(2005) 11 KL CK 0014

In the High Court Of Kerala

Case No : WA No.3320 of 2001

The Regional Transport Officer, Kasargode — APPELLANT

Vs

Bhaskar Salian — RESPONDENT

Date of Decision : 14-11-2005

Acts Referred:
Constitution of India, 1950 — Article 301
Motor Vehicles Act, 1988 — Section 88

Citation : (2006) 1 KLJ 900

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : George kutty Mathew G.P, for the Appellant; C.S. Manu, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in these cases is whether interstate carriage permit holders are liable to pay tax for standing passengers. Petitioners in the original petitions are inter-state stage carriage permit holders. Petitioner in O.P.No. 23838 of 2000 is the registered owner of stage carriage vehicle KA. 19/4955 and holder of inter-state stage carriage permit on the route Mangalore-Kasargode. Permit was issued by the State Transport Authority, Karnataka and the permit was duly countersigned by the State Transport Authority, Kerala. First respondent issued demand notice on 3-7-2000 demanding arrears of tax to the tune of Rs. 8,640/-being the tax on the standing passengers for the period from April 1994 to March 1995 and from April 1995 to March 1996. Petitioner challenges the said demand on the ground that the permit issued to him does not permit carrying of standing passengers. Further it may also be stated that in the permit granted by the State Transport Authority, Karnataka and countersigned by the second respondent seating capacity shown is 48 with one driver and one conductor and the permit does not permit carrying of standing passengers. Therefore the demand, according to the petitioner, is unauthorised and illegal. Learned single judge found favour with the contention of the petitioners and allowed the writ petitions and held that demand for tax is without the authority of law. Aggrieved by the same, Regional Transport Officer and others have come up in these appeals.

2. We heard Sri. Georgekutty Mathew, Special Government Pleader for Taxes for the appellants and Sri. C.S. Manu and others for respondents.

3. The Kerala Motor Vehicles Taxation Act, 1976 was enacted to consolidate and amend the laws relating to the levy of tax on motor vehicles and on passengers and goods carried by such vehicles in the State of Kerala. Taxation on motor vehicles is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining it and for facilitating the movement and regulation of traffic. The Supreme Court in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, considered the question whether imposition of tax under the Rajasthan Motor Vehicles Taxation Act violated the provisions of Articles 301 of the Constitution of India held that the taxes imposed are compensatory taxes which do not hinder the freedom of trade, commerce and intercourse assured by Art. 301 of the Constitution and hence the Act does not violate the provisions of that Article. State Legislature, in our view, is competent to enact law under Entry 57 of List II of the VII Schedule of the Constitution of India and impose tax on motor vehicles. Section 3 of the Act dealing with levy of tax reads as follows :

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.

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(6) In the case of motor vehicles in respect of which any reciprocal arrangement relating to taxation has been entered into between the Government of Kerala and any other State Government, the levy of tax shall, notwithstanding anything contained in this Act, be in accordance with the terms and conditions of such reciprocal arrangement.

Provided that the terms and conditions of every such reciprocal arrangement shall be published in the Gazette and a copy thereof shall be placed before the Legislative Assembly of the State.

Schedule to the Act lays down the rate of tax. Under item No. 7, motor vehicles in respect of which permits have been issued under sub clause (f) the tax prescribed is Rs. 1,400/- per passenger per quarter. Under serial number 7 of the Schedule vehicle operating inter-state with more than twelve passengers, the rate of tax to be paid quarterly is Rs. 2,000/-. Provisions were made in the Finance Act 1993 with effect from 1-4-1993 to levy tax on standing passengers in stage carriage irrespective of ordinary / fast passenger / express service at the rate of Rs. 50/- per passenger per quarter. The rate was enhanced to Rs. 100/- with effect from 1-4-1995 by the Finance Act, 1995. Later it was enhanced to Rs.

150/- and so on. Rule 267(2) of the Kerala Motor Vehicles Rules 1989 empowers the State or the Regional Transport Authorities to fix the number of standing passengers. State Transport Authority in its meeting held on 20-6-1994. decided to fix the standing passengers in all stage carriage operating on the inter-state route including those vehicles operated by the K.S.R.T. Corporation. In the light of the above decision, all the stage carriage operators are liable to pay tax for standing passengers. The legal validity of that provision was upheld by this Court in Devee Motors v. State of Kerala (1996 (2) KLT 755). So far as stage carriage operating within the State there could be no doubt that they are liable to pay tax for standing passengers as per rules. The question that has come up for consideration is whether the same could be extended to petitioners in the original petitions who are operating on inter-state permits. Permit issued to the petitioner in O.P. No. 23838 of 2000 stipulates that any other condition could be imposed as per rules. Sub-section (3) of Section 88 of the Motor Vehicles Act 1988 states that when a Regional Transport Authority countersigning the permit may attach to the permit any condition which it might have imposed if it had granted the permit and may vary any condition attached to the permit by the authority by which the permit was granted. While countersigning the permit in respect of the petitioner in O.P. No. 23247 of 2000 the Secretary, State Transport Authority, Trivandrum has attached usual conditions applicable in the State of Kerala. Therefore the inter-state permit holders while operating their service in the State of Kerala can be subjected to same conditions imposed on operators operating their services exclusively in the State of Kerala. On countersigning the inter-state permit usual conditions applicable to the stage carriage permit holders can be made applicable to the interstate carriage permit holders also. Consequently stage carriage operators operating on inter-state permit are also bound to pay tax on standing passengers. It is so declared.

In such circumstances all the appeals would stand allowed and the judgment of the single judge would stand set aside.