IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY,THE 7TH DAY OF JUNE 2016/17TH JYAISHTA, 1938

WA.No. 1071 of 2016 IN WP(C).17895/2016

AGAINST THE JUDGMENT IN WP(C) 17895/2016 of HIGH COURT OF KERALA DATED 23-05-2016

APPELLANT/PETITIONER: -

DR. C.H.MOIDEEN KUNHI, B.SC., MBBS, MD(PED), DCH,
AGED 63, S/O CHERIKODE MOHAMMED KUNHI,
CHERIKODE HOUSE, CHATTANCHAL,
P.O. THEKKIL, KASARAGOD DISTRICT.

BY ADVS.SRI.SHIRAZ ABDULLA M.S.
SRI.JOJO PAPPACHAN

RESPONDENTS/RESPONDENTS: -
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE TRANSPORT COMMISSIONER,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.

3. THE REGIONAL TRANSPORT OFFICER,
REGIONAL TRANSPORT OFFICE,
KASARGOD.

BY GOVERNMENT PLEADER SRI. E.M. ABDUL KHADIR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 07-06-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DMR/-

ANTONY DOMINIC &
DAMA SESHADRI NAIDU, JJ.

W.A. No. 1071 of 2016

Dated this the 07th day of June, 2016

JUDGMENT

Dama Seshadri Naidu, J.

Appellant is a differently abled person with 100% disability and is totally wheelchair dependant. His only son is also specially abled being mentally retarded. He requires physical attention on a day-today basis. Thus, as per the need of the family, the appellant had decided to purchase what is said to be a bigger car.

2. As per G.O. (MS) No. 16/98/Tran., dated 31.03.1998, the Kerala Government has provided a tax exemption for certain motor vehicles, including the luxury cars, being purchased by differently abled persons. Later, through Exhibit P5 amendment, the Government has imposed a cap of Rs.5,00,000/- on the value of the vehicle entitled to tax exemption. This cap on the value of vehicle purchased by a differently abled person has come to be impugned by the appellant in W.P. (C) No. 17895/2016.

3. A learned single Judge of this Court upon consideration of the issue dismissed the writ petition through judgment dated 23.05.2016. Further aggrieved, the appellant is before us.

4. The learned counsel for the petitioner has submitted that the appellant indisputably is a physically challenged person with 100% disability. There is no question of his misusing the privilege or benefit conferred on him through Exhibit P4. It is the singular contention of the learned counsel that imposing a cap on the value of the car to be purchased and limiting it to Rs.5,00,000/- are arbitrary and fall foul of Article 14 of the Constitution of India.

5. In elaboration of his submissions, the learned counsel has strenuously contended that there is no rational nexus between the imposition of the cap on the vehicle and the object to be achieved, namely misuse of the privilege.

6. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents, apart from perusing the record.

7. Indeed, be it a classification of discrimination in terms of Article 14 of the Constitution, it applies *vis-a-vis* the right

that has been constitutionally consecrated. In that context, legion are the precedents that the classification or discrimination shall pass the judicial muster as regards the reasonableness or non-arbitrariness.

8. In the present instance, it is only a concession the Government has conferred on physically challenged persons. It being a financial incentive, the Government is well within its powers to impose suitable conditions. In other words, a privilege being entirely different from a right, a Fundamental Right at that, we are of the opinion that the contention of the learned counsel as regards discrimination or unreasonableness does not apply.

Accordingly, the writ appeal is dismissed. No order as to costs.

ANTONY DOMINIC, JUDGE

DAMA SESHADRI NAIDU, JUDGE

DMR/-