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PROBLEMS OF INTERSTATE TRADE AND COMMERCE IN INDIA

By

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In almost all federal constitutions of the world control over trade and commerce is very important legislative power. Many a time it has given rise to legal disputes between the Federal governments and the governments of the Constituent units of the Federation. In United States of America, though the power of the Federal Government to control Trade and Commerce is confined to interstate and Foreign commerce only, the power of the congress under this clause has been more profound due to judicial interpretation. In Gibbon's v. Ogden, the Supreme Court held that commerce was not limited merely to buying and selling or interchange of commodity but it included navigation also. In a series of decision that followed the Supreme Court so extended the power of the congress under this clause as to cover transport industries and other commercial activities. The observation made by Chief Justice Hughes in National Labour Regulation Board v. Zones and Laughlin Steel Corporation,

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case is significant. He said "When Industries organise themselves on national scale, making their relation to inter-state commerce the dominant factor in their activity, how can it be maintained that their Industrial Relations constitute a forbidden field in to which congress may not enter, when it is necessary to protect inter-state commerce from consequences of Industrial War."

In British North America Act, 1867 the dominion Parliament has been given the exclusive power over "Regulation of trade and commerce" under section 91 item 2. But by judicial interpretation the meaning and scope of this power has been very much reduced. In Toronto Electric Commission v. Snider Viscount Haldane, observed that the power to regulate the trade and commerce can not be relied on as enabling the dominion parliament to regulate the civil right in the provinces. The result of such decisions, has been that power of the dominion parliament to regulate commerce is to be exercised only when it does not conflict with the property and civil right over which the provinces have the right to legislate.

In Australia the power to regulate inter-state trade and commerce is with the Government of the Commonwealth. The term commerce has been given a very wide meaning by the Australian High Court and the Commonwealth can legislate upon monopoly, transport by land, Sea and Air, and relations of employer and employees in the interstates commerce. But this power has been very much restricted by section 92 which provides that trade commerce and inter-course among states shall be absolutely free. The Privy Council considered this question in the Second Dried fruit case... 'James v. Commonwealth' and held that section 92 was binding as much upon commonwealth as upon the states for otherwise the freedom of trade guaranteed by Sec. 92 would be illusory. The idea of freedom of trade under Australian Constitution involved

freedom from customs, duties on imports, border prohibitions and restriction of every kind. Burdens and hindrances to the freedom of trade and commerce may appear in different forms but all these can be struck down U/S 92 of commonwealth of Australia Act.

The framers of the Indian Constitution had closely examined the implications of the various judicial decisions given by highest courts in Canada, Australian and United States of America in respect of the commerce clause and benefited from their experience. In the draft constitution of India freedom of trade, commerce and inter course appeared as a fundamental right in Part III of the Constitution but later it was transferred to Part XIII. Thus it ceased to be a fundamental right. But it continues to be a limitation upon the legislative power. Under Article 19(1)(G) a citizen has right to carry any trade or business, where as Article 301 provides that trade commerce and intercourse throughout the territory of India shall be free. The object of Article 19 (1)(g) is to guarantee to each citizen the right to carry on trade, where as Article 301 aims at making India one Unit for the purpose of trade and commerce. Freedom of trade and commerce may however be restricted by a law made by the Parliament in Public interest provided it does not discriminate against any particular state except when such discriminatory treatment has been rendered necessary owing the scarcity of goods in any part of India. The States may also restrict this freedom provided the law made by them only imposes reasonable restriction in the public interest and the sanction of the President has been obtained for making such law. In the absence of Presidential sanction the state law may be challenged if it infringes Article 301. The Supreme Court considered the scope of Article 301, in Motilal v. The Uttar Pradesh Government and Agarwal J. observed as under:

"It may be conceded that reasonable restraints in Public interest mentioned in clause (6) of Art. 19 to which the freedom of citizen to carry on any occupation trade and or business in subject, may presumably be assimilated to the police power of the state as evolved by the American courts or the regulatory power to which absolute freedom of commerce and trade guaranteed under Section 92. Australian Act, was made subject by Australian Courts and there lordship of the privy council. I do not think that there is much distinction between the world reasonable restriction as used in clause (6) and regulation as used in American and Australian cases. Every regulation is a restriction of some kind though every restriction may not be regulation. But every reasonable restriction is to my mind nothing more than what has been held to be justifiable regulation." Thus it appears that Art. 301 to Art. 304 give power to the parliament and the states to regulate trade, commerce and inter course where they deem it necessary to do so in public interest.

As has been stated earlier the object of the founding fathers was to bring about uniform economic growth of the country doing away with the regional imbalances. Because barriers to free flow of inter-state trade and commerce are hindrance to the economic growth of the country, the Indian Constitution attempted to remove such barriers. Before the constitution (Sixth Amendment) Act, 1956, Article 286(2) provided that 'Except in so far as Parliament may by law otherwise' provide, no law of a state shall impose or authorise the imposition of a tax on the sale and purchase of any goods where such sale or purchase takes place in the course of inter-state trade or commerce." This article had put a ban on state taxation of interstate sales. But the purpose of this article seems to have been defeated by the decision of the Supreme Court in State of Bombay v. United Motors case in which the Bombay Sales Tax Act, 1952 had been challenged. By the impugned Act the State of Bombay could

tax a Sale even though the seller was out side Bombay, if as result of the sale goods were delivered in the state of Bombay for consumption there. The Supreme Court held that although such a transaction was in reality an inter-state transaction, it lost its inter-state character the moment the goods were delivered in the State of Bombay. The court placed its reliance on explanation to article 28(1) which runs as follows:

'for the purpose of sub clause (a) a sale or purchase shall be deemed to have taken place in the state in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that state, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such a sale or purchase passed in another State.'

Chief Justice Patanjali Sastry said that as soon as the goods are delivered in the state for the purpose of consumption there, the transaction loses its inter-state character and falls out side the purview of article 286(2). The result of this decision was that a dealer having sales in several states was liable to be taxed in each one of those state in respect of the deliveries made in those states. This caused serious inconvenience to the dealers having interstate dealings.

This questions came at again before the Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar' and the Court, overruling its decision in United Motors case, held that even the delivery state cannot tax an interstate sale. The question for consideration before the Supreme Court was whether Bihar State was competent to levy a tax on sale effected by the seller in West Bengal when the goods were delivered for consumption to the buyer in Bihar. The Bihar Government placed its reliance on

on Explanation to article 286(1) and contended that in view of the Explanation such a sale should be treated as a sale inside Bihar and therefore Bihar was competent to tax this sale. Chief Justice S.R. Das who spoke for the majority stated that the explanation to article 286(1) does not confer any legislative power and only removes a ban on state Taxation of outside sale. There is another ban on state taxing power imposed by article 286(2) in respect of interstate sales. - The sale in question being an interstate sale this ban applies until it has been removed by the Parliament. The result of this decision was that even the delivery state could not tax an interstate sale.

The Constitution (Sixth amendment) Act, 1956 was passed to remedy the situation created by the Bengal Immunity Companies case. The result of this Act is that it confers upon the union Parliament the exclusive power to tax interstate sales. The Central Sales Tax Act, 1956 was passed in pursuance to the power conferred upon the Parliament by the Constitution (Sixth amendment Act) 1956. The Act imposes tax on interstate sales. This tax is to be collected and utilised by the state within which it is levied. The purpose of this Act is not to add to the revenues of the central government but only to keep the interstate commerce under central control.

The constitution of India has given power to the states to tax under several heads. In normal exercise of their taxing powers the states may pass statutes which may impinge on the freedom of commerce guaranteed under article 301 of the constitution. What is the scope of this freedom? Does it cover the freedom from Taxing Statutes as well? This question came up for consideration before the Supreme Court in 'Attiabari Tea Company v. State of Assam'. The Assam Taxation (on goods carried by roads or inland water ways) Act, 1954 provided for the levy of Tax on goods carried by road or

inland water ways in the state of Assam. The Assam government made demand on the petitioners which had to carry their Tea by road through the State of Assam for payment of Tax under the provision of the above Act. The petitioners challenged the right of the Assam government to levy such tax because the Act violated the freedom of commerce provided for by Article 301 of the constitution.

Justice Gajendragadkar discussing the freedom of trade, commerce and intercourse under part XIII of the constitution stated that this freedom covered freedom from taxing statutes as well. He further said 'the purpose of article 301 is to allow the free flow of stream of trade, commerce and intercourse throughout the territory of India. It embodies and enshrines a principle of paramount importance for ensuring of economic unity of the country which in its turn will provide a sustaining force for preservation and promotion of political and cultural unity of the country.' Under article 302 Parliament may in public interest impose restrictions on freedom of trade and commerce both intra-state and inter-state. The power is subject to article 303 by which Parliament cannot discriminate between one state and another or give preference to one state over other unless it declares that it is necessary to do so to cope with situation arising from scarcity of goods in any part of India. The impugned statute interferes with the freedom of trade and commerce. It cannot be sustained under article 302 for it has not been passed by the Parliament, nor can it stand up article 304 because no previous sanction of the President has been obtained. It therefore fails.

Chief Justice Sinha dissented from the majority view. He observed that so long as the tax is not in the nature of an impediment to the free flow of commerce, it cannot be attacked under article 301. This statute is not intended to be such impediment, so it is valid.

The question came up again before the Supreme Court in Automobile Transport (Rajasthan) Ltd. v. State of Rajasthan in which the validity of Rajasthan Motor Vehicles Taxation Act (1951) was challenged. The Act imposed a Tax on playing of motor vehicles. The Supreme Court affirming its view held in Attiabari case stated that taxing laws are within the purview of article 301. But it qualified its statement by adding that 'regulatory measures or measures imposing compensatory Taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by article 301 and such measures need not comply with the requirements of Proviso to article 304(b) of the constitution. As this tax was held to be in the nature of a compensatory tax so it was not hit by article 301. A tax is presumed to be compensatory unless it is so excessive or prohibitive as to be a hindrance to the free flow of commerce. The same view was held by the court in the State of Assam v. Labanya Prabha Devi case.

It is submitted that the decision of the Supreme Court in the automobile cases in effect over-rules its decision in Attiabari case. The view expressed by Chief Justice Sinha in his dissenting judgment in Attiabari case appears to be correct. A tax simpliciter was not treated as involving restriction on the freedom of internal trade under sec. 297(1) of the government of India Act 1935. When same provision was made by article 304(a) it is reasonable to assume that the same view was taken of it. A tax simpliciter cannot therefore be treated as an impediment to free flow of trade and commerce.

The Parliament of India may by law impose such restrictions on freedom of trade, commerce and intercourse between one state and another or within any part of the territory of India as may be required in Public interest (Article 302). The legislature of a state may by law impose such reasonable restriction on freedom of trade, commerce or intercourse with or within the state as may be required in the public interest. It is for the government to establish that a certain restriction imposed by law is in public interest.

The concept of public interest is identical with public purpose. Justice Mahajan observed in State of Bihar v. Maharaja of Darbhanga that the legislature is best judge of what is good for the community. The phrase public purpose has to be construed according to the spirit of the time in which particular legislation is enacted.

The question of discriminatory Tax came up for consideration in Mehtab Majid & Co. v. State of Madras. The validity of rule 16 of Turnover and Assessment Rules made under Madras General Sales Act, 1939 was challenged. Justice Raghuvver Dayal observed.

'It is well settled that taxing laws can be restriction on trade, commerce and inter-course if they hamper the flow of trade and if they are not what can be termed to be compensatory Taxes or regulatory measures. Sales Tax of the kind under consideration here, cannot be said to be measure regulating any trade or a compensatory tax levied for the use of Trading facilities. Sales Tax which has the effect of discriminating between goods of one state and goods of another, may effect the free flow of trade and then it will offend against article 301 and will be valid only if it comes within the terms of article 304(a). The rule was therefore, struck down being a piece of a discriminatory legislation. The same view was held by the Supreme Court in the State of Madhya Pradesh v. Bhailal Bhai.

The decision in these cases show that article freedom of trade and commerce enshrined in article 301 is a vital principle to ensure balanced economic growth of the country. But very often we have witnessed the State Governments acting in a very parochial manner hampering the free flow of trade and commerce in name of public interest. These Governments should develop a broad national out look.

Wadhwa

