A STATE OF HIMACHAL PRADESH AND ORS. ETC. ETC.

v.

NURPUR PRIVATE BUS OPERATORS UNION
AND ORS. ETC. ETC.

B OCTOBER 6, 1999

[S.P. BHARUCHA, B.N. KIRPAL, V.N. KHARE, D.P. MOHAPATRA AND N. SANTOSH HEGDE, JJ.]

Taxation :

C *Himachal Pradesh Passengers and Goods Taxation Act, 1955—Ss.3 and, proviso to 4 (as amended)—Passengers tax—Levy of—Mode of payment—Lump sum collection of tax by taking into consideration the registered capacity of the vehicle and the distance travelled or to be travelled—Validity of—Held, tax can be levied with regard to all fares in respect of all passengers*
D *carried—No hypothetical assumption can be made regarding number of passengers carried—Amended proviso to S.4 is beyond the scope of the Act—Himachal Pradesh Passengers and Goods Taxation Rules, 1957—Rule 9.*

E *Doctrines :*

Doctrine of prospective over-ruling—Applicability of—Held, once the taxing provision is held invalid, the collections made thereunder also stands invalidated—Himachal Pradesh Passengers and Goods Taxation Act, 1955.

F **Respondent-bus operators challenged the amended proviso to S. 4 of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 and the Rules framed thereunder. Under the amended proviso to S. 4 of the Act, the State Government may assess the tax at lump sum taking into consideration the registered capacity of the vehicle and the distance**
G **travelled or to be travelled by such vehicle. High Court held that the said amendment was invalid. However, High Court by applying the doctrine of prospective over-ruling held that the tax which had already been collected, will not stand invalidated. Hence, the present appeals.**

Dismissing the Revenue's appeal and allowing that of Assessees',
H **the Court**

HELD : 1.1. Amendment of Section 4 of the Himachal Pradesh Passengers and Goods Taxation Act, 1955 by the inclusion of the proviso is beyond the scope of the said Act. It is, therefore, unnecessary to consider Rule 9, as amended, whose terms also, in fact, leave the matter in no doubt. However, the State may make assessments of passengers tax as provided for in S. 3 of the Act. [433-G-H] A B

1.2. It is plain from Section 3 of the Act, that the levy of the tax is on "all fares ..... in respect of all passengers carried ....". However, the proviso to Section 4 takes into account for the purpose of assessment of the lump sum tax only "the registered capacity of the vehicle and the distance travelled or to be travelled.........". It takes no account of "all fares...... in respect of all passengers carried.....", and it makes it obligatory for the operator to pay such lump sum tax. There can be no generalisation of tax that can be levied under S. 3 of the Act. It can be levied with due regard to all fares in respect of all passengers carried by the particular operator. No hypothetical assumption can be made about how many passengers an operator has carried. [433-D; E; F; G] C D

M/s. Sainik Motors, Jodhpur and Ors. **v.** *The State of Rajasthan,* **[1962] 1 SCR 517, referred to.**

2. Once the High Court came to the conclusion, rightly, that the concerned provisions were invalid, it was obliged to so declare and, consequently, the collections made thereunder stood invalidated. Thus, the direction of the High Court insofar as it relates to prospective over-ruling is set aside. [434-C; 434-D] E

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6466-6476 of 1995. F

From the Judgment and Order dated 1.10.92 of the Himachal Pradesh High Court in C.W.P. Nos. 664, 744/91, 754/91, 225, 229, 230, 371, 429, 448, 704 and 677 of 1992.

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WITH

Civil Appeal Nos. 6477 and 6480 of 1995.

From the Judgment and Order dated 1.10.92 of the Himachal Pradesh High Court in C.W.P. No. 371 and 229 of 1992. H

N.C. Kochhar, Naresh K. Sharma, Uma Dutta, Ashok Kr. Sharma and Pradeep Kumar Bakshi for the appearing parties.

The Judgment of the Court was delivered by

BHARUCHA, J. Civil Appeal Nos. 6466-6476 of 1995 :

Under challenge by the State of Himachal Pradesh is the judgment of a Division Bench of the High Court of Himachal Pradesh delivered on writ petitions filed under Article 226 of the Constitution to challenge amendments to the Himachal Pradesh Passengers and Goods Taxation Act, 1955 and the Rules framed thereunder. The High Court allowed the writ petitions, coming to the conclusion that confining the payment of tax under the said Act to the mode of payment by lump sum made the provision invalid.

Section 3 of the said Act is the charging secion. It provides, in so far as is relevant :

> "*3. Levy of Tax.* – (1) There shall be levied, charged and paid to the State Government *a tax on all fares* and freights *in respect of all passengers carried* and goods transported by motor vehicles at such rates not exceeding.......as the Government may, by notification, direct." (Emphasis supplied.)

Section 4 lays down the method of collection of the tax and states that the tax shall be collected by the owner of the motor vehicle and paid to the State Government in the prescribed manner. The proviso thereto, which is under challenge, reads :

> "Provided further that in case of motor vehicles (including the stage or contract carriages), other than those specified in the first proviso, in which the passengers are carried, *the State Government may assess the tax .... at lump sum* in the manner prescribed, *taking into consideration the registered capacity of the vehicle* and the distance travelled or to be travelled by such motor vehicles under a permit issued to such vehicles." (Emphasis supplied.)

The Rule made to effectuate the said proviso, which was also the subject matter of challenge, laid down the formula for such assessment of the lump sum tax. The formula was this :

"*Number of seats* x number of scheduled kilometers *x 3/5* x rate of passengers tax x rate per kilometer. A

Explanation : In this formula, *3/5 represents average occupancy taken at sixty per cent of the number of seats." (Emphasis supplied)*

B

It may be mentioned that, earlier, the relevant proviso had provided that in case of contract carriage the State Government "may accept a lump sum in lieu of the tax chargeable on fare in the manner prescribed". This proviso was challenged. This Court, in *M/s. Sainik Motors, Jodhpur and Ors.* v. *The State of Rajasthan,* [1962] 1 SCR 517, upheld the proviso for the reason that "payment to lump sum is not obligatory, and a person can elect C to pay tax calculated on actual fares and freights....There is no compulsion for any operator to elect to pay a lump sum if he does not choose to do so."

As far as the said Act, as it now stands, is concerned it is plain from D Section 3 thereof that the levy of the tax is on "all fares.......in respect of all passengers carried.......". The proviso to Section 4 that is under challenge takes into account for the purpose of assessment of the lump sum tax only "the registered capacity of the vehicle and the distance travelled or to be travelled........". It takes no account of "all fares.....in respect of all passengers carried.......", and it makes it obligatory for the operator to pay such E lump sum tax.

Learned counsel for the appellant-State submitted that the said Section 4 and Rule had been so amended having regard to surveys made and data collected by the State Government and with a view to prevent tax F evasion. This may be so, but there can be no generalisation of tax that can be levied under Section 3. It can only be levied with due regard to all fares in respect of all passengers carried by the particular operator. No hypothetical assumption can be made about how many passengers an operator has carried. The amendment of the said Section 4, by the inclusion of the proviso quoted above, is beyond the scope of the said Act. It is, G therefore, unnecessary to consider Rule 9, as amended, whose terms also, in facts, leave the matter in no doubt.

The State may now make assessments of passenger tax on the basis that is provided for in Section 3 of the Act. H

A The Civil appeals are dismissed with costs.

Civil Appeals Nos. 6477/1995 and 6480/1995 :

The High Court, in the judgment afore-mentioned, held that the levy and realisation of tax on the basis which had been held to be invalid by it
B "for the period between 1st April, 1991 andf 30th Septemper, 1992 shall not stand invalidated.........We propose to direct that the declaration made by us today shall be applicable prospectively and with effect from October 1, 1992 alone." Some operators challenge the correctness of this. They are right, for the doctrine of prospective over-ruling cannot be utilised by the High Court. Once the High Court came to the conclusion, rightly, that the
C concerned provisions were invalid, it was obliged to so declare and, consequently, the collections made thereunder stood invalidated.

These civil appeals are, therefore, allowed and the direction of the High Court insofar as it relates to prospective over-ruling is set aside. The
D judgment and order of the High Court shall also operate for the period between 1st April, 1991 and 30st September, 1992.

No order as to costs.

S.V.K. Appeals dismissed/allowed.