

(1992) 06 KL CK 0035
In the High Court Of Kerala
Case No : O.P. No. 6454 of 1992-R

N. Mani

APPELLANT

Vs

The Regional Transport Officer, Thiruvananthapuram and
Others

RESPONDENT

Date of Decision : 26-06-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Motor Vehicles Taxation Act, 1976 — Section 22

Citation : AIR 1993 Ker 37

Hon'ble Judges : B.M. Thulasidas, J

Bench : Single Bench

**Advocate : S. Gopakumaran Nair and S. Subash Chand, for the Appellant;
A.A.G., for the Respondent**

Final Decision : Dismissed

Judgement

B.M. Thulasidas, J.—It is alleged that on 22-1-1987 the officers of the Motor Vehicle's Department seized the petitioner's vehicle KBT 2792 for the arrears and the same was entrusted with the third respondent, Sub-Inspector for Police, Vattappara Police Station, for safe custody, which is evidenced by Ext. P1, He was in great financial difficulties and therefore could not pay the tax arrears or take steps to get the vehicle released. On 16-12-1991 he moved an application before the first respondent to grant him exemption from payment of tax. But his application was rejected by order dated 17-12-1991, copy of which is Ext. P2. In doing so, the first respondent relied upon the notification, a copy of which is Ext. P3, Aggrieved by Ext. P2, the petitioner submitted a representation, copy of which is Ext. P4, to the Minister for Transport and it has not been disposed of so far. According to the petitioner, Exts. P2 and P3, "in so far as it excludes motor vehicles held in public custody for non-payment of tax from the exemption provisions are unreasonable and unjust and are ultra vires the provisions of the Constitution as well as the provisions of the Kerala Motor Vehicles Taxation Act and the Rules framed thereunder". Several grounds have been urged in support

of the contention. Petitioner has prayed for a writ of mandamus to respondents 1, 2 and 4 to grant him exemption from payment of vehicle tax for the period during which it was in Government custody and also for a declaration that respondents 1, 2 and 4 are not empowered to collect any tax from him in respect of his vehicle and for a further order to release the vehicle on a bond pending disposal of the Original Petitioner.

2. Heard counsel for the petitioner and the respondents.

3. On 22-1-1987 a contract carriage that belongs to the petitioner was seized by the Motor Vehicle's Department for tax arrears and it was entrusted to the third respondent for safe custody the same day. According to him, since he did not and could not ply the vehicle or use it on public roads after it was seized he is not bound either legally or morally to pay vehicle tax during the period it was in official custody. The submission is rested on Section 5 of the Kerala Motor Vehicles Taxation Act, (hereinafter called the Act) which reads:

"In the case of a motor vehicle which is not intended to be used or kept for use during the first month or the first and second months of a quarter or the whole of a quarter or year, as the case may be, the registered owner or the person having possession or control of such vehicle shall give previous intimation in writing to the Regional Transport Officer from whom the endorsement for tax has been obtained, that such vehicle would not be used for such period and thereupon, the registered owner or such other person shall not be deemed to have used or kept for use the vehicle for such period, and so tax shall be payable in respect of such vehicle for such period."

According to the petitioner, the procedural safeguard in the form of previous intimation is only to enable the authorities to check and verify the truth of the intimation. Since as in this case the vehicle was all along in official custody the question of giving intimation did not arise and the liability to pay tax was also non-existent. Attractive though these arguments are, they lack merit. The position has been clarified by the Supreme Court in Travancore Tea Estates Co. Ltd. and Others Vs. State of Kerala and Others, where it was observed :

"Though the purpose of the Act is to tax vehicles that are used or kept for use on the public roads of the State, the State is entitled for the purpose of safeguarding the revenues of the State and to prevent evasion of the tax to enact provision like provision as in Section 3 raising a presumption that the vehicle is used or kept for use in the State without any further proof unless exemption is claimed u/s 3(2), Section 5 and Section 6. It may be observed that reading Sections 3, 5 and 6, it is clear that a levy of tax is contemplated only on the vehicles that are used or kept for the use on the public roads of the State.,.....While we agree with the contentions of the learned counsel for the appellant that the tax is only exigible on vehicles used or kept for use on public roads, we must observe that in order to claim exemption from payment of tax requirements of Section 3 (2) or Sections 5 and 6 should be satisfied.

Surrender of the registration certificate contemplated u/s 5 is for making sure that the motor vehicle is not being put to any use and does not have the effect of annulling the certificate of registration. If the requirement contemplated under the Act is not satisfied the registered owner or person in possession or control of the vehicle would not be entitled to claim any exemption from payment of tax."

4. u/s 22 of the Act, --

"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 vehicles or class of motor vehicles; or

(iii) 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."

In exercise of this power the Government promulgated a notification, copy of which is Ext. P3: and by SRO 878/75 certain classes of motor vehicles have been exempted from payment of tax. Under item 27, --

"all motor vehicles held in the custody of the police or other authorities for offences other than non-payment of tax, for the period during which such vehicles are in such custody".

are exempt from payment of tax, According to the petitioner, the non-inclusion of vehicles seized and kept in custody for non-payment of tax is discriminatory and offends Article 14 of the Constitution. This argument is also unmerited. No doubt, as submitted a classification could be spelt out from Item 27 of Ext. P3 which is not impermissible or unreasonable. Indeed, for a permissible classification, --

"two conditions must be fulfilled, namely (i) that 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) that differentia must have a rational relation to the object sought to be achieved by the statute in question. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration".

The question for determination for the Court will not be whether the classification resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation or inequality of treatment does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it

is necessary to show that the selection of differentiation is unreasonable.

5. As held in Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others,

"The State, in the exercise of its Governmental power has, of necessity, to make laws operating differently in relation to different groups or class of persons to attain certain ends and must, therefore, possess the power to distinguish and classify persons or things. It is also recognised that no precise or set formulae or doctrinaire tests or precise scientific principles of exclusion or inclusion are to be applied. The test could only be one of palpable arbitrariness applied in the context of the felt needs of the times and social exigencies informed by experience."

6. I do not agree that the classification between vehicles held in the custody of the police or other authorities for offences and those in custody for non-payment of tax is in any manner discriminatory, unreasonable or otherwise unjustified. One cannot equate a vehicle kept in custody following its involvement in an offence and another seized for non-payment of tax. The rationale and the object sought to be achieved are different. There is no reason to hold that Item 27 of Ext. P3 is in any way bad or untenable, as alleged by the petitioner. He certainly cannot claim exemption from payment of tax for his vehicle having failed to satisfy the conditions of Section 5 of the Act and being out of Item 27 of Ext. P3. The reliefs prayed for cannot be granted.

The Original Petition fails and is dismissed.