

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

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OWP nos. 1158/2012, 1243/2011,
1399/2012, CMA no. 1949/2012
OWP no. 881/2012, CMA no. 1240/2012
OWP no. 1349/2012, CMA no. 1887/2012
OWP no. 1395/2012, CMA no. 1945/2012
OWP nos. 792/2012, 816/2012 & 582/2012

Date of order: 14/11/2013

M/s Libra Bus Service Pvt. Ltd.	v.	State and ors.
Shishendra Shokeen and anr.	v.	State and ors.
M/s Zamindara Travels	v.	State and ors.
Surender Mohan and ors.	v.	State and ors.
M/s Chandra Subh Yatra Co. Pvt. Ltd.	v.	State and ors.
M/s Swagatam Holidays Pvt. Ltd.	v.	State and ors.
Varinder Singh and ors.	v.	State and ors.
Baljeet Singh and ors.	v.	State and ors.
Rashpal Singh and ors	v.	State and ors.

Coram:

Hon'ble Mr. Justice Hasnain Massodi, Judge

Appearing Counsel:

For the petitioner(s): Mr. K. S. Johal, Sr. Advocate with
Mr. Amit Gupta, Advocate.
Mr. W. S. Nargal, Advocate.
Mr. Vijay Gupta, Advocate.

For the respondent(s): Mr. Gagan Basotra, Sr. AAG.

i.	Whether approved for reporting in Press/Media	: Optional
ii.	Whether to be reported in Digest/Journal	: Yes

1. Petitioners in the writ petitions on hand are Tour Operators, Tourist Bus Owners, operating Buses/Coaches with All India Tourist Permits, from different cities/towns outside the State of Jammu and Kashmir to the tourist, pilgrim and other destinations within the State of Jammu and Kashmir. They are aggrieved with the amendment made to the Jammu and

Kashmir Motor Vehicles Taxation Act, 1957 (hereinafter the Act) by Jammu and Kashmir Motor Vehicles Taxation (Amendment) Act, 2002 adding Clause E to Schedule I to the Act, making provision for levying entry tax @ Rs.2,000/- per day on All India Tourist Vehicles (Deluxe Coaches) from the date to be notified by the Government. The petitioners are also aggrieved with SRO 196 of 2002 dated 30.05.2002 whereby the State Government in exercise of powers available under Section 3 of Jammu and Kashmir Motor Vehicles Taxation Act, 1957 has added item B1 to SRO 116 dated 26.03.2002, providing for Rs.2,000/- per day tax on All India Tourist Vehicles (Deluxe Coaches) and SRO 137 of 2010 dated 25.03.2010 whereby SRO 244 of 2002 dated 04.07.2002, keeping in abeyance SRO 196 of 2002 dated 30.05.2002, has been rescinded, paving way for levying Rs.2,000/- per day tax on All India Tourist Vehicles (Deluxe Coaches) using any public road in the State of Jammu and Kashmir.

2. Petitioners question the amendment made to Schedule I of J&K Motor Vehicles Taxation Act, 1957 by the Act of 2002 and the aforesaid Notifications on the ground that the amendment as also the Notifications in question issued by Government after the amendment, are

ultra vires Section 3 Jammu and Kashmir Motor Vehicles Taxation Act, 1957.

3. The amendment to Schedule I to the Act by the Act XIV of 2002 adding Clause E to the Schedule I, and Notifications SRO 196 of 2002 and SRO 137 of 2010 are primarily questioned on the ground of excessive taxing, labeled as confiscatory in character. It is pleaded that in terms of the new tax regime an All India Tourist Vehicles (Deluxe Coaches) entering the State is required to pay Rs.2,000/- per day as entry tax, Rs.300 per day as passenger tax and Rs.200 per day as toll tax. It is pointed out that a Tourist Vehicle (Deluxe Coaches) having a State Permit is required to pay one half of the entry tax payable by All India Tourist Vehicles (Deluxe Coaches) per day, for full quarter. The amendment to the Act and the Notifications issued in wake of the Amendment, imposing entry tax on All India Tourist Vehicles (Deluxe Coaches) 200 times the tax payable by the State Tourist Vehicles (Deluxe Coaches), according to the petitioners is discriminatory in character and not permissible under Law. Petitioners point to Notification SRO 242 of 2010 08.06.2010 whereunder relief is granted to All India Tourist Vehicles (Deluxe Coaches), carrying pilgrims for

Amarnath Yatra and to Mata Vaishno Devi Shrine. It is stated that while All India Tourist Vehicles (Deluxe Coaches) carrying pilgrims for Amarnath Yatra are to pay Rs.2000/- entry tax for a period of seven days and thereafter Rs.2,000/- per day, such Tourist Vehicles (Deluxe Coaches) carrying pilgrims to Mata Vaishno Shrine are to pay Rs.2,000/- as entry tax for 3 days and thereafter Rs.2,000/- per day. The Amendment and the Notifications in question, it is insisted are arbitrary, irrational and violative of Articles 14, 19 1 (g) and 301 Constitution of India.

4. The amendment to the Act incorporated by Act XIV of 2002 adding Clause E to the Schedule I and the Notifications issued in exercise of power under Clause E, are also questioned on the ground that the amendment is *ultra vires* Section 3 (2) of the Act. It is pointed out that while Section 3 (1) empowers the Government to direct that a tax shall be levied on every motor vehicle using any public road in the State of Jammu and Kashmir, by issuing a notification in the Government gazette, Section 3 (2) qualifies, restricts and controls the power by requiring such notification to specify the rates at which, and the *quarter* from which, the tax is to be levied.

Reference is also made to Column 2 of Schedule I titled “*Maximum Quarterly Tax*” to emphasize that the State Government having regard to language of Section 3 (2) read with Schedule I is given power to levy tax on *quarterly* basis and, therefore, power to levy tax at the given rates *per day* is not permissible under Law. The power conferred by Section 3 (1), according to the petitioners is further restricted by Proviso to Section 3 (2) that prohibits levy of tax at the rates exceeding the maximum specified in Schedule I to the Act.

5. The writ petitions are resisted by the respondents on the ground that the entry tax levied by the State Government vide Notification no. 196 of 2002 dated 30.05.2002 on All India Tourist Vehicles (Deluxe Coaches) is lesser than such tax imposed on All India Tourist Vehicles (Deluxe Coaches) by the States of Punjab, Haryana and Rajasthan. It is pointed out that entry tax levied by aforesaid States is Rs.3000, 3200 and 3600 per day respectively and All India Tourist Vehicles (Deluxe Coaches) owned by the residents of the Jammu and Kashmir State and other States have to pay such tax at the entry point while entering aforesaid States. It is insisted that the State Tourist Vehicles (Deluxe Coaches)

are required to pay Rs.20,000/- per annum as permit fee - a tax not levied on All India Tourist Vehicles (Deluxe Coaches) and the petitioners cannot, therefore, complain of any discriminatory treatment. Respondents insist that entry tax @ 2,000 per day levied on All India Tourist Vehicles (Deluxe Coaches) is in conformity with Law and is neither excessive nor punitive in character. It is pleaded that the State Legislature did not overstep its legislative power while making the amendment nor did the Government exceed the power with which it is clothed under the Act while issuing Notification in question.

6. I have gone through the pleadings and have heard learned counsel for the parties at length.

7. Section 114, Constitution of Jammu and Kashmir, corresponding to Article 265, Constitution of India by prohibiting levy or collection of tax except by authority of law, indirectly confers power on the State Legislature to enact law providing for imposition and collection of tax.

Section 114 reads as under:-

“114. Taxes not to be imposed save by authority of law. No tax shall be levied or collected except by authority of law.”

There is, therefore, constitutional prohibition against imposition of tax by mere executive *fiat* sans

authority of Law. Tax, in terms of above quoted, constitutional provision can be levied only under authority of law or legislative enactment. However, a tax statute like any other law has to satisfy the test of legality. The law imposing tax must be a valid law, within legislative competence and not in conflict with or prohibited by the Constitution of State or Constitution of India. It must not be discriminatory in character and violative of equality clause of the Constitution. A five, Judge Bench of Hon'ble the Apex Court in **Kunnathat Thathunni Moppil Nair etc., v. State of Kerala and anr. AIR 1961 SC 552** commenting on the power of State to impose tax observed:

“Article 265 imposes a limitation on the taxing power of the State is on far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorizing the collection thereof and, secondly, the tax must be subject to the conditions laid down in Art. 13 of the Constitution.”

8. The Court proceeded to further observe:

“A taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14, though the courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in a way that the Court might think more just and equitable. If the legislature has classified persons or properties into different categories which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subject to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property.”

09. In the present case, Notifications imposing entry tax @ 2000 per day on All India Tourist Vehicles (Deluxe Coaches) for use of the roads within the State have been issued under Jammu and Kashmir Motor Vehicles Taxation Act, 1957 as amended from time to time. The petitioners, therefore, cannot have a grievance that the tax has been imposed otherwise than under the authority of law or that the imposition of tax is in conflict with Article 265 Constitution of India or Section 114 Constitution of Jammu and Kashmir. They, however, find fault with the Notifications impugned in the petition, on the ground that such Notifications go beyond the power given under Act and also that the Notifications are discriminatory in character. They are also aggrieved with addition of Clause E to Schedule 1 to the Act. Let us take up petitioners grievances one by one.

10. Section 3 of the Act is an enabling provision. It empowers the Government to direct that the tax shall be levied on a Motor Vehicle using any public road in the State of Jammu and Kashmir. A notification issued in terms of Section 3 (1) of the Act is to specify the rates at which, and the quarter from which, the tax shall be levied. In terms of Proviso to Section 3 (2) the rates

specified in the notification are not to exceed the maximum specified in Schedule I to the Act. Petitioners label addition of Clause E to the Scheduled I by Act XIV of 2002 as beyond legislative competence on the ground that in terms of Section 3 (2) tax is to be levied on “*quarterly*” and not “*daily basis*”, as is provided under Clause E added by aforesaid amendment. They seek support from Column II of Schedule I titled as “*Maximum Quarterly Tax*”. A reference also is made to Proviso to Section 3 (2) to insist that amendment to Schedule I cannot be so made as to nullify the effect of the Proviso to Section 3 (2).

11. The case set up and arguments advanced may sound attractive but are to be found without force on a closer look at Section 3 of the Act. Section 3 (2) does not prohibit levy of tax on “*daily basis*”. It also does not make it mandatory to levy tax on “*quarterly basis*”. In terms of Section 3 (2) the Government while issuing notification to direct that the tax shall be levied on a motor vehicle using any public road in the State of Jammu and Kashmir shall specify the rate at which the tax would be levied and the “*quarter*” from which such levy is directed. The Government, therefore, is free to levy tax on “*daily*

basis” and all that Section 3 (2) of the Act calls upon the Government is to indicate the rate at which the tax is to be imposed and the “*quarter*” from which it is so imposed. In terms of Proviso to Section 3 (2) the rates at which the tax would be levied are not to exceed the maximum rates prescribed in Schedule I to the Act. The Proviso to Section 3 (2) of the Act does not prohibit the amendment to Schedule I. Otherwise also, there cannot be any such prohibition as the tax rates cannot be static without scope for change from time to time as may be dictated by contemporary realities. The power to enhance or slash down tax rates is inherent in the power to impose/levy tax and so is the power to levy the tax on “daily” “quarterly” ‘bi-annual’ ‘annual’ or even “life time basis” as has been done under Section 3 A of the Act. The amendment to Schedule I incorporated by the Act XIV of 2002 adding Clause E cannot be labeled as beyond legislative competence, not authorized by or in conflict with Section 3 of the Act. Same is true about Notifications SRO 196 of 2002 and SRO 137 of 2010 issued in exercise of power available under Section 3 of the Act. One more aspect of the matter needs to be noticed. An All India Tourist Vehicles (Deluxe Coaches)

entering the State may not necessarily use State roads or ply in the State for a “*quarter*”. It may use public roads in the State for a few days and thereafter leave the State. It would be unjust to levy entry tax on such vehicles on “*quarterly basis*”. A provision for levy and collection of entry tax on “*daily basis*” would be in the interest of All India Tourist Vehicles (Deluxe Coaches) making use of public roads in the State.

12. The ground urged in the writ petition that addition or Clause E to the Schedule I by amending Act of XIV 2002 is discriminatory in character and violative of Article 14 Constitution of India, is equally specious and without any substance. The All India Tourist Vehicles (Deluxe Coaches) and the vehicles registered in the State and not having All India Permit, constitute two different classes. The All India Tourist Vehicles (Deluxe Coaches) are not liable to pay a number of taxes, levied on State vehicles. To illustrate, the State vehicles have to pay an amount of Rs. 20,000/- per annum as permit fee and such fee/tax is not levied on All India Tourist Vehicles (Deluxe Coaches). The All India Tourist Vehicles (Deluxe Coaches) constitute a class different from other vehicles and are, therefore, required to pay entry tax in other

States like Punjab, Haryana and Rajasthan where entry tax is collected at a higher rate as compared to the entry tax rate prescribed under the Schedule I (E) to the Act. The All India Tourist Vehicles (Deluxe Coaches) carrying pilgrims to Shri Amarnath Shrine or Shri Mata Vaishno Devi Shrine, again constitute a class different and distinct from All India Tourist Vehicles (Deluxe Coaches). The vehicles having Shri Mata Vaishno Devi Shrine and Shri Amarnath Shrine as their destination carry pilgrims, not on a pleasure trip but to pay their obeisance at the holy places. The pilgrims carried by such vehicles are not necessarily from well to do and affluent class and most of pilgrims belong to middle, lower middle class of the society. The tourists carried by All India Tourist Vehicles (Deluxe Coaches) on the other hand are on a pleasure trip or excursion and are possessed of resources beyond what are required for mere sustenance and day to day expenditure. In case, Government has given some concession to the vehicles carrying pilgrims to Shri Amarnath Shrine and Shri Mata Vaishno Devi Shrine, it cannot be held guilty of any discrimination. It is pertinent to point out that concession given to the vehicles carrying pilgrims to Shri Amarnath Shrine and

Shri Mata Vaishno Devi Shrine is limited to a few days (seven days and three days), to ensure that the vehicle owners do not use pilgrimage to such holy destinations as a camouflage to run tour programmes. Once such vehicles use the public roads in the State for a period more than the concession period, they are required to pay entry tax at the same rates as levied on All India Tourist Vehicles (Deluxe Coaches). The Notifications impugned as also Clause E to Schedule I of the Act cannot be, therefore, labeled as discriminatory or in conflict with mandate of Article 14 Constitution of India.

13. The plea that the tax imposed is excessive, exorbitant, confiscatory and punitive is devoid of any merit. The neighbouring States of the Jammu and Kashmir State are recovering entry tax at a higher rate as compared to the entry tax levied under the Act read with the Notifications issued in exercise of powers under the Act.

14. For the reasons discussed, the petitions on hand do not show any merit and deserve to be dismissed. The writ petitions OWP Nos. 1158/2012, 1243/2011, 1399/2012, 881/2012, 1349/2012, 1395/2012, 792/2012, 816/2012 & 582/2012 are, accordingly, dismissed.

Resultantly, the respondents shall be free to recover entry tax at the prescribed rates from All India Tourist Vehicles (Deluxe Coaches) with effect from the date it is recoverable in terms of the Jammu and Kashmir Motor Vehicles Taxation Act, 1957 and the Notifications issued thereunder. The amount, if any, deposited on account of such tax, with the registry, be released in favour of the respondent department.

**(Hasnain Massodi)
Judge**

Jammu,
14 .11.2013
Parshant