IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.39700 of 2006
and
M.P.Nos.1 of 2006 and 1 of 2008

Kasthoori Nursery and Primary School
run by Freedom Fighter
N.Kandasamy Educational Trust
Masakalipaty (P.O) 637 401
Rasipuram T.K. Namakkal District,
Rep.by its President/Managing Trustee
K.Chidambaram ... Petitioner

Vs.

1. The State of Tamilnadu
rep by its Secretary
Home (Transport) Department,
Fort St.George, Chennai -9.

2. The Regional Transport Officer,
Namakkal,
Namakkal District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Declaration, declaring the Tamil Nadu Motor Vehicles Taxation (Amendment) Act, Act 13 of 2003 as null and void in so far as it substitutes the rate of tax in clause 8 of the schedule to the Principal Act by increasing the Motor Vehicles tax in respect of the vehicles owned by the petitioner's institution from Rs.500/- per quarter to Rs.150/- per every person (other than the driver which the vehicle is permitted to carry)

For Petitioner : Mr.R.Rabu Manohar
For Respondents : Mr.K.Ravikumar,
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition to issue a writ of Declaration, declaring the Tamil Nadu Motor Vehicles Taxation

(Amendment) Act. (Act 13 of 2003) as null and void in so far as it substitutes the rate of tax in clause S of the schedule to the Principal Act by increasing the Motor Vehicles tax in respect of the vehicles owned by the petitioner's institution from Rs.500/- per quarter to Rs.150/- per every person.

2. Heard, Mr.R.Rabu Manohar, learned counsel appearing for the petitioner and Mr.K.Ravikumar, learned Additional Government Pleader appearing for the respondents.

3. In similar facts this Court in the decision reported in 2006 (4) L.W. 914 (Association of Managements of Nursery, Primary & Matriculation Schools, rep. by its Secretary, Sree Gopal Naidu Higher Secondary School, Peelamedu, Coimbatore v.1. The Government of Tamil Nadu, rep. by its Secretary, (Home), Transport Department, Fort St. George, Chennai and another) has issued the following directions:

> "20. We find no merit in the contention advanced by the petitioner that by charging the same rate to the educational institution vehicles and the private service vehicles, the State has violated Article 14 of the Constitution. As observed by the Supreme Court in M. Krishnappan 's case, cited supra, levy is a constitutional concept, whereas collection of a tax as well as incidence of tax comes within the statutory measure. The mode of collection or the incidence of tax cannot be the conclusive test to decide the nature of the levy. The nature of the levy is a concept different from the mode of collection of tax. Levy is a constitutional concept whereas mode of collection of tax is a statutory concept. They stand on different footings. Secondly, it is important to remember that a tax is generally imposed by reference to economic activities or transactions which exist in the real world. When an economic activity is to be valued, it is open to the law maker 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. It is for the Legislature to decide on what objects to levy what rate of tax and it is not for the Courts to consider whether some other objects should have been taxed or whether a different rate should have been prescribed for the tax. It is also to be noted that the 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.

21. In the instant case, the petitioners beyond merely alleging violation of Article 14, have not furnished any material to substantiate the charge of violation of the equality clause. The plea of the petitioners that the levy is violative of Article 14 of the Constitution is also liable to be rejected.

22. The learned counsel for the petitioners submitted that the levy was stayed by this court since 2003 and in view of the stay, the enhanced taxes are not paid nor recovery from the students is made and the students have passed out and gone and under the circumstances, recovery of past dues will put a very heavy burden on the educational institutions. It is submitted that the State is empowered under Section 20A to grant remission of tax on such conditions as may be prescribed by the Government. The petitioners are at liberty to make representation to the Government and if such representation is made within four weeks the Government may consider the same sympathetically and take appropriate decision in accordance with law.

23. The petitions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed. No costs."

This writ petition is also dismissed on the same line as extracted above. Consequently connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary
Home (Transport) Department,
Fort St.George, Chennai -9.

2. The Regional Transport Officer,
   Namakkal, Namakkal District.

+1cc to Government Pleader in sr.no.32835

W.P.No. 39700 of 2006

vd(co)
nr 12/06/2018