R. SENTHIL BABU

v.

STATE OF TAMIL NADU AND ANR.

(Civil Appeal No. 7304 of 2008)

DECEMBER 16, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Constitution of India, 1950 – Arts. 226 and 14 – Writ petition raising issues of public importance – Requirement of pleadings with sufficient data and details – Contract carriage **vis-à-vis** *stage carriage – Taxation – Principle of proportionality – Amendment Act providing for increased rates of tax in respect of contract carriage – Order of High Court on the writ petition filed by appellants challenging constitutional validity of the said Act – Appeals against – Held: Petition before High Court was very sketchy – Pleadings at the initial stage was thus insufficient – No infirmity in judgment of High Court – However, since questions of public importance were involved, appellants permitted to withdraw the appeals with liberty to file fresh writ petition in High Court with proper details and data – Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1998.*

The Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1998 provided for increased rates of tax in respect of contract carriage. Appellants filed writ petition challenging constitutional validity of the 1948 Act on the ground that it placed uneven burden on owners of contract carriage *vis-a-vis* stage carriage. The order passed by the High Court on the petition was challenged in the present appeals.

Dismissing the appeals, the Court

HELD: 1.1. Generally, in a matter of this nature, the quantifiable data forms the basis of the challenge. At the

A initial stage when the petition is filed in such cases there has to be a precise formulation of the ground of challenge from the side of the appellants based on some statistical data as to disproportionality of the rate of tax. It is only thereafter that the burden will shift on to the State to
B submit quantifiable and measurable data. In the present case, the initial burden on the appellants itself has not been discharged in the sense that the petitions filed before the High Court were very sketchy. A challenge of this nature requires the appellants to furnish greater details before the State could be called upon to submit
C quantifiable and measurable data justifying the impugned rate. Ultimately, it is the State which has to meet the allegations made in the writ petitions and if those allegations made in the writ petitions are vague, inaccurate or insufficient then it would not be possible
D for the State to submit its reply/data to the Court. The repeated increase in the rate of tax, particularly the incidence of which is more on the contract carriage *vis.-a-vis* stage carriage raises question of public importance. At the same time the State can certainly rely upon the
E data available to show cross subsidization, if it so exists in a given case, by which stage carriage gets subsidized in public interest. Keeping in mind the gamut of the dispute involved, this Court cannot interfere with the impugned judgment of the High Court, particularly when
F the pleadings at the initial stage were insufficient. [Paras 4, 5, 7 and 8] [634-B-C-D-E, G]

1.2. The appellants sought permission of this Court to withdraw the civil appeals/special leave petitions with liberty to file proper writ petition in the High Court giving
G requisite details and available data. Normally, such permission cannot be granted. However, questions of public importance arises in these matters, particularly in the context of the principles of proportionality under Article 14 of the Constitution and the later development of law, as indicated by this Court in the case of Jindal Stainless
H Steel*. In the circumstances, the appellants are permitted

to withdraw the appeals with liberty to file proper writ petition, if so advised. There is no infirmity in the impugned judgment of the High Court based on the petition originally filed before it. [Paras 9 and 10] [635-A-D]

******Jindal Stainless Ltd.* **(2) and** *Another vs. State of Haryana and Others* **(2006) 7 SCC 241 and** *Tamil Nadu Omni Bus Owners Association v. State of Tamil Nadu & Anr.* **i.e. C.A.No.1177 of 2006 disposed of by Supreme Court on 28.11.2007, referred to.**

Case Law Reference:

(2006) 7 SCC 241 relied on Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7304 of 2008.

From the final Judgment and Order dated 29.11.2005 of the High Court of Judicature at Madras in Writ Petition (Civil) No. 4066 of 2002.

WITH

C.A. No. 7305 of 2008.

Aribam Guneshwar Sharma for the Appellant.

R. Nedumaran for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. The short question which arises for determination in these Civil Appeals concerns challenge to the Constitutional validity of Tamil Nadu Motor Vehicles Taxation (Amendment) Act, 1998, by which initially the rate of tax in respect of contract carriage stood increased from Rs.1500/- per seat per quarter to Rs.2000/- per seat per quarter, and subsequently the said rate stood enhanced from Rs.2000/- per seat per quarter to Rs.3000/- per seat per quarter vide Notification No.1184 dated 30.11.2001 with effect from 1st December 2001.

3. The basis of the challenge rests on the uneven burden placed on the owners of contract carriage *vis-a-vis* stage carriage. Broadly it is contended that there is no rational in the

A imposition of the levy, that tax is imposed indiscriminately, that it is levied to cross-subsidize stage carriage and that uneven burden has been placed on the owners of contract carriage which has no nexus with the services or amenities provided.

4. Generally, in a matter of this nature, the quantifiable data B forms the basis of the challenge. At the initial stage when the petition is filed in such cases there has got to be a precise formulation of the ground of challenge from the side of the appellants based on some statistical data as to disproportionality of the rate of tax. It is only thereafter that the C burden will shift on to the State to submit quantifiable and measurable data.

5. In the present case we find that the initial burden on the appellants itself has not been discharged in the sense that the petitions filed before the High Court were very sketchy. A challenge of this nature requires the appellants to furnish D greater details before the State could be called upon to submit quantifiable and measurable data justifying the impugned rate. Ultimately, it is the State which has to meet the allegations made in the writ petitions and if those allegations made in the writ petitions are vague, inaccurate or insufficient then it would E not be possible for the State to submit its reply/data to the Court.

6. One more aspect in these cases also needs to be mentioned. It has been argued before us that the tax in question is a compensatory tax. Certain judgments of this Court are also relied upon in this regard, the latest being the judgment in the F case of *Jindal Stainless Ltd. (2) and Another vs. State of Haryana and Others* [(2006) 7 SCC 241].

7. In our view, this repeated increase in the rate of tax, particularly the incidence of which is more on the contract carriage *vis-a-vis* stage carriage raises question of public G importance. At the same time the State can certainly rely upon the data available to show cross subsidization, if it so exists in a given case, by which stage carriage gets subsidized in public interest.

8. Keeping in mind the gamut of the dispute involved, we H are of the view that we cannot interfere with the impugned

judgment of the High Court, particularly when the pleadings at the initial stage were insufficient.

9. Realizing this difficulty, learned counsel appearing on behalf of the appellants fairly stated that he would seek permission of this Court to withdraw the civil appeals/special leave petitions with liberty to file proper writ petition in the High Court giving requisite details and available data. Normally, we would not have granted such permission. However, as stated above, questions of public importance arises in these matters, particularly in the context of the principles of proportionality under Article 14 of the Constitution and the later development of law as indicated by this Court in the case of *Jindal Stainless Ltd.* (Supra).

10. In the circumstances we permit the appellants herein to withdraw the Civil Appeals with liberty to file proper writ petition, if so advised. We make it clear that we do not find any infirmity in the impugned judgment of the High Court which is based on the petition originally filed by the petitioners. Subject to above, Civil Appeals stand dismissed with no order as to costs. We make it clear that if a proper writ petition is filed giving requisite data to the satisfaction of the High Court, then any observation made in the impugned judgment will not come in the way of the appellants. All contentions of both sides are expressly kept open.

11. Similar order was passed in a group of cases i.e. *Tamil Nadu Omni Bus Owners Association v. State of Tamil Nadu & Anr.* (i.e. Civil Appeal No.1177 of 2006 etc. disposed of on 28.11.2007).

12. Subject to the above, the Civil Appeals are dismissed with no orders as to costs.

B.B.B. Appeals dismissed.