual user of the vehicle at the relevant time which determines those matters;

(iii) that the amount of the fixed share in the so-called administrative charges, which is recovered from the employees of the Petitioner falls within the meaning and scope of the word "reward" as used in Section 2(25) of the Motor Vehicles Act, and, therefore, the Petitioner is carrying its employees in its buses for reward;

(iv) that when a corporation carries its employees in its own buses by recovering from them some amount which may be called an administrative charge or anything else, it carries its employees as passengers (for reward) within the meaning of Section 2(f) of the Act and operates its buses as public service vehicles within the meaning of Section 2(i) of the Act read with Section 2(25) of the Motor Vehicles Act....

29. The above observations relating to operation of the definition clause were really obiter dicta and unnecessary for the judgment in that case as the Learned Judge had found that the employees were travelling in the vehicles of the owner for reward. Even otherwise, we are unable to accept the correctness of the said view expressed by the learned Judge.

30. The same learned Judge was a party to a Full Bench of the said High Court, which decided the case in *Bharat Steel Tubes Ltd. Vs. The State of Haryana and Others*, . The judgment in the case was delivered by Anr. member of the Bench, but the principle laid down in the earlier case, namely, *The Hindustan Machine Tools Limited v. The State of Haryana and Ors.* Vol. 72-1970 Punjab Law Reporter Page 193, has been invoked by the Full Bench in the case before the Full Bench also. It was unnecessary to invoke the said principle as on the facts it was not disputed that the employees, who were travelling in the vehicles of the owner were paying a particular amount every month and the Full Bench held that the

same would fall within the scope of "hire or reward".

31. The learned Advocate General has also contended that the function of an explanation in a statute is also to widen the scope of the main Section and the legislative intent has to be gathered from the context. In this connection, our attention is drawn to *Hiralal Rattanlal Vs. State of U.P. and Another* etc. etc., . The Court observed:

But from what has been said in the case, it is clear that if on a true reading of an Explanation it appears that it has widened the scope of the main Section, effect be given to legislative intent notwithstanding the fact that the Legislature named that provision as an Explanation. In all these matters the courts have to find out the true intention of the Legislature.

32. Our attention is also drawn to a judgment in *Km. Sonia Bhatia Vs. State of U.P. and Others*, The Court said that an explanation merely widens the scope of the main Section and is not meant to carve out a particular exception to the contents of the main Section.

33. The observations in the aforesaid two decisions of the Supreme Court cannot be taken out of the context and construed as laying down a general proposition that in all cases an explanation should be considered to widen the scope of the main Section. As has been repeatedly pointed out by the Supreme Court in several cases, the matter depends upon the context of not merely the Section but of the entire statute.

34. In *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, the Court said that the explanation must be read so as to harmonise with and clear up any ambiguity in the main Section and should not be so construed as to widen the ambit of Section.

35. In *Coromandel Fertilizers Ltd. Vs. Union of India (UOI) and Others*, dealing with an explanation added to the notification, the Court held that the explanation formed a part of the main provision and neither controlled nor altered the same.

36. In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, the Supreme Court dealt with at length the function of an explanation in a statute. After referring to the various authorities on the question, the Court said:

Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provisions is

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

37. In *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation*, , the Court said:

The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision.

38. In *Sulochana Amma Vs. Narayanan Nair*, , while dealing with the provision of Section 11 of the CPC and Explanation VIII there to, the Court pointed out that the scope of the Explanation could be understood by reading it in combination with the main Section, namely, Section 11.

39. On an analysis of the aforesaid decisions of the Supreme Court with regard to the scope and object of Explanation in a statute, we have no doubt in holding that an Explanation to a Section should be understood in the context of the scheme and object of the statute itself and not merely the provisions of the particular Section. We have already pointed out that the scheme of the Act is to levy a tax on passengers of certain motor vehicles only. A perusal of the various definitions contained in Section 2 read with definitions contained in the Motor Vehicles Act clearly shows that the intention of the Legislature was to make the Act applicable only to persons, who carried on business of transport. We are fortified in this regard by the definition of "owner" contained in the Act, when it was first enacted. That referred to the owner of a motor vehicle in respect of which a permit had been granted or counter-signed under the provisions of the Motor Vehicles Act. A permit under the Motor Vehicles Act, 1939 was the document issued by the Commission of State or the Regional Transport Authority authorising the use of transport vehicle as a contract carriage or stage carriage or authorising the owner of a private carrier or public carrier to use such vehicles. The terms "private carrier" and "public carrier" were also defined in Section 2.22 and Section 2.23 of the said Act. A look at the said Section shows that the Petitioner would not fall within the scope of either of the expressions. The term "transport vehicle" was defined as a public service vehicle or goods vehicle. Thus, when the Act was first enacted, it was confined only to public service vehicles and persons travelling therein, But the expression "owner" was later amended by Act No. 1 of 1978 to mean the owner of motor vehicle used for carrying passengers or transporting goods in or through the territory of the State of Himachal Pradesh. That change did not bring about any change in the scope of

the Act as the expression "motor vehicle" continued to mean a public service vehicle or public carrier or private carrier or a trailer when attached to any such vehicle. In the context of the scheme of the Act and the object with Which it was enacted, there can be no doubt that the Explanation to Section 3(1) was not intended to widen the scope of the main Section. The only meaning that can be given to the Explanation is that whenever a person is allowed to travel in a public service vehicle without paying any fare, the amount which he would have paid had he been liable to pay the fare would also be taken into account for assessing the tax due.

40. The principle that a definition clause in any statute will operate only when there is nothing repugnant in the subject or context has been considered by the Supreme Court in two recent judgments in *Ichchapur Industrial Cooperative Society Ltd. Vs. Competent Authority, Oil and Natural Gas Commission and Another*, and *K.V. Muthu Vs. Angamuthu Ammal*, A Division Bench of that Court held that the definition contained in the definition clause of the Act has to be read into the context in which it is used and the purpose for which the Act was made. In the latter judgment referred to above, the Court said:

...This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule. which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied.

41. The above dictum clearly shows that unless there is something in the context making the definition inapplicable, the definition should be applied. If that principle is borne in mind, it is seen that there is nothing in Section 3(1) or the Explanation thereto, which makes the definition of the expressions "motor vehicle" and "passenger" in Sections 2(e) and 2(g) inapplicable or repugnant to the context. If the Explanation can be given full effect, even after applying the definition contained in Sections 2(e) and 2(g), it is not open to the Court to give any other meaning to the expressions used in the Explanation. The Court cannot assume or presume that the explanation is intended to widen the scope of the main Section, namely, Section 3(1). If the meanings contained in the definition clause to the expressions "motor vehicle" and "passenger" are applied to the said expressions found in the Explanation, the result of the position would be as

stated earlier that if in a public service vehicle, certain persons are allowed to travel without payment of fare for certain reasons, they cannot escape the liability for payment of tax under the provisions of the Act, The fare which would have been payable by them, but for the permission given to them to travel freely would be taken into consideration for assessing the tax. Hence, in our opinion, during the first period i.e., upto 31-5-1988, the Petitioner could not be made liable for payment of tax u/s 3(1) of the Act, or the Explanation thereto.

42. Turning to the second period i.e., from 31-5-1988 to 30-9-1990, the definition of motor vehicle was expanded only to include any vehicle used in contravention of the provisions of the Motor Vehicles Act, 1939 for the carriage of passengers and goods or both for hire or reward. Thus, the explanation of the definition has no impact whatever on the Petitioner or its employees. The question of the Petitioner's liability to pay tax could have arisen only if its vehicles had been used for carriage of passengers for hire or reward. It is needless to repeat that the Petitioner's employees travel in its vehicle free of any charge.

43. The definition of "passenger" is also changed by the Amendment Act No. 10 of 1988. Instead of the words "public service vehicle", the words "motor vehicle" have been substituted in the definition of "passenger". Thus, the definition has been widened. Though the definition of passenger is widened by referring to any person travelling in a motor vehicle instead of confining it to a public service vehicle, reading it along with the definition of "motor vehicle", it could apply only to persons travelling in a public service vehicle or public carrier or a private carrier or in a vehicle used in contravention of the provisions of the Motor Vehicles Act for hire or reward. We have already found that the Petitioner's vehicles are not public service vehicles. The expressions "public carrier and private carrier" were defined in the Motor Vehicles Act, 1939. Section 2(23) of the said Act defined a public carrier as an owner of a transport vehicle, who transports or undertakes to transport goods or any class of goods, for any person at any time and in any public place for hire or reward, whether in pursuance of the terms of a contract or agreement or otherwise, and includes any persons, body, association or company engaged in the business of carrying the goods of person associated with that person, body, association or company for the purpose of having their goods transported. Private carrier was defined in Section 2(22) of the said Act as an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purposes of his business not being a business of providing transport. or who uses the vehicle for any of the purposes specified in Sub-section (2) of Section 42.

44. "Transport vehicle" was defined in Section 2(33) of the said Act as public service vehicle or a goods vehicle. It is not necessary to dilate further on this aspect of the matter. A perusal of the above definitions would itself show that the change in the definitions of the expressions "motor vehicle" and "passenger"

introduced by Act No. 10 of 1988 did not alter the position of the Petitioner vis-a-vis the Act. Thus, the Petitioner continued to be outside the scope of Section 3(1) or the Explanation thereto during the second period also.

45. The third period is from 1-10-1990 onwards. Act 8 of 1991 introduced a new definition to the expression "motor vehicle". We have already extracted the said definition. It is not necessary to repeat the same here. Of course, the definition has widened the scope of the expression. Thus, any motor vehicle may fall within the expression. Here again, the words transport vehicle are used. The definition of "transport vehicle" as found in the Motor Vehicles Act, 1988 to which reference has been made in Section 2(e) is as follows:

"transport vehicle" means a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle.

46. The definition of public service vehicle in Section 2(35) of the Motor Vehicles Act, 1988 is the same as that found in Section 2(25) of the Act of 1939. The Petitioner's vehicles will not come within the scope of that definition. A private service vehicle has been defined in Section 2(33) of the Motor Vehicles Act, 1988 as follows:

"private service vehicle" means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by a person or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward but does not include a motor vehicle used for public purposes.

47. The said definition would certainly include the vehicles of the Petitioner herein. But u/s 3(1) of the Act, which remains untouched by the Amendment Act No. 10 of 1988 or the Amendment Act No. 8 of 1991, the tax shall be levied, charged and paid to the State Government on all fares and freights in respect of all passengers carried and goods transported by the motor vehicles in question. As the employees of the Petitioner are not paying any fare, Sub-section (1) of Section 3 will not apply by itself in order to make them liable for tax. The provisions of the Explanation are invoked. No doubt, the Explanation would apply to passengers carried by such motor vehicles and no fare or freight whether chargeable or not or has been charged, but the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route. A legal fiction is introduced by which the assessment has to be made on the footing that such passengers were carried at the normal rate prevalent on the route. The crucial words are "at the normal rate prevalent on the route". The statute has used the said expression. Unless the said expression is applicable in a given situation, the Section cannot be implemented. The word "route" has not been defined in the Act, but it has been defined in the Motor Vehicles Act, 1988. No doubt, it is the same as the definition, which was found in 1939 Act. It reads as follows:

"route" means a line of travel which specifies the highway which may be traversed

by a motor vehicle between one terminus and Anr. .

48. It is not in dispute that the vehicles of the Petitioner do not ply on any route, as defined above. The word "route" has a special connotation in the "Motor Jurisprudence", if we are permitted to say so. it is too well settled that route and highway are not synonymous nor can route be equated to a road. The learned Advocate General has placed reliance on the definition of highway in Webster's Third New International Dictionary found at page 1069. It reads as follows:

Highway: 1(a) a road or way on land or water that is open to public use as a matter of right whether or not a thoroughfare a public road or way (as a footpath, road, or waterway) including the right-of-way-compare private way, b: such a road or way established and maintained (as by a state) in accordance with law, C: a main direct road (as between one town or city and Anr.) sometimes contrasted with byway....

49. As we have stated earlier, route is not a highway and the two expressions are not synonymous. The matter is not bereft of authority. In *Kelani Valley Motor Transit Co. Ltd. v. Colombo Ratnapura Omnibus Co. Ltd.* AIR 1946 P C 137, Sir John Beaumont observed that "route" and "highway" are not synonymous terms. He said:

A "highway" is the physical track along which an omnibus runs, whilst a "route" appears to their Lordships to be an abstract conception of a line of travel between one terminus and Anr. , and to be something distinct from the highway traversed.

50. The above passage is quoted with approval by the Supreme Court in *Mysore State Road Transport Corporation Vs. Mysore State Transport Appellate Tribunal*, .

51. As the explanation to Section 3(1) has used the expression "normal rate prevalent on the route" in order to levy and collect tax by enforcing the Explanation, two things are necessary.

(1) There should be a route on which the vehicles are plying, (2) there should be a normal rate for that route. It is not in dispute in this case that neither of the above requirements is satisfied. It is the specific case of the Petitioner, which is not denied by the Respondents that the vehicles of the Petitioner are travelling for most part of the journey within the property of the Petitioner and not on public roads maintained by the State Government. Even that part of the public road cannot be considered to be a route, as defined by the Motor Vehicles Act unless it has been specified so by the concerned authorities under that Act.

52. Secondly, there is no normal rate or for that matter any rate admittedly fixed for the roads through which the Petitioner's vehicles are driven, assuming for a moment that the same could be considered to be a route as contemplated by the Act. It is stated in paragraph 19 of the reply filed by the Respondents as follows:

The contents of this para are wrong and denied. The rate of fare on a particular

route can be determined/reckoned by taking the fare per scheduled kilometer in the adjoining area on the same type of road conditions fixed by the transport authorities. As already submitted above the assessments made by Respondent No. 3 is based upon the information supplied by the Petitioner and if any area of the highway which falls within the campus of the Petitioner must have been excluded from the distance travelled.

53. It is evident from the above admission that there is a no normal rate for the route in question even assuming that the Petitioner's vehicles travel on such a route. There is no basis or warrant for the authorities under the Act to take into consideration some adjoining area on the same type of road conditions fixed by the Transport authorities in order to find out the normal rate referred to in the Explanation. It may not be forgotten that the Explanation uses definite article "the", when it refers to the route. The words are not "a route", but "the route". Hence, the charging provision contained in the Explanation cannot be enforced unless the route is specified by the authorities and the normal rate on that route is also prescribed, It is too well known that the authorities under the Motor Vehicles Act are empowered under Sections 43 and 48 of the Motor Vehicles Act, 1939 corresponding to Sections 67 and 72 of the Act of 1988 to prescribe the rates of fares, which shall be charged by the transport operators.

54. It should be mentioned in this connection that the learned Advocate General has made a statement and also produced a typed statement to the effect that the Petitioner's vehicles have been registered as stage carriages under the provisions of the Motor Vehicles Act and, therefore, they cannot escape the liability to pay the tax and surcharge. There is no substance in this contention. Even assuming that the registration of the vehicle is as a "stage carriage" that will not make the Petitioner's vehicles "state carriages". The question depends upon the actual use of the vehicles and not the registration. It is not disputed on facts that the vehicles of the Petitioner are being used by its employees free of charge and, therefore, they are not factually used as "stage carriages". The question arose for consideration before the Supreme Court in State of Mysore Vs. Syed Ibrahim, Referring to the provision of Section 42(1) of the Motor Vehicles Act, 1939, the Court said:

These words, however, cannot mean that the Sub-section applies only to cases where the motor vehicle in question is registered as a transport vehicle. If that were so, a person can use his motor vehicle, provided it is not "a transport vehicle", for carrying passengers for hire or reward without having to take out a permit for its used as "a transport vehicle". Since the Section is enacted for control C transport vehicles, it could never be the intention of the Legislature to allow such an anomalous result.....What the Sub-section emphasises is the use of a motor vehicle as a transport vehicle and the necessity of a permit which is required for purposes of exercising control over vehicles used as transport vehicles.....It is the use of the motor vehicle for carrying passengers for hire or reward which determines the application of Section 42(1).

55. The aforesaid decision of the Supreme Court was followed and applied by Justice Narual in his judgment in *The Hindustan Machine Tools Limited v. The State of Haryana and Ors.* Vol. 72-1970 Punjab Law Reporter 193 cited by the learned Advocate General himself and referred to by us earlier. The learned Judge held:

(i) that there is an error apparent on the face of the order of the Excise and Taxation Commissioner (Annexure J), in so far as it has been held there under that the issue whether the company's vehicles are public service vehicles or not, is clinched by the mere fact that those vehicles are registered as public service vehicles under the Motor Vehicles Act, and are not registered as private vehicles;

(ii) that it is not the class of vehicles under which a motor vehicle is registered which determines whether it is at a particular time being used as a vehicle of that type for purposes of the Punjab Passengers and Goods Taxation Act or even for the purposes of determining liability under Sections 112 and 123 of the Motor Vehicles Act, but it is the actual user of the vehicle at the relevant time which determines those matters....

Even if it is stated that it is open to the Government to frame the necessary Rules prescribing the normal rate prevalent on the route by exercising its powers u/s 22, the same has not been done yet. Hence, the Petitioner cannot be made liable to pay tax.

56. We have already referred to the Rules framed under the Act, which are being periodically amended. A perusal of the said Rules shows that there is no provision therein, which can be invoked for giving effect to the last part of the Explanation to Section 3(1) of the Act. so long as there is no specification of the route and prescription of the normal rate on the said route, it is not open to the Respondents to levy and collect taxes on the employees of the Petitioner, who are travelling in its vehicles to and from their work place or their children who travel to and from their schools or educational institutions free of charge. Hence, we hold that even for the third period, the Petitioner will not be liable for payment of tax. It follows that the first question as to the liability of the Petitioner for payment of tax under the provisions of the Act has to be answered in favour of the Petitioner.

57. The next question relates to surcharge u/s 3A. The answer to this question is very simple. Liability for payment of surcharge will arise only if there is liability for payment of tax. Section 3A provides for surcharge on the tax payable by every passenger carried by stage/contract carriage. Apart from the fact that the Petitioner is not liable for payment of tax u/s 3 of the Act, as now held by us, Section 3A has confined its applicability to stage/contract carriage. The Petitioner's vehicles are neither state carriage" nor "contract carriage". "stage carriage" was defined in the Motor vehicles Act, 1939 as a motor vehicle carrying or adapted 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 stage of the journey. In the Motor Vehicles Act, 1988, the definition was changed and it reads as follows:

"Stage carriage" means a motor vehicle constructed or adapted to carry more than six passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey.

58. "Contract carriage" was defined in 1939 Act as follows:

"contract carriages" means a motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for a fixed or agreed rate or sum

(i) on a time basis whether or not with reference to any route or distance, or

(ii) from one point to another, and in either case without stopping to pick-up,

or set down along the time or route passengers not included in the contract; and includes a motor cab notwithstanding that the passengers may pay separate fares.

59. In the Act of 1988, the definition reads as follows:

"contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes

(i) a taxicab; and

(ii) a motocab.

notwithstanding that separate fares are charged for its passengers.

60. It is very clear that the Petitioner's vehicles are not either "stage carriages" or "contract carriages". Hence, the Petitioner will not be liable for surcharge even if it is liable for payment of tax u/s 3 of the Act.

61. A reference was made by learned Counsel for the Petitioner to a communication from the Director Transport, Himachal Pradesh dated 25th September, 1995 filed as Annexure RB along with the reply of the Respondents. In that communication, it is stated that the Passenger Ex-gratia Scheme referred to in Section 3A is applicable for stage carriages and contract carriages only and,

as such, the buses of Boards, Universities, Schools, Himachal Pradesh State or the Central Government Undertakings or the National Hydro-electric Power Corporation (Petitioner) carrying their own employees or workmen, School or College students were not covered under the Scheme. The learned Advocate General contends that the statement in the said communication is only the opinion of the Director Transport and it is not binding on the State Government. It is unnecessary for us to dwell further on the matter as we are of the view that Section 3A is applicable to "stage carriage" and "contract carriage" only and the Petitioner's vehicles are neither.

62. Learned Advocate General has drawn our attention to a judgment of the Karnataka High Court in *Deshnur Wine Stores v. The State of Karnataka and Anr.* (1986) 61 STC 69 wherein it is held that whenever additional tax or surcharge on sales tax is levied, what is really levied is a tax on sale or purchase and the same does not lose the character of a tax on sale or purchase. It is wholly unnecessary for us to go into the question as we have held that the Section is not applicable to the vehicles of the Petitioner. Hence, the second question is also answered in favour of the Petitioner.

63. The last question relates to grant of exemption u/s 10 of the Act. It is not strictly necessary for us to go into this question in view of our conclusion on the other questions. However, for the sake of completion, we will deal with this question also. We have already referred to the fact that the 2nd Respondent had rejected the application of the Petitioner for exemption. The order of the 2nd Respondent is filed as Annexure P-10. It is really a communication to the Secretary (M.P.P. and Power) to the Government of Himachal Pradesh. The only reason given therein for rejection of the application is that the Organisation referred to therein including that of the Petitioner are being run on commercial basis. In our opinion, the said reasoning is fallacious. The Act imposes a tax only on the passenger and not on the vehicles or the owners of the vehicles. The owner of the vehicle is only a sort of collecting agent and he is not made liable himself under the Act to pay the tax. Hence, the application for exemption under the provisions of the Section should be considered from the point of view of persons, who are made liable to pay the tax under the Act. Section 10 empowers the Government to exempt an owner from the operation of any or all the provisions of the Act. After passing of the Amendment Act No. 10 of 1988, Section 10 reads thus.

Whenever it is expedient to do so in national or public interest the State Government may, by general or special order and subject to specify conditions, if any, exempt any person or class of persons for the operation of all or any of the provisions of this Act.

No doubt, when the order in Annexure P-10 was passed, the Section was different, and from 31-5-1988, the Section requires the Government to take into consideration the national or public interest. If an occasion arises for the Petitioner to apply for exemption under the provisions of Section 10 as amended in 1988, it

is for the concerned authorities to take into consideration the relevant matters taking in view the national or public interest and decide the same. Suffice it for the purpose of this writ petition to hold that the order in Annexure P-10 is not sustainable inasmuch as it was based on irrelevant consideration. However, it is unnecessary for us to quash the said order in the view we have expressed as regards the liability of the Petitioner for payment of tax, under the provisions of the Act. Though the third question is also answered in favour of the Petitioner, no relief need be given to the Petitioner in that regard.

64. In the result, the writ petition is allowed. Prayers A, B and C are granted. As regards prayer D, it is declared that the Petitioner is not liable to pay surcharge u/s 3A of the Act. Prayers E and F are granted and prayer G is rejected as unnecessary. The Respondents are granted eight weeks' time for refunding the tax already collected. There will be no order as to costs.