A.VENKATAKRISHNAN
V.
STATE OF TAMIL NADU AND ORS.
Civil Appeal No. 1120 of 2009

FEBRUARY 19,2009

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

Tamil Nadu Motor Vehicle Taxation (Amendment) Act, 1998 – Contract carriage – Repeated increase in rate of tax – Challenge to, by appellant – Petitions dismissed by High Court – On appeal, held: Petitions filed before High Court were very vague – Appellant did not discharge the initial burden – It did not furnish statistical data as to disproportionately of rate of tax for State to submit its quantifiable and measurable data justifying the impugned rate – Question being of public importance, appellant permitted to withdraw the appeal with liberty to file proper writ petition.

The question which arose for consideration in this appeal was whether the 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 from Rs. 2000/- per seat per quarter to Rs. 3000/-per seat per quarter was valid.

Dismissing the appeal, the Court

HELD: 1.1 The initial burden on the appellant 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 appellant to furnish statistical data as to disproportionately of the rate of tax 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, in accurate or insufficient then it would not be possible for the State to submit its reply/data to the Court. [Para 6] [870; 871-G]

1.2 As questions of public importance has arisen in these matters, particularly in the context of the principles of proportionality under Article 14 of the Constitution and the later development of law by this Court in the case of Jindal Stainless Ltd., the appellant is permitted to withdraw the Civil Appeal with liberty to file proper writ petition, if so advised. There is no infirmity in the impugned judgment of the High Court which is based on the petition originally filed by the petitioners. [Paras 10 and 11] [871-F; 871-872-G-H]

Jindal Stainless Ltd. (2) and Another Vs. State of Haryana and Others (2006) 7 SCC 241; Tamil Nadu Omni Bus Owners Association v. State of Tamil Nadu & Anr. Civil Appeal No. 1177 of 2006 decided by Supreme Court on 28.11.2007 – referred to.

Case Law Reference

(2006) 7 SCC 241 **Referred to.** **Para 7, 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No 1120 of 2009

From the Judgement and Order dated 19.11.2005 of the Hon'ble High Court of Judicature at Madras in W.P. Nos. 18618 of 2003, 18619 of 2003, 18620 of 2003, 18621 of 2003.

Kiran Suri, for the Appellants.

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division

A Bench of the Madras High Court dismissing several Writ Petitions and Writ Appeals including Writ Petition Nos.18618/2003 to 18621/2003.

3. The short question which arises for determination in this Civil Appeal concerns challenge to the Constitutional validity of
B 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
C seat per quarter vide Notification No.1184 dated 30.11.2001 with effect from 1st December 2001.

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

5. Generally, in a matter of this nature, the quantifiable data 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
F appellant 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 submit quantifiable and measurable data.

6. In the present case we find that the initial burden on the appellant itself has not been discharged in the sense that the
G petitions filed before the High Court were very sketchy. A challenge of this nature requires the appellant to furnish 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
H in the writ petitions and if those allegations made in the writ

petitions are vague, inaccurate or insufficient then it would not be possible for the State to submit its reply/data to the Court.

7. 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 case of *Jindal Stainless Ltd. (2) and Another vs. State of Haryana and Others* [(2006) 7 SCC 241].

8. In our view, this repeated increase in the rate of tax, particularly the incidence of which is more on the contract carriage vis-à-vis. stage carriage raises question of public 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.

9. Keeping in mind the gamut of the dispute involved, we are of the view that the impugned judgment of the High Court cannot be interfered with, particularly when the pleadings at the initial stage were insufficient.

10. Realizing this difficulty, learned counsel appearing on behalf of the appellant fairly stated that he would seek permission of this Court to withdraw the Civil Appeal 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).

11. In the circumstances we permit the appellant herein to withdraw the Civil Appeal 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

A the petition originally filed by the petitioners. Subject to above, Civil Appeal stands 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 B appellant. All contentions of both sides are expressly kept open.

12. 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).

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13. Subject to the above, the Civil Appeal is dismissed with no orders as to costs.

N.J. Appeal dismissed.