

(1995) 12 KL CK 0018

In the High Court Of Kerala

Case No : W.A. No's. 1180, 1252, 1253 and 1437 of 1995

Aravind Ramakant Modawdekar and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 301

Kerala Motor Vehicles Taxation Act, 1976 — Article 4(1), 3

Citation : AIR 1996 Ker 195 : (1996) 1 ILR (Ker) 721

Hon'ble Judges : K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench : Division Bench

Advocate : S. Sankara Subban, for the Appellant;

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Kerala Vs. Aravind Ramakant Modawdakar and Others, AIR 1999 SC 2970(2) : AIR 1999 SC 2970 : (1999) 5 JT 588 : (1999) 4 SCALE 680 : (1999) 7 SCC 400 : (1999) AIRSCW 2886 : (1999) 7 Supreme 267

Thomas, Ag. C.J.

1. When the Original Petitions were filed the initial target was the steep rise in the tax amount imposed by the Government on "contract carriages". But eventually petitioners restricted the scope of their challenge to the two tier tax rates fixed on contract carriages -- one for those operating service entirely within the State of Kerala and the other for those conducting service both within and outside the State. The former class of contract carriages is described as "intra-State service" for convenience and the latter class as "inter-State service". The same expressions can appropriately be used by us also in this judgment. Tax in respect of intra-State service is Rs. 500/- per quarter per seat while for the other it is just double of it. This differentiation is attacked as violative of Article 14 of the Constitution.

2. Learned single Judge dismissed all the Original Petitions on the ground that the said classification has an intelligible basis and that there is a nexus between the differentia and the object of the taxation. In other words, learned single Judge upheld the validity of the two tier tax measure imposed on contract carriages. Owners of contract carriages who filed the Original Petitions have filed these appeals in challenge of the said judgment.

3. Learned counsel for the appellants contended that even if the classification made between intra-State and inter-State service has any perceptible differentia it has no rational nexus with the object of taxation. Learned Additional Advocate General (for Taxes) defended the two tier taxation measure on the premise that Government has the power to reduce the tax in respect of any class of persons and that such reduction for intra-State contract carriage operators is intended to reduce the hardship of that class. Hence he contended that the measure is well within the scope of Article 14 of the Constitution.

4. For appreciating the rival contentions, we think that an understanding of the distinction between a contract carriage, a tourist vehicle and a stage carriage is of use. Section 2(7) of the Motor Vehicles Act, 1988 (for short "the M. V. Act") defines a "contract carriage". In substance a contract carriage is a motor vehicle which carries passengers for hire or reward and is engaged under a contract on an agreed rate and without stopping to pick up or set down passengers during the journey. A "stage carriage" is a motor Vehicle adapted to carry more than six passengers for hire at separate fares paid for individual passengers either for the whole journey or for stages of the journey. (It is defined in Section 2(4) of the M. V. Act). A "tourist vehicle" is a contract carriage (vide Section 2(43) of the M. V. Act) and its only difference with contract carriage is that tourist vehicle is equipped and maintained in accordance with certain prescribed specifications. Thus a contract carriage can be a tourist vehicle also, but not a stage carriage. The two tier tax measure applies only to a contract carriage and not to any other type of vehicle.

5. Section 74 of the M. V. Act deals with procedure for granting permit for a contract carriage. It is Regional Transport Authority which is empowered to grant permit for operating service within, its territorial limits. Section 88 provides for operating service even beyond such territorial limits. In such a case the permit shall be got countersigned by the Regional Transport Authority of that other region but if the service has to be stretched beyond the State the permit shall be got countersigned by the State Transport Authority of the other State concerned. Thus a contract carriage can be used for operating service within as well as without the territorial limits of a State.

6. Kerala Motor Vehicles Taxation Act 1976 (for short "the Taxation Act") was passed for levying tax on motor vehicles. Section 3 of the Taxation Act empowers the State Government to levy a tax on every motor vehicle used or kept for use inside the State at the rate specified for such vehicle in the Schedule to the Act. Government is empowered to increase the rate from time to time by notification

in the gazette upto a maximum of fifty per cent more. The liability to pay the tax is cast on the registered owner or the person having possession or control of the vehicle. Section 22 enables the State Government to exempt any person or class of persons from liability to pay the tax. At the same time Government is empowered to reduce the tax payable by any person or class of persons or in respect of any class of motor vehicles.

7. The Schedule to the Act contained different rates of tax as for different types of vehicle. Article 4 of the Schedule provides rates of quarterly tax payable in respect of motor vehicles plying for hire and used for transport of passengers. Clause (1) of the Article relates to "vehicles permitted to ply solely as contract carriages." The rate of tax for every seat was initially Rs. 310/- and it was increased from time to time and reached an all time high of Rs. 1,000/- from 1-4-1994 onwards. Sub-Clause (e) has been amended by the Kerala Finance Act, 1994. The sub-clause as it stands now is extracted below :

"(e) Vehicles permitted to operate within the State --

(i) More than 12 passengers but not more than 20 passengers, for every passenger. --

350.00

(ii) More than 20 passengers, for every passenger.

500.00

(f) Vehicles operating inter-State --

(iii) More than 12 passengers, for every passenger.

1,000.00"

8. The contention of the appellants is that the above classification of contract carriage into intra-State service and inter-State service for imposing two rates of taxes is ultra vires to Article 14 of the Constitution as there is no rational or reasonable nexus between the differentia and the object of the enactment.

9. Learned Additional Advocate General (for Taxes) invited our attention to the observations in *Ambica Mills' case The State of Gujarat and Another Vs. Shri Ambica Mills Ltd., Ahmedabad and Another, and Income Tax Officer, Shillong and Others Vs. R. Takin Roy Rymbai and Others*, . In the first decision Their Lordships quoted with approval the following passage from "The Equal Protection of the Laws" by M/s. Joseph Tussman and Jacobs Breck:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the, uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled

by events -- self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

In the second decision it has been observed that the more fact that a tax falls more heavily on some in the same category is by itself not a ground to render the law invalid. Supreme Court has pointed out that legislature has ample freedom to select and classify persons, districts, goods, properties, incomes and objects which it would tax and it would not be invalid, if it has the legislative competence.

10. Bearing in mind the above observations we may point out here itself that a taxing statute, like any other statute, should conform to the fundamental rights in Part III of the Constitution and if it infringes any such rights the same cannot survive the sweep of Article 13 of the Constitution.

11. Shri S. Sankara Subban, learned -counsel for some of the appellants, advanced the argument that taxes on motor vehicles is different from other categories of taxes because the former are really compensatory and regulatory in nature in spite of the involvement of revenue aspect and hence such taxes could not be levied for any other purpose as that would then infringe Article 301 of the Constitution. According to the learned counsel if Government levies a particular tax in respect of those vehicle plying within the State, Government have a liability to keep and maintain the roads in the State in good condition and Government have the further burden to keep the law enforcing agencies including police patrol to maintain traffic regulations as well as law and order. But Government have no liability whatsoever to maintain any road outside the State or to employ any law and order enforcement agency beyond the territorial limits of the State, according to him, In such a situation, learned counsel further contended that tax payable for inter-State operation under the Act should have been less than the tax leviable for intra-State use. At any rate, he argued that imposing a higher liability of tax for those who ply the vehicle outside the State is without any nexus with the object sought to be achieved.

12. It is by virtue of Entries 56 and 57 of List II of the Constitution that a State legislature can enact law for levying a tax on motor vehicles. Entry 56 is "Taxes on goods and passengers carried by road or on inland waterways", whereas Entry 57 is "Taxes on vehicles, whether mechanically propelled or not suitable for use on roads.....".

13. When imposition of a tax on motor vehicles was first challenged, Supreme Court quashed it on the ground that such tax is a hindrance to the free flow or movement of trade as envisaged in Article 301 of the Constitution (vide *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*,). But the interpretation in *Atiabari Tea Company's* case did not last long. It was either overruled or explained by a larger bench of seven Judges in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, stating that if the tax on motor vehicles is a compensatory or regulatory measure, the same would not

infringe. Article 301 of the Constitution. Supreme Court held that "regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the Proviso to Article 304(b) of the Constitution."

14. Following the above ratio Supreme Court upheld the distinction made in a taxing enactment as between contract carriage and stage carriages in the matter of levy of vehicle tax in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, . Mathew, J. in that decision has pointed out that the differentia has a rational nexus with the object on the premise that "contract carriages can run a larger number of miles than stage carriages and therefore the wear and tear of the road caused would be greater and in the case of roads which are not fit for such operation, the damage to the road surface due to wear and tear is quite likely to be much larger, involving higher cost of maintenance of such roads; in other words, the contract carriage even with the same passenger seating capacity as a stage carriage can travel on any road and on any type of surface at any time of the day or night, and thus can cause greater damage to roads, especially of the inferior type of road surfaces which it traverses." These and other things weighed with the Supreme Court in holding that the classification in that case would not hit Article 14 of the Constitution.

15. A higher rate of tax imposed on stage carriages vis-a-vis goods vehicles was upheld by this Court in *Sadasivan v. State of Kerala* ILR.(1984) Ker 407 on the premise that tax on goods vehicle would stir up the prices of goods and that would lead to inflation and affect the economy and hence there is a rational nexus with the differentia. Even the tax collected by a State Government from vehicles plying along National Highways was upheld in *International Tourist Corporation and Others Vs. State of Haryana and Others*, on the reason that under the National Highways Act the State Government have also the burden to maintain, in certain conditions, national highways and so the taxation is compensatory in nature.

16. But here the two tier tax measure seems peculiar. Those Contract. Carriages plying within the territorial limits of Kerala State without proceeding beyond such limits need bear only one half of the tax which those Contract Carriages plying both inside and outside the State have to bear. Justification for reducing the tax burden as for the former class is that it would lessen the hardship of those operators. With one illustration we would highlight the want of justification for the hike of tax burden for the latter class. If a contract carriage operates service from Kasaragod (northern end of Kerala) upto Parassala (southern end) his tax burden is only Rs. 500/- per seat per one quarter. But if a contract carriage service starting from Trivandrum (situated very near to the southern end of the State) proceeds upto Kanyakumari (only a few miles South, but in Tamil Nadu) the tax burden is Rs. 1,000/- per seat. Is there any nexus between this differentia and the object of the taxation?

17. There is no case for the State Government that contract carriages plying outside the State will create any additional burden or cost for the State Government so far as the compensatory and regulatory aspects are concerned. We have pointed out earlier that no tax on vehicles can survive Art. 301 of the Constitution if the same is not imposed as compensatory or regulatory measure. So, when the State Government have absolutely no financial burden in respect of the roads outside the State, imposition of a far higher rate of tax on the same type of vehicles simply because they proceed just outside the State has no legal justification. There is no-nexus between differentia of the classification and the object of the taxing measure.

18. We, therefore, hold that the two tier tax measure levying higher tax on contract carriages operating inter-State service offends Article 14 of the Constitution. In the result, we declare that the higher tax imposed on contract carriages operating inter-State service is unconstitutional. Tax on such contract carriage need be paid at the same rate as carriage operating intra-State service. Hence we allow these appeals to the above extent.