

**Erappa Vs. State of Karnataka**

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**Court :** Karnataka

**Decided On :** Jan-25-1991

**Reported in :** ILR1991KAR3102; 1991(2)KarLJ432

**Judge :** M. Ramakrishna, J.

**Acts :** [Karnataka Stamp Act, 1957](#) - Sections 9, 19 and 46A; Karnataka Stamp (Amendment)Act, 1980; [Constitution of India](#) - Article 14

**Appeal No. :** W.P. Nos. 10441 to 10449 of 1985 etc.

**Appellant :** Erappa

**Respondent :** State of Karnataka

**Advocate for Def. :** Nirmala Lingappaji, HCGP for R-1, R-2 and R-4 and ;D.V. Shylendra Kumar, Senior Central Govt. Standing Counsel for R-3

**Advocate for Pet/Ap. :** A.C. Rajasekhar and ;S.R. Subbanna, Advs.

**Disposition :** Writ petition dismissed

**Judgement :**

ORDER

**M. Ramakrishna, J.**

1. In this batch of Writ Petitions, the petitioners have sought for a common relief based upon similar set of facts. Therefore, I propose to hear and dispose of these Petitions by the common following order.

2. Admittedly, the petitioners are the employees working in the State of Karnataka in different Departments controlled by the Central Government. With a view to construct residential houses on the sites allotted to them by the CIL House Building Co-operative Society Limited, they approached the Government of India through the various Departments in which they are working for sanction of loans. According to them, they are low paid employees and they could not afford to pay the higher rentals and therefore they have taken up constructions of their own houses by raising loans.

3. According to the Rules governing such loans, the petitioners are required to execute Mortgage Deeds in favour of Government of India in respect of the sites on which loans were granted for construction of houses. Accordingly, Mortgage Deeds were executed some time in the year 1975, 1977 and 1978. After so executing the Mortgage Deeds, the petitioners were required by the Head of the Department to have their Mortgage Deeds registered in Madras. Therefore, they had to go to Madras by spending a lot of money to have their Mortgage Deeds registered there.

4. It is their contention that in Tamil Nadu the employees of the State Government as well as the Central Government were exempted from paying stamp duty on such documents. They also contend that such facility of exempting them from paying stamp duty has also been extended throughout the Country except Kerala and Jammu Kashmir, by the Official Memorandum dated 31-5-1978 issued by Ministry of Works and Housing, New Delhi, a copy of which is produced as Annexure-B.

5. However, on January, 31, 1985 the petitioners received the orders (Annexures H1 to H8) issued by the Special Deputy Commissioner for Detection of Under valuation of Stamps, Bangalore, requiring them to pay deficit stamp duty so as to enable them to have the Mortgage Deeds registered. Aggrieved by the said orders, they approached the Minister concerned in the Karnataka State requesting

him to extend the facility in their favour so as to enable them to have their Mortgage Deeds registered, without paying the stamp duty. It appears, they have made repeated efforts to get themselves exempted from payment of Stamp Duty but in vain. It is stated that by virtue of several Notifications issued under Section 9 of the [Karnataka Stamp Act, 1957](#) (hereinafter referred to as the 'Act') the State Government exempted both State and Central, Government Employees from paying Stamp Duty on Mortgage Deeds to be executed by them. According to them, earlier by one such Notification the State of Karnataka exempted the employees working in the Central Government from payment of stamp duty on Mortgage Deeds in respect of loans raised by them in regard to purchase of Motor Cars and Motor Cycles. Indeed, they have also stated that earlier by virtue of another such Notification issued by the State of Karnataka, the employees working in the Central Government were also exempted from payment of stamp duty on Mortgage Deeds in respect of loans raised from the HUDCO. It is stated that similar concessions were also extended to the employees working in the Defence. It is pointed out that, by virtue of a Notification issued by the State of Karnataka on 19-3-1971 only its employees are exempted 50 per cent Stamp Duty on the Mortgage Deeds, Agreements and Surety Bonds to be executed in favour of the State of Karnataka in respect of house building, house purchase loans or house repair advances granted by it and Central Government Employees are denied such concession. Therefore, it is contended that having regard to this anomaly relating to payment of stamp duty in respect of House Building Loans, the petitioners have approached this Court in these Petitions under Articles 226 and 227 of the [Constitution of India](#).

6. The main contention urged is that the treatment meted out to the Central Government employees in not putting them on par With the State Government employees in regard to payment of Stamp Duty on the Mortgage Deeds to be executed in favour of the respective Governments on Housing Loans is opposed to principles of natural justice apart from offending the provisions of Article 14 of the [Constitution of India](#)- According to them, the levy of stamp duties on documents registered in the year 1975, 1977 and 1978 is illegal, inasmuch as according to Government of India Memorandum, Annexure-B, the concession was available during these years and it came to be withdrawn only in the year 1979.

7. As against the contention urged for the petitioners, the stand taken by the State Government is that it is true that earlier the exemption from payment of stamp duty was granted at the instance of the Government of India. But, however, for the reasons best known to the State Government the said concession came to be withdrawn by the Amendment issued in the year 1979. Section 46A of the [Karnataka Stamp Act, 1957](#) which is relevant for the purpose of appreciating the contention is extracted below:-

'46A:- Recovery of stamp duty not levied or short levied -

1. Where any instrument chargeable with duty has not been duly stamped, the Chief Controlling Revenue Authority or any other officer authorised by the State Government (hereinafter referred to as the authorised officer) may, within (five years) from the date of commencement of the Karnataka Stamp (Amendment) Act, 1980 or the date on which the duty became payable whichever is later, serve notice on the person by whom the duty was payable requiring him to show cause why the proper duty or the amount required to make up the same should not be collected from him:

Provided that where the non-payment was by reason of fraud, collusion or any wilful mis statement or suppression of facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty, the provisions of this sub-section shall have effect, as if for the words (five years) the words (ten years) were substituted;

Provided further that nothing in this sub-section shall apply to instruments executed prior to first day of April 1972.'

Section 9 which deals with the power to reduce, remit or compound duties reads as follows:-

(a) reduce or remit, whether prospectively, or retrospectively, in the whole or any part of the State of Karnataka if, in the opinion of the State Government, it is necessary in public interest so to do, the duties with which any particular class of instruments, or any of the instruments belonging to such class, or any instruments

when executed by or in favour of any particular class, of persons, or by or in favour of any members of such class, are chargeable; and

(b) Provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate, of bonds or other marketable securities.

(2) Every Rule or Order published under Clause (a) of Sub-section (1) shall be laid as soon as may be after it is published before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the Rule or Order or both Houses agree that the Rule or Order should not be made, the Rule or Order shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule or Order.'

The State of Karnataka by Amendment issued on 3-12-1979 by Act No. 15/1980 amended Section 46A which has come into effect on 17-4-1980 by which the concession that came to be granted earlier in favour of the persons like the petitioners came to an end. In other words, the facility that was available earlier to the persons like petitioners for availing exemption was put an end to by the Amendment issued by the State of Karnataka by the Notification referred to above on 3-12-1979. The contention taken on behalf of the State is that the Amendment amending Section 46A came to be issued after following the procedure set forth under the Act and after affording an opportunity to the persons who may be affected. The Official Memorandum referred to and relied on by the petitioners has no statutory force and hence is not binding on the second respondent, On the other hand, it is contended that the second respondent is bound to act according to the legislation enacted by the State of Karnataka. The further contention of the respondents is that the stand taken by the petitioners that, the Official Memorandum relied upon by them having been repealed, their rights are affected, cannot be sustained and hence the contentions taken by the petitioners are liable

to be rejected -because the petitioners did not have any such vested right to seek exemption from payment of stamp duty as it is left to the wisdom of the Legislature - State and in the instant case the Legislature - State of Karnataka having taken the view that such concession in regard to the persons like petitioners was uncalled for, by the Notification, referred to above, the State of Karnataka amended the provision of Section 46A putting an end to such concession.

8. The argument advanced by the learned High Court Government Pleader for the State is that the State of Karnataka, in his wisdom, granted certain exemption to its employees exercising its discretion, and that the petitioners who are employees of the Union of India, constituting a different category with better pay scale and other facilities under service conditions cannot be kept on par with the State Government employees. In this behalf, the learned Government Pleader relied upon the Ruling of the Supreme Court in R.K. GARG v. UNION OF INDIA. Their Lordships of Supreme Court dealing with the similar question observed as follows:-

'8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative Judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed in *Morey v. Doud*, (1957) 354 US 457 where Frankfurter J. said in his inimitable style:

'In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative Judgment. The legislature after all has the affirmative responsibility. The Courts have only the

power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.' The Court must always remember that 'legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry' that exact wisdom and nice adoption of remedy are not always possible and that 'judgment is largely a prophecy based on meagre and uninterpreted experience.' Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot as pointed out by the United State Supreme Court in *Secy. of Agriculture v. Central Raig. Refining Co.*, (1950) 94 Led. 381, be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot be itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation, which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of the legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues.'

Similar is the view taken by this Court in *MUTHUKALI CHETTIYAR v. I.A.C. INCOME TAX*. In the said Decision, the Division Bench of this Court dealing with

the classification of the different set of persons for the purpose of treating them under Section 181A of the Wealth Tax Act, 1957, with reference to the criteria to be construed under Article 14 held as follows:

'The two expressions 'equality before the law' and 'equal protection of the law' may mean different things, but the entire concept is, however, fundamentally the same; that is, 'like should be treated alike'. This principle proceeds on the premise that men are unequal in many respects, but those who are similarly situated should be similarly treated. As different persons should be treated differently, the law has evolved a theory of reasonable classification but not class legislation.'

In view of the Rulings in the above two Cases, it is clear that the economic legislations should be viewed by the Courts with greater latitude and they cannot be struck down as invalid on the ground of crudities and inequities. In the instance case, the impugned Notification came to be made keeping in view the financial position of the persons who are unequal in many respects. Therefore, the impugned Notification having been based on reasonable classification, cannot be interfered with. Under the circumstances, I am of the view that the contentions of the petitioners to the contrary are liable to be rejected. Consequently, the Writ Petitions are also liable to be rejected.

9. One more aspect to be considered here is that the petitioners have referred to the concession available in the State of Tamil Nadu. They made an attempt to establish discrimination. It is necessary for me to mention here that the Office of the Sub-Registrar, Madras, has clearly indicated that the Union of India was aware that if the petitioners were to get their Mortgage Deeds registered in the State of Karnataka, they would have to pay proper stamp duty and for that reason only the petitioners were directed to register the documents at Madras where registration fee was exempted. In this behalf, Section 19 of the Act entitles the State of Karnataka to demand proper stamp duty from persons who have registered their documents outside the State but the same are subsequently enforced within the State of Karnataka and therefore the procedure initiated under Section 46A of the Act, by the respondents is in consonance with the said provisions of the Act. Thus the submission of the petitioners to the contrary cannot be sustained.

10. In some of the Writ Petitions a specific contention has been urged that before the imposition of the stamp duty, they were not heard. Having regard to the scope of Sections 9, 19 and 46A of the Act, I am of the opinion, that it is left to the wisdom of the State Government to extend the benefit of exemption to persons like the petitioners. I do not think that the petitioners are entitled to be given an opportunity of being heard personally, inasmuch as such right is not vested with them. Therefore, they cannot urge the contention. The further contention urged in common is that cyclostyled form is used while sending endorsement to the petitioners. Common order having been made by the first respondent, he sent up the order in cyclostyled form to all the petitioners. The petitioners cannot find fault with it. Therefore, this contention is one without any force.

In the result, the Writ Petitions are dismissed.

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