

(1999) 08 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 24221 of 1998

V.M. Anas and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 16-08-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(d), 202, 265
Kerala Motor Vehicles Taxation Act, 1976 — Section 19, 3, 3(1), 3(2), 4

Citation : (1999) 2 KLJ 370

Hon'ble Judges : S. Sankarasubban, J;AR. Lakshmanan, J

Bench : Division Bench

Advocate : K. Radhakrishnan, P. Gopalakrishna Menon, K.V. Gopinathan Nair, P.M.M. Najeeb Khan, Sajeevkumar K. Gopal and T.A. Shaji, for the Appellant; V.V. Asokan (Govt. Pleader) and R.K. Muraleedharan (Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, Ag. C.J.

1. These writ petitions are filed by the purchasers of new vehicles challenging the newly introduced provisions for the payment of "one time tax" applicable to the newly purchased vehicles. The petitioners are owners of newly purchased vehicles of different brands. According to the petitioners they had purchased different models and a temporary registration certificate was given to them. After the purchase of the vehicle it has to be produced before the registering authority for permanent registration. When the vehicle is registered the tax endorsement will be given for payment of tax in respect of the vehicle and now the tax endorsement will be at the rates prescribed as per the new amendment made to the Kerala Motor Vehicles Taxation Act as per the Kerala Finance Bill 1998 as one time tax. As per the Kerala Finance Bill, 1998 and replaced by the Kerala Finance Act, 1998, the amendment has been made to section 3(1) of the Kerala Motor Vehicles Taxation Act, 1976 by introducing a proviso thereto and annexure in the

Act where a new type of tax named as one time tax to the new motor vehicle is imposed. As per the said annexure for vehicle weighing not more than 750 Kgs. of unladen weight, tax has to be paid to the tune of Rs. 14,000/-. The Kerala Finance Bill, 1998 together with the settlement of objects and reasons the financial memorandum in the memorandum regarding delegated legislation was published under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly. The Kerala Finance Bill, 1998 with Annexure dated 20th March, 1998 is reproduced hereunder: Government of Kerala 1998.

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SECRETARIAT OF THE KERALA LEGISLATURE NOTIFICATION

No. 269/Legn-1/98/Leg.

Dated, Thiruvananthapuram, 28th March, 1998.

The Kerala Finance Bill, 1998 together with the settlement of objects and Reasons, the Financial Memorandum in the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rule of Procedure and Conduct of Business in the Kerala Legislative Assembly.

R. Rajendra Babu, Secretary, Legislative Assembly

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33/1278/98/MC.

18) in the Second Schedule, for serial number 4 and the entries against it, the following shall be substituted, namely:

4(i) Raw hides and skins

a) Purchases within the State : At the point of last purchase in the State by a dealer liable to tax u/s 5.

b) brought from outside the State : At the point of first sale in the State by a dealer liable to tax under S. 5.

ii) Dressed hidden and skins At the point of first sale in the State

by a dealer liable to tax under S. 19.

In the third schedule the words "crushed metals produced otherwise than the mechanised crushing" occurring in item 33 shall be omitted.

4. Amendment of Act 19 of 1976:-In the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976).

i) in section 3 to sub-section (1) the following further proviso shall be added, namely:

Provided further that in respect of a new Motor Vehicle of any of the classes specified in item Nos. 1, 2 and 11 of the schedule to this Act there shall be levied from the date of purchase of the vehicles one time tax at the rates specified in the Annexure, at the time of first registration of the vehicle, and thereafter tax shall be levied at the time of renewal of registration of such vehicle at the rate specified in the Schedule as per the fourth proviso to sub-section (1) of Section 4.

2) In the schedule in item 11, for sub item "(1) Motor Cars" and the entries thereunder, the following shall be substituted, namely:--

1) Motor Cars

a) weighing not more than 750 Kgs. unladen

b) Weighing more than 750 Kgs., but not more than 1500 Kgs. unladen.

c) Weighing more than 1500 Kgs unladen

3) after the Schedule the following Annexure shall be inserted namely:

ANNEXURE One Time Tax (See Proviso to Section 3(1))

New Motor Cycles (including Motor Scooters and Cycles with attachments for propelling the same by mechanical power) and three wheelers (including tricycles and Cyclickshaws with attachment for propelling the same by mechanical power) not used for transport of goods or passengers and Motor Cars.

Sl. No.

Class of Vehicle

Rate of onetime tax (in Rupees)

(1)

(2)

(3)

1.

Motor Cycles (including motor scooters with cycles with attachment for propelling the same by mechanical power

(a)

Bi-cycles not exceeding 7500

1500

(b)

Bi-cycles exceeding 7500 with or without side car or drawing a trailer

2000

2.

Three wheelers (including tri-cycles and cycle rickshaws with attachment for propelling the same by the mechanical power) not used for transport of goods or passengers

(a)

Tri-cycles/cycle rickshaws

1500

(b)

Three-wheelers

2000

3.

Motor Cars

(a)

Weighing not more than 750 Kgs. unladen

14000

(b)

Weighing more than 750 Kgs. but not more than 1500 Kgs. unladen

18800

(c)

Weighing more than 1500 Kgs. unladen

23100.

According to the petitioners the said amendment made to the Kerala Motor Vehicles Taxation Act as per the Kerala Finance Bill, 1998 and replaced by the Kerala Finance Act, 1998 is constitutionally invalid and illegal because the Kerala Motor Vehicles Taxation Act is in the character of a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure

for making road maintaining and for facilitating the movement and regulation of traffic. The object and reasons of the Kerala Finance Bill is to give effect to certain financial proposals by the State Government. It is submitted that the State Government is not empowered to introduce such type of amendment in the Kerala Motor Vehicles Taxation Act to collect money for the purpose of diverting into certain financial proposals.

Arguments were advanced by Mr. K. Radhakrishnan, Mr. Gopalakrishna Menon, Mr. K.V. Gopinathan Nair, Mr. T.P.M. Ibrahim Khan, Mr. T.A. Shaji and Mr. P.M.M. Najeer Khan on behalf of the petitioners. Counsel appearing for the other writ petitioners have adopted the arguments. On behalf of the Government Mr. V.V. Asokan, Government Pleader, argued the case. 2. Learned counsel for the petitioners submitted that the object of the taxation should have a nexus with the object to be achieved and nowhere in any other State such one time tax has been introduced and instead of realising tax at the rate prescribed in the schedule Section 3(1) has been amended introducing a new type of tax called as one time tax, which according to the petitioners is highly illegal, ultra vires and unconstitutional and liable to be struck down. Section 3(2) of the Kerala Motor Vehicles Taxation Act gives power to the State Government to increase the tax from time to time by the issuance of a notification. But such increase shall not in the aggregate exceed 50% of such rate. Section 3(2) of the Kerala Motor Vehicles Taxation Act reads as follows:--

3(2) The Government may, from time to time, by notification in the Gazette increase the rate of tax specified in the Schedule:

Provided that such increase shall not in the aggregate exceed fifty percent of such rate.

Now enhancement is made against the above provisions by amending Section 3(1) by introducing a separate annexure to the Amendment Act to realise a special type of tax called one time tax. Counsel for the petitioners submit that this is highly arbitrary, discriminatory and violative of Articles 14 and 19 of the Constitution of India.

3. Mr. K. Radhakrishnan, learned counsel for the petitioner in O.P. No. 11435 of 1998 raised the following contentions:--

(i) The levy is illegal, transgression of constitutional provisions relating to fundamental rights under Articles 14 and 19, harsh, oppressive and sought to be collected under coercion.

(ii) The levy is imposed without recognising the real State of affairs, absence of rational relationship with objective sought to be achieved.

(iii) No evil is sought to be remedied. The Government have no case that it is to meet tax evasion the proviso is added.

(iv) Irrationality-wednesbury principle of unreasonableness.

(v) Section-3: charging section-contradiction between sections 3 and 4.

(vi) Imposition of one time tax on certain class of new vehicles this classification is not founded on an intelligible differentia which distinguishes those that are grouped together from others.

4. Mr. Gopalakrishna Menon submitted the following proposition:--

Section 3(1) of the Act gives power to levy tax on every motor vehicle used or kept for use in the State at the rates specified for such vehicles in the schedule. Section 3(2) gives power to the State Government to increase the rate of tax specified in the schedule from time to time by notification in the official gazette. But the said section contains a proviso to the effect that such increase shall not in the aggregate exceed 50% of such rate. As per the amendment made to the schedule on the last occasion the rate of tax prescribed for vehicles newly registered is the rate of tax prescribed for two years and now in order to circumvent the proviso to Section 3(2) the State Government has made amendment to Section 3(1) as per the Kerala Finance Bill 1998 to the effect that one time tax can be levied on motor vehicles-registered as a new vehicle and by virtue of the amendment if a person takes the vehicle outside the State he will have to pay tax again in the other State. Therefore, the levy of one time tax is highly arbitrary and harsh and the petitioner is put to very heavy financial loss and hardship. According to Mr. Menon, the new amendment introduced traverses the scope, object and ambit of the Finance Bill and that the amendment thus brought out is not a law as understood and permitted by Article 265 of the Constitution of India. The levy of tax is therefore, unconstitutional and ultravires.

5. Mr. Gopinathan Nair contended that the charging section namely Section 3 contradicts section 4 of the Kerala Motor Vehicles Taxation Act providing option to the registered owners of the Motor Vehicles to pay tax for the period exceeding two years when the amended section 3(1) makes it compulsory. Sections 3 and 4 are hence mutually exclusive, inconsistent and contradictory. Without properly and legally introducing amendments into Section 4 no change in the mode of payment of tax is permissible. Therefore, the amendment brought out to Section 3(1) in the Kerala Finance Bill, 1998 is illegal.

6. Mr. P.M.M. Najeeb Khan submitted that persons like the petitioners are not in a position to raise any further amount to the vehicles and that as per Section 4 of the Act the petitioner is eligible to pay tax at his own choice either for a quarter or for a year.

7. Mr. Sajeevkumar K. Gopal submitted that the levy of tax on motor vehicles depends upon the use of the vehicle to which the vehicle is put and that tax can hence be levied on the basis of the actual or intended use of the vehicle and as such there must be some proximity with the period for the use for which the tax can be levied and collected and that there must be a nexus between the imposition of tax and the period for which the advance tax is collected. It is also submitted that the purchaser of the brand new vehicle is imposed with an

unwarranted, oppressive and unreasonable burden to pay tax for unreasonably long period in future and that there is no rationale in the offending legislation in this context. According to the learned counsel, the impugned amendment adversely affects the fundamental rights guaranteed to a citizen under the Constitution.

8. Mr. Ibrahim Khan submitted that on the basis of Section 4 of the Motor Vehicles Taxation Act, which is relevant regarding the payment of tax and the issuance of licence, the petitioners were at liberty to pay advance motor vehicles tax at their choice on the basis of their financial capacity. But the respondents had issued an amendment to the provisions of the Kerala Motor Vehicles Taxation Act, 1976 on the basis of the Kerala Finance Bill, 1998. As per the proviso to Section 3, at the time of the first registration of the vehicle the entire tax as specified in the schedule is to be paid and that the tax has been fixed on the basis of the categories based on unladen weight. Other rates have also been fixed for vehicles having different weights. However, the said one time tax is made applicable to those vehicles which were purchased on or before 1-4-1998. It is submitted that the registration of the petitioners' vehicles was denied on the sole ground that they have not paid the entire amount introduced by way of amendment as one time tax and that the said one time tax is arrived at without having any regard for the nature of the vehicles, and durability expectations of its life. It is submitted that on the basis of the sudden introduction of a new tax system called one time tax, the petitioners are not in a position to make such a huge amount and get their vehicles registered, and that if the vehicles purchased by the petitioners are not registered within thirty days from the date of temporary registration, they will be liable to pay huge amount by way of penalty at the rate of Rs. 100/- per day.

9. Mr. T.A. Shaji submitted that levy of a huge amount as one time tax on the motor vehicles are unreasonable, arbitrary and without any nexus to the provisions of the Motor Vehicles Taxation Act.

10. Mr. Hariharan, learned counsel for some of the writ petitioners submitted that the petitioners are discriminated from the similarly placed persons who have purchased the vehicles during the said period from other states and they have brought the vehicles to their native place and getting the vehicles registered in their name and using the same without any problem. At the same time the petitioners are denied the registration on the sole reason that they have not paid the amount as lumpsum as a one time tax. He would further submit that the new amendment introduced traverses the scope, object and ambit of the Finance Bill and that the amendment thus brought out is no law as understood and permitted by Article 265 of the Constitution of India and that the levy of tax thereby is hence unconstitutional.

11. When the writ petitions were posted before. Shanmugam, J. he referred the matter by his reference order dated 30th June 1998 since according to the learned Judge the amendment will substantially affect the users of motor

vehicles generally and raises (sic) import (sic) by a Division Bench. That is how the matters were listed before us.

12. It was argued by learned counsel for the petitioners that the levy of tax on motor vehicles depends upon the use to which the vehicle is put and that the tax can be levied only on the basis of the actual or intended use of the vehicle and that there must be some proximity with the period for the use for which the tax can be levied and collected and that there must be a nexus between the imposition of tax and the period for which the advance tax is collected. Mr. Gopalakrishna Menon submitted that if the vehicle is given a permanent registration, endorsement will be made in the registration certificate in terms of the amended section 3(1) of the Act and that the petitioners will be compelled to pay the tax as one time tax. He would further submit that if a person purchases a vehicle from any other person which has been already registered and the same is transferred in the name of the purchaser, there is no obligation for the purchaser to pay one time tax. But the petitioners are compelled to pay tax for one time only because they purchased the vehicle as brand new vehicles. Therefore, there is no bona fides in the said action. Referring to Sections 3, 5 and 6 of the Act Mr. Menon submitted that the levy of tax is contemplated only of the vehicles that are used or kept for use on the public roads in the State, which position of law is made clear by the Supreme Court in the decisions in *Bolani Ores Ltd.*, *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and in 1980 KLT 568 and if one time tax is introduced it has to be understood in such a way that the original purchaser of this vehicle will have to use the vehicle life time without transferring the same to any person which is against the proviso of the Motor Vehicles Act and also the provisions of the Sale of Goods Act.

13. Mr. V.V.Asokan, Government Pleader submitted that the Original Petitions are not maintainable in view of the decisions reported in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, and *Venkita Rao v. State of Kerala* (1993 (1) KLT 303). It is further submitted that on merits also the Original Petitions are not maintainable. Only one counter affidavit was filed in O.P. 8996/98 and in para 3 of the counter affidavit it is stated that this counter affidavit can be adopted to other similar Original Petitions filed before this court by several other petitioners who have challenged the amendment to the Motor Vehicles Taxation Act. The question of law involved in all the Original Petitions are one and the same. Arguments were advanced by the counsel on the question of law and also on facts. We have carefully considered the amended provision and also the following decisions cited by the counsel appearing on either side:--

- i) *In Re: The Special Courts Bill, 1978*, .
- ii) *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*,
- iii) *The State of Maharashtra Vs. Himmatbhai Narbheram Rao and Others*
- iv) *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*,

v) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another,

vi) Chhotabhai Jethabhai Patel and Co. Vs. The Union of India and Another, .

As per Section 39 of the Kerala Motor Vehicles Act, 1988 all the vehicles have to be registered with the concerned registering authority and after the registration of the vehicles, the Taxation Officer have to endorse the rate of tax to be remitted in the registration certificate. It is stated that the vehicle can be used only after the payment of the aforesaid rate of tax and for the payment of the said tax there is a grace period of 14 days from the date of purchase. According to the newly introduced provision, the petitioner are liable to pay "one time tax" at the rates specified in the annexure to the Amendment of the Kerala Motor Vehicles Taxation Act, 1976. A proviso is added to Section 3 and as per the said proviso the petitioners are liable to remit "one time tax" at the rates specified in the annexure at the time of first registration of the vehicle. The petitioners are the owners of the newly purchased vehicle and they come under the amended provision of the Motor Vehicles Taxation Act. Petitioners' contention that the law applicable at the time of booking of the vehicle should be applied at the time of purchase of the vehicle, cannot be accepted. The provisions of fiscal status will be periodically changed according to the policy of the Government and therefore the rate of tax is applicable only when the vehicle is delivered to the customers. The present amendment and the newly introduced provision is applicable for the vehicles purchased after 1-4-98. Some of the petitioners submitted that one time tax is arrived at without having any regard to the nature of the vehicles, durability expectations of its life. It is submitted on the side of the State of Kerala that the Motor Vehicles Act itself fixed the life of the vehicle with respect to non-transport vehicles and as per Section 41(7) the Certificate of Registration is valid only for a period of 15 years from the date of issue of such certificate and shall be renewable for all the vehicles other than the transport vehicles. In our view, the present introduction of one time tax is enacted in a rational basis and the allegation that introduction of one time tax is arbitrary and illegal and without any nexus to the provisions of the Kerala Motor Vehicles Taxation Act has no basis. The main contention raised in the Original Petition is that the new amendment amounts to violation of the fundamental rights of the petitioners to get their vehicle registered in their name on the basis of the provisions of the Kerala Motor Vehicles Act and by paying reasonable taxes fixed by the Motor Vehicles Taxation Act. It is also contended that the amendment is in violation of Art. 19(1)(d) of the Constitution of India. None of these contentions are sustainable in law in view of the decisions of the Supreme Court and also of this court on the subject. The principle of one time tax is held valid by the apex court in State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, . The validity of Bombay Motor Vehicles Tax Act (1958), Secs. 3 and 9 (as amended by Act 14 of 1987, Act 33 of 1987 and 9 of 1988) was challenged. The Bombay Motor Vehicles Tax Act, 1958 prior to its amendment in 1987 provided for levy of tax on vehicles annually and quarterly. In 1987, by Sec.3 of the Maharashtra Act No.XIV of 1987, sub-section (1C) was added to provide for

levy of one time tax at 15 times the annual rate on all motor cycles used or kept for use in the State. Certain amendments were also-introduced. Sec.6 of the Maharashtra Act XIV of 1987 added to sub-section (6) to Sec.9 of the principal Act which enabled a registered owner of motor cycle or tricycle to obtain refund of "one time tax" in cases where the vehicle is removed outside the State and the registration of the vehicle is cancelled due to scrapping of the vehicle or for a similar reason and that the refund was to be paid in accordance with the Fourth Schedule. The Supreme Court on a consideration of the case law on the subject held that the levy of one time tax on motor cycle and tricycle under the Act is regulatory as well as compensatory and not discriminatory. The Supreme court also held as follows:-

The Bombay Motor Vehicles Tax Act after its amendment in 1987 and 1988 comes within the constitutional requirement of making the one time tax a regulatory and compensatory tax. The Act has provided for refund of proportionate amount of tax upto 13 years but the fact that the Act has not provided for refund in the 14th and 15th years does not make the law outside the competence of the State Legislature. It is not mathematical precision that is necessary nor can it be. There is in the provisions as amended, a discernible and an identifiable object behind the levy and a nexus between the subject and the object of the levy. The evidence on record shows that the life of motor cycles and tricycles normally exceeds 25 years. The so-called non-refund for certain period is not conclusive of the matter. Even if mathematical precision is not possible, it cannot be said that it is wholly unmathematical. The collection of tax for a period of 15 years at one point of time is a convenient method enabling the owner to use the vehicle for more than 25 years, without having to visit the office to pay the tax periodically, and pay enhanced tax that may be levied during the 25 years of life of the vehicle. Regulatory and compensatory tax can be levied to the extent the State is required to pay for rendering the services. According to the State Government, the cost of services is twice the total amount recovered from all types of vehicles. The balance of expenditure is met by the State from the general revenues. Even from this half collection, the motor cycles and tricycles contribute only 6.4 per cent. The percentage of motor cycles and tricycles is 56 to 58 percent of all vehicles. Thus, even in substantial increase in their rates cannot be said to be not a "regulatory or compensatory" tax measure.

The above ruling, in our opinion, squarely cover all the contentions raised by the counsel for petitioners. This judgment was followed by a Division Bench of this court in Venkata Rao v. State of Kerala (1993 (1) KLT 303). In the above case petitioner has assailed the validity of the Kerala Motor Vehicles Taxation (Amendment) Ordinance, 1993 (Ordinance 2 of 1993) on various grounds. By virtue of the said ordinance, Section 4 of the Kerala Motor Vehicles Taxation Act, 1976 has been amended and a new fourth proviso was substituted. The fourth proviso provided that a registered owner or the person having possession or control of a motor cycle, scooter etc. with attachment for propelling the same by mechanical power, a new three wheeler shall pay the tax payable in respect of

that vehicle in advance for a period of five years in lumpsum upon a licence for such period and in respect of a three wheeler other than the new three wheeler and in respect of a motor car as specified in serial No.6A of the schedule. The proviso further provides that such payment of tax shall be for a period of two years upon a licence for such period provided however that he may at his choice pay the tax in advance in respect of a motor cycle or new three wheeler for a period of 10 years or 15 years and in respect of a three wheeler other than a new three wheeler for a period of 5 years or 10 years or 15 years in lumpsum upon a licence for such period. In the second proviso to Section 4 for the words "motor vehicle" the words "motor vehicle other than a motor cycle" or a three wheeler including new three wheeler or a motor car as specified in item 6A of the schedule were substituted. A further amendment was made by describing the existing explanation as Explanation 1 and in the explanation as so numbered for the words "the tax for an annual licence shall not exceed four times", the words "the tax for an annual licence shall not exceed four times, tax for two years, license shall not exceed eight times" were substituted. After the said explanation 1, another Explanation was added as Explanation 2 stating that for the purposes of this subsection, a new three wheeler means a three wheeler specified in item 2 of the schedule which is first registered in the State on or after the commencement of this Ordinance. Consequential amendments were also made in Section 6 of the Act. It is thus seen that advance collection of motor vehicles tax is levied for a period of five years in respect of certain vehicles and for a period of five years in respect of another type of vehicles and a choice is given to the tax payers to pay the tax for a longer periods. As already noticed this amendment was assailed in the writ petition. The Chief Justice, Mr. Jagannadha Rao speaking for the Bench, after referring to decision reported in State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, held that the said decision clearly concludes the matter against the petitioner in the present case where the tax is collected in advance only for five years and two years in respect of different types of vehicles. The contention of the party-in-person that the tax is unreasonable and it imposes a burden on the tax payer for paying the tax for five years in advance was also not countenanced. The Division Bench held that the collection of tax in advance for five years in respect of certain vehicles and for two years in respect of certain other vehicles cannot be said to be unreasonable and in so far as the State is concerned, the State is saving by way of administrative expenses involved in the collection of tax periodically and that the tax payer's burden for the future, to that extent, is also reduced and that would enable the state to expend a large amount in respect of immediate schemes where a large amount of capital out-lay is involved, such scheme being for the benefit of the roadusers. The Division Bench therefore held that the levy of tax cannot be said to be unreasonable. The Bench also rejected the contentions raised by the petitioner under Art. 19(1)(d) of the Constitution of India that the levy of tax amounts to unreasonable restriction on the citizens. The Bench held that the State is entitled to levy tax and the levy of tax or its advance collection does not amount to unreasonable restriction.

14. We may also usefully refer to another decision of the Andhra Pradesh High Court reported in *B. Mohan Reddy v. Managing Director, A.P. State Co-operative Marketing Federation* (1989 (1) ALT SN 24) wherein the validity of a similar amendment to the Andhra Pradesh Motor Vehicles Taxation Act came up for consideration in the said case. The High Court held that the amendment was within the competence of the Andhra Pradesh Legislature.

15. The above two decisions, both the Supreme Court and the High Court have upheld the introduction of one time tax, which is absolutely within the power of the State Legislature. It is argued by Mr.K. Radhakrishnan that the Supreme Court State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others, which has been referred to above, on the basis of the statistical data has found in para. 18 of the said judgment and that the factual scenario upon which the two judgments are found is different from the one available here and nothing has been stated in the counter affidavit about the evils sought to be remedied. About the objects sought to be achieved nothing is stated in the counter affidavit except the plea raised in paragraphs 12 and 13 that it is a beneficial legislation to the extent that the vehicle owners need not visit the transport office for a period of 15 years. No data is given in the counter affidavit as discussed as the apex court case in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, . The said submission has no merits as the Supreme Court and the Division Bench of this court considered all the aspects elaborately and upheld the introduction of the one time tax. A further contention that the above two judgments are in respect of two wheelers and three wheelers and therefore, not applicable to the present case, cannot also be considered. There is no discrimination between the same class of vehicles. Therefore, in our view, the petitioners are liable to remit the amounts required under the Motor Vehicles Taxation Act. The contention of the petitioners that the Motor Vehicles Taxation Act is compensatory for the use of public road and there is no justification for levy of tax at the time of registration without specifying the period, is without any basis. From the proviso, introduced by the new Amendment, it is clear that if the one time tax is paid at the time of first registration, thereafter tax shall be levied at the time of renewal of registration only and the renewal or registration comes only after 15 years. Further as seen above, the Supreme Court has held in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, that the concept of regulatory and compensatory act does not imply mathematical precision of quid pro quo. This aspect was also emphasized in the *International Tourist Corporation and Others Vs. State of Haryana and Others*, . In the above case, the Supreme Court has opined as follows:--

But to say that the nature of 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. The State of Haryana incurs considerable expenditure for the maintenance of roads and providing facilities for the

transport of goods and passengers within the State of Haryana. The maintenance of Highways other than the National Highways is exclusively the responsibility of the State Government. But the State Government is not altogether devoid of responsibility in the matter of development and maintenance of a national highway of the Union Government. Since the development and maintenance of that part of the highway which is within a municipal area is equally important for the smooth flow of passengers and goods along the national highway it has to be said that in developing and maintaining the highway State Government is surely facilitating the flow of passengers and goods along all highways including national highways, such as lighting, traffic control, amenities for passengers, halting places for buses and trucks are available for use by everyone including those travelling along the national highways. It cannot, therefore, be said that the State Government confers no benefits and renders no service in connection with traffic moving along national highways, and therefore, not entitled to levy a compensatory and regulatory tax on passengers and goods carried on national highways. There is sufficient nexus between the tax and passengers and goods carried on national highways to justify the imposition.

In the instant case there is a provision for refund of tax for vehicles which are transferred to other States for permanent use for the remaining period. Rule 15A of the Motor Vehicles Taxation Rules provides for refund of one time tax. The said Rule provides for refund if the vehicle is removed permanently from this State on transfer of ownership or change of address or the registration of the vehicle has been cancelled during the currency of tax so paid. The refund of tax paid shall be the difference between the actual amount of tax paid and the amount calculated by multiplying the number of years for which the motor vehicle was actually used in this State by the rate of annual tax prevailed on the date on which the refund is applied for. Rule 15A(2) provides for refund of tax subject to complying with certain conditions as stated in the said sub-clause. As per the said clause the application for refund of tax shall be made to the Regional Transport Officer/Joint Regional Transport Officer concerned within 30 days from the date of removal of the vehicle from the State. The tax licence shall be surrendered along with the application and a certificate obtained from the Registering Authority of the other transferee state shall be produced to the effect that the vehicle has been included in the regional and tax due to that State has been paid. Therefore the petitioners cannot have any apprehension that the tax paid is gone for ever even if the vehicle is not in existence. Once the vehicle is fully damaged and the vehicle is not in existence that will result in the automatic cancellation of the registration certificate and once the cancellation of registration is done the question of payment of tax does not arise for a non-existent vehicle and that the owners of the vehicle will also be entitled to refund of tax paid for the remaining period. We hold that if the registration of the vehicle is cancelled due to scrapage of the vehicle or for a similar reason, the petitioners will be entitled for refund in accordance with Rule 15A of the Rules. As per the annexure to the present amended provision motor cars weighing more than 750 kgs. but not more than

1500 Kgs. unladen has to pay one time tax at Rs. 18,800/-. On the other hand the vehicles of the same class have to pay Rs.390/- per quarter. If that is multiplied into 4 for 15 years the amount will come to Rs.23,400/- (390 x 4 x 15). Thus the difference will be Rs.4,600/-, which, in our opinion is beneficial to the vehicle owners. All the future increase in the vehicle tax is not applicable to the vehicle owners who remitted the one time tax. This illustration itself shows as to how the vehicle owners are benefited by the payment of one time tax.

16. It is submitted that the life of the non-transport vehicle is fixed by Sec. 41 (7) of the Motor Vehicles Act. As far as the transport vehicles are concerned, the life of the vehicle depend upon several factors. As pointed out by the learned Government Pleader that the transport vehicles and non-transport vehicles are different classes of vehicles and the provisions applicable to those vehicles are also different and hence the contention of the petitioners in this regard has no substance. It is submitted by petitioners' counsel that one time tax is not introduced anywhere in India except Kerala. The submission made by the counsel is factually incorrect. It is brought to our notice that the States like Karnataka, Andhra Pradesh and Tamil Nadu have introduced the one one time tax long back and for example in Tamil Nadu one time tax was introduced with effect from 1-4-1989 itself. As the nature of taxation is being compensatory and regulatory and it is for the legislature to classify and re-classify the vehicles for the purpose of taxation depending upon the extent of use. Classification has a rational nexus to the object to be achieved. There is no discrimination between the vehicles of similar classification. It is submitted that the Motor Vehicles' tax collection is far below while considering the expenditure on the construction and maintenance of roads and bridges in the State of Kerala, which can be evidenced from the yearly budget. Therefore, the contentions to the contrary are also without any merit. In some of the Original Petitions, petitioners have taken the contention that they have obtained the permit from the appropriate authority for use of the vehicle as taxis/tourist taxis. By way of clarification, it is submitted by the Government that taxis/tourist taxis are not liable for one time tax provided if they obtain sanction from the STA/RTA and when such proceedings are placed before the registering authority the vehicle may be registered as taxi/tourist taxi and payment of tax will be as per the schedule. Therefore we clarify that the vehicles which are registered as taxis/tourist taxis are not liable for one time tax subject to their satisfying the other conditions as aforesaid.

17. It is argued that because of the amendment introduced, the purchasers of new vehicles are put to hardship and they are compelled to pay the entire tax in one lump. Courts have held that hardship cannot be a ground and that an enactment cannot be struck down on the ground that the court thinks it is unjustified. The legislature composed, as they are, of the representatives of the people, are supposed to know and be aware of the needs of the people. The court cannot sit in judgment over their wisdom. The amendment now introduced cannot be treated as an unreasonable restriction. It is within the legislative competence of the State Legislature.

18. It is submitted that the present amendment violates Art. 14 of the Constitution of India. The Supreme Court in the decision reported in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, held that every legislation, particularly in economic matters, is essentially empiric and it is based on experimentation, and that there may be crudities, inequities and even possibilities of abuse, but on that account alone it cannot be struck down as invalid. The court must adjudge the constitutionality of such legislation by the generality of its provisions. Laws relating to economic activities, the Supreme Court held, should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. Moreover, there is always the presumption in favour of the constitutionality of a statute and the burden is upon those who attack it to show that there has been a clear transgression of the constitutional principles. Counsel for the petitioners in O.P.No.1603 of 1999, after referring to Art. 202 of the Constitution of India, argued that one time tax has a component for the future and in view of Art. 202, tax shall be paid for the year only and that the Constitution does not envisage the State to tax for the future. This contention cannot be countenanced in view of the decision of the Supreme Court reported in *State of Maharashtra and Others Vs. Madhukar Balkrishna Badiya and Others*, . It is also argued that no tax can be levied or collected except with the authority of law. The petitioners, in this context, has not established that the imposition of one time tax is without the authority of law and that the State Legislature has no competence to introduce such an amendment.

19. The argument of the learned counsel for the petitioner that the amendment is violative of Art. 14 of the Constitution cannot at all be countenanced. A taxing statute can be held to contravene Art. 14 of the Constitution only if purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. As pointed out by the Apex Court in many reported decisions, it is for the Legislature to decide on what objects to levy what rate of tax and it is not for the courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also to be noted that the Legislature is competent to classify persons or properties into different categories and tax them differently, and if the classification thus made is rational, the taxing statute cannot be challenged merely because different rates of taxation are prescribed for different categories of persons or objects.

20. Having regard to all these factors and having regard to the taxation laws, we are of the view that the amendment, sought to be challenged in these writ petitions, does not suffer from any vice of not being regulatory or compensatory taxation, nor from the vice of being violative of Art. 14 of the Constitution of India. The challenge to the amended provisions cannot, therefore, be countenanced.

21. The learned single Judge, while staying the operation of the amendment

made Sec. 3(1) of the Kerala Finance Bill, 1998 imposed the following conditions:

1. The petitioner shall pay two years tax with addl. tax, if any, on the vehicle.
2. He/She shall not sell, transfer or alienate the vehicle during the pendency of the case.
3. The petitioner shall also file an undertaking before the registering authority that he/she shall pay the tax with 18% interest within two weeks from the date of the judgment if the O.P. is decided against the petitioner.

It is argued on behalf of the petitioners that the order passed is only an interim order pending final adjudication of the question involved and that in the absence of any provision in the taxing statute for charging interest, the State shall not be permitted to collect interest as ordered in the interim order.

22. Per contra, learned Government Pleader Mr.V.V. Asokan placed before us the decision of the Supreme Court reported in *Calcutta Jute Manufacturing Co. v. C.T.O.* (1997) 106 STC 433 and submitted that even though there is no provision for charging interest, the taxation statute has to be construed so as not to upset or impair the purpose of the provisions. In that case, the appellant before the Supreme Court filed a writ petition before the High Court challenging the validity of Sec.6B of the Bengal Finance (Sales Tax) Act, 1941, imposing a tax on the annual aggregate gross turnover of a dealer whose gross turnover exceeded Rs.50 lakhs. On admission of the petition, the High Court granted interim injunction against the Government from collecting such tax; but ultimately the writ petitions were dismissed and the appellants paid tax thereafter. Demands were made on the appellants under Sec. 10A for interest on the amount of tax for the period of default. The appellants challenged the demand for interest before the taxation Tribunal, but the Tribunal upheld the demand. The Supreme Court, after affirming the decision of the Tribunal, held that the tax which the appellants should have paid under Sec.6B remained with them during the entire period, and the State, to which the amount should have necessarily gone, was not able to utilize it for public purposes, and that the appellants had the advantage of retaining the amount of tax without paying it to the State exchequer only because the High Court had granted stay orders restraining the state from recovering the amount from the appellants. It was further held that no act of court should cause prejudice to any party, and that merely because the High Court had granted interim orders, it could not be inferred that the court was satisfied of a strong prima facie case for the appellants, but on the contrary, it is well-settled that there is always a presumption in favour of the constitutionality of a legislative act and not the other way round. K.T. Thomas, J. speaking for the Bench, held in para. 16 of the judgment as follows: 16. The tax amount which they should have paid as per Sec.6B remained with the appellant during the entire period and they would have earned good profit with that amount. The State, to which the amount should necessarily have gone, was not able to utilize it for public purposes. When appellants had the advantage of keeping the amount

of tax without paying it to the State Exchequer only because of the High Court granted orders restraining the State from recovering that amount from the assessee, no act of the court shall cause prejudice to any party. The pristine doctrine couched in the maxim "*actus curiae neminem gravabit*" has ever remained a salutary and guiding principle.

In view of the above decision of the Supreme Court, persons like the petitioners, who have obtained the conditional interim order, are liable to pay the tax due with interest at 18% per annum. We, therefore, direct the petitioners to pay the tax due, together with interest at 18% per annum from the date on which the tax fell due till the date of payment, within one month from today. The amount already paid by the petitioners shall be given credit to and interest as above shall be chargeable only on the tax remaining to be paid. The original petitions are without merits and are accordingly dismissed subject to the above directions. In the facts and circumstances of the case there will be no order as to costs.