
(1995) 09 KL CK 0007

In the High Court Of Kerala

Case No : O.P. 2791, 4776, 4785, 178700 of 1994 and 5477 of 1995

Ranganatha Reddy

APPELLANT

Vs

The Secretary, State Transport Authority and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 301
Kerala Finance Act, 1993 — Section 7
Kerala Finance Act, 1994 — Section 1(3), 12, 21, 22, 3
Kerala Motor Vehicles Taxation Act, 1976 — Section 22
Motor Vehicles Act, 1988 — Section 2(7), 4(1), 73, 74, 74(1)

Citation : (1995) 09 KL CK 0007

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : M. Krishnakumar, in O.P.No. 2791/94G, for the Appellant; T. Karunakaran Nambiar, A.A.G. (Taxes), for the Respondent

Judgement

P.A. Mohammed, J.—In this batch of writ petitions under Article 226 of the Constitution of India, the Petitioners mainly challenge constitutional validity of the provisions contained in item 4(i)(f) of the Schedule to the Kerala Motor Vehicles Taxation Act, 1976 as amended by Section 4 of the Kerala Finance Act, 1994 (hereinafter referred to as "the Act") enhancing the rate of quarterly tax in respect of the contract carriage vehicles operating interstate. In O.P. No. 2791 of 1994, there is an additional prayer seeking to quash notifications G.O. (Rt.) 1618/93/P.W. and T., dated 19th November 1993 and G.O. (Rt.) 1619/93/P.W. and T., dated 19th November 1993 issued by the Government under Sections 3(2) and 22 of the Act respectively.

2. The Petitioners are operators of "contract carriages" coming within the definition of the said term contained in Section 2(7) of the Motor Vehicles Act, 1988. The contract carriage permits are issued to them u/s 74(1) of the said Act. Many of the Petitioners are operating on all India permits obtained by them u/s 88(9) of the said Act from the State Transport Authorities concerned. As per the

said permits they are authorised to ply the vehicles throughout the country as interstate contract carriage vehicles. The common Petitioner in O.P. Nos. 2791 and 7300 of 1994 is operating eight contract carriage buses on interstate routes Calicut-Bombay and Kannur-Bangalore. Those contract carriage permits were issued to him by the Regional Transport Officer, Kannur, subject to the obtaining of counter signatures of State Transport Authorities of Karnataka and Andhra Pradesh.

3. The Kerala Motor Vehicles Taxation Act, 1976 was published as per Kerala Gazette No. 196 dated 25th March 1976. This Act was intended "to consolidate and amend the laws relating to levy of tax on motor vehicles and on passengers and goods carried by such vehicles in the State of Kerala". By virtue of Section 1(3), the Act was brought into force from 1st October 1975. It was amended from time to time by virtue of the provisions contained in the Finance Acts intended to give effect financial proposals of the Government in every year.

4. Under Sub-section (1) of Section 3 of the Act, a tax shall be levied on every motor vehicles used or kept for use in the State at the rate specified for such vehicle in the Schedule to the Act. Item No. 4 in the Schedule to the Act prescribes rate of tax in respect of motor vehicles plying for hire and used for transport of passenger? in respect of which permits have been issued under the Motor. Vehicles Act, 1988. Sub-item (1) of item 4 of the Schedule to the Act is extracted below:

4. Motor vehicles plying for hire and used for transport of passengers and in respect of which permit have been issued under the Motor Vehicles Act, 1939.

(i) Vehieles permitted to ply solely as contract carriages and to carry- (a) Not more than two passengers 25.00 (b)Three passengers 60.00 (c) More than three passeengers, but not more than six passengers, except for Tourist Motor Cabs 130.00 (d) More than 6 passengers, but not more than 20 passengers, for every passenger 190.00 (e) More than 20 passengers, for every passenger 310.00

5. Clauses (d) and (e) of Sub-item (i) of item 4 contained in the Schedule to the Act were amended by Section 7 of the Kerala Finance Act, 1993 (Act 13 of 1993) substituting the following:

(d) More than 6 passengers, but not more than 12 passengers, for every passenger 200.00 (e) More than 12 passengers, but not more than 20 passengers, for every passenger 250.00 (f) More than 20 passengers, for every passenger 370.00

Thus, by virtue of Finance Act, 1993, rate of quarterly tax for a passenger carried in the vehicle permitted to ply solely as contract carriage was enhanced to Rs. 370, if the vehicle carries more than 12 passengers but not more than 20 passengers. Subsequently, by G.O. (Rt.) 1618/93/P.W. and T, dated 19th November 1993 (S.R.O. No. 1809/93) the Government in exercise of the powers conferred by Sub-section (2) of Section 3 of the Act have increased the rate of

quarterly tax payable in respect of class of vehicles specified in Clause (f) in Sub-item (i) of item 4 of the Schedule to the Act, as below:

Class of vehicle Rate of quarterly tax 4. Motor Vehicles plying for hire and used for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act, 1939 or Motor Vehicles Act, 1988 (i) Vehicles permitted to ply solely as contract carriage and to Carry- (ii) More than 20 passengers, for every passenger 500.00

However, by virtue of G.O. (Rt.) 1619/93/P.W. and T. dated 19th November 1993 (S.R.O. No. 1810/93) the Government have reduced the rate of tax prescribed in respect of contract carriage vehicles having more than twenty-one seats including the driver which is permitted to operate within the State to Rs. 370. The said G.O. is extracted hereunder:

S.R.O. No. 1810/93- In exercise of the powers conferred by Section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (Act 19 of 1976) the Government of Kerala being satisfied that it is necessary in the public interest so to do hereby reduce the rate of tax on contract carriage vehicles having more than twenty-one seats including the driver and covered by permits issued under Sub-section (1) of Section 74 of the Motor Vehicles Act, 1988 and permitted to operate within the State only to Rs. 370 (Rupees three hundred and seventy only).

The purpose of this amendment was "to avoid the hardship to the intra state contract carriage operators" in the State. Thus the rate of quarterly tax prevailing from 19th November 1993 to 1st April 1994 was Rs. 370 and Rs. 500 in respect of contract carriage having permits to operate "intra state" and "inter state" respectively.

6. When the Government have introduced Kerala Finance Bill, 1994 in the Legislative Assembly, the tax pattern in respect of contract carriage appears to have been revised. By the said Bill, Clauses (e) and (f) of item 4 in the Schedule were substituted by a new Clause (e) whereby a uniform rate of tax of Rs. 1,000 was levied in respect of all contract carriages having seating capacity of more than twelve passengers. The effect of this amendment was an increase in quarterly rate of tax in respect of contract carriages having passenger capacity of more than twelve passengers but not more than twenty passengers from Rs. 250 to Rs. 1,000 and in respect of the contract carriages having the passenger capacity of more than twenty passengers from Rs. 500 to Rs. 1,000. Later in order to avoid hardship to the intra state contract carriage operators of the State, Government have proposed to reduce the quarterly tax in the case of such class of vehicles from Rs. 1,000 to Rs. 500 per seat per passenger. This was done as per the Government Order G.O. (P.) No. 23/94/P.W. and T. dated 6th April 1994 (S.R.O. No. 1417/94) which is extracted hereunder;

S.R.O. No. 1417/94.- In exercise of the powers conferred by Section 22 of the Kerala Motor Vehicles Taxation Act, 1976 (Act 19 of 1976) and in supersession of notification number G.O. (Rt.) 1619/93 P.W. and T. dated 19th November, 1993

published as S.R.O. No. 1810/93 in Kerala Gazette extra-ordinary No. 1174, dated 20 th November, 1993, the Government of Kerala being satisfied that it is necessary in the public interest so to do hereby reduce the quarterly rate of tax payable under the said Act in respect of contract carriage vehicles permitted to carry more than 12 passengers and covered by permits issued under Sub-section (1) of Section 74 of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) and permitted to operate within the State only to Rs. 500 (Rupees five hundred only) for every passenger with effect from the 1st day of April 1994.

7. By virtue of the amendment introduced as per Section 4 of the Finance Act, 1994, Clauses (e) and (f) of Sub-item (i) of item 4 now stand as thus:

(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) Vehicle operating interstate: more than 12 passengers, for every passenger 1000.00

Thus it is crystalline that there are two classes of contract carriage vehicles: (i) class of vehicles "permitted to operate within the State", and (ii) class of vehicles "operating interstate". In both the cases, the vehicles are plying for hire and used for transport of passengers, and in respect of which permits have been issued u/s 74(1) of the Motor Vehicles Act, 1988. The above provision authorises the Regional Transport Authority to grant a contract carriage permit in accordance with the application filed u/s 73. The vehicles are permitted to ply solely as contract carriages in both the cases. The rate of quarterly tax payable in respect of the first category of vehicles is Rs. 500 for every passenger and Rs. 1,000 as above in respect of second category of vehicles. Thus, though both the classes of vehicles are liable to pay quarterly tax, the tax burden in the case of inter state contract carriage vehicles is higher than the rate applicable to intra state contract carriage vehicles, though it is alleged that both the classes are similarly placed. The Petitioners point out that apart from the tax burden being high no service is rendered in respect of the inter state contract carriage vehicles plying beyond the territorial limits of the State.

8. The challenge against the provisions contained in item 4 (i) (f) of the Schedule to the Act is mainly on the ground of Article 14 of the Constitution. Classification of contract carriages as two classes namely, vehicle operating interstate and vehicles operating intrastate, according to the Petitioners, is without any basis. They further plead that the classification is arbitrary and unreasonable having no nexus with the object sought to be achieved. It is also pointed out that the contract carriage vehicles belong to one group and the classification among that group is not permissible.

9. What is the nature of the tax levied u/s 3(1) of the Act? An answer to this question is found to be necessary while dealing with the above contentions urged by the Petitioners. While proceeding further on this question, I am being reminded by the oft-quoted rule laid down by Rowlatt, J. in *The Cape Brandy*

Syndicate v. Inland Revenue Commissioners (1921) 1 K.B. 64.

In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

Applying this dictum this Court can only perceive that u/s 3(1) of the Act a "tax" is levied on every motor vehicle used or kept for use in the State and it cannot be called as "fee" in any event. Distinction between "tax" and "fee" is well nigh evident in the words of Cooley.

A charge fixed by statute for the service to be performed by an officer, where the charge has no relation to the value of the services performed and where the amount collected eventually finds its way into the treasury of the branch of the Government whose officer or officers collect the charge is not a fee but a tax.

Placing reliance on this principle the Supreme Court in Sri Krishna Das Vs. Town Area Committee, Chirgaon, observed:

Where it appears that under the guise of levying a fee the authority is attempting to impose a tax, the court has to scrutinise the scheme to find out whether there is a real co-relation between the services and the levy whether it is so co-extensive as to be a pretence of a fee but in reality a tax, and whether a substantial portion of the fee collected is spent in rendering the service.

10. In this context it is apt to recall that under the provisions of the Constitution the power of the Government to levy a tax is not identical with that of its power to levy a fee. Therefore, "when a levy or an imposition is questioned, the court has to inquire into its real nature inasmuch as though an imposition is labelled as a fee, in reality it may not be a fee but a tax, and vice versa". The drawing of distinction between the imposition of tax and imposition of fee any further is found to be inessential inasmuch as the position is well settled that the power exercisable under entry 56 or 57 of List II of VII Schedule is a power to impose taxes which is in the nature of compensatory and regulatory measure. In *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, the Supreme Court while examining the constitutional validity of Rajasthan Motor Vehicles Taxation Act observed:

In the cases under our consideration the tax is based on passenger capacity of commercial buses and loading capacity of goods vehicles; both have some relation to the wear and tear caused to the roads used by the buses. In basing the taxes on passenger capacity or loading capacity, the Legislature has merely evolved a method and measure of compensation demanded by the State, but the taxes are still compensation and charge for regulation.

In *Bolani Ores Ltd.*, while examining the validity of the Bihar and Orissa Motor Vehicles Taxation Act, the apex court observed that the said Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to

meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. It is further held: "The validity of the taxing power under Entry 57 List II of the Seventh Schedule read with Article 301 of the Constitution depends upon the regulatory and compensatory nature of the taxes. It is not the purpose of the Taxation Act to levy taxes on vehicles which do not use the roads or in any way form part of the flow of traffic on the roads which is required to be regulated? K.K. Mathew, J. in G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, upheld the validity of Madras Motor Vehicles Taxation Act observing that the tax imposed on the contract carriages by the impugned notification was compensatory in character.

The position on this question seems to have been well concluded in the following passage contained in the judgment of the Supreme Court in International Tourist Corporation and Others Vs. State of Haryana and Others, at 779.

We have held that the Haryana Passengers and Goods Taxation Act is a law made pursuant to the power given to the State Legislature by Entry 56 of List II. Having regard to *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, ; *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, and *Bolani Ores Ltd.*, it has to be held that the power exercisable under Entry 56 of List II is the power to impose taxes which are in the nature of regulatory and compensatory measures. In the last of the cases mentioned it was said by the Court, "Entry 57 of List II empowers legislation in respect of taxes on vehicles... suitable for use on roads... The power exercisable under Entry 57 is the power to impose taxes which are in the nature of compensatory and regulatory measures". What was said about Entry 57 is true of Entry 56 too.

11. A Division Bench of this Court upheld the constitutional validity of the provisions contained in the Kerala Motor Vehicles (Taxation) (Amendment) Act, 1983 authorising enhancement of tax at different rates and imposition of additional burden on the operators in *Sadasivan and Ors. v. State of Kerala and Ors.* ILR 1984 Ker 407. There the Division Bench after taking note of the above decisions of the Supreme Court observed that vehicles tax "is no doubt a tax and therefore a compulsory exaction for augmenting the revenues of the State, all the same, it is a compensatory tax in the sense that the tax payer is directly benefited by the proper up-keep and maintenance of roads used by his vehicles".

12. Admitting the compensatory and regulatory nature of the tax, the Petitioners submit that the tax now levied as per the impugned provision is highly disproportionate to the beneficial service, or convenience rendered by the State. Their case is that if the actual accounts relating to the collection and expenditure maintained by the State is verified it could be seen that the proposed enhancement is no way connected with the compensatory nature of the tax. This argument is countered by the State by projecting that there was sufficient increase in the expenditure of the State revenue for maintenance of the roads and other incidental activities. Their further case is that the rate of tax in Karnataka is equal to the rate of tax now in force in this State and the increase is

made in order to have uniformity in respect of taxation structure in comparison with other States. But neither the Petitioners nor the State has channelized their respective claims as to the proportionality of levy by supplying adequate material or data so as to have a thorough probe into the question.

Anyhow, such a probe loses its prominence inasmuch as the compensatory tax does not mean that the measure of tax should be proportionate to the expenditure incurred by the State for maintenance of the roads and for other services rendered. In this context what the Supreme Court said in *International Tourist Corporation and Others Vs. State of Haryana and Others*, is apposite.

But to say that the nature of a tax is of a compensatory and regulatory nature is not to say that the measure of the tax should be proportionate to the expenditure incurred on the regulation provided and the services rendered. If the tax were to be proportionate to the expenditure on regulation and service it would not be a tax but a fee.

In *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, the Supreme Court observed:

It is always difficult to evolve a formula which will in all cases ensure exact compensation for the use of the road by vehicles having regard to their type, weight and mileage. Rough approximation rather than mathematical accuracy, is all that is required.

In *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, it further said:

There is, however, no doubt that the courts do have the ultimate power to decide whether what is recovered by way of tax is in truth and substance either a contribution towards the construction and maintenance of the roads, bridges and other facilities that are necessary for providing a smooth transport service or an exaction far in excess of what is needed for providing such facilities. Courts, however, cannot insist upon an exact correlation between the tax recovered and the cost so incurred because such exact correlation is in the very nature of things impossible to attain. There may be in some cases a little excess recovery by way of taxes. That by itself should not result in the nullification of the law imposing the tax, if the extent of such excess is marginal having regard to the total cost involved.

(Italics supplied)

13. Applying the principles discussed herein before it is difficult for this Court to say that the amount collected by way of tax in respect of interstate contract carriage vehicles is an exaction of money far in excess of the compensation for facilities and conveniences and charges for regulations. The present dynamic growth of the country in the socio-economic field demands enormous infra-structural facilities particularly in the field of transport which in effect moves men and materials from place to place facilitating construction of new bridges, roads,

highways etc. and installing new devices and techniques for regulation of efficient traffic system. At best what is involved in this set of facts is nothing other than a contribution by the operators of contract carriages towards the cost of facilities or conveniences and charges for regulation, multidimensional in nature.

14. It is argued that neither compensatory nor regulatory measures are attracted when the Petitioners operate their vehicles interstate. It is their case that major portion of the route through which they operate falls outside the State and if at all any tax is liable it can only be with reference to the portion of the route which falls within the State. The answer to this contention requires the determination of the taxable event under the charging provisions contained in Section 3(1) of the Act, which runs thus:

3. Levy of Tax.- (1) Subject to the provisions of this Act, on and from the date of commencement of this Act, a tax shall be levied on every motor vehicle used or kept for use in the State, at the rate specified for such vehicle in the Schedule:

Provided that no such tax shall be levied on a motor vehicle kept by a dealer in, or a manufacturer of, such vehicle, for the purpose of trade and used under the authorisation of a trade certificate granted by the registering authority.

Under the above provision what is material for levy of tax is the use of vehicle or keeping of the vehicle for use in the State. The taxable event u/s 3(1) of the Act occurs when the vehicle is used or kept for use in the State. When the tax is paid on the occurrence of the taxable event it does not matter whether the vehicle is actually used for carriage or not. In *International Tourist Corporation and Others Vs. State of Haryana and Others*, it is observed:

In these cases the taxable event is "keeping for use" and alternately user within the State. Once the motor vehicle is used within the State the taxable event occurs and the tax is attracted.

15. Chief Justice Kania said as revealed from the judgment of S.R. Das, C.J. in *Tata Iron and Steel Co. Ltd. v. State of Bihar* AIR 1958 S.C. 452.

Generally, States can legislate effectively only for their own territories, but for purposes of taxation and similar matters, a State makes laws designed to operate beyond its territorial limits.

When the taxable event occurred, the collection of tax takes place irrespective of whether the vehicle operates intrastate or interstate. An interstate operator may not have any benefit at all but for that reason the levy cannot be invalidated, for, the accrual of such benefit is not referable to the taxable event u/s 3(1) of the Act. Whether a particular operator is benefited or not is not the criterion for collecting the contribution towards costs for facilities and charges for regulation. It is for the benefit of the contract carriage operators as a class, whether operating interstate or intrastate, and ultimately it is for the benefit of the entire society as a class or class of people as a whole. The actual user would often be unknown to Ors. and such user may at some time be compensatory and at other

not so. This being the concept of benefit envisaged under the compensatory taxing laws, the extension of such benefit beyond the territorial limits loses its relevance.

16. "In deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not Ors. ?. [See: East India Tobacco Co. Vs. State of Andhra Pradesh, . In Elal Hotels and Investments Limited and Others Vs. Union of India, the Supreme Court further held: ?It is now well-settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must needs to be so, having regard to the complexities involved in the formulation of a taxation policy." This can only be so, because, "The instrument of taxation is not merely a means to raise revenue in India it is, and ought to be, a means to reduce inequalities. You don't tax a poor man. You tax the rich and the richer one gets, proportionately greater burden he has to bear." That is how the Supreme Court enunciated the idea behind taxation as observed by it in Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others,

17. In Bain Peanut Co. v. Pinson (1930) 282 U.S. 499 Holmes, J. proclaimed:

We must remember that the machinery of Government would not work if it were not allowed a little play in its joints.

This famous quotation was applied by the Supreme Court in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, wherein it was held that "unconstitutionality" and not unwisdom" of a legislature is the narrow area of judicial review.

18. Bearing in mind the above guiding principles, this Court has next to examine whether the classification of contract carriage vehicles as "interstate" and "intrastate" is a permissible classification under Article 14. In this context one must know what is meant by "interstate" and "intrastate" and any intelligible meaning and distinction can be attributed to those words. Differentiation between these two can be understood by any one without resorting to any discussion or argument. The contract carriage vehicles operating between the States are called as "vehicles operating interstate" and those operating inside the State are called as "vehicles operating intrastate". This distinction is clear and definite and an intelligible differentia between these two is apparent. In this connection it is apt to be remembered what the Supreme Court said about the "permissible classification" in Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, .

In order, however, to pass the test of 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 Ors. who are left out of the group and (ii) that that differentia

must have a rational relation to the object sought to be achieved by the Act. What is necessary is that there must be a nexus between the basis of classification and the object of the Act.

In *R.K. Garg v. Union of India* AIR 1981 S.C. 2138 it was further observed thus:

It is clear that Article 14 does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of attaining specific ends. What is necessary in order to pass the test of permissible classification under Article 14 is that the classification must not be "arbitrary, artificial or evasive" but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.

19. In a recent decision, what the Supreme Court pointed out in this context was this:

The principles for determining the validity of classification in taxing statutes are well-settled and so also the limits of judicial review in testing the validity thereof on the touchstone of equality under Article 14. The test applicable for striking down a taxing provision on this ground is one of "palpable arbitrariness" in the context.

See: *M/s. Khadi and Village Soap Industries Association and another Vs. State of Haryana and others*, . In *Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others*, the Supreme Court held:

It is settled that classification founded on intelligible differentia is permitted provided the classification made has a rational nexus with the object sought to be achieved. In other words, those grouped together must possess a common characteristic justifying their inclusion in the group, but distinguishing them from those excluded and performance of this exercise must bear a rational nexus with the reason for the exercise.

(Italics supplied)

The above underlined passage clearly explains what the Supreme Court meant when it said, "It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classification, that there would be a violation of Article 14" in *Income Tax Officer v. N. Takin Roy Rymbai* AIR 1976 S.C. 670. There it further said that the mere fact that a tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid.

20. In the instant case, classification of contract carriage vehicles as "interstate" and "intrastate" appears to have come into existence with the issue of two notifications, G.O. (Rt.) 1618/93/P.W. and T and G.O. (Rt.) 1619/93/ P.W. and T, on 19th November 1993. By G.O. (Rt.) 1618/93/P.W. and T, Government in exercise of the powers conferred by Sub-section (2) of Section 3 of the Act have

increased the rate of quarterly tax payable under the Act to Rs. 500 in respect of class of vehicles permitted to ply solely as contract carriage and to carry more than twenty passengers. The class of vehicles specified in G.O. (Rt) 1618/93 is thus: ?Motor Vehicles plying for hire and used for transport of passengers and in respect of which permits have been issued under the Motor Vehicles Act, 1939 or Motor Vehicles Act, 1988: The enhanced rate will apply in respect of vehicles permitted to ply solely as contract carriage and to carry more than 20 passengers. The question is whether such exercise of power is permissible by the issue of a notification by the Government in that behalf. Sub-section (2) of Section 3 of the Act authorises the Government, by notification in the gazette, from time to time, to increase the rate of tax specified in the Schedule. Thus, the power of the Government to increase the rate of tax in respect of vehicles permitted to ply solely as contract carriage is undisputed.

21. By the second notification, G.O. (Rt.) 1619/93/ P.W. and T Government have reduced the rate of quarterly tax from Rs. 500 to Rs.370 per seat in respect of contract carriage vehicles permitted to operate within the State in order to avoid hardship to the intrastate contract carriage operators. It is made clear in the said G.O. that the said reduction was granted in public interest. The above reduction in the rate of tax was made in exercise of power u/s 22 of the Act, which is extracted below:

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 vehicles or class of motor vehicles; or

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

When the Government are satisfied that it is necessary in public interest to make an order granting exemption or reduction in the rate of tax, the power of the Government to issue notifications u/s 22 to that effect cannot be questioned. When the Government have power under Sub-section (2) of Section 3 to increase rate of tax specified in the schedule and to reduce the rate of tax u/s 22, it cannot be argued that the resultant position of exercise of powers under those provisions creates unreasonable classification. The powers u/s 3(2) and Section 22 are separate and distinct. The challenge is not against the provisions contained in the aforesaid sections, but against the action taken thereunder. The argument of the Petitioners is that the notifications issued under the above sections create impermissible classification. When the Government Act in exercise of powers specified in a statute, even if the said act in effect creates two

different classes of persons or things, it cannot be challenged on the ground that there is classification which is impermissible. Therefore, I cannot agree with the challenge against the two notifications referred to above as contended by the Petitioner in O.P. No. 2791 of 1994.

22. The common contention advanced by the Petitioners that Clauses (e) and (f) of Sub-item (i) of item 4 in the Schedule to the Act create objectionable classification and therefore, violate Article 14, will have to be considered independent of the challenge against the Government orders. G.O. (Rt) 1618/93 and G.O. (Rt) 1619/93 dated 29th November, 1993 which I have already dealt with herein before. As noticed earlier, by the coming into force of the Finance Act, 1994, two classes of contract carriage vehicles were created. The argument is that both intrastate and interstate contract carriage vehicles will come within the definition of the term "contract carriage" contained in Section 2(7) of the Motor Vehicles Act, 1988. The term "contract carriage" has not been independently defined in the Act. Therefore, the definition of the said term contained in the Motor Vehicles Act, 1988 can be adopted for the present purpose.

23. Section 2(7) of the Motor Vehicles Act, in so far as it is relevant, is extracted below:

2(7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum.

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to Anr., and in either case, without stopping to pick up or set down passengers not included in the contract any where during the journey.

As per the above section, "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract for the use of such vehicle as a whole for the carriage of passengers, on a fixed or agreed rate on a time basis and from one point to Anr.. Thus contract carriage is always permitted for a specified period from one place to Anr.. Such grant of permission in respect of a vehicle may be or may not be with reference to any route or distance. What is material is the "time basis" and "from one point to Anr.". When we say the contract carriage vehicle is "from one point to Anr." such points may be within the State or outside the State. This would indicate that the definition of the term "contract carriage" takes in both contract carriage vehicles operating intrastate as well as interstate.

24. Since the intrastate as well as interstate contract carriages are generally grouped as contract carriages, both having permits u/s 74 of the Act, it is said

that the said differentiation has no intelligible differentia or any reasonable nexus to the object sought to be achieved. This classification operates only when a class of contract carriage operators having permit u/s 74 of the Act obtain permission to operate their vehicles within the State. The other class of operators continue to operate interstate by virtue of the permits obtained by them. Thus the operators who have obtained permits u/s 74 can either operate their vehicles as intrastate contract carriages after obtaining permission or to operate as interstate contract carriage. Thus the basis of the differentiation solely rests on the area of its operation. If the area confines within the State, vehicles are treated as intrastate contract carriage vehicles operating within the State. If the area of operation extends beyond the boundaries of the State, vehicles are treated as interstate contract carriages operating also outside the State. Therefore, these two classes of vehicles are well defined classes having intelligible differentia or reasonable basis. The classification is thus substantial and straight forward.

25. This is not a case where the legislature made no attempt to make a sound classification. In the words of Bose, J. the classification is "merely a systematic arrangement of things into groups or classes usually in accordance with some definite Scheme". See: *The State of West Bengal Vs. Anwar Ali Sarkar*, The classification is made in this case by the legislature with a definite scheme of taxation. It has reasonable nexus with the object sought to be achieved by the Act. Item 4 in the schedule to the Act was amended from time to time so as to enhance the revenue by giving effect to financial proposals of the Government every year. By the amendment introduced as per the Kerala Finance Act, 1994, two different classes of vehicles are introduced for the purpose of fixing the rate of quarterly tax in the case of contract carriages having permits u/s 74 of the Act. In the case of contract carriage vehicles operating interstate the rate of quarterly tax applicable is higher than the rate applicable to the contract carriage vehicles operating intrastate. The object of the amendment in item 4 of the Schedule to the Act being the enhancement of revenue, the classification made by the legislature has a rational relation to the said object sought to be achieved. The Supreme Court in *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, supra upheld the classification between stage carriages on the one hand and contract carriages on the other for fixation of higher rate of tax on the latter. There the apex court further observed:

Classification is dependent on peculiar needs and specific difficulties of the community. The needs and the difficulties of a community are constituted out of facts and information beyond the easy ken of the court. It depends to a great extent upon an assessment of the local condition under which these carriages are being run which the legislature or the administrative body alone was competent to make.

26. Learned Counsel for the Petitioners maintain that the vehicles in respect of which permits have been obtained u/s 74 of the Motor Vehicles Act are generally

grouped as "contract carriages as distinct from stage carriage and therefore, the legislature is not justified in creating among them two classes of contract carriages as intrastate contract carriages as well as interstate contract carriages. This amounts to mini-classification, according to them, and they place reliance on the following observation of the Supreme Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, for its invalidation. "Miniclassifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity." However, it is difficult to say that this is a case where there is no substantial and straightforward classification in view of what I have said herein before. It is pertinent to point out here that in the above case the Constitution Bench of the Supreme Court held to the effect that if the persons drawn from different sources are integrated into one class, they can be classified for purposes of promotion on the basis of their educational qualifications. The rule that emerges from this decision is that a classification of persons or things can be made for first identifying them and then distinguishing the members or items of one class from those of another.

27. Learned Additional Advocate General (Taxes) places reliance on the decision of the Supreme Court in *Bharat General and Textile Industries Ltd. v. State of Maharashtra and Ors.* (1989) 72 S.T.C. 354 for upholding that the classification in this case has a reasonable and intelligible basis. There the contention was that item "oil" would include edible as well as non-edible oil and therefore, there was no reason or justification for the Government to have removed the benefit of tax exemption to units manufacturing edible oil alone and allow continuance of the benefit of tax exemption to new units producing non-edible oil. This contention was rejected by the Supreme Court observing thus:

Even this contention is devoid of substance because even though edible and non-edible oils may fall under the general heading of "oils" they undoubtedly constitute two separate groups which are capable of distinct classification on intelligible basis.

In *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, the differential levy of excise duty on classification of match box industry into mechanised and non-mechanised and classifying the B and C categories of manufacturers into one group was in challenge before the Supreme Court. The Supreme Court upheld the classification observing that: "A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judiciary cannot rush in where even the legislature warily treads.

28. Learned Counsel for the Petitioners place reliance on the decision in *Jhon Cherian and Ors. v. State of Kerala* 1974 KLT 179 and contend that contract carriage vehicles permitted to operate intrastate are allowed to pay reduced rate though the contract carriage vehicles operating interstate are similarly situated. In other words, by the reduction of tax in respect of intrastate vehicles, equals

are being treated unequally. This argument can be accepted only when within the range of its selection the law operated unequally. If the selection or classification can be sustained on the basis of intelligible differentia, it cannot be said to be discriminatory. I have already found that there is intelligible basis for classification in the facts of this case. A learned Single Judge of this Court in the above decision held that Section 21 of the Kerala Motor Vehicles Taxation Act, 1963 unconstitutional as being violative of Article 14. This Court observed in the said judgment thus:

It is alleged by the Petitioners that there is no co-operative society satisfying the requirements of the above statutory provision except the second Respondent, and that the said provision was enacted only for the purpose of giving a partial treatment and an undue advantage to the said Respondent to the detriment of the Petitioners and persons similarly placed like them. The Respondents have not filed any counter affidavit denying the above allegation. Therefore, I am constrained to consider the question of the alleged violation of Article 14 of the Constitution on the assumption that Section 21 of the Act was made for the sole benefit of the second Respondent.

(Italics supplied)

It was actually the above peculiar circumstance that compelled this Court to declare the unconstitutionality of Section 21 of the Act. It is submitted that the State has not filed any appeal against the said decision of the learned Single Judge. Since the facts of that case being different. I do not propose to rely on the said decision in the facts of the present case.

29. Frankfurter, J. said in *Morey v. Doud* (1957) 354 U.S. 457

In the utilities, tax and economics 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.

Placing reliance on the above quotation, the Supreme Court in *R.K.Garg's case* AIR 1981 S.C. 2138 observed:

The court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex....

It further added:

There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid.

This would indicate that the presumption of constitutionality of an enactment is

indeed strong and the court must adjudge it by generality of the provisions of the enactment. This presumption is enhanced in the case of laws of taxation and laws regulating economic activities.

30. One of the principles laid down by the Supreme Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, is this:

The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

This principle would otherwise mean that the classification made by the legislature is presumed to be reasonable. Of course this presumption can be rebutted where the classification made by the legislature is patently arbitrary. However, the burden of showing that a classification rests upon an arbitrary basis, is always upon the person who challenges the law as being violative of Article 14 Of the Constitution. In this case, the Petitioners have failed in their attempts to rebut the said presumption. Whatever that be, the constitutional validity of the impugned provision is upheld for reasons discussed herein before.

31. However, it is pointed out that this Court has granted stay of collection of tax in respect of contract carriage vehicles involved in this batch of writ petitions subject to the payment of tax at the pre-revised rate or payment of tax on certain percentage of the total demand. By reason of such orders passed by this Court Petitioners are now liable to pay the balance tax in respect of the contract carriage vehicles belonging to them inasmuch as the levy of tax under the Act has been upheld. u/s 12 of the Act the authorities are empowered to levy the additional tax in case the tax due in respect of the vehicle has not been paid within the time prescribed. Since the Petitioners have initially obtained stay of collection of tax as aforesaid, the authorities concerned are directed not to levy any such additional tax or penalty for the non-payment of the balance tax. Considering all the aspects of the case, I allow the Petitioners to pay the entire balance tax payable upto 30th September 1995 in two equal installments, first to be paid within three months from today and the second within three months thereafter.

The original petitions are dismissed subject to the above observations/directions. However, in the circumstances of the case, no order as to costs.