

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL**

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WA.No. 1799 of 2014 ()

AGAINST THE JUDGMENT IN WP(C).NO.4555/2014 DATED 26-08-2014.

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APPELLANTS/RESPONDENTS IN THE WP(C):

- 1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
TAXES, SECRETARIAT, THIRUVANANTHAPURAM-695 001.**
- 2. COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, PUBLIC OFFICE BUILDINGS,
THIRUVANANTHAPURAM -692 035.**
- 3. THE COMMERCIAL TAX OFFICER (LUXURY TAX),
DEPARTMENT OF COMMERCIAL TAXES, KOLLAM.**

BY SPL. GOVT. PLEADER (TAXES) DR.SEBASTIAN CHAMPAPPILLY.

RESPONDENTS/PETITIONERS IN THE WP(C):

- 1. THARA JAYAKUMAR,
WIFE OF JAYAKUMAR RAMAKRISHNAN,
SARADA KALYANA MANDAPAM/AUDITORIUM, II MILE STONE,
KILIKOLOOR, KOLLAM-691 004.**
- 2. MANOJKUMAR K.,
MANAGER, "SANA AUDITORIUM",
III MILE STONE, KILIKOLOOR- KOLLAM- 691 004.**
- 3. PREM KRISHNAN N., PARTNER, 'N.N. BUILDINGS',
N.N. KALYANA MANDAPAM COMPLEX,
CRUZON ROAD, KOLLAM-691 013.**
- 4. ABUBEKAR KUNJU M.,
M.S.M. AUDITORIUM, POST OFFICE JUNCTION,
PALLIMUKKU, KOLLAM.-691 001.**

WA.No. 1799 of 2014

**5. AYYAPPAN PILLAI C., SUN BAY AUDITORIUM,
KANKATHU MUKKU, KOLLAM-691 012.**

**BY ADVS. DR.K.P.PRADEEP,
SRI.V.RENJITH KUMAR.**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2015,
ALONG WITH W.A. NO.13 OF 2015 AND CONNECTED CASES, THE
COURT ON 09/04/2015 DELIVERED THE FOLLOWING:**

rs.

“CR”

Thottathil B.Radhakrishnan

&

K.Harilal, JJ.

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W.A.No.1799 of 2014, W.A.Nos.13, 16, 19, 22,
30, 36, 41, 42, 46, 53, 54, 56, 57, 62, 68,
69, 87, 101, 111, 114, 117, 118, 125, 145,
147, 178 & 191 of 2015

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Dated this the 9th day of April, 2015

Judgment

Thottathil B.Radhakrishnan, J.

1. These writ appeals are filed by the State of Kerala and its officers challenging the judgment of the learned single Judge, holding section 11 of the Kerala Finance Act, 2013, for short, the ‘Act’, as unconstitutional and void.
2. We heard the learned Special Government Pleader for the Department of Taxes and the respective learned counsel appearing for the contesting respondents.
3. The provision impugned in the writ petitions

provides that there shall be levied and collected a cess to be called "Mangalya Nidhi Cess" on every wedding and its connected celebrations conducted in hotels having the classification of Three Star and above, or in auditoriums with a seating capacity of above five hundred including that of dining halls, at the rates specified in the Table in sub-section 1 of section 11 of the Act.

4. Challenging the impugned judgment, the learned Special Government Pleader argued that the impugned cess is introduced in exercise of the legislative powers referable to Entry 62 of List II of the Seventh Schedule of the Constitution and that imposition of such a cess would not amount to double taxation. It was argued that the impugned cess, even if it is addition to an existing tax, that is permissible in terms of the constitutional provisions. It was further argued that 'cess' is nothing but 'tax' and the imposition as per section 11 of the Act cannot be considered as a 'fee' as it is not charged for

rendering any specific service to the beneficiary; and therefore, no quid pro quo is necessary. It is also submitted that even if the impugned cess is considered as a 'fee', the legislative power to impose it can be traced to Entry 66 of List II of the Seventh Schedule.

5. Supporting the findings and the reasons given by the learned Judge in support of the impugned decision, the respective learned counsel appearing for the respondents argued that, for reasons stated in it, the impugned judgment does not warrant interference. It is specifically pointed out that the findings of the learned Judge on the issue of legislative competence and the nature of the impugned levy are in accordance with the constitutional principles and they do not merit interference in appeal. Contrasting different relevant entries under the State List and the Concurrent List, it is argued that there is no reason to hold that the impugned judgment is contrary to law.

6. Noticing that the main challenge in the writ petitions was as to the constitutionality of the impugned levy and that the imposition is not within the competence of the State Legislature; as also that it is vitiated by blatant arbitrariness and obvious discrimination; we see that the learned Judge had focused correctly on the points which arose for decision in the writ petitions. Sieving out the peripheral and superficial issues, the learned Judge noticed that the essential contention of the writ petitioners was that in every wedding and its connected celebrations conducted in hotels, there is no component or aspect which could be identified and validly taxed by the State Legislature beyond the pale of whatever falls within the net of "Service Tax" under the relevant Union Legislation and the imposition made on what is defined as 'luxury' under the Kerala Tax on Luxuries Act, 1976. Having done so, the learned Judge noticed that the writ petitioners pleaded that there is no specific power under the constitutional scheme, for the

State Legislature to impose such tax on wedding ceremonies. It was pointedly noted that the writ petitioners contended that none of the entries coming within the State List or the Concurrent List authorises the State Legislature to enact such a law and the impugned levy cannot be a 'fee' since there is neither quid pro quo; nor could it be considered as a regulatory measure. Having regard to the nature of the impugned levy and the constitutional situs of the relevant statutory provision, we are of the view that the learned Judge was abundantly justified in noticing that there is no nexus between the persons who are made liable for the levy and the persons who are said to benefit from the revenue generated from such cess. In such context, the learned Judge was correct in holding that the said situation lays bare the arbitrariness in the levy and that the so-called 'fee', is in effect, a 'tax'; levy of which is beyond the legislative powers of the State. It has been noticed in the impugned judgment that the charging section provides for levy of cess on weddings and

connected celebrations conducted in hotels having the particular classification and seating capacity and the liability to such cess has been mulcted on the person from whom the charges or rent for such celebration are received by the proprietor of such hotel or auditorium. For all intents and purposes, that is definitely a levy, either by way of 'tax' or 'fee', on the end user of the facilities provided in a hotel or auditorium, to conduct a marriage, connected ceremonies and celebrations. Marriage is a social institution, as rightly noted in the impugned judgment. Ceremonies attendant to marriages are always treated as part of the marriage; to whichever social, economic, religious or ethnic group to which the persons involving in the transaction belong. Any celebration in connection with such a ceremony cannot but be treated as part of such a social union since, in the wildest of dreams, none who is ordinarily prudent would deem it appropriate to conceive that such celebration, including by offering a feast to those who participate in a marriage and its

ceremonies, would be a component that could be segregated from the attendant requirements of a marriage; whether ceremonial or not. We therefore affirm the views of the learned Judge in that regard.

7. Having regard to the nature of the contentions advanced before the learned Judge and in these appeals, we are in complete agreement with the view in the impugned judgment that the decision of the Honourable Supreme Court of India in *Delhi Race Club Ltd. v. Union of India* [(2012) 53 VST 1 (SC)] is the appropriate and exhaustive precedent that would be relevant to decide the issues arising for consideration in these cases. The learned Judge was right in enunciating and applying the legal principles settled as per that decision of the Apex Court and the precedents referred to therein. Therefore, the finding in the impugned judgment, particularly paragraph 14 thereof, to the effect that in the context of the specific contention of the State that what is levied is a 'fee' under Entry 66 and because it

does not have a case that the levy is a 'tax', the State should necessarily indicate some services offered; or the alternative, a regulatory measure being employed, is fully justified. We uphold it. There is no contention put forward by the State that there is any 'service' offered. There is also no plea as to any 'quid pro quo' with respect to the impugned levy. So much so, the impugned levy is on wedding and its connected celebrations; and the service, if at all, is offered by the hotelier or the proprietor of the auditorium. That is an activity which is subjected to imposition of service tax under the relevant Central Act. There is no plea or material to hold that the same activity could be subjected to levy under the taxation regime within the legislative competence of the State Legislature, either with reference to List II or III of the Seventh Schedule to the Constitution. As rightly noted in the impugned judgment, the State also does not plead any regulation, insofar as the ceremony or the social institution of 'marriage' as such. We uphold such findings in

the impugned judgment.

8. Having regard to the constitutional format in which ceremonies of different religious denominations are placed, and the constitutional backing for non-ceremonial marriages under the laws in India, we cannot but say that any imposition by way of 'tax', 'fee' or other 'levy', on a marriage, ceremonies and celebrations that follow, may call for an examination in the larger constitutional perspective. Beyond all 'tax', 'fee' and 'levy'; is human life and the society. Fortunately, we are not called upon to speak on those matters. Therefore, while we dissuade ourselves from speaking on any such issue, we affirm the finding in the impugned judgment that there cannot be any imposition in the nature of the one which was impugned through the writ petitions.

9. Dilating on the different precedents referred to in the impugned judgment, in the wake of the reference made by the learned Special Government

Pleader to the decision of the Honourable Supreme Court in India Cements Ltd. V. State of Tamil Nadu [(1990) 1 SCC 12], it has been rightly held that the principle enunciated in India Cements Ltd. (supra); particularly paragraph 23 of that judgment, is decisive to the cases on hand; to hold that the impugned levy will not be attracted to the activity to which a hotelier or an auditorium keeper puts such premises to use, in connection with any wedding and its connected celebrations conducted in hotels, since such activity cannot be taken to be one where there is a renting out of the building specifically for such purposes. We are in complete agreement with that view of the learned Judge and we affirm the finding in the impugned judgment in that regard.

10. The learned Judge was fully justified in noticing that the so-called beneficiaries of the levy are not related to any 'service' which has any remote connection to the persons on with whom such levy is made. Resultantly, the finding in the impugned judgment that the fee now sought to

be levied, tracing the power to Entry 66 of List II and correlating it with Entry 62 cannot be sustained is only to be upheld. We do so.

11.The finding in the impugned judgment that the State's contention depending on a correlation of Entry 5 to Entry 47 of List III of the Seventh Schedule is liable to be repelled, cannot but be upheld. This is so because, as rightly noted by the learned Judge, there is no regulatory exercise brought into operation, except an attempt to create a measure of deterrence in the financial aspect of expenditure. That plea of the State is something which cannot be made, referable to any legislative power reckonable with reference to those entries. That contention on behalf of the State is hence repelled.

12.For the aforesaid reasons, we do not find any ground to interfere with the impugned judgment at the instance of the State. These appeals therefore fail.

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In the result, these appeals are dismissed. No costs.

Sd/-
Thottathil B.Radhakrishnan
Judge

Sd/-
K.Harilal
Judge

Sha/

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P.S.to Judge