

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-29-11-2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Appeal Nos.1293 to 1297 of 1998,
and Writ Petition Nos. 212, 2320 to 2322, 2728, 2753, 2835, 2912 to 2918,
2997 to 3000, 3001 to 3003, 3304 to 3311, 3322 to 3327, 3354, 3355, 3375
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410 to 414, 184 to 187, 240 to 242, 8238, 8258, 8267, 13174, 13175, 13192 to 13195, 13224 to 13229, 13244 to 13250, 13251, 13252, 13387, 13575 to 13577, 13667 to 13677, 13708 to 13710, 13775 to 13780, 13805, 14096 to 14099, 14199, 14282 to 14284, 16263, 16489, 16490, 17453, 17478 to 17481, 16550, 17068, 17069, 16691, 17113, 17275, 17055, 17056, 19323 to 19326, 21805 to 21807, 21808 to 21813, 21814, 21837, 21834, 21819, 21835, 21839, 21840, 22089 to 22091, 23612, 23613, 24092, 21858, 21859, 23705 to 23708, 22559, 22563, 24091, 22730, 22731, 22103, 22104, 22206, 22207, 23100 to 23103, 23240 to 23244, 1782 to 1784, 14904, 14921 to 14925, 15022 to 15032, 15193 to 15195, 15621 to 15625, 20163 to 20169, 20172, 20179 to 20181, 20616, 20617, 20652, 20653, 24103, 24108, 24109, 24125, 24229, 25142 to 25145, 37359, 37360, 37954, 37955, 37956, 29595 to 29597, 29861 to 29864, 166 to 168, 253, 254, 292, 293, 296, 297, 1941 to 1947/2004, 13142, 13143, 13185, 13186, 13685, 13686, 13693 to 13696, 17304, 17305, 1778, 1779, 18285, 18286, 18491, 18492, 1924, 1925, 19294, 22369 to 22372, 25644, 25905, 25906, 26013, 26024, 19565 to 19567, 23040, 23041, 23050, 25255, 25256, 25574, 25576, 26971 to 26974, 26980, 27654, 27655, 27807, 27817 to 27821, 37180, 37181, 37385, 37386, 37802 to 37804, 38004, 38017, 38018, 38279 to 38283, 38291, 38292, 38620, 38621, 38797, 39070, 39128, 39512, 27790, 28566, 29601, 29702, 29703, 29980, 29981, 29982, 29983, 29984, 29985, 27990, 30078 to 30082, 30285, 30286, 30467 to 30471, 30671 to 30673, 30690, 30691, 30704, 33234 to 33236, 33277 to 33280, 33281 to 33284, 33285, 33286, 34008, 34009, 34036 to 34041, 34102, 36247, 36298, 26027, 26028, 26512, 26513, 26617, 26618, 26619, 26882, 32996 to 32998, 33037, 33040 to 33042, 33043, 33430 to 33436, 33537, 33538, 33583, 33653, 33654, 33952, 34212 to 34216, 34298, 34299, 34310, 34311, 34534, 34535, 34536, 34537, 35828, 35829, 36060, 36061, 36670, 36671, 37002, 37383, 37384, 38255, 38274 to 38276, 38272, 38273, 14938 to 14940, 14955 to 14958, 22582 of 2004;
1258, 1259, 1262, 1272, 1521, 1522, 3907, 3908, 3966, 3970, 3971 to 3976, 4079, 4080, 4314, 129, 130, 293, 294, 468, 473, 474, 1878, 1879, 2582, 2583, 2959, 3003, 3354 to 3357, 3055, 3448, 5040, 5041, 5186, 5187, 5258 to 5261, 5420, 5571, 5572, 5599, 5600, 7632, 7684, 7868, 7869, 7890, 8065, 8150, 8151, 8444, 8486, 9120, 9338 to 9341, 10333, 10334, 10399, 10400, 10773, 10774, 12165, 12166, 12969, 12202, 12203, 13032, 13061 to 13063, 17471, 12512, 12513, 12514, 98, 99, 101, 102, 7882, 8762 to 8764, 9781,

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W.A.Nos.1293 to 1297/1998

A. Aariff .. Appellant/Petitioner in WA.1293/98.
Sursh Kumar Sharma .. Appellant/Petitioner in WA.1294/98.
D.P.Sharma .. Appellant/Petitioner in WA.1295/98.
S.Sudhakar,
Lakshmi Saraswathi Travels,
Pattukottai. .. Appellant/Petitioner in WA.1296/98.
G. Vivekanandan .. Appellant/Petitioner in WA.1297/98.

Vs.

1. The State of Tamil Nadu,
represented by
Secretary to Government,
Home (Transport) Department,
Chennai-9.
2. The State Transport Authority,
Chennai 5. .. Respondents in WA.Nos.1293 to
1297/98.

Writ Appeal has been filed under Clause 15 of Letters Patent against order of Single Judge dated 24-09-1998 made in Writ Petition Nos. 9553 etc., of 1998.

Mr.V.T.Gopalan, Senior Counsel for Mrs. Radha Gopalan:- For Appellant in W.A.Nos.1293 to 1297/98 and petitioner in W.P.No.212/2002 etc.,

Mr. R. Muthukumarasamy, Addl. Advocate General, assisted by Mr. P. Chandrasekaran, Additional Govt., Pleader and Mr. P.P. Shanmugasundaram, Govt., Advocate for Respondents in all Writ Appeals and Writ Petitions.

Mr. D. Krishnakumar, Special Government Pleader for Commissioner in all W.Ps.

COMMON JUDGEMENT

(Judgement of Court was delivered by P. SATHASIVAM, J.,)

Writ Appeal Nos. 1293 to 1297 of 1998 are directed against common order passed in Writ Petition Nos. 9553 of 1998 etc., batch dated 24-9-1998 in and by which learned Single Judge had upheld the validity of the amendment to First Schedule to the Motor Vehicle Taxation Act enhancing the tax in respect of contract carriages (Omni Buses) from Rs.1,500/- to Rs.2,000/- per seat per quarter.

2. Writ Petitions namely, W.P.Nos. 212/2002 etc., batch have been filed questioning the order of the Government in G.O.Ms.No. 1184 Home (Tr.I) Department dated 30-11-2001, increasing the tax in respect of contract carriages from Rs.2,000/- to Rs.3,000/- per seat per quarter with effect from 1-12-2001.

3. Since the contentions and issues raised in Writ Appeals and the batch of Writ Petitions are common and similar, they are being disposed of by the following common order.
Brief facts:

Motor Vehicle Tax in Tamil Nadu is governed by Tamil Nadu Motor Vehicles Taxation Act, 1974 (hereinafter referred to as "the Act"). In terms of Section 3 (1) of the Act, tax shall be levied on every motor vehicle used or kept for use in the State of Tamil Nadu at the rate specified for such vehicle in the first Schedule or the Second schedule or in the third Schedule as the case may be. Section 3 (2) of the Act enables the State Government by a notification to increase the rate of tax specified in the Schedule subject to the condition that the increase does not in the aggregate exceed 50% of the rate specified in the schedules.

4. In terms of the provisions of the Act, motor vehicle taxation has been levied in respect of various classes of vehicles at different rates as specified in the schedules. As on 31-3-1990 the motor vehicles tax payable for stage carriages was Rs.200/- per seat per quarter, while motor vehicles tax payable for contract carriages was Rs.500/- per seat per quarter. The Act was amended by Tamil Nadu Act 28/90 as per which the rate of taxation for stage carriages was increased to Rs.230/- per seat per quarter, while in the case of contract carriages it was increased from Rs.500/- to Rs.2000/- per seat per quarter. The said Amendment Act was questioned before this Court in a batch of writ petitions in W.P.No. 6733 of 1990 etc., batch. After considering the various submissions and after observing that the range of difference between the stage carriage on the one hand and the contract carriage on the other was considerably high, a Division Bench of this Court did not interfere with the said increase but passed orders taking note of the representation of the State Government of its decision to reduce the taxation from Rs.2,000/- to Rs.1,500/- in so far as contract carriages are

concerned. It shows that from 1-4-90 contract carriages were paying tax at Rs.1,500/- per seat per quarter, while the stages carriage were paying tax at Rs.230/- per seat per quarter. In the year 1998, the Tamil Nadu Legislature passed an Act viz., Act 27 of 1998 amending the Schedule to the Motor Vehicles Taxation Act in terms of which the rate of taxation for contract carriages was revised from Rs.1,500/- to Rs.2,000/-per seat per quarter. There was also increase of motor vehicle taxation marginally in respect of other classes of vehicles as well. The aforesaid amendment Act was questioned in a batch of cases in W.P.No. 9553/98 etc., batch. A learned Single Judge, after taking note of the earlier Division Bench decision of this Court rendered in W.P.No.6733/90 etc., batch, dismissed all the writ petitions holding that the amended provision of the Motor Vehicles Taxation Act did not offend Article 14 or 19 (1) (g) as well as 301 of the Constitution of India and dismissed all the writ petitions. As against the common order of the learned Single Judge, the Writ Appeal Nos. 1293 to 1297 of 1998 have been filed.

5. During the pendency of the above Writ Appeals, in the absence of any order of stay staying the order in W.P.Nos. 9553/98 etc., of this Court, the Government have issued a notification on 30-11-2001 under Section 3 (2) of the Act amending the Schedule to the Motor Vehicle Taxation Act as per which the motor vehicle tax for contract carriages has been increased from Rs.2,000/- to Rs.3,000/- per seat per quarter. This order is under challenge in the batch of writ petitions.

6. Heard Mr. V.T. Gopalan, learned senior counsel and Mr. R. Natesan for petitioners and Mr. R. Muthukumarasamy, learned Additional Advocate General for State Government.

7. (a) Mr. V.T. Gopalan, learned senior counsel and Mr. R. Natesan, learned counsel for the petitioners, have raised the following submissions:

i) The order passed by the Division Bench of this Court in Writ Petition Nos. 6733/90 etc., batch dated 20-12-90 cannot be said to have concluded the issues raised by the petitioners and, therefore, their contention regarding the validity of Tamil Nadu Act 27 of 1998 and the notification of the Government dated 30-11-2001 increasing the motor vehicle taxation for contract carriages from Rs.1,500/- to Rs.2,000/- and from Rs.2,000/- to Rs.3,000/- respectively per seat per quarter still remain to be considered;

ii) The Motor Vehicle Taxation is a Regulatory or Compensatory tax and the impugned enactment and the orders which impose a very heavy burden on the contract carriages, as compared with other class motor vehicles, more particularly stage carriage, amounts to discrimination violative of Article 14 of the Constitution of India;

iii) The increase of motor vehicle tax on contract carriages from

Rs.1,500/- to Rs.2,000/- and further to Rs.3,000/- per seat per quarter would result in the annihilation of business of many contract carriage operators on account of the heavy burden of Taxation; hence liable to be struck down as arbitrary and violative of Article 14;

iv) Relevant facts have not been taken into account while increasing the taxation of contract carriages, namely, that there were a number of categories of contract carriages for different purposes which ought to have been taken into account.

b) On the other hand, learned Additional Advocate General for State Government would submit that in the absence of challenge relating to competence of State Legislature to pass the amendment Act or the power of the Government to amend the Schedule has not been questioned, and that the earlier Division Bench judgement of this Court dated 20-12-90 considered and concluded all the issues in question. In the Bench judgement, similar complaints were urged to the effect that the increase of taxation would annihilate their business and that the burden of tax is disproportionate on the contract carriage operators in the State, besides complaint based on Article 301 and Article 19 (1) (g) of the Constitution of India. All the contentions were not accepted by the Division Bench even in 1990. He further contended that the contention of the petitioners based on discrimination and violation of Article 14 of the Constitution of India is without any merit. According to him, the classification as stage carriage vehicle and contract carriage vehicle have been upheld by the Supreme Court. He also contended that the complaint of disproportionate burden of contract carriages as compared to stage carriages was raised by the petitioners and rejected by the Division Bench in W.P.No. 6733/90 dated 20-12-90. He further contended that the increase of tax in question have been made taking into account various factors, including the fact that contract carriages have no limitation on the number of miles that it could run, the unrestricted roads that it could operate and the unrestricted rate that it could collect from the public using the vehicle as compared to the stage carriage vehicle which is bound to collect only the rate fixed by the Government. Coming to the contention relating to destruction of lawful business of tourist bus operation, according to him, having regard to the rate collected by the contract carriages which is 2 to 3 times the rate collected by the stage carriages, it cannot be said that the amount increased is expropriatory, when alone the rate of tax can be interfered with. It is also stated that the tax amount are collected as part of the rates from the public, inasmuch as the travelling public in contract carriages are from higher economic strata of the society than the travelling public in stage carriages who cannot pay higher amounts and, therefore, the classification is in furtherance of public interest and prayed for dismissal of all the Writ Appeals and Writ Petitions.

8. We have carefully considered the relevant materials and rival contentions.

9. Section 2 (7) of the Motor Vehicles Act, 1988 defines contract carriage as follows:

"2 (7) "contract carriage" means a motor vehicle which carries a passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-

(a) on a time basis, whether or not with reference to any route or distance; or

(b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-

(i) a maxi-cab; and

(ii) a motor cab notwithstanding that separate fares are charged for its passengers; "

Additional Secretary (Transport) Home Department, Government of Tamil Nadu, Chennai-9 in his counter affidavit, which was filed in November, 2002, has stated that presently there are 450 Omni Buses (contract carriages) plying in the State operated by the private bus operators. They have been issued 299 State wide permits and 151 All India Permits. In addition, Omni buses of other States are also coming to this State daily.

10. With the above back ground, let us consider the points raised. It is seen from the Writ Appeals and the Writ Petitions as well as the arguments advanced in these cases before us the competence of the Legislature to pass the amendment Act or the power of the Government to amend the Schedule by the notified order have not been questioned. It may also be relevant to note that the counsel for the petitioners are not seriously disputing the fact that the receipts by way of motor vehicles tax is less than the expenditure incurred for relevant purposes. The challenges have been made only on the grounds of discrimination and arbitrariness amounting to violation of Article 14 of the Constitution of India. In other words, according to them, the increased burden of motor vehicles tax had not been uniformly distributed between the persons, namely, stage carriage and contract carriage operators, both the categories to be considered as equals with reference to the object sought to be achieved by the Tamil Nadu Motor Vehicles Act judged by various norms and standards relevant to connect the nexus and object for

classifying them into two categories for the purpose of levy of motor vehicles tax. It is also their claim that though the operators have been categorised into stage carriage and contract carriage operators, such classification only tantamounts to making a distinction without a difference, in that the same does not bear any rational reasonable nexus to the objects sought to be achieved by the Act. The petitioners as well as Government rely upon the earlier Division Bench decision of this Court dated 20-12-90 in W.P.Nos. 6733/90 etc., batch in respect of their claim. As a matter of fact, it is the specific stand of the Government that the said Division Bench judgement concludes all the issues in question. Division Bench decision dated 20-12-90 in W.P.Nos.6733/90 etc., batch.

The contract carriage Omni bus operators in a batch of writ petitions have challenged the amendment to the First Schedule to the Motor Vehicles Taxation Act by which the tax payable in respect of a contract carriage was enhanced from Rs.500/- to Rs.2000/-; and consequently have prayed for issue of a writ of declaration declaring that Section 3(2)(b) of the Tamil Nadu Motor Vehicles Taxation Amendment Act, 1990 (Act 28 of 1990) amending the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 prescribing the tax for a contract carriage at Rs.2000/- per seat per quarter is ultra vires and violative of Articles 14, 19(1)(g) and 301 of the Constitution of India. The contention put forth before the Division Bench was that the amendment Act enhancing the tax is violative of Article 301 of the Constitution and is not saved under Article 304 (1) (b) of the Constitution, hence the levy is violative of Article 19 (1) (g) of the Constitution. It is also stated that even the impost does not retain its compensatory character, the distribution of the burden of the tax amongst the various categories of road users has no relevance, but it is disproportionate to the essentially relevant criterion of the extent of the use of the roads in the State and that there is no reasonable, fair or equitable basis or principle for the distribution of the tax and therefore the distribution of the burden is arbitrary and violative of the essential principle against arbitrariness in Article 14 of the Constitution. On behalf of the State it was stated that the comparison between the contract carriage omni bus and the Reserve Stage carriage is extraneous to the issue on hand, and that the Government have powers to enhance the rates of tax for different classes of motor vehicles. After referring various decisions of the Supreme Court, including decisions in (1) G.K. Krishnan v. State of Tamil Nadu, reported in A.I.R. 1975 S.C. 583; and (2) Malwa Bus Service (Pvt.) Ltd., etc. v. State of Punjab and others, reported in A.I.R. 1983 S.C. 634, the Division Bench concluded that there is uniform rate of increase of levy of tax to other classes of vehicles and such a uniform rate of increase of levy is not manifest in so far as the contract carriages are concerned. They also observed that the contract carriage is entitled to use the roads on the entire length and breadth of the State with greater burden on and wear and tear of the roads in the State and that cannot be the case in respect of stage carriage and as such even to treat both equally shall be a discrimination. They further concluded that the discrimination cannot be

said to be arbitrary when it is based on sound reasons of public policy. They finally concluded that "This Court has taken note of the fact that caution has to be exercised by the Court by judicial restraints on matters of this nature. It is in those circumstances, the relief that is sought for to declare Section 8 (2) (b) of the Amendment Act No.28 of 1990 amending the provisions of the Tamil Nadu Motor Vehicles Taxation Act, 1974 prescribing the tax for a contract carriage at Rs.2000/- per seat per quarter as ultra vires and violative of Articles 14, 19(1)(g) and 301 of the Constitution cannot be granted for the reasons stated supra." and disposed of all the writ petitions. Before the Division Bench, the State Government itself decided to reduce the tax from Rs.2000/- to Rs.1500/- per seat per quarter in so far as contract carriages are concerned. The Division Bench after recording the above statement, disposed of all the writ petitions. As rightly pointed out by the learned Additional Advocate General, the Division Bench accepted the State Government's decision to reduce the tax from Rs.2,000/- to Rs.1,500/- and passed orders. Thus, it is seen that the contentions urged in this batch of writ petitions had been considered and rejected by the earlier Bench as early as in 1990 after taking note of the various judgements of the Supreme Court. The observations contained in the judgement of the Division Bench dated 20-12-90 which was relied upon by the petitioners, is untenable since notwithstanding such observations, the Court held that the issue is a matter of legislative decision and judicial restraint. Though in paragraph 28, the Division Bench observed that petitioners therein have established that they were made to bear the burden of heavy increase of tax more than that of the owners of other classes of vehicles and ultimately, in the light of the Scheme of the Act and various decisions of the Supreme Court, has concluded that the distribution of the burden is a matter of legislative policy and judgement than for judicial evaluation and rejected the contentions pertaining to violation of Articles 14 (1) (g) and 301 of the Constitution of India.

11. The learned Single Judge in his order dated 24-9-98 in W.P.Nos. 9553/98 etc., which is the subject matter of the Writ Appeals, has mainly relied on all the judgements referred to by the Division Bench in para 16 and the conclusion arrived at therein. The learned Single Judge after quoting the Division Bench judgement in extenso, has concluded that "I am of the view that the above referred judgement of the Division Bench would squarely apply to the facts of this case". After saying so, he dismissed all the writ petitions.

12. Now let us consider the judgement of the Supreme Court in G.K. Krishnan's case [A.I.R. 1975 S.C. 583: [1975] 1 SCC 375] which is relied on by the counsel for the petitioners and the respondents. In the Civil Appeals before the Supreme Court, two points have been raised, namely, (1) that the tax imposed is excessive and therefore, it operates as unreasonable restriction upon the fundamental right of the appellants to carry on the business; (2) and that the imposition of different rates of tax on contract and stage carriages is discriminatory and is,

therefore, hit by Article 14. They also considered the question whether the said tax is a compensatory tax. The counsel for appellants contended before the Supreme Court that there was no reason for imposing vehicle tax at a higher rate on contract carriages than on stage carriages. He also contended that both stage carriages and contract carriages are similarly situated with respect to the purpose of vehicle taxation, namely, the use of the road and, therefore, a higher vehicle tax on contract carriages is manifestly discriminatory. In other words, the argument was that the classification of the vehicles as stage carriages and contract carriages for the purpose of a higher levy of vehicle tax on contract carriages has no reasonable relation to the purpose of the Act. Before going into the merits of the claim, Their Lordships have observed: (para 20)

"20. It is well to remember the practical administrative difficulties in imposing a tax at a rate per mile. It is always difficult to evolve a formula which will in all cases ensure exact compensation for the use of the road by vehicles having regard to their type, weight and mileage. Rough approximation, rather than mathematical accuracy, is all that is required. In all such matters, it is well to remember the profound truth of the saying: "it is the mark of an educated man to look for precision in each class of things just so far as the nature of the subject admits".

13. The reason for enhancing the vehicle tax on contract carriages as stated in the counter affidavit filed before the Supreme Court is as follows:-

"Commercial vehicles consist of public transport passenger buses, namely stage carriages and contract carriages and goods vehicles namely, trucks of varying capacity. The tax on lorries is graduated, based on the permitted laden weight, the higher the laden weight, the higher the amount of tax. So far as the passenger buses are concerned, the stage carriages cannot do unlimited mileage. But contract carriages, depending upon the organisational efficiency, can do much more distance of travel per day as there is flexibility of space and time for its operation. The stage carriages have to operate only on fixed time schedules and on fixed routes and the number of miles they can negotiate is limited by the rule to 400 K.M. Besides, they can operate only on roads duly certified by the concerned authorities as fit for such operation. On the other hand, in the case of contract carriages, there is neither any fixed time schedule nor any fixed route; the number of miles they can run is also quite unlimited; they are free to operate on any route whether the road is certified as fit for such traffic or not. Hence the contract carriages can run a larger number of miles than stage carriages and therefore the wear and tear of the road caused would be greater and in the case of roads which are not fit for such operation, the damage to the road

surface due to wear and tear is quite likely to be much larger, involving higher cost of maintenance of such roads; in other words, the contract carriage even with the same passenger seating capacity as a stage carriage can travel on any road and on any type of surface at any time of the day, or night, and thus can cause greater damage to roads, especially of the inferior type of road surfaces which it traverses. The higher speed of vehicle will induce correspondingly higher impact stresses on the pavement structure than the vehicle of the same capacity at lower speeds. These higher stresses in the pavement layers affect the performance characteristics and durability of the surface. Also, higher speeds require longer accelerating and decelerating distances which brings in the maximum value of the frictional coefficient causing increased wear and tear of the road surfaces. Moreover, the load factor of a stage carriage including the passenger luggage may be comparatively low. In the counter affidavit it is also stated that the rate of tax payable on stage carriage is Rs.65 per seat per quarter and a surcharge of 10 paise per rupee on the fare collected, though there is a provision for compounding the tax collected at Rs.25 per seat per quarter under the Tamil Nadu Motor Vehicles (Taxation of Passengers and Goods) Act, 1952, is also payable by their owners and that owners of contract carriages are not liable to pay the surcharge."

Taking note of the stand taken by the Government in the form of counter affidavit and considering the definition of contract carriage in Section 2 (3) and stage carriage in Section 2 (29) of the Motor Vehicles Act, 1939 as well as other provisions of the Act, Their Lordships have observed: (para 36 and 39)

"36. It cannot be said that a classification made on the basis of the capacity of the contract carriages to run more miles is unreasonable because those carriages will be using the road more than the stage carriages which have got a time schedule, specified routes and minimum and maximum number of trips. A person who challenges a classification as unreasonable has the burden of proving it. There is always a presumption that a classification is valid, especially in a taxing statute. The ancient proposition that a person who challenges the reasonableness of a classification, and therefore, the constitutionality of the law making the classification, has to prove it by relevant materials, has been reiterated by this Court recently (*Amalgamated Tea Estates v. State of Kerala*, (1974) 4 SCC 415 and *Murthy Match Works v. Asst. Collector of Central Excise*, (1974) 4 SCC 428). In the context of commercial regulation, Article 14 is offended only if the classification rests on grounds wholly irrelevant to the achievement of the objective and this lenient standard is further weighted in the State's favour by the fact that a

statutory discrimination will not be set aside if a state of facts may reasonably be conceived by the Court to justify it.

39. Judicial deference to Legislature in instances of economic regulation is sometimes explained by the argument that rationality of a classification may depend upon 'local conditions about which local legislative or administrative body would be better informed than a court. Consequently, lacking the capacity to inform itself fully about the peculiarities of a particular local situation, a court should hesitate to dub the legislative classification irrational (see CARMICHAEL v. SOUTHERN COAL & COKE Co., [301 US 495]). Tax laws, for example, may respond closely to local needs and Court's familiarity with these needs is likely to be limited. Therefore, the Court must be aware of its own remoteness and lack of familiarity with the local problems. Classification is dependent on peculiar needs and specific difficulties of the community. The needs and difficulties of a community are constituted out of facts and information beyond the easy ken of the Court. It depends to a great extent upon an assessment of the local condition under which these carriages are being run which the Legislature or the administrative body alone was competent to make [STATE OF GUJARAT v. AMBICA MILLS LTD., (1974) 4 SCC 656]. Therefore, when the Government, in the exercise of its power to tax, made a classification between stage carriages on the one hand and contract carriages on the other and fixed a higher rate of tax on the latter, the presumption is that the Government made that classification on the basis of its information that contract carriages are using the roads more than the stage carriages because they are running more miles. Therefore, this Court has to assume, in the absence of any materials placed by the appellants and petitioners, that the classification is reasonable. It was a matter exclusively within the knowledge of the petitioners and the appellants as to how many miles the contract carriages would run on an average per day or month. When, in the counter-affidavit the allegation was made that the owners of the contract carriages are free to run at any time throughout the State, without restrictions the inference which the State wanted the Court to draw was that the owners of the contract carriages were utilizing this freedom for running more miles than the stage carriages. As to the number of miles run by the contract carriages, it was not possible for the State Government to furnish any statistics. They could only say that since there are no restrictions, they must have run more miles and that cannot be said to be a purely speculative assessment. If the petitioners and the appellants had a case that contract carriages were not running more miles on an average than the stage carriages, it would have been open for them to place relevant materials before the Court as the materials were

within their exclusive knowledge and possession. In these circumstances, we think there is the presumption that the classification is reasonable, especially in the light of the fact that the classification is based on local conditions of which the Government was fully cognizant. Since the petitioners and the appellants have not discharged the burden of proving that the classification is unreasonable, we hold that the levy of an enhanced rate of vehicle tax on contract carriages was not hit by Article 14".

The Supreme Court in the above decision has rejected the argument relating to discrimination in the matter of levy of an enhanced rate of vehicle tax on contract carriages alone.

14. Inasmuch as similar contentions have been made by the petitioners regarding discrimination, and violation of Article 14 of the Constitution, in the light of the conclusion arrived at by the Supreme Court in G.K. Krishnan's case (cited supra), the present contention is without any merit. The counsel for the petitioners did not dispute that there can be a classification between stage carriage vehicle and contract carriage vehicle. It is not in dispute that the contract carriages have been treated as a separate category from that of the stage carriages in the Schedule to the Motor Vehicles Taxation Act right from the beginning. The rate of tax for contract carriages was much higher than that of the stage carriages from the beginning. Inasmuch as the classification as 'stage carriages' and 'contract carriages' have been upheld by the Supreme Court in G.K. Krishnan's case (cited supra), the very same contention raised once again is also liable to be rejected. No doubt, an argument was advanced by Mr. V.T. Gopalan, learned Senior Counsel and Mr. R. Natesan, learned counsel that the Supreme Court's decision in G.K. Krishnan's case upholding the classification was on account of the fact that the petitioner did not furnish sufficient material to justify their complaint of discrimination regarding the number of miles that each class of vehicles ran and they have now placed materials to show that the stage carriages ran more number of miles than the contract carriages thereby using the road more than the contract carriages. As already stated, the classification between stage carriage and contract carriage for the purpose of motor vehicle taxation could be made. However, it was contended that when there was an increase in the taxation, the burden should not be very heavy on the contract carriages and sought to compare them with stage carriages. If there could be a classification between stage carriages and contract carriages for different rates of taxation, as had been conceded to, which had also been the legislative history, it cannot be stated that the increase in the taxation should be proportionate. It is well settled that violation of Article 14 cannot be invoked in respect of two different classes of objects-vide I.T. Officer, Shillong v. N.T.R. Rymbai [A.I.R. 1976 S.C. 670]. Further, this complaint of disproportionate burden of contract carriages as compared to stage carriages was raised by the petitioners and rejected by the Division Bench

of this Court in Writ Petition No. 6733 of 90 dated 20-12-1990.

15. Basing reliance on the decision of the Supreme Court in State of Maharashtra v. Manubhai Pragaji Vashi, reported in (1995) 5 Supreme Court Cases 730, it was contended by the counsel for petitioners that when, prima facie, a plea of discrimination was made out, the burden of proof is on the State to show that it is not so; or that a valid and permissible classification exists for the differential treatment. There should be nexus between the basis of classification and the object of the Act under consideration.

16. In Federation of Hotel and Restaurant v. Union of India, reported in (1989) 3 Supreme Court Cases 634, Constitutional Bench of the Supreme Court has held that legislatures have very wide discretion in selection of persons, subject matters, events etc., in formulation of fiscal policy for the purpose of taxation. They further held: (para 46)

"46. It is now well settled that though taxing laws are not outside Article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy legislature enjoys a wide latitude in the matter of selection of persons, subject matter, events, etc., for taxation. The tests of the vice of discrimination in a taxing law are, accordingly, less rigorous. In examining the allegations of a hostile, discriminatory treatment what is looked into is not its phraseology, but the real effect of its provisions. A legislature does not, as an old saying goes, have to tax everything in order to be able to tax something. If there is equality and uniformity within each group, the law would not be discriminatory. Decisions of this Court on the matter have permitted the legislatures to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes".

17. In Malwa Bus Service (Pvt.) Ltd., v. State of Punjab, reported in A.I.R 1983 Supreme Court 634, Their Lordships have held that different rates of tax on stage carriages and public carriers are not discriminatory and hit by Article 14 of the Constitution of India. The following conclusion is relevant: (para 21)

"21. The next submission urged on behalf of the petitioners is based on Article 14 of the Constitution. It is contended by the petitioners that the Act by levying Rs.35,000/- as the annual tax on a motor vehicle used as a stage carriage but only Rs.1,500/- per year on a motor vehicle used as a goods carrier suffers from the vice of hostile discrimination and is, therefore, liable to be struck down. There is no dispute that

even a fiscal legislation is subject to Article 14 of the Constitution. But it is well settled that a legislature in order to tax some need not tax all. It can adopt a reasonable classification of persons and things in imposing tax liabilities. A law of taxation cannot be termed as being discriminatory because different rates of taxation are prescribed in respect of different items, provided it is possible to hold that the said items belong to distinct and separate groups and that there is a reasonable nexus between the classification and the object to be achieved by the imposition of different rates of taxation. The mere fact that a tax falls more heavily on certain goods or persons may not result in its invalidity. As observed by this Court in *KHANDIGE SHAM BHAT v. THE AGRICULTURAL INCOME-TAX OFFICER*, (1963) 3 SCR 809: (AIR 1963 SC 591), in respect of taxation laws, the power of legislature to classify goods, things or persons are necessarily wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways. The Courts lean more readily in favour of upholding the constitutionality of a taxing law in view of the complexities involved in the social and economic life of the community. It is one of the duties of a modern legislature to utilise the measures of taxation introduced by it for the purpose of achieving maximum social goods and one has to trust the wisdom of the legislature in this regard. Unless the fiscal law in question is manifestly discriminatory the Court should refrain from striking it down on the ground of discrimination. These are some of the broad principles laid down by this Court in several of its decisions and it is unnecessary to burden this judgment with citations. Applying these principles it is seen that stage carriages which travel on an average about 260 kilometres every day on a specified route or routes with an almost assured quantum of traffic which invariably is over crowded belong to a class distinct and separate from public carriers which carry goods on undefined routes. Moreover the public carriers may not be operating every day in the State. There are also other economic considerations which distinguish stage carriages and public carriers from each other. The amount of wear and tear caused to the roads by any class of motor vehicles may not always be a determining factor in classifying motor vehicles for purposes of taxation. The reasons given by this Court in *G.K. Krishnan's case*, (AIR 1975 SC 583) (supra), for upholding the classification made between stage carriages and contract carriages both of which are engaged in carrying passengers are not relevant to the case of a classification made between stage carriages which carry passengers and public carriers which transport goods..."

Their Lordships have also rejected the contention that because of the enhanced rate of tax, their business becomes uneconomical. It was urged

that the levy is almost confiscatory in character and the petitioners would have to close down their business as stage carriage operators. Rejecting the contention, Their Lordships have concluded: (para 22)

"22....Though patent injustice to the operators of stage carriages in fixing lower returns on the tickets issued to passengers should not be encouraged, a reasonable return on investment or a reasonable rate of profits cannot be the sine qua non of the validity of the order of the Government fixing the maximum rates which the operators may collect from their passengers. It cannot also be said that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business. It is however, open to the State Government to make any modifications in the fares if it feels that there is a need to do so. But the impugned levy cannot be struck down on the ground that the operation of stage carriages has become uneconomical after the introduction of the impugned levy...."

The contention that the levy of enhanced tax on passenger vehicles is discriminatory or at any rate, the enhanced tax on passenger vehicles is neither regulatory nor compensatory was negatived in the case of *Meenakshi v. State of Karnataka*, reported in AIR 1983 S.C. 1283.

18. In *State of Kerala v. Aravind Ramakant Modawdakar*, reported in AIR 1999 S.C. 2970, the arguments on behalf of writ petitioners-respondents have been that both types of contract carriages are covered by a permit issued under Section 74 of the Act and 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 intra-State carriages will have to operate within the territory of the State of Kerala. It was also contended that if at all the usage of roads is a relevant factor then the intra-State vehicles used the roads within the State of Kerala much more than the inter-State vehicles. It was also contended that the burden of road usage could be more in the case of intra-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 intra-State contract carriages. Rejecting the said contention, the Honourable Supreme Court has held: (para 9)

"9.... 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

constitutional 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 exclusively 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...."

19. In *State of Tamil Nadu v. M. Krishnappan*, reported in (2005) 4 Supreme Court Cases 53, the Supreme Court, while considering the very same provisions namely, Tamil Nadu Motor vehicles Taxation Act, rejected the similar contentions. The conclusion arrived at by Their Lordships is as under: (paras 24, 25 and 26)

"24. We also do not find the impugned levy to be discriminatory, arbitrary or unreasonable so as to violate Article 14 of the Constitution as held by the High Court. In the case of *Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai* [(1986) 3 SCC 20] this Court held that Article 14 forbids class legislation and not reasonable classification and in order to pass the test of reasonable classification, the classification must be founded on an intelligible differentia which distinguishes persons or class of persons that are grouped together from the others left out of that group and that such differentia must have a rational relation to the object sought to be achieved by the statute in question.

25. In the case of *State of Gujarat v. Shri Ambica Mills Ltd.*, [(1974) 4 SCC 656], this Court held that where size is an index, discrimination between large and small is permissible. Article 14 does not require that every regulatory

statute should apply to each and every one equally in the same business.

26. Similarly, in the case of *State of Maharashtra v. Madhukar Balkrishna Badiya* [(1988) 4 SCC 290] this Court has held that taxing of a company-owned vehicle at three times the rate payable by an individual owner did not make the enactment violative of Article 14 as the legislature had the power to distribute the tax burden in a flexible manner and the Court would not interfere with the same."

Their Lordships have further held that when an economic activity is to be valued it is open to the lawmaker to take into account various factors including the paying capacity of the user, the value of the vehicle, the economic life of the vehicle, etc. They quoted the observations of the Division Bench of the Kerala High Court in *Anas Vs. State of Kerala* (1993) 3 KLT 147), wherein it was held that 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. The above decisions make it clear the argument relating to discrimination and violation of Article 14 of the Constitution of India is without any merit. The classification as stage carriage and contract carriage have been upheld by the Supreme Court and it is permissible for the purpose of motor vehicle taxation. If there could be a classification between the stage carriage and contract carriage for different rates of taxation which had also been the rate of history, it cannot be stated that the increase in the taxation should be proportionate. The complaint of disproportionate burden of contract carriages as compared to stage carriages raised by the petitioners were considered and rejected by the Division Bench. In respect of contract carriages, the increase had been though disproportionate in 1990 which had been upheld the claim of the State that the present increase in 2001 as compared to that as in 1990 would go to show that it is proportionate to the then existing structure. In such circumstances, the contentions relating to discrimination and the rate fixed for contract carriages is disproportionate are liable to be rejected.

21. It is also the claim of the learned counsel appearing for the appellants in the Writ Appeals that the issue of burden of enhanced tax not being equal, uniform distribution between the stage carriage and contract carriage as found in the earlier Division Bench judgements has not been considered in the proper perspective by the learned Single Judge while considering the writ petitions relating to enhancement of tax from Rs.1,500/- to Rs.2,000/- per seat per quarter. It is also their case that the distribution of enhanced rate burden has not been uniform between the stage carriage and the contract carriage,

resulting in imposition of very heavy burden of enhanced tax which is six times the tax payable in respect of stage carriage, which is tantamount to discrimination. They pointed out that the chassis for both the categories of vehicles are the same. There is only a little difference in the construction of the body and in the arrangement of seats. The cost of 35 push-back luxury seats in the contract carriages will be offset by the higher number of ordinary seats that is 60 and above provided in a stage carriage. Some vehicles are air-conditioned. Therefore, according to them, on the ground or factor namely cost of make of vehicles will not again make any difference between a stage carriage and a contract carriage. It is further submitted that there is no relevant factor to be taken into account in judging whether classification is reasonable or not. It is also stated that so far as stage carriages are concerned, they are running upto 750-800 kms. per day as permitted. So far as the contract carriages are concerned, special permits issued in respect of such contract carriages for a period of three months have been filed in the writ petitions and also in the writ appeals which have not been disputed by the respondents. It is further projected that a contract carriage at best cannot run for more than 300 kms. A day, as otherwise the very purpose of and object of contract carriages will be totally lost. Assuming that a contract carriage can run for all the 24 hours non-stop, legally and theoretically, it cannot run for more than 1000-1200 kms. a day. Therefore, according to them, between such optimum mileage a vehicle can run either in the case of stage carriage or contract carriage, the difference between the stage carriage and the contract carriage is only between 750 - 800 kms per day and 1000 kms. to 1200 kms. for a contract carriage but the distribution of burden of enhanced tax between the stage carriage and contract carriage is that the contract carriages are made to bear six times the tax of a stage carriage. It is also their claim that the State had not discharged its burden of sustaining the impugned levy and it must therefore be declared that the enhancement of tax in respect of contract carriage is plainly arbitrary as such violative of Article 14 of the Constitution of India.

22. With reference to the above factual details, it is useful to refer the information furnished in the common counter affidavit filed in the earlier batch of writ petitions which are the subject matter of the writ appeals and individual counter affidavits in the present writ petitions. It is stated that by way of increase of tax from Rs.1,500/- to Rs.2,000/- per seat per quarter, the additional revenue derived per annum works out to Rs.3,01,70,000/-. Though the actual amount relating to increase of tax from Rs.2,000/- to Rs.3,000/- per seat per quarter has not been furnished in the counter affidavit, it is stated that the increase in the rate was made with a view to mobilize additional revenue to the State Government for implementing various welfare schemes which include maintenance and repairs of roads, laying of new roads, traffic control, halting places for buses and trucks, construction of bridges and pollution control arising out of motor vehicles. Regarding the comparison, the enhanced rate for contract carriages (omni buses) with that of goods

carriages and stage carriages, we have already found that the Courts have held that such differential treatment is permissible. It is brought to our notice that the goods carriages are taxed on the basis of the registered laden weight of the vehicle, but the basis for taxation in respect of stage carriages is with reference to the classification of services and also taking into account the permitted passengers in the vehicle. In respect of stage carriage the operation of service is made possible on the collection of fare from the passengers which is fixed by the Government from time to time taking into various factors such as cost of fuel, cost of tyre and other materials necessitated to operate a stage carriage service. The omni buses charges fare on their own, 2 to 3 times above the stage carriage fare. Regulation of timings with a view to serve the travelling public is also an exercise carried out for operation of the Stage carriages. Such formalities of fixation of timings, not to speak of the regulation of fares by the Government in respect of omni buses is not available for the operation of contract carriages. Comparing the amount of tax payable alone is taken by the petitioners leaving other factors so as to show an un-warranted picture of levy of higher rate of tax in respect of the omni buses.

23. It is not in dispute that the motor vehicle tax is compensatory in the sense that the tax is leviable so long as the vehicle is used on the road. Different classes of vehicles attract different rates of tax as could be seen from the Tax Schedule. Apart from the facts of extent of use of road, other valid factors govern the fixation of rate. There can be no comparison between contract carriage vehicles and the other vehicles, since the permits are granted for different purpose and that the levy is in the nature of compensatory tax and that identifiable object exists behind the levy and there is nexus between the subject and object of the levy. We are satisfied that the statistics furnished by the petitioners regarding maximum usage of road by contract carriage vehicles per day are not based on any authorised statistical data. On the other hand, the contract carriage is entitled to use the roads on the entire length and breadth of the State with heavy burden on an wear and tear of the roads in the State is substantial. Though a statistic was submitted by learned counsel for the appellants stating that a stage carriage is running upto 750-800 kms., per day and contract carriage is running 1000-1200 kms., a day, there is no material to substantiate their contention. On a common parlance, it is difficult for a stage carriage to ply 750-800 kms., per day. The stage carriage is permitted to run on a specified route with permissible trips with a charge that was fixed by the Government. Whereas for the contract carriage, it can go without any limit, thus using the roads more than the stage carriages.

24. It is also the claim of the petitioners that if the enhanced rate is implemented, the vehicle operators have to give up their profession because of the over burden. The same contention was raised before the Supreme Court in Malwa Bus Service (Pvt.) Ltd., etc., Vs. State of Punjab and others (AIR 1983 SC 634), wherein the contention that

because of the enhanced rate of tax their business becomes uneconomical and the levy is almost confiscatory in character and the petitioners would have to close down their business have been rejected as unacceptable. It has been held therein that a reasonable return on investment or a reasonable rate of profits cannot be the sine qua non of the validity of the order of the Government fixing the maximum fares which the operators may collect from their passengers. It has also been held that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business are all liable to be rejected. Though, the Court has observed that it would be open to the aggrieved persons to approach the State Government with necessary representation, however, Their Lordships have held that the impugned levy cannot be struck down on the ground that the operation of stage carriages has become uneconomical after the introduction of the impugned levy. The said principles and observations are squarely applicable to the contract carriages also. As rightly pointed out on behalf of the State that the tax amount are collected as part of the rates from the public and the travelling public in contract carriages are from higher economic strata of the society than the travelling public in stage carriages who cannot pay higher amounts and, therefore, the classification is in furtherance of public interest.

25. Under these circumstances, we hold that the amended provisions of the Motor Vehicles Taxation Act do not offend Article 14 or 19 (1)(g) as well as 301 of the Constitution of India and the enhanced rate of motor vehicle tax in respect of contract carriages cannot be said to be either discriminatory or unreasonable warranting interference by this Court, accordingly all the Writ Appeals and Writ Petitions are liable to be dismissed.

26. Considering the fact that in all these cases, the appellants/petitioners secured an order of stay of enhanced rate of tax and in view of our conclusion upholding the validity of imposition of tax, if the appellants/petitioners feel that the same is a burden for them, they are free to approach the Government through their Association or individually either for reduction of the rate or for payment of arrears of enhanced tax in easy instalments. With the above observation, all the Writ Appeals and the Writ Petitions are dismissed. No costs. Consequently, all the connected miscellaneous petitions are closed.

After pronouncement of the above order, learned counsel appearing for the appellants/petitioners basing on their claim that payment of arrears will be a burden for them, prayed reasonable time for making representation and for direction to the Government for considering their grievance. They also prayed that till such order being passed by the Government, on the proposed representation, they may be permitted to continue to pay the old rate of tax, namely, Rs.2,000/- per seat per

quarter.

2. On this aspect, we heard learned Additional Advocate General.

3. Considering the difficulties expressed and in view of the fact that the appellants/petitioners had the benefit of interim order all along, they are permitted to make appropriate representation to the Government within a period of two (2) weeks from today and the Government is free to consider and pass appropriate orders within a period of four (4) weeks thereafter. Till such order being passed by the Government, on the proposed representation, the appellants/petitioners are permitted to pay the old rate of tax viz., Rs.2,000/- per seat per quarter.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

R.B.

To:-

1. The Secretary to Government,
Home (Transport) Department, Chennai-9.
 2. The State Transport Authority,
Chennai 5.
- + 1 CC to M/s.Radha Gopalan, Advocate SR NO 47176
+ 1 CC to the Government Pleader SR NO 46809

gp/

सत्यमेव जयते

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