2022 PLRonline 0293

Supreme Court of India

JUSTICE A. M. KHANWILKAR JUSTICE ABHAY S. OKA JUSTICE C. T. RAVIKUMAR

ALL KERALA DISTRIBUTORS ASSOCIATION, KOTTAYAM UNIT, REPRESENTED BY ITS SECRETARY v. THE STATE OF KERALA & ANR.

CIVIL APPEAL NO. 4502 OF 2009

27th July 2022

Kerala Motor Vehicles Taxation (Amendment) Act 2005, S. 4 – Kerala Motor Vehicles Taxation Act 1976, S. 15 – Kerala Motor Transport Workers' Welfare Fund Act 1985, S. 8A

Cases Cited :

1. *Para 9: A.L.S.P.P.L. Subrahmanyan Chettiar v. Muttuswami Goundan, AIR 1941 FC 47*
2. *Para 9: Prafulla Kumar Mukherjee & Ors. v. Bank of Commerce Ltd., Khulna, AIR (34) 1947 PC 60*
3. *Para 9: The State of Bombay & Anr. v. F.N. Balsara, AIR 1951 SC 318*
4. *Paras 9, 17: M. Karunanidhi v. Union of India, AIR 1979 SC 898*
5. *Para 11: Hardev Motor Transport v. State of M.P. & Ors., (2006) 8 SCC 613*
6. *Paras 12, 32: Deep Chand v. The State of Uttar Pradesh & Ors., (1959) Supp. 2 SCR 8*
7. *Para 12: Zaverbhai Amaidas v. The State of Bombay, (1955) 1 SCR 799*
8. *Para 12: Ch. Tika Ramji & Ors., etc. v. The State of Uttar Pradesh & Ors., (1956) SCR 393*
9. *Paras 12, 33: Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of Tamil Nadu & Ors., (1996) 3 SCC 15*
10. *Para 12: Kulwant Kaur & Ors. v. Gurdial Singh Mann (Dead) by LRs. & Ors., (2001) 4 SCC 262*
11. *Para 13: Kaiser-I-Hind Pvt. Ltd. & Anr. v. National Textile Corpn. (Maharashtra North) Ltd. & Ors., (2002) 8 SCC 182*
12. *Paras 13, 21: Hoechst Pharmaceuticals Ltd. & Ors. v. State of Bihar & Ors., (1983) 4 SCC 45*
13. *Para 13: State of Kerala & Ors. v. Mar Appraem Kuri Company Limited & Anr., (2012) 7 SCC 106*
14. *Para 14: Union of India & Ors. v. Mohanlal Likumal Punjabi & Ors., (2004) 3 SCC 628*
15. *Para 14: Director of Elementary Education, Odisha & Ors. v. Pramod Kumar Sahoo, (2019) 10 SCC 674*
16. *Para 17: Association of Natural Gas & Ors. v. Union of India & Ors., (2004) 4 SCC 489*
17. *Para 17: Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., (2007) 9 SCC 109*
18. *Para 18: Ashok Kumar alias Golu v. Union of India & Ors., (1991) 3 SCC 498*
19. *Paras 18, 19: State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors., (2011) 8 SCC 737*

20. *Para 19: Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors., (1981) 1 SCC 722*
21. *Para 27: Collector of Customs, Madras v. Nathella Sampathu Chetty & Anr., AIR 1962 SC 316*
22. *Para 27: New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise, Allahabad & Ors., (1970) 2 SCC 820*

Petitioner Counsel: RANJITH K. C., Respondent Counsel: P. S. SUDHEER NISHE RAJEN SHONKER

JUDGEMENT

A. M. KHANWILKAR, J.

1. These appeals involve challenge to the constitutional validity of sub-sections (7) and (8) of Section 4 [introduced by way of the Kerala Motor Vehicles Taxation (Amendment) Act, 2005 (for short, “the Amendment Act”) in the Kerala Motor Vehicles Taxation Act, 1976 (for short, “the 1976 Act”)], Section 15 of the 1976 Act and Section 8A of the Kerala Motor Transport Workers’ Welfare Fund Act, 1985 (for short, “the 1985 Act”) inserted by Act 23 of 2005.

2. The thrust of the challenge is on the ground that the State Legislature by way of stated amendments to the welfare legislation has effectively bootstrapped the obligation to make contribution to the workers’ welfare fund with the obligation to pay tax for operating motor vehicles. In other words, the welfare legislation is intertwined with the compensatory legislation by the impugned Amendment Act of 2005 and together they substantially encroach and override the relevant provisions of the Central legislation i.e., the Motor Vehicles Act, 1988 (for short, “the 1988 Act” or “the Central Act”, as the case may be) to paralyse the Stage and Goods Carriage Operation or to undermine the effectiveness of the transport permit provided under the 1988 Act.

3. The 1976 Act was enacted by the State Legislature when the erstwhile Motor Vehicles Act, 1939 (for short, “the 1939 Act”) was in force. It was so enacted under Entry 56 (Taxes on goods and passengers carried by road or on inland waterways) and Entry 57 (Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III) of List II of the Seventh Schedule to the Constitution. Section 15 of the 1976 Act postulates that non-payment of tax due in respect of a transport vehicle within the prescribed period would render the transport permit for such vehicle ineffective from the date of expiry of the said period until such time as the tax is actually paid. The State of Kerala had sought Presidential assent for the 1976 Act and the same was granted on 25.3.1976. However, in due course, the 1939 Act was repealed by the Parliament and it was replaced by the 1988 Act, introducing a new regime to consolidate and amend the law related to motor vehicles. This Act (the 1988 Act) was enacted by the Parliament under Entry 35 of List III (Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied). Chapter V of the 1988 Act deals with control of transport vehicles, including the procedure of Regional Transport Authority in considering application for stage carriage permit and the duration

and renewal of permits. According to the appellants, the 1988 Act exhaustively covered all aspects of grant, control and validity of transport permits. Further, the State of Kerala did not seek Presidential assent in respect of the State Act i.e., 1976 Act, after coming into force of the Central Act, despite the repugnancy between the existing State Act and the newly introduced the 1988 Act.

4. Furthermore, in the year 2005, the State of Kerala amended the 1976 Act and the 1985 Act thereby introducing sub-sections (7) and (8) of Section 4 (4. Payment of tax and issue of license.- (1) The Tax levied under Sub Section (1) of Section 3 shall be paid in advance with such period and in such manner as may be prescribed, by the registered owner or person having possession or control of the Motor Vehicle, for a quarter or year, at his choice, upon a quarterly or annual licence to be taken out by him. Provided that, in the case of fleet owner, the Government may direct that the tax shall be paid in monthly instalments before such date, in such manner and subject to such conditions, as may be specified in the direction: Provided further that where the tax payable in respect of a motor vehicle other than a motorcycle (including a motor scooter and cycle with attachment for propelling the same by mechanical power) or a three wheeler as specified in items 1 and 2 of the schedule or a motor car as specified in item 11 of the Schedule, for a year does not exceed Rupees one thousand five hundred, the tax shall be paid yearly upon an annual licence: Provided also that the registered owner, or person having possession or control of the motor vehicle may, at his /her choice, pay the yearly tax payable under the second proviso in advance for any period upto 5 years, upon a licence for such period: Provided also that the registered owner, or a person having possession or control of a motor cycle (including motor scooters and cycles, with attachment for propelling the same by mechanical power) specified in item 1 of the Schedule or three wheelers (including tricycles and cycle rickshaws with attachment for propelling the same by mechanical power) not used for transport of goods or passengers specified in item 2 of the Schedule or a motor car specified in item 11 of the said Schedule shall pay tax in respect of those vehicles in advance for a period of two years in lumpsum upon a licence for such period. Provided also that a registered owner or person liable to pay tax for a period of two years in respect of motor vehicles specified in serial numbers 1 and 2 of the schedule may at his choice pay tax in advance for any period exceeding two years at the rates specified in the Schedule: Provided also that the owner or a person liable to pay tax in respect of vehicles specified in items 1,2,11 and 12 of the Schedule shall not be liable to pay any periodical increase in tax for which he has paid tax for such vehicles. Provided also that a registered owner or a person liable to pay tax for a period of two years under the preceding proviso may, at his choice, pay tax in advance for a period of five years or ten years or fifteen years in lumpsum upon a licence for such period. Explanation:- (1) The tax for an annual licence shall not exceed four times tax for two years licence shall not exceed eight times, tax for 5 years' licence shall not exceed twenty times, tax for 10 years' licence shall not exceed forty times and tax for 15 years' licence shall not exceed sixty times, the tax for a quarterly licence. (1A) Notwithstanding anything contained in any other provision of this Act, 'year' in relation to a motor vehicle in respect of which tax has to be paid yearly upon an annual licence in pursuance of the second proviso to sub section (1), shall mean a period of twelve months commencing on the first day of the quarter in which the vehicle has been or is, first registered in the State and annual tax licence in respect of such a vehicle shall be taken

accordingly: Provided that if the tax in respect of a motor vehicle for any portion of the year so reckoned has already been paid, the tax payable for the remaining period of that year shall be calculated at the rate of one-twelth of the annual tax for each calendar month or part thereof. Provided further that in the case of a motor vehicle in respect of which tax has to be paid yearly upon an annual licence in pursuance of the second proviso to sub-section (1), the tax for the period from the 1st day of April 1985, to the commencement of the year in relation to such a vehicle shall be paid as if the Kerala Motor Vehicles Taxation (Amendment) Act, 1986 had not been enacted. (2) In the case of licence for a year or more, such rebate in respect of the tax, as may be prescribed, shall be granted. (3) When any person pays the amount of tax in respect of a motor vehicle used or kept for use in the State of the vehicle by the Regional Transport Officer concerned that no tax is payable in respect of such vehicle, the Taxation Officer shall- (a) grant to such person a licence in the prescribed form: and (b) record that the tax has been paid for the specified period, or that no tax is payable in respect of that vehicle, as the case may be. Provided that no licence shall be granted in respect of a motor vehicle, which is exempt from payment of tax under sub-section (1) of Section 5. (4) No motor vehicle liable to tax under Section 3 shall be kept for use in the State unless the registered owner or the person having possession or control of such vehicle has obtained a tax licence under sub-section (3) in respect of that vehicle. (5) No motor vehicle liable to tax under Section 3 shall be used in the State unless a valid tax licence obtained under sub section (3) is displayed on the vehicle in the prescribed manner. (6) Notwithstanding anything contained in sub-section (1), no person shall be liable to tax during any period on account of any taxable motor vehicle, the tax due in respect of which for the same period has already been paid by some other person. (7) Notwithstanding anything contained in any other provision of this Act, every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay contribution under the Kerala Motor Transport Worker's Welfare Fund Act, 1985 (21 of 1985) shall, before effecting payment of tax produce before the Taxation Officer the receipt of remittance of the contribution towards welfare fund due upto the preceding month. (8.) No tax under this Act shall be collected unless the receipt of remittance of contribution towards welfare fund mentioned in sub-section (7) is produced.) in the 1976 Act and Section 8A (8A. Production of receipt of remittance of welfare fund contribution.- Notwithstanding anything contained in any other law for the time being in force every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay contribution (other than autorickshaws covered under the provisions the Kerala Autorickshaw Workers' Welfare Fund Scheme, 1991) shall, at the time of making payment of the tax under the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976) produce before the Taxation Officer the receipt of remittance of the contribution to the fund upto the preceding month.) in the 1985 Act. The effect of these amendments is to mandate production of receipt of remittance of welfare fund contribution at the time of making payment of vehicle tax before the Taxation Officer. In this context, it is urged that the amendment of 2005 effected by the State legislation has effectively bootstrapped the obligation to make contribution to the workers' welfare fund with the obligation to pay tax for operating motor vehicles, which are otherwise governed by the permit issued under the 1988 Act. In the process, it undermined the effectiveness of the permit so issued by the competent authority.

5. It is urged that the amendments to the 1976 Act as also to the 1985 Act, including Section 15 of the 1976 Act, are unconstitutional as the entire field is already occupied by the Central Act of 1988, with respect to permits to be issued for operating transport vehicles. Thus, the provisions of the State Act(s) referred to above are repugnant to the Central Act and that no Presidential assent had been obtained by the State of Kerala despite the repugnancy with the Central Act. Further, even if there is no direct conflict, the impugned provisions in the State Act(s) are ultra vires for want of legislative competence.

6. Notably, in the writ petitions filed before the High Court of Kerala, challenging the stated provisions in the State enactments, no relief or declaration was sought in respect of Section 8A of the 1985 Act. Moreover, the Division Bench of the High Court in the impugned judgment noted that the counsel for the petitioner(s) had given up the challenge to the validity of Section 15 of the 1976 Act. Being conscious of this indisputable position, it is urged that there can be no estoppel on legal questions or the concessions made by the counsel on the question of law before the High Court. That cannot come in the way of the appellants to pursue the challenge to the impugned provisions before this Court.

7. Be that as it may, the Division Bench of the High Court exhaustively considered the arguments canvassed on behalf of the parties and on thorough scrutiny thereof, it negatived the challenge vide impugned judgment dated 30.7.2007. The High Court opined that the combined effect of sub-sections (7) and (8) of Section 4 and Section 15 of the 1976 Act, is that if a clearance certificate is not obtained from the Assessing Officer under the 1985 Act, the motor vehicle tax would not be received by the Taxation Officer in connection with the permit. As a consequence of which, the permit would be rendered ineffective, disentitling the owner of a stage carriage from operating his vehicle under such permit for the relevant period.

8. The High Court further noted that the 1988 Act had been enacted by the Parliament on subjects falling under Entry 35 of List III which, however, did not cover the field concerning imposition and the manner of recovery of vehicle tax. Section 81(1) (81. Duration and renewal of permits.—(1) A permit other than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective from the date of issuance or renewal thereof for a period of five years: Provided that where the permit is countersigned under sub-section (1) of section 88, such counter-signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit. …..) of the 1988 Act envisages that a permit other than a temporary permit issued under Section 87 (87. Temporary permits.—(1) A Regional Transport Authority and the State Transport Authority may without following the procedure laid down in section 80, grant permits to be effective for a limited period which shall, not in any case exceed four months, to authorise the use of a transport vehicle temporarily— (a) for the conveyance of passengers on special occasions such as to and from fairs and religious gatherings, or (b) for the purposes of a seasonal business, or (c) to meet a particular temporary need, or (d) pending decision on an application for the renewal of a permit, and may attach to any such permit such condition as it may think fit: Provided that a Regional Transport Authority or, as the case may be, State Transport Authority may, in the case of goods carriages, under the circumstances of an exceptional nature, and for reasons to be

recorded in writing, grant a permit for a period exceeding four months, but not exceeding one year. (2) Notwithstanding anything contained in sub-section (1), a temporary permit may be granted thereunder in respect of any route or area where— (i) no permit could be issued under section 72 or section 74 or section 76 or section 79 in respect of that route or area by reason of an order of a Court or other competent authority restraining the issue of the same, for a period not exceeding the period for which the issue of the permit has been so restrained; or (ii) as a result of the suspension by a Court or other competent authority of the permit of any vehicle in respect of that route or area, there is no transport vehicle of the same class with a valid permit in respect of that route or area, or there is no adequate number of such vehicles in respect of that route or area, for a period not exceeding the period of such suspension: Provided that the number of transport vehicles in respect of which temporary permits are so granted shall not exceed the number of vehicles in respect of which the issue of the permits have been restrained or, as the case may be, the permit has been suspended.) or a special permit issued under sub-section (8) (88. Validation of permits for use outside region in which granted.— ..... (8) Notwithstanding anything contained in sub-section (1), but subject to any rules that may be made under this Act by the Central Government, the Regional Transport Authority of any one region or, as the case may be, the State Transport Authority, may, for the convenience of the public, grant a special permit to any public service vehicle including any vehicle covered by a permit issued under section 72 (including a reserve stage carriage) or under section 74 or under sub-section (9) of this section for carrying a passenger or passengers for hire or reward under a contract, express or implied, for the use of the vehicle as a whole without stopping to pick up or set down along the line of route passengers not included in the contract, and in every case where such special permit is granted, the Regional Transport Authority shall assign to the vehicle, for display thereon, a special distinguishing mark in the form and manner specified by the Central Government and such special permit shall be valid in any other region or State without the countersignature of the Regional Transport Authority of the other region or of the State Transport Authority of the other State, as the case may be. .....) of Section 88 shall be effective from the date of issuance or renewal thereof for a period of five years. Whereas, the State Act i.e., the 1976 Act, came to be enacted under Entry 57 of List II of the Seventh Schedule to the Constitution, which is solely concerned with tax on vehicles whether mechanically propelled or not. Whilst, the 1985 Act is also a State legislation covered under Entries 23 and 24 of List III for promoting the welfare of motor transport workers.

9. Dealing with the challenge to the validity of the stated provisions in the State enactments, the Division Bench of the High Court plainly opined that there was no lack of legislative competence in the State Legislature and that the 1976 Act as well as the 1985 Act, fall substantially within the powers expressly conferred upon the State Legislature which had enacted both the legislations, including the Amendment Act of 2005. It further held that merely because the 1976 Act had also dealt with a subject which falls under Entries 23 and 24 of List III of the Concurrent List, it cannot be held that the provisions of the 1976 Act are bad in law. To buttress the view taken by it, the High Court relied upon the exposition in A.L.S.P.P.L. Subrahmanyan Chettiar v. Muttuswami Goundan, AIR 1941 FC 47; Prafulla Kumar Mukherjee & Ors. v. Bank of Commerce Ltd., Khulna, AIR (34) 1947 PC 60; The State of Bombay & Anr. v. F.N. Balsara, AIR 1951 SC 318; and M. Karunanidhi v. Union

of India, AIR 1979 SC 898. The High Court opined that the State enactments and the impugned amendments substantially fall within the powers expressly conferred upon the State Legislature and cannot be held to be invalid solely because it incidentally touches upon another legislation. The doctrine of pith and substance would clearly get attracted in the fact situation of the present case. Whilst dealing with the argument of the appellants that the right of appeal and review available to the appellants under the 1985 Act would be curtailed, the High Court in paragraphs 18 and 19 noted thus:

"18. Petitioners, as we have already indicated, have raised a contention that because of the introduction of sub-sections (7) and (8) to Section 4 of the Taxation Act, remedy of filing a review as well as appeal under Section 8 of the Welfare Fund Act has been effectively curtailed. Sub-section (2) of Section 8 enables a person to file a review petition before the authority who had determined the arrears showing the detailed facts and reasons for reviewing the original determination. Right is also conferred on the aggrieved party if he is dissatisfied with the order passed by the authority on the review petition to file appeal before the District Labour Officer of the concerned district. To maintain an appeal he need remit only 50% of the amount demanded. The above right to file review or appeal has been effectively taken away by sub-sections (7) and (8) of Section 4 that is, only on production of certificate of payment of contribution the officer will accept tax. We have already indicated that a Circular dated 16.06.2007 has been issued receipt of 50% of the contribution due under the Welfare Fund Act enabling the aggrieved person to pay tax. Therefore an aggrieved party who files an appeal on payment of 50% of the contribution under the Welfare Fund Act is entitled to get a certificate to that effect and on production of that certificate before the taxing authorities he would receive tax. Circular of course does not deal with review petition. We therefore order that if a properly constituted review petition is filed within the prescribed time, and the same is pending the Chief Executive Officer or any other officer appointed under section 8 of the Welfare Fund Act that officer has to issue a certificate to that effect and on production of that certificate the taxing authority should receive tax under the Taxation Act. The right to file a review petition as well as an appeal is therefore effectively protected.

19. We therefore hold that sub-sections (7) and (8) of Section 4 of Act 24 of 2005 is constitutionally valid; so also Section 8A introduced under the Welfare Fund (Amendment) Act. However, we hold if a review petition filed under sub-section (2) of Section 8 as well as appeal under Section 4 read with Section 7 is pending consideration before the authorities concerned, they are obliged to issue a certificate during the pendency of the review petition and if an appeal is pending and pre condition for filing appeal has been satisfied, certificate has to be issued by the appellate authority and if those certificates are produced before the taxing authority they would receive tax under the Taxation Act. The writ appeal and the writ petitions are disposed of accordingly."

10. In substance, the High Court has noted that the permit holders were neither disputing their obligation to pay vehicle tax under the 1976 Act nor are they denying the obligation to pay contribution towards the welfare fund under the 1985 Act. The purport of the impugned amendments, including Section 15, was merely to ensure that both these obligations are duly discharged so as to permit the transport operators to continue with their business

uninterrupted. It is neither a case of levy of tax not permitted under the 1988 Act nor deviating from the spirit of the said Act, which clearly predicates that for grant of stage carriage permit, the Regional Transport Authority is obliged to consider the satisfactory performance of the applicant as a stage carriage operator, including payment of tax by the applicant. The provision(s) in the State Legislation is not to suspend the permit issued under the 1988 Act, but the expression “ineffective” ought to be construed as enabling the permit holder to avail of the permit only upon payment of vehicle tax under the 1976 Act, as amended from time to time. On this analysis, the High Court rejected the challenge and dismissed the writ petitions and writ appeals vide impugned judgment.

11. The appellants have assailed the view taken by the High Court. It is urged by Mr. K. Parameshwar, learned counsel appearing for the appellants that the Central legislation i.e., the 1988 Act, occupies the entire field of permits and the said legislation is a selfcontained code as expounded by this Court in Hardev Motor Transport v. State of M.P. & Ors., (2006) 8 SCC 613 (paras 4, 11 and 12). He would submit that Chapter V of the 1988 Act deals with all aspects of permits, including their issuance, effectiveness, duration of validity, renewal, transfer and penal consequences for any breach of conditions. Section 81(1) of the 1988 Act envisages that the permit issued by the competent authority shall be effective from the date of issuance or renewal thereof for a period of five years. Once such permit is issued, the same cannot be interdicted by a State legislation during its validity period. Section 82 (82. Transfer of permit.—(1) Save as provided in sub-section (2), a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not, without such permission, operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. (2) Where the holder of a permit dies, the person succeeding to the possession of the vehicle covered by the permit may, for a period of three months, use the permit as if it had been granted to himself: Provided that such person has, within thirty days of the death of the holder, informed the transport authority which granted the permit of the death of the holder and of his own intention to use the permit: Provided further that no permit shall be so used after the date on which it would have ceased to be effective without renewal in the hands of the deceased holder. (3) The transport authority may, on application made to it within three months of the death of the holder of a permit, transfer the permit to the person succeeding to the possession of the vehicles covered by the permit: Provided that the transport authority may entertain an application made after the expiry of the said period of three months if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified.) of the 1988 Act also allows transfer of permit from one person to another and Section 83 (83. Replacement of vehicles.—The holder of a permit may, with the permission of the authority by which the permit was granted, replace any vehicle covered by the permit by any other vehicle of the same nature.) allows the permit holder to replace the vehicle covered by the permit by any other vehicle of the same nature. Moreover, Section 192A (192A. Using vehicle without permit.—(1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of sub-section (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with imprisonment for a term which may extend to six

months and a fine of ten thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less than six months or with fine of ten thousand rupees or with both: Provided that the court may for reasons to be recorded, impose a lesser punishment. (2) Nothing in this section shall apply to the use of a motor vehicle in an emergency for the conveyance of persons suffering from sickness or injury or for the transport of materials for repair or for the transport of food or materials to relieve distress or of medical supplies for a like purpose: Provided that the person using the vehicle reports about the same to the Regional Transport Authority within seven days from the date of such use. (3) The court to which an appeal lies from any conviction in respect of an offence of the nature specified in sub-section (1), may set aside or vary any order made by the court below, notwithstanding that no appeal lies against the conviction in connection with which such order was made.) of the 1988 Act specifically imposes punishment of imprisonment for a term specified therein for using a vehicle without a permit and Section 177 (177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to five hundred rupees, and for any second or subsequent offence with fine which may extend to one thousand and five hundred rupees.) of the 1988 Act is a general provision for punishment owing to contravention of the provisions of the Act or of any rule, regulation, or notification made thereunder. Section 207 (207. Power to detain vehicles used without certificate of registration permit, etc.—(1) Any police officer or other person authorised in this behalf by the State Government may, if he has reason to believe that a motor vehicle has been or is being used in contravention of the provisions of section 3 or section 4 or section 39 or without the permit required by sub-section (1) of section 66 or in contravention of any condition of such permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, seize and detain the vehicle, in the prescribed manner and for this purpose take or cause to be taken any steps he may consider proper for the temporary safe custody of the vehicle: Provided that where any such officer or person has reason to believe that a motor vehicle has been or is being used in contravention of section 3 or section 4 or without the permit required by sub-section (1) of section 66 he may, instead of seizing the vehicle, seize the certificate of registration of the vehicle and shall issue an acknowledgment in respect thereof. (2) Where a motor vehicle has been seized and detained under sub-section (1), the owner or person in charge of the motor vehicle may apply to the transport authority or any officer authorised in this behalf by the State Government together with the relevant documents for the release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose.) of the 1988 Act also provides for seizure and detention of any vehicle that is plying without a permit. In other words, there is an inbuilt mechanism in the 1988 Act for situations to deal with violation of conditions of permit or using the vehicle without a valid permit. This being a complete code, it would not be open to the State Legislature to impinge upon the occupied field. Hence, Section 15 of the 1976 Act is in direct conflict with the legislative scheme under the Central legislation, dealing with permit of transport vehicles. The State legislation would only be limited to tax on vehicles and cannot transcend on matters relating to permits or its effectiveness during the term of five years provided for under Section 81 (81. Duration and renewal of permits.—(1) A permit other

than a temporary permit issued under section 87 or a special permit issued under sub-section (8) of section 88 shall be effective from the date of issuance or renewal thereof for a period of five years: Provided that where the permit is countersigned under sub-section (1) of section 88, such counter-signature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit. (2) A permit may be renewed on an application made not less than fifteen days before the date of its expiry. (3) Notwithstanding anything contained in sub-section (2), the Regional Transport Authority or the State Transport Authority, as the case may be, entertain an application for the renewal of a permit after the last date specified in that sub-section if it is satisfied that the applicant was prevented by good and sufficient cause from making an application within the time specified. (4) The Regional Transport Authority or the State Transport Authority, as the case may be, may reject an application for the renewal of a permit on one or more of the following grounds, namely:— (a) the financial condition of the applicant as evidenced by insolvency, or decrees for payment of debts remaining unsatisfied for a period of thirty days, prior to the date of consideration of the application; (b) the applicant had been punished twice or more for any of the following offences within twelve months reckoned from fifteen days prior to the date of consideration of the application committed as a result of the operation of a stage carriage service by the applicant, namely:— (i) plying any vehicle— (1) without payment of tax due on such vehicle; (2) without payment of tax during the grace period allowed for payment of such tax and then stop the plying of such vehicle; (3) on any unauthorised route; (ii) making unauthorised trips: Provided that in computing the number of punishments for the purpose of clause (b), any punishment stayed by the order of an appellate authority shall not be taken into account: Provided further that no application under this sub-section shall be rejected unless an opportunity of being heard is given to the applicant. (5) Where a permit has been renewed under this section after the expiry of the period thereof, such renewal shall have effect from the date of such expiry irrespective of whether or not a temporary permit has been granted under clause (d) of section 87, and where a temporary permit has been granted, the fee paid in respect of such temporary permit shall be refunded.) of the 1988 release of the vehicle and such authority or officer may, after verification of such documents, by order release the vehicle subject to such conditions as the authority or officer may deem fit to impose. Act. Whereas, Section 15 of the 1976 renders the transport permit ineffective. Thus, it exposes the permit holder to multiple punishment under the 1988 Act as well as the 1976 Act.

12. He further submits that repugnancy can arise even in the absence of direct or irreconcilable conflict, if it touches upon the field occupied by the Central legislation. Reliance is placed on Deep Chand v. The State of Uttar Pradesh & Ors., (1959) Supp. 2 SCR 8 (para 28) which had followed the decisions in Zaverbhai Amaidas v. The State of Bombay, (1955) 1 SCR 799 and Ch. Tika Ramji & Ors., etc. v. The State of Uttar Pradesh & Ors., (1956) SCR 393. Reliance is also placed on Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of Tamil Nadu & Ors., (1996) 3 SCC 15 (para 26); and Kulwant Kaur & Ors. v. Gurdial Singh Mann (Dead) by LRs. & Ors., (2001) 4 SCC 262 (para 14).

13. It is urged that as there is repugnancy, the State of Kerala ought to have obtained Presidential assent in respect of the 1976 Act after coming into force of the 1988 Act as was

obtained under the proviso to Article 304(b) of the Constitution on 25.3.1976 in reference to the provisions of the 1939 Act. In absence of such Presidential assent, Section 15 of the 1976 Act is rendered ultra vires, being repugnant with Section 81 of the 1988 Act. Reliance is placed on Kaiser-I-Hind Pvt. Ltd. & Anr. v. National Textile Corpn. (Maharashtra North) Ltd. & Ors., (2002) 8 SCC 182 (paras 72 to 76). For the same reason, the State of Kerala ought to have obtained Presidential assent under Article 304(b) of the Constitution in respect of amended provisions vide the Amendment Act of 2005. Reliance is also placed on Hoechst Pharmaceuticals Ltd. & Ors. v. State of Bihar & Ors., (1983) 4 SCC 45 (para 69) to contend that the question of repugnancy under Article 254(1) between a law made by the Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List, and there is direct conflict between the two laws. But, Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand, and Lists I and III on the other. If such overlapping exists, the State law will be ultra vires because of the non obstante clause in Article 246(1) read with Article 246(3). The State law in that case would eventually fail for lack of legislative competence and not because of repugnancy. Reliance is also placed on State of Kerala & Ors. v. Mar Appraem Kuri Company Limited & Anr., (2012) 7 SCC 106 (para 39) which had dealt with the efficacy of Article 246(1) of the Constitution.

14. It is also urged that the appellants cannot be non-suited from arguing the validity of Section 15 of the 1976 Act, being in conflict with Section 81 of the 1988 Act, merely because of the concession of the counsel on the question of law before the High Court. To buttress this submission, reliance is placed on the dictum in Union of India & Ors. v. Mohanlal Likumal Punjabi & Ors., (2004) 3 SCC 628 (paras 8 and 9) and Director of Elementary Education, Odisha & Ors. v. Pramod Kumar Sahoo, (2019) 10 SCC 674 (para 11).

15. It is, thus, submitted that the appellants are entitled to assail the constitutional validity of not only sub-Sections (7) and (8) of Section 4, as inserted by the Amendment Act of 2005 in the 1976 Act, but also Section 15 of the 1976 Act. In the submission of the appellants, these provisions are unconstitutional.

16. Mr. K. Radhakrishnan, learned senior counsel appearing for the appellants in the connected matters, more or less, pursued the same line of challenge to the amended provisions and Section 15 of the 1976 Act, but in addition, he also assailed the validity of Section 8A, as inserted by Act 23 of 2005 in the 1985 Act. According to him, Section 8A of the 1985 Act with its non-obstante clause in effect overrides the Central legislation i.e., the 1988 Act. He submits that the High Court, in paragraph 19 of the impugned judgment, has upheld the constitutional validity of Section 8A of the 1985 Act; and, hence, it is open to the appellants to challenge the validity of this provision in the present appeals. In his submission, Entry 57 of List II (State List) is made subject to Entry 35 of the Concurrent List (List III). Hence, the impugned amendments in Section 4 of the 1976 Act cannot encroach and override the Central legislation i.e., the 1988 Act, much less undermine the Stage and Goods Carriage Operations as per the permit issued under that Act.

17. It is further urged that Entry 57 of List II (State List) is not made subject to Entry 24 of the Concurrent List and for which reason, the 1976 Act cannot be made subservient to the 1985 Act. The 1985 Act is a labour welfare legislation, whereas the 1976 Act is a legislation which is compensatory in nature. In any case, the 1988 Act is a complete code and a regulatory legislation. In his submission, the welfare legislation has been intertwined by the State of Kerala with the compensatory legislation vide impugned amendments/insertions and together these provisions substantially encroach and override the dispensations and provisions predicated in the 1988 Act concerning issuance of permits and its effectiveness. In his submission, the impugned State enactments are repugnant with the Central law and there exist irreconcilable conflict and direct collision between the State and Central legislations, impinging upon the mandate of Article 254(1) of the Constitution which declares that the Central legislations must prevail. He submits that the impugned State enactments are, therefore, void and unconstitutional. The same do not have the protection under Article 254(2) of the Constitution and in absence of Presidential assent, it cannot prevail. He has placed reliance on M. Karunanidhi, Supra at Footnote No.14 (para 8); Association of Natural Gas & Ors. v. Union of India & Ors., (2004) 4 SCC 489 (paras 13 and 15); and Dharappa v. Bijapur Coop. Milk Producers Societies Union Ltd., (2007) 9 SCC 109 (para 12).

18. It is his submission the State enactments suffer from the vice of the lack of legislative competence and are colourable legislations. The field of legislation in Entry 57 of the State List and Entry 24 of the Concurrent List are distinct and different. However, two State legislations are operating in different fields to achieve different goals. For that reason, the impugned amendments/insertions in the concerned provisions are bordering on transgression of the limits of the powers to achieve indirectly the collection of welfare fund contribution. The State Legislature is not competent to frame such law for ensuring collection of welfare fund dues through the medium of a taxation statute. In the process, the taxation statute is made to yield to the welfare fund statute. To buttress this submission, reliance has been placed on the dictum in Ashok Kumar alias Golu v. Union of India & Ors., (1991) 3 SCC 498 (para 9) and State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors., (2011) 8 SCC 737 (para 36).

19. It is then submitted that the impugned amendments/insertions are manifestly arbitrary and inevitably impinge upon the fundamental rights inasmuch as, the substantive unreasonableness is apparent on the face of the impugned insertions by way of sub-Section (8) of Section 4 which declares that no tax shall be collected unless the receipt of remittance of contribution towards welfare fund mentioned in sub-Section (7) of Section 4 is produced. This is manifestly arbitrary and unreasonable. In that, the Taxation Officer is duty bound to accept tax when offered by the tax payer and he cannot refuse to do so much less to impact the Stage and Goods Carriage Operations with valid permits issued under the Central legislations i.e., the 1988 Act. The permit so issued cannot be rendered ineffective by a State legislation. In that sense, the impugned amendments/insertions are hit by Article 254(1) and 254(2) of the Constitution. The presumption of constitutionality cannot come to the aid of the impugned amendments/insertions which are vitiated by manifest legislative arbitrariness and have deleterious impact on the permit of Stage and Goods Carriage Operations. The impugned insertions, therefore, fall foul of Article 19(1)(g) of the

Constitution as well. Reliance is placed on Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors., (1981) 1 SCC 722 (para 16) and K. Shyam Sunder, Supra at Footnote No.36 (paras 50 to 53). It is, therefore, submitted that the appeals be allowed and the impugned provisions in the State enactments be declared as unconstitutional.

20. Mr. Abraham Mathews, learned counsel appearing for the State of Kerala, has adopted the reasons recorded by the Division Bench of the High Court in the impugned judgment. Additionally, it is submitted that the appellants conceded their liability to pay the tax levied under the 1976 Act as well as their dues/contribution under the 1985 Act. In that sense, the only challenge in these appeals is that the amendment makes payment of the welfare dues a precondition for the collection of the tax, thereby dovetailed with a tax, merely for the purpose of compliance. Such a provision cannot be construed as unconstitutional. It is always open to the Legislature to combine levies for other purposes such as education cess, etc. Moreover, in paragraph 19 of the impugned judgment, the Division Bench of the High Court has clearly provided by directing the statutory authorities that if a tax payer produces proof of having preferred an appeal in the prescribed mode in respect of legitimate dispute over the quantum of levy, that be regarded as sufficient compliance. This is a safeguard and must be good enough to assuage the apprehension of the appellants, who intend to dispute the quantum of levy under the 1985 Act. In other words, if the permit holder has resorted to remedy of appeal/review in respect of demand under the 1985 Act, that would be regarded as sufficient compliance so as to accept the vehicle tax by the Taxation Officer under the 1976 Act. Therefore, no prejudice whatsoever would be caused to such permit holder. In any case, the permit holder cannot be heard to argue that he would not pay the dues under the 1985 Act and yet would want to continue with the business as usual, exploiting the workers sheerly because of the validity of the permit to operate transport vehicle used in the same business as usual. As a matter of fact, the levy under the 1985 Act is covered by Entry 24 of the Concurrent List. Whereas, the vehicle tax is levied as per Entry 35 thereof. The two fields are different and there is no encroachment into the legislative domain of the Parliament.

21. It is further urged that even if it is a case of encroachment into the legislative domain of the Parliament, such encroachment, being incidental one, is protected by the doctrine of pith and substance as expounded in Hoechst Pharmaceuticals Ltd., Supra at Footnote No.28.

22. It is also urged that the levy of contribution to the workers' welfare fund is a socially beneficial legislation intended to protect the workers of the commercial operations undertaken by the appellants and other similarly placed vehicle operators pursuant to permit issued under the Central legislation. The workers engaged by them may not be eligible to avail of the pension and provident fund scheme. In most of the cases, they are typically unorganised and part of the informal workforce of the country and often left to fend for themselves. The 1985 Act is to reach out to such workers and provide them with support on the basis of the collection made from the Stage and Goods Carriage Operators. In the past, there has been any number of instances where the operators had deliberately avoided to pay and contribute to the workers' welfare fund which was frowned upon even by the High Court warranting amendments to the State legislations which are impugned in

the present proceedings.

23. It is, thus, urged that the challenge set forth by the appellants is devoid of merit. In that, the provisions of the State enactments, which are impugned in the present proceedings, do not undo the permit issued under the Central legislation as such, but merely restates the mandate of the Central legislation itself that the vehicle cannot be used without permit and payment of vehicle tax. Merely because permit is issued under the Central legislation which provides for a term of five years from the date of issuance, it does not follow that the permit holder or the vehicle owner can operate the vehicle under such a permit without payment of tax payable by virtue of the State legislation and more so linked to the activities relatable to the vehicle. It is open to the State to stop any vehicle or seize and detain the vehicle despite a valid permit if it is used or kept for use within the State without payment of tax payable under the 1976 Act. That is a consequence under the State legislation. In one sense, the amended provisions using the expression “ineffective” would mean that despite a valid permit, action can be taken under the State legislation concerning the vehicle which is used or kept for use within the State without payment of tax.

24. It is a different matter that precondition of production of proof of payment of dues under the 1985 Act has been provided for before accepting the vehicle tax by the Taxation Officer. If so understood, Section 15 of the 1976 Act cannot be regarded as in conflict or repugnant with Section 81 of the 1988 Act. Even under the 1988 Act, the permit holder is obliged to pay tax regularly, failing which, it can entail cancellation or rejection of permit/renewal, including penal consequences for violation.

25. Mr. P.N. Ravindran, learned senior counsel, appearing for the Kerala Motor Transport Workers Welfare Fund Board (for short, “the Welfare Fund Board”), has also defended the view taken by the Division Bench of the High Court. He submits that in the State of Kerala, the levy of tax on motor vehicles is governed by the 1976 Act, a law enacted by the State Legislature under Entry 57 of List II of the Seventh Schedule to the Constitution. This Act had received Presidential assent on 15.3.1976. Whereas, the 1985 Act was enacted by the State Legislature under Entry 24 of List III of the Seventh Schedule to the Constitution. Under Section 3 (3. Motor Transport Workers Welfare Fund.- (1) The Government may, by notification in the Gazette, frame a scheme to be called the Kerala Motor Transport Workers’ Welfare Fund Scheme for the establishment of a Fund under this Act for employees and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the scheme. (2) The Fund shall vest in, and be administered by, the Board. (3) Subject to the provisions of this Act, the scheme may provide for all or any of the matters specified in the Schedule.) of this Act, the State Government has formulated a scheme known as ‘the Kerala Motor Transport Workers Welfare Fund Board Scheme, 1985’ (for short, “the 1985 Scheme”). As per Section 9 (9. Remittance of monthly contribution.- (1) Every employer, employer and self-employed person shall, pay the contribution due from him every month as provided for in the scheme. (2) The monthly contribution shall become payable on or before the 7th day of the succeeding month.) of the 1985 Act and paragraph 29 of the 1985 Scheme, every employer, employee and self-employed person are obliged to remit the monthly

contribution on or before the 7th day of the succeeding month. Section 8 (8 Determination of amount due.- (1) The Chief Executive Officer or any other officer appointed under sub-section (1) of section 7 authorised by him in this behalf may, by order, determine the amount due under the provisions of this Act or of the Scheme from the employer, employee and self-employed person and if the amount due is not paid on or before the due date he shall issue a demand notice to the defaulter showing the amount of arrears. (2) Any person aggrieved by the determination of arrears under sub-section (1) may file a review petition before the authority who had determined the arrears, showing detailed facts and reasons for reviewing the original determination within seven days of receipt of demand notice. (3) A review petition filed under sub-section (2) shall be disposed of by the authority within a period of thirty days from the date of its receipt. (4) Any person aggrieved by an order under sub-section (3) may prefer an appeal before the District Labour Officer of the concerned district and it staff be disposed of by him within a period of sixty days from the date of its receipt. (5) If the amount of arrears in dispute exceeds rupees one lakh, any person aggrieved by an order under sub-section (4) may prefer a second appeal before the Board and it shall be disposed of within a period of sixty days from the date of its receipt. (6) Every order passed under sub-section (4) or sub-section (5) as the case may be, shall be final. (7) No appeal under this section shall be entertained unless the amount in accordance with the order against which the appeal has been preferred is paid. (8) If the appellate authority in an appeal decides that the amount paid is in excess of what is due from the appellant, it may, by order, direct for the refund of the excess amount. (9) An officer or authority exercising the power of appeal under sub-section (5) of section 8 of the Kerala Motor Transport Workers' Welfare Fund Act. 1985, immediately before the commencement of the Kerala Motor Transport Workers' Welfare Fund (Amendment) Ordinance, 2005 shall continue to exercise such powers, in respect of the case pending before such officer or authority.) of the 1985 Act and paragraph 28 of the 1985 Scheme provide for determination of the amount due under the Act and the Scheme from the employer, employee and self-employed person. It provides for remedy of review petition before the authority, who determined the arrears; an appeal before the District Labour Officer; and, in cases where arrears in dispute exceed Rs.1,00,000/-, a second appeal to the Kerala Motor Transport Workers Welfare Fund Board. The appeal can be entertained only if 50% of the amount, as mentioned in the order under challenge, is paid. It was noticed that mandate of the 1985 Act and the 1985 Scheme was not being complied with in most of the cases. This aspect was taken note of by the High Court in O.P. No.7440 of 2003 filed by the Kerala Private Bus Operators Federation and pursuant to the directions issued by the High Court, not only the Scheme was amended, but Section 8A came to be inserted in the 1985 Act vide Act 23 of 2005. Simultaneously, by Act 24 of 2005, the 1976 Act came to be amended by inserting sub-Sections (7) and (8) in Section 4 of that Act. The purport of the inserted sub-Sections (7) and (8) of Section 4 was more or less in line with the regime specified in Section 15 of the 1976 Act. Under the 1976 Act, by virtue of Section 10, any officer of the Motor Vehicles Department not below the rank of Assistant Motor Vehicles Inspector or any police officer in uniform not below the rank of Sub-Inspector, has been empowered to stop any vehicle for the purpose of satisfying himself that the amount of the tax due in respect of such vehicle has been paid.

26. Section 11 of the 1976 Act empowers the stated officers to seize and detain taxable

motor vehicles used or kept for use in the State of Kerala without payment of tax pending production of proof of payment of the tax. Notably, these provisions have not been challenged. In one sense, without the amended provisions, the permit issued under the 1988 Act would become ineffective in cases where action is taken under Sections 10 and 11 of the 1976 Act. Thus understood, Section 15 as well as the amended Section 4(7) and (8) of the 1976 Act and Section 8A of the 1985 Act would have the same effect in case of action taken by the stated officers under Sections 10 and 11 of 1976 Act. The amended provisions merely declare that position. It is nobody's case merely because on the basis of permit, the permit holder would be entitled to use vehicle or keep the vehicle for use within the State of Kerala without payment of tax. The levy of tax shall be on the basis of rate specified under Section 3 (3. Levy of Tax.- (1) Subject to the provisions of this Act, on and from the date of commencement of this Act, a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule: Provided that no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of, such vehicle, for the purpose of trade and used under the authorization of a trade certificate granted by the registering authority; provided further that in respect of a new motor vehicle of any of the classes specified in item Nos.1(b), 2 and 11 of the Schedule to this Act, there shall be levied from the date of purchase of the vehicle 'one time tax' at the rates specified in the Annexure at the time of the first registration of the vehicle, and thereafter tax shall be levied in the schedule as per the fourth proviso to sub-section (1) of Section 4. Provided further that in respect of new motor vehicle of any of the descriptions specified in item No.1(a) of the Schedule to this Act, there shall be levied from the date of purchase of the vehicle a tax in advance for a period of five years at the rate specified in the schedule, at the time of first registration of the vehicle, and thereafter tax shall be levied at the rate specified in the Schedule in accordance with the fourth proviso to sub section (1) of Section 4. (2) The Government may from time to time by notification in the Gazette, increase the rate of tax specified in the Schedule: Provided that such increase shall not in the aggregate exceed fifty per cent of such rate. (3) The registered owner of, or any person having possession or control of a motor vehicle shall, for the purpose of this Act, be deemed to use or kept such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under sub section (1) of Section 5. (4) Notwithstanding anything contained in sub-section (1), the Government may, from time to time, by notification in the Gazette, direct that a temporary licence for a period not exceeding seven days or thirty days at a time may be issued in respect of any class of motor vehicles specified in the Schedule on payment of the tax specified in sub-section (5), and subject to such conditions as may be specified in such notification. (5) The tax payable for a temporary licence in respect of a motor vehicle shall be- (a) where the temporary licence is for period not exceeding seven days, at the rate of onetenth of the quarterly tax on that motor vehicle; and (b) where the temporary licence is for a period exceeding seven days but not exceeding thirty days, at the rate of one third of the quarterly tax on that motor vehicle: Provided also that in the case of vehicles covered with permit under sub-section (9) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and registered in any State other than the State of Kerala and entering the State of Kerala and staying therein, then, the tax payable for such vehicle shall be- (a) if such stay. does not exceed seven days one-tenth of the quarterly tax; and (b) if such stay exceeds seven days but does not exceed thirty days one third of the quarterly tax (6) In the case of motor

vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into between the Government of Kerala and any other State Government, the levy of tax shall, notwithstanding anything contained in this Act be in accordance with the terms and conditions of such reciprocal arrangement.: Provided that the terms and conditions of every such reciprocal arrangement shall be published in the Gazette and a copy thereof shall be placed before the Legislative Assembly of the State.) of the 1976 Act. Despite the repeal of 1939 Act, these provisions of the 1976 Act continue to operate, thereby empowering the stated officers to act against the vehicle used or kept for use within the State of Kerala without payment of vehicle tax.

27. Section 15 merely makes reference to the 1939 Act without incorporation of any provision thereof. Resultantly, the repeal of that Act will have no impact on the provisions of the 1976 Act, including in light of Section 8(1) of the General Clauses Act, 1897. In support of this submission, reliance is placed on The Collector of Customs, Madras v. Nathella Sampathu Chetty & Anr., AIR 1962 SC 316 and New Central Jute Mills Co. Ltd. v. Assistant Collector of Central Excise, Allahabad & Ors., (1970) 2 SCC 820.

28. Coming to the challenge to the amended provisions vide State legislation in 2005, it is urged that the Parliament has not enacted any law regarding levy of tax on motor vehicles. The 1988 Act does not deal with levy of tax on motor vehicles and the consequence of non-payment of such tax. Whereas, the 1976 Act has been enacted by the State Legislature under Entry 57 of List II of the Seventh Schedule to the Constitution, which is exclusively within the domain of the State Legislature. The regime regarding payment of tax in respect of motor vehicles and the consequence of non-payment, are, therefore, exclusive to the 1976 Act. Thus understood, there is no question of repugnancy between the provisions of the 1988 Act and the State legislation in the field occupied by the 1976 Act. Suffice it to observe contends the learned senior counsel that Section 15 of the 1976 Act does not reduce the period of validity of the permit issued under the 1988 Act, but it only stipulates that the vehicle tax due in respect of transport vehicle must be paid within the prescribed period and thereby declaring that in case of non-payment of tax, the validity period of permit cannot come in the way of initiating action against the vehicle used or kept for use within the State of Kerala without payment of vehicle tax. If so understood, there is no conflict between the period prescribed in terms of Section 81(1) of the 1988 Act and the provisions in the State legislation — be it the 1976 Act or the 1985 Act.

29. As submitted earlier, the appellants have not challenged the validity of Sections 10 and 11 of the 1976 Act in particular which empower the stated officers to stop or seize and detain motor vehicles used or kept for use in the State of Kerala without payment of vehicle tax. The amended provisions of the 1976 Act and the 1985 Act merely prescribe the modalities for payment and collection of vehicle tax or payment of contribution to the Kerala Motor Transport Workers' Welfare Fund by requiring the employer/vehicle owner to produce receipt regarding payment of contribution to the welfare fund before the Taxation Officer while offering to pay vehicle tax under the 1976 Act.

30. It is further urged that no argument can be countenanced that the State Legislature lacks legislative competence to enact a law on the subject of vehicle tax falling under Entry

57 of List II of the Seventh Schedule to the Constitution. The 1988 Act does not deal with either the modalities for the payment or collection of vehicle tax as such. For which reason, there is no inconsistency between the Central Act and the State Act. According to the learned senior counsel, these appeals are devoid of merits and, therefore, the decision of the Division Bench of the High Court under appeal needs to be affirmed.

31. We have heard learned counsel appearing for both parties at length.

32. After cogitating over the oral arguments and perusing the written submissions, it needs to be noted at the outset that there is no challenge on the ground of legislative competence in respect of the 1976 Act and amendments thereto as well as the 1985 Act as amended. The argument is essentially about repugnancy owing to the application of the State laws to the vehicle permit issued under the law made by Parliament. The tests of repugnancy have been delineated by the Constitution Bench in Deep Chand (Supra at Footnote No.22). Three principles have been noted in this decision as follows:

“(1) Whether there is direct conflict between the two provisions;

(2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and

(3) Whether the law made by Parliament and the law made by State Legislature occupy the same field.”

33. We may usefully also refer to the decision in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust (Supra at Footnote No.25) wherein the Court observed in paragraph 26 as follows:

“26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance. Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.”

34. Keeping in mind the exposition of this Court in the aforementioned decisions, we would immediately turn to the Act enacted by the Parliament in 1988. This Act had repealed the erstwhile Motor Vehicles Act, 1939. The Parliament has obviously enacted the 1988 Act in reference to Entry 35 in List III – Concurrent List which concerns the mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Notably, the 1988 Act provides for procedure of Regional Transport Authority in considering application for stage carriage permit as predicated in Section 71 (71. Procedure of Regional Transport Authority in considering application for stage carriage permit.— (1) A Regional

Transport Authority shall, while considering an application for a stage carriage permit, have regard to the objects of this Act. (2) A Regional Transport Authority shall refuse to grant a stage carriage permit if it appears from any time-table furnished that the provisions of this Act relating to the speed at which vehicles may be driven are likely to be contravened: Provided that before such refusal an opportunity shall be given to the applicant to amend the time-table so as to conform to the said provisions. (3)(a) The State Government shall, if so directed by the Central Government having regard to the number of vehicles, road conditions and other relevant matters, by notification in the Official Gazette, direct a State Transport Authority and a Regional Transport Authority to limit the number of stage carriages generally or of any specified type, as may be fixed and specified in the notification, operating on city routes in towns with a population of not less than five lakhs. (b) Where the number of stage carriages are fixed under clause (a), the Government of the State shall reserve in the State certain percentage of stage carriage permits for the scheduled castes and the scheduled tribes in the same ratio as in the case of appointments made by direct recruitment to public services in the State. (c) Where the number of stage carriages are fixed under clause (a), the Regional Transport Authority shall reserve such number of permits for the scheduled castes and the scheduled tribes as may be fixed by the State Government under sub-clause (b). (d) After reserving such number of permits as is referred to in clause (c), the Regional Transport Authority shall in considering an application have regard to the following matters, namely:— (i) financial stability of the applicant; (ii) satisfactory performance as a stage carriage operator including payment of tax if the applicant is or has been an operator of stage carriage service; and (iii) such other matters as may be prescribed by the State Government: Provided that, other conditions being equal, preference shall be given to applications for permits from— (i) State transport undertakings; (ii) co-operative societies registered or deemed to have been registered under any enactment for the time being in force; (iii) ex-servicemen; or (iv) any other class or category of persons, as the State Government may, for reasons to be recorded in writing consider necessary. Explanation.—For the purposes of this section “company” means any body corporate, and includes a firm or other association of individuals; and “director”, in relation to a firm, means a partner in the firm.) of the 1988 Act. The Authority while considering an application for grant of a stage carriage permit is obliged to have regard to the objects of the 1988 Act including about the satisfactory performance of the applicant as a stage carriage operator and payment of tax [Section 71(3)(d)(ii)]. The other relevant provision for considering the subject-matter of this appeal is Section 81 dealing with duration and renewal of permits. It postulates that the permit issued by the Authority under the Act shall be effective from the date of issuance or renewal thereof for a period of five years. The proviso to sub-section (1) envisages that where the permit is countersigned under sub-section (1) of Section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit. We are not concerned with the effect of the proviso in the present case. The relevant sub-section dealing with the power of the Authority to reject an application for the renewal of a permit is subsection (4) of Section 81. It provides for the grounds on which the renewal of a permit can be rejected. The same includes plying any vehicle without payment of tax due on such vehicle; and on any unauthorised route. Besides these provisions, there is nothing in the 1988 Act to deal with the manner of levy of vehicle tax or the collection thereof. In other words, the law made by the Parliament does not occupy the field of manner of levy of

vehicle tax and collection thereof. If so, it is not possible to hold that there is direct conflict between the two provisions, namely, in the law made by the Parliament and by the State Legislature. Furthermore, on analysing the legislative intent and the efficacy of the impugned provisions enacted by the State Legislature concerning the manner of levy of vehicle tax and collection thereof, it will be amply clear that obedience to each of the laws (made by the Parliament and State Legislature) is possible without disobeying the other. We shall elaborate on this aspect while dealing with efficacy of the law made by the State Legislature a little later. Suffice it to observe that the argument regarding repugnancy is devoid of merit.

35. As regards the 1976 Act enacted by the State Legislature, the same is ascribable to Entries 56 and 57 of List II – State List. Entry 56 deals with taxes on goods and passengers carried by road or on inland waterways. Entry 57 deals with taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of Entry 35 of List III. In one sense, the law made by the State Legislature is also ascribable to Entry 35 of List III under which the Parliament has already enacted 1988 Act. However, as aforementioned, the law made by the Parliament, being 1988 Act, does not touch upon or deal with the field of manner of levy of vehicle tax and collection thereof. Whereas, the 1976 Act enacted by the State Legislature is to consolidate and amend the laws relating to the levy of tax on motor vehicles and on passengers and goods carried by such vehicles in the State of Kerala. The levy of tax is spelt out in Section 3 of this Act. Section 4 deals with payment of tax and issue of licence. The writ petitioners have challenged the amendment made to this provision vide Act 24 of 2005 inserting sub-sections (7) and (8) therein. By this amendment, it is provided that every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay contribution under the 1985 Act shall, before effecting payment of vehicle tax under the 1976 Act, produce before the Taxation Officer the receipt of remittance of the contribution towards welfare fund due upto the preceding month and failure to do so, would entail in refusal to collect the vehicle tax under the 1976 Act. In the context of this provision, it has been urged that such a provision is in the nature of bootstrapping of two different liabilities. Section 8 (8. Production of certificate of insurance.- Every registered owner or person having possession or control of a motor vehicle shall, at the time of making payment of the tax, produce before the Taxation Officer a certificate of insurance in respect of the vehicle, which is valid at the time of making such payment, complying with the requirements of Chapter VIII of the Motor Vehicles Act, 1939 (Central Act 4 of 1939). mandates production of certificate of insurance by every registered owner or person having possession or control of a motor vehicle. Section 9 (9.Liability to payment of tax by persons succeeding to the ownership, possession or control of motor vehicles.- (1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person before payment of tax has transferred the ownership of such vehicle or has ceased to be in possession control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax. (2) Nothing contained in Sub-section (1) shall be deemed to affect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle.) fastens liability to pay vehicle tax by person succeeding to the ownership, possession or

control of motor vehicles. Sections 10 and 11 are of some relevance. The same reads thus:

“10. Power of officers of Police or Motor Vehicles Department to stop motor vehicles.-

(1) Any officer of the Motor Vehicles Department not below the rank of Assistant Motor Vehicles Inspector or any police officer in uniform who is not below the rank of a Sub Inspector may require the driver of any motor vehicle in any place to stop such vehicle and cause it to remain stationary so long as may reasonably be necessary for the purpose of satisfying himself that the amount of the tax due in accordance with the provisions of this Act in respect of such vehicle has been paid.

(2) Any person failing to stop a motor vehicle when required to do so under sub-section (1) by any officer referred to in that sub-section or resisting any such officer when required under that sub-section to stop a motor vehicle shall, on conviction, be punishable with the same penalty as provided in section 16.

11. Seizure and detention of motor vehicles pending production of proof of remittance of tax. – Any Officer not below the rank of Assistant Motor Vehicles Inspector authorized in this behalf by the Government or any police officer not below the rank of Sub-Inspector may, if he has reason to believe that a taxable motor vehicle is used or kept for use in the State without paying the tax, seize and detain that vehicle and make arrangements for the safe custody of that vehicle pending production of proof of payment of the tax.”

Concededly, the validity of these two provisions have not been assailed by the writ petitioners and, failure to do so, may have some bearing on the view that we propose to take. Additionally, we may also advert to Section 15 of the Act which is the subject-matter of challenge in these proceedings. The same reads thus:

“15. Transport Vehicle permit to be ineffective if tax not paid.- Notwithstanding anything contained in the Motor Vehicles Act, 1939 (Central Act 4 of 1939) if the tax due in respect of a transport vehicle is not paid within the prescribed period, the validity of the permit for that vehicle shall become ineffective from the date of expiry of the said period until such time as the tax is actually paid.”

36. From the scheme of the 1976 Act, it is amply clear that it is specific to levy of tax on motor vehicle and passengers and goods carried by such vehicle in the State of Kerala. It is not a law regulating the issuance of a permit by the Authority under the 1988 Act as such. Indisputably, the permit issued by the Authority is hedged with conditions including the condition of regular payment of vehicle tax. Section 15 provides for the consequences for nonpayment of tax consistent with Sections 10 and 11 of the 1976 Act. Thus understood, there is no occasion for conflict between the two provisions much less repugnancy.

37. As regards the argument regarding bootstrapping of liabilities of permit-holder under two different State legislations, it is to say the least tenuous. It is open to the Legislature to combine levies for other purposes, such as education cess, etc., for collection of tax due and payable by the same tax-payer. It is one thing to say that the person is being compelled to discharge liability under two different State enactments, although he is not

liable under one of the two. That is not the argument of these writ petitioners. The petitioners are not disputing their liability under both the State Enactments. The argument, however, is that the writ petitioners may intend to invoke remedy of appeal and revision in respect of liability fastened under the 1985 Act. This argument has been rightly negatived by the High Court in paragraph 18 of the impugned judgment by observing that sufficient safeguard has been provided under the relevant enactment to file appeal/revision by remitting 50 per cent of the amount demanded. The High Court issued directions in that regard in paragraph 19 of the impugned judgment. A circular has been issued on 16.6.2007, clarifying that the aggrieved person, who prefers appeal on payment of 50 per cent of the contribution under the Welfare Fund Act, is entitled to get a certificate to that effect and on production of that certificate before the Taxing Authorities, the vehicle tax could be received by the Authority without payment of the entire Welfare Fund of contributions. The High Court has already issued directions to extend similar benefit even in cases where review petition is filed within the prescribed time. The fact remains that no prejudice whatsoever is caused to the permit-holder who intends to pursue remedy under the 1985 Act against the demand received by him relating to the contribution of the Welfare Fund.

38. Reverting to the 1985 Act enacted by the State Legislature, indisputably, it is a welfare legislation constituting a fund to promote the welfare of motor transport workers in the State of Kerala. This Act is ascribable to Entries 23 and 24 of List III – Concurrent List. Entry 23 deals with social security and social insurance; employment and unemployment and Entry 24 deals with welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. Ostensibly, it may appear that the liability arising from the obligations under the 1985 Act have nothing to do with the subject of vehicle tax. However, the 1985 Act has been enacted with the objects and reasons noted. As a vast number of employees were being engaged in Motor Transport Industry in the State in the private sector, the Government thought it necessary to provide for the constitution of a Fund to promote the welfare of such of the motor transport workers in the private sector who are not covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Payment of Gratuity Act, 1972. In other words, this Act came into being to ameliorate the difficulties encountered by the motor transport workers in the State of Kerala. In due course, it came to the notice of the Government that the system of determination and assessment of contribution from employers and adjudication of disputes, etc., as provided for in the 1985 Act had certain loopholes resulting in loss of welfare fund contribution. In that, the bus operators set forth a defence by creating bogus partnerships and showing relatives as employees to evade payment of contribution. Another device was to keep on changing the employees frequently. Thus, to check this mischief, an amendment was effected to the 1985 Act vide Act 23 of 2005 including to reduce the arbitrariness in fixing the contribution. The activities of motor transport workers are directly linked to the use and operation of the motor transport vehicles having permit issued under the 1988 Act in that regard. Under the said Act, the permitholder is obliged to ensure that the vehicle tax is paid regularly. The law clearly provides for action to be taken against the motor transport vehicle for failure to pay vehicle tax including to reject renewal of the permit. The stipulation in the 1985 Act is in the nature of ensuring that the vehicle owner/permit-holder discharges both the liabilities

and does not commit default in contributing to the welfare fund as also pay vehicle tax on time. Non-payment of vehicle tax may entail in stopping of motor vehicle by the Officers of Police or Motor Vehicles Department in exercise of power under Section 10 of the 1976 Act including to seize and detain the same pending production of proof remittance of tax as predicated in Section 11 of the Act. Additionally, the vehicle owner may have to suffer penalty under Section 16 (16. Penalties.- Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, on conviction, if no other penalty is elsewhere provided in this Act or the rules for such contravention, be punishable with fine which may extend to one hundred rupees and, in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to two hundred rupees.) and face prosecution under Section 17 (17. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation:- For the purpose of this section- (a)”company” means a body corporate, and includes a firm or other association of individuals; and (b) “director”, in relation to – (i) a firm, means a partner in the firm., (ii) a society or other association of individuals, means the person who is entrusted under the rules of the society or other association with the management of the affairs of the society or other association, as the case may be.), besides the permit being rendered ineffective if tax is not paid by virtue of Section 15.

39. Considering the scheme of the State legislations, it is incomprehensible to countenance the argument that the two provisions (of 1988 Act on the one hand and of 1976 Act and 1985 in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to two hundred rupees. Act on the other) are inconsistent in any manner whatsoever. Whereas, the State enactments are complementary and can be given effect to without any disobedience to the Central legislations. As aforementioned, the 1988 Act does not cover the field of the manner of levy of vehicle tax and collection thereof. The same is covered by the State legislations.

40. Concededly, the appellants have not disputed their liability to pay the vehicle tax levied under the 1976 Act as well as to pay contribution towards the workers’ welfare fund under the 1985 Act. So understood, the real grievance in these appeals by the motor transport vehicle owners/permit-holders is about compelling them to pay the welfare contribution dues as a precondition for collection of vehicle tax. We have no hesitation in taking the view that such dispensation cannot be construed as unconstitutional. Further, such a plea

cannot be countenanced at the instance of someone who otherwise concedes liability to pay both the dues towards welfare fund contribution and vehicle tax. It is beyond comprehension that the vehicle owner/permit-holder can be heard to argue that he would not pay the dues under the 1985 Act and, yet, would continue with the business of motor transport as usual in the State of Kerala by exploiting the workers on the specious plea that the validity of the permit to operate transport vehicle cannot be interdicted under a State legislation. The provision in the form of Section 15 of the 1976 Act is in the nature of restating the consequences flowing from Sections 10 and 11 of the same Act to stop motor vehicle and to seize and detain the same if being used or operated without payment of vehicle tax. When action is taken by the competent authority under Sections 10 and 11 of the Act, inevitably, the transport vehicle in question for which permit has been taken is rendered unusable due to non-payment of vehicle tax. The liability of the vehicle owner/permit-holder to pay welfare fund contribution as well as to pay vehicle tax arises under the legislation enacted by the State Legislature. As such, there is nothing wrong in State Legislature making it compulsory to pay outstanding welfare fund contribution first before accepting the vehicle tax which had become due and payable. In this view of the matter, it would be unnecessary to dilate on the argument regarding validity of Section 15 of the 1976 Act because of lack of Presidential assent after coming into effect of the 1988 Act.

41. We cannot be oblivious about the legislative intent for enacting the 1985 Act and the amendment effected thereto in 2005. The same is a beneficial legislation with avowed objective to ensure strict compliance of payment of welfare fund contribution to protect the workers of the commercial operations undertaken by the vehicle owners/permit-holders pursuant to a permit issued under the 1988 Act, and is to reach out to such workers who are typically unorganised and a part of informal workforce. Neither the provisions of the 1985 Act or the 1976 Act have the effect of interdicting the permit issued under the 1988 Act. The real intent and purpose behind these provisions is to restate the mandate stated in the 1988 Act that the vehicle cannot be used on road without a valid permit and payment of vehicle tax up to date.

42. A priori, we have no hesitation in concluding that the provisions of the 1976 Act and the 1985 Act, enacted by the State Legislature, are only intended to ensure that the vehicle owner/permit-holder does not remain in arrears of either the welfare fund contribution or the vehicle tax both payable under the State enactments. These provisions are in no way in conflict with the law made by the Parliament (1988 Act). The State enactments do not create any new liability or obligation in relation to the permit issued under the 1988 Act (Central legislation), but it provides for dispensation to ensure timely collection of the welfare fund contribution as well as vehicle tax payable by the same vehicle owner/permit-holder.

43. While parting, we must note that the writ petitioners through their counsel had fairly accepted during oral argument that after the 2005 amendment, for all these years they have been following the dispensation provided under the State legislations without exception. In that sense, the challenge has become academic. Be that as it may, we have negatived the stand taken by the writ petitioners regarding the validity of the amended

provisions being repugnant to the law made by the Parliament.

44. In view of the above, these appeals must fail and the same are dismissed with costs. Pending application(s), if any, stands disposed of.