
(2022) 05 KL CK 0060

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 2881, 2204, 2247, 3664, 3693, 6364, 6656, 6663 Of 2022 & 17167 Of 2020

Vakiyath Koya

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 18-05-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Motor Vehicles Taxation Act, 1976 — Section 3, 5, 22, 23, 24

Citation : (2022) 05 KL CK 0060

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : K.V.Gopinathan Nair, Thushara James, Stalin Peter Davis

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. The pestilence in the form of Covid-19 has created situations and consequences that are unprecedented. Apart from the health of individuals, every establishment including the Government, has been affected financially and otherwise. Manufacture, consumption and transportation had come to a halt or dwindled, creating ripples in the State economy. Measures introduced as part of national and statewide lockdowns affected the movement of people and goods. Public transportation had to be curtailed and regulated to prevent the spread of the virus. While the Government-run/supported, public transportation could withstand, to a large measure, the perils of the pandemic, the privately run public transportation system could not bear the economic brunt of the circumstances. The present batch of writ petitions brings to the fore, the woes of a certain category of owners of motor vehicles which cater to public transportation.

2. These writ petitions are preferred by owners of stage carriages as well as contract carriages, claiming the benefit of exemption from payment of tax for the

period affected by the restrictions and regulations imposed due to Covid-19 pandemic. W.P.(C) No.2881 of 2022 is treated as the leading case and the facts in the said writ petition alone are narrated for the sake of brevity.

3. W.P.(C) No.2881 of 2022 is filed by owners of registered stage carriages who allege that due to the restrictions imposed on public transportation, petitioners were not allowed to operate their stage carriages during various periods. Apart from the periods of absolute prohibition in operating the stage carriages, there were other regulations even after lock-down was lifted, like restrictions on operation of vehicles during Saturdays and Sundays, restrictions on operating during certain days through the pattern of odd and even numbers, restrictions on permitting passengers from containment zones to travel, reduction in the number of trips permitted, etc. According to the petitioners, the Justice Ramachandran Commission, which constituted the Fare Revision Committee, had submitted a report to the Government advising the grant of exemption from payment of tax, and despite the above advice, Government exempted the stage carriage operators from payment of tax only minimally, that too for limited periods. Petitioners allege that the lock-down, which caused disruption of all businesses, had a catastrophic impact on stage carriage operators, and the same ought to have been reckoned while considering the question of exemption from tax due under the Kerala Motor Vehicles Taxation Act, 1976 (for short, 'the Act').

4. Petitioners further contend that despite the happening of force majeure conditions and despite the Supreme Court's direction to extend maximum economic benefits to all sectors, the Government ignored the stage carriage operators. Faced with such a dilemma, petitioners submitted representations requesting exemption from payment of tax. However, Government failed to heed their requests and the benefit of tax exemption was declined to the petitioners for the period from 01.07.2021 till 31.03.2022. In the above circumstances, the petitioners have filed the writ petition seeking a direction to the first respondent to exempt private stage carriage operators from payment of tax for the period 01.07.2021 till 31.03.2022 by considering their request and also sought a direction to the first respondent to issue orders on Ext.P3 and Ext.P4 requests for considering the recommendations made by the Fare Revision Committee, a copy of which is produced as Ext.P2.

5. Though the State has not chosen to file a counter affidavit, the second respondent has filed a statement contending that several representations and requests were received by the Government including the advice/recommendation of the Fare Revision Committee, for granting exemption from tax for the stage carriages/contract carriages. The respondents stated that the 'use of a vehicle' is not the only criteria for imposing a tax on motor vehicles and that the incidence of tax under the Act falls even on a vehicle that is 'kept ready for use' and in case the owner of the vehicle does not intend to use the same, he is at liberty to file a G-Form with the concerned authority and seek exemption from payment of tax. According to the second respondent, the provision for levy of tax was

carefully drafted, and if there was no intention to use the road, statutory benefits could have been claimed by intimating the authority concerned in the prescribed form. It was pointed out that the liability to pay tax falls on the owner or the person in possession of the motor vehicle and that the tax payable is to be paid in advance. It was further pleaded that stage carriages are specified in category 2(2) of the Act, which stipulated payment of tax in advance for every quarter and the tax had to be paid within 45 days of the commencement of the quarter. The respondents averred that every financial year is divided into four quarters comprising April to June, July to September, October to December and January to March of the succeeding year. According to the respondents, though Rules prescribed time-lines for payment of tax, the Government had given anxious consideration to the demands of the stage carriage operators and extended several benefits. The pleadings also referred to various exemptions granted which included full exemption and partial exemptions. On the aforesaid basis, the second respondent questioned the report of the Fare Revision Committee pleading that the said Committee was concerned only with the fare revision and not otherwise. It was also pleaded that the State Government had granted all possible benefits to stage carriage/contract carriage operators in the matter of payment of tax and that in the event of any grievance regarding the imposition of tax, the matter ought to have been taken up before the Appellate Authority.

6. A reply affidavit was filed by the first petitioner pointing out that the State Government had set apart about 1000 crores to meet the loss of Kerala State Road Transport Corporation and that while the Government is supporting the said Corporation, no such benefits are conferred upon private stage carriage operators, whose numbers in the State were 34000 in 2016, but declined to 12000 within five years. After asserting that the industry was facing acute difficulty and economic hardships, petitioners pleaded to allow the writ petitions.

7. I have heard the arguments of Sri.K.V.Gopinathan Nair, Sri.G.Hariharan, Sri.O.D.Sivadas, and Sri.I.Dinesh Menon, learned counsel for the petitioners as well as Dr.Thushara James, learned Senior Government Pleader on behalf of the respondents. I also heard Sri. Stalin P. Davis on behalf of the impleading respondents who supported the cause of the writ petitioners.

8. On a consideration of the rival contentions, it can be appreciated that the issue to be considered is whether this Court should direct the Government to grant exemption to the petitioners from the motor vehicle tax payable on stage carriages/contract carriages, due to the restrictions and regulations brought in on account of Covid-19 pandemic.

9. Though unprecedented situations warrant extraordinary actions, in the matter of taxation, certain fundamental canons of tax jurisprudence come to the forefront, which cannot be ignored. As is often noted, there is no equity in tax, and the court must go strictly by the letter of law, while interpreting a taxing statute. If the aforesaid principle is borne in mind, the issue that arises for consideration can be resolved effectively without much toil.

10. The Kerala Motor Vehicles Taxation Act, 1976 is an Act providing for the levy of tax on motor vehicles and on passengers and goods carried by such vehicles. The incidence of tax under section 3 of the Act falls on every motor vehicle used or kept for use in the State. Section 3, to the extent relevant, reads as below:

"S.3. Levy of Tax.- (1) Subject to the other 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:

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

(2) xxx

(3)The registered owner of, or any person having possession or control of a motor vehicle shall, for the purposes of this Act, be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable on such motor vehicle under sub-section (1) of section 5."

11. It is thus explicit from a reading of the above-extracted provision that the burden of tax under the Act is not necessarily on the use of the vehicle on the roads, but the liability falls, even on vehicles kept ready for use on roads. No manner of interpretation is required to come to the conclusion that even if a vehicle is not actually used on the roads, the tax liability will be incurred, the moment it is kept ready for use on roads. When it comes to stage carriages and contract carriages, the liability to pay tax is divided into separate periods of a year, identified as 'a quarter'. Each stage carriage/contract carriage is bound to pay the tax due on the motor vehicle in instalments. The benefit of quarterly payment or instalment payment is granted not due to an absence of liability but only by a measure of deferment of the dates of payment. The liability to pay tax accrues when the vehicle is kept ready for use on a road, but the collection of tax is deferred, giving the benefit of instalment payments. Therefore, by virtue of reference to section 3 of the Act, petitioners cannot claim any benefit for non-payment of tax merely on the ground of restrictions and regulations imposed due to Covid-19 pandemic.

12. However, section 5 of the Act provides for exemption from tax, and the provision reads as follows:

"S.5. Exemption From Tax. (1) In the case of a motor vehicle which is not intended to be used or kept for use during any calendar month of a quarter or two successive calendar months of a quarter, or the whole of a quarter or a year beginning with the 1st day of a quarter, as the case may be, the Registered Owner or the person having possession or control of such vehicle shall give previous intimation in such form, manner and fee, as may be prescribed, in this behalf, to the Regional Transport Officer or the Joint Regional Transport Officer concerned under whose jurisdiction the vehicle is registered or endorsement of

tax has been obtained, that such vehicle will not be used for such period and thereupon, the Registered Owner or the person having possession or control of the vehicle shall not be deemed to have used or kept for use the vehicle for such period, and no tax shall be payable in respect of such vehicles for such period.

(2) Notwithstanding anything contained in sub-section(1), twice the amount of tax shall be levied from the Registered Owner or the person having possession or control of the vehicle if on verification it is found that the vehicle has been used during any such period of non-use without remitting tax.

(3) Notwithstanding anything contained in sub-section (1), in an appeal under section 23 or a revision under section 24, the burden of proving that a motor vehicle has not been used during any period shall be on the registered owner or the person having possession or control of the motor vehicle, as the case may be."

13. The mandate of section 5 of the Act is that if previous intimation is given about the non-use of the vehicle for a minimum of one month in a quarter, it shall be deemed that the vehicle is not used or kept ready for use in the State. Thus, statute contemplates situations where the tax liability can be excluded in respect of each quarter of a year. None of the petitioners claimed the benefit of section 5 of the Act for the periods in question.

14. Further, the statute through section 22 of the Act confers power upon the Government in public interest to make an exemption or reduction in the rate of tax or other modifications either prospectively or retrospectively in regard to the tax payable under the Act by any person or class of persons or in respect of any motor vehicle or class of motor vehicles etc. The statutory provision is extracted as below:

"S.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 vehicle 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."

15. The Statute thus vests the power upon the Government to exempt the tax payable by any person or motor vehicle or even motor vehicles using a specified route. In exercise of the powers under section 22 of the Act, the Government had granted the benefit of exemption for different periods during the pandemic. Full exemption from tax liability of the stage carriages and contract carriages was given for the period from 01.04.2020 to 30.09.2020 and again from 01.01.2021 to 30.06.2021, apart from granting a further benefit of 50% tax exemption for

the period from 01.10.2020 to 31.12.2020. The benefit of tax exemption/relaxation granted under the Act for the periods during the pandemic is given in a tabular column as below:

Sl.No.

Quarter

Benefit granted

1

01.04.2020 to 30.09.2020

Full exemption

2

01.10.2020 to 31.12.2020

50% of tax was exempted

3

01.01.2021 to 30.06.2021

Full exemption

4

01.07.2021 to 30.09.2021

Time for payment of tax extended to 31.12.2021, ie., till the end of the next quarter

5

01.10.2021 to 31.12.2021

Time for payment of tax extended till 31.12.2021, ie., till the end of the quarter

6

01.01.2022 to 31.03.2022

Time for payment of tax extended till 31.03.2022

16. A perusal of the above tabular column will reveal that from 01.04.2020 till 30.06.2021, except for one quarter i.e; October to December 2020, full exemption from payment of tax was granted by the Government. For the period 01.10.2020 till 31.12.2020 also, there was an exemption from motor vehicle tax liability, though limited to 50%. Thus out of a period of 15 months within the pandemic, absolute or total exemption from tax was granted for 12 months.

17. Since exemption from payment of tax was granted for reasonable periods, it

cannot be said that despite the restrictions and regulations brought in due to Covid-19 pandemic, the Government had not considered the plight of the stage carriage operators and contract carriage operators. When the Government had extended absolute exemption from payment of tax for a period of 12 months out of a period of 15 months, with a partial exemption for the remaining 3 months, petitioners cannot be heard to contend that their pleadings had fallen on deaf ears. On the other hand, the grant of full exemption as well as partial exemption from payment of tax apart from the various relaxations given on the deadline for payment of tax for each quarter indeed reflects the Government paying heed to the woes of the petitioners and even reflects an application of mind by the Government.

18. The argument that several restrictions imposed like the restriction on the number of passengers that could be carried in a stage carriage, restrictions on permitting passengers from particular areas and restrictions on operating stage carriages during certain days of a week, are all matters which are alien to the incidence of tax under the Act and are not legally tenable. As observed by this Court earlier, the incidence of tax is not on the number of passengers who board the stage carriage nor is it on the number of days on which the stage carriage is operated, but the incidence of tax is on the use or kept for use on the roads.

19. Grant of exemption from tax, whether limited or wholly, is a matter to be decided based on a policy. Failure to extend tax exemption to the full satisfaction of the petitioners is not an issue that is justiciable in the absence of any legal or constitutional right to demand exemption. Even if circumstances existed similar to those for the period during which exemption was granted, that will not confer a right to obtain an exemption from tax for other periods. No semblance of arbitrariness or unreasonableness is reflected in the manner of grant or denial of tax exemption.

20. The contention of the petitioners on the basis of legitimate expectation is also not legally tenable. The principle of legitimate expectation, which evolved as an equitable doctrine, cannot apply contrary to the statute. In other words, there cannot be any legitimate expectation against the terms of the statute.

21. The doctrine of legitimate expectation is a part of the principle of non - arbitrariness, which is a necessary attendant of the rule of law. The said doctrine is a weapon in the armoury of the Constitutional courts to prevent arbitrariness in governmental action. The applicability of the doctrine of legitimate expectation arises in certain specified circumstances. The doctrine does not apply wherever or whenever the citizens expect a thing to be done. The doctrine applies when (i) there is an express promise given by the public authority, (ii) due to the existence of a regular practice, the claimants expect the said practice to continue, and (iii) the expectation must be genuine and reasonable, not fanciful. The doctrine will have no application when a practice is varied or a change is brought in on the basis of a change in policy or in public interest or altered by legislation or rule. Further, in the absence of any specific promise made to the

claimant or the existence of a right, the doctrine cannot be resorted to. (See the decision in *Madras City Wine Merchants' Association v. State of T.N. and Another* [(1994) 5 SCC 509])

22. The doctrine of legitimate expectation cannot be misconstrued as a doctrine of anticipation or even as a doctrine of expectation. Every anticipation of a claimant or his expectation cannot transform into an assertible expectation. The word 'expectation' in the doctrine is qualified by the word 'legitimate' which infuses significant difference and meaning to the doctrine.

23. Whether the expectation of a claimant is legitimate or reasonable is to be adjudged in the context of each case. When a question on the applicability of the doctrine of legitimate expectation arises, it is to be determined not according to the claimant's perception, but, in the larger public interest, wherein, other more important considerations may outweigh, what would otherwise have been the legitimate expectation of the claimant. The Courts have held that a bona fide decision of a public authority reached in the manner mentioned above, would satisfy the requirement of non - arbitrariness and withstand judicial scrutiny. Reference can be drawn from the recent decision in *X v. Registrar General, High Court of Madhya Pradesh and Another* [MANU/SC/0171/2022].

24. When the provisions of the taxing statute mandate that tax is liable to be paid when a vehicle is kept ready for use in a State, there cannot be any legitimate expectation on the part of the stage carriage owners that even though the vehicle is kept ready for use, they are not liable to pay tax. Further, the concept of legitimate expectation cannot be extended or stretched to assume that as and when a restriction is brought in, the Government should immediately order tax exemption. The grant of tax exemption for one quarter or more than one quarter of a year, cannot also give rise to a legitimate expectation that for every quarter of the year or for periods beyond that, the exemption will be extended. The expectation that tax exemption will be accorded for periods beyond what has been granted is not an assertible expectation. Such an expectation is not legitimate. Law cannot accord its imprimatur to such expectations under the cover of the doctrine of legitimate expectation.

25. Apart from the above, petitioners are seeking a writ of mandamus to the State Government to exempt stage carriage operators from payment of tax under the Act for certain periods. While powers under Article 226 can be used to enforce the rule of law, Courts cannot issue orders and directions which are contrary to law. No writ under Article 226 can be issued when petitioner fails to establish the existence of a legal right. A writ of mandamus can be issued in favour of a person who establishes a legal right in himself and can be issued against a person who has a legal duty to perform but failed or neglected to do such legal duty. Though the words 'any other purpose' in Article 226 makes the jurisdiction of the High Court extensive, the Court must exercise restraint and should not ordinarily encroach into the legislative or executive domain. As a rule, policy decisions must be left to the Government, as it alone can decide the

nature of policy to be adopted, after considering all facets from different angles. As long as an infringement of a legal or constitutional right is not evident or proved, courts will have no occasion to interfere, and the court will not substitute its own judgment for the decision of the executive in such matters. It has been held that in the issuance of a writ of mandamus it is essential that there be an obligation imposed either by the Constitution or by a statute or by rules and orders having the force of law (See the decision in Director of Settlements A.P. and Others v. M.R. Apparao and Another [(2002) 4 SCC 638].

26. In the decision in Mani Subrat Jain and Others v. State of Haryana and Others [(1977) 1 SCC 486], it was observed that to obtain a writ of mandamus, the petitioner must show that he has a legal and judicially enforceable right to the performance of a legal duty as distinguished from a discretion. Similarly, it was held in the decision in State of Bihar and Others v. Amrendra Kumar Mishra [(2006) 12 SCC 561], that a writ of mandamus cannot be issued on the basis of mere sympathy.

27. In view of the above, a writ of mandamus cannot be issued to the Government to grant tax exemption for the stage carriages or contract carriages as sought for by the petitioners.

28. What remains to be considered is the relief seeking a direction to consider the representations submitted by the petitioners. On 28.01.2022, when W.P.(C) No.2881 of 2022 came up for admission, this Court had directed the respondents to get instructions on the decision taken on the representations submitted by the petitioners as Ext.P3 and Ext.P4, taking into reckoning the advice of the Fare Revision Committee. It was informed that the Government had declined the request made in the representations.

29. Since the Government has declined the request submitted as Ext.P3 and Ext.P4 produced in W.P.(C) No.2881 of 2022, I am of the view that a further direction for consideration of Ext.P3 and Ext.P4 is redundant and superfluous.

Accordingly, I find no merit in these writ petitions. All these writ petitions are therefore dismissed.