

(2004) 03 CAL CK 0053
In the Calcutta High Court
Case No : A.S.T. No. 1761 of 2003

Soumitra Banerjee and Others

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 304

West Bengal Additional Tax and One time Tax on Motor Vehicles Act, 1989 — Section 9, 9(1), 9A, 9B

West Bengal Motor Vehicles Tax Act, 1979 — Section 3, 4, 4(3)

Citation : (2004) 3 CHN 545

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Rudrajyoti Bhattacharjee, Rampada Pal, Debdas Khanna, Probal Kumar Mukherjee, Kedareswar Chakraborty, Rameswar Bhattacharjee, Gyanta Das, Jayanta Kumar Sanyal, Debashis Basu, Bikash Chatterjee-II, Tapan Kumar Mukherjee, Depankar Ghosh, R. Basu, Sambhunath De, Debabrata Karn, Golam Mostfa, Jinita Mukherjee, Amal Kumar Sen, Sanjay Paul, D.P. Adhukari, J.H. Mallick, Anjan Kumar Banerjee, Subrata Biswas, Saidur Rahaman, D.K. De, N. Das, Rabindra Nath Bag, Saktipada Jana, Arobinda Chatterjee, Arpana Roy Chowdhury, A.K. Pan and Partha Ghosh, for the Appellant; Balai Roy, Ld. A.G. and Debasish Kargupta and Krishnapada Pal, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—All these writ applications were taken up together as common questions of law are involved in all these matters.

2. By these applications, the petitioners have challenged the West Bengal Additional Tax and One-time Tax on Motor Vehicles Tax (Amendment) Act, 2003 (West Bengal Act XIV of 2003), the West Bengal Motor Vehicles Tax (Amendment) Act, 2003 (West Bengal Act XIX of 2003) and the West Bengal Additional Tax and One-time Tax on Motor Vehicles (Second Amendment) Act, 2003 (West Bengal Act XX of 2003).

3. To appreciate the contentions raised by the parties, it is necessary to state a

brief history of promulgation of the statute relating to tax on Motor Vehicles in West Bengal.

4. Prior to independence, the Bengal Motor Vehicles Tax Act, 1932 (Bengal Act I of 1932) was the taxing statute by virtue of which taxes were imposed upon motor vehicles. After the coming into operation of our Constitution, the West Bengal State Legislature in 1979 enacted West Bengal Motor Vehicles Tax Act, 1979 (hereinafter referred to as the "1979 Act") thereby repealing the Bengal Motor Vehicles Act, 1932. 1979 Act was legislated by virtue of power conferred upon the State Legislature by the Seventh Schedule of the Constitution of India vide serial No. 57 of List-II read with serial No. 35 of List-III, the concurrent list.

5. Section 3 of 1979 Act imposes a duty upon every owner of a registered motor vehicle or every person who keeps in his possession or control any motor vehicle to pay tax on such vehicle at the rate specified in the Schedule of the Act. According to Section 4 of such Act, the tax payable u/s 3 should be paid for a year and in advance by the person liable to pay tax within such period as may be determined by the taxing officer. Sub-section (3) of Section 4 of such Act gives power to the taxing officer to refund tax already paid to the extent indicated therein if such officer is satisfied that certificate of registration and the token delivered u/s 8 on payment of tax in respect of a motor vehicle had been surrendered or that the motor vehicle had not been used or kept for use for any complete calendar month.

6. During the subsistence of the 1979 Act, the West Bengal State Legislature enacted the West Bengal Additional Tax and One-time Tax on Motor Vehicles Act, 1989 (hereinafter referred to as the "1989 Act") thereby prescribing imposition and levy of additional tax on motor vehicles and a one-time tax on motor cycles less than 15 years old in the State of West Bengal; Section 9 of 1989 Act did away with the duty to pay annual tax under 1979 Act in respect of motorcycles less than fifteen years old and created an obligation to pay a one-time tax specified in Schedule II in lieu thereof when applying for first registration or assignment of fresh registration mark or change of address on removal of the motor cycle from another state. However, motor cycles more than 15 years old were not required to pay such one-time tax but were obliged to pay annual tax in accordance with 1979 Act. Subsequently, by way of amendment, the provisions contained in Sections 9A and 9B were introduced.

7. According to Section 9A notwithstanding anything contained in the said Act, the owner of any motor cycle being less 15 years old when applying for first registration or assignment of fresh registration mark or change of address on removal of the motor cycle from another State other than West Bengal on or after the date of coming into force of West Bengal Additional Tax and One-time Tax on Motor Vehicles (Amendment) Act, 1992 should pay one-time tax as specified in Schedule III in lieu of any tax payable under 1979 Act or under 1989 Act. Thus, from the date of coming into operation of the amendment, the rate of one-time tax was enhanced to rate mentioned in Schedule III from those

mentioned in Schedule II.

8. Section 9B, on the other hand, provides that a one-time tax for a period of 5 years in lieu of annual tax leviable under 1979 Act and 1989 Act should be payable on motor cars and omnibuses not being transport vehicles as provided in Part I of Schedule IV registered and used for non-transport purposes only at the rates specified in the said Schedule. It further provides that w.e.f. such date, the owner of any motor vehicle being less than 10 years old when applying for the first registration or assignment of fresh registration mark or change of address on removal of the motor vehicle from another State should pay one-time tax at the rates specified in Part of Schedule IV for the period of five years in lieu of annual tax payable under 1979 Act and 1989 Act.

9. Sub-section (3) of the said provision further provides that owner of any motor vehicle being less than 10 years which is already registered in West Bengal and the annual tax in respect of which has been paid under 1979 Act and 1989 Act from the date of coming into operation of Amendment should pay one-time tax for a period of five years at the rates specified in Part I Schedule IV in lieu of annual tax under 1979 Act and 1989 Act on the expiry of the period for which annual tax has been paid.

10. However, there was a proviso to Sub-section (3) which enabled the owner of any motor vehicle referred to in Sub-section (3), if he so desired, to pay annual tax leviable under 1979 Act and 1989 Act in lieu of one-time tax by submitting an application to the Taxing Officer within whose jurisdiction the tax is leviable. Sub-section (4), however, declared that owner of any motor vehicle which is more than 10 years should pay annual tax and not one-time tax under 1979 Act and 1989 Act.

11. By the amendment of 2003, dealers of such motor cars have also been brought under its purview and further, the schedules of 1989 Act have been amended.

12. Moreover, Section 9A, as it stood, has been substituted by the following new Section 9A:

"Section 9A : Owner of motor cycle to pay life-time tax.--(1)

Notwithstanding anything contained elsewhere in this Act, the owner of any motor cycle being less than fifteen years old, when applying for first registration, or assignment of fresh registration mark, or change of address on removal of the motor cycle from a State other than the State of West Bengal, on or after the date of coming into force of the West Bengal Additional Tax and One-time Tax on Motor Vehicles (Second Amendment) Act, 2003, shall pay life-time tax as specified in Schedule III in lieu of tax payable under the West Bengal Motor Vehicles Tax Act, 1979 (West Ben. Act IX of 1979), and under this Act:

Provided that the owner of a motor cycle registered after the 25th day of November, 1991, shall be liable to pay the difference of the rate of life-time tax

payable and the one-time tax already paid, within such period as specified in Schedule III and if the difference amount is not paid within the date to be notified by the State Government, a penalty at the rate of 100 per cent, of the difference amount payable shall be charged :

Provided further the owner of that a motor cycle registered before the 25th day of November, 1991, shall continue to pay the annual rate of tax as payable under the provisions of the West Bengal Motor Vehicles Tax Act, 1979.

(2) If life-time tax in respect of a motor cycle has already been paid under Sub-section (1) and if the said motor cycle is removed from West Bengal on change of address or on cancellation of registration, the owner of the said motor cycle shall be entitled to claim refund at the rate specified in Part II of Schedule III".

13. Similarly, proviso to sub-section (3) of Section 9B of the 1989 Act has been deleted. There are other consequential amendments defining the lifetime tax and one-time tax and rates specified in the Schedule have also been amended.

14. Those amendments virtually gave rise to filing of these applications.

15. Mr. Sen, Mr. Roy, Mr. Mukherjee, Mr. Bhattacharya, Mr. Chatterjee and Mr. Tapan Mukherjee, the seven learned Counsels have advanced arguments in support of various writ petitioners. Their contentions may summarized thus :

A) 1979 Act and 1989 Act having been enforced after taking assent of the President of India, the Amendment of 1989 Act by virtue of the impugned legislation cannot be given effect to unless Presidential assent is taken in terms of Article 254 of the Constitution of India. Thus, the amended Act cannot be effective by merely taking assent from Governor of the State and so long the President of India does not give assent, those amendments cannot be enforced.

B) There being already a valid piece of legislation on the subject, viz. the 1979 Act, without repealing such Act another statute cannot be enacted by the self-same legislature.

C) By virtue of 1989 Act, the Government having already realized one-time tax for a motor cycle, further tax in the name of the "life-time tax" on the self-same vehicle is not permissible.

D) There being no provision in the 1989 Act for refund of life-time tax or one-time tax or additional tax if the vehicle is unable to ply on the road for a temporary period for any reason, as provided in 1979 Act, the 1989 Act must be held to be confiscatory and thus it is beyond the competency of State Legislature to enact such a statute.

E) The object of 1989 Act being to realise further revenue for repair of roads, there was no valid reason to discriminate old cars from the new cars. Moreover, tax cannot be imposed on the basis of power of engine even though a particular vehicle may be lighter in weight than another vehicle which has lesser engine power. Similarly, price of a motor vehicle has no relevance in fixing the amount

of tax. There is also no justification of favouring a transport vehicle while assessing amount of tax.

F) In fixing life-time tax, the State Legislature acted contrary to the principles enacted by Motor Vehicles Act, 1988, wherein specific lifetime has been provided of a vehicle; in other words, life-time tax cannot be imposed beyond the period of registration which is initially for 15 years and for which tax has already been paid.

G) The impugned 1989 Act having put restriction on the freedom of trade, commerce or intercourse within the territory of India, even if the amendment amounts to "reasonable restriction", the Bill proposing amendment could not be moved without previous sanction of the President as required under the proviso to Article 304(b) of the Constitution of India.

16. In support of the aforesaid contentions, the learned Counsel appearing for the petitioners have relied upon the following decisions :

- 1) Bolani Ores Ltd.,
- 2) Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others,
- 3) State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others,
- 4) B.A. Jayaram and Others Vs. Union of India (UOI) and Others,
- 5) Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others,
- 6) State of A. P. v. Murali Cafe, reported in 28 Sales Tax Cases 399 at page 408;
- 7) Govinddas and Ors. v. ITO and Anr., reported in 103 ITR 123 134;
- 8) Vasudev Ram Chandra Shelat v. P. J. Thaker and Ors., reported in AIR 1974 SC 1428;
- 9) A.P. State Financial Corporation Vs. Official Liquidator,
- 10) Indira Sawhney Vs. Union of India and Others,

17. These applications are opposed by the State of West Bengal and Mr. Roy, the learned Advocate-General appearing on behalf of the State of West Bengal, relied upon the affidavit-in-opposition used by the State of West Bengal in W. P. No. 2341 of 2003 and submitted that the said affidavit-in-opposition may be treated as affidavit-in-opposition in all the matters. Mr. Roy further submitted that most of the questions involved in these applications being pure questions of law, filing of affidavits in all matters should be dispensed with. Defence taken by the State of West Bengal in affidavit-in-opposition may be epitomized thus :

A) Imposition of taxes by way of impugned amendment Acts are compensatory and regulatory in nature as it appears from summary statements of revenue given by the State Government on account of imposition of tax under reference

vis-a-vis the amount spent for maintenance and construction of road within the State.

B) Public Works Department of the State of West Bengal maintains about 18,000 kms. of roads in a year. Zila Parishads and Urban Local Bodies maintain about 30,000 kms. of road in year. Thus, the total length of roads maintained by the State in a year is about 48,000 kms. Apart from maintaining the roads, the Government has to construct new roads and widen existing roads each year.

C) An amount of Rs. 379.37 crore has been allocated in the current year's budget in favour of Public Works Department. Moreover, an amount of Rs. 182 crore has been earmarked for construction of different flyovers etc. in the current year's budget in favour of the transport department. That apart, an amount of Rs. 100 crore had been allocated in the current year's budget in favour of Panchayat Bodies as also Zila Parishads and Urban Local Bodies including Municipal Corporations.

D) A considerable amount is being spent by the State Government on maintenance of law and orders in the roads by the police and that apart, out of the budgetary allocations made in favour of Home (Police) Department, a large amount has been earmarked for maintenance of traffic system for smooth and safe vehicular movements.

E) An estimated amount of Rs. 100 crore may be earned from 4-wheeler non-transport vehicles under the West Bengal Additional Tax and One-time Tax on Motor Vehicles (Second Amendment) Act, 2003 for the next five years. The aforesaid amount is only a nominal amount in comparison with the amount which the State Government spends for maintenance of road, construction of new roads and flyovers and maintenance of traffic system as stated above for implementation of industrial development adopted by State Government as also for smooth running of vehicles on roads.

F) The State Legislative Assembly has the competence to enact law for imposition of tax on motor vehicles and there being no existing statute in the said field enacted by the Parliament, assent of President is not required to be taken. Similarly, by the proposed amendments the State having enacted a regulatory and compensatory statute, the provisions contained in proviso to Article 304(b) of Constitution of India are not required to be complied with.

G) There has been no violation of any of the provisions of the Constitution of India in enacting the impugned amendments.

18. Mr. Roy, the learned Advocate-General appearing on behalf of the State respondent, has opposed all the contentions raised by the learned Counsel for the petitioners. As regards the first point that the Presidential assent was necessary in terms of Article 254 of Constitution of India, Mr. Roy contends that while enacting 1979 Act and 1989 Act, there was no necessity of taking assent of the President of India in terms of Article 254 of the Constitution of India because

West Bengal State Legislative Assembly is quite competent to enact law relating to imposition of tax on motor vehicles by virtue of Serial No. 57 of List II read with Serial No. 35 of List III of the Seventh Schedule of the Constitution of India. Mr. Roy submits that so far Serial No. 57 of List II is concerned, the State Legislature has the absolute authority to enact any law as regards the tax on motor vehicles which is however subject to Serial No. 35 of Concurrent List by which both State Legislature and the Parliament are vested with right to enact principles relating to imposition of tax on motor vehicles. According to Mr. Roy, there being no existing Central legislation laying down any principle in the matter of imposition of tax on motor vehicles, while enacting the 1979 Act or 1989 Act, there was no necessity of taking assent of the President. Such question would have arisen if any statute passed by State Legislature was in conflict with any existing law on the self-same subject made by the Parliament. Thus, in the absence of any law enacted by the Parliament, Mr. Roy continues, assent of President while enacting 1979 Act or 1989 Act was superfluous. For the above reason, Mr. Roy proceeds, while enacting the impugned amendments of 1989 Act no assent of the President was taken.

19. Similarly, as regards the other point that while enacting the impugned legislations the requirement of proviso to Article 304(b) was not complied with, Mr. Roy contends that present provision being regulatory and compensatory in nature, there was no necessity of taking prior assent of President before introduction of Bill as required in proviso to Article 304(b) of the Constitution of India. It has been, however, admitted that before introduction of the Bill for the impugned amendments, prior assent of President as required under proviso to Article 304(b) was not taken.

20. Mr. Roy, further contends that the argument of the learned Counsel for the petitioners that without repealing 1979 Act, another statute of the similar nature cannot be enacted by the self-same legislature, is equally devoid of any substance. Mr. Roy, in this connection, submits that by 1979 Act all motor vehicles were required to pay tax but by enacting 1989 Act, the legislature has only imposed additional tax and has made provisions for payment of one-time tax in lieu of tax payable under 1979 Act under certain circumstances. Thus, by enactment of subsequent 1989 Act, Mr. Roy submits, a Section of the tax-payers under 1979 Act have been taken out of the purview of the said Act. Those tax-payers are now required to pay tax under 1989 Act in lieu of tax payable under 1979 Act. Thus, simply because both the statutes are alive in the field, according to Mr. Roy, that cannot be a ground for declaring the subsequent statute as void. Mr. Roy submits that by enactment of 1989 Act some of the provisions of 1979 Act should be held to have been repealed by necessary implications and thus, for not mentioning specifically in 1989 Act that those parts of 1979 Act have been repealed, the subsequent statute cannot be held to be void.

21. In reply to the argument that by virtue of 1989 Act, the Government having already realized one-time tax for a motor cycle, further tax in the name of life-

time tax on the self-same vehicle is not permissible, Mr. Roy contends that a legislature, if otherwise competent to impose tax, can always modify the rate of tax. While enacting 1989 Act, Mr. Roy continues, the legislature fixed one-time tax for motor vehicles as mentioned in the Schedules but for subsequent years the State Legislature is further entitled to impose tax on the said vehicle at a different rate. Mr. Roy contends that tax impugned having been imposed for the purpose of maintenance, repair and preparation of new roads, the State Legislature has the right to ask the user of the road to pay such further tax and thus it cannot be contended that such imposition of tax by enhancing the rate was in any way illegal.

22. Regarding discrimination alleged in the writ applications in the matter of fixing the tax on the basis of price of vehicle, power of engine and as regards allegation of favouring transport vehicles, Mr. Roy contends that those discrimination are based on reasonable grounds. The State Legislature, according to Mr. Roy, is competent to decide whether the entire burden of the tax should be uniformly distributed among all the tax payers or whether the persons who are capable of purchasing vehicle at a higher price or maintaining an air-conditioned vehicle should be taxed at the excessive rate. Similarly, it is for the legislature to decide whether it will favour transport vehicle, because, in the event transport vehicles are taxed at a higher rate, the burden will ultimately come over the ordinary citizens. In such a situation, Mr. Roy proceeds, State Legislature is competent to ask private motor vehicle owners to bear excess burden. As regards fixation of rate on the basis of power of engine, Mr. Roy contends that such fixation is based on scientific reason inasmuch as it is noticed that light motor vehicles are always fitted with lesser engine capacity and the heavier one with the higher one. Thus, instead of fixing the rate of tax on the basis of unladen weight, the legislature decided to change the unit in accordance with the engine power and such decision is quite reasonable. Mr. Roy further contends that high speed vehicles damage the road more than a slow moving vehicle does due to excess friction and thus such provision has been incorporated deciding to impose tax on vehicles on the basis of engine power.

23. Lastly, Mr. Roy vehemently contended that the 1989 Act as amended is not at all confiscatory but regulatory, and compensatory in nature. He contends that there is provision for refund of one-time tax in the event the vehicle is removed from the State of West Bengal on change of address. He further points out that although there is some ambiguity in the provision of refund of the amount but the intention of the legislature was to refund the one-time tax also in the event of registration being cancelled. According to Mr. Roy simply because there is no provision for refund in the event a motor vehicle which is not on road due to accident or any temporary reason as provided in 1979 Act, for that reason, the 1989 Act cannot be said to be confiscatory in nature. Mr. Roy submits that the substance of the provisions of refund in the amended Act is that in case of removal of vehicle from West Bengal and in case of cancellation of registration, the owner is entitled to get proportionate refund of the amount. According to Mr.

Roy, it is not possible for a State Government to effectively verify a claim that a vehicle was really out of road for other temporary reasons and for the above reason no provision has been made for refund of tax for temporary absence from road as provided in 1979 Act. For the above minor deviation from the provision contained in 1979 Act, Mr. Roy contends, the 1989 Act cannot be said confiscatory in nature. Mr. Roy further submits that if the statute is held to be regulatory and compensatory, in such a case, proviso to Article 304(b) does not come into play and thus, there is no necessity of taking prior approval of President of India before presentation of the Bill in the Legislative Assembly. Mr. Roy thus prays for dismissal of all these applications.

24. In support of all these contentions, Mr. Roy relies upon the following decision :

- 1) M. Narasimhaiah Vs. Deputy Commissioner for Transport, Bangalore Division, Infantry Road, Bangalore and Another,
- 2) State of Karnataka and Others Vs. N. Madappa and Others,
- 3) State of Assam v. Labanya Probha Debi, reported in AIR 1967 SC 1575 ;
- 4) Zaverbhai Amaldas Vs. The State of Bombay,
- 5) Deep Chand Vs. The State of Uttar Pradesh and Others,
- 6) State of Haryana and Another Vs. Chanan Mal and Others,
- 7) Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others,
- 8) Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.,
- 9) Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.,
- 10) Rai Ramkrishna and Others Vs. The State of Bihar,
- 11) The Assistant Commissioner of Urban Land Tax and Others Vs. The Buckingham and Carnatic Co. Ltd., etc.,
- 12) Jawaharmal Vs. State of Rajasthan and Others,
- 13) International Tourist Corporation and Others Vs. State of Haryana and Others,
- 14) R. K. Garg v. Union of India, reported in AIR 1981 SC 2138 ;
- 15) The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.,
- 16) Kutner v. Phillips, reported in 1891(2) Q. B. 267 ;
- 17) Dharangadhra Chemical Works Vs. Dharangadhra Municipality and Another,
- 18) A.P. State Financial Corporation Vs. Official Liquidator,

19) The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others,

25. The first question that falls for determination in these applications is whether in view of existence of a particular statute viz., 1979 Act in the field, the State Legislative Assembly is entitled to enact another statute for further imposition of additional levy.

26. After hearing the learned Counsel for the parties and after going through the materials on record, I am not at all impressed by the submissions of the learned Counsel for the petitioners that merely because there is already a statute viz., 1979 Act imposing liability upon the persons in possession of a vehicle to pay tax, another statute cannot be enacted. It is true that further tax might have been imposed by way of additional levy under the 1979 Act itself, but that cannot prevent the said legislature from passing another statute to impose further levy. The aforesaid point has already been decided by a Division Bench of this Court in the case of Sarat Chandra Sharma and Ors. v. State of West Bengal and Ors., reported in 1996(1) CLJ 166 where the Division Bench has approved the competency of the State Legislative Assembly to enact 1989 Act in addition to 1979 Act. Therefore, I do not find any substance in the aforesaid point raised by the petitioners.

27. The next question is whether the legislature is entitled to make classifications among tax payers in the matter of fixing the liability of tax imposed upon the vehicles.

28. The discretionary power of legislature to make classification in laws dealing with tax matter is much wider than other laws. The Courts have recognized the complexity of fiscal adjustment on diverse elements and accordingly permitted a larger discretion to the legislature in the matter of classification so long the same does not transgress upon fundamental right guaranteed by the Constitution of India. Thus, if the State Legislature decided to favour transport vehicles over the non-transport vehicles, there is nothing illegal for which such discretion can be struck down. Any levy on transport vehicle would be passed on to the common people in the long run and thus, the State can impose lesser amount of tax on transport vehicles; similarly, the State can decide that the entire burden should be distributed in such a manner that a citizen using costly vehicle should bear more burden than a person using inexpensive car. Thus, it may decide to fix the amount of tax on the basis of price of the vehicle, a particular citizen is in possession of and the higher amount of tax on air-conditioned vehicles. Similarly, imposition of tax on the basis of engine capacity of the vehicle cannot be held to be unreasonable. I, thus, find that the aforesaid questions should also be answered in favour of State respondent.

29. The next question is whether the State having already realized one-time tax for a motor cycle by virtue of 1989 Act, further levy of tax in the name of "life-time tax" on the self-same vehicle is permissible?

30. As pointed out by Supreme Court in the case of State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, the State Legislature is competent to enact one-time tax as, according to Supreme Court, collection of tax for a period of 15 years at one point of time is a convenient method enabling the owner to use the vehicle for more than 25 years without having to visit the office to pay the tax periodically and pay enhanced tax that may be levied during the 25 years of the life of the vehicle. In the present case, by virtue of 1989 Act, owner of 2-wheelers have already paid one-time tax on the basis of assurance of the State Government that no further tax will be paid in future. Therefore, the owners of those 2-wheelers who have already paid one-time tax for the vehicle cannot be asked to pay further amount in the name of life-time tax. Thus, imposition of lifetime tax also upon those vehicle owners who have already paid one-time tax by asking them to pay further amount is a fraud on citizen. However, for a vehicle for which one-time tax has not been taken, the State Legislature is entitled to impose life-time tax in lieu of one-time-tax. Thus, in my view the life-time tax introduced by incorporating new Section 9A cannot be held applicable to the owners of a 2-wheeler who have already paid one-time tax on the basis of promise of the legislature that no further amount of tax will be payable for those vehicles.

31. Mr. Roy, at this juncture, assiduously contended that in Section 9 of the 1989 Act there was no indication, either explicit or implicit suggesting that the one-time tax mentioned therein was meant for all time to come; Mr. Roy, on the other hand, asserts that the rates of one-time tax in Schedule II or Schedule III demonstrate that such tax was for a period of maximum 15 years depending upon the age of the vehicle.

32. To appreciate the aforesaid contention, the provisions contained in Section 9 of the 1989 Act are quoted below :

"Section 9. One-time Tax.--(1) A one-time tax in lieu of annual tax as leviable under the West Bengal Motor Vehicles Tax Act, 1979 (West Bengal Act IX of 1979), shall be leviable on motor cycles as shown in Schedule II at the rate specified therein.

(2) With effect from the date of commencement of this Act, the owner of any motor cycle being less than fifteen years old, when applying for first registration or assignment of fresh registration mark or change of address on removal of the motor cycle from another State other than West Bengal, shall pay one-time tax as specified in Schedule II in lieu of any tax payable under the West Bengal Motor Vehicles Tax Act, 1979 (West Bengal Act IX of 1979).

(3) The owner of any motor cycle being less than fifteen years old, which is already registered in West Bengal and the tax in respect of which is being paid annually under the West Bengal Motor Vehicles Tax Act, 1979, shall, from the date of commencement of this Act, pay one-time tax at the rate specified in Schedule II in lieu of the annual tax under that Act on the . expiry of the period

for which the annual tax under that Act has been paid.

(4) The owner of any motor cycle of the description referred to in Sub-section (2) or Sub-section (3), which is more than fifteen years old, shall pay the annual tax, in lieu of one-time tax, under the West Bengal Motor Vehicles Tax Act, 1979.

(5) The State Government may require the manufacturer or the dealer of motor cycles to furnish to it the names and addresses of the purchasers of motor cycles with effect from such date as may be determined by the State Government by notification published in the Official Gazette.

(6) If one-time tax in respect of a motor cycle has already been paid under Sub-section (2) or Sub-section (3), and if the said motor cycle is removed from West Bengal on change of address or on cancellation of registration, the owner of such motor cycle shall be entitled to claim refund at the rate specified in Part II of Schedule II".

33. In my opinion, the use of the article "A" before the phrase "one-time tax in lieu of annual tax" appearing in Sub-section (1) of Section 9 without reference to any period of time makes it clear that such payment is once for all. My aforesaid interpretation will be strengthened from the fact that although in Sub-section (4) of Section 9 it has been specifically mentioned that any motor cycle more than fifteen years old should pay annual tax in lieu of one-time tax, but there is no indication that after expiry of any period, the owners who have already paid one-time tax is required to further pay annual tax in terms of 1979 Act or any further tax under 1989 Act. It may further be mentioned here that although in Section 9B, while fixing liability to pay one-time tax for motor vehicles less than 10 years old, it is specifically mentioned that such one-time tax is meant for a period of five years, no such time limit has been fixed for payment of one-time tax for motor cycles. Thus, as the phrase "one-time tax" is preceded by the article "A" and not followed by any limitation in terms of point of time, it necessarily follows that such imposition of tax was really :a "one-time tax" for the life of the vehicle.

34. I, thus, hold that the amended provision of Section 9A as incorporated by the impugned amendment cannot be applicable to those vehicle owners who have already paid one-time tax in accordance with the earlier provisions contained in Section 9 of the 1989 Act.

35. Now the most vital question is whether the amended provisions of 1989 Act as amended by the impugned amendments can be said to be confiscatory in nature.

36. There is no dispute that if the amendments are held to be confiscatory in nature, in such a case, the State Legislature is not competent to enact such statute and at the same time, without taking prior assent of the President, the Bill proposing the amendment cannot also be introduced in the State Legislative Assembly.

37. It is now settled position of law that if in a given enactment a tax is imposed

at a time for years, but there is no provision for refund even if the vehicle ceases to be a registered vehicle within such period, in such a case, the statute must be held to be confiscatory in nature. Similarly, if the vehicles do not use the road, notwithstanding that those are registered under the Motor Vehicles Act, 1988, those cannot be taxed (see *Bolani Ores Ltd.*, ; *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*,

38. In order to appreciate the aforesaid question, the provisions contained in Sub-section (2) of Section 9A and Sub-section (5) of Section 9B are quoted below :

" Section 9A(2): If life-time tax in respect of a motor cycle has already been paid under Sub-section (1) and if the said motor cycle is removed from West Bengal on change of address or on cancellation of registration, the owner of the said motor cycle shall be entitled to claim refund at the rate specified in Part II of Schedule III.

Section 9B(5): If one-time tax in respect of a motor vehicle has already been paid under Sub-section (2), or Sub-section (3), and if the said motor vehicle is removed from West Bengal on change of address or on cancellation of registration, the owner of such motor vehicle shall be entitled to claim refund of such tax at the rate specified in Part II of Schedule IV".

39. A bare reading of the aforesaid provisions of refund make it abundantly clear that if one-time tax or life-time tax in respect of a vehicle has been paid, the owner of such vehicle can claim refund only if the said vehicle is removed from West Bengal (1) on change of address, or (2) on cancellation of registration. Thus, removal of the vehicle from West Bengal is mandatory so that an owner can get refund of the amount of one-time tax or life-time tax, if already paid. But if there is no removal of the vehicle from the State of West Bengal but registration is otherwise cancelled, the owner is not entitled to get refund. Although, Mr. Roy seriously disputed the aforesaid interpretation, having regard to the clear language in which the aforesaid provisions are couched, there is no scope of interpreting those provisions as if a motor vehicle, even if, not removed from West Bengal but if its registration is cancelled, the owner thereof can get back refund. I have already pointed out that the opening sentence is "if the said motor vehicle is removed from West Bengal" and then any of the two further conditions are to be fulfilled : viz., (1) on change of address, or (2) cancellation of the registration. Thus, if the vehicle remains within West Bengal, even if there is cancellation of registration, the owner is not entitled to get back refund. In this connection, I find substance in the contention of Mr. Chatterjee, appearing on behalf of the petitioner, that the intention of the legislature was to give refund only if the vehicle is removed from West Bengal under two circumstances : (1) For change of address, and (2) on cancellation of registration as provided in Section 55(4) where a vehicle leaves India permanently.

40. Apart from the aforesaid fact, when in 1979 Act still there is provision for

refund of tax paid for one year only if it is established that for any reason the vehicle was out of road for one complete calendar month, there is no reason why such provision should not be incorporated when tax is taken either for five years or for whole life. The absence of provision of refund in cases where vehicles do not temporarily use road in spite of existence of registration makes the provision of sections 9A and 9B of 1989 Act a confiscatory one and thus, State legislature was incompetent to enact such provision.

41. Moreover, as pointed out by the learned Counsel for the petitioners that even if the aforesaid provision is said to be "reasonable restriction" within the meaning of Article 304(b) of Constitution of India, in such a case, prior assent of President of India before introduction of the Bill of Amendment in the State Legislative Assembly was essential. Thus, on that score also the provisions contained in sections 9A and 9B are liable to be struck down.

42. Mr. Roy, in this connection, has however placed strong reliance upon the observation of the majority view expressed by S. K. Das, J. on behalf of the himself, Kapur and Sarkar, JJ. in the case of *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, where Their Lordships clarified the majority decisions in the case of *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , observing that regulatory measure 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 proviso to Article 304(b) of the Constitution. In the said case of *Automobile Transport*, Subba Rao, J. although concurred with the ultimate conclusion arrived at by those three learned Judges but in his separate judgment did not agree with the aforesaid clarification as will appear from the following proposition No. (4) made in paragraph 16 :

"(4). The State also, in exercise of its legislative power, may impose similar restriction subject to the two conditions laid down in Article 304(b) and subject to the proviso, mentioned therein".

43. In the case of *Atiabari Tea Co (supra)* Gajendragadkar J. for himself and Wanchoo and Das Gupta, JJ. made the following observation vide the last sentence of paragraph 54 :

"We are dealing in the present case with an Act passed by the State Legislature which imposes a restriction in the form of taxation on the carriage or movement of goods and we hold that such restriction can be imposed by the State Legislature only if the relevant Act is passed in the manner prescribed by Article 304(b)".

44. J. C. Sha, J. agreed with the aforesaid majority view with only this exception that according to His Lordship, even if prior assent provided in the proviso to Article 304(b) is not taken, such defect can be cured by taking subsequent assent of the President.

45. Thus, the observations of the three Judges in Automobile case cannot override the views of four Judges in Atiabari Tea CO. case that for even putting "reasonable restriction" in the form of tax, at least subsequent consent of the President is necessary and the said view is still the law of the land notwithstanding the contrary view taken by three Judges in the case of Automobile Transport. I, thus, find no merit in the aforesaid contention of Mr. Roy.

46.1 now propose to deal with the other decisions cited by Mr. Roy.

47. Since I have accepted all the contentions put forward by Mr. Roy except the above one and the other two, viz., (1) The 1989 Act is regulatory or compensatory and (2) even after realization of one-time tax on motor cycles, the State can levy further tax on the self-same motor cycle by way of life-time tax, I will deal with only those decisions which were cited by Mr. Roy in support of the aforesaid two contentions.

48. By relying upon the decisions of the Supreme Court in the cases of (1) Hiralal Ratan Lal (2) Asstt. Commissioner, Urban Tax and (3) Jawaharmal (supra), Mr. Roy contended that once a State legislature is found to have competence to impose tax, it can levy such tax either prospectively or retrospectively; thus by imposing life-time tax, Mr. Roy submits, the legislature has virtually enhanced the rate of one-time tax retrospectively. The position of law that a legislature can impose tax retrospectively is well-settled. But the law is equally settled that although it is not right to say as a general proposition that imposition of tax with retrospective effect per se renders the law unconstitutional, nevertheless, in applying the test of reasonableness to a taxing statute, it is of course a relevant consideration that the tax is being enforced with retrospective effect but that is not conclusive in itself [see observation of Apex Court in Asstt, Commissioner of Urban Land Tax, Madras (supra) at paragraph 12]. If such imposition is arbitrary, then the levy would be violative of Article 14. In this case, I have already held that further imposition of life-time tax on motor cycles which have already paid one-time tax on the promise that no further tax in future will be leviable on such vehicle, is a fraud on the public. Thus, the said provision being arbitrary and unreasonable, infringes Article 14 of the Constitution. Therefore, those decisions do not help the respondents.

49. On the question whether the 1989 Act is confiscatory, Mr. Roy placed strong reliance upon the observation of the Supreme Court in the case of State of Maharashtra v. Madhukar Balkrishna Badiya (supra), where the Supreme Court observed that the concept of "regulatory and compensatory" tax does not imply mathematical precision of quid pro quo. By relying upon such observation Mr. Roy contended that merely because there is no provision for refund in case of temporary absence of the vehicle on road, for that reason, the statute cannot be said to be confiscatory. In the case of Maharashtra (supra), there was no provision of refund if the registration of the vehicle was cancelled on the 14th or 15th year after the payment of one-time tax. Under the aforesaid circumstances, the Apex Court made those observations. But if, in a statute there is no provision

at all for refund due to temporary absence on road or for cancellation of registration, if the vehicle is not removed from the State, such provision must be held to be confiscatory and therefore, the said decision is of no avail to the State. I have already pointed out that tax on motor vehicle is a compensatory tax levied for the use of roads and it is not a tax on ownership or possession of the vehicle (see *State of Karnataka v. K. Gopal Krishan Shenoy* AIR 1987 SC 1991).

50. Therefore, on consideration of the entire materials on record, I arrive at the following conclusions :

A) The provisions contained in sections 9A and 9B of the 1989 Act as amended in 2003 are confiscatory in nature and thus, the State legislature was incompetent to enact such provisions in exercise of powers conferred on it by virtue of serial No. 57 of the List II of the Seventh Schedule of the Constitution.

B) Even if it is assumed for the sake of argument that Section 9A of 1989 Act as amended in 2003 is not confiscatory but regulatory or compensatory, such provision is not applicable to the motor cycles which have already been levied one-time tax, as imposition of life-time tax on those vehicles is arbitrary and violative of Article 14 of the Constitution of India.

C) Even if sections 9A and 9B as amended in 2003 are held to be regulatory or compensatory, the Bill proposing the amendment not having been introduced after complying with the proviso to Article 304(b) of the Constitution and such defect, even not having been cured by taking subsequent assent of the President of India, those provisions are invalid.

51. These writ applications are thus disposed of with the above declarations and the State respondents are restrained from enforcing those provisions.

52. Tax already paid on the basis of those invalid legislations including penalty, if any, be refunded to the tax payers within two months from date with interest from the date of acceptance of tax till date of refund at the rate available to a depositor in the State Bank of India for the short term deposit for such period or at the rate payable in Saving Bank Account whichever is higher.

53. In the facts and circumstances, there will be, however, no order as to costs.

54. Xerox certified copy of this order, if applied for, be given by a day from the date of application.