Before K. S. Tiwana and M. M. Punchhi, JJ.

AMBALA BUS SYNDICATE (PVT.) LTD., ROPAR and another,—*Petitioners*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 1864 *of* 1981.

December 3, 1981.

Punjab Motor Vehicles Taxation Act (IV of 1924) *as amended by Act No. XIII of* 1981—*Sections* 3 *and* 4—*Constitution of India,* 1950—*Articles* 14, 19 *and* 301 *to* 304 *and Seventh Schedule List II Entries* 56 *and* 57—*Tax on vehicles kept for use on roads—Incidence of such tax—Whether attracted to the actual or available user of the road by or for a motor vehicle—Absence of nexus to the actual use of roads—Whether affects the regulatory or compensatory character of the tax—Burden of tax highest on the stage carriages as against other class of vehicles—Article* 14—*Whether violated—Failure to classify stage carriages for purposes of taxation—Whether offends against Article* 14—*Such levy of tax—Whether confiscatory and thus violative of Articles* 19 *and* 301 *to* 304.

Held, that if the tax is a measure to place burden upon transportation so as to aid the State in the general expenditure out of which it spends on the cost of maintaining and making roads as also bridges, it would be a compensatory or a regulatory tax and not a tax simpliciter. At the same time the extent to which use is made of the roads, it has to be read and meant in the context that the taxes on vehicles are levied and imposed for their suitability and capability for use of the roads. To put it differently, the State's ability to provide for and keep available roads and also providing facilities such as lighting, traffic control amenities for passengers, halting places for vehicles, maintenance of staff for the aforesaid purposes and the traffic police etc. are all measures which involve expenditure and necessarily the State is competent under Entry 57 of List II of the Seventh Schedule to the Constitution of India to impose tax to aid itself as a recompense to the expenses incurred. Thus, the incidence of tax is attracted on the availability of roads in the net work of the country as also facilities for the proper, safe, efficient and economical use thereof and not to the actual use of road by the stage carriages kept by the transport operators.

(Para 12).

Held, that section 4 of the Punjab Motor Vehicles Taxation Act 1924 provides for the obligation of persons keeping motor vehicles to make declarations and to pay taxes. Taxation is attracted for keeping the motor vehicles for use and not for actually using it. Section 13 of the Act provides for exemptions and deductions. The State Government by rule or order, can exempt a person or class of persons from liability to pay the whole or part of the taxes in respect of any motor vehicle or class of motor vehicles and in the like manner can exclude such motor vehicles from the operation of the Act. At the same time a person keeping for use a motor vehicles can apply for exemption and prove to the satisfaction of the Licensing Officer that he has not used or permitted the use of motor vehicles for the period sought to be exempted for which tax is otherwise payable. Thus, there is an inbuilt infrastructure that a person who keeps a motor vehicle for use is liable to pay tax but can claim exemption from liability to pay tax if he satisfies the Licensing Officer that he has not used or permitted the use of his motor vehicle throughout the quarterly period preceding. As it would be plain that tax is attracted on the owner for keeping the vehicle for use and a fortiori the State is entitled to the tax as a regulatory and compensatory measure for making the roads and facilities available to him but nevertheless can exempt such person if he has not actually used the road for the quarterly period preceding. The principle of uniformity is towards taxation and exemption is the exception. Thus, there is sufficient nexus between the tax and the use of road justifying the imposition. (Para 13).

Held, that a statutory discrimination will not be set aside if a set of facts may reasonably be conceived by a Court to justify it. As yet, no scheme of taxation, be it of any kind, has been devised which is free of all discriminatory impact. The Court, thus in such a situation exercises judicial restraint and does not impose too rigorous standards of scrutiny as the arena is complex and the Court has its own remoteness and lack of familiarity with the local problems. Thus, when the Government in exercise of its power to tax makes a classification, the presumption is that the Government made that classification on the basis of its information that the two objects which are subjected to tax are differently situated and have to be made to share the tax burden unequally. The public carriers work in a competitive field whereas a non-competitive field is assured to the stage carriages. This provides the rationale for placement of different tax burdens. Additionally, stage carriages normally ply in the day time catering to the needs of passenger traffic making it imperative for them to keep the speed varied and applying brakes very often making higher impact stresses on the pavement structure than the goods vehicles who normally operate by night, maintain a regular speed and do not have to apply brakes and stop too frequently as do passenger buses. More facilities have been provided by the

State all along the roads in the form of bus-stands, traffic lights and other amenities to the passengers for facilitating the flow of passengers traffic whereas such facilities are normally not expected by the goods carriers except of halting places. It is well settled that the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property of tax in different ways and adopt different modes of assessment. A taxing statute cannot thus be exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects. Thus Article 14 does not stand violated as stage carriages and goods vehicles are categories distinct.

(Paras 15 and 16).

Held, that the requirement of maintaining twenty-five per cent extra fleet is not for the purposes of creating more objects of taxation but solely for the purposes of ensuring and making passenger transport dependable and efficient. It is inherent in the system that there would be breakdowns of vehicles stranding them on the roadside and the passengers would have to be rendered help and facility to carry on to their destination. The extra fleet vehicles have to stand by to substitute the vehicles on the road in the larger interest of transportation of passengers. These are also required to be maintained for being plied as contract carriages for special purposes as also to take over extra burden of passenger traffic in times of exceptional necessity. For them also the roads are made available by the State and properly maintained and kept. Moreover, exemptions can be claimed if the vehicle has not been put to use for the quarter preceding. When exemption can successfully be sought, even the semblance of discrimination vanishes. Thus, there was no need for the State to classify stage carriages differently for the purposes of taxation. (Para 17).

Held, that there can be many reasons for the losses suffered by the operators of stage carriages and not by the increase in tax. Losses could be due to mis-management or keeping a small fleet of buses resulting in higher expenses. In view of the fact that the State has pleaded figures of the profits which the passenger transport is likely to make, the trade of carrying passengers as such can bear the increased tax and the mere fact that some transporters could not bear the increased tax was no ground to strike down the increase as confiscatory. (Para 18).

Petition under Articles 226 and 227 of the Constitution of India praying that the petition be accepted records of the case sent for and :—

(a) *a writ in the nature of Certiorari or any other suitable writ issued declaring the Amending Act No. 13 of 1981 and*

the notification issued thereunder as unconstitutional and ultra vires *the Constitution;*

(b) *a writ in the nature of mandamus issued directing the respondents to do their duty according to law and not to recover the enhanced tax from the petitioner;*

(c) *Service of notice of motion dispensed with since the respondents are seeking to recover the arrears of token tax which has been levied retrospectively as arrears of land revenue;*

(d) *filing of original/certified copies of Annexure P. 1 to P. 12 dispensed with;*

(e) *operation of the amending Act and the recovery of the amount as claimed,*—vide *Annexure 'P. 12' stayed till the writ petition is finally disposed of by this Hon'ble High Court; and*

Y. S. Chitley, Advocate with N. K. Sodhi, and Sadana Rama Chaudhri, Advocates, *for the Petitioner.*

M.J.S. Sethi, Additional A.G., Punjab, *for the Respondents.*

JUDGMENT

M. M. Punchhi, J.

1. Whether the actual or available user of the road, by or for a motor vehicle, attracts the incidence of taxation under the Punjab Motor Vehicles Taxation Act, 1924 (for short the Act) is the foremost legal question requiring determination in this petition under Article 226 of the Constitution of India.

2. Section 3 is the charging section under the Act. It hitherto provided that tax shall be leviable on every motor vehicle in equal instalments for quarterly periods commencing on the 1st day of April, the 1st day of July, the 1st day of October and the 1st day of January at such rates not exceeding Rs. 20,000 per vehicle for a period of one year as the State Government may by notification direct. Any broken period in such quarterly periods for purposes of levying

the tax was to be considered as full period. The tax was required to be paid upon a license to be taken out and paid for under the provisions of the Act, by the person who keeps the motor vehicle for use. Any person keeping a motor vehicle for use without a proper license, or neglecting or refusing to pay any amount of tax within the time prescribed, is liable to be penalised under section 9 of the Act. As permitted by the Act, the rules framed thereunder provide a schedule. Item 5 thereof provided for the motor vehicles described as 'stage carriages plying for hire and used for transport of passengers excluding the driver and conductor', the annual rate of tax for such vehicle at Rs. 300 per seat subject to a maximum of Rs. 20,000. This was the position when the Act came to be amended, as it had been done before a number of times, by raising the maximum limit in section 3 from Rs. 20,000 to Rs. 35,000 by the Punjab Motor Vehicles Taxation (Amendment) Act, 1981 (Act No. 13 of 1981). A new section 3A was also inserted in the Act thereunder authorising the State Government to issue a notification under section 3 so as to be effective from the date of the commencement of the Punjab Motor Vehicles Taxation (Amendment) Act, 1981. Correspondingly the State of Punjab made the entry in the schedule to raise the tax from Rs. 300 to Rs. 500 per seat subject to the maximum of Rs. 35,000 and made it operative with retrospective effect from 1st October, 1980. This the State Government did in the purported exercise of the powers under the Amendment Act No. 13 of 1981 as it deemingly was provided to come into force on the 1st day of October, 1980. The tax due from the 1st day of October, 1980, onwards was authorised under the newly added section 3A to be payable within a period of one month from the date of the publication of the notification providing for retrospective operation. The increase in tax has given rise to the present petition.

3. The petitioners are a registered company and one of its Director/Shareholder. It claims to be a leading transport company having transport business involving several lakhs of rupees maintaining a fleet of seventy-two stage carriages operating on routes within the State of Punjab and inter-State routes. According to it, by the periodic enhancement of the tax from time to time from Rs. 75 per seat in 1965 to Rs. 500 per seat in 1980, the State Government was acting with a motive to squeeze out the private operators from the scene in view of the State's object to nationalise the

passenger transport trade. The petitioners also claimed that with the progressive increase in the imposition of tax, it has become well nigh impossible for private operators to continue their business or to earn any profits by the arbitrary and irrational measures of taxation. All these steps are said to have been taken with the ulterior motive that the private operators of the passenger buses should abandon the same in due course of time and thus the tax was in the nature of a restriction offending Article 19(1) (g) of the Constitution being an unreasonable deprivation of their business. Lament was also made that as per comparative statement, Annexure P. 5, there were a number of other vehicles like public carriers and private carriers, popularly known as goods vehicles which had increased considerably and they had not been made to share the burden whereas the petitioners alone have been singled out for discrimination violating Article 14 of the Constitution. It was pointed that the goods vehicles were liable to pay a fixed sum of Rs. 1,000 per annum and that continues to be so despite the fact that their laden weight was 15,225 kgs. and a stage carriage of the largest capacity could only have a laden weight of 11,770 kgs, a weight much less, making the wear and tear of the road negligible. Additionally it was averred that the stage carriages were confined to specified routes and for a limited number of trips as sanctioned by the transport authorities, subject to a restriction of an average 208 kms. per bus per day, but on the other hand the goods carriages had no such restriction as they could go in any direction at any time and for any mileage within the State or without the State if permitted under the law. It has also been averred that the private operators were required to maintain 25 per cent of the sanctioned fleet as a reserve fleet which meant payment of more tax without any corresponding benefit. Since the reserve fleet could not operate in the normal circumstances it made the levy of tax so unreasonable as it is merely on the factum of ownership or possession of the vehicle, whether used or not or whether in running condition or not. The petitioners also highlighted the universal phenomenon of the price hike in diesel, spare parts and other automobile machinery etc. as also the rising wage structure of the employees pointing out that the cost of operation and maintenance of passengers service had increased manifold, to which the Punjab Government was alive as per statements made by Minister on the floor of the Punjab Legislative Assembly while introducing the budget for the current financial year 1981-82. The petitioners admitted that the bus fares were increased by the State

by 43 per cent but despite that these were not sufficient to sustain the transport business and the expenditure as incurred per km. operation was far more than the income worked out on the km. basis. Reliance was placed by the petitioners on comparative statements supplied by them in Annexures P. 8 and P. 9. The petitioners lament that yet on the one hand the State while conceding to them the hike in passengers fares has taken away the bulk of it by increase in taxation and they termed this measure to be a big hoax played upon the operators of stage carriages. It is on these premises that the petitioners maintain that the tax imposed by the State Government is neither compensatory nor regulatory but a tax simpliciter and beyond the competence of the State Legislature as also the State Government to fix the rate of taxation. A parallel point has also been taken that the tax being not compensatory or regulatory, it impeded freedom of trade, commerce and intercourse as guaranteed by Articles 301 to 304 of the Constitution of India and being so the State Legislature of Punjab was not competent to pass the said Act without the previous sanction of the President of India. It is claimed that the said levies imposed an unreasonable restrictions which are not in public interest and are merely for filling the coffers of the State. Section 3 of the Act was claimed to be unconstitutional and void as giving arbitrary, unguided and uncontrolled powers to the State Government in the matter of imposition of tax on motor vehicles. The petitioners further claim that the imposition of levy at the rate of Rs. 500 per seat is to be uniform per vehicle but here discrimination visits on the class of vehicle used and unused and thus there is absence of making a reasonable classification which is violative of Article 14 of the Constitution of India. On these averments and a few other minor ones, the petitioners approached this Court when the District Transport Officer-cum-Licensing Officer, Rup Nagar issued to them recovery notices to deposit the arrears of token tax for the third and fourth quarters of 1980-81. This Court issued notice of motion to the State.

4. In response to the notice of motion, the State Transport Commissioner, Punjab filed a written statement on behalf of the respondents. He countered the material averments made in the petition and attempted to explain them away. According to him, the petitioners maintain only a fleet of sixty-two buses. He pointed out that two statutory schemes were in vogue for the benefit of

private transport operators till the Government would be in a position to nationalise the passenger transport which it could not undertake for the present paucity of funds, but the Government's policy has neither been extended nor revised. He refuted the suggestion that the present measure of taxation was motivated to throw the private passenger transport operators out of business. At the same time it was countered that by the increase of the rates of bus fares per passenger per kilometre in respect of stage carriages, the passenger bus services continued to earn due profits by the gradual expansion of their fleet of buses and daily operated mileage in the past years. It was maintained that sequelly there has been an ever increase in expenditure on the road and the wages and this is one of the factors to be taken into account for motor vehicle taxation having due regard to the budgetary provision also. Figures were supplied that in 1979 the private operators had 1,561 buses and now they had 1,649 buses and the norm for 208 km. per day per bus was fixed by the State Transport Authority, Punjab, in a meeting held on 17th May, 1973 on the recommendations of the Planning Commission, Government of India. It was maintained that every private passenger bus is allotted a route permit defining return trips on a particular route and competition for it is ruled out as passenger traffic is regulated to the buses having particular route permits alone. It was maintained that the goods transport, on the other hand had no such monopoly and by the very nature of trade was neither assured of business and that too was highly competitive. With regard to the increase in bus fares, it was maintained that the private operators had started getting an additional income of about Rs. 3 lakhs daily from the passengers and thus of their daily operated mileage of 3,43,490 kms., the private operators were to have an additional income of about Rs. 10.93 crores annually. On that basis, it was claimed that the Government in order to mop up about 75 per cent additional profit decided to raise the rate of motor vehicle tax from Rs. 300 to Rs. 500 per seat with retrospective effect from 1st October, 1980 and that even after the imposition of such tax, the private operators had still been left with substantial profits. It is the aforementioned plea of the State which facilitated the admission of the writ petition to a Division Bench as the same was highlighted by the learned counsel for the petitioners that the tax purported to be a tax on income and not a compensatory or regulatory tax. Keeping that apart for the moment, the remaining pleas of the State were that the increase in tax was uniformally applicable to the private operators as also to

the State Transport Undertakings and the same was justified because of the rising cost of expenditure on maintenance of roads and bridges which could easily be contributed by the private operators from the huge profit margin which had been conceded to them by the hike in bus fares. The State had also countered that the tax was neither violative of Article 19(1)(g) nor Article 14 of the Constitution of India.

5. The petitioners filed Civil Miscellaneous Application No. 1713 of 1981 appended with a replication seeking our permission to place the same on record which was supported by additional evidence. We ordered it to be taken up at the time of the hearing of the main petition. During the course hereof, we thought it fit to confine the parties to their original pleas and did not permit the petitioner to place the replication and the additional material on the record lest it turned out to be more of a fact finding enquiry, a course which we would not like to adopt in these proceedings.

6. Dr. Chitley, learned counsel for the petitioners, raised before us the following five points:—

(1) That the tax can only be justified under Entry 57 of List II in the Seventh Schedule of the Constitution if it was regulatory or compensatory. Since the tax was on vehicles kept for use on roads, so the tax must have nexus to the actual use of road. As in the present case there was no such nexus, the measure was neither regulatory nor compensatory.

(2) If it is taken that there is such nexus, then the tax is violative of Article 14 of the Constitution as the tax burden on stage carriages was the highest without any rationale to the wear and tear of the road to which other vehicles of different categories were also responsible.

(3) That even in passenger buses, there was failure to classify for purposes of taxation and every seat is fixed at the rate of Rs. 500 subject to the maximum limit of Rs. 35,000 per annum per bus despite the fact that the stage carriage uses the road or does not use the road.

(4) That the levy was confiscatory in character as it tended to violate Articles 14, 19, 301 to 304 of the Constitution and was

also not regulatory or in public interest. According to the State's own case, it wanted 75 per cent of the purported income of the private operators of stage carriages to come to it under the impugned measure and under the garb thereof, it wanted to eat the petitioners' capital.

(5) That the imposition was *mala fide* and meant to drive away competitors and create monopoly in favour of the State and that section 3 of the Act was *ultra vires* the Constitution as the power assumed was unguided and unprincipled.

7. Dr. Chitley right at the initiation very candidly gave out before us that he was not serious in urging ground No. 5 with regard to the motives of the State in levying the tax or to the constitutionality of section 3 of the Act. He confined only to the first four points.

8. Highlighting point No. 1, Dr. Chitley urged that the two Entries 56 and 57 occurring in List II of the Seventh Schedule to the Constitution of India were a pointer towards the purpose of legislation conceivably to be enacted by the State. He maintained that, while tax on goods and passengers carried by road under Entry 56 necessarily involved the actual user of the road for the purpose of such carriage, tax could justifiably be levied under such entry if it tended to be regulatory or compensatory, as otherwise it would violate Articles 301 to 304 of the Constitution whereunder freedom of trade, commerce and intercourse throughout the territory of India, subject to restriction specifically provided therein, has been guaranteed. On that analogy, it was maintained that under Entry 57 as well, the State has not an unlimited power but has to limit itself in imposing only those taxes which are regulatory or compensatory in nature but that too on vehicles actually using the road and that too proportionate to the user as otherwise the tax, as in the instant case, would be a tax for keeping or owning a vehicle without actually or regulatedly being put on the road. He maintained that the concept of 'regulatory' or 'compensatory taxes' was founded on actual user of the road and not on the available use of road.

9. Let these two entries be taken note of:—

"56. Taxes on goods and passengers carried by road or on inland water-ways.

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."

In *Atiabari Tea Co. Ltd. etc.* v. *The State of Assam and others*, (1) the majority view of the Supreme Court was that if a State Act is passed under Article 304 and its validity is impeached, the State can seek to justify the Act on the ground that the restrictions imposed by it are reasonable and in public interest and in doing so it may rely on the fact that the taxes levied by the impugned Act are compensatory in character. That was a case which seemingly arose out of a State Act passed under Entry 56 in List II of the Seventh Schedule. Shortly thereafter the Supreme Court in *Automobile Transport (Rajasthan) Ltd., etc.* v. *State of Rajasthan and others*, (2), while explaining the majority view in *Atiabari Tea Co. Ltd.'s case* (supra) took the view that regulatory measure or measures imposing compensatory taxes for the use of trade facilities do not come within the purview of restrictions contemplated by Article 301 of the Constitution and such measures need not comply with the requirement of proviso to Article 304(b) of the Constitution. Article 304 authorises the State Legislature to impose on goods non-discriminatory taxes and such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in public interest. For the latter class of legislation containing reasonable restrictions, its movement or introduction in the Legislature of a State can only be with the previous sanction of the President. But in *Automobile Transport (Rajasthan) Ltd., case* (supra), the Supreme Court took out compensatory and regulatory taxation to be outside the aforesaid Articles and held that the State can justify a measure otherwise on these premises.

10. In *Bolani Ores Ltd.* v. *State of Orissa* (3), the Supreme Court while dealing with a State taxation measure under Entry 57 observed as follows :—

"The Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. The validity of the taxing power under Entry 57, List II

(1) AIR 1961 S.C. 232.
(2) AIR 1962 S.C. 1406.
(3) AIR 1975 S.C. 17.

of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated."

11. In *G. K. Krishnan etc.* v. *State of Tamil Nadu and another etc.*, (4), while considering whether the State measure involved therein was a compensatory tax, it was observed as follows :—

"Strictly speaking, a compensatory tax is based on the nature and the extent of the use made of the roads, as for example, a mileage or ton-mileage, charge or the like, and if the proceeds are devoted to the repair, upkeep, maintenance and depreciation of relevant roads and the collection of the exaction involves no substantial interference with the movement. The expression 'reasonable compensation' is convenient but vague. The standard of reasonableness can only be in the severity with which it bears on traffic and such evidence of extravagance in its assessment as come from general considerations. What is essential for the purpose of securing freedom of movement by road is that no pecuniary burden should be placed upon it which goes beyond a proper recompense to the State for the actual use made of the physical facilities provided in the shape of a road. The difficulties are very great in defining this conception. But the conception appears to be based on a real distinction between remuneration for the provision of a specific physical service of which particular use is made and a burden placed upon transportation in aid of the general expenditure of the State. It is clear that the motor vehicles require, for their safe, efficient and economical use, roads of considerable width, hardness and durability, the maintenance of such roads will cost the government money. But, because the users of vehicles generally, and of public motor vehicles in particular, stand in a special and direct relation to such roads, and may be said to derive a special and direct benefit from them, it seems not unreasonable that they shuld be called upon to make a special contribution to

(4) AIR 1975 S.C. 583.

their maintenance over and above their general contribution as tax-payers of the State. If, however, a charge is imposed, not for the purpose of obtaining a proper contribution to the maintenance and upkeep of the road, but for the purpose of adversely affecting trade or commerce, then it would be a restriction on the freedom of trade, commerce or intercourse, see *Freight-lines and Construction Holding Ltd.* v. *State of New South Wales* (5)."

12. *Bolani Ores Ltd's case and G. K. Krishnan's case* aforeextracted are the sheet-anchor for the argument of Dr. Chitley that it is the actual user of the road which attracts incidence of taxation but as a measure which is a proper recompense for such actual use made of physical facilities provided in the shape of a road. The argument raised is indeed attractive. There is seldom any difficulty in putting forth plausible theories like the one which has been propounded, but the difficulty lies in testing them. If it could be taken that the Supreme Court had in the aforesaid two cases gone to the length of linking regulatory and compensatory taxes under Entry 57 to the actual user of physical facilities provided in the shape of a road, then, as it appears to us, it would be reading something in Entry 57 which is not there. In *Bolani Ores Ltd's case* (supra), the motor vehicles kept by the owners were tractairs, dumpers and rockers. The tractairs were neither registerable under the Motor Vehicles Act nor taxable under the Bihar Taxation Act. The dumpers and rockers though registerable under the Motor Vehicles Act, were not taxable under the Bihar Taxation Act so long as they were working solely within the premises of the respective owners. The Supreme Court then on those facts held that the mere fact that the vehicles were registered under the Motor Vehicles Act did not mean that they could be taxed under the Taxation Act if those vehicles did not use the road. Support was also drawn from the provisions of the Act in question whereunder concept of actual user was found embodied in the Taxation Act facilitating a declaration that a motor vehicle would not use the roads for a particular period and that if any tax had been paid for any such period during which it was not proposed to use the motor vehicle on the road, the

(5) (1968) A.C. 625.

tax for that period was refundable. Thus in *Bolani Ores Ltd's case* (supra) in that context the tax was inter-linked with the actual user of road. On the other hand, in *G. K. Krishnan's case* (supra) the Court while spelling out the conception of 'actual user' of road, in the same breath expressed great difficulties in defining the conception. The concept was laid by drawing a distinction between remuneration for the provision of a specific physical service of which particular use is made (and if we may now say in the nature of *quid pro quo*) and placed on transportation in aid of general expenditure of the State (not in the nature of *quid pro quo*). Therefrom it seems to us that if the tax is a measure to place burden upon transportation so as to aid the State in the general expenditure out of which it spends on the cost of maintaining and making roads as also bridges, it would be a compensatory or regulatory tax and not a tax simpliciter. And at the same time the extent to which use is made of the roads, it has to be read and meant in the context that the taxes on vehicles are levied and imposed for their suitability and capability for use of the roads. To put it differently, the State's ability to provide for and keep available roads and also providing facilities such as lighting, traffic control amenities for passengers, halting places for vehicles, maintenance of staff for the aforesaid purposes and the traffic police etc. are all measures which involve expenditure and necessarily the State is competent under Entry 57 to impose tax to aid itself as a recompense to the expenses incurred. Sustenance to the view can be drawn from *M/s. International Tourist Corporation etc. etc.* v. *State of Haryana and others* (6). It will be useful to extract a portion therefrom:—

> "What was said about Entry 57 is true of Entry 56 too. But to say that the nature of a tax is of a compensatory and regulatory nature is not to say that the measure of the tax should be proportionate to the expenditure incurred on the regulation provided and the services rendered. If the tax were to be proportionate to the expenditure on regulation and service it would not be a tax but a fee.
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> While in the case of a fee it may be possible to precisely identify and measure the benefits received from the Government and levy the fee according to benefits received and the expenditure incurred, in the case of a

(6) AIR 1981 S.C. 774.

regulatory and compensatory tax it would ordinarily be well nigh impossible to identify and measure, with any exactitude, the benefits received and the expenditure incurred and levy the tax according to the benefits received and the expenditure incurred. What is necessary to uphold a regulatory and compensatory tax is the existence of a specific, identifiable object behind the levy and a nexus between the subject and object of the levy. If the object behind the levy is identifiable and if there is sufficient nexus between the subject and object of the levy, it is not necessary that the money realised by the levy should be put into a separate fund or that the levy should be proportionate to the expenditure. There can be no bar to an intermingling of the revenue realised from regulatory and compensatory taxes and from other taxes of a general nature nor can there be any objection to more or less expenditure being incurred on the object behind the compensatory and regulatory levy than the realisation from the levy. In *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan*, (7), this Court observed at pages 536-537 :

"Whether a tax is compensatory or not cannot be made to depend on the preamble of the statute imposing it. Nor do we think that it would be right to say that a tax is not compensatory because the precise or specific amount collected is not actually used to providing any facilities....actual user would often be unknown to tradesmen and such user may at some time be compensatory and at others not so. It seems to us that a working test for deciding whether a tax is compensatory or not is to enquire whether the trades people are having the use of certain facilities for the better conduct of their business and paying not patently much more than what is required for providing the facilities. It would be impossible to judge the compensatory nature of a tax by a meticulous test, and in the nature of things that cannot be done....".

(7) (1963) 1 S.C.R. 491 : AIR 1962 S.C. 1406.

Thus it appears to us that the incidence of tax is attracted on the availability of roads in the network of the country as also facilities for the proper, safe, efficient and economical use thereof and not to the actual use of road by the stage carriages kept by the petitioner.

13. At this stage section 4 of the Act be taken note of:—

"4. *Obligation of persons keeping motor vehicles to make declaration and to pay tax.*—(1) Every person who keeps a motor vehicle for use shall fill up and sign a declaration in the prescribed form, stating the prescribed particulars, and shall deliver the declaration as filled up and signed by him to the licensing officer before the 30th day of April, 1925, or if such person commences to keep the motor-veicle for use after the 10th day of April, 1925, then before the expiration of 21 days from the day of his commencing to keep the motor vehicle for use.

(2) The tax to which he appears by such declaration to be liable shall be paid by the person keeping the motor vehicle, if for the first quarterly period before the 30th day of April, if for the second quarterly period before the 31st day of July, if for the third quarterly period before the 31st day of October, and if for the fourth quarterly period before the 31st day of January:

Provided that if such person commences to keep the motor vehicle for use after the 10th day of April, 1925, he shall pay the first instalment due before the expiration of 21 days from the day of his commencing to keep the motor vehicle for use.

(3) Every person who owns any motor vehicle which is let for hire, shall, for the purposes of this Act, be deemed to be the person who keeps the motor vehicle for use."

The aforesaid section, therefore, provides for the obligation of persons keeping motor vehicles to make declarations and to pay taxes. Every person keeping a motor vehicle is required to fill up and sign a declaration in the prescribed form before the expiration of 21 days from the day of his commencing to keep the motor vehicle for

use. He is also required to pay tax for which he would be liable by such declaration for the period involved. Now the taxation is attracted for keeping the motor vehicle for use and not for actually using it. In the said section, it is also provided that every person who owns any motor vehicle which is let for hire, shall, for the purpose of the Act, be deemed to be a person who keeps a motor vehicle for use. Section 13 of the Act provides for exemptions and deductions. The State Government by rule or order can exempt a person or class of persons from liability to pay the whole or part of the taxes in respect of any motor vehicle or class of motor vehicles and in the like manner can exclude such motor vehicles from the operation of the Act. At the same time a person keeping for use a motor vehicle can apply for exemption and prove to the satisfaction of the Licensing Officer that he has not used or permitted the use of motor vehicle for the period sought to be exempted for which tax is otherwise payable. Thus there is an inbuilt infra-structure that a person who keeps a motor vehicle for use is liable to pay tax but can claim exemption from liability to pay tax if he satisfies the Licencing Officer that he has not used or permitted the use of his motor vehicle throughout the quarterly period preceding. As it would be plain that tax is attracted on the owner for keeping the vehicle for use and *aforetiori* the State is entitled to the tax as a regulatory and compensatory measure for making the roads and facilities available to him, but nevertheless can exempt such person if he has not actually used the road for the quarterly period preceding. The principle of uniformity is towards taxation and exemption is the exception. Thus there is sufficient nexus between the tax and the use of road justifying the imposition.

14. Having found the nexus, the next question which has been raised was that the rate of tax on passenger buses being different than the one imposed on other vehicles on the road is violative of Article 14 of the Constitution. Reliance has been placed on the observations afore-extracted in *G. K. Krishnan's case* (supra), that the milage or the ton-mileage charged or the like are the guidelines for the purposes of imposition. Elaborating Dr. Chitley contended that the goods carriers plying in the State were required to pay only Rs. 1.000 per year unrestricted by the measure of road they would come to use, as also on account of their laden weight the wear and tear of the road was higher as compared to the stage carriages and

their laden weight. The State in its return has said that it is the unladen weight on both kinds of vehicles which has been taken into consideration for purposes of taxation. It was also contended on behalf of the State that the goods carriers suffered tough competition but conversely the stage carriers were assured of an uncompetitive field. It was also pointed out that different considerations prevail for the grant of permits to stage carriers and public carriers. It is noteworthy that sections 46, 47 and 48 of the Motor Vehicles Act, provided the procedure for the granting of stage carriage permits whereas considerations for the grant of a public carrier permit are found available in sections 54, 55 and 56 of the said Act. And that a comparative reading of the two would disclose the difference of approach to both the subjects.

15. A person who challenges a classification as unreasonable has the burden of proof in it. There is always a presumption that a classification is valid specially in a taxing statute. This principle was reiterated in *Amalgamated Tea Estates Co.* v. *The State of Kerala* (7-A), and in *G. K. Krishnan's case* (supra). It has also been observed in the latter case that Article 14 is offended only if the classification rests on the ground wholly irrelevant to the achievement of the objective and this lenient standard is further weighted in the State's favour by the fact that a statutory discrimination will not be set aside if a set of facts may reasonably be conceived by a Court to justify it. As yet, no scheme of taxation, be it of any kind, has been devised which is free of all discriminatory impact. The Court thus in such a situation exercises judicial restraint and does not impose too rigorous standards of scrutiny as the arena is complex and the Court has its own remoteness and lack of familiarity with the local problems. Thus when the Government in exercise of its power to tax make a classification, the presumption is that the Government made that classification on the basis of its information that the two objects which are subjected to tax are differently situated and have to be made to share the tax burden unequally. Therefore, this Court has to assume, in the absence of any materials placed by the parties, that the classification is reasonable. The Government has in the instant case pleaded that the public carriers work in a competitive field whereas a non-competitive field is assured to

(7-A) AIR 194 S.C. 849.

the stage carriages. That stance provides the rationale for placement of different tax burdens. Additionally it was plausibly argued on behalf of the State, and to which we agree, that normally stage carriages ply in the day time catering to the needs of passenger traffic making it imperative for them to keep the speed varied and applying brakes very often making higher impact stresses on the pavement structure than the goods vehicles who normally operate by night, maintain a regular speed and do not have to apply brakes and stop too frequently as do passenger buses. It was also plausibly pointed out, to which we agree, that more facilities have been provided by the State all along the roads in the form of bus stands, traffic lights and other amenities to the passengers for facilitating the flow of passenger traffic whereas such facilities are normally not expected by the goods carriers except of halting places.

16. It is noteworthy that when the maximum limit of the tax in section 3 was raised to Rs. 10,000 in the year 1971 and the schedule provided for tax at the rate of Rs. 100 per seat for a stage carriage, the imposition of tax was questioned in *Hoshiarpur Express Transport Company etc.* v. *The State of Punjab etc.* (8) before this court. A Division Bench while dismissing the petition on 27th September, 1971 repelled an argument of the kind now raised before us. It observed as follows:—

> "Various classes of motor vehicles have been defined in the Motor Vehicles Act, 1935, wherein the public carriers, stage carriages and other motor vehicles have been differently treated. According to the learned Advocate-General, the case of a public carrier is not at par with that of the stage carriages. The stage carriages ply according to the time table prescribed for them and do not remain idle on any day unless it is for the purposes of repairs. Trips have been provided for the stage carriages of each operator in accordance with a time table which assures them the daily income therefrom. The public carriers, many times for days, do not get the goods to be carried and continue to be idle. The Governments, considered that the public carriers were not in a position to bear an extra burden of tax and, therefore, the increase

(8) CW 410 of 1971 decided on 27th September, 1971.

in their case was not effected. It was for the Government to decide whether the tax on the other classes of motor vehicles should also be enhanced or not. No discrimination takes place if the enhancement of tax is made in the case of one class of motor vehicles and not others. There is, thus, no substance in the submission of the learned counsel for the petitioners on the basis of discrimination under Article 14 of the Constitution."

It now stands settled that the Legislature is free to choose objects of taxation, impose different rates, exempt classes of property from taxation, subject different classes of property to tax in different ways and adopt different modes of assessment. A taxing statute cannot thus be exposed to attack on the ground of discrimination merely because different rates of taxation are prescribed for different categories of persons, transactions, occupations or objects. See in this connection *V. Venugopala Ravi Verma Rajah* v. *Union of India and another* (9). Reliance was also placed on *Smt. Maneka Gandhi* v. *Union of India and another* (10), to highlight the scope of Article 14 which is to the following effect :—

"Now, the question immediately arises as to what is the requirement of Article 14:— what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E. P. Royappa* v. *State of Tamil Nadu* (11), namely, that "from a positivistic point of view, equality

(9) A.I.R. 1969 S.C. 1094.

(10) A.I.R. 1978 S.C. 597.

(11) (1974) 2 SCR 348 (AIR 1974 S.C. 555).

is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of article 21 would not be satisfied.

How far natural justice is an essential element of procedure established by law."

It is plain that this principle has been enunciated to promote procedural law synthesised with the liberty principle. The principle so evolved cannot have applicability to the present controversy as the foundation is entirely different. Thus for the aforesaid reasoning, the second contention of Dr. Chitley must be repelled on the premises of Article 14 of the Constitution as stage carriages and goods vehicles are categories distinct.

17. For the third point, it was contended that all transporters engaged in the plying of passenger buses were required to maintain a twenty-five per cent idle fleet under the law and this fleet which was being maintained by the petitioners was idle and not actually using the road, as the use of road was restricted and confined to the route permit, as also to the maximum of 208 kms. per day. On the strength thereof, it was urged that **Bolani Ores Ltd.'s case** (supra) was clearly attracted as here was no user of the road. Support was sought from the principle that when dissimilarity in the two sets of vehicles was writ large, then imposition of a uniform tax itself resulted in discrimination and the failure of the State to make a

reasonable classification would itself be a denial of equality. Reliance was placed on *Kunnathat Thathunni Moopil Nair etc.* v. *State of Kerala and another* (12). *The State of Andhra Pradesh and another* v. *Nalla Raja Reddy and others* (13), *New Manek Chowk Spinning and Weaving Mills Co. Ltd., etc.* v. *Municipal Corporation of the City of Ahmedabad and others* (14), *The State of Kerala* v. *Haji K. Haji K. Kutty Naha and others etc.* (15), and *Bai Chanchal and others* v. *Syed Jalaluddin and others* (16). Now the petitioner being required of maintaining twenty-five per cent extra fleet is not for the purposes of creating more objects of taxation but solely for the purposes of ensuring and making passenger transport dependable and efficient. It is inherent in the system that there would be breakdowns of vehicles stranding them on the road side and the passengers would have to be rendered help and facility to carry on to their destinations. The extra fleet vehicles have to stand by to substitute the vehicles on the road in the large interest of transportation of passengers. These are also required to be maintained for being plied as contract carriages for special purposes as also to take over extra burden of passenger traffic in times of exceptional necessity. For them also the roads are made available by the State and properly maintained and kept. Moreover, in the Taxation Act, exemptions can be claimed if the vehicle has not been put to use for the quarter preceding, as has been noticed earlier. When exemption can successfully be sought, even the semblance of discrimination vanishes. Thus we have no hesitation in coming to the conclusion that there was no need to classify in the manner suggested by the petitioners.

18. This brings us to the last contention of the petitioners that the levy was confiscatory and was not regulatory or in public interest and that the State wanted to eat the petitioners' capital. Highlighting this aspect, it was contended that the State had acted on the assumption that every passenger bus must make a profit and that every owner of the passenger bus must pay. Stress was laid upon facts pleaded in the petition that the passenger transport business was running into losses and that to meet it the petitioners had to

(12) AIR 1961 S.C. 552.
(13) AIR 1967 S.C. 1458.
(14) AIR 1967 S.C. 1801.
(15) AIR 1969 S.C. 378.
(16) AIR 1971 S.C. 1081.

cause dimmunition of their capital. As has been noticed earlier, the State has pleaded figures of the profits which the passenger transport is likely to make and on that calculation has placed the tax burden on the stage carriages. The petitioners, on the other hand, contend that they are suffering losses. A similar argument was raised before this Court in *Hoshiarpur Express Transport Company's case* (supra) but was repelled taking the view that there could be many reasons for the losses suffered by the petitioners and not by the increase in tax. It was noticed that the losses could be due to mismanagement or keeping a small fleet of buses resulting in higher expenses. It was held in that case that the trade of carrying passengers as such can bear the increased tax and the mere fact that some transporters could not bear the increased tax was no ground to strike down the increase. We have no reason to differ from such view taken by this Court a decade ago. Repelling the contention on behalf of the petitioners, it is to be held that the passenger transport can bear the increased tax burden. The plea of the State that it wanted to mop up seventy-five per cent of the purported income of the private operators, stood dilluted itself in the return when cause had been made out that the tax was required for the making, maintaining and otherwise providing for facilities of the roads. The position was in terms abandoned during the course of arguments by the learned counsel for the State by maintaining that the tax was of regulatory and compensatory nature. At the same time, the Court, too, is not bound by any statement made on behalf of executive Government on a question of the Legislative intent or nature of an enactment. What the Legislature intended an enactment to be need not necessarily be what the Government says it is. It is a matter of construction in the light of several attending circumstances including the source of legislative power under the Constitution to make a particular law. Since it was a law made in the exercise of Entry 57 of List II, the power exercised for the purpose is to be presumed in the nature of regulatory and compensatory measure. We thus find no merit in the fourth contention as well.

19. Before parting with the judgment, we deem it right to mention that the State placed before us documentary materials for perusal to show that the State was spending much more than what it was recovering under the head "Motor Vehicle Taxation". No argument was built by Mr Chitley on that score, but we were satisfied from

those figures that the taxes recovered were far less than the State's expenditure on making and maintaining the roads and constructing and maintaining the bridges thereof.

20. For the foregoing reasons, we find no merit in either of the contentions raised in this writ petition and order its dismissal but with no order as to costs.