
Wahab Vs State of Kerala

O.P. No. 31704 of 2000

Court: High Court Of Kerala

Date of Decision: March 16, 2006

Acts Referred:

Kerala Motor Vehicles Rules, 1989 " Rule 133(5)#Kerala Motor Vehicles Taxation Act, 1976
" Section 3(4)#Motor Vehicles Act, 1988 " Section 3, 3(1), 3(4), 3(5), 87

Citation: (2006) 2 ILR (Ker) 498 : (2006) 2 KLT 755

Hon'ble Judges: C.N. Ramachandran Nair, J

Bench: Single Bench

Advocate: P.V. Baby and A.N.Santhosh, for the Appellant; T.R. Ravi, Government Pleader and Thomas Mathew Nellimoottil, for the Respondent

Judgement

C.N. Ramachandran Nair, J.

The petitioner who is engaged in operation of stage carriages, contract carriage vehicles, vehicles with all

India permits etc., is challenging validity of Section 3(4) of the Kerala Motor Vehicles Taxation Act (hereinafter called "the MVT Act") which

authorises the officer at the Check Post to grant a temporary licence for a vehicle coming from outside State for use of the vehicle in the State for

not exceeding seven days and thirty days at a time on payment of tax specified in Sub-section 5 of Section 3. The petitioner has produced Ext.PI

which is the receipt for Rs.7,933/- issued by the Motor Vehicles Check Post official at Thalappady, Manjeswaram to a visiting vehicle towards

tax for 30 days use of the vehicle in the State. I have heard counsel for the petitioner and Government Pleader for respondents.

2. The case of the petitioner is that MVT Act is made in exercise of powers conferred on the State under Entry 57 of List II in the VIIth Schedule

to the Constitution of India which authorises the State to make law for collection of tax on motor vehicles. Since MVT Act is made in exercise of

the above constitutional entry, it cannot provide for issuance of licence to motor vehicles is the case of the petitioner. Government Pleader on the

other hand contended that the authorities under the Motor Vehicles -Act, 1988 (hereinafter called ""the MV Act"") dealing with issue of permits

whether for stage carriage or contract carriage or goods vehicles is either the Regional Transport Authority or the State Transport Authority or the

Secretaries of these two agencies. Section 87 of the MV Act provides for issue of temporary permits by RTAs and STAs upto a period of four

months. According to him, the RTAs and STAs are constituted by State Government under the M.V. Act and therefore, it makes no difference

even if the permit is authorised to be issued under the MVT Act, so long as there is no conflict of the provisions of the said Act in regard to issue of

permit with any provision of the MV Act. Even though counter is not filed, the Government Pleader has referred to notification SRO 872/1975

issued by the State Government declaring Motor Vehicle Inspectors as Taxation Officers under the MVT Act and notification SRO 873/1975

issued u/s 3(4) of the MV Act authorising Taxation Officers to issue temporary licence as provided under the said Section. By virtue of these two

notifications, the Motor Vehicle Inspectors at the Check Post are authorised to issue temporary licence to visiting vehicles u/s 3(4) and are

authorised to collect tax as provided u/s 3(5) of the MVT Act. According to counsel for the petitioner. Rule 133(5) of the Kerala Motor Vehicles

Rules authorises delegation of power by STAs and RTAs for issuing permit only for goods vehicles. Since the notification based on which permit is

issued by the Motor Vehicle Inspector at the Check Post is not issued under Rule 133(5) of the Kerala Motor Vehicles Rules, there is no violation

of the said Rule. On the other hand, the question is whether Section 3(4) is beyond the legislative competence of the legislature and if so, whether

State Government is authorised to notify Motor Vehicle Inspectors at the Check Post to be Taxation Officers authorised to collect tax and can be

delegated with authority to issue temporary licence in terms of the said Section 3 and to collect tax u/s 3(5) of the MVT Act. The positioning of a

temporary licencing power in the charging section to the MVT Act has to be considered with reference to the main charging section i.e. Section 3

of the MVT Act which provides collection of tax only in respect of vehicles kept for use in the State. The category of vehicles referred to in

Section 3(1) are generally vehicles registered in the State. However, the Legislature which is authorised to make law authorising collection of tax

under the MVT Act which is declared by Supreme Court as compensatory tax for use of the roads maintained by the State, has authority under

Entry 57 of the Second List in the VIIth Schedule to make law also to collect tax on visiting vehicles for use of the roads in the State. Therefore,

provision has to be necessarily provided in the charging section of MVT Act for levying tax on visiting vehicles. No one can have a doubt that the

appropriate authority to collect tax on visiting vehicles is the Taxation Officer stationed at the boarder Check Post on interstate roads? The

question therefore is whether a visiting vehicle reaching the Check Post should be made to wait there for the vehicle to apply for and obtain licence

from the general licencing authorities such as the STA or RTA or the Secretaries of these licencing agencies. It would be absurd to expect a vehicle

driver to leave the visiting vehicle at the Check Post with passengers or goods and go to the Secretary of RTA or STA for a permit which

obviously cannot be obtained on a holiday or outside office hours. Check Post officials are stationed round the clock round the year and it is in the

fitness of things that they are given powers to issue temporary licence and authority to collect tax on the visiting vehicles. The petitioner has no case

that the visiting vehicles are not entitled to any permit for temporary use of the vehicle in the State. Therefore, grant of permit at the Check Post to

visiting vehicles is a matter of course and not a matter of discretion left to the motor vehicle authority. So long as there is nothing discretionary

about the grant of a temporary licence to a visiting vehicle, there is no harm in vesting such power with a low level functionary like the Motor

Vehicle Inspector. Even though licencing and grant of permits to motor vehicles are controlled by central legislation namely, the MV Act, there is

no dispute that the entire scheme of permit and control are by the authorities under the control of State Government. So long as the State

Government is the ultimate authority constituting and controlling STAs and RTAs and their officials, who are the authorities granting permit there is

nothing conflicting between the MV Act and the MVT Act with regard to the provision for temporary licencing provided in the MVT Act as

against the general provision for permit provided in the MV Act. So much so, I do not think Section 3(4) of the MVT Act is in conflict with any

provision of the MV Act, 1988 or is ultravires the powers of the State Legislature.

The O.P. is therefore devoid of any merit and is dismissed.