

(1983) 07 KAR CK 0025

In the Karnataka High Court

Case No : Writ Petition No's. 19187 of 19200, 24118 to 24131 and 26443 of 1982

Shantilal and Brothers

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 29-07-1983

Acts Referred:

Constitution of India, 1950 — Article 226, 286

Karnataka Sales Tax Act, 1957 — Section 5 (4), 5 (6), 6 B (1), 6 B (2)

Citation : (1984) 1 KarLJ 69 : (1985) 59 STC 178

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : B.P. Gandhi, K. Srinivasan, Devanathan and Indrakumar, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

Jagannatha Shetty, J.—Each of these petitions under article 226 of the Constitution raises the same question regarding the constitutional validity of section 6B(1) of the Karnataka Sales Tax Act, 1957 ("Act" for short) as amended by Karnataka Act No. 13 of 1982, which provides for the levy of non-half per cent. of "turnover tax" on every dealer whose total turnover in a year exceeds rupees one lakh.

2. In order to appreciate the contention urged in regard to the said question, it will be necessary to have regard to some of the relevant provisions of the Act. Section 2(1)(u-1) defines "taxable turnover" to mean "the turnover on which a dealer shall be liable to pay a tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India".

Section 2(1)(u-2) defines "total turnover" as follows :

"The aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India."

Section 2(1)(v) defines "turnover" in the following terms :

"The aggregate amount for which goods are bought or sold, or supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration."

Section 5 in Chapter III provides for levy of tax on sale or purchase of goods. Section 5(1) provides for levy of tax at four per cent. (five per cent. from 1st April, 1982), on the turnover specified in sub-sections (i) and (ii). It may be multi-point levy. Section 5(2) provides for a concessional rate of tax in case of a dealer registered under the Central Sales Tax Act. Section 5(3)(a) and 5(3)(b) provide for single point levy of tax on the taxable turnover of goods mentioned in the Second and Third Schedules to the Act.

Section 5(4) provides for levy of tax on declared goods specified in the Fourth Schedule on the taxable turnover of sales or purchases.

Section 5(5)(a) provides for the ceiling of the turnover the excess of which will be liable to tax, namely, any dealer whose total turnover does not exceed Rs. 35,000 in a year shall not be liable to tax.

Section 5(6) provides for the method of determining "total turnover", "taxable turnover" and "turnover" for the purpose of taxing u/s 5.

Rules prescribed under the Act also provide for determining the total turnover and taxable turnover for the purpose of levying tax. Rule 6(4) provides for determination of taxable turnover by allowing certain deductions from the total turnover.

3. We may now trace the somewhat vacillating steps by which section 6B reached its present form. Section 6B as it originally stood provided for the levy of an additional tax of 10 paise in the rupee on the sales tax or purchase tax or both payable by every dealer liable to pay tax under sections 5 and 6 of the Act subject to certain restrictions contained in the proviso thereunder. Sub-section (2) of section 6B provided that the provisions of the Act and the Rules made thereunder including those relating to refund or exemptions from tax shall, in so far as may be, apply in relation to the levy, assessment and collection of such additional tax as they apply in relation to the levy, assessment and collection of sales tax or purchase tax under the act. This provision was substituted by section 3 of the Karnataka Sales Tax (Amendment) Act, 1981 (Karnataka Act No. 7 of 1981).

4. There is a material difference between the provisions of the original sub-section (1) and the substituted sub-section. While the earlier provision envisaged an additional levy on a dealer calculated at ten paise in the rupee on the amount of sales tax or purchase tax or both payable by him, the substituted sub-section provided a levy at 1/2 per cent. on the turnover of a dealer whose total turnover in a year exceeds rupees one lakh.

Section 6B(1) as inserted by Karnataka Act No. 7 of 1981 reads :

"6B. Levy of turnover tax. - (1) Every dealer whose total turnover in a year exceeds rupees one lakh shall, in addition to the tax payable, if any, under other provisions of this Act, pay a tax at the rate of one-half per cent. of his total turnover :

Provided that no tax under this sub-section shall be payable on any part of such turnover which relates to, -

- (i) sale or purchase of goods specified in the Fifth Schedule;
- (ii) sale or purchase of goods specified in the Fourth Schedule;
- (iii) Sale or purchase of goods in the course of inter-State trade or commerce;
- (iv) sale or purchase of goods in the course of export outside the territory of India or sale or purchase in the course of import into the territory of India; and
- (v) all amounts collected by way of tax under the provisions of this Act or the Central Sales Tax Act, 1956."

5. The validity of the above section was called into question in this Court on a variety of grounds by the petitioners herein and also by other dealers in W.P. No. 11889 of 1981 and connected writ petitions (B.P. Automobiles v. State of Karnataka [1984] 55 STC 93). This Court while upholding the validity of the section inter alia observed :

"That the expression "total turnover" occurring in the first part of section 6B(1) requires to be read in terms of section 2(1)(u-2) and should not be confined to a turnover in respect of which the State Legislature is competent to impose a tax. But the expression "total turnover" used in section 6B(1) (including inter-State and export and import turnover on which it is not competent for the State Legislature to levy tax) was only meant for the purpose of identifying the dealers and the actual levy was intended only on intra-State turnover. The classification of dealers under the sub-section proceeded on a rational basis and did not bring about any hostile discrimination against any class of dealers. Indeed a proportion of intra-State and inter-State transactions in the turnover of a dealer may itself vary from year to year and the provision prescribing a "total turnover" of Rs. 1,00,000 as the cut-off line cannot be termed irrational and therefore cannot be said to suffer from the vice of hostile discrimination. Section 6B was not an unreasonable restriction on the freedom of trade guaranteed to citizens. In view of the nature of the tax envisaged by section 6B(1) there was no violation of the

right guaranteed under article 301. The exemptions and non-liability to tax u/s 6b(1) enumerated in the proviso thereunder were not exhaustive and the exemptions provided u/s 5(3)(a) and (b) of the act were also attracted for computing the turnover for the purpose of levy. Section 6B(2) was purely a machinery and procedural provision. The expression "total turnover" in the second part of section 6B(1) must be really read as "taxable turnover".

With these conclusion, this Court gave to the petitioners and others the following reliefs :

(1) Writs of mandamus shall issue to the respondents restraining them from levying turnover tax u/s 6B of the Karnataka Sales tax act, 1957 (as substituted by Karnataka Act 7 of 1981) on turnovers which are exempt from levy of tax under the Act by virtue of section 5(3)(a) and 5(3)(b) of the "Act".

(2)(i) Wherever assessments have been completed on the petitioners u/s 6B(1), including the turnover exempt from tax u/s 5(3)(a) and 5(3)(b), the said assessments are to that extent, quashed;

(ii) if any turnover tax u/s 6B was recovered pursuant to such assessments, the same shall, to the extent the tax relates to turnover exempt u/s 5(3)(a) and (b), be refunded to the petitioners concerned.

6. The State perhaps thought that the decision of this Court in B.P. Automobiles" case [1984] 55 STC 93 was not close to the legislative intent. So, Karnataka Act No. 13 of 1982 was enacted with the substitution of new section 6B giving retrospective effect from 29th March, 1981. It is apparently a Validating Act enacted for the purpose of validating the turnover tax assessed and collected u/s 6B of Karnataka Act No. 7 of 1981. That becomes clear by section 3 of Karnataka Act No. 13 of 1982 which has validated the assessments, reassessments, levy or collection of any tax made, notwithstanding anything contained in any judgment, decree or order of any Court.

7. There cannot be any dispute regarding the power of the Legislature to put an end to the finality of a judicial decision by passing a Validating Act. A Validating Act may also be given retrospective effect neutralising the conditions on which the decision of the Court was based. The Legislature by so doing does not exercise a judicial function. The validity of a Validating Act, however, could be challenged if it does not satisfy the following tests :

(1) Whether the Legislature, enacting the Validating Act, has competence over the subject-matter ?

(2) Whether by validation, the Legislature has removed the defect which the Court had found in the previous law ? and ?

(3) Whether the validating law is consistent with the provisions of Part III of the Constitution ?

These principles are well settled by the following decisions of the Supreme

Court : (i) Hari Singh and Others Vs. The Military Estate Officer and Another, , (ii) Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and (iii) I. N. Saksena v. State of Madhya Pradesh AIR 1976 SC 2250 to 2255.

8. We shall now proceed to examine whether the Legislature has removed the defects or infirmities which this Court has found in section 6B of Karnataka Act No. 7 of 1981. For immediate reference, we may set out the two sections in juxtaposition.

Karnataka Act No. 7 of 1981. Karnataka Act No. 13 of 1982. "6B. Levy of turnover tax. - (1) 6B. Levy of turnover tax. - (1) Every dealer whose total turnover Every dealer whose total turnover in a year exceeds rupees one lakh in a year exceeds rupees one lakh, shall, in addition to the tax whether or not the whole or any payable, if any, under other pro- portion of such turnover is liable visions of this Act, pay a tax at to tax under any other provision the rate of one-half per cent. of of this Act, shall be liable to his total turnover : pay a tax at the rate of one-half per cent. of his total turnover : Provided that no tax under this Provided that no tax under this sub-section shall be payable on sub-section shall be payable on any part of such turnover which that part of such turnover which relates to, - relates to, - (i) sale or purchase of goods (i) sale or purchase of goods specified in the Fifty Schedule; specified in the Fifty Schedule; (ii) sale or purchase of goods (ii) sale or purchase of goods specified in the Fourth Schedule; specified in the Fourth Schedule; (iii) sale or purchase of goods (iii) sale or purchase of goods in the course of inter-State in the course of inter-State trade or commerce; trade or commerce; (iv) sale or purchase of goods in (iv) sale or purchase of goods in the course of export outside the the course of export out of the territory of India or sale or territory of India or sale or purchase in the course of import purchase in the course of import into the territory of India; and into the territory of India; (v) all amounts collected by way (v) all amount collected by way of tax under the provisions of of tax under the provisions of this Act or the Central Sales Tax this Act or the Central Sales Tax Act, 1956 (Central Act No. 74 of Act, 1956 (Central Act 74 of 1956). 1956); (vi) all amounts falling under the head "freight", when specified and charged for by the dealer separately without including such amounts in the price of the goods sold; and (vii) all amounts falling under the head "charges for packing materials and cost of labour", when specified and charged for by the dealer separately without including such amounts in the price of the goods sold : Provided further that save as otherwise provided in this sub-section, no other deduction shall be made from the total (2) The provisions of this Act turnover of a dealer for the and the Rules made thereunder purposes of this section. those relating to refund or exemption from tax shall, so far as (2) The provisions of this Act may be, apply in relation to the and the Rules made thereunder levy, assessment and collection shall, so far as may be, apply of the tax payable under sub-sec- in relation to the assessment, tion (1), as they apply in relation collection or refund of the to the levy, assessment and turnover tax as they apply in collection of sales tax or relation to the assessment, purchase tax under this Act. collection or

refund of tax under the other provisions of this Act."

9. The Legislature has made the following improvements in section 6B of Karnataka Act No. 13 of 1982. In section 6B(1) it has been expressly made clear that a dealer shall be liable to pay tax at the rate of one-half per cent. of his total turnover (whether or not the whole or any portion of such turnover is liable to tax under any other provision of the Act). The portion included within the bracket is the addition. But the words "in addition to the tax payable, if any," used in section 6B(1) of Act No. 7 of 1981 have been deleted. Clauses (vi) and (vii) and the second proviso are also additions. The second proviso declares that the exemptions given under clauses (i) to (vii) of the first proviso are exhaustive and no other deduction shall be made from the total turnover of a dealer.

It may be recalled that this Court in *B.P. Automobiles*" case [1984] 55 STC 93 has observed that section 6B(2) was only a machinery and procedural provision as the Legislature had used the words "levy and exemptions" and if the intention had been otherwise those words would not have been used in section 6B(2). The Legislature has now deleted those words to make the intention clear that section 6B(2) is not intended to be a procedural or machinery provision. The impugned section 6B thus provides for the levy and collection of turnover tax at the rate of one-half per cent. on every dealer whose total turnover in a year exceeds one lakh of rupees. It is an independent charging section to tax the turnover of a dealer at the prescribed rate irrespective of the fact whether any part of such turnover has suffered any tax any other provisions of the Act.

10. We shall now proceed to examine the contentions raised by the counsel for the petitioners. The contentions raised by the different Advocates are some-what conflicting if not mutually destructive. We will first deal with the contentions raised by Sri K. Srinivasan, the learned counsel for the petitioners in W.P. Nos. 24118 of 24131 of 1982. He did not dispute that section 6B(1) is now an independent provisions providing for levy and collection of tax at the prescribed rate. He also did not dispute that it is a validating enactment. He, however, urged that the Legislature has no competence to override the mandamus issued by this Court in the exercise of its constitutional power under article 226 of the Constitution in *B.P. Automobiles*" case [1984] 55 STC 93 . This Court had issued a writ in the nature of mandamus restraining the State and its authorities from levying the turnover tax which were exempted u/s 5(3)(a) and 5(3)(b) of the Act. This Court also issued a direction to refund to the petitioners the tax recovered from them. According to the counsel, such a mandamus issued by this Court cannot be rendered ineffective by the Legislature. In support of the contention, he relied upon trilogy of cases of the Supreme Court : (1) *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, (2) *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, and (3) *Maru Ram and Others Vs. Union of India (UOI) and Others*,

11. In *Narasimha Kamath & Co. v. Entry Tax Officer, Mandya* (W.A. Nos. 662 to 668 of 1982 disposed of on 12th April, 1982), a Bench of this Court has rejected

a similar contention urged by Mr. Srinivasan. however, our of respect to the learned counsel who pressed the contention very seriously, we may independently examine the question in this case also. In Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others, popularly called as "L.I.C. Bonus case", the matter arose out of writ petitions filed by Class III and Class IV employees of the Life Insurance Corporation (LIC) challenging the validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976. There had been a number of settlements between the LIC and its Class III and Class IV employees about the payment of bonus. The last of these settlements was arrived at on 24th January, 1974 and it covered a period of four years from 1st April, 1973 and 31st March, 1977. Under the settlement, bonus was to be paid to the employees at 15 per cent. of the gross wages; and the payment was not dependent on the LIC making profits. The settlement was approved by the Directors of the LIC and also by the Central Government, and bonus for the years 1973-74 and 1974-75 was paid in terms of the settlement. In September, 1975 the Payment of Bonus (Amendment) Ordinance, 1975 was promulgated, later replaced by the Payment of Bonus (Amendment) Act, 1976. As a result of the Ordinance the LIC informed the employees that the bonus payable under the settlements was being withheld pending further consideration. The Insurance Employees' Association filed a writ petition in the Calcutta High Court and on 21st May, 1976 a single Judge allowed the writ petition and issued a writ of mandamus directing the LIC to act in accordance with the terms of the settlement dated 24th January, 1974. The Letters Patent appeal preferred against that order was perhaps withdrawn. The result was that the judgment of the learned single Judge became final and binding. In the meantime, the Life Insurance Corporation (Modification of Settlement) Act, 1976 (called shortly "Modification Act") came into force nullifying the payments due under the said settlement to Class III and Class IV employees from 1st April, 1975. The validity of the Modification Act was challenged before the Supreme Court as violative of article 19(1)(f) and article 31(2) of the Constitution. It was also contended that in view of the judgment of the Calcutta High Court which had become final, the Act did not affect the workmen's right to bonus under the settlement. On the last contention, Bhagwati, J., who delivered the majority judgment observed at page 816, para 25 :

"It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non obstante clause referring to a judgment of a Court in section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court had already issued a writ of mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act provided that the provisions of the settlement in so far as they

relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from 1st April, 1975. But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year 1st April, 1975 to 31st March, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year 1st April, 1975 to 31st March, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year 1st April, 1975 to 31st March, 1976 in obedience to the writ of mandamus."

Finally, all the seven learned Judges who constituted the Bench declared the Modification Act, 1976 void as offending article 31(2) of the Constitution and four out of the seven also issued a mandamus to pay annual cash bonus for the years 1976 and 1977 to Class III and Class IV employees as per the settlement dated 24th January, 1974 on the ground that the Modification Act did not supersede the decision of the learned single Judge of the Calcutta High Court. It may be noted that the mandamus issued by the Supreme Court did not rest on the ground that the Parliament has no power to supersede the decision of the Calcutta High Court given in the exercise of powers under article 226 of the Constitution. The relief was granted on the basis that the Modification Act did not at all disturb that decision of the Calcutta High Court and therefore it was binding on the LIC.

12. In *A.V. Nachane and Others Vs. Union of India (UOI) and Another*, the Supreme Court had to consider the effect of the decision in *Madan Mohan Pathak and Another Vs. Union of India (UOI) and Others*, and also the effect of the decision in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*. The Supreme Court said that a combined effect of the said two decisions was that the settlements of 1974 in so far as they related to bonus, could only be superseded by a fresh settlement, industrial award or relevant legislation. But any such supersessions could only have future effect.

13. The decision of the Supreme Court in *Maru Ram and Others Vs. Union of India (UOI) and Others*, does not with the problem presented before us. Therefore, the said three decisions on which Mr. Srinivasan rested his contention are of little assistance to him.

14. It is pertinent to observe that the Legislature in order to render the judgment of this Court in *B.P. Automobiles"* case [1984] 55 STC 93 ineffective also enacted section 3 in Karnataka Act No. 13 of 1982. Section 3 provides that notwithstanding anything contained in any judgment, decree or order of any Court or other authority to the contrary, any assessment, reassessment, levy or collection of any tax made or purporting to have been made including payments,

recoveries or refunds in relation to such assessments, etc., shall be deemed to be valid and effective and no Court shall enforce any decree or order directing the refund of any such tax. In view of this express validation of the tax levied and collected coupled with the change in the relevant law, we fail to see how the counsel for the petitioners could still contend that the Legislature has no power to render the judgment of this Court ineffective.

It was next contended by Sri Srinivasan that the impugned section 6B(1) is beyond the competence of the State Legislature inasmuch as the inter-State sales and export sales were also taken into consideration for determining the liability of a dealer. In this context, the counsel place strong reliance on the decision of the Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, It seems to us that the decision in *A.V. Fernandez Vs. The State of Kerala*, has been misunderstood in many quarters. Article 286 is not a forbidden fruit for the State for all purposes. What was forbidden by article 286 was only the imposition of tax on the inter-State sales and import and export sales. In *B.P. Automobiles*" case [1984] 55 STC 93 , this Court after examining the ratio of the decision in *A.V. Fernandez Vs. The State of Kerala*, has observed that the expression "total turnover" used in the first part of section 6B(1) includes inter-State sales but it was used only for the purpose of identifying the dealers and the actual levy intended was only on intra-State turnover by reason of the proviso thereunder. It was also observed that the similar expression used in the second part of section 6B(1) must be really read as taxable turnover. We respectfully agree with that view. The counsel, however, urged that the term "total turnover" used in section 6B(1) at both the places must receive the same meaning as defined u/s 2(1) (u-2) and if that be the meaning, then it would be a tax on the total turnover with the exemptions provided under the proviso. This argument, in our opinion, completely overlooks the scope and effect of the proviso to section 6B(1). Section 6B(1) must be read with het qualifying proviso. Craies on Statute Law, Seventh Edition, page 218, explains the scope of such proviso as follows :

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be constructed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

Section 6B(1) when so construed with the proviso it will be clear that the Legislature did not intend to tax the turnover relating to non-liability under article 226 of the Constitution. The exclusion provided under clauses (iii) and (iv) of the proviso relates to the inter-State and export or import transactions and they are really the cases of non-liability covered under article 286 of the Constitution. It is, therefore, futile to contend that the transactions covered under article 286 are also sought to be taxed. The term "total turnover" used in section 6B(1), as rightly held by this Court in *B.P. Automobiles*" case [1984] 55

STC 93 was intended only to identify the class of traders for the purpose of levy and not for the purpose of taxing itself.

15. The Supreme Court in the recent decision in Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, (Civil Appeals Nos. 2567 and connected appeals of 1982 disposed of on 6th May, 1983) has explained the decision in A.V. Fernandez Vs. The State of Kerala, as follows :

"The decision in Fernandez's case [1957] 8 STC 516 (SC) is therefore clearly an authority for the proposition that the State Legislature notwithstanding article 286 of the Constitution while making a law under entry 54 of List II of the Seventh Schedule can, for the purposes of the registration of a dealer and submissions of returns of sales tax, include the transactions covered by article 286 of the Constitution. That is to say, sub-section (1) of section 5 of the Act which provides for the classification of dealers whose gross turnover during a year exceeds Rs. 5 lakhs for the purpose of levy of surcharge, in addition to the tax payable by him, is not constitutionally invalid. The contention that taking into account inter-State sales and outside sales for computing the gross turnover of Rs. 5 lakhs would make the Act ultra vires is not sustainable. So long as sales in the course in inter-State trade and commerce, outside sales and sales in the course of import into and export out of the territory of India are not taxed, there is nothing to prevent the State Legislature while making a law for the levy of a surcharge under entry 54 of List II of the Seventh Schedule to take into account the total turnover of a dealer within the State."

16. The other two contention urged by Mr. Srinivasan are those which have been already considered and rejected by this Court in B.P. Automobiles" case [1984] 55 STC 93. He urged that the corresponding Bill of Karnataka Act No. 13 of 1982 was not reserved for the assent of the President and therefore section 2(3) of the Amending Act inserting section 6B is violative of article 301 of the Constitution inasmuch as it directly impedes the free flow of trade. In B.P. Automobiles" case [1984] 55 STC 93 this Court observed that section 6B(1) of Karnataka Act No. 7 of 1981 did not impose unreasonable restrictions, and in view of the nature of the tax envisaged thereunder, there was no violation of the right guaranteed under article 301 of the Constitution. We entirely agree with that view. His next contention that section 6B(1) is arbitrary and violative of article 14 of the Constitution is as fragile as the other. That contention was also rightly rejected in B.P. Automobiles" case [1984] 55 STC 93. The view taken by this Court has now the support of the decision of the Supreme Court in Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, in which it was observed :

"The argument of arbitrariness is an argument of despair. Sub-section (1) of section 5 of the Act levies surcharge on dealers, whose gross turnover in a year exceeds Rs. 5 lakhs irrespective of whether such dealers deal in essential commodities or not. It is a general tax and all dealers falling within the class defined under sub-section (1) of section 5 of the Act have been levied the surcharge at a uniform rate of 10 percentum of the tax."

The provisions of section 6B(1) of the Act with which we are concerned are similar to the terms of section 591) of the Bihar Finance Act, 1981 which was considered by the Supreme Court in the abovesaid case. Therein the dealers having gross turnover exceeding Rs. 5 lakhs have been grouped together for the purpose of the surcharge, whereas here, the dealers having total turnover of one lakh and above are selected for the turnover tax at the prescribed rate. In substance, there is absolutely no difference in both the said sections. Therefore, the contention relating to the vice of discrimination also must fail and is rejected.

17. There is yet another contention urged for the petitioners relating to the validity of section 18(3) of the Act. The argument proceeded on the assumption that that section is an unreasonable restriction on the freedom of trade guaranteed to the petitioners under article 19(1)(g) of the Constitution. There is hardly any substance even in this contention. Section 2(10) of Karnataka Act No. 13 of 1982 inserting section 18(3) is only prospective in operation. It came into force with effect from 1st April, 1982. It prohibits the dealers from collecting from this customers any amount by way of turnover tax payable by the dealers u/s 6B(1). However, the validity of this section can no longer be in doubt in view of the decision of the Supreme Court in *S. Kodar Vs. State of Kerala*, wherein it was observed :

"As we said, the additional tax is a tax upon sales of goods and not upon the income of a dealer and so long as it is not made out that the tax is confiscatory, it is not possible to accept the contention that because the dealer is disabled from passing on the incidence of tax to the purchase, the provisions of the Act impose an unreasonable restriction upon the fundamental rights of the appellants under article 19(1)(g) or 19(1)(f)."

Again, this view has been reiterated by the Supreme Court in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, as follows :

"Merely because a dealer falling within the class defined under sub-section (1) section 5 of the Act is prevented from collecting the surcharge recovered from him, does not affect the competence of the State Legislature to make a provision like sub-section (3) of section 5 of the Act nor does it become a tax on his income. It is no doubt true that a sale tax is, according to the accepted notions, intended to be passed on to the buyer, and the provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. It is not an essential characteristic of sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the Legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing a sales tax, or validating the imposition of sales tax, when the seller is not in a position to pass it on to the consumer, is a matter of policy and does not affect the competence of the Legislature : see *The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar*, , *J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another*, and *S. Kodar Vs. State of Kerala*, . The contention

based on article 19(1)(g) cannot therefore be sustained."

18. Sri Devanathan for the petitioner in W.P. No. 26443 of 1982, Sundaram Finance Limited which is a hire-purchase financier of motor vehicles, contended that his client as second dealer of motor vehicles in the State was not liable to pay any tax under the principal Act, but in view of section 6B, the company is now liable to pay tax on the turnover and such a tax is illegal and contrary to the scheme of single point levy envisaged u/s 5(3)(a). Sri B. P. Gandhi, appearing for the petitioners in W.P. Nos. 19187 to 19200 of 1982, who are dealers liable to pay tax as first sellers submitted that the turnover of such dealers again cannot be brought to tax, since the power to tax such turnover has been exhausted u/s 5 of the Act. His further contention was that the turnover of the dealers in respect of transactions of goods specified in the Fourth Schedule and the Fifth Schedule are still exempted from the turnover tax u/s 6B, while the turnover of dealers under the Second and Third Schedule are subjected to second levy and therefore section 6B is discriminatory.

19. There are in our opinion, at least three reasons to reject these contentions. Firstly, the Act does not provide exclusively for a single point levy. There is no such scheme under the Act. Secondly, even assuming that the Act provides only for a single point levy, it cannot bind the Legislature for all time to come. It is always open to the Legislature to provide for multi-point levy by properly amending the Act. Thirdly, section 6B is an independent and self-contained provision for taxing a higher class of dealers whose total turnover in a year exceeds rupees one lakh. There is no discrimination made among this class of dealers for the purpose of levy. The petitioners cannot, therefore, successfully challenge the constitutional validity of that section.

20. In the result and for the reasons stated, these petitions fail and are dismissed with no order as to costs.

Order on oral application

21. Sri Srinivasan, counsel for the petitioners, seeks a certificate for appeal to the Supreme Court. We do not think that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court.

22. The certificate prayed for is therefore refused.