(1961) 01 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ. Petns. No''s. 582, 651, 657, 681, 682, 684, 719, 720, 728, 747, 750, 752, 757, 763, 766, 767, 775, 779, 786, 787, 791, 793, 796, 797, 798, 799, 801, 803, 805, 809, 814, 833, 839, 841, 842, 843, 847, 849, 852, 853, 854, 855, 860, 861, 865, 859, 875,

Venson Transports and others APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 17-01-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 255, 301, 303
States Reorganisation Act, 1956 — Section 119

Citation : AIR 1962 AP 103

Hon'ble Judges : P. Chandra Reddy, C.J;Ramachandra Rao, J

Bench : Division Bench

Advocate : K. Srinivasamurthi, P. Babul Reddy, E.P.K. Sikhamani, M.V. Ramana Reddy, I. Koti Reddy, K. Mangachari, D.V. Reddi, Pantulu, Smt. K. Amareswari, N.V.B. Sankararao, G. Balaparameswara Rao, R. Sundarama Reddy, G. Krishna Reddi, S. Venkata Reddy, M.B. Rama Sarma, D.S. Krishna, R.V. Vidyasagar, R. Rajeswarao, R.V. Subbarao, K.F. Baba, P. Ramachandra Rao, V. Venkataramana Reddy and V. Venkateswarlu, for the Appellant; Advocate General and the 3rd Govt. Pleader for Respondent in all, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddy C.J.

1. The constitutionality of the Madras Motor Vehicles (Taxation of Passengers and Goods) Act. (Andhra Pradesh Amendment Act) 1959. (hereinafter for the sake off convenience referred to as the Act) is put in issue in these writ petitions. These petitions presented under Art. 226 of the Constitution claim the issuance of writs of mandamus or other appropriate writs, directions or orders directing the State of Andhra Pradesh to forbear from enforcing the provisions of the said Act and the rules framed thereunder against these petitioners.

2. The petitioners carry on the business of motor transport in different parts of

Andhra Pradesh. They ply stage carriages on the several routes in this State under permits issued under the Motor Vehicles Act, 1939 subject to the conditions imposed under the licences and by other provisions of the Motor Vehicles Act. They are also subject to the tax levied under the Madras Motor Vehicles Taxation Act. Under S. 43-1(ii), the Government of the State is authorised to fix maximum fares for stage carriages and public carriers to be applicable throughout the State or within any area or routes within the State. In exercise of this power, the maximum fares in respect of the routes on which these vehicles ply were fixed by the concerned Governments.

3. In the year 1952, the legislature of the composite State of Madras passed the Madras Motor Vehicles (Taxation of Passengers and Goods) Act (Act XVI of 1952) providing for the levy of taxes on passengers and goods carried in stage carriages and public carrier vehicles in the State. That Act came into force on 1st February, 1953 throughout the composite State of Madras.

4. Section 3 of that Act, which is the charging section runs as follows:

From and after the commencement of this Act there shall be levied and paid to the Government, a tax on all passengers, luggage and goods carried by stage carriages and on all goods transported by public carrier vehicles, at the rate of nine pies in the rupee on the fares and heights payable to the operators of such stage carriages and at the rate of six pies in the rupee on the freights payable to the operators of such public carrier vehicles. Provided that the fare charged by an operator inclusive of the tax leviable under this section shall not exceed the maximum fare prescribed by the Government under the Motor Vehicles Act, 1989, and in force at the commencement of this Act:

Provided further that no tax shall be levied on any passenger, luggage or goods carried in a stage carriage, the total permitted daily mileage of which does not exceed fifty miles.

5. Section 4 provided for the composition of tax payable by the operators under the Act on application made by them to the authority constituted under the Act.

6. The transport operators running stage carriages in various parts of the composite State of Madras filed writ petitions questioning the validity of this Act. Chief Justice Rajamannar and Venkatarama Ayyar J. held in P. Mathurai Pillai and Others Vs. State of Madras, that except the first proviso to Sec. 3 of the Act, the Act was constitutional and valid. They struck down the first proviso to Sec. 3 as being bad.

7. On the formation of the Andhra State, the Governor promulgated an Ordinance in 1954 amending the aforesaid Madras Act XVI of 1952 by omitting the first proviso to Sec. 3 and by providing that the said amendment should be deemed to have come into force on 18-9-1953, the date on which the proviso was declared to be invalid. This ordinance was subsequently re-enacted as President''s Act XI of 1954, on 13-2-1954. Ever since, the transport operators

have been paying the taxes as levied under Madras Act XVI of 1952 as amended in this State.

8. On 1st November 1956, the State of Andhra and a part of the erstwhile Hyderabad State known as Telangana were erected into the State of Andhra Pradesh. The legislature of Andhra Pradesh enacted the impugned statute amending Madras Act XVl of 1952 to enhance the rates of tax. It received the assent of the Governor on the 20th of March 1959. Section 1(2) of the Act provided that the Act would come into force on such date as the State Government may by notification in tie Andhra Pradesh Gazette appoint. Section 2 provided for the substitution of enhanced rates in Section 3 of the main Act. Instead of five naye paise in the rupee on the fares and freights payable to the operators of stage carriages, the rate of tax was raised to 20 naye paise in the rupee.

Similarly in cl. (a) of sub-rule 1 of Rule 1 in the Schedule to the principal Act, the words "one rupee and forty eight naye paise per seat per year per mile" and the words "fifty rupees per seat per quarter" were substituted in the place of 37 naye paise and twelve rupees and fifty naye paise per seat per quarter. The effect of this amendment is to raise the rates of taxes payable by the permit holders of stage carriages four-fold. Having paid tie increased tax as demanded by the Transport Authorities under protest, these petitioners had recourse to the jurisdiction of this Court under Art. 226 of the Constitution complaining that these enhanced taxes would criple their trade.

9. The Act is assailed mainly on two grounds:

i) that it is repugnant to Art. 14 of the Constitution and (ii) that it imposes fetters on the free flow of trade and commerce in regard to transport business, and, as such, contravenes the provisions of Part XIII of the Constitution.

10. The argument advanced on the first point is that the principle enshrined in Art. 14 is violated since the impugned law is applicable only to permit holders of stage carriages plying in the area which formed Andhra State and not to transport operators in the Telangana region. Thus, the law makes a discrimination between the two sets of operators and there cannot be two sets of laws in the two areas of the same State throwing greater burden on one class of citizens than on the other since it attracts Art. 14 of the Constitution.

11. To substantiate this proposition, The State of Rajasthan Vs. Rao Manohar Singhji, is cited to us. We do not think that this argument is substantial. It is true that there is no law corresponding to the impugned Madras Motor Vehicles (Taxation of Passengers land Goods) Act or the amended Act in operation in the Telangana area. But that was the position I even at the time when integration took place between the Andhra State and Telangana. However, this is not due to any law passed by the State Legislature. That result flowed from the provisions of the States Reorganisation Act which is a parliamentary legislation. By reason of Sec. 119 of the States Reorganisation Act, the laws prevailing in the respective

areas of the re-organised State had to be continued. Art. 4 of the Constitution vests constituent or sovereign power in the Parliament to make all laws essential to give effect to the formation of new States. The Parliament is given plenary powers to make the necessary legislation required in that behalf. Therefore, the Madras Motor Vehicles (Taxation of Passengers and Goods) Act, 1952 does not fall within the sweep of Art. 14 of the Constitution. If the main Act cannot be said to infringe Art. 14, the amending Act, which revised the rates, cannot offend against that Article.

12. The State of Rajasthan Vs. Rao Manohar Singhji, does not furnish any parallel here. Their Lordships of the Supreme Court were not concerned there with the legislation, which had to be continued under the States Re-organisation Act. That was a case of merger of States that took place prior to the inauguration of the Constitution. Moreover, in that case, there was no evidence that the jagirdars were in any way different from the jagirdars of other areas of the State. As remarked by their Lordships of the Supreme Court in Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others, the discrimination complained of could not be unconstitutional if the law impeached is based on territorial classification having reasonable nexus or correlation between basis of the classification and the object sought to be achieved by the Act. The incidence of tax may be correlated to the various factors varying from region to region, such as the habits and the economic conditions of the people. It could not be postulated that the people of the two regions of this State are similarly situated in every respect.

13. In Shri Kishan Singh and Others Vs. The State of Rajasthan and Others, , the principle was laid down by the Supreme Court that Art. 14 only inhibited unequal treatment of persons in similar circumstances and a classification could be made on territorial basis if it was pertinent to the purpose of the Act. Merely because the Act does not govern the entire State, it could not be said to be inconsistent with Art. 14 of the Constitution and it is for persons who impeach the law as being discriminatory in nature to establish that the conditions obtaining in one part of the State were similar to those in the other. Even On this criterion, the argument founded on Art. 14 of the Constitution has to be repelled.

14. The Act is challenged in some of the writ petitions on another ground. The petitioners therein mostly belong to Chittoor district plying for hire stage carriages on routes lying in Madras and Andhra States. Their grievance is that operators belonging to Madras State, who ply their vehicles on routes lying in Andhra State under the primary permit granted by the State Transport Authority of Madras pay lower rate of tax than the petitioners here. This has put them? at great disadvantage and has adversely affected their business. We do not think that this contention is admissible. The difference complained of is not traceable to any law passed by the Andhra Pradesh legislature. It is the consequence of two different legislations of two different States. Equality before the law can be claimed only when persons are subject to the same law of one State. It does not

come into play where different persons are subject to the laws of different States. Therefore, there is no question of unconstitutional arbitrary discrimination.

15. This legal position is established by the The State of Madhya Pradesh Vs. G.C. Mandawar, It was ruled there that Art. 14 did not authorise the striking down of the law of one State on the ground that if contrasted with the law prevailing in another State on the same topic, it will be found to be discriminatory. If the source of authority for the two statutes is different, Art. 14 cannot come into operation. We cannot, therefore, give any weight to the submission that the petitioners compared to the transport operators, in Madras State are in an unfavourable position and the law which has brought about that result is vitiated by the vice of discrimination.

16. We will now consider the impugned legislation from the standpoint of Part XIII of the Constitution. On this topic, the argument is this. The Act imposes restrictions on trade and therefore contrary to the provisions of Art. 301 of the Constitution. Art. 301 envisages absolute freedom of trade and commerce and any legislation, which imposes taxes, interferes with the free flow of trade and commerce and infringes the provisions of Part XIII. Since the legislation in question places restriction on trade and commerce, it has to satisfy the requisites of Art. 304 (b) of the Constitution. The question whether the taxing laws of the nature of the impugned one fall within the terms of Art. 301 of the Constitution or not is no longer a debatable one in view of the judgment of the Supreme Court in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, This controversy is set at rest there. In those cases, the vires of the Assam Taxation (on Goods carried by Roads or Inland Waterways) Act (XIII of 1954) was called in question by some of the growers of tea in West Bengal or in Assam who carried their tea to the market in Calcutta from where the tea was sold for consumption in that country or exported for sale outside the country. That statute levied tax on certain goods carried by road or inland waterways in the State of Assam.

The ground of attack against the enactment in those cases, inter alia, was that since it imposes fetters on the free flow of trade and commerce, in disregard of Art. 301 of the Constitution, the legislature had to comply with Art. 304 (b) of the Constitution and that, since it failed to do so, the law in dispute was unconstitutional. The validity of this statute was sought to be sustained by the State Government on the plea that taxation as such was not a restriction within the meaning of Part XIII of the Constitution and so the taxing laws were outside the purview of that Part, Hence, no question of infringement of the relevant article or obtaining the previous sanction of the President under Art. 304(b) proviso arose. The objection formulated on behalf of the various States did not find acceptance with the majority of the learned Judges. The principle enunciated by them was that the doctrine of freedom of trade, commerce and intercourse enshrined in Art. 301 was only subject to the provisions of that Part and not controlled by the other provisions of the Constitution. Except as determined by the provisions of that Part the freedom of trade, commerce and intercourse envisaged in that Part was absolute. Though it is permissible for a State to re-enact laws imposing restrictions on trade and commerce to subserve the public ends, they have to be made in conformity with Art. 304, and failure to follow the procedure indicated therein affects their validity.

17. What emerges from this ruling is that Part XIII of the Constitution is not confined to laws merely regulating trade, commerce and intercourse and it is comprehensive enough to take in taxing laws and the scope and amplitude 1 of Art. 301 has to be judged with reference to factors qualifying that freedom. A combined reading of Arts. 301 and 304b) gives this effect to Part XIII.

18. That part of the Constitution imposed limitation on the legislative power of the Parliament and the State Legislatures. At the same time it recognises that that part of the Constitution does not altogether interdict taxing laws. Art. 304(b) empowers the State Legislature to impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within the State if the public interest required them. But that legislative power could be exercised only in the manner indicated in Art. 304. It is no doubt true that the entry 56 of List II enables the State Legislature to make legislation imposing taxes on passengers and goods but that is subject to the fulfilment of the requirements of Art. 304(b).

Article 304 runs as follows:-

Notwithstanding anything contained in Art. 301 or Art. 303, the legislature of a State may by law-

a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public-interest :

Provided that no Bill or amendment for the purpose of cl. (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President.

19. We are here concerned only with cl. (b) of this Article. The proviso makes it obligatory on the State Legislature to obtain the previous sanction of the President. Any bill or amendment introduced without observing this condition cannot be sustained, Thus, while there is no lack of initial legislative competence to pass a law for levying tax on passengers or goods, it is subject to the limitation laid down by the proviso to cl. (b) of Article 304. If that proviso is not complied with, the law enacting restrictions on freedom of trade; is invalid. It is common ground that the legislature did not have recourse to the proviso to cl. (b) before introducing the bill. It is also not disputed that the business engaged

in by the petitioners comes within the words ''trade, commerce and intercourse''. That being the position, the challenge to the impugned Act has to be upheld.

20. The learned Advocate-General sought to sustain this legislative measure on the ground that the taxes in dispute do not bear directly and immediately on the trade of motor transport and hence would not fall within the mischief of Art, 301. For this proposition, reliance is placed on the observations of Gajendragadkar J., who delivered the majority opinion of the Court:

Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301. The argument that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate, or mediate, direct or remote, adopts in our opinion an extreme approach which cannot be upheld. If the said argument is accepted it would mean, for instance, that even a legislative enactment prescribing the minimum wages to industrial employees may fall under Part XIII because in an economic sense an additional wage bill may indirectly affect trade or commerce. We are, therefore, satisfied that in determining the limits of the width and amplitude of the freedom guaranteed by Art. 301 a rational and workable test to apply would be: does the impugned restriction operate directly or immediately on trade or its movement?

21. The learned Advocate-General on the basis of these remarks urged that the impugned legislation does not have any direct impact on transport business. He suggests that the main Act and the amending Act levy taxes only on passengers and they do not throw any burden on bus operators. The amending Act, according to him, only enhances the surcharge on the fares paid by a passenger and the operator was constituted only the collecting agent of the Government. We find it difficult to accede to this view. In our opinion, the tax is levied against the operator himself and the entire burden falls on him. This is brought out clearly by Sec 4 of the Act, which enables an operator to compound the tax ''assessable on him'' under Sec. 3 by applying to tile prescribed officer. Sec. 4 indicates that the tax to be compounded is assessed on the operator. Sec. 3 does not talk of the tax being collected from the passengers by the operator on behalf of the Government. It only provides a basis for calculating the tax at some proportion of the amount of the fares and that does not make it any the less a tax payable by the bus operator. It may be that he can add this additional surcharge to the fares to be collected from the passengers, but it is not always that he could do it consistent with the interests of his business.

We feel that this Act is an impediment to the freedom of trade. It directly and immediately impinges on the operator''s trade in that it impedes the free flow of his business. Since it places a restriction on the motor transport trade, the Act attracts the applicability of Art. 304(b) proviso, and the omission in this behalf is fatal to the Act. It is true that if the previous sanction was not obtained, that infirmity may be cured by adopting the course authorised by Article 255 of the Constitution. It may incidentally be mentioned that the previous sanction of the

President was obtained in accordance with Art. 304(b) proviso in regard to the main Act. The same procedure could have been adopted) even with regard to this amendment without taking any risks. For these reasons, we bold that the impugned legislation is void.

22. In the result, the writ petitions are allowed without costs.

