Supreme Court of India
Sainik Motors, Jodhpur And Ors. vs The State Of Rajasthan on 22 March, 1961
Equivalent citations: AIR 1961 SC 1480, 1962 1 SCR 517
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Bench: J S Kapur, M Hidayatullah, S Das, T V Aiyar
JUDGMENT Hidayatullah, J.

1. This is a petition under Art. 32 of the Constitution. The petitioners, who are seven in number, challenge as unconstitutional and ultra vires certain provisions of the Rajasthan Passengers and Goods Taxation Act, 1959, the Rajasthan Passengers and Goods Taxation Rules, 1959, and a notification issued under R. 8. For brevity, we will refer to them in this judgment, as the Act, the Rules and the notification respectively. The first petitioner is a registered firm, petitioners Nos. 2 to 6 are the partners of that firm, and petitioner No. 7 is the General Manager of the firm. Petitioner No. 7 holds a public carrier permit for the whole of Rajasthan in his individual name. The petitioners also hold 59 stage carriage permits from the Regional Transport Authority, Jodhpur, for diverse routes over roads which have different kinds of surfaces, some being sandy or katcha and others, metalled, tarred, etc.

2. The Act was passed in 1959 for levying a tax on passengers and goods carried by road in motor vehicles. The power to enact the Act purports to be derived from Entry No. 56 of the State List in Sch. VII to the Constitution, which reads :

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

3. The Act received the assent of the President on April 27, 1959, and was published in the Rajasthan Gazette on April 30, 1959. The same day, the Rules framed in exercise of the powers conferred by s. 21 of the Act were also published, and the notification was also issued. The Rules were subsequently amended, and we are concerned with the Rules, as amended.

4. Before we deal with the case further, it is convenient to see how the Act is constructed and what the Rules and the notification provide. The Act, which consists of 21 sections, came into force in the whole of the State of Rajasthan on May 1, 1959. The Act contains the usual provisions to be found in all taxing statutes about appeals, revision, offences and penalties, power to compound offences, recovery of tax as arrears of land revenue, bar of proceedings, exclusion of the jurisdiction of Civil Courts, refunds and power to make rules, to which detailed reference need not be made. We are only concerned with the imposition of the tax and the mode of its recovery, and will refer to those provisions which are relevant. Section 3 is the charging section, and s. 4 deals with the method of collection of the tax. Since these sections are the main subject of attack, we quote them in full :

"3. Levy of tax. - (1) There shall be levied, charged and paid to the State Government a tax on all fares and freights in respect of all passengers carried and goods transported by motor vehicles at such rate not exceeding one-eighth of the value of the fare or freight, in the case of cemented, tarred, asphalted, metalled, gravel and kankar roads and not exceeding one-twelfth of such value in other cases, as may be notified by the State Government from time to time subject to a minimum of one

naya paisa in any one case, the amount of tax being calculated to the nearest naya paisa.

Explanation. - When passengers are carried and goods are transported by a motor vehicle, and no fare or freight has been charged, the tax shall be levied and paid as if such passengers were carried or goods transported at the normal rate prevalent on the route.

(2) Where any fare or freight charged is a lump sum paid by a person on account of a season ticket or as subscription or contribution for any privilege, right or facility which is combined with the right of such person being carried or his goods transported by a motor vehicle without any further payment or at a reduced charge, the tax shall be levied on the amount of such lump sum or on such amount as appears to the prescribed authority to be fair and equitable having regard to the fare or freight fixed by a competent authority under the Motor Vehicles Act, 1939 (Central Act 4 of 1939).

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

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

(4) Method of collection of tax. - The tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner :

Provided that in case of public carriers the State Government may accept a lump sum in lieu of the tax chargeable on freight in the manner prescribed :

Provided further that in case of contract carriages the State Government may accept a lump sum in lieu of the tax chargeable on fare in the manner prescribed."

5. Section 5 lays down the method of levy, and enjoins the issuance of a ticket showing the tax paid or a receipt showing the freight charged and the tax paid. It includes a proviso that in the case of passengers the tax becomes chargeable only on entry in the State, if the journey began outside the State. Section 6 requires the owner to keep accounts and to submit periodic returns and provides for levy of penalties in case of failure, which penalties are laid down in s. 8. Section 7 deals with the appointment of taxing authorities, and s. 12 gives the power of entry to officers into vehicles, garages, and offices for inspection and checking. Section 10 enjoins upon the owners the duty of furnishing tables of fares and freights, time-tables, etc. Section 9 enables the State Government to grant to any person or class of persons, exemption from all or any of the provisions of the Act.

6. The Rules prescribe those matters which are required under the Act to be prescribed by the Rules. It is not necessary to refer to them beyond Rules 8 and 8-A, which have been challenged. Rule 8(i) prescribes the method of payment of tax by means of stamps to be affixed to the tickets, and the second proviso is to the following effect :

"Provided further that the tax payable under the Act on fare by the owner of a motor-cycle, rickshaw or a motor cab shall be paid to the State Government in lump sum, of which the amount shall be fixed by the State Government from time to time by Notification in this behalf."

Rule 8(ii) then provides :

"The owner of a public carrier shall pay to the State Government a lump sum in lieu of the tax chargeable under the Act on freight and the amount of such lump sum shall be fixed by the State Government from time to time by Notification in this behalf."

Rule 8-A, in so far as material to this case, reads :

"Provisions for payment of lump sum in lieu of tax on fare or freight. - (1) In cases covered by the second proviso to sub-rule (1) of rule 8 and by sub-rule (ii) of that rule the lump sum fixed by the State Government as payable in lieu of the tax on fare or freight, as the case may be, shall be deposited in cash into a Government Treasury or a Sub-Treasury in equal quarterly instalments payable within 15 days from the 31st day of March, the 30th day of June, the 30th day of September and the 31st day of December every year; and in case of such vehicles not registered in Rajasthan to the incharge of the check post or barrier at the time of their entry into the State of Rajasthan or to the officer of the Excise and Taxation Department nearest to the point of entry into the State and having jurisdiction over that area :

Provided that -

(a) for the quarter ending on the 30th day of June, 1959, such payment shall be made for the months of May and June, 1959, at the rate of 1/12 of the said sum for each month,

(b) where the owner has not plied his vehicle for the entire quarter immediately preceding any of the aforesaid dates a proportionate decrease in the amount due for that quarter may be made,

(c) if the owner ceases to ply his vehicle on a date preceding any of the aforesaid dates, the proportionate amount for the quarter shall be paid by him immediately upon such cessation, and

(d) where the owner has not plied his vehicle for a continuous period of not less than three months and produces a certificate from the authority competent under the Rajasthan Motor Vehicles Taxation Act, 1951, or the rules made thereunder to the effect that he has been refunded the tax for that period under section 7 of the said Act, no amount by way of tax under the Act shall be payable for such period.

(2) The owner shall inform the Assessing Authority as soon as his vehicle goes out of use. When the vehicle is again put on the road, an intimation to that effect shall be sent to the Assessing Authority immediately."

7. The notification which was issued under R. 8 prescribing lump sum rates, is as follows :

"Jaipur, April 30, 1959 No. F. 15(5) E & T/59. III. - In pursuance of rule 8 of the Rajasthan Passengers and Goods Taxation Rules, 1959, the Government of Rajasthan hereby directs that the tax chargeable on fare or freight in respect of the following class of Motor Vehicles, shall be paid in lump sum of which the amount is mentioned opposite each such class :-

3. Public carriers (Goods Vehicles) :-

(a) Holding a general permit under the Motor Vehicles Act, 1939, to use all roads in Rajasthan :-

(i) Load carrying capacity below 5 Tons.... Rs. 420 per annum.

(ii) Load Carrying Capacity 5 Tons and above.... Rs. 540 per annum.

(b) Holding a permit under the Motor Vehicles Act, 1939, for plying within the limits of any region or on fixed routes in any one region :-

(i) Load carrying capacity below 5 Tons.... Rs. 360 per annum.

(ii) Load carrying capacity 5 Tons and above.... Rs. 480 per annum.

"4... Public Carriers (Goods Vehicles) plying on hire on temporary permits under the Motor Vehicles Act, 1939 :-

(b) Public Carriers (Goods Vehicles) :-

(i) Load carrying capacity below 5 Tons... Rs. 2 for each calendar day....

(ii) Load carrying capacity 5 Tons and above.... Rs. 4 for each calendar day.....

This shall have effect on and from the 1st May, 1959."

8. The petitioners challenged the Act, the Rules and the notification from many angles, in the petition; but at the hearing before us, the arguments were more restrained. The main objection to the Act is that the tax has not been laid upon "passengers and goods" as authorised by Entry No. 56 but upon "fares and freights", which are different entities, and in support of the contention that there is a difference, reference is made to Entry No. 89 of the Union List, where power is conferred to tax "fares and freights". It is submitted that a tax on fares and freights being a different tax, cannot be levied under the Entry, and thus, the tax is without authority of law.

9. The Act and the Rules are further challenged on the grounds that they are repugnant to Arts. 301 and 304 as being a restriction upon inter-State trade, commerce and intercourse, to Art. 19 as involving an unreasonable restriction upon the business of the petitioners, and also to Art. 14 as discriminating between this mode of transport and the Railways. The Act is further challenged on the ground that it concedes to the States Government the power to fix the amount of lump sum payment without guidance. The rates and lump sum payment are challenged because they involve discrimination between routes involving roads of different surfaces. Rules 8 and 8-A and the notification are challenged as, it is submitted, they go beyond the Act by making the lump sum payment compulsory, even though under the Act it is optional, and involve payment of tax even when no passengers or goods are transported. Lastly, it is said that by making tax payable even though the route between two intra-State point passes outside the State, the Act has an extra-territorial operation which is ultra vires the legislature.

10. The first - and the main - contention is that the Act in the guise of taxing passengers and goods, taxes really the income of the petitioners, or, at any rate, fares and freights, and is thus unconstitutional. It is argued that the tax is borne by the operators because of competition with the Railways. That the petitioners are required to bear the tax themselves to stand competition with the Railways is a matter of policy, which the petitioners follow and is not something which flows inevitably from the provisions of the Act. We do not agree that the Act, in its pith and substance, lays the tax upon income and not upon passengers and goods. Section 3, in terms, speaks of the charge of the tax "in respect of all passengers carried and goods transported by motor vehicles", and though the measure of the tax is furnished by the amount of fare and freight charged, it does not cease to be a tax on passengers and goods. The Explanation to s. 3(1) lays down that even if passengers are carried or goods transported without the charge of fare or freight, the tax has to be paid as if fare or freight has been charged. This clearly shows that the incidence of the tax is upon passengers and goods, though the amount of the tax is measured by the fares and freights. A similar argument was not accepted by the Madras High Court in Mathurai v. State of Madras [I.L.R. [1954] Mad. 867.], and the same view was expressed in Atma Ram Budhia v. State of Bihar [(1952) I.L.R. 31 Pat. 493 (S.B.).]. In our opinion, the charging section does not go outside Entry No. 56. The tax is still on passengers and goods, though what it is to be is determined by the amount of fare or freight. It is clear that if the tax were laid on passengers irrespective of the distance travelled by them, it would lead to anomalies if the amount charged be the same in every case. This is additionally clear in the case of goods where the weight, bulk or nature of the goods may be different, and a scale of payments must inevitably be devised. Though the tax is laid on passengers and goods, the amount varies in the case of passengers according to the distance travelled, and in the case of goods because the freight must necessarily differ on account of weight, bulk and nature of the goods transported. The tax, however, is still a tax on passengers and goods, and the argument that it is not so, is not sound.

11. 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.

12. The next contention is that the Act allows an option to pay a lump sum in lieu of the tax, but Rules 8 and 8-A and the notification make the payment of the lump sum compulsory. There is no doubt that ex facie the two provisos to s. 4 employ language which is permissive, while the two Rules and the notification employ language which is imperative. The two provisos to s. 4 are enabling, and thereby authorise the State Government to accept a lump sum payment in lieu of the tax actually chargeable. The word "accept" shows that the election to pay a lump sum is with the taxpayer, who may choose one method of payment or the other. The inclusion of such a provision is designed to promote easy observance of the Act and also its easy enforcement. The charge of tax calculated on fares and freights involves difficulties for the operators who have to keep accounts and also difficulties for the taxing authorities, who have to maintain constant checks and inspections. The lump sum payment is a convenient mode by which an amount is payable per year irrespective of whether the tax would be more or less if calculated on actual fares or freights. The operators pay the lump sum if they so choose, to avoid having to maintain accounts and to file returns, and the Government accepts it to avoid having to inspect accounts and to keep a check. The rates which are prescribed for a lump sum payment per year are for those who wish to avail of them.

13. It is, however, contended that though the section creates an option, the Rules and the notification make the payment compulsory, and attention is drawn to the word "shall" used both in Rules 8 and 8-A and the notification, whereas the words in the two provisos to s. 4 are "may accept". The word "shall" is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demands. In In re Lord Thurlow Ex Parte Official Receiver [(1895) 1 Q.B. 724.], Lord Esher, M.R., observed at p. 729 that "the word 'shall' is not always obligatory. It may be directory", and Lopes L.J., at p. 731 added :

"It is clear that the word 'shall' is not always used in a mandatory sense. There is abundance of authority to the contrary in cases where it has been held to be directory only".

14. It was thus that the word 'shall' was held to be directory only, in that case, by Coutts Trotter, C.J., in Manikkam Pattar v. Nanchappa Chettiar [(1928) M.W.N. 441.], by Russel, J., in In re Rustom [(1901) I.L.R. 26 Bom. 396; 3 Bom. L.R. 653.], by Venkatasubba Rao, J., in Jethaji Peraji Firm v. Krishnayya [(1929) I.L.R. 52 Mad. 648, 656.] and by the Judicial Committee in Burjore and Bhavani Pershad v. Mussumat Bhagana [(1883) L.R. 11 I.A. 7.].

15. Now, Rules 8 and 8-A and the notification only lay down what lump sum payment has to be in each case, if a lump sum is being paid. The mandatory language is used to fix peremptorily the amount of the lump sum. Rules 8 and 8-A and the notification cannot be said to overreach the section to which they are subordinate and from which they must take their colour and meaning. If the Act creates an option, it cannot be negatived by the Rules. The Act and the Rules must be read harmoniously, and reading them so, it is plain that the apparent mandatory language of the Rules

and the notification still retains the permissive character of the section, but only lays down what the amount of the lump sum must be, if lump sum payment is made in lieu of payment of the tax calculated on actual fares and freights. If the two Rules and the notification are read in this way, the mandatory language is limited to the prescribing of the lump sum rates. In our opinion, the two Rules and the notification are not void and contradictory of the Act.

16. It is contended that the powers to fix lump sums in lieu of tax has been conferred upon Government without guidance, and is, therefore, unconstitutional. It is also urged that the levy of a lump sum leads to the result that even if passengers or goods are not transported, the tax is still payable. These arguments, in our opinion, cannot be accepted. The learned Advocate-General pointed out that the lump sum rates work out at a very low figure, the minimum being less than Re. 1/- per day and the maximum, Rs. 1.50 nP. per day. The rates are no doubt very reasonable, but this hardly meets the argument of the petitioners. There are, however, good reasons for upholding the fixation of lump sums. The payment of the lump sum is not obligatory, and a person can elect to pay tax calculated on actual fares and freights. The fares and freights are fixed by competent authority under the Motor Vehicles Act, and that takes into account the average earnings, and the lump sum is fixed as an average of what tax would be realised if calculated on actual fares and freights. There is no compulsion for any operator to elect to pay a lump sum if he does not choose to do so. Nor is the argument that there may be vacant periods when no passengers or goods are transported but the tax is payable, is of any force, because there may be days when the business done might result in tax in excess of the lump sum payable. The lump sum figure is based on averages, and cannot be impeached by reference to a possibility that on some days no business might be done.

17. The next contention that there is discrimination between road transport and rail transport is also without force. The entry in the State List is limited to a tax on passengers and goods transported by road or inland waterways. The comparison with Railways is not admissible, because tax on railway fares and freights is a Union subject, and is not available to the State Legislature. There is thus a clear classification made by the Constitution itself. No discrimination between operators of public motor vehicles using roads has been pointed out, and all operators are equally affected by the Act. Some manner of support for the argument was sought from s. 9, where the State Government is empowered to grant exemption from the Act by general or specific order to any person or class of persons. But we were informed that no exemption has been granted except to hospitals or charities.

18. It is next urged that the imposition of a higher rate of tax for cemented, tarred, asphalted, metalled, gravel and kankar roads than that for other roads discriminates between operators. This argument overlooks the very object and purpose of a tax. As is well-known, taxes are burdens or charges imposed by legislative power upon persons or property to raise money for public purposes. The power to tax is thus indispensable to any good government, and the imposition of the tax is justified on the assumption of a return in the shape of conveniences. If this be the true import of a tax, it is but natural that taxes will be graded according as they involve more or less of such conveniences. They will be heavy in case of roads requiring greater expenditure to construct and to maintain, than in case of roads not requiring such expenditure. All operators using the better kind of roads have to pay the heavier tax, and there is no discrimination between them as a class. Discrimination can only be found if it exists between persons who are comparable, and there is no

comparison between persons suing the better kind of roads and those who use roads which are not so good. It is the cost of construction and maintenance which makes the difference in the tax, and no case of discrimination can be said to be made out.

19. The last contention is that the proviso to sub-s. (3) of s. 3 is extraterritorial in nature, because it makes the tax payable on fares and freights attributable to the territory of another State when the route passes through such territory, even though the journey starts and ends in Rajasthan. We were informed that now there are no such routes, but even otherwise, such portions must have been very short and negligible. No affidavit was sworn to show how many such routes were involved and what their extent was, and in view of lack of adequate averments, we must reject the contention.

20. In the result, the petition fails, and is dismissed with costs.

21. Petition dismissed.