

(1954) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 89 of 1953

Surrendara Transport and Engineering Co. Ltd., Kalka and Others APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 29-03-1954

Acts Referred:

Constitution of India, 1950 — Article 226, 23, 245, 246(3)
Punjab Passengers and Goods Taxation Act, 1952 — Section 3(3), 4

Citation : AIR 1954 P&H 264

Hon'ble Judges : Bhandari, C.J.; Harnam Singh, J

Bench : Division Bench

Advocate : Tek Chand and A.C. Hoshiarpuri, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, C.J.—The question which falls to be determined in the present case is whether it was within the territorial competence of the State Legislature to enact the measure known as "The Punjab Passengers and Goods Taxation Act, 1952".

2. The petitioners are holders of permits under the Motor Vehicles Act and their vehicles are continuously engaged in carrying goods and passengers between Kalka and Simla, over a route 56 miles long, 5 miles of which passes through the territory of the Punjab and the remaining 51 miles through the territories of Himachal Pradesh and Patiala and East Punjab States Union.

3. On 1-9-1952 the State Legislature enacted a measure called "The Punjab Passengers and Goods Taxation Act, 1952" which provided that where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside that State, a tax shall be payable in respect of the distance covered within the State and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in

the State bears to the total distance of the journey. Then follows a proviso to which objection has been taken and which is in the following terms:

"Provided that where passengers are carried or goods transported by a motor vehicle from any other place within the State, to any other place within the State through the intervening territory of another State, the tax shall be levied on the full amount of the fare or freight payable for the entire journey and the owner shall issue a single ticket or receipt, as the case may be, accordingly."

4. The petitioners have presented an application under Article 226 of the Constitution and challenged the validity of the Act.

5. This petition can be dismissed on the short ground that the petitioners have no locus standi to challenge the validity of the Act, for it has been held repeatedly that a statute may be assailed only by one relying on an alleged invasion of his own constitutional rights. The invasion must affect his interests adversely and this interest must be a genuine proprietary interest and not merely a remote interest, vide Art. 13 of Willoughby on the Constitution of the United States, Vol. I. The tax in the present case is to be paid not by the petitioners who are plying their vehicles on hire but by the passengers who are carried or by the owners of the goods which are transported and it seems to me, therefore, that the present petition is incompetent.

Mr. Tek Chand who appears for the petitioners admits that the tax is to be recovered from certain, other persons and that those persons alone can challenge the validity of the Act, but he contends that as Section 4 requires that the tax shall be collected by the owner of the motor vehicle and paid to the State Government and as this provision infringes the fundamental right guaranteed to his clients by Article 23 of the Constitution, it is open to the petitioners to seek redress from this Court. The case of -- Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, has been cited in support: of this contention.

Mr. Sikri, who appears for the State, replies that the plea put forward on behalf of the petitioners is devoid of force, for Clause (2) of Article 23 declares that nothing in the said Article shall prevent the State from imposing compulsory service for public purposes but he requests that this Court might pronounce upon the validity or otherwise of this measure so that the matter may be decided once, for all and that the State should be in a position to recover the tax without let or hindrance. I agree that the matter should be decided once for all and that the doubts which have arisen should be set at rest.

6. The principal question which has been somewhat obscured by the raising of a number of subsidiary issues is whether the Act of 1952 is repugnant to the provisions of the Constitution.

Mr. Tek Chand contends that in so far as the State Legislature has authorised the imposition of the tax in respect of the distance covered by motor vehicles in the territories of States other than the Punjab, the law is in violation of the

provisions of the Constitution and roust, therefore, be deemed to be ultra vires, for the Legislature of a State has no power to make laws which purport to operate beyond the geographical limits of the State. Certain authorities have been cited in support of the proposition that there can be no extra-territorial execution of the laws of any State.

In *In Re: S. Mohan Kumaramangalam*, it was held that the State of Bombay cannot, for the purpose of Preventive Detention Act, pass orders for detaining a person found within its territory for his activities in the State of Madras or direct that such a person be interned in the State of Madras. In *In Re: S.V. Ghatge*, also a case under the Preventive Detention Act, it was held that the Commissioner of Police had no jurisdiction to make an order against the petitioners who are not residents in Bombay and who are not within his jurisdiction.

In an earlier decision reported as -- "*Darbar Patiala v. Firm Narain Das-Gulab Singh*" AIR 1944 Lah 302 (D), a Division Bench of the Lahore High Court held that S. 80A, Government of India Act, 1919, empowered a Provincial Legislature to make laws for the peace and good government of the territories for the time being constituting that province and the Provincial Legislature could not possibly legislate for provinces outside its jurisdiction or promulgate laws that may have extra-territorial application or affect the persons, properties or Courts beyond its jurisdiction.

While there can be no doubt in regard to the correctness of the legal proposition propounded in these authorities, I am extremely doubtful if they can have any bearing on the matters now under consideration.

7. Prima facie the jurisdiction of a State is territorial for, as pointed out by the Judicial Committee in -- "*Croft v. Dunphy*" AIR 1933 PC 16 (E), "it may be accepted as a general principle that (States can legislate effectively only for their own territories." If the power of a State to impose a tax can reach only persons, property and business in the State, it is obvious that a tax can be levied by a State if the real object intended to be taxed (whether that object is a person, some species of property or some business) is within or associated "with the State. This point was brought out with admirable clarity in -- "*Broken Hill South Ltd. v. Commr. of Taxation, New South Wales*" 56 CLR 337 (F), where Dixon J. observed as follows:

"The power to make laws for the peace, order and good government of a State does not enable the State Parliament to impose by reference to some act, matter or thing occurring outside the State a liability upon a person unconnected with the State whether by domicile, residence, or otherwise. But it is within the competence of the State Legislature to make any fact, circumstance, occurrence or thing in or connected with the territory the occasion of the imposition upon any person concerned therein of a liability to taxation or of any other liability.

It is also within the competence of the Legislature to base the imposition of liability on no more than the relation of the person to the territory. The relation

may consist in presence within the territory, residence, domicil, carrying on business there, or even remoter connection. If a connection exists, it is for the Legislature to decide how far it should go in the exercise of its powers."

(See also in -- "Colonial" Gas Association Ltd. v. Federal Commrs. of Taxation" 51 CLR 172 (G) and -- "R. v. Lander". 1919 NZLR "305 (H)).

8. There are at least two cases decided by the Supreme Court in which similar observations were made. In -- The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, a question arose whether the Bombay Sales Tax Act, 1952, was ultra vires the State Legislature. Patanjali Sastri C. J. observed as follows; "As pointed out by the Privy Council in -- (1948) 16 ITR 240 (Privy Council) in dealing with the competency of the Indian Legislature to impose tax on the income arising abroad to a nonresident foreign company, the constitutional validity of the relevant statutory provisions did not turn on the possession by the Legislature of extraterritorial powers but on the existence of a sufficient territorial connection between the taxing State and what it seeks to tax.

In the case of sales-tax it is not necessary that the sale or purchase should take place within the territorial limits of the State in the sense that all the ingredients of a sale like the agreement to sell, the passing of title, delivery of the goods, etc., should have a territorial connection with the State. Broadly speaking, local activities of buying or selling carried on in the State in relation to local goods would be a sufficient basis to sustain the taxing power of the State, provided of course, such activities ultimately resulted in a concluded sale or purchase to be taxed."

9. A similar proposition was enunciated in --- Poppatlal Shah Vs. The State of Madras, In this case, the validity of the Madras General Sales Tax Act, 1939, which was enacted by the Provincial Legislature in exercise of the power vested in it by Section 100(3), Government of India Act, 1935, was called into question. Mukherjea J., who delivered the judgment of the Court observed:

"It admits of no dispute that a Provincial Legislature could not pass a taxation statute which would be binding on any other part of India outside the limits of the province, but it would be quite competent to enact a legislation imposing taxes on transactions concluded outside the province, provided that there was sufficient and a real territorial nexus between such transactions and the taxing province."

10. In order to decide whether a tax has been lawfully imposed by a State, it is necessary to enquire--

(1) whether the statute by which the tax is imposed was enacted for "the State or any part thereof", that is, whether it was enacted for the purposes of the State;

(2) whether the tax falls within the description of taxation set out in an entry of the State List;

(3) whether the person, property or business to be taxed is within or associated with the State, or in other words, whether there is a sufficient territorial connection between the object to be taxed and the taxing State; and

(4) whether there is anything in the Constitution or in any other law for the time being in force to indicate that the tax is not valid.

11. There can be no doubt that the tax now under consideration has been imposed for the purposes of the State and that the subject-matter of the Act falls under entry 56 of the State List which empowers the Legislature to make laws "for taxes on goods and passengers carried by roads or inland waterways". It is equally clear that the fact that goods and passengers are carried from one place in the State to another place in the State constitutes a sufficient territorial connection between the object to be taxed and the taxing State. Again, it is obvious that there is nothing in the Constitution or in any other law to indicate that the tax is not valid.

12. Mr. Tek Chand, however, argues that the tax is invalid as the State is endeavouring to charge a tax not only on the fare or freight payable for the journey within the territory of the Punjab but also on the fare and freight payable for the much longer journey within the territories of Himachal Pradesh and Patiala and East Punjab States Union. This argument appears to me to be wholly devoid of force. It is common ground that if was open to the State to impose a tax on goods and passengers carried by road within the territory of the Punjab.

It is also admitted that the mode, form and extent of taxation are limited only by the provisions of the Constitution and the wisdom of the Legislature. The rate at which a particular tax ought to be imposed can obviously be determined by the appropriate legislative authority and it is for that authority alone to decide what relation, if any, the tax should bear to the degree of benefit received by the taxpayer. The authority may charge a nominal tax and encourage a particular class of transactions; it may charge small tax and restrict the number of transactions; it may charge a heavy tax and prevent the transactions altogether. The mere fact that the State Legislature in the present case has imposed a tax on the full amount of the fare or freight payable in respect of the entire journey of 56 miles shows only that the State Legislature has adopted a particular method for the assessment of the tax. If the tax is otherwise valid, and there can be no doubt that it is, the mere fact that the State has decided to charge a heavy tax when it could as easily have charged a lighter one would not detract from the validity of the tax.

It has been held repeatedly that a Court should endeavour to uphold the validity of a measure unless it finds clearly that the Legislature has exceeded the authority conferred upon it by the Constitution.

13. Certain subsidiary objections have been raised in paragraph 15 of the petition but these objections should, in my opinion, be lodged before the appropriate administrative authority and not before this Court in the first

instance. It has been held repeatedly that a person should invoke the help of Article 226 after all the other remedies available to him have been exhausted.

14. For these reasons, I am of the opinion that it was within the legislative and territorial competence of the State to enact the measure and that the present petition under Article 226 must be dismissed with costs. I would order accordingly.

Harnam Singh, J.

15. In agreeing that Writ Application (Civil) No. 89 of 1953 should be dismissed with costs I add a few words on the point arising, under Article 245 of the Constitution of India.

16. In Writ Application (Civil) No. 89 of 1953 the point that arises for decision is whether the Legislature of the Punjab State was competent to enact the proviso to Section 3(3), Punjab Passengers and Goods Taxation Act, 1952, hereinafter referred to as the Act.

17. That the Legislature possessed competency to make the law is plain from entry No. 56 of the Seventh Schedule read with Article 246(3) of the Constitution of India. That entry empowers the Legislature of the State to make laws on "taxes on goods and passengers carried by road or on inland waterways."

18. Basing himself on the provisions of Article 245 of the Constitution counsel for the applicants urges that Section 3(3) of the Act is invalid on the ground that it would have extra-territorial operation.

19. Article 245 of the Constitution of India reads--

"245. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

20. Plainly, Clauses (1) and (2) of Article 245 of the Constitution show that it was not intended by the Constitution that the laws made by the State Legislature should have extra-territorial operation.

Section 3(3) of the Act reads--

* * * * (3) Where passengers are carried or goods transported by a motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate laid down in Sub-section (1) and shall be calculated on such amount as bears the same proportion to the total fare or freight as the distance covered in the State bears to the total distance of the journeys;

Provided that where passengers are carried or goods transported by a motor vehicle from any place within the State to any other place within the State, through the intervening territory of another State, the tax shall be levied on the full amount of the fare or freight payable for the entire journey and the owner shall issue a single ticket or receipt, as the case may be, accordingly."

21. In Writ Application (Civil) No. 32 of 1953 the applicants are holders of permits under the Motor Vehicles Act, and their vehicles are continuously engaged in carrying goods and passengers between Kalka and Simla over a route of fifty-six miles long, five miles of which pass through the territory of the Punjab and the remaining fifty-one miles through the territories of the Himachal Pradesh and the Patiala and East Punjab States Union.

22. As stated hereinbefore, the applicants maintain that the proviso to Section 3(3) of the Act is "ultra vires" of the State Legislature for the reason that the State Legislature was not competent to legislate for the States of Himachal Pradesh and Patiala and East Punjab States Union.

23. Plainly, if the impugned provision purports to affect persons who are not within the State or are not connected with it by ties of domicile or residence and is in respect of things which are not within the State the provision of law is void for extra-territoriality.

24. From a perusal of the proviso to Section 3(3) of the Act, it is plain that the Legislature has selected as its subject of taxation persons, things or circumstances within its territory. Indisputably, the proviso to Section 3(3) of the Act comes into operation where passengers are carried or goods transported by a motor vehicle from any place within the State to any other place within the State. In deciding whether a law is void for extra-territoriality the sufficiency for the purpose for which it is used of the territorial connection set forth in the impugned portion of the law is to be seen.

25. In several cases it has been said that once some connection with the State appears the Legislature of that State may make that connection the occasion or subject of the imposition of a liability. In 56 CLR 337 (F), Dixon J. said at p. 375--

"But it is within the competence of the State Legislature to make any fact, circumstance, occurrence or thing in or connected with the territory the occasion of the imposition upon any person concerned therein of a liability to taxation or of any other liability. It is also within the competence of the Legislature to base the imposition of liability on no more than the relation of the person to the territory. The relation consists in presence within the territory, residence, domicile carrying on business there. or even remoter connections. If a connection exists, it is for the Legislature to decide how far it should go in the exercise of its powers."

26. In Poppatlal Shah Vs. The State of Madras, B. K. Mukherjea J. delivering the judgment of the Court said-

"It admits of no dispute that a Provincial Legislature could not pass a taxation statute which would be binding on any other part of India outside the limits of the province, but it would be quite competent to enact a legislation imposing taxes on transactions concluded outside the province, provided that there was sufficient and a real territorial nexus between -such transactions and the taxing province. This principle which is based upon the decision of the Judicial Committee in (1948) 16 ITR 240 (Privy Council) has been held by this Court to be applicable to sale tax legislation, in its recent decision in the Bombay Sales Tax Act case, The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, and its propriety is beyond question."

27. In the present case the liability imposed is to pay tax on the full amount of the fare or freight payable for the entire journey including the journey through the intervening territory of another State provided the passengers are carried or goods transported by a motor vehicle from any place within the State to any other place within the State.

28. But it is said that the Legislature should not have gone so far in the exercise of its powers as to affect the Himachal Pradesh and the Patiala and East Punjab States Union.

29. In the words of Dixon J. cited above if a connection exists, it is for the Legislature to decide how far it should go in the exercise of its powers. In -- "Vacher and Sons, Ltd. v. London Society of Compositors" 1913 AC 107 (L), Lord Macnaghten said:

"But a judicial tribunal has nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature."

30. For the foregoing reasons I hold that Section 3(3) of the Act is not void for extra-territoriality.