

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 21ST DAY OF DECEMBER 2016/30TH AGRAHAYANA, 1938

WP(C).No. 7490 of 2014 (I)

PETITIONER :

K.R.SURESHKUMAR,
PROPRIETOR, M/S.KALLADA TOURS & TRAVELS,
S/O.LATE RAMAKRISHNAN, NO.14, HOSUR MAIN ROAD,
MADIWALA, BANGALORE - 560 068.

BY ADVS.SRI.G.HARIHARAN
SRI.PRAVEEN.H.
SMT.N.C.SALINI
SMT.K.S.SMITHA
SRI.C.RADHAKRISHNAN
SMT.V.S.SANGEETHA

RESPONDENTS:-

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
FINANCE DEPARTMENT, NORTH BLOCK, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE TRANSPORT COMMISSIONER,
TRANS TOWERS, VAZHUTHACAUD,
THIRUVANANTHAPURAM - 695 014.
3. THE TAXATION OFFICER, (MOTOR VEHICLE INSPECTOR),
MOTOR VEHICLE CHECK POST, AMARAVILA,
THIRUVANANTHAPURAM - 695 122.
4. THE TAXATION OFFICER, (MOTOR VEHICLE INSPECTOR),
MOTOR VEHICLE CHECK POST, GOPALAPURAM CHECK POST,
PALAKKAD DISTRICT, PIN - 678 101.
5. THE TAXATION OFFICER, (MOTOR VEHICLE INSPECTOR),
MOTOR VEHICLE CHECK POST, WALAYAR,
PALAKKAD - 678 624.

-2-

WP(C).NO.7490/2014

**6. THE TAXATION OFFICER (MOTOR VEHICLE INSPECTOR),
MOTOR VEHICLE CHECK POST, MUTHANGA,
(VIA) SULTHANBATHERY, WAYANAD DISTRICT - 673 592.**

R1 TO R6 BY SPL.GOVERNMENT PLEADER SRI.PRAVINDRANATH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 14-11-2016, ALONG WITH WPC.NO. 8085/2014 AND CONNECTED
CASES, THE COURT ON 21-12-2016 DELIVERED THE FOLLOWING:**

sts

WP(C).No. 7490 of 2014 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE LIST OF VEHICLES WITH ALL INDIA PERMIT ISSUED BY THE STATE TRANSPORT AUTHORITY, KARNATAKA WHICH ARE OPERATED BY THE PETITIONER FOR CONDUCTING TOURIST SERVICES AS STATE ABOVE.
- EXHIBIT P1(A). TRUE COPY OF THE LIST OF ALL INDIA PERMIT SLEEPER VEHICLE OPERATED BY THE PETITIONER.
- EXHIBIT P2. TRUE COPY OF PERMIT OF ONE VEHICLE BEARING REGISTRATION NO.KA-01AA-7633 MULTI AXLE VOLVO BUS.
- EXHIBIT P3. TRUE COPY OF THE RELEVANT EXTRACT OF THE BUDGET SPEECH IN ENGLISH BY THE HON'BLE MINISTER OF FINANCE INTRODUCING THE STATE'S BUDGET FOR THE FINANCIAL YEAR 2014-15, CONTAINING PORTIONS REGARDING MOTOR VEHICLES DEPARTMENT.
- EXHIBIT P4. TRUE COPY OF THE FIRST SCHEDULE UNDER THE TAMILNADU MOTOR VEHICLES TAXATION ACT, 1974 (PLEASE SEE SERIAL NO.II).
- EXHIBIT P5. TRUE COPY OF THE TAX RECEIPT ISSUED BY THE GOVERNMENT OF KARNATAKA FOR VEHICLE NO.KA 51 B 3197 WHICH IS A 37 SEATER VEHICLE AT THE RATE OF RS.3000/- PER SEAT FOR A QUARTER.
- EXHIBIT P6. TRUE COPY OF THE RELEVANT EXTRACT OF THE FINANCE BILL, 2014 CONCERNING AMENDMENTS TO THE KERALA MOTOR VEHICLE TAXATION ACT, 1976.
- EXHIBIT P7. A GRAPHICAL REPRESENTATION SHOWING THE INCREASE IN MOTOR VEHICLE TAX WITH RESPECT TO VEHICLES REGISTERED OUTSIDE KERALA FOR THE DIFFERENT CATEGORIES MENTIONED ABOVE IN PURSUANCE TO THE KERALA FINANCE ACT, 2014.
- EXHIBIT P8. TRUE COPY OF THE CIRCULAR NO.2/2014 ISSUED BY THE 2ND RESPONDENT DIRECTING THE TAXATION OFFICERS IN THE STATE TO COLLECT TAX AT THE RATE PRESCRIBED IN EXHIBIT P6.
- EXHIBIT P9. TRUE COPY OF THE NOTIFICATION NO.1899/14 DATED 23/07/2014 NOTIFIED BY THE LAW (LEGISLATION (A) DEPARTMENT)
- P9 IN (IA.NO.11609/2014) COPY OF THE GAZETTE NOTIFICATION RELATING TO ACT 29/2014 DATED 23/07/2014.

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

sts

P.A.TO JUDGE

A.M.SHAFFIQUE, J

W.P.C.Nos.7490, 8085, 8130,
8176, 8250, 8253, 8410,
8438, 8439, 8440, 8441,
8442, 8446, 8971, 9082,
9286, 11103
&
14364 of 2014

Dated this the 21st day of December 2016

J U D G M E N T

These writ petitions concern common issue and hence heard and decided together.

2. In W.P.(C)No.7490/2014, petitioner seeks for a declaration that Sl.No.7(i)(f) of the Schedule to the Kerala Motor Vehicle Taxation Act 1976 (hereinafter referred to as 'the Act'), which was substituted by Amendment Act 29 of 2014, is ultra vires statute and for other consequential reliefs.

3. The short facts giving raise to the writ petitions are as under:

The petitioners are Tourist Bus Operators conducting services from Kerala to various destinations outside State of Kerala like Chennai, Bangalore, Hyderabad etc. This writ petition is filed at a stage when there was a proposal to amend the

W.P.C.Nos.7490/2014
& conn.cases

2

taxation schedule attached to the Act by introducing an amendment through the Kerala Finance Act 2014. The Kerala Finance Bill 2014 was passed by the Legislative Assembly and it was process of receiving assent of the Governor and notified in the Gazette. Petitioner submits that prior to the proposed amendment to Sl.No.7(f) of the schedule, rate of tax applicable for contract carriage vehicles operated inter-state was without any distinction, that the vehicle was registered in the State of Kerala or outside the State of Kerala. In respect of vehicle operating inter-state with more than 12 passengers, the rate of tax was Rs.1,540/- per passenger per quarter. By virtue of the proposal to substitute Sl.No.7(f) and insert an additional clause (g), the intention is to increase the rate of tax by 290% for vehicles with pushback seats registered outside Kerala. Earlier, there was no such classification between vehicle operating inter-state, whether it is registered within the State or outside the State. By enhancing the rate of tax for vehicles registered outside the State for operating within the State, it amounts to hostile discrimination between such vehicles. Petitioners place reference to the budget speech of the finance Minister which clarified the

W.P.C.Nos.7490/2014
& conn.cases

3

enhancement in the rate of tax and contends that the only reason is that the rate of tax fixed by neighbouring states for vehicle registered in Kerala is excessive and highly disproportionate in comparison with the rate levied by the State of Kerala and therefore it is proposed to introduce a separate rate of tax for contract carriages registered outside the State. According to the petitioners the above reason is highly misconceived since the State of Tamil Nadu is charging a uniform rate of Rs.3,000/- per seat per quarter on vehicle permitted to ply solely as contract carriages despite the fact that it is classified as tourist vehicle or not. It is pointed out that State of Karnataka levies uniform tax for all luxury buses. A tabulation column showing the difference in rate of tax in the State of Kerala, State of Tamil Nadu and State of Karnataka is shown to contend that the rate proposed to be fixed by the State of Kerala is highly excessive. It is contended that there is no reason to classify vehicles registered outside the State and inside the State as a separate class. There is no reasonable nexus with the object to be achieved in classifying both the categories differently.

W.P.C.Nos.7490/2014
& conn.cases

4

4. During the pendency of the writ petition, Act 29 of 2014 was passed after getting assent of the Governor on 23.07.2014 by which the amendments were brought into force.

The relevant provision which is impugned reads as under:

“(f) Vehicles registered in Other States and entering Kerala after obtaining permit under Sub-sections (8) and (9) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988)

(i)	Ordinary Contract Carriage permitted to carry more than 6 passengers – for every passenger	4000.00
(ii)	Contract Carriages with push back seats and permitted to carry more than 6 passengers – for every passenger	6000.00
(iii)	Contract Carriages with sleeper berths and permitted to carry more than 6 passengers – for every passenger	7000.00

The rate of tax for vehicles registered in Kerala and operating inter-State is as under:

“(e) Vehicles registered in Kerala and operating Inter-State after obtaining permit under sub-section (9) of Section 88 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988)

W.P.C.Nos.7490/2014
& conn.cases

5

(i)	<i>Ordinary Contract Carriage permitted to carry more than 6 passengers – for every passenger</i>	1540.00
(ii)	<i>Contract Carriages with push back seats and permitted to carry more than 6 passengers – for every passenger</i>	2000.00
(iii)	<i>Contract Carriages with sleeper berths and permitted to carry more than 6 passengers – for every passenger</i>	3000.00

5. In some of the cases, Circular No.2/2014 issued by the Transport Commissioner is under challenge.

Counter affidavit has been filed in W.P.(C)No.8253/2014 which was adopted in the other cases, *inter-alia*, stating that all contract carriages registered in State of Kerala are covered under Sl.7(f) were divided into 3 categories on the basis of the comfort and services provide in the said vehicles. In the case of vehicles registered in other States entering State of Kerala and after obtaining All India Permit different rates are prescribed on the basis of the place of registration to offset the imbalance otherwise arising in the case of vehicles registered in Kerala with All India Permit as neighbouring states are charging Motor Vehicles Tax at higher rate upon entry in that State. In other words, if corresponding concessional rates are not allowed for vehicles registered in Kerala the contract carriage owners who have taken

registration in Kerala will not be able to compete with the contract carriages registered in other states. Therefore, the Government has taken a policy decision to protect the business interest of the operators who have taken up registration in Kerala by enhancing the rate of tax of the contract carriages registered in other states in order to have a near parity with the rate of tax prevailing in the neighbouring states. With reference to the rates submitted by the petitioner in the State of Tamil Nadu and Karnataka it is submitted that the said rates were prevailing in 2011 and the current rates are not produced. Further rate of tax in respect of vehicles registered in Karnataka has no relation with the rate imposed on vehicles registered in Kerala and entering the State of Karnataka. It is further submitted that the Kerala State Legislature is competent to enact law as per Entry 57 of List II of the 7th Schedule the validity of the parent act has been upheld by the Supreme Court in **Travancore Tea Company Ltd. v. State of Kerala (AIR 1980 SC 1547)**. Reliance is also placed to the Judgement of the Punjab and Haryana High Court in **Ravidas Tansport Company v. State of Punjab AIR 2014 P&H 50** wherein it is held that the State is having right to make its own

W.P.C.Nos.7490/2014
& conn.cases

7

legislation and imposition of higher rate of tax would not suffer from the vice of discrimination under Article 14 of the Constitution of India.

6. With reference to Circular 2/2014 it is contended that the same had been issued on the basis of the enhancement of the rate made through the Kerala Finance Bill 2014 and the levy of tax with effect from 01.04.2014. It is also contended that there is no violation that proviso to Section 3(2) of the Act. The prohibition applies only in respect of enhancement of rate of tax in exercise the power under the delegated legislation which does not prohibit the Government from exercising legislative power under Entry 57 of List II of the 7th Schedule. It is stated that the classification is intended for levying higher rate of quarterly tax on account of the reason that contract carriage registered in the State of Kerala is paying a higher rate of tax in other States. Further it is submitted that the three categories mentioned as per the amendment are distinct and they offer distinct services for the commuters. The comfort and service made available in such categories are different and the charges also varies according to the level of comfort and facilities provided therefore the

W.P.C.Nos.7490/2014
& conn.cases

8

classification is justified and cannot be challenged by the petitioner.

7. In W.P.(C)No.8253/2014 an additional counter affidavit has been filed taking into account the amendment made by the petitioner. It is stated that tourists vehicles registered under Section 88(9) of the Motor Vehicles Act in the State of Kerala entering State of Karnataka have to pay tax for one year even for a single entry whereas the vehicle registered in other states and entering in the State of Kerala are given option to pay tax for a period of 7 days or for a period of 30 days as per notification in SRO No.1462/1991.

8. In W.P.(C)No.8971/2014 petitioner also challenges the classification made in the amendment imposing a different rate of tax for contract carriages with push back seats and contract carriage with sleeper bus. It is contended that providing a push back or sleeper bus is only an amenity to extend to the passengers for the comfort during the journey which cannot be a criteria for the purpose of assessment tax in respect of a vehicle.

9. Substantially the issue projected by the petitioners is regarding the discrimination meted out by the State Government

in the legislative process by which the inter-state and intra-state bus operators are categorised differently who carries out the same set of services within the State and outside the State. In some of the writ petitions the challenge is to the Circular issued by the Transport Commissioner when the bill was introduced before the legislative assembly. In so far as the amendments have already come into effect from 01.04.2014, there is no reason to separately considered the validity of the Circular.

10. Writ petitions were filed at a stage when the Finance Bill was introduced in the Legislative Assembly. However, during the pendency of the writ petition the bill was passed, assent of the Governor was obtained, it was notified and the amendment had taken effect from 01/04/2014.

11. Therefore, what remains is to be considered in these writ petitions are basically two questions. One is regarding the differentiation of classification between contract carriages having ordinary seats, push back seats and sleeper births, which according to the petitioners cannot be classified separately depending upon the comfort given to the passengers. The second is regarding the different rate of tax for vehicles registered in

other States and entering the State of Kerala after obtaining permit under Sub Sections (8) & (9) of Section 88 of the Motor Vehicles Act. The allegation is that a higher rate of tax has been imposed compared to the rate of tax applicable to the vehicles registered in the State of Kerala.

12. Learned counsel for the petitioner relied upon the judgment of the Apex Court in **State of W.B. v. Anwar Ali Sarkar and another** [1952 KHC 304]. That was a case where the question considered was whether the High Court of Calcutta was justified in quashing the conviction of the respondent by the Special Court in an instance where the respondent and 49 other persons were charged with various offences in the course of the riot as an armed gang on a factory. They were convicted and sentence by the Special Court. Thereafter, respondent filed a writ petition under Article 226 of the Constitution to quash the conviction and sentence on the ground that the special court which tried the case had no jurisdiction to try the case and therefore unconstitutional void under Section 13(2) and Article 14 of the Constitution of India. In the said case, the Apex Court considered the scope and effect of protection under Article 14 and

it is held that to invoke the protection of Article 14 of the Constitution there is no necessity to show that the legislation complained is a hostile legislation. If the legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it has to be treated as hostile since it affects injuriously the interests of that persons or class. It is held that if it is established that the person complaining has been discriminated as the result of legislation and denied equal privileges with others occupying the same provision, there is no necessity to assert and prove that in making the law the legislature was actuated by a hostile or inimical intention against the particular person or class in order to claim relief on the basis of his fundamental rights. It is held that what is to be enquired into is regarding the dominant intention of the legislature in enacting the law and the operation of Article 14 would be excluded if it is proved that the legislature had no intention to discriminate, though the discrimination was the necessary concomitant of the Act. He also placed reliance on a judgement of this Court in **Balan v. State of Kerala** [2004 KHC

W.P.C.Nos.7490/2014
& conn.cases

12

78] wherein the learned Singe Judge was occasion to consider a question regarding the Motor Vehicles Tax to be applied to contract carriages having All India Tourist Permit operating regular inter-state service under the provisions of the Motor Vehicles Taxation Act. That was a case in which an existing Circular by which inter-state operators were permitted to plie to State of Kerala under a special permit by paying short term tax or 7 days / 30 days was withdrawn. Petitioner sought for a direction by which they requested to receive from them tax for either one month/ two months or one quarter. After elaborately considering the matter it was held that paragraphs 11, 12 & 13 as under:

11. On a conspectus of the provisions of Sections 3 and 4, read with Schedule to the Act and Rule 5 of the Rules I am of the view that so far as the vehicles of the petitioners which are regularly operated on the basis of a permit issued by the outside State authorities under Section 88(9) of the Motor Vehicles Act without any limitation of time, the petitioners are liable to pay tax on quarterly or yearly basis at the option of the petitioners at the rate provided under the Schedule. Of course, if the vehicles which are granted permit under Section 88(9) of the Motor Vehicles Act enter

the State and stay in the State for a period not exceeding 7 days or enter the State and stay here for more than 7 days but not exceeding 30 days certainly the provisions of the proviso to subsection (5) of Section 3 would apply for which the operators have to specifically mention the fact before the authority before whom the tax is paid in advance as contemplated under Rule 5 of the Rules. Of course in a case covered by the proviso to subsection (5) of Section 3 the operators have got an option either to pay the tax as provided under the proviso and or to pay tax as provided under Section 3(1) read with the Schedule, i.e. quarterly tax. This will depend on the facts and circumstances of each case.

12. The stand taken by the department as already noted is that tax has to be paid for each entry of the vehicle in the State. A reading of the provisions of the Act and the Rules does not warrant such an interpretation. That apart it is against the very scheme of the Act discernible from the charging section, Section 3. The liability to tax under the Act, it must be noted, is not based on the entry of the motor vehicles inside the State but it is based on the use of the vehicle or keeping the vehicle for use in the State. The normal rule is to pay

tax for the quarter or for the year at the option. What is provided under Section 3(5) is only an exception to the above rules for the benefit of the operators, who have no intention to use the vehicle for one quarter in full or for a major part of a quarter. If the view taken by the department is accepted as pointed out by the petitioners themselves the petitioners have to pay tax for a quarter (for 45 days since the petitioners are operating the vehicles in the State only for 45 days in the quarter, i.e. on alternate days) Rs. 2,25,000/- against the quarterly tax payable at Rs. 56,000/-.

13. As already noted the proviso to Section 3 (5) only provides a benefit to vehicles covered by permits under sub-section (9) of Section 88 and not to saddle them with huge liability. If the view taken by the department is accepted it will be discriminatory and will offend the provisions of Articles 14 and 19 of the Constitution of India."

13. On the other hand, learned Government Pleader while supporting the stand taken in the matter placed reliance upon the following judgements:

1) **The State of Gujarat and Another v. The Ambica Mills Ltd.** [AIR 1974 SC 1300] - In this case the Apex Court was

considering the question regarding the challenge to Sections 3, 6-A & 7 of the Bombay Labour Welfare Fund Act 1953 and Section 13 of the Bombay Labour Welfare Fund (Gujarat Extension and Amendment) Act, 1961 and Rules 3 and 4 of the Bombay Welfare Fund Rules, 1953. The High Court declared that certain provisions of the Act and the Rules is unconstitutional and void. The Apex Court considered the correctness of the said judgement, it was held at paragraphs 53, 54, 60, 61 and 62 as under:

“ 53. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase 'similarly situated' mean ? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good.

54. A classification is under inclusive when all who are included in the class are tainted with the mischief but there are others also tainted

whom the classification does not include. In other words, a classification is bad as under inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden persons on others who are similarly situated. A classification is over inclusive when it includes not only those who are similarly situated with respect to the purpose but other who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.

60. *A legislative authority acting within its field is not bound to extend its regulation to all cases which it might possibly reach. The legislature is free to recognize degrees of harm and it may confine the restrictions to those classes of cases where the need seemed to be clearest (see Mutual Loan Co. v. Martell, (1911) 56 L Ed 175 at p. 180.)*

61. *In short the problem of legislative classification is a perennial one, admitting of*

no doctrinaire definition. Evils in the same field may be of different dimensions and proportions requiring different remedies. Or so the legislature may think (see Tigner v. Texas, (1939) 310 US 141).

62. Once an objective is decided to be within legislative competence, however, the working out of classifications has been only infrequently impeded by judicial negatives. The Court's attitude cannot be that the state either has to regulate all businesses, or even all related businesses, and in the same way, or, not at all. An effort to strike at a particular economic evil could not be hindered by the necessity of carrying in its wake a train of vexations, troublesome and expensive regulations covering the whole range of connected or similar enterprises."

Further at paragraphs 70 & 71, it is also held as under:

"70. The Court must be aware of its own remoteness and lack of familiarity with local problems. Classification is dependent on the peculiar needs and specific difficulties of the community. The needs and difficulties of the community are constituted out of facts and opinions beyond the easy ken of the court. (37 California Rev. 341). It depends to a great extent upon an assessment of the local

condition of these concerns which the legislature alone was competent to make.

71. Judicial deference to legislature in instances of economic regulation is sometimes explained by the argument that rationality of a classification may depend upon 'local conditions' about which local legislative or administrative body would be better informed than a court. Consequently lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification irrational (see Carmichael v. Southern Coal and Coke Co., (1936) 301 US 495.) Tax Laws, for example, may respond closely to local needs and court's familiarity with these needs is likely to be limited."

(ii) State of Tamil Nadu and Others v. K.Shyam Sundar and Others (2011 8 SCC 737). In this case, the Apex Court was considering an appeal filed by the State against judgement of the High Court by which Section 3 of the Tamil Nadu Uniform System of School Education (Amendment) Act 2011 was struck down as unconstitutional and certain directions have been issued to the State authorities to implement the Act of 2010. While considering the validity of the judgement it was held that

paragraphs 37 and 41 as under:

“37. It has consistently been held by this Court that the doctrine of mala fides does not involve any question of bona fide or mala fide on the part of legislature as in such a case, the Court is concerned to a limited issue of competence of the particular legislature to enact a particular law. If the legislature is competent to pass a particular enactment, the motives which impelled it to an act are really irrelevant. On the other hand, if the legislature lacks competence, the question of motive does not arrive at all. Therefore, whether a statute is constitutional or not is, thus, always a question of power of the legislature to enact that statute. Motive of the legislature while enacting a statute is inconsequential: “Malice or motive is beside the point, and it is not permissible to suggest parliamentary incompetence on the score of mala fides.” The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. This kind of “transferred malice” is unknown in the field of legislation. (See K.C. Gajapati Narayan Deo v. State of Orissa, STO v. Ajit Mills Ltd., SCC p. 108, para 16, K. Nagaraj v. State of A.P., Welfare Assn., A.R.P. v. Ranjit P. Gohil and State of Kerala v. Peoples Union

for Civil Liberties.)

IV. Doctrine of lifting the veil

41. *However, in order to test the constitutional validity of the Act, where it is alleged that the statute violates the fundamental rights, it is necessary to ascertain its true nature and character and the impact of the Act. Thus, courts may examine with some strictness the substance of the legislation and for that purpose, the court has to look behind the form and appearance thereof to discover the true character and nature of the legislation. Its purport and intent have to be determined.*

“8. ... In order to do so it is [permissible in law] to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy.”

(Vide Dwarkadas Shrinivas v. Sholapur Spg. & Wvg. Co. Ltd., Mahant Moti Das v. S.P. Sahi and Hamdard Dawakhana v. Union of India, AIR p. 559, para 8.)

(iii) **State of Madhya Pradesh v. Rakesh Kohli and another** (2012 (6) SCC 312). In this case, the Apex court was

considering the correctness of the judgement of the High Court of Madhya Pradesh declaring clause (d) of Article 45 of Schedule I-A of the Stamp Act 1899 brought in by an amendment Act 2002 as unconstitutional and violative of Article 14 of the Constitution of India. The Apex Court while considering the test of classification held at paragraphs 16, 17, 24, 25 and 32 as under:

“16. The statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. The court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. Sans flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature is not declared bad.

17. This Court has repeatedly stated that legislative enactment can be struck down by court only on two grounds, namely (i) that the appropriate legislature does not have the competence to make the law, and (ii) that it does not (sic) take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. In McDowell and Co. while dealing

with the challenge to an enactment based on Article 14, this Court stated in para 43 of the Report as follows: (SCC pp. 737-38)

“43. ... A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone viz. (1) lack of legislative competence, and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. ... if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by sub-clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to

know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.”

24. *While dealing with the aspect as to how and when the power of the court to declare the statute unconstitutional can be exercised, this Court referred to the earlier decision of this Court in Rt. Rev. Msgr. Mark Netto v. State of Kerala and held in para 46 of the Report as under: (P. Laxmi Devi case, SCC p. 740)*

“46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under Schedule VII List I, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other

making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Rt. Rev. Msgr. Mark Netto v. State of Kerala, SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.”

Then in paras 56 and 57 the Court stated as follows: (P. Laxmi Devi case, SCC p. 744)

“56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges’ personal preferences. The court must not invalidate a statute lightly, for, as observed above, invalidation of a statute made by the legislature elected by the people is a grave step. As observed by this Court in State of Bihar v. Kameshwar Singh: (AIR p. 274, para 52)

‘52. ... The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence....’

57. In our opinion, the court should, therefore, ordinarily defer to the wisdom of the legislature unless it enacts a law about which there can be no manner of doubt about its

unconstitutionality.”

25. *The Constitution Bench of this Court in Mohd. Hanif Quareshi v. State of Bihar, while dealing with the meaning, scope and effect of Article 14, reiterated what was already explained in earlier decisions that to pass the test of permissible classification, two conditions must be fulfilled, namely,*

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and

(ii) such differentia must have rational relation to the object sought to be achieved by the statute in question.

The Court further stated that classification might be founded on different basis, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

32. *While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles:*

(i) there is always presumption in favour of constitutionality of a law made by Parliament

or a State Legislature,

(ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,

(iii) the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence,

(iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law, and

(v) in the field of taxation, the legislature enjoys greater latitude for classification.

Had the High Court kept in view the above well-known and important principles in law, it would not have declared clause (d), Article 45 of Schedule I-A as violative of Article 14 of the Constitution being arbitrary, unreasonable and irrational while holding that the provision may pass the test of classification."

14. The main argument of the petitioners is with reference to proviso to Section 3 (2) which reads as under:

3. Levy of Tax:

(1) xxxx

(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 percent of such rate."

15. I do not think that the above provision restricts the right of the Government in amending the statute whereby a different classification has been brought into effect. As rightly pointed out by the petitioners, prior to the amendment, there was only a single rate of tax as far as Motor Vehicles registered outside the State was concerned. Even at the relevant time there was a separate classification. The rate of tax for vehicles registered in Kerala and the vehicles which are registered outside the State were differently classified. Further, the classification itself is based on the fact that one vehicle is registered in the State of Kerala and the other in other State. Therefore, to that extent, it cannot be stated that the classification is bad.

16. Then the only question is whether there can be different classification with reference to the very same type of

vehicle by treating the same differently depending upon the nature of comfort for the passengers. Perusal of Sl.No.7 of the Schedule would show that similar classification has been done in respect of vehicles operated within the State in respect of ordinary contract carriages and other contract carriages with push back seats, sleepers etc. Similar classification has been made in respect of vehicles registered in the State of Kerala and operating inter-State, very same classification has been made in respect of vehicles registered in other State and entering State of Kerala. Therefore, the classification based on the comfort level of passengers either ordinary seats, pushback seats, sleeper berth etc., has been uniformly applying within the State, outside the State and vehicles coming from other States. Hence, I do not find any discrimination warranting interference under such a ground.

17. Now, the only question that remains is whether the differential tax can be adopted with respect to vehicles registered in State of Kerala and operating outside the State and vehicles registered out side the State operating in Kerala. As already stated, there is nothing wrong in classifying them separately as

they form different classes being registered in two separate States. The question is what is the basis for differentiating them with reference to the rate of tax. Apparently, there is a different rate of tax. Can rate of tax beyond the refund to hold that the same is unconstitutional and violative of Article 13(2), 14, 19(1)(g), 301, and 303 of the Constitution of India. The judgments relied upon by either side are well settled propositions of law. The question is whether this Court will be justified in interfering with the legislative function of the State when the legislative competence is not questioned.

18. It is settled law that the statute enacted by the State legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. In other words, unless there is a flagrant violation of the constitutional provision, the law made by the Parliament or a State legislature cannot be declared as bad.

19. The only question to be considered in the present situation is whether the impugned amendment can be struck

down on the ground that it takes away any of the fundamental rights of the petitioners. In this case, I am concerned with a taxing statute wherein hardship is not considered to be relevant. This position is well-settled in **Bengal Immunity Co. Ltd. v. State of Bihar (AIR 1955 (SC) 661)**. In **Mohd. Hanif Quareshi v. State of Bihar (AIR 1958 SC 731)** the Constitution Bench, while dealing with the meaning, scope and effect of Article 14 reiterated that to pass the test of permissible classification, two conditions must be fulfilled viz., one the classification must be found on an intelligible differentia which distinguishes person or things that are grouped together from others left out of the group and such differentia must have rational relation to the object sought to be achieved by the statute in question. It was also held that the classification must be founded on different basis viz., the geographical or according to object or occupations or the like and what is necessary is that there must a nexus between the basis of classification and the object of the Act under consideration.

20. The reasons stated by the Government for imposing a different rate of tax between two types of operators viz, operators

W.P.C.Nos.7490/2014
& conn.cases

31

registered in State of Kerala and outside Kerala is the difference in the rate of tax between the two States. It is contended that the vehicle registered in the State of Kerala when it operates inter-State will have to pay a higher rate of tax in the neighbouring State, and it has come to the notice of the Government, that such operators are unable to compete with operators who are registered outside the State and operating within the State. It is well settled that in a taxing statute, the intention of the Government is not material, and therefore one cannot treat the impugned clauses as a discrimination, warranting interference by this Court.

These writ petitions are hence dismissed.

(A.M.SHAFFIQUE, JUDGE)

jsr