there is nothing to show that any damage had been caused to the Inamdars of the village as a result of the diversion of the water caused by the military authorities. Therefore, we are satisfied that the appellant cannot now make an alternative case on the ground of his rights as a riparian owner.

The result is, the appeal fails and is dismissed with costs, two sets; one hearing fee.

Appeal dismissed.

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v.

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(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Taxing Statute—Tax on passengers and goods—Retrospective operation—Validity—Restrictions, if unreasonable—Fundamental rights, if infringed—State's power of taxation—Constitution of India, Arts. 19(1)(f) and (g), (5), (6), 304(b), Seventh Schedule, List II, Entry 56—Bihar Finance Act, 1950 (Bihar 17 of 1950)—Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, (Bihar 17 of 1961) ss. 1 (3), 23(b).

On March 30, 1950, the Bihar Legislature passed the Bihar Finance Act, 1950. That Act levied a tax on passengers and goods carried by public service motor vehicles in Bihar. The appellants challenged the validity of the Act and certain provisions of the Act were struck down by this Court. The respondent then issued the Bihar Ordinance No. II of 1961 on August 1, 1961. By that Ordinance, the provisions of the Act of 1950 which had been struck down by this Court were validated and brought into force retrospectively from the date when the earlier Act purported to come into force. Later on, the provisions of the said Ordinance were incorporated in the Bihar

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Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. As a result of the retrospective operation of the Act of 1961, its material provisions were deemed to have come into force from April 1, 1950, the date on which the Act of 1950 came into force.

The appellants challenged the validity of the Act of 1961 but their writ petitions were dismissed by the High Court which held that the Act in its entirety was valid. The appellants came to this Court by special leave. The appellants conceded in this Court that the Act of 1961 in its prospective operation was perfectly valid and s. 23 (a) which validated the acts done under the Act of 1950 was valid. What was contended by the appellants was that the provisions of s. 23(b) in so far as they referred to proceedings commenced under the Act of 1950 but not completed before the Act of 1961 came into force were invalid. It was also contended that the retrospective operation prescribed by s. 1(3) and a part of s. 23(b) so completely altered the character of the tax proposed to be retrospectively recovered that it introduced a serious infirmity in the legislative competence of the Bihar Legislature itself and the retrospective operation was so unreasonable that it could not be saved either under Art. 304(b) or Art. 19(5) and (6) of the Constitution of India.

Held, that if in its essential features a taxing statute is within the competence of the Legislature which passed it by reference to the relevant entry in the List, its character is not necessarily changed merely by its retrospective operation so as to make the said retrospective operation outside the legislative competence of the said legislature. The challenge to the validity of the retrospective operation of the Act on the ground that the provision was beyond the legislative competence of the Bihar Legislature, must be rejected.

Held, also that the restriction imposed on the fundamental rights of the appellants under Art. 19(1)(f) and (g) by the retrospective operation of the Act was reasonable within the meaning of Arts. 19(5) and (6) and Art. 304(b). The test of the length of time covered by the retrospective operation cannot by itself be treated as a decisive test.

Where the legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. The legislative power includes the subsidiary or the auxiliary power to validate law which is found to be invalid. If a law passed by the legislature

is struck down by the Courts, it is competent to the appropriate legislature to pass a validating law so as to make the provisions of the earlier law effective from the date when it was passed.

The power of taxing people and their property is an essential attribute of Government and the Government can legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature, can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature.

Atiabari Tea Co. Ltd. v. *State of Assam*, [1961] 1 S.C.R. 809, *The Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan*, [1963] 1 S.C.R. 491, *United Provinces* v. *Mst. Atiqa Begum* [1940] F.C.R. 110, *State of West Bengal* v. *Subodh Gopal Bose*, [1954] S.C.R. 587, *The Express Newspapers (P) Ltd.* v. *Union of India*, [1959] S.C.R. 12, *Kunnathet Thathunni Moopil Nair* v. *State of Kerala*, [1961] 3 S.C.R. 77, *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh*, [1963] 1 S.C.R. 220, *Tata Iron & Steel Co. Ltd.* v. *The State of Bihar*, [1958] S.C.R. 1355, *M.P.V. Sundararamier & Co.* v. *The State of Andhra Pradesh*, [1958] S.C.R. 1422, *M/s. J. K. Jute Mills Co. Ltd.* v. *State of Uttar Pradesh*, [1962] 2 S.C.R. 1, and *M/s. Chhotabhai Jethabhai Patel & Co.* v. *Union of India*, [1962] Supp. 2 S.C.R. 1, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 16 and 17 of 1962.

Appeals by special leave from the judgment and order dated September 5, 1962, of the Patna High Court in Misc. Judl. Cases Nos. 916 and 918 of 1961.

M. C. Setalvad, B. K. P. Sinha, A. N. Sinha, and *B. P. Jha* for the appellants.

A. V. Viswanatha Sastri, D. P. Singh, Anil Kumar Gupta, M. K. Ramamurthi, R. K. Garg and *S. C. Agarwala,* for the respondent.

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1963. February 11. The Judgment of the Court was delivered by

GAJENDRAGADKAR, J.—The short question which these two appeals raise for our decision is in regard to the validity of the retrospective operation of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961 (No. 17 of 1961) (hereinafter called 'The Act'). It is true that the two writ petitions Nos. 916/1961 and 918/1961 filed by the appellants Rai Ramkrishna & Ors. and M/s. Road Transport Co., Dhanbad & Ors. respectively in the High Court at Patna along with 18 others under Articles 226 and 227 of the Constitution had challenged the validity of the whole of the Act. The High Court has held that the Act is valid both in its prospective as well as its retrospective operation. In their appeals brought to this Court by special leave against the said judgment, the appellants do not challenge the conclusion of the High Court that the Act is valid in so far as its prospective operation is concerned; they have confined their appeals to its retrospective operation. Eighteen other petitioners who had joined the appellants in the High Court have accepted the decision of the High Court and have not come to this Court in appeal.

Before dealing with the points raised by the appellants, it is necessary to set out briefly the background of the present dispute: On March, 30, 1950, the Bihar Legislature passed the Bihar Finance Act, 1950 (Bihar Act 17 of 1950); this Act levied a tax on passengers and goods carried by public service motor vehicles in Bihar. Nearly a year after this Act came into force, the appellants challenged its validity by instituting a suit No. 60/1951 in the Court of the First Subordinate Judge at Gaya on May 5, 1951. In this suit, the appellants prayed that the provisions of Part III of the said Act were

unconstitutional and asked for an injunction restraining the respondent, the State of Bihar, from levying and realising the said tax. It appears that a similar suit was instituted (No. 57/1951) on behalf of the passengers and owners of goods for obtaining similar reliefs against the bus operators. This latter suit was filed by the passengers and owners of goods in a representative capacity under O. 1 r. 8. Both these suits were transferred to the Patna High Court for disposal. A special Bench of the High Court which heard the said two suits dismissed them on May 8, 1952. The High Court found that the said Act of 1950 did not contravene Art. 301 of the Constitution and so, its validity was beyond challenge. The appellants then preferred an appeal to this Court No. 53/1952. Pending the said appeal in this Court, a similar question had been decided by this Court in the case of *Atiabari Tea Company Ltd.* v. *The State of Assam* (1). In consequence, when the appellants' appeal came for disposal before this Court, it was conceded by the respondent that the said appeal was covered by the decision of this Court in the case of Atiabari Tea Co. Ltd., and that in accordance with the said decision, the appeal had to be allowed. That is why the appeal was allowed and the appellants were granted the declaration and injunction claimed by them in their suit. This judgment was pronounced on December 12, 1960.

The respondent then issued an Ordinance (Bihar Ordinance No. II of 1961) on August 1, 1961. By this Ordinance, the material provisions of the earlier Act of 1950 which had been struck down by this Court were validated and brought into force retrospectively from the date when the earlier Act had purported to come into force. Subsequently, the provisions of the said Ordinance were incorporated in the Act which was duly passed by the Bihar Legislature and received the assent of

(1) [1961] 1 S.C.R. 809.

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the President on September 23, 1961. As a result of the retrospective operation of this Act, its material provisions are deemed to have come into force on April 1, 1950, that is to say, the date on which the earlier Act of 1950 had come into force. That, in brief, is the background of the present legislation.

The appellants and the other petitioners who had joined by filing several petitions in the Patna High Court had challenged the validity of the Act on several grounds. The High Court has rejected all these grounds and has taken the view that the Act in its entirety is valid. The High Court has found that the provisions of the Act no doubt take it within the purview of Part XIII of the Constitution; but it has held that the Act has been passed with the previous sanction of the President and the restrictions imposed by it are otherwise reasonable, and so, it is saved under Art. 304 (b) of the Constitution. The plea made by the respondent that the taxing provisions of the Act were compensatory in character and were, therefore, valid, was rejected by the High Court. The High Court held that the principle that a taxing statute which levies a compensatory or regulatory tax is not invalid which has been laid down by the majority decision of this Court in the case of *The Automobile Transport (Rajasthan) Ltd.* v. *The State of Rajasthan* (1), was not applicable to the provisions of the Act. The argument that the Act was invalid because it required the appellants to act as the Agents of the respondent for collecting the tax from the passengers and from the owners of the goods without payment of any remuneration, was rejected by the High Court. It was also urged that the Act contravened the provisions of Art. 199 (4) of the Constitution, but the High Court was not impressed with this argument; and the plea that the matters in dispute between the appellants and the respondent are really concluded by *res judicata,*

(1) [1963] 1 S.C.R. 491.

appeared to the High Court without any substance. That is how the writ petitions filed by the appellants failed, and so, they have come to this Court confining their challenge only to the validity of the restrospective operation of the Act.

At this stage, it is necessary to refer to the material provisions of the earlier Acts and examine the scheme of the Act impugned. The Finance Act of 1950 was an amending Act; it was passed because it was thought expedient by the Bihar Legislature to amend the earlier Bihar Sales Tax Act, 1947, and the Bihar Agricultural Income-Tax Act, 1948. Section 12 of the said Act levied a tax on passengers and goods carried or transported by public service vehicles and public carriers. Section 12 (1) prescribed the rate of the said taxation @ As.-/2/-in a rupee on all fares and freights payable to owners of such motor cabs, stage carriages, contract carriages or public carriers, as carried the goods and passengers in question. Sub-section (2) dealt with the cases where any fare or freight was charged in a lump sum either for carrying goods or by way of contribution for a season ticket, or otherwise; and sub-section (3) provided that every owner of the public vehicle shall pay into the Government Treasury, the full amount of the tax due from him under sub-section (1) or sub-section (2) in such a manner and at such intervals as may be prescribed and shall furnish such returns by such dates and to such authority as may be prescribed.

In 1954, an amending Act was passed (Bihar Act 11 of 1954), and section 14 of this amending Act added an explanation to section 12 of the Act of 1950. By this explanation, every passenger carried by the public vehicle and every person whose goods were transported by a public carrier was made liable to pay to the owner of the said carrier the amount of tax payable under sub-sections (1) and (2)

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of section 12, and every owner of the vehicle or carrier was authorised to recover such tax from such passenger or person. In other words, whereas before the passing of the amending Act, the owners of public vehicles may have been entitled to raise their fares or freight charges in order to enable them to pay the tax levied under s. 12 of the Act of 1950, after the amending Act was passed, they became entitled to recover the specific amounts from passengers and owners of goods by way of tax payable by them under the said section.

After the Act as thus amended was struck down by this Court on December, 12, 1960 an Ordinance was passed and its provisions were included in the impugned Act which ultimately became the law in Bihar on September 25, 1961. The Act consists of 26 sections. Section 1 (3) expressly provides that the Act shall be deemed to have come into force on the first day of April, 1950. Section 2 defines, inter alia, goods, owners, passenger and public service motor vehicle. Section 3 is the charging section. Section 3 (1) provides that on and from the date on which this Act is deemed to have come into force under sub-section (3) of section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle. Then the sub-section prescribes the rate at which the said tax has to be paid. There is a proviso to this sub-section which it is unnecessary to set out. Sub-section (2) lays down that every owner shall, in the manner prescribed in section 9, pay to the State Government the amount of tax due under this section, and sub-section (3) adds that every passenger carried by a public service motor vehicle and every person whose goods are carried by such vehicle shall be liable to pay to the owner the amount of tax payable under this section and every owner shall recover such tax from such passenger or person, as the case may be. There are three more sub-sections to this section which need

not detain us. It would be noticed that the effect of s. 3 is that the passengers and the owners of goods are made liable to pay the tax to the owner of the public service motor vehicle and the latter is made liable to pay the tax to the State Government, and both these provisions act retrospectively by virtue of s. 1 (3). In other words, the tax is levied on passengers and goods carried by the public vehicles, and the machinery devised is that the tax would be recovered from the owners of such vehicles. Section 4 requires the owners of public service motor vehicles to register their vehicles. Under s. 5, security has to be furnished by such owners; and returns have to be submitted under s. 6. Section 7 deals with the procedure for the assessment of tax. Section 8 provides for the payment of fixed amount in lieu of tax, and under s. 9 provision is made for the payment and recovery of tax. Section 10 deals with the special mode of recovery. Section 11 deals with cases of transfer of public service motor vehicle and makes both the transferor and the transferee liable for the tax as prescribed by it. Refund is dealt with by s. 12 ; and appeal, revision and review are provided by ss. 13, 14 and 15 respectively. Under s. 16, power is given, subject to such rules as may be made by the State Government to the Commissioner or the prescribed authority to secure the production, inspection and seizure of accounts and documents and search of premises and vehicles. Section 17 makes the Commissioner and the prescribed authority public servants ; and section 18 deals with offences and penalties. Section 19 deals with compounding of offences. Section 20 prescribes the usual bar to certain proceedings, and section 21 refers to the limitation of certain suits and prosecutions. Section 22 confers power on the State Government to make rules. Section 23 is important. In effect, it provides that the acts done under Bihar Act 17 of 1950 shall be deemed to have been done under this Act.

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It reads thus :—

"Notwithstanding any judgment, decree or order of any Court, tribunal or authority—

(a) any amount paid, collected or recovered or purported to have been paid, collected or recovered as tax or penalty under the provisions of Part III of the Bihar Finance Act, 1950 (Bihar Act XVII of 1950), as amended from time to time (hereinafter referred to as the "said Act") or the rules made thereunder during the period beginning with the first day of April, 1950 and ending on the thirty-first day of July, 1961, shall be deemed to have been validly levied, paid, collected, or recovered under the provisions of this Act ; and

(b) any proceeding commenced or purported to have been commenced for the assessment, collection or recovery of any amount as tax or penalty under the provisions of the said Act or the rules made thereunder during the period specified in clause (a) shall be deemed to have been commenced and conducted in accordance with the provisions of this Act, and, if not already completed, shall be continued and completed in accordance with the provisions of this Act."

There is a proviso to this section which is not relevant for our purpose. Sections 24 and 25 deal with repeals and savings; and section 26 provides that if any difficulty arises in giving effect to the provisions of the Act, the State Government may pass an order in that behalf, subject to the limitations prescribed by the said section. That, broadly stated, is the scheme of the Act.

In order to appreciate the merits of the contentions raised by Mr. Setalvad on behalf of the appellants, it is necessary to specify clearly the limited character of the controversy between the parties in appeal. The appellants concede that the Act in its prospective operation is perfectly valid. They also concede that s.23(a) which validates the acts done under the earlier Act of 1950 is valid. It would be noticed that apart from the general retrospective operation of the Act for which a provision has been made by s.1(3), s. 23 itself makes a clear retrospective validating provision and it is not disputed that the acts validated by s.23(a) have been properly validated. With regard to the validating provision contained in s. 23 (b), it has been urged that the said provision in so far as it refers to proceedings commenced under the earlier Act but not completed before the impugned Act came into force, is invalid. The rest of the provisions of s. 23 (b) are also not challenged. In other words, it is not disputed that in its prospective operation, the Act has been validly passed by the Bihar Legislature exercising its legislative power under Entry 56 in List II of the Seventh Schedule of the Constitution. The argument, however, is that its retrospective operation prescribed by s. 1 (3) and by a part of s. 23 (b) so completely alters the character of the tax proposed to be retrospectively recovered that it introduces a serious infirmity in the legislative competence of the Bihar Legislature itself. Alternatively, it is argued that the said retrospective operation is so unreasonable that it cannot be saved either under Art. 304 (b) or Art. 19 (5) and (6). It is these two narrow points which call for our decision in the present appeals.

In dealing with this controversy, it is necessary to bear in mind some points on which there is no dispute. The entries in the Seventh Schedule conferring legislative power on the legislatures in question must receive the widest denotation. This position is

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not disputed. Entry 56 of the Second List refers to taxes on goods and passengers carried by road or on inland waterways. It is clear that the State Legislatures are authorised to levy taxes on goods and passengers by this entry. It is not on all goods and passengers that taxes can be imposed under this entry; it is on goods and passengers carried by road or on inland waterways that taxes can be imposed. The expression "carried by road or on inland waterways" is an adjectival clause qualifying goods and passengers, that is to say, it is goods and passengers of the said description that have to be taxed under this entry. Nevertheless, it is obvious that the goods as such cannot pay taxes, and so taxes levied on goods have to be recovered from some persons, and these persons must have an intimate or direct connection or nexus with the goods before they can be called upon to pay the taxes in respect of the carried goods. Similarly, passengers who are carried are taxed under the entry. But, usually, it would be inexpedient, if not impossible, to recover the tax directly from the passengers and so, it would be expedient and convenient to provide for the recovery of the said tax from the owners of the vehicles themselves. That is why it is not disputed by Mr. Setalvad that in enacting a law under entry 56 in respect of taxes imposed on passengers carried by road or on inland waterways, it would be perfectly competent to the legislature to devise a machinery for the recovery of the said tax by requiring the bus operators or bus owners to pay the said tax.

The other point on which there is no dispute before us is that the legislative power conferred on the appropriate legislatures to enact laws in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively. Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law,

but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. This position is treated as firmly established since the decision of the Federal Court in the case of *The United Provinces* v. *Mst. Atiqa Begum* (1).

It is also true that though the Legislature can pass a law and make its provisions retrospective, it would be relevant to consider the effect of the said retrospective operation of the law both in respect of the legislative competence of the legislature and the reasonableness of the restrictions imposed by it. In other words, it may be open to a party affected by the provisions of the Act to contend that the retrospective operation of the Act so completely alters the character of the tax imposed by it as to take it outside the limits of the entry which gives the legislature competence to enact the law; or, it may be open to it to contend in the alternative that the restrictions imposed by the Act are so unreasonable that they should be struck down on the ground that they contravene his fundamental rights guaranteed under Art. 19 (1) (f) & (g). This position cannot be, and has not been, disputed by Mr. Sastri who appears for the respondent, *vide The State of West Bengal* v. *Subodh Gopal Bose* (2), and *Express Newspapers (Private) Ltd.* v. *The Union of India* (3).

In view of the recent decisions of this Court Mr. Sastri also concedes that taxing statutes are not beyond the pale of the constitutional limitations

(1) [1940] F.C.R. 110. (2) [1954] S.C.R. 587, 626.
(3)[[1954] S.C.R. 12, 139.

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prescribed by Articles 19 and 14, and he also concedes that the test of reasonableness prescribed by Art. 304(b) is justiciable. It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes Art. 19, courts would naturally be circumspect and cautious. Where for instance, it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the Court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes. This is illustrated by the decision of this Court in the case of *Kunnathet Thathunni Moopil Nair* v. *State of Kerala* (1), where a taxing statute was struck down because it suffered from several fatal infirmities. On the other hand, we may refer to the case of *Raja Jagannath Baksh Singh* v. *State of Uttar Pradesh* (2), where a challenge to the taxing statute on the ground that its provisions were unreasonable was rejected and it was observed that unless the infirmities in the

(1) [1961] 3 S.C.R. 77. (2) [1963] 1 S.C.R. 220.

impugned statute were of such a serious nature as to justify its description as a colourable exercise of legislative power; the Court would uphold a taxing statute.

It is in the light of these principles of law which are not in dispute between the parties before us that we must proceed to examine the arguments urged by Mr. Setalvad in challenging the validity of the retrospective operation of the Act. Mr. Setalvad contends that one has merely to read the provisions of s. 3(3) to realise that the character of the tax has been completely altered by its retrospective operation. It would be recalled that s. 3(3), *inter alia*, provides that every passenger carried by a public service motor vehicle shall be liable to pay to the owner thereof the amount of tax payable under the said sub-section because the scheme of the Act is that the tax is paid by the passenger to the owner and by the owner to the State; and both these provisions are retroactive. However, in respect of passengers carried by the owner between 1.4.1950 and the date of the Act, how can the owner recover the tax he is now bound to pay to the State, asks Mr. Setalvad ? *Prima facie*, the argument appears to be attractive, but a closer examination would show that the difficulty which the owner may experience in recovering the tax from the passengers will not necessarily alter the character of the tax. If the scheme of s. 3 for the levy and recovery of the tax is valid under entry 56 of List II so far as future recoveries are concerned, it is not easy to see how it can be said that the character of the tax is radically changed in the present circumstances, because it would be very difficult, if not impossible, for the owner to recover the tax from the passengers whom he has carried in the past. The tax recovered retrospectively like the one which will be recovered prospectively still continues to be a tax on passengers and it adopts the same machinery for the recovery of the tax both as to the

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past as well as to the future. In this connection, we ought to bear in mind that the incidence of the tax should not be confused with the machinery adopted by the statute to recover the said tax. Besides, as we will point out later, it is only during a comparatively short period that the owners' difficulties assume a significant form. Stated generally, it may not be unreasonable to assume that from the time when the Act of 1950 was brought into force it was known to all the owners that the legislature had imposed a tax in respect of passengers and goods carried by them and since then, and particularly after the amendment of 1954, they may have raised their fares and freights to absorb their liability to pay the tax to the State. But apart from that, it seems to us that the nature of the tax in the present case is the same both in regard to prospective and retrospective operations, and so, it is difficult to entertain the argument that the tax has ceased to be a tax on passengers and is, therefore, outside Entry 56. The argument that the retrospective operation of the Act is beyond the legislative competence of the Bihar Legislature must, therefore, be rejected. In this connection, we cannot ignore the fact that prior to the passing of the impugned Act there was in operation a similar statute since April 1, 1950 which was struck down as unconstitutional on the ground of want of assent of the President. This aspect of the matter, no doubt, will have to be further examined in the context of the appellants' case that the retrospective operation of the Act introduces a restriction which is unreasonable both under Art. 19 (1) (f) & (g) and Art. 304 (b); but it has no validity in challenging the legislative competence of the Bihar Legislature in that behalf.

We may, in this connection, incidentally refer to some decisions of this Court where a similar argument was urged in regard to the retrospective operation of some Acts. It appears that in those

cases, the argument proceeded on a distinction between direct and indirect taxes. It is well-known that John Stuart Mill made a pointed distinction between direct and indirect taxation and this distinction was reflected in s. 92 (II) of the British North America Act which gave to the Legislatures of the Provinces exclusive power to make laws in relation to direct taxation within the Province. No such distinction can be made in regard to the legislative power conferred on the appropriate legislatures by the respective entries in the Seventh Schedule of our Constitution, and so, it is unnecessary for us to consider any argument based on the said distinction in the present case. However, this argumeut was urged before this Court in challenging the validity of some Acts by reference to their retrospective operation. In the *Tata Iron & Steel Co. Ltd.* v. *The State of Bihar*, (1), where this Court was called upon to examine the validity of the Bihar Sales Tax Act, 1947 as amended by the Amendment Act of 1948, one of the points urged before this Court was that whereas sales-tax is an indirect tax on the consumer inasmuch as the idea in imposing the said tax on the seller is that he should pass it on to his purchaser and collect it from him, the retrospective operation of the Act made the imposition of the said tax a direct tax on the seller and so, it was invalid. This argument was rejected. A similar objection against the retrospective operation of the Madras General Sales Tax Act, 1939 as adapted to Andhra by the Sales Tax Laws Validation Act, 1956 was rejected in the case *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh* (2).

In *M/s. J. K. Jute Mills Co. Ltd.* v. *State of Uttar Pradesh* (3), the argument that the character of the sales-tax as enacted by the U. P. Sales Tax Act, 1948, was radically altered in its retrospective operation, was likewise rejected. The same argument

(1) [1958] S.C.R. 1355, 1377. (2) [1958] S.C.R. 1422.
(3) [1962] 2 S.C.R. 1.

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in respect of an excise tax raised before this Court in the case of *M/s. Chhotabhai Jethabhai Patel & Co.* v. *Union of India* (1), was for similar reasons rejected. The position, therefore, appears to be well settled that if in its essential features a taxing statute is within the legislative competence of the legislature which passed it by reference to the relevant entry in the List, its character is not necessarily changed merely by its retrospective operation so as to make the said retrospective operation outside the legislative competence of the said legislature, and so, we must hold that the challenge to the validity of the retrospective operation of the Act on the ground that the provision in that behalf is beyond the legislative competence of the Bihar Legislature, must be rejected.

That takes us to the question as to whether the restriction imposed on the appellants' right under Art. 19 (1) (f) and (g) by the retrospective operation of the Act is reasonable so as to attract the provisions of Art. 19 (5) and (6). The same question arises in regard to the test of reasonableness prescribed by Art. 304 (b). Mr. Setalvad contends that since it is not disputed that the retrospective operation of a taxing statute is a relevant fact to consider in determining its reasonableness, it may not be unfair to suggest that if the retrospective operation covers a long period like ten years, it should be held to impose a restriction which is unreasonable and as such, must be struck down as being unconstitutional. In support of this plea, Mr. Setalvad has referred us to the observations (2) made by Sutherland. "Tax statutes", says Sutherland, "may be retrospective if the legislature clearly so intends. If the retrospective feature of a law is arbitrary and burdensome, the statute will not be sustained. The reasonableness of each retroactive tax statute will depend on the circumstances of each case. A statute retroactively

(1) [1962] Supp. 2 S.C.R. 1.
(2) Sutherland on Statutes and Statutory Construction, 1943 Ed. Vol. 2 Paragraph 2211 pp. 131-133.

imposing a tax on income earned between the adoption of an amendment making income taxes legal and the passage of the income-tax act is not unreasonable. Likewise, an income-tax not retroactive beyond the year of its passage is clearly valid. The longest period of retroactivity yet sustained has been three years. In general, income taxes are valid although retroactive, if they affect prior but recent transaction." Basing himself on these observations, Mr. Setalvad contends that since the period covered by the retroactive operation of the Act is between April 1, 1950 and September 25, 1961, it should be held that the restrictions imposed by such retroactive operation are unreasonable, and so, the Act should be struck down in regard to its retrospective operation.

We do not think that such a mechanical test can be applied in determining the validity of the retrospective operation of the Act. It is conceivable that cases may arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional; but the test of the length of time covered by the retrospective operation cannot, by itself, necessarily be a decisive test. We may have a statute whose retrospective operation covers a comparatively short period and yet it is possible that the nature of the restriction imposed by it may be of such a character as to introduce a serious infirmity in the retrospective operation. On the other hand, we may get cases where the period covered by the retrospective operation of the statute, though long, will not introduce any such infirmity. Take the case of a Validating Act. If a statute passed by the legislature is challenged in proceedings before a Court, and the challenge is ultimately sustained and the statute is struck down, it is not unlikely that the judicial proceedings may occupy a fairly long period

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and the legislature may well decide to await the final decision in the said proceedings before it uses its legislative power to cure the alleged infirmity in the earlier Act. In such a case, if after the final judicial verdict is pronounced in the matter the legislature passes a validating Act, it may well cover a long period taken by the judicial proceedings in Court and yet it would be inappropriate to hold that because the retrospective operation covers a long period, therefore, the restriction imposed by it is unreasonable. That is why we think the test of the length of time covered by the retrospective operation cannot by itself be treated as a decisive test.

Take the persent case. The earlier Act was passed in 1950 and came into force on April 1, 1950, and the tax imposed by it was being collected until an order of injunction was passed in the two suits to which we have already referred. The said suits were dismissed on May 8, 1952, but the appeals preferred by the appellants were pending in this Court until December 12, 1960. In other words, between 1950 and 1960 proceedings were pending in court in which the validity of the Act was being examined, and if a Validating Act had to be passed, the legislature cannot be blamed for having awaited the final decision of this Court in the said proceedings. Thus the period covered between the institution of the said two suits and their final disposal by this Court cannot be pressed into service for challenging the reasonableness of the retrospective operation of the Act.

It is, however, urged that the retrospective operation of the Act during the period covered by the orders of injunction issued by the trial Court in the said two suits must be held to be unreasonable, and the argument is that in regard to the said period the retrospective operation should be struck down. Similarly, it is urged that the said retrospective

operation should be struck down for the period between December 12, 1960 when this Court struck down the earlier Act and August 1, 1961 when Ordinance II of 1961 was issued. We do not think it would be appropriate in the present case to examine the validity of the retrospective operation by reference to particular periods of time covered by it in the manner suggested by Mr. Setalvad; and so, we are not prepared to accept his argument that the retrospective operation of the Act is invalid so far as the period between December 12, 1960, when the earlier Act was struck down by this Court, and August 1, 1961, when the Ordinance was issued, is concerned. It would be realised that in such a situation there would always be some time lag between the date when a particular Act is struck down as unconstitutional and the date on which a retrospective validating Act is passed. Besides, the circumstances under which the orders of injunction were passed by the trial Court cannot be altogether ignored. Mr. Sastri contends that the two suits filed by the appellants and the passengers and the owners of goods respectively disclose a common design and can be treated as friendly suits actuated by the same motive, and we do not think that this contention can be rejected as wholly unjustified. Apart from it, when the injunction was issued against the respondent in the appellants' suit, the appellants gave an undertaking in writing to pay the taxes payable on the fares and freights as provided by the law in case their suit failed. As we have already seen their suit was dismissed by the High Court on May 8, 1952, so that it was then open to the respondent to call upon the appellants to pay the taxes for the period covered by the orders of injuction and to require them to pay future taxes because the earlier Act under which the taxes were recovered was held to be valid by the High Court. It is no doubt suggested by Mr. Setalvad that the spirit of the undertaking required that no recovery should be made

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until the final disposal of the proceedings between the parties. We do not see how this argument about the spirit of the undertaking can avail the appellants. As soon as their suit against the respondent was dismissed, the respondent was at liberty to enforce the provisions of the Act and the dismissal of the suit made it possible for the respondent to claim the taxes even for the period covered by the order of injunction. We do not think that in the context, the dismissal of the suit can legitimately refer to the final disposal of the appeal filed by the appellants before this Court. In any event, having regard to the genesis of the two suits, the nature of the orders of injunction issued in them and the character of the undertaking given by the appellants, we do not think it would be possible to sustain Mr. Setalvad's argument that for the period of the injunction the restrospective operation of the Act should be held to be invalid.

In this connection, it would be relevant to refer to another fact which appears on the record. Along with the appellants, 18 other bus owners had filed writ petitions challenging the validity of the Act. These petitioners have not appealed to this Court presumably because their cases fall under the provisions of s. 23 (a) of the Act. It is likely that they had paid the amounts, and since the amounts paid under the provisions of the earlier Act are now deemed to have been paid under the provisions of this Act, they did not think it worthwhile to come to this Court against the decision of the High Court. Apart from that, it is not unlikely that other bus owners may have made similar payments and the appellants have, therefore, come to this Court because they have made no payments and so, their cases do not fall under s. 23 (a), or may be, their cases fall under s. 23 (b). The position, therefore, is that the retrospective operation of s. 23 (a) & (b) cover respectively cases of payments actually made under

the provisions of the earlier Act, and cases pending inquiry, and the retrospective operation of s. 3 (3) read with s. 1 (3) only applies to cases of persons who did not pay the tax during the whole of the period, or whose cases were not pending ; and it is this limited class of persons whose interests are represented by the appellants before us. Having regard to the somewhat unusual circumstances which furnish the background for the enactment of the impugned statute, we do not think that we could accept Mr. Setalvad's argument that the retrospective operation of the Act imposes restrictions on the appellants which contravene the provisions of Art. 19 (1) (f) & (g). In our opinion, having regard to all the relevant facts of this case, the restrictions imposed by the said retrospective operation must be held to be reasonable and in the public interest under Art. 19 (5) and (6) and also reasonable under Art. 304 (b).

There is only one more point to which reference must be made. We have already noticed that the High Court has rejected the argument urged on behalf of the State that the tax imposed by the Act is of a compensatory or regulatory character and therefore, is valid. Mr. Sastri wanted to press that part of the case of the State before us. He urged that according to the majority decision of this Court in the case of the *Automobile Transport (Rajasthan) Ltd.* (1), it must now be taken to be settled that "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Art. 304 (b) of the Constitution." (p. 1424). On the other hand, Mr. Setalvad has argued that this doctrine of compensatory or regulatory or taxation which is mainly based on Australian decisions cannot be extended to the present case, and he contends that if the doctrine of regulatory or compensatory taxes is very

(1) [1963] 1 S.C.R. 491.

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liberally construed, it would tend to cover all taxes, because in a loose sense, all taxes raised by the State can ultimately be said to be compensatory in a far-fetched manner, and in that way, the well-recognised constitutional difference between a tax and a fee will be obliterated and the provisions of Part XIII of the Constitution will lose all their significance. Part XIII contains provisions which constitute a self-contained code and we need not really travel outside the said provision in determining the validity of the tax imposed by the Act. Since we have come to the conclusion that the challenge to the validity of the retrospective operation of the Act cannot be sustained, we do not think it necessary to pursue this matter any further.

In the result, the appeals fail and are dismissed with costs.

Appeal dismissed.

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February, 11.

JANAPAREDDY LATCHAN NAIDU

v.

JANAPAREDDY SANYASAMMA

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, M. HIDAYATULLAH, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Maintenance—Decree by court charging certain properties—Nature of such decree—If can be executed against other properties—Code of Civil Procedure, 1908 (Act 5 of 1908), s. 47.

The respondent, wife of the appellant, filed an execution petition for execution of a maintenance decree obtained by her which, in addition to the personal liability, created a charge for past and future maintenance on three lots of properties. After obtaining the permission of the Court she purchased two items of the properties subject to her maintenance charge. Later she