# International Tourist Corporation ... vs State Of Haryana & Ors.Andmanmohan Vig & ... on 15 December, 1980

## Equivalent citations: 1981 AIR 774, 1981 SCR (2) 364, AIR 1981 SUPREME COURT 774, 1981 TAX. L. R. 289, (1981) 2 SCR 364 (SC), 1981 2 SCR 364, (1981) CURLJ(CCR) 303, 1981 SCC (TAX) 103, 1981 UPTC 605, (1981) TAC 180, 1981 (2) SCC 318

## Author: O. Chinnappa Reddy

## Bench: O. Chinnappa Reddy, Ranjit Singh Sarkaria

PETITIONER:
INTERNATIONAL TOURIST CORPORATION ETC. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA & ORS.ANDMANMOHAN VIG & ORS.v.STATE OF HARY

DATE OF JUDGMENT15/12/1980

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
SARKARIA, RANJIT SINGH

CITATION:
1981 AIR 774 1981 SCR (2) 364
1981 SCC (2) 318
CITATOR INFO :
RF 1981 SC2030 (8)
RF 1983 SC 634 (16)
R 1983 SC1005 (7,8)
F 1983 SC1019 (93)
R 1983 SC1283 (5)
R 1988 SC2062 (10)
RF 1990 SC1637 (10)
RF 1991 SC1650 (4,6)

ACT:
Haryana Passengers and Goods Taxation Act, 1952-Whether section 3(3) interferes with the freedom of Inter-state Trade, Commerce and Intercourse and is therefore violative of Article 301 of the Constitution-Interpretation of Entries in the Constitution-Exclusive competence of Parliament, when can be claimed-Levy of tax at 60% of fare, whether

regulatory and compensatory in nature-Entry 56, List II of Seventh Schedule to the Constitution, scope of.

U.P. Motor Vehicles Taxation Act , scope of sections 4 and 5A- Section 9 of the U.P. Motor Gadi (Malkar) Adhiniyam, 1964 is not violative of Article 14 of the Constitution.

Bihar Taxation of Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, section 3(6), scope of.

HEADNOTE:

Dismissing the Appeals, S.L.Ps. and Writ Petitions the Court

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HELD : (1) Where the competing entries are an Entry in List II and Entry 97 in List I the Entry in the State list must be given a broad and plentiful interpretation. In a Federal Constitution like ours where there is a division of legislative subjects but the residuary power is vested in Parliament; such residuary power cannot be so expansively interpreted as to whittle down the power of the State legislature. That might affect and jeopardise the very federal principle. The federal nature of the constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle state autonomy must be rejected. Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislative must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those lists. [372 A-D, 373C-D]

The Haryana Passengers and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by Entry 56 of List II. The omission of reference to National Highways in Entry 30 and Entry 89 is of signifi-

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cance and indicates that the subject of "passengers and goods" carried, on National Highways is reserved for inclusion in the State List. A consideration of Entries 22, 23, 24, 29, 30 and 89 of List I and Entry 56 of List II makes it clear that taxes on passengers and goods carried on National Highways also fall directly and squarely within and are included in Entry 56 of List II.

[373 D-G & 374 C]

Attorney-General for Ontario v. Attorney-General for the Dominion, 1896 A.C. 348 @ 360-361; A. L. S. P. L. Subrahmanyan Chettiar v. Muttuswami Goundan, A.I.R. 1941 Federal Court 47 @ 55 and Manikkasundara Bhattar & Ors. v.

R. S. Nayudu & Ors., [1946] F.C.R. 67 @ 88, quoted with approval.

(2) The power exercisable under Entry 56 of List II is the power to impose taxes which are in the nature of regulatory and compensatory measures. The Court is not bound by any statement made by or on behalf of the Executive Government on a question of the legislative intent or nature of an enactment. What the legislature intended an enactment to be need not necessarily be what the Government says it is. It is a matter of construction, in the light of several attendant circumstances including the source of the legislative power under the Constitution to make the particular law. [374 B-C, D-E]

Atiabari Tea Co. Ltd. v. State of Assam & Ors., [1961] 1 S.C.R. 809; The Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan & Ors. [1963] 1 S.C.R. 491 and Bolani Ores Ltd. etc. v. State of Orissa etc., [1975] 2 SCR 138, followed.

(3) To say that the nature of a tax is of a compensatory and regulatory nature is not to say that the measure of the tax should be proportionate to the expenditure incurred on the regulation provided and the services rendered. If the tax were to be proportionate to the expenditure on regulation and service it would not be a tax but a fee. While in the case of a fee it may be possible to precisely identify and measure the benefits received from the Government and levy the fee according to the benefits received and the expenditure incurred, in the case of a regulatory and compensatory tax it would ordinarily be well nigh impossible to identify and measure, with any exactitude, the benefits received and the expenditure incurred and levy the tax according to the benefits received and the expenditure incurred. What is necessary to uphold a regulatory and compensatory tax is the existence of a specific, identifiable object behind the levy and a nexus between the subject and the object of the levy. If the object behind the levy is identifiable and if there is sufficient nexus between the subject and the object of the levy, it is not necessary that the money realised by the levy should be put into a separate fund or that the levy should be proportionate to the expenditure. There can be no bar to an intermingling of the revenue realised from regulatory and compensatory taxes and from other taxes of a general nature nor can there be any objection to more or less expenditure being incurred on the object behind the compensatory and regulatory levy than the realisation from the levy. [374 F-H, 375 A-C]

The maintenance of highways other than the National Highways is exclusively the responsibility of the State Government. In view of the provisions of the National Highways Act, the State Government is not altogether devoid of responsibility in the matter of development and maintenance of a National Highway, though the primary

responsibility is that of the Union Government.
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It is under a statutory obligation to obey the directions given by the Central Government with respect to the development and maintenance of National Highways and may enter into an agreement to share the expenditure. In developing and maintaining that part of the Highway which is within a municipal area State Government is surely facilitating the flow of passengers and goods along the national highway. Apart from this, other facilities provided by the State Government along all highways including national highways such as lighting, traffic control, amenities for passengers, halting places for buses and trucks are available for use by everyone including those travelling along the national highway. [376 A, C-F]

The State Government does confer benefits and renders service in connection with traffic moving along national highway. Therefore, there is sufficient nexus between the tax and passengers and goods carried on national highways to justify the imposition. [376 G-H]

(4) It is now settled that regulatory and compensatory taxes are outside the purview of Article 301 of the Constitution. In the instant cases, the tax is limited to the fare and freight for the distance within the State of Haryana. Therefore, section 3(3) of the Haryana Passengers and Goods Taxation Act is not violative of Article 301 of the Constitution. [377 A, 378 B]

Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan, [1963] 1 S.C.R. 491 and M/s. Sainik Motors Jodhpur & Ors. v. The State of Rajasthan, [1962] 1 S.C.R. 517 @ 526; applied.

(5) Under sections 4 and 5A of the Uttar Pradesh Motor Vehicles Taxation Act, tax is levied on the basis of their user in the State of Uttar Pradesh and not because they are "kept" in the State of Uttar Pradesh. [378 G-H]

State of Mysore & Ors. v. S. Sundaram Motors P. Ltd. A.I.R. 1980 S.C. 148, distinguished.

(6) The levy made on vehicles passing through Uttar Pradesh from a place outside Uttar Pradesh is not violative of Article 14 of the Constitution. The tax is payable because of the user of the roads while the question of picking up and setting down passengers and goods at wayside stations en route is dependant on the conditions of the permit and the reciprocal agreements between the States. One has nothing to do with the other. [379 B-C]

(7) Entry 56 of List II cannot be read in conjunction with Entry 26. The taxing power of the State Legislature in regard to passengers and goods carried by roads or inland waterways is to be found in Entry 56. Therefore, such taxing power is not controlled by another Entry in List II which is unrelated to taxing power. The taxable event is the carrying of goods and passengers on roads within the State thereby making use of the facilities provided by the State. [379 F-

G]

(8) Section 9 of the Uttar Pradesh Motor Gadi (Malkar) Adhiniyam, 1964 is not violative of Article 14 of the Constitution. The rate of lump-sum tax is relatable to the freight carried or the period of the journey or to both.

[380 A, F-G]

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(9) Under section 3(6) of the Bihar Taxation of Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, tax can be levied where passengers or goods are carried from any place outside the State to any place outside the State because the vehicle passes through the State of Bihar. A journey from a place outside the State to another place outside the State, but through the State, involves a journey from a place outside the State to a place inside the State and a journey from a place inside the State to a place outside the State. [380 G-H, 381 F-G]

Pritpal Singh v. State of U.P., (1973) U.P. Tax Cases 376, partly overruled on this question only.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 638, 656, 786 and 2632 of 1979.

Appeals by Special Leave from the Judgment and Order dated 9-1-1979 of the Punjab & Haryana High Court in Civil Writ Nos. 3870/77, 1564/77, 4080/77 and 3631/77.

WITH SPECIAL LEAVE PETITION (CIVIL) Nos. 8961-62/79. From the Judgment and Order dated 7-10-1980 of the Allahabad High Court in Civil Writ Petition No. Nil.

AND WRIT PETITION NOS.: 183 of 1977, 3967 of 1978, 5116 to 5143, 5151-5159 of 1980, 657, 910-913, 922-23, 1039-40, 1192, 1344, 1347 of 1979, 324, 421, 451, 820, 880, 881, 1152, 1153, 1154, 1207, 1404, 1426, 1541, 1542, 1561, 1563, 1650, 1651, 1714, 1715, 1716, 1717, 1730, 1731, 1732, 1855, 1948-49, 2032-34, 2162, 2164, 2165, 2415, 2416, 2418, 2419, 2420, 2421, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2636, 2638, 2639-2640, 2641, 3015-30, 3043-3044, 3054, 3055-3056, 3456-3457, 3703, 3704, 3705-3708, 3712-3715, 3716, 3803, 3823, 4326, 4333, 4334, 4335, 4336, 4337-38, 4532, 4534, 4682, 4683, 4684, 4685, 4708, 4709-4711, 5500, 5506, 5507, 5495-5497, 5505, 5508-9, 5426, 5416-20, 5427, 5415, 5526-27, 5536, 5333, 3289, 4347, 4348, 4753, 5629-33/80, 364, 337/72, 3822, 2160, 2164, 636, 1429, 1782-83, 2163 and 2124/80.

(Under Article 32 of the Constitution).

Soli J. Sorabji, B. R. Kapoor and R. A. Gupta for the Appellant in CA 639/79.

Y. S. Chitale (Dr.) and Indra Makwana for the Appellant in CA 656/79.

Indra Makwana and Sushil Kumar Jain for the Appellant in CA 786/79.

P. R. Mridul, B. R. Kapoor, Miss Renu Gupta, R. Satish Vig and N. N. Sharma for the Appellant in CA 2632 and Petitioners in SLP Nos. 8961-8962/80.

K. G. Bhagat, D. Goburdhan, M. N. Shroff, Miss A. Subhashini, M. Veerappa, S. K. Gambhir, Gijay Hansonia, R. K. Mehta, B. D. Sharma, N. Hansonia and S. Markandeya for the Respondent (State) in all the matters.

L. N. Sinha Att. Genl. and S. Markandeya for the Respondent (State of Uttar Pradesh).

B. R. Kapoor, Renu Gupta, S. R. Srivastava, N. N. Sharma, U. S. Prasad, Mrs. M. Qamruddin, S. Markandeya and M. P. Jha for the Petitioners.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. Civil Appeals Nos. 638, 656, 786 and 2632 of 1979 may be dealt with first as the principal submissions were made in these cases. The appellants are transport operators plying stage carriages and contract carriages between Delhi and Jammu and other places in the State of Jammu and Kashmir. Their carriages follow National Highways 1 and 1-A. They operate directly between Delhi and the other terminus in the State of Jammu and Kashmir, that is to say, they do not pick up or set down passengers or goods en route. In the course of the journey it is necessary for them to travel through the State of Haryana as part of National Highway No. 1 passes through that State. The State of Haryana levies a tax on passengers and goods carried by motor vehicles, which we may call, for brevity's sake, 'passengers and goods tax'. The levy is made under the provisions of the Haryana Passengers and Goods Taxation Act 1952. Sec. 3(1) of the Act empowers the levy of a tax, to be paid to the State Government, at such rates not exceeding 60% of the value of the fare or freight as the case may be, on all passengers and goods carried by a motor vehicle other than a private carrier. In the case of contract carriages and stage carriages the State Government is authorised to accept a lump-sum in lieu of the tax chargeable on passengers and goods respectively, in the manner prescribed. Sec. 3(3) deals with situations where a route lies partly within and partly outside the State of Haryana. It reads as follows :

> "S. 3(3). When passengers and goods are carried by a motor vehicle on a 'joint route', the tax shall be payable in respect of fare or freight for the distance covered within the State at the rate laid down in this section.
>
> Explanation : For the purpose of this sub-section, 'joint route' shall mean a route which lies partly in the State of Haryana and partly in some other State, or Union Territory."

The appellants question the vires of Sec. 3(3) of the Haryana Passengers and Goods Taxation Act in so far as it permits the levy of tax on passengers and goods carried by their carriages plying entirely along the National Highways. The Writ Petitions filed by them in the High Court of Punjab & Haryana were dismissed, the High Court upholding the vires of Sec. 3(3). Hence these appeals.

Shri Soli Sorabji and Dr. Chitale who appeared for the appellants submitted that it was incompetent for the State Legislature to levy the passengers and goods tax on passengers and goods carried on National Highways. It was said : that Parliament alone had exclusive jurisdiction under Entry 23 read with Entry 97 of List I of the Seventh Schedule to the Constitution to legislate in respect of National Highways, including levy of taxes on goods and passengers carried on National Highways. It was further argued that Entry 56 of List II of Seventh Schedule to the Constitution which empowered the levy of taxes on goods and passengers carried by road merely authorised the levy of taxes which were of regulatory and compensatory nature. Consequently the taxing power of the State Legislature could only be exercised in respect of passengers and goods carried on roads maintained by the State Government and not on roads maintained by the Union Government. Under no circumstances, it was emphasised, could it be said that the levy of a tax which was as much as 60% of the fare was regulatory and compensatory in its nature. It was also submitted that Sec. 3(3) of the Haryana Act interfered with the freedom of Inter-state Trade, Commerce and Intercourse and was, therefore, violative of Art. 301 of the Constitution. It was not saved by Art. 304(b) as its provisions could not be described as reasonable restrictions within the meaning of Art. 304(b).

The constitutional and statutory provisions which require to be considered may now be set out. Entry 23 and Entry 97 of List I of the Seventh Schedule to the Constitution are as follows :

> "23. Highways declared by or under law made by Parliament to be national highways."
>
> "97 Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

Entries 22, 24, 25, 29, 30 and 89 of List I also throw light, as we will presently show and they are as follows :

> "22. Railways."
>
> "24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways."
>
> "25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by State and other agencies."
>
> "29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies."

"30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels."

"89. Terminal taxes on goods or passengers, carried by railway, sea or air, taxes on railway fares and freights."

Entry 13, Entry 56 and Entry 57 of List II are as follows :

"13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles."

"56. Taxes on goods and passengers carried by road or on inland waterways."

"57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III."

The National Highways Act 1956 provides for the declaration of certain highways to be National Highways. Sec. 2(1) of the Act declares the Highways specified in the Schedule 'except such parts thereof as are situated within any municipal area' to be National Highways. Sec. 3 defines 'municipal area' as meaning "any municipal area with a population of 20,000 or more, the control or management of which is entrusted to a Municipal Committee, a Town Area Committee, a Town Committee or any other authority". Sec. 4 vests all National Highways in the Union. Sec. 5 makes it the responsibility of the Central Government "to develop and maintain in proper repair all National Highways", but empowers the Central Government to direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions as may be specified, also be exercisable by the concerned State Government. Section 6 further empowers the Central Government to give directions to the Government of any State as to the carrying out in the State of any of the provisions of the Act or of any rule, notification or order made thereunder. Sec. 8 authorises the Central Government to enter into an agreement with the Government of any State or with any municipal authority in relation to the development or maintenance of the whole or any part of a National Highway situated within the State or within a municipal area, and any such agreement it is said, may provide for the sharing of expenditure by the respective parties thereto.

We have already extracted Sec. 3(3) of the Haryana Passengers and Goods Taxation Act 1952. It is not necessary to refer to the other provisions of the Act.

The submission of Shri Sorabji relying on Union of India v. H. S. Dhillon and Satpal & Co. etc. v. Lt. Governor of Delhi & Ors., was that there was nothing in the Constitution to prevent Parliament from combining its power to legislate with respect to any matters enumerated in Entries 1 to 96 of List I with its power to legislate under Entry 97 of List I and, so, if Entries 23 and 97 were read together, the power to legislate with respect to taxes on passengers and goods carried on National Highways was within the exclusive legislative competence of Parliament. The observation in Union of India v.

H. S. Dhillon(1) on which reliance was placed by the learned counsel was :

> "However, assuming that the Wealth Tax Act, as originally enacted, is held to be legislation under entry 86 List I, there is nothing in the Constitution to prevent Parliament from combining its powers under entry 86. List I with its powers under entry 97. There is no principle that we know of which debars Parliament from relying on the powers under specified entries 1 to 96, List I, and supplement them with the powers under entry 97 List I and art. 248, and for that matter powers under entries in the Concurrent List."

The observation in Dhillon's case was quoted with approval in Satpal & Co. etc. v. Lt. Governor of Delhi & Ors., and a criticism that Dhillon's case was no longer good law in the light of His Holiness Kesavananda Bharathi Sripadagalavaru v. State of Kerala, based on the commentary of Mr. Seeravai was repelled.

There is a patent fallacy in the submission of Shri Sorabji. Before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislative must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III and in the case of a tax if it is not mentioned in either of those lists. In a Federal Constitution like ours where there is a division of legislative subjects but the residuary power is vested in Parliament, such residuary power cannot be so expansively interpreted as to whittle down the power of the State legislature. That might affect and jeopardize the very federal principle. The federal nature of the constitution demands that an interpretation which would allow the exercise of legislative power by Parliament pursuant to the residuary powers vested in it to trench upon State legislation and which would thereby destroy or belittle state autonomy must be rejected. In Attorney-General for Ontario v. Attorney-General for the Dominion, it was observed by House of Lords at p. 360-361 :

> "....the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces".

In A. L. S. P. P. L. Subrahmanyan Chettiar v. Muttuswami Goundan the Federal Court said at (p. 55) :

> "But resort to that residual power should be the very last refuge. It is only when all the categories in the three Lists are absolutely exhausted that one can think of falling back upon a nondescript."

Again in Manikkasundara Bhattar & Ors. v. R. S. Nayudu & Ors., the Federal Court observed (at p.88) :

> "In the Indian Constitution Act, s. 104 has been inserted for the very purpose of enabling legislation to be enacted in respect of subjects omitted from the three Lists in the Seventh Schedule. There is not therefore the same necessity for Courts in India to find that a subject must be comprised within the entries in the Lists. But when there is a choice between two possible constructions of an entry or entries, one of which will result in legislative power being conferred by some entry or entries in the Lists and the other in a finding of no existing power, but if legislation is required that recourse must be had to s. 104, the first construction should on principles analogous to those applied to the Canadian Constitution be preferred".

It is, therefore, but proper that where the competing entries are an entry in List II and entry 97 of List I, the entry in the State list must be given a broad and plentiful interpretation.

Entry 56 of List II refers to taxes and goods on passengers carried by road or on inland waterways. It does not except National Highways and National Waterways, so declared by law made pursuant to Entry 23 and Entry 24 of List I. While it is to be noticed that Entries 22, 23, 24, 25 and 29 specify Railways, National Highways, National Waterways and Maritime Shipping, Navigation and Airways respectively, Entry 30 which refers to carriage of passengers and goods specifies Railways, Sea, Air and National Waterways only but not National Highways. Again entry 89 which refers to Terminal Taxes on goods or passengers specifies Railways, Sea or Air but not National Highways. The omission of reference to National Highways in Entry 30 and entry 89 is of significance and indicates that the subject of 'passengers and goods' carried on National Highways is reserved for inclusion in the State List. A consideration of these several entries appears to us to make it clear that taxes on passengers and goods carried on National Highways also fall directly and squarely within and are included in entry 56 of List II.

We proceed to the next submission of the learned counsel for the appellants that the legislative power to impose taxes under entry 56 of List II was of a regulatory and compensatory nature and consequently the taxing power of the State Legislature could only be exercised with respect to goods and passengers carried on roads, maintained by the State Government and not on National Highways which were maintained by the Union Government. In the counter affidavit filed by Shri Rajender Singh, Taxation Commissioner, on behalf of the State of Haryana, it was claimed that the tax was not of a regulatory and compensatory nature but that it was a general revenue measure. This position was abandoned during the course of argument and Shri Bhagat learned counsel for the State of Haryana conceded that the tax was of a regulatory and compensatory nature. Nor, of course, is the Court bound by any statement made by or on behalf of the Executive Government on a question of the legislative intent or nature of an enactment, what the legislature intended an enactment to be need not necessarily be what the Government says it is. It is a matter of construction, in the light of several attendant circumstances including the source of the legislative power under the Constitution to make the particular law. We have held that the Haryana Passengers and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by entry

56 of List II. Having regard to Atiabari Tea Co. Ltd., v. State of Assam & Ors., The Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan & Ors., and Bolani Ores Ltd. etc. v. State of Orissa etc., it has to be held that the power exercisable under entry 56 of List II is the power to impose taxes which are in the nature of regulatory and compensatory measures. In the last of the cases mentioned it was said by the Court, "Entry 57 of List II empowers legislation in respect of taxes on vehicles ..... suitable for use on roads ..... the power exercisable under Entry 57 is the power to impose taxes which are in the nature of compensatory and regulatory measures". What was said about entry 57 is true of entry 56 too. But to say that the nature of a tax is of a compensatory and regulatory nature is not to say that the measure of the tax should be proportionate to the expenditure incurred on the regulation provided and the services rendered. If the tax were to be proportionate to the expenditure on regulation and service it would not be a tax but a fee.

While in the case of a fee it may be possible to precisely identify and measure the benefits received from the Government and levy the fee according to the benefits received and the expenditure incurred, in the case of a regulatory and compensatory tax it would ordinarily be well nigh impossible to identify and measure, with any exactitude, the benefits received and the expenditure incurred and levy the tax according to the benefits received and the expenditure incurred. What is necessary to uphold a regulatory and compensatory tax is the existence of a specific, identifiable object behind the levy and a nexus between the subject and the object of the levy. If the object behind the levy is identifiable and if there is sufficient nexus between the subject and the object of the levy, it is not necessary that the money realised by the levy should be put into a separate fund or that the levy should be proportionate to the expenditure. There can be no bar to an inter-mingling of the revenue realised from regulatory and compensatory taxes and from there taxes of a general nature nor can there be any objection to more or less expenditure being incurred on the object behind the compensatory and regulatory levy than the realisation from the levy. In the Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan & Ors., (Supra) this Court observed (at p.536-537) :

> "Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor do we think that it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used to providing any facilities. ..... actual user would often be unknown to tradesmen and such user may at some time be compensatory and at others not so. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done. Nor do we think that it will make any difference that the money collected from the tax is not put into a separate fund so long as facilities for the trades people who pay the tax are provided and the expenses incurred in providing them are borne by the State out of whatever source it may be .....We were addressed at some length on the distinction between a tax a fee and an excise duty. It was also pointed out to us that the taxes raised under the Act were not specially ear-marked for the building or maintenance of roads. We do not think that these considerations necessarily determine whether

the taxes are compensatory taxes or not. We must consider the substance of the matter".

There cannot be the slightest doubt that the State of Haryana incurs considerable expenditure for the maintenance of roads and providing facilities for the transport of goods and passengers within the State of Haryana. The maintenance of highways other than the National Highways is exclusively the responsibility of the State Government. While the maintenance of National Highways is the responsibility of the Union Government, under Sec. 5 of the National Highways Act, that very provision empowers the Central Government to direct that any function in relation to the development and maintenance of a National Highway shall also be exercisable by the concerned State Government. Sec. 6 further empowers the Central Government to give directions to the State Government as to the carrying out of the provisions of the Act and Sec. 8 authorises the Central Government to enter into an agreement with the State Government in relation to the development and maintenance of the whole or part of a National Highway situated within the State including a provision for the sharing of expenditure. Therefore, the State Government is not altogether devoid of responsibility in the matter of development and maintenance of a national highway, though the primary responsibility is that of the Union Government. It is under a statutory obligation to obey the directions given by the Central Government with respect to the development and maintenance of national highways and may enter into an agreement to share the expenditure. That part of the highway which is within a municipal area is excluded from the definition of a national highway and therefore, the responsibility for the development and maintenance of that part of the highway is certainly on the State Government and the Municipal Committee concerned. Since the development and maintenance of that part of the highway which is within a municipal area is equally important for the smooth flow of passengers and goods along the national highway it has to be said that in developing and maintaining the highway which is within a municipal area, the State Government is surely facilitating the flow of passengers and goods along the national highway. Apart from this, other facilities provided by the State Government along all highways including national highways, such as lighting, traffic control, amenities for passengers, halting places for buses and trucks are available for use by everyone including those travelling along the national highways. It cannot therefore, be said that the State Government confers no benefits and renders no service in connection with traffic moving along national highways and is, therefore, not entitled to levy a compensatory and regulatory tax on passengers and goods carried on national highways. We are satisfied that there is sufficient nexus between the tax and passengers and goods carried on national highways to justify the imposition.

The last of the submissions was that the levy of tax on passengers and goods passing through the State of Haryana from a place outside the State to a place outside the State interfered with the freedom of trade, commerce and intercourse throughout the territory of India and so Sec. 3(3) of the Haryana Act was violative of Art. 301 of the Constitution. We are unable to accept this submission. It is now well settled that regulatory and compensatory taxes are outside the purview of Art. 301 of the Constitution. In Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan & Ors., (Supra) the question arose whether the provision of the Rajasthan Motor Vehicles Taxation which authorised the levy of tax even on stage carriages which ran for the most part on a route within the State of Ajmer but had necessarily to pass through a small strip of territory in the State of Rajasthan could

be said to contravene Art. 301 of the Constitution. The Court, by a majority, upheld the validity of the Rajasthan Statutory provision and observed :

> "Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Art. 301 and such measures need not comply with the requirements of the proviso to Art. 304(b) of the Constitution".

The identical question was considered in M/s. Sainik Motors, Jodhpur & Ors. v. The State of Rajasthan, in connection with a similar provision in the Rajasthan Passengers and Goods Taxation Act which provided that where passengers and goods were carried by motor vehicle from any place outside the State to any place within the State or from any place within the State to any place outside the State, tax was leviable on the fare or freight at a rate proportionate to the distance covered in the State when compared with the total distance of the journey. The Constitution Bench of the Court holding that there was no violation of Art. 301, observed :

> (at p. 526) "We are also of opinion that no inter-State trade, commerce or intercourse is affected. The tax is for purposes of State, and falls upon passengers and goods carried by motor vehicles within the State. No doubt, it falls upon passengers and goods proceeding to or from an extra-State point but it is limited only to the fare and freight proportionate to the route within the State. For this purpose, there is an elaborate scheme in R. 8-A to avoid a charge of tax on that portion of the route which lies outside the State. There is thus no tax on fares and freights attributable to routes outside the State except in one instance which is contemplated by the proviso to sub-s. (3) of s. 3 and to which reference will be made separately. In our opinion, the levy of tax cannot be said to offend Arts. 301 and 304 of the Constitution". As in the case of M/s. Sainik Motors, Jodhpur & Ors. v. The State of Rajasthan, (supra) in the cases before us also the tax is limited to the fare and freight for the distance within the State of Haryana. We, therefore, hold that S. 3(3) of the Haryana Passengers and Goods Taxation Act is not violative of Art. 301 of the Constitution. As a result of our discussion Civil Appeals Nos. 638, 656, 786 and 2632 of 1979 are dismissed with costs.
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> In the remaining cases, apart from the principal points which we have discussed above some other points also were raised which we shall now proceed to consider. One of the submissions of Shri Mridul who appeared in the Special Leave Petitions was that Sections 4 and 5A of the Uttar Pradesh Motor Vehicles Taxation Act stipulated two cumulative taxable events both of which had to be satisfied before tax could be levied on a vehicle plying under a permit granted by an authority having jurisdiction outside Uttar Pradesh. The two taxable events according to Shri Mridul were (1) user within the territories of Uttar Pradesh and (2) user in any public place in Uttar Pradesh. The argument was that since the vehicles did not pick up or set down passengers or goods at any place within the State of Uttar Pradesh there was no user as contemplated by Sections 4 and 5A and therefore, the taxable events had not

taken place. Reliance was placed by the learned counsel on our decision in State of Mysore & Ors. v. S. Sundaram Motors P. Ltd. We do not think that the case relied on by Shri Mridul is of any assistance to him. The question there was whether a motor vehicle passing through the territory of the State of Mysore and making short halts for rest, food etc. during transit on the way from Bombay to its destination in Tamil Nadu was a motor vehicle 'kept' in the State of Mysore. Our answer depended on the meaning to be given to the word 'kept', since under the Mysore Motor Vehicles Taxation Act motor vehicles had to be 'kept in the State of Mysore' if tax was to be levied. We held that the vehicles which merely passed through the State of Mysore were not "kept in the State of Mysore". The language of Sections 4 and 5A of the Uttar Pradesh Motor Vehicles Taxation Act is entirely different from the language of the Mysore Act. The Uttar Pradesh tax is levied on the vehicles on the basis of their user in the State of U.P. and not because they are 'kept' in the State of Uttar Pradesh. There is no force in this submission of Shri Mridul.

Shri Mridul's second submission was that the levy made on vehicles passing through Uttar Pradesh from a place outside, to a place outside Uttar Pradesh was violative of Art. 14 since these vehicles were not allowed to pick up or set down passengers or goods at any place within Uttar Pradesh, unlike vehicles holding permits granted by authorities having jurisdiction within Uttar Pradesh which were permitted to pick up and set down passengers, notwithstanding the fact that the tax payable by all of them was the same. Thus it was said unequals were treated alike for the purpose of payment of tax. We see no force in this submission. The tax is payable because of the user of the roads while the question of picking up and setting down passengers and goods at wayside stations en route is dependant on the conditions of the permit and the reciprocal agreements between the States. The one has nothing to do with the other and we are unable to see any violation of Art. 14.

Shri Kapoor appearing for the petitioners in a large majority of Writ Petitions raised a number of contentions. One of the submissions was that entry 56 of List pursuant to which the various passengers and Goods Taxation Acts were made should not be read in isolation but should be read alongside other entries in List II particularly along with entry 26 which was "trade and commerce within the State subject to the provisions of entry 33 of List III". Shri Kapoor also suggested that entry 23 of List I should be read with entry 42 of List I which was: "Inter-state trade and commerce". The submission of Shri Kapoor was that if entries

26 and 56 of List II were read together and if entries 23 and 42 were similarly read together separately, it would atone become clear that the power to levy tax on passengers and goods under entry 56 was to be confined to passengers and goods carried within the State. We do not agree with the submission. There is no justification for reading entry 56 of List II in conjunction with entry 26. The taxing power of the State legislature in regard to passengers and goods carried by roads or on inland waterways is to be found in entry 56 and there is no warrant for holding that such taxing power is controlled by another entry in List II which is unrelated to taxing power. Shri Kapoor

suggested that no taxable event occurred within the State when goods were merely transported through the State in the course of inter- state trade and commerce. The obvious answer is that the taxable event is the carrying of goods and passengers on roads within the State thereby making use of the facilities provided by the State.

One of the submissions of Shri Kapoor was that Sec. 9 of the Uttar Pradesh Motor Gadi (Mal-Kar) Adhiniyam 1964 which provided for the payment of a lump-sum in lieu of the amount of tax that might be payable was hit by Art. 14 of the Constitution. He relied on a full bench decision of the High Court of Himachal Pradesh in M/s. Gainda Mal Charanji Lal v. The State of Himachal Pradesh & Ors. That was a case where the Act provided for the payment of a flat lump-sum of Rs. 1500/- per annum in lieu of tax, irrespective of the freight carried or the period during which the vehicle was operated within the State. The lump-sum levy was held to be violative of Art. 14. We are not concerned with such a situation under the Uttar Pradesh Motor Gadi Mal-Kar Adhiniyam. Under Sec. 9 of the Uttar Pradesh Adhiniyam the State Government is empowered to accept a lump-sum in lieu of the amount of tax that may be payable for such period as may be agreed upon by the operator. Rule 5 of the Uttar Pradesh Motor Gadi Mal-Kar Rules 1964 provides that the lump-sum in lieu of tax shall be determined in accordance with the rates specified in the third schedule. The second item of the third schedule prescribes the rate of lump-sum tax for 'public goods vehicles', the permits in respect of which have been granted by a Regional or State Transport authority of the State including vehicles of other States authorised to ply under counter-signatures granted by a Regional or State Transport Authority of the State for any of the Hill roads, as Rs. 3.50 per month per quintal of authorised carrying capacity of the vehicles in respect of agricultural produce, minerals and petroleum goods, and Rs. 5.60 per month per quintal of the authorised carrying capacity of the vehicle in the case of other goods. The third item of third schedule deals with goods vehicles of other States authorised to ply under temporary permits granted by a Regional or State Transport authority of another State for an inter-state route partly lying in the State for a period not exceeding 15 days. The lump-sum to paid in the case of public goods vehicles is Rs. 4 per day for the number of days covered by the journeys to be performed within the State in respect of agricultural produce, minerals and petroleum goods and Rs. 6.40 per day in respect of other goods. The rate of lump-sum tax is thus seen to be relatable to the freight carried or the period of the journey or to both. There is no violation of Art. 14.

In the Bihar cases Shri Kapoor learned counsel for the petitioners raised the contention that on the terms of Sec. 3(6) of the Bihar Taxation of Passengers and Goods (Carried by Public Service Motor Vehicles) Act 1961, no tax was leviable on passengers or goods carried by a public vehicle from any place outside the State of Bihar to any place outside the State merely because the vehicle happened to pass through Bihar in the course of its journey. S. 3(6) reads as follows:

> "Where passengers or goods are carried by a public service motor vehicle from any place outside the State to any place within the State, or from any place within the State to any place outside the State, the tax shall be payable in respect of the distance covered within the State at the rate provided in sub-section (1) ..."

The learned counsel contrasted the language of Sec. 3(6) of the Bihar Act with the language of the Explanation to Sec. 3(1) of the Uttar Pradesh Motor Gadi (Mal-Kar) Adhiniyam, 1964, which is as follows:

> "Explanation I-Where goods are carried by a public goods vehicle-
>
> (a) from any place outside the State to any place outside the State; or
>
> (b) from any place within the State to any place outside the State; or
>
> (c) from any place outside the State to any place within the State; an amount bearing the same proportion ..... ".

The omission of a clause similar to clause (a) of Explanation I to Sec. 3(1) of the Uttar Pradesh Motor Gadi (Mal-Kar) Adhiniyam, 1964, according to the learned counsel, made it clear that tax was not leviable where passengers or goods were carried from any place outside the State to any place outside the State merely because the vehicle passed through the State of Bihar. Reliance was placed by the learned counsel on a decision of the Allahabad High Court in Pritpal Singh v. State of U.P. We do not agree with the submission. A journey from a place outside the State to another place outside the State, but through the State, involves a journey from a place outside the State to a place inside the State and a journey from a place inside, the State to a place outside the State. Clauses (b) and (c) of Explanation I to Sec. 3(1) of the Uttar Pradesh Act together, cover, of their own force, the situation contemplated by clause (a) also. Clause (a) however, appears to have been added by way of caution and because of the decision of the Allahabad High Court in the case on which the learned counsel relied. The Allahabad High Court was dealing with a provision which at that time was analogous to the present Bihar provision. We do not agree with the view expressed by the Allahabad High Court in that case on this question only.

Based on our judgment in State of Mysore & Ors. V. Sundaram Motors P. Ltd. (supra), it was argued in some of the cases that where the motor vehicle merely passed through the State, no taxable event occurred and therefore, tax could not be levied. In the Motor Vehicle Taxation Acts of several States the charging section generally runs as follows : "There shall be levied and collected on all motor vehicles used or kept for use in the State a tax at the rate fixed by the State Governments..... ". In these cases the taxable event is 'keeping for use' and alternately user within the State. Once the motor vehicle is used within the State the taxable event occurs and the tax is attracted. The decision in State of Mysore & Ors. v. Sundaram Motors P. Ltd., (supra) has no application to such cases as already pointed out by us while dealing with a similar submission of Shri Mridul in the Uttar Pradesh cases.

In some States, the Motor Vehicles Taxation Acts provide for payment of tax in the event only of vehicles being "kept for use in the State" and provide for no other alternative taxable event. In such cases the principle of our decision in State of Mysore & Ors. v. Sundaram Motors P. Ltd., (supra) may be attracted. It will depend on an interpretation of the provisions of the relevant statutes. But we do not propose to say anything more about such cases as we cannot give any relief, even if we

agree with the petitioners, in applications under Art. 32 of the Constitution.

In the other cases from the States of Gujarat, Maharashtra, West Bengal, Punjab, Haryana, Karnataka, Bihar, Madhya Pradesh, Rajathan, Orissa, no other points were raised but the relevant provisions of the Motor, Vehicles Taxation Acts and the Taxation on Passengers and Goods Acts in force in the several States were brought to our notice and similar submissions as those discussed by us were made. In the result all the Civil Appeals, Special Leave Petitions and Writ Petitions are dismissed with costs. In some of the Writ Petitions proper Court fee has not been paid. However, we are not dismissing the Writ Petitions on that ground.

The Order of the Court in W.P. No. 5845 of 1980 was delivered on 13th January, 1981 by CHINNAPPA REDDY, J. This Writ Petition is really covered by the judgment pronounced by us on December 15, 1980, in M/s. Inter-

national Tourist Corporation etc. etc. v. The State of Haryana & Ors. Shri S. N. Kacker, learned counsel, however, urged that there was no material before us in that case to justify a conclusion that the State Government incurred any expenditure in connection with the National Highways to justify imposition of a tax of a compensatory and regulatory nature. He invited our attention to the budget of the Haryana Government to show that no expenditure was incurred in connection with the development, construction, improvement and maintenance of National Highways in the State of Haryana. There is no substance in the submission. We have pointed out in our judgment that the State Government incurs expenditure in connection with National Highways not by directly constructing or maintaining National Highways but by facilitating the transport of goods and passengers along the National Highways in various other ways such as lighting, traffic control, amenities for passengers, halting places for buses and trucks etc. etc. And not by eastern windows only, When daylight comes, comes in the light;

In front the sun climbs slow, how slowly ! But westward, look, the land is bright ! The petition is therefore, dismissed.

S.R. Appeals & Petitions dismissed.