

Secretary To Government of Home Department, Tamil Nadu and Others

Vs

Salem Dharmapuri Omnibus Association and Others

Civil Appeals Nos. 1405-1409 of 1971

(CJI A. N. Ry, K. K. Mathew, A. J. J. J. J.)

12.11.1974

JUDGMENT

MATHEW, J. –

1. The only point in these appeals is whether the High Court was right in striking down the two G. Os., namely, G. O. M. S. 923-Home dated April 19, 1969 and G. O. M. S. 434-Home dated February 27, 1970 for the reason that the levy of tax under the G. Os. was not an exercise of the power of taxation but was a measure for eliminating competition of the permit-holders of contract carriages.
2. We have already indicated in our judgment in G. K. Krishna v. State of Tamil Nadu ((1975) 1 SCC 375.) that if the government has power to impose the tax, the motive or the purpose with which that power has been exercised is quite immaterial. Section 17 gives power to the State Government to amend Schedule II or III by rules. A draft of any rule has to be laid on the table of the Legislative Assembly and the rule shall not be made unless the Assembly approves the draft. Neither the draft of the rule approved by the Assembly nor the rule as framed by government contained the purpose of imposing a higher tax on contract carriages. It was only when the rule was published that the purpose of imposing the tax viz., to eliminate the unhealthy competition from contract carriages, was added. If the tax was otherwise legal, it would not become illegal merely because it was intended to be used also as an instrument to regulate an activity within the power of the State.
3. We have already held in our judgment referred to in the preceding paragraph that the tax imposed on contract carriages by notification No. 2044-Home dated September 20, 1971 is compensatory in character and, therefore, the Government, in the exercise of its delegated power was competent to impose the same without, in any way, restricting the freedom of trade, commerce and intercourse. If that be so, we see no reason to hold that the tax imposed by the two notifications in question is not compensatory in character and it was not contended otherwise before the High Court or here.
4. The High Court was clearly wrong in declaring that the tax imposed by the notifications was not an exercise of the power to tax. The Judgment of the High Court in these appeals is set aside and the appeals allowed but, in the circumstances, without any order as to costs.

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