State of Kerla

Vs

Aravind Ramakant Modawdakar

Civil Appeal No, 13039 of 1996

(R. C. Lahoti, N. Santosh Hegde JJ)

10.08.1999

JUDGMENT

Santosh Hegde, J. –

1. The State of Kerala has preferred these appeals against the judgment of a Division Bench of the High Court of Kerala dated 11.12.1995 in W.A. No. 1180/1995 and other connected appeals whereby the appellate Bench of the kerala High Court reversed the judgment of a learned Single Judge of the said High Court dated 28.9.1995 in a batch of writ petitions being O.P. Nos. 12240/1994-F and connected matters.

2. The original petitioners, who are respondents in the various appeals before us, filled writ petitions before the High Court of Kerala, challenging the constitutional validity of the provisions contained in Item 4(1) (f) of the Schedule to the Kerala Motor Vehicles Taxation Act, 1976, as amended by Section 4 of the Kerala Finance Act, 1994 (hereinafter referred to as `the Act') whereby the State had enhanced the rate of quarterly tax in respect of the contract carriage vehicles operating inter-State. They also sought certain other incidental reliefs. The primary contention of the petitioners in these petitions was that the reduction of tax liability in favour of the vehicles covered by inter-State contract carriage permit without granting the same benefit to inter-State contract carriages amounted to an arbitrary discrimination between the vehicles of persons similarly situated, hence, the same is violative of Article 14 of the Constitution of India. The learned Single Judge who heard the batch of writ petitions by an elaborate judgment came to the conclusion that the contract carriages covered by inter-State permit formed a different class for the purpose of levying motor vehicles tax compared to contract carriages which are covered by inter-State permits. After discussing the various case-laws on the subject, he held that the legislature has under Entry 56 or 57 of List II of the 7th Schedule a power to impose taxes which are compensatory and/or regulatory in nature, and by virtue of the power vested in the State under Section 22 of the Act, the State has the power to reduce the tax with reference to a particular type of vehicle in public interest which power had been exercised by the State rightly by reducing the levy of tax in favour of contract carriages covered by inter-State permits. He negatived the contention of the respondent-writ petitioners that this reduction of tax in favour of contract carriages covered by inter-State permits only violated Article 14 of the Constitution. he upheld the contention of the State that the contract carriages covered by inter-State permits did form a different class of contract carriages as compared to contract carriages which are covered by inter-State permits. He also held that this classification within the class of contract carriages was a reasonable classification for the purpose of levy of tax. Having come to the said conclusion, he proceeded to dismiss the writ petitions.

3. In appeal, the Division Bench of the said High Court took a contrary view and held that the above

classification within the class of contract carriages based on the nature of permits covering these vehicles would be arbitrary and violative of Article 14 of the Constitution since the said classification had no nexus with the object of taxation. It also held that the motor vehicles taxation being a compensatory and regulatory tax, there could be no two-tier tax measure based on the nature of permit held by these contract carriages and if there was any justification for the State to reduce the tax burden on the class of contract carriages covered by inter-State permits to lesson the hardship to its operators, the same would equally apply to the operators of the contract covered by inter-State permits also.

4. In these appeals on behalf of the State, it is contended by Mr. C.S. Vaidyanathan, learned Additional Solicitor General, that impugned classification is based on well defined, intelligible differentia which is reasonable and would not offend Article 14 of the Constitution. He also contended that the State had ample power for giving exemption or reduction of tax under Section 22 of the Act and the concession given in the instant case to inter-State contract carriages was with an object to reduce the hardship of this category of vehicle owners which hardship, according to him, was not there so far as inter-State contract carriage owners are concerned. He also contended that the legislature had ample power under the Act if it so chooses to tax a particular class of vehicle differently from another class of vehicle and the courts cannot review these decisions if there is no abuse of its powers and transgression of the legislative function. He also questioned the wisdom of the Division Bench of the High Court in assessing the hardships suffered by particular owners of the contract carriages, taking into consideration hypothetical factors such as the possible distances covered by these two types of contract carriages. Per contra, defending the judgment of the appellate Bench, Mr. TLV Iyer, learned senior counsel appearing on behalf of the respondents, contended that as has been held by a catena of decisions of this Court, the taxing power under Entry 56/57 of List II of the 7th Schedule being regulatory and compensatory in nature, the same cannot be discriminatory, He attacked the reasoning of the classification which, *inter alia*, relied upon the difference in seating capacity between the contract carriages covered by inter-State permits and those covered by inter-State permits. It was his contention that the difference in seating capacity cannot be a ground to form an artificial classification from amongst similar group of vehicles or operators. He further contended that, as a matter of fact, inter-State vehicles have a heavier axel weight and power hence would cause greater damage and wear and tear to the roads and since the measure of taxation is compensatory in nature, if at all the power of exemption is to be exercised under Section 22, the same should have been done in favour of the inter-State vehicles rather than in facour of inter-State vehicles.

5. We have considered the arguments on behalf of the parties so also perused both the judgments of the High Court. Though originally there was a challenge to the constitutional validity of the provision contained in Item 4(I)(f) of the Schedule to the Act, as amended by Section 4 of the Kerala Finance Act, 1994 and also to the Notification issued under Section 22 of the Act whereby the State reduced the burden of levy on vehicles covered by inter-State contract carriage permits during the course of arguments, it seems the challenge was confined only to the difference in levy giving up the challenge of constitutional validity. Obviously, as we see because of the fact that the writ petitioners would not gain anything by getting the notification quashed but were interested in getting similar benefits for themselves which could not have been achieved by getting the Notification quashed.

6. Certain fact-situations in this case are admitted. The authority of the State to levy tax under its legislative power based on Entries 56 or 57 of List II of the 7th Schedule is admitted. It is also an admitted fact that under sub-section (1) of Section 3 of the Act, the State has power to levy tax on

every motor vehicle used or kept for use in the State at the rates specified for such motor vehicles in the Schedule to the Act. Prior to the Notification in question, the rates of tax as between the inter-State vehicles and inter-State vehicles were equal. By virtue of the Notification issued under Section 22 of the Act, the State reduced the rate of taxation on contract carriage vehicles covered by inter-State permits to Rs. 500/- per quarter from Rs. 1,000; without reducing the same for the contract carriages covered by inter-State permits. It is also a settled position in law that the actual user of the road by the vehicles which are covered by the requisite permits is not always a relevant factor since the taxable event under Section 3(1) of the Act occurs when the vehicle is used or is kept for use in the State. Therefore, once the vehicle becomes liable for payment of tax the extent and quantity of use by the vehicle is not a decisive factor for the purpose of levy of tax as could be seen from the judgment of this Court in the case of *M/s. International Tourist Corporation etc. etc. v. State of Haryana & others, AIR 1981 SC 774.* Coming to the power of the State in legislating taxation law, the court should bear in mind that the State has a vide discretion in selecting thee persons or objects it will tax and thus a Statute is not open to attack on the ground that it taxes some persons or the objects and not others. It is also well-settled that a very wide latitude is available to the Legislature in the matter of classification of objects, persons and things for the purpose of taxation. While considering the challenge and nature that is involved in these cases, the courts will have to bear in mind the principles laid down by this Court in the case of *M/s. Murthy Match Works etc. etc. v. The Asstt. Collector of Central Excise, AIR 1974 SC 497* wherein while considering different types of classifications, this Court held "that a pertinent principle of differentiation, which was, visibly linked to productive process, had been adopted in the broad classification of power-users and manual manufacturers. It was irrational to castigate this basis as unreal. The failure however, to mini-classify between large and small sections of manual match manufactures could not be challenged in a Court of law, that being a policy decision of Government dependent on pragmatic wisdom playing on imponderable forces at work. Though refusal to make rational classification where grossly dissimilar subjects are treated by the law violates the mandate of Article 14, even so, as the limited classification adopted in the present case was based upon a relevant differentia which had a nexus to the legislative end of taxation, the Court could not strike down the law on the score that there was room for further classification."

7. Keeping in mind the above principles of law, we will now proceed to examine the contentions of the parties in these cases. The State in its counter has stated that in view of the decision of the Transport Development Committee, the State proceeded to increase the rate of tax in respect of the contract carriages having seating capacity of more than 20 passengers. The increase was effected for the purpose of having a uniform pattern in respect of tax structure in all States. Since the tax in respect of contract carriage Omni Bus' is the lowest in the State of Kerala when compared with other States, the State felt the necessity to increase the same. Hence, by Notification No. SRO 181/93 an amendment was brought to clause (f) of "Item 4" in the Schedule of the Taxation Act. It is further stated in the said affidavit that after the above increase was brought about in respect of contract carriages in general, the Government felt that the increase will cause hardship to the contract carriage operators having inter-State operations. Therefore, in exercise of the power conferred by Section 22 of the Kerala Motor Vehicles Taxation Act, 1976, the Government have enforced a reduction in respect of the rate of tax in inter-State contract carriages. It is also stated that a decision was taken to change the pattern in respect of the contract carriage vehicles taxation when the Government introduced the Rural Finance Bill of 1994 and having considered the various representations of the operators of inter-State contract carriages, the Government considered it necessary to reduce the rate of tax in order to avoid hardship, the Notification in question reducing the rate of taxation to this class of vehicles was introduced. It is also stated in the counter affidavit

that the contract carriages covered by inter-State permits do form a separate class as against the contract carriages covered by inter-State permits inasmuch as the former, namely, the contract carriages having inter-State permits have a seating capacity of 35 whereas inter-State carriages have a seating capacity varying from 50 to 55. This is also a relevant factor, according to the State, to classify reasonably the two types of contract carriages we have referred to above.

8. Whereas the arguments on behalf of the writ petitioners-respondents have been that both types of contract carriages are covered by a permit issued under Section 74 of the Act and, in fact, there is hardly any difference between these two types of carriages with reference to the nature of operation except that in the case of inter-State carriages they have the right to go beyond the territorial limits of the State of Kerala while the inter-State carriages will have to operate within the territory of the State of Kerala. It is also contended that if at all the usage of roads is a relevant factor then the inter-State vehicles used the roads within the State of Kerala much more than the inter-State vehicles.

9. Certain hypothetical examples in regard to the usage of roads by these vehicles have been cited by the petitioners-respondents which found favour with the Division Bench in the impugned judgment. It is stated that an Inter-State contract carriage can travel from the North-most part to the South-most part of kerala using the roads in kerala more than an inter-State contract carriage which may be travelling outside the State of Kerala within a point very close to the boundary of Kerala State. Therefore, it is contended that the burden of road usage could be more in the case of inter-State permit holders and the tax in question being compensatory in nature, there is no justification for reducing the tax rate in favour of the inter-State contract carriages. We think this argument of long or short usage of road is purely hypothetical and would not be a sole guideline to test the validity of a taxing Statute; even if such Statute is a compensatory/regulatory taxation. The tax levied under the legislative power found in Entry 56 or 57 of List II of the 7th Schedule is primarily a tax, though it may be compensatory and/or regulatory in nature and, therefore, while testing the constitution validity of a taxing Statute it may not be safe to rely upon the hypothetical factors as against the wisdom of the legislature. In regard to measure of road user both the sides can give contrary arguments which may look convincing. Hence the examples of this nature would not carry the argument to any logical conclusion. Having noticed the fact that the area of judicial review is considerably limited in testing the validity of a taxing Statute and considering the impugned classification in its factual background, it seems the two permits are different from very nature of their operation: while one allows operation within the State only the other allows operation beyond the boundaries of the State. Even though in generic terms both are contract carriages, there are individual restrictions and advantages attached to each of these permits which could be exclusive to themselves. As argued on behalf of the respondents, even the types of vehicles used by the holders of these permits, in most cases, if not in all cases, are different. The carrying capacity of the vehicles concerned covered by these two permits is different. Thus in many factual ways these vehicles covered by two different permits do form separate and distinct class. So long as this classification is not arbitrary or unreasonable, the courts will not interfere with this classification which is the prerogative of the legislature. Now coming to the nexus of the classification with object of taxation, it should be noted that in the present cases the classification is made for the purposes of granting exemption under Section 22 of the Act. Grant of exemption/reduction under this Section is in "Public interest", therefore, nexus of this classification will have to be traced to "Public interest" which is again within the realm of legislative wisdom unless tainted by perversity or absurdity.

10. The validity of Section 22 of the Act has not been questioned which Section empowers the State in public interest to grant exemptions in such a manner as it deems fit to a class of people. Once we hold that the contract carriages covered by inter-State permits and inter-State permits can form two

distinct and separate classes within the larger class of contract carriages, we find it difficult to hold that this classification is either unreasonable or it lacks nexus to the object or is violative of Article 14. The opinion as to public interest contemplated under Section 22 of the Act will have to be formed by the State after taking into consideration the various factors which affect the public at large. Definitely, in the absence of a challenge to this decision-making process on facts, it will not be open to us to substitute our views in this matter to that of the opinion formed by the State. For the reasons stated above, with respect, we are unable to concur with the judgment of the appellate Bench of the Kerala High Court which is impugned before us and the same is set aside.

11. During the pendency of the proceedings before the learned Single Judge, the petitioner-respondents had obtained a stay of collection of tax in respect of the contract carriage vehicles involved in the writ petitions before the High Court. While dismissing their petitions, the learned Single Judge directed that the petitioners should pay the balance tax due up to 30th September, 1995 in equal instalments. From records we are unable to find whether there was any interim order of stay during the pendency of the appeal before the Division Bench. But it is clear from the records of this Court that the stay sought for by the State in these appeals was rejected. Taking into consideration the fact that at least after the judgment of the Division Bench of Kerala High Court delivered on 11.12.1995, there has been no stay or any other interim order in favour of the State, we are of the opinion that it would be just and fair that inspite of the fact that we have allowed the appeal of the State, the State should not demand the enhanced tax from the respondents which may have become due by virtue of this judgment for the period between the date of judgment of the Division Bench i.e. 11.12.1995 and today, that is, the date of the judgment of this Court. The appeals are accordingly allowed with the above directions, upholding the validity of the notification impugned herein, setting aside the judgment of the Division Bench of the High Court of Kerala in W.A. No. 1180/95 and connected matters. There shall, however, be no order as to costs.