
(1992) 02 KL CK 0003

In the High Court Of Kerala

Case No : O. P. No"s. 1240 and 1244 of 1992

Coastal M.T.W. Co-op. Society

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 03-02-1992

Acts Referred:

Citizenship Act, 1955 — Section 5
General Clauses Act, 1897 — Section 21
Industrial Disputes Act, 1947 — Section 10
Kerala General Sales Tax Act, 1963 — Section 10, 10(2)(a), 10(3)
Kerala Motor Vehicles Taxation Act, 1976 — Section 19, 21, 22, 3

Citation : (1992) 1 KLJ 393

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : S. Venkitasubramanya Iyer, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Nayar J.

1. The same question arises for consideration in both the Original Petitions. The matter relates to the withdrawal of the exemption from payment of tax under the Kerala Motor Vehicles Taxation Act, 1976, (for short "the Act"), given in the petitioner's vehicles. In both the cases, the petitioners are Co-operative Societies who own and operate bus services. u/s 3 of the Act, a tax shall be levied on every motor vehicle used or kept for use in the State at the rates specified for such vehicle in the schedule, Section 22 of the Act provides as follows:

22. Exemption from or reduction of tax--The Government may, if they are satisfied that it is necessary in the public interest so to do, by notification in the Gazette make an exemption or reduction in the rate or other modification, either prospectively or retrospectively, in regard to the tax payable under this Act or under the Kerala Motor Vehicles Taxation Act, 1963 (24 of 1963) or the Kerala

Motor Vehicles (Taxation of passengers and Goods Act, 1963 (25 of 1963))--

(i) by any person or class of persons; or

(ii) in respect of any motor vehicle or class of motor vehicles using a specified route, subject to such terms and conditions as they may deem fit.

By the above provision the Government is enabled to issue notification giving exemption in regard to tax payable under the Act. Ext. P1 is the notification issued, viz. notification No. 42188/TC 2/75/PW dt 17-10-1975 published as S. R. O. No. 1009/75. That was issued in exercise of the power u/s 22 of the Kerala Motor Vehicles Taxation Ordinance which was replaced by the Act. In order to get the exemption provided by the said notification, five conditions mentioned therein have to be satisfied viz.

2. (i) The Co-operative Society is solely engaged in the business of transport of goods or passengers or both from one place to another in motor vehicles;

(ii) at least seventy five percent of the members of the Cooperative Society are its employee;

(iii) At least fifty per cent of the members of the Co-operative Society are not related to each other;

(iv) At least ninety percent of the employees of the Society are its members; and

(v) The motor vehicle is used or kept for use exclusively for the purpose of the Co-operative Society.

Petitioners are co-operative societies satisfying the requirements of Ext. P1 and they were enjoying the exemption under Ext. P1. That was withdrawn by the Government by Ext. P2 notification, G. O. (P) 92/91/ PW & T. dated 31-12-1991 published as S. R. O No. 1618/91. Petitioners challenge Ext. P2 notification cancelling the earlier notification published as S. R. O. No. 1009 of 1975 in Part I of the Kerala Gazette No. 43 dated 4th November, 1975. Both the notifications, Exts. P1 and P2, are notifications issued u/s 22 of the Act and necessary satisfaction in public interest is there in both the cases. I am not going into the facts of the case in detail as it is admitted that the facts will not make any difference as the petitioners are concerned only with the validity of Ext. P2. The contention of the petitioners is that u/s 21 of the Act, exemption from payment of tax is given by the statute itself in respect of certain vehicles used for agricultural operations. But u/s 22 of the Act, exemption is provided for by issuing notification. Section 22 is an enabling provision by which the Government is permitted to grant exemption by way of notification. If u/s 21 exemption is given by legislation, u/s 22 the exemption is given by subordinate legislation or by way of notification. u/s 22 of the Act there is a provision to grant exemption, but there is no provision to take away is the contention. Once the exemption provided by section 22 is granted, it will be effective and cannot be taken away unless there is clear provision for taking away that right is the case of the

petitioners. It is also contended that the legislature was careful to see that no power is given to the government to take away the exemption granted and, therefore, no power is provided. As an analogy and comparison, the petitioner drew my attention to section 19 of the Kerala Motor Vehicles (Taxation on Passengers and Goods) Act, 1963 (for short "the T. P. G. Act) and section 10 of the Kerala General Sales Tax Act. In both the cases, there are specific provisions for cancelling the notification giving exemption. Sub-section (3) of section 19 of the T. P. G. Act is as follows:

(3) the Government may, by notification, cancel or vary any notification issued under sub-section (1).

The contention is, there must be specific provision as in sub-section (3) of section 19 of the T. P. G. Act in the case exemption covered by section 22 of the Act. Similar provision contained in section 10 (3) of the Kerala General Sales Tax is as under :

(3) The. Government may by notification in the Gazette, cancel or vary any notification issued under sub-section (1).

It is argued that in the absence of enabling provision to cancel the notification issued viz, Ext. P1, granting exemption cannot be withdrawn. Counsel for the petitioner referred to various decisions, viz. The Strawboard Manufacturing Co. Ltd. Vs. Gutta Mill Workers' Union, , Ghaurul Hasan and Others Vs. The State of Rajasthan, , The State of Bihar Vs. D.N. Ganguly and Others, , Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, and K.M. Chikkaputtaswamy and Others Vs. State of Andhra Pradesh and Others, .

2. In the decision in Strawboard Manufacturing Company's case (supra) the question was whether the time for making the award can be extended after the expiry of the time fixed therefor. Such a power cannot be granted ex post facto is the decision of the Supreme Court. Ghaurul Hasan's case related to the Citizenship Act. The citizenship once granted can be cancelled u/s 10 (2) (a) of the said Act on the ground it was obtained by fraud, false representation or concealment of any material fact. But when the Collector cancelled the citizenship, the Supreme Court held that the power given was only for cancellation on specific grounds and so far as the same had not been established in the case, the cancellation was bad. But it was contended in that case that the Collector has the power to cancel by the application of section 21 of the General Clauses Act. Dealing with this aspect of the matter, the Supreme Court held that section 21 confer on the Collector no such power as the order mentioned in section 21 of the General Clauses Act are not of the kind contemplated u/s 5 of the Citizenship Act. In the decision in State of Bihar v. D.N. Ganguly (supra) the question was whether the reference once made by the Government u/s 10 of the Industrial Disputes Act can be cancelled. The Supreme Court held that that cannot be done, for it will involve trespassing into the judicial power. Once reference is made, the case is before the Tribunal to be adjudicated and full

adjudication of the same cannot be prevented by cancelling the reference. The next decision referred to by counsel for the petitioner, viz. Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, related to the question whether under the Land Acquisition Act the acquisition proceedings can be cancelled once the notification has been issued. u/s 48 it is specifically provided that after possession is taken by the Government and the land is vested in the Government, the same cannot be cancelled. Therefore, in that case, since the cancellation was taken place after vesting the property in the Government, it was held that the cancellation was without jurisdiction. The decision in Chikkaputtaswamy's case (supra) related to the Motor Vehicles Taxation Act of Andhra Pradesh. Section 9(1) thereof is the provision for exemption. There is also a provision for withdrawing the exemption. But the grant or cancellation of exemption should be in the manner prescribed therein. It is well settled that when a statute makes provision prescribing the manner in which a benefit can be granted or taken away, it can be done only in that way and in that manner. So far as in the case the same had not been done by way of notification as prescribed in the relevant provision, the Supreme Court held that the withdrawal of exemption was bad, because the concession given by a notification was withdrawn without a notification.

3. The above decisions will not apply In this case. In this case, section 22 of the Act provides for exemption by issue of notification. Section 20 of the Interpretation and General Clauses Act, 1125 provides as follows:

Power to make, to include power to add, to amend vary or rescind, orders, rules or byelaws.-- Where by any Act, power to issue notifications, orders, rules or byelaws conferred then that power includes a power exercisable in the like manner and subject to the like sanction and conditions if any, to add to amend, vary or rescind notifications, orders, rules or bye-laws so issued.

The notification issued can be rescinded in the same manner as provided in section 22 of the Motor Vehicles Taxation Act. That will be the effect of section 20 of the Interpretation and General Clauses Act read with section 22 of the Motor Vehicles Taxation Act. Counsel referred me to paragraphs 168 and 169 relating to interpretations in "Statutory Construction" by Earl T. Crawford. Counsel referred to this only to establish the fact that under law nothing can be implied in the statute and this Court cannot supply the omission. Of course, the Judges are not stevedores to fork up an unexpressed intent of a taxation legislation. Nothing which is not expressed in the statutory enactment can be implied, therein. It is also the law that exemption laws should, as far as possible, be interpreted giving benefit to the assessee. These statutory principles are well settled. But the application of the same in the present case is a matter to be considered. Section 22 gives power to the Government to issue notification on certain conditions, i.e. if the Government is satisfied that it is necessary in public interest. That satisfaction is made by the Government while issuing Ext. P1 notification. That satisfaction was also made by the Government when withdrawing the exemption

under Ext. P2. The question whether the Government is justified in withdrawing the notification or cancelling the notification already issued will not come before me for consideration, for it is a policy matter for the Government to decide. The Government was satisfied in the interest of the public that the exemption granted by Ext. P1 notification should be withdrawn. If that be so, the withdrawal of the exemption given by Ext. P1 notification by issuing Ext. P2 notification cannot be faulted.

I find no merit in the Original Petition and the same is hereby dismissed.