

(2002) 11 KAR CK 0036

In the Karnataka High Court

Case No : Writ Petition No's. 17878 to 17923 and 18038 to 18060 of 2002

Smt. Ramakanya Devi and Another

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 301, 304
Karnataka Motor Vehicle Taxation Act, 1957 — Section 3

Citation : (2003) 2 ACC 267 : (2003) 1 ACC 644 : (2003) 1 KarLJ 227 : (2003) 1 KCCR 17 SN

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : C.B. Srinivasan, in W.P. Nos. 17878 to 17923 of 2002 and M.R.V. Achar, in W.P. Nos. 18038 to 18060 of 2002, for the Appellant; A.N. Jayaram, General and T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Judgement

P. Vishwanatha Shetty, J.—The petitioners in these petitions and connected petitions have prayed for a declaration that the enhancement of the motor vehicles tax (hereinafter referred to as "the tax") at Items 6 and 7 in column (3) of Part "A" in the Schedule given to the Karnataka Motor Vehicles Taxation Act, 1957 by means of amending Act No. 4 of 2002 as unconstitutional, oppressive, illegal and unenforceable in law. They have also prayed for a direction to the respondents from raising a demand for the recovery of difference of tax on the basis of the enhancement of the tax made.

2. The petitioners in these petitions claim that they are transport operators. The first petitioner-Smt. Ramakanya Devi in Writ Petition Nos. 17878 to 17923 of 2002 is the mother of the second petitioner-Suresh Kumar who represents the 2nd petitioner-M/s. Sharma Transports The 1st petitioner in the said petitions, Smt. Ramakanya Devi claims that she is the registered owner of two tourist vehicles set out in serial Nos. 1 and 2 and the 2nd petitioner-M/s. Sharma Transports claims to be the owner of tourist vehicles set out in serial Nos. 3 to 46

of the list enclosed to these writ petitions.

3. The first petitioner in Writ Petition Nos. 18038 to 18060 of 2002 claims that it is a registered firm carrying on business by way of operation of motor vehicles (omnibus tourist vehicles) and stage carriages. The second petitioner claims to be a registered owner of a tourist vehicle. Both the petitioners in these petitions claim that their vehicles are covered by permits issued under Sub-section (9) of Section 88 of the Motor Vehicles Act as All India Tourist Permits.

4. The State of Karnataka by means of Karnataka Act No. 35 of 1957 passed an Act known as the Karnataka Motor Vehicles Taxation Act, 1957 (hereinafter referred to as "the Act") providing for levy of tax on motor vehicles. Section 3 of the Act is the charging section. It provides for levy of tax at the rates specified in Part "A" of the Schedule given to the Act on all motor vehicles suitable for use on roads. The Schedule given to the Act sets out the details regarding the type of motor vehicles and the nature of the imposition of the tax on the said vehicles. The tax per seat per quarter for tourist vehicles in the State of Karnataka till 1-4-1987 was Rs. 500/-. However, by means of an amendment made by means of Act No. 8 of 1987, the State enhanced the tax to Rs. 2,000/- per seat per quarter. The constitutional validity of the said provision came to be challenged before this Court in Writ Petition Nos. 5224 to 5231 of 1987 and connected petitions and the Division Bench of this Court by its judgment dated 8th, 9th and 10th September, 1987 dismissed the said writ petitions. Aggrieved by the said judgment, special leave petitions were filed before the Hon"ble Supreme Court. However, during the pendency of the special leave petitions, the State of Karnataka reduced the tax payable under the Act in respect of tourist vehicles to Rs. 1,000/- per seat per quarter with effect from 1st April, 1990. The Hon"ble Supreme Court disposed of the special leave petitions taking the view that since the tax had been considerably reduced, it was unnecessary to go into the merits of the controversy raised in the special leave petitions. However, it left it to the State Government to look into the anomaly created on account of the reduction of the enhanced tax only from 1st April, 1990 though the enhancement of tax was made with effect from 1-4-1987 and take appropriate decision in the matter. It is useful to refer to the observation made by the Hon"ble Supreme Court in the said special leave petitions which reads as hereunder:

"Since the tax has already been considerably reduced, it is not necessary for us to go into the merits of the controversy. The only contention raised before us by Mr. Chidambaram, learned Counsel appearing for the appellants/petitioners is that the State Government should not charge tax at the rate of Rs. 2,000/- per seat per quarter for the period from 1st April, 1987 to 31st March, 1990. This was the period during which the stay granted by the High Court and this Court was operating. As mentioned above with effect from 31st March, 1990, the tax was reduced from Rs. 2,000/- to Rs. 1,000/-. We are of the view that there is some plausibility in the contention raised by the learned Counsel. The net result of the two notifications issued by the State Government is that from 1st April,

1990, the tax is being charged at the rate of Rs. 1,000/- per seat per quarter and thereafter it has been reduced to approximately Rs. 500/-. The obvious anomalous position, however, would be that with the disposal of these matters the appellants/petitioners shall have to pay tax for the period prior to 1st April, 1990 at the rate of Rs. 2,000/- per seat per quarter. We, however, leave it to the State Government to Look into the anomaly and take an appropriate decision".

(emphasis supplied)

5. However, the State Government again on examination of the claim made for reduction of the tax in the light of the observation made by the Hon"ble Supreme Court refused to reduce the tax. The said decision of the State Government was again called in question by the petitioners and others before this Court by filing writ petitions. The learned Single Judge of this Court dismissed the said writ petitions. Aggrieved by the decision of the learned Single Judge, writ appeals were filed before the Division Bench of this Court. The Division Bench of this Court by means of its order dated 28th September, 1999 dismissed the writ appeals. The decision of the Division Bench was called in question by the petitioners in SLP Nos. 8982 to 8984 of 1999 before the Hon"ble Supreme Court and it is submitted that the said special leave petitions are pending consideration before the Hon"ble Supreme Court and the Hon"ble Supreme Court has also stayed the recovery of the differential amount of tax from the petitioners.

6. The State of Karnataka by means of Act No. 7 of 2001 amended Item 6 in column (3) of Part "A" and enhanced tax payable from Rs. 1,000/- to Rs. 1,400/- per seat per quarter with effect from 1st April, 2001 and again by means of Act No. 4 of 2002 amended Item 6 in column (3) of Part "A" and enhanced tax payable from Rs. 1,400/- to Rs. 2,250/- per seat per quarter with effect from 1st April, 2002. By the same amendment the State of Karnataka amended Item 7 of column (3) of Part A of the Schedule and enhanced the tax payable from Rs. 2,000/- to Rs. 4,000/- per seat per quarter in respect of camper vans. As noticed by me earlier, in these petitions the constitutional validity of the amendment made to the Act by means of Karnataka Act No. 4 of 2002 providing for enhancement of tax in respect of Items 6 and 7 of column (3) of the Act is called in question.

7. Sri C.B. Srinivasan, learned Counsel appearing for the petitioners in Writ Petition Nos. 17878 to 17923 of 2002 challenging the constitutional validity of the impugned provision strongly urged that the impugned provision is liable to be declared as unconstitutional on the ground that the respondent-State has failed to show that the impugned tax is compensatory in nature and as such the impugned provision is liable to be declared as unconstitutional on the ground that it interferes with the free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India. It is his submission that the impugned provision nowhere states that the enhancement of the tax has been made by way of compensatory tax or by way of regulatory measure and there are no facts and figures supplied in support of the enhancement made. He

submitted that the preamble also does not indicate as to what prompted the State to enhance the tax by almost 80 per cent in respect of tourist vehicles and 100 per cent in respect of camper vans. He also pointed out that even in the statement of objections, the figures justifying the enhancement of the tax has not been furnished. Relying upon the annual financial statement made as provided under Articles 202 and 203 of the Constitution of India, Sri Srinivasan further pointed out that the financial statement made also does not justify the enhancement of the tax as has been done in the impugned provisions. In this connection, he drew my attention to the extract of the budget speech made by the Hon'ble Chief Minister who is also the Finance Minister, a copy of which has been produced as Annexure-C to the writ petition and also a copy of the financial statement which has been produced as Annexure-D to the writ petition. In support of his submissions that the burden is on the State to show that the impugned tax is either compensatory or regulatory in nature, Sri Srinivasan relied upon the judgments of the Hon'ble Supreme Court in the cases of *Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others*, , *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, and *State of Karnataka and Others Vs. D.P. Sharma and Others*, . He also pointed out that the observation made by the Hon'ble Supreme Court in the case of *B.A. Jayaram and Others Vs. Union of India (UOI) and Others*, of the judgment wherein the Hon'ble Supreme Court had taken the view that taxes of compensatory and regulatory character are outside the expanse of Article 301 of the Constitution and regulatory measures and compensatory taxes far from impeding the free flow of trade and commerce, often promote such free flow of trade and commerce by creating agreeable conditions and providing appropriate services; and all that is necessary to uphold a tax which purports to be or is claimed to be a compensatory tax is the existence of a specific, identifiable object behind the levy and a nexus between subject and the object of levy, is no longer good law in view of the observation made by the Hon'ble Supreme Court in the case of *Sharma Transport*, supra.

8. Sri M.R.V. Achar, learned Counsel appearing for the petitioners in Writ Petition Nos. 18038 to 18060 of 2002 while strongly supporting the submissions of Sri Srinivasan further submitted that the impugned provision is also liable to be declared as unconstitutional on the ground that it is discriminatory and arbitrary in nature and violative of the right to equality guaranteed to the petitioners under Article 14 of the Constitution of India. He pointed out that the definition of a "fleet owner" as provided u/s 2(aa) of the Act, means "a registered owner of a fleet of 500 or more public service vehicles and in the State of Karnataka"; except the statutory Corporations like the Karnataka State Road Transport Corporation, Bangalore Metropolitan Transport Corporation and the North West Karnataka Road Transport Corporation which are wholly owned by the Government, no other person is a fleet owner and therefore, the impugned levy of tax which results in serious discrimination between fleet owners and owners of

other vehicles is liable to be quashed. He pointed out that while the private operators who are not the fleet owners are required to pay the tax at a very high rate, the State Corporations are required to pay only nominal tax. In this connection, he drew my attention to the averments made in paragraphs 4 and 5 of the writ petition. It is his submission that the object of imposition of tax being collection of tax from the transport operators for the use of the road and the funds required for developmental activities of the road and public transport system, it is not permissible for the State to impose higher tax on small operators who are not "fleet owners" and give concession in levy of tax to the State owned Corporations who are carrying on their business as transport operators. The other learned Counsel appearing in the connected matters also supported the submissions of Sri Srinivasan and Sri Achar.

9. However, Sri A.N. Jayaram, learned Advocate General appearing along with Sri T.K. Vedomurthy, learned Government Pleader strongly supported the constitutional validity of the impugned provision and submitted that the impugned provision does not interfere with free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India as pointed out by the petitioners as the levy of the tax is in the nature of a compensatory tax. He also submitted that the additional tax that the State intends to collect by virtue of the impugned provision is not even sufficient for construction of new roads and bridges and other developmental activities required to improve roads and transport facilities in the State and more particularly in the rural areas and drew my attention to the statement made in paragraphs 2 to 5 of the additional statement of objections. He also referred to me the judgment of the Hon'ble Supreme Court in the case of Automobile Transport (Rajasthan) Limited, supra. He further submitted that the petitioners having failed to place any material before this Court to show that the impugned levy is neither compensatory nor regulatory in nature, cannot be permitted to make a grievance of the impugned provision on the ground it impinges their right to free trade, commerce and intercourse guaranteed to them under Article 301 of the Constitution of India. It is also his further submission that since the facts and figures set out by the respondents in the additional statement of objections having not been denied by the petitioners, the facts placed by the respondents should be accepted as true and correct and on that basis this Court should proceed to hold that the impugned levy is compensatory in nature. With regard to the submission of Sri Achar, the learned Advocate General submitted that the classification made between the "fleet owners" who are transport operators and others is a reasonable classification and the said question has a direct nexus with the object sought to be achieved. He pointed out that the State owned Corporations cannot be treated as similar or on par with the private operators whose object is mainly to make profit and whereas the object of the State owned Corporations is to provide transport facilities at a considerably low cost to the travelling public. He also pointed out that the State has a responsibility of construction of roads, bridges and carrying out other developmental activities to

facilitate smooth transport system in the State and for the said purpose if the State is required to collect funds, and for the said purpose if the State in its discretion shows some concession to the State owned Corporations, the impugned provision cannot be called in question on the ground that it is discriminatory in nature.

10. In the light of the rival contentions advanced by the learned Counsels appearing for the parties, the two questions that would arise for my consideration in these petitions are:

(i) Whether the impugned enhancement of tax made by amending Items 6 and 7 of column (3) of Part "A" of the Schedule by means of Act No. 4 of 2002 is liable to be declared as unconstitutional on the ground it interferes with the right to free trade, commerce and intercourse guaranteed to the petitioners under Article 301 of the Constitution of India?

(ii) Whether the impugned provisions are liable to be declared as unconstitutional on the ground that they are discriminatory and arbitrary in nature and violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India?

11. Before I proceed to consider the first question that would emerge for my consideration, it will be useful to refer to the law laid down by the Hon"ble Supreme Court. In the case of Automobile Transport (Rajasthan) Limited, supra, after elaborately considering the circumstances under which the freedom of trade, commerce and intercourse guaranteed under Article 302 is impaired, at paragraph 10 of the judgment it is observed as follows:

"If the word "free" in Article 301 means "freedom to do whatever one wants to do" then chaos may be the result; for example, one owner of a motor vehicle may wish to drive on the left of the road while another may wish to drive on the right of the road. If they come from opposite directions, there will be an inevitable clash. Another class of examples relates to making a charge for the use of trading facilities, such as, roads, bridges, aerodromes etc. The collection of a toll or a tax for the use of a road or for the use of a bridge or for the use of an aerodrome is no barrier or burden or deterrent to traders who, in their absence, may have to take a longer or less convenient or more expensive route. Such compensatory taxes are no hindrance to anybody's freedom so long as they remain reasonable; but they could of course be converted into a hindrance to the freedom of trade. If the authorities concerned really wanted to hamper anybody's trade, they could easily raise the amount of tax or toll to an amount which would be prohibitive or deterrent or create other impediments which instead of facilitating trade and commerce would hamper them. It is here that the contrast between "freedom" (Article 301) and "restrictions" (Articles 302 and 304) clearly appears; 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 a priori to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade but the distinction, if it has to be drawn, is real and clear. For the tax to become a prohibited tax it has to be a direct tax the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory it cannot operate as a hindrance".

Again at paragraph 17 of the judgment, the Court while reiterating the majority view expressed in the case of *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, observed as follows:

"17. We have, therefore, come to the conclusion that neither the widest interpretation nor the narrow interpretations canvassed before us are acceptable. The interpretation which was accepted by the majority in the case of *Atiabari Tea Company Limited, supra*, is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution".

In the case of *Nazeria Motor Service etc. Vs. State of Andhra Pradesh and Another*, , while reiterating the law laid down by the Hon''ble Supreme Court in *Automobile Transport (Rajasthan) Limited's* case, *supra*, held that compensatory tax would be outside the purview of Article 301 and cannot fall under Article 304-B. In the case of *G.K. Krishnan, supra*, at paragraph 29 of the judgment, the Hon''ble Supreme Court has observed thus:

"29. So far as the first contention is concerned, we do not think that any material has been placed before us to hold that the tax is confiscatory and operates as an unreasonable restriction upon the appellants' right to carry on the trade. We have already held that the tax is compensatory in character. If that is so, we do not think that it can operate as an unreasonable restriction upon the fundamental right of the appellants to carry on their business, for, the very idea of a compensatory tax is service more or less commensurate with the tax levied. No citizen has a right to engage in trade or business without paying for the special services he receives from the State. That is part of the cost of carrying on the business".

Again in the case of *Godfrey Philips India Ltd. and Another Vs. State of Rajasthan and Another*, at paragraph 32 of the judgment the Rajasthan High Court has observed thus:

"32. The aforesaid discussions of honourable Supreme Court decisions from 1961 to 1996, bring us to the conclusion that if an enactment of taxation by State Legislature is found to be compensatory or regulatory, then, the provisions enshrined under Part XIII of the Constitution, are not attracted and such taxation laws enacted by State Legislature, pertaining to any entry of State List of the Seventh Schedule, cannot be challenged on the ground that such enactment

infringes freedom of trade under Article 301 of the Constitution. From the decisions rendered by the Apex Court, mentioned hereinabove, it is easily deducible that if an enactment is found to be compensatory or regulatory, then, such taxation enactment is saved from the applicability of Article 304(b) of the Constitution. It is also to be noticed that conceptualisation of upholding constitutional validity of compensatory and regulatory taxation enactments to show service and facilities to promote trade and commerce as a condition precedent is undergoing evolutionary process".

In the case of *Sharma Transport*, supra, after elaborately considering the principles underlying Articles 301 to 304 of the Constitution at paragraphs 24 and 26, the Hon"ble Supreme Court at paragraph 26 of the judgment has observed thus:

"26. The following conclusions really constitute the core of the principles:

"Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution" ".

The Hon"ble Supreme Court while reiterating the earlier decisions of the Hon"ble Supreme Court has in the case of *Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another*, observed as follows:

"Thus the intrinsic evidence furnished by some of the Articles of Part XIII shows that taxing laws are not excluded from the operation of Article 301; which means the tax laws can and do amount to restrictions freedom from which is guaranteed to trade under the said part. Does that mean that all tax laws attract the provisions of Part XIII whether their impact on trade or its movement is direct and immediate or indirect and remote? It is precisely because the words used in Article 301 are very wide, and in a sense vague and indefinite that the problem of construing them and determining their exact width and scope becomes complex and difficult. However, in interpreting the provisions of the Constitution we must always bear in mind that the relevant provision "has to be read not in vacua but as occurring in a single complex instrument in which one part may throw light on another" (*Vide James v. Commonwealth of Australia* 1936 AC 578 : 1936 All ER 1449 : 155 LT 393). In construing Article 301, we must, therefore, have regard to the general scheme of our Constitution as well as the particular provisions in regard to taxing laws. The construction of Article 301 should not be determined on a purely academic or doctrinaire considerations; in construing the said Article we must adopt a realistic approach and bear in mind the essential features of the separation of powers on which our Constitution rests. It is a Federal Constitution which we are interpreting, and so the impact of Article 301 must be judged accordingly. Besides, it is not irrelevant to remember in this connection that the Article we are construing imposes a constitutional

limitation on the power of the Parliament and State Legislatures to levy taxes, and generally, but for such limitation, the power of taxation would be presumed to be for public good and would not be subject to judicial review or scrutiny. Thus considered we think it would be reasonable and proper to hold that restrictions freedom, from which is guaranteed by Article 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 it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301. The argument that all taxes should be governed by Article 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts, in our opinion an extreme approach which cannot be upheld".

(emphasis supplied)

12. Re. Question No. (i).--From the principle enunciated by the Hon''ble Supreme Court extracted above and the discussions made in the said judgments it is clear that any regulatory measures introduced by the State by means of a legislation while do not impede the freedom of trade, commerce and intercourse; the compensatory taxes imposed for the use of the trading facilities are not hit by the freedom guaranteed under Article 301 of the Constitution. They are excluded from the purview of the provisions of Part XIII of the Constitution as they do not in any manner hamper trade, commerce and intercourse, but they would rather facilitate them. Further, from the law laid down by the Hon''ble Supreme Court in the decisions referred to above, it also follows that taxes which do not directly or immediately restrict or interfere with the trade, commerce and intercourse throughout the territory of India would therefore be excluded from the ambit of Article 301 of the Constitution of India. In the present case, it has to be noticed that the imposition of the tax in question has only an indirect effect on trade and commerce. Therefore, in the backdrop of the principle enunciated by the Hon''ble Supreme Court now let me examine whether the impugned levy of tax would in any manner impede the freedom of trade, commerce and intercourse as strongly urged by the Counsel for the petitioners. As noticed by me earlier, while it is the case of the petitioners that the State has not placed any material either in the preamble given to the amending Act or in any other manner justifying the imposition of the enhancement of the tax, and even the statement made in the Annual Financial Statement made by the Hon''ble Chief Minister, a copy of which has been produced as Annexure-D does not support the enhancement of the tax, it is the case of the State that with a view to mobilise resources for the purpose of its developmental activities by way of construction and maintenance of roads and other facilities, it had to find out ways and means to mobilise resources. In this connection it is useful to refer to the statement made in the additional statement of objections filed by the State at paragraphs 2 to 5 which read as follows:

"1. The respondents most respectfully pray that this Hon''ble Court may be pleased to permit the respondents to file the Additional Statement of Objections.

2. It is submitted that the Department of Transport in Karnataka has estimated the calculation through the motor vehicles tax for the financial year 2002-03 as Rs. 786.83 crores and for the financial year 2001-02, the motor vehicles tax was collected in a sum of Rs. 634.92 crores. The details of which are as follows:

Head of the Account

Revised Estimates for 2001-02

Budget Estimates for 2002-03

Fees such as DL fees, Registration fees, FC Fees, permit fees

023.60

027.66

Tax such as tax on Private Buses, Lorries, Cess, KSRTC/NWKRTC/ BMTC Vehicles

593.99

739.80

Fines and penalties and other items

017.33

019.37

Total

634.92

786.83

Therefore, there is an estimated increase is about 150 crores for the year 2002-03 as envisaged for the year 2002-03. The additional revenue of Rs. 150 crores estimated from all the above items such as fee, tax from existing vehicles, fines and penalties keeping in view the anticipated increase in the registration of vehicles, etc., for the year 2002-03. With regard to the All India Tourist Omnibuses, the additional revenue mobilisation expected for the year 2002-03 due to increase of tax from the existing Rs. 1,400 to Rs. 2,250 per seat per quarter is Rs. 18.36 crores as per the calculations made below:

Year

No. of Buses

Seating Capacity

No. of Quarter

Rate of Tax

Anticipated amount (in crores)

2001-02

1,800

30

4

Rs. 1,400 per seat per qtr.

30.24

2002-03

1,800

30

4

Rs. 2,250 per seat per qtr.

48.60

3. It is further submitted that out of anticipated increase of Rs. 150 crores, the additional revenue mobilisation due to increase of tax in respect of multi-axle vehicles, maxi cab, stage carriages, camper vans, omnibuses, private service vehicles, articulated vehicles etc., is about Rs. 40 crores, out of which anticipated revenue from the ATTOBs is Rs. 18.36 crores. As regards the case pending before the Hon"ble Supreme Court of India that the case pertains to increase of tax in respect of ATTOBs from Rs. 1,000 to Rs. 2,000 per quarter per seat which pertains to the year 1997. It is pertinent to note in this context that the neighbouring States of Andhra Pradesh and Tamil Nadu, the tax is Rs. 3,500/- and Rs. 3,000/- respectively per seat per quarter. The tax that has been levied and collected in Karnataka is far less and this is done keeping in view of the interest of tourists.

4. It is submitted that the above said estimated collection is pooled in consolidated fund of the State and allocated the funds as follows for the purpose of construction of new roads, etc.:

Item Description

Budget Estimates 2002-2003 (Rs. in crores)

1.

PWD (roads and bridges (plan and non-plan)

1,105.64

2.

T.F.R.R. (KKDCL)

150.00

3.

District Roads (plan and non-plan)

245.33

1,500.97

Therefore, in all, State is estimated to spend Rs. 1,500.97 crores on the improvement of the roads, bridges, etc., within the State for the year 2002-03, the Hon"ble Government of Karnataka has given assent for the budget presented by the Hon"ble Finance Minister for the year 2002-03.

5. Viewing from any angle, the amount being spent by the State of Karnataka for the purpose of improvements of the roads and bridges is much more than what is being collected as motor vehicle taxes. Therefore, the allegations made by the petitioner in para 18 of the petition is not correct".

13. From the averments made in the additional statement of objections it is seen that the estimated collection of revenue through motor vehicles tax for the financial year 2002-03 is in a sum of Rs. 739.80 crores. The estimated increase is around Rs. 150 crores as against the total collection of motor vehicles tax for the financial year 2001-02. Further, out of the estimated increase of Rs. 150 crores, it is the case of the State that on account of the increase of the tax from Rs. 1,400/- to Rs. 2,250 per seat per quarter, the State expects to collect Rs. 18.36 crores during the financial year 2002-03. It is the further case of the State that the tax collected are pooled in the Consolidated Fund of the State and the funds are allocated for various purposes as set out in paragraph 4 of the additional statement of objections. Further, during the financial year 2002-03 the State estimates to spend Rs. 1,500.97 crores on improvement of roads, bridges, etc. Therefore, the facts and figures supplied by the State in the additional statement of objections clearly establishes that the State intends to mobilise resources for the purpose of improvement of roads, bridges within the State for the year 2002-03 and the total amount required is around Rs. 1,500.97 crores. On account of the enhancement of tax, the additional revenue sought to be collected is about Rs. 58.36 crores only i.e., Rs. 40 crores + Rs. 18.36 crores. The collection of resources on the basis of budget estimate as set out in paragraph 2 of the additional statement of objections accounts for collection of Rs. 786.83 crores. Therefore, I am unable to accept the submission of Sri Srinivasan that the State has failed to establish that the enhancement of motor vehicles tax at Items 6 and 7 of column (3) of the Schedule is not in the nature of compensatory tax. No doubt, the preamble to the impugned Act or in the objects and reasons to the impugned Act, the details of the collections of the tax and the estimated expenditure is not set out. By that itself, it is not possible to take the view that the impugned tax is not compensatory in nature. Further, in my view, the contention advanced by the petitioners based on the right

guaranteed to them under Article 301 is required to be rejected on the very ground that the Division Bench of this Court in Writ Petition Nos. 5224 to 5231 of 1987 and connected petitions disposed of on 8th, 9th and 10th September, 1987 rejected the similar contentions. At paragraph 12 of the judgment it is observed as follows:

"12. Re. Contention (b): "That the tax offends Article 301".

If a tax under Entry 57 of List II is not compensatory, it might affect the freedom of trade, commerce and intercourse under Article 301 of the Constitution. If the tax is non-compensatory in character, it will then have to satisfy the requirements of Article 304(1)(b). It must be shown that the restriction on the freedom imposed by or implicit in a non-compensatory tax of this kind is reasonable and in public interest. Legislative measure must have also either the prior consent of the President to the legislative measure or the President's subsequent assent to the "Act". Considerable arguments were expended on what, in the case of a tax under Entry 57, List II, satisfies the requirement of reasonableness within the meaning of Article 304(1)(b). If such tax is non-compensatory in character, what are the tests by which its reasonableness for purposes of Article 304(1)(b) could be judged and decided? The case of such non-compensatory taxes came up for consideration in the case of Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, and in Nazeeria Motor Service's case, supra. This exercise, in our opinion becomes purely academic in this case. In the view we have taken that the tax as enhanced by Act No. 8 of 1987 till it retains its compensatory character, it is not necessary for the State to support it with reference to the requirement of Article 304(1)(b). A compensatory tax is outside Article 301. Such a compensatory tax merely facilitates trade and commerce by creating facilities for their advancement and does not constitute a restriction".

14. The fact that the Hon'ble Supreme Court refused to interfere against the said decision notwithstanding the fact that the tax was enhanced to Rs. 2,000/- in the year 1987 and was reduced to Rs. 1,000/- only with effect from 1st April, 1990 is a clear indication that the Hon'ble Supreme Court also on principle accepted the imposition of motor vehicle tax as compensatory in nature. The direction given by the Hon'ble Supreme Court in the SLP to the State Government to reconsider the matter with regard to the question as to whether the tax is required to be reduced from 1st April, 1987 till 31st March, 1990, in my view, does not support the contentions of the learned Counsel appearing for the petitioners in any manner. The Division Bench of this Court in Writ Appeal Nos. 4153 to 4155 of 1999 disposed of on 28th September, 1999 while repelling the contention that the enhancement of tax from Rs. 500/- to Rs. 2,000/- for the period from 1st April, 1987 to 31st March, 1990 is required to be nullified at paragraphs 18 and 19 of the judgment has observed as follows:

"18. Keeping in view the offer made by the Counsel appearing for the operators in the Supreme Court and the assurance given by the Government Advocate the incidence of tax was decreased from Rs. 2,000/- to Rs. 1,000/- with prospective

effect from 1-4-1990. Generally speaking the taxes and specially the indirect tax are increased or decreased with a prospective date. It would be assumed in the case of indirect taxes that the person responsible to pay the tax must have shifted the incidence of tax to the consumers. Grant of interim stay by the High Court did not mean or imply that the operators could not pass on the incidence of the enhanced tax to the commuters. Wherever interim order is granted the same is subject to the final disposal of the suit or the writ petition. In the event of the dismissal of the writ petition the liability to pay the tax would arise as the interim order cannot be taken to be the final order passed in the suit/writ petition. Contention of the Counsel for the appellants that they did not pass on the incidence of the enhanced taxes to the commuters as there was an interim stay by the High Court, cannot be accepted on the probabilities of the case. Simply because the incidence of tax was reduced from Rs. 2,000/- per seat per quarter, with effect from 1-4-1990 would not mean that the liability of the operators to pay the tax between 1-4-1987 to 31-3-1990 at the rate of Rs. 2,000/- per seat per quarter ceased. Supreme Court had issued direction to the executive authorities of the State to consider that representation and if found that the operators did not pass on the burden of the tax to the consumers then consider reducing the tax to Rs. 1,000/- per seat per quarter. Since it was not found to be so, the representation was rejected.

19. We find substance in the other submission of Mr. Mallya as well that the executive authority of the State would be bound by the law made by the Legislature unless the same was struck down. No directions were issued to the Legislature to reduce the tax, and in fact none could be issued. The Legislative Act of the State Act having been upheld, the Executive Authority was bound to follow the same. The incidence of tax could only be reduced by the Legislature and not by the Executive Authority of the State in exercise of its executive powers".

15. No doubt, the Hon"ble Supreme Court has stayed the recovery of the enhanced tax from Rs. 500/- to Rs. 2,000/- for the period from 1st April, 1987 to 31st March, 1990. However, that is of no assistance to the petitioners to support their contentions in these petitions. The tax imposed by means of Act No. 8 of 1987 was enhanced to Rs. 1,400 per seat per quarter from 1st April, 2001. As noticed by me earlier, the Division Bench of this Court has upheld the levy of enhancement of tax from Rs. 500/- to Rs. 2,000/- for the period from 1st April, 1987 to 31st March, 1990. The tax was enhanced from Rs. 1,000/- to Rs. 1,400/- with effect from 1st April, 2001. It is only with effect from 1st April, 2002 the tax was enhanced to Rs. 2,250/-. It cannot be disputed that money value over the years has gone down and the pressure on the roads on account of the increase in the use of vehicles has gone up which requires constant repair and maintenance of roads and also further construction of new roads and bridges. All this requires huge resources by the State. It is the case of the State that it intended to enhance the tax to Rs. 3,000/-per seat per quarter, but on the request made by the Tourist Operators, the same was reduced to Rs. 2,250/-. It

is not in dispute that in the neighbouring States of Andhra Pradesh and Tamil Nadu, the tax is Rs. 3,500/- and Rs. 3,000/- respectively per seat per quarter. Therefore, for the purpose of extending better transport facilities in the State, if the State has passed the impugned Act enhancing the tax, in my considered view, the same cannot be held as impeding the free trade, commerce and intercourse throughout the territory of India. The enhancement of the tax in my view, does not in any manner directly and immediately impose any restriction on the movement of trade or commerce. The impugned enhanced tax, in my view, has to be held as compensatory in nature. For the same reason, the enhancement of tax in respect of camper vans also cannot be held to be as one impeding the right guaranteed to the petitioners under Article 301 of the Constitution of India. Therefore, I am unable to accede to the submission of Sri Srinivasan that the enhancement of the tax in question violates the right guaranteed to the petitioners under Article 301 of the Constitution of India. Therefore, first question is held against the petitioners.

16. Re. Question No. (ii).--Now, the next question is as to whether the enhancement of the tax in question is liable to be struck down on the ground that it is discriminatory, arbitrary and violative of the rights guaranteed to the petitioners under Article 14 of the Constitution of India as contended by Sri Achar? I am of the view that there is absolutely no merit in the said submission. It is true that the tax levied in respect of the fleet owners is considerably less as contended by Sri Achar. However, in my view, the reduction of tax in respect of the fleet owners though the fleet owners in the State are the State controlled Corporations, it cannot be said that the enhancement of the tax is violative of the right to equality guaranteed to the petitioners under Article 14 of the Constitution of India. It is also necessary to point out that the impugned tax is in the nature of indirect tax which can be transferred by the transport operators to the consumers or the travelling public. The classification made between the fleet owners and others in my view is a reasonable classification and there is a direct nexus with the object sought to be achieved. Even according to the petitioners, it is only the State owned Corporations are the fleet owners in the State. It cannot be disputed that large number of travelling public make use of the State owned transport and the tariff generally prescribed by the State owned transport vehicles is much lower than the tariff charged by the private tourist operators. The State owned Corporations can afford to charge lower tariffs provided their cost of maintenance is also less. Since the tariff in the State owned transport vehicles is lower than the private transport vehicles, the poorer sections of society generally prefer to travel in the State owned transport vehicles. This may be an incentive given by the State to the members of the travelling public who cannot afford heavy cost of transport expenditure. Therefore, I do not find any merit in the submission of Sri Achar that the impugned provision is liable to be struck down as unconstitutional on the ground that it is arbitrary and discriminatory in nature and violates the right guaranteed to the petitioners under Article 14 of the Constitution of India.

17. Therefore, in the light of the discussion made above, I am of the view that these petitions are liable to be rejected. However, since this Court has granted an interim order staying the recovery in excess of 70 per cent of the tax levied, I am of the view that it would be in the interest of justice to give some reasonable time to the petitioners in these petitions and connected petitions to pay the arrears of tax that has accrued on account of the interim order granted by this Court. Having regard to the facts and circumstances of the case, the petitioners in these petitions and connected petitions are given six weeks" time from today to pay 50 per cent of the arrears of the tax and another four weeks" time to pay the balance 50 per cent of the tax due. Subject to the time given to the petitioners to pay the arrears of tax as stated above, these petitions are rejected. However, no order is made as to costs.