
(1986) 01 PAT CK 0015

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 3336 of 1985, 3888, 5355, 5676, 5686 of 1984 and 464 of 1985

Ram Jiwan Prasad Lath and 4 others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 09-01-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 304, 304(a), 304(b)

Citation : (1986) PLJR 231

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : Yogendra Mishra, Mithilesh Kumar Khare and P. K. Thakur in CWJC Nos. 3336/85, 3888/84, 5676/84, 5686/84 and 5355/84 and Mr. Amla Kant Chaudhary and Mrs. Sujata Mukherjee in CWJC Nos. 53-55/84 and 464/85, for the Appellant; R.B. Mahto (A. G.), J.N. Jha (S. C.1.), Ashok Kumar Jha and Rajendra Nath Jha (J. C. to S. C.1.) in CWJC Nos. 3336/85, 5676/84 and 5686/84, M/s R.B. Mahto (A. G.), D.K Jha (G.A.) and Nirmal Kumar Sinha (J.C. to G.A) in CWJC No. 3888/84, M/s R. B. Mahto (A. G.) C.K. Sinha (G.P. 1.) and S. N. Prasad (J. C. to G. P. 1.) in CWJC No. 5355/85 and M/s R. B. Mahto (A. G.) J. N. Pandey (G. P. 2). and Mithilesh Kumar Singh (J.C to G. P. 2) in CWJC No. 464/85, for the Respondent

Final Decision : Dismissed

Judgement

Uday Sinha, J.—These are a batch of six writ applications challenging the vires of the Bihar Finance Acts, 1982 and 1983 in relation to the imposition of additional tax on motor vehicles. As the questions raised in these applications are common, they have been heard together and will be disposed of by this common judgment. The vires of section 30 and Third Schedule of the Bihar Finance Act, 1982 (Bihar Act 58 of 1982) fell for consideration before a Division Bench of this Court in Shyam Sundar Roy and others v. The State of Bihar and others; 1982 B. C. J. 561. All conceivable attacks to the validity of that Act were repelled by S. K. Jha, J. Subsequently another amendment was made to the taxation law in regard to motor vehicles by the Bihar Finance Act 1983 (Bihar Act I of 1984) in

regard to payment of additional taxes by stage carriage operators. That has occasioned the filing of the present writ application. In terms of the 1983 Amendment the additional tax payable by contract carriages and buses was reduced. The history of legislations has been set out by Jha, J. in the case of Shyam Sundar Roy (supra). It is, therefore, not necessary to cover the same ground over again. Suffice it to say that in 1961 the Bihar Legislature enacted Bihar Taxation on Passengers and Goods (carried by public service motor vehicles) Act, 1961 (Bihar Act 17 of 1961). Section 3 thereof levied tax on all passengers and goods carried by public service motor vehicles at prescribed rates. Sub-section (3) thereof provided for shifting of tax to the passengers and the owners of the goods sought to be transported. In 1982 came the Finance Act 1982 which repealed the whole of 1961 Act. This Act amended, repealed and substituted several State Acts. Chapter XI of the Bihar Finance Act 58 of 1982 provided for amendment of Bihar and Orissa Motor Vehicles Taxation Act 1930. In terms of the Schedule to that Chapter vehicles having seating capacity between 16 and 30 exclusive of driver and conductor were required to pay Rs. 240/- annually per seat and vehicles with seating capacity of 31 or more were required to pay Rs. 300/- per seat per annum. By the Amendment Act of 1984 the sum of Rs. 240/- was reduced to Rs. 200/- and the sum of Rs. 300/- was reduced to Rs. 260/-. These additional taxes were applied at flat rate. In short, the rate of additional tax payable at a flat rate based on the seating capacity was reduced by the Finance Act I of 1984. The petitioners have now challenged the vires of the 1984 Act. Ordinarily, the attack upon the vires of the 1982 Act having failed, there was little left to be agitated, as 1984 Act conferred benefit upon bus operators by reducing the rate of additional tax. In fact, if the challenge to the vires of the 1984 Act was to succeed, the petitioners would be thrust from fryingpan to the fire since they would have to pay higher additional tax. Be that as it may, the petitioners have once again, but for one aspect, have agitated the same question over again.

2. The points agitated before us in this bout are as follows:--

- (i) The imposition of flat rate of additional tax based on the seating capacity is discriminatory and, therefore, violative of Article 14 of the Constitution.
- (ii) The prior assent of the President not having been obtained to the enactment, it was ultra vires the Proviso to Article 304 of the Constitution.
- (iii) The amount of additional tax is unreasonable and, therefore, infringes Article 19 (1) (g) of the Constitution.
- (iv) The restriction on realisation of the additional tax from passengers was a hardship and confiscatory.

3. The most serious challenge was that the Act took no note of the length of the routes, year of the bus and the condition of road. It was submitted that a longer route was likely to have higher rate of profit and that operators of shorter routes were at disadvantage by a flat rate of tax having been imposed. It was submitted

that in imposing the additional tax the profitability of the operators should have been taken into account. The condition of the roads was also valid consideration in as much as bad roads were likely to cause greater wear and tear to the vehicles. Different considerations arise in the case of buses operating on fair weather roads vis-a-vis good roads. The profits on good, all weather, long routes are likely to be higher. Operators like the petitioners, therefore, who had to operate on only fair weather roads with short haulage should have been treated differently. In short unequals should have been treated as unequals. The imposition of flat rate of additional tax thus infringes equality of law. Thus submitted learned counsel for the petitioners. This aspect of the matter was considered and rejected by S. K. Jha, J. in case of Shyam Sunder Roy (supra) at paragraph 10. It would be appreciated that under the 1982 Act as well as under the 1984 Act three categories have been created for levy of additional tax. The first was buses with seating capacity of more than six, but not exceeding 15 persons. The second category is of buses with seating capacity between 16 and 30. The third category is of buses with seating capacity above 30. For the first category the rate was Rs. 250/- per seat per annum. For the second category the tax was Rs. 300/- per seat per annum and for the third category it was Rs. 400/- per seat per annum. It will thus be seen that three categories of buses were kept in view. Smaller buses with lesser seating capacity were likely to make lesser profit and, therefore, operators of larger buses were required to pay lesser tax. There was thus a classification which has nexus with the profitability of the operators. In those circumstances, S. K. Jha, J. rejected the charge of contravention of equality clause in Article 14 of the Constitution. For the same reasons, the submission urged in these application based on Article 14 of the Constitution must fail in these petitions as well. I, therefore, see no merit in the submissions urged on behalf of the petitioners that the enactments infringe Article 14 of the Constitution.

4. Learned counsel for the petitioners pressed into service the decision of the Supreme Court in Kunnathat Thathunni Moopil Nair etc. vs. State of Kerala and another, AIR 1961 Supreme Court, 552 for showing that a flat rate of tax is arbitrary, as it takes no account of profitability. I regret, the reliance placed upon the case of Moopil Nair (supra) is misplaced. That was a case where a fiat rate of Rs. 2/-per acre had been imposed. The income from the forest was a paltry sum of Rs. 3,100/- per year. The tax imposed was Rs. 50,000/- per annum. In those circumstances, the Supreme Court struck down the impugned provisions. The facts showed patent infringement of Article 14. There was no classification of lands. In the case before us, however, classification has been done. In fact, the case of Moopil Nair (supra) supports the State where it was observed as follows in paragraph 7:

Hence, if the Legislature has classified persons of (or) properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification

is unequal.

It cannot be doubted--

that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14 though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable.

The fact that profitability could have been taxed from another angle or that the basis of taxation should have been different is not for Courts so long as the classification has been done and the classification has nexus with the object to be achieved, namely, the raising of revenue for the State

5. The reliance placed by learned counsel for the petitioners on *New Manek Chowk Spg. and Wvg. Mills co. Ltd. etc. versus Municipal Corporation of the City of Ahmedabad and others*, AIR 1967 Supreme Court 1801 is equally misplaced. That was also a case of levy of tax by Ahmedabad Municipal Corporation where a flat rate method of the fixed amount per hundred square feet was adopted for determining the rental value of the property. That case again is distinguishable on the footing that there was no classification in the matter of computation of the rental value. The ratio of this case also was that where a flat rate of valuation for all kinds of buildings or properties is adopted, without regard to profitability and other considerations, that would be arbitrary. This case also, therefore, does not improve matters for the petitioners.

6. The Supreme Court case in *State of Kerala versus Hajik, Hajik, Kutty Naha and others etc.*, AIR 1969 Supreme Court 378 also can be of no avail to the petitioners inasmuch as that was also a case where there had been no classification of properties. It proceeded upon the basis of the Supreme Court case of *New Manek Chowk Spg. and Wvg. Mills Co. Ltd. (Supra)*. It is however, worthy of note that in paragraph 4 their Lordships approved the dictum of the Supreme Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, in the following terms:--

The principles which have been expounded by this Court in determining whether there has been denial of equal protection of the laws are also well settled; See *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, . It is true that in the application of the principles, the Courts, in view of the inherent complexity of fiscal legislation admit a larger discretion to the Legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the Legislature to classify is, it is said, of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways: (1963) 3 SCR 309 : (*Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer*,).

7. For the reasons, stated above, the attack on the vires of the additional tax on

the anvil of Article 14 of the Constitution fails and is rejected accordingly.

8. The next submission urged on behalf of the petitioners was that the amount of additional tax levied is unreasonable and unconscionable. It would be seen that the petitioners obtained the permits with eyes open knowing the condition of the road-whether it is good, bad or all weather routes. The routes were profitable to the operators. All that the levy of additional tax means a levy of 70 p. per seat per day for buses with capacity of 31 and above and lesser figures for buses with lower seating capacity. This, in my view, can hardly be branded as unreasonable. If a bus operator cannot make both ends meet with this infinitesimal levy, he is unfit for the transport business. The tax cannot be said to be unreasonable.

9. It was submitted that the tax was confiscatory in the sense that it cut into the profits of the operators as they are prohibited from passing on the incidence of tax to the passengers. I regret, there is no substance in this submission as well. The tax is ex-facie compensatory. It was imposed for improvement of roads in the State. It cannot be doubted that the roads need to be constructed and maintained, at all times. Nor, can it be doubted that the total rates from motor tax is inadequate to construct new roads or maintain existing ones. In that view of the matter, it is immaterial whether the roads on which the petitioners are plying are being repaired or not. The canvas of the whole State has to be taken into account for judging whether the tax is compensatory or confiscatory. Every tax payer cannot measure the return to him in terms of the tax paid by him nor can there be quid pro puo for it, and much less in equal measure. Besides repairs of the existing roads, new roads have to be constructed. That is a continuous process which has to go on for the development of the economy. Even if, therefore, the amount collected from road tax is in excess of the expenditure over roads, as it exists at the moment, the future is also to be taken into account. The tax is, therefore, clearly compensatory. The submission that the Finance Act of 1982 was confiscatory was considered at length by the Division Bench in the case of Shyam Sundar Roy (supra). In paragraph 9 Jha, J. clearly rejected the submission made on behalf of the operators that the additional tax was not compensatory. There can be no doubt that bus and truck operators derive the maximum advantage from good roads. Good roads subserve to advancement of trade and commerce. Therefore, the tax is for the benefit of the operators besides the passengers and the community at large benefits by efficient transport system. Tie fact that a particular operator has to operate under difficult circumstances cannot be the touchstone for testing the vires of any statute. The compensatory nature of a tax cannot be judged by any mathematical accuracy in relation to the benefit. I have, therefore, no difficulty in holding that the Act is compensatory in nature. I see no reason to take a view different from what of S. K. Jha, J. took in the case of Shyam Sundar Roy (supra) so far as the attack on the ground of the statute being confiscatory is concerned. Augmentation of State revenue is clearly a public purpose. The view that I have taken is based on the decisions of the Supreme Court in G. K. Krishnan vs. State of Tamil Nadu and another, AIR 1975 Supreme Court 583; Khyerbari Tea Co. Ltd.

and another versus State of Assam and others, AIR 1964 Supreme Court 925 and State of Karnataka and others Versus C. P. Sharma, AIR 1975 Supreme Court 594.

10. I have already rejected the submissions urged on behalf of the petitioners that the statute infringed Article 14 of the Constitution in as much as the levy was discriminatory in treating all operators at par. It only remains to consider whether the levy of additional tax infringes Article 19(1)(g) of the Constitution. This aspect of the matter was agitated in the case of Shyam Sundar Roy (supra) also where it was contended that "the additional taxes would be last straw on the camel's back and would drive out motor vehicles operators from their trades." This question was left unanswered by the earlier Division Bench observing that question could not be answered in the absence of foundational facts in the petition. Counsel for the petitioners have endeavoured to highlight this aspect of the matter before us. I once more reiterate that the additional tax would not drive out an operator. In C.W.J.C. No. 3336 of 1985 the petitioner has annexed a Schedule of receipt and expenditure of his bus. It plies on Saharghat to Saidpur via Bhatta, Sursand, Sitamarhi. The route is 72 K. Ms. one way, i.e. about 144 K. Ms. per day. It is a daily service. The fare under the permit is Rs. 6.50 per passenger for each journey. That means the operator will be earning Rs. 13/- per day per seat. This for 365 days the operator will be earning Rs. 4,745/-. Out of this sum Rs. 240/- will have to be paid as additional tax leaving a balance of Rs. 4505/- in the end. The calculations mentioned in Annexure-1 seems to be fallacious at several points. The arithmetic in Annexure-1 has several mistakes and loop-holes. In the matter of receipt there is an obvious mistake. The bus of the petitioner does two trips every day. For each trip it is entitled to charge Rs. 6.50 That means the fare per day per seat will be Rs. 13/-. For 365 days it will work out at Rs. 4,745/-. The bus has 50 seats. The income, therefore, for the whole bus during the year will come to Rs. 2,37,250/-. Besides this the petitioner has shown income from haulage of luggage at Rs. 6,000/-. Income thus swells to Rs. 2,43,250/-. There is no question of buses going empty or not being filled up fully on any day. In fact most of the buses have become double decker in the sense that travelling on roofs has become a common feature now. There is no question of empty capacity being carried. The deduction of 30% on account of concession to students and children below 12 years is also fallacious. The receipts, therefore, should be much more than what have been shown in Annexure-1. The receipts will be more than double of what has been shown. The above calculation is on the basis of 365 days. It is true that a bus may not be running for all 365 days. It may require repairs entailing stoppage of the bus. The petitioner has proceeded only on the basis of 300 working days. Thus the petitioner's bus does not operate for 65 days every year. If that be the situation, the petitioner should walk out. To keep idle for 65 days is too much. I can imagine of a bus being idle on the average of two days every month, but not more. These are some of fallacies in the figures given by the petitioner in Annexure-1. The expenditure side in Annexure-1 also has several loop-holes, but

even accepting as a whole the petitioner is left with sufficient margin to make a profit. The petitioner will be required to pay only Rs. 12,000/- in a year as additional tax. This cannot be said to be unreasonably high by any process of calculation. The expenditure over repairs may be high on account of the bus being an old one, i.e. 1970 model. If the petitioner runs an old and tattered bus, that cannot be the criteria of judging whether the import will break the back bone of the operator. It is, therefore, idle to contend that the additional tax will amount to last straw on the camel's back. The Act of 1983 cannot be held to be *ultra vires*, infringing Article 19(1) (g) of the Constitution.

11. Mr. Amla Kant Chaudhary, learned counsel for the petitioner placed great reliance on Article 304 of the Constitution. It was submitted that the Bihar Finance Acts 1982 and 1983 were restrictions on trade and commerce, and, therefore, it had to pass the test of Article 304 of the Constitution. The question of infringement of Article 304(a) does not arise, in relation to Article 304(b). I have already held that the levy of additional tax is compensatory in nature, meant to facilitate trade and commerce by extending/maintaining and repairing roads. Levy, therefore, cannot amount to striction on trade and commerce. Article 304, therefore, is not attracted. Since Article 304(b) does not come into play, the question of crossing the bar of the Proviso does not arise. The Proviso to Article 304(b) provides that no Bill or amendment for purpose of clause (b) shall be introduced or moved in the Legislature of the State without the previous sanction of the President. Since the levy is not a restriction, the Proviso does not come into play. Further in *Shyam Sundar Roy's case* (*supra*) this Court had examined this matter in paragraph 4 and it was noted therein that in 1982 Finance Act it received the assent of the President prior to its being introduced in the legislature. The submission in that behalf had been withdrawn by Mr. B. C. Ghose. For the same reasons and for the reasons stated by me, Article 304 of the Constitution cannot invalidate the statute falling for consideration before us. The 1982 Act had received the prior assent of the President on the 27th April, 1982 and the 1983 Act (Act 1 of 1984) had received the prior assent/approval of the President on the 27th January, 1984. The Act, therefore, cannot be struck down as invalid on that score.

12. The reasons for which the attack on 1982 Act had been rejected apply with equal force to 1983 Finance Act (Act 1 of 1984) as well. The Statutes are good pieces of Legislations and cannot be struck down as *ultra vires*. For all the reasons, stated above, I find no merit in any of the applications. They are dismissed accordingly. There shall, however, be no order as to costs.

Nazir Ahmad, J.

I agree.