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A. S. KARTHIKEYAN ETC.

v.

STATE OF KERALA & ANR.

November 20, 1973

[A. N. RAY, C.J., K. K. MATHEW, Y. V. CHANDRACHUD,
A. ALAGIRISWAMI AND P. N. BHAGWATI, JJ.]

B

Kerala Motor Vehicles (Taxation of Passengers and Goods Amendment) Act (18 of 1971) and Motor Vehicles (Kerala Third Amendment) Act (34 of 1971)—Validity of.

Section 43 of the Motor Vehicles Act, 1939, lays down that the State Government may, from time to time issue directions to the State Transport Authority regarding fixing of fares and freights for stage carriages and public carriages; and s. 44(3) requires the State Transport Authority to give effect to such directions. In exercise of these powers the fare structure had been fixed for stage carriages in the respondent-State from time to time. In 1963, the respondent decided, to increase the motor vehicles tax, to introduce tax on passengers and goods, and to modify the fare structure suitably for stage carriages. Accordingly under the Kerala Motor Vehicles Taxation Act, 1963, the new rate of tax was fixed. Section 3 of the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963, provided that there shall be levied and paid to the Government a tax on all passengers, luggage etc. and the composition fee was fixed per seat per quarter. Also, after hearing the representations and objections of the operators and the public, there was a revision, as from July 1, 1963, of the fare structure of stage carriages in the State. Till July 1966, the operators collected tax on passengers and goods and paid the taxes to the Government. But in 1966, the operators agitated for enhancement of fares and took the matter to Court. In *Thomman & Ors.* v. *The Regional Transport Officer, Ernakulam & Anr.* I.L.R. [1968] 2 Kerala 153, the High Court held that the tax under the 1963-Act (Taxation of Passengers and Goods) was a tax on passengers and goods and not on the operators as contended by the operators, but held that the Act contained no satisfactory provision for its collection, in that it was not clear that the tax was payable by the passengers to the operators.

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Thereafter, the Kerala Motor Vehicles (Taxation of Passengers and Goods Amendment) Act 18 of 1971 was passed amending the 1963-Act. Two new sub-sections to s. 3 provided that the tax levied shall be paid by the passengers and consignors of the goods to the operators along with fares and freights and that the operators shall be liable to pay the tax so levied to the Government. There was also a validating section in Act 18 of 1971, which stated that taxes levied or collected shall be deemed to be and to have always been levied or collected in accordance with law as if s. 3 of the 1963-Act, as amended by Act 18 of 1971 was in force at all material times. Another Act, Motor Vehicles (Kerala Third Amendment) Act 34 of 1971, effected 2 principal changes, namely, (1) the addition of sub. s. (1A) to s. 43 of the Motor Vehicles Act which provided that any direction regarding the fixing of fares and freights prospectively or retrospectively might provide that such fares and freights shall be inclusive of the tax payable by passengers or consignors of goods; and (2) a validating provision validating the directions, relating to fares issued on or after March 1, 1963 to be inclusive of the tax payable under the 1963-Act. With effect from October 15, 1971, the Government also revised the rates of fare.

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The operators contended that: (1) The provisions of Acts 18 and 34 of 1971 amounted to a tax not on passengers and goods but on the income of the operators, (2) the retrospective validation of levy and collection amount to a tax on amounts collected as fare and therefore the tax was a new tax on fare, and (3) the retrospective validation was unreasonable because the operators were made liable for a tax which they did not in fact collect during the period July 1966 to October 14 1971, when they were agitating for enhancement of fare.

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Rejecting the contentions, the Court, A

HELD : (1) The provisions of the 1963-Act (taxation of passengers and goods) indicate that the tax under that Act is a tax on passengers and owners of goods and that the operators only collected the tax. When passengers and owners of goods pay the tax, the Government requires an agency to collect it and the operators are such agents. The power to enact such a measure is derived from entry 56 of the State List II of the Seventh Schedule to the Constitution. [329B-C, D-F] B

M/s Sainik Motors, Jodhpur & Others v. *The State of Rajasthan*, [1962] 1 S.C.R. 517, followed.

(2) The tax recovered retrospectively as well as prospectively is the same tax, a tax on passengers and goods. The tax is imposed by the 1963 Act and its character as well as incidence is determined by the 1963-Act. No tax is imposed or collected under Act 34 of 1971, nor was there any alteration of the character of the tax which had already been imposed. The machinery for its collection which was implicit in the 1963-Act was made explicit by Act 18 of 1971. The C State Government fixed the fare in July 1, 1963 after taking into account the element of tax on passengers and goods imposed by the 1963-Act. The operators in collecting fares from passengers in fact collected the tax due from them under the 1963-Act along with the fare. Section 43(1A) of the Motor Vehicles Act only clarified the factual basis. It is competent to the State Legislature to amend the Motor Vehicles Act by enacting that directions regarding fares can be inclusive of tax. The two Acts of 1971 were only for the purpose of dispelling the doubts expressed in *Thomman* Case. [333C-G] D

Rai Ramkrishna & Others v. *The State of Bihar*, [1964] 1 S.C.R. 897, explained and followed.

S. Srikantiah & Ors. v. *The Regional Transport Authority, Anantapur & Ors.*, [1971] Supp. S.C.R. 816, followed.

(3) The correspondence and representations by the operators and notes of hearing prepared by the Secretariat in connection with the revision of fares, show, that the incidence of the increase in the motor vehicles tax and the *increase in tax liability on account of tax on passengers and goods* were all taken into consideration in fixing the fare with effect from July 1, 1973. Since the tax was an element included in the fare structure, the retrospective validation cannot be said to be unjust, especially because the operators had collected the entire amount. [332B-C; 334C-D] E

ORIGINAL JURISDICTION : Writ Petition No. 326 of 1972 & 203 of 1973. F

Under Article 32 of the Constitution of India for the enforcement of fundamental rights.

Civil Appeal No. 1875 *of* 1972.

Appeal by Special Leave from the Judgment and Order dated the 15th March, 1972 of the Kerala High Court at Ernakulam in O. P No. 23 of 1971. G

Civil Appeal No. 1765 *of* 1972.

From the Judgment and Order dated the 16th March, 1972 of the Kerala High Court Ernakulam in O.P. No. 3034 of 1971.

Civil Appeal No. 27 *of* 1973.

From the Judgment and Order dated the 13th March, 1972 of the H Kerala High Court in O.P. No. 2320 of 1971.

Civil Appeal No. 361 of 1973.

A From the Judgment and Order dated the 15th March, 1972 of the Kerala High Court in O.P. No. 2453 of 1971.

V. M. Tarkunde, C. K. Viswanatha Iyer, K. Jayaram and *R.Chandrasekharan* for the petitioners (in W. P. No. 326/72).

C. K. Viswanatha Iver, K. Jayaram and *R. Chandrasekharan*, for B the petitioners, (in W. P. No. 203/73).

M. M. Abdul Khader, V. A. Syed Mohammed, K. Paripoornam and *P. C. Chandi*, for respondent No. 1 (in W.P. No. 203/73).

S. V. Gupte, V. Sivaraman Nair, C. J. Balakrishnan and *A. Sreedhar Nambiar*, for the appellant (in C. A. No. 1875/72).

C *V. Sivaraman Nair, C. J. Balakrishnan* and *A. Sreedharan Nambiar*, for the appellants, (in C. A. No. 1765/72).

V. Bhaskaran Nambiar and *A. Sreedharan Nambiar*, for the appellant (in C. A. No. 27/73).

K. T. Harindranath and *A. Sreedharan Nambiar*, for the appellants, (in C. A. No. 361/73) and for Intervener No. 5.

D *S. V. Gupte* and *A. Sreedharan Nambiar*, for Intervener No. 1.

A. Sreedharan Nambiar, for Intervener Nos. 2, 3 and 6.

The Judgment of the Court was delivered by

RAY, C.J. These matters raise questions on the validity of legislative measures of levy and collection of tax on passengers and goods E carried by stage carriages and public carrier vehicles. Stage carriages carry passengers and public carriers carry goods. The validity of the Kerala Motor Vehicles (Taxation of Passengers and Goods Amendment) Act, 1970 for the sake of brevity called Act 18 of 1971 as well as the Motor Vehicles (Kerala Third Amendment) Act, 1971 for the sake of brevity called Act 34 of 1971 is challenged.

F The petitioners in the writ petitions and the appellants in Civil Appeals are operators of stage carriages in the State of Kerala.

The questions which fall for consideration in these matters are these. First, does Act 18 of 1971 levy a tax on passengers or does it levy a tax on the income of operators? Second, is the retrospective validation of levy and collection of taxes by Act 18 of 1971 legal? G Third, is it competent to the legislature to amend section 43 of the Motor Vehicles Act, 1939 called the 1939 Act by Act 34 of 1971 to include retrospectively tax within fare?

Section 43 of the 1939 Act lays down that the State Government may, from time to time by notification in the Official Gazette, issue directions to the State Transport Authority regarding fixing of fares and freights for stage carriages, contract carriages and public carriages. H Section 44(3) of the 1939 Act requires the State Transport Authority to give effect to such directions issued by the Government. It is in exercise of these powers that the fare structure for stage carriages is fixed from time to time.

The State of Kerala came into existence with effect from 1 November, 1956 by the Reorganisation of States comprising the Malabar area of the former Madras State and the Travancore-Cochin area. The fare structure in force in the Malabar area as on 1 November, 1956 was 3.90 nP per mile and the minimum fare was 31 nP for distances less than 8 miles. The fare structure in Travancore-Cochin area prior to 1 November, 1956 was 3.90 nP per mile and the minimum was 19 nP. There was difference only in the minimum fare between Malabar and Travancore-Cochin areas.

In 1958 the difference between the minimum fare of the two was eliminated. The Kerala Government on 15 April, 1958 increased the rate of fare to 4 nP per mile and the minimum fare was 16 nP.

Prior to 1 July, 1963 there was no provision for the levy of tax on passengers and goods in the Travancore-Cochin area. In the Malabar area the Madras Motor Vehicles (Taxation of Passengers and Goods) Act 1952 was in force over and above the Madras Motor Vehicles Taxation Act. In the Travancore-Cochin area there was only the Travancore-Cochin Vehicles Taxation Act 14 of 1950. The incidence of tax on stage carriages and public goods carriages was the same after the formation of the Kerala State in 1956. In the Malabar area a tax of Rs. 25/- per seat per quarter was levied under the Motor Vehicles Taxation Act and a compounded rate of Rs. 12.50 per seat per quarter under the Motor Vehicles (Taxation of Passengers and Goods) Act. The aggregate of the two taxes in the Malabar area was Rs. 37.50 per seat per quarter in respect of stage carriages. In the Travancore-Cochin area the rate of vehicles tax under the Vehicles Taxation Act was Rs. 37.50 per seat per quarter equal to the total incidence of tax in the Malabar area for stage carriages.

The fare structure throughout the Kerala State after 1958 was 4 nP per mile and the minimum was 16 nP. In 1961 the Government of Kerala continued the fare at 4 nP. per mile but reduced the minimum from 16 nP to 10 nP.

In this background, the Government of Kerala on consideration of proposals made by the Transport Commissioner decided in the month of February, 1963 first to increase the motor vehicles tax throughout the State; second, to introduce tax on passengers and goods throughout the State; and, third to increase the fare structure suitably for stage carriages. The incidence of tax at Rs. 37.50 per seat per quarter prevalent in the Kerala State was low compared to the incidence of vehicle tax in the three neighbouring States of Madras, Mysore and Andhra Pradesh. In Madras, the total incidence of vehicle tax per seat per quarter was Rs. 40/- and composition fee under Taxation of Passengers and Goods Act was Rs. 25/- aggregating Rs. 65/- in 1962. In Mysore, the rate was Rs. 57.50 per seat per quarter comprising vehicle tax and composition fee under Taxation of Passengers and Goods Act. In Andhra Pradesh, the total comprising the taxation of passengers and vehicle tax was Rs. 67.50 in 1963.

In 1963 the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963 for the sake brevity called Act 25 of 1963 was enacted. Section 3 of Act 25 of 1963 provided that "there shall be

A levied and paid to the Government a tax on all passengers, luggage and goods carried by stage carriages and on all goods transported by public carrier vehicles at the rate of 10 nP in the rupee on the fares and freights payable to the operators of such stage carriages and at the rate of 5 nP in the rupee on the freights payable to the operators of such public carrier vehicles." The Act 25 of 1963 was published on 15 April, 1963 in the Kerala Gazette Extraordinary and was brought B into force with effect from 1 July, 1963. The Act 25 of 1963 contained these provisions. The operator is permitted to compound the tax assessable on him in circumstances and conditions mentioned therein. The operator is required to submit returns in prescribed forms. The operator is to pay tax every month. There are provisions for assessment, penalty, production of accounts.

C The State Government of Kerala published a draft notification on 4 March, 1963 for revising the fare structure. After hearing the representations and objections of the operators and the public, the final notification was issued on 13 June, 1963 and was published in the Gazette on 18 June, 1963. By this notification, the fare was fixed at 3 nP per kilometre and the minimum fare was fixed at 20 nP.

D The rate of tax under the Kerala Motor Vehicles Taxation Act, 1963 was fixed at Rs. 35/- per seat per quarter in respect of vehicles where the total distance permitted to be operated did not exceed 200 kilometres and Rs. 40/- in respect of vehicles where the total distance permitted to be operated per day exceeded 200 kilometres. The composition fee payable under Act 25 of 1963 was fixed at Rs. 25/- per seat per quarter. Therefore, the total incidence of the two taxes E under Motor Vehicles Taxation Act and the Taxation of Passengers and Goods Act was Rs. 60/- per seat per quarter for vehicles not operating in excess of 200 kilometres a day and Rs. 65/- per seat per quarter in respect of vehicles operating in excess of 200 kilometres a day.

As a result of Act 25 of 1963, the fare structure with effect from 1 July, 1963 was 3 nP per kilometre and the minimum was 20 nP. F Prior to 1 July, 1963, the rate of fare was 2.5 nP per kilometre and the minimum was 10 nP.

After the fixation of fare structure on 1 July, 1963 there were repeated representations from operators to increase the fare and representations from the public for reduction of the minimum of 20 nP. A transport High level Committee was constituted with Shri C. G M. Mathew a retired District Judge as the Chairman. The Committee recommended that there was no need to raise the fare structure but it recommended a reduction of the minimum fare from 20 Ps. to 10 Ps. Presumably pursuant to the recommendation, a notification was issued on 24 April, 1964 reducing the minimum from 20 Ps to 10 Ps.

From the year 1963 to 1966, the operators paid to the Govern- H ment taxes under Act 25 of 1963. The operators collected tax on passengers and goods.

But in 1966 the operators agitated for enhancement of fare. Eventually the operators went before the Kerala High Court. The

operators challenged Act 25 of 1963. The main contention of the operators was that Act 25 of 1963 imposed the tax not on the passengers or consignors of the goods but on the operators who carry the passengers or the goods. The decision of the Kerala High Court in *Thomman & Ors* v. *The Regional Transport Officer, Ernakulam*(1) reported in I.L.R. (1968) 2 Kerala 153 was on 4 March, 1968. The High Court held that the tax is a tax on the passengers and goods. The High Court expressed the view that there was no satisfactory provision for the collection of the tax. The High Court observed that provision must be made for the collection of the tax from the passenger as tax specifying the quantum calculated and computed on the basis of the provision of the Act.

Soon after the decision in *Thomman* case (supra) the State Government issued a notification dated 29 April, 1968 and published it on 30 April, 1968. This notification was to the effect that the fare with effect from 1 July, 1963 was inclusive of the tax leviable under Act 25 of 1963. There was also a draft amendment to the Kerala Motor Vehicles (Taxation of Passengers and Goods) Rules, 1963. A new rule numbered rule 3(2) was inserted. That new rule was to the following effect :—

> "The fares and freights collected from the passengers or consignors of goods as the case may be, may include in it, such proportion of the tax as is payable under section 3 of the Act and the prescribed authority while making the assessment under sub-rule (i) shall calculate the tax due to the Government under the act from the fares and freights collected on the same proportion".

The purpose of the 1968 notification was that the fare already fixed and which was effective from 1 July, 1963 was inclusive of the tax and that such tax was being collected from the passengers and the consignors of the goods.

The 1968 notification was also challenged in the Kerala High Court. The Government represented that no tax would be collected without complying with the directions in *Thomman* case (supra) On this representation of the State, the Kerala High Court dismissed the writ petitions.

Thereafter a bill was introduced in the Assembly to amend Act 25 of 1963. The Bill was published in the Gazette on 11, August, 1969. The Bill was to have come up for consideration on 9 January, 1970. It was not taken up for consideration on that day. Instead an Ordinance (Ordinance No. 1 of 1970) was promulgated on 4 January, 1970 introducing amendments to Act 25 of 1963. This 1970 Ordinance was challenged in the Kerala High Court. On 19 January, 1970 the High Court passed an order that "collection of tax under Act 25 of 1963 as amended by Ordinance 1 of 1970 is stayed in respect of the period prior to its publication in the Karela Gazette on 5 January, 1970 to the extent the operator has not collected the same during the said period." The operators resolved to collect 10 per cent extra over the fare from the month of January,

A 1970. The transport Commissioner asked them not to do so. On 2 February, 1970 a conference was held by the Minister for Transport. The operators agreed that no enhanced amount would be collected by them pending the decision of the Kerala High Court. The Government issued instructions on 24 February, 1970 that until further orders from the Government "the operators shall not be required to pay the tax under Act 25 of 1963 for the period from 5
B January, 1970 in rendering services in respect of the concerned vehicle such as issue and renewal of permits etc."

The impugned Act 18 of 1971 was passed by the Legislature on 28 February, 1970 and received the assent of the Governor on 1 June, 1971. Act 18 of 1971 introduced two sub-sections to section 3 of the Act 25 of 1963. Act 18 of 1971 was enacted to clarify the position
C with regard to levy of and collection of taxes from passengers and consignors of goods in accordance with the observations of the Kerala High *Court in Thomman case* (supra). The High Court observed in that case that provision should be made for the collection of the tax from the passenger as tax specifying the quantum calculated and computed on the basis of provision in the Act. The High Court also observed that the tax would be payable to the operator who was liable
D to pay the same to the State. It is in this background that Act 25 of 1963 was amended by Act 18 of 1971. Act 25 of 1963 contained inter alia the provisions that "there shall be levied and paid to the Government a tax on all passengers, luggage and goods". The provision was amended by Act 18 of 1971 by substituting the words "there shall be levied a tax" in place of the words "there shall be levied and paid to the Government a tax". The result of the amendment was that "there shall be levied a tax on all passengers, luggage and goods". The former wording of section 3 that "there shall be levied and paid to the Government a tax on all passengers, luggage and goods" was said by the High Court to raise doubts as to whether the provision clearly said that the tax was payable by the passengers to the operators.

The two new sub-sections introduced to section 3 by Act 18 of
F 1971 are first that the tax levied under sub-section (1) shall be paid by the passengers or the consignors of the goods as the case may be to the operators along with the fares or freights payable to the operators of the stage carriages or the goods vehicles. The second introduction is that the operator shall be liable to pay the tax levied under sub-section (1) on all passengers, luggage or goods carried by stage carriages and on all goods carried by goods vehicles of which he is the operator
G to the Government in the manner provided in this Act.

The other provision in Act 18 of 1971 is validating section which is as follows :—

> "Notwithstanding any judgment, decree or order of any court, all taxes levied or collected or purported to have been levied or collected under the Principal Act before the date
H of commencement of this section shall be deemed to be and to have always been levied or collected in accordance with law as if section 3 of the principal Act as amended by this Act was in force at all material times when such tax was

levied or collected, and no such levy or collection shall be called in question on the ground that it was without authority of law, and all taxes so levied or purported to have been levied but not collected may be collected in accordance with the provisions of the principal Act as amended by this Act:

Provided that nothing in this Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done by him before the 5th day of January, 1970 if such act or omission was not an offence under the principal Act before the aforesaid date but for the provisions of this Act."

The validating section in Act 18 of 1971 stated that taxes levied or collected shall be deemed to be and to have always been levied or collected in accordance with law as if section 3 of Act 25 of 1963 as amended by act 18 of 1971 was in force at all material times. The validating section became necessary to render levy as well as collection lawful.

Act 18 of 1971 received the assent of the Governor on 1 June, 1971. On the same day, Ordinance No. 15 of 1971 was passed. This Ordinance was replaced by Act 34 of 1971. Act 34 of 1971 effected two principal changes. First, it amended section 43 of the Motor Vehicles Act, 1939 by adding sub-section (1A) to section 43 of that Act. The amended sub-section (1A) stated principally that any direction regarding the fixing of fares and freights prospectively or retrospectively might provide that such fares and freights "shall be inclusive of the tax payable by passengers or consignors of goods". The other change effected by Act 34 of 1971 is that it validated inter alia the directions relating to fares issued on or after 1 March, 1963 or thereafter to be inclusive of the tax payable under Act 25 of 1963.

The challenge by the operators to the validating sections in Act 18 of 1971 and Act 34 of 1971 is primarily based on the ground that the operators did not and could not collect tax from the passengers because the fare fixed with effect from 1 July, 1963 did not include the tax imposed by Act 25 of 1963. The other challenge is that the directions issued by the State Government before the amendment of section 43 of the 1939 Act about fixing of fare did not include tax and, therefore, restrospective validation of fare to be inclusive of tax was to levy tax on fare.

The three principal contentions on behalf of the operators with regard to the legality of Acts 18 and 34 of 1971 are these. First, the impugned provisions amount to a tax not on passengers and goods but on the income of operators. Second, the impugned provisions as to retrospective validation of levy and collection are a tax on amounts which are collected as fare and, therefore restrospectively it is a tax on fare and fare alone. Third the retrospective validation is unreasonable because the operators are made liable for tax which they did not in fact collect. All these contentions turn on the question as to whether tax was included as an element in the fare, which became effective from 1 July, 1963.

A The question whether the statutes, *viz.*, Act 25 of 1963 and Act 18 of 1971 impose a tax on passengers and owners of goods or is a tax on the income of operators has been rightly held by the Kerala High Court in *Thomman* case (supra) and this case to be a tax on passengers and goods. This Court in *M/s Sainik Motors, Jodhpur & Others* v. *The State of Rajasthan* [1962] 1 S.C.R. 517 construed the Rajasthan Passengers and Goods Taxation Act, 1959 and held that B the incidence of the tax was upon passengers and goods and not upon the income of the operators of stage carriages though 'the measure of the tax is furnished by the amount of fare and freight charged". The power to enact such legislative measure is derived from Entry 56 of the State List. The Entry provides "taxes on goods and passengers carried by road or on inland waterways". In *Sainik Motors* case (supra) section 3 provided "there shall be levied, charged and paid to the State C Government a tax on all fares and freights in respect of passengers carried and goods transported by motor vehicles at such rates which are thereafter set out". Section 4 in *Sainik Motors* case (supra) provided that the "tax should be collected by the owner of the motor vehicles and paid to the State Government in the prescribed manner". Though there is no comparable provision in the present case of section D 4 in *Sainik Motors* case (supra) as to method of collection of tax the various provisions like levy and payment before amendment of section 3 and levy and collection after amendment of that section, composition of tax in section 4, submission of return in section 5, procedure where no payment is made in section 7, fares and freights escaping assessment in section 8, penalty for non-payment of tax in section 9 indicate that the tax is on passengers and owners of goods and the E operators collect the tax. It is obvious that when passengers and owners of goods pay the tax the Government requires an agency to collect such tax because these taxes are payable to the Government. The operators of stage carriages and public carriers are agents of the Government to collect these taxes. The composition of tax which is allowed to operators also shows that it is a tax on passengers and owners of goods and the composition is a convenient mode of payment by operators F who collect the tax.

The agitation of the operators for increase of fare which had been going on particularly since the year 1966 led to the formation of two committees for investigation into that question. One of the committees was with Shri K. Sankaran, a retired Chief Justice of Kerala High Court as Chairman and the other committee was with the Minister for Revenue and Labour as Chairman. The Government on consideration of the G recommendations of these committees revised the rates of fare with effect from 15 October, 1971. The rate of fare was raised from 3 Ps per kilometre fixed on 1 July, 1963 to 3.3 Ps with effect from 15 October, 1971 per kilometre. The minimum fare which had been fixed on 1 July, 1963 at 20 Ps and reduced to 10 Ps on 24 April, 1964 was raised to 20 Ps with effect from 15 October, 1971. The Government con- H sidered revision of fare on account of several factors.

The operators paid to Government taxes on passengers and goods from 1 July, 1963 upto the month of July, 1966. The operators have also been paying to the Government taxes on passengers and goods

from 15 October, 1971. The entire controversy between the operators on the one hand and the State on the other is for the period July, 1966 to 14 October, 1971. A

The heart of the matter is whether tax was included in the fare and, therefore, paid by passengers particularly in the disputed period between July, 1966 and October, 1971. If no tax has in fact been paid by passengers or owners of goods the retrospective validation by Acts 18 and 34 of 1971 of levy and collection of tax and retrospective inclusion of tax within fare could be contended to be unreasonable, unworkable and unconscionable according to the operators. B

When the operators challenged Act 25 of 1963 in *Thomman* case (supra) the High Court said that the Court was not in a position to say whether the liability imposed by the Act had or had not been absorbed by the increase of fare with effect from 1 July, 1963. The provision in the Act is that there shall be a tax at the rate of 10 nP in the rupee on the fares and freights payable to the operators of stage carriages and at the rate of 5 nP in the rupee on the freights payable to operators of public carrier vehicles. The machinery for the collection of the tax is the same as for the collection of the fare. The provision of tax at the rate of 10 Ps in the rupee as also 5 Ps in the rupee shows that the tax is payable along with fares and freights. There is no difficulty in ascertaining or quantifying the tax payable because the rates are specified to be "in the rupee". Tax is collected by the operator with the fare from the passengers. To illustrate if the fare paid is 110 paise the tax levied is 10 paise. The fare to be appropriated by the operators is 100 paise and the tax of 10 paise is collected by the operator and paid to the Government. C D

The contemporaneous evidence on the question whether the State Authorities at the time of fixing the fare in the month of July, 1963 included the tax imposed under Act 25 of 1963 within the fare fixed is furnished first by the letter of the Director of Transport dated 2 April, 1963, second, by the representation of the operators dated 3 April, 1963 and third by the notes of hearing prepared by the Secretariat under the heading "Motor Vehicles Stage Carriages Fare Revision File". E F

The Director of Transport in his aforementioned letter set out in paragraphs 2,3 and 4 thereof as follows :—

> "2. At the existing rate of fares, the earning per mile (E.P.M.) worked out for the year 1962-63 comes to 123 nP. The present proposal to increase the basic rate as 3 nP per head per kilometre will result in about 20 percent increase in the rate of fares. From the actual figures of the previous years, the Department could expect only about 8 per cent in the E.P.M. from the services at the proposed rate of fares. Thus 133 nP seems to be a fair estimate of the E.P.M. which the department could expect to get for the year 1963-64 after the fair increase. G
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> 3. As against the increased E.P.M. of 133 nP the expenditure worked out will come to 130 nP per mile. This increased operational cost is estimated by the Department taking H

A into account the enhanced rate of vehicle tax, the new imposition of passenger tax under the T.P.G. Act and such other duties. Consequent to the proposed levy of tax on passenger, there will be more than 60 per cent increase in the rate of tax to be paid by the department. All these factors were taken into consideration in estimating the operational cost.

B 4. No doubt the increased rate of tax, the levy of passenger tax and such other duties would reduce the profit margin and the return on capital out lay to a considerable extent. Despite the incidence of higher rate of tax, levy of passenger tax and other duties, I feel that the department could still operate its services profitably at the rate of fares contained in the draft notification published by the Government. Since by careful operational economics the expenditure per mile could be reduced by 2 to 3 nP per mile and the earnings increased by rationalisation of services. So further enhancement of fare is unnecessary."

These statements in the letter of the Director of Transport indicate that the increased operational cost was estimated and considered by the D Department after taking into account the enhanced rate of vehicles tax, the new imposition of the passenger tax and other duties.

The representation of the operators was in answer to draft directions contained in notification dated 4 March, 1963 containing proposals to revise the fare rates. The draft notification proposed maximum fare at the rate of 3.75 nP per head per kilometre for fast passenger services E in the case of Ghat roads and 3nP per head per kilometre as a maximum fare for ordinary services in the case of other roads. The operators set out the wide disparity between increase in operational cost on the one hand and the inadequacy of the proposed fare rates on the other. The operators estimated their daily expenses under several heads. One of the heads estimated by the operators was "increase in tax at the revised rate as envisaged by State budget". That is referable to tax on passen- F gers and goods. The operators stated that the maximum fare should be raised to 3.5 nP per kilometre. This was after taking into account the tax element.

The representation of the operators shows that the tax on passengers and goods was one of the elements in the fare structure. This becomes apparent in the hearing notes of the Carriage Fare Revision File pre- G pared by the Secretariat. It was calculated that the proposal to increase from the then existing fare of 2.5 nP per kilometre to 3 nP per kilometre would bring an additional income of Rs. 40 per day for an ordinary bus of 40 seats operating 200 kilometres per day. The occupation ratio work out between 60 to 80 per cent. Leaving out margin for occupation ratio the average additional income worked at Rs. 30 per vehicle of 40 seats. The existing motor vehicles tax per seat per quarter at the time of H the fixation of fare was Rs. 37.50 per seat per quarter. The then proposed enhanced tax on vehicles was at Rs. 60 per seat per quarter. The existing motor vehicles tax worked at 41.6 nP per day. The enhanced tax worked out at 66.6 nP per day. The increase in motor vehicles tax

would impose an additional tax burden of 25 nP per seat per day. The increase in motor vehicles tax would be at Rs. 10 per bus of 40 seats a day. The additional cost of operation on account of increase in cost of fuel, spare parts came to 12 nP per mile or 8 nP per kilometre. The operational cost of a bus of 40 seats came to Rs. 16 per day. The total additional cost per day of 40 seats on account of vehicles tax and cost of fuel and spare parts came to Rs. 26. The additional income as already indicated came to Rs. 30 per day. Therefore, the operator was not hit by the proposal for taxation which was taken into consideration. The operators and the Chairman of the State Transport Board demanded further increase in the rate of fare. The entire evidence at the time of the fixation of fare is ample proof of the fact that the incidence of the increase in motor vehicles tax, the increase in tax liability on account of tax on passengers and goods, and additional cost of operation on account of increase in cost of fuel and spare parts were all taken into consideration in fixing the fare with effect from 1 July, 1963.

Counsel on behalf of the operators contended that Act 34 of 1971 imposed a new levy for these reasons. Fares were formerly exclusive of tax. As a result of Act 34 of 1971, fares were made inclusive of tax. The character of the fare was altered by retrospective piece of legislation. A deeming provision subjected the amount collected by operators as fare to a deduction of tax. Reliance was placed on the decision of this Court in *Rai Ramkrishna & Others* v. *The State of Bihar*, [1964] 1 SCR 897 in support of the contention that the character of the tax was altered by its retrospective operation.

In *Rai Ramkrishna* case (supra) the Bihar Finance Act 1950 levied tax on passengers and goods carried by public motor service in Bihar. The owners of motor vehicles challenged the validity of the Act. The Act was struck down by this Court. The State thereafter issued an Ordinance. The provisions of the Act which had been struck down by this Court were validated and brought into force retrospectively by the Ordinance from the date when the earlier Act had purported to come into force. The provisions of the Ordinance were thereafter incorporated in the Bihar Taxation on Passengers and Goods Act, 1961. The validity of the Act of 1961 was challenged. The owners of vehicles contended there that retrospective operation completely altered the character of the tax proposed to be retrospectively recovered.

The contentions in *Rai Ramkrishna* case (supra) were two-fold. First, retrospective recoveries did not have legislative competence. Second, the owners could not recover tax from passengers carried by them between 1 April, 1950 and the date of the retrospective validation of the Act in 1961. Therefore, the tax was unreasonable. It may be stated here that future recoveries were not challenged in that case. As a matter of fact, the right to make future recoveries was conceded. In the present case, the prospective future recoveries are also not challenged. The challenge is confined to retrospective validation only.

This Court said in that case "If the scheme of section 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,

A because it would be very difficult, if not impossible, for the owners 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 past as well as to the future".

B The decision in *Rai Ramkrishna* case (supra) does not support the contention of the operators. The decision on the other hand shows that tax recovered retrospectively as well as recovered prospectively is the same tax. The character of the tax is not altered. The position is identical in the present case.

The contention of the operators is fallacious for these reasons. No C tax is imposed or collected under Act 34 of 1971. The tax is imposed by Act 25 of 1963. The character as well as incidence of the tax is determined by Act 25 of 1963. The machinery for collection of the tax which was implicit in Act 25 of 1963 was made explicit by Act 18 of 1971. The State Government under Chapter IV of the Motor Vehicles Act, 1939 having regard to various factors mentioned in section 43(1) of the 1939 Act issues directions to the State D Transport Authority relating to the fixing of fares and freights including the maxmium and minimum in respect thereof for stage carriages, contract carriages and public carriers. The provisions of Act 34 of 1971 are that while fixing the fares, the Government may take into account the tax, if any, imposed on the passengers and that such fares may be inclusive of the tax payable by the passengers or consignors of goods to the operators under any law dealing with the E matter. Under section 44 of the 1939 Act, the State Transport Authority shall give effect to the directions issued by the State Government under section 43 of the Act. Fare could be fixed either exclusive or inclusive of tax. The State Government fixed the fare on 1 July, 1963 after taking into account the element of tax on passengers and goods imposed by Act 25 of 1963. The operators in collecting fare from passengers in fact collected the tax due from passengers under Act F 25 of 1963 along with the fare. Section 43(1A) of the Motor Vehicles Act, 1939 was, therefore, introduced with retrospective effect to clarify the factual basis. There was neither imposition of any new tax by Act 34 of 1971 nor was there any alteration of the character of the tax which had already been imposed. In the present case, the principal Act 25 of 1963 levied the tax. Acts 18 and 34 of 1971 were for the purpose of dispelling the doubts expressed in *Thomman* G case (supra).

In the recent decision in *S. Srikantiah & Ors.* v. *The Regional Transport Authority, Anantapur & Ors.* [1971] Suppl S.C.R. 816 this Court considered the validity of a notification under section 43 of the Motor Vehicles Act, 1939. The Madras Vehicles (Taxation of Passengers and Goods) Act, 1952 became applicable to Andhra H Pradesh. In 1959 the Andhra Pradesh legislature enacted the Motor Vehicles (Taxation of Passengers and Goods) Andhra Pradesh (Amendment) Act. By that amendment, the rates were increased. The State Authority was directed by the Government to fix

maximum fares inclusive of the leviable tax under the Act for the stage carriages. The Andhra Pradesh Amendment Act was challenged. The Andhra Pradesh High Court struck down the Act as unconstitutional. The Legislature thereafter passed a validating Act in 1961. The operators again questioned the Amendment Act on the ground that they had not collected the fare on the enhanced rate fixed by the Transport Authority. The contention in that case was that the enhanced surcharge which became operative on coming into force of 1961 Act could not be sustained without amending the conditions of the permit dealing with the fares leviable by the operators. This Court held that the notification under the Motor Vehicles Act in that case issued under scetion 43 of the Act fixing the maximum fare inclusive of the tax has the effect of incorporating the maximum fare as notified including the tax leviable as a condition of the permit. Therefore, it is competent to the Legislature to amend the Motor Vehicles Act by enacting that directions regarding fares can be inclusive of tax.

The arguments advanced on behalf of the operators fail in view of the cardinal fact that tax was an element included in the fare structure. The retrospective validation cannot be said to be unjust because the operators collected the entire amount. The tax has always been paid by passengers and owners of goods. The tax is not on the income of the operators. There was and is no lack of machinery for collection of these taxes. The operators collected tax as well as fare. The directions regarding fare were validated by Act 34 of 1971 by reason of the litigation between the operators and the State.

For these reasons, the contentions of the operators fail. The petitions and appeals are dismissed. The decision of the Kerala High Court in Civil appeal No. 1875 of 1972 and other appeals is upheld. In view of the fact that the High Court directed the parties to bear their respective costs, parties will bear their own costs in these matters.

V.P.S. *Petitions and appeals dismissed.*