

The Union of India Vs. the Kasaragod Dist.Parallel College Assn

The Union of India Vs. the Kasaragod Dist.Parallel College Assn

SooperKanoon Citation : sooperkanoon.com/1015804

Court : Kerala

Decided On : Jul-25-2013

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : The Union of India

Respondent : The Kasaragod Dist.Parallel College Assn

Advocate for Def. : Shri. P.K. Vijayamohanan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI THURSDAY, THE 25TH DAY OF JULY 2013 3RD SRAVANA, 1935 WA.No. 516 of 2006 (B) ----- (AGAINST THE ORDER/JUDGMENT IN WP(C).NO.1778/2004 DATED 31 08-2005) ----- APPELLANT(S)/RESPONDENTS 1 TO 4 : ----- 1. THE UNION OF INDIA, REP. BY THE SECRETARY TO GOVERNMENT MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI.

2. THE COMMISSIONER OF CENTRAL EXCISE, CALICUT.

3. THE SUPERINTENDENT OF CENTRAL EXCISE, KASARAGOD RANGE, PALLIKKUNNU, KASARAGOD.

4. THE SUPERINTENDENT OF CENTRAL EXCISE, KANHANGAD RANGE,
NAVERANG BUILDING, KANHAGAD. BY ADVS. SRI.P.PARAMESWARAN
NAIR,ASST.SOLICITOR SRI.THOMAS MATHEW
NELLIMOOTTIL,SC,CEN.BOAR OF EXCISE SRI.JOHN
VARGHESE,SC,CEN.BOARD OF EXCIS RESPONDENT(S)/PETITIONER &
RESPONDENT : ----- 1. THE
KASARAGOD DISTRICT PARALLEL COLLEGE ASSOCIATION, REP.BY
SHRI.K.MADHAVA HERLA, KASARAGOD.

2. THE STATE OF KERALA, REP.BY CHIEF SECRETARY TO GOVERNMENT,
TRIVANDRUM. R1 BY ADV. SRI.M.THAMBAN SMT.T.SUDHAMANI R2 BY
GOVERNMENT PLEADER SRI.R.PADMARAJ THIS WRIT APPEAL HAVING
BEEN FINALLY HEARD ON 06-06-2013, ALONG WITH WA.NO. 518/2006 AND
CONNECTED CASES, THE COURT ON 25-07-2013 DELIVERED THE
FOLLOWING: sts W.A.NO.516/2006 APPENDIX APPELLANT'S ANNEXURES:
ANNEX A COPY OF THE NOTIFICATION NO.6/05 DATED 01 03/2005 ISSUED
BY THE MINISTRY OF FINANCE. RESPONDENT'S ANNEXURES: NIL /TRUE
COPY/ P.A.TO.JUDGE sts T.R.RAMACHANDRAN NAIR & A.V.RAMAKRISHNA
PILLAI, JJ.

----- W.A.No.516/2006 in W.P.(C) No.1778/2004
W.A.No.518/2006 in W.P.(C) No.2302/2004 W.A.No. 542/2006 in W.P.(C)
No.728/2004 W.A.No. 558/2006 in W.P.(C) No.4718/2004 W.A.No.670/2006 in
W.P.(C) No.35867/2004 W.A.No. 676/2006 in W.P.(C) No.11976/2004
W.A.No.680/2006 in W.P.(C) No.28334/2004 W.A.No.681/2006 in W.P.(C)
No.33480/2004 W.A.No.705/2006 in W.P.(C) No.6258/2004 W.A.No. 750/2006 in
W.P.(C) No.12238/2005 W.A.No. 893/2006 in W.P.(C) No.31751/2004 W.A.No.
925/2006 in W.P.(C) No.28608/2004 W.A.No.926/2006 in W.P.(C) No.3617/2005
W.A.No. 927/2006 in W.P.(C) No.35834/2003 W.A.No.939/2006 in W.P.(C)
No.35904/2004 W.A.No.1015/2006 in W.P.(C) No.6830/2005 W.A.No. 1189/2006
in W.P.(C No.22094/2006 W.A.No.1280/2006 in W.P.(C)No.28532/2005
W.A.No.1437/2006 in W.P.(C)No.10098/2005 W.A.No.1486/2006 in
W.P.(C)No.32536/2004 - - - - - DATED THIS THE
25th DAY OF JULY, 2013 JUDGMENT Ramachandran Nair, J.

These writ appeals have been filed against a common Judgment rendered by the learned Single Judge. The batch of writ petitions were filed by the Association of Parallel Colleges and by persons owning or running individual parallel colleges in the State. The challenge was against the W.A.Nos.516/206, etc. -2- constitutional validity of levy of service tax treating Parallel Colleges as "commercial training or coaching centres" coming under Section 65(27) of the Finance Act, 1994 (for short, the 'Act').

2. The learned Single Judge by the impugned Judgment held that the impugned provisions of the Act authorising levy of service tax on Parallel Colleges are arbitrary and violative of Article 14 of the Constitution of India. But it was made clear that the Judgment is rendered on the peculiar facts applicable to the Parallel Colleges in the State of Kerala and it cannot be treated as declaring the Section unconstitutional, in so far as any other category of educational institution or training centre is concerned. Thus, the respondents in the writ petitions were prohibited from demanding registration or service tax for the services rendered by the writ petitioners, their members and other Parallel Colleges in the State of Kerala.

3. We heard the learned Standing Counsel Shri John Varghese and Shri Thomas Mathew Nellimoottil, learned Standing Counsel for the appellants in the appeals. Heard, Shri P.K.Vijaya Mohanan, Shri P.C.Joseph Pazheparambil, Shri S.A.Razack learned counsel appearing for the respondents. W.A.Nos.516/206, etc. -3- 4. Learned Standing Counsel Shri John Varghese raised the following contentions. It is submitted that as far as the levy of tax is concerned, it is upto the Central Government to introduce service tax in respect of any specified items of service and it is beyond the pale of judicial review. The learned Counsel submitted that it is well settled by the decisions of the Apex Court that in economic matters, there is sufficient play in the joints and therefore, the Parliament is free to impose tax in respect of an entry by way of introduction in the Finance Act. The only question is whether the activity will come within the meaning of commercial training and coaching centres under Section 65(27) of the Act.

5. The learned Counsel further submitted that the argument of the respondents that the colleges under the regular stream are excluded from the imposition of tax and hence the provision is arbitrary, cannot be countenanced at all. As far as the regular colleges are concerned, they are governed by various University regulations, and are having a defined curriculum, period of study, conduct of examination and other relevant factors. The colleges will have to avail affiliation and there will be a regular W.A.Nos.516/206, etc. -4- course of study. The colleges will have to provide sufficient infrastructure and other facilities also. It is submitted that as far as Parallel Colleges are concerned, with regard to collection of fees, providing curriculum, period of study, etc. there is no defined yardstick and is left to the individual colleges to charge fees. They are not compelled to provide any specific infrastructure or other facilities also. Therefore, the respondents cannot be heard to say that for non imposition of tax in respect of the regular stream, there is total discrimination. It is submitted, after referring to the principles laid down by the Apex Court and U.S. Supreme Court in various Judgments, that the exclusive power of the Parliament to make laws with respect to any matters enumerated in List I in the seventh schedule cannot be attacked on such flimsy grounds. The power of the Court to intervene in such matters is very limited. Introduction of tax is really an economic measure and it is beyond the pale of challenge.

6. The learned Standing Counsel Shri Thomas Mathew Nellimoottil also submitted that there is a clear distinction between the students who undergo studies in the regular stream and who approach Parallel Colleges. But the learned Judge was of the view that there is no W.A.Nos.516/206, etc. -5- distinction between the two classes of students, namely, the students studying in the colleges affiliated to Universities and private students who take coaching in parallel colleges to write the examination, which according to the learned Counsel is actually not correct. According to the learned Counsel there are several Parallel Colleges which charge heavy fees also. Therefore, the activity is of a commercial nature and therefore, there is no legal embargo in collecting service tax.

7. These arguments have been met by the learned counsel for the respondents by pointing out that any legislative measure will have to come within the constitutional scheme and it should not be violative of Article 14 of the Constitution of India. It is

submitted that this Court has ample power to consider whether the introduction of the measure is arbitrary and discriminatory. The learned counsel for the respondents also relied upon various decisions of the Hon'ble Supreme Court to contend that the scope of judicial review is not limited and this Court will be free to examine whether the measure can be supported in the light of the provisions of the Constitution of India. W.A.Nos.516/206, etc. -6- 8. The learned counsel for the respondents explained that the colleges run by the respondents are presenting students for various examinations to acquire the Degrees and other qualifications granted by the various Universities. The colleges under the regular stream are also allowing the students to appear for the various University examinations which is the facility granted by the Parallel Colleges. They are not directly conferring any Degree or diploma to students. It is submitted that when admissions are regulated by number of seats, and students' strength is thus limited, and as sufficient colleges are not there, students are compelled to approach colleges like the one run by the respondents. These colleges are thus doing the same activity by way of facilitating education to a group of students, who could not get admission in regular colleges for whatever reasons that may be. It is submitted that there are many poor students, who cannot bear the financial burden in regular colleges and to pay for hostel facility and the like. Therefore, as rightly held by the learned Single Judge, these colleges are catering the needs of poorer sections of the Society in the State. When service tax is imposed by the appellants to such colleges, it will have to be collected from the students which will affect them adversely. W.A.Nos.516/206, etc. -7- When the students form a homogeneous class, there cannot be a discrimination between them in the matter of imposition of tax.

9. Learned counsel for the respondents opposed the contentions raised by the learned Standing Counsel that there are certain factors which distinguish students studying in regular colleges. It is submitted that the legislative measure adopted is not one drawing any distinction between two types of colleges, namely, one under the regular stream and the another under the parallel scheme. It is submitted that in the absence of such a distinction, the appellants cannot be heard to say that the students undergoing regular course of study are covered by various other factors like curriculum, period of study, University examinations etc.. It is submitted that in

the parallel colleges also as same subjects are being taught, namely, science, arts or humanities and the students are preparing themselves for appearing for the very same University Examinations after getting registration in Universities and such being the system, it is explained that there is real discrimination and violation of Article 14 of the Constitution of India as rightly found by the learned Single Judge. W.A.Nos.516/206, etc. -8- 10. We will now refer to the relevant provisions, namely, Section 65(26), 65(27) 65(105)(zzc) of the Act and explanation to the same. "Commercial training or coaching" under Section 65(26) means any training provided by a commercial training or coaching centre. Section 65(27) gives the meaning of "commercial training or coaching centre". The above provisions are extracted below: "65(26): "commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre; (27) "commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes but does not include preschool coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force; (105) "taxable service" means any service provided or to be provided:- (zzc) to any person, by a commercial training or coaching centre in relation to commercial training or coaching; W.A.Nos.516/206, etc. -9- [Explanation:-- For the removal of doubts, it is hereby declared that the expression "commercial training or coaching centre" occurring in this sub-clause and in clauses (26), (27) and (90a) shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly;" 11. We will now consider the materials placed on record by the writ petitioners before this Court. W.A.No.516/2006 is against the Judgment in W.P.(C) No.1778/2004. Ext.P1 produced in the writ petition is the Judgment of the Division Bench in W.A.No.947/1987 wherein denial of exemption from remitting building tax for the building used for educational purposes under the

Building Tax Act was the question raised. The College therein was not an affiliated one but a Parallel College. This Court held that there is no distinction between such colleges as exemption is allowed for buildings used mainly for educational purposes. Ext.P4 is the letter which is communicated to a Member of Parliament by the Chairman of the Department of Revenue Central Board of Excise and Customs under the W.A.Nos.516/206, etc. -10- Ministry of Finance. It is informed in the letter that "Institutes which provide any formal education leading to degree, diploma, certificate etc. which are approved by law have been kept outside the purview of service tax." 12. Similar contentions have been raised in all the writ appeals. We will now refer to the contentions of the appellants which are evident from the counter affidavit filed in different cases. In the counter affidavit filed in W.P.(C).No.1778/2004 from which W.A.No.516/2007 arises, in para.3 it is stated that Parallel Colleges are conducting tutorial classes not only to those who could not get admission to regular college/school, but also to regular college/school going students during non-working hours of such regular institutions. In para.7, it is stated that "however, it is true that education provided by the Parallel Colleges is formal education and that the students appear for the same examination and get the same certificate". In para.11, it is averred that Parallel Colleges are performing an important function as far as education is concerned. It is explained that the fee charged from the students is not regulated by any statutory instructions nor governed by any Government instructions. W.A.Nos.516/206, etc. -11- 13. In the counter affidavit filed in W.P.(C).No.3617/2005 by the respondents (appellants in W.A.926/2006) it is stated in para.3 as follows: ".....Though the services provided by regular colleges and parallel colleges are identical in nature, both the institutions are functioning on certain criteria/conditions. Private tutorial colleges are not governed by any law. Commercial Coaching is taxable due to the reason that it is on commercial basis. Since regular colleges (aided or unaided) are affiliated to University/Board, such institutions do not come into the ambit of Service Tax." 14. In the counter affidavit file by the respondents in W.P.(C). No.28334/2004 from which W.A.No.680/06 arises, it is stated in para.2 that the term 'parallel college' is used to denote "those institutions which give coaching to private students who appear for the various courses offered by Universities/Boards". It is further stated in para.5 that the parallel colleges are

distinct from regular unaided institutions, which are recognised by the Government or are affiliated to the Universities as per relevant statutes. The regular unaided institutions also come under the purview of Section 65, but W.A.Nos.516/206, etc. -12- they are exempted from the payment of service tax vide Notification No.10/2003 dated 20/06/2003. It is further stated that students are appearing through Parallel Colleges by way of opting for private registration.

15. In fact, one of the contentions raised by the learned counsel for the respondents is that as far as various self financing colleges also are concerned, they are also not governed by any of the stipulations and other regulatory measures, including fees prescribed by Government or Universities, and are not controlled by the supervisory powers of the Universities in various matters. It is submitted that they are also excluded from the purview of payment of service tax which will show that the imposition of tax as against the Parallel Colleges which serves the same purpose is not justified.

16. On a reading of the impugned Judgment, it can be seen that the learned Single Judge after elaborately considering the contentions was of the view that there may not be any qualitative difference in the coaching rendered in the parallel colleges and in regular colleges. It was held that the provisions in question should stand the test of constitutional validity with W.A.Nos.516/206, etc. -13- reference to Article 14 of the Constitution of India as held by the Apex Court in Federation of Hotel and Restaurant v. Union of India [(1989) 3 SCC 634.and East India Tobacco Co. Ltd. v. State of A.P. [AIR 196.SC 1733]. It was held that the burden of service tax on education falls on the students community. The students studying in the parallel colleges are students who are entitled to write University examinations as private students. The curriculum prescribed for the examination and the degree certificate awarded to private students and students studying in regular colleges, whether aided or self financed affiliated to the University, are the same. Therefore, there is no distinction between the two classes of students, namely, the students studying in the colleges affiliated to the Universities and private students who take coaching in parallel colleges to write the same examinations. It is also held that the main reason why many students cannot join regular colleges affiliated to Universities is economical. Further on account of limited number of seats available

in the affiliated colleges, the less brilliant students will have to look for coaching elsewhere and they end up in parallel colleges. It is also well-known fact that the interior and remote areas of the State, poor students even if eligible for admission in W.A.Nos.516/206, etc. -14- regular colleges cannot afford out-station-study and they will naturally go to parallel colleges. Accordingly, it was held that in most cases, students landing in Parallel Colleges are less fortunate ones who are compelled to join Parallel Colleges for economic reasons. They are also eligible for bus fare concession as per the order of the State Government and finance benefits are provided to SC and ST community students studying in parallel colleges also and thus, the State Government also treats the students in affiliated colleges and parallel colleges as part of the same class.

17. It was also held that in any case there cannot be any distinction between students undergoing private study in the parallel colleges and those undergoing course study in the regular colleges, so long as the curriculum, the examinations written and the degree obtained by them are one and the same.

18. Finally, it was held that levy of service tax for services rendered by parallel colleges which indirectly falls on the students, but by simultaneously providing exemption to regular affiliated colleges allowing the students therein study free tax is patently discriminatory and violative of Article 14 of the Constitution of India. W.A.Nos.516/206, etc. -15- 19. The principles stated in the following judgments have been relied upon by the learned Standing Counsel for the appellants, viz. Robert J.

Lehnhausen v. Lake Shore Auto Parts Co. (410 US 356), New York Rapid Transit Corporation v. City of New York (1982 L.ed. 1024), John E. Madden v. Commonwealth of Kentucky (84 L.ed 590 US), City of New Orleans v. Nancy Dukes (427 US 297), MAC Q. Williamson v. Lee Optical of Oklahoma (348 US 483), Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others (AIR 195.SC 538), Raja Jagannath Baksh Singh v. State of Uttar Pradesh and another (AIR 196.SC 1563), M/s. East India Tobacco Co. et. v. State of Andhra Pradesh and another (AIR 196.SC 1733), Khandige Sham Bhat v. Agricultural Income-tax Officer, Kasaragod (AIR 196.SC 591), Kyerbari Tea Co. Ltd. And another v. State

of Assam and others (AIR 196.SC 925), The Twyford Tea Co. Ltd. and another v. The State of Kerala and another (AIR 197.SC 1133), Govt. of Andhra Pradesh v. P. Laxmi Devi (Smt) {(2008) 4 SCC 720}, Karnataka Bank Ltd. v. State of Andhra Pradesh and others {(2008) 2 SCC 254}, Greater Bombay Coop. Bank Ltd. v. United Yarn Tex (P) Ltd. and others {(2007) 6 SCC 236}, R.K. Garg v. Union of W.A.Nos.516/206, etc. -16- India and others {(1981) 4 SCC 675}, Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Ltd. and another (AIR 198.SC 239), Transport and Dock Workers Union and others v. Mumbai Port Trust and another {(2011) (2) SCC 575}, State of Madhya Pradesh v. Rakesh Kohli and another {(2012) 6 SCC 312} and Namit Sharma v. Union of India {(2013) 1 SCC 745}.

20. In Robert J.

Lehnhausen's case (410 US 356), in Headnotes 2 to 5 it has been held as follows: "The equal protection clause does not mean that a state may not draw lines that treat one class of individuals or entities different from others; the test is whether the difference in treatment is an invidious discrimination....." An earlier decision in Allied Stores of Ohio v. Bowers (358 US 522.526-

527) was relied upon, wherein it was held that "the States have a very wide discretion in the laying of their taxes. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value." In the other decisions cited by learned counsel Shri John Varghese, of the U.S. Supreme Court, the very W.A.Nos.516/206, etc. -17- same principles have been reiterated. The next decision relied upon is that of the Apex Court in Shri Ram Krishna Dalmia's case (AIR 195.SC 538), wherein it has been held that "a law may be constitutional even though it relates to a single individual, if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself." It was held therein further that "there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the Constitutional principles."

21. The law is well settled by a series of judgments of the Apex Court that even in

the matter of taxing statutes, it will have to satisfy the test under Article 14 of the Constitution of India. Even though learned Standing Counsel for the appellants went on to the extent of submitting that any legislative measure, i.e. in economic matters or tax matters is beyond the pale of challenge, we cannot agree.

22. In fact, in Karnataka Bank Ltd.'s case {(2008) 2 SCC 254}, the Apex Court in paragraphs 19 and 20 has laid down how the matter can be examined by the Constitutional courts. We extract the same hereunder: W.A.Nos.516/206, etc. -18- "19. The rules that guide the constitutional Courts in discharging their solemn duty to declare laws passed by a legislature unconstitutional are well known. There is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt; to doubt the constitutionality of a law is to resolve it in favour of its validity. Where the validity of a statute is questioned and there are two interpretations, one of which would make the law valid and the other void, the former must be preferred and the validity of law upheld. In pronouncing on the constitutional validity of a statute, the Court is not concerned with the wisdom or un-wisdom, the justice or injustice of the law. If that which is passed into law is within the scope of the power conferred on a Legislature and violates no restrictions on that power, the law must be upheld whatever a Court may think of it. [See State of Bombay v. F.N. Basalara - AIR 195.SC 318].

20. In State of W.B. and another vs. E.I.T.A. India Ltd. - (2003) 5 SCC 23.- this Court summarized the well settled principles to determine the constitutional validity of the provisions of any statute and held : (SCC pp.244-45, para

4) "4. In examining the constitutional validity of the impugned provisions of a statute, it will be useful to bear in mind the following well-settled propositions. If a legislation is found to lack in legislative competence or is found to be in W.A.Nos.516/206, etc. -19- contravention of any provision of Part III or any other provision of the Constitution, the impugned legislation cannot escape the vice of unconstitutionality (see : Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 22.: AIR 197.SC 1461.and also State of A.P. v. McDowell and Co. [(1996) 3 SCC 709)]. A challenge to any statutory provision on the ground of the classification

being discriminatory and violative of Article 14 of the Constitution, can be successfully met on the principle of reasonable classification having nexus to the object of the Act sought to be achieved (see : State of Bombay v. F.N.Balsara [AIR 195.SC 31.:

1951. SCR 68.: (1951) 52 Cri LJ 1361.and Budhan Choudhry v. State of Bihar [AIR 195.SC 19.: (1951) 1 SCR 104.:

1955. Cri LJ 374]. However, the legislature enjoys a greater latitude for classification in the field of taxation (see : Steelworth Ltd. v. State of Assam [1962 Supp (2) SCR 58.: (1962) 13 STC 233], Gopal Narain v. State of U.P. [AIR 196.SC 370.and Ganga Sugar Corpn. Ltd. v. State of U.P. [(1980) 1 SCC 22.:

1980. SCC (Tax) 90 : AIR 198.SC 286]). No legislation can be declared to be illegal, much less unconstitutional on the ground of being unreasonable or harsh on the anvil of Article 14 of the Constitution, except, of course, when it fails to clear the test of arbitrariness and discrimination which would render it W.A.Nos.516/206, etc. -20- violative of Article 14 of the Constitution. (See : Steelworth Ltd. (1962 Supp (2) SCR 58.and McDowell and Co. (1996) 3 SCC 709))" 23. In the Constitution Bench decision of the Apex Court in Raja Jagannath Baksh Singh's case (AIR 196.SC 1563), while considering whether the court can strike down a legislative measure as violative of Article 14 of the Constitution of India, it has been held thus in para 16: "16. A taxing statute can be held to contravene Art. 14 if it purports to impose on the same class of property similarly situated an incidence of taxation which leads to obvious inequality. There is no doubt that 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 true 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. But, if in its operation, any taxing statute is found to contravene Art. 14, it would be open to Courts to strike it down as denying to the citizens the equality before the law guaranteed by Art. 14."

W.A.Nos.516/206, etc. -21- 24. Therefore, the law is well settled by the decisions of the Apex Court that the statute will have to satisfy the test under Article 14 and the learned Single Judge has also relied upon the decisions of the Apex Court while going into the contentions under Article 14 of the Constitution of India. In that view of the matter, it may not be necessary for us to discuss the principles stated by the Apex Court in each one of the decisions relied upon by the learned Standing Counsel for the appellants, Shri John Varghese.

25. Shri Thomas Mathew Nellimoottil, relied upon a decision of the Bombay High Court in Master Kochikar Ketan Manohar and others v. State of Maharashtra and others (CDJ 199.BHC

339) to contend that there can be difference between two types of students. He also relied upon the decision of the Apex Court in P. Laxmi Devi's case {(2008) 4 SCC 720.to contend that as far as taxing statutes are concerned, hardship is not relevant in determining constitutionality under Article 14.

26. We will now come to the principles stated in some of the decisions of the Apex Court relied upon by Shri P.K.Vijayamohanan, learned counsel appearing for the respondents in certain appeals. He relied W.A.Nos.516/206, etc. -22- upon the following observations in para 10 of the decision of the Apex Court in Sube Singh and others v. State of Haryana and others {(2001) 7 SCC 545}: "At the cost of repetition, it may be stated here that no material was placed before us to show the basis of classification of the existing structures on the lands proposed to be acquired." There, the policy of the Government to exclude lands having structures thereon from acquisition, was under challenge under Article 14 of the Constitution. It was held that the provisions are not reasonable and are arbitrary and discriminatory. This is relied upon to contend that in the present case also no material has been placed to show the basis of classification.

27. The State of Kerala v. Haji K. Haji K. Kutty Naha and others (AIR 196.SC

378) is the decision of the Apex Court where the constitutional validity of Kerala Building Tax Act, Section 4 and Schedule was considered. It was held that the provision will go against the Constitution and is ultra vires. In para 3 it was held

that "if the Act infringes the provisions of Article 14 of the Constitution, it must be struck W.A.Nos.516/206, etc. -23- down as unconstitutional." Reference was made to the earlier decision of the Apex Court in K.T. Moopil Nair v. State of Kerala {(1961) 3 SCR 77}.

28. Kerala Hotel and Restaurant Association and others {(1990) 2 SCC 502} is another decision of the Apex Court relied upon by Shri P.K. Vijayamohanan, learned counsel for the respondents. There, the matter came under the Kerala General Sales Tax Act and Tamil Nadu General Sales Tax Act. It was held in para 7 that "reasonableness of classification must be decided with reference to the realities of life and not in the abstract. A discernible dissimilarity between those grouped together and those excluded is a pragmatic test, if there be a rational nexus of such classification with the object to be achieved." Learned counsel also relied upon other decisions of the Apex Court to explain that even taxing statutes will have to satisfy the test under Article 14 of the Constitution.

29. Learned counsel Shri P.C. Joseph Pazheparambil relied upon a decision of the Apex Court in M/s. East India Tobacco Co.'s case (AIR 196.SC 1733) and that of this Court in Principal, St. Thomas College v. State of Kerala (1999 (1) KLT 815). We have already referred to the W.A.Nos.516/206, etc. -24- decision of the Apex Court in M/s. East India Tobacco Co.'s case (supra). In Principal, St. Thomas College's case the matter arose under the Building Tax Act, 1975 (Kerala). Therein, exemption was refused on the ground that the building in question was used for functioning a parallel college which is not recognised by the Government. This Court found that the fact that the building is used principally for educational purposes, is not disputed. Such being the position, it was held that the authorities cannot usurp the function of the Legislature by adding the word 'recognised' before the words 'educational purposes'.

30. Learned counsel, Shri S.A. Razzak submitted that really the provisions will act as discriminatory, as there cannot be any distinction between the parallel colleges and regular colleges and in the light of the relevant findings rendered by the learned Single Judge.

31. We will now come to the definitions under Sections 65(26), 65 (27) and the Explanation under Section 105 of the Finance Act. Section 65 (27) which gives the meaning of "commercial training or coaching centre" requires a close scrutiny, as to whether the distinction sought to be drawn by the learned counsel for the appellants are applicable or not. Going by the W.A.Nos.516/206, etc. -25- same, the following aspects are relevant: (a) any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate will come within the meaning; (b) it includes coaching or tutorial classes; (c) It does not include: (i) pre-school coaching and training centre; and (ii) any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force.

32. We are told that parallel colleges are sought to be included under the first limb of the above section on the plea that they are having tutorial classes. But it is clear that in the light of the stand taken in the counter affidavits filed by the appellants that they have understood parallel colleges as having the similar system like regular colleges wherein students are appearing for the same University examinations, and get the same certificates and they are also imparting similar education to the needy students. To attract the exclusion clause under Section 65(27) it should be one which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. Therefore, a W.A.Nos.516/206, etc. -26- distinction is drawn on the basis of the factors concerning issuance of certificate or diploma and the recognition of the same by any law for the time being in force.

33. When we come to the real picture herein, it can be seen that whether it is parallel colleges run by the writ petitioners herein or by the regular colleges are concerned, they are not issuing any certificate or diploma directly and are not awarding any degree, etc. Going by the averments of both sides, these types of institutions are preparing the students to appear for the University examinations in various subjects, like arts, science, commerce, etc. leading to award of degree, diploma, certificate, etc. which are approved by law. To that extent there is no dispute also.

34. We will now deal with the sustainability of the contentions based on the apparent distinction sought to be drawn by the learned counsel for the appellants, that in regular colleges there is a period of study, regulation of fees by the laws concerned, the matter of affiliation of colleges and other factors. We find from a reading of the provision that such a distinction has not been provided in the section. The Parliament has not empowered or has not left it to the discretion of the assessing authorities or others to classify W.A.Nos.516/206, etc. -27- the institutions on such basis. Of course, the power to grant exemption is there. Therefore, the meaning attributable under the provision itself is the relevant one. No distinction has been provided in the provisions based on the infrastructural facilities of the institutions, regulation of fees, curriculum or the like. Herein, there is no dispute that same subjects are being taught in parallel colleges also as observed by the learned Single Judge. It has also been held that the curriculum, the examinations written and the degrees obtained by students undergoing private study in parallel colleges and in the regular colleges are one and the same. Therefore, the argument based on regulation of fees, conduct of classes, affiliation under the regular stream of Colleges, etc. falls to the ground, as such is not the test that is imported by the Parliament into the provision. In fact, going by the Explanation to Section 105(zzc), another situation is provided therein that "where training or coaching is imparted for consideration and whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive, it will come within the expression "commercial training or coaching centre"". The same is also important W.A.Nos.516/206, etc. -28- while considering the sustainability of the arguments raised by the learned counsel for the appellants. We are, therefore, of the view that such a distinction as sought to be drawn by the learned Standing Counsel for the appellants, cannot be imported into the provision.

35. Therefore, what is important to consider is that if the institution is one wherein students are being prepared for acquiring qualification, certificate or diploma or degree which is recognised by law in force, then the same will come within the second limb of the exclusion clause under Section 65(27). The important distinction is thus drawn based on the fact of recognition by law for the time being

in force for the certificate, diploma or degree. It is well-known that as far as parallel colleges and self financing colleges in the State are concerned, they are preparing the students for acquiring University degrees, diploma certificate, etc. which is an admitted fact by the respondents also in their counter affidavit, the portions of which we have already extracted.

36. Apart from the same, in the first limb of Section 65(27), even though the words "tutorial classes" have been introduced, they may indicate cases where, under the generally known system in the State, failed students W.A.Nos.516/206, etc. -29- or some others who require improvement may be resorting to the facility in certain coaching centres. If the institutions which prepare students for acquiring regular degree or diploma recognised by law, are also to be roped in under the first limb by giving wider meaning to the course of study as tutorial classes, then it will defeat the purpose of the enactment itself and further the classification will suffer from the vice of arbitrariness. Learned counsel for the respondents would contend that the words "tutorial classes" alone are taken by the department herein to proceed against the writ petitioners. We cannot therefore consider the effect of the provision merely on the basis of the mentioning of "tutorial classes" in Section 65(27). Definitely the writ petitioners will not come under the said category, going by the admitted position.

37. When we come to the object of the provisions under Sections 65 (26) and 65(27), it can be seen that the object is not to include pre school coaching and training centre or any institute or establishment which issues any certificate or diploma or degree or any educational qualification recognised by law for the time being in force. Therefore, the exclusion clauses take in all such institutions or establishments whose endeavour is to W.A.Nos.516/206, etc. -30- prepare students for obtaining a certificate or diploma or degree or educational qualification recognised by law. It is well-known that such degrees or diplomas are provided by various enactments including different University Acts, etc. Thus, students who are preparing for such type of diplomas, degrees or certificates, are not to be saddled with the payment of service tax. Since the object is evident from Section 65(27), an interpretation of the provision in consonance with the object will not be violative of the statute. This is especially so since other activities by coaching centres alone

are taken care of under the first limb.

38. The learned Single Judge's conclusion even though vehemently attacked by the learned counsel for the appellants pin point on certain important aspects. It was found that the students of the two streams, namely, students studying in the colleges affiliated to the University and private students are having no distinction between them. The main reason for many of the students not joining regular courses is economic and limited number of seats available in the affiliated colleges. These aspects are well-known. It is in that context, we will have to judge whether the conclusion that the students landing in parallel colleges are less fortunate ones, who are W.A.Nos.516/206, etc. -31- poorer to one joining regular courses. We find no reason to take a different view on those aspects. As far as the State are concerned, such colleges are established because of various factors like, catering to the needs of students, who cannot be accommodated in the regular colleges. Large number of students are coming out every year after passing Plus Two examinations and it is well-known that there are no sufficient facilities and number of seats for all of them to get admission in the regular colleges, are not there.

39. The crucial aspect is whether, there is an intelligible differentia in the classification sought to be introduced. These students form a homogeneous class. The coaching centres which come within the first limb of the Section 65(27) alone are subjected to the tax liability. Therefore, since Parallel Colleges, which are involved herein are also conducting classes and preparing the students for appearing the very same University examinations like regular students, which fact is not disputed and has been practically agreed to in the counter affidavit filed by the respondents in the writ petitions also, we find no distinction between these two classes of students. Merely because some of the students who are less fortunate have found themselves in Parallel Colleges, that cannot lead to a situation where W.A.Nos.516/206, etc. -32- they have to bear the burden of service tax as rightly found by the learned Single Judge.

40. The learned Single Judge was right in finding that there may not be any qualitative difference in the coaching rendered in Parallel Colleges and in regular

colleges also. Apart from the same, as rightly pointed out by the learned counsel for the respondents, various self financing colleges are also in the field who are preparing students to undergo the course of studies like the one offered by the regular stream as well as parallel colleges. All these colleges are thus presenting the students to get the very same degree, diploma certificates etc.. Thus, when the levy of service tax will indirectly fall upon all students and when exemptions are provided, simultaneously for regular affiliated colleges, it will be patently discriminatory and violative of Article 14 of the Constitution of India. The question is not only whether there is legislative competence to impose tax on any segment but it should further satisfy the test under Article 14 of the Constitution of India as held by the Apex Court in various Judgments referred to as already. W.A.Nos.516/206, etc. -33- 41. As we have already observed, the distinction provided in the section is not based on any other characteristics like the curriculum, period of study, infrastructure provided by the colleges, the way in which fees are collected in regular colleges and Parallel Colleges. etc.. The legislative policy is clear from Section 65(27) itself. Therefore, we will have to find out, the real object of the provision and the impact of the same. Therefore, the plea raised by the learned counsel for the appellants that students undergoing regular course of study are covered by various other factors like curriculum, period of study undergone, University examinations etc.. are relevant cannot be accepted.

42. In that view of the matter, we find no reason to interfere with the decision of the learned Single Judge. We further clarify that those institutions or colleges, namely, parallel colleges, who are parties before this Court, who are preparing students to obtain certificates or diploma or degree or any other educational qualifications, recognised by law will not be liable to pay Service Tax under Sections 65(26) and 65(27) read with Section 65 (105)(zzc) of the Act. The Department will be free to find out the credentials of other institutions or coaching centres as to whether they will W.A.Nos.516/206, etc. -34- come within the first limb of Section 65(27). Such individual cases will have to be dealt with accordingly and in the proper legal manner, as the learned Single Judge has made clear that the judgment is not to be treated as declaring the Section unconstitutional in so far as any other category of educational institution or training centre is concerned. We are not making a

Universal declaration in respect of all institutions in whatever manner they are being conducted. The declaration made by this Court in the Judgment will be clarified to that extent and we further make it clear that the declaration will apply to the parties to these appeals who are petitioners in the writ petitions. The department will have to verify cases of other institutions individually based on materials collected from them, after issuing proper notices. Subject to the above clarification, the writ appeals are dismissed. No costs. (T.R.RAMACHANDRAN NAIR, JUDGE) (A.V. RAMAKRISHNA PILLAI, JUDGE) kav/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com