inder Kumar Goyal and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-31-1991

Reported in : AIR1992Raj181; 1991(2)WLC196

Judge : D.L. Mehta and; G.S. Singhvi, JJ.

Acts : Rajasthan Motor Vehicles Taxation Act, 1951; Rajasthan Motor Vehicles Taxation (Amendment) Act, 1989 - Sections 4B(3); Constitution of India - Article 245; Motor Vehicles Act, 1939 - Sections 123

Appeal No. : Civil Writ Petitions Nos. 2663, 3166, 4122, 4123, 4124, 4185, 4186 and 4187/89

Appellant : inder Kumar Goyal and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : B.P. Agrawal, Adv. General and; M.I. Khan, Addl. Adv. General

Advocate for Pet/Ap. : N.L. Jain, Sr. Adv. and; Subhash Jain, Adv.

Disposition : Petition allowed

Judgement :
ORDER

1. The main question involved inall these writ petitions relates to vires ofSection 4B(3) of the Rajasthan Motor Vehicles Taxation Act, 1951 and Rule 4CC of the Rajasthan Motor Vehicles Taxation Rules, 1951. Arguments were, therefore, heard jointly for all these writ petitions on the request of learned counsel for the parties and they are being disposed of by a common order.

2. We may refer to the facts of Writ Petition No. 2663/89 Inder Kumar Goyal v. State of Rajasthan and others.

3. Petitioner Inder Kumar Goyal is holding three contract carriage permits in his own name, details of which have been set out in para 2 of the writ petition. Vehicle No. RNP 2964 (1988 model) is owned by the petitioner and it is registered in his name. He is having All India Tourist Permit No. RTA/79/27/1, which has been renewed up to 30th May, 1992. The statement of the petitioner is that he has deposited road tax as well as special road tax as prescribed under the Rajasthan Motor Vehicles Taxation Act, 1951.

4. Bus No. RNP 2964 was checked at Jobner by the Transport Checking Party. Petitioner was forced to pay a sum of Rs.4850/- under Section 4B(3) of the Rajasthan Motor Vehicles Taxation Act (for short, it will be referred to as '1951 Act') as amended by Amendment Act No. 5 of 1989. The Transport Checking Party demanded Rs. 100/- per seat per trip as tax and surcharge under the provisions of the aforesaid section of the Act for alleged infringement of the conditions of permit. The infringement indicated was that name of one passenger was not given in the list which was given in the character demand under Section 63(7) of the Motor Vehicles Act, 1939 (hereinafter to be referred as 'the Act to 1939). Petitioner's driver was forced to pay Rs.3,850/- as additional special road tax and Rs. 1,000/-as composition charges. At the time of checking, the bus was coming from Ahmedabad to Jaipur and was carrying passengers who were keen to reach Jaipur as early as possible. The checking party threatened seizure of the vehicle which would have resulted in the passengers being left on the road. Petitioner was, therefore, compelled to pay the amountdemanded by the checking party Petitioner has produced a copy of the passengers chart prepared under Section 63(7) of the Act of 1939, memo of checking proceedings, receipt of the

amount of Rs. 4,850/- and a copy of the application submitted by the petitioner to the Regional Transport Officer, Jaipur-1st, Jaipur complaining against the incident. He also demanded refund of the amount charged from him.

5. Petitioner has asserted that the so-called tax which is being levied, imposed and collected under Section 4B(3) of 1951 Act is not imposed on the vehicle or passengers or goods or even on the user of the road, but a fine or penalty for certain acts of commissions or omissions and 1951 Act cannot be utilised for imposition of fine or penalty. Such tax cannot be levied under the provisions of 1951 Act, particularly when this type of actions or omissions are punishable under Section 123 of 1938 Act or under Section 192 of the Motor Vehicles Act, 1988. Petitioner has alleged that 1939 Act has been enacted by the Parliament and 1951 Act has been enacted by the State Legislature. Section 123 of the Central Act specifically covers the contingencies involving violation of the conditions of permit or unauthorised plying of the vehicle. Thus the field is already occupied by the Central Legislation and the State Legislature was not competent to enact any law on this subject. No such power is vested with the State Legislature in List VIIth Schedule of the Constitution and in any case when the field was occupied, an inconsistent enactment could not have been made by the State Legislature. There is a direct repugnancy/conflict between the Central Law and the State Law and, therefore, in view of the provisions of Article 254 of the Constitution of India, the provisions contained in Section 4B(3) of 1951 Act are liable to be declared unconstitutional. Moreover, no presidential assent was obtained for amending Act No. 5 of 1989 whereby the Motor Vehicles Act, 1951 was amended.

6. Petitioners' further assertion is that vehicle No. RNP 2964 is covered by valid all India carriage permit. Grant of contract carriage permit which is defined under Section 2(3)of 1939 Act is governed by the provisions of 1951 Act. The conditions which can be imposed by the authority granting such permit are specified in Section 51 of the Act and, therefore, no condition can be imposed by the authority granting contract carriage permit. Yet another submission made by the petitioner is that the checking party has not been authorised under 1951 Act to take action and realise further special road tax under Section 4B of the Act. The checking party-consisting of Police and Transport Officers and employees could not exercise this

jurisdiction because no such jurisdiction has been vested under the Act on such checking party. The members of the checking party acted as prosecutors, witnesses and Judge and, therefore, the action taken by them is liable to be declared as wholly unconstitutional The procedure for levy and collection of tax under 1951 Act is laid down by the Rajasthan Motor Vehicles Taxation Rules, 1951 (hereinafter to bereferred to as '1951 Rules'). The provisions of these Rules lay down that the Taxation Officer would be appointed by the State Government (R. 3). Rule 4 prescribes the modeof payment of tax and procedure there of Tax is to be assessed and determined by theTaxation Officer. A demand note is to begiven to the assessee and challan forms are to be provided to enable him to deposit the amount. Of the assessee does not object to the assessment, he may deposit the amount, otherwise he may file an appeal. Under Rule 33, tax can be recovered as an arrears of land revenue. The scheme of the Rules shows that the principles of natural justice have been made part and parcel of the procedure for imposition of tax and realisation thereof.

7. Respondents have opposed the prayer made in the writ petition in their written reply. The case of the respondents is that the petitioner is flouting the terms and conditions of the contract carriage permit and All India, Tourist Permit. The statement of the petitioner that he has been plying his bus in accordance with the provisions of the Motor Vehicles Act or in terms of the permits issued to him, has been disputed. When the bus was checked on 5-5-1989 at Jabner by the Transport Checking Party, it was found that the buswas carrying passengers from Ahmedabad to Jaipur against the terms of the permit. The bus was diverted to a clandestine route to avoid the checking party. Jobner is not on the National Highway from Ahmedabad to Jaipur. It was further found that the passengers were not returning from Jaipur by the same bus. On physical verification, it was found that there was no list of passengers with the Operator of bus in accordance with the passengers available in the vehicle. The list was not found correct. Further case of the respondents is that Section 4B(3) of 1951 Act was added with a view to discourage the use of transport vehicle without permit or contrary to the permit and therefore, further special road tax has been imposed at the rate of 100/-per seat per trip. The bus of the petitioner was found to have flouted the terms of permits laid down under Section 63(7) of 1939 Act. It is an offence punishable

under Section 123 of that Act. Petitioner was found committed offence punishable under Section 123 of the Act of 1939, for which he was to be challaned, but the petitioner voluntarily agree to compound the offence and agreed to pay a sum of Rs. 1,000/- as compounding money, in order to avoid prosecution. Further special road tax has been imposed for use of roads without permit or in contravention of the conditions of permit. Respondents have stated that the State Legislature is competent to enact such law under Entry 57 of List IT of VIIth Schedule of the Constitution and, therefore, Section 4B(3) is constitutionally valid. There has been no violation of the principles of natural justice. There is no inconsistency or repungancy between the Central Law and the State Law.

8. A rejoinder has been filed by the petitioner. In this rejoinder, petitioner has stated that the allegation of violation of the terms and conditions of the Contract Carriage Permit and All India Tourist Permit is wholly baseless and there is no material in support of such allegation. Petitioner has submitted a list of passengers travelling in Bus No. RNP 2964. List was issued by the Inspector General of Police. Navrangpur, Ahmedabad. It was checked on border between Gujarat and Rajasthan and was found to becorrect. In Annexure P/2 (Seizure Memo) prepared by the checking party, the only lacuna pointed out is regarding one Raj Kumar, who was issued ticket for seat No. 33. The name of R. K. Thaku has been mentioned instead of Raj Kumar, In fact it was the name of same person. Petitioner has stated that if there has been any violation of the conditions of permit or there has been unauthorised plying of the bus, the respondents are entitled to prosecute the petitioner in accordance with the provisions of law. But they cannot impose further tax on the petitioner for the alleged breach of the conditions of permit or any provision of the Motor Vehicles Act, 1939.

9. The main question, which requires determination in these writ petitions relates to the vires of Section 4B(3) of the Act. For the purpose of determination of this question, we may refer to some provisions of the Constitution as welt as the Rajasthan Motor Vehicles Taxation Act, 1951, Rajasthan Motor Vehicles Taxation Rules, 1951 and the Motor Vehicles Act, 1939.

10. Article 246 of the Constitution of India specifies the subject matters of law made by the Parliament and by the State Legislatures. This article is generally referred to as for providing distribution of legislative powers. Article 254 provides for consequences in case of inconsistency between the laws made by the Parliament and the laws made by the Legislatures of the State. Both these Articles are quoted below:

'246.(1). Notwithstanding anything in Clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State also have powers to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the 'Union List').

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power tomake laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.'

'254.(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to/that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.' Entries 23 and 93 of List I, Entry 56 of List II as well as entries 1 and 35 of List III of Seventh Schedule of the Constitution are also quoted below:

'Entry 23 of List-

Highways declared by or under law made by Parliament to be national highways

Entry 93 of List I

Offences against laws with respect to any of the matters in this list.

Entry 56 of List-II

Taxes on goods and passengers carried by road or on inland waterways.

Entry I of List III

Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

Entry 35 of List III

Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.'

11. The term 'tax' has been defined in Section 2(c) of 1951 Act. It means a tax and surcharge imposed under the Act. This definition is the substituted definition of the term 'tax' vide Notification dated 1-10-1982. Section 4 of 1951 Act provides for imposition of tax on all motor vehicles kept for use in the State. Section 4A which was inserted vide Section 5 of the Rajasthan Finance Act, 1986 which was published in the Rajasthan Gazette Extraordinary Notification dated 31-3-1986 provides for imposition of surcharge on the tax imposed under Section 4. Section 4B, by which imposition of special road tax has been provided for, was inserted by the Rajasthan Motor Vehicles Taxation (Amendment) Act, 1982, which was published in the Rajasthan Gazettee Extraordinary dated 1-10-1982. S.4B as it was introduced by Notification dated 1-10-1982 was as under:--

'4B. Special Road Tax (S.R.T.) -- In addition to the tax and surcharge is levied under Section 4 and 4A respectively and subject to the Rules as may be made by the State Government in this behalf, there shall be levied and paid to the State Government a Special Road Tax on all transport vehicles at the rates fixed by the State Government by Notification in the Official Gazette not exceeding the maximum rates specified in Schedule A.'

12. On that very day, the State Government issued Notification Not F.1(9)Home/ Gr.7/76 dated 1-10-1982 and specified therates of special road tax on different classes of Motor Vehicles.

13. Section 4B has been amended by the Rajasthan Motor Vehicles Taxation (Amendment) Ordinance, 1989, which was promulated on 27-1-1989. This Ordinance has specifically been replaced by the Rajasthan Motor Vehicles Taxation (Amendment) Act, 1989. By virtue of this amendment Ordinance/Act, S.4B has been numbered as Section 4B(1) w.e.f. 1-10-1982 and at the same time the words 'and such non-transport vehicles as are used for carrying passengers or goods on hire or reward' have been treated as inserted between the words 'on all transport vehicles' and the words 'at the rates' in Section 4B(1). Section 4B(2) and 4B(3) have been added w.e.f. 1-10-1982. Section 4B(3) which is the centre of controversy between the parties can appropriately be quoted below:

'4B(3). Where a transport vehicle is used without a valid permit or in any manner not authorised by the permit, there shall be levied and paid to the State Government further special road tax in addition to the tax payable under Sub-section (1) on such vehicle at the rate fixed by notification not exceeding the maximum rate specified in this behalf in Schedule A'.

By a Notification dated 3-2-1989 issued under Section 22 of 1951 Act, the State Government added R.4CC in the Rajasthan Motor Vehicles Taxation Rules, 1951. This rule reads as under:

'4CC. Tax under Section 4B(3) of the Act in respect of the Transport Vehicles found plying without permit in any manner not authorised by the permit, and Non-Transport Vehicles used for carrying passengers or goods on hire or reward shall be payable forthwith.'

14. Section 2 of the Motor Vehicles Act, 1939 contains definition of clauses. Section 2(3) defines the term 'contract carriage'. Section 2(8) defines the goods vehicles. Section 2(28) defines the term 'route'. Section 2(29) defines the term 'stage carriage'. Section 2(29A) defines the term 'tourist vehicle', Section 2(3) defines the term 'transport vehicle', Section 22 prohibits driving of any vehiclefor the purpose of carrying passengers or goods without registration and registration mark. Section 42 specifies the necessity of use of the vehicle only in accordance with the conditions of permit.

Section 123 of 1939 Act provides that a person whosoever drives or causes or allows a motor vehicle to be used in contravention of the provisions of Section 22 or 42(1) or any condition of permit is liable to be punished for offences. Sections 42(1) and 123(1) and 123(3) are also reproduced below because they have relevance to the controversy involved in the present case:

'42(1). Necessity for permits.

No owner of a transport vehicle shall use or permit the use of the vehicle in any public place (whether or not such vehicle is actually carrying any passenger or goods) save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority (or the Commission) authorising the use of vehicle in that place in the manner in which- the vehicle is being used:

Provided that a stage carriage permit shall, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a public carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the vehicle for the carriage of goods for or in connection with a trade or business carried on by him.'

'123(1). Using vehicle without registration or permit-

Whoever drives a motor vehicle or causesor allows a motor vehicle to be used incontravention of the provisions of Section 22 orwithout the permit required by Sub-section (I) ofSection 42 or in contravention of any condition ofsuch permit relating to the route on which orthe area in which or the purpose for which thevehicle may be used (or to the maximumnumber of passengers and maximum weightof luggage that may be carried on the vehicle)shall be punishable for a first offence with fine which may extend to one thousand rupees and for (any second or subsequent offence) with imprisonment which may extend to six months or with fine which may extend to two thousand rupees or with both.'

'123(3). Where a person is convicted of an offence under this section, the Court by which such person is convicted may, in addition to any sentence which may, be passed under Sub-section (1), by order-

(a) if the vehicle used in the commission of the offence is a motor car, suspend its certificate of registration for a period not exceeding four months;

(b) if the vehicle used in the commission of the offence is a transport vehicle, suspend its permit for a period not exceeding six months or cancel it.

15. While Shri N. L. Jain, Sr. Advocate assisted by Shri Subash Jain strenuously urged that Section 4B falls outside the field of legislation earmarked for the State Legislature and is, therefore liable to be declared as unconstitutional and also that

there is a direct repugnancy between the Central Law and the State Law, learned Advocate General and Additional Advocate General argued that Section 4B(3) can appropriately be enacted by the State Legislature under Entry 56 of List II of Seventh Schedule.

16. The preamble of 1951 Act shows that it is an act to provide for imposition of tax on motor vehicles throughout the State of Rajasthan. The term 'tax' has been defined as a tax and surcharge imposed under the Act of 1951. The word 'tax' is compulsory exaction by the State for the purpose of raising the revenue. It is distinguished from fee which is levied for some service and is not meant to augment the general revenue. The rent is a periodical payment by the tenant in consideration for the use and occupation of the land or building. It is essentially a payment by a person user of land to the learned for the use of that land, and is usually the result of a common agreement between them. In Commissioner of H.R.T. v. L.T. Swamiar, AIR1954 SC 282, their Lordships of the Supreme Court held that a tax is a compulsory exaction of money by a public authority for public purpose enforcable by law and is not payment of services rendered. The essence of taxation is compulsory that it is to say, it is imposed under statutory power without the tax payer's consent and the payment is enforced by the law. The second character is that it is an imposition made for the public purposes without reference to any specific benefit to be conferred to the tax payer. It is a levy for the purpose of general revenue. There is no element of quid pro quo between the tax payer and the public authority.

17. In Jethmal v. Hira Lal, 1957 RLW 522 : (AIR 1958 Raj 48) this Court had also held that the term 'tax' used in Section 21 of 1951 Act has to be read in broader sense and not in a narrower sense in which it has been defined in Section 2 of the same Act.

18. Power to impose tax, which are in the nature of regulatory and compensatory measure vest with the State Legislature under Entry 56 of List II of Seventh Schedule. Entry 57 of List II empowers the Legislatures in respect of tax on vehicles suitable for use on roads. The powers exercisable under Entry 57 is also a power to impose tax, which are in the nature of regulatory and compensatory

measures. In Automobile Transport Rajasthan Ltd. v. State of Rajasthan, (1963) 1 SCR 491: (AIR 1962 SC 1406), it was held by their Lordships of the Supreme Court that the tax on motor vehicles compensatory tax leviedfor the use of vehicles and it is not a tax on trade. The object of the act is achieved bycharging to tax on motor vehicles suitable for use on roads kept in the State.

19. In Bolani Ores Ltd. v. State of Orissa, (1974) 2 SCC 777 : (AIR 1975 SC 17), the Supreme Court observed that Entry 57 of List II of Seventh Schedule was subject to the Limitation, namely, the power of taxation cannot exceed compensatory nature, which must have some nexus with the vehicles using the roads. If vehicles do not use the road, the tax cannot be levied.

20. In State of Maharashtra v. MadhukarBalkrishan Vaidhya, (1988) 4 SCC 290: (AIR 1988 SC 2062) the Court reiterated the principle the tax imposed on the motor vehicles or a class of motor vehicles would not be penalty unless it is compensatory or regulatory or does not have nexus with the vehicles using public roads.

21. Imposition of tax by virtue of Section 4 of 1951 Act has been upheld by this Court as well as by the Supreme Court. Likewise, imposition of surcharge has also been upheld by the Court on the premises that it is a part of tax which is compensatory and regulatory in character. In Aditya Mills Ltd. v. Rajasthan State Electricity Board, 1969 RLW 147: (AIR 1969 Raj 254), the Court had held that the surcharge on tax or duty is not a strict levy but an additional levy in the nature of tax or duty as the case may be.

22. A perusal of Sections 4(1) and 4(2) shows that the tax is levied on motor vehicles used or kept for use in the State. Surcharge is levied at the rate of 10% of the tax imposed under Section 4(1). Section 4B(1) deals with special road tax on all transport and non-transport vehicles. Special road tax can only be levied on all transport and non-transport vehicles. This is in addition to the tax and surcharge levied under Sections 4 and 4A. Section 4B(2) indicates that rate of special road tax depends on distance required to be covered during a month as per time table fixed or as per the scope fixed for the route by the R.T.O. under the Motor Vehicles Act, 1939 or by a competent authority or by any other law for the time

being in force. Section 4B(3) provides for imposition of further special road tax, which is in addition to the tax payable under Section 46(1). There are two situations under which tax under Section 4B(3) can be levied. First is, where a transport vehicle is used without valid permit and the second is, that where a transport vehicle is used in any manner not authorised by permit Thus, ordinarily, a transport or non-transport vehicle is liable to pay tax, surcharge and special road tax under Sections 4, 4A and 4B(1). However, those transport vehicles which are used without a valid permit or in any manner not authorised by permit, an additional special road tax has to be paid as per Section 4B(3).

So far as Section 4B(3) is concerned, it does not say that this additional road tax is to be paid with reference to user of the vehicle or road. It is clearly not a tax on the road or on a vehicle or on passenger. According to the assertion made by the respondents themselves it is the additional special road tax imposed for vehicles plying without licence or in contravention with the conditions of licence or permit. Those who are using the road without permit or in breach of the permit are made to pay higher special road tax.

23. Section 11 of 1951 provides for punishment for non-payment of tax or additional tax payable in accordance with the provisions of the Act in respect of a motor vehicle, which is in his possession or under his control or who delivers a declaration or additional declaration in which particulars are not full and truly stated on who obstructs any officer in exercise of the powers conferred by Section 18 or fails to stop the motor vehicle when required to do so by such officer under Section 17. For other contraventions of the provisions of the Act and the Rules also punishment is provided by Section 11(2). Section 12 of 1951 Act provides for compounding of offence committed under Section 11 at any time before conviction, and such composition has an effect of discharging such person from all liabilities from offence. This provision has been referred to in order to emphasis that the Act of 1951 makes specific provision to treat the breach of the provisions of that Act and the Rules made thereunder as offence, specifies the punishment which may be imposed on conviction in respect of such offence and also for compounding of offence by the prescribed officer by accepting money may extend up to the amount of taxi However, the provisions of the Act of 1951 do not deal

with the cases relating to the violation of permit or conditions of permit. Violation of permit granted under the Motor Vehicles Act or contravention of any of the conditions of permit or of the provisions relating to restrictions are dealt with under Section 123 of 1939 Act. A specific provision has been made in that Act to deal with the cases relating to the contravention of the provisions of Ss. 22 and 42 of the Act. Section 123(1) provides for punishment of fine forthe first offence and of imprisonment which may extend to six months or with fine which may extend to Rs. 2000/- or both for second or subsequent offence. Proviso to Section 123(1) makes it obligatory for the Court to impose a fine of at least Rs. 500/- for any second or subsequent offence. Section 123(1) also provides for suspension of certificate of registration or permit of the vehicle used in commission of offence. This is in addition to the sentence which may be passed under sub-section (1) of Section 123(1). It is clear from Section 123(1) that a specific provision has been made in 1939 Act to deal with the cases involving contraventions of Ss. 22 and 42 of 1939 Act. Any person who plies vehicle without permit or in contravention of conditions of such permit is liable to be prosecuted and is liable to be punished in case of conviction. Source of a provision like Section 123 can be traced in Entry 93 of List I of Seventh Schedule. It is, therefore, clear that a specific provision exists to deal with the offences involving violation of Section 42, namely, where the vehicle is plied without permit or in contravention of the conditions of permit. The question now arises for consideration is as to whether a tax, additional tax or special tax can be imposed for an act which is offence under a provision contained in the Motor Vehicles Act, 1939 and has the State Legislature a power to legislate for imposition of tax or additional tax with reference to an act committed by a person, which is treated as an offence under the Act of 1939. Entry 56 of List II of Seventh Schedule will no doubt receive a liberal construction. However, as already noticed hereinabove, under Entry 56 tax can be imposed on goods and passengers carried by road or inland waterways. Such tax has to be compensatory or regulatory. It can be for the use of road and: of the vehicle. Entry 56 of List II cannot however be interpreted to bring within its frame work the imposition of tax for an act which is offence. A person who is plying vehicle on road is liable to pay tax, surcharge, special road tax. Thus, irrespective of whether he is having a permit or not or whether he is plying the vehicle in contravention of the conditions of permit, the power vesting with the State Legislature in Entry 56 cannot beutilised for imposition of penalty in the form of tax. In our opinion, what has been done by Section 4B(3) is not the imposition of tax, but a fine or penalty for an alleged offence of plying the vehicle without a valid permit or in contravention of the conditions of permit. Such a penalty cannot be treated as a part of regulatory or compensatory tax.

24. In view of the above discussions, it must be held that Section 4B(3) is beyond the legislative competence of the State Legislature and is liable to be declared as ultra vires to the powers of the State Legislature.

25. In view of the above, we do not consider it necessary to decide a number of other questions raised in these writ petitions regarding the action taken by the checking party and the manner of recovery of the so-called tax from the petitioners.

26. Consequently, the writ petitions are allowed. Section 4B(3) of 1951 Act is declared unconstitutional and is hereby struck down. As a result of this, all actions taken by the respondents regarding recovery of tax under Section 4B(3) from the petitioners and other actions like recovery of compounding fees etc. are declared illegal and the respondents are directed to refund the amount to the petitioners. However, we make it clear that the respondents will be free to take any action against the petitioners under the provisions of law for violation of the provisions of 1939 Act or any other law.

Parties are left to bear their own costs.