

(2018) 04 PAT CK 0117

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3071, 3081, 3088, 3112, 3119 Of 2017

A V I Cable Network And Ors

APPELLANT

Vs

State Of Bihar, Through Its Chief Secretary And Ors

RESPONDENT

Date of Decision : 16-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 301, 304
Bihar Entertainments Tax Rules, 1984 — Rule 19(A), 19(A)(1)
Bihar Entertainment Tax Act, 1984 — Section 2, 3(A)(A)

Citation : (2019) 2 PLJR 543

Hon'ble Judges : Rajendra Menon, CJ;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Manish Jha, Bishwa Bibhuti Kumar Singh

Final Decision : Dismissed

Judgement

The present writ applications have been preferred seeking following reliefs:-

I. To declare the amendment in sub-rule (1) of Rule 19 A of Bihar Entertainments Tax Rules, 1984 issued vide S.O. 307, dated

16.12.2016 as ultra vires and against the Constitution of India.

II. To declare the amendment in sub-rule (1) of Rule 19 A of Bihar Entertainments Tax Rules, 1984 issued vide S.O. 307, dated 16.12.2016

against the fundamental rights as envisaged under the Constitution of India and also against the principles of natural justice and equity.

III. To declare the amendment in sub-rule (1) of Rule 19 A of Bihar Entertainments Tax Rules, 1984 issued vide S.O. 307, dated 16.12.2016

contrary to Article 301 and 304 of the Constitution of India.

IV. To direct the Respondent State not to discriminate the Cable Service or the Cable Television Network with the entertainment provider.

V. To grant any other and further relief/reliefs as to which this Honourable Court may deem fit and proper in the interest of justice.â??

The basic contention of learned counsel representing the petitioners in all these writ applications is that the petitioners who are local cable operators (in

short â??LCOâ?) are being burdened by imposing entertainment tax while allowing the entertainment providers to go scot-free without there being

any tax liability upon them. Learned counsel submits that amendment in sub-rule (1) of Rule 19-A of the Bihar Entertainment Tax Rules, 1984 is

against the fundamental rights of the petitioners as provided under Article 14 and Article 19(1)(g) read with Article 301 and 304 of the Constitution of

India and the same is liable to be declared ultra vires. It is also submitted that the legislation brought by the State in terms of amendment is

discriminatory in nature as it has sought to impose tax only on cable service. He further submits that the Entertainment Tax rate at present is highly

excessive and the State of Bihar is presently one of the highest entertainment tax charging State in the entire nation.

In the counter affidavit filed on behalf of the State a stand has been taken that the amendment in sub-rule (1) of Rule 19-A of Bihar Entertainment

Tax Rules, 1984 has been proposed in S.O. 261 dated 07.10.2016 whereby provision has been made to the effect that the consolidated amount of tax

payable under Section 3AA shall be paid by the proprietor of any cable service or cable television network for each connection given to the subscriber

at the rate of fifty rupees per connection per month irrespective of the fact that exhibition of programmes through cable service or cable television

network is combined with any service or supply of any goods for which a lump sum is charged from a person.

It is also stated that the objections against or suggestions for proposed amendment were invited as per extant provisions in the Act. The objections and

suggestions received were considered, and thereafter sub-rule (1) of Rule 19 A of Bihar Entertainment Tax Rules, 1984 was amended by S.O. 307

dated 16.12.2016, whereby the proprietor of any cable service or cable television network is required to pay rupees fifty per connection per month. It

is submitted that Rule 19 A was inserted in Bihar Entertainment Tax Rules, 1984 by S.O. 73 dated 05.09.2007 whereby proprietor of cable service or

proprietor of cable television network on the one hand and the entertainment providers on the other hand have been placed in two different classes.

All cable service network and the entertainment providers have been placed in two different classes. After the amendment made by S.O. 73 dated

05.09.2007, sub-rule (1) of the said Rule 19A contained the provision for the payment of entertainment tax of fifteen rupees per connection per month

by the Proprietor of cable service or cable television network. Sub-rule (2) of the said Rule enumerates that the entertainment provider shall pay

entertainment tax at the rate of fifteen percent of the gross collection per month of each connection given to the subscriber. Thus, according to the

respondents, they are classified in two groups and the classification being reasonable and not under challenge cannot be said to be discriminatory or

treating equals unequals. It does not violate Article 14 of the Constitution of India.

Having heard learned counsel for the petitioners as well as learned counsel representing the State, we find that competence of the State legislature to

make law for imposition and collection of tax on entertainment has not been questioned by the petitioners. Taxes on entertainment are an item

mentioned in Entry 55 of List II (State List) of the 7th Schedule to the Constitution of India. It is further submitted that such laws are based on an

intelligible differentia taking into consideration that the entertainment provider and service cable operator are working into two areas though both of

them are related to entertainment, we accept the submission advanced on behalf of State. The legislature have brought an amendment in Rule 19-A

whereunder the rate of tax imposable on proprietor of cable operator or television cable network has been fixed taking into consideration the

objections and suggestions and the various other factors such as purchasing power of the viewers etc., no fault may be found with such amendment.

The amendment cannot be allowed to be challenged on the ground of its being excessive on the face of uncontroverted stand of the State in its

counter affidavit that the rate of entertainment tax has been fixed after due consideration of the various factors enumerated in the counter affidavit. It

is pointed out that Rule 19-A inserted by S.O. 206 dated 17.12.1998 had contained provision to the effect that proprietor of cable service or cable

television network had to pay Rs.30/- per connection per month up to five channels exhibited and Rs.50/- per connection per month for more than five

channels exhibited. We also find that the tax is in the nature of indirect tax which is passed on to the subscribers and it is the subscribers who have to

pay entertainment tax and not the petitioners who are the cable operators in an ultimate analysis. We have perused the definition of entertainment

provider and cable operator under Section 2 of the Bihar Entertainment Tax Act, 1984. The definitions are as under:-

2(ee)â??Entertainment providerâ? means a person who transmits or re-transmits programmes or channels through a satellite by a set of

closed transmission paths and associated signal generation for reception of multiple users, commonly known as Direct to Home Service

(DTH), but does not include a cable operator.

2(m) â??Cable Operator? means any person who provides Cable TV service through a cable television network or otherwise controls or is

responsible for the management and operation of a cable television network.â??

Rule 19-A of the Bihar Entertainment Tax Rule, 1984 prior to its amendment vide S.O. 307 dated 16th December, 2016 reads as under:-

â??19A. Payment of fixed sum in lieu of tax payable under the Act by proprietor of Cable Service or Cable Television Network or by an

entertainment provider.- (1) The consolidated amount of tax payable under Section 3AA Network for each connection given to the

subscriber at the rate of fifteen rupees per connection per month irrespective of whether exhibition of programmes through Cable Service

or Cable Television Network is combined with any service or supply of any goods for which a lump sum is charged from a person.

(2) The consolidated amount of tax payable under Section 3AAA shall be paid by the entertainment provider for each connection given to

the subscriber at the rate of fifteen rupees per connection per month irrespective of whether exhibition of programmes by the entertainment

provider is combined with any service or supply of any goods for which a lump sum is charged from a person.â??

By virtue of S.O. 307 dated 16th December, 2016 sub-rule(1) of Rule 19-A has been substituted in following words:-

1. Amendment of sub-rule (1) of Rule 19A of the Bihar Entertainment Tax Rules, 1984.-

Sub-rule (1) of rule 19A of the said rules shall be substituted by the following:-

â??(1) The consolidated amount of tax payable under Section 3AA shall be paid by the proprietor of any Cable Service or Cable Television

Network for each connection given to the subscriber at the rate of fifty rupees per connection per month irrespective of the fact that

exhibition of programmes through Cable Service or Cable Television Network is combined with any service or supply of any goods for

which a lump sum is charged from a person.â??

We agree with the contention advanced on behalf of the State that the Act itself has placed the cable service operator or cable television network in a

different and distinct class from that of the service provider. The legislative competence of the State is not under challenge and therefore only because

the amendment to sub- rule (1) of Rule 19-A talks of only cable service and cable television network, it cannot be said to be violative of Article 14 and

Article 19(1)(g) of the Constitution of India. In our writ jurisdiction, we would not delve upon the rate of tax on the ground that the State of Bihar is

charging higher rate in comparison to other States in the country.

We do not find any merit in the writ applications. The same are, accordingly, dismissed.