

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 8TH DAY OF MARCH 2017/17TH PHALGUNA, 1938

WP(C) .No. 7641 of 2014 (E)

PETITIONER(S) :

1. THE KERALA TRAVEL OPERATORS ASSOCIATION
REG.NO. ER/766/06, BASIL BUILDING,
SHANMUGHAM ROAD, COCHIN -35,
REPRESENTED BY ITS PRESIDENT SOLLY GEORGE, AGED 51.
2. RAJU T.K.
AGED 52, S/O. LATE T.K. KURIAKOSE,
CHERUVATHOOR HOUSE, MAROTTICHODU, EDAPALLY, COCHIN -24.

BY ADV. SRI.BABU PAUL

RESPONDENT(S) :

1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
TAXES DEPARTMENT, THIRUVANANTHAPURAM - 695 001.
2. COMMISSIONER OF TRANSPORTS
TRANSPORT COMMISSIONERATE, 2ND FLOOR,
TRANS TOWERS, VAZHUTHACAD, THIRUVANANTHAPURAM - 692 014.

R1-R2 BY ADV. SPL. GOVERNMENT PLEADER SRI.P.RAVINDRANATH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-02-2017, ALONG WITH WP(C) No. 12925/14 AND CONNECTED CASES, THE
COURT ON 08/03/17 DELIVERED THE FOLLOWING:

WP(C).No. 7641 of 2014 (E)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE FINANCE BILL, 2014 RELATING TO THE KERALA
MOTOR VEHICLE TAXATION ACT, 1976.

EXHIBIT-P2-TRUE COPY OF THE CIRCULAR NO. 2/14, B1/2787/TC/2014 DATED
10/03/2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT-P3-TRUE COPY OF THE CERTIFICATE OF REGISTRATION NO. ER76/06
DATED 22/11/2006.

RESPONDENT(S) ' EXHIBITS NIL

Rp

//TRUE COPY//

PS TO JUDGE

A.M. SHAFFIQUE, J.

“ C.R.”

=====
W.P. (C) Nos. 7641, 12925, 13168,
13972, 14178, 14732, 14784,
16192 & 17392 of 2014
=====

Dated this, the 8th day of March, 2017

J U D G M E N T

These writ petitions concern challenge to Finance Bill, 2014 by which taxi vehicles are also imposed with an obligation to pay one time tax for fifteen years. The main contention urged by the petitioners is that there is a different rate for payment of tax as far as taxi vehicles are concerned. The taxi vehicle can be used as a taxi vehicle in terms of Rule 82(2) of the Central Motor Vehicles Rules only for a period of nine years. However, while registering the aforesaid vehicles to be used as taxi, petitioners are called upon to remit tax @15% for a period of fifteen years. This, according to the petitioners, is arbitrary and illegal taking into account the nature of use of the vehicle.

2. Counter affidavit has been filed by the Government in WP (C) No. 13972/2014, inter alia supporting the stand taken in the matter. It is submitted that the State Legislature is competent to enact the law under Entry 57 of List II of the 7th Schedule by which tax can be levied on motor vehicles plying within the State. This position of law has been upheld by the Supreme Court in

W.P(C) No.7641/14 & conn.cases

-:2:-

Travancore Tea Company Ltd. v. State of Kerala (AIR 1980 SC 1547) and a judgment of this Court in **Reena v. State of Kerala** (2015 KHC 181). It is therefore submitted that being a one time tax, all vehicles are liable to pay tax for 15 years.

3. Before proceeding further, it has to be considered whether the vehicles used for private use and vehicles used for taxi can be brought under the same classification. Apparently, the vehicles used as taxi can be utilized only for a period of nine years as per Central Motor Vehicles Rules whereas vehicles which are for own use can be used initially for a period of 15 years and thereafter it is possible for the said vehicles to get re-registration also. It is therefore apparent that the vehicles which are being purchased or used as taxies can have a separate classification with reference to the vehicles which are purchased for own use, and is apparent from the classification in Annexure 1 itself.

4. Now coming to the principle of taxation, there is no dispute about the legislative competence of the Government to impose tax. The right of the Government to impose one time tax has been upheld by this Court in **Anas v. State of Kerala** (1999 (3) KLT 147). But, while calling upon the vehicles which are used

W.P(C) No.7641/14 & conn.cases

-:3:-

as taxi to pay 15 years tax or one time tax, whether it amounts to an arbitrariness on the part of the Government or not is the question. Annexure 1 of Finance Act, 2012 relates to one time tax to be payable under Section 3(1) of the Kerala Motor Vehicles Taxation Act. Item Nos.4 to 12 read as under:-

4	Motor Cars and Private Service Vehicle for personal use (NTV) having purchase value upto rupees 5 lakhs	6% of the purchase value of the vehicle
5	Motor Cars and Private Service Vehicle for personal use (NTV) having purchase value more than rupees 5 lakhs and upto rupees 10 lakhs	8% of the purchase value of the vehicle
6	Motor cars and Private Service Vehicles for personal use (NTV) having purchase value more than rupees 10 lakhs and upto rupees 15 lakhs	10% of the purchase value of the vehicle
7	Motor Cars and Private Service Vehicle for personal use (NTV) having purchase value more than rupees 15 lakhs.	15% of the purchase value of the vehicle
8	Motor cabs having cubic capacity below 1500 cc	6% of the purchase value of the vehicle
9	Tourist Motor cabs having cubic capacity below 1500 cc and having purchase value upto rupees 10 lakhs	6% of the purchase value of the vehicle
10	Tourist Motor cabs having cubic capacity below 1500 cc and having purchase value above rupees 10 lakhs	10% of the purchase value of the vehicle
11	Motor cabs & Tourist motor cabs having cubic capacity 1500 cc and above and having purchase value upto Rs.15 lakhs.	10% of the purchase value of the vehicle
12	Motor cabs & Tourist motor cabs having cubic capacity 1500 cc and above and having purchase value above Rs.15 lakhs	15% of the purchase value of the vehicle

5. Sl.Nos.8 to 12 relate to motor cabs. As per the second

W.P(C) No.7641/14 & conn.cases

-:4:-

proviso to Section 3, all vehicles are liable to pay life time tax which is considered to be 15 years.

6. Rule 82 of the Central Motor Vehicles Rules reads as under:

"82. Tourist permits - (1) An application for the grant of permit in respect of a tourist vehicle (hereinafter referred to in these rules as a tourist permit) shall be made in Form 45 to the State Transport Authority.

(2) (a)) A tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of a motor cab and 8 years where the motor vehicle is other than a motor cab, unless the motor vehicle is replaced.

(b) Where a vehicle covered by a tourist permit is proposed to be replaced by another, the latter vehicle shall not be more than two years old on the date of such replacement.

Explanation:-For the purposes of this sub-rule, the period of 9 years or 8 years shall be computed from the date of initial registration of the motor vehicle."

7. The statute is rather clear that a tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of a motor

W.P(C) No.7641/14 & conn.cases

-:5:-

cab and 8 years where the motor vehicle is other than a motor cab. In **Sethunath v. John Varghese and others** (2011 (1) KLT 222), it is held that though the period of permit has expired, it does not mean that the vehicle cannot be used as a transport vehicle any more. The owner of the vehicle can use the same as a mode of transport. Therefore, merely for the reason that the permit expires by eight or nine years, as the case may be, is not a reason to conclude that motor vehicle tax cannot be levied for a larger period or life time tax cannot be received. In **Mohandas N.Hegde v. State of Karnataka** (2005 (3) Supreme 4), the Apex Court had occasion to consider the question whether making provision for tax on value basis was Constitutional or not. In the said case, the challenge was relating to the levy of life time tax on value of car exceeding 1500 cc. It was held that the classification indicates a measure or rate of tax applied differently on different vehicles depending upon various circumstances and so long as there is competence to levy and collect the tax under Entry 57 List-II of the seventh schedule to the Constitution, the levy cannot be struck down only on the ground that the incidence of the tax falls differently on different categories of vehicles. A

W.P(C) No.7641/14 & conn.cases

-:6:-

Division Bench of this Court also had occasion to consider the validity of introducing one time tax. It was held in **Anas** (supra) that there is no discrimination between the same class of vehicles. It was held that a taxing statute can be held to contravene Article 14 only if purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. It was also held that taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects.

8. The contention of the petitioners have to be considered in the light of the above stated principles. In the case on hand, it is evident that as per item No.4 of the Annexure to Motor Vehicle Taxation Act, the one time tax payable for motor cars upto ₹5 lakhs is 6%. From item No.8, it is evident that for motor cabs having cubic capacity below 1500 cc, rate of tax is only 6%. Item No.5 relates to motor cars and private service vehicle where the purchase value is more than ₹5 lakhs and upto ₹10 lakhs, rate of tax is 8%. Coming to almost similar category of vehicles under item No.9, for tourist motor cabs having cubic capacity below 1500 cc and having purchase value upto ₹10 lakhs, tax is only 6%

W.P(C) No.7641/14 & conn.cases

-:7:-

which is less than that prescribed in item No.5. Coming to item No.6, motor cars and private service vehicles having purchase value of more than ₹10 lakhs and upto ₹15 lakhs, the rate of tax is 10%. Similar types of vehicles are dealt with in item no.11 where the rate of tax for motor cabs and tourist motor cabs having cubic capacity of 1500 cc and above and purchase value upto ₹15 lakhs, the tax is 10%. Similarly in respect of item No.7 where the value of vehicle is more than ₹15 lakhs, in respect of motor cars and private service vehicle, tax is 15% and item 12 also would show that motor cabs and tourist motor cabs having cubic capacity of 1500 cc and above and having purchase value above ₹15 lakhs, the rate of tax is 15%. Therefore, as far as motor cabs having cubic capacity below 1500 cc and purchase value upto ₹10 lakhs, the rate of tax compared to private service vehicle is less than the normal rate. In respect of item No.4, it is same as item No.8, item no.6 is same as item No.11 and item No.7 is same as item No.12.

9. It can therefore be seen that different types of vehicles have been differently classified. Even motor cabs and taxis are classified separately. The one time registration which is for a

W.P(C) No.7641/14 & conn.cases

-:8:-

period of 15 years is applicable to all vehicles. The same cannot be equated to grant of permit under Rule 82 of the Central Motor Vehicles Rules. In other words, the Motor Vehicle Taxation has nothing to do with the grant of permit for operating a vehicle as a tourist taxi or a motor cab. In such circumstances, merely for the reason that a motor cab or taxi can have a permit for 8 or 9 years by itself cannot be a reason for nonpayment of registration tax under Section 3. In other words, there is no misclassification as alleged by the petitioners.

10. Hence, I do not think that the statute suffers from any arbitrariness warranting interference by this Court under Art.226 of the Constitution of India.

Writ petitions are dismissed.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//TRUE COPY//

PS TO JUDGE