

(1992) 11 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No's. 6883 to 6886, 8073 to 8077, 8079, 8080, 9905 to 9908 of 1987

Sree Gajanana Motor Transport Co. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Motor Vehicles Taxation (Amendment) Act, 1987 — Article 301

Citation : (1993) 2 ACC 6 : (1993) ILR (Kar) 30 : (1993) 1 KarLJ 344

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : P.R. Ramesh and C.K. Ramegowda, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—In all these Writ Petitions, the petitioners are challenging the validity of the Karnataka Motor Vehicles Taxation (Amendment) Act, 1987 (Karnataka Act No. 8 of 1987) (hereinafter referred to as the Impugned Act). So far as the said Act relates to the increase of the Tax on the Stage Carriage Vehicles on inter-state routes under Part-A of the Schedule. In other words, the petitioners are aggrieved by the sub-items (3A)(a) and (4A)(a) of Item No. 4 of the said part. Consequently reliefs are sought. The impugned Act is challenged as violative of Articles 14 and 301 of the Constitution of India. All the petitioners are Inter-State Stage Carriage operators. The substance of their grievance is that, they have been discriminated in the matter of taxation as against similar operators who operate intra-state.

2. Prior to the impugned Act, the Karnataka Motor Vehicles Taxation Act, 1957 was substantially amended in the year 1986 as per the Karnataka Motor Vehicles Taxation (Amendment) Act, 1986; inter alia, this Act substituted the entire Schedule to the Act. Item-4 in Part "A" of the Schedule provided for the levy of

tax in respect of the motor vehicles enumerated under the said item. Sub-item-3 of this Item-4 provided for the tax payable in respect of the vehicles permitted to carry more than 12 persons and the total mileage of which does not exceed 100 kms. per day. In such a situation, the tax is levied at the rate of 200/- per every seated passenger, which the vehicle is permitted to carry. The other clause is not relevant here for our purpose. As per sub-item 4, this tax rate was fixed at Rs. 250/-per every seated passenger when the vehicles are permitted to carry more than 12 persons and the total mileage of which exceeds 100 kms. per day. Thus a distinction was made in the matter of tax rate depending upon the distance permitted to be used by the vehicle. An Explanation is provided at the end of the Schedule after Part-C. Clause 4 of the Explanation which is relevant for our purpose reads thus:

"Where in pursuance of any agreement between the Government of Karnataka and the Government of any other State, tax in respect of any stage carriage, plying on a route lying partly in the State of Karnataka and partly in the other state, is payable to the Government of Karnataka only, the tax in respect of such vehicles shall be calculated on the total distance covered by the stage carriage on such route."

In other words, the Explanation provides for the computation of the distance so as to include the route in the other State, though, the vehicle is registered in the State of Karnataka, provided the vehicle is permitted to ply on the entire route in pursuance of any agreement between the two States.

3. In the year 1987, under the impugned Act, some of the items in the Schedule to the Act were amended. The Schedule as such continued as substituted in the year 1986. In these Petitions, we are concerned with the insertion of sub-item 3(A) and 4(A) in Item-4 of Part "A" of the Schedule. As per sub-item-3(A), rate of tax was enhanced to Rs.250/- for every seated passenger which the Vehicle is permitted to carry, when the vehicle is permitted to carry more than 12 persons and the total distance covered by the vehicle does not exceed 100 kms. per day in the Inter-State routes. However, in respect of the similar vehicle which is permitted to cover a distance of more than 100 kms. the rate of tax is Rs. 300/- per passenger as per sub-item 4(A). The resultant position was that, in the case of an Intra-State operator, the rate of tax would be Rs. 200/-per passenger when the vehicle is permitted to cover a distance not exceeding 100 kms. In identical circumstances, if the vehicle operates on an Inter-state route, the rate of tax is Rs. 250/- Similarly, in the case of a Vehicle permitted to cover a distance of more than 100 kms. on an Intra- State route, the tax rate is Rs.250/- when the distance exceeds 100 kms. But in the case of Inter-State stage carriage vehicle, when the distance permitted to be covered more than 100 kms. the rate of tax would be Rs.300/- per passenger. Thus, there is a difference of Rs. 50/- per passenger per quarter in the matter of levying the tax on these two kinds of vehicles.

4. It is also necessary to note, that the tax leviable in the case of fleet owner is

based on the revenue of the fleet owner earned by plying of the vehicles by virtue of the amendment made to Section 10 of the Parent Act by the Karnataka Act, 1986, under which, the schedule was also substituted, as already referred. By virtue of this amendment effected in the year 1986, it was provided that, notwithstanding anything contained in Sections 3, 6 and 7 a tax shall be levied at 15 percent of the gross, revenue from fares and freights of public service vehicles by a fleet owner. A fleet owner is defined as a person who is the registered owner of 500 or more transport vehicles. There is no dispute that the benefit of this provision could be availed only by the Karnataka State Road Transport Corporation, because, there is no other fleet owner in the State of Karnataka who could be covered by the definition of the fleet owner.

5. According to the petitioners, the Revenue collected by the State by virtue of the Motor Vehicles Taxation Act is so high as against the expenditure incurred; that it was absolutely unnecessary to raise the tax rate and that too by imposing a higher burden on the Inter-State Stage Carriage operators. It was also contended that, under the impugned Act, the State of Karnataka is unable to levy the tax in respect of a vehicle with reference to the route covered by the said vehicle in another State. The Petitioners further contend that there is a hostile discrimination between an Inter-State stage carriage operator and Intra-State Carriage Operator and similarly, there is also a discrimination between the private operators as against the State owned Corporation viz., KSRTC.

6. Mr. Ramesh, learned Counsel for the petitioners advanced following contentions on the basis of the pleading in the Writ Petitions:

(1) Motor vehicles tax being compensatory and regulatory in nature, any increase in the tax could be justified only in case there is a shortage in the revenue with reference to the same head of taxation;

(2) The State is not competent to take into consideration the route that may be covered by a vehicle in another State for the purpose of levying the motor vehicles tax;

(3) The levy impugned herein is violative of Article 14 of the Constitution for two reasons already stated while summarising the pleading:

7. Nature of the Tax: In *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, the Supreme Court was considering the nature of the tax involved herein; in the context of Article 301 of the Constitution the Supreme Court pointed out that, the nature of the tax is a compensatory tax and therefore, it would not cause any hindrance to anybody's freedom so long as the tax remains reasonable. At page 1420, the Supreme Court observed thus:

"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."

Para 19 refers to the approach adopted by the High Court in considering the revenue and the expenditure from the tax levied by the State of Rajasthan. This was pointed out by Mr. Ramesh, learned Counsel, to contented that the Court will have to examine receipts and expenditure while considering the reasonableness of the levy, However, at page 1425, the Court pointed out:

"Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor do we think that it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities. It is obvious that if the preamble decided the matter, then the mercantile community would be helpless and it would be the easiest thing for the Legislature to defeat the freedom assured by Article 301 by stating in the preamble that it is meant to provide facilities to the tradesmen. Likewise actual user would often be unknown to tradesmen and such user may at some time be compensatory and at others not so. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people 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. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done."

At page 1432, an Australian Decision is referred, wherein, it was pointed out that the validity of the exercise of the power must sometimes depend on facts; facts which somehow must be ascertained by the Court; the Supreme Court also held that the taxation laws are within the purview of Part III of the Constitution and liable to be tested under the provisions contained therein.

8. The Supreme Court also pointed out that, however difficult the question may be, having regard to the subject matter involved, the Court cannot avoid the question by stating that it was outside the jurisdiction of the Court. The Court also observed that, while judging the validity of the levy, its direction and immediate effect on the freedom of the citizen, shall have to be examined and in case the law directly, and immediately affects the free movement of trade, it

would be a restriction on the freedom of trade. At page 1436, the Court summarised the conclusion as follows:

"The foregoing discussion may be summarised in the following propositions: (1) Article 301 declares a right of free movement of trade without any obstructions by way of barriers, inter-state or intra-state or other impediments operating as such barriers. (2) The said freedom is not impeded, but, on the other hand, promoted, by regulations creating conditions for the free movement of the trade, such as, police regulations, provision for services, maintenance of roads, provision for aerodromes, wharfs etc., with or without compensation. (3) Parliament may by law impose restrictions on such freedom in the public interest; and the said law can be made by virtue of any entry with respect whereof Parliament has power to make a law. (4) The State also, in exercise of its legislative power, may impose similar restrictions, subject to the two conditions laid down in Article 304(b) and subject to the provision mentioned therein. (5) Neither Parliament nor the State Legislature can make a law giving preference to one State over another or making discrimination between one State and another, by virtue of any entry in the Lists, infringing the said freedom. (6) This ban is lifted in the case of Parliament for the purpose of dealing with situations arising out of scarcity of goods in any part of the territory of India and also in the case of a State under Article 304(b), subject to the conditions mentioned therein. And (7) the State can impose a non-discriminatory tax on goods imported from other States or the Union territory to which similar goods manufactured or produced in that State are subject."

Several other Decisions were also cited, viz.,

(1) STATE OF ASSAM AND ORS. v. LABANYA PROBHA DEVI AIR 1967 SC 1575

(2) Shaik Madar Saheb and Others Vs. The State of Andhra Pradesh and Others,

(3) Bolani Ores Ltd.,

(4) G.K. Krishnan and Others Vs. State of Tamil Nadu and Others,

(5) The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory,

(6) Kewal Krishan Puri and Others Vs. State of Punjab and Another,

From these Decisions, it was contended that the State will have to justify the levy by reference to the relevant expenditure being atleast a substantial portion of the tax collected and a few of the Decisions pertain to the levy of the fee, which, according to Mr. Ramesh, would govern the case of a levy of compensatory tax also. We do not think we should refer to these Decisions in detail in view of the latest decision of the Supreme Court, which according to us, concludes the question raised by the learned Counsel.

9. In Maharaja Tourist Service, Vs. State of Gujarat, a similar taxation measure was being considered by the Supreme Court. At page 1653 (para 5), the

Supreme Court held thus:

"Law is settled that to uphold levy of a tax of this type, what is necessary is existence of a nexus between the subject and the object of the levy and it is not necessary to show that the whole or a substantial part of the tax collected is utilised."

10. The above observation clearly brings out the fact that the levy of compensatory tax cannot be tested in the same manner a levy of fee is tested. The concept of fee is entirely different; in the matter of a fee, the State shall have to show that a substantial part of the collection is utilised for rendering the service to any class of persons for whose benefit the service is being rendered. However, the tax is levied not for the benefit of a particular class of persons, though the occasion for the levy of tax is the plying of motor vehicles on the routes in the State, that does not mean a substantial part of the said collection should be utilised only for the purpose of maintaining the roads or building up of roads; the tax is not only compensatory but is also regulatory. "Regulatory" is a term of wide import and may cover several aspects of the sovereign functions of a State.

11. In these circumstances, it is unnecessary for us to consider the facts and figures stated in the Writ Petitions, from which, it was contended that the expenditure incurred from the relevant tax is only a small percentage of the same. No doubt, the State has not filed any Counter to these Writ Petitions. Mr. Dattu, learned Government Advocate submitted that, at the time of these Writ Petitions being filed, there were several other Writ Petitions, wherein, some other provisions of the very impugned Act were under challenge and the State had filed its statement of objections to those Writ Petitions and the facts were considered by this Court while disposing of those Writ Petitions. The learned Government Advocate brought to our notice the decision rendered in Writ Petitions Nos. 5224 to 5231 of 1987 etc., *B.A. Jayaram and Ors. v. State and Ors.*, decided on 8, 9 and 10th September, 1987. As submitted by the learned Government Advocate, it is clear that a Bench of this Court had considered the revenue collected by the levy under the impugned Act in its entirety as against the expenditure incurred and upheld the provisions challenged in those cases. Mr. Ramesh contended that the said Decision was appealed against by the Operators and ultimately it was compromised before the Supreme Court and the rate of tax was reduced from Rs. 2,000/- to Rs. 1,000/- per cent per quarter in respect of All India Tourist Vehicles. That may be so, but that does not mean that we are precluded from referring to the earlier Decision rendered in the said batch for the purpose of appreciating the figures relied upon by the petitioners as well as by the State and the approach to be adopted by the Court in such a matter, as this.

12. In the earlier batch of Writ Petitions, Justice Venkatachalaiah J., speaking for the Bench observed:

"What is necessary to validate a regulatory and compensatory tax is the

existence of specific and identifiable object behind the levy and a nexus between the subject and the object of levy."

13. On facts, it was found, even if the compensatory element in the tax is tested with the more stringent standards of a fee, even then, the correlation was established. The learned Judge pointed out that the nature and quality of correlation in the case of compensatory tax is altogether different from that of a fee.

14. Re: Second Contention: (Extraterritorial) Routes:

It was contended that the State cannot take into consideration the distance covered by a vehicle in another State for the purpose of levy and computation of the tax. *Sainik Motors, Jodhpur and Others Vs. The State of Rajasthan*, was referred in this connection. At para 10 the Supreme Court observed while considering the facts of the case before it, thus:

"We are also of opinion that no inter-state trade, commerce or intercourse is affected. The tax is for purposes of State, and falls upon passengers and goods carried by motor vehicles within the State. No doubt it falls upon passengers and goods proceeding to or from an extra-State point but it is limited only to the route within the State. For this purpose, there is an elaborate scheme in Rule 8-A to avoid a charge of tax on that portion of the route which lies outside the State. There is thus no tax on fares and freights attributable to routes outside the State except in one instance which is contemplated by the proviso to Sub-section (3) of Section 3 and to which reference will be made separately."

Mr. Ramesh also referred to an earlier passage at Page 1484 (para 9); which reads thus:

"The tax is still on passengers and goods, though what it is to be is determined by the amount of fare or freight. It is clear that if the tax were laid on passengers irrespective of the distance travelled by them, it would lead to anomalies if the amount charged be the same in every case."

15. Again, in *International Tourist Corporation and Others Vs. State of Haryana and Others*, it was pointed out that, in the said case, "the tax is limited to the fare and freight for the distance within the State of Haryana"

16. To the same effect is the observation of the Privy Council in *FREIGHTLINES AND CONSTRUCTION HOLDING LTD. v. STATE OF NEW SOUTH WALES AND THE COMMISSIONER OF MOTOR TRANSPORT AND ORS.* 1967 (2) ALL ER 433 it was observed that:

"if the charge is imposed on the inter-state operation itself then it must be made to appear that it is such an attempt, to fix a reasonable recompense or compensation for the use of the highway and for a contribution to the wear and tear which the vehicle may be expected to make; further, it is stated that *prima facie* it should be based on nature and extent of the use made of the roads."

17. The Explanation to the Schedule which we have referred earlier, shall have to be borne in mind while appreciating the contention of Mr. Ramesh. It is clear from the said Explanation that the extraterritorial route is taken into consideration only in the case of a vehicle plying under a permit issued in pursuance of any agreement between the Government of Karnataka and the Government of any other State. In such a case where the route is partly in the State of Karnataka and partly in the other State, the tax is payable to the Government of Karnataka only, the provision is attracted. In other words, in such a situation, where the vehicle is operated in pursuance of a permit obtained under an agreement between the two States, the vehicle is not subjected to tax in the Other State. The tax payable in the other State, is completely saved to the operators. This is so because, correspondingly, there will be other operators registered in the other State who would be plying partly in the other State and partly in the State of Karnataka and who are not liable to pay any tax to the Government of Karnataka. Since these operators operate in two States by pursuance of the agreement entered into between the two States and the other State does not levy any tax on them, the State of Karnataka is naturally expected to levy tax on such vehicles. The ostensible or the alleged burden on the Karnataka Operator in effect is no burden at all, because of the non-levy by the other State. The nature of the permit, under which, the vehicle is permitted to ply in the other State shall have to be taken note of while considering this aspect of this provision. While considering this aspect of this question, it is also necessary to note that the petitioners are availing of a benefit to operate on an inter-State route facilitated by the agreement entered into between the Government of Karnataka and the other State.

18. Some of the petitioners before us are stated to be intra- state operators operating by virtue of permits obtained not in pursuance of any agreement but under the provisions of the Motor Vehicles Act. It was contended that it is entirely un-reasonable to levy the tax on those vehicles computing the tax with reference to the extra territorial routes. This contention over-looks the effect of Clause-IV of the Explanation referred already. It is clear from this Explanation that these operators shall have to pay tax only in respect of the routes used by them while plying their vehicles within the State of Karnataka only. The purpose of Clause-IV of the Explanation to the Schedule necessarily bars any levy of tax under the Act on these operators who operate independently of the agreement referred therein. The learned Government Advocate also stated before us that in effect no such tax is levied on those operators, by taking into consideration, the extra territorial routes used by such operators.

19. The next argument is based on Article 14 of the Constitution. In the earlier Decision, a similar contention was advanced that there was differential treatment between KSRTC and other operators. The said contention was negated by this Court. The Court recognised the rationality behind the legislative classification between fleet owners and other operators. It was held that the classification is based on a particular statutory standard and not on the basis of any particular

entity or operator. The fact that KSRTC happens to be the sole fleet owner is only accidental and therefore, cannot be a ground to hold that the differentiation was to favour the KSRTC or to cause hostile discrimination against other operators.

20. Mr. Ramesh pointed out that in the Budget Speech while introducing the impugned Act, it was stated thus;

"The increase in the Revised Estimates 1986-87 and Budget Estimates 1987-88 are on account of the following:

- (i) Increase in number of vehicles especially two wheelers;
- (ii) Abolition of quota restriction on National permits, Zonal permits and composite with effect from 1.4.1986;
- (iii) Introduction of life time tax in respect of two wheelers and collection of 15% of revenue derived from fares and freights of Karnataka State Road Transport Corporation."

21. It was contended that, obviously, there was a loss of revenue by levying only 15% of the revenue derived by the KSRTC and this is sought to be compensated by the State by enhancing the tax on the inter-State operators. The budget speech may be a relevant factor while considering the various factors, under which, the impugned levy is imposed; but the Court is entitled to consider the other factors also. In the case of a fleet owner having a large number of vehicles (500 or more in the instant case) it will be convenient for the State to levy and collect on the basis of gross revenue. In *Galaxy Theatre Vs. State of Karnataka*, this Court at page 2478 observed thus;

"Equality is not an abstract concept. Realities of life, practicality of administration, convenience of the public and requirement of simplicity of procedure are some of the factors to be considered as relevant in testing - a complaint of discrimination."

22. It is also now clear that in the matter of taxation, the State enjoys a wide latitude to classify the objects for the levy and to differentiate between persons and persons and so long as the classification is not entirely arbitrary, it is permissible. If the classification is patently arbitrary and devoid of any reasonable basis, the classification may be stigmatized as causing hostile discrimination; but in the instant case, it cannot be said that levy of tax on the fleet owners on the face of it is to favour the KSRTC and discriminate against others.

23. The same reasoning applies to the allegation of discrimination between the inter-State and intra-State operators. It is obvious that an inter-State operator has certain advantages in the matter of earning a higher revenue. It is also likely that the competition faced by the inter-State operator may be not as keen as that of intra-State operator. An inter-State passenger could be treated on a different footing who could be considered as capable of paying higher tax when

compared to a regional passenger.

24. It was contended that some of the operators have to maintain spare buses and they are also made liable to pay tax under the impugned Act. Having regard to Section 7 of the Parent Act and having regard the material on record, we are unable to appreciate the contention of the petitioners. In case, the vehicle is not used during the whole period of a calendar month, there is a provision to claim refund of tax as per Section 7. However, if the vehicle is used on a single day during the calendar month, the tax shall have to be paid for the entire month. In the case of a spare-bus, it cannot be anticipated in advance whether it would be used or not and the operator would not be in a position to avail the benefit of Section 7. Section 7 seems to be insufficient to meet the situation depicted by the learned Counsel for the petitioner before us. We keep open the question raised by these petitioners in this regard, so that, the question could be more properly thrashed out in a properly constituted Writ Petition. However, we are constrained to observe that it will be fair for the State to provide for refund of tax without any stringent conditions to avail of the benefit of refund in such cases.

25. Mr. Ramesh submitted that the benefit of paying tax on the basis of the revenue should be extended to other operators, who are mainly incorporated Companies and that there cannot be any tax evasion by such a facility. This is a matter of Governmental policy. It is for the petitioners to persuade the Government to make available to them this facility of paying tax on the basis of gross revenue.

26. Mr. Ramesh submitted that he could not file Vakalaths in all the cases though he has oral instructions to appear for the parties, consequent on the demise of the earlier Advocate appearing for the petitioners; the Learned Counsel is permitted to file the Vakalaths within 8 weeks from today.

In the result, all these Writ Petitions are dismissed subject to the observations regarding spare buses.