

(1990) 12 SHI CK 0029

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No's. 507, 536, 595, 604, 606, 611,621, 628, 647, 648, 651, 663, 671, 677, 678 and 685 of 1990

Nurpur Pvt. Bus Operators Union and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 24-12-1990

Acts Referred:

Companies Act, 1956 — Section 183, 379, 398

Constitution of India, 1950 — Article 14

Criminal Procedure Code, 1973 (CrPC) — Section 144

Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 16, 20, 40, 40(2), 8

Himachal Pradesh Passengers and Goods Taxation Act, 1955 — Section 10, 12, 13, 13AA, 15

Himachal Pradesh Passengers and Goods Taxation Rules, 1957 — Rule 17, 18, 19, 20, 21

Citation : (1992) 1 ShimLC 117

Hon'ble Judges : P.C.B. Menon, C.J;Bhawani Singh, J

Bench : Division Bench

Advocate : S.S. Kanwar, for the Appellant; Chhabil Dass, General and L.S. Panta, Dy. A.G., for the Respondent

Judgement

P.C. Balakrishna Menon, C.J.—These writ petitions are by the "owners" of "motor vehicles" within the meaning of the Himachal Pradesh Passengers and Goods Taxation Act, 1955, (for short the Act). They have challenged the validity of the amended Rule 9 of the Himachal Pradesh Passengers and Goods Taxation Rules, 1957 (for short the Rules), as in excess of the statutory provision u/s 4 of the Act, and also as violative of Article 14 of the Constitution.

2. The preamble of the Act states that the Act is "to provide for levying a tax on passengers and goods carried by road in certain motor vehicles" Section 3 of the Act is the charging Section as par which a tax is to be levied charged and paid to the State Government, on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at such rates not exceeding fifty

per cent as may be notified by the State Government. Section 3 of the Act reads as follows:

3. (1) 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 such rates not exceeding (fifty per cent) of the value of the fare or freight, as the case may be, and as the Government may, by notification, direct, (subject to minimum of five paise in any one case, the amount of tax being calculated to nearest multiple of five paise by ignoring two paise or less and counting more than two paise as five paise).

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.

(2) Where any fare or freight charged is 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 is 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, the tax shall be levied on the amount of such lump sum or on such amount as appears to the prescribed authority to be fair and equitable having regard to the fare or freight fixed by a competent authority under the Motor Vehicles Act, 1939.

(2-A) 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.

(3) Where passengers are carried or goods transported by a motor vehicle from any place outside the State or from any place outside the State to any place outside State but through the State or from any place within the State to any other place within the State but through the intervening territory of Anr. State to any place within the State, or from any place within the State to any place outside the State the tax shall be payable in respect of the distance covered within the State at the rate laid down in Sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare and freight as the distance covered in the State bears to the total distance of the journey.

(3-A) Notwithstanding anything contained in Sub-section (1) of Section 3 of the Act, from and after the commencement of this Section, there shall further be levied and paid to the State Government a surcharge on the tax payable by every passenger carried by a stage/contract carriage for each journey at a rate of 20% subject to a minimum of 5 paise in any one case, the amount of surcharge being calculated to the nearest multiple of 5 paise by ignoring 2 paise

or less and counting more than 2 paise and 5 paise, for the purpose of payment of ex-gratia grant to a passenger under the scheme to be prepared and notified by the State Government in the official Gazette.

(Provided that such scheme may be framed by the State Government with retrospective effect from which the surcharge was levied.

3. Section 4 of the Act provides for the method of collection of tax and that Section is as follows:

4. The tax and surcharge shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner.

(Provided that in case of public carriers or private carriers the Government may accept a lump sum in lieu of the tax chargeable on freight in the manner prescribed.

Provided further that in case of stage or contract carriages the Government may accept a lump sum in lieu of the tax and surcharge chargeable on fare in the manner prescribed).

4. Section 5 enjoins that no passenger shall be allowed to travel in a motor vehicle by its owner unless he is issued a ticket in the prescribed form for the journey, noting that the tax and surcharge had been paid ; so also no goods shall be allowed to be carried in a motor vehicle unless the person incharge of the vehicle has in his possession a receipt in the prescribed form issued by the owner of the vehicle showing the freight charged or chargeable at the usual current rate and denoting that the tax due under the Act had been paid.

5. Section 6 of the Act requires the owner of the motor vehicle to keep accounts and submit returns at such intervals to the Taxation authority as may be prescribed. The prescribed authority is empowered to make a best-judgment assessment in case he is not satisfied that the tax and surcharge has been correctly levied, charged and paid. Before making a best judgment, the taxation authority is required to give a reasonable opportunity to the owner of being heard.

6. Section 8 of the Act requires the owner of the motor vehicle to have the vehicle registered under the Act.

7. Section 9 provides for the procedure for registration and the grant of certificate of registration to the owner of the motor vehicle Sub-Section (4) of Section 9 empowers the prescribed authority to assess the tax and impose penalty in cases where the owner has failed to register the motor vehicle or pay the tax and surcharge due under the Act.

8. Section 12 makes the tax, surcharge and penalty under the Act recoverable as arrears of land revenue.

9. Section 15 provides for appeals to the appellate authority appointed under the

Act and Section 16 provides for revision before the Commissioner. The Commissioner is defined under the Act as the Excise and Taxation Commissioner of Himachal Pradesh.

10. Section 13-AA added by the amendment Act (Act No. 10 of 1988) empowers the officer authorised u/s 13 of the Act to detain the motor vehicle if he has reason to believe that passengers or goods are being carried by the motor vehicle in or through the State of Himachal Pradesh without payment of tax or penalty, if any, imposed under the Act.

11. Section 2(e) defines "motor vehicle" to mean a public service vehicle or public carrier or private carrier or a trailer when attached to any such vehicle. Clause (g) of Section 2 defines the expression "passenger" to mean any person travelling in a public service vehicle excluding the driver and 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.

12. Section 22 of the Act enables the State Government to make rules for the purpose of carrying out the provisions of the Act.

13. As is clear from Section 4 quoted above, the owner of the vehicle is constituted as the agent of the Government for the purpose of collection and payment of tax and surcharge to the Government. The first proviso relating to public or private carriers and the second proviso relating to stage or contract carriages allow an option to the owner of the motor-vehicle concerned to offer payment of tax chargeable under the Act in a lump sum and the Government has the discretion to accept the lump sum payment in lieu of the tax.

14. Rule 9 of the Act before its substitution w.e.f. 1st October, 1990 reads as follows:

9. Tax shall be paid in one of the following manners.--(1)(i) by stamping the ticket or receipt with an impressed, embossed, engraved or adhesive stamp (not already used) issued by the State Government for the purposes of the Act and denoting that the tax due has been paid.

(ii) where the impressed, embossed, engraved or adhesive stamps are not available or the Commissioner so directs, the amounts of tax payable shall be deposited by the owner in cash into the Treasury at such intervals and in such manner as laid down in Rules 17, 18, 19, 20 and 22:

Provided that the owner of a public or a private carrier may pay to the State Government, the following lump sum tax in lieu of the tax chargeable on freight:

(a) for the period from 1st January 1969 to 31st July 1969--Rs. 50 per month;

(b) for the period from 1st August, 1969 to 31st March, 1970--Rs. 1,500 per truck per annum;

(c) for the period from 1st April, 1970 to 30th June, 1972:

(i) Rs. 1,500 per annum per vehicle having loading capacity of more than 30 quintals;

(ii) Rs. 600 per annum per small vehicle (Gattu) having loading capacity between 10 and 20 quintals; and

(iii) Rs 300 per annum per small vehicle (jeep and Station Wagon) having loading capacity of less than 10 quintals; and

(d) for the period from 1st July, 1972:

(i) Rs. 2,500 per annum per vehicle having loading capacity of more than 20 quintals;

(ii) Rs. 1,000 per annum per small vehicle (Gattu) having loading capacity between 10 and 20 quintals;

(iii) Rs. 500 per annum per small vehicle (Jeep and Station Wagon) having loading capacity of less than 10 quintals;

Provided further that the owner of tourist taxi/taxi car shall pay to the State Government, a sum of Rs. 500 per annum per taxi in lieu of the tax chargeable on fare with effect from 1st July, 1985).

The said lump sum goods/passengers tax shall be deposited in cash by the owner into treasury and shall be payable in equal quarterly instalments paid within thirty days of the commencement of the quarter to which it relates.

(Provided further that the owner of the mini buses having sitting capacity of not more than 25 passengers shall pay to the State Government a lump sum tax of Rs. 21,000 and a surcharge of Rs. 4,000 per annum in lieu of the tax and surcharge chargeable on fare. The lump sum tax shall be paid within seven days of the commencement of the month concerned).

(2) The owner of a motor vehicle registered under the Act shall file his option to pay the lump sum rate of goods/passengers tax in writing at the time of registration which will be incorporated in the registration certificate. The owners who are already registered under the Act shall file their option within one month from the date of this notification failing which the tax shall be chargeable at ad valorem rate as may be prescribed from time to time. Such an option will remain operative till such time as it is allowed to be changed by the Assessing Authority concerned on application filed by the owner in the first week of April.

(3) When the owner of a motor vehicle opting to pay tax in lump sum under this Rule has not been plied his vehicle for a complete calendar quarter and produces an order from the competent authority under the Himachal Pradesh Motor Vehicle Taxation Act, 1973, that he has been exempted from the payment of tax for the said quarter, no tax shall be leviable under this rule for that quarter.

(4) The owner of a vehicle opting to pay tax in lump sum under this rule shall inform the Assessing Authority concerned within 7 days from the date from which

his vehicle goes out of use In case, the vehicle is put on road within the course of the quarter, an intimation to that effect shall also be given to the Assessing Authority concerned within 7 days of the date on which his vehicle is put on the road.

(5) If the permit of an owner of a vehicle opting to pay tax in lump sum under this rule is temporarily in the adjoining State, he shall intimate this fact within 15 days of such counter signatures to the Assessing Authority of the district in which his vehicle is registered under the Act.

(6) When an owner of a vehicle opting to pay tax in lump sum under this rule, deposits tax in a district in Himachal Pradesh other than the district in which he is registered under the Act, he shall, intimate within a week of such deposit, complete particulars etc of the deposit made in Anr. district, to the Assessing Authority of the district in which his vehicle is registered under the Act.

15. The rule was substituted by notification issued by the Government on 19th September, 1990 and the substituted rule came into force w.e.f. 1st October, 1990. Rule 9 as it stands at present reads as follows:

9. Mode of determination and payment of tax.--(1) The lump sum tax shall be determined in the following manner:

The owner of a stage carriage and a contract carriage other than those specified in Sub-rules (7) and (8) shall pay to the State Government tax in lump sum to be determined by the Assessing Authority on the basis of formula and in the manner hereinafter provided and after following the procedure specified in sub-rule (2) namely:

Number of seats x number of scheduled Kilometers x $\frac{3}{4}$? rate of passengers tax ? fare per kilometer:

Explanation.--In this formula $\frac{3}{4}$ represents average occupancy taken at 75 per cent of number of seats;

Provided that where the lump sum tax so determined is less than the average amount of tax paid or payable during the last three years or the actual of the previous year immediately preceding the year for which lump sum tax is being determined, the tax payable shall be the said average amount of tax or the said actual, whichever is higher:

Provided further that where the rate of passengers tax or fare is increased at any time during the year for which the lump sum tax is determined, for the purpose of the first proviso the average amount of tax paid or payable during the last three years or actuals of the previous year immediately preceding the year for which tax is being determined shall be deemed to be the amount which would have been had the increase in the rate of passenger's tax or fare would have been taken into account while calculating the said average amount or actual of tax:

Provided further that where the owner of a stage carriage and contract carriage has not plied the vehicle(s) for complete month and produces an order of the licensing authority under the provisions of the Motor Vehicles Act, 1988 that his vehicle(s) remained off the road completely for the said month, no tax shall be leviable for that month:

Provided further that where an owner of a stage carriage has not been able to ply his vehicle(s) owing to imposition of prohibitory orders u/s 144 of the Code of Criminal Procedure, 1973 restricting the movement of vehicle or owing to the natural calamities resulting in damage to roads or bridges, the tax for such number of days on which the vehicle has not been plied shall be deductible from the tax liability determined in respect of the vehicle, subject to production of satisfactory evidence of such prohibitory orders or damage to roads and bridges:

Provided further that when an owner of a stage carriage, having no sanctioned reserve replacement available with him has not plied his vehicle owing to an accident, no tax shall be leviable for such number of days on which he has not been able to ply the vehicle subject to production of the certified copy of report lodged with the local police and also a verification from the licensing officer appointed under the provisions of Himachal Pradesh Motor Vehicle Taxation Act, 1973 to the effect that his vehicle has remained off the road for the number of day(s) for which deduction of passenger tax is claimed.

(2) The Assessing Authority shall follow the following procedure for determining lump sum tax under sub-rule (1):

(a) The amount of deduction to be allowed in pursuance of the provisions contained in the second, third and fourth provisos to Sub-rule (1) shall be determined by the Assessing Authority at the time of assessment to be made under Sub-section (4) of Section 9 and Rule 21.

(b) before determining the amount of tax in lump sum under Sub-rule (1) the Assessing Authority shall afford an opportunity of being heard to the owner by serving him a notice in Form PGT-8-B ordinarily in the first fortnight of January in each financial year, requiring him on a date and a place to be indicated therein either to attend in person or to produce or cause to be produced any evidence, which such owner may wish to produce;

(c) on the day specified in the notice or as soon as afterwards the Assessing Authority shall, after considering such other evidence as it may require on specific points, ordinarily determined the lump sum tax:

(i) for the period from 1-10-1990 to 31-3-1991 before 25th October, 1990 and shall issue a notice to demand in Form PGT-11;

(ii) for the financial years from 1991-92 onwards, before the close of February each year and the Assessing Authority shall issue a notice of demand in Form PGT-11; and

(d) Notwithstanding anything contained hereinbefore where the fare rates or scheduled kilometers are changed by or with the approval of the prescribed authority under the Motor Vehicles Act, 1988, the amount of lump sum tax shall be re-determined in accordance with the provisions of Sub-rule (1) and notice of demand in Form PGT-11 shall be re-issued accordingly.

(3) Notwithstanding anything contained hereinbefore, in case of trips against special permits, not covered under the already authorised trips, including the stage carriage and contract carriages plying for transportation of passengers on special occasion like fairs and pilgrimages to religious or historical or tourist places, the Assessing Authority shall determine and recover, in addition to the lump sum tax under Sub-rule (1), the tax on the basis of hundred percent occupancy and the kilometers to be covered or on actual fare charged, whichever is higher and the same shall be deposited in cash by the owner in the Government Treasury or paid to the Assessing Authority before undertaking such journey.

(4) In the case of stage carriage and contract carriage which are already authorised to ply on the commencement of the Himachal Pradesh Passengers and Goods Taxation (Amendment) Rules, 1990 and in the case of the stage carriage and contract carriage which are got registered under the provisions of Motor Vehicles Act, 1988 after such commencement, the owner thereof may deposit the tax in respect of such vehicles in accordance with the provisions of Sub-rule (6) until the Assessing Authority determines the amount of tax, in respect of such vehicles under sub-rule (1).

(5) The lump sum amount of tax determined under Sub-rule (1) for the whole year or part thereof, shall be split up into equal monthly instalments as the case may be, and each instalment shall be payable in cash by the owner in Government Treasury on or before the 7th day of the month following the month to which the payment relates.

(6) The owner of the vehicle referred to in sub-rule (4) and of stage carriages and contract carriage visiting the State of Himachal Pradesh on special trips shall pay the tax by stamping the tickets or receipts with an impressed, embossed, engraved or adhesive stamps (not already used) issued by the State Government for the purpose of the Act and denoting that the tax due has been paid:

Provided that where the impressed, embossed, engraved or adhesive stamps are not available or the Commissioner so directs, the amount of tax payable shall be deposited by the owner in cash into the Government treasury at such intervals and in such manner as specified in Rules 17, 18, 19, 20 and 22.

(7) Notwithstanding anything contained in Sub-rule (2) the owner of a transport vehicle used for the carriage of goods or a private carrier who in the course of trade or business delivers goods to his customers on his own transport vehicles without charging separate freight distinct from the price of goods (hereinafter referred to as the public carrier or private carrier) may pay to the State

Government the following lump sum in lieu of the tax chargeable on freight:

(I)(a) Rs. 2,500 per annum per vehicle having loading capacity of more than 20 quintals;

(b) Rs. 1,000 per annum per vehicle (Gattu) having loading capacity between 10 and 20 quintals;

(c) Rs. 500 per annum per vehicle (jeep and station wagon) having loading capacity of less than 10 quintals; and

(d) Rs. 1,200 per annum for tractor plying with public carrier or private carrier permit when carrying goods which are not incidental to agriculture, belonging to the owner.

(II)(a) The amount of the tax specified in clause (I) shall be payable by the owner in equal quarterly instalments within thirty days of the commencement of the quarter to which the payment relates and shall be deposited in cash in Government treasury.

(b) On payment of the tax, the Assessing Authority shall grant a clearance certificate in Form P.G.T. 5-A in token of having received the tax under his signature.

(c) The payment of quarterly tax instalments shall, however, be subject to the following conditions, namely:

(i) where an owner of a public carrier or a private carrier has not plied his vehicle for a complete calendar quarter and produces an order of the Licensing Officer under the Himachal Pradesh Motor Vehicles Taxation Act, 1972 that he has been exempted from the payment of tax for that quarter, no tax shall be leviable for that quarter;

(ii) the owner of a public carrier or a private carrier shall inform the Assessing Authority concerned as soon as his vehicle goes out of use and in case the vehicle is put on the road within the course of the quarter, and intimation to that effect shall be sent to the Assessing Authority concerned within 7 days of the date on which his vehicle is put on the road;

(iii) When the tax is deposited in a district other than the district of registration of the vehicle the owner of public carrier or private carrier holding the permit shall furnish within a week of such deposit particulars of the deposit made in Anr. district to the Assessing Authority of the district in which the vehicle is registered under the Act.

(8)(a) Notwithstanding anything contained in Sub-rule (6) the owner of contract carriage specified below may pay to the State Government in cash in Government Treasury the lump sum tax as specified against each in equal instalments as mentioned in clause (c) of this sub-rule in lieu of the tax chargeable on fare:

Tax. (i) Scooter Rickshaw (two seater) Rs. 200 per annum (ii) Taxi Car or jeep having seats upto Rs. 600 per annum. 6 (excluding driver). (iii) Taxi/Station wagon having seats Rs. 4,600 per annum, not exceeding 15 (d) The provisions of Sub-rule (7) in so far as they relate to exemption shall apply mutatis mutandis to the contract carriage specified in clause (a).

(c) The lump sum passengers tax, in the case of Scooter Rickshaw and Taxi Car as specified in sub-clause (i) and (ii) of clause (a) of this Sub-rule shall be payable in equal quarterly instalments payable within 30 days of the commencement of the quarter to which it relates:

Provided that the lump sum tax in respect of Taxi and Station Wagon, specified in Sub-clause (iii) of Clause (a) shall be paid within 7 days of the commencement of the month to which it relates.

16. The amended rule in so far as it relates to stage carriages provides for a method of calculation of the amount of tax for the purpose of lump sum payment by prescribing the following formula:

Number of seats $\times$ number of scheduled Kilometers $\times \frac{3}{4} \times$ rate of passengers tax $\times$ fare per Kilometer.

17. The rule as it stood prior to the amendment provided for the stamping of the tickets or receipts with an impressed, embossed, engraved or adhesive stamp denoting that the tax due had been paid Alternatively, the rule provided also for the deposit by the owner, of the tax due into the treasury at such intervals and in such manner as are laid down by Rules 17 to 20 and 22 Rule 9 as it stood prior to its substitution w.e.f. 1st October, 1990, thus provided for a method of payment in conformity with the main part of Section 4 of the Act. It also prescribed the manner of payment in lump sum in lieu of the tax as provided for in the two provisos relating to goods vehicles and passenger vehicles respectively.

18. The grievance of the petitioners is that after the Sub-stitution of Rule 9 tax is demanded in lump sum calculated on the basis of the formula provided for in the amended rule and they are not allowed to pay tax on the actual amount of passenger fares charged and received. They thus complain that the main part of Section 4 of the Act is totally ignored in regard to the mode of payment of tax by the owner to the State Government.

19. It is clear from Section 4 of the Act itself that tax is to be paid on the fare and freight received by the owner and a payment by way of lump sum is a matter of option by the owner which option the Government is not bound to accept In other words, the method of lump sum payment as provided under the proviso is for the benefit of the owner so that he need not be subjected to assessment as provided for u/s 6 of the Act. The discretion is left with the Government to accept the lump sum payment or reject the same requiring the owner to pay tax and surcharge, on the freights and fares collected by him. The option cannot over-ride the method of payment provided for in the main part of

Section 4 and the amended Rule 9 should, therefore, be confined in its application to cases where the owners of motor vehicles have opted to pay the tax and surcharge in lump sum. In cases where the option is exercised and payment is made in accordance with the amended rules, the Government is required to accept the payment. In cases where the owner does not opt to pay the tax and surcharge in lump sum, then there is nothing in the rules to preclude him from making payment in accordance with the main part of Section 4 of the Act, in which case the Act, as already stated, by Section 6 provides for a method of assessment.

20. Construing similar provisions in Section 4 of the Rajasthan Passengers and Goods Taxation Act and Rules 8 and 8-A of the Rajasthan Passengers and Goods Taxation Rules (1959)--issued thereunder, a Constitution Bench of the Supreme Court in *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, stated thus:

Now, Rules 8 and 8-A and the notification only lay down what lump sum payment has to be in each case, if a lump sum is being paid. The mandatory language is used to fix peremptorily the amount of the lump sum. Rules 8 and 8-A and the notification cannot be said to over reach the Section to which they are subordinate and from which they must take their colour and meaning. If the Act creates an option, it cannot be negated by the Rules. The Act and the Rules must be read harmoniously, and reading them so, it is plain that the apparent mandatory language of the Rules and the notification still retains the permissive character of the Section, but only lays down what the amount of the lump sum must be, if lump sum payment is made in lieu of payment of the tax calculated on actual fares and freights. If the two Rules and the notification are read in this way, the mandatory language is limited to the prescribing of the lump sum rates. In our opinion, the two Rules and the notification are not void and contradictory of the Act.

21. The mandatory language of the Rule was thus held to apply only to cases where the owner had opted to pay the tax in lump sum and does not affect the main part of the Section under which the tax is to be collected by the owner and paid to the State Government.

22. A Division Bench of this Court in *Sardar Karam Singh v. The State of Himachal Pradesh etc* ILR 1973 (HP) 1107 had struck down a proviso to Rule 9 as it originally stood requiring the owners of private and public vehicles exercising the option to make lump sum payment of tax without reference to the distance covered in the State of Himachal Pradesh as violative of Article 14 of the Constitution. Construing Section 4 of the Act, the Division Bench observed at page 1113:

...Section 4 by its first proviso permits the Government in the case of public carriers or private carriers to accept a lump sum in lieu of tax chargeable u/s 3. The Government is thus empowered to accept a lump sum in respect of the tax.

The proviso uses the words "may accept". They indicate (a) an offer by the owner of the motor vehicle to pay a lump sum in lieu of tax, and (b) a power in the Government to accept the offer. The making of such an offer is left to the will of the motor vehicle owner, and so also it is open to the Government to decide whether it should accept the offer.

It is further stated at page 1114:

It has been contended on behalf of the petitioner that payment of the lump sum is obligatory and that the before the rule exceeds what is contemplated by Section 4 of the Act, and is, therefore, ultra vires. In my opinion, in the context of Section 4 there is no ground for the conclusion. I have already explained that Section 4 gives an option to the motor vehicle owner to offer a lump sum in lieu of tax chargeable u/s 3. The option rests with him. It is for him to decide whether he wishes to pay the tax calculated on the actual freight in accordance with Section 3 or prefers to pay a lump sum in lieu of the tax. If he chooses to pay a lump sum, the Government is bound to accept it provided the payment is made in accordance with the rules. No question arises of the motor vehicle owner being bound to pay a lump sum in lieu of tax.

23. It is thus clear that the lump sum payment is an alternative method at the option of the owner provided for in the proviso to Section 4 of the Act.

24. A Full Bench of this Court in *Gainda Mal Charanji Lal Vs. The State of Himachal Pradesh and Others*, declaring Rule 9 as it stood at the relevant time, fixing a flat rate of tax for carriers operating exclusively within the territory of Himachal Pradesh and for carriers operating only in part of the territory as opposed to Article 14, stated thus at page 20:

A perusal of the provisions contained in Sections 3 and 4 of the Act shows that the charging provision contained in Section 3 proposes to levy tax "at such rates not exceeding one sixth of the value of the fare or freight". Thus the tax is levied on the basis of the fare or freight realised by a transport undertaking. But, for the purpose of convenience, Section 4 gives an option to the owners of carriers to pay the tax in lump sum. The method of levying lump sum amount of tax is prescribed by the Government by Rule 9 which is amended from time to time. According to the impugned notification which amends Rule 9, this lump sum is fixed at Rs. 1,500 irrespective of the question whether the carrier plies on only a part of the territory of Himachal Pradesh or on the whole of that territory. It is no doubt true that this particular method of calculation of tax in lump sum is devised only for administrative convenience, and as held by the Supreme Court in *R.C. Jall Vs. Union of India (UOI)*, so long as the method of calculation of tax does not affect the essence of the duty, but only relates to the machinery of the calculation for administrative convenience the said method cannot be successfully challenged. It should also be conceded that so long as this machinery for calculation of tax has some rational or intelligent nexus between the tax calculated, and the fares and freights collected, it would not be open to a citizen

to contend that the tax is ultra vires, and not justified under entry 56 of List two of the Constitution. The question, however, is whether a flat rate of levying tax in lump sum without making any distinction between two classes of operators not similarly situated, would offend the provisions of Article 14 of the Constitution or not.

It should be notified that the lump sum tax contemplated by Section 4 of the Act is in lieu of the tax which is chargeable u/s 3. If again a reference is made to the provisions contained in Section 3 it becomes evident that in ordinary course the tax is chargeable only on the value of fare on freight. Sub-section (3) of Section 3 makes it further clear that in cases where goods are permitted to be transported not in the whole of the area of Himachal Pradesh, the tax becomes payable in respect of the distance covered within the State of Himachal Pradesh calculated on such amount as bears the same proportion to the total fare and freight as the distance covered in the State bears to the total distance of the journey. This Sub-section (3) therefore, emphasises the intention of the legislature to levy tax which is proportionate to the area covered by the transport vehicle in question. Thus the tax policy which is revealed from the scheme of Section 3, makes distinction between the carriers which are operating in the whole of the territory of the State, and the carriers which are operating only in a part of this territory. Now if the tax is to be realised in lump sum, and in lieu of the tax which would become chargeable u/s 3, it must follow that the lump sum tax so levied must be based on the same principle on which ad valorem tax to be levied u/s 3, is based. If that is not done, and if all the carriers are charged to the same tax in lump sum irrespective of the question whether they transport goods in the whole territory of Himachal Pradesh, or is only a part of that territory, the result would be that the two classes of cases which do not stand on equal footing are treated equally. This would not only infringe the principle of Article 14 of the Constitution, but would also go against the intention expressed by the legislature in the above referred provisions of Section 3 which is the main charging Section. In these circumstances, we see no justification for revising the view which this Court has taken in the above referred case of *Sardar Karam Singh* 1974 Tax LR 1921 (Him Pra).

25. We are clear in our minds that the lump sum payment contemplated by the two provisos of Section 4 of the Act does not in any way affect the owner's right if he so chooses to make payment of tax and surcharge on the freight and fare collected by him in accordance with the main part of Section 4 of the Act.

26. It is, however, contended that as per Section 4 the tax and surcharge are to be collected by the owner and paid to the State Government and since presently there is no rule prescribing the manner of collection and payment of tax and surcharge by the owner to the State Government, the only method of payment is as-provided by the amended Rule 9 and the owner cannot have any other option except to comply with the requirements of the amended Rule 9. It is also submitted that Rule 9 as amended prescribing a formula for arriving at the tax

due and payable will also satisfy the requirements of the main part of Section 4 of the Act. We are enable to accept these arguments The lump sum payment provided for under the proviso should have a reasonable nexus to the fare and freight collected by the owner and the formula prescribed satisfies the requirements of the proviso for arriving at the amount for the purpose of lump sum payment But that does not in any way affect the main part of Section 4 as par which the owner of the motor-vehicle is required to collect and pay tax and surcharge to the Government. The charge of tax u/s 3 is on all fair and freight in respect of passengers curried and goods transported by motor vehicles at the rates notified by the Government in that behalf. The mere fact that presently there is no rule prescribing the manner of collection and payment of tax by the owner to the Government does not make the main part of Section 4 inapplicable and unworkable. The Supreme Court in Surinder Singh Vs. Central Government and Others, stated thus at page 673:

Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.

27. The Supreme Court quoted the following passage from its earlier decision in U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Others,

It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations u/s 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff.

28. Considering Sections 8, 16, 20 and 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, in the light of the above decision the Supreme Court stated at page 674:

...Section 40(2)(j) provides for framing of rules prescribing procedure for the transfer of property out of the compensation pool and the adjustment of the value of the property so transferred against the amount of compensation. Neither Sections 8, 16, 20 nor Section 40 lay down that payment of compensation by sale of the pool property to a displaced person shall not be done unless rules are

framed These provisions confer power on the Central Government and the authorities constituted under the Act power to pay compensation to displaced persons by sale, or allotment of pool property to them in accordance with rules, if any. Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act If the legislative intent was that until and unless rules were framed power conferred on the authority under Sections 8. 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of rules, could not be a condition precedent for the exercise of power.

29. The same principle was reiterated in *Arati Dutta v. Eastern Tea Estate (P) Ltd* (1988) I SCC 523. The question in that case related to the right of appeal u/s 183 against the orders passed by a single Judge under Sections 379 and 398 of the Companies Act. The Supreme Court in that context observed at page 528:

It is true that there is perhaps no procedure to file an appeal from the decision of the learned Single Judge of the Gauhati High Court. If that is so rules should be framed by the High Court in its jurisdiction of rule-making power for filing and disposal of such appeals. But absence of the procedural rules do not take away a litigant's right to file such appeals when the statute confers such a right specifically and the jurisdiction of the High Court to dispose of such an appeal if so filed.

30. For the aforesaid reasons, we hold that Rule 9 as substituted w.e.f. 1-10-1990 is perfectly valid The said rule, however, will have application only to cases where the owner of the motor vehicle concerned opts to pay the tax in a lump sum. It does not in any way preclude him from paying the tax on the freights and fares due u/s 3 of the Act.

C.W.P. No. 606 of 1990.

31. C.W.P No. 606 of 90 is by the Dr. Y.S. Parmar University of Horticulture and Forestry. According to the University the vehicle used by it for the transportation of the staff and students of the University will not be covered by the provisions of the Act. It is also stated that the University charges only a nominal rate by way of fare from its students and staff. Since the vehicle used by the University is also a motor-vehicle within the meaning of the Act, it cannot be said that the said vehicle is not covered by the provisions of the Act. It is however, open to the University to have recourse to the provisions of Section 10 of the Act for exempting the University from the operation of the provisions of the Act.

32. These writ petitions are disposed of as above. The parties will suffer their respective costs.