



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Case Comment: *Atiabari Tea Co. Ltd. v the State of Assam and Ors.*

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*Received* 28 July 2023; *Accepted* 15 August 2023; *Published* 19 August 2023

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### INTRODUCTION

Barrierless trade within the territory of the federal country comprising the Union and the State is indispensable for the promotion of economic integration. The free movement of goods within a country is necessary for the economic unity of the country. Indian Constitution promotes the unrestricted flow of trade within the country to make India a single economic unit. The free flow of trade makes people from different parts of India feel integrated as citizens of the country. The resilience of the cultural unity of India can only be preserved by barrierless internal trade within India. Article 301 of the Indian Constitution ensures Freedom of trade, commerce, and intercourse applies to both citizens and non-citizens<sup>1</sup>. The Indian judiciary mainly focuses on the idea of ‘freedom’ in the elucidation of Article 301<sup>2</sup> of the Indian Constitution. The notion of free flow trade provision in the Indian Constitution is derived from ‘Trade within the Commonwealth to be free’ in Section 92 of the Commonwealth of Australia

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<sup>1</sup> Constitution of India 1950, art 301

<sup>2</sup> *Ibid*

Constitution Act of 1900<sup>3</sup>. Freedom is not outright as restrictions are mentioned in Articles 302<sup>4</sup> to 305<sup>5</sup>. Article 19(1)(g)<sup>6</sup> is identical to the freedom of trade and commerce mentioned in Part XIII. But the above previously pointed out article in Part III of the Indian Constitution mentions freedom to practice any occupation, trade or business. The above-mentioned right under Part III is solely available to citizens. The Supreme Court in the current case addresses the interpretation of Article 301 and its object in our Constitution. In this landmark case, a wide connotation of the term 'trade and commerce' is provided. The Apex Court also considers the other issues concerning it such as 'intercourse' and 'throughout the territory of India'<sup>7</sup>.

## FACTS OF THE CASE

The appellants of this case were tea growers in the states of Assam and West Bengal. Manufactured tea was taken to the Calcutta market where it was sold to consumers internally and exported abroad. The mode of transportation of manufactured tea was predominantly through land and inland waterways of Assam. Sometimes only a small part of the state territory of Assam was used for the transportation of goods. The tea industry was being controlled by the central act, The Tea Act 1953<sup>8</sup>. The State Legislature of Assam enacted the Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act 1954<sup>9</sup> which became operational on 01 June 1954. The objective of this act was to impose taxes on goods that were transported through the road and inland waterways of Assam. The Commissioner of Taxes in Assam, the second respondent issued a notification that the rules under the above act for the term of 01 June 1954 to 30 September 1954 must be furnished by the end of 30 October 1954. It also included handing over quarterly returns to the Superintendent of taxes, the third respondent. The Constitutional validity of the above act was challenged by appellants in the

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<sup>3</sup> Commonwealth of Australia Constitution Act 1900, s 92

<sup>4</sup> Constitution of India 1950, art 302

<sup>5</sup> Constitution of India 1950, art 305

<sup>6</sup> Constitution of India 1950, art 19(1)(g)

<sup>7</sup> *Atiabari Tea Co. Ltd. v The State of Assam and Ors* AIR 1961 SC 232

<sup>8</sup> Tea Act 1953

<sup>9</sup> Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act 1954

High Court of Assam under Article 226 of the Indian Constitution<sup>10</sup>, with the plea for the issue of a writ of mandamus by curbing the provisions of the aforesaid act. The legislative authority of the Assam state legislature on certain subjects had been questioned. A Special Bench of the High Court of Assam declared that the act was not unconstitutional. The case was contended before the Hon'ble Supreme Court of India.

## LEGAL ISSUES

1. Whether the rules under the Act ultra-vires freedom of trade under Article 301<sup>11</sup> of the Indian Constitution. (Contention by Appellants)
2. Whether the legislative competence of the state legislature of Assam on the tea subject is available. (Contention by Appellants)
3. Is Article 14<sup>12</sup> of the Indian Constitution violated in the aforesaid act? (Contention by Appellants)
4. Whether taxing a special function of the legislature. (Contention by Respondents)
5. Does tax under the Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, 1954<sup>13</sup> come under the ambit of regulatory and compensatory tax? (Contention by Respondents)

## OBSERVATIONS OF SUPREME COURT

In this case, a minority opinion was given by CJI Sinha, a majority opinion by Justice Gajendragadkar, Justice Wanchoo, and Justice Dasgupta, and a separate opinion was given by Justice Shah. Each of them had a distinct observation of the case. The Supreme Court observed that taxing is necessary for the presence of government, but it should be overseen by the

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<sup>10</sup> Constitution of India 1950, art 226

<sup>11</sup> Constitution of India 1950, art 301

<sup>12</sup> Constitution of India 1950, art 14

<sup>13</sup> Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act 1954

Constitution. It's irrelevant to say that taxing is extraneous to the ambit of provisions of the Constitution.

Freedom of trade, commerce, and intercourse enshrined under Article 301<sup>14</sup> ensures not exclusively inter-state trade but also the free movement of goods within the state. Article 19(1)(d) of the Indian Constitution guarantees the free movement of individuals within the territory comprising trade, commerce and intercourse<sup>15</sup>.

The impugned passed under Entry 56 of List II authorises the State of Assam to levy taxes on goods transported through the roads and inland waterways of Assam. But with a prominent intention to fix restorations on the roads and waterways. Fulfillment of the conditions provided in Article 304(b)<sup>16</sup> by the state legislatures making them authorized to put constraints on the movement of goods. The Apex Court observed the distinction between Article 304(b)<sup>17</sup> and Article 302<sup>18</sup> respectively. At first view posits that the latter article provides Parliament with exclusive powers, to restrict free trade based on the public interest. Conversely, the former article wants the regulation to be in the public interest, with the President's prior sanction along with plausible restrictions. The Act was questioned on the ground of freedom of trade, commerce and intercourse mentioned in Part XIII which also makes the legislative authority of Assam questioned on the 'Doctrine of Pith and Substance' and 'Doctrine of colourable legislation'. 'The Supreme Court was of the perspective that freedom pointed out in Article 301 of the Indian constitution would evolve to be illusive, if the conveyance of the goods to be occluded by the taxes with unsatisfaction of Articles 302, 303 and 304'.<sup>19</sup>

## DECISION

The Court denied the arguments of the Respondent and maintained the Act to be unconstitutional. The Act indisputably charged taxes which restricts the freedom of trade in

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<sup>14</sup> Constitution of India 1950, art 301

<sup>15</sup> Constitution of India 1950, art 19(1)(d)

<sup>16</sup> Constitution of India 1950, art 304(b)

<sup>17</sup> *Ibid*

<sup>18</sup> Constitution of India 1950, art 302

<sup>19</sup> *Atiabari Tea Co. Ltd. v The State of Assam And Ors.* (1961) 1 SCR 809

the Indian Constitution under Part XIII. Further, the Court posited that the State or the Union has the intrinsic power to levy taxes on the sole grounds of the upsurge of the revenue which has been spoken of in Article 265 of the Indian Constitution<sup>20</sup>. The Act passed on the restriction on trade, commerce and intercourse can only be enforced by the condition in Article 304(b)<sup>21</sup> of the Indian Constitution but in this case, the above-mentioned condition was rejected as the prior sanction by the president was not acquired.

## ANALYSIS

Formulating trade obstacles at the regional level trade within the territory of India affects the economic expansion of the country. The preliminary notion hidden in the insertion of Freedom of Trade, Commerce and Intercourse in Article 301<sup>22</sup> is to conserve the economic integration of the country as a single unit. Article 301 of the Indian Constitution exercises constraints on the Union and State legislature that guarantee an unconstrained flow of trade, commerce and intercourse in the intra and inter-state trade<sup>23</sup>. Justice Gajendragadkar, in this case, mentioned the influence of the Parliament and the State legislature on the economic unity of the country taking from the United States case decisions “.....it cannot be suggested that the power of taxation can, for instance, violate the equality before the law guaranteed by Art. 14 of the constitution.....cannot be said that the power of taxation per se is outside the purview of any constitutional limitations”.<sup>24</sup> The concept of taxation, wholly based on Articles 301 to 304 of the Constitution was not acceptable as the constitutional provision which deals with taxes is Article 245 of the Indian Constitution<sup>25</sup>. The current case divulges Article 303(1)<sup>26</sup> establishes supplementary constraint, not to make prejudice between the states in the exercise of the powers concerning trade, commerce, and intercourse. Hon'ble Supreme Court gave judgement in this case against the State of Assam.

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<sup>20</sup> Constitution of India 1950, art 265

<sup>21</sup> Constitution of India 1950, art 304(b)

<sup>22</sup> Constitution of India 1950, art 301

<sup>23</sup> *Ibid*

<sup>24</sup> *Atiabari Tea Co., Ltd. v The State of Assam And Ors.* (1961) 1 SCR 809

<sup>25</sup> Constitution of India 1950, art 245

<sup>26</sup> Constitution of India 1950, art 303(1)

## CONCLUSION

The court held the Act as unconstitutional since it violated the prerequisites mentioned in Article 304(b)<sup>27</sup> and Article 255(c) of the Indian Constitution<sup>28</sup>. The Act falls over procedural technicality as the fault in unfulfillment of the procedures in getting the assent of the President. The concept behind 'Colourable legislation' is that the legislature passes an Act within the boundaries of the powers furnished by the provisions mentioned by law. The Doctrine of Colourable Legislation and the Doctrine of Pith and Substance are crucial in the Atiabari judgement. The notion put forward by this judgement had an adverse effect on the financial independence of the states. Freedom of trade, commerce and intercourse mentioned in Article 301 is a way expansive concept that had further developed in the following case of *Automobile Transport (Rajasthan) Ltd v State of Rajasthan And Ors*<sup>29</sup> after the Atiabari case decision.

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<sup>27</sup> Constitution of India 1950, art 304(b)

<sup>28</sup> Constitution of India 1950, art 255(c)

<sup>29</sup> *Automobile Transport (Rajasthan) Ltd v The State of Rajasthan and Ors.* (1963) SCR (1) 491