in the meat market in question and has undertaken on behalf of the Municipal Committee that this would be done. The Municipal Committee would be bound by this undertaking. If the petitioners wish to avail of the undertaking given by the respondent Municipal Committee, they should apply to the Municipal Committee for such accommodation within two months from today.

(8) Subject to the direction based on the undertaking given by the Municipal Committee, this petition is dismissed without any order as to costs.

N.K.S.

FULL BENCH

MISCELLANEOUS CIVIL

Before R. S. Narula, C.J. O. Chinnappa Reddy and Bhopinder Singh, JJ.

BHARAT STEEL TUBES LTD., ALLAHABAD BANK BUILDING,—*Petitioner.*

versus

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ No. 6343 *of* 1974.

December 3, 1976.

Punjab Passengers and Goods Taxation Act (XVI of 1952)—*Sections* 2(*f*), 2(*i*), 2(*j*), 3(1)(*i*) *and* 3(2)—*Motor Vehicles Act* (4 of 1939)—*Section* 2(25)—*Employer providing transport facilities to its employees on nominal fixed charges—Carriage of such employees—Whether for 'hire or reward'—Employer—Whether liable to pay passenger tax.*

Held, that carrying passengers for 'hire or reward' need not be the very business of the person in whose vehicle passengers are

carried. It is not necessary that the carrier should be actuated by a profit motive in a business sense. It is enough if the carriage of passengers is for a monetary reward. Every employee who wants to avail himself of the facilities of transport provided by the employer has to pay a nominal fixed charge and any employee who does not pay the amount cannot avail himself of the facilities. There is a clear contract between the employer (owner of the vehicle) and the employee (the passenger) whether or not such contract is a part of the contract of the employment. That is enough to hold that the employer carries his employees in the vehicle for hire or reward. The question of profit motive is irrelevant. Even assuming that the words 'hire or reward' may sometimes imply a profit motive, such implying is not permissible in the context of the Punjab Passengers and Goods Taxation Act 1952. The definitions in section 2 of the Act as well as the definitions imported from the Motor Vehicles Act 1939 are subject to the context of the Act. It is expressly so stated in section 2 of the Act and it is a principle of interpretation of statutes that even a definition clause is always subject to the context in which the word is used. If the context so requires, a word or expression may be given a meaning not covered by the definition clause. Keeping in mind the principle of statutory interpretation expressly incorporated in the opening words of section 2 of the Act, it is clear that profit motive is not a pre-condition to the levy of tax on passengers and any interpretation to the contrary would nullify the Explanation to section 3(1) and sub-section (2) of section 3 of the Act. Thus, an employer providing transport facilities to its employees on nominal fixed charges is liable to pay passengers tax.

(Paras 10 and 13)

Case referred by Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice S. C. Mital, on 31st March, 1976, to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble The Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice O. Chinnappa Reddy and Hon'ble Mr. Justice Bhopinder Singh Dhillon, finally decided the case on 3rd December, 1976.

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased :—

(a) *to order the respondents to submit the records of this case to this Hon'ble Court with a view to scrutinising the legality and validity of the orders dated 28th August 1973 and 5th March, 1974 passed by Respondents Nos. 2 and 3 (Annexures "P-1" and "P-3" respectively) with a view to quashing the same ;*

(b) *to hold, on a proper interpretation of the various provisions of the law, that the petitioner is not liable to the levy tax under the Act by reason of transporting its workers from Sonepat to the factory at Ganaur ;*

(c) *to order the respondents to refrain from taking any proceedings under the Act for the levy and assessment of the tax under the Act ;*

(d) *to dispense with the filing of certified copies of Annexures P-1, P-2, P-4 and P-5 as they are not readily available ; and*

(e) *to award costs of this petition to the petitioner ;*

Further praying that such other consequential or additional relitf may be allowed to the petitioner as it may be entitled to under the Act.

D. N. Awasthy, Advocate with S. P. Jain, Advocate, *for the Petitioner.*

V. M. Jain, Advocate for A. G. (H), *for respondents.*

JUDGMENT

Judgment of the Court was delivered by:—

Chinnappa Reddy, J.

(1) The petitioner in all the eight writ petitions (Nos. 6343, 6568, 6569, 6571, 6572, 6573, 6647 and 6648 of 1974) is a Company engaged in the manufacture of steel tubes and pipes. Its factory is located at Ganaur, while a number of its employees live at Sonepat, about 24 kilometres away. The company operates a bus to provide transport facilities to the employees living at Sonepat. This is not, however, provided as a part of the contract of employment. Nor is the facility provided free. Each employee taking advantage of the facility has to pay to the Company Rs. 10 per month. "But", it is stated in the writ petitions, "the main object of the Company was not to make a profit by running this bus but to give its staff a facility as a measure of ensuring punctuality and smooth and harmonious functioning of the factory. It was a part of various measures adopted by the Company for the Social Welfare and harmony between the employer and the employed."

(2) The Company was called upon to pay tax under the Punjab Passengers and Goods Taxation Act, 1952, as amended in Haryana. The Company objected on the ground that it was not engaged in the business of carrying passengers and that, in providing a bus for the transport of its employees, it was not actuated by any 'profit-motive'. In the absence of a 'profit-motive', it was said, the Company's bus could not be said to be a vehicle used for the carriage of passengers for 'hire or reward' so as to make it a 'public service vehicle' as defined in the Motor Vehicles Act. It was pointed out while the annual expenditure on the bus was about Rs. 15,400, the total receipts from the employees amounted to Rs. 9,000 only. The Company's contention was overruled by the Excise and Taxation Officer and, on appeal, by the Deputy Excise and Taxation Commissioner. Both of them followed the decision in the *Hindustan Machine Tools Ltd.* v. *The State of Haryana,* (1), rendered by one of us (Narula, J. as my Lord the Chief Justice then was). The present writ petitions have been filed questioning the decision of the taxing authorities, and, as may be expected, the correctness of the decision in the *Hindustan Machine Tools Ltd.* v. *The State of Haryana* is canvassed.

(3) The relevant statutory provisions may now be noticed. Section 2 of the Punjab Passengers and Goods Taxation Act contains various definitions. It begins with the prefatory admonition that the expressions defined shall have the meanings assigned *"unless there is anything repugnant in the subject or context"*. This preface is of considerable importance in the present case, as we shall presently show. The word 'passenger' is defined in section 2(f) to mean:—

> "any person travelling in a public service vehicle, but shall not include the driver or the conductor or an employee of the owner of the vehicle travelling in the *bona fide* discharge of his duties in connection with the vehicle."

The expression "motor vehicle" is defined as:—

> "a public service vehicle, public carrier, private carrier or a trailor when attached to any such vehicle".

The expression 'public service vehicle' is not defined in the Passengers and Goods Taxation Act but section 2(j) provides that words and expressions not defined in the Act shall have the meaning

(1) 1970 P.L.R. 193.

assigned to them in the Motor Vehicles Act, 1939. Section 2(25) of the Motor Vehicles Act defines a 'public service vehicle' to mean:—

> "any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a motor cab, contract carriage and stage carriage."

Section 3 of the Passengers and Goods Taxation Act is the charging section. Section 3(1) (i) to the extent that it is relevant is as follows:—

> "There shall be levied, charged and paid to the State Government a tax at such rate not exceeding sixty per centum of the value of fare or freight, as the case may be, on all passengers and goods carried by a motor vehicle other than a private carrier".....as the State Government may, by notification direct....."

There is a very significant Explanation to Section 3(1) which is as follows:—

> *Explanation*—When passengers and goods are carried by a motor vehicle other than a private carrier, and no fare or freight is charged, the tax shall be levied and paid as if such passengers and goods are carried at the normal rate prevalent on the route or at the rate fixed by the competent authority under the Motor Vehicles Act (Central Act 4 of 1939), whichever is higher.

Sub-section (2) of section 3 is also important and it is as follows:—

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

Section 4 provides that the tax levied on passengers and goods shall be collected by the owner and the tax so collected paid to the State Government. Section 5(1) prescribes that no passenger shall be allowed to travel in a motor vehicle by the owner unless he is issued a ticket denoting that the tax has been paid. Section 6(1) enjoins a duty on the owner to keep accounts and submit returns at prescribed intervals. Section 10 empowers the State Government to grant general or special exemption from the operation of all or any of the provisions of the Act in favour of any person or class of persons if such exemption would promote national or public interest.

(4) The submission of Shri D. N. Awasthy, learned counsel for the petitioner was that the definition of the expression 'public service vehicle' in the Motor Vehicles Act had to be read into the definitions of the expressions 'passenger' and 'motor vehicle' in the Taxation Act and that the charging section, section 3(1) (i) of the Taxation Act was to be read in the light of those definitions. So done, it was clear that carriage of passengers for hire or reward was the pre-condition for the levy of tax. Carriage of passengers for hire or reward meant no more and no less, according to the learned counsel than that passengers were carried out of a profit-motive. The learned counsel claimed that the Scheme of the Act supported his contention. The Explanation to section 3(1) and sub-section (2) of section 3 were brushed aside with the comment that they were meant to cover cases of issue of free passes and special seasonal and concessional passes and the like. Shri Awasthy relied on *Coward* v. *Motor Insurance Bureau.* (2), *Indian Telephone Industries* v. *Regional Transport Officer*, (3), *Premier Automobile Ltd.*, v. *G. A. Sharma (unreported) and Hindustan Aeronautics Ltd.* v. *Secretary (Home Department) (Unreported).*

(5) At the very outset, we would like to say that we do not consider it right to import considerations such as those of 'profit-motive', so obviously drawn from other branches of law. Importation of such expressions, which, in other fields, have acquired a special significance and the status of formulae, but which are alien to the statute under consideration, can only lead to confusion and complication. Statutory interpretation does not permit the substitution of the language of the statute by tempting legal concepts.

(2) 1962 (1) All E.R. 531.
(3) A.I.R. 1975 Karnataka 211.

(6) The words used are "hire or reward". They are words well known to draftsmen of statutes and contracts. They mean payment as a recompense, ordinarily though not always, pursuant to an agreement or understanding.

(7) *In Bonham* v. *Zurich Insurance Co. Ltd.* (4), the Court of appeal considered a contract of insurance in which the words "hire or reward" were used. It was held that passengers who were regularly carried in a car by its owner for payments made voluntarily and not pursuant to a legally enforceable contract were passengers carried for 'reward'. Uthwatt J. observed :—

> "It appears to me that distinction falls to be drawn between the word 'hire' and the word 'reward'. The first word necessarily imports, I think, an obligation to pay. The inclusion of the second word is not, in my opinion, merely for the purpose of giving an alternative word to 'hire' which means the same thing, but for the purpose of bringing in a subject-matter which does not include 'hire' and *including* (I do not think it is confined to that) cases where *there is no obligation to pay*..... whether he was carrying for 'reward' is a question of fact determined by all the circumstances of the case, including the length of time over which this course of conduct (*I do not call it 'course of business'*) has gone on; the nature of the payments made, namely, cash, the exact amount of the payment, 1s. 2d., and its correspondence with the railway fare covered by the same journey."

(8) *In Coward* v. *Motor Insurers Bureau,* which was one of the cases on which Shri Awasthy relied, there was departure from the view expressed in *Bonham* v. *Zurich General Accident and Liability Insurance Co. Ltd.*, that there need be no legally enforceable contract. It was held that the payment should be legally recoverable in order to constitute "hire" or "reward". Upjohn J. observed as follows :—

> "The expressions "for hire" and "for reward" have been used indifferently for very many years to express the monetary consideration for which a carrier of goods or passengers undertakes either by virtue of a special contract or

(4) 1945 (1) All E.L.R. 427.

by reason of his common law status as common carrier to carry goods or passengers on a journey..... Prima facie, when one finds in an Act of Parliament a reference to carriage of passengers "for hire or reward" one would construe it as referring to carriage in consideration of a monetary payment to be made to the carrier and legally recoverable by him..... It is, in our view, clear that the expression "carrying passengers for hire or reward" in section 61 and section 121 means carrying passengers for a monetary reward *legally recoverable* by the carrier *under a contract express or implied by the mere act of entering the vehicle*....."

(9) In Stroud's Judicial Dictionary, Fourth Edition Volume II, at page 1243, these two cases and some other decisions, the reports of which are not available to us, are noticed. We may usefully extract what is stated in Stroud:—

"(3) "Hire or reward". Passengers who are regularly carried in a private motor car by the assured for voluntary payments are carried for "hire or reward" for the purposes of an insurance policy (*Bonham* v. *Zurich General Accident and Liability Insurance Co.* (5).

(4) Carrying passengers "for hire or reward" (Road Traffic Act 1930 (c. 43), S. 36 (1) (b) (ii) ; now Road Traffic Act 1960 (c. 16), S. 203 (4) (a) means the carriage of passengers for a monetary reward legally recoverable by the carrier under a contract express or implied by the mere act of entering the Vehicle (*Coward* v. *Motor Insurers Bureau* (6). "For hire or reward" (Road Traffic Act 1960 (c. 16) s. 203 (4). A private car which is only occasionally used for the giving of lifts against some payment, is not a vehicle "in which passengers are carried for hire or reward" within the meaning of the section (*Connell* v. *Motor Insurers Bureau*) (7). Nor is a car in which a man gives lifts to his fellow workers, for which some payment is expected (*Albert* v. *Motor Insurers' Bureau*) (8). But

(5) (1945) K.B. 292.
(6) (1963) 1 Q.B. 259.
(7) (1969) 2 Q.B. 494.
(8) (1969) 2 Lloyds Rep. 243.

workmen who regularly travelled to work in a van owned and driven by one of them, and who bought the petrol between themselves, were held to be carried for "hire or reward" within the meaning of this section, although there was no formal agreement about payment (*Meanen* v. *High Cleland and Sons*) (9). And in Australia the carrying of passengers on a trip in a private car on terms that they paid for the petrol used was held to constitute a hiring within the meaning of s. 20(2) of the State Transport Act 1960 (Old) (*Horne* v. *Dennisi*) (10).

(5) "Hire or reward" (Road Traffic Act, 1960 (c. 16) s. 117(1). It is enough to satisfy this section that there is a general understanding that some payment will be made although there is no firm contract between the parties (*Aitken* v. *Hamilton*) (11), *Meanen* v. *High Cleland and Sons* (12)."

(10) It is clear from the several cases noticed in Stroud including the case Coward *v.* Motor Insurers Bureau, that carrying passengers for ' hire or reward' need not be the very business of the persons in whose vehicle passengers are carried. It is not necessary that the carrier should be actuated by a profit motive in a business sense. It is enough if the carriage of passengers is for a monetary reward. The controversy whether the monetary reward should be payable pursuant to a contract or not is of no consequence on the facts and circumstances of the present case since it is admitted that every employee, who wants to avail himself of the facility of transport provided by the petitioner has to pay Rs. 10 per month and any employee, who does not pay the amount cannot avail himself of the facility. There is a clear contract between the employer (owner of the vehicle) and the employee (the passenger) whether or not such contract is part of the contract of employment. That is enough to hold that the petitioner carries his employees in the vehicle for 'hire or reward'. The question of profit motive, as we said, is irrelevant.

(9) 1970 S.L.T. 341.
(10) (1965) 59 Q.J.P.R. 97.
(11) 1964 S.L.T. 125.
(12) 190 S.L.T. (notes) 55.

(11) *Indian Telephone Industries* v. *Regional Transport Officer* is of no assistance at all to the petitioner. The question decided there was whether a bus maintained by the Indian Telephone Industries for transporting its employees from their residences to the factory was a "Contract Carriage" within the meaning of section 2(3) of the Motor Vehicles Act. Since the very definition of "Contract Carriage" provided that the contract should be for the use of the vehicle as a whole and as that element was absent in the case, it was held that the vehicle was not a Contract Carriage. This was also the question considered by a learned Single Judge of the Andhra Pradesh High Court in *Hindustan Aeronautics Ltd.* v. *Secretary (Home Department)*. The learned Judge while holding that the vehicle was not a 'Contract Carraige' as defined in the Motor Vehicles Act also observed:—

> "Further, the element of making profit is totally absent in this case."

The observation was unnecessary for the purpose of that case and we are unable to infer from that observation that 'profit motive' is an essential pre-condition for the levy of tax on passengers carried by a motor vehicle. Neither in the Karnataka case nor in the Andhra Pradesh case was there a question of levy of tax on passengers carried by a motor vehicle.

(12) In *Premier Automobiles Ltd.* v. *G. A. Sharma*, a learned Single Judge of the Bombay High Court held that a profit motive was necessarily implied in the definition of 'public service vehicle'. The learned Judge after referring to the definitions of various expressions in the Motor Vehicles Act, observed:—

> "As the definitions of a "motor cab" a "contract carriage", a "public service vehicle" and a "stage carriage" in section 20 of the Motor Vehicles Act show and as the authorities above referred to make it clear, the essential features of each of these categories of vehicles is the purpose of earning hire or reward. It is clear on a reading of these definitions and authorities that the true test for determining in which category a particular vehicle falls would be to ascertain the purpose or object for which the vehicle is being used. If the purpose or object for the use of the vehicle is hire or reward, that is, to earn hire or reward,

> it would be a motor cab, or a public service vehicle or a stage carriage, all of which are public service vehicles. This purpose necessarily implies a profit motive."

Later, the learned Judge again observed:—

> "I, therefore, do not find it possible to hold that mere receipt of money, irrespective of dominant purpose or object of the carriage of persons, would constitute a vehicle a public service vehicle. The real test, in my opinion, is the dominant object or purpose underlying the carriage of persons in the vehicle. What is necessary is the existence of profit motive and not earning of profits."

Thus, the learned Judge equated the use of a vehicle for the carriage of passengers for hire or reward with the use of the vehicles to earn hire or reward and proceeded to hold that it necessarily implied a profit motive. We are unable to agree with the learned Judge. We have already given our reasons for holding that 'profit-motive' is irrelevant.

(13) Even assuming that the words "hire or reward" may sometimes imply a profit motive, we do not think that such implying is permissible in the context of the Punjab Passengers and Goods Taxation Act. The definitions in section 2 of the Act as well as the definitions imported from the Motor Vehicles Act are subject to the context of the Act. It is expressly so stated in section 2 of the Act. It is a principle of interpretation of statutes that even a definition clause is always subject to the context in which the word is used. If the context so requires, a word or expression may be given a meaning not covered by the definition clause. In *Nagpur Electric Co. Ltd.* v. *Shreepathi Rao* (13), the services of an employee of the Company were terminated in accordance with the Standing Orders. The Standing Orders of the Company defined the term 'Workman' as one who had been issued a ticket. The workman whose services had been terminated, challenged the order of termination on the ground that no ticket had been issued to him and, therefore, the Standing Orders did not apply to him. The argument was repelled with the observation, "But even a definition clause

(13) A.I.R. 1968, S.C. 658.

must derive its meaning from the context or subject". In *Vanguard Fire and General Insurance Co. Ltd.* v. *Fraser and Ross* (14), the Supreme Court said, "Though the ordinary meaning given to the word 'insurer' as given in the definition clause, section 2(9), refers to a person or body corporate, etc. carrying on the business of insurance, the word may also refer in the context of certain provisions of the Act to any intending insurer or quondam insurer". In *Hutchi Gowder* v. *Richoldas Fathamul* (15), the Supreme Court refused to read the definition of the word 'debt' into the words 'decree debt' on the ground that the Scheme of the Act would thereby be disturbed. Keeping in mind the principle of statutory interpretation expressly incorporated in the opening words of section 2 of the Punjab Passengers and Goods Taxation Act, it becomes clear that to view 'profit motive' as a pre-condition to the levy of tax on passengers, would nullify the Explanation to section 3(1) and sub-section (2) of section 3. That was precisely what was held by Narula, J. (as my Lord the Chief Justice then was) in the *Hindustan Machine Tools Ltd.* v. *The State of Haryana*. My Lord had then said:—

> "As already indicated, the definitions contained in the various clauses of section 2 of the Act as well as those imported from section 2 of the Motor Vehicles Act by operation of section 2(j) of the Act, will operate only if there is nothing repugnant thereto in the subject or context, or in any case only to the extent to which they do no become repugnant to any provision in the Act. The scheme of the charging section which is the pivot of the whole Act seems to be that even if no fare or freight is actually paid in respect of the carriage of passengers or goods, the tax would be attracted. This is clear from the explanation to sub-section (1) of section 3. The explanation makes it clear that if nothing is charged the tax will be levied as if the passengers were carried or the goods transported at the normal rate prevalent on the route. In any event, sub-section (2) of section 3 appears to me to clinch the matter. The provision has already been quoted. The effect of this sub-section is that even if some right or facility is provided to a person being carried without any further payment, the tax has to be levied on such amount as may appear to the

(14) A.I.R. 1960 S.C. 97.

(15) A.I.R. 1965 S.C. 577.

prescribed authority to be fair and equitable having regard to the fare fixed by the competent authority under the Motor Vehicles Act..... It may be remembered that passenger tax levied under section 3 of the Act is not a tax on the owner of the vehicle, but is a tax on the fare paid in respect of the passengers irrespective of the fact, whether the fare is actually paid or in view of the provisions of the explanation to sub-section (1) or sub-section (2) of section 3 is notionally deemed to have been paid. If any part of the definitions of 'public vehicle' or 'passenger' are in any manner found to come into conflict with the express provisions of section 3 of the Act, the definition in question would by operation of the opening words of section 2 not operate to that extent on account of its repugnancy to section 3."

Nothing more need be added than to say that we are in respectful agreement with what has been quoted by us.

(14) In the result, all the writ petitions are dismissed. No costs.

N. K. S.

FULL BENCH

LETTERS PATENT APPEAL

RAM KALA,—*Appellant*

versus

THE ASSISTANT DIRECTOR, CONSOLIDATION OF HOLDINGS, PUNJAB, ROHTAK AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 209 of 1974

December 15, 1976

Limitation Act (36 of 1963)—*Article* 137 *of the Schedule*—*Constitution of India* 1950—*Article* 226—*Application for adding or substituting parties to a petition under Article* 226—*Article* 137—*Whether applicable.*

Held, that a High Court while exercising jurisdiction under Article 226 of the Constitution of India 1950 does not try a suit as