

(1996) 07 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No. 9270 of 1994-C and etc. etc.

T.T. Thomas

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1997 Ker 105 : (1996) 3 ILR (Ker) 611

Hon'ble Judges : K. Sreedharan, Acting C.J.;C.S. Rajan, J

Bench : Division Bench

**Advocate : Thampan Thomas and V.V. Nandagopal Nambiar, for the Appellant;
K.K. Dinesan, Govt. Pleader, for the Respondent**

Judgement

Sreedharan, Actg. C.J.

1. These Original Petitions have come before us on a reference made by learned single Judge. The issue raised in all these cases is the validity of the amendment brought out to the Kerala Motor Vehicles Taxation Act, 1976, hereinafter referred to as the Act. Kerala Finance Bill, 1993 incorporated Entry 3A to the Schedule to the Kerala Motor Vehicles Taxation Act, 1976 imposing tax on private service vehicle on the basis of seating capacity. That schedule was amended by the Finance Bill of 1994 and the rate of tax prescribed in Entry 3A has been made applicable to omni buses for private use also. According to petitioners, a private service vehicle which is being regularly used in connection with the trade or business of the owner, which is so used with a motive to earn profits can never be equated with a purely private vehicle used for personal purposes. So the amendment whereby it seeks to equate the above mentioned two types of vehicle is unjustifiable and ultravires the powers of the legislature.

2. Petitioners purchased Mahendra & Mahendra Commander Jeeps, Tractor, Tata mobile passenger version, Trax etc. which could accommodate more than six persons excluding the driver. It is alleged that they purchased these vehicles for their personal use solely as means of transport for themselves and the members

of their family. The vehicles were produced for inspection and registration before the Registering "Authority. These vehicles were registered as "light motor vehicles" (omni bus). The motor vehicle tax and surcharge for a period of two years was fixed at the rate of Rs. 600/- per annum as private vehicle under Entry 7 of the schedule to the Kerala Motor Vehicles Taxation Act, 1976. By the amendment of 1993, Clause 3A was added to the schedule requiring every "private service vehicle" to pay tax at the rate of Rs. 100/- per seated passenger. In 1994 Clause 3A was amended adding "omni bus for private use" along with private service vehicles. Consequently "omni buses for private use" are classified along with "private service vehicle" and tax levied accordingly. The legislature by treating omni bus for private use along with private service vehicles has acted in an illegal, arbitrary, unconstitutional and discriminatory manner, contends the petitioners.

3. Words and expressions used in the Act which have not been defined in it should have the meaning respectively assigned to them in the Motor Vehicles Act or the Rules made thereunder, as per Section 2(m) of the Act. Section 2(21) of the Motor Vehicles Act, 1988 defines "light motor vehicle" as a transport vehicle or omni bus, the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed 6,000 kilograms. Clause 22 of that Act define "maxicab" as any motor vehicle constructed or adapted to carry more than six passengers but not more than twelve passengers excluding the driver, for hire or reward. Clause 25 describes "motor-cab" as any motor vehicle constructed or adapted to carry not more than six passengers excluding the driver for hire or reward. As per Clause 26 "motor car" means any motor vehicle other than a transport vehicle, omni bus, road-roller, tractor, motor cycle or invalid carriage. Omni bus has been defined in Clause 29 as any motor vehicle constructed or adapted to carry more than six persons excluding the driver. Section 2(33) describes "private service vehicle" adapted to carry more than six persons excluding the driver and ordinarily used by or, on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business otherwise than for hire or reward, but does not include a motor vehicle used for the public purpose. From these definitions, it is seen that any motor vehicle constructed or adapted to carry more than six persons excluding the driver will fall within the category of omni bus. A private service vehicle can be an omni bus because the vehicle is constructed or adapted to carry more than six persons excluding the driver. A private service vehicle should ordinarily be used for the purpose of carrying persons for, or in connection with the owners, trade or business otherwise than for hire or reward. Motor vehicles used for public purpose will not fall within the category of private service vehicle. An omni bus which is adapted to carry more than six passengers excluding the driver can also be a private service vehicle. If such an omni bus is used otherwise than for hire or reward, that omni bus squarely falls within the category of private service vehicle. Whether the vehicle is private service vehicle or omni bus capable of satisfying the requirements of

private service vehicle is put in use the wear and tear of the road will be the same.

4. Now the question that arises for consideration is whether the Kerala Legislature was justified in classifying "omni buses for private use" together with "private service vehicles" in item 3-A to the Schedule to the Act. Entry 57 in List II-State List of the Seventh Schedule to the Constitution authorises the State Legislature to legislate on taxes on vehicles whether mechanically propelled or not, suitable for use on road. It was in exercise of this legislative power the Kerala Legislature passed the impugned amendment. Consequently the competence of the State Legislature to enact Act 13 of 1993 and Act 19 of 1994 is not open to challenge. No argument was advanced before us by counsel appearing on behalf of the petitioners questioning the legislative competence either. Their argument was that the Legislature grouped together vehicles which are dissimilar and treated them alike for the purpose of taxation. Consequently, according to counsel, the enactment cannot stand.

5. Learned counsel argued that the amendment is unconstitutional on the ground that two dissimilar categories of vehicle have been classified into one group and are treated alike. Justice V.R. Krishna Iyer speaking for the Court in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, observed (Para 18) :--

"Merely because there is room for classification it does not follow that legislation without classification is always unconstitutional, The Court cannot strike down a law because it has not made the classification which commends to the Court as proper. Nor can the legislative power be said to have been unconstitutionally exercised because within the class of a sub-classification was reasonable but has not been made."

In the case on hand omni bus for private use and private service vehicles can safely fall within one category. They can also be treated as falling within two sub groups of the same category. In reality they fall within one category. Legislature in its wisdom treated them as one group. That treatment or classification made by the Legislature cannot be taken as unconstitutional.

6. The averments made by the petitioners (we are referring to the averments made by the petitioner in O. P. 12765/94 because counsel appearing in other cases endorsed the argument advanced by the counsel in this case and did not advance any new ground) in O. P. 12765/94 regarding the unreasonableness of the Legislation are :--

"This Honourable Court, as well as the Honourable Supreme Court, have, in a large number of decisions, repeatedly and consistently laid down that Motor Vehicles Tax is a compensatory tax exigible on the user of the road, and that such tax is in the nature of a fee collected for the services rendered by the Government and in order to recompense its expenses in constructing and maintaining the roads. It has been repeatedly laid down that, in the above view,

Motor Vehicles Tax is exigible on the use of the roads and the levy of tax should have some nexus to the objects of the enactment, which is to obtain compensation for such user. As such, Ext. P. 3 amendment (amendment of 1994) in so far as it simply clubs a certain type of private vehicle along with a certain type of transport vehicle for the purpose of levying tax, is clearly unreasonable and is vitiated by a total lack of application of mind."

The averments in the counter affidavit filed on behalf of the State in support of treating omni buses for private use on a par with private service vehicles are as follows :--

"Experience would show that the pattern of user of both the type of vehicle is the same, that is to say multipassenger use. There is no difference between the passengers occupying a private service vehicle and those occupying an Omni Bus for private use, may be in private service vehicle, the employees of the commercial establishment may also travel along with the owners. In the case of Omni bus for private use there is no fool proof check to ensure that the owner and his family members alone are travelling, and to further ensure that his employees and friends are not travelling in the private vehicle. The wear and tear of the public road does not depend on the relationship between the owner and the passengers but depend upon the total weight of the vehicle and the number of passengers travelling. This being the position, there is nothing illegal in bringing these categories of vehicles in one category under Entry 3-A of the Schedule for the purpose of taxation. The fact that till this was grouped together, separate rates were provided, will not bind the legislature for all time to come. xx xx xx"

7. It is settled proposition of law that in matters of taxation the Legislature possesses large freedom in the matter of classification. Wide discretion can be exercised by the Legislature in selecting persons or objects which can be taxed. The Legislature is not open to challenge on the mere ground that it imposes tax on some persons or objects and not others. If the law operates equally to categories selected, then that law cannot be objected on the basis of violation of Article 14 of the Constitution. It is open to the Legislature to group the different types of vehicle for the purpose of imposing tax. A Constitution Bench of the Supreme Court in Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, took the view that if there is equality and uniformity of objects within group, the law cannot be treated as discriminatory. Their Lordships observed (at p. 1652):--

"It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject matter, events, etc. for taxation, The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does

not. as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes".

In the instant case, as stated earlier, omni buses used for private buses safely come within the category of private service vehicle. When there is such identity or uniformity between the two groups, we find it very difficult to say that the classification has no rational basis. The said classification has rational nexus with the objects sought to be achieved by the law namely imposition of tax. It is well recognised that no precise or set formulae or doctrinaire test are to be applied. The test on the issue before us can only be whether omni buses for private use can fall within the category of private service vehicles. The answer to this query, according to us, can only be in the affirmative.

8. As stated earlier, omni buses for private use and private service vehicles fall in one category. They carry more than six persons excluding the driver. When these vehicles ply on the roads, the burden taken by the road is identical. The wear and tear of the road will certainly depend on the number of persons travelling in the vehicle and not on their relationship with the owner of the vehicle. Motor Vehicles Tax being compensatory in nature has its basis the extent of the use made by the vehicle of the roads. When the issue raised in these cases is examined in the above manner, we feel that the impugned amendment is not open to challenge. The levy of tax being compensatory and regulatory in nature, it is for the legislature to classify the vehicles for the purpose of taxation depending upon the extent of use and the possible wear and tear of the public road. From the counter affidavit, it is seen that it is only after extensive study of the pattern of use in general in respect of the particular type of vehicle, that classification 3A was made and the rate of tax fixed. We do not find any arbitrariness or illegality in the legislation brought out by the Kerala Legislature. Item 3A of the Schedule appended to the Kerala Motor Vehicles Taxation Act 1976 enacted by the Kerala Finance Act, 1994 is valid and it is not open to challenge.

9. Petitioners have a case that their vehicles fall within entry 7 in the schedule which is a residuary schedule. Motor Vehicles other than those liable to tax under any of the other entries alone fall within that item. They are taxed on the basis of the unladen weight. As observed earlier, vehicles owned by petitioners fall within Entry 3A of the schedule. Entry 7 in the schedule will come into operation only in the absence of specific entry in the schedule. When Item 3A takes within its ambit omni buses for private use, such vehicles cannot be included in the category shown as item 7 in the schedule.

10. All Original Petitions which challenge the validity of the Amendment to the Schedule to the Kerala Motor Vehicles Taxation Act, 1976 have only to be

dismissed and we do so.

11. In O. P. Nos. 1117/95, 9364/95 and 910/95 petitioners claim exemption from the higher tax in respect of omni bus registered in their name on the ground that those vehicles are being used for charitable purposes. Representations filed by them for tax benefit have not been properly considered and disposed of by the Government. So we direct the Government to dispose of the representations filed by the petitioners in accordance with law, as expeditiously as possible, after affording them a reasonable opportunity of being heard in the matter.