

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM

**THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA**

**AND**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.A.No.1810 of 2021

and C.M.P.No.11316 of 2021

C.Joseph Vijay

.. Appellant/Petitioner

Vs.

1. The State of Tamil Nadu  
Rep. by its Secretary,  
Home Department (Transport),  
Fort St. George, Chennai-600 009.
2. The Assistant Commissioner (CT),  
Assessment Circle, Chennai.
3. The Regional Transport Officer,  
Chennai South, Chennai.
4. The Motor Vehicle Inspector,  
Chennai South, Chennai.

.. Respondents/Respondents

\* \* \*

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 08.07.2021 passed in W.P.No.18385 of 2012.

\* \* \*

For Appellant : Mr.Vijay Narayan, Senior Counsel  
for Mr.S.Kumaresan

For Respondent : Mr.V.Nanmaran

### **J U D G E M E N T**

The charm and dignity of a judge get enhanced by sobriety restrain grace and concern for the cause of justice - EGO (Edging God Out).

"Real strength of the judiciary lies in public faith and not in its contempt jurisdiction to punish a person."

2. The above appeal is filed by the appellant to expunge certain offending / objectionable observations made in the order of the Writ Court made in W.P.No.18385 of 2012 on 08.07.2021.

3. The appellant, who had purchased an imported car, was insisted by the transport authorities to pay the entry tax before registering the vehicle.

Hence, a Writ of Mandamus was filed by him. While dismissing the same, learned Single Judge had made certain observations / remarks, which according to the appellant, are disparaging and undeserving. Feeling aggrieved against the adverse remarks made by the Writ Court and for the expunction of the same, the above appeal is filed.

4. Mr.Vijay Narayan, learned Senior Counsel appearing for the appellant, would submit that :

(a) the adverse remarks are not at all necessary for just and proper disposal of the writ petition and such undeserving remarks were made in breach of principles of natural justice. The comments made by the learned Single Judge are sought to be expunged, in particular those made in paragraphs 3, 4, 7, 8, 11 and 12 of the impugned order.

(b) the castigating remarks against the appellant, without affording an opportunity of hearing affecting his reputation, integrity and conduct, are wholly unsustainable and bad in law.

(c) such adverse remarks are absolutely unnecessary for proper adjudication of the writ petition and it would affect the appellants future career.

(d) the unwarranted and uncharitable remarks imputing motives to the appellant as litigant really hurts.

5. To be noted here is that the appellant has paid, the entry tax as demanded.

6. Before delving into the impugned order of the learned Single Judge, it is appropriate to collate certain judgments with regard to the demand and collection of entry tax and the constitutionality of the same vis-a-vis Part-XIII of the Constitution. The primordial challenge in this regard before various High Courts and the Hon'ble Supreme Court revolved around was, whether the "Entry Tax" was compensatory in nature and thus, outside the purview of Part-XIII of the Constitution.

7. Though the above question stands finally resolved by the Constitutional Bench of 9 Judges by the Hon'ble Supreme Court in the case of ***Jindas Stainless Limited and Another Vs. State of Haryana and others*** reported in **(2017) 12 SCC 1**, it may be very relevant to set out the history of the litigation leading to the Constitutional Bench decision in the aforesaid case.

7.1. A Writ petition was filed before the High Court of Punjab and Harayana assailing the constitutional validity of the Harayana Local Area Development Tax Act. A Division Bench, after relying upon the decision of the *Supreme Court in **Atiabari Tea Co. Ltd., Vs. State of Assam and Others, AIR 1961 SC 232***, has held that the levy was compensatory in character hence, outside the purview of Article 301.

7.2. The correctness of the said order was assailed before the Supreme Court, wherein, a two-Judge Bench noticed an apparent conflict between the constitutional bench Judgments reported in ***Atiabari case*** and ***Automobile Transport (Rajasthan) Ltd., V. State of Rajasthan, AIR 1962 SC 1406***, on the one hand and ***Bhagatram Rajeevkumar V. CST, 1995 Supp (1) SCC 673*** and ***State of Bihar Vs Bihar Chamber of Commerce, (1996) 9 SCC 136*** on the other. The 2-Judge Bench of the Supreme Court referred the matter to a Constitutional Bench stating that the interpretation of Article 301 vis-a-vis compensatory tax should be authoritatively laid down with certitude under Article 145(3) of the constitution.

7.3. Pursuant thereto, the matters were placed before the Constitutional Bench of the Hon'ble Supreme Court in ***Jindal Stainless Ltd., Vs. State of Haryana reported in (2006) 7 SCC 241***, which resolved the conflict noticed in the reference order, holding that the working test propounded by seven

Judges in **Automobile Transport case** authoritatively was incompatible with the test of some connection enunciated by a Bench of 3 *Judges in Bhagatram Rajeevkumar and Bihar Chamber of Commerce*.

7.4. The matters were thereafter listed before Two Judge Bench for hearing the appeals, in the light of the above Bench Judgment pronounced by the Constitutional Bench. The Two-Judge Bench of the Supreme Court after finding that in the absence of the relevant data before the High Court, the issue whether the levy were compensatory or otherwise could not have been considered and referred the matter back to the High Court to decide the said aspect.

7.5 The matters were taken by the High Court after remitted by the Supreme Court and a number of High Courts, including the Madras High Court, have struck down the levy imposed by the respective States on the ground that they were discriminatory in nature and thus violative of Article 304(a) of the Constitution.

7.6. The Judgments and orders of various high Courts passed pursuant to the remand made by the Hon'ble Supreme Court were came to be challenged by the States concerned before the Supreme Court. Those appeals initially came up before a Two-Judge Bench of the Supreme Court, which referred the same yet again to a Constitutional Bench for an

authoritative pronouncement, whereby, as many as 10 questions were formulated in the reference order.

7.7. The two-Judge Bench was of the view that the Constitutional Bench Judgment in ***Jindal stainless Ltd. Vs. State of Haryana, (2006) 7 SCC 241***, had not dealt with certain important constitutional issues. Moreover as the Division Bench was of the view that a conceptually and contextually different approach may be required vis-a-vis **Transport case** on one hand and cases of Entry tax on goods on the other, the matter was placed once again before the Bench of Five Judges of the Hon'ble Supreme Court in ***Jindal stainless Ltd. Vs. State of Haryana, (2010) 4 SCC 595***, wherein, after briefly referring to the decision of **Atiabari, Automobile Transport cases** and **Keshav mills Co. Ltd.**, the same was referred to a Larger Bench for re-consideration of the Judgment of the Supreme Court in **Atiabari and Automobile Transport cases**.

7.8. Finally, the matters were listed before the Constitutional Bench of Nine Judges. The scope of Part-XIII vis-a-vis the power/competence to tax was finally resolved and inter alia, the Nine-Judge Bench held as follows :

*"1159. By majority the Court answers the reference in the following terms:*

*1159.1. Taxes simpliciter are not within the contemplation of part XVIII of the constitution of India. The word "free" used in Article 301 does not mean " free from taxation"*

*1159.2 Only such taxes as are discriminatory in nature are prohibited by Article 304(1). It follows that levy of an non-discriminatory tax would not constitute an infraction of Article 301.*

*1159.3 Clauses (a) and (b) of Article 304 have to be read disjunctively.*

*1159.4. A levy that violates Article 304(a) cannot be saved even if the procedure Article 304(b) of the proviso thereunder is satisfied.*

*1159.5 The Compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal case has no juristic basis and is therefore rejected.*

*1159.6 The decisions of this Court in Atiabari, Automobile Transport and Jindal cases and all other judgments that follow these pronouncements are to the extent of such reliance overruled.*

*1159.7 A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.*

*1159.8 Article 304(a) frown upon discrimination (of a hostile nature in the protectionist sence) and not on mere differentiation. Therefore, incentives, set-offs, etc granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.*

*1160. States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from states and goods produced within the state fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies*



*in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters."*

7.9. Importantly the question as to whether the Entire State can be notified as a local area and whether entry tax can be levied on the goods entering into the land mass of India from another country was left open to be determined in an appropriate proceedings.

7.10. Thereafter the Hon'ble Supreme Court dealt with a batch of appeals raising the above question viz., competence of the States to levy Entry tax in vehicles/goods imported from outside India by various States including States of Orissa, Bihar and Kerala.

8. The Two Judge Bench of the Supreme Court proceeded to hold that it is permissible for the State to levy Entry Tax even on imported goods/Vehicles and reversed the order of the Kerala High Court which held that levy of Entry tax on imported goods/vehicles imported from outside the country is impermissible. The history of litigation has been set out in great detail only to show that there has been grave uncertainty not only with the reference to parameter/test to be applied for determining the question of validity of levy of Entry Tax, but also the question whether Entry Tax can be levied on imported goods stood resolved only by the decision of the Supreme Court in **State of Kerala and Others Vs. Fr.William Fernandez Etc.** reported in

**2017 SCC OnLine SC 1791**, which was delivered on 09.10.2017. Thereafter, following the decision of the Supreme Court in **Fr. William Fernandez case**, a Division Bench of this Court delivered a judgment on **29.01.2019** in a batch of writ petitions in the case of **V.Krishnamurthy Vs. State of Tamil Nadu** reported in **(2019) 69 GSTR 326**.

9. The order of the learned single Judge, wherein, certain disparaging remarks were made, appears to be wholly unwarranted, as there was uncertainty as to the state of law relating to Entry Tax and divergent views were expressed not only by the High Courts, but by the Supreme Court as well. Thus, to impute motives to a litigant or castigating him for taking a particular legal position or exercising his constitutional right under Article 226 is unwarranted.

10. Now the question that arises for consideration is with regard to inherent power and jurisdiction of this Court to expunge the alleged adverse remarks made by the Single Judge. In this regard, it would be appropriate to refer to the relevant decisions.

10.1. In **Testa Setalvad and another Vs State of Gujarat and others** reported in **(2004) 10 SCC 88**, it has been held by the Hon'ble Supreme Court that :

*"13. We also extract below the observation of this Court in Braj Kishore Thakur Vs Union of India:*

*"2. Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a judge which he is obliged to keep refurbished from time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher Courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of Courts at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that "a judge who has not committed any error is yet to be born". .....*

*11. No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when judges of higher courts publicly express lack of faith in the subordinate judges. It has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a judicial officer against whom aspersions are made in the judgment could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against the lower judiciary."*

10.2. In **Dr.Dilip Kumar Deka and another Vs State of Assam and another** reported in **(1996) 6 SCC 234**, it has been held as follows:

"6. The tests to be applied while dealing with the question of expunction of disparaging remarks against a person or authorities whose conduct come in for consideration before a Court of law in cases to be decided by it were succinctly laid down by this Court in **State of U.P. Vs. Mohd. Naim, AIR 1964 SC 703**. Those tests are:

(a) Whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself;

(b) Whether there is evidence on record bearing on that conduct justifying the remarks ; and

(c) Whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

The above tests have been quoted with approval and applied by this Court in its subsequent judgments in **Jage Ram Vs. Hans Raj Midha, (1972) 1 SCC 181**, **R.K. Lakshmanan Vs. A.K.Srinivasan (1975) 2 SCC 466** and **Niranjan Patnaik Vs. Sashibhusan Kar, (1986) 2 SCC 569**.

7. We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition, to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was a complete negation of the fundamental principle of natural justice. ....

11. Now that we have found, applying the first two tests of Mohd. Naim case that the impugned remarks cannot be justified, the question whether it satisfies the third test also need not be gone into. However, we will be failing

*in our duty if we do not advert to the phraseology the learned Judge has used while condemning the conduct of the appellants. In Mohd. Naim Case this Court while laying down the three tests (quoted earlier) further observed :*

*"It has also been recognised that judicial pronouncement must be judicial in nature and should not normally depart from sobriety, moderation and reserve."*

*While quoting with approval the above observations in Niranjana case this Court further observed :*

*"We need only remind that the higher the forum and the greater the powers, the greater the need for restraint and the more mellowed the reproach should be."*

12. Recently, in **Abani Kanti Ray Vs. State of Orissa, 1995 Supp. (4) SCC 169**, this Court had made the following observations after referring to the earlier cases of this Court including R.K. Lakshmanan and Niranjana:

*"What we have said above is nothing new and is only a reiteration of the established norms of judicial propriety and restraint expected from everyone discharging judicial functions. Use of intemperate language or making disparaging remarks against anyone unless that be the required for deciding the case, is inconsistent with judicial behaviour. Written Words in judicial orders form permanent record which make it even more necessary to practise self-restraint in exercise of judicial power while making written orders. It is helpful to recall this facet to remind ourselves and avoid pitfalls arising even from provocation at times."*

11. If one bears in mind the above background, it is difficult to suggest that the petitioner had acted with malafide and with deliberate intention and thus, the observation made by the learned single Judge, apart from being unwarranted, are irrelevant to decide the issue. The order of the writ Court also overlooks the fact that the view/stand taken by the petitioner, insofar as the leviability of entry tax on imported vehicles is the view taken by the Division Bench of Kerala High Court and also the Judgment of the Madras High Court and the matter was finally resolved by a Division Bench of the Hon'ble Supreme Court, after the Constitutional Bench of Nine Judges pronounced on the scope of Part XIII of the Constitution. The above sequence of litigation will clearly demonstrate that the appellant cannot be imputed with motive whatsoever and therefore, the disparaging remarks are clearly unwarranted.

12. For the foregoing reasons, the Writ Appeal is allowed and the observations made by the learned Single Judge against the appellant in paragraphs 3, 4, 7, 8, 11 and 12 of the impugned order stand expunged. No costs. Consequently, connected miscellaneous petition is closed.

(P.S.N., J.) (M.S.Q., J.)

25.01.2022

Index : Yes / No

Internet: Yes

gg

To

1. The Secretary,  
Home Department (Transport),  
Government of Tamil Nadu,  
Fort St. George, Chennai-600 009.
2. The Assistant Commissioner (CT),  
Assessment Circle, Chennai.
3. The Regional Transport Officer,  
Chennai South, Chennai.
4. The Motor Vehicle Inspector,  
Chennai South, Chennai.





**PUSHPA SATHYANARAYANA, J.**  
**AND**  
**MOHAMMED SHAFFIQ, J.**

gg

W.A.No.1810 of 2021  
& C.M.P.No.11316 of 2021

25.01.2022