

Automobiles Transport Ltd. v State of Rajasthan AIR 1962

THREE writ applications were filed by the Automobile Transport (Raj) Ltd. The Rajasthan Roadways Ltd., and Framji C, Framji and others, and in each of them the validity of the Rajasthan Motor Vehicles Taxation Act (No. XI) of 1951 was challenged. The three cases came before a Division Bench of this court which has referred the following question to a Full Bench -

"whether Sections 4 and 11 of the Rajasthan Motor Vehicles Taxation act, 1951, do not infringe the rights of freedom of trade, commerce or intercourse granted under Article 301 of the Constitution?"

facts -The applicants carry on the business of plying stage carriages, and all three of them have their Head Offices in what was the former State of Ajmer. All three of them ply vehicles on Nasirabad-Deoli Road, while the Automobile Transport (Raj.)Ltd. also ply motor vehicles between Ajmer and Kishangarh for which they held permits from the former State of Ajmer. The road from Nasirabad to Deoli was mainly in the former State of Ajmer, but for some distance it passed through the state of Rajasthan. Similarly, the road from Ajmer to Kishangarh was partly in the former State of Ajmer, and partly in the State of Rajasthan. The Regional Transport Officer, Jaipur, who is also the Motor Vehicles Taxation Officer, demanded from the applicants tax under the Rajasthan Motor Vehicles Taxation Act (No. XI) of 1951, (hereinafter called the Act) for the period from 1st of April, 1951, to 31st March, 1954. The applicants contended that they were not liable to pay this tax for various reasons, and filed these writ applications challenging, inter alia, the validity of the Act.

THE matter came up for hearing before a Bench of this Court, and the Bench has referred the question set out above for answer by a Full Bench

Applicant's contention -They say that Article 301 of the Constitution provides that subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free. Therefore it is urged that no tax like the one provided in the Act can be levied

because such a tax militates against the freedom of trade, commerce and intercourse throughout the territory of India, unless the previous sanction of the president is obtained to the bill for the levying of the tax (assuming that the tax imposes reasonable restrictions on the freedom of trade, commerce or intercourse) in view of the proviso to Article 304. It is further urged that even if previous sanction of the President was not taken as envisaged in that proviso, the defect could have been remedied if subsequent assent had been obtained under Article 255. But as neither the previous sanction of the President to the introduction of the bill relating to this taxation was taken, nor the Act received the assent of the President after it was passed, the Act is invalid as it restricts freedom of trade, commerce and intercourse guaranteed under Article 301.

State's contention- The Act is a valid piece of legislation, and does not offend against Article 301. It is further contended that the Act was passed under the powers of the State Legislature under Article 245 of the Constitution, and the tax levied is according to law, and therefore the applicants cannot contend in view of Article 265 that they are not liable to pay it. It is also urged that no law imposing a tax can be invalid on the ground that it offends Article 301.

THE main contention on behalf of the applicants is based on certain decisions of the Privy Council, and the High Court of Australia in relation to Section 92 of the Australia Constitution, which provides freedom of inter-State trade. We must, however, point out that there are differences between the Australian Constitution and the Indian Constitution, and therefore the principles evolved in connection with Section 92 of the Australian Constitution cannot apply in full to a case covered by Article 301 of our Constitution. In the first place, Article 301 is wider than Section 92 of the Australian Constitution inasmuch as the Australian constitution provides for the freedom of Inter-State trade only, while Article 301 governs not only Inter-State trade, but also intra-State trade. There is further a fundamental difference between the Indian Constitution and the Australian Constitution inasmuch as the Indian Constitution provides for certain fundamental rights in Article 19 (1). Of these fundamental rights, the following are relevant in connection with Article 301, namely (d) to move freely throughout the territory of India, and (g) to practise any profession, or to carry on any occupation, trade or business. Article 301 deals with trade, commerce and intercourse. Obviously Article 19 (1) (d) more or less corresponds to intercourse by individuals, whether that intercourse be inter-State or intra-State.

Article 19 (1) (g) more or less covers trade and commerce so far as the right of individuals to engage in trade and commerce is concerned. Now there is no provision protecting the rights of individual citizens in the Australian Constitution corresponding to Article 19 (1). Therefore, the Privy Council in *Commonwealth of Australia v. Bank of New South Wales*¹, held that the rights of individuals also came within the purview of Section 92. In our Constitution, however, rights of individuals in matters covered by Article 301 are provided in Article 19 (1) (d) and (g). Therefore, when dealing with the question whether a particular enactment offends Article 301, the matter has to be considered from two angles. An enactment restricting intercourse, trade and commerce may have two aspects. In one aspect, it may interfere with the fundamental right of individuals to move freely throughout the territory of India, or to practise any profession, or to carry on any occupation, trade or business. In the other aspect, it may interfere with intercourse, trade and commerce considered generally without reference to the right of individuals who might be engaged in that intercourse, trade and commerce. As we have said above, the Privy Council has held that Section 92 of the Australian Constitution deals with the rights of individuals also, and that decision, if we may say so with respect, would be quite appropriate with respect to a Constitution which does not provide fundamental rights in favour of individual citizens. But, where, as in our constitution, there is a distinct provision for fundamental rights of individual citizens, Article 301, which provides for some of the matters protected under Article 19 (1) should not, in our opinion, be applied so far as individual rights are concerned. It should only be considered as providing safeguards for carrying on trade, commerce and intercourse generally. Every enactment, therefore, which apparently restricts trade, commerce and intercourse, has to be viewed from these two angles. So far as the angle concerning individual rights is concerned, it is to be judged according to Article 19. So far as the angle relating to trade, commerce and intercourse generally is concerned, it has to be considered according to the provisions contained in Part xiii of the Constitution. It seems to us that it is not right to mix up these two aspects in view of the two distinct provisions in our Constitution -- one relating to individuals contained in Art 19 and the other relating to trade, commerce and intercourse as a whole contained in Article 301.

¹ 1950 AC 235 (A)

A similar view was expressed by the Allahabad High Court in *Sagir Ahmad v. State*², AIR. That case went in appeal to the Supreme Court, and the judgment of the Supreme Court is in *Sagir Ahmad v. State of U. P*³. The Supreme Court formulated a question

"in other words, this article (i. e. 301) is concerned with the passage of commodities or persons either within or outside the State frontiers but not directly with individuals carrying on commerce or trade. The right of individuals, it is said, is dealt with under Article 19 (1) (g) of the constitution and the two articles have been framed in order to secure two different objects. "

The Supreme Court did not express its view finally on this question, and left it open in that case. But it seems to us that Article 19 is concerned with the rights of individuals, and as rights of individuals have been provided under that Article, article 301 should be confined only to trade, commerce and intercourse as a whole, and where any restriction interferes with trade, commerce and intercourse as a whole, then only will it offend Article 301.

LET us now examine the impugned Act from these two aspects. The Act provides for taxation of motor vehicles. Section 4, which is one of the sections referred to in the question formulated for answer by this Bench, lays down that

"no. motor vehicle shall be used in any public place or kept for use in rajasthan unless the owner thereof has paid, in respect of it, a tax at the appropriate rate specified in the schedules to this Act within the time allowed by Section 5. "

Section 11 is a consequential section, and provides for penalties tor contravention of the Act. Thus the question put to this Bench really refers to the validity of section 4, for, if Section 4 is valid, Section 11 would necessarily be valid. The Schedules of the Act divide Motor Vehicles into two parts. Schedule I deals with vehicles other than Transport Vehicles plying for hire or reward. Schedule II deals with Transport Vehicles of two kinds. Schedule III deals with Goods Vehicles registered outside Rajasthan. Various rates of taxes are provided for various kinds oj

² 1954 All 257 (B)

³ AIR 1954 sc 728 (C)

vehicles in these Schedules. Schedule I is concerned mainly with what would come within the term 'intercourse' in Article 301. Schedules II and III deal mainly with what would come within the term 'trade and commerce' in Art 301. The result of reading Section 4 of the Act with the Schedules is that no one can use or keep a motor vehicle in Rajasthan without paying the appropriate tax for it.

NOW this Act has obviously two aspects. The first aspect is that no individual is allowed to keep or use a vehicle in Rajasthan unless he pays a tax for it. This is a restriction on the right of individuals, and has therefore, to be judged in the light of the provisions in Article 19. The other aspect is that motor vehicles are used for trade, commerce and inter-course, and the question arises whether this, taxation offends against Article 501 which provides for freedom of trade, commerce and intercourse throughout the territory of India. These two aspects must, in our opinion, be kept separate, and dealt with separately in view of the distinct provisions in the Constitution relating to them.

THE first aspect, which concerns individuals, has, in our opinion, to be judged according to Article 19 (1). That Article permits reasonable restrictions on the right to move freely throughout the territory of India, vide Article 19 (5). It also permits reasonable restrictions on the right to practise any profession, or to carry on any occupation, trade or business, vide Article 19 (6). The State Legislature can, therefore, impose reasonable restrictions on the rights given in Article 19 (1) (d) and (g), and in passing legislation to that effect it is not fettered by the condition mentioned in the proviso to Article 304. All that it has to see is that the restrictions put by it on the rights of individuals in this behalf are reasonable restrictions. Therefore, so far as that aspect of the impugned Act is concerned, which affects the rights of individuals guaranteed under Article 19 (1) (d)' and (g), the State legislature can pass a law without the necessity of previous, sanction of the president to the bill, provided the restrictions that it puts are reasonable. So far therefore as fundamental rights are restricted by the impugned Act all that we have to see is whether the. restrictions are reasonable within the meaning of article 19 (5) and (6). If they are reasonable, the Act, so far as it puts restrictions on individuals, cannot be invalid even though the proviso to Article 304, or Article 255 has not been complied with.

LET us, therefore, look at the reasonableness or otherwise of the restrictions which have been put by the Act on the fundamental right of individuals to move freely throughout the territory of India, or to practise any profession or to carry on any occupation, trade or business. In this connection, it is well to remember that the State maintains old roads, and makes new ones, and these roads are at the disposal of those who use motor vehicles either for private purposes or for trade or commerce. This naturally costs the State. It has, therefore, to find funds for making new roads and maintenance of those that are already in existence. These funds can only be raised through taxation, and if the State taxes the users of motor vehicles in order to make and maintain roads, it can hardly be said that the state is putting unreasonable restrictions on the individuals' right to move freely throughout the territory of India, or to practise any profession or to carry on any occupation, trade or business. We have looked into figures of income and expenditure in this connection of the rajasthan State to judge whether this taxation is reasonable. We find that in 1952-53, income from, motor vehicles taxation under the Act was in the neighbourhood of 34 lakhs. In that very, year, the expenditure on new roads and maintenance of old roads was in the neighbourhood of 66 lakhs. In 1953-54, the income from motor vehicles tax was in the neighbourhood of 33 lakhs, while the expenditure on new roads and maintenance of old roads was in the neighbourhood of 60 lakhs. In 1954-55, the estimated income from the tax was 35 lakhs, while the estimated expenditure was over 65 lakhs. It is obvious from these figures that the State is charging from the users of motor vehicles something in the neighbourhood of 50 per cent of the cost it has to! incur in maintaining and making roads. Can it be said in these circumstances that the state in levying this, taxation is not putting a reasonable restriction on the individuals' freedom guaranteed under Article 19 (1) (d) and Article 19 (1) g). Looking to these figures, we are definitely of opinion that the restrictions put by this taxation are in the circumstances reasonable.

LET us look into this matter from another angle. Take the case of private persons using motor vehicles. For motor cars the tax is Rs. 12/- per seat, and for an ordinary five-seater car it comes to Rs. 60/-per year. On payment of this amount, the owner of the motor vehicle can use it anywhere in Rajasthan, and all the roads are open to him. Can it be said that this is restricting the freedom to move throughout the territory of India unduly? We are definitely of opinion! that this is not an unreasonable restriction.

THEN take the case of a goods vehicle where the rate of taxation is the highest. It is Rs. 2,000/- per year for a goods vehicle with a load capacity of over five tons, i. e. , over 135 maunds. Now assuming that a goods vehicle can be used reasonably for at least 200 days in a year, the tax amounts to Rs. 10/- per day for say 140 maunds of goods carried over any length of the roads in Rajasthan. This comes to Re. 1/- for 14 maunds, i. e. , almost an anna a maund. Can it be said that this charge, which is the maximum, is an unreasonable restriction on the individuals' right to carry on the trade of goods transport when the State provides him with hundreds of miles of roads on which to carry on his trade. We are again emphatically of opinion that this is not an unreasonable restriction. Therefore, so far as this aspect of the impugned Act is concerned, the Act does not impose any unreasonable restriction on the individuals' right to move freely throughout the territory of India, or to practise any profession, or to carry on any trade, occupation or business connected with motor vehicles.

THE Act must, therefore, be held valid so far as the individuals' right is concerned. The result is that the individual must, if he wants to move throughout india, or to carry on any trade, occupation or business, pay this tax which is a reasonable restriction. After paying this tax, he is free to move throughout India, or to carry on his profession, trade or business relating to motor vehicles. The restriction, therefore, being reasonable, there is no hampering of the individual's right and in particular individuals will be at liberty to carry on their trade, occupation or business after paying the tax, and transport vehicles, in which individuals carry on their trade, business or occupation, will be available for purposes of trade, commerce and intercourse.

THEN we come to the other aspect of the Act, namely whether it restricts freedom of intercourse, trade or commerce as a whole which is provided in Article 301. In considering this aspect, we must assume that individuals have paid this reasonable tax, and are carrying on business, trade or occupation, and transport vehicles are available for trade, commerce and intercourse.

THE question, that arises then, is whether there is still any violation of Article 301 because of this taxation. There is no doubt that taxation may violate freedom of trade, commerce and

intercourse. We may in this connection refer to *Surajmal baj v. State of Rajasthan*⁴. That was a case of octroi duty and it was held that levying of octroi duty on entry of goods inside municipal limits would certainly restrict freedom of trade. inasmuch as there will be impediment to the movement of goods into municipal limits unless duty was paid, and such duty therefore would amount to restriction on the freedom of trade guaranteed under Article 301 of the Constitution. That was, however, a case of a direct tax on the movement of goods. The question, that we have to consider in this case, is whether a tax, which only indirectly or remotely affects freedom of trade, would offend Article 301. In this connection, it is well to refer to the Australian Case of *Hughes and Vale Proprietary Ltd. v. State of New South Wales*, 93 Com-WLR 1 (E), on which the applicants also rely strongly. In that case, their Lordships of the Privy Council reviewed the earlier authorities dealing with Section 92 of the Australian Constitution, and laid down the following general propositions deducible from them -

(1) That regulation of trade, commerce and intercourse among the states is compatible with its absolute freedom, and (2) That Section 92 is available only when a legislative or executive act operates to restrict such trade, commerce and intercourse directly and immediately as distinct from creating some indirect or consequential impediment which may fairly be regarded as remote.

THE impugned Act is not an Act for the regulation of trade, commerce and intercourse, and therefore the first proposition laid down by their Lordships of the privy Council does not arise for consideration. It is the second proposition which applies, and if we may say so with the utmost respect, that is the criterion for judging whether a particular enactment violates the freedom guaranteed to trade, commerce and intercourse as a whole under Article 301. ILR (1954) 4 Raj 317: (AIR 1954 Raj 260) (D), to which we have referred, was a case of direct and immediate restriction on the entry of goods within a certain area. But can it be said that the taxation under the impugned Act is also a case of direct and immediate restriction? it is clear that on the principle enunciated by their Lordships of the Privy Council, any indirect or consequential impediment,, which may fairly be regarded as remote, cannot be a restriction on freedom of trade, commerce and intercourse. This is a question which will always have to be decided on the

⁴ ILR (1954) 4 Raj 317: (AIR 1954 Raj 280) (D)

facts and circumstances fit each case. Take, for example, a case which every one will admit can only be an indirect or consequential impediment to free trade, commerce or intercourse, and would be regarded fairly as remote. Suppose a house tax on a trader's house is doubled. The result of that may be that the trader will have to find more money to pay the extra tax, He may thereby be compelled to increase the prices of his goods. In one sense this increase in prices of goods may restrict his trade, but it can never be said that such a tax restricts trade, commerce or intercourse directly. The distinction, therefore, between direct and immediate restriction and indirect or consequential impediment, which may fairly be regarded as remote, is real, though the line in some cases might be difficult to draw.

LET us see whether the taxation in the present case falls in the category of direct and immediate restriction, or is only an indirect or consequential impediment which may fairly be regarded as remote. There is no doubt that there may be a certain increase in the price of goods as a result of this taxation which may affect freedom of trade, commerce or intercourse. It is here that the first aspect of this legislation has to be borne in mind. We have already held that so far as the restrictive effect of this legislation on individual rights is concerned, the legislation is valid as the restrictions are reasonable. It follows therefore that the restrictions being reasonable, (take only the case of transport vehicles) individuals would be carrying on the trade in transport vehicles. The restriction being reasonable, such trade by individuals must be presumed not to be affected. So far as trade and commerce as a whole is concerned, transport vehicles provided by individuals carrying on the business of transport are available. Can it be said in these circumstances that the restriction in this case is directly on trade and commerce? We are of opinion that it is not. Transport vehicles are provided by individuals carrying on business in them, and those, who carry on trade and commerce as a whole, can use these transport vehicles, The fact that on account of this taxation, the charges of transport vehicles are higher let us say by an anna a maund is, in our opinion, merely an indirect or consequential result of this Act, and such an impediment may fairly be called remote. It would be a different matter if the taxation is so high that it virtually kills trade and commerce by compelling the traders to rise their prices to an exorbitant rate. But this being not the nature of the tax in this case, and the taxation being not directly on trade, commerce or intercourse (as for example is the case with octroi tax which is direct tax on trade and commerce) We are of opinion that this taxation cannot be said to offend

against Article 301, for its effect on trade and commerce is only indirect and consequential, and the impediment, if any, may fairly be regarded as remote.

OUR attention was also drawn to other Australian cases to which, however, we need not refer in detail. In most of those cases tax was levied on a ton-mile or passenger-mile basis and not as annual lump sum as in our case. Whether a tax on ton-mile or passenger-mile basis, will be a direct tax on trade and commerce, and will be hit by Article 301 is a matter which we need not consider as it does not arise in this case. But where a tax of this nature is a lump sum payable annually, it must be held that its effect on trade and commerce is only indirect and consequential, and it can only be considered as an impediment to trade and commerce if the tax is so high as to be unconscionable and thus liable to kill trade and commerce. This being not the case here the tax under the impugned Act cannot be said to offend against Article 301. Therefore, it was not necessary before enacting this law to obtain the previous sanction of the President under the proviso to Article 304, or to obtain his assent after the Act was passed under Article 255. Section 4 of the act is, under the circumstances, not hit by Article 301 of the Constitution as it does not restrict freedom of trade, commerce or intercourse guaranteed by that article.

IT was also, urged on behalf of the State that this legislation was passed under the powers conferred on the State under Article 245, and that the powers conferred under that Article are not subject to Article 301. Reliance in this connection was placed on *H. P. Barua v. State of Assam*, (S) AIR 1955 Assam 249 (SB) (F). That was a case dealing with tax on transport or carriage of goods.