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Court : Delhi

Decided On : Apr-18-1973

Reported in : ILR1973Delhi843

Judge : T.V.R. Tatachari and; Rajindar Sachar, JJ.

Acts : Constitution of India - Articles 131 and 269; Terminal Tax of Railway Passengers Act, 1965 - Sections 2

Appeal No. : Civil Writ Appeal No. 201 of 1970

Appellant : Municipal Board of Hardwar Etc.

Respondent : Union of India and ors.

Advocate for Pet/Ap. : V.M. Tarkunde,; J.P. Goel,; Y. Dayal,;

Judgement :

Sachar, J.

(1) Is the Comptroller and Auditor General of India under a legal duty to give a hearing to the State Government before he certifies the net proceeds as required by Article 279(2) of the Constitution, is a question that arises in this writ petition This petition also brings into open the strain and lack of mutual understanding which may sonic time arise between the Centre and a State under Federal Constitution like ours

(2) This writ petition was originally filed by the Municipal Board of Hardwar V Union (Petitioner No. 1). Respondent No. 1 is Union of India. Respondents 2 and 3 are the Railway Board and the Northern Railway respectively. Respondent No. 4 is the Comptroller and Auditor General of India. State of U.P. was respondent No. 5. Later on C.M. 73-W/73 was filed by the State of U.P. seeking to transpose itself from the array of the respondents to that of the petitioner. This was allowed by this court and in consequence an amended petition was filed with the State of U.P. as petitioner No. 2.

(3) Hardwar in U.P. is one of the important pilgrim stations of all India importance. A tax commonly known as Pilgrim Tax is imposed on the passengers visiting Hardwar by Road and rail respectively and has been in existence since 1894. Pilgrim tax on passengers by road is levied by petitioner No. 1 with the sanction of petitioner No. 2. Tax which is levied on passengers arriving by rail is known as terminal tax on Railway passengers and is collected by the railways for which they charge collection charges. We are in this writ petition only concerned with the tax which is imposed on passengers carried by Rail. Petitioner No. 1 like other municipalities in the State of U. P.. had made arrangements with the railways for collecting this pilgrim tax. This was given a statutory shape under U.P. Act No. 2 of 1899 as amended from time to time by which it was lawful for the Railway Administration to agree with the Municipal Board to collect tax within the Municipal or the cantonment board limit on such terms as may be initially agreed upon. The railway which realised the tax used to remit the tax proceeds after deducting their commission. It appears that the then Magistrate,

Roorkee in his sole capacity as sole administrator of the pilgrim tax wrote to the Chief Commercial Manager, E.I.R.. Calcutta on 10-4-1949 requesting that permission may be given for representative of the Hardwar Board to check records of the tax maintained at the Hardwar, Bhimgoda Tank and Jawalapur Stations. The railway by its letter dated 1-9-1949 informed the Magistrate that there was no objection to the representative of the Hardwar Board being deputed to check the records relating to pilgrim tax. In pursuance of this arrangement the procedure being followed was that a checking officer was appointed by the State Government who was given facilities to inspect the records of the railway. As and when any discrepancy came to his notice the same was pointed out to the railway which would look into the matter and if necessary make the correction.

(4) In 1956 the Parliament passed the Terminal Tax of Railways Passenger Act (Act No. 69 of 56) (hereinafter called the Act). By section 2(c) notified place was defined to mean place of pilgrimage or a place where a fair, mela or exhibition is being or is likely to be held, which the Ceniral Government has by notification in the Official Gazette, declared to be a notified place for the purposes of this Act. Section 3 provided for the levy of a terminal tax on all passengers carried by rail from or to notified places at such rates as the Central Government may by notification fix. Section 7 provided that terminal tax shall be collected by means of surcharge on fares by the railway administration and also provided that such portion of total proceeds as the Central Government may ascertain shall be deducted to meet the cost of collection of the tax. Section 8 provided that where under the Act terminal tax in relation to any notified place is levied on the passengers carried by railway, no other terminal tax in relations to such place shall be levied under any other law on such passengers.

(5) Government of India in the exercise of its power conferred by Section 3(1) of the Act issued a notification dated 17-12-1958 fixing the rate at which the terminal tax shall be levied and also directed that aforesaid tax shall be livable with effect from 1-2-1959. Another notification of the same date in pursuance of the powers of clause (c) of Section 2 of the Act declared Hardwar, Jawalapur and Bhimgoda Tank as the notified places. Even after coming into force of the Act the procedure of appointment of checking officers by petitioner No. 2 seems to have continued as is clear from the letter dated 19-1-1960 written by the Deputy Secretary to Government of U. P. to the Secretary of Government of India, Ministry of Railways intimating to him that the State Government had appointed a person to check and verify the terminal tax accounts on their behalf from time to time in respect of the notified place like Hardwar and requesting him to issue necessary instructions to officers concerned of the Northern Railway to afford necessary facilities to him. It is not disputed that the checking officer continued to be given the facility of inspection by the Railway of the railway tax records right till 1967 when the Railway Board sent a circular dated 27-4-1967 denying access of the Railway records to the checking officer of the petitioners. The said order as reproduced in the petition is as follows:-

'THErealisation of the proceeds of terminal tax and disbursement thereof are being certified by the Comptroller and Auditor General of India. thereforee no agreement with local bodies/Municipalities for providing facilities for inspection of the Station records for purposes of verification of the amount of terminal tax, collected by the Railways may be entered into by Railways.'

(6) On coming to know of this, petitioner No. 2 took up the matter with the Railway pointing out that there was no necessity for a change in the procedure winch was being followed all this time. The matter was pursued at the various levels but the same was not accepted by the Central Government. It took the stand that facility of checking officer given in 1949 was in pursuance of the request of the Statement Government on whose behalf the tax was being collected at that time and that with effect from 1-2-1959 the tax had become a central levy and there was no legal justification for the railways to continue this facility of giving access to the railway records for compiling final accounts in view of the provisions of Article 279 of the Constitution, Having failed to persuade the railway to change this decision the present writ petition has been filed in which the main prayer is made for the issue of writ of mandamus for commanding the respondents to restore to the checking officer of petitioner No. 1 and 2 the facility of inspecting the railway terminal tax records as before and to enable him to point out the discrepancies in the railway tax accounting for

subsequent verification and adjustments in tax accounts as before.

(7) The claim of the petitioners rest by invoking the principles of natural justice. The argument is that as the terminal tax is levied and collected by the Govcniment of India but is to be assigned to petitioner No. 2, under Article 269 of the Constitution, the later has right of inspection of the railway accounts to see that correct recording is maintained of the collection and also has a right to have a hearing before the Comptroller and Auditor General of India before he issues a certificate so as to be able to point out the discrepancies and the omissions from the accounts.

(8) Before we deal with the contention on merits, we may dispose of the preliminary objection raised by the respondents. The objection is that petitioner No. 1 has no cause of action as no legal right of it has been violated. As regards petitioner No. 2 it cannot maintain proceedings under Article 226 in view of Article 131 of the Constitution which lays down that the Supreme Court shall to the exclusion of any other court, have original jurisdiction in any dispute between the Government of India and one or more States. It is pointed out that the grievance, if any, of not being given inspection by the Railways and also of being denied a hearing by the Comptroller and Auditor General of India is that of State of U. P. to whom the net proceeds are assigned under Article 269 of the Constitution.

(9) This contention of the respondents is repudiated by the petitioners and it was contended by Mr. Tarkunde that the terminal tax was in fact imposed for the benefit of the local bodies and that in fact, the entire net proceeds are passed on, no doubt in first instance to the State Government, but the whole of that amount is then given in grant to petitioner No. 2. Though no doubt the State is giving the grant of this amount to petitioner No. 1, it is equally true that the Constitution only recognised the State to whom the net proceeds are to be assigned. The question of the locus standi of petitioner No. 1 alone to maintain the writ petition may have had to be determined, but this question does not survive in view of the fact that petitioner No. 2 State of U. P. has been transposed as one of the petitioners and there can be no doubt of the locus standi of petitioner No. 2. No doubt Union of India is one of the respondents. But in addition the Comptroller and Auditor General of India who is undoubtedly a separate constitutional authority different from Union of India is one of the respondents (respondent No. 4). The impleading of Comptroller and Auditor General of India was necessary because one of the main grievance in the writ petition relates to not being given a hearing by respondent No. 4 before he gives a certificate under Article 279. This relief is in addition to and. apart from the relief to seek inspection of the records of the railways. In our view in such a case as the present Article 131 is inapplicable. Dealing with the scope of Article 131, the Supreme Court in The State of Bihar V. The Union of India and another : [1970]2SCR522 observed as follows

'THEframers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or a corporation is in any way involved as a fit subject for adjidication by this Court under its exclusive original jurisdiction conferred by Article 131.'

'APARTfrom these special provisions a dispute which falls within the ambit of Article 131 can only be determined in the forum mentioned therein, namely, the Supreme Court of India, provided there has not been imp leaded in any said dispute any private party, be it a citizen or a firm or a corporation along with a State either jointly or in the alternative. A dispute in which such a private party is involved must be brought before a court, other than this court, having jurisdiction over the matter.'

In that case it was held that as Hindustan Steel Limited was one of the parties to the dispute, Article 131 of the Constitutin was not attracted. la view of this authority it was fairly conceded by Mr. Nariman, counsel for the Union of India that he could not take this matter any further in this court. This preliminary objection, thereforee fails.

(10) Mr. Nariman had also contended that under Article 269(2) the net proceeds are to be assigned to the States within which the duty or tax is livable in that year and is to be distributed amongst those States in accordance with such principle as may be formulated by Parliament by law and as no principle of distribution

has yet been formulated by Parliament petitioner No. 2 cannot predicate the amount it will get and thus has no locus standi to maintain this petition. Mr. Tarkunde's contention on the other hand was that all the terminal tax collected in the State of U.P. to and from the notified places was to be assigned to the State of U.P. alone. He referred us to the Act and maintained that the scheme of the Act itself contemplates that the terminal tax collected in each State would be assigned to that very State. We do not think it is necessary to go into this aspect of the matter in view of the fact that Mr. Nariman conceded that even on his own argument based on Article 269(2) it would not be permissible for the Parliament to totally exclude petitioner No. 2 from being assigned some share of the terminal tax because the assignment has to be made to the States within which the tax is livable and as admittedly the terminal tax is being levied in the State of U.P., petitioner No. 2 has a right to have assigned some share in any case. On that view the locus standi of petitioner No. 2 to maintain the present petition is obviously established. The only difference in the contention that remains is whether the State of U.P. (petitioner No. 2) has a right to be assigned the full amount of terminal tax collected in the State of U.P. or whether it was open to Parliament to provide that full amount may not be given to the State of U.P. Id the present case it is not disputed that the total amount collected by railways after deducting collection charges is being assigned to petitioner No. 2. We, thereforee, hold that petitioner No. 2 has the locus standi to maintain the petition.

(11) Mr. Tarkunde in order to invoke the principle of natural justice also sought to invoke the analogy of the right of inspection of the accounts of the Trust Property given to the beneficiary under the Indian Trusts Act and we were referred to Hallsbury's Laws of England, Third Edition, Volume 38. para 1686 page 973 to the effect that trustee is bound to furnish on demand information or the means of obtaining information as to the mode in which the trust property or his share therein has been invested or otherwise dealt with. This decision is of no avail to the present case. The argument was that as under Article 269 terminal tax which is collected by the Union of India is to be assigned to petitioner No. 2 the latter must be considered a beneficiary and thereforee, has a right to inspect the accounts maintained by the railway for the purpose of checking. We do not agree that the analogy of the Indian Trust Act has any relevancy to the present case. There is no element of trust or an obligation in the nature of trust under Article 269. That Article provides for the levy and collection and distribution of the Terminal Tax. Article 279 itself lays down the procedure by which the net proceeds are to be ascertained. The right of the State to that amount is, thereforee, provided in the Constitution and it is idle for Mr. Tarkunde to invoke the provisions of the Indian Trust Act for the purpose of implying a hearing. If the principles of natural justice are held not applicable in the present case the same cannot be invoked by relying on the provisions of the Indian Trust Act. So the question that has to be determined is whether principles of natural justice are applicable in the present case.

(12) Municipal Board comprises of Hardwar, Jawalapur and Bhimgoda Tank stations which have been declared notified area under the Act. Petitioner No. 1 covers all these areas. Terminal tax is levied on railway passengers booked from or to those notified stations. The tax amount is included in the Railway fare itself and is not separately shown on the tickets. There are different rates of terminal tax for different classes of passengers and also for long and short distance passengers as well as for adults and children. Passenger traffic is divided into following types of traffic :-

(1)Traffic originating from Northern station and terminating at any of those four stations in Hardwar is termed as local inward traffic. (2) Traffic originating from Hardwar to any stations on the Northern Railway is known as outward local traffic, (3) Traffic originating from stations outside the Northern Railways to Hardwar is known as foreign inward traffic. (4) Traffic originating from Hardwar to stations situate on railways outside the Northern Railway is known as foreign outward traffic. Hardwar is within the Northern Ra'lway.

The Railways issue the following types of tickets to the passengers:-

(I)Printed card tickets both for local and foreign booking. (ii) Blank paper tickets including special tickets which are issued stations and the special paper tickets are issued when a reserved carriage or a special train is booked. (iii) Excess fare tickets.whis are by the traveling Ticket Examiners in the trains or by the Ticket

Collectors at the stations when a passenger is detected traveling without a ticket, etc. 90 per cent of the traffic is booked by printed card tickets.

(13) The railways prepare at each station a monthly return statement known as the Passengers classification Returns for printed card tickets and Blank paper tickets. Returns and Excess fare Returns for Blank paper tickets and Excess Fare Tickets respectively. All these three kinds of returns are prepared separately for local and foreign traffic. These returns arc submitted every month to the Accounts Offices of the Zonal Railways under the Control of the Financial Adviser and the Chief Accounts Offices. These returns arc then processed in the accounts office for ascertaining the clement of terminal tax. The office of the Financial Adviser and the Chief Accounts Officer. Northern Railways deals with all outward traffic (local and foreign) from those notified stations and also with local inward traffic to such stations from any stations on Northern Railway. The offices of the Financial Adviser and the Chief Accounts Officer of other 8 zonal Railways deal will) the foreign inward traffic to the notified stations from those railways.

(14) The Passengers Classification Returns prepared every month include the stations not only of the notified places like Hardwar but all other stations. The Railways in order to find out the terminal tax scrutinises and then segregates these items from others and post them in the respective registers for the maintenance of Pilgrim Tax Account. The procedure lor picking up the details of the printed card tickets from Passenger Classification Returns is by means of a computer. It is claimed by the railways that the computer system has a certain set of internal checks and control which ensures proper and complete compilation of tax figures, and there is hardly any possibility of wrong compilation by the computer. If in a particular month any arrears arc left over such returns arc taken into account by the computer in the next month. There is said to be an inbuilt check on the computer to indicate the missing returns for a particular month. Computer tabulation shows the stations from where the booking is done and other details. From these statements of the computers the relevant entries are posted in the register for the maintenance of pligrim tax account.

(15) With respect to the Blank paper tickets returns and Excess Fare Tickets return the relevant tickets are picked up manually from the statements received and posting is made in the respective registers for maintenance of terminal tax. This work is done by the accounts clerk Grade I of the Accounts Branch. 10 per cent of the work done is further subjected to test check by their immediate superiors known as sub-heads and another 10 per cent by the accountants concerned.

(16) As regards the foreign inward passengers traffic the accounts offices of the respective railways from which the passenger tickets are issued compile detailed information regarding number of pasxcnger tickets etc. on computers in respect of printed card tickets and manually in respect of blank paper tickets and excess fare tickets and special tickets, and sent the statement to the Northern Railways Accounts Office. Those statements are duly signed personally by the Financial Adviser and the Chief Accounts Officers and verified by the Chief Auditors of the respective railways. The figures so received are then posted in a registered and a consolidated statement is prepared which is checked by the sub-heads and the accountants concerned. This statement is then sent to the Chief Auditors of the Northern Railways for checking and then that statement is passed on to the branch dealing with the final consolidation to arrive at the total amount of tax payable.

(17) The statements thus received from different Return checking stations are sent to the Branch entrusted with the work of consolidating tax figures in a statement showing the number of tickets issued and the amount of terminal tax due. These statements are checked by the sub-heads, accountants and the Branch Accounts Officers and are then signed personally by the Financial Adviser and the Chief Accounts Officers and sent to the Chief Auditor of the Northern Railways who is acting as representative of the Comptroller and Auditor General of India. The statements received by the Chief Auditor of Northern Railway are checked by him, after he has checked them and found them to be correct he gives a certificate with endorsement that he has verified them as per entires in the pilgrim tax register. The total amount as verified by the Chief Auditor in the monthly statement is then provisionally paid to the State of U.P. at the end of the quarter. Final adjustments, if any, are made after the Comptroller and Auditor General of India has given the certificate.

(18) At the end of the financial year a final statement for the year is prepared by the Northern Railway signed by the Financial Adviser and the Chief Accounts Officer. It is got certified from the Chief Auditor of the Northern Railways and then sent to the Railway Board. These certificates, are then sent by the Railway Board to the Comptroller and Auditor General of India for issuing a certificate as required by Article 279.

(19) The offices of the Chief Auditors conduct monthly test audit for the stations returns and verify the accuracy of the Collections and trace them in the register maintained by the Financial Adviser and the Chief accounts Officers and thereafter audit certificates are given. The Chief Auditor then sends copies of their audit certificates to the Comptroller and Auditor Gencral of India. In the office of the Comptroller and Auditor General of India the statements received from the Railway Board are checked with copies received from Chief Auditors for ensuring accuracy. It is only after such check and being satisfied about its correctness that the Comptroller and Auditor General of India gives the certificate as provided by Article 279(1) of the Constitution.

(20) It is this amount which then is considered to be the net proceeds under Article 279(1) and which is assigned to states. It is also pointed out by the respondents that 5090 of the work since 1967 is done y the computer. There is said to be intensive checking by the Accounts office and Chief Auditors and it is claimed that if one mistake is detected all the documents of the stations for earlier months are checked to find out all similar mistakes and action taken to correct them.

(21) The procedure followed by the petitioners' checking officer prior to 1967 has been to check up the figures of the local outward and foreign outward traffic statements from the monthly return complied by their stations in the municipal area. There has been a further checkinc of the inward traffic from the ticket collector's register which furnishes information of tickets collected at Hardwar. It is claimed that the compilation was made of a total number of tickets issued from any particular station to Hardwar during the given month by noting down the commencing and closing Seriall number of tickets issued by the station on 1st and last date of the month and that this information can be used for comparing with the figures of the traffic accounted for by the traffic accounts office in the corresponding tax statement on the basis of which tax amounts payable are determined.

(22) Information about the special tickets concerning the Yatra Bogies and Special Trains is also available from the ticket collectors' register. All this information is said to have been collected by the checking officer of the petitioners. Every quarter a further checking of local inward traffic was done at the Traffic accounts offices by comparing the traffic figures posted in the pilgrim tax register with the station returns with a view to point out discrepencics.

(23) We may note that both sides accepted the factual aspect of the details of the procedure as indicated by us above, though they had their own comments and reservations regarding the efficacy of the procedure of the other side.

(24) It was in this context that Mr. Tarkunde who appeared for the petitioners challenged the stand of the respondents that no mistakes could be committed by them and took us through the voluminous correspondence to point out that many a time in the past the State has been able to receive a lot of revenue by pointing out omissions and discrepencies in the Railways Account. We were referred to annexurcs 12 and 14 written by petitioner No. 1 to the Minister of Railways pointing out how previous facilities of inspection to the petitioner had resulted in large amount of tax being realised by it which but for the pointing out of the checking officer would have been lost to them. Our attention was drawn to the illustration of short accounting of tax under the heading Hardwar l/W-Ayodha to Hardwar mentioned in annexure 12 where allegedly Hardwar inward traffic accounting for the month of July, 1965 to August, 1966 has been certified by the Railways at a figure of 6 whereas according to the petitioners the traffic actually booked as per retiuns ran into hundreds. Similar other examples of the alleged wrong accounting was pointed out from Patiala to Hardwar which according to the petitioners were also shown at very much less figures than the actual ones. Similar other details were pointed out in which petitioner No. 1 had complained that for months the traffic

from Western Railways had not been accounted for in the statements supplied to it. It was stressed that in the past various omissions and discrepencies have been pointed out and the railway authorities had missed the same and carried out adjustment and this amount would have been lost to the petitioners if the facility of inspection was not restored. It was also stressed that about four lac tickets had escaped accounting through normal process and they wore only recovered because the cheeking officers of the petitioners had pointed out this discrepency. In the return it was admitted that the railways used to look into the omissions pointed out by the checking officers but it was denied that but for these omissions pointed out necessary adjustement of delayed returns would never have been made. Discrepencies were said to be mainly relating to the late receipt of returns and mainly those which were kept back in accounts office due to arrears and internal check. All these receipts of the returns were said to be in the knowledge of the accounts office and would have been accounted for in the normal course. It was emphatically denied that the average of four lack of tickets escaped from normal notice. It was also denied that the terminal tax in respect of any traffic escaped notice and needed to be pointed out by the checking officer. The averment of the petitioners that over 3 lac tickets missed the railway account as well as the audior's certificate during the short period of 9 months from April to December, 1967, was strongly denied. It was pointed out that due to initial difficulties in mechanisation and arrears of work in the Accounts office returns of these months could not be checked in time with the result that the tax figures pertaining to these returns could not also be compiled in time. The pilgrim tax pertaining to these returns was brought to account in subsequent months in the normal course when the arrears return were adjusted in accounts. The figures of three lac of tickets mentioned by the petitioners were never substantiated. All this amount was also said to have been adjusted subsequently in the process of normal accounting by the Railways.

(25) Mr. Tarkunde also referred us to correspondence and sought to point out that the railways had in fact many a time corrected their earlier mistakes on the pointing out of the checking officers and contended that but for the pointing out by the petitioners there would have been lot of los of revenue and, thereforee, these circumstances clearly support his plea that the principles of natural justice are applicable. We feel that it is not necessary to determine nor arc we in a position to do so whether the pointing out of discrepencies and omissions as alleged by the petitioners was responsible for position to do so as alleged by the petitioners was responsible for correcting the accounts by the railways or whether as mentioned in the returns by the respondents those omissions were based on misapprehension by the petitioners due to the delay in returns and would have been corrected in the normal course. This is because we arc not determining on merits whether any particular amount is due to the petitioners are not. We, thereforee, do not think that for the purpose of finding out whether in law the State Government has a right of inspecting the railways accounts as well a further right of the ring before a certificate is given by the Comptroller and Auditor General of India, the fact of omissions or otherwise having been pointed out by the checking officer of the petitioners in the past has any relevancy. This is because if the nature of the duty performed by the Comptroller and Auditor General of India and the Railways is such that natural justice and right of hearing is no be implied it would be of no consequence whether omissions had or had not been pointed out in the past by the checking officer. So the mere fact that in the past (even on the assumption) that certain revenue would have been lost to the petitioners had the checking officers not pointed out the omissions or the discrepencies in the railway record, would not by itself confer a right of hearing in law on the petitioner. The right must exist independently of the fact whether its cxercise would lead to any actual benefit. And if, in law right of hearing cannot be implied, it is of no avail to say that it would have been beneficial to the party concerned if such a right were to be implied. These are extraneous considerations and of no use in interpreting a provision where no right of hearing has been specifically provided and the question is whether such a right arises by necessary implication. In this connection we may note that the respondent's case is that the amount of tax collected in respect of Hardwar Zone for two years preceding and following withdrawal of facilities of inspection of record does not support the petitioner's contention that in the absence of checking by the petitioners the collection of tax has fallen. From the figures supplied we find that the tax collected on account of local (outward and inward) and foreign (outward and inward) was Rs. 4,71,894.38 for 1965-66, Rs. 5,46,560.99 1966-67, Rs. 5,44,375.72 for 1967-68, Rs. 641,938.42 for the year 1968-69, Rs. 6,50,443.67 for the year 1969-70, Rs. 6,39.471.92 for the year 1970-71

and Rs. 703,709.47 for the year 1971-72. For the same reasons that the omissions pointed out by the petitioners are considered irrelevant by us, the present figures even if the collection is more than that period when facility of inspection was available would be irrelevant for the determination of the question of applicability of principles of natural justice. We feel that this argument is also foreign to the scope of the enquiry about the applicability of principles of natural justice because even if the Railways was able to point out that collection had been larger after 1967, and if a hearing in law is necessarily implied, the petitioners could not have been denied that right on the supposition that even without the exercise of that right no prejudice had occurred. The principles of natural justice are not to be placed on such weak foundations. Either they must be found to be applicable as a condition precedent to the duty to be preformed by the Comptroller and Auditor General of India or they must be found to be inapplicable considering the nature of the circumstances of the case and function of the Comptroller and Auditor General of India. It is admitted by the petitioners that there is no law nor is there any constitutional provision which gives the states to whom the taxes and duties arc to be assigned, the right to inspect the railway records or have a hearing before the Comptroller and Auditor General of India before he gives his certificate under Article 279. The claim is based only on the plea that the duty to be performed by the respondents is such that on the basis of fair play and justice such a right should be implied to be vested in the petitioners and corresponding duty imposed, on the respondents. The responsibility of the Comptroller and Auditor General of India for the audit of the railway account is discharged by the Additional Deputy Comptroller and Auditor General of India (Railway) who conducts audit on behalf of and under the directions of the Comptroller and Auditor General of India. There are local Chief Auditors under the Additional Comptroller and Auditor General having their offices at the headquarters of the Railways to which they are attached.

(26) The argument of Mr. Tarkunde is that when the Comptroller and Auditor General of India certifies under Article 279 the net proceeds which under Article 269 are to be assigned to the State of U.P. (as in the present case) it is incumbent on him in accordance with principles of natural justice to give an opportunity of hearing to petitioner No. 2, and this opportunity in order to be a reasonable one necessarily implies that the checking officer of petitioner No. 2 should have the facility of inspecting the railway accounts so that he can point out the omissions and discrepencies and show that the revenue which- is to fall to the share of State of U.P. does not suffer.

(27) The Rules as to the applicability of natural justice are no longer in doubt. The aim of Rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can opearte only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it, vide A.K. Krapak and others V. Union of India and others : [1970]1SCR457 . It was also observed in that case :

'WHATparticular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of the law under which the enquiry is held and the constitution of the Tribunal or body of person appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.'

(28) Reference may also be made to the observations of Tucker, L. J. in Russell v. Duke of Norfolk 1949 1 ALL. E.R. 109 which were referred with approval in The Kesava Mills Co. Ltd. and another V. Union of Jndia and others : [1973]3SCR22 :

'THErequirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with and so forth.'

(29) Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard-and fast rules. For a long time the courts have, without objection from Parliament, supplemented

procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation', vide Lord Raid, J. in Wiseinan and Another V. Borwman and others 1971 A.C. 297.

(30) Part 12 of the Constitution deals with the Finance. Property, Contracts and suits. Article 266 provides that all amounts on account of loans etc. raised by the Government of India shall form one consolidated Fund of India and all revenue revenue by the Government of States shall form one Consolidated Fund to be entitled the Consolidated Fund of the State. Article 268 provides that certain duties shall be levied by the Government of India but shall be collected by the States within which such duties arc leviable. Article 269 further provides that the duties and taxes shall be levied and collected by the Government of India but shall be assigned to the State's in the manner provided in clause (2). Item No. 89 of List I, Seventh Schedule of the Constitution authorises only Parliament to frame legislation with respect to Terminal taxes on goods or passengers, carried by railway, sea or air as mentioned in sub-clause (c) of clause (1) of Article 269. Clause (2) of Article 269 provides that the net proceeds of any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union Territories shall not form part of the Consolidated Fund of India but shall be assigned to the States within which that duty or tax is livable in that year, and shall be distributed 'among those States in accordance with such principles of distribution as may be formulated by Parliament by law. As to how calculation of net proceeds is to be done is provided in Article 279 which provides that 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Comptroller and Auditor General of India whose certificate shall be .final.

(31) The Constitutional scheme thus being that the taxes which arc levied and collected by the Government of India but which are to he assigned to the States ascertainment of that is to be certified by the Comptroller and Auditor General of India. Admittedly there is no provision in the Constitution that the collecting agency of the Union of India (in this case the Railways) is to make available their accounts for inspection and checking by the States. Nor is there any provision that the Comptroller and Auditor General of India should give a hearing to the States concerned before given the requisite certificate under Article 279. The question arises whether there is anything in the nature of the work performed by the Railways or by the Comptroller and Auditor General of India which compels this court to read the requirement of inspection and hearing to be given to the State before the Comptroller and Auditor General gives a certificate, In this connection it is instructive to note that under the Government of India Act, 1935 there was a separate Auditor General of India under Section 166 of the Act. However Section 167 of the Act of 1935 also provided that Provincial Legislature may appoint Auditor General for the province to perform the same duties in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor General of India, if an Auditor General of the Province had not been appointed. But a deliberate departure from this position was made by our Constitution which has only provided for one Comptroller and Auditor Genarl of India vide Article 148 of the Constitution. Article 149 lays down that the Comptroller and Auditor General of India shall perform such duties and exercise such powers in relations to the accounts of the Union and of the States and is provided in this Art. and by Article 150 it is further provided that the accounts of the Union and of the States shall be kept in such form as the Comptroller and Auditor General of India may with the approval of the President prescribe.

(32) It will thus be seen that the Comptroller and Auditor General of India is a high constitutional and independent functionary. He is Comptroller and Auditor General not only for the Union of India but for the States as well. It is his constitutional duty to sec that the revenues of the Union of India and the States are not kept out of their respective consolidated funds. The suggestion in the present case by the peitioners is that the terminal tax which is to be assigned to petitioner No. 2 will not be correctly made if it is not given a hearing. Now under the Constitution it is the precise function of the Comptroller and Auditor General of India

to ensure that the taxes etc. which are to form part of the Consolidated Funds of the Stales are not left out. Comptroller and Auditor General of India, thereforee, has been enjoined by the Constitution to see that the revenue and expenditure is incurred in accordance with the provisions of the Constitution and that no amount is credited to an account to which under the Rules it is not to be, and that no amount is left out of the funds to which by the Constitution or the Rules it should be credited. The reports of the Comptroller and Auditor General of India are placed before each house of Parliament and his report relating to the States is to be laid before the legislature of the State. Thus an effective forum has been provided to the elected representatives to point out any defect that may arise in the manner of collection of the revenue by the various agencies. An audit began examination of the accounts with a view to satisfying that they correctly and truely represent the transaction to which they apparently relate. Audit is an instrument of financial control and checks and sees whether the accounts maintained by the accounting party have been maintained in accordance with the Rules and the requirements governing that.

(33) We may in this connection refer to the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (No. 6 of 1957). This Act has been passed to prescribe the duties and powers of the Comptroller and Auditor General. Section 10 makes the Comptroller and Auditor General responsible for compiling the accounts of the Union and of each State. Section 12 requires the Comptroller and Auditor General to give such information as the Union Government and the States may require and render such assistance in the preparation of their annual financial statements as ey may reasonably ask for. Section 13 makes it his duty to audit all expenditure from the consolidated fund of India and of each State and of each Union Territory having a Legislative Assembly and to ascertain whether the moneys shown in .the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have been applied or charged. Section 16 makes it a duty of the Comptroller and Auditor General to audit all receipts which are payable into the consolidated fund of India and of each State and to satisfy himself that the Rules and procedures in that behalf are designed to secure an effective check on the assessment, collection and proper allocation of revenue and are being duly observed and to make for this purpose such examination of the accounts as he thinks fit and report thereon. It will thus be seen that this Act is really to effectuate the mandate of the Constitution and requires the Comptroller and Auditor General to satisfy himself that any receipts which is to form part of the consolidated fund of the States is not left out. The real and only grievance of the petitioners being that total terminal tax which is to form a part of the consolidated fund of the State is not being received but is being retained by the Railways and is thus forming part of the Consolidated Fund of India, deals with a matter which has been left by the Constitution to the sole and exclusive authority of the Comptroller and Auditor General.

(34) The primary function of Government Audit is to verify the accuracy and completeness of accounts, to secure that all financial transactions viz. receipts and payments are properly recorded in the accounts, correctly classified. As a result of the separation of accounts, the Comptroller and Auditor General is not responsible for the compilation of the Railway accounts: but he incorporates in the Combined Finance and Revenue Accounts of the Central Government and States the compiled accounts of Railways prepared by the Railway Accounts Department. His responsibility for the audit of the accounts of Indian Railways is the same as that of other departments of Government.

(35) Now in the present case the Railways being the collecting agency it is the constitutional duty of the audit department to sec that the amounts which are collected on account of terminal tax by the Railways arc assigned to petitioner No. 2 (of course after deducting collection charges). If, thereforee, more collections have been allegedly made on account of Terminal tax but a lesser amount is being assigned to petitioner No. 2 through a certificate given by the Comptroller and Auditor General, it would be a case of failing in constitutional obligation imposed on the Comptroller and Auditor General. The argument of Mr. Tarkunde is that in order to fulfill the Constitutional obligation of the Comptroller and Auditor General it is necessary for him to give a hearing to the States concerned (in this case the State of V.P. petitioner No. 2). We do not agree. We think that the argument proceeds on misapprehension of the work and function which is to be performed

by the Comptroller and Auditor General. The principles of natural justice are implied by the courts because some civil rights of the parties are affected by the authorities, quasi judicial or administrative, because it is considered that it would be in consonance with fair play and justice that before any adverse order is passed against an affected party he should be given an opportunity to have his say. But in a case like the present dealing with collection of taxes like the Terminal tax under Article 269 and the certificate being given by the Comptroller and Auditor General under Article 279, there is no question of any dispute or charge which is being investigated. There is no issue or lis between the Union of India and the State whether the collection on account of the Terminal tax is to be assigned to the States or not. Article 269 is specific and unambiguous, and provides that the terminal tax shall be levied and collected by the Government of India but shall be assigned to the States. No enquiry, is, thereforee, contemplated as to whether the Terminal Tax is to be assigned to the States or not. Nor is there any dispute that the tax has to be collected by the Government of India and cannot be done by the States. We have already mentioned above that for all the tickets which are sold to and from the notified places a chart is prepared from each station giving fare including the tax. Monthly return which incorporates the details, namely passenger classification return is really the basic document. Mr. Tarklinde did not challenge the correctness of the entries in the monthly returns. Nor did he alleged any deliberate or malafied preparation of the accounts. His whole argument proceeded on the assumption that though the full details were given in the monthly returns yet in the process of posting those various entries from the monthly returns to the pilgrim tax register and other documents some omissions were made at some point of time and it was these omissions which according to the learned counsel the Checking Officer of the Municipal Board could point out if given inspection by the Railways and hearing by the Comptroller and Auditor General. The argument, thereforee, really boils down to saying that there are inadvertent omissions or at the worst careless accounting by the railway staff and even careless checking by the audit staff of Comptroller and Auditor General. It is to be seen that the rate of the terminal tax is known and the same is entered in the monthly return. The only thing that is done by the various agencies is to note down each entry when preparing a full statement of the collection of the terminal tax. In all this process we do not find any scope for giving any hearing to be given to the State concerned either by the Railway or the Comptroller and Auditor General. We do not know what kind of hearing could possibly be given to the States concerned in this matter. If it is suggested that the States should be in a position first to see all the tickets that are sold from all the stations to and from the notified places and then have further inspection of the records that those tickets have been entered in the monthly returns and then to check up whether all these statements have been correctly entered and that no items have been omitted it is really asking to perform the job of the Financial Adviser and Accounts officer of the Railways. Further if hearing has to be given before the Comptroller and Auditor General and it is to be a reasonable one, the petitioners must be given access to all the supporting vouchers, documents, registers and it is only after they have gone through the same and satisfied themselves that no omissions have taken place and have then been given a hearing by the Comptroller and Auditor General, should the Comptroller and Auditor General certify it under Article 279(1) of the Constitution. This process would really amount to giving to the petitioners a power akin to holding a parallel audit in addition to the one that is to be carried out by the Comptroller and Auditor General under the Constitution.

(36) Of course Mr. Tarkunde protested that he did not envisage such a detailed procedure. But we do not see how it is possible to limit the right of the States once the principles of natural justice are held to be applicable. If a hearing has to be effective all these procedures necessarily follow. Could the Constitution have contemplated such a situation where all the States would be given the right of inspecting the accounts of various Government of India agencies collecting the taxes mentioned in Article 269 and also have full hearing before the Comptroller and Auditor General. The whole thing will reduce the function of the Comptroller and Auditor General to a superfluity and unworkability.

(37) Our Constitution has a federal structure where some taxes are collected by Government of India and also some taxes are collected by the States. In some cases taxes are levied by Government of India but collected by the States. In others levied and collected by the Government of India but to be assigned to the States. The Constitinion necessarily had to provide an institution to deal with these aspects and it has provided for an

independent constitutional authority namely the Comptroller and Auditor General to see and to check and inspect the various accounts and then to give a required certificate. The Comptroller and Auditor General is not in any manner interested in keeping with the Government of India the terminal tax which should be assigned to the States under Article 269 and 279. He is not a part of the Railway Accounts Organisation. He is the Comptroller and Auditor General for the State like petitioner No. 2 also. The only purpose of invoking natural justice by petitioner No. 2 on the plea of fair play is. that it should be allowed to have the inspection of the accounts by its own checking officer with a view to seeing whether the accounts have been properly kept and the collection of the terminal tax is being fully assigned to the State. Now when the constitution has provided for an independent agency like the Comptroller and Auditor General to do precisely that thing would it be logical to hold that justice requires reading the requirement of hearins when constitution has by implication negatived it. It is true that even after the coming into force of 1956 Act. the checking officer of petitioner No. 2 continued to inspect the railway record till 1967. But that facility which may have been agreed to voluntarily by the Railways cannot convert that into a right in law to compel the Railways or the Comptroller and Auditor General to give a hearing to petitioner No. 2. when it is not provided by the constitution or under any law, nor can it be read by implication on any principle of fair play or justice.

(38) A reference to Article 279 shows that the work which is to be performed by the Comptroller and Auditor General relates to the calculation of net proceeds. In making this calculation of the net proceeds there is no dispute about the nature of collection; nor whether the particular amount is to fall under the head Terminal Tax nor of the fact that this amount has to be assigned to the States (like petitioner No. 2). This work is in the nature of a ministerial and checking work to be performed by the Comptroller and Auditor General. To apply the principles of natural justice in such a situation would hardly be apposite nor is it justified on any principle.

(39) It will thus be seen that the Constitution has provided for a very elaborate machinery and an hierarchy of staff to ensure that the checking and audit of the accounts of the Union of India as well as the States is done in such a manner that the scope for omission and discrepancy is reduced to the minimum. No doubt where all these details are to be worked out by human agency the element of inadvertent error and omission cannot be ruled out. We are not suggesting that the organisation of the audit department is infalliabic and that it cannot make any mistake, but that assumption docs not lead to the result that the checking officer of the petitioners is in no way falliable and that he will not be also liable to some inadvertent error and omissions. We may say in fairness to Mr. Tarkunde that he did not claim that the checking officer of the petitioners was infalliable and he was not liable to make mistakes like other human agencies. We are pointing this out for the reasons that the courts have implied principles of natural justice when there is nothing in the statutes giving a right of hearing mainly on the considerations to prevent any miscarriage of justice. Now in the present case inspection of accounts and hearing is sought for the purpose of pointing out omissions and discrepancies. There is a full fledged independent organisation of the Comptroller and Auditor General with larger resources and much greater staff to do precisely the same thing and to see that the taxes which are to be assigned to the States like petitioner No. 2 are in fact assigned to them. Keeping this in view and the Constitutional and statutory provisions with regard to functions to be performed by the Comptroller and Auditor General we do not think that there is any unfairness or anything inherently wrong if the petitioners arc not allowed inspection of the railways account or given any hearing by the Comptroller and Auditor General before he gives a certificate as required by Article 279 of the Constitution. In our view the interests of the States (like petitioner No. 2) are more than sufficiently safeguarded by the constitutional provisions. We thereforee, do not feel that keeping in view the nature of the duties to be performed by the Comptroller and Auditor General and the circumstances of the case. the principles of natural justice would be violated if no hearing is given. We accordingly hold that the petitioners are not entitled to have inspection of railway accounts nor have they any right under the law or on the principles of natural jstice to have a hearing before the Comptroller and Auditor General.

(40) The next prayer seeks mandamus to the respondents to reassign Rs. 29.282.81 collected from the traffic between Laksar and Jawalapur for the years 1962 to 1965. The position in regard to this is that when the Act

came into force the Government of India issued a notification declaring an area of 14 miles as a 'free zone' to and from the notified place. This notification came into force as from 1st February, 1959. Later on, however, this notification was amended and the 'free zone' was raised from 14 miles to 15 miles with effect from 25th September, 1959. It appears, however, that inspire of the 'free zone' having been increased to 15 miles the Railways went on collecting terminal tax from the places beyond 14 miles and up to 15 miles and thus an amount of Rs. 51,945.91 was collected from the passengers between 25th September, 1959 and July, 1965. This amount was on account of Jawalapur-Laksar traffic. This collection was obviously irregular as no terminal tax should have been levied within 15 miles 'free zone'. This irregularity, however, came to the notice of the Railway authorities only in August, 1965-By that time the Comptroller arid Auditor General of India had given a certificate under Article 279 of the Constitution for the net proceeds for 1959- 60 and 1960-61 and the certificate included the amount of Rs. 22,663.10 (out of Rs. 51,945.91) which had been collected for the period between 25.9.1959 and July, 1965. The Railways presumably because of this did not reopen the matter of recovery of this amount. But as regards the balance amount, the railways deducted an amount of Rs. 26,282.63 from the subsequent tax proceeds in August, 1965, and another sum of Rs. 3,000.18 which was deducted in June, 1966 thus making the total of Rs. 29,282.81 about which mandamus is now being sought. It is a common case that the collection of this terminal tax from passengers was illegal in view of the government notification dated 25-9-1959. The petitioners, however, claim that as under Article 269 of the Constitution the terminal tax though collected by the railways is to be assigned to the State and is not to form part of the Consolidated Fund of India, the same cannot be retained by the railways. The contention of the respondents on the other hand is that it is only a terminal tax on passengers carried by railways which can be assigned to the States under Article 269(c) and the mere fact that an amount of Rs. 51,945.91 was collected by the Railways purporting to be on account of the terminal tax but which admittedly was not authorised under the Act does not given any right to petitioner No. 2 to demand that such an amount which is not a terminal tax. be assigned to it, as the State has no legal claim over it. Reference was, made to R. Abdul Quader and Co. V. Sales Tax Officer, Second Circle Hyderabad (1964-Vo1. XV-Sales Tax Cases 403). That was a case where a dealer had collected sales tax from the purchaser but had not paid it to the Government on the ground that he was not liable to pay this amount on the ground that Act did not authorise such a tax. Reliance was placed by the State on Section 11(2) of the Hyderabad General Sales Tax Act which authorised the Government to recover any amount from a person, who had collected or collects, after May 1. 1950. by way of tax otherwise than in accordance with the provisions of the Act. The Supreme Court held that such a tax was beyond the competence of the State Legislature as it provides for some amount being collected by way of a tax though it is not really due as a tax under the law. The court observed that if a dealer had collected anything from a purchaser which is not authorised by the taxing law, that is a matter between him and the purchaser and the purchaser may be entitled to recover the amount from the dealer, but unless the money so collected is due as a tax, the State cannot by law make it recoverable simply because it was wrongly collected by the dealer. Mr. Nariman, counsel for the respondents relied on these observations and urged that even if the Railways had collected the terminal tax wrongly it did not permit the petitioners to claim that amount because it can only claim that amount which had been collected legally by the Railways as terminal tax. Mr, Tarkunde on the other hand, contended that position might have been different if having collected the amount the same had not been passed on to petitioner No. 2. In the present case, it was urged that as the amount had already been passed on to petitioner No. 2 in previous years, the Railways were not entitled to make deduction in subsequent years, because they have no legal right to demand back this amount which does not belong to them and they thus arc seeking to keep with them an amount which is not to form a part of the consolidated fund of India. It was urged that it was an illegal levy, the respondents have no better title than petitioner No. 2, and thereforee this should be directed to refund that amount which had been wrongly deducted. We find that of Rs. 29,282,81 which is now being claimed by the petitioners, deduction was made as far back as August, 1965 of Rs. 26,282.63 and in June, 1966 of Rs. 3000.18. The present writ petition was filed in February, 1970 and a question may well arise apart from other questions whether this claim is within time. Mr. Tarkunde referred us to annexure 16, a letter from the Secretary, Railway Board, dated .26-4-1967 in which is stated that the Government of India has decided that irregular recovery of tax from Jawalapur-Laksar traffic

from 25-9-1959 should not be credited to the Hardwar Municipality, as they are not entitled to the same and urged that the claim would be within time from that day. We have already pointed out that the deduction was made in August, 1965 and June, 1966 as per the rejoinder of the petitioners. We also find that the letter of the Railways dated 26-4-1967 refers to a letter from petitioner No. 1 dated 1-11-1966 (which letter is not on record). It is thus apparent that the full facts and material are not on the present record and it would, thereforee, be not safe, nor would it be proper to give any decision on this point either way in view of insufficient material on record. We may also note that no certificate by the Comptroller and Auditor General of India had been issued for the period covering the amount of Rs. 29.282.81 and it may be open if so advised to the petitioners to point out to the Comptroller and Auditor General about this amount.

(41) In view of these circumstances we feel that we cannot satisfactorily decide this matter in the present proceedings. It will of course be open to the parties concerned to take any appropriate steps that they may deem proper in the circumstances of the case.

(42) The next prayer claims a mandamus against the respondents to make adjustments of specific claims of the petitioners in respect of foreign inward traffic pertaining to 1959-60 and onwards. In this connection it is relevant to note that the certificates by the Comptroller and Auditor General under Article 279 has been given only with respect to the years 1959-60 and for 1960-61 on 2-11-1964 and 14-4-1965 respectively. It was sought to be contended that there was non-accounting of large amount of terminal tax. Attention was drawn to both the certificates in which the entire traffic (both special and normal) accounted for from South Eastern Railways from 1959-60 was certified at Rs. 113-48 whereas the claim by the petitioner was Rs. 3,595. Similarly with respect to the year 1960-61 it was contended that the certificate by the comptroller and Auditor General had only shown an amount of Rs. 1525.54 from Southern Railways whereas the petitioners claim an amount of Rs. 4,560.00. It is also pointed out that the figures taken by the Comptrollers and Auditor General were the figures which had been supplied by the Railways and they had been accepted by him without independent check as against the figures which had been claimed by the petitioners. Now if this is an argument to show that the certificate given by the Comptroller and Auditor General is wrong and, thereforee, a hearing should be given to the petitioners on the principles of natural justice before finally certifying it, we have already dealt with it. If, however, the argument is that the lesser amount of tax had been assigned to the petitioners, than was colleced by the Railway, the same amounts to a claim for money which prima fade became due to the petitioners in 1964-65. This again raises disputed question of facts because the respondents had in their reply claimed that all the accounts have been checked and fully accounted for. The respondents, in short, are not admitting that the figures supplied by the petitioners are correct. All these are matters which obviously cannot be decided in these summary proceedings and the parties must be left to take necessary steps in appropriate forums, if so advised. Another feature mentioned by Mr. Tarkunde was a reference to the letter dated March, 1967, written by the Northern Railway to the Checking Officer (enclosure L to annexure 14) wherein the railways maintain that the amount of tax due to the municipality, in all cases had been included in the final certificate filed by them. In the said letter however, it was added that the records of foreign inward passenger classification returns relating to the period up to November, 1963 have since been destroyed being time expired records and that no information will be forthcoming for the traffic to or from Hardwar up to November, 1963. The purpose of referring to this letter by Mr. Tarkunde was to show that even though the Comptroller and Auditor General has given a certificate under Article 279 only for the years 1959-60 and 1960-61. according to the letter the records up to November, 1963 have been destroyed and this supported his contention that auditing and checking by the Comptroller and Auditor General was of no avail. We are afraid it is not possible for us to entertain this objection because of the paucity of material on record. We do not know under what circumstances this letter was written nor have we any material to hold that the records for that period are not available with various other offices. It would thereforee, be hazardous to hold that the certificate given by the Comptroller and Auditor General would have been given without referring to the relevant documents and records. It is of course open to the petitioners to bring this fact to the notice of the Comptroller and Auditor General of India for any appropriate action that he may deem proper.

(43) Before we part with the case we may note that Mr. Nariman, counsel for the Union of India and the Comptroller and Auditor General stated before us that though he was disputing the right of the petitioners to inspect the railway accounts or to have a hearing before the Comptroller and Auditor General but nevertheless in view of the insistence of the State, in order to give a further assurance to the State that full terminal tax was being assigned to it, he was prepared to add his recommendation if the State applied to the Comptroller and Auditor General for appointment of special officer to be appointed by the Comptroller and Auditor General under him, if possible to deal exclusively with the checking and inspecting of the terminal taxes which are being collected by the Railways from Hardwar. Of course he made it clear that if the Comptroller and Auditor General found that it was practicable to appoint such an officer under him the expenses for that will have to be borne by petitioner No. 2. This offer was made by Mr. Nariman, because as he stated, that it was not the purpose of the Union of India or the Comptroller and Auditor General to stand on any false prestige and that if the State feels that there should be a further checking done exclusively on this account he would recommend it, because all of them were genuinely interested in seeking that the terminal taxes which are not to form a part of consolidated fund of India are fully assigned to state. Mr. Tarkund however, stated that it would not be possible for the petitioners to agree to any officer being appointed to do checking who would be under the Comptroller and Auditor General and that the petitioners would only feel reassured if they have their own checking officers as at present. As the parties could not agree, it is unnecessary for us to pursue it any further and we leave it at that.

(44) As a result of the above, we do not find any merit in the petition and thereforee dismiss the same, but in the circumstances of the case leave the parties to bear their own costs.

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