

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 25TH DAY OF JANUARY 2023 / 5TH MAGHA, 1944

WP(C) NO. 31061 OF 2013

PETITIONER:

CLINT JOHNSON
S/O.JOHNSON K.K., AGED 18 YEARS, KAKKRAKUNNEL HOUSE,
EDAVAKA VILLAGE, MANATHAVADY TALUK, MENTALLY RETARDED
PERSON REPRESENTED BY HIS GUARDIAN AND MOTHER MARY
W/O.JOHNSON, KAKKRAKUNNEL HOUSE, AGED 48, EDAVAKA
VILLAGE.

BY ADVS.

SRI.VARGHESE PARAMBIL

SRI.ALBERT JOSEPH

SRI.P.CHANDY JOSEPH

SRI.T.K.KUNJUMON

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY, TRANSPORT (B) DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.
- 2 TRANSPORT COMMISSIONER,
TRANSPORT COMMISSIONRATE, TRANS TOWERS, VAZHUTHAKADU,
THIRUVANANTHAPURAM-14
BY GOVERNMENT PLEADER SMT.RESHMITHA.R.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17.01.2023, THE COURT ON 25.1.2023 DELIVERED THE FOLLOWING:

C.R.

P.V.KUNHIKRISHNAN, J.

=====
W.P.(C.) No. 31061 of 2013

Dated this the 25th day of January 2023

JUDGMENT

The point to be decided in this case is whether the exclusion of 'mentally retarded persons' from the category of 'physically handicapped persons' in Ext.P3 notification issued by the Government by invoking the powers under Sec.22 of the Kerala Motor Vehicles Taxation Act, 1976 (for short the, "Act,1976") is discriminatory or not.

2. The short facts narrated in the writ petition are as follows: The petitioner is a mentally retarded person and the writ petition is filed through his guardian, his mother. A perusal of Ext.P1, the Standing Disability Assessment Board Certificate issued by the competent authority, will show that the petitioner is having mental retardation (moderate) and his permanent disability was assessed as 75%. It is stated in the writ petition that the petitioner is fond of

outings apart from that, if he is kept in the house itself, he often becomes restless and his behaviour sometimes becomes unpredictable. However, at the same time, it is very difficult for him to travel in the public transport system because of his physical disabilities. So, in order to integrate with the society, the parents of the petitioner thought of purchasing a motor car for his travel. Accordingly, a motor car was purchased in the name of the petitioner for his own use. It is the case of the petitioner that the 2nd respondent, The Transport Commissioner, insisted on the payment of one-time tax to the vehicle and hence, he was forced to pay the one-time tax as evidenced by Ext.P2 receipt. According to Ext.P3 notification, issued as per Sec.22 of the Act,1976, the payment of tax is exempted to - three wheelers, invalid carriages, motor cycles and motor cars which are owned by physically handicapped persons for their own use whether driven by the handicapped persons themselves or by others for the transport of such handicapped persons subject to the production of a certificate from the medical officer not below the rank of a civil surgeon that the owner of the vehicle is a physically

handicapped person with more than 40% disability at least. For the purpose of the notification, the physically handicapped persons are explained as blind, deaf and orthopeodically handicapped persons. Ext.P3 is the notification. Based on Ext.P3 notification, the petitioner claimed the refund of Rs.40,570/- paid by him as vehicle tax. But the 2nd respondent disallowed the exemption by stating that as per Ext.P3 notification, the petitioner is not entitled to the benefit because mentally retarded persons are not included in the explanation mentioned as physically handicapped persons in Ext.P3 notification. According to the petitioner, rejection of the prayer for the refund of the tax amount of Rs.40,570/- paid by the petitioner is blatantly discriminatory and violates the fundamental right under Article 14 of the Constitution of India. It is also submitted that as per Ext.P5 notification, the charitable organisation exclusively used for the conveyance of mentally retarded/physically handicapped/deaf and dump children, inmates of orphanages and old age homes etc. are given a deduction in motor vehicles tax. Hence it is submitted that the petitioner, who is a mentally retarded person, is entitled to tax

exemption. Hence, the above writ petition is filed with the following prayers :

- i. Call for the records relating to the case and to declare that the non inclusion of the mentally retarded persons in the Ext.P3 is discrimination and is in violation of the Article 14 of the constitution of India.
- ii. Issue Writ in the nature of mandamus or such other appropriate writ or order or direction commanding the respondents to refund of Rs.40,570 paid as per Ext.P2 by way of Motor Vehicle Tax to the petitioner.
- iii. To grant such other reliefs that are found just and proper to be granted in the facts and circumstances of the case or as may be prayed for during the course of above petition.

(SIC)

3. The 1st respondent filed a counter affidavit, in which it is stated that as per the existing definition of the term 'physically handicapped', vide SRO No.301/98, mental retardation is not considered as a physical handicap and hence, the petitioner is not entitled to the benefit of exemption from the payment of motor vehicles tax. It is also stated in the affidavit that the hardship encountered in parenting a differently abled child is not disputed. But, according to the 1st respondent, The Taxation Authority, the 2nd

respondent, The Transport Commissioner is bound by the prevailing rules and laws and thus the rejection of the prayer of the petitioner for exemption from tax is justified. It is stated in the counter affidavit that the 2nd respondent is not a competent authority to overrule the existing provisions and hence, there is no need to interfere with Ext.P4 order.

4. A counter affidavit is filed by the 2nd respondent also. Almost similar contentions raised in the counter affidavit filed by the 1st respondent are reiterated in the counter filed by the 2nd respondent. It is also stated that there are several other matters which should be addressed before taking a decision on these types of matters. It is also stated that it is a moot question to ask, whether a mentally challenged person can act on his own and own up to his responsibilities and questions relating to insurance coverage and third-party claims. According to the 2nd respondent, it requires serious consideration by the legislature. It is also stated that the mentally challenged persons are a distinct category from the physically challenged persons because the physically challenged are capable of

owning criminal and civil liabilities, whereas the mentally challenged cannot have mensrea or civil liability. Therefore, it is stated by the 2nd respondent in the counter affidavit that this is a matter having serious legal consequences and that the third party claims would get frustrated. But, the 2nd respondent submitted that the matter is under the consideration of the State Government, and without amendment of the law, no relief can be granted in this case. It is also stated that the welfare measures initiated by the Government have been widely misused nowadays. It is further stated that the vehicles are registered in the name of physically handicapped persons, just for the purpose of evading tax, and thereafter the same is used for other purposes. Hence the Department is highly apprehensive about the extension of such benefits as this would seriously harm the revenue interest of the State is the further contention raised in the counter affidavit.

5. Heard the learned counsel for the petitioner and the learned Government Pleader.

6. The learned counsel for the petitioner reiterated the contentions raised in the writ petition. The counsel submitted that the

exclusion of mentally retarded persons from the explanation of physically handicapped persons in Ext.P3 is discriminatory and arbitrary. According to the counsel, the exclusion of mentally retarded persons from the category of physically handicapped persons is an injustice and is an improper classification. It is also contended by the petitioner that, subsequent to Ext.P3 notification, the Government issued G.O.(P).No.13/2022/TRANS dated 26.04.2022 in which the Government exempted tax for the motor cars having purchase value up to Rs.7,00,000/-, which are owned by persons with autism or cerebral palsy or multiple disability or mental retardation, subject to certain conditions. Therefore, there is no justification for denying the tax exemption to the petitioner who purchased the vehicle before the above Government Order is the submission.

7. Adv.Reshmita Ramachandran, the Government Pleader on the other hand submitted that the powers of the Government to exempt tax as per section 22 of the Act,1976 is discretionary in nature. The Government exercised that discretion and gave a concession to certain categories. Under such a situation, this

Court may not interfere with such concession granted by the Government. The Government Pleader also submitted that after a detailed study, the Government felt that the concession granted to physically handicapped persons should be enlarged further, and accordingly, tax exemption is granted for motor cars owned by a person with autism or cerebral palsy or multiple disability or mental retardation with effect from 01.03.2022. The petitioner purchased the car before 01.03.2022 and therefore, the petitioner is not entitled to the tax exemption. It is the specific contention of the Government Pleader that there is no application of Article 14 of the Constitution in a concession given by the Government. The learned Government Pleader conceded the hardship encountered in parenting a differently abled child but, the Government Pleader submitted that the 2nd respondent is bound by the orders that are in existence as on the date of purchase of the motor car by the petitioner, and hence, the rejection of the claim for tax exemption is justified.

8. The point to be decided in this case is whether the mentally retarded persons are also entitled for tax exemption while

purchasing motor cars in the light of the fact that physically handicapped persons were given such an exemption as per Ext.P3 order. As per Section 22 of the Act, 1976, the Government may, if they are satisfied that it is necessary in the public interest so to do, by notification in the Gazette make an exemption or reduction in the rate or other modification either prospectively or retrospectively; in regard to the tax payable under this Act or under the Kerala Motor Vehicles Taxation Act, 1963 or the Kerala Motor Vehicles (Taxation of Passengers and Goods) Act, 1963: by any person or class of persons; or in respect of any motor vehicle or class of motor vehicles; or in respect of any motor vehicle or class of motor vehicles using a specified route, subject to such terms and conditions as they may deem fit.

9. Ext.P3 is a notification issued in exercise of the powers under Section 22 of the Act,1976 by the Government of Kerala. As per Ext.P3, the Government has exempted three wheelers, invalid carriages, motor cycles and motor cars which are owned by the physically handicapped persons for their own use whether driven

by the handicapped persons themselves or by others for the transport of such handicapped persons, from the tax payable under the Act,1976 from the 1st day of April, 1998 permanently subject to the production of a certificate from a medical officer not below the rank of a civil surgeon that the owner of the vehicle is a physically handicapped person with more than 40% disability at least. The explanation to the notification states that, for the purpose of the notification, physically handicapped persons means, the blind, the deaf and the orthopeodically handicapped. It will be better to extract the explanation to the notification hereunder:

“Explanation:- For the purpose of this notification physically handicapped persons means:

(a) The blind - That is those persons who suffer from any of the following condition:

(1) total absence of sight,

(2) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lense.

(3) Limitation of the field of vision substanding an angle of 20 Degrees or worse,

(b) The Deaf:- That is those persons in whom the sense of hearing is non functional for the ordinary purpose of life. Generally a lose of hearing at 70 decibels or above at 500, 1000 or 2000 frequencies will make residual hearing non-functional.

(c) The Orthopeodically handicapped:- That is those persons who have a physical defect or deformity which caused an interference with the normal functioning of born muscles and joints. (Notification GO.(MS) No.16/96/Trans. Dated 31st March 1998)”

10. From the above explanation, it is clear that the tax exemption available as per Exhibit P3 is only to the blind, the deaf and orthopeodically handicapped.

11. Subsequently, as per G.O.(P).No.13/2022/TRANS dated 26.04.2022, the tax exemption is granted to the motor cars having purchase value up to 7 lakhs which are owned by persons with autism or cerebral palsy or multiple disabilities or mental retardation with effect from 01.03.2022. It will be better to extract G.O. (P).No.13/2022/TRANS dated 26.04.2022:

“GOVERNMENT OF KERALA
Transport (B) Department

NOTIFICATION

G.O.(P)No.13/2022/TRANS

Dated, Thiruvananthapuram 26th April,

2022.

S. R. O. No. 400/2022

In exercise of the powers conferred by section 22 of the Kerala

Motor Vehicles Taxation Act, 1976 (19 of 1976), the Government of Kerala, being satisfied that it is necessary in the public interest so to do, hereby exempt the motor cars having purchase value up to Rs. 7 lakh which are owned by persons with autism or cerebral palsy or Multiple Disabilities or Mental Retardation from the tax payable under the said Act, from 1 March, 2022, permanently, subject to the following conditions, namely:-

(i) the vehicle shall be used for the transportation of such persons as specified above:

(ii) the owner of the vehicle shall be eligible for tax exemption for only one vehicle:

(iii) a certificate issued by a Medical Board in Government sector to the effect that the owner of the vehicle is suffering from autism or cerebral palsy or Multiple Disabilities or Mental Retardation having not less than 40% disability, shall be produced.

By order of the Governor,
BIJU PRABHAKAR,
Secretary to Government.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

As per notification issued under G.O.(Ms) No.16/98/Tran. dated 31st March, 1998 and published as S.R.O. No. 301/98 in the Kerala Gazette Extraordinary No. 546 dated 31st March, 1998, Government have exempted three wheelers, invalid carriages, motor cycles and motor cars owned by the physically handicapped persons from payment of

tax under the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976). Considering the representations received from the parents of mentally challenged persons, requesting to exempt the tax under the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976) in respect of the vehicles registered in the names of such persons and used for the transportation of such persons, Government have decided to exempt the motor cars having purchase value up to Rs.7 lakh which are owned by persons with autism or cerebral palsy or Multiple Disabilities or Mental Retardation from the tax payable under the said Act subject to the production of a certificate issued by a Medical Board in Government sector to the effect that the owner of the vehicle is having not less than 40% disability.

The notification is intended to achieve the above object.”

12. From a reading of the above Government Order including the explanatory note, it is clear that the Government extended tax exemption to persons with autism or cerebral palsy or multiple disabilities or mental retardation. Ext.P3 order is referred to in the explanatory note of the above Government Order dated 26.04.2022. It is stated that the tax exemption is enlarged to persons with autism or cerebral palsy or multiple disabilities or mental retardation because of the representation received from the parents of such persons. But as per the above Government Order dated

26.04.2022, the tax exemption is available only to the persons who have purchased the motor cars from 01.03.2022 onwards. Admittedly, the petitioner who purchased the motor car is not entitled to the benefit of G.O.(P)No.13/2022/TRANS dated 26.04.2022, because he purchased the vehicle before the above Government order but after Ext P3 order. Therefore, this Court has to decide whether the exclusion of mentally retarded persons from the explanation to Ext.P3 Government Order is discriminatory or not.

13. Nowadays physically handicapped persons including mentally retarded persons are usually called or termed as, 'differently abled persons' or 'specially abled children'. Why are they called 'differently abled' or 'specially abled'? In my opinion, a majority of the citizens in this country have some disability when compared to the minority. Some citizens may sing beautifully like the legends K.J.Yesudas or Lata Mangeshkar even without any training or coaching. That is their inborn talent. We can see such people in our villages, schools, colleges and even on the streets. But majority of the citizens may not have such an ability. Similarly, some persons may

dance without coaching or training, like Mrinalini Vikram Sarabhai or Dhananjayan Mash who are some of the stalwarts in this field. They just watch the dance performance of the legends and dance like them. The majority of the citizens may not be able to do so because there is no such inbuilt talent in them. Similarly, there are be orators in the villages of this Country, who may not have any basic education but, they speak like the great orator, Sukumar Azhikode. The majority of the citizens may not have such an ability. Similar is the situation in acting, writing, poetry writing and even in the fields of athletics, football, volleyball, etc. A section of people may have inborn talent and they will perform without any training or coaching and the others may not have such an inborn talent. A coconut climber can be seen in almost all villages in our state and he can climb on coconut trees with ease. But the majority of the people are not able to climb like that because there is no such talent for them. Moreover, we all have heard about the talent of 'Ekalavya'(a character in the great Indian epic Mahabharatha) who studied archery without the aid of any 'gurus' but treated 'Dronacharya' as his Guru in his mind. Therefore, a minority of

citizens are 'differently abled persons' or 'specially abled persons' when compared to the majority of the citizens. Under such a situation also the minority can be called 'differently abled persons' or 'specially abled persons'. Therefore, none of us need to boast that, we are something great when compared to others. Every human being is having incapacities either mentally or physically or talent-wise. Every citizen is having inborn talents in one way or another way. That is why physically handicapped persons including mentally retarded persons are called 'differently/specially abled persons'. Why do we treat them separately and watch them with sympathetic eyes? When we appreciate the talented minority among us, why not appreciate these categories of our citizens who are 'differently/specially abled persons'? They are not different, but one among us. Their parents need not worry about the society because they are one among the citizens. Parents of these 'differently/specially abled persons' need not be anxious as the state will protect their interest, and their fellow citizens will keep them close. Some of these differently/specially-abled persons will write stories, some of them will write poetry and

some of them will sing and dance. We should not exclude them from the general category and as they are also differently abled persons. They are a part of our society. Just like the lack of inborn talents in some citizens, a differently abled person also has some disability, but they have better abilities than others in some other field.

14. 'Ashtavakra' a vedic sage in Hinduism born with eight deformities, is the author of 'Ashtavakra Gita' which examines the metaphysical nature of existence and the meaning of individual freedom and also presents its thesis that there is only one supreme reality. Stephen Hawking, an English theoretical physicist has some physical disabilities, but he is the author of several books and was one of the most renowned person in the world. Therefore, respecting the differently/specially abled person is the duty of every citizen. They don't want sympathy from the citizens. They want recognition from the citizens. Citizens need not treat them as physically disabled persons. But the citizens should treat them as differently/specially-abled persons. Respecting them and treating them as equals is the duty of every citizen of this country. The Holy Quran urges to treat

people with intellectual disabilities with kindness and urges to protect them. The prophet Muhammad is shown to have treated disabled persons with respect. Not only in Islam, but all religions recognizes the same, and therefore it is the duty of the citizens to respect the differently abled persons and not to watch them with sympathetic eyes. They are similar to us. Some of us may have some abilities likewise they are also have abilities that we do not have.

15. in my opinion, the citizens of this Country should visit differently/specially abled children when they get an opportunity, not to sympathize with them but to love them and to interact with them. At this juncture, this Court has to recognize the efforts of Mr.Gopinath Muthukad, a famous magician, for the upliftment of differently/specially abled children. He is conducting a centre for differently abled children at Kazhakootam, Thiruvananthapuram which is known by the name, "Different Art Centre". More than 100 differently abled children are there in this centre. Their talents are great. A person visiting the Different Art Centre will understand that we are nothing in front of those differently abled children. They sing,

dance, play drums and perform magic for us. The performance of these students are available online (www.differentartcentre.com). The great ability of one boy by the name, Varun Ravindran in this centre is thrilling and unimaginable. He can read and write several languages without the help of a teacher. He can read and write Bengali, Telugu, Kannada, English etc. He studied these languages without any serious coaching or training. The experts in the field says that it is a special ability of this person. We can also see a boy named Sreekanth in the Different Art Centre who sings beautifully with a smile on his face along with the rhythm played by another boy named Kashi. The perfection of Sreekanth in singing the famous Malayalam movie song "Rama Katha ganalayam..."(Movie-Bharatham) cannot be described in words. These are only some examples. Differently abled children are enjoying themselves under the wings of Mr.Gopinath Muthukad and his dedicated staffs. It is the duty of this Court to appreciate such dedicated persons. The Registrar General of this court will send a recognition certificate to Mr.Gopinath Muthukad and his entire team for their valuable efforts taken to help the differently/specially abled

children.

16. The question to be decided in this case is whether mentally retarded persons are entitled to tax exemption while purchasing a motor car. As per Ext.P3 notification, physically handicapped persons are entitled to tax exemption with effect from 01.04.1998. But the explanation of "physically handicapped persons" in Ext.P3 Government Order is confined to the blind, the deaf and the orthopeodically handicapped persons. A mentally retarded person is not included. The petitioner is a mentally retarded person with 75% disability. Such category of persons was not given tax exemption. Ext.P3 notification clearly says that the physically handicapped persons for their own use, whether driven by the handicapped persons themselves or by others for the transport of such handicapped persons are entitled to tax exemption. Therefore, the contention of respondents 1 and 2 that simply because a mentally retarded person cannot own the responsibilities and questions relating to insurance coverage and third-party claims, the tax exemption can not be enlarged to them, is not justified. The plight of the parents of

the differently abled person is to be considered at this point of time. Some of the parents may have to take their children to school or other places. Under such a situation, a vehicle may be a dream to them. The suffering and insult suffered by some of the parents cannot be ignored. As I said earlier, this is a country in which every citizen has some disability. There is no difference between a normal man and an abnormal man. Even a normal man, has some disabilities. Likewise, an abnormal man, has abilities too. We should recognize those abilities.

17. What is the basis for giving an explanation in Ext P3 and limiting physically handicapped persons only to the category of blind, deaf and orthopedic persons? In my opinion, there is no basis for excluding mentally retarded persons from the category of physically handicapped persons.

18. The Black's Law Dictionary defines "child with disabilities" like this: "Under the Individuals with Disabilities Education Act, a child who needs special-education or related service because of (1) **mental retardation**, (2) a hearing, language or visual

impairment, (3) a serious emotional disturbance or (4) another health impairment or specific learning disability". Article 1 of United Nations Convention on the Rights of Persons with Disabilities states that persons with disabilities include those who have long-term physical, **mental, intellectual** or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Section 2(i) of The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (in short the, "Act,1995"), defines "disability" as "blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, **mental retardation**, and mental illness. Similarly, the Rights of Persons With Disabilities Act, 2016 (for short the, "Act,2016") defines "person with a disability" in Section 2(s) as a person with long term physical, **mental, intellectual or sensory impairment** which, in interaction with barriers, hinders his full and effective participation in society equally with others. The United Nations Convention on the Rights of Persons with Disabilities is the basis for the enactment of the Act,2016. As per the United Nations

Convention on the Rights of Persons with Disabilities, Act 1995 and also as per the Act,2016, the person with disability includes a mentally retarded person. Under such circumstances, I am of the considered opinion that the exclusion of mentally retarded persons in the explanation of physically handicapped persons in Ext.P3 notification is a clear case of discrimination. The Apex Court, in **Deaf Employees Welfare Association and Another v. Union of India and Others [2014 (3) SCC 173]**, considered the comparison of disabilities among persons with disabilities. The Apex Court observed that the person suffering from hearing impairment is equal to blinds and orthopeodically handicapped persons. It will be beneficial to extract paragraphs 23, 25, 26 and 28 of the above judgment hereunder:

"23. The Disabilities Act, as already indicated, states that the "persons with disabilities" means persons suffering from not less than 40% of "any disability, as certified by the medical doctor. When a person is having any of the disabilities mentioned in S.2(i) and is so certified by the Medical Doctor, he is entitled to the benefits of all the Schemes and benefits provided by the Government and there can be no further discrimination among the persons with varied or different types of disabilities. In the matter of affirmative action, in our view, there cannot be further discrimination between a person with disability of 'blindness' and a person with disability of hearing impairment. Such discrimination has not been envisaged under the Disabilities Act. All the categories

of persons mentioned in S.2(i) have their own disadvantages, peculiar to themselves. A 'visually impaired person' cannot be equated with 'hearing impaired person' and vice versa. Both have different type and mode of disability. For a blind person, visibility may be poor, sometimes zero per cent, but would be able to hear and understand what is going on in and around him. At the same time, a deaf and dumb person could see, but would not be able to talk and hear what is going on around him. The nature of disability of those categories of persons may not be same, but the disabilities they suffer are to be addressed with care and compassion.

25. The hearing impaired person also would not be able to hear the sound of horn and passing vehicles and, at times, will have to seek the assistance of other co-passengers or strangers on the road. We find it difficult to subscribe the view that disability, as envisaged under S.2(a) of the Act, with respect to the hearing impaired persons, is less than the disability of a blind person. No such discrimination has ever been made or visualized among the persons with disabilities mentioned in S.2(i) of the Act as they form a class by themselves. A further discrimination amongst themselves is clearly violative of Art. 14 of the Constitution of India.

26. The Disabilities Act deals with a well defined class i.e. "persons with disabilities" mentioned in S.2(i). The nature of disability may differ from person to person included in S.2(i), but all such persons have been categorized as a group of "persons with disabilities" under S.2(i) read with S.2(t) of the Act. In our view, the differentia sought to be canvassed by the Ministry of Finance has no rational relation to the object sought to be achieved by the Disabilities Act, which envisages to give equal opportunities, protection and rights to the "persons with disabilities". Equality of law and equal protection of law be afforded to all the "persons with disabilities" while participating in Governmental functions. Transport allowance is given to Government employees since many of the Government employees may not be residing in and around their places of work. Sometimes, they have to commute long distances to and fro. There has been an unprecedented increase in the commutation time between the residence and place of work which effects the work environment in offices adversely as the employee spend much of their energy in commuting and, in the case of

persons with disabilities, the situation is more grave.

**

28. The deaf and dumb persons have an inherent dignity and the right to have their dignity respected and protected is the obligation of the State. Human dignity of a deaf and dumb person is harmed when he is being marginalized, ignored or devalued on the ground that the disability that he suffers is less than a visually impaired person which, in our view, clearly violates Art.21 of the Constitution of India. Comparison of disabilities among "persons of disabilities", without any rational basis, is clearly violative of Art. 14 of the Constitution of India. In our view, the recommendation made by the Ministry of Health and Family Welfare for extending the benefit of transport allowance to the Government employees suffering from hearing impairment in equal with blinds and orthopaedically handicapped Government employees is perfectly legal and is in consonance with Art.14 and Art.21 of the Constitution of India." (*Underline supplied*)

19. Similarly, in **Vikash Kumar v. Union Public Service Commission and Others [2021 (5) SCC 370]**, the Apex Court considered the provision for the facility of a scribe for a person with disabilities. While considering the same, the Apex Court considered the matter in detail in paragraphs 41 and 42, which are extracted hereunder:

"41. When the government in recognition of its affirmative duties and obligations under the RPwD Act 2016 makes provisions for facilitating a scribe during the course of the Civil Services Examination, it cannot be construed to confer a largesse. Nor does it by allowing a scribe confer a privilege on a candidate. The provision for the facility of a scribe is in pursuance of the statutory mandate to

ensure that persons with disabilities are able to live a life of equality and dignity based on respect in society for their bodily and mental integrity. There is a fundamental fallacy on the part of the UPSE/DoPT in proceeding on the basis that the facility of a scribe shall be made available only to persons with benchmark disabilities. This is occasioned by the failure of the MSJE to clarify their guidelines. The whole concept of a benchmark disability within the meaning of Section 2(r) is primarily in the context of special provisions including reservation that are embodied in Chapter VI of the RPwD Act 2016. Conceivably, the Parliament while mandating the reservation of posts in government establishments and of seats in institutions of higher learning was of the view that this entitlement should be recognized for persons with benchmark disabilities. As a matter of legislative policy, these provisions in Chapter VI have been made applicable to those with benchmark disabilities where a higher threshold of disability is stipulated. Except in the specific statutory context where the norm of benchmark disability has been applied, it would be plainly contrary to both the text and intent of the enactment to deny the rights and entitlements which are recognized as inhering in persons with disabilities on the ground that they do not meet the threshold for a benchmark disability. A statutory concept which has been applied by Parliament in specific situations cannot be extended to others where the broader expression, persons with disability, is used statutorily. The guidelines which have been framed on 29 August 2018 can by no means be regarded as being exhaustive of the situations in which a scribe can be availed of by persons other than those who suffer from benchmark disabilities. The MSJE does not in its counter affidavit before this Court treat those guidelines as exhaustive of the circumstances in which a scribe can be provided for persons other than those having benchmark disabilities. This understanding of the MSJE is correct for the simple reason that the rights which emanate from provisions such as S.3 extend to persons with disability as broadly defined by S.2(s).

42. We are, therefore, of the view that DoPT and UPSC have fundamentally erred in the construction which has been placed on the provisions of the RPwD Act 2016. To confine the facility of a scribe only to those who have benchmark disabilities would be to deprive a class of persons of their statutorily recognized entitlements. To do so would be contrary to the plain terms as well as the object of the statute."

20. This Court, in **Sumith V. Kumar and Another v. State of Kerala and Others [2022 (1) KLT 377]**, observed that it is by virtue of the statute, persons with disability are treated as a homogeneous class irrespective of social classification. It will be better to extract paragraph 8 of the above judgment:

“8. The State can identify classes of persons who are having distinct characteristics or disadvantages and treat them separately under law. Persons having disability form a homogeneous class by themselves where disability is not on the basis of social backwardness but on the basis of physical disability. It is relevant to point out that the claim of the petitioners for reservation is traceable to Art. 15 which is an enabling right, the claim of the PWD persons traces to a statute promulgated for the purpose of implementation of a Constitutional mandate. Therefore, it is by virtue of the statute, persons with disability are treated as a homogeneous class irrespective of social classification. Such a valid classification cannot be sought to be impeached by way of linking it with Art. 16 or Art. 15 which does not apply. There is no violation of Art. 14, as Art.14 postulates equal treatment for equally placed persons that is to say unequals can be treated unequally. To be more precise, differential treatment is permissible when it comes to unequals. Persons claiming social reservation fall in one compartment and persons with disabilities who are included in the quota fall on a different distinct compartment so there arises no question of violation of Art. 14 of the Constitution.”

21. In the light of the above principles, when the Act,1995 and the Act,2016 says that the person with disability

includes mentally retarded persons also, the exclusion of mentally retarded person from tax exemption by giving an explanation, restricting the physically handicapped persons to that of blinds, deaf and orthopeodically handicapped persons, is discriminatory and is liable to be interfered by this Court. This Court is of the considered opinion that the exclusion of mentally retarded persons from the explanation to Ext.P3 Government Order is discriminatory and violative of Article 14 of the Constitution of India.

22. It is true that with effect from 01.03.2022, person with autism or cerebral palsy or multiple disabilities or mental retardation are exempted from tax payable while purchasing motor cars up to the value of Rs.7 lakhs. But, as per the above notification, the same is applicable only from 01.03.2022. It is true that Ext.P3 and the G.O.(P) No.13/2022/TRANS dated 26.04.2022 are concessions given by the Government to certain categories of persons. But, when a concession is given to certain categories of persons, there cannot be a discrimination among that category itself. Here is a case where physically handicapped persons were given

concessions as per Ext.P3 and G.O.(P) No.13/2022/TRANS dated 26.04.2022. But, as per Ext.P3, the mentally retarded person is not included in the category of physically handicapped persons. Of course, they were included as per G.O.(P) No.13/2022/TRANS dated 26.04.2022. Admittedly the petitioner purchased the car before 26.04.2022 and after Ext.P3 Government Order. I am of the considered opinion that the petitioner is also entitled to tax exemption and the amount collected from the petitioner is to be refunded to the petitioner forthwith. If any mentally retarded person has purchased a car in their name for their personal use for the period starting from 01.04.1998 (the date of Ext.P3) to 01.04.2022(effective date of the G.O.(P).No.13/2022/TRANS dated 26.04.2022), all those persons are entitled to tax exemption and if applications are filed by them, the Government should refund the tax remitted by them.

Therefore, this writ petition is disposed of in the following manner:

1. Ext.P4 is set aside.
2. It is declared that mentally retarded persons are also entitled

to tax exemption as per Ext.P3 Government Order (S.R.O.No.301/1998- GO.(MS)No.16/96/Trans. Dated 31.3.1998).

3. The respondents will refund the one time tax paid by the petitioner (Rs.40,570/-) to him forthwith, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

4. If any mentally retarded persons have purchased a motor car in their name during the period from 01.04.1998 till 01.03.2022 for their own use and paid tax, they are entitled to refund of the tax, if an application is filed to that effect.

5. The Registrar General will convey the appreciation of this Court to Mr.Gopinath Muthukad and the entire team of Different Art Centre (DAC) along with a copy of this judgment in the light of the observations of this Court in paragraph-15 of this judgment.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF WP(C) 31061/2013

PETITIONER EXHIBITS

EXT.P1 - A PHOTOCOPY OF THE CERTIFICATE DATED 7-10-09 ISSUED BY THE STANDING DISABILITY ASSESSMENT BOARD, DISTRICT HOSPITAL, WAYANAD ASSESSING DISABILITY AT 75%

EXT.P2 - A PHOTOCOPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE SRTO MANANTHAVADY DATED 2-8-13

EXT.P3 - A PHOTOCOPY OF SRO NO.301/98 DATED 31-3-98

EXT.P4 - THE TRUE COPY OF THE ORDER DATED 27-9-13 DISALLOWING THE TAX EXEMPTION.

EXT P5: COPY OF SRO NO.610/99 DTD 19.6.99

RESPONDENTS EXTS : NIL

TRUE COPY

P.A.TO JUDGE