(1994) 02 MP CK 0021

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 3270 of 1985

All India Motor Transport Congress and Another		APPELLANT
	Vs	
State of Madhya Pradesh		RESPONDENT

Date of Decision: Feb. 18, 1994

Acts Referred:

- Constitution of India, 1950 - Article 14, 246, 265, 301, 304
- Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985 - Section 3

Citation: AIR 1994 MP 117 : (1994) 39 MPLJ 884 : (1994) MPLJ 884

Hon'ble Judges: U.L. Bhat, C.J; P.P. Naolekar, J

Bench: Division Bench

Advocate: V.S. Dabir, for the Appellant; A.S. Jha, for the Respondent

Final Decision: Dismissed

Judgement

P.P. Naolekar, J.

This petition shall also govern the disposal of Misc. Petition No. 3729/85 (Prabhashankar v. The State of Madhya Pradesh) and Misc. Petition No. 4327/92 (G. P. Gupta v. the State of Madhya Pradesh). The petitioner''s challenge is to the Act passed by the State legislatures of Madhya Pradesh called the "Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985 Madhya Pradesh Act No. 17 of 1985 (for short the "Act"). The petitioner No. 1 is a All India Motor Transport Congress which is the Apex organization of Motor Transport Operators affiliated to State/Regional Associations and is a company registered under the Companies Act, 1956. The members of the petitioner No. 1 are goods transport operators holding composit/ national permits on inter-State routes as provided in Section 63(11) of the Motor Vehicles Act, 1939 and the petitioner No. 2 is a

National Permit holder providing goods transport facilities.

The act received assent of the Governor on 28-8-1985 and was published in Madhya Pradesh-Gazette (Extraordinary) dated 29-8-1985. The act was enacted by the Madhya Pradesh legislature to provide for levy of toll on certain motor vehicles entering in the State of Madhya Pradesh and for matters connected therewith or incidental thereto as its aim and objects:

STATEMENT OF OBJECTS AND
REASONS

According to the geographical position, the State of Madhaya Pradesh is situated in the heart of India. Due to the advancement of India in multilateral sphers there has been tremendous increase in the transport vehicles and consequently the entry and operation of the transport vehicle from other States have enormously increased and had thus adversely affected the roads of this State. The development and maintenance of roads are very essential according to the need of transport and also for the safety of public life. For want of additional revenue rescorces it is not at all possible to fulfil the requirement of the aforesaid work. It is, therefore, considered necessary to levy toll tax on the transport vehicle of other States entering the State of Madhya Pradesh.

2A, Hence this bill.

Section 2 (b)of the Act defines "goods vehicle" to be a transport vehicle whether a private goods vehicle or public goods vehicle as defined in the Madhya Pradesh Motor Vehicles (Taxation of Goods) Act, 1962. u/s 2(d) toll means the toll levied u/s 3, Motor Transport Vehicle is defined in Section 2 (f) to mean a stage carriage or a goods vehicle. Section 2(g) provides that words and expressions used and not defined in the Act but defined in the Motor Vehicles Act, 1939 shall have the respective meaning assigned to them in that Act. Thus, the words and expressions not defined in the Act are imported from the Motor Vehicles Act, 1939. Section 3 is the charging section which provides that the toll shall be levied on every transport vehicle plying under a permit issued under the Motor Vehicles Act, 1939 by an authority, having jurisdiction outside Madhya Pradesh, when enters the State of Madhya Pradesh, at such rate not exceeding one hundred rupees per vehicle, as the State Government may, by notification specify. The State of Madhya Pradesh had fixed toll of Rs. 50/- on every motor transport vehicle entering the State of Madhya Pradesh by notification dated 3rd October, 1985. As per the proviso, where toll has been paid once in respect of entry of the vehicle, no toll shall be levied for any subsequent entry of the transport vehicle on the same day. The toll is payable by the operator of the Motor Transport Vehicle. Section 5 gives the Toll Tax Officer power to prevent entry of any transport vehicle liable to pay toll, entering the State of Madhya Pradesh without payment of toll. Section 6 authorises Toll Tax Officer to inspect the vehicle and to detain the vehicle of any part of accessory thereof for realisation of the toll, if not paid, Section 7 prescribes penalty for nonpayment of the toll. Section 8 gives right of appeal against the order passed levying penalty. u/s 11, the State Government by notification may exempt in whole or in part any Motor Transport Vehicle or class of Motor Transport Vehicle from payment of toll for such period and subject to such restrictions and conditions as may be specified in the notification.

Constitutional validity of the Act is challenged on the grounds (i) that under the reciprocal agreement entered between the States of Gujarat, Haryana, Madhya Pradesh, Maharashtra, Punjab, Rajashthan, Uttar Pradesh and Delhi as notified in Madhya Pradesh Rajpatra, dated 29-12-1972, limited number of composit permits have been issued by each State u/s 63 (11) of the Motor Vehicles Act, 1939, by virtue of the imposition of toll in the State of Madhya Pradesh, artificial barrier has been created whereby the trade, commerce and intercourse throughout the territory of reciprocal agreement State is impaired which vidates freedom guaranteed under Article 301 of the Constitution of India. Further that imposition of the toll in a free zone under the reciprocal agreement is not a reasonable restriction on the freedom of the trade, commerce or intercourse with or within the State in the public interest and in any case the Act having not introduced or moved in the legislature of the State with the previous sanction of the President, it is ultra vires; (ii) the tax on the Motor Vehicle for the purpose of the maintenance of roads in the State of Madhya Pradesh is already levied under the Motor Vehicles Taxation Act, 1947 and therefore toll for the same purpose amounts to double taxation; (iii) a message by the Transport Commissioner for the State of the Regional Transport Authority in the State of Madhya Pradesh instructing them not to levy the Pathkar from the buses operating in the interstatal routes on countersigned permits, whereas a levy of Toll Tax goods vehicle, amounts to discrimination, prohibited under Article 14 of the Constitution of India.

Section 63 of Motor Vehicles Act, 1939 enables the transport authority of the State to countersign a permit of the other State so that the permit issued outside the State will be operative within the State. Sub-section(11) of Section 63 provides that notwithstanding the requirement of countersignature, the appropriate authority, for the purposes of encouraging long distance inter-State road transport, can grant national permit to the owner of the Motor Vehicle who use or intend to use such vehicle for the carriage of goods, for hire or reward. In explanation to this section, national permit is defined to mean a permit granted by the appropriate authority to the owner of the Motor Vehicle authorising him to operate as a public carrier throughout the territory of India or in such other contiguous States, not being less than five in number, including the State in which the permit is issued. The national permit issued under Sub-section (11) is operative without the requirement of the countersignature by the State Transport Authority. To encourage the long distance and inter-State transport of goods by roads and to regulate, co-ordinate and control their operation a reciprocal agreement was entered into between States of Gujarat, Haryana, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh and Delhi. Under the reciprocal agreement each applicant was required to apply for a composit permit with the choice of minimum of four States i.e. the Home State and any three other States. A sum of Rs. 700/- was payable in lieu of the tax to each of the States of his option, other than the Home State. Thus the State of Madhya Pradesh along with other seven States have entered into a reciprocal agreement for issuance of the national permits for operation of the vehicles between the States without countersignature on payment of Rs. 700/- per State of choice. According to the petitioners, these eight States form one Zone for the purposes of movement of vehicle to which the national permits were issued. By imposition of Toll Tax by the State of Madhya Pradesh, an artificial barrier has been created which infringes the guarantee given to the petitioners to have free trade. The toll tax has been levied, as is clear from aims and objects of the Act, to maintain the roads and the bridges falling within the State of Madhya Pradesh. The tax is payable because of the user of the roads. Picking up and setting down goods at way side station on routes is dependant on the condition of the permit and the reciprocal agreement between the States. The tax is levied and collected for the development, maintenance and regulation of the roads and bridges which is necessary for the purposes of running the vehicles and carrying on the business and is compensatory in character.

In The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, validity of Rajasthan Motor Vehicles Taxation Act, 1951 imposing tax on the motor vehicle used in a public place or kept for use in Rajasthan was attacked on the ground that the tax imposed by the Act restrict freedom of trade, commerce and intercourse assured by Article 301. The Supreme Court has held :

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

In Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, has held :

"Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to List II of the 7th Schedule on the States. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. Constitution of India is an organic document. It must be so construed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society, economically, politically and socially."

The Supreme Court also pointed out that a tax which does not directly or immediately restrict or interfere with trade, commerce and intercourse throughout the territory of India would therefore be excluded from the ambit of Article 301 of the Constitution of India. The need of taking resort to exception will arise only if the tax impugned is hit by Article 301 and Article 303 of the Constitution. If it is not, then Article 304 of the Constitution will not come into picture at all. The toll is compensatory in nature and does not restrict trade, commerce and intercourse and is utilised for providing facilities for smooth operation of transport business by developing, maintaining and regulating roads, bridges and other means of transportation necessary for the trade, commerce and intercourse. The toll tax being compensatory in nature is not an impediment to free flow of trade and commerce and does not fall within the ambit of Article 301 of the Constitution of India.

We have held that toll is imposed by the State for providing better transport facilities and as such does not infringe guarantee of free trade and commerce throughout the State. As the Act does not fall within the ambit of Article 301 of the Constitution of India it is not required to be tested on the touchstone of reasonable restriction in public interest nor it was necessary for the State legislatures to introduce or move the Bill with previous sanction of the President. The free composit permit zone created by reciprocal agreement is open for trade or business on the condition incorporated under permits issued and toll charged under the Act, does not impair that right of the petitioners. The Act does not violate either provisions of Article 301 or 304 of the Constitution of India.

The levy of tax provided in Madhya Pradesh Motor Vehicles Taxation Act, 1947, is on the motor vehicle used or kept for use on the basis of the user or intended user of the motor vehicle in the State. Once the vehicle is used or permitted to be used taxable event occurs. The levy of tax on motor vehicle under Madhya Pradesh Motor Vehicles Taxation Act, 1947 is referable to Entry 57 of List II of Schedule 7 of the Constitution of India whereas Entry 59, List II, Schedule 7 authorises the State Legislature to levy a toll i.e. a payment realised for some benefit taken of roads, bridges, temporary use of lands, which is provided by the State to the petitioners. There is nothing in Article 265 of the Constitution of India from which one can spell out the constitutional vice called double taxation. When the State legislature possesses the power to levy tax there is nothing in the Constitution to prevent the legislature from exercising its power under different entries. This contention of the petitioners deserves to be dismissed.

We proceed to the next submission that on account of issuance of the message/ instructions (Annexure-C) by the Transport Commissioner, the Regional Transport Authorities have not recovered Pathkar from the stage carriages in the inter-state routes on countersigned permits, whereas Pathkar was recovered from the goods vehicle entering the State of Madhya Pradesh. The goods vehicle is defined to be a vehicle as defined in Madhya Pradesh Motor Vehicles (Taxation of Goods) Act, 1962 and means any motor vehicle constructed or adapted for use of carriage of goods or when used for carriage of goods solely or in addition to passenger for hire or reward, whereas the stage carriage is a vehicle, as defined in Section 2(29) of the Motor Vehicles Act, 1939 and is motor vehicle carrying or adapted to carry more than six persons for hire or reward for a whole journey or for stages of a journey. Thus, the two vehicles are separately defined under separate Acts and they are by themselves different. types of vehicles used for different purposes. It is also a matter of common knowledge that the goods vehicles carry heavier weight than stage carriages and naturally use of goods vehicles will cause more wear and tear of the roads. The stage carriage operates in a particular route and covers particular distance, timings of operation of stage carriages and fixed and stoppages are scheduled, whereas the goods carriage can operate in the State, after their entry, on any length of route, the route is not fixed, their timings are not fixed, their stoppages are not fixed. The nature of the operation of the stage carriages and the transport goods vehicles are different. The operation of the stage carriages on interstate routes are limited in number whereas large number of goods vehicles enter the State of Madhya Pradesh as the State of Madhya Pradesh is situated in the meeting place of the Southern and the Northern India.

The inhibition of Article 14 of the Constitution of India that State shall not deny to any person equality before the law or equal protection of laws was designed to protect all persons from discrimination by the State and to prevent any person being subjected to discrimination and hostile treatment. The State is bound to treat equals as equals; there cannot be equal treatment of unequals and equality doctrine of Article 14 will not be attracted in case of unequals. In this case by very nature of the operations and the vehicles used the stage carriage vehicle and the goods carriage are different. By virtue of the transport operations undertaken by these vehicles, they have been differentiated and there is a reasonable classification based on real and substantial distinction in relation to and in respect of the vehicles. The distinction drawn by the Transport Commissioner while issuing the instruction only regarding the transport vehicles cannot be said to be an arbitrary exercise of discretion contravening Article 14 of the Constitution of India.

There is a presumption always in favour of the constitutionality of an enactment, since it must be presumed that the legislature understood and correctly appreciated the need of its own people and, therefore, the burden of showing that the classification is arbitrary and not based on rational basis is upon the persons who impeach the law, as being the violation of constitutioinal guarantee, of the denial of equal protection in the exercise of its discretion. We do not find any allegation in the petition spelling out exercise of discretion by the State which could be said to be arbitrary or unreasonable, white exempting the buses entering, the State of Madhya Pradesh on countersigned permits and charging toll tax on the goods vehicle entering the State. A heavy burden lies on the petitioner to show hostile discrimination, which is not made out from the allegations made in the petition. We do not know whether the instruction issued by the Transport Commissioner were implemented, because u/s 11 of the Act, it is the State Government which can exempt any vehicle from toll by issuance of the notification. Admittedly Annexure-C is not a notification issued by the State Government u/s II of the Act.

For the reasons aforesaid, we hold that the Madhya Pradesh Motor Parivahan Yano Par Pathkar Ka Udgrahan Adhiniyam, 1985, is intra vires of the Constitution of India and is a valid piece of legislation. As a consequence thereof, this petition fails and is hereby dismissed with costs of Rs. 750/-.