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C.A.No. 3686 OF 2003
ITEM No.101 (Part-Heard) Court No.4 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.3686/2003

JAI PRAKASH & ORS. Appellant (s)

VERSUS

STATE OF U.P. & ORS. Respondent (s)

(with office report)

With C.A. No.3687/2003 (with office report), C.A. Nos.3688-3693/2003 (with appln.(s) for directions and with office report), C.A. Nos.3694-3696/2003 (with office report), C.A. No.3697/2003 (with office report), C.A. No.3698/2003 (with office report), C.A. No.3699/2003 (with office report), SLP(C) Nos.8515-8516/2003, SLP(C) No.11237/2003 (with prayer for interim relief and office report), SLP(C) No.4497/2003 (with prayer for interim relief), SLP(C) No.13911/2003 (with appln.(s) for exemption from filing O.T. and transposing respondents as petitioners and with prayer for interim relief), SLP(C) No.16069/2003 (with appln.(s) for permission to file SLP and with prayer for interim relief), SLP(C) Nos.8897-8898/2004 (With appln.(s) for exemption from filing O.T. and with prayer for interim relief and office report), C.A. Nos.2383-2384/2000 (with office report), C.A. No.3450/2000 (with appln.(s) for exemption from filing O.T. and with office report), C.A. No.3451/2000 (With office report), C.A. No.3452/2000 (with office report), C.A. No.3776/2000 (with office report), C.A. No.3777/2000 (with office report), C.A. No.4755/2000 (with office report), C.A. No.5615/2000 (with office report).

Date : 14/09/2004 This Petition was called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant/ (s)
Petitioner (s)
in CA Nos.3686/03,Mr. Dinesh Kumar Garg, Adv.
3687/03, 3697/03,Mr. R.C. Kaushik, Adv.
3698/03, 3699/03,Mr. B.S. Bilowria, Adv.
4755/2000Mr. Rohit Pandey, Adv.
Mr. N.P. Midha, Adv.

in CA 3688-3693/03Mr. L.N. Rao, Sr. Adv.
Mrs. Rani Chhabra, Adv.
Mr. Pradeep Sharma, Adv.
Ms. Sudha Pal, Adv.
Ms. Seema Nair, Adv.

in CA 3694-3696/03Mrs. Rani Chhabra, Adv.
in SLP(C)Nos.11237/03Mr. Pradeep Sharma, Adv.
4497/03, 13911/03,Ms. Sudha Pal, Adv.
16069/03, CA Nos.Ms. Seema Nair, Adv.
2383-2384/2000,
3452/2000.

in CA 3450/2000Mr. R.N. Trivedi, Sr. Adv.
Mrs. Rani Chhabra, Adv.

Ms. Sudha Pal, Adv.
Ms. Seema Nair, Adv.

in SLP(C)8897-98/04Mr. Shail Kumar Dwivedi, Adv.

in CA 3451/2000Mr. Mukul Rohtagi, Sr. Adv.
Mrs. Rani Chhabra, Adv.
Ms. Sudha Pal, Adv.
Ms. Seema Nair, Adv.

in CA 3776/2000Ms. Rachana Srivastava, Adv.
Mr. Govind Kaushik, Adv.

in CA 3777/2000Mr. T.N. Singh, Adv.

in CA 5615/2000Mr. K.K. Gupta, Adv.

in SLP(C) No.8515-
8516/2003Mr. Rakesh K. Khanna, Adv.
Mr. Rajeev Singh, Adv.
Mrs. Sunita Singh, Adv.
Ms. Abha R. Sharma, Adv.
Mr. R.P. Singh, Adv.

For Respondent (s)Mr. Sunil Gupta, Sr. Adv.
State of U.P.Mr. Pramod Dayal, Adv.
Mr. Jatin Zaveri, Kadv.
Mr. Vivek Vishnoi, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard parties.
No orders on the application for transposition.
Leave granted.
The Appeals are dismissed in terms of the signed order.

There will be no order as to costs.

(K.K. Chawla)
Court Master

(Madhu Saxena)
Court Master

[signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3686 OF 2003

JAI PRAKASH & ORS. Appellant (s)

VERSUS

STATE OF U.P. & ORS. Respondent (s)

WITH

CIVIL APPEAL NO.3687 OF 2003

WITH

CIVIL APPEAL NOS.3688-3693 OF 2003

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CIVIL APPEAL NOS.3694-3696 OF 2003

WITH

CIVIL APPEAL NO.3697 OF 2003

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CIVIL APPEAL NO.3698 OF 2003

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CIVIL APPEAL NO.3699 OF 2003

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CIVIL APPEAL NOS._____ OF 2004
(ARISING OUT OF SLP(C) NOS.8515-8516 OF 2003

WITH

CIVIL APPEAL NO._____ OF 2004
(ARISING OUT OF SLP(C) NO.11237 OF 2003

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(ARISING OUT OF SLP(C) NO.4497 OF 2003

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(ARISING OUT OF SLP(C) NO.13911 OF 2003

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CIVIL APPEAL NOS._____ OF 2004
(ARISING OUT OF SLP(C) NOS.8897-8898 OF 2004

WITH

CIVIL APPEAL NOS.2383-2384 OF 2000

WITH

CIVIL APPEAL NO.3450 OF 2000

WITH

CIVIL APPEAL NO.3451 OF 2000

WITH

CIVIL APPEAL NO.3452 OF 2000

WITH

CIVIL APPEAL NO.3776 OF 2000

WITH

CIVIL APPEAL NO.3777 OF 2000

WITH

CIVIL APPEAL NO.4755 OF 2000

WITH

CIVIL APPEAL NO.5615 OF 2000

O R D E R

Leave granted.

The question involved in all these Appeals is the constitutional validity of Sections 4 and 6 of The Uttar Pradesh Motor Vehicles Taxation Act, 1997 (hereinafter referred to as "The Act"). In some appeals there is a specific challenge to an amendment to Section 6 in 2001 as also to a circular issued under Section 67 of the Motor Vehicles Act, 1988.

The first submission is that the Act was referable to Entry 56 of List II of the 7th Schedule to the Constitution and that the State Legislature could levy the tax under the Act only on passengers.

The submission is sought to be supported with reference to the legislative history of the Act and also with reference to the Statement of Objects and Reasons for the Act. As far as the legislative history is concerned, it was stated that under the Government of India Act, 1935, "mechanically propelled vehicles" were taxable under Entry 20 of List III. In exercise of this power, the Uttar Pradesh Motor Vehicles Taxation Act, 1935 had been enacted. A distinction was drawn in this Act between 'goods vehicles' and 'passenger vehicles' for the purposes of levying tax. As far as the goods vehicles were concerned, tax was levied on the basis of the laden weight. As far as the passenger vehicles were concerned, the tax was levied on the basis of the seating capacity. This position continued till the enactment of the U.P. Motor Gadi (Yatri Kar) Adhiniyam, 1962 (for short "the 1962 Act"). Section 3 of the 1962 Act also, like the 1935 Act, provided for a tax on passengers at a percentage of the fare for the journey made. Both the 1935 and the 1962 Acts, according to the Appellants, were therefore clearly referable to Entry 56 of List II of the 7th Schedule to the Constitution which reads :

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

and not to entry 57 of List II which provides:

"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 impugned Act was an Act which, according to the Appellants, merely replaced and consolidated the earlier statutes on the question of taxation on passengers. The second submission of the Appellants that the Act was referable to Entry 56 of List II is based upon the scheme of the Act and the basis of the levy. It is contended in this connection that the tax levied from t

he SRTC was on the basis of actual gross receipts which was an indication of the nature of the tax. Our attention was also drawn to the submission made in the counter affidavit filed on behalf of the Respondent-State in one of the Writ Petitions before the High Court, admitting that the Act was referable to Entry 57 of List II. In these circumstances, according to the Appellants, the tax was in effect a passenger tax and the levy thereunder could only relate to the number of actual passengers carried.

It is further submitted on behalf of the Appellants that the Act was violative of Article 14 of the Constitution inasmuch as an unreasonable distinction was sought to be drawn between vehicles operated by the State Road Transport Corporation (in short "SRTC") and other operators. It is submitted that the calculation of the tax as far as the SRTC was concerned was made with reference to the actual user of the vehicle whereas tax was charged from other operators at slab rates irrespective of the distance covered by the vehicle and without reference to the number of passengers being carried. A challenge was also made to the proviso to Section 6(1) of the Act on the ground that it conferred arbitrary and uncanalised power on the State Government to fix rates of tax.

The Act was amended on 6th October, 2001 by the introduction of sub-section (1-A) to Section 6. Over and above the tax payable under Sections 4 and 6(1), an additional tax was sought to be levied in respect of particular kinds of passenger vehicles. The operation of the amendment was kept suspended by an Ordinance issued on 15th December, 2001. The Ordinance lapsed on 2nd November, 2002 whereafter sub-section (1-A) of Section 6 became enforceable. The Appellants have contended that, in any event, for the period Section 6(1-A) had not been enforced by virtue of the enactment of the Ordinance, no tax under that sub-section could be levied. It is finally stated that if the Act was referable to Entry 57 of List II, then the tax would be compensatory and the levy must have some nexus with the benefits in respect of which the tax was being levied. The compensation in this case was relatable to the user of the roads in the State. It is contended that therefore no levy could be made for the period during which the vehicle was idle or not in use. A levy, according to the Appellants, which was not referable to actual user of the vehicle, could not be sustained.

Apart from the challenge to the various provisions of the Act, the Appellants have also impugned a circular dated 10th March, 2000 issued under Section 67(1) of the Motor Vehicles Act, 1988 which, apart from fixing the rates of fares of stage carriages and contract carriages, directed "under the provisions of Uttar Pradesh Taxation Act, 1997 no tax or additional tax would be chargeable from passenger except fare (sic)". All the submissions raised by the Appellants as noted earlier with regard to the nature of the tax levied under the Act have been reiterated in connection with their challenge to the circular. The contention is that if it is a passenger tax, the same should be permitted to be recovered from the passengers. A submission was also made that the State Government was incompetent to issue such a circular under Section 67(1) of the Motor Vehicles Act. That Section, according to the Appellants, merely permitted the State Government to fix the fares chargeable in respect of passenger vehicles.

Learned counsel appearing on behalf of the Respondent-State has submitted that the impugned Act was clearly referable to Entry 57 of List II. There was a deliberate shift of policy from the earlier legislation on the subject so that instead of levying passenger tax, the tax was sought to be levied on the vehicle itself. Reference in this connection has been made to the recommendations of The Uttar Pradesh Taxation Inquiry Committee constituted in 1980 under the Chairmanship of Dr. Chelaiya and the Uttar Pradesh Taxation Review Committee under the chairmanship of Dr. Papola. It is submitted that under Entry 57 of List II the tax need not be levied on vehicles with reference to their actual user and could be levied on the potential user of the vehicles. It is further submitted that there was no discrimination between SRTC and other operators as SRTC formed a well defined class which was rational and could be justified with reference to Article 14. On the question of the charge being levied at slab rates, it is submitted that there was no challenge to the same in any of the writ petitions before the High Court. In any event, according to the Respondents, slab rate was fixed with reference to the mileage and did not proceed on any assumption that there was any actual coverage of the mileage so referred to. It was contended that the challenge to the proviso to Section 6(1) was similarly made for the first time before this Court. It is stated that the proviso provided for a cap or an outside limit beyond which the additional tax could not be raised. Apart from this, according to the Respondents, the guidelines could be culled out from the Statement of Objects and Reasons, the scheme of the Act and the purpose behind the levy of the tax namely the maintenance of roads and other facilities and the creation of a Road Transport Accident Relief Fund. The fact that the Act was compensatory in nature would itself provide the necessary guideline for the rate of tax. In answer to the challenge to the circular issued under Section 67(1) of the Motor Vehicles Act, 1988, it is contended that being the tax was on the vehicle and that the State Government was competent under Section 67(2) of the Act but to allow the tax to be included in the fare.

Before dealing with the submissions of the parties, it is necessary to briefly refer to the relevant provisions of the impugned Act. There are two charging Sections in the Act, namely, Sections 4 and 6. Section 4 reads as under:-

"4.Imposition of tax. - (1) Save as otherwise provided in this Act or the rules made thereunde r, no motor vehicle other than a transport vehicle, shall be used in any public place in Uttar Pradesh unless a one-time tax at the rate applicable in respect of such motor vehicle, as spe cified in Part 'B' of the First Schedule has been paid in respect thereof:

["Provided that where a one-time tax in respect of any such motor vehicle has been paid before the commencement of the Uttar Pradesh Motor Vehicles Taxation (Amendment) Act, 2000 and such Tax has not been refunded under sub-section (5) of Section 12, no tax under this sub-section s hall be payable in respect thereof after such commencement:

Provided further that in respect of an old Motor Vehicle instead of a one-time tax, annual tax applicable to such motor vehicle, as specified in Part-'C' of the First Schedule may be paid. "]

(2)Save as otherwise provided by or under this Act no transport vehicle shall be used in any p ublic place in Uttar Pradesh unless a tax at the rate applicable to such motor vehicle, as spe cified in Part 'D' of the First Schedule has been paid in respect thereof.

(3)Where any motor vehicle other than a transport vehicle, in respect whereof one-time tax has been paid, is operated as a transport vehicle the tax payable under this Act on such transpor t vehicle shall be payable.

[(4) The State Government may, by notification, increase by not more than fifty percent, the r ates of tax, specified in Part 'B', Part 'C' or Part 'D' of the First Schedule."]

This Section makes a distinction between "Motor Vehicles other than transport vehicles" and "t ransport vehicles". The first is dealt with under sub-section (1) and the second under sub-se ction (2) of Section 4. A "transport vehicle" has been defined in sub-section(n) of Section 2 of the Act as meaning "a goods carriage or a public service vehicle". We are not concerned w ith goods carriage as all the Appellants before us operate passenger vehicles. The phrase "pu blic service vehicle" has not been defined in the Act. But under sub-section (o) of Section 2 words and expressions used but not defined in the Act and defined in the Motor Vehicles Act, 1988 shall have the respective meaning assigned to them in that Act. The Motor Vehicles Act, 1988 has defined "public service vehicles" in Section 2 sub-section (35) as meaning "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and inc ludes a maxicab, a motorcab, contract carriage, and stage carriage".
The Appellants' vehicles would fall within the ambit of the levy under Section 4 sub-section (2) of the Act.The levy under the State Act is in respect of the motor vehicle and the taxable event is the "user of the vehicle in any public place"the 'public place' being the roads in t he State of U.P.
Section 6, including the amendment introduced in 2001, reads as follows:-

"6.Additional tax on public service vehicle. - (1) Save as otherwise provided in this Act or t he rules made thereunder, no public service vehicle, other than those owned or controlled by t he State Transport undertaking shall be operated in any public place in Uttar Pradesh unless t here has been paid in respect thereof, in addition to the tax payable under section 4, an addi tional tax at the rate applicable to such public service vehicle specified in the Fourth Sched ule:

Provided that the State Government may, by notification, increase by not more than fifty per c ent, the rates of additional tax specified in the said Schedule.

{(1-A) Save as otherwise provided in this Act, no Motor Vehicle registered or adapted, to carr y more than nine persons excluding the driver shall be kept for use without a permit under Sec tion 66 of the Motor Vehicles Act, 1988 unless there has been paid in respect thereof in addit ion to the tax payable under Section 4, an additional tax twenty-five per cent more than the a dditional tax payable in respect of that category of vehicle under clause (a) of Article V of the fourth Schedule:

Provided that the provisions of this sub-section shall not apply to a Motor Vehicle referred t o in sub-section (3) of section 66 of the said Act.]

(2)The additional tax in respect of a public service vehicle owned or controlled by a state Tr ansport undertaking shall be levied and paid in accordance with the formula specified in the F ifth Schedule.

(3)Where a public service vehicle is wholly or partially exempted from the payment of addition al tax by or under this Act a surcharge for the purpose of the fund established under Section 8 shall be levied on its operator at the rate of five per cent of the additional tax that woul

d have been payable on such vehicle had it not been so exempted and such amount shall be credi ted to the said fund."

Sub-section (1) of this Section also indicates that the tax is leviable in respect of the publ ic service vehicle and the taxable event is the operation of the vehicle in any public place. The tax is in addition to the one time tax payable under Section 4. The rate of tax has been specified in the 4th Schedule. The 4th Schedule provides for slab rates based upon the distan ces run and the nature of the route. The proviso allows the State Government to increase the r ate under Section 6(1) "by not more than 50%" over the rates of additional tax as specified in the 4th Schedule. Sub-section (1-A) of Section 6 provides for a tax payable by motor vehicle s which carry more than 9 persons; and which are kept for use without a permit under Section 66 of the Motor Vehicles Act. The additional tax leviable is 25% more than the rates specifie d for the vehicles covered under sub-section (1) of Section 6. While the rates specified in r espect of those vehicles covered by sub-section (1) and sub-section (1-A) have no reference to the passengers actually carried, sub-section (2) of Section 6 directs that the rate of levy o f additional tax on public service vehicles owned or controlled by State Transport Undertaking is under the 5th Schedule to the Act, based on the gross receipts of the undertaking on accou nt of the passenger traffic during any calendar month.

The first question to be decided is, whether, given these features, the Act is referable to En try 56 or Entry 57 of List II of the 7th Schedule to the Constitution? While the legislative h istory of a statutory enactment may be looked into for the purpose of interpreting an express ion in a statute, this tool of interpretation like any other tool, is available only if the st atutory provision is ambiguous. There is no ambiguity whatsoever in either Section 4 or Secti on 6 as to the object of the tax. It is on the public service vehicle itself and not on the p assengers and is therefore referable to Entry 57 of List II. The mere fact that the basis of calculation of the levy may be made in some cases with reference to the actual passengers carr ied, is no ground for holding that the nature of the tax is other than a tax on vehicles. It is too well established to require authority in support of our conclusion that the measure of tax does not define the nature of the tax. Learned counsel for the Respondents is correct in his submission that there was a deliberate decision to shift from the earlier legislative prac tice in respect of taxes in connection with passengers to a tax on the vehicles. The Statemen t of Objects and Reasons does not lend support to any argument to the contrary. The report of the Chelaiya Committee which has been specifically referred to as the background in which the Act was framed and which has been quoted in the decision which is under challenge in the Spec ial Leave Petition Nos.8897-8897/2004 reads as under:

"The problems of enforcement, leakage of revenue, harassment to operators, multiplicity of tax points and plethora of other problems lead us to the inevitable conclusion in favour of the m erger of the passengers tax with the motor vehicles tax - a recommendation which has partly be en indirectly implemented through the provisions for compounding. .... Taking i nto account all the factors, we have evolved a rate schedule (Appendices 12-C and 12-D) for th e stage carriages and contract carriages for levying an additional motor vehicles tax in lieu of the passengers' tax."

Under Entry 57 of List II, the State Government is legislatively competent to levy taxes in re spect of vehicles which are suitable for use on roads. The phrase "suitable for use on roads" has been authoritatively expounded in several decisions of this Court all of which have been c onsidered and pronounced upon recently by this Court in State of Gujarat v. Akhil Gujarat Prav asi V.S. Mahamandal reported in (2004) 5 SCC 155. In that case the Court was considering, int er alia, the validity of Sections 3 and 3-A of the Bombay Motor Vehicles Tax Act, 1958. In tha t case it was held that an enactment under Entry 57 List II may provide for a tax on vehicles which are not actually being used but are kept for being used on roads. The Sections which wer e considered in that case provided for the levy and collection of tax on all motor vehicles us ed or kept for use in the State. There is no material difference with the statutory provision s being construed by us. Sections 4 and 6(1) both provide for the user of vehicles, although the word used in Section 6(1) is "operate". Sub-section (1-A) of Section 6 deals with those ve hicles which are "kept for use". In these circumstances, finding a parity in the nature of the tax levied, we see no reason not to follow the reasoning of this Court in Akhil Gujarat Prav asi's case (supra) and to hold that the present Act is referable to Entry 57 of List II and no t Entry 56.

The scheme of the Act would show that the charge under Section 4 is common to all vehicles. A distinction is made only with regard to the additional tax payable under Section 6(1),(1-A) a nd (2). In all these cases the tax is with reference to the vehicle and in no case is the lev y on the passengers themselves. The mere fact that in an affidavit, an officer of the State G overnment may have stated that the Act was referable to Entry 56 would not render it so. Since we have held that tax can be levied under the Act on vehicles which are not actually ply ing, the question then is having regard to the compensatory nature of tax, whether the levy co

uld be said to have a nexus with such compensation. In our view it does as the Act itself cle arly provides for refund of tax if the vehicle is not used for a period of one month under Sec tion 12 read with Rule 22 of the Act.

The answer given by the State Government to the Appellants' challenge to the proviso to Secti on 6(1) appears to us to be correct. The very compensatory nature of the tax affords an inbui lt safeguard against an arbitrary exercise of power.

As regards the validity of the circular is concerned, there is no substance in the submission that the State Government could not prohibit the recovery of the tax levied under the Act from the passengers. Sub-section (2) of Section 67 of the Motor Vehicles Act, 1988 clearly provid es that the State Government may indicate whether the tax payable by the operators could be in cluded in the fare chargeable by operators in respect of the passengers carried by them. The m ere fact that sub-section (2) of Section 67 has not been referred to in the circular would mak e no difference to the existence of the power in the State Government.

We are also not persuaded to hold that there is any discrimination between the Appellants and the SRTC. It has been repeatedly held by this Court (See for example Sher Singh v. Union of I ndia reported in (1984) 1 SCC 107) that preference to public undertakings over private underta kings is not violative of Article 14 in the matter of fiscal benefits having regard to the nat ure of the enterprise and the general public services which such Corporations are called upon to provide. The High Court, in our view, has correctly rejected the submissions of the Appell ants on this count.

We, therefore, see no reason to interfere with the decisions of the High Court. However, w e make it clear that we have not expressed any opinion on whether the Appellants would be liab le to pay tax under Section 6(1-A) during the period Ordinance 22 of 2001 was in operation. T his was not in issue before the High Court and liberty is given to the Appellants to raise th e issue if a demand is raised for the aforesaid period, if they are so advised and if they are otherwise so entitled in law. The Appeals are accordingly dismissed. There will be no order as to costs.

.....J.
(Ruma Pal)

.....J.
(Arun Kumar)
New Delhi;
September 14, 2004.