# HANSRAJ BAGRECHA

*v.*

# STATE OF BIHAR & ORS.

*September* 18, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

*Constitution of India, Arts.* 301 & 304—*The Bihar Sales Tax Act, 1959 as amended by Bihar Finance Act,* 1966, *ss. 3A, 5A, & 42—The Bihar Sales Tax Rules,* 1959, *R.31B—Levy of purchase tax on goods whether per se restrictive of freedom of tarade—Presidential assent whether required for levy of tax—Sections 3A & 5A of Bihar Act whether invalid on ground of contravention of s. 15 of Central Sales Tax Act,* 1956—*Rules 31B restricts transport of goods pursuant to transactions in course of inter-State trade—Hence invalid.*

Under s. 5A of the Bihar Sales Tax Act 1959 as amended by the Bihar Finance Act, 1966 the purchase tax on goods declared under s. 3A was to be levied at the point of purchase made from a person other than a registered dealer. By a notification dated September 14, 1966 the Governor of Bihar declared jute as a commodity liable to purchase tax at the rate specified in the notification. The appellant carried on business in jute. In the course of his business he purchased raw jute from producers in West Bengal, transported it to Kishenganj Railway Station in Bihar and then re-exported it to purchasers in West Bangal. He also bought raw jute in Bihar and exported it to merchants and mill-owners in West Bengal by rail from Kishenganj Railway Station. After the enactment of ss. 3A and 5A the State Government issued a notification dated December 26, 1967 purporting to exercise power under s. 42 of the Bihar Sales Tax Act, 1959 read with r. 31B of the Bihar Sales Tax Rules, 1959 notifying that no person shall tender at any railway station mentioned in Sch. II any consignment of goods mentioned in Sch. I exceeding the quantity specified for transport to any place inside the State of Bihar and no person shall accept such tender in accordance with the conditions laid down in the said R. 31B. Under Sch. I jute exceeding 800 kg. could not be tendered for transport without a despatch permit and Kishenganj was one of the railway stations mentioned in Sch. II. In July 1967 the Superintendent of Commercial Taxes prohibited the railway authorities from loading and despatching jute goods from any railway station in Purnea district without the production of a registration certificate. For non-production of such certificate the railway authorities refused to despatch from Kishenganj the jute goods booked by the appellant. The appellant moved a writ petition in the High Court of Patna challenging *inter alia* the validity of ss. 3A and 5A of the Bihar Sales Tax Act and of R.31B. The High Court dismissed the petition. With certificate the present appeal was filed. In support of the petition it was urged (i) that ss. 3A and 5A infringed the guarantee of freedom of trade under Art. 301 of the Constitution and since the amendment by the Finance Act, 1966 introducing these sections did not receive the assent of the President under Art. 304(b) the amendment was not saved; (ii) that ss. 3A and 5A were contrary to s. 15 of the Central Sales Tax Act, 1956 and accordingly void; (iii) that R. 31B framed by the State Government and the notification issued on December 26, 1967 were unauthorised and liable to be struck down.

HELD: (i) The assumption that the levy of purchase tax must be deemed in all circumstances to violate the guarantee under Art. 301 and

A the levy will be valid only if the Act is enacted by the State Legislature with the previous sanction of the President cannot be accepted as correct. Imposition of tax may in certain circumstances impede free flow of trade, commerce and intercourse. But every tax does not have that effect. [417 G; 419 E]

*State of Madras v. N. K. Nataraja Mudaliar* [1968] 3 S.C.R. 829, *Atiabari Tea Co. Ltd.* v. *State of Assam*, [1967] 1 S.C.R. 809 and *The* B *Andhra Sugars Ltd.* v. *State of Andhra Pradesh*, 21 S.T.C. 212, applied.

In the present case the petitioner has made no averments in his petition which supported the plea that imposition of purchase-tax directly and immediately restricts or impedes the free flow of trade. Since power to impose purchase tax under s. 3A was not shown to restrict or impede the free flow of trade directly and immediately, it need not seek to derive for its validity, support from Art. 304(b). [419 G]

C (ii) By s. 15 of the Central Sales Tax Act, tax liable in respect of declared goods on transactions of sale or purchase is restricted to 3% and is not leviable at more than one stage. There was no dispute that the purchase tax on jute was leviable at the first point of purchase under s. 3A of the Bihar Sales Tax Act, and the rate of tax was not shown to exceed the maximum prescribed by s. 15 of the Central Sales Tax Act. The provisions of ss. 3A and 5A of the Bihar Sales Tax Act are not therefore inconsistent with the provisions of s. 15 of the Central Sales D Tax Act. [420 E]

(iii) Rule 31B of the Bihar Sales Tax Rules must however be struck down as *ultra vires*. [420 F]

The power of the State Legislature is restricted to legislate in respect of intra-State transactions of sale and purchase and to matters ancillary or incidental thereto; it has no power to legislate for levy of tax on sales and purchase in the course of inter-State transactions. The power E conferred by s. 42 authorising the imposition of restriction or transport or movement of goods may only be exercised in respect of transactions which facilitate levy, collection and recovery of tax on transactions of intra-State sale or purchase. When r. 31B prohibits transport of goods to any place outside the State of Bihar unless a certificate is obtained from the appropriate authority, it seeks to prohibit transport of goods pursuant to transactions which may not even be of the nature of sale or purchase transactions; in any case it restricts transport pursuant to F transactions in the course of inte-State trade and commerce. The operation of the rule is not restricted only to transactions in the course of intra-State trade and commerce. The rule authorises restrictions on inter-State transactions and is on that account unauthorised. For the same reasons the notification issued on December 26, 1967 must be regarded as also unauthorised. [421 E-G]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1985 of 1969.

Appeal from the judgment and order dated January 4, 1969 of the Patna High Court in Civil Writ Jurisdiction case No. 520 of 1967.

*M. C. Chagla, D. P. Singh* and *V. J. Francis*, for the appellant.

H *L. M. Singhvi* and *U. P. Singh*, for respondents Nos. 1 to 4.

The Judgment of the Court was delivered by

SHAH, J. This appeal is filed with certificate granted by the High Court of Patna under Art. 133(1)(a) of the Constitution.

The appellant Hansraj Bagrecha carries on business in jute. In the course of his business the appellant buys raw jute from producers in West Bengal, transports it to Kishanganj Railway Station (which is within the State of Bihar) and then re-exports it to purchasers in West Bengal. He also buys raw jute in Bihar and exports it to the merchants or mill owners in West Bengal by rail from Kishanganj Railway Station.

The Bihar Sales Tax Act, 1959, as originally enacted did not provide for levy of purchase tax. By the Bihar Finance Act, 1966, with effect from April 1, 1967, among others the following sections were incorporated in the Bihar Sales Tax Act, 1959 :

> S.3A "The State Government may from time to time, by notification declare any goods to be liable to purchase tax on turnover of purchase :
>
> Provided that general sales tax and special sales tax shall not be payable on the sale of goods or class of goods declared under this section."
>
> S. 5A "The purchase tax on goods declared under section 3A shall be levied at the point of purchase made from a person other than a registered dealer."

By a notification dated September 14, 1966 the Governor of Bihar declared 'jute' as a commodity liable to purchase tax at the rate specified in the notification.

Section 42 of the Bihar Sales Tax Act by the first sub-section provided :

> "No person shall transport from any railway station, steamer station, air-port, post office or any other place, whether of similar nature or otherwise, notified in this behalf by the State Govt., any consignment of such goods, exceeding such quantity, as may be specified in the notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act."

Section 46 of the Act invested the State Government with power to make rules for all matters expressly required or allowed by the Act to be prescribed and generally for carrying out the purposes of the Act and regulating the procedure to be followed, forms to

A be adopted and fees to be paid in connection with proceedings under the Act and all other matters ancillary or incidental thereto.

In exercise of the powers conferred under s. 46(1) the State of Bihar promulgated under Rules 31 B and 8C, Rule 31B, which provided :

B "(1) No person shall tender at any railway station, steamer station, air-port, post-office or any other place, whether of similar nature or otherwise, notified under section 42, any consignment of such goods exceeding such quantity, as may be specified in the notification, for transport to any place outside the State of Bihar, unless such person has obtained a despatch permit in C Form XXVIII-D from the appropriate authority referred to in the Explanation to rule 31 and no person shall accept such tender unless the said permit is surrendered to him."

Rule 30(1) provided :

D "The first purchase of goods declared under section 14 of the Central Sales Tax Act, 1956, shall be leviable to tax in terms of sections 3, 3A and 5A of the Act and no subsequent sales or purchases in respect of the said goods shall be liable to any tax under the Act."

E After the enactment of ss. 3A and 5A the State Government issued a notification dated December 26, 1967 purporting to exercise power under s. 42 of the Bihar Sales Tax Act, 1959 read with r. 31B of the Bihar Sales Tax Rules, 1959, notifying that no person shall tender at any railway station mentioned in Sch. II, and consignment of goods mentioned in Sch. I, exceeding the F quantity specified for transport to any place outside the State of Bihar and no person shall accept such tender in accordance with the conditions prescribed in r. 31B of the Bihar Sales Tax Rules, 1959. Under Sch. I 'Jute' exceeding 800 Kg. could not be tendered for transport without "a despatch permit", and Kishanganj was one of the Railway Stations mentioned in Sch. II.

G In July 1967 the Superintendent of Commercial Taxes addressed a letter prohibiting the railway authorities from loading jute goods and despatching them from any railway station within the Purnea District of Bihar, except on production of a "registration certificate". By his letter dated July 10, 1967 the Station Master Kishanganj called upon the Secretary, Jute Merchants Association, Kishanganj, to produce a certificate as required in the letter of the H Superintendent of Commercial Taxes, before "loading jute goods for despatch was commenced" and informed them that in default wagons allotted to the jute merchants shall be cancelled and

registration fees forfeited and that "demurrage" will be charged. The appellant's request that jute booked by him be despatched from Kishanganj was turned down by the railway authorities, because the registration certificate issued by the Superintendent of Commercial Taxes, Purnea for the movement of jute from the place was not produced.

The appellant then moved a petition before the High Court of Patna on August 29, 1967 challenging the validity of ss. 3A, 5A, 42 and 46 and r. 31B of the Bihar Sales Tax Rules, 1959. The High Court of Patna dismissed the petition. With certificate granted by the High Court this appeal has been preferred by the appellant.

In support of the appeal counsel for the appellant raised three contentions :

(1) that ss. 3A & 5A as incorporated 4th Finance Act of 1966 infringed the guarantee of freedom of trade under Art. 301 of the Constitution and since the amendment made by the Finance Act, 1966 did not receive the assent of the President under Art. 304(b) the amendment was not saved;

(2) that ss. 3A & 5A and r. 8C "were contrary to" s. 15 of the Central Sales Tax Act, 1956 and were void on that account; and

(3) that r. 31B framed by the State Government and the notification issued on December 26, 1967 were unauthorised and liable to be struck down.

Article 301 of the Constitution guarantees freedom of trade, commerce and intercourse throughout the territory of India. By Art. 302 the Parliament is authorised by law to impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Art. 303(1) imposes restrictions upon the power which the Parliament or the Legislature of a State may exercise to make any law giving, or authorising the giving of, any preference to one State over another, or making or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule. But that clause does not operate to restrict the power of the Parliament to make any law giving, or authorise the giving of, any preference or making or authorising the making of, any discrimination, if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from

A scarcity of goods in any part of the territory of India; Art. 303 (2). Art. 304 provides in so far as it is relevant :

> "Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—
>
> (a)
>
> B
>
> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :
>
> Provided that no Bill or amendment for the pur-
> C pose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

Art. 304 is in terms a restriction on the freedom guaranteed by Art. 301. Notwithstanding the amplitude of the freedom of trade, commerce and intercourse throughout the territory of India, the
D Legislature of a State may by law impose among others such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. But that authority to impose reasonable restrictions on the freedom of trade, may only be exercised by the Legislature of a State if the Bill or amendment for the purpose of
E cl. (b) is introduced or moved in the Legislature of a State with the previous sanction of the President.

It was contended that since s. 3A providing for the levy of purchase tax imposes a restriction on the freedom of trade, commerce and intercourse and on that account violates the freedom of
F trade guaranteed by Art. 301, it may be saved only if it is legislation of the nature comtemplated by Art. 304(b) and the Bill which was enacted into the Act received the previous assent of the President. The assumption that the levy of purchase tax must be deemed in all circumstances to violate the guarantee under Art. 301, and the levy will be valid only if the Act is enacted by the State Legislature with the previous sanction of the President,
G cannot be accepted as correct. This Court in *The State of Madras* v. *N. K. Nataraja Mudaliar*(1)—examined the validity of laws which impose taxes on sale in the light of Art. 301. It was observed at p. 839 :

> "This Article (Art. 301) is couched in terms of
> H the widest amplitude; trade, commerce and intercourse are thereby declared free and unhampered throughout the territory of India. The freedom of trade

(1) [1968] 3 S. C. R. 829.

so declared is against the imposition of barriers or obstructions within the State as well as inter-State : all restrictions which directly and immediately affect the movement of trade are declared by Art. 301 to be ineffective. The extent to which Art. 301 operates to make trade and commerce free has been considered by this Court in several cases. In *Atiabari Tea Co. Ltd.* v. *The State of Assam and others*(1) Gajendragadkar, J., speaking for himself and Wanchoo and Das Gupta JJ, observed at p. 860 :

". . . . . we think it would be reasonable and proper to hold that restrictions, freedom from which is guaranteed by Art. 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade."

"In *Automobile Transport (Rajasthan) Ltd* v. *The State of Rajasthan and others*(2) the view expressed by Gajendragadkar, J., in *Atiabari Tea Co's* case was accepted by the majority. Subba Rao, J., who agreed with the majority observed that the freedom declared under Art. 301 of the Constitution of India referred to the right of free movement of trade without any obstructions by way of barriers, inter-State or intra-State, or other impediments operating as such barriers. The same view was expressed in Firm *A.T.B. Mehtab Majid and Company* v. *State of Madras and Another*(3) by a unanimous Court. It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Art. 301 and subject to the other provisions of the Constitution they may be regarded as void.

But it is said that by imposing tax on sales, no restriction hampering trade is imposed. In the *Atiabari Tea Company's* case, Gajendragadkar, J., observed :

"Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Art. 301. The argument that all taxes should be governed by Art. 301 whether or not their impact on trade is immediate or mediate, direct or remote, adopts, in our opinion, an extreme approach which cannot be upheld."

In a recent judgment of this Court in *The Andhra Sugars Ltd. and Another* v. *The State of Andhra Pradesh and others*(4)

(1) [1961] 1 S.C.R. 809.
(2) [1963] Supp. 2 S. C. R. 435.
(3)[1963] 1 S.C.R. 491.
(4) 21 S.T.C. 212

A Bachawat, J., speaking for the Court after referring to the observations made by Gajendragadkar, J., in *Atiabari Tea Company's* case(1) observed :

> "This interpretation of Article 301 was not dissented from in *Automobile Transport (Rajasthan) Ltd.* v. *State of Rajasthan*(2). Normally, a tax on sale of
B goods does not directly impede the free movement or transport of goods. Section 21 is no exception. It does not impede the free movement or transport of goods and is not violative of Article 301."

Section 21 of the Andhra Pradesh Sugar Cane (Regulation of
C Supply and Purchase) Act which was referred to in the judgment authorised the State Government to levy a tax at such rate,

> "not exceeding five rupees per metric tonne as may be prescribed on the purchase of cane required for use, consumption or sale in a factory. It must, therefore, be regarded as settled law that a tax may in certain cases
D directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so."

Imposition of tax of the nature of purchase tax does not by itself restrict freedom of trade, commerce or intercourse. Imposition of tax may in certain circumstances impede free flow of trade, commerce or intercourse. But every tax does not have
E that effect. Imposition of a purchase-tax by the State does not by itself infringe the guarantee of freedom under Art. 301

The argument that imposition of sales or purchase tax must be regarded in all cases as infringing the guarantee of freedom under Art. 301 cannot be accepted as correct.

F The appellant filed the petition out of which their appeal arises soon after the Station Master informed the Jute Merchants Association about his inability to book consignments of jute. He has made no averments in the petition which support the plea that imposition of purchase-tax "directly and immediately restricts or impedes" the free flow of trade. Since power to impose
G purchase tax under s. 3A on notified goods is not shown to restrict or impede the free flow of trade directly and immediately, it need not seek to derive, for its validity, support from Art. 304(b).

The contention that ss. 3A & 5A are inconsistent with s. 15 of the Central Sales Tax Act, 1956 is without substance. By s. 14 of the Central Sales Tax Act, 1956 certain classes of goods are
H declared goods of special importance in inter-State trade or commerce. Jute is one of such classes of goods. By s. 15 as

(1) [1961] 1 S. C. R. 809. (2) [1963] 1 S. C. R. 491.

amended by the Central Sales Tax Second Amendment Act XXXI of 1958 it is provided :

> "Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :—
>
> (a) the tax payable under that law in respect of any sale of purchase of such goods inside the state shall not exceed three per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) where a tax has been levied under that law in respect of the sale or purchase inside the state of any declared goods and such goods are sold in the course of inter-state trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

By s. 15 of the Central Sales Tax Act in respect of the declared goods on transactions of sale or purchase the tax leviable is restricted to 3% and is not leviable at more than one stage. There is no dispute that the purchase tax on jute is leviable at the first point of purchase under s. 3A of the Bihar Sales Tax Act, and the rate of tax also is not shown to exceed the maximum prescribed by s. 15 of the Central Sales Tax Act. The provisions of ss. 3A & 5A of the Bihar Sales Tax Act are not therefore inconsistent with the provisions of s. 15 of the Central Sales Tax Act.

But, in our judgment, r. 31B of the Bihar Sales Tax Rules, 1959 and the notification issued on December 26, 1967 are unauthorised and must be struck down. The Bihar Sales Tax Act is enacted by the Legislature to consolidate and amend the law relating to the levy of tax on the sale and purchase of goods in Bihar. The State Legislature is competent in enacting sales-tax legislation to make a provision which is ancillary or incidental to any provision relating to levy, collection and recovery of sales-tax and purchase-tax. A provision which is made by the Act or by the Rules which seeks to prevent evasion of liability to pay tax on intra-State sales or purchase would therefore be within the competence of the Legislature or the authority competent to make the rules. But the State Legislature has no power to legislate for the levy of tax on transactions which are carried on in the course of inter-State trade or commerce or in the course of export. Section 42 of the Bihar Sales Tax Act, 1959, prevents any person from transporting from any railway station, steamer station,

A air-port, post office or any other place any consignment of such goods exceeding the quantity specified with a view to ensuring that there is no evasion of tax payable under the Act. But the power under s. 42 can only be exercised in respect of levy, collection and recovery of intra-State or purchase tax. It cannot be utilised for the purpose of ensuring the effective levy of Inter-State sales B or purchase tax.

The appellant purchased jute both within and without the State of Bihar. In respect of transactions of purchase within the State of Bihar and despatch of goods liability to pay purchase-tax at the point of purchase may arise. In respect of goods which are purchased in the State of West Bengal and brought within the C State of Bihar and then despatched to other States in the course of inter-State transactions no question of levy of purchase-tax under the Bihar Sales Tax Act arises. R. 31B framed by the State Government seeks to prohibit transport in pursuance of transactions which are inter State, for in terms it prohibits transporting of goods to any place *outside the State of Bihar*. Again trans- D port of goods for personal consumption or use, or of goods gifted, pledged or dealt with otherwise than by sale, falls within the injunction contained in r. 31B.

The power of the State Legislature is restricted to legislate in respect of intra-State transactions of sale and purchase and to matters ancillary or incidental thereto : it has no power to legis- E late for levy of tax on sales and purchase in the course of inter-State transactions. The power conferred by s. 42 authorising the imposition of restriction on transport or movement of goods may only be exercised in respect of transactions which facilitate levy, collection and recovery of tax on transactions of intra-State sale or purchase. When r. 31B prohibits transport of goods to any F place outside the State of Bihar unless a certificate is obtained from the appropriate authority, it seeks to prohibit transport of goods pursuant to transactions which may not even be of the nature of sale or purchase transactions; in any case it restricts transport pursuant to transactions in the course of inter-State trade and commerce. The operation of the rule is not restricted G only to transactions in the course of intra-State trade and commerce. The rule authorises restrictions on inter-State transactions and is on that account unauthorised. For the same reasons the notification issued on December 26, 1967 must be regarded as also unauthorised.

In the view we have taken r. 31B and the notification issued H by the State Government on December 26, 1967 must be declared *ultra vires*, and since r. 31B and the notification are *ultra vires* the communication issued by the Superintendent of Commercial

Taxes to the Railway Authorities must also be declared unauthorised. A writ will therefore issue declaring r. 31B and the notification issued by the Government of Bihar on December 26, 1967 *ultra vires*, and the letter written by the Superintendent of Commercial Taxes to the Railway Authorities is also declared unauthorised.

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Having regard to the circumstances, we think there should be no order as to costs.

G.C.