Before N.K. Sud, J

SIDHU ROADLINE REGD. & OTHERS—*Petitioners*

versus

STATE OF PUNJAB—*Respondents*

C.W.P. No. 1175 of 1999

2nd December, 2002

Constitution of India, 1950—Entry 57, List II, Schedule VII (II)—Punjab Motor Vehicles Taxation Act, 1924 (Punjab Act No. 22 of 1993)—S. 3—F—Abolition of passenger tax—To recover loss of revenue, Govt. levying special road tax on transport vehicles—State Govt. fully competent to levy road tax on motor vehicles—Computation of levy of special road tax on the basis of distance allowed to be covered under the permit is reasonable & justified—Merely because special road tax calculated on the basis of an earlier formula on which passanger tax was being calculated it cannot alter the nature of levy on motor vehicles to levy of tax on passangers—Action of Govt. to levy tax only on transport vehicles in exclusion to other type of vehicles not discriminatory—Petition liable to be dismissed.

Held, that the Statement of Objects and Reasons for making the amendment published in the Punjab Govt. Gazatte (extra) dated 5th April, 1993 does not show that it is a levy of passanger tax in the guise of Road Tax. All that it shows is that it is a levy to recover the loss which the State was to incur on account of repeal of the Passangers Tax Act. The levy has been imposed by amendment of the Motor Vehicles Act by incorporating the new provision of Section 3-F. Thus, it has to be treated as a levy on motor vehicles under the Motor Vehicles Act. Merely because special Road Tax is calculated on the basis of a formula on which Passangers Tax on lump sum basis was being calculated earlier, cannot alter the nature of levy on motor vehicles to levy of tax on passangers. Once it is held to be a levy on motor vehicles under the Motor Vehicles Act, the State Legislature's competence cannot be disputed. Hence, in view of Entry 57 of List II Schedule VII(II) of the Constitution of India, it cannot be said that the State Govt. is not competent to levy road tax on motor vehicles. The levy clearly is for compensating the State Government for user of roads.

(Paras 21 & 22)

Further held, that the State Government wanted to increase taxes on passanger transport vehicles. For this purpose, it had two options. It could either amend Section 3(1) and provide for a different rate of tax and ceiling for such vehicles or in the alternative incorporate another provision providing for such a levy. In either case, the net result would have remained the same. The legislature has chosen, for the sake of clarity, to incorporate a new provision rather than amend Section 3(1). Thus, the special Road Tax levied u/s 3F of the Act does not tantamount to a second levy but only results in enhancement of tax on transport vehicles which is not impermissible.

(Para 25)

Further held, that the purpose of levying Special Road Tax is to compansate the State for the use of its roads and to defray the cost of construction and maintenance and expenses in regulating motor traffic. Once, this purpose is established, the State has considerable discretion in the method, measure and amount of tax. The formula prescribed has not been shown to be resulting in any patent injustice and, therefore, the discretion of the State cannot be interfered with. The formula for calculation on the basis of distance allowed to be covered by a vehicle under a permit has a rational nexus with the object sought to be achieved and cannot be said to be unreasonable.

(Paras 31 & 32)

M.S. Khaira, Sr. Advocate, with Balvir Singh Giri,Advocate, *for the petitioners.*

Salil Sagar, Addl. AG, Punjab, *for the respondent-State*

JUDGEMENT

N.K. Sud, J.

(1) The petitioners, who run buses under the stage carriage permits granted to them, have filed this petition praying for the issuance of a writ in the nature of certiorari declaring Sections 3F, 4A, 5A, 7A, 7B and 7C of the Punjab Motor Vehicles Taxation Act, 1924 (for short the Motor Vehicles Act), as incorporated by the Punjab Act No. 22 of 1993, imposing special Road Tax as ultra-vires the Constitution of India. They also seek a direction to the respondents

to refund the special Road Tax already charged from the petitioners and a further direction to not to charge the same in future also.

(2) Before adverting to the controversy raised in this petition, it is necessary to notice the background under which the impugned amendment had been brought about in the Motor Vehicles Act.

(3) Prior to the aforesaid amendment, the tourist bus operators were paying tax on motor vehicles under section 3 of the Motor Vehicles Act. Sub-section (1) of Section 3 empowers the State Government to levy tax on every motor vehicle at such rates as may be prescribed but not exceeding Rs. 35,000 per vehicle for a period of one year.

(4) The State Government had also levied tax on passengers under the provisions of the Punjab Passengers and Goods Taxation Act, 1952 (for short 'the Passengers Tax Act'). The Passenger Tax was imposed at the rate of 45% of the fare as fixed by the State Government from time to time. This tax was collected by the bus operators from the passengers actually travelling in their buses and the mode of payment to the Government was by affixation of adhesive stamps drawn from the Government treasury. However, there was an option given to the bus operators to pay the Passenger Tax either in the manner as aforesaid by affixing the adhesive stamps or in lump sum as per the mode of calculation prescribed under the Rules. This option was taken away by the Punjab Passengers and Goods Taxation Ordinance, 1992 (Punjab Ordinance No. 3 of 1992), and the bus operators were required to pay passenger tax on lump sum basis calculated on the basis of 65% average occupancy. In other words, the option of the bus operators to pay the Passenger Tax on the basis of actual collection from the passengers travelling in their buses was taken away and they were required to pay the tax on lump sum basis irrespective of the number of passengers actually travelling in their buses.

(5) The action of the State Government was challenged by many transporters by filing writ petitions in this Court as they claimed that by making payment of passenger tax on lump sum basis mandatory, they were being made to pay more tax than what was being collected by them from the passengers. This, therefore, tantamounted to levy of tax on the transporters rather than on the

passengers which was not permissible under the Passengers Tax Act. A similar method of calculation of Passenger Tax was also introduced in Himachal Pradesh and an obligation was cast on the transporters to pay the Passenger Tax on lump sum basis only and the option of the transporter to pay the Passenger Tax by way of affixation of adhesive stamps was taken away. The action of the State Government was challenged by the transporters in the Himachal Pradesh High Court. The High Court,—*vide* order dated 1st October, 1992 in CWP 664 of 1991 *(The Nurpur Pvt. Bus Operators Union and others* versus *State* and *others)* held that the State Government could not make it compulsory for the transporters to pay the Passenger Tax on lump sum basis. It could not take away the option of the transporters to pay the tax on the basis of actual collection made from the passengers by affixation of adhesive stamps.

(6) It was, at this stage, that the impugned amendment in the Motor Vehicles Act was made,—*vide* Punjab Act No. 22 of 1993. The Statement of Objects and Reasons for making the amendment published in the Punjab Government Gazette (Extra) dated 5th April, 1993 reads as under :—

> "The Government of Punjab,—vide its notification dated 13th November, 1992 prescribed the levy of lump sum passenger tax at the rate of 65% average occupancy. The collection of passenger tax on lump sum basis has been challenged by a large number of passenger transport operators in the Punjab and Haryana High Court. Pending a final decision on the issue, the Hon'ble High Court has allowed these transporters to pay passenger tax by pasting adhesive stamps on the tickets. In this method of putting adhesive stamps on the tickets, many stage carriage operators evade or underpay passenger tax.
>
> 2. It is feared that the judgments may be against the said notification on the analogy of the judgment pronounced by the Himachal Pradesh High Court in an identical case. In order to avoid this adverse situation, a study of various prevalent systems of taxation in other States was carried out. It is felt that the system which has

been applicable in the State of Rajasthan can be adopted in the State of Punjab for best results. The provisions proposed to be adopted through this Bill are as follows.

(3) (a) It is proposed that we may repeal the Punjab Passengers and Goods Taxation Act, 1952 with savings that rights, duties, obligations, privileges, liabilities acquired or accrued or incurred or previous operation or anything duly done or suffered under that Act and Rules will be protected.

(b) Simultaneously a provision for levying and collection of a "special road tax" on transport vehicles may be made in the Punjab Motor Vehicles Taxation Act, 1924, alongwith the consequential amendments.

The new provision which is proposed to be added in the Motor Vehicles Taxation Act, 1924 will be to the effect that all transport vehicles shall be levied with the special road tax at the rates fixed by the State Government."

(7) Meanwhile, the writ petitions challenging the Punjab Ordinance No. 3 of 1992 were also decided by this Court in ***Gill Bus Service (Registered), Amritsar and others*** **versus** ***State of Punjab and another (1),*** whereby the action of the respondents in making the levy of Passenger Tax on lump sum basis compulsory was struck down. The decision of the Himachal Pradesh High Court in the case of *The Nurpur Pvt. Bus Operators Union (supra)* was approved. Further, the view taken by the Himachal Pradesh High Court was also affirmed by the Supreme Court in ***State of Himachal Pradesh and others*** **versus** ***Nurpur Private Bus Operators Union and others (2).***

(8) It is in the above factual background that the validity of the impugned notification amending the Motor Vehicles Act, providing for levy of special Road Tax, has been challenged.

(9) Mr. M.S. Khaira, appeared on behalf of the petitioners, and challenged the levy of Special Road Tax under the

(1) AIR 1993 Pb & Hy. 281
(2) JT 1999 (8) S.C. 128

new provisions incorporated in the Motor Vehicles Act by the Punjab Act No. 22 of 1993.

(10) The first ground of attack is that the special Road Tax imposed,—vide the impugned amendment is nothing but Passenger tax levied in the grab of special Road Tax as is evident from a plain reading of the Statement of Objects and Reasons. It was pointed out that prior to the incorporation of Section 3F in the Motor Vehicles Act, the rate of fare and freight for State carriages was fixed,—*vide* Notification dated 31st October, 1992 (Annexure P-1), the relevant extract of which is as under :—

Kind of Vehicle	Fare per passenger per K.M. (paise)	Passenger Tax per K.M.	Total
1. Ordinary Buses	14.57	6.56	21.13

After the impugned amendment, a fresh Notification (Annexure P-2) was issued whereby the rates of fare and freight for stage carriages with effect from 1st June, 1993 were prescribed. The relevant extract of the same is as under :—

Kind of Vehicle	Fare per passenger per K.M. (paise)	Remarks
1. Ordinary Buses	21.13	

From the above, it is evident that the total fare per passenger remained the same. In other words, the element of the special road tax continued to be the same as that of Passenger Tax earlier. To elaborate this point further, the counsel pointed out that as per Annexure P-1, the Passenger Tax was payable at paise 6.56 on actual basis. However, for the purposes of lump sum payment of Passenger Tax as per Punjab Ordinance No. 3 of 1992, the average occupancy has to be taken at 65% and consequently the amount of Paise 6.56 gets reduced to Rs. 4.26 being 65% of Rs. 6.56. This is precisely the rate prescribed for the special Road Tax,—*vide* Annexure P-3 dated 28th May, 1993 under the amended provisions of Section 3F of the Motor Vehicles Act. For the

levy of Passenger tax on lump sum basis, the number of passengers was taken at 65% of total seats and full rate of tax was applied. On the other hand, for the levy of Special Road Tax, the number of passengers is not reduced but the tax is reduced to 65% of the earlier rate of Passenger Tax. The net result in each case remains the same. Thus, it is claimed that this levy in fact is Passenger Tax which cannot be levied under the Motor Vehicles Act.

(11) It was next contended that the State Government has no power to levy special Road Tax under any entry either in the State list or in the concurrent list. It was also contended that if this Tax is considered to be a tax on vehicles, then, it is totally unreasonable and arbitrary as it is calculated on the basis of distance allowed to be covered under the permit and has no relation with distance actually covered.

(12) It is further contended that a formula for calculation of lump sum tax which has been found unreasonable for the purposes of Passenger Tax, cannot be justified for the purposes of computation of Road Tax.

(13) The levy is also challenged on the ground that there is no power with the State Government to levy two taxes assessed and levied under the same entry on different basis. It was pointed out that tax on motor vehicles has duly been provided for under section 3 of the Motor Vehicles Act. It also prescribes a maximum limit for this purpose. Thus the provision for levy of special Road tax on motor vehicles on a different basis was not justified. For this purpose, the learned counsel placed reliance on the judgment of the Supreme Court in ***Union of India and others*** **versus** ***Tata Iron and Steel Co. Ltd., Jamshedpur (3).*** He also relied on the judgment of the Allahabad High Court in ***The Co-operative Cane Development Union Ltd.*** **versus** ***The Town Area Committee, Pipraich Distt. Gorakhpur (4).*** Reliance was also placed on the judgment of the Supreme Court in ***State of Karnataka and others*** **versus** ***N. Madappa and others (5),*** in which it has been held that after having levied the tax on the basis of capacity of passengers carried in a motor

(3) (1976) 2 S.C.C. 123
(4) 1982 All. L.J. 25
(5) JT 1996(5) S.C. 453

vehicle as per permit issued thereunder, the State Legislature could not levy tax on excess passengers on each of the occasions when the enforcing officers found the vehicle to be over-loaded. At any rate, it is claimed, that the tax on vehicles and the special Road Tax taken together, could not exceed the overall limit of Rs. 35,000 per vehicle per year as prescribed in sub-section (1) of Section 3 of the Motor Vehicles Act.

(14) Mr. Khaira then contended that even if it were to be held that the Government is competent to levy Special Road Tax, such a levy cannot be imposed only on transport vehicles in exclusion to other types of motor vehicles. He referred to Section 3 of the Punjab Motor Vehicles Act which provides for levy of tax "on every motor vehicle". He contended that the term 'motor vehicle' is defined in clause (b) of Section 2, which reads as under :—

> "(b) "motor-vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially ;"

According to him, since the mandate of Section 3 is for levy of tax on every motor vehicle, levy of Special Road Tax on transport vehicles alone is clearly contrary to the aforesaid provision and also suffers from the charge of discrimination.

(15) Mr. Salil Sagar, Additional Advocate General, appearing on behalf of the respondents, contended that the Special Road Tax is a levy on motor vehicles as is evident from a plain reading of the relevant provisions. He referred to Entry 57 of List II Schedule VII(II) of the Constitution of India to show that the State Government has been given power to impose tax on vehicles, whether mechanically propelled or not, suitable for use on road. He explained that earlier taxes were levied under the Motor Vehicles Act as also under the Passengers Tax Act. Under the Motor Vehicles Act, tax was levied on the motor vehicles whereas under the Passengers Tax Act, tax was levied on the passengers carried by the transport vehicle and was collected by the transporters from the passengers. In the year 1993, the Passengers Tax Act was repealed. In order to provide for an alternative source of revenue on account of the loss of revenue on repeal of the Passengers Tax Act. It was decided to levy Special Road

Tax on transport vehicles. Consequently, such a levy has been provided by incorporating Section 3F by the Punjab Act No. 22 of 1993. In this factual background, he contested the claim of the counsel for the petitioners that the levy of Road Tax under section 3F was nothing but passenger tax in the garb of Special Road Tax. He pointed out that the Statement of Objects and Reasons dated 5th April, 1993 could not be interpreted to mean that the Road Tax was, in effect, tax on passengers. In fact, it clearly shows that the Special Road Tax on transport vehicles had been levied to make up for the loss which the State Government was likely to incur on account of abolition of the tax on passengers. He relied on the judgment of the Supreme Court in ***Mrs. Meenakshi and others*** **versus** ***State of Karnataka and others (6).*** In that case, the State Government had abolished octroi. In order to recoup the loss of revenue, a new provision Section 3B was inserted in the Karnataka Motor Vehicles Act by which tax was enhanced on passenger vehicles. This action of the State Government was upheld by the Supreme Court. Thus, Mr. Sagar contended that the Special Road Tax is not passenger tax but a levy in lieu thereof for recovering the loss of revenue on account of its abolition. However, it retains the character of a levy on motor vehicles.

(16) The learned State counsel then contended that the levy of tax on transport vehicles could not be challenged on the ground that the State Government is not competent to levy such a tax. According to him, the State Government provides roads, bridges, check posts, etc. for the transporters which are used by motor vehicles. Thus, the motor vehicles have a direct relation to such facilities and any levy to recover the cost incurred for the aforesaid purpose cannot be held to be without jurisdiction. He placed reliance on the judgments of the Supreme Court in ***Automobile Transport (Raj.) Ltd., etc.*** **versus** ***State of Rajasthan and others (7)*** and ***The Malwa Bus Service (Pvt.) Ltd.*** **versus** ***State of Punjab and others (8).*** Thus, he pleaded, the levy of road tax is a levy on motor vehicles which the State Government is fully competent to impose under Entry 57 of List II of Schedule VII(II) of the Constitution of India.

(17) Learned counsel for the respondent further contended that the levy of road tax cannot be held to be unreasonable and

(6) AIR 1983 S.C. 1283
(7) AIR 1962 S.C. 1406
(8) AIR 1983 S.C. 634

arbitrary on the ground that it had no relation with the actual distance covered. He argued that once the State Government is found to have jurisdiction to levy Special Road Tax, a method and measure has to be evolved to determine the liability. There can be no straight-jacket formula which can determine the exact liability of each vehicle. The present formula based on seating capacity and the distance allowed to be covered under the permit cannot be held to be unreasonable. He pointed out that special care has already been taken to mitigate hardship which this formula might entail. For instance, 36 tax holidays have been allowed in a year to ensure that no tax is recovered for period during which a vehicle may be out of use due to the normal requirement of its repair or servicing or similar other unforeseen circumstances. It is not disputed that the present formula can cause a little hardship to some while granting a marginal extra benefit to others. But, according to him, this cannot be a ground for striking it down as there can possibly be no fool proof formula to determine the exact liability in respect of each vehicle. The element of estimate cannot be totally ruled out. Thus, unless it can be shown that the basis of estimate is grossly unfair or unjust, it cannot be held to be unreasonable. Learned counsel referred to the judgment of the Supreme Court in the case of ***Automobile Transport (Raj.) Ltd. (supra)*** in which it was held that tax based on passenger capacity on commercial buses and loading capacity of goods vehicles, both had some relevance to the wear and tear caused to the road used by the buses. It was further held that in basing the tax on passengers capacity or loading capacity, the Legislature has merely evolved a method and measure of compensation demanded by the State but the tax continues to be compensation and charge of regulation.

(18) The learned counsel for the respondents then contended that the formula of calculation of Special Road Tax cannot be said to be unreasonable on the ground that it had not been approved under the Passengers Tax Act. Under the Passengers Tax Act, the tax was leviable on passengers. However, by introducing this formula, the State Government had made it compulsory for the transporters to pay passenger tax on lump sum basis. The passenger tax was recoverable by the transporters from the passengers. By making the levy on lump sum basis compulsory on the basis of the aforesaid formula, it was shown to the Court that in many cases the tax required to be paid exceeded the tax actually recovered from the passengers and thus it

tantamounted to levy of tax on transporters rather than on passengers. It was on this ground alone that the compulsory levy of passenger tax on the basis of this formula had been dis-approved. The Court was of the view that it should be the option of the transporter either to pay the tax on lump sum basis in accordance with the above mentioned formula or on actual basis by way of affixation of adhesive stamps. However, the counsel pointed out, that the formula itself had not been found to be bad or unreasonable.

(19) Mr. Sagar also contested the contention raised on behalf of the petitioners that levy of Special Road Tax under section 3F of the Motor Vehicles Act tantamounts to levy of a second tax, in addition to the levy under Section 3(1), assessed and levied on a different basis under the same entry. He argued that it is only an additional levy under the same enactment which has been introduced to make up the loss caused to the State revenue on account of repeal of the Passenger Tax Act. The fare structure was also revised. Initially it was enhanced to the old level inclusive of the Passenger Tax liability and thereafter enhanced further from time to time. Thus, the Legislature clearly intended to place additional burden of tax on the transport vehicles. This could have been done either by amending sub-section (1) itself or by incorporating a new provision. Merely because the Legislature chose to do the latter, it cannot be said that a second tax on motor vehicles had been imposed.

(20) Mr. Sagar further submitted that the State Legislature was fully competent to classify the vehicles for the purpose of taxation. A provision levying tax cannot be struck down on the ground that the tax falls heavily on a particular category. For this purpose, he placed reliance on the judgment of the Supreme Court in ***State of Maharashtra and others*** **versus** ***Madhukar Balkrishna Badiya and others. (9)*** In this case it has been held that the Legislature has the power to distribute tax burden in a flexible manner and the Court would not interfere with the same. He, therefore, contended that levy of special Road Tax cannot be faulted on the ground that its burden fell only on the transport vehicles and not on other motor vehicles.

(21) I have heard the counsel for the parties and also gone through the case law cited before me. The first issue for determination

(9) AIR 1988 S.C. 2062

is about the nature of tax levied under section 3A of the Motor Vehicles Act. The petitioners maintain that this levy is nothing but Passenger Tax in the guise of Road Tax whereas the respondent maintain that it is levy of Road Tax on transport vehicles carrying passengers for the user of infrastructure such as roads and is regulatory and compensatory in nature. The claim of the petitioners is based on the Statement of Objects and Reasons and on the mode of its calculation. The Statement of Objects and Reasons has already been reproduced in the earlier part of this judgment. These do not, to my mind, show that it is a levy of Passenger Tax in the guise of Road Tax. All that it shows is that it is a levy to recover the loss which the State was to incur on account of repeal of the Passengers Tax Act. The levy has been imposed by amendment of the Motor Vehicles Act by incorporating the new provision of Section 3-F. Thus, it has to be treated as a levy on motor vehicles under the Motor Vehicles Act. Merely because special Road Tax is calculated on the basis of a formula on which Passenger Tax on lump sum basis was being calculated earlier, cannot alter the nature of levy on motor vehicles to levy of tax on passengers. Whether such a levy is otherwise reasonable or justified or not, is a separate matter which shall be dealt with later. However, once it is held to be a levy on motor vehicles under the motor Vehicles Act, the State Legislature's competence cannot be disputed. This matter has been considered by the Apex Court in the case of *Automobile Transport (Raj.) Ltd. (supra)* in which it has been held that the taxes imposed under the Rajasthan Motor Vehicles Taxation Act are compensatory taxes and do not hinder the freedom of trade, commerce or intercourse assured by Article 301 and hence the Act does not violate the provisions of that Article. It was also held that a measure imposing compensatory taxes for the use of trading facilities do not come within the purview of the restriction contemplated by Article 301 and such measures need not comply with the requirements of proviso to Article 304(b) of the Constitution. After examination of various provisions of the Rajasthan Motor Vehicles Taxation Act, it was observed that the taxes imposed were really taxes imposed on motor vehicles which use the roads in Rajasthan or are kept for use therein, either throughout the whole area or part of it. The Apex Court further went on to hold 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.

(22) This view stands reaffirmed in ***G.K. Krishnan etc.* versus *State of Tamil Nadu and another (10).*** In this case, it has been held that to determine whether the tax is compensatory or not, it is not necessary to show that the precise or specific amount collected has been used for providing the facilities. Thus, the broad test as laid down in *G.K. Krishnan's case (supra)* was to show that the taxation was for the purpose of compensating the State for the use of its roads and to defray the cost of construction and maintenance and expenses in regulating motor traffic, and it must affirmatively appear that such is the purpose of the legislation sought to be upheld. Applying the ratio of the judgments of the Apex Court discussed above and in view of Entry 57 of List II Schedule VII(II) of the Constitution of India, it cannot be said that the State Government is not competent to levy road tax on motor vehicles. The levy clearly is for compensating the State Government for user of roads.

(23) There is no merit in the contention of the counsel for the petitioners that since the special Road Tax has been levied after repealing the Passenger Tax Act, it in fact, tantamounts to levy of Passenger Tax in the guise of Road Tax. The Statement of Objects and Reasons clearly shows that this tax has been levied to fill in the dent made in the revenue of the State on account of abolition of Passenger Tax. In ***Mrs. Meenakshi's case (supra),*** the State Government had abolished Octroi and had simultaneously enhanced tax on passenger vehicles under the Karnataka Motor Vehicles Act. The enhanced levy was challenged by the bus operators. The levy was upheld. The Supreme Court has observed that once the State Legislature is found to be competent to pass the Act and the Government is authorised to levy the tax, the question of motive with which the tax was imposed is immaterial.

(24) The next question for consideration is as to whether the levy of special Road Tax can be challenged on the ground that it tantamounts to levy of second tax assessed and levied under the same entry on different basis. For this purpose, it will be relevant to refer to Section 3(1) of the Motor Vehicles Act and the amendments made thereto from time to time. This provision has been noticed by the

(10) AIR 1975 S.C. 583

Supreme Court in the case of ***The Malwa Bus Service (Pvt.) Ltd. (supra),*** in paras 2 to 6, which read as under :—

"Before the commencement of the Constitution, Section 3(1) of the Act which is the charging section read as follows :—

"3. (1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the first day of April, first day of July, first day of October and the first day of January at the rate specified in the schedule to this Act."

3. The above provision was amended in 1954 by providing that the rates of tax levied under the Act were those specified by the State Government in a Notification to be issued by it, subject however to the maximum limit fixed by the Act, instead of the rates of tax specified by the State Legislature itself in the Schedule to the Act. After that amendment, Section 3(1) read thus :

"3(1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the first day of April, first day of July, first day of October, and the first day of January *at such rates not exceeding Rs. 2,200 per vehicle for a period of one year as the State Government may by notification direct." (Emphasis added).*

4. The maximum limit of Rs. 2,200 mentioned in Section 3(1) was increased by successive legislative amendments to Rs. 2,750 in 1963, to Rs. 4,200 in 1965, to Rs. 10,000 in 1970 and to Rs. 20,000 in 1978. In exercise of the power conferred on it, the State Government fixed the rate of tax in the case of stage carriages at Rs. 75 per seat in 1965, at Rs. 100 per seat in 1970 and at Rs. 200 per seat in 1974, subject to the maximum prescribed by the Act. On March 31, 1978, the State Government issued a Notification providing that on and after April 1, 1978, every stage carriage plying in the State of Punjab should pay tax at Rs. 275 per seat where it

operated up to 125 kilometres a day and Rs. 300 per seat where it operated for more than 125 kilometres subject to a maximum of Rs. 20,000 per year in both the cases. Then came the Amending Act in 1981 by which the maximum limit prescribed in Section 3(1) of the Act was raised to Rs. 35,000 retrospectively with effect from 1st October, 1980. Section 3 of the Amending Act inserted a new section in the Act being Section 3-A of the Act which authorised the state Government to issue a Notification under Section 3(1) raising the rates of tax retrospectively with effect from 1st October, 1980. After the amendment in 1981 Section 3(1) of the Act reads thus :

"3(1) A tax shall be leviable on every motor vehicle in equal instalments for quarterly period commencing on the first day of April, first day of July, first day of October and the first day of January at such rates not exceeding Rs. 35,000 per vehicle for a period of one year, as the State Government may by notification direct."

(5) Pursuant to the above section, as amended in 1981, and the newly inserted Section 3-A of the Act which conferred power on it to raise the rates of tax under the Act with effect from 1st October, 1980 the State Government issued the following Notification on 19th March, 1981 :

"DEPARTMENT OF TRANSPORT

Notification

The 19th March, 1981

No. S.O. 15/P.A.4/24/S. 3/Amd./81.—In exercise of the powers conferred by sub-section (1) of Section 3 read with Section 3-A of the Punjab Motor Vehicles Taxation Act, 1924 (Punjab Act No. 4 of 1924) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the schedule appended to the Punjab Government,

Transport Department Notification No. S.O./50/P.A./4/24/S.3/71, dated the 10th November, 1971 with effect from the 1st October, 1980 namely :—

AMENDMENT

In the said schedule, against serial No. 5 for item (i) and entries relating thereto, the following item and entries shall be substituted, namely :—

"(1) Stage carriages for hire and used for the transport of passengers, excluding the driver and conductor.	Rs. 500 per seat subject to a maximum of Rs. 35,000".

SADA NAND,

Secretary to Government, Punjab,
Department of Transport."

(6) The final position that emerged after the above Notification was that every stage carriage plying for hire and used for the transport of passengers (excluding the driver and conductor) had to pay per year Rs. 500 per seat subject to a maximum of Rs. 35,000 irrespective of the distance over which it operated daily."

The transport vehicle operators' challenge to the Notification dated 19th March, 1981 enhancing the tax on Stage Carriages plying for hire and used for the transport of passengers to Rs. 500 per seat was negatived by the Apex Court.

(25) A perusal of the original provisions as existed in the Motor Vehicles Act and amendments made thereto from time to time clearly shows that the State Legislature has not only increased taxes from time to time but also increased the maximum limit specified in Section 3(1). Thus, the competence of the State Legislature to increase either the rate of tax on vehicles or the upper limit cannot be questioned

nor has it been disputed. In the present case, the State Government wanted to increase taxes on passenger transport vehicles. For this purpose, it had two options. It could either amend Section 3(1) and provide for a different rate of tax and ceiling for such vehicles or in the alternative incorporate another provision providing for such a levy. In either case, the net result would have remained the same. The Legislature has chosen, for the sake of clarity, to incorporate a new provision rather than amend Section 3(1). Thus, the special Road tax levied under Section 3-F of the Act does not tantamount to a second levy but only results in enhancement of tax on transport vehicles which is not impermissible. The judgment of the Supreme Court in **N. Madappa's case** *(supra)* does not advance the case of the petitioner in this behalf. In that case, the State Legislature had levied tax under the Karnataka Motor Vehicles Taxation Act on the basis of capacity of passengers as per the permits issued thereunder. Thereafter, an amendment was made to levy tax on excess passengers on each of the occasions when the enforcing officers found the vehicle to have been overloaded. This levy was struck down on the ground that the concept of tax on vehicles was not for a single day or an hour when the passengers were found to be in excess of the limit prescribed under the permit. The power to levy the tax was on the basis of user of the vehicle for the quarter under the Act. Thus the additional levy was found to be inconsistent with the scheme of the Act. Such is not the position in the case in hand. As already pointed out, the levy of special Road Tax is nothing but an increase in tax on passenger transport vehicles which the State Legislature is fully competent to provide. Similarly, the decision of the Allahabad High Court in the case of **The Co-operative Cane Development Union Ltd.,** *(supra)* is not applicable to the facts of this case. In that case, the High Court was interpreting the term property under clause (f) of sub-section (1) of Section 14 of the U.P. Town Areas Act, 1914. It was held that the term property in clause (f) had to be read in the context of circumstances and was not a tax under clauses (a), (b) (c) or (e) thereof when the land of building is to be taxed. The same was struck down on the ground that under the garb of the Rules, the Town Area wanted to impose the tax levied under clauses (a), (b), (c) and (d), again under clause (f) of Section 14 of the Act. Thus, that case was decided by the Allahabad High Court on the basis of interpretation of clause (f) of Section 14 of the U.P. Town Areas Act, 1914.

(26) The judgment of the Supreme Court in the case of **Tata Iron and Steel Co. Ltd.,** *(supra)* is also not applicable to the facts of the present case. In that case. Items 25 and 26 of Schedule I of the Central Excise and Salt Act, 1944, were being interpreted. It was held that the charging Section 3 of that Act provided for levy of excise duty on non-exicisable goods other than salt which were produced and manufactured at the rate set forth in the first Schedule. Under Item 25, duty was prescribed on pig iron scrap and under Item 26, rate of duty on melting scrap was prescribed. The excise authorities had realised duty from the assessee on steel ingots in the making of which duty paid iron of rejected ingot moulds and bottom stools was used alongwith non duty-paid materials. Its claim for exemption in respect of duty paid pig iron on rejected moulds and bottom stools used in the making of steel ingots was rejected. Thus, the sole dispute before the Supreme Court, as noticed in para-22 of this judgment was, as to whether the duty paid pig iron was used alongwith the non duty paid material. The Apex Court accepted the contention of the petitioner that it was possible to find out the quantity of duty paid pig iron in the melting scrap, i.e. unserviceable ingot moulds and bottom stools broken into pieces. It was on this ground that the assessee's claim for exemption in respect of duty paid pig iron had been accepted. This is not an authority on the proposition that the charging section cannot be amended to provide for an additional levy.

(27) The petitioner is also challenging the levy on the ground that the formula prescribed for computation of levy of Special road Tax is totally unreasonable as it has no relation with the actual distance covered. The liability is computed on the basis of the distance allowed to be covered under the permit. It has been correctly pointed out by the counsel for the respondents that once the State is found to have jurisdiction to levy Special Road Tax, a method and measure has to be evolved to determine the liability and there can be no straight-jacket formula which can determine the exact liability in respect of each vehicle. A formula for levy of Road Tax for use of roads, based on seating capacity and distance allowed to be covered under the permit cannot be said to be unreasonable. A bus operator is expected to cover the distance allowed to him under the route permit. 36 tax holidays have been provided for possible non-operation of the vehicle due to the requirement of normal repair or servicing. In the case of **The Malwa Bus Service (Pvt.) Ltd.,** *(supra)*, the Apex Court

has observed that the Courts cannot insist upon an exact correlation between the tax recovered and the cost so incurred because such exact correlation is in the very nature of things impossible to attain. There may be in some cases a litle excess recovery by way of taxes. That by itself should not result in the nullification of the law imposing the tax if the extent of such excess is marginal having regard to the total cost involved.

(28) In the case of **Automobile Transport (Raj) Ltd.** *(supra)*, it has been observed by the Supreme Court that it would not be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used in providing any facilities and that a working test for 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 and that it would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things it could not be done.

(29) In **G.K. Krishnan's case** *(supra)*, the Supreme Court has observed that it is always difficult to evolve a formula which will in all cases ensure exact compensation for the use of the road by vehicles having regard to their type, weight and mileage. Rough approximation, rather than mathematical accuracy, is all that is required. The Supreme Court further referred to the judgments of the Supreme Court of U.S.A. and has observed as under (in paras 21 and 22) :—

> "21. The Supreme Court of U.S.A. takes the view that the validity of a tax on vehicles must be determined not by way of a formula but rather by the result, and in several cases, the court has upheld the validity of a flat fee not geared to weight, mileage or seating capacity, provided the fee is reasonable in amount and is not shown to be in excess of the compensation for the use of the roads; see **Morf.** *versus* **Bingaman, (1935) 298 U.S. 407 and Aero Mayflower Transit Co,** *versus* **Board of R.R. Commrs., (1947) 332 U.S. 497.** According to that Court, since the purpose of the tax

imposed by the state on motor vehicles using its road is to obtain from them a fair contributive share of the cost of constructing and maintaining the public highways and facilities furnished and to defray the expense of administering the police regulations enacted for the purposes of ensuring the public safety, the method used by the state for imposing tax does not seem to be of great significance : but such taxation, however, can only be for the purpose of compensating the state for the use of its roads and to defray the cost of construction and maintenance and expenses in regulating motor traffic, and it must affirmatively appear that such is the purpose of the legislation sought to be upheld. But, once a proper purpose is established, the state has considerable discretion in the method, measurement and amount of the tax.

22. It has been said that the amount of the charges and the method of collection are primarily for determination by the state itself, although they must be reasonable and fixed according to some uniform, fair and practical standard. If the tax is attacked on the ground that it is excessive, the burden of proof is upon the one attacking its validity. Although any method of taxation which has a direct bearing upon or connection with the use of the highways is apparently valid, a tax which has no such apparent bearing and is not shown to be compensatory, but is rather a tax on the privilege of engaging in trade of commerce, is beyond the power of the state. Nor is it necessary that there should be a separate fund or express allocation of money for the maintenance of roads to prove the compensatory purpose when such purpose is proved by alternative evidence."

(30) Further, it is evident from para-6 of **Mrs. Meenakshi's case** *(supra)*, that the levy of enhanced passenger tax on passenger transport vehicles had no relation with the actual distance covered daily by such vehicles.

(31) In view of the above, it is clear that the purpose of levying Special Road Tax is to compensate the State for the use of

its roads and to defray the cost of construction and maintenance and expenses in regulating motor traffic. Once, this purpose is established, the State has considerable discretion in the method, measure and amount of tax. The formula prescribed has not been shown to be resulting in any patent injustice and, therefore, the discretion of the State cannot be interfered with. In fact, in **G.K. Krishnan's case** *(supra)*, the argument that the tax could be levied only for use of roads in existence and not for capital expenditure for construction of new roads was negatived by the Apex Court. This shows that a levy of compensatory tax can even go beyond the actual user of roads by a vehicle. Reliance is pleaced on the observations of the Supreme Court in the case of **Automobile Transport (Raj) Ltd.,** *(supra)*, at page 1425, which read as under :—

> ".....The taxes are compensatory taxes which instead of hindering trade, commerce and intercourse facilitate them by providing roads and maintaining the roads in a good state of repairs. 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 that 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."

(32) The formula for calculation on the basis of distance allowed to be covered by a vehicle under a permit has a rational nexus with the object sought to be achieved and cannot be said to be unreasonable. It has been correctly pointed out that this formula for calculation of Passenger Tax was never struck down for being unreasonable. The courts merely held that the option of the transport vehichle operators to pay Passenger Tax on actual basis could not be

taken away. It was held that insistence of the State Government to recover Passenger Tax in lump sum on the basis of this formula could in some cases result in collecting more tax from an operator than what was recovered by him from passengers. In such cases, the levy lost its character of being a tax on passengers and became a tax on transporters, which was not permissible.

(33) The next objection of the petitioners that the transport vehicles could not be singled out in exclusion of other types of motor vehicles for levy of Special Road Tax in view of Section 3 of the Act, is also without any substance. Similar objection stands over-ruled by the Apex Court in the case of **Mrs. Meenakshi, The Malwa Bus Service (Pvt.) Ltd.** and **G.K. Krishnan** *(supra)*, In **Mrs. Meenakshi's case** *(supra)*, enhanced tax was levied on passenger vehicles only. It was challenged on the ground that no similar levy was made in respect of goods vehicles. It was held that in the matter of taxation, the Constitution gives wide latitude to the Legislature in classification for taxes. The Apex Court at page 1287 relied on the following observations in its earlier decision in ***East India Tobacco Co.*** *versus* ***State of Andhra Pradesh, and others (11)*** :—

> "A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

It was further observed as under :—

> "Therefore, if the Legislature after considering various aspects of the matter decided to enhance tax on the passenger vehicles on the ground that it was not possible to raise tax on goods vehicles for a short period on that account alone it cannot be said that the tax if it is otherwise compensatory, would cease to be one. On the contrary, if augmentation of the revenues by raising the tax was necessary for facilitating inter-State trade, commerce and intercourse and it was attempted by levying enhanced tax on goods vehicles which for certain reasons did not fructify the short fall was sought to be made good by enhancing the tax on the passenger vehicles because a large amount was necessary for facilitating inter-State trade, commerce and intercourse."

(11) AIR 1962 S.C. 1733

In the case of **The Malwa Bus Service (Pvt.) Ltd.,** *(supra)* also, the levy of tax was challenged on the ground that tax of Rs. 35,000 had been levied on motor vehicles used as stage carriage but only Rs. 1,500 per year on a motor vehicle used as a goods carrier. It was pleaded that this action suffered from the vice of hostile discrimination and was, therefore liable to be struck down. This plea was negatived by the Supreme Court and at page 642 it was observed as under :—

> ".....There is no dispute that even a fiscal legislation is subject to Art. 14 of the Constitution. But it is well settled that a legislature in order to tax some need, not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. ....."

In **G.K. Krishnan's case** *(supra)* also, one of the grounds for challenging the imposition of enhanced tax on contract carriages was that similar tax had not been imposed on stage carriages. This contention was negatived by the Apex Court. In Para-39, it was observed as under :—

> ".....Therefore, when the Government, in the exercise of its power to tax, made a classification between stage carriages on the one hand and contract carriages on the other and fixed a higher rate of tax on the latter, the presumption is that the Government made that classification on the basis of its information that contract carriages are using the roads more than the stage carriages because they are running more miles. Therefore, this Court has to assume, in the absence of any materials placed by the appellants and petitioners, that the classification is reasonable. ..... In these circusmstances, we think there is the presumption that the classification is reasonable, especially in the light of the fact that the classification is based on local

conditions of which the Government was fully cognizant. Since the petitioners and the appellants have not discharged the burden of proving that the classification is unreasonable, we hold that the levy of an enhanced rate of vehicle tax on contract carriages was not hit by Article. 14".

Reference can also be made to the observations of the Supreme Court in ***S.K. Dutta, ITO*** *versus* ***Lawrence Singh Ingty (12)*** :—

"It is not in dispute that taxation laws must also pass the test of article 14. That has been laid down by this court in **Moopil Nair** *versus* **State of Kerala (1961) 3 SCR 77.** But as observed by this Court in **East India Tubacco Co.** *versus* **State of Andhra Pradesh (1963) 1 SCE 404, 409** in deciding whether the taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others : it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably".

Thus, the objection of the petitioners that the transport vehicles could not be singled out in exclusion of other types of motor vehicles for levy of Special Road Tax has no merit.

(34) No other point has been raised.

(35) In view of the above, I find no merit in this writ petition which is, accordingly, dismissed. No costs.

R.N.R.

(12) (1968) 68 ITR 272 (SC)