

(1965) 02 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 1375, 1665, 1666, 1667, 1668, 1669 and 1670 of 1964

P. Venkatachalapathi and Others

APPELLANT

Vs

Commercial Tax Inspector, Intelligence Section and Others

RESPONDENT

Date of Decision : 26-02-1965

Acts Referred:

Constitution of India, 1950 — Article 19 (1), 19 (1) (f), 19 (1) (g), 301
Mysore Sales Tax Act, 1957 — Section 28 A, 28 A (2), 28 A (7)

Citation : (1965) 16 STC 894

Hon'ble Judges : D.M. Chandrashekhar, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : K. Srinivasan, S. Gurumukh, T.V. Srinivasan, H.S. Narasiah and H.N. Srinivas Anand, for the Appellant; T. Krishna Rao, Advocate-General, for the Respondent

Judgement

Narayana Pai, J.—The petitioners in these writ petitions assail the constitutionality or validity of section 28-A of the Mysore Sales Tax Act, 1957.

2. The said section - to the provisions of which we shall make a detailed reference later - was introduced into the principal Act by the Mysore Sales Tax (Third Amendment) Act, 1961, on 1st December, 1961. The section as originally introduced had six sub-sections. The first empowered the State Government to establish check posts or erect barriers at such place or places in the State as may be notified if it considers necessary to do so, with a view to prevent or check evasion of tax under the Act. Sub-section (2) provided, among other things, that the owner or person in charge of a goods vehicle should, in addition to a goods vehicle record or a trip sheet, carry with him a document called a bill of sale or a delivery note containing the prescribed particulars and produce the same before the officer in charge of the check post or barrier or any other officer empowered by the State Government. In the case of goods entering or leaving the State limits, such person was further required to give a declaration in the prescribed form. Sub-section (3) required him to stop his vehicle at every check

post or barrier or at any other place when so required by the officer empowered by the State Government, to enable the officer to inspect the goods carried in the vehicle and the records relating thereto. Sub-sections (4) and (5) declared that the officer in question shall have the power to seize and confiscate goods not covered by the documents mentioned above or in the case of goods moving across the State limits, if the declaration mentioned above is false. A proviso stated that before taking action for confiscation of goods the officer shall give the person affected an opportunity of being heard and make an enquiry in the manner prescribed. Sub-section (6) gave the option to the owner of the goods or the person in charge of the goods to pay in lieu of confiscation a certain amount specified in the sub-section.

3. By Notification No. F.D. 383 CSL. 61 dated 20th November, 1962, published in the Mysore Gazette of 22nd November, 1962, Part II-A was added to the Mysore Sales Tax Rules, 1957, containing rules 23-B, C, D, and E. Rule 23-B prescribed the particulars to be contained in a bill of sale or delivery note referred to in sub-section (2) of section 28-A. Rule 23-C stated that the declaration required by the said section should be in Form No. 34. Rules 23-D and 23-E prescribed the details relating to the inspection and confiscation of goods.

4. The Mysore Sales Tax (Amendment) Act, 1963 (Act No. IX of 1964), which received the assent of the President on 17th February, 1964, added sub-section (7) of section 28-A providing that such authority as may be prescribed may, either suo motu or on an application by any person aggrieved by any order made under the section, call for the records and after giving an opportunity to such person of being heard, pass appropriate orders. The Sales Tax Rules were further amended by Notification No. G.S.R. 226 dated 23rd July, 1964, which, among other things, introduced new rule 23-F prescribing the Deputy Commissioner of Commercial Taxes as the authority for purposes of sub-section (7) of section 28-A.

5. The petitioner in Writ Petition No. 1375 of 1964 is a merchant carrying on business at New Tharagupet, Bangalore. He purchased 100 bags of groundnut seeds from a concern called Gopalakrishna Groundnut Factory, Chilamathur, Hindupur Taluk, Andhra Pradesh, on 14th February, 1964. The goods were despatched by lorry on the same day from Chilamathur to Bangalore. On 15th February, 1964, at 6-30 A.M., the Commercial Tax Inspector checked the lorry at Yelahanka check post. The petitioner's clerk who was in the lorry could not produce the documents prescribed u/s 28-A of the Act. The petitioner states that the invoice and the way bill relating to the goods issued by the seller in Andhra Pradesh were despatched to him direct by post. The Commercial Tax Inspector seized the goods and informed the petitioner's clerk that they would not be released unless Rs. 900 being ten per cent. of the estimated value of the goods are paid. The petitioner made the payment on 15th February, 1964, and got the goods released. He complains that before seizure and confiscation no sort of enquiry was conducted. He further stated that the Commercial Tax Inspector had

in fact come to his shop on 17th February, 1964, and satisfied himself about the existence of the relevant documents and also the fact that the purchase had been entered in the books of account of the petitioner on 15th February, 1964, itself. He has produced the invoice and the way bill as annexures to his petition. The petitioner appealed to the Deputy Commissioner of Commercial Taxes. It was dismissed on 13th May, 1964, as not maintainable. That order is also one of the annexures to the petition.

6. The petitioners in the other six writ petitions are owners or operators of lorries or goods vehicles operating within the District of Bangalore. The facts of their cases are all similar and may be summarised as follows :-

They state that their lorries are used mostly for transport of bricks, jelly, size stones and boulders and sand and mud, all used for building purposes in Bangalore. They state that check posts u/s 28-A have been established at old Mysore Road, Bellary Road Hosur Road, Tumkur Road, and Mysore Road, and that at every check post their lorries are being stopped and goods not covered by a bill of sale or delivery note are seized and confiscated and released on payment of sums of money stipulated by the officer in charge of the check post. Their complaint is that their activity, viz., transport of material of the type mentioned above, does not involve any act of sale, that having regard to the peculiar circumstances of their business, it is highly impracticable or almost impossible to comply with the provisions of section 28-A and that they stand in danger or run the risk of going out of business altogether.

7. We shall refer to the facts in greater detail when we come to discuss the arguments in support of these petitions.

8. The attack on the validity or constitutionality of the section in question is two-fold. In the first place, the petitioners contend that the provisions of the section are beyond the legislative competence of the State Legislature. In the alternative, they contend that the said provisions constitute an unreasonable restriction on their fundamental rights guaranteed under clauses (g) as well as (f) of Article 19(1) of the Constitution.

9. The first argument relating to the alleged lack of legislative competence is sought to be supported both on the ground that section 28-A is beyond the scope of Entry 54 of List II of the Seventh Schedule of the Constitution and also on the ground that it affects or impedes the freedom of trade, commerce and intercourse protected by Article 301.

10. Because the arguments addressed from every one of these points of view proceed on the purpose and operation of section 28-A and the language employed therein, we should first set out the section in extenso. That section, as amended, reads as follows :-

"(1) If the State Government consider it necessary that with a view to prevent or check evasion of tax under this Act, in any place or places in the State, it is

necessary so to do, they may, by notification, direct the establishment of a check post or the erection of a barrier, or both, at such place or places as may be notified.

(2) The owner or person in charge of a goods vehicle or boat shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note containing such particulars as may be prescribed in respect of the goods carried in the goods vehicle or boat, as the case may be, and produce the same before any officer in charge of check post or barrier or any other officer as may be empowered by the State Government in this behalf. The owner or person in charge of a goods vehicle or boat entering the State limits or leaving the State limits shall also give a declaration containing such particulars, as may be prescribed, of the goods carried in the goods vehicle or boat, as the case may be, before the officer in charge of the check post or barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer and keep one copy with him.

(3) At every check post or barrier, or at any other place when so required by any officer empowered by the State Government in this behalf, the driver or any other person in charge of a goods vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may be required by the officer in charge of the check post or barrier or the officer empowered as aforesaid, to examine the contents in the vehicle or boat and inspect all records relating to the goods carried, which are in the possession of such driver or other person in charge, who shall, if so required, give him his name and address and the name and address of the owner of the vehicle or boat.

(4) The officer in charge of a check post or barrier or the officer empowered under sub-section (3), shall have power to seize and confiscate any goods which are under transport by a goods vehicle or boat and which are not covered by a goods vehicle record, a trip sheet or a log book, as the case may be, and a bill of sale or a delivery note and, when the goods vehicle or boat enters or leaves the State limits, the declaration referred to in sub-section (2) also.

(5) Where the declaration made under sub-section (2) is false in respect of the materials furnished therein, the officer in charge of the check post or barrier or any other officer empowered in this behalf shall have the power to seize and confiscate the goods in respect of which the declaration is false :

Provided that before taking action for the confiscation of goods under this section the officer shall give the person affected an opportunity of being heard and make an inquiry in the manner prescribed.

(6) Whether confiscation is authorised by this section, the officer adjudging it shall give the owner or the person in charge of the goods an option to pay in lieu of confiscation, -

(a) in cases where the goods are taxable under this Act without prejudice to

recovery of the tax recoverable, a sum of money equal to ten per cent. of the estimated value of the goods; and

(b) in cases where the goods are exempted from tax under this Act on any condition, one thousand rupees or one-half of the value of the goods whichever is less.

(7) Notwithstanding anything contained in sub-section (6), such authority as may be prescribed by either suo motu or on an application by any person aggrieved by any order made under this section, call for the records and after giving an opportunity to the person affected of being heard, pass orders confirming, cancelling or varying any such order, as the prescribed authority deems fit".

(Note :- The word "by" occurring after the expression "as may be prescribed" and before the expression "either suo motu" in sub-section (7) is obviously a printer's mistake for the word "may").

11. It is common ground that the source of legislative power is Entry 54 of List II of the Seventh Schedule of the Constitution, under which the State Legislature is empowered to legislate on the subject of taxes on the sale or purchase of goods other than newspapers subject to the provisions of Entry 92-A of List I. Entry 92-A of List I empowers the Parliament to legislate on the subject of tax on the sale or purchase of goods other than newspapers where such sale or purchase takes place in the course of inter-State trade or commerce.

12. With reference to the said entries, the argument on behalf of the petitioners in Writ Petitions 1665 to 1670 of 1964 is that their activity does not involve any act of sale or purchase of goods at all and that therefore any attempt to regulate or control such activity is outside the scope of Entry 54. They state that they are neither dealers within the meaning of the Sales Tax Act nor assessee to sales tax. The section, without in any manner controlling the activities of such dealers or obliging them to comply with its requirements, has, according to the petitioners, sought to control their activity which has nothing to do with either the levy or collection of tax under the Mysore Sales Tax Act.

13. On behalf of the petitioner in Writ Petition 1375 of 1964, a more elaborate argument has been addressed on this point. It is stated that because the provisions of the section govern not merely the goods or transactions which may be legitimately subjected to tax under the Act but also transactions in the course of inter-State trade excluded from the purview of Entry 54 of the State List and in respect of goods which are exempted from the tax under the Act itself, the section must be held to trench upon a legislative field outside the competence of the State Legislative and to levy a tax or penalty not lawfully exigible under the charging provisions of the Act itself. It is further stated that the amount prescribed as payable in lieu of confiscation under sub-section (6) of the section is really a penalty in the nature of additional tax which is not exigible under the charging provisions of the Act and that if the operation of the section is to be viewed as resulting in the confiscation of goods, pure and simple, such

confiscation must be held to be clearly de hors the taxing provisions of the Act, because it is not a tax on sale.

14. The answer on behalf of the State to these contentions is that the impugned section is entirely within the scope of Entry 54 of the State List. The legislative power under the said entry, the learned Advocate-General states, clearly includes all incidental and ancillary powers necessary to make the collection of tax effective and complete. He points out that the very first sub-section of the impugned section clearly indicates that the purpose of the section is the prevention of evasion of tax. The steps taken to make the collection of tax effective and complete and to prevent evasion cannot, he points out, be restricted or limited only to such as are directly related to the activity which is taxed, like the activity of sale and purchase in this case. According to him, it must in the nature of things comprise or comprehend all ancillary and attendant activities leading to the principal activity which is taxed, including the transport of goods, maintenance of records and accounts, and activities of person other than assesseees with whom or the assesseees may in the course of trade have dealings, and should also extend to the requisitioning of assistance and information from persons other than the direct assesseees under the Act. He argues that if the provisions of the impugned section are understood in the correct perspective and in the light of the objective clearly stated in sub-section (1), it should be clear that there is no intention whatever to affect, control or tax transactions in the course of inter-State trade, or impose a tax not exigible under the statute - for example, in respect of exempted goods; the mere fact that the goods cross the State border does not, he points out, indicate that the goods are necessarily the subject of a transaction in the course of inter-State trade; they may well be goods the turnover in respect of which is subject to tax under the State Act; all that is intended by the section is the collection of information to facilitate the identification of the transaction or the liability or otherwise of a dealer within the State or of a dealer liable to pay tax under the State Act. He repudiates the suggestion that there is any attempt at all to impose tax under the impugned section, or that either the confiscation or payment in lieu of confiscation can at all be regarded as a tax or additional tax under the State Act. According to him, it is in the nature of a penalty, not tax, intended to make the entire machinery to prevent evasion of tax set up u/s 28-A effective in its operation. There is no law, he states, which prohibits the levy of a penalty in the nature of punishment, apart from the tax, by the authorities functioning under the taxing statute without recourse to ordinary criminal courts. He concedes or at any rate does not dispute that the impugned section does impose certain restrictions on the trade or business of not merely the assesseees to sales tax but also transporters like the petitioners in Writ Petitions 1665 to 1670 of 1964, but contends that those restrictions are reasonable and have been imposed in the interest of the general public which is undoubtedly served by the due collection of all taxes.

15. Reserving our opinion about the reasonableness of the restrictions which we

shall consider separately at a later stage, it appears to us that the petitioners cannot successfully question the legislative competency of the impugned section, or more accurately, contend that the State Legislature had no competence to enact the said section.

16. It is well settled, and no one disputes, that the power to legislate on a topic of legislation carries with it the power to legislate on an ancillary matter which can be said to be reasonably included in the power given (Vide *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, . That the power to provide for the taking of steps to prevent evasion of tax is reasonably related to the legislative power itself of imposing such tax cannot also admit of any doubt. In *Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi and Ajmer*, , their Lordships pointed out that the entry authorising legislation on income tax should be read not only as authorising the imposition of a tax but also as authorising an enactment which prevents the tax imposed being evaded, because if it were not to be so read, then the admitted power to tax a person on his own income might often be made infructuous by ingenious contrivances. The same view was reiterated in *Balaji Vs. Income Tax Officer, Special Investigation Circle*, . Once again, in *R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad*, , their Lordships observed as follows at page 924 :-

"Now there is no dispute that the heads of legislation in the various Lists in the Seventh Schedule should be interpreted widely so as to take in all matters which are of a character incidental to the topics mentioned therein. Even so, there is a limit to such incidental or ancillary power flowing from the legislative entries in the various Lists in the Seventh Schedule. These incidental and ancillary powers have to be exercised in aid of the main topic of legislation, which in the present case, is a tax "on sale or purchase of goods". All powers necessary for the levy and collection of the tax concerned and for seeing that the tax is not evaded are comprised within the ambit of the legislative entry as ancillary or incidental".

17. That persons who are not directly liable to pay the tax in question may also have their activities reasonably restricted with a view to prevent the principal persons liable to tax from evading payment of tax is also clear from another decision of the Supreme Court reported in *Chaturbhai M. Patel Vs. Union of India (UOI) and Others*, , in which their Lordships upheld the competence of the Central Excises and Salt Act, 1944, and the rules made thereunder which required various persons who may not be liable themselves to pay excise duty to furnish information, submit returns, etc., and make them liable for penalties, confiscation, etc., for contravention, pointing out that the various provisions of the Act and the rules were essentially connected with the levying and collection of excise duty.

18. The last mentioned ruling of the Supreme Court answers Mr. Narasiah's argument on behalf of the petitioners in Writ Petitions 1665 to 1670 of 1964 that the business of transport carried on by them does not involve any element of sale of goods attracting liability to tax under the Sales Tax Act. Whether the

restriction imposed by the impugned section on their trade or business is reasonable, we shall consider separately. But if the provisions of the section can be regarded as provisions against evasion, the fact that Mr. Narasiah's clients themselves are not assesseees to sales tax does not affect the legislative competency of the section.

19. The argument of Mr. Srinivasan that the section goes beyond the scope of Entry 54 of the State List may now be considered.

20. The first point to consider is whether the section at all imposes any tax. On a plain reading of the section, no such result can be postulated. Apart from calling for some information to be furnished in the shape of bill of sale or delivery note containing particulars set out in rule 23-B or in the shape of a declaration in Form No. 34, the other things that the section provides for are confiscation of goods not covered by the documents or in relation to which false declaration has been made, and the option to the person affected to pay a certain amount in lieu of confiscation. Calling for information clearly does not impose any tax. The amount which may be paid in lieu of confiscation is said to be "without prejudice to the recovery of tax" which may be recoverable under the Act. So far, it is clear that the section does not regard the said amount as tax. It is, however, pointed out that the amount payable in respect of goods exempted from tax on any condition could only be regarded as tax. But before we could say that the amount payable under sub-section (6) of section 28-A either in respect of taxable goods or in respect of goods exempted from tax is itself in the nature of tax, we have to examine the reasons for which or the circumstances in which the section requires such payment. Now, the tax under the Act is a tax on turnover as is obvious from the charging section 5. The amount payable under sub-section (6) of section 28-A has no relation to the turnover of the dealer who has dealt with them or who may at a subsequent date deal with them in the course of his trade, nor is it a fee which may rightly be regarded as a payment really in the nature of a tax. Obviously it is in the nature of a punishment for contravention of the section rendering the goods liable for confiscation. Whether one looks upon confiscation itself as the primary punishment or the payment as the primary punishment and confiscation only an effective way of enforcing the said payment, there can be no doubt that what the section purports to do is to punish a person for failure to obey it and not to impose on him a tax in respect of his turnover. But, Mr. Srinivasan, relying upon a ruling of the Supreme Court in C.A. Abraham, Uppotttil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, , contends that what is levied by the section is penalty and that the penalty should be regarded as an additional tax. In that case, their Lordships dealt with section 44 of the Income Tax Act of 1922 and the nature of penalty imposed u/s 28 of that Act against the partners of a firm who had discontinued their business by virtue of section 44. After pointing out that the liability declared by section 44 is undoubtedly a liability to assessment under Chapter IV of the Act, their Lordships held that what is called penalty u/s 28 of the Act (which is included in Chapter IV) is imposed as a part of machinery for assessment of tax liability. It is in that

sense, their Lordships pointed out, that the said liability is in essence a liability to pay additional tax though designated as penalty. But section 28-A of the Mysore Sales Tax Act with which we are now concerned is no part of the machinery for assessment of tax liability under the statute; the payment which it requires or permits is clearly in the nature of punishment which under certain circumstances the authorities functioning under the statute itself are authorised to impose. A more appropriate analogy for it is to be found in statutes like the Central Excises and Salt Act, Sea Customs Act, etc., in which the authorities functioning under the said statutes are themselves authorised in certain circumstances to confiscate goods answering a particular description and also levy penalty on a person for contravention of certain provisions of the Act or rules made thereunder, irrespective of or in addition to whatever liability there may be for payment of excise duties or customs duties.

21. In view of our opinion that section 28-A of the Mysore Sales Tax Act does not purport to levy any tax, it is not possible to accept Mr. Srinivasan's contention that there is any possibility of either exempted goods or inter-State transactions being exposed to levy of tax not lawfully eligible. We also agree with the learned Advocate-General that even in the case of goods which cross the State border, one need not necessarily assume that a transaction in the course of inter-State trade is involved. Even if such may be the position in certain cases, the information sought under the impugned section is only for identifying the nature of the transaction and tracing the dealer only with a view to see that a person or a transaction legitimately liable to sales tax under the State Act does not escape payment of such tax.

22. Mr. Srinivasan's alternative argument is that if the amount payable under the impugned section is not sales tax, then it cannot be recovered at all. For this argument he relies upon *R. Abdul Quader and Co. Vs. Sales Tax Officer, Hyderabad*, already cited. We do not think that the ruling supports the contention of Mr. Srinivasan. Dealing with section 11 of the Hyderabad General Sales Tax Act (corresponding to section 13 of the Mysore Act), their Lordships pointed out that when the statute itself proceeds on the basis that the amount collected by the dealers from consumers was not tax eligible under the statute, the Legislature cannot in the exercise of powers described as ancillary or incidental direct payment of such amounts to the Government as if it were a tax. This is what their Lordships observed at page 924 of the reports :

"But where the legislation under the relevant entry proceeds on the basis that the amount concerned is not a tax exigible under the law made under that entry, but even so lays down that though it is not exigible under the law, it shall be paid over to Government, merely because some dealers by mistake or otherwise have collected it as tax, it is difficult to see how such a provision can be ancillary or incidental to the collection of tax legitimately due under a law made under the relevant taxing entry. We do not think that the ambit of ancillary or incidental power goes to the extent of permitting the Legislature to provide that though the

amount collected - may be wrongly - by way of tax is not exigible under the law as made under the relevant taxing entry, it shall still be paid over to Government, as if it were a tax".

23. In the present case, section 28-A does not say that the payment demanded by it, though not a tax, shall be paid as if it were a tax. What it does is to make certain provisions with a view to prevent evasion of tax and to impose penalty for contravention of those provisions. Penalty is obviously intended to make the machinery against evasion effective.

24. From the above discussion, it is obvious that the entire section 28-A is intended to set up a machinery to prevent evasion of tax. The machinery gets set up or erected only when under sub-section (1) the Government considers it necessary with a view to prevent evasion of tax in any place or places in the State to direct the establishment of check posts, barriers, etc. Sub-sections (2) and (3) are intended for collection of information, the possession of which by the assessing authorities under the statute will or is likely to help them to discover omissions, if any, in the accounts of assessee made with a view to reduce the turnover and escape payment of tax. The rest of the section is intended to enforce compliance with the obligation to furnish information.

25. Being thus clearly intended as a step for preventing evasion, it is within the ambit of ancillary powers of legislation under Entry 54 of List II in the Seventh Schedule of the Constitution and therefore within the legislative competence of the State Legislature. Whether the restrictions imposed by the section are reasonable is a different question which has to be considered separately.

26. The arguments related to Article 301 of the Constitution need not detain us long, because it is proved by the affidavit of the Joint Secretary to the Government of Mysore, Law Department, filed in answer to the additional affidavit on behalf of the petitioners in Writ Petitions 1665 to 1670 of 1964 (both with our permission granted in the course of the hearing of these petitions) that the previous sanction of the President under the proviso to Article 304(b) had been obtained for the introduction of the Bill which later got enacted as Mysore Sales Tax (Third Amendment) Act and also because the legal position in that regard has been fully explained by the Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, and *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, .

27. In the first-mentioned case, their Lordships, pointed out that restrictions on the freedom of movement which are prohibited by Article 301 are such restrictions as directly and immediately restrict or impede the free flow or movement of trade, and made the following incidental observations in regard to Articles 302 and 304(b) :-

"Incidentally we may observe that the difference in the provisions contained in Article 302 and Article 304(b) would prima facie seem to suggest that where

Parliament exercises its power under Article 302 and passes a law imposing restrictions on the freedom of trade in the public interest, whether or not the given law is in the public interest may not be justiciable, and in that sense Parliament is given the sole power to decide what restrictions can be imposed in public interest as authorised by Article 302. On the other hand, Article 304(b) requires not only that the law should be in the public interest and should have received the previous sanction of the President but that the restrictions imposed by it should also be reasonable. Prima facie, the requirement of public interest can be said to be not justiciable and may be deemed to be satisfied by the sanction of the President; but whether or not the restrictions imposed are reasonable would be justiciable and in that sense laws passed by the State Legislatures may on occasions have to face judicial scrutiny. However, this point does not fall to be considered in the present proceedings and we wish to express no definite opinion on it."

28. In the second mentioned case, their Lordships pointed out that regulatory measures or measures imposing compensatory taxes for use of trading facilities do not come within the purview of restrictions contemplated by Article 301, and explained that regulatory measures should be such as do not impede the freedom of trade, commerce and intercourse.

29. In the last case, after stating that there is ordinarily a presumption in favour of the constitutionality of a statute impeached as being unconstitutional, their Lordships observed :-

"..... once the invasion of the fundamental right under Article 19(1) is proved, the State must justify its case under clause (6) which is in the nature of an exception to the main provisions contained in Article 19(1). The position with regard to the onus would be the same in dealing with the law passed under Article 304(b). In fact, in the case of such a law, the position is somewhat stronger in favour of the citizen, because the very fact that a law is passed under Article 304(b) means clearly that it purports to restrict the freedom of trade. That being so, we think that as soon as it is shown that the Act invades the right of freedom of trade it is necessary to enquire whether the State has proved that the restrictions imposed by it by way of taxation are reasonable and in the public interest within the meaning of Article 304(b). This enquiry would be of a similar character in regard to clause (6) of Article 19."

30. Thus from the point of view of either Entry 54 of List II in the Seventh Schedule or Article 301 of the Constitution, there is no question of any lack of competence in the State Legislature to enact the impugned section, and the only question for consideration is whether the restrictions imposed by it are reasonable.

31. We now proceed to examine that question. We might first consider the argument addressed by Mr. Narasaiah on the basis of Article 14 of the Constitution which, though presented as an apparently independent argument,

has some bearing on the question of reasonableness also.

32. It will be noticed that though the impugned section refers to boats also, the only vehicles used for transport by road or land which are dealt with by it are goods vehicles. Mr. Narasaiah states that by selecting goods vehicles alone for being dealt with while several other types of vehicles are also used for transport of goods, the section must be held to discriminate against goods vehicles alone and in favour of every other type of vehicles and that therefore there has been a violation of the fundamental right of equality before the law guaranteed by Article 14. It is further contended that if the setting up of check posts or barriers in any selected place by the State Government proceeds upon the opinion that there is widespread evasion of tax in that place or locality, which makes it necessary to check or inspect goods in the course of transport, then it is unreasonable to provide for checking and inspection of only one class of vehicles leaving every other class of vehicles free from check or control and that it would lead to the inevitable consequence of diverting the business of transporting goods from the class of vehicles selected for check or inspection to other classes of vehicles not so subjected to check or inspection.

33. Mr. Advocate-General states that the expression "goods vehicle" is not defined in the Sales Tax Act and that in its etymological sense it is wide enough to cover every type of vehicles used for transport of goods. Alternatively he contends that even if goods vehicles or lorries alone are the vehicles which can properly be checked or inspected under the impugned section, there is no unconstitutional discrimination because the selection of such vehicles for being dealt with under the section amounts to a classification based on intelligible criterion reasonably related to the object of the section.

34. The expression "goods vehicle", as stated by the Advocate-General, is not defined in the Sales Tax Act. But for that reason alone we cannot accept his suggestion that we can proceed on the footing that the expression takes in every type of vehicles used for transport of goods. We have to ascertain its meaning in the context of the section and from the indications contained therein which are of assistance in ascertaining the meaning which the section places upon that expression.

35. The principal obligation which the section places upon the owner or person in charge of a goods vehicle is that he should carry with him a document called a bill of sale or delivery note containing prescribed particulars in addition to a goods vehicle record or a trip sheet, as the case may be. Whereas the section states that the particulars to be contained in a bill of sale or delivery note have to be prescribed, that is to say, prescribed by rules under the Act in the light of the section, it makes no attempt; to prescribe the form or particulars of either a goods vehicle record or a trip sheet. It obviously proceeds upon the assumption that the latter documents are well known documents whose form and particulars are laid down by some other provision of law not contained in the Sales Tax Act. Those documents, it is well known, are prescribed by rules made under the Motor

Vehicles Act which is the Act that regulates or controls the operation of motor vehicles. That Act also contains the definition of the term "goods vehicle" in clause (8) of section 2 which reads as follows :-

""Goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers."

36. Rule 187 of the Mysore Motor Vehicles and Road Traffic Rules framed under the Motor Vehicles Act requires that every driver of a goods vehicle shall keep, and every holder of a goods vehicle permit shall cause to be kept, in English or in Kannada, a record in Form No. 33 (appended to the said Rules) which shall give, in respect of each day on which the driver was employed in driving, the information prescribed in the form. Reference to a trip sheet is found in rule 257 of the same Rules which states -

"The driver or conductor of every public service vehicle shall maintain trip sheets serially numbered in a bound book in Form 39 or 40 in English or in Kannada."

37. Form 39 has to be used in the case of a stage carriage and Form 40 in the case of a contract carriage, both of which are categories of motor vehicles carrying passengers for hire or reward and come within the general definition of a public service vehicle given in clause (25) of section 2 of the Motor Vehicles Act which reads -

""Public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage, and stage carriage."

38. If such a vehicle also carries goods in addition to passengers, it would fall within the definition of a goods vehicle and therefore be obliged to maintain a goods vehicle record.

39. In the light of these provisions of the Motor Vehicles Act and the Rules framed thereunder which have necessarily to be looked into for the purpose of understanding the provisions of section 28-A of the Sales Tax Act, for the reason that the said section does not define a goods vehicle record or a trip sheet, it is abundantly clear, in our opinion, that the said section 28-A uses the expression "goods vehicle" to mean a goods vehicle as defined in section 2(8) of the Motor Vehicles Act. We therefore think that Mr. Narasaiah is right in his contention that vehicles which can be lawfully dealt with u/s 28-A of the Sales Tax Act are only the vehicles answering that description and no other class of vehicles.

40. But this alone is not sufficient, in our opinion, to hold that there has been a contravention of Article 14 of the Constitution. The fact that the State Government entertains an opinion that there is evasion of tax or possibility of such evasion in any particular place or locality in the State and that therefore it is necessary to take steps to check or prevent such evasion does not mean that the steps proposed to be taken for the said purpose should or can at all be

absolutely complete or perfect. In one sense, it is humanly impossible totally to eradicate evasion, at best, all that could be done is to check evasion and try to reduce it to the minimum possible. One of the ways is to deal with what upon experience appears to be the commonest or most frequently used method for evasion of tax. Section 28-A of the Sales Tax Act proceeds upon an inference apparently based on experience that large quantities of goods, the sale or purchase of which could normally be expected to be included in the turnover of dealers liable to tax under the Act, are not duly brought to account in the books of dealers and that the omission to bring them to account in the books may be detected when goods which are the subject of such transactions of sale or purchase are transported from place to place. Mr. Advocate-General also says that the majority of goods which are transported by road are transported by lorries or goods vehicles in view of the fact that such transport is both convenient as well as speedy. He adds that the transport by goods vehicles or lorries is becoming more and more popular and may be expected to grow in proportion and popularity with the growth of trade and commerce.

41. It is with these considerations, according to Mr. Advocate-General, that the checking of lorries in the manner envisaged by section 28-A of the Act has been decided upon as one of the important steps for checking evasion on the expectation that it will reduce to a considerable extent the omission on the part of dealers duly to account for all goods dealt with by them in the course of their trade with a view to evade payment of tax. There is, therefore, he says, an intelligible criterion for classifying lorries or goods vehicles separately for the purpose of check and inspection under the section and excluding the rest of the vehicles from that category, and such classification has a demonstrable and reasonable connection with the object of the section, viz., preventing or checking evasion of tax.

42. We think that the considerations set forth by Mr. Advocate-General are sound and that there is no valid reason to discard them. That transport of merchandise by goods vehicles has become popular with the trade and is being availed of in increasing measure is a matter of common knowledge and is not sought to be controverted before us. Although goods which are owned by an individual, like household articles, may also on occasions be transported by lorries or goods vehicles, it cannot be denied that the bulk of the articles carried by such vehicles would be merchandise, i.e., goods which are the subject-matter of trade. Such goods may be carried by the same dealer from one place to another place for sale at the latter place or may be goods sold by a dealer in one place and purchased by a dealer in another place. Hence the selection of such vehicles for inspection with a view to collect information useful for checking evasion of sales tax and obliging the persons in charge of such vehicles to furnish such information cannot be said to be devoid of an intelligible criterion to place them in a separate category or entirely unconnected with the object of the section.

43. The second aspect of the argument, viz., the complaint that the enforcement

of the provisions of the section is likely to divert the transport trade from goods vehicles to other types of vehicles, has a more direct bearing on the question of alleged unreasonableness of the restrictions imposed by the section. For a full understanding of the argument, it is necessary to examine other circumstances also set out in the affidavits of the petitioners. But before examining the value and effect of those circumstances from the point of view of our present enquiry, we should briefly state the principles established by the rulings of the Supreme Court and relied upon by the counsel before us as those governing the examination of the question whether the restrictions complained of are unreasonable.

44. One of the earliest pronouncements by the Supreme Court on the question is found in the case of Chintaman Rao Vs. The State of Madhya Pradesh, . Their Lordships observed :

"The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

45. In State of Madras Vs. V.G. Row, , there occurs the following oft-quoted statement of principle by Patanjali Sastri, C.J. :-

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

46. In Cooverjee B. Bharucha Vs. The Excise Commissioner and the Chief Commissioner, Ajmer and Others, , and Saghir Ahmad Vs. The State of U.P. and Others, , their Lordships pointed out that in judging the reasonableness or otherwise of the restrictions, regard should be had for the nature of the trade affected and the conditions prevalent therein. In Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , it is further pointed out that both the substantive and procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness. In Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , a section of the Act impugned therein providing for seizure

and confiscation of certain articles was struck down as amounting to an unreasonable restriction on fundamental rights for the reason that there were no limitations placed on, no rules and regulations made for and no safeguards provided in regard to the powers of persons authorised to seize and detain articles. P.V. Sivarajan Vs. The Union of India (UOI) and Another, and The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another, are relied upon by Mr. Advocate-General for the proposition that if on an examination of all circumstances it is found that the impugned restrictions strike a proper balance between the rights of individuals and the interests of the public and that therefore they may be regarded as reasonable within the meaning of clause (6) of Article 19, the fact that they may in some marginal cases lead to hardship is not in itself sufficient to condemn the restrictions as unreasonable. It is also pointed out that though in earlier cases some doubt had been expressed whether a total deprivation may be regarded as a reasonable restriction for the purpose of clause (6) of Article 19, it is now clear from Narendra Kumar and Others Vs. The Union of India (UOI) and Others, and Rahman v. The State of Andhra Pradesh [1961] 12 S.T.C. 392 : AIR 1961 S.C. 147, that the word "restriction" in the said clause would include a total prohibition or deprivation also.

47. Analysing the provisions of the impugned section 28-A of the Mysore Sales Tax Act, the learned counsel have asked us to regard sub-sections (2) and (3) as containing what may be called the substantive part of the matter and the remaining sub-sections as containing the procedural part thereof. Such analysis, in our opinion, may be accepted as a reasonable and convenient basis for the discussion of arguments and examination of the principal point of enquiry, viz., the reasonableness or otherwise of the restriction.

48. Proceeding on this basis, the argument on behalf of the petitioners has been that unreasonableness attaches both to the substantive as well as to the procedural parts of the section, as against which the contention of the Advocate-General on behalf of the State has been that the complaint of unreasonableness is scarcely possible in respect of the substantive part of the section and that if such were the position, the procedural part of the section, which merely states the consequences of contravening the substantive part and which are necessary for making the substantive part effective, cannot also be attacked as unreasonable. The further contention on behalf of the petitioners is that even if it should be possible to regard the substantive part as reasonable, the procedural part is so disproportionate to the object sought to be achieved by the substantive part and so excessive and arbitrary and devoid of any safeguards that the entire scheme under the impugned section is liable to be struck down as constituting a highly unreasonable restriction beyond the limits permitted by the Constitution. In reply, Mr. Advocate-General, while not conceding the tenability of the attack on the procedural part of the section, has suggested that even if there is substance in the said attack, the two parts of the section are clearly severable and that the substantive part will remain unaffected by the infirmity, if any, in the procedural part, and may be enforced to achieve the object set out in sub-section

(1) even in the absence of the procedural part in view of rule 61 of the Mysore Sales Tax Rules providing for a penalty independent of the confiscation of goods under the section.

49. Now, the principal provision of the substantive part of the section is that the owner or person in charge of a goods vehicle should carry with him, in addition to a goods vehicle record or a trip sheet, a bill of sale or delivery note containing the particulars prescribed in rule 23-B. The particulars prescribed by that rule are the following :-

"(i) full name and particulars of the selling dealer/consignor and his registration certificate number, if any;

(ii) full name and particulars of the buying dealer/consignee and his registration certificate number, if any;

(iii) description of the goods;

(iv) quantity or weight;

(v) value of the goods;

(vi) full name of the person to whom delivered for transport;

(vii) relationship of the person referred to in item (vi) to the buyer/consignee;

(viii) signature of the person referred to in item (vi) taking delivery of the goods;

(ix) signature of the person delivering the goods on behalf of the seller/consignor;

(x) relationship of the person referred to in item (ix) to the seller/consignor."

50. The petitioners in Writ Petitions 1665 to 1670 of 1964 contend that in the peculiar circumstances of their trade, it is highly impracticable, if not impossible, for them to comply with these requirements of the section and the rule. They are, as already stated, owners or operators of lorries or goods vehicles transporting building materials like bricks, jelly, size stones, boulders, sand and mud. In regard to bricks, they state that they have to transport them from kilns and that the owner of the kilns does not keep any establishment, office or even a clerk at the kilns with the result that there is no person available to issue either a bill of sale or a delivery note. They further state that the business of manufacturing bricks is carried on only for a period of about three months in a year and that ordinarily the persons left in charge of the kilns are illiterate, coolies who will not sign any documents. In the matter of jelly, size stones and boulders, the position, they state, is worse. They have to be removed by transporters like the petitioners from the quarries direct. They state that the work of quarrying is generally assigned to different piece-workers by the person who has obtained the right to quarry by payment of royalty, and that each such piece-worker gathers just about Rs. 10 or Rs. 15 worth of material per day and leaves it in charge of illiterate workers who refuse to sign documents. The position in regard to sand and mud is said to be the worst. It is stated that

places wherefrom such materials are loaded into lorries and transported, belonging either to Government or private owner, are not even inhabited and that therefore there will be no one on the spot to sign any bill of sale or delivery note.

51. Their counsel contend that, as pointed out by the Supreme Court, the reasonableness or otherwise of the restriction on their trade must be examined in the light of these peculiar circumstances and that when so examined, there can be little doubt that they are being subjected to a very unreasonable restriction. He complains that the law which places restriction on these petitioners has made no attempt to oblige the consignor or the consignee of the goods or the seller or purchaser of the goods to comply with the requirements of the section and the rule and that therefore persons like the petitioners have no legal authority to compel him to prepare and hand over to them either a bill of sale or a delivery note. In the absence of such legal authority the petitioners, according to him, are placed in a helpless position of having to choose between carrying on their trade running the risk of themselves suffering the consequences of the failure to comply with the requirements of the section and going out of business altogether.

52. The counter-affidavit on behalf of the State does not expressly deny or controvert the particular or peculiar circumstances of the trade of these petitioners as set out in the affidavits in support of their petitions, but raises the contention that the restrictions complained of were considered necessary in view of the large scale evasion of sales tax and makes the following answer to the difficulties complained of by the petitioners in paragraph 5 of the counter-affidavit :-

"The practical difficulties complained of in these affidavits are not genuine; they are not such as cannot be overcome with honest efforts to comply with the law. Such regulatory provisions with a view to prevent evasion of tax, even though they may cause some amount of inconvenience, are necessary to achieve effectively the object of the Act and therefore such restrictions are not open to any challenge."

53. In examining the relative strength of these opposing contentions, we may preface the discussion with a few preliminary observations as to which there could be no controversy.

54. It will be noticed that the information sought under ten heads in rule 23-B relates to persons and particulars directly connected with the particular act of transport in question and could therefore be treated as information readily available or accessible to the transporter in the way of his business. Further, the collection of information on the points noted is also necessary for the transporter's own business. The description, quantity, weight or value of the goods are all matters which are or may be of relevance for the purpose of determining the remuneration of the transporter himself. There is no doubt also

that the consignor or a representative of his directly contacts the transporter or his representative and that the transporter should be informed about the name and address of the consignee for the due discharge of his obligation under the contract of transport. It is also well-known and not denied that transporters obtain documents in the nature of applications signed by consignors or their representatives and that ordinarily a document in the nature of a way bill is prepared in respect of any particular consignment or a particular group of consignments. We might also add that some of the particulars required under rule 23-B of the Mysore Sales Tax Rules are not different in nature from the particulars to be noted in the form of goods vehicle record prescribed under the Mysore Motor Vehicles and Road Traffic Rules. Indeed, in one sense, the only additional information specially required from the point of view of the Sales Tax Act is the registration certificate numbers of the consignor and the consignee if they happen to be registered dealers under the Sales Tax Act. The ascertainment of that detail should not offer any special difficulty any more than the ascertainment of other particulars like the name, address, etc.

55. Ordinarily speaking, therefore, the obligation cast on transporters by sub-sections (2) and (3) of the impugned section 28-A of the Mysore Sales Tax Act cannot be regarded as either heavy or unreasonable or impossible of compliance.

56. But Mr. Narasaiah for the petitioners in Writ Petitions 1665 to 1670 of 1964 has stated that the position must be viewed from the peculiar circumstances of the trade carried on by the said petitioners. Analysing the various heads under which information is sought by rule 23-B, Mr. Narasaiah has frankly and rightly conceded that no difficulty could arise even in the case of his clients in regard to any of the heads except item No. 9. That item requires the transporters to obtain the signature of the person delivering the goods to the former on behalf of the seller or consignor. Now, if there is a person answering that description, we do not think that the illiteracy of such a person makes it impossible for the transporter to comply with item No. 9, because if the person cannot sign his name, he can be asked to affix his thumb impression which will have the same legal value as his actual signature. If there is no person at all at the point of loading, some person who goes with the lorry will do the loading and that person would undoubtedly be a person subject to the control or direction of the transporter himself. There should not therefore be any difficulty in the said person signing the delivery note adding, if necessary, that he had to do loading in the absence of any other person on the spot. When, in circumstances of that nature, a person under the control of the transporter himself attends to loading, it could normally be inferred that he has the authority of whoever is the person entitled to make delivery. Further, even according to the case of the petitioners, they do not transport the material on their own account but on being employed to transport them by some person. If that person happens to be the seller of the material, then there is no difficulty in requiring the seller to direct his men to sign against item No. 9 of the delivery note at the point of loading; if there is no such person and the seller authorises the transporter himself to attend to the

loading, then the seller constitutes the transporter himself as the agent for making delivery on his behalf. If, on the other hand, the person who employs the transporter happens to be the purchaser, he would certainly be interested in getting his seller to make necessary arrangements to attend to the completion of item No. 9 of the delivery note, and in the event of the seller pleading his inability to post some person at the point of loading to deliver that material on his behalf and authorises the purchaser to make his own arrangements for the purpose, then the purchaser would have the authority on behalf of the seller to either send one of his own men to the spot or require the transporter to attend to the loading. In any view of the matter, therefore, we cannot accept the position that there is any insuperable difficulty in completing the form of delivery note. Mr. Narasaiah has complained that his clients have no authority to compel the consignors or sellers to complete item No. 9 of the delivery note because obligation is cast by the section and the rule on the transporter and not on the consignor. We think this is an erroneous view. The compulsion of the law operates, and operates successfully, by reason of the idea of self-interest inherent in every person, resulting in acts designed to protect one's own interest and prevent or avoid prejudice thereto. The employers of persons in the position of the petitioners in Writ Petitions 1665 to 1670 of 1964 are likely to be building contractors in a majority of cases. They are also interested in carrying on trade or business for which purpose they will be interested in ensuring due and timely supply of building materials at their work spots, and it is difficult to believe that they would deliberately refuse to comply with the requisition of the transporters which would lead to short supply or absence of supply of building material very necessary for carrying on their own trade.

57. We do not think therefore that even the peculiar circumstances of the trade carried on by the persons in the position of these petitioners render the restrictions imposed by the substantive part of section 28-A of the Mysore Sales Tax Act unreasonable or impossible of obedience. It follows therefore that the apprehension on their part that their business might be diverted to others or that they might themselves go out of business is not well-founded.

58. We might add that the petitioner in Writ Petition No. 1376 of 1964 who is a merchant has not complained that there is any particular difficulty in obeying the requirements of the substantive part of the section. Indeed, he has produced along with his petition a way bill which appears to be in the form prescribed under the Andhra Pradesh General Sales Tax Act containing particulars more or less similar to those prescribed by rule 23-B of the Mysore Sales Tax Rules.

59. We are therefore of the opinion that the substantive part of the section, considered by itself, cannot be condemned as imposing any unreasonable restrictions.

60. The strongest and heaviest attack, however, is against the procedural part of the section and the consequences it is said to have on the constitutionality of the substantive part as well.

61. The central feature of the procedural part, it will be noticed, is the confiscation of the goods themselves. Although Mr. Advocate-General insists that the said provision for confiscation is intended to make the substantive part effective for the purpose of achieving the principal object of the section, he does not and cannot deny that confiscation is a serious consequence. His contention is that we must regard it as merely a necessary consequence provided by the section for the contravention of its substantive part, and that therefore if the substantive part is held to be reasonable or not open to the attack of unreasonableness, there would be the reasonableness of the consequence. He further states that in spite of the several details relied upon by the petitioners and the different approaches from which arguments on their behalf have been addressed, the weight of all their arguments leads only to one complaint, viz., that there is no rule or effective safeguard provided by the section by way of an enquiry leading to confiscation or by way of affording the aggrieved person a reasonable opportunity to show cause against confiscation. His case is that this complaint is without substance and that the procedure prescribed is quite sufficient to afford protection to honest men.

62. While it may be correct to summarise the effect of the arguments on behalf of petitioners by stating that the central point of attack is the absence of real or effective safeguards for the protection of honest men, we do not think that we can accept the suggestion of Mr. Advocate-General that the mere fact of the substantive part of the section considered in isolation having been held to be reasonable would constitute a complete answer or an almost complete answer to the attack of unreasonableness directed against the procedural part. Such a view would be opposed to the clear principle stated by the Supreme Court in *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness. We might also repeat that it is for the reason of a similar infirmity in the procedural part that the provisions as to seizure and confiscation contained in the Drug Control Act were struck down by the Supreme Court in the case of *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, .

63. The attacks against the procedural part made on behalf of the petitioners may be briefly summarised as follows :-

Firstly, they state that beyond declaring that the goods not covered by the documents mentioned in the said section or goods crossing the State border in respect of which a false declaration has been made are liable to seizure and confiscation by an officer specified in the section, the section has made no attempt to state in clear terms the exact circumstances in which confiscation may lawfully be effected. It may be that the seizure referred to in the section means no more than detention. If so, it cannot be equated to confiscation.

Therefore confiscation must be a matter for subsequent decision. The enquiry provided for in the section and the opportunity of being heard which the section purports to give to a person affected must precede confiscation. The petitioners complain that the section contains no indication as to the point of enquiry to be conducted by the officer or as to the cause which the affected person may show against confiscation. Dealing with the provisions of sub-section (6) for payment in lieu of confiscation, the petitioners point out that there is firstly no apparent reason why goods exempted from tax should at all be confiscated and secondly no apparent basis for the distinction made between the amount payable in respect of taxable goods and the amount payable in respect of goods exempted from tax. The remedy provided by sub-section (7) by way of recourse to a superior authority, the Deputy Commissioner, is a wholly ineffective remedy, firstly because it is obviously a discretionary remedy, that is to say, a remedy wholly dependent upon the discretion of the Deputy Commissioner and secondly because if the point for enquiry by the original authority is itself incapable of clear determination, there is no way in which the superior authority can decide whether the original authority had or had not committed any error. If, as the learned Advocate-General points out, the object of the section is no more than the collection of information and action, if any, on the basis of that information with a view to prevent evasion of tax is expected to be taken subsequently at the time of assessment to tax of dealers liable, the petitioners contend, the object of the section would be fully achieved by mere detention pending the furnishing of full information, and therefore the penalty of confiscation of the goods themselves is wholly disproportionate to the object sought to be achieved. They also state that if the detention of goods in the absence of documents and therefore on the suspicion that evasion of tax is possible or is being attempted and the adjudging of confiscation of goods are both to be done or effected by the same officer, the alleged enquiry following the detention and leading to confiscation could only be characterised as a pretence, because the person affected would have no real opportunity whatever of dispelling the suspicions of the officer and establishing bona fides of the transaction. At this point, we might record that because information regarding the status of the officer referred to in the section was not available in any of the affidavits, we sought information from the Advocate-General and he told us that the officer generally empowered under the section is an Inspector of Commercial Taxes whose rank is below the assessing authority of the lowest grade under the statute.

64. As the section stands, the question as to the point or object of enquiry provided for in it and the question whether the opportunity of being heard purported to be given to the person affected is a real and effective one are fraught with serious difficulties. On the language of the section the only thing that is made clear is that a specified officer shall have power to seize and confiscate goods if they are not covered by the documents mentioned in the section and in the case of goods crossing the State border if the declaration in respect of them is false. In regard to the declaration it might perhaps be stated

that the point for enquiry is whether the declaration is true or false. But it is difficult to postulate the point for enquiry in the case described as the one in which the goods are "not covered by the documents." That expression, according to the Advocate-General, may mean either total absence of the documents or that such documents as exist do not relate or cannot be reasonably related to the goods. In the second alternative, he points out, there is a clear point for enquiry, viz., whether the documents produced relate to the goods in the vehicle, which would mean, according to him, an enquiry into the truth of the particulars found entered in the documents. The ultimate purpose, according to him, is to collect true information about the goods or more accurately, true information about the dealers who are concerned with the goods in the way of their business, so that such dealers may be deterred from omitting to bring such goods into account in their books. If that much is achieved, says Mr. Advocate-General, the section does not contemplate that the goods should be confiscated.

65. What Mr. Advocate-General has stated should, if properly understood and applied, support two inferences, viz., (1) that the absence of documents or the apparent lack of connection between the documents and the goods merely exposes the goods to the possibility of confiscation but that something more is necessary before they could be actually confiscated, and (2) that if correct information in respect of the particulars enumerated in rule 23-B is furnished even after the goods are detained for the absence of the same, the liability for confiscation disappears.

66. Such may be a just and proper way of achieving the principal object of the section. But the question is whether the language employed in the section can bear the meaning which he wishes to assign to it or clearly indicates the intention of the Legislature to be what he has stated. One may also ask whether the manner in which the section is likely to be acted upon in its actual operation would be as contemplated by the Advocate-General.

67. Taking up first a case of total absence of documents which in the language of the section would clearly be a case where there are "goods which are under transport and which are not covered by" the documents required by the section, sub-section (4) clearly makes them liable for confiscation. In the absence of any statement in the section of any additional circumstance necessary to effect confiscation, it would appear that there is nothing which could be made the subject of an enquiry or in respect of which a person affected can make any representation if an opportunity of being heard is given to him. The only circumstance, viz., the absence of documents must on the hypothesis itself be taken to have been established; therefore there would be nothing which the party affected can say in respect of it, because in such an event, all that he can do is perhaps to state the reason for his failure to carry the documents with him or give oral information as per particulars in rule 23-B, - neither of which can disprove the actual absence of the documents which, on the language of the section, may be all that is apparently necessary to effect confiscation.

68. Another possible situation suggested by the Advocate-General is a case where there are some documents but the question arises whether those documents relate to the goods carried in the vehicle. Though at first sight this may appear to be a different category from the one already considered, a closer analysis of the situation will disclose that it is not, to any appreciable extent, different in its nature or its consequence from the first-mentioned case. It will be remembered that the particulars leading to the identification of goods as set out in rule 23-B comprise not merely an objective description of the goods themselves capable of verification on the spot but also the names of the consignor or seller and of the consignee or purchaser with other details which are not capable of verification on the spot. It is in regard to these particulars not capable of verification on the spot that Mr. Advocate-General apparently suggests that an enquiry has to be made. The arguments on behalf of the petitioners is that if the description of the goods in the documents tallies with the goods actually carried in the vehicle and the documents also contain other particulars relating to the consignor, consignee, etc., it is impossible for the check post officer or other empowered officer to say that the goods are not covered by the documents, because the section does not empower him to examine whether the particulars are true or false as it does in the case of declaration in relation to goods crossing the State border, and that therefore the proviso cannot be read as authorising him to conduct an enquiry into a question which he is not by the express terms of the section empowered to examine. They also state that the enquiry contemplated by the section is an enquiry for the purpose of taking action for confiscation and not for detention or seizure. It is difficult to answer these contentions of the petitioners on the basis of the language employed in the section itself.

69. The suggestion of the Advocate-General that confiscation is not contemplated or may be avoided by the furnishing of full information on all prescribed particulars even after the detention of goods, finds no express mention in the section itself which, as it stands, provides for only one way of furnishing that information, viz., putting it in writing in the prescribed form which should be in actual possession of the driver or other person in charge of the vehicle at the time it reaches a check post or barrier, or is stopped elsewhere by an authorised officer.

70. Another argument of Mr. Advocate-General may also be considered in this connection. Referring to the payment in lieu of confiscation mentioned in sub-section (6) of the section, he has sought to make out that because such payment is provided for only in the case of taxable goods and of goods which are exempted from tax on any condition, there could be confiscation only in the case of such goods, and not in the case of any other goods, and that therefore one of the points for enquiry would be whether the goods are of such a nature as to be confiscable. If this contention is correct, goods which do not answer that description cannot be seized or confiscated even if they are not covered by any of the documents mentioned in the earlier portion of the section. But, no such

exception or exemption from the necessity of carrying relevant documents can be read in either sub-section (2) or sub-section (3) of the section.

71. We were invited to look into the provisions of rule 23-D to get a fuller idea of the enquiry contemplated. Apart from the fact that rules are of little or no relevance in interpreting the section itself, what the rules, according to the section, can prescribe is only the manner of conducting an enquiry and not the points for enquiry which the section itself should state or indicate. Further, sub-rule (4) of the said rule merely states that if the owner of the goods can be ascertained, he should be given an opportunity of being heard, which does nothing to clarify the position as stated in the proviso to the section. It is further pointed out on behalf of the petitioners that whereas under sub-rule (4) an owner whose name and address could be ascertained is given what is called an opportunity of being heard, under sub-rule (8) an owner, who could not be traced or whose identity could not be ascertained, may appear before the officer ordering confiscation and satisfy him with relevant records regarding the bona fides of the transport of the goods in question and the officer, if satisfied that there has been no evasion of tax, may order release of the confiscated goods for reasons to be recorded in writing. Mr. Srinivasan points out that an owner who is readily available appears to be at a disadvantage. We might add that it is a matter for some doubt whether the provision for proof of what is called the bona fides of transaction by relevant records, which apparently are records other than the documents prescribed by the section, does not amount to adding something to the section.

72. It will thus be seen that the impugned section, while providing for an enquiry, has totally failed to indicate what the point for enquiry is. If so, there is considerable force in the argument that the so-called enquiry must be regarded as a pretence. But what is of more serious consequence is that the section has failed to state in clear terms the exact circumstances in which alone so serious a penalty as actual confiscation of the goods can be ordered, while apparently suggesting or making one believe by its general tenor and objective that mere absence of documents may not be a sufficient cause for confiscation.

73. If the exact circumstances in which confiscation can be ordered are not ascertainable from the section two consequences follow : One is that an opportunity of being heard given to an affected person is no opportunity at all because the opportunity should be effective, and it could be effective only if he is enabled to show cause against confiscation, and before he can show such cause he must be told on what grounds his goods can be confiscated. The second consequence is that the provision for correction of an order of confiscation by the Deputy Commissioner under sub-section (7) becomes infructuous because in the absence of a clear statement of circumstances in which confiscation could be ordered, it will be impossible for him to find whether the confiscating officer has committed any error.

74. There is another matter of some importance, arising out of the arguments of

the learned Advocate-General which we should now notice. He has made a strenuous attempt to justify the provision for confiscation on the analogy afforded by the provision for confiscation contained in the Central Excise and Salt Act, Sea Customs Act, etc., and the rules framed under those Acts. We should point out that there are some important points of distinction between the confiscation provided for by or under those Acts and the confiscation provided for in section 28-A of the Mysore Sales Tax Act. In the first place, duties of excise and customs have a more direct relation with the goods themselves than the sales tax which is a tax on turnover and not directly on the goods themselves. For the same reason, the provisions made for a close and continuous control of goods whenever they move from point to point can be reasonably regarded as essentially connected with levying and collection of duty. In the case of customs duties they become payable at the time the goods cross the frontier and the law involves or enacts a prohibition against goods crossing the frontier without payment of the customs duty. Thirdly, whenever confiscation is provided for, the statute or the relevant rule states in clear terms the circumstances in which or the reasons for which confiscation may be ordered, so that the party affected has an opportunity of showing cause against confiscation before specified officers who are of a status superior to that of officers detaining or seizing the goods and on whom the statute imposes a duty to act judicially. We might also refer with advantage to a portion of the discussion in the judgment of the Supreme Court in *The Collector of Customs, Madras Vs. Nathella Sampathu Chetty and Another*, strongly relied upon by the learned Advocate-General. That case dealt with an attack on the constitutionality of section 178-A of the Sea Customs Act which enacted a rule of evidence placing the burden on the person found in possession of goods to prove that they are not smuggled goods when they are seized by an officer under the Act on a reasonable belief that they are smuggled goods. In the course of the discussion, Rajagopala Iyengar, J., points out that the burden of proof arises only on a seizure made on the reasonable belief entertained by the seizing officer that the goods are smuggled and that the facts and circumstances on which such reasonable belief is entertained are themselves open to scrutiny and examination by another superior officer who adjudges whether or not to confiscate the goods. We refer specially to this circumstance because it was obviously regarded by their Lordships of the Supreme Court as affording a reasonably strong safeguard for the person against whom action of that type is sought to be taken. In the case of confiscation provided u/s 28-A of the Mysore Sales Tax Act, it is impossible to postulate any such safeguard. The most effective action or action which the section considers most effective for the purpose is required to be taken by a single officer of not any superior status on the basis of certain objective facts which may or may not be indicative of any attempt to evade tax with scarcely any real or effective opportunity to the person affected of either avoiding confiscation or of getting any error on the part of the confiscating officer corrected by a superior officer.

75. We may now examine whether there is any reasonable likelihood at all of the

section being acted upon in the just and reasonable way indicated by the learned Advocate-General in the course of his arguments. It is no doubt true that the mere possibility of abuse is not a matter which vitiates a provision of law otherwise good and constitutional. But, where the impugned power is conferred or may be conferred on a person of inferior status with no clear guidance given to him to act justly in a situation in which, the interests of persons affected require that he should act justly, leading to a clear and undoubted possibility of arbitrary exercise of such power, we think it is not only permissible but necessary that the court should assess the manner in which the provisions of the impugned law are most likely to be understood and acted upon, by persons entrusted with its enforcement.

76. It is enough to refer to two decided cases, one of the Kerala High Court and the other of the Madras High Court, and to the actual facts and circumstances of one of the cases before us, viz., Writ Petition No. 1375 of 1964.

77. In *Kesava Panicker v. State of Kerala* [1962] 13 S.T.C. 170, it was strenuously contended by the Sales Tax Authorities before the Kerala High Court in regard to section 16-A of the Kerala Sales Tax Act corresponding to section 28-A of the Mysore Act, that the proviso making it necessary to hold an enquiry and give an opportunity of being heard to an affected person applied only to one of the sub-sections dealing with a declaration in relation to goods crossing the State frontier and not to the other sub-section. The High Court rejected the contention.

78. In *Meenambika Company v. The State of Madras* [1963] 14 S.T.C. 817, which dealt with section 42 of the Madras General Sales Tax Act corresponding to section 28-A of the Mysore Act, no less an authority than the Board of Revenue of Madras took the view that there was no need to issue a notice to the owner of the goods when there is no actual confiscation and sale and that the issue of notice to and collection of compounding fee from the lorry driver who was the person in charge of the goods being transported without a delivery note or bill of sale is in accordance with the provisions of the Act. The High Court rejected this view.

79. We have already stated the facts of Writ Petition No. 1375 of 1964. The position there was that though the petitioner's clerk was travelling in the lorry and he could undoubtedly give all relevant information, the goods were seized and released only on payment of Rs. 900 in lieu of confiscation. The answer made in the counter-affidavit on behalf of the State is significant. Regarding the actual confiscation as stated in paragraph 1 of the petitioner's affidavit, the counter-affidavit states that no comments are necessary except that the documents required by the section were not available in the lorry and that consequently the officer had to take action in accordance with the provisions of the Act. Regarding paragraph 2 of the petitioner's affidavit, beyond stating that payment in lieu of confiscation was ordered after "due enquiry" and that the subsequent verification of the facts by the Inspector on 17th February, 1964, has no relevance, the counter-affidavit does not indicate what the "due enquiry" was

which was held or conducted by the Inspector. It is further stated :-

"The Commercial Tax Inspector having satisfied himself that the relevant records had not been produced proceeded to make an enquiry after seizing the goods and as he was not satisfied in the enquiry he was competent to take action for the confiscation of the goods"

80. It is repeated later that the Commercial Tax Inspector was bound to make enquiries to the extent possible after hearing the person in charge of the goods and also that it did not appear (apparently to the Inspector) that the person in charge of the goods wanted further opportunity to place the facts and explain the matter. Apart from the fact that the counter-affidavit is silent as to the nature and particulars of the enquiry which the Inspector is said to have conducted, the manner in which he acted clearly shows that his understanding of the section and of his powers thereunder is diametrically opposed to what, according to the learned Advocate-General, would be a just and reasonable way of achieving the purpose of the section.

81. For these reasons, we hold that the provisions of the procedural part of the section, viz., sub-sections (4), (5) and (6) impose an unreasonable restriction on fundamental rights of individuals guaranteed by Article 19(1)(g) of the Constitution. Although sub-section (7) may be read as conferring power which is as wide as appellate power with an amplitude sufficient to correct all errors of the original authority, it is for the reasons already stated, of no value because having regard to the effect of sub-sections (4), (5) and (6), there would be no occasion at all for the effective exercise of that power. Therefore, it should stand or fall with sub-sections (4), (5) and (6), although, if considered in isolation, it is not open to any attack of unreasonableness or to the criticism that it confers a purely discretionary power. It follows therefore that sub-sections (4), (5), (6) and (7) of section 28-A of the Mysore Sales Tax Act are liable to be struck down as unconstitutional and invalid.

82. The next question is whether, for the said reason, sub-sections (1), (2) and (3) also become invalid. That depends upon the question whether the two sets of sub-sections are so inextricably bound together as to constitute a single comprehensive scheme with the result that sub-sections (1), (2) and (3) cannot be effective or operative in the absence of other sub-sections.

83. Mr. Advocate-General has pointed out that even in the absence of sub-sections (4), (5), (6) and (7), the rest of the section can be operated with such effectiveness as to enable the achievement of the object of the section. In themselves, he points out, the sub-sections place an obligation upon certain persons to furnish information necessary for preventing evasion of sales tax. The provisions of rules 23-B, 23-C, sub-rules (1), (2), (2-A) of rule 23-D and sub-rule (1) of rule 23-E prescribe the details in that regard. Finally, there is rule 61 promulgated or made pursuant to section 38(3) which provides for imposition of a fine on conviction by a Magistrate of the First Class for any breach of rules

including rules 23-B, 23-D and 23-E. Further clause (bb) of sub-section (2) of section 29 makes it an offence to prevent or obstruct and clause (d) of the same sub-section also makes it an offence to wilfully act in contravention of any of the provisions of the Act or the Rules made thereunder. He therefore argues that our opinion regarding the invalidity of sub-sections (4), (5), (6) and (7) of section 28-A need not make it necessary to strike down sub-sections (1), (2) and (3) also of section 28-A.

84. We accept the argument of the learned Advocate-General and hold that sub-sections (1), (2) and (3) of section 28-A are valid and constitutional and need not be struck down.

85. In the result, we uphold the validity of sub-sections (1), (2) and (3) of section 28-A of the Mysore Sales Tax Act, 1957, and strike down as invalid and unconstitutional sub-sections (4), (5), (6) and (7) of the said section. This necessarily means that so much of rules 23-D and 23-E as relate exclusively to sub-sections (4), (5) and (6) and the entire rule 23-F prescribing the Deputy Commissioner as the authority for the purpose of sub-section (7) become inoperative.

86. The remaining question is the relief, if any, to be granted to the petitioners in these petitions.

87. The prayer in Writ Petition No. 1375 of 1964 is for a writ in the nature of certiorari quashing the order of the Deputy Commissioner dated 13th May, 1964, in the petitioner's case A.P. 204 of 63-64 and for a writ of mandamus directing the refund of Rs. 900 recovered from the petitioner on 15th February, 1964, under receipt No. 8712 of the same date. As we have held sub-sections (4), (5), (6) and (7) of section 28-A of the Act are invalid, the recovery of Rs. 900 from this petitioner will clearly be illegal. He is therefore entitled to the refund of Rs. 900. So far as the impugned order of the Deputy Commissioner is concerned, it cannot be permitted to stand in the way of the petitioner obtaining refund as aforesaid; it has to be quashed whether the line of reasoning contained in it is right or wrong as to which it is unnecessary to express any opinion.

88. Hence we grant both the above prayers in Writ Petition No. 1375 of 1964. The petitioner will also have his costs from the respondents. Advocate's fee is fixed at Rs. 100.

89. The prayers in Writ Petitions Nos. 1665 to 1670 of 1964, though worded elaborately, actually amount to a prayer for striking down sub-sections (1), (2) and (3) of section 28-A and rule 23-B, either generally or at any rate in the case of petitioners engaged in the trade of transporting bricks, jelly, size stones, boulders, sand and mud. Because we have held that the said sub-sections and the rule are valid, the prayer of the petitioners cannot be granted.

90. Writ Petitions Nos. 1665, 1666, 1667, 1668, 1669 and 1670 of 1964 are therefore dismissed but without costs.

91. Ordered accordingly.