
(1996) 04 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 214 of 1987

Salgaocar Mining Industries Limited and Another	APPELLANT
Vs	
State of Goa and Others	RESPONDENT

Date of Decision : 16-04-1996

Acts Referred:

Constitution of India, 1950 — Article 255, 265, 301, 304
Goa, Daman and Diu Barge (Taxation of Goods) Act, 1985 — Section 1, 3
Goa, Daman and Diu Barge Tax Act, 1973 — Section 1

Citation : AIR 1996 Bom 374

Hon'ble Judges : R.K. Batta, J; P.S. Patankar, J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; V.B. Nadkarni, Advocate General and G.U. Bhobe, Government Advocate, for the Respondent

Judgement

Patankar, J.—The question involved in this petition under Article 226 of the Constitution is whether the Goa, Daman and Diu Barge (Taxation of Goods) Act, 1985 (hereafter referred to as the Act of 1985) is invalid in view of the provisions of Article 301 and Article 304(b) of the Constitution of India?

2. We shall first state the background. The Goa, Daman and Diu Barge (Taxation on Goods) Rules, 1978 was enacted. However, the same came to be challenged in this Court and the Division Bench of this Court by passing order dated 10th October, 1983 in Special Civil Application No. 123/B of 1980 struck down the same on the ground that the provisions of Article 301 and Article 304(b) was not followed, inasmuch as the Bill was introduced without Presidential assent in State Legislature and there was no assent obtained to the said Act under Article 255 of the Constitution. Further, it was held that there was nothing to show except the statement and objects of the Act that it was a levy compensatory in nature. In the affidavit in reply filed in that matter, there was nothing pointed out how the levy was regulatory or compensatory in nature.

3. In our case the statement of object and reasons mentioned for the present Act

are as follows:

"A substantial investment has been made for widening of the Cumbarjua Canal, to make it navigable for the barges up to 1,000 tonnes D.W.T, at all tides by day and night and both ways. This will ensure that the monsoon does not adversely affect transportation of goods by the barges.

As the Cumbarjua Canal is a commercial project, investment in it with interest is to be recovered from the users. The Planning Commission is insisting that additional taxes be levied on the users of the canal.

The Bill accordingly provides for the levy of a tax at the rate of Rs. 0.20 per tonne of goods actually carried in the barges which pass through the inland waterways or canals as may be notified by Government or allows the transporting barges the option of paying tax leviable on 90% of its assessed capacity as composite fees. This will be made applicable to barges carrying goods passing through the Cumbarjua Canal."

Thereafter the Rules providing machinery for collection of the said tax came to be enacted. They are Goa, Daman and Diu (Taxation of Goods) Rules, 1987. The Cumbarjua Canal came to be notified for the purpose of the Act of 1985 on 23rd October, 1986.

4. It is necessary to note at the outset that though Section 3 of the Act of 1985 says that it would come into force from 1st day of July, 1978, the respondents have conceded that it would come into operation only from 23rd October, 1986 that is the date on which Cumbarjua Canal was notified for the purpose of the Act of 1985. In fact, 95 Writ Petitions of similar nature challenging the Act of 1985 were filed, but they came to be withdrawn because a statement was made that the provisions of this Act would be made applicable from 23rd October, 1986 (e.g. Writ Petition No. 81/88, dated 20th September, 1992). It is also necessary to note that the legislative competence of the State Legislature to enact this Act of 1985 in view of Entry 56, List II of the Seventh Schedule of the Constitution is not under challenge.

5. The learned counsel for the petitioners submitted that the Act is invalid as the provisions of Article 301 and Article 304(b) of the Constitution were not followed. In particular it is submitted that the Bill was introduced in the State Legislature without the previous sanction of the President and hence proviso to Article 304(b) was not complied.

6. The counsel for the respondents first submitted that it was not necessary to comply with the provisions of Articles 301 and Article 304(b) of the Constitution as the tax was compensatory in nature and outside the purview of those provisions. It was further submitted by him that assuming it falls within Articles 301 and Article 304(b) of the Constitution all the requirements were complied with. He has relied upon the letter dated 17th July, 1985 written by the Under-Secretary to the Government of India to the Law Secretary, Government of Goa,

Daman and Diu, Panaji pointing out that the previous sanction of the President under the proviso to Article 304(b) of the Constitution was conveyed. He pointed out that the Bill was introduced thereafter and the Act came to be passed.

7. We have already pointed out the statement regarding objects and reasons in enacting the Act of 1985. In the affidavit-in-reply filed on behalf of the respondents by Shri V. G. Manckar, Under-Secretary to the Government of Goa dated 14th January, 1993 it has been pointed out that the tax is collected from those barges which transport goods through the Cumbarjua Canal which has been made navigable by the Government by spending substantial amount. During monsoon period navigation through the mouth of Mandovi river is prohibited. During that period the only waterway through which transport of ores can be made to Monnugao Harbour is through the Cumbarjua Canal. The said Canal is 17 Kms. long. Sometime in 1978 the said Canal was improved and certain facilities were provided for allowing barges of certain dimensions and tonnage to sail through the same. The improvement cost was over Rs. 125 lakhs. The annual cost of maintenance of the said Canal by dredging, marking and maintaining navigational heads such as the light house, lifebuoys and staff is over Rs. 40 lakhs. During the monsoon period the said Canal was used by barges and the State maintaining launches with staff at the said Canal for assisting the barges to cross the Canal. The said Canal is permitted to be used only during the monsoon season i.e. from 20th May to 16th September and that too only by barges of D.W.T. and below and having dimensions of 15 metres in length and 5 metres in breadth. The annual collection of tax from the levy is not above 3.30 lakhs. He has, therefore, pointed out that the yearly maintenance cost is much more than the income by way of levy of the said tax and the collection is hardly 10% of the annual expenditure incurred by the Government for maintenance of the said Canal. This position is not disputed on behalf of the petitioners. Therefore, this levy is clearly compensatory in nature and the learned counsel for the respondents is right in submitting that this cannot come within the purview of Article 301 and Article 304(b) of the Constitution of India.

8. Learned counsel for the petitioners has relied upon *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, . In the same case the Supreme Court was concerned with validity of Assam Taxation (on Goods carried by Roads or Inland Waterways) Act (13 of 1954). It was held in the said case :

"Thus considered we think it would be reasonable and proper to hold restrictions, freedom from which is guaranteed by Art. 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions, but is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301."

It was then observed in para 53 :

"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."

It was further observed :

"It is thus obvious that the purpose and object of the Act is to collect taxes on goods solely on the ground that they are carried by road or by inland waterways within the area of the State. That being so the restriction placed by the Act on the free movement of the goods is writ large on its face."

In view of this it was held that the tax fell under Article 301 and provisions of Article 304(b) ought to have been complied with. The learned counsel then relied upon *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, . The Apex Court was dealing with *Rajasthan Motor Vehicles Taxation Act (II of 1951)*. It came to be observed :

"It seems to us that a working test for deciding whether tax is compensatory or not is to inquire whether the trade people are having the use of facilities for better conduct of their business and paying not much more than what is required for providing the facilities."

In the case of *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , it was held by the Apex Court that if the tax is of compensatory or regulatory in nature, then it does not fall under Art. 301 and Art. 304(b) of the Constitution.

9. The constitutional provisions and the authorities cited above lay down that Article 301 constitutes a limitation upon legislative power in general and was not confined to the entries relating to trade and commerce. Tax Law may interfere with the freedom guaranteed by Art. 301. Consequently a State Bill or amendment relating to the entries in Lists II and III may require the sanction of the President if any of the following conditions are present --

(i) that it imposes a restriction directly and immediately upon the flow or movement of persons, animals and goods; or

(ii) that the impugned law is not merely regulatory or compensatory in nature and the burden imposed is excessive. We have already pointed out the reasons and object for enacting this law and the justification offered by the respondents in the affidavit-in-reply. The tax or the levy is, therefore, clearly compensatory in nature. Further under the charging Section 3 of the Act of 1985 says that the tax shall be levied and paid to the Government on the goods transported by barges through such inland waterways and canals as may be notified by the Government and the rate of the tax would be 20 paise per tonne of the goods or pan thereof. Therefore, the burden is not at all excessive and further it has been pointed out in the affidavit-in-reply that the said levy would only bring in 10% of the amount required for maintenance of the said Canal every year. In our opinion the learned

counsel for the respondents is right in submitting that this enactment would not fall within the purview of Art. 301 and would not be required to comply with the provisions of Art. 304(b) of the Constitution.

10. Assuming that this falls within the purview of Art. 301 of the Constitution, whether the requirements of Art. 304(b) are also complied with or not, the restrictions imposed by this enactment cannot be said to be unreasonable. The levy is only going to meet part of the expenses undertaken by the State for maintenance of the Canal. The major cost for maintenance is going to be borne by the State, By keeping this Canal open special services are provided by the State for the barge owners to transport mineral ore during monsoon. It cannot be said to be arbitrary or excessive in nature. Further it is also in the public interest in view of the fact that during the monsoon period navigation through the mouth of Mandovi river is not possible and the only waterway through which the transport of ore can be made 10 Mormugao Harbour is through this Cumbargjua Canal. It is in public interest to keep it open during that period. In the affidavit-in-reply, it is pointed out that the Bill was introduced after taking the sanction of the President of India and proviso to Art. 304(b) of the Constitution were complied with. In the rejoinder filed on behalf of the petitioners this was disputed. However, the letter dated 17th July, 1985 written by the Under-Secretary to the Government of India to the Law Secretary, Government of Goa, Daman and Diu, Panaji is produced. It shows that the previous sanctions of the President under proviso to Art. 304(b) of the Constitution was granted. Therefore, all the requirements of Art. 304(b) were complied with. In view of this it cannot be said that the levy was invalid.

11. The learned counsel for the petitioner further submitted that the Act does not prescribe life regarding imposition of tax and, therefore, it is invalid. This cannot be a ground. The affidavit-in-reply shows that every year the canal is required to be maintained and large amounts are required to be spent for its maintenance. The details thereof are given above. Therefore, we reject this contention.

12. The learned counsel for the petitioners submitted that there is no quid pro quo and, therefore, it is invalid. First it is not a fee, secondly the levy is on the goods which are carried through barges and for using the Canal. Therefore, there is no substance in this contention.

13. The learned counsel for the petitioners then submitted that the levy is tax on tonnage basis and it does not take into consideration the type of goods, the distance to be covered and other similar factors and hence arbitrary. The tax is based on tonnage of goods carried. It is to be paid by the barges who are crossing through the said Canal which is 17 K.M. long. Obviously this cannot be on the type of goods or distance to be covered etc. Therefore it cannot be said that the tax is arbitrary or unreasonable in nature.

14. The learned counsel for the petitioners submitted that this amounts to double taxation. He invited our attention to the Goa, Daman and Diu Barge Tax Act,

1973. The said Act is for levying or imposing tax on barges, while the tax under the Act of 1985 is on the goods carried in the barges through the notified canal. Further we find that the 1973 Act was introduced for raising the revenue for the maintenance and improvement of the inland waterways. However, the Act of 1985 is totally for different object. It is for the maintenance of the notified Canal. It is not imposed on all barges, but on goods transported in the barges which are using the notified Canals such as Cumbarjua Canal. In view of this, it cannot be said that there is double taxation.

15. We, therefore, find no merit in this petition. However, we accept the statement made on behalf of the respondents that the tax shall be levied and recovered only from 23rd October, 1986 from the petitioners. Petition dismissed. Rule discharged, subject to above. No order as to costs in the facts and circumstances of the case.

Petition dismissed.