

(1982) 07 PAT CK 0005

In the Patna High Court

Case No : Civil Writ Jurn. Case No's. 768 and 810 of 1982 (R)

Shyamsundar Roy and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 27-07-1982

Acts Referred:

Bihar and Orissa Motor Vehicles Taxation Act, 1930 — Section 6, 6(1A)
Constitution of India, 1950 — Article 14, 19(1), 199, 304

Citation : AIR 1983 Patna 14

Hon'ble Judges : Sushil Kumar Jha, J; Satyeshwar Roy, J

Bench : Division Bench

Advocate : B.C. Ghosh, P.K. Sinha and D.K. Sarkar, in CWJC No. 768 of 1982 R, Basudeo Prasad Nr. Singh and Indrani Chaudhary, in CWJC No. 810 of 1982 R, S.R. Sanyal and S.B. Sinha, Amicus Curiae, for the Appellant; R.B. Mahto, A.A.G., T. Bodra, Govt. Pleader No. 2 and V.P. Singh, Jr. Counsel to Govt. Pleader and S.K. Sinha, Jr. Counsel to A.G., for the Respondent

Judgement

1. In these two applications under Articles 226 and 277 of the Constitution the only question involved is as to whether Section 30 as well as the Third Sch. of the Bihar Finance Act, 1982, (Bihar Act 58 of 1982) (hereinafter referred to as "the 1982 Act"), is a valid piece of legislation or is ultra vires the various Constitutional provisions?

2. In the two applications, the petitioners are operators of motor vehicles of different types which have been purported to be subject to be taxed under the impugned Act. One of the petitioners in CWJC 768 of 1982 R (namely petitioner No. 3 thereof), is the New Chhoianagpur Bus Owners Association a registered Association of some of such operators. We may make it plain at this very stage that no controversial question of fact is involved in these writ applications and we have to test the legality or otherwise of the 1982 Act with reference to facts which were on record before us until before the hearing was concluded. This we have indicated at the outset on account of the fact that, when the final hearing of C. W. J. C. 810 of 1982 (R) was concluded and the judgment deferred to today,

Mr. Busudeo Prasad, learned counsel appearing in support of that writ application, has filed a supplementary affidavit by way of, we should say a rejoinder to the counter-affidavit filed on behalf of the State, which we have refused to entertain especially because the State would have no opportunity to controvert any of the new facts sought to be brought on record by way of such belated supplementary affidavit and/or rejoinder, apart from the deprecable practice being sought to be followed by filing supplementary affidavit/rejoinder after the close of arguments. Therefore, we proceed upon the facts, as they stood in the petitions and the counter-affidavits filed on behalf of the State until before the hearing of the case had begun,

3. A short legislative history needs to be set out here to show how the impugned Act of 1982 has been brought on the Statute Book. As far back as in the year 1930 the Bihar and Orissa Motor Vehicles Taxation Act 1930 (Act 2 of 1930 hereinafter called the 1930 Act) was enacted by the provincial legislators with the previous sanction of the Governor-General under Sub-s. (3) of Section 80A of the Government of India Act, 1915. The assent of the Govern-General to that Act was published in the Bihar and Orissa Gazette of the 3rd Sept. 1930. Section 6 of that Act provided for imposition of tax on Motor Vehicles in the then province of Bihar and Orissa. By Section 9 of that Act, a person was required to pay additional tax on his motor vehicle if such a vehicle was altered in such a manner as to cause the vehicle to become one in respect of which a higher rate of tax is payable, Then came a Central Act being the Motor Vehicles Act, 1939 (Act 4 of 1939) (hereinafter referred to as "the 1939 Act") brought on the Statute Book to consolidate and amend the law relating to Motor Vehicles; Chap. III thereof laid down provisions for registration of Motor Vehicles in general and Chap. IV dealt with control of transport vehicles. Another State Act was passed in the year 1961 being the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (Bihar Act 17 of 1961) (hereinafter referred to as "the 1961 Act"). This Act received the assent of the President on the 23rd Sept 1961, and the assent was first published in the Bihar Gazette (Extraordinary issue) on the 25th Sept. 1961. Section 3 of this Act levied a tax on all passengers and goods carried by a public service motor vehicle at the prescribed rates of fares and freights payable to the owner of such vehicle. Sub-section (3) of Section 3 further provided for shifting of expenses of tax to the passengers and the owners of the goods which were sought to be transported but the mode of payment was by recovery from the Motor Vehicles Operators who used to carry passengers and goods. The 1982 Act, inter alia repealed the 1961 Act. The Finance Act, 1982, as a whole amended, repealed substituted and otherwise dealt with quite a number of State Acts. For instance, the Bihar Cess Ordinance, 1982, was converted into an Act after amending its provisions. The 1961 Act was repealed, Bihar Finance Act. 1981 (Bihar Act 5 of 1981), Bihar Health Cess Act, 1977 (Bihar Act 22 of 1977), Bihar Agriculturists Act, 1955 (Act 8 of 1955) Chotanagpur Tenancy Act, 1908 (Bengal Act 6 of 1908), Santhal parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act 14 of 1949). Bihar Entertainment Tax Act, 1948

(Bihar Act 35 of 1948). The Cess Act, 1880 (Bengal Act 9 of 1880) and Bihar and Orissa Motor Vehicles Taxation Act, 1930 (Bihar Act 2 of 1930) were amended. We are called upon in these cases to test the validity of only that part of the Act by which 1961 Act having been repealed additional taxes have been sought to be levied by amending the 1930 Act. That is specifically done by Section 30 of the 1982 Act by which Section 6 of 1930 Act has been amended and Section 6 (IA) read with the Third Schedule to it has been inserted.

4. In a nutshell, there is no controversy with regard to the fact that the practical effect by bringing about this piece of legislation is the complete repeal of 1961 Act and imposition of additional taxes by amendment of Section 6 of the 1930 Act and insertion of Section 6(IA) in that very Act. Under some misapprehension, the validity of 1982 Act was also challenged in the writ petitions by the learned counsel for the different parties in that no previous assent of the President having been taken, this piece of legislation should be struck down as being ultra vires on that ground alone. As we have stated there was some misapprehension on account of which this point had been taken in the writ petitions and argued at the Bar. When it was brought to the notice of the learned counsel of the petitioners that this Act had already received previous assent of the President on the 27th April, 1982, before being published in the Bihar Gazette (Extraordinary issue) on the 30th April, 1982, this submission was fairly withdrawn. It is worthwhile to mention here that although the Presidential assent was received on the 27th April 1982 and the Act was officially notified on the 30th April, 1982, it has been deemed to be effective from the 1st April 1982, in retrospective nature and the taxation provision has rightly not been challenged on that ground.

5. Quite a number of points have been raised at the Bar by Mr. B. C. Ghosh appearing for the petitioners in C. W. J. C. 768 of 1982 (R) and Mr. Basudeo Prasad. learned counsel appearing for the petitioners in C. W. J. C. 810 of 1982 (R). Another case which has not yet been admitted namely C. W. J. C. 782 of 1982 (R), which was listed for orders and was to be disposed of after the disposal of C. W. J. C. 768 of 1982 (R) was represented by Mr. S. B. Sinha and Mr. S. B. Sanyal who with the permission of the Court assisted the Court in support of the petition as *amicus curiae*. In the fitness of things, however, in this case we think it fit and proper to point out some of the well settled principles of law which are beyond the pale of controversy now in view of the various Supreme Court decisions. These should be the principles upon which the validity of such Acts and Statutes like the 1982 Act (Section 30 thereof) has to be tested. We are laying down propositions, at this stage, as culminated from the series of decisions of the Supreme Court, so that, once we keep sight of these principles, the question will be merely one of the application of such principles for deciding the validity of the impugned legislation.

Proposition No. 1 :-- It has been generally held that a presumption of constitutionality arises where a statute is impeached as being unconstitutional but in regard to the fundamental right under Article 19(1) 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 the 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 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) of the Constitution.

Proposition No. 2:-- Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that, the legislature understands and appreciates the needs of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. The presumption is, therefore, in favour of the constitutionality of an enactment. But this is generally applicable in a case under Article 14 of the Constitution, where it is to be attacked on the ground of its being discriminatory in nature, .

Proposition No. 3 :-- Since the taxation laws have to stand the scrutiny of Article 19, as soon as the validity of a tax law passed under Article 304(b) of the Constitution is challenged under Article 19, the State would be entitled to rely on the fact that the revenue raised by the tax law serves public purpose and that is its basic justification for being treated as a reasonable restriction on the individual's fundamental right under Article 19(1)(g) in this context, it may also be legitimate to bear in mind that the revenue is required by the State to raise money in order to carry on the function of government and to sustain the manifold welfare activities undertaken by it.

Proposition No. 4 :-- The fact that the President has given previous sanction under Article 304(b) to the introduction of the Bill may conceivably be relevant, because the Constitution seems; to contemplate that the sanction of the President would indicate that the Central Government had applied its mind to the problem and had come to the conclusion that the proposed tax is reasonable and in the public interest. But the significance of these considerations cannot be exaggerated. Under Article 304(b) it would be open to the State to sustain the restriction imposed by the tax levied on the ground that the tax is levied not merely to raise general revenue for the State which itself is a public purpose, but that the tax is raised and utilised for keeping the waterways and the roads in good condition in the State.

Proposition No. 5:-- There cannot be any hard and fast rule in such cases and the theory of approximation rather than exemption has to be applied which has been approved by the Supreme Court. It is further well settled that the law of

taxation is on the ultimate analysis, the result of the balancing of several complex considerations and so, it would be unreasonable to insist upon the application of a general rule that if a tax is levied at a flat rate, it must be treated as unreasonable. These are questions which must normally be left to the legislature to decide.

Proposition No. 6:-- In deciding constitutionality of the provisions which have been challenged, it is necessary to look into the principles and object of the Act in which the impugned provisions appear.

Proposition No. 7:-- In such cases discrimination can only be found if it exists between" persons who are comparable and not by comparing incomparable elements can the statute be attacked.

"Proposition No. 8:-- There is vital difference in between a tax which burdens a trader directly and immediately and a tax which being general is paid by tradesman in common with others, viewed from the angle of freedom of trade and commerce The first is an impost on trade and as such may be said to restrict it the second may burden a trader but it is not a "restriction" of the trade.

Proposition No. 9:-- A working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having any use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to fudge the compensatory nature of a tax by a meticulous test and in the nature of things that cannot be done.

Proposition No. 10:-- A regulation of trade and commerce may achieve some public purpose which affects trade and commerce incidentally but without impairing the freedom.

Proposition No. 11:-- The standard of reasonableness can only be in the severity with which it bears on traffic and such evidence of extravagance in its assessment as comes from general considerations. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the State for the actual use made of the physical facilities provided in the shape of a road. The difficulties are very great in defining this conception But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and burden placed upon transportation in aid of the general expenditure of the State, It is clear that the motor vehicles require, for their safe, efficient and economical use, roads of considerable width, hardness and durability; the maintenance of such roads will cost the government money. But because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them, it seems not unreasonable that they should be called upon to make a special contribution to their maintenance over and above their general contribution as taxpayers of

the State. None the less, if a charge is imposed not for the purpose of obtaining a proper contribution to the maintenance and upkeep of the road, but for the purpose of adversely affecting trade or commerce, then it would be a restriction on the freedom of trade, commerce or intercourse.

6. In support of the propositions which we have enunciated hereinbefore reference may be made to the decisions of the Supreme Court in the case of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, ; M.A. Rahman and Others Vs. The State of Andhra Pradesh, ; Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan, , The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, and G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, and these propositions of law have well been kept beyond ambit of any controversy at the Bar. All that we have to do therefore, is to test the reasonableness and validity of impugned provisions of the 1982 Act in view of these well settled constitutional principles.

7. Turning now to the submissions made at the Bar in the instant cases, on behalf of the petitioners, the learned counsel assisting the Court, challenged the vires of the impugned legislation on these common grounds:--

(i) It lacked the legislative competence of the State legislature and was therefore, liable to be struck down, While it was argued by Mr. Basudeo Prasad that such a piece of legislation may fall only under item 97 of list I of the 7th Schedule of the Constitution, Mr. B. C. Ghosh contended that it fell within entry 35 of list 3 of that Schedule, The stand of the State on the contrary was that it was fully covered by item 57 of list 2.

(ii) The impugned legislation was neither regulatory nor compensatory in character, but for all practical purposes was confiscatory in nature.

(iii) Since there was no machinery and rule provided under the impugned Act it would bring in the infraction of the equality of laws guaranteed under Article 14 of the Constitution. In any event it was argued on behalf of the petitioners that the taxing provisions in themselves discriminated between persons of the same class and, therefore, was liable to be struck down as being discriminatory.

These being the common propositions advanced on behalf of the petitioners in these cases, two more points were raised by Mr. B. C. Ghose alone, which we must take notice of for whatever worth they may be.

(iv) The impugned Act is ultra vires being in contravention of provisions under Article 19(1)(g) of the Constitution and

(v) The 1930 Act having died a legal death in the year 1939, there was nothing to be revived or amended by the 1982 Act and on that ground also it must be treated to have been enacted to amend a Statute which for all legal purposes was non est.

We shall deal with all these contentions in seriatim:--

8. Re--point No. (I).-- To argue that it lacks legislative competence of the State either because it falls within the domain of Entry 97 of List I of the Seventh Sch. as contended by Mr. Basudeo Prasad or Entry 35 of List 3 as contended by Mr. B. C. Ghose. is fallacious. Entry 97 of List I merely makes it competent to Union Parliament to enact with regard to any matter not enumerated in List II or List III including any tax not mentioned in either of those lists. Item 35 of last III of the Seventh Sch. on the other hand provides for dealing with mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. The contention of Mr. Basudec, Prasad cannot hold water as in our view" the impugned legislation is squarely covered by Entries 56 and 57 of List II which provides for sanction of legislative competence to the State legislature to provide for taxes on goods and passengers carried by road or on inland waterways and on taxes on vehicles whether mechanically propelled or not, suitable for use on roads, including tram-cars subject to the provision of Entry 35 of List III. Such a piece of legislation as the one in question before us came to be decided by the Supreme Court in the case of *State of Assam v. Labanya Probha Devi* AIR 1967 SC 1575. In that case similar provision in the Assam Motor Vehicles Taxation (Amendment) Acts (15 of 1963) and (12 of 1966) which had amended pre-Constitutional Provincial Act, namely Assam Motor Vehicles Taxation Act (Act 9 of 1936) fell for consideration by the Supreme Court. That was a case in which the petitioner in the High Court had succeeded in getting those amended Acts struck down as ultra vires and the State of Assam went to the Supreme Court. While deciding the legislative competence of such statutory provisions it was clearly laid down by the Supreme Court that such provisions fell within Entry 57 of List II of the Constitution. While some confusion was sought to be created on account of Entry 35 of the concurrent list, the Supreme Court set aside the controversy and accepted the contention of the State by holding that the amended Schedule in the Assam Amended Acts only disclosed that different rates were fixed, that is to say, the amended Schedule did not lay down any principles on which tax on motor vehicles was to be levied within the meaning of Entry 35 of the concurrent list. It was solely concerned with taxes on vehicles within the meaning of Entry 57 of List II. The two entries, it was held, dealt with two different matters, though allied ones, one dealt with taxes on vehicles and the other with the principles on which such taxes are to be levied, When two entries in the Constitution (Schedule (?)) whether in the same list or different lists, deal with two subjects, if possible, an attempt shall be made to harmonize them rather than to bring them into conflict. Taxes on vehicles in their ordinary meaning connote the liability to pay taxes at the rates at which the taxes are to be levied. On the other hand, the expression principles of taxation denotes rules of guidance in the matter of taxation. It is, thus manifest, that the Supreme Court held that the Assam Amended Act, did not come into conflict with the existing law in respect of any principles of taxation but only dealt with a subject matter which was exclusively within the legislative competence of the State Legislature and in that view of the matter there was no scope for the application of Article 254(2) of the Constitution. For the same reasons we have no hesitation in

holding that the provisions of the impugned legislation fall squarely within Entries 56 and 57 of List II of the Seventh Sch. The contention of both Mr. Basudeo Prasad and Mr. B. C. Ghosh, therefore, must be rejected.

9. Re-point No. (II):-- Apropos of the second point, as we have already indicated earlier, the legal principles involved are not at all in controversy. They merely have to be applied to the circumstances and the exigencies necessitating the bringing about of the impugned Finance Act. The concept of freedom of trade, commerce and intercourse must be understood in the context of an orderly society and as a part of the Constitution which envisages a distribution of powers between the States and the Union and, if so understood, the concept must recognise the needs and the legitimacy of some of the declared regulatory control whether by the Union or by the State. That which in reality facilitates trade and commerce is not a restriction, and that which in reality hampers or burdens trade and commerce is a restriction. It is the reality or substance of the matter that has to be determined. It is not possible to draw a dividing line between that which would in reality be a deterrent to a trade and a restriction as has already been emphasised in the propositions enumerated at the outset, has well been brought into focus by Mathew, J. in the case of *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, . As has already been emphasised, the execution and implementation of merely a part for augmenting general revenues of the State which by itself has been held to be a public purpose cannot be exaggerated. It is in that context that the Supreme Court held in the *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, that even if a part of the revenues was sought to be raised by such provision of tax and a portion of the income received was diverted for use by the State in its governmental capacity, that would not make it, in the least confiscatory. Such a piece of legislation would still remain to be regulatory and compensatory if a substantial portion of the revenue is expended towards upkeep, repair and construction of roads and bridges, etc., for the facility of the users of the motor vehicles in general and operators of public motor vehicles in particular. Keeping these principles in sight Mr. Basudeo Prasad very vehemently argued that we have to hold the impugned piece of legislation as confiscatory in nature having regard to what the Chief Minister of the State stated with regard to its objects and requirements on the floor of the Legislative Assembly while initiating the Budget for the year 1982-83. The relevant portion of the statement of the objects and requirements may be extracted below:--

"The object of this Bill is to raise fund for different public welfare schemes and to give effect to the financial proposals of the State Government as well as to make the provisions relating to taxes etc. more appropriate to the present economic conditions. With this object in view, this Bill is for the enactment and amendment of the provisions of and Bihar & Orissa Motor Vehicles Taxation Act, 1930 (B. & O. Act 2 of 1930)."

We have taken note of the objects and reasons of the Bill merely because it was

repeatedly brought to our notice by Mr. Basudeo Prasad, otherwise the Act itself contains its objects and reasons in the preamble which is to the effect that for execution . of the public welfare scheme, the additional resources were required. All such Acts, a list, regarding which we have already enumerated at the outset, have been substituted, re-pealed and amended. It is, therefore not quite correct to argue that the repeal of the 1961 Act and the amendment of the 1930 Act and insertion of Section 6 (IA) read with the third Schedule, was only for the purpose of execution of public welfare schemes. The public welfare scheme mentioned in the statements of the objects and reasons, quoted above, must be read in the context of all such Acts which have been amended by 1982 Finance Act. It is not confined only to amendment of 1930 Act. Be that as it may, learned counsel also pressed upon our attention the Statement of the Chief Minister made on the floor of the Legislative Assembly while moving the Budget for the year 1982-83, a copy of which has been marked as Annexure-2 to the writ petition. Time and again, he drew our attention to the initial words of para "14" at page 107 of the Budgetary proposals made by the Chief Minister which read as follows :--

^ ^turk dks euksjatu ds vfrfjDr lk/ku miyC/k djkus rFkk fu;kstu esa o`f) ykus ds ?;s; ls-----**

which for all practical purposes means "for obtaining additional resources for the entertainment of the public This part of the Chief Minister's statement has manifestly been taken out of its context in order to correlate it with the purposes for which Section 30 of the 1982 Act was brought on the Statute. The aforementioned part of the Chief Minister's Statement led to the amendment of the Bihar Entertainment Tax Act and is not confined to the impugned Act. Our attention was next focussed by Mr. Prasad to the opening words of Paragraph 16 of the Chief Minister's speech which are as follows:--

^ ^lk/ku Lrksr dks c<kus ds fy;s tks dfri; izLrko ge lou ds le{k j[kuk pkgrs gS A**

which means "for the purpose of augmenting the revenue, the various proposals that I want to put before the House " Mr. Prasad then further drew our attention to the Budgetary proposals, official copies of which were made available to the court and are on record of these cases. He wanted to bring home the fact with reference to the Budget for the financial year 1982-83 that the enormity of the very quantity of the additional revenue sought to be collected through levy and realization of the impugned additional tax showed that they were recoverable through fraud upon the Constitution and would not be protected by the regulatory or compensatory nature as has been sought to be put upon them by the State. The argument was that the additional tax sought to be levied was to the tune of Rs. 31 Crores 3 lakhs which figure is by itself preposterous enough to induce it to be confiscatory in nature. This argument is again fallacious. The very extract of the Chief Minister's statement on which Mr. Prasad has relied (Annexure-2 to the writ petition) shows in the last sentence of para 16 (1) that the Chief Minister had stated that.-

^;k=h ,oa eky&djk/kkj vf/kfu;e ds fujlu ls rFkk vfrfjDr eksVkj xkMh djkjksiu ls 3
djksM+ :i;s dh okf"kZd vk; gksxh A**

which mean : "by repeal of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (Act 17 of 1961), and by the additional motor vehicles taxes sought to be levied under the (impugned) piece of Legislation would bring about an additional annual revenue of about Rs. 3 crores only. This statement of the Chief Minister stands fully justified in view of the Budget which has been placed before us. The official copy of the Budget, authenticity of which is not in any way under challenge before us, shows that the actual receipt for the year 1980-81 from taxes on Motor Vehicles was to the extent of Rs. 11,97,04,000? and from taxes on goods and passengers was to the tune of Rupees 11,19,69,000 bringing about a total of Rs. 23,16,73,000. The revised estimate from these two sources for the Financial year 1981-82 correspondingly shows as Rs. 14,21,00,000 and Rs. 14,46,00,000 bringing about total sum of Rupees 28,67,00,000. This would have been the total estimated receipts for the financial year 1981-82 if the 1961 Act was left to remain in existence. By repealing 1961 Act, the State Exchequer was, therefore, put to a loss of Rs. 14,46,00,000 and they were already entitled during the year 1981-82 to another Rupees 14,21,00,000 under the existing law, the total sum against both the items having been increased by the introduction of the new Additional taxes of Rs. 31,03,00,000 only. Thus, the total net revenue sought to be raised would work out to the tune of about Rupees 2,36,00,000 (two crores thirty six lakhs) only whereas the Chief Minister had made statement that it would bring about an additional revenue of Rupees three Crores. That apart, looking to the expenditure side, for expenses on roads and bridges, we find from the Budget that the annual expenditure during the year 1980-81 was to the tune of Rupees 27,29,62,000. As against total annual receipt of Rs. 23,16,73,000. the annual total expenditure was Rupees 27,29,62,000. That left the State Exchequer in a deficit of Rupees Four Crores Thirteen Lakhs approximately. While the State Exchequer had incurred a loss over expenditure on roads and bridges only to the tune of more than Rupees four Crores. we see nothing confiscatory in nature if the revenue has been sought to be increased by imposition of additional tax to the tune of Rupees Two Crores Thirty Six Lakhs only. By no stretch of imagination, therefore, can it be said that the proposed additional tax is "unreasonable" within the meaning of Article 19(1) or "restriction on trade and commerce"" under Article 304(b) of the Constitution. Even looking to the estimated revenue for the year 1982-83 as we have already noted above, the total revenue through all sources insofar as Motor Vehicles are concerned, is Rupees Thirty One Crores Three Lakhs while estimated expenditure over roads and bridges over non-plying area is shown as Rupees 27,17,24,000 and over planned expenditure another sum of Rs. 2,10,42,000 bringing about a total estimated expenditure of Rs. 24,27,66,000. Actually it may not leave a gap of about Seven Crores of Rupees as it may show, but even assuming that the estimated augmentation of revenue is of Seven Crores which is the difference of

the estimated income and estimated expenditure for the year 1982-83, the best that can be argued is that about Seven Crores out of Rupees Thirty One Crores are being diverted for use of the Governmental functions of the State. That itself is too meagre a proportion to bring it within the domain of its being confiscatory having regard to the fact that it has already been sufficiently recognised that augmentation of State revenue by itself is a public purpose. For the reasons, therefore, that the Supreme Court upheld the validity of the Assam Taxation (On Goods Carried by Road or on Goods by Inland Waterways) Act (Act 10 of 1961), The Assam Motor Vehicles Taxation Act, 1936 (as amended by Acts 15 of 1963 and 12 of 1966), The Andhra Pradesh Notification enhancing the rates of additional tax on Motor Vehicles, Kerala Cess Control Act (Act 34 of 1971). The Madras Motor Vehicles Taxation Act (Act 3 of 1931) which was enhanced by a Government notification and the Mysore Motor Vehicles Taxation Act, (Act 35 of 1957) as amended by Act 6 of 1972 were upheld by the Supreme Court as valid pieces of Legislation being regulatory and compensatory in nature, we have no option but to hold that the impugned Legislation (relevant part thereof) stands on the same footing, the validity of which has to be upheld by the additional tax having been established to be compensatory and/or regulatory in nature and in no manner confiscatory. The aforesaid pieces of Legislation by the various Statutes were upheld as valid respectively in the cases of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, ; Labanya Probha Devi AIR 1965 SC 1575 (supra); Shaik Madar Saheb and Others Vs. The State of Andhra Pradesh and Others, ; A.S. Karthikeyan and Others Vs. State of Kerala and Another, ; G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, and State of Karnataka and Others Vs. D.P. Sharma and Others, . Apart from the ratio of these cases, the leading principles laid down in the The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, as summarised and clarified in G. K. Krishnan's case (supra), leaves no scope for the argument that the impugned piece of Legislation can in no manner be said to be either regulatory or compensatory in nature. Borrowing the Language of the Supreme Court in G. K. Krishnan's case (supra) "the maintenance of such roads will cost the government money. But because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them, it seems not unreasonable that they should be called upon to make a special contribution to their maintenance over and above their general contribution as tax payers of the State....." It is furthermore dear in the instant cases that it will not be right to say once again that the proposed additional tax is not compensatory. The working test for deciding whether the tax is compensatory or not would be merely to enquire whether the tradesmen are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. There can not be any meticulous test; and it is impossible to judge the compensatory nature of a tax by any such mathematical accuracy sought, to be put up before us by the learned Counsel for the petitioners in these cases.

Mr. Basudeo Prasad submitted that the imposition of these additional taxes will be the last straw on the camel's back and would, therefore, compel the Motor Vehicles Operators to be uprooted from their trades. This part of the submission was also reiterated time and again by Mr. Ghosh. We cannot enter into this controversy because there was no foundational facts pleaded in the petitions. We have already highlighted one of the principles at the outset that it must first be proved in some form or the other by the person challenging the validity and constitutionality of an enactment that the restriction is either un-reasonable, contravening any provision not protected by Clause (6) of Article 19 or restrictive of trade and commerce inhibited by Article 301 of the Constitution before the State can be called upon to discharge its onus of proving the reasonableness under Article 19 and its action under Article 304(b) of the Constitution. There is no foundation for the fact that the petitioners are paying patently much more than what is required for providing facilities. This plea therefore can not be entertained. It was in this context that after the close of the argument which we have already referred to earlier, that a supplementary affidavit was sought to be filed by way of rejoinder to the counter-affidavit filed on behalf of the State which we have refused to entertain. On the materials on record, therefore, there is nothing to show that the payment is grossly or patently so high as to result in the closure of the business nor that the imposition of the taxation would put a burden much too disproportionate to be discharged and make the discharge of such liability unbearable to the petitioners. The State on the contrary, even if it was called upon to discharge a heavy onus has sufficiently discharged it by placing materials to which reference has already been made in detail in the paragraphs hereinbefore.

9A. There were the two main points over which learned counsel for the petitioners took most of our time. These contentions having been rejected as untenable, we are now called upon to test the other submissions of learned counsel for the petitioners.

10. Re, Point No. III:-- The impugned piece of Legislation cannot be struck down on the ground of any infraction of the provisions under Article 14 of the Constitution. This is for the simple reason that we cannot dub it as discriminatory. It is well established that while deciding the validity of a piece of legislation on the rock of Article 14, there must be a classification based upon classes of persons comparable. Nothing has been shown to us as to in what manner incomparable people have been classified under a comparable head in the impugned Legislation. All classification made is on reasonable basis, that is insofar as motor bus operators are concerned, it is based upon the seating capacity of the different transport vehicles, and insofar as public transport carriers are concerned, it is on the basis of tonnage or registered laden weight that additional taxes have been levied. All persons coming within one group are to be similarly treated under the Statute. There is no comparison between incomparables under the 1982 Act, It is, therefore, futile to invoke the principles of Article 14. Insofar as the attack on it under the same heading on the ground

of lacking in the machinery or the procedural rules is concerned, this point too is devoid of any merit. The provisions either of amended Section 6 or the inserted Section 6 (IA) read with the Third Sch. in the 1930 Act ex facie needs no particular machinery nor the absence of rules in any way leave any sort of confusion in the mind of anyone insofar as the quantum and processes of realisation of such taxes are concerned. The third Schedule read with Section 6 (IA) as newly inserted or for that matter Section 6 in its amended form, leaves no vagueness in the provisional. This argument of learned counsel for the petitioners must also, therefore, fail.

11. Now only two supplementary points urged by Mr. Ghosh namely, infraction of Article 19(1)(g) and the 1930 Act being dead sought to be treated as non est in the eye of law. Re. Point No. IV-

12. In spite of his best endeavours, Mr. Ghosh could not satisfy us as to in what manner the provisions of Article 19 of the Constitution have been contravened. It is a money-Bill. There is no controversy about it. Since it deals with imposition, abolition, remission, alteration or regulation, it has been duly certified as such by the Speaker, President's assent has been received on the Bill and that is the end of the matter, insofar as challenge on ground of contravention of Article 19 of the Constitution is concerned.

13. Re--point No. V :-- It was contended by Mr. Ghosh that as soon as the Central Act 1939, was passed, the Provincial Act 1930 must be deemed to have been superseded in all its aspects by the Central Act, u/s 107(1) of the Government of India Act, 1935 corresponding to Clause (1) of Article 254 of the Constitution of India. He first tried to submit that the provisions of 1930 Act came into conflict with the provisions of 1939 Act and thus died a natural death under Sub-section (1) of Section 107 of the Government of India Act, 1935. It must be held to have become void when the 1939 Act came into force. This argument is devoid of any substance. When we called upon Mr. Ghosh to show to us as to which part of 1930 Act came into conflict with which part of Chap. III and/or IV of 1939 Act he was unable to point out any specific provision of either Chap. III or Chap. IV of the 1939 Act which had dealt with any matter in the existing provincial law namely the 1930 Act. He then shifted his stand and tried to impress upon us the point that since an occupied field had been covered by the Central Act, the existing Provincial Act should be deemed to be dead. Again we called upon him to point out as to the particular field that was occupied by the Central Act. He could not give us any satisfactory answer either oral or in the written submissions filed by him. It may bear repetition to say that whatever the State Legislature has done in bringing about 1962 Act into force, it has rightly purported to do so under the powers conferred upon it under items 56 and 57 of List II of the Seventh Sch. of the Constitution, which is the exclusive legislative field of the State. There is no conflict, as we have already held above, either with entry 97 of List I or of Entry 35 of List III which deals with the provisions of taxation on motor vehicles only. There is thus, no substance either in Mr.

Ghosh's first or in his second supplementary points.

14. We further drew the attention of Mr. Ghosh to the two decisions of the Supreme Court in the cases of Labanya Probha Devi AIR 1967 SC 1575 where the Provincial Act of 1936 had been amended by 1963 and 1966 Acts (Acts 15 and 12 respectively) and the case of G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, where the Madras Motor Vehicles Taxation Act 3 of 1931 was the foundation for enhancement of the tax by a Government notification. When we pointed it out to Mr. Ghosh that in these cases before the Supreme Court also the post-Constitution amendments had been made in Provincial Acts under the Government of India Act, 1935, and no one ever raised any argument before the Supreme Court that the pre-1939 Provincial Acts would become dead in the eye of law by the passing of the 1939 Central Act. Mr. Ghosh then contended that since this point was never raised before the Supreme Court, that must be held to be sub-silentio wrong in so far as this aspect had not been taken into consideration. We have taken note of this submission merely for the purpose of rejecting it outright.

15. We, accordingly do not find any merit in these applications and are constrained to dismiss them, but in the circumstances of the cases, there will be no order as to costs.

16. In C. W. J. C. 768 of 1982 (R) there was a limited order of interim stay by which the respondents were restrained from taking any coercive measures against the petitioners until the disposal of that case. Since we have now dismissed the writ petitions, in all fairness, we must give some reasonable time to the petitioners of these writ petitions as well as to other petitioners who have not paid the additional tax so far to fulfil the requirements of the law as held to be valid; and we, accordingly, direct that if the petitioners as above, make their payments of additional taxes in accordance with law within a period of three weeks from today, no penal provision would be invoked against them by the respondents.