(2004) 04 AHC CK 0041

In the Allahabad High Court

Case No : C.M.W.P. No. 538 of 2004

Ashok Kumar Agrawal and Others — APPELLANT

Vs

State of U.P. and Another — RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Constitution of India, 1950 — Article 14
Uttar Pradesh Motor Vehicles Taxation Rules, 1998 — Rule 29

Citation : (2004) 3 AWC 2471

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : L.P. Naithani and H.P. Dube, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed challenging the validity of Rule 29 (v) of the U. P. Motor Vehicles Taxation Rules, 1998. The petitioners have also prayed for a mandamus directing the respondents not to impose and realise additional tax from the petitioners at the rate specified in Article 5 of IVth Schedule of the U. P. Motor Vehicles Taxation Act, 1997.

2. Heard learned counsel for the parties.

3. The petitioners are residents of Kanpur City and their vehicles are engaged by various educational institutions in Kanpur for carrying school children to and from the institutions.

4. It is alleged that the petitioners did not use their vehicles for any other purpose on the public road except for carrying students to and from the institutions.

5. It is alleged in para 5 of the petition that the petitioners are not charging any fare from any individual student. The petitioners, entered into a contract with the institutions concerned on contract amount which is between 9,500 to Rs. 12,500

per month.

6. In the year 1962, passenger tax was imposed as stated in para 6 of the writ petition. The U. P. Motor Vehicles Taxation Act, 1997 and the Rules made thereunder were made with the object to consolidate all taxes in one place and to provide for levy of additional tax in place of ''Yatri kar'' and ''Mal kar''. Stage carriages owned by the recognised educational institutions and used exclusively for the convenience of students to and from the institutions have been exempted under Rule 29 (v) of the U. P. Motor Vehicles Taxation Rules, 1998. Rule 29 (v) states :

"Stage carriages owned by a recognised educational institution and used exclusively for the convenience of people to and from the institution shall be exempted from the payment of additional tax under the Act."

7. Sri L. P. Naithani, learned Sr. counsel for the petitioner submitted that Rule 29 (v) creates hostile discrimination between the vehicles owned by the recognised educational institutions and those not owned by the recognised educational institutions.

8. In our opinion there is no merit in this petition. Rule 29 (v) grants exemption only to stage carriages owned by the recognised educational institutions. If a stage carriage is not owned by the recognised educational institution then the exemption under Rule 29 (v) does not apply.

9. It is well settled that in tax matters Article 14 has much narrower scope than with respect to other laws.

10. It may be mentioned that in tax matters the Government has a greater latitude to tax one category and not to tax other categories vide The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, ; R. K. Garg v. Union of India 1982 UPTC 355 (SC) ; Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others, ; Income Tax Officer v. N.I.R. Rymbai AIR 1976 SC 670 ; Amalgamated Tea Estate v. State of Kerala 1975 UPTC 89 etc. A taxing statute is not open to attack on the ground that it taxes some persons or objects and not others. East India Tobacco Co. Vs. State of Andhra Pradesh, The State has a wide discretion in selecting the objects or persons that it will tax, and in order to tax something it is not bound to tax everything. Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI), ; State of M. P. v. Bhopal Sugar Industries AIR 1974 SC 1179 . It can pick and choose objects, areas, persons, rates of tax, etc. V. Venugopala Ravi Varma Rajah Vs. Union of India and Another, ; Gopal Narain Vs. State of Uttar Pradesh and Another, ; Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, an T.G. Venkataraman, etc. Vs. State of Madras and Another, etc.

11. The above decisions have been followed by the decision of this Court in M/s. Lallooji and Sons v. State of U. P. and Ors. 2003 UPTC 900.

12. Thus, there is no force in this petition and it is dismissed.

