

(1993) 02 KL CK 0060
In the High Court Of Kerala
Case No : O.P. No. 449 of 1993

K. Venkata Rao

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 15-02-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21
Kerala Motor Vehicles Taxation Act, 1976 — Section 4, 6, 8

Citation : (1993) 02 KL CK 0060

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : Vijayan Nair, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Jagannadha Rao, C.J.—The Writ Petition has been referred to a Division Bench by a learned Single Judge. In the Writ Petition the Petitioner has assailed the validity of the Kerala Motor Vehicles Taxation (Amendment) Ordinance, 1993 (Ordinance 2 of 1993) on various grounds. By virtue of the said ordinance, Section 4 of the Kerala Motor Vehicles Taxation Act, 1976 has been amended, and a new fourth proviso is substituted, which reads as follows:

Provided also that a registered owner or person having possession or control of a motor cycle (Including motor scooter and cycle with attachment for propelling the same by mechanical power) or a new three wheeler shall pay the tax payable in respect of that vehicle in advance for a period of 5 years in lumpsum upon a licence for such period, and in respect of a three wheeler other than the new three wheeler and in respect of a motor car as Specified in serial No. 6A of the Schedule, such payment of tax shall be for a period of two years upon a licence for such period provided however that he may, at his choice pay the tax in advance in respect of a motor cycle or new three wheeler for a period of 10 years or 15 years and in respect of a three wheeler other than a new three wheeler, for a period of 5 years or 10 years or 15 years, in lump sum upon a licence for such

period.

2. In the second proviso to Section 4 for the words "a motor vehicle" the words "a motor vehicle other than a motor cycle (including motor, scooter and cycle with attachment for propelling the same by mechanical powers) or a three wheeler including new three wheeler or a motor car as specified in item 6A of the Schedule" were substituted. A further amendment is made by describing the existing Explanation as Explanation 1 and in the Explanation as so numbered for the words "the tax for an annual licence shall not exceed four times", the words "the tax for an annual licence shall not exceed four times, tax for two years, licence shall not exceed eight times" were substituted. After the said Explanation 1, Anr. Explanation was added as Explanation 2 stating that "for the purposes of this Sub-section "a new three wheeler" means a three wheeler specified in item 2 of the Schedule which is first registered in the State on or after the commencement of this Ordinance". Consequential amendments are made in Section 6 of the Act.

3. It will therefore be seen that the advance collection of motor vehicles tax is levied for a period of five years in respect of certain vehicles and for a period of two years in respect of Anr. type of vehicles. There is also a choice given to the tax-payer to pay the tax for longer periods. It is this amendment that is assailed in the Writ Petition.

4. At the outset, it may be noticed that the Bombay Motor Vehicles Tax Act, 1958 was amended in 1987 and 1988 in Bombay by permitting collection of motor vehicles tax in advance for 15 years, which was described as one-time tax. The validity of the same has been upheld by the Supreme Court in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, . Their Lordships pointed out that the State Legislature has powers to collect tax under Entry 35, of List III-of the 7th Schedule to the Constitution, that such tax is regulatory and compensatory tax, and the State is entitled to come forward with legislation to collect such tax in advance for 15 years. The contention of the Government that the cost of service to be rendered to the public was twice the total amount recovered from all types of vehicles was accepted. It is also pointed out that the tax-payer should not take the trouble of going to the authorities for paying tax every year. Their Lordships also pointed out that the Act, as amended, was not violative of Article 14 of the Constitution of India. This decision therefore clearly concludes the matter against the Petitioner in the present case where the tax is collected in advance only for five years or two years in respect of different types of vehicles.

5. The party-in-person raised a contention before us that the tax is unreasonable inasmuch as it imposes a burden on the tax-payer presently for paying tax for 5 years/two years in advance. In our view, when the collection of tax even for 15 years in advance has been upheld by the Supreme Court in the above said decision, the collection of tax in advance for five years in respect of certain vehicles and for two years in respect of certain other vehicles cannot be said to

be unreasonable. Even otherwise, having regard to the amount involved, we do not consider, it in any manner unreasonable, particularly having regard to the fact that once the advance tax is paid, the tax-payer's burden for the future, is, to that extent, reduced. So far as the State is concerned, the State is saving by way of administrative expenses involved in the collection of tax periodically. Further the collection of tax in advance in lump sum would enable the State to expend a larger amount in respect of immediate scheme where a large amount of capital outlay is involved, such schemes being for the benefit of the road users. We, therefore, hold that the levy of tax cannot be said to be unreasonable.

6. A point has been raised under Article 19(1)(d) of the Constitution of India that the levy of tax amounts to unreasonable restriction on the citizens. We do not think that there is any substance in this contention. The State is entitled to levy tax, and the levy of tax or its advance collection does not amount to unreasonable restriction.

7. Another aspect raised by the Petitioner is. that there is a likelihood of the owner of the vehicle using the vehicle without certificate of insurance and if any accident occurs, the victims may not get proper compensation, and that therefore Article 21 of the Constitution of India is violated. We are unable to agree. The verification of the existence of an insurance certificate may be done at the time of collection of tax, as stated in Section 8 of the Kerala Motor Vehicles Taxation Act, 1976. That does not preclude verification by the police authorities or, by the Officers under the Motor Vehicles Act in respect of the insurance certificate at other times also. Therefore Article 21 of the Constitution of India is not violated. The third contention is that the increase in tax without notice is violative of principles of natural justice. We are clear there is no merit in this contention. The issuance of Ordinance is a legislative act and therefore principles of natural justice are not attracted to such legislative acts.

8. The validity of a similar amendment to the Andhra Pradesh Motor Vehicles Taxation Act came up for consideration in *B. Mohan Reddy v. Managing Director, A.P. State Co-operative Marketing Federation* 1989 (1) A.L.T. S.N. 24, before the Andhra Pradesh High Court and the Andhra Pradesh High Court held that the amendment was within the competence of the A.P. Legislature.

We see no merit in this O.P. and is accordingly dismissed.