

# State Of Bihar & Ors vs Harihar Prasad Debuca Etc on 21 February, 1989

**Equivalent citations: 1989 AIR 1119, 1989 SCR (1) 796, AIR 1989 SUPREME COURT 1119, 1989 STI 9, 1989 29 STL 1, 1989 BRLJ 96, (1989) 73 STC 353, 1989 (2) SCC 192**

**Author: K.N. Saikia**

**Bench: K.N. Saikia, G.L. Oza**

PETITIONER:  
STATE OF BIHAR & ORS.

Vs.

RESPONDENT:  
HARIHAR PRASAD DEBUKA ETC.

DATE OF JUDGMENT 21/02/1989

BENCH:  
SAIKIA, K.N. (J)  
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SAIKIA, K.N. (J)  
OZA, G.L. (J)

CITATION:  
1989 AIR 1119                      1989 SCR (1) 796  
1989 SCC (2) 192                JT 1989 Supl.            34  
1989 SCALE (1) 464

ACT:

Constitution of India: Articles 301 and 304---Freedom of trade, commerce and intercourse--Not absolute--Is subject to reasonable, regulatory and compensatory measures in public interest.

Reasonable restrictions--Whether can be imposed by executive action--Reasonability of restrictions--How determined.

Legislature--Power of--To make laws--Also has ancillary and incidental power to make that law effective.

Bihar Finance Act, 1981: Section 31(2-a) (As substituted by Bihar Finance Act, 1984)--Notification No. S.O. 1432 dated 28.12.85-Adopting permits in Form XXVIII A or XXVIII B--Validity of--Whether violative of Articles 301 and 304.

Words and Phrases: 'Free Trade'--'Trade and Business'--Throughout the Territory of India"--'De Minimis Non Curat

Lex'-Meaning of.

HEADNOTE:

In exercise of the powers conferred by sub-section (2-a) of section 31 of the Bihar Finance Act, 1981 the Commissioner of Commercial Taxes, Bihar issued a Notification dated 28th December, 1985 adopting Forms XXVIII A and XXVIII B as the declaration for the purposes of verification and assessment of the sales-tax payable. Clause 1 of the Notification provided that a person transporting goods, exceeding the quantity notified under section 35, on a goods carrier or a vessel shall carry Form XXVIII A or XXVIII B duly filled up in respect of goods being brought into the State or being sent out of the State. Clause 2 of the Notification provided that in case a form is found blank or not containing all the particulars, it shall be deemed to be a violation of the provisions of sub-section (2-a) of section 31 of the Act.

The respondent, a registered dealer under the Bihar Sales Tax Act and the Central Sales Tax Act purchased 165 bags of mustard in the State of Rajasthan and was transporting the same therefrom to

797

Jamshedpur in the State of Bihar. The officers of the Investigation Bureau Jamshedpur Division seized the vehicle along with the goods on the ground that in the road permit the bill number had not been mentioned in column No. 9 in Form XXVIII B. On a representation by the Singhbhum Chamber of Commerce and Industry the truck along with the goods was released. The Inspecting Officer issued a demand notice to the respondent imposing a penalty of Rs.8,330 and rejected the contention of the respondent that no permit was necessary because it was violative of the respondent's Constitutional right of freedom of inter-State trade and commerce.

The appellant filed a writ petition in the Patna High Court challenging the validity of the Notification on the ground of its being violative of Articles 301 and 304 and also the demand notice imposing penalty.

The High Court held that the Notification imposed unwarranted restrictions on the inter-State trade and commerce and accordingly quashed the Notification as violative of Articles 301 and 304 and set aside the penalty order with demand notice.

In this appeal by special leave on the question whether the impugned Notification and the adoption of Forms XXVIII A and XXVIII B, for the purposes of preventing evasion of sales-tax, was violative of Articles 301 and 304 of the Constitution.

Allowing the appeals and setting aside the judgment of the High Court,

HELD: 1. Article 301 mandates free trade, commerce and intercourse-throughout the territory of India. The words

"throughout the territory of India" extends the freedom not only to inter-State but also to inter-State transactions and movements. The mobility of goods throughout the territory of India has to be free. Free trade throughout the territory of India would be one with no tariffs and no restrictions or disadvantages of any kind of importing or exporting from the different States. Free trade means complete freedom of inter-State trade without any restrictions on the movement of goods between the States. Anyone aggrieved by infringement of the provisions of Article 301 can seek his remedy from the Court against the offending legislative or executive action. [808C-E]

2. The word 'trade' has been used synonymously with the word  
798

'business'. Trade or business would mean some real substantial and systematic or organised course of activity or conduct with a set purpose. [808E]

State of Bombay v. R.M.D. Chamarbaug-wala, [1957] S.C.R. 874, applied.

3. Freedom under Article 301 does not mean absolute freedom but freedom from all restrictions and barriers except those which are provided in other Articles of Part XIII as well as regulatory and compensatory measures. The object of Part XIII is not to make inter-State trade, commerce or intercourse absolutely free. Reasonable restrictions in public interest are permissible. The reasonable restrictions contemplated in Part XIII have to be backed by law and not by executive action provided the same are within the limitations prescribed under the scheme of Part XIII. The power of the Union or the State to exercise legitimate regulatory control is independent of the restrictions imposed by Articles 302-305. [808F; 81 IG; 812B]

State of Madras v. Nataraja, [1968] 3 S.C.R. 829, applied.

4. While examining whether there is a violation of the freedom guaranteed by Article 301, one has to scrutinise whether the impugned legislative or executive act operates to restrict or barricade trade, commerce or intercourse directly and immediately, as distinct from creating some indirect or inconsequential impediment which may be regarded as remote. In other words, regulatory or compensatory measures cannot be regarded as violative of the freedom. Such measures cannot be challenged as interfering with the freedom guaranteed by Article 301 unless they are shown to be colourable measures to restrict the free flow of trade, commerce and intercourse. [808H; 809A-B]

5. Measures impeding the freedom of trade, commerce and intercourse may be legislative or executive and may be fiscal or non-fiscal. Taxing laws could be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they were not what could be termed to be compensatory taxes or regulatory measures. He who assails such a measure has to show that it is not regulatory but it directly and immediately interferes with the free flow of

inter-State trade or business. Freedom may be impeded by impediments on the individuals carrying on trade or business, on the business itself or on the vehicles, carriers, instruments and labour used in the trade or business. [809B-C]

799

Atiabari Tea Co. Ltd. v. State of Assam and others, [1961] 1 S.C.R. 809; Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan and others, [1963] 1 S.C.R. 491; Western Electronics v. State of Gujarat, A.I.R. 1988 S.C. 2038 and Indian Cement v. State of Andhra Pradesh, A.I.R. 1988 S.C. 567 applied.

6. When the legislature had the power to make a law with respect to any subject it had all the ancillary and incidental power to make that law effective. In the instant case the notification ex facie shows the purpose, namely, to prevent evasion and facilitate assessment of sales tax. The permits will indirectly help assessment by ascertaining whether tax would be payable or not. The permit would enable the carrier to cross the State territory by producing it if and when needed and thus would promote rather than impede inter-State trade. A declaration may also serve the public purpose by finding out unauthorised trade or business to which freedom of trade, commerce and intercourse would not apply. Thus, the impugned notification is a measure in exercise of a power incidental to the levy of sales tax and it could not be said to have been a colourable exercise of power to impede, restrict or barricade inter-State trade in respect of which Bihar State Legislature has no power to legislate. [813B-E]

6.1 Article 304(b) clearly permits the State Legislature to impose such a reasonable restriction on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest. The word 'with' involves an element having its situs in another State. It cannot be, therefore, said 'that the insistence on the disclosure in respect of goods entering Bihar from another State if otherwise legitimate would not be protected by Article 304(b). [815C]

6.2 To decide whether the notification impeded inter-State trade, the concept of inter-State trade and its continuity has also to be taken into consideration. In the instant case the notification clearly states that the declaration in the permit is indeed for the purpose of verification and assessment of tax payable and there is no imposition of any tax. The notification only prescribed the declaration forms to be carried on a goods carrier or vessel for transporting goods through the State of Bihar. It does not prohibit transportation of the goods. Therefore, there is no direct and immediate restriction of inter-State trade, commerce or intercourse as a result of the requirement to fill up and carry the forms. In other words, the continuity of the transport will not be obstructed or interrupted.

Therefore, the notification and the adoption of the forms are reasonable and in public interest and not ultra vires the Articles 301 and 304 of the Constitution of India. [815F, 816F]

800

Hans Raj Bagrecha v. State of Bihar and others, [1971] 2 SCR 412; 1971 1 SCC 59, distinguished.

Sodhi Transport Co. v. State of U. P., [1986] 1 SCR939, held applicable.

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 346347 of 1988.

From the Judgment and Order dated 18.11.1986 of the Patna High Court in C.W.J.C. Nos. 990 and 991 of 1986 (R). G. Ramaswamy, Additional Solicitor General and Ranjit Kumar for the Appellants.

Nemo for the Respondents.

The Judgment of the Court was delivered by K.N. SAIKIA, J. These appeals by special leave are from a full bench judgment of the Patna High Court in two writ petitions under Articles 226 and 227 of the Constitution of India allowing the petitions and quashing the Bihar Government's Notification No. S.O. 1432 dated 28th December 1985 as violative of Articles 301 and 304 of the Constitution of India.

Sub-section (2-a) of section 31 of the Bihar Finance Act, 1981 was substituted by Bihar Finance Act, 1984 as follows:

"(2-a) A person transporting goods shall carry a declaration in such form as may be pre-

scribed by the commissioner supported by either a cash memo, bill or a challan, in case the movement is otherwise than as a result of sale, in respect of goods which is being transported on a goods carrier, or a vessel and shall produce such challan, cash memo or bill along with the aforesaid form of declaration on demand before the prescribed authority:

Provided that the Commissioner, by notification in this respect, may prescribe a form of declaration or adopt a form of declaration or permit prescribed for the purpose of Sections 34 & 35 of this part, and, he may also pre-

scribe in the said notification, the manner in which such declaration or permit shall be utilised for verification and assessment of tax payable under this part. Provided further that the Commissioner may exempt any person or dealer or class of registered dealers from the requirement of this

sub-section."

Under the aforesaid amended provision the following Notification was issued:

The 28th December, 1985.

S.O. 1432.--In exercise of the powers conferred by subsection (2-a) of section 31 of the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) Part I, the Commissioner adopts Forms XXVIII A and XXVIII B as the declaration for the purpose of the aforesaid sub-section which a person shall carry in respect of goods being transported for the purposes of verification and assessment of tax payable and prescribes the following manners in which such permit shall be utilised for verification and assess-

ment of tax payable under Part I of the said Act:

(i) A person transporting goods, exceeding the quantity notified under section 35, on a goods carrier or a vessel shall carry Form XXVIII A or XXVIII B duly filled up in respect of goods being brought into the State or being sent out of the State;

(ii) In case a form is found blank, or not containing all the particulars, it shall be deemed to be a violation of the provisions of sub-section (2-a) of section 31 of the said Act.

(iii) The prescribed authority, after verifi-

cation of the consignment, shall make appropriate endorsement in respect of the result of verification on both the copies/counterfoils of Form XXVIII A or XXVIII B, as the case may be, and retain one copy of original counterfoil and return the other copy or duplicate counterfoil to the person transporting the goods;

(iv) The copy of the original counterfoil retained by the inspecting authority shall be forwarded for verification and for assessment of tax to the circle in which the dealer is registered or has his place of business.

(v) ,The concerned dealer shall preserve the other copy or duplicate counterfoil of Form XXVIII A or XXVIII B, as the case may be, for production before the assessing 'authority or for inspection at any time before or after the assessment.

This notification shall come into force with effect from the 1st January, 1986.

/Bikrikar/vividh/12 1-308/85 By order of the Governor of Bihar MUKUND PRASAD Commissioner of Commercial Taxes and Special Secretary to Government."

The respondent as proprietor of M/s Jai Durga Industries of Jamshedpur town, which was registered under the Bihar Sales Tax Act and the Central Sales Tax Act, purchased 165 bags of mustard (sarso) from M/s Kanpur Chand Girish Chand Jain at Dhaulpur, in the State of Rajasthan, and was trans- porting the same therefrom to Jamshedpur in the State of Bihar in Truck No. RSG 533. On the 13th of February, 1986, the officers of the Investigation Bureau Jamshedpur Division, inspected the said truck and all necessary papers including a road permit in Form XXVIII B for the 165 bags of mustard (sarso) were produced at the time of inspection. In the road permit the bill number had not been mentioned in Column No. 9 in Form No. XXVIII B. On that ground the Inspecting Officers seized the goods loaded in the aforesaid truck and detained it at Mango Mufassil Police Station at Jamshedpur. A notice was issued to the petitioner to show cause as to why penalty should not be imposed under section 31(3) of the Act. He was directed to appear before the Inspecting Officer on the 14th February, 1986. The Petitioner being a member of the Singhbhum Chamber of Commerce and Industry, moved the said organisation to agitate the matter before the authority and on a representation by the said Chamber the truck with the goods therein were released on the 15th February 1986. In reply to the show cause notice the appellant took the stand that no permit in the required Form was necessary and in any case it was violative of the petitioner's Constitutional right of freedom of inter-State trade and commerce. The contention was re-

jected and a penalty of Rs.8,330 was imposed by Order dated 29th May 1986; and thereafter the consequential demand notice No. 986 dated 2nd June 1986 was issued. Aggrieved, the appellant filed a writ petition in the Patna High Court under Articles 226 and 227 of the Constitution of India challenging, inter alia, the Notification No. S.O, 1432 dated 28th December 1985 as ultra vires the Articles 301 and 304 of the Constitution of India, and also the order imposing penalty and the consequential demand notice. The High Court held, inter alia, that the impugned Notification imposed unwarranted restrictions on inter-State trade and commerce the freedom whereof stood guaranteed; that the decision of this Court in *Hans Raj Bagrecha v. State of Bihar & Ors.*, reported in [1971] 2 S.C.R. 412:1971 1 S.C.R. 59 squarely covered this case; that the impugned Notification was not of regulatory character; and that the decision in *Sodhi Transport Co. v. State of U.P.*, reported in [1986] 1 S.C.R. 939 did not apply as that case dealt with the question of transit pass only. The Notification was accordingly quashed and the penalty order with demand notice set aside.

Mr. Ranjit Kumar the learned counsel for the appellant State submits that the amendment of sub-section (2-a) of section 31, the impugned Notification No. S.O. 1432, herein- after referred to as 'the Notification', and the adoption of Forms XXVIII A and XXVIII B thereby were made with a view to preventing evasion of Sales Tax and in pith and substance it is a regulatory measure which in no way affected freedom of inter-State trade; and that the High Court erroneously held the Notification to be violative of Articles 301 and 304 of the Constitution of India. Counsel further submits that the particulars to be disclosed in the prescribed Forms XXVIII A and XXVIII B and the carrying of the Forms by the carriers would promote rather than hinder freedom of inter-State trade.

It may be noted that the vires of sub-section (2-a) of Section 31 of the Bihar Finance Act, hereinafter referred to as 'the Act', whereunder the Notification was issued and the Forms were adopted by the Commissioner and of the relevant Rules referred to in the Forms, namely, Rule 41 and 42(2) were not challenged before the High Court or before this Court.

To decide the question whether the Notification and adoption of the two aforesaid Forms would be ultra vires Articles 301 and 304 of the Constitution of India, it would be relevant to refer to the Forms and the Articles. The following are the Forms:

FORM XXVIII A Permit (See Rule 41) NO.

I hereby permit the transport of the consignment detailed overleaf. This permit will be valid for one month from the date of issue.

Place .....	Signature
Date .....	Designation

Details OF Consignment Permitted to be Transported Description Dated signature of the of goods quantity issuing the permit 1 2 3 Result of Checking on the Route Designation and Description Quantity of Dated signature head quarters of of goods the goods of the authority the authority by actually mentioned in by whom transport transported column-1. of consignment was checked.

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		FORM XXVIII B	
		Form of Permit	

(See Rule 42(2) of the Bihar Sales Tax Rules 1983) (Original--Not transferable) Serial No. (To be filled in by the permit-holder before transport of goods).

1. Name of dealer to whom the permit is granted with registration certificate numbers.
2. Name and address of the consignor.
3. Name and address of the consignee.
4. Place of despatch.
5. Destination.
6. Name of notified railway station/other places from where delivery is to be taken.
7. Number and date of:
  - (i) Railway receipt
  - (ii) Other document.

8. Description of consignment:



Name of goods Value Quantity.

9. Seller's invoice, forwarding note, number and date.

10. Mode of transport (vehicle No.) I/We hereby declare that the above statements are correct and complete in the best of my/our knowledge and belief.

Signature of dealer/declared Manager.

Date .....

Result of Checking on the Route			
Designation and headquarters of the authority by whom the transport of the	Description of goods.	Quantity of the goods actually transported	Dated signature of the authority mentioned in column-1 and place of checking.

Note: (1) Separate form should be used for each consignment.

(2) (a) In case of transport across

or beyond checkpost, a copy of the form should accompany the consignment.

(b) In case of delivery of consignment from any notified railway station/other such place the original copy of the form shall accompany the consignment in transit and thereafter shall be sent to the appropriate authority of the Commercial Taxes.

Article 301 which deals with freedom of trade, commerce and intercourse provides:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

Article 304 which deals with restrictions on trade, commerce and intercourse among States provides:

"Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law;

(a) impose on goods imported from other States or the Union Territories 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 inter-

course with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President." The right to carry on any occupation, trade or business conferred by Article 19(1)(g) on citizens is subject to reasonable restrictions, and in so far as trade or commerce involves the buying and selling of goods, restrictions on the right to trade can be put in the public interest. As regards the right of free movement, the power to legislate on the free- dom of trade, commerce and intercourse is restricted by Article 19(1)(g) and the provisions of Articles 302 to 306. Under Article 302 Parliament may by law impose such restric- tions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public inter- est. Article 303(1) provides that notwithstanding anything in Article 302 neither Parliament nor the Legislature of a State shall have power to make any law giving, or authoris- ing the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relat- ing to trade and commerce in any of the Lists in the Seventh Schedule. Under clause (2) nothing in clause (1) shall prevent Parliament from making any law, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. Thus Article 303(1) expressly forbids discrimination relating to trade and commerce apart from Article 14. Trade, commerce and intercourse may be domestic or foreign or international. Part XIII of the Constitution deals with trade, commerce and intercourse within the territory of India i.e. domestic or internal. This again is sub-divided into trade, commerce or inter- course between one State and another i.e. inter-state and within the same State i.e. intraState.

In *Atiabari Tea Co. Ltd. v. The State of Assam and Ors.* [1961] 1 S.C.R. 809 it has been held that the freedom of trade, commerce and intercourse guaranteed by Article 301 was wider than that contained in Section 297 of the Govern- ment of India Act, 1935, and it included freedom from tax laws also. Article 301 provides that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the State or at any other points inside the States themselves; and if any Act imposes any direct re- strictions on the movement of the goods it attracts the provisions of Article 301 and its validity can be sustained only if it satisfies the requirements of Article 302 or Article 304. Further the operation of Article 301 cannot be restricted to legislation under entries dealing with the trade and commerce. Gajendragadkar, J., as he then was, in the majority judgment, observed that free movement and exchange of goods throughout the territory of India was essential for sustaining the economy and improving living standards of the country and that Article 301 guaranteeing freedom of trade and commerce and intercourse embodied and enshrined a principle of paramount importance that the economic unity of the country would provide the

main sustaining force for the stability and progress of the political and cultural unity of the country and it was based on the theory that the peoples of the several States may sink or swim together. It was also held that though the power of levying tax was essentially for existence of the Government, its exercise must inevitably be controlled by the Constitutional provisions and the power was not outside the purview of any constitutional limitations.

Article 301 mandates free trade, commerce and intercourse throughout the territory of India. Inter-State trade has, therefore, to be free from trade barriers. The mobility of goods throughout the territory of India has to be free. Free trade throughout the territory of India would be one with no tariffs and no restrictions or disadvantages of any kind of importing or exporting from the different States. Free trade means complete freedom of inter-State trade without any restrictions on the movement of goods between the States. Anyone aggrieved by infringement of the provisions of Article 301 can seek his remedy from the court against the offending legislative or executive action. The word 'trade' has been used synonymously with the word 'business'. Trade or business would mean some real substantial and systematic or organised course of activity or conduct with a set purpose. In *State of Bombay v. Chamarbaugwala*, [1957] S.C.R. 874 this Court has held that the protection afforded by Article 301 is confined to such activities as may be regarded as lawful trading activity and does not extend to activity which is 'res extra commercium' and cannot be said to be trade. The words "throughout the territory of India" extends the freedom not only to inter-State but also to intra-State transactions and movements. Freedom under Article 301 does not mean absolute freedom but freedom from all restrictions and barriers except those which are provided in other Articles of Part XIII as well as regulatory and compensatory measures. The power of the Union or the State to exercise legitimate regulatory control is independent of the restrictions imposed by Articles 302-305 as was held in *State of Madras v. Natraja*, [1968] 3 S.C.R. 829. While examining whether there is a violation of the freedom guaranteed by Article 301, one has to scrutinise whether the impugned legislative or executive act operates to restrict or barricade trade, commerce or intercourse directly and immediately, as distinct from creating some indirect or inconsequential impediment which may be regarded as remote. In other words, regulatory or compensatory measure cannot be regarded as violative of the freedom. Such measures may be of diverse nature or various kinds such as traffic regulation, making of declarations and filing of returns within reasonable limits. Such measures cannot be challenged as interfering with the freedom guaranteed by Article 301 unless they are shown to be colourable measures to restrict the free flow of trade, commerce and intercourse. Measures impeding the freedom of trade, commerce and intercourse may be legislative or executive and may be fiscal or non-fiscal. He who assails such a measure has to show that it is not regulatory but it directly and immediately interferes with the free flow of inter-State trade or business. Freedom may be impeded by impediments on the individuals carrying on trade or business, on the business itself or on the vehicles, carriers, instruments and labour used in the trade or business. In

Atiabari (supra) tax on goods carried by roads outside State was struck down. In the Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan & Ors., [1963] 1 S.C.R. 491 sub-section (1) of Section 4 of the Rajasthan Motor Vehicles Taxation Act which provided that no motor vehicle should be used in any public place or kept for use in Rajasthan unless the owner thereof had paid in respect of it, a tax at the appropriate rate specified in the Schedule to the Act within the time allowed was challenged on the ground that it constituted a direct and immediate restriction on the movement of trade and commerce with and within Rajasthan inasmuch as motor vehicles which carried passengers and goods within or through Rajasthan had to pay the tax which imposed a pecuniary burden on a commercial activity and was, therefore, hit by Article 301 of the Constitution of India and was not saved by Article 304(b). The Rajasthan High Court dismissed the Writ Petition and the appeals were dismissed by Supreme Court in accordance with the opinion of the majority. Thus both Atiabari (supra) and Automobile (supra) dealt with fiscal measures.

In Hansraj Bagrecha v. State of Bihar & Ors., (supra) under section 5A of the Bihar Sales Tax Act 1959 as amended by the Bihar Finance Act, 1966 the purchase tax on goods declared under section 3A was to be levied at the point of purchase made from a person other than a registered dealer. By a Notification dated September 14, 1966 the Governor of Bihar declared jute as a commodity liable to purchase tax at the rate specified in the Notification. The appellant carried on business in jute. In the course of his business he purchased raw jute from producers in West Bengal, transported it to Kishanganj Railway Station in Bihar and then re-exported it to purchasers in West Bengal.

He also bought raw jute in Bihar and exported it to merchants and mill owners in West Bengal by rail from Kishanganj Railway Station. After the enactment of Ss. 3A and 5A the State Government issued a Notification dated December 26, 1967 purporting to exercise power under s. 42 of the Bihar Sales Tax Act, 1959 read with R. 31 B of the Bihar Sales Tax Rules, 1959 notifying that no person shall tender at any railway station mentioned in Sch. II any consignment of goods mentioned in Sch. 1 exceeding the quantity specified for transport to any place inside the State of Bihar and no person shall accept such tender in accordance with the conditions laid down in the said R. 31B. Under Sch. I jute exceeding 800 kg could not be tendered for transport without a despatch permit and Kishanganj was one of the railway stations mentioned in Sch.II. In July 1967 The Superintendent of Commercial Taxes prohibited the railway authorities from loading and despatching jute goods from any station in Purnea District without the production of a registration certificate. For non-production of such certificate the railway authorities refused to despatch from Kishanganj the jute goods booked by the appellant. The appellant moved a writ petition in the High Court of Patna challenging, inter alia, the validity of Ss. 3A and 5A of the Bihar Sales Tax Act and of R. 31B. The High Court dismissed the petition. With certificate the appeal was filed. In support of the petition it was urged (i) that Ss. 3A and 5A infringed the guarantee of freedom of trade under Article 301 of the

Constitution and since the amendment by the Finance Act, 1966 introducing these sections did not receive the assent of the President under Art. 304(b) the amendment was not save; (ii) that Ss. 3A and 5A were contrary to s. 15 of the Central Sales Tax, 1956 and accordingly void; (iii) that R. 31B framed by the State Government and the Notifica-

tion issued on December 26, 1967 was unauthorised and liable to be struck down. While striking down Rule 31B of the Bihar Sales Tax Rules 1959 and the Notification issued on December 26, 1967 as ultra vires, their Lordships observed that the Bihar Sales Tax Act was enacted by the legislature to consolidate and amend the law relating to the levy of tax on the sales and purchase of goods in Bihar. The State legislature was competent in enacting sales tax legislation to make a provision which was ancillary or incidental to any provision relating to levy, collection and recovery of Sales tax and Purchase tax. A provision which was made by the Act or by the rules which sought to prevent evasion of liability of tax on intrastate sale or purchase would, therefore, be within the competence of the legislature or the authority competent to make the rules. But the State legislature had no power to legislate for the levy of tax on transactions which were carried on in the course of inter-State trade or commerce or in the course of export.

Section 42 of the Bihar Sales Tax Act, 1949 prevented any person from transporting from any railway stations, steamer station, airport, post office or any other place any consignment of such goods exceeding the quantity specified with a view to ensuring that there was no evasion of tax payable under the Act. But the power under section 42 could only be exercised in respect of levy, collection and recovery of intrastate Sales or Purchase tax. It could not be utilised for the purpose of ensuring effective levy on inter-State Sales or Purchase Tax. When rule 31B prohibited transport of goods to any place outside the State of Bihar unless a certificate was obtained from the appropriate authority, it sought to prohibit transport of goods pursuant to transactions which might not even be of the nature of sale or purchase transaction; in any case it restricted transport pursuant to transactions in the course of inter-State trade and commerce. The operation of the rule was not restricted only to transactions in the course of intrastate trade and commerce but it authorised restrictions on inter-State transactions and on that account it was ultra vires and consequently the Notification issued on December 26, 1967 was also declared ultra vires. It would thus be seen that rule 31B and the Notification issued thereunder were struck down on the ground that they impeded inter-State trade, commerce and intercourse. It would also be clear that the Notification issued was shown to be a measure for preventing evasion of Sales Tax. In the instant case the Notification dated 28th December, 1985 clearly states that the declaration in the permit is indeed for the purpose of verification and assessment of tax payable.

In *Indian Cement v. State of A.P.*, A.I.R. 1988 S.C. 567 it was held that the restriction provided for in Article 301 can within the ambit be limited by law made by the Parliament and the State legislature and that no power is vested in the executive authority to act in any manner which affects or hinders the essence and thesis contained in the scheme of Part XIII of the Constitution which is against creation of economic barriers and/or pockets which would stand against the free flow of trade, commerce and intercourse. There could be no dispute that taxation was a deterrent against free flow. The reasonable restrictions contemplated in Part XIII have to be backed by law and not by

executive action provided the same are within the limitations prescribed under the scheme of Part XIII. In *Weston Electronics v. State of Gujarat*, A.I.R. 1988 S.C. 2038 it was reiterated that while a State legislature may enact a law imposing a tax on goods imported from other States as is levied on similar goods manufactured in that State the imposition must not be such as to discriminate between goods so imported and goods so manufactured and that taxing laws could be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they were not what could be termed to be compensatory taxes or regulatory measures. It is by now settled law that the object of Part XIII is not to make inter-State trade, commerce or intercourse absolutely free. Reasonable restrictions in public interest are permissible. Mandate against discrimination dictates the placing of inter-State trade, commerce and intercourse under no greater disadvantage than that borne by intra-State trade, commerce and intercourse. The primary object is to avoid barriers around the State borders. Fractionalisation of the country's trade, commerce and intercourse is to be avoided. However, this could not mean supporting trader's hostility towards regulations.

Coming to the impugned Notification and the two adopted Forms, namely Form XXVIII A and XXVIII B we find that there is no imposition of any tax by them. It is, therefore, pertinent to ask what this measure actually does. Does it directly and immediately restrain inter-State trade, commerce and intercourse? Does it place the intra-State carrier in a superior or advantageous position to that occupied by inter-State carrier? Does it restrict inter-State trade, commerce and intercourse? What are the direct and indirect effects of this measure and whether it amounts to a prohibition or a mere regulation? If it is a mere regulation then only the motive, purpose or policy of the State Government would be relevant. However, if it amounts to a prohibition that would not be relevant. If it has any effect on inter-State trade, we have to ascertain the essence or incidence thereof.

The Notification only prescribed the declaration Forms to be carried on a goods carrier or vessel for transporting goods through the State of Bihar. It does not prohibit transportation of the goods. Before the High Court it was not disputed that the Notification and the Forms were applicable in respect of goods being brought into the State and being sent out of the State in excess of the quantity notified under section 35 of the Act on every goods carrier or vessel. Thus, it would be applicable to the transport of all goods carried intra-State in Bihar, and inter-State to and through the State of Bihar. Further, clause (ii) of the Notification states that if the prescribed Form is found blank or does not contain all the required particulars it would be deemed to be a violation of the provisions of sub-section (2-a) of section 31 of the Act entailing penalties for the infraction thereof. Counsel for the State submits that Form XXVIII A (Permit) is meant for those who are not registered as dealers and it has to be obtained from office, while Form XXVIII B (Permit) can be filled up by the registered dealer himself. It is further submitted that the particulars are to be furnished by the persons and this would not affect the freedom of movement of the goods carried, and that it would facilitate transportation across and throughout the State of Bihar by showing the permit wherever required and thus, instead of hindering, it will promote free movement of the goods. We find no reason to disbelieve these statements. We are of the view that the permits will indirectly help assessment by ascertaining whether tax would be payable or not. The permit would enable the carrier to cross the State territory by producing it if and when needed and thus would promote rather than impede inter-State trade. A declaration may also serve the public purpose by finding out unauthorised trade or business to which freedom of trade, commerce and intercourse would not apply. Thus,

the impugned Notifi- cation has to be held to be a measure in exercise of a power incidental to the levy of Sales Tax and it could not be said to have been a colourable exercise of power to impede, restrict or barricade inter-State trade in respect of which Bihar State legislature has no power to legislate., It is, to our mind, clearly distinguishable from the facts in Bagrecha's case (supra). The commonness between the two is in insistence of despatch certificate in Bagrecha and a permit in the instant case, But there the similarity ends. While there was an ex facie purpose disclosed in the Bagre- cha prohibitory Notification, in the instant case the Noti- fication ex facie shows the purpose, namely, to prevent evasion and facilitate assessment of Sales Tax. The insist- ence on a permit in respect of goods entering the State in course of inter-State trade Could also be necessary. to distinguish the goods that would be transported across the territory of State and those which would reach the consump- tion point within the State, and to ascertain whether tax would be payable in the latter category. We are, therefore, of the view that the ratio decidendi of the Bagrecha case would not be applicable to the facts of the instant case. We are also of the view that the facts in Sodi Transport Co. v. State of U.P. & Ant., (supra) would be nearer to the facts of the instant case. In this case Section 28 of the Uttar Pradesh Sales Tax Act,. 1948 authorised the State Government to establish check-posts and barriers with a view to pre- venting evasion of tax or other dues payable under the Act in respect of sale of goods in the State. Section 28-B, added by the U.P. Act 1 of 1973, makes provision for the procedure to be followed by persons who intend to transport goods from outside the State by road through the State to destinations outside the State. It provides that when a vehicle coming from any place outside the State and bound for any other place outside the State passes through the State, the driver or the other person in-charge of such vehicle shall obtain in the prescribed manner a transit pass from the officer in charge of the first check post or barrier after his entry into the State and deliver it to the officer in charge of the check post or barrier before exit from the State. If he fails to do so it shall be presumed that the goods carried thereby have been sold within the State by the owner or person in-charge of the vehicle. Rule 87 of the Uttar Pradesh Sales Tax Rules 1948, inserted by the U.P. Sales Tax (First Amendment) Rules, 1977 provides that a person who wishes to obtain a transit pass shall make an application in the prescribed form to the officer in charge of the check post concerned. It also provides for the issue of private pass in triplicate and for inspection of the documents, consignments and goods to ensure that the state- ments are true.

The appellants who claimed to be engaged in the business of transport of goods belonging to others for hire and who in the course of their business had to carry goods from one State to another State along roads lying in the State of Uttar Pradesh, questioned the validity of section 28B of the Act and Rule 87 of the Rules by filing writ petitions before the High Court. Their contentions were (i) that section 28B and Rule 87 were outside the scope of entry 54 of the Sev- enth Schedule of the Constitution; (ii) that they infringed freedom of trade, commerce and intercourse guaranteed under Article 30 1 of the Constitution; and (iii) that they im- posed unreasonable restrictions on the freedom of trade guaranteed under Article 19(1)(g) of the Constitution. The High Court having upheld the constitutional validity of the impugned provisions appeals were preferred to this court by special leave.

In the writ petition under Article 32 of the Constitu- tion in addition to the contentions raised in the High Court, it was submitted that the rule of presumption con- tained in section 28B of the Act

virtually made a person, who had not actually sold the goods liable to pay Sales Tax, and that a transporter being just a transporter could not be treated as a dealer within the meaning of that expression as it was defined in the Act at its commencement. It was held, that the decision of the High Court upholding the constitutionality of section 28B of the U.P. Sales Tax Act, 1948 and rule 87 of the U.P. Sales Tax Rules, 1948 did not call for any interference. It was observed that the Act was traceable to entry 54 in List II of the Seventh Schedule to the Constitution. Section 28B of the Act and Rule 87 of the rules were enacted to make the law workable and to prevent evasion of tax. They fell within the ambit and scope of the power to levy the tax itself. When the legislature had the power to make a law with respect to any subject it had all the ancillary and incidental power to make that law effective.

We have seen that in *Bagrecha* what was insisted was a despatch certificate; in *Sodhi Transport* what was insisted was a transit pass while in the instant case what is being insisted is a permit disclosing particulars of the goods to be transported. While in *Bagrecha* it was not protected by 304(b) in *Sodhi Transport* it was. Article 304(b) clearly permits the State legislature to impose such a reasonable restriction on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest. The word 'with' involves an element having its situs in another State. It cannot be therefore said that the insistence on the disclosure in respect of goods entering Bihar from another State if otherwise legitimate would not be protected by Article 304(b). The question, therefore, arises whether the insistence on the permit in Forms XXVIII A or XXVIII B, as the case may be, pursuant to the impugned Notification can be said to be a reasonable measure adopted by the State legislature for the express purpose of preventing evasion and facilitating assessment of tax. The reasonableness has to be considered in the context of the effectiveness of the State's powers and the erosion, if any, of the powers of the Parliament in respect of inter-State trade, commerce and intercourse. In so far as carriage of goods vis-a-vis Sales Tax, it has also to be considered keeping in mind the fact that at some point goods imported from outside shall become assimilated with the general mass of property in a State and be subject to State taxation and the problem of determination as to when and where that point is reached. The motive of State regulation in exercise of incidental power to tax has to be scrutinised and laissez faire hostility towards trade regulations or taxation has to be kept within limits. The peculiarity of the local situation of a State may not also be entirely ignored. To decide whether the Notification impeded inter-State trade we have also to take into consideration the concept of inter-State trade and its continuity.

The High Court has taken the view that an importer has to send the form in advance to the consignor so that it could be filled up to accompany the goods and that would amount to a blockade placed on the free movement of goods in inter-State commerce. It should, however, be noted that the Notification has been issued and the Forms have been adopted by the State of Bihar and would be enforced in that State. There is nothing to indicate that the carrier would be penalised for not having filled up Forms XXVIII A or XXVIII B, as the case may be, while the goods were being carried through other States. They are to be filled up only when the carrier is within the territory of the State of Bihar. There is no provision to the effect that those who had not filled up the appropriate form at the earlier stages of the transit would not be allowed to fill up with the State. The particulars required are not such as would be impossible or difficult for the carrier to furnish. There is no prohibition on transportation of the goods themselves. We are accordingly of the view that there is



no direct and immediate restriction of inter- State trade, commerce or intercourse as a result of the requirement to fill up and carry the Forms. In other words, the continuity of the transport will not be obstructed or interrupted. Stoppage of the transporting vehicle for the purpose of obtaining and filling in the appropriate Form would, in our opinion, not amount to interruption but only a stoppage. A mere stoppage of the movement of the vehicle will not have any direct or immediate effect on the trade. The checking of documents or the filling in and submission of Forms and returns, detour to a public weigh-bridge and the like may be an inconvenience, and unless they are shown to be unreasonable and not in public interest the court may apply the maxim 'de minimise non curat lex'. A stoppage of the vehicle for roadside repair, for taking petrol, for allowing the driver to take rest or his meals would not naturally amount to interruptions of trade, commerce and intercourse. Public interest also will not allow transit regulations and allied measures to be violated, thwarted or evaded through the channel of inter-State trade, commerce and intercourse, unless of course the measures are shown to be unreasonable. In this view of the matter this case would squarely be covered by the decision in Sodhi Transport Co., (supra). We accordingly hold the Notification and adoption of the Forms to have been validly made in exercise of powers incidental to the power of levying Sales Tax, and that they are reasonable and in public interest, and not ultra vires the Articles 301 & 304 of the Constitution of India. In the result, the impugned judgment of the High Court is set aside, and the appeals are allowed, but without any orders as to costs. Learned counsel for the appellant states that the State in these appeals was interested in the law being laid down, and that even if the validity of the Notification is upheld it will not revive the proceedings against the respondent to realise the penalty. We have no doubt that the State will abide by it.

T.N.A.

Appeals allowed.