

(1984) 04 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 6404, 6948, 6979, 6539, 6542, 6553, 6558, 6561, 6569, 6697, 6537, 7451, 7541, 7508, 7496, 7274, 7230, 7271, 7266, 7270, 6680, 6543, 6544, 6545, 6546, 6547, 6548, 6549, 6550, 6551, 6835, 6913, 6929, 6941, 7051, 7210, 7225, 7281, 8073,

Alankar Theatre

APPELLANT

Vs

Entertainment Tax Officer, Warangal

RESPONDENT

Date of Decision : 19-04-1984

Acts Referred:

Andhra Pradesh Entertainment Tax Act, 1939 — Section 4(1)

Citation : (1991) 82 STC 417

Hon'ble Judges : Y.V. Anjaneyulu, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : S. Dasaratharama Reddy, K. Raji Reddy, B. Subhadhan Reddy, Rajiv Indani, M.B. Rama Sarma, M.R.K. Chowdary, P. Babul Reddy, G.R. Subhramanyam, E. Raja Rao, M. Adinarayana Raju, M. Rajasekhara Reddy, M.V. Ramana Reddy, P. Anil Kumar Reddy, M.S.R. Subrahmanyam, Sattoor Chandrasekhar, A. Jaswant Raj, M. Laxmaya Sarma, S. Anand Reddy, B. Sudhakara Rao, Adnam Mahmood, P. Ramakrishna Raju, M. Jaganmohan, Chenna Basappa Desai, K. Somakonda Reddy, K.V. Upendra Gupta, V. Jagannadha Rao, K. Raji Reddy, J.V. Suryanarayana, M. Seshadri, R. Naik, S. Venkat Reddy, S. Parvatha Rao, C. Sadasiva Reddy, J. Eswaraprasad, P. Vittal Rao, B. Adinarayana Rao and G. Anjappa, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—Taxes on cinema entertainment in the State of Andhra Pradesh are levied and governed by the Andhra Pradesh Entertainments Tax Act, 1939 (hereinafter referred to as "the Act"). The Act was made by the Madras Legislature in 1939, simultaneously repealing the Madras Local Authorities Entertainments Tax Act, 1926. The object of the Act is to levy taxes on amusements and other entertainments, and to provide for the payment of compensation of the local authorities. The preamble to Act, as it now stands, reads as follows :

"An Act to impose taxes on entertainments in the State of Andhra Pradesh.

Whereas it is expedient to provide for the levy by the State Government of taxes on amusements and other entertainments, to repeal the Madras Local Authorities Entertainments Tax Act, 1926 (Madras Act V of 1927) and to provide for the payment of compensation to local authorities now levying a tax under the Act aforesaid, it is hereby enacted as follows :-"

The Act which was in force in the Andhra area of this State was extended to Telangana area, by the Madras Entertainments Tax (Andhra Pradesh Extension and Amendment) Act, 1958. It is necessary to notice certain relevant provisions of the Act.

2. Section 3 is the interpretation clause containing certain definitions. The expression "admission" is defined by clause (1) in the following words :

""admission" includes admission as a spectator or as one of an audience to an entertainment."

Clause (4) defines the expression "entertainment". According to it, ""entertainment" mean cinematograph exhibition to which persons are admitted on payment".

3. The expression "payment for admission" is defined by clause (7) in the following words :

""payment for admission" includes -

(a) any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving a tax or a higher tax is required;

(b) any payment for seats or other accommodation in a place of entertainment; and

(c) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment."

4. "Proprietor" is defined by clause (9) to include, in relation to any entertainment, any person responsible for the management thereof.

A. Position up to January 1, 1984 :

Section 4, as it stood until January 1, 1984, provided for levy of entertainment tax at a certain percentage on each payment for admission. Sub-section (1) of section 4 read as follows :

"4(1). Save as otherwise provided in this Act, on each payment for admission to any entertainment, there shall be levied and paid to the State Government, a tax

(hereinafter referred to as the entertainment tax) calculated at the following rates, namely :

Where such payment (exclusive of Rate of tax the amount of tax) (i) is not more than one rupee and Thirty-five per cent of fifty paise. such payment (ii) is more than one rupee and Forty-five per cent of fifty paise. such payment

5. Sub-section (1-A) levied what it called an "additional tax" on each payment for admission to any entertainment, i.e., over and above the tax levied by sub-section (1). It is thus clear that, though the Act purported to levy tax on entertainments, the levy was calculated with reference to each payment for admission to the entertainment. The property of an entertainment was obliged to collect the entertainment tax along with the payment for admission, and make over the tax so collected to the State. Section 4-A levied what may be called "show tax". Until January 1, 1984, the show-tax was Rs. 6 in certain areas, and Rs. 4 in others.

6. Section 4-C was introduced by section 3 of the Amendment Act (No. 58 of 1976), while substituting section 5. Section 4-C and section 5 are parts of one single scheme which was introduced for the first time by the said Amendment Act. According to section 4-C, on entertainments held within the jurisdiction of any local authority, whose population did not exceed 25,000, the entertainment tax was levied, not on the basis of each payment for admission, but at a certain percentage of the gross collection capacity, per show. According to section 4-C, it is not necessary for the authorities to verify or enquire into the number of persons admitted to each show and/or to verify the correctness or otherwise of the returns submitted by the proprietor, containing particulars of the number of persons admitted to each show and the amount of tax collected. It was obviously found impracticable and inconvenient to check the correctness of the collections reported by the proprietors of cinema theatres in villages and small towns with less than 25,000 population. Lack of proper supervision and verification would necessarily give room for evasion and abuse on the part of the proprietors. It was, therefore, thought convenient and appropriate to devise a new method of levy of entertainment tax, based upon the gross collection capacity per show. Explanation to sub-section (1) of section 4-C prescribed the manner in which the gross collection capacity per show was to be calculated. Sub-section (1) of section 4-C may now be set out :

"4-C. - Tax on entertainment shows in places with population not exceeding 25,000. - (1) On the entertainments held within the jurisdiction of any local authority whose population does not exceed twenty-five thousand, there shall be levied and paid to the State Government, a tax for every entertainment show calculated at the following rates, namely :

(i) entertainments held within the Thirteen per cent of jurisdiction of any local authority whose the gross collection population does not exceed 5,000 capacity per show; (ii) entertainments held within the Thirteen and a half jurisdiction of

any local authority whose per cent of the gross population exceeds 5,000 but does not collection capacity exceed 10,000 per show; (iii) entertainments held within the Fourteen per cent of jurisdiction of any local authority whose the gross collection population exceeds 10,000 but does not capacity per show; exceed 15,000 (iv) entertainments held within the Fourteen and a half jurisdiction of any local authority whose per cent of the gross population exceeds 15,000 but does not collection capacity exceed 25,000 per show.

7. Provided that the State Government may, having due regard to the nature of the population, including the floating population, in any local area, by notification published in the Andhra Pradesh Gazette, direct that any local authority falling under a lower category of percentage mentioned above, shall fall under any higher category thereof.

Explanation. - For the purpose of this section and section 5, the term "gross collection capacity per show" shall mean the notional aggregate of all payments for admission, the proprietor would realize per show, if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955 (President's Act 4 of 1955) in respect of the place of entertainment are occupied, and calculated at the maximum rate of payments for admission as determined by the said licensing authority".

8. It would be evident from a reading of the explanation that "gross collection capacity per show" meant the total collection of a cinema theatre, if all the seats or accommodation therein are occupied. It may be remembered that, if all the seats or accommodation in a cinema theatre are fully occupied, the proprietor would be liable to collect and pay over to the State entertainment tax at the rate of 35 per cent or 45 per cent, as the case may be, according to sub-section (1) of section 4. But, in case of theatres governed by section 4-C, he would pay only 13 per cent to 14 1/2 per cent (depending upon the area of the local authority within whose jurisdiction the theatre is situated) of the gross collection per show, which is certainly much lower than what he collects on account of entertainment tax. But, the Legislature took into account the reality that all the seats or accommodation in the theatre may not be fully occupied for each show, or on each day, in a given week, month or the year, as the case may be. It is for this reason that lower percentage in section 4-C were prescribed. An illustration would bring home the point : if in a given theatre there are 1,000 seats and the total collection on account of payment for admission (excluding entertainment tax) was Rs. 1,000, the proprietor would have been liable, u/s 4, to collect entertainment tax at 40 per cent (for the sake of convenience we are taking a mean figure between 35 per cent and 45 per cent prescribed by section 4(1). In other words, in addition to Rs. 1,000 collected on his own account, the proprietor would be obliged to collect Rs. 400 on account of the entertainment tax, and make over the said sum of Rs. 400 to the State; but, in a case where section 4-C applies, he would be liable to pay only 14 per cent (here again we are taking a mean figure between 13 per cent and 14 1/2 per cent prescribed by section 4-

C(1) of the gross collection capacity, which means 14 per cent of Rs. 1,400, which comes to Rs. 196 only. Thus, the proprietor would be appropriating to his own use Rs. 204 out of the entertainment tax, per show. But, inasmuch as it cannot be expected that he would be having the full capacity collections for each show, or on each day of the week or month, or the year, as the case may be, the Legislature thought it fit to levy the tax, taking the average occupancy rate at or around 50 per cent. According to the illustration given above, even if the occupancy rate in a given week or month, or year, is 50 per cent or even little less, the proprietor would not be prejudiced by this new method of levy. If his collections are 50 per cent or more, he stands to gain, inasmuch as what he is collecting on account of entertainment tax over and above the amount he is liable to pay under the consolidated levy system (i.e., new system of levy of tax) would be added to his profits. It may also be noted that, in areas where section 4-C applied, section 4 as well as section 4-A did not apply.

9. Section 5 which, as stated above, is part of the new system introduced by the Amendment Act No. 58 of 1976 and is an extension of section 4-C, provided a much more convenient and beneficial mode of levy - beneficial from the point of view of the proprietor. It may be noted that, according to section 4-C, the consolidated tax is levied on the gross collection capacity, per show. While collecting the tax u/s 4-C, the authorities have, therefore, to enquire into the number of shows held by a proprietor. But even this requirement is dispensed with, if a proprietor opts for the composition scheme contemplated by section 5. Section 5 provided that, it is open to a proprietor to enter into an agreement with the prescribed authority to compound the tax payable u/s 4-C(1) for a fixed sum, which was to be arrived at in accordance with the formula prescribed in the section. According to this formula, the number of shows was fixed for a year, for a theatre, based on the number of shows exhibited in the previous year. For example, if the number of shows held in the previous year did not exceed 300, the number of shows for the purpose of section 5 was fixed at 365, and so on. The percentage of levy on the gross collection was substantially brought down, as compared to the rates prescribed in section 4-C(1). As against 13 per cent to 14 1/2 per cent prescribed in section 4-C(1), section 5 prescribed the percentages at 8 per cent to 12 per cent. A proprietor opting for the scheme u/s 5 was free to exhibit any number of shows he liked during that year. Whether he exhibited more number of shows or less than the prescribed number, the amount of tax payable by him remained constant. In other words, while the authorities were rid of the verification of the number of shows held by a proprietor, the proprietor was rid of the obligation to satisfy the authorities about the number of shows held by him in a week/month/year.

10. It may, however, be noted that this system of consolidated levy of entertainment tax was confined only to local authorities whose population did not exceed 25,000. Though the system was in vogue since 1976, not a single proprietor ever complained of this method of levy, and as we shall presently point out, the petitioners' contention has been that this system was beneficial to

the proprietors, and for that reason they never complained of it. It may be pointed out that, in case of a proprietor opting u/s 5, he did not stand to lose even if the average rate of occupancy of his theatre went below 50 per cent. Even if it went down to 40 per cent, he could still break even. In other words, what he collected on account of entertainment tax on 40 per cent average occupancy, would be sufficient to pay the tax prescribed u/s 5.

B. Position between January 1, 1984 and March 23, 1984 :

On December 29, 1983, the Governor of Andhra Pradesh issued Ordinance No. 31 of 1983, amending the Act, with effect from January 1, 1984. By section 3 of the Ordinance, the percentages of entertainment tax prescribed in sub-section (1) of section 4 were raised. The new rate of levy became 65 per cent, where the payment for admission excluding the entertainment tax, was less than Re. 1; 75 per cent in case the payment for admission was not less than Re. 1 but not more than Rs. 2; and 80 per cent in case of payment for admission being more than Rs. 2. Sub-section (1-A) of section 4, which provided for an additional tax, was deleted. Sub-section (1) of section 4-A which levied the show tax, was also amended. The show tax now became Rs. 6 per show within the area of municipal corporations, and lesser levy in case of smaller local authorities. Section 6 of the Ordinance substituted sections 5 and 6 altogether. According to section 5 as introduced by this Ordinance, the proprietor of a theatre was given an option to pay the amount of tax every week as specified in section 5, i.e., a consolidated weekly amount in lieu of the tax payable u/s 4. The table mentioned in sub-section (1) of section 5 mentioned the rates at which the tax was payable. It also provided the weekly number of shows on the basis of which the weekly tax was to be arrived at. The percentage of tax payable was tacked on to the gross collection capacity, and it varied from 25 per cent (in the case of air-conditioned theatres within the limits of municipal corporations) to 14 per cent (in the case of touring and temporary theatres within the gram panchayats and townships). Whereas old section 5 provided for an agreement to be entered into by the proprietor with the prescribed authority, section 5 as introduced by this Ordinance dispensed with such agreement. It was enough if the proprietor indicated his option to be governed by section 5, and on the prescribed authority permitting him to do so, he was to be governed by the said method of levy. As under the previous section 5, the amount determined u/s 5(1) can be raised in the case of increase in the gross collection capacity per show, but there was no provision for downward revision in case the gross collection capacity was decreased. Sub-section (1) of section 5 along with explanation I thereof read as follows :

"5. Option to pay tax in lieu of tax payable u/s 4. - (1) In lieu of the tax payable u/s 4, in the case of entertainments held in the theatres specified in column (2) of the table below and located in the local areas specified in the corresponding entry in column (1) of the said table, the proprietor thereof may, at his option and subject to such conditions as may be prescribed, pay the amount of tax to

the State Government every week as specified in the corresponding entry in column (3) thereof :

Local areas	Theatres	Amount of tax	(1)	(2)	(3)
----- (a) Municipal (i)					
Air-conditioned. 25 per cent of the corporations gross collection and the capacity per show Secunderabad multiplied by 24. Cantonment area and the					
(ii) Air-cooled 23 per cent of the contiguous gross collection area of capacity per show 8 kilometers multiplied by 24. thereof : (iii) Ordinary 20 per cent of the (other than gross collection air-cooled and capacity per show air-conditioned) multiplied by 24. (b) Selection (i) Air-cooled and 23 percent of the grade and air-conditioned. gross collection Special grade capacity per municipalities multiplied by 24. and the contiguous (ii) Ordinary 20 per cent of the area of (other than gross collection 6 kilometers air-cooled and capacity per show thereof. air-conditioned) multiplied by 24. (c) First grade (i) Air-cooled and 21 per cent of the municipalities air-conditioned gross collection and the capacity per show contiguous multiplied by 24. area of 8 kilometers (ii) Ordinary 18 per cent of the thereof. (other than gross collection air-cooled and capacity per show air-conditioned) multiplied by 24. (d) Second grade All categories 17 per cent of the municipalities gross collection capacity per show multiplied by 24. (e) Third grade All categories 16 per cent of the municipalities gross collection capacity per show multiplied by 21. (f) Gram (i) Permanent and 15 per cent of the panchayats, semi-permanent. gross collection selection capacity per show grade gram multiplied by 14. panchayats and townships (ii) Touring and 14 per cent of the and any other temporary. gross collection local area. capacity per show multiplied by 10.					

Explanation 1 : For the purposes of this section the term "gross collection capacity per show" shall mean the notional aggregate of all payments for admission, the proprietor would realise per show, if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission as determined by the said licensing authority

11. Evidently, the State thought it fit to extend partially the consolidated system of levy of entertainment, tax, - i.e., only the optional composition levy system - which until now was confined to local areas with less than 25,000 population, to the entire State. Just as before January 1, 1984, a proprietor governed by section 4-C had an option to enter into an agreement with the prescribed authority to be governed by the system of composition levy of tax as prescribed by section 5(1), now also the proprietor was given an option to opt to be governed by the weekly consolidated levy system, u/s 5. By choosing to be governed by the weekly consolidated levy system u/s 5, the proprietor was

entitled to the same beneficial treatment as was available to a person choosing to be governed by old section 5. Of course, basic system of levy u/s 4 remained as before.

12. On December 29, 1983, the date on which the Ordinance No. 31 of 1983 was issued, the Government issued G.O. Ms. No. 615 enhancing the rates of admission. The new rates of admission ranged between Rs. 7 and paise 60. These rates were prescribed keeping in mind the percentage of tax as prescribed by section 4(1) of the Act, as amended by Ordinance 31 of 1983. For example, in case of a ticket of Rs. 7 denomination, the tax component was Rs. 3.10 and the admission fee Rs. 3.90. Similarly, in the case of a ticket of Rs. 5 denomination, it was Rs. 2.25 and Rs. 2.75, respectively. In the case of a ticket of Rs. 3, it was Rs. 1.30 and Rs. 1.70, and in the case Re. 1, it was 40 paise and 60 paise respectively. According to this G.O., the licensing authorities were directed to permit the proprietors to adopt the said rates subject to the ceilings prescribed in the G.O. In other words, while the proprietors were not obliged to adopt the maximum rates, they were not entitled to charge rates higher than those prescribed; but, whichever rates a proprietor adopts, they must be ones prescribed by the G.O.

13. The effect of the Ordinance and the G.O. issued on 29th December 1983, was : (i) the percentage of tax was raised from previous 35 per cent - 45 per cent to 65 per cent - 80 per cent; (ii) whereas the composition levy system per show was previously confined only to theatres situated within the local areas of less than 25,000 population, the said system was now extended to the entire State. Different rates were prescribed for theatres situated within different local authorities. A distinction was also made between air-conditioned, air-cooled, and ordinary theatres for the purpose of section 5; and (iii) where the proprietor opted for the weekly composition levy system u/s 5, it was no longer necessary for him to enter into an agreement; it was enough if he indicated his option and was permitted by the prescribed authority to be governed by section 5.

14. Neither Ordinance 31 of 1983, nor G.O. Ms. No. 615 are questioned in this batch of writ petitions.

C. Position on and after March 23, 1984 :

On March 23, 1984, the Governor of Andhra Pradesh issued Ordinance No. 9 of 1984. On this Ordinance lapsing, another Ordinance (No. 14 of 1984) was issued in identical terms, on April 27, 1984. In this batch of writ petitions the validity of these two Ordinances is questioned; but, inasmuch as, pending the writ petitions, the Ordinances have been replaced by the Andhra Pradesh Entertainments Tax (Amendment) Act, 1984 (being Act No. 24 of 1984), it is not necessary to refer to the provisions of these two Ordinances. The Ordinances and the Act are in identical terms. The prayers in this batch of writ petitions have also been amended by the petitioners, challenging the validity of the aforesaid Act. It would, therefore, be sufficient if we refer to the provisions of the Amendment Act

No. 24 of 1984 (hereinafter referred to as "the Amendment Act"). Section 4 of the Amendment Act changed the very basis of levy of entertainment tax. Hitherto the tax was levied on each payment for admission to the entertainment at a certain percentage of the payment for admission (exclusive of the amount of tax); but, by the Amendment Act, the tax was levied at a certain percentage of the gross collection capacity per show. In other words, the consolidated levy system per show prevalent under old section 4-C, but confined to local areas with less than 25,000 population, was now extended to the entire State. It may be remembered that, u/s 4-C, the proprietors of theatres within the limits of local areas with less than 25,000 population, had no option but to be governed by the consolidated levy system. The only option they had was either to be governed by section 4-C, or section 5. In other words, they had an option either to pay the consolidated amount per show as prescribed in section 4-C(1), or to pay the weekly consolidated amount (composition amount) u/s 5(1). The same system was now extended to the entire State, to wit, the consolidated levy system per show became obligatory, with an option to be governed by the weekly consolidated system (composition amount) u/s 5. Again, the rates prescribed u/s 5 were uniformly lower by 5 per cent. It would be appropriate to set out the provisions of sub-sections (1) and (2) of section 4, as also section 5 as introduced by the Amendment Act :

"4.(1) There shall be levied and paid to the State Government a tax on the gross collection capacity on every show (hereinafter referred to as the entertainments tax) in respect of entertainments held in the theatres specified in column (2) of the table below and located in the local areas specified in the corresponding entry in column (1) of the said table, calculated at the rates specified in the corresponding entry in column (3) thereof.

THE TABLE -----		
Local area Theatre	Rate of tax on the gross collection capacity per show	
-----	(1)	(2) (3)
-----	(a)	Municipal (i)
Air-conditioned.	29 per cent	corporations and the Secunderabad (ii) Air-cooled
28 per cent	cantonment area and the contiguous (iii) Ordinary	25 per cent area
of two (other than kilometres thereof.	air-conditioned and air-cooled)	(b)
Selection grade (i) Air-conditioned.	28 per cent	municipalities and the
contiguous (ii) Air-cooled	27 per cent	area of two Kilometres thereof. (iii)
Ordinary	24 per cent	(other than air-conditioned and air-cooled) (c) Special
grade (i) Air-conditioned.	27 per cent	municipalities and the contiguous (ii) Air-
cooled	26 per cent	area of two Kilometres thereof. (iii) Ordinary
(other than air-conditioned and air-cooled)	(d) First grade (i) Air-conditioned.	26 per cent
municipalities and the contiguous (ii) Air-cooled	25 per cent	area
of two Kilometres thereof. (iii) Ordinary	22 per cent	(other than air-
conditioned and air-cooled) (e) Second grade	All categories	21 per cent
municipalities and the contiguous area of two kilometers thereof. (f) Third	grade	All categories
20 per cent	municipalities and the contiguous area of two	

kilometers thereof. (g) Gram panchayats, (i) Permanent and 20 per cent selection grade semi-permanent. gram panchayats, townships and (ii) Touring and 19 per cent any other temporary local areas.

Explanation. - For the purpose of this section and section 5, the term "gross collection capacity per show" shall mean the notional aggregate of all payments for admission, the proprietor would realise per show if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission as determined by the said licensing authority.

(2) The amount of tax under sub-section (1) shall be payable by the proprietor on the actual number of shows held by him in a week.

(3)

(4)

(5)"

"5.(1) In lieu of the tax payable u/s 4, in the case of the entertainments held in the theatres specified in column (2) of the table below and located in the local areas specified in the corresponding entry in column (1) of the said table, the proprietor thereof may, at his option and subject to such conditions as may be prescribed, pay the amount of tax to the State Government every week as specified in the corresponding entry in column (3) thereof :

Local	area	Theatre	Amount	of	tax	(1)	(2)	(3)
----- (a) Municipal (i)								
Air-conditioned. 24 per cent of the corporations gross collection and the capacity per show Secunderabad multiplied by 22. cantonment area and the								
(ii) Air-cooled 23 per cent of the contiguous gross collection area of capacity per show two kilometers multiplied by 22. thereof : (iii) Ordinary 20 per cent of the (other than gross collection air-conditioned capacity per show and air-cooled) multiplied by 22. (b) Selection grade (i) Air-conditioned 23 per cent of the municipalities gross collection and the capacity per show contiguous area multiplied by 22. of two kilometers thereof. (ii) Air-cooled 22 per cent of the gross collection capacity per show multiplied by 22. (iii) Ordinary 19 per cent of the (other than gross collection air-conditioned capacity per show and air-cooled) multiplied by 22. (c) Special grade (i) Air-conditioned 22 per cent of the municipalities gross collection and the capacity per show contiguous area multiplied by 21. of two kilometers thereof. (ii) Air-cooled 21 per cent of the gross collection capacity per show multiplied by 21. (iii) Ordinary 18 per cent of the (other than gross collection air-conditioned capacity per show and air-cooled) multiplied by 21. (d) First grade (i) Air-conditioned 21 per cent of the municipalities gross collection and the capacity per show contiguous area								

multiplied by 21. of two kilometers thereof. (ii) Air-cooled 20 per cent of the gross collection capacity per show multiplied by 21. (iii) Ordinary 17 per cent of the (other than gross collection air-conditioned capacity per show and air-cooled) multiplied by 21. (e) Second grade All categories 16 per cent of the municipalities gross collection and the capacity per show contiguous area multiplied by 21. of two kilometers thereof. (f) Third grade All categories 15 per cent of the municipalities gross collection and the capacity per show contiguous area multiplied by 17. of two kilometers thereof. (g) Gram (i) Permanent and 15 per cent of the panchayats, semi-permanent. gross collection selection grade capacity per show gram panchayats multiplied by 14. townships and any other (ii) Touring and 14 per cent of the local area. temporary. gross collection capacity per show multiplied by 7.

Explanation. - For the purposes of computing the gross collection capacity per show in respect of any place of entertainment, the maximum seating capacity or accommodation and the maximum rate of payment for admission determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, as on the date when the proprietor is permitted to pay tax under this section shall be taken into account.

(2) The amount of tax under sub-section (1) shall be payable by the proprietor irrespective of the actual number of shows held by him in a week.

(3) Any proprietor who opts to pay tax under this section shall apply in the prescribed form to the prescribed authority to be permitted to pay the tax under this section.

(4) On being so permitted, such proprietor shall pay the tax for every week as specified in sub-section (1).

(5) The option permitted under this section shall continue to be in force till the end of the financial year in which such option is permitted.

(6) It shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section (1) during the period of option permitted under this section at any time, if there is an increase in the gross collection capacity per show in respect of the place of entertainment by virtue of an upward revision of the rate of payment for admission therein or of the seating capacity or accommodation thereof or where the local area in respect of which permission is granted is upgraded or if it is found for any reason that the amount of tax has been fixed lower than the correct amount.

(7) Every proprietor who has been permitted to pay the tax under this section shall intimate to the prescribed authority forthwith such increase in the gross collection capacity per show in respect of the place of entertainment, failing which it shall be open to the prescribed authority by giving fifteen days notice to cancel the option so permitted.

(8) Where a proprietor fails to pay the amount of tax on the due date, such amount of tax shall be recoverable with interest calculated at such rate as may be prescribed.

(9) The amount of tax due under this section shall be rounded off to the nearest rupee and for this purpose, where such amount contains part of a rupee consisting of paise, then if such part is fifty paise or more it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored".

15. The show tax remained at the same level as was prescribed by section 4-A of Ordinance 31 of 1983. The Amendment Act deleted section 4-C, and also amended certain other provisions, to which it is not necessary to refer.

16. A reading of sub-section (1) of section 4 discloses that, for the purpose of the levy of tax, the theatres in the State were classified into different categories on a twin basis. The first classification is local area-wise. The rate of tax differs as between theatres situated within municipal corporation, selection grade municipalities, special grade municipalities, first grade municipalities, second grade municipalities, third grade municipalities, and gram panchayats, as the case may be. The second classification is theatre-wise, i.e., the rates again differ within a given local area as between air-conditioned theatres, air-cooled theatres and ordinary (other than air-conditioned and air-cooled) theatres. This theatre-wise distinction, however, is maintained only up to, and including the level of first grade municipalities. Below that, i.e., from second grade municipalities and downwards, this distinction is not maintained. But again, in the case of gram panchayats, a distinction is maintained between permanent and semi-permanent theatres on one hand, and touring and temporary theatres on the other. The explanation to sub-section (1) of section 4 defines the "gross collection capacity per show". It means the full collection per show, if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, are occupied, calculated at the maximum rate of payment for admission as determined by the licensing authority. This amount is payable every week, on the number of shows actually held during that week.

17. Now coming to section 5, the proprietor is given an option to pay a weekly consolidated amount, which may be called, for the sake of convenience, "composition amount". In case a proprietor is governed by section 5, the number of shows actually held by him is irrelevant. It is open to him to hold any number of shows he likes; but, for the purpose of determining the composition amount, a particular number of shows is taken. The number of shows varies from 22 (in the case of air-conditioned theatres within the municipal corporations) to 7 shows per week (in the case of touring and temporary theatres in gram panchayats and townships). The rate of tax is uniformly lower by 5 per cent than the rate in section 4(1). The same twin classification obtaining in section 4(1) is also continued u/s 5(1). The gross collection capacity also is determined in the same manner. Undoubtedly, the composition scheme contained in section 5 is distinctly

advantageous to the proprietors. A proprietor has now to pay either the tax per show as per section 4, or the composition amount per week, as per section 5(1). The show tax, however, remains. No other entertainment tax is payable by the proprietor.

18. The main attack of the petitioners is to the validity of section 4. It is obvious that, if section 4 goes, section 5, which is merely an adjunct to section 4, would also fall.

D. Main/common grounds of attack :

Mr. P. Babul Reddy, who led the attack on the constitutional validity of section 4, based his attack on the following three grounds, viz : (i) the levy of entertainment tax on the basis of gross collection capacity without reference to the actual amount collected, or the actual number of tickets sold, or the number of persons admitted, is ultra vires the power of the State Legislature. The levy is upon "entertainment", which means there must be some persons who are entertained. The tax must be levied upon the entertainment so provided to the persons. The levy must, therefore, be with reference to the number of persons entertained, and the amount collected from them as the price for entertainment. By levying the tax with reference to the gross collection capacity, the tax no longer remains an "entertainment tax" within the meaning of entry 62 of List II of the Seventh Schedule to the Constitution, but becomes either a tax on profession, trade, calling and employment within the meaning of entry 60, or a tax on property, within the meaning of entry 49 of List II, or a tax on income within the meaning of entry 82 in List I. If it is treated as a tax on profession, occupation or calling, article 276 prescribes a ceiling of Rs. 250. If it is a tax on income, it is beyond the competence of the State Legislature, and as a tax on property it is expropriatory; (ii) section 4 as introduced by the Amendment Act, is arbitrary and discriminatory and is hit by article 14 of the Constitution. It seeks to treat unequals as equals, which itself is discriminatory and violative of article 14. Treating the air-conditioned, or air-cooled or ordinary theatres, as the case may be, within a local area, on the same par is unrealistic, unreasonable and arbitrary. An air-conditioned theatre situated in the heart of the city or municipality, will be better-off than an air-conditioned theatre situated in a corner or on the outskirts of the city or municipality, as the case may be. Even the theatres situated within two kilometre-periphery of a local authority are included within that local authority. An air-conditioned theatre situated within two kilometre periphery of a municipal corporation cannot be treated on the same par with an air-conditioned theatre situated in the heart of the city. Same would be the case with respect to air-cooled and ordinary theatres. The Legislature ought to have made some enquiry or must have called for objections and representations, and then devised a better and more comprehensive classification. The failure to do so is resulting in imposing unbearable and destructive burden upon the proprietors. Many theatres would be closed if the new system of levy is held to be valid; and (iii) the levy of entertainment tax u/s

4 constitutes an unreasonable restriction on the right guaranteed to the petitioners by article 19(1)(g) of the Constitution, and being expropriatory and unreasonable, is not saved by clause (6) of article 19. Counsel contended that, if the tax is to be paid at the rates prescribed in section 4, the proprietors would be obliged to pay practically the entire collections towards tax, leaving nothing for meeting the expenses, or towards their profit. This would virtually drive them out of the business.

19. We shall deal with these contentions in their proper order.

E. Competence of the State Legislature :

Entry 62 of List II of the Seventh Schedule to the Constitution empowers the State Legislature to levy "taxes on luxuries including taxes entertainment, amusement, betting and gambling". Entry 60 in the same List empowers the levy of "taxes on professions, trades, callings and employments"; but, these taxes cannot exceed the ceiling prescribed in article 276, viz., Rs. 250 per annum. The levy of taxes on lands and buildings is authorised by entry 49 in List II, while the levy of "taxes on income other than agricultural income" is provided by entry 82 in List I (Union List) of the Seventh Schedule.

20. It may be noticed that entry 62 authorizes the levy of taxes on entertainments and amusements, and not on the person entertained or the person provided amusement. Consistent with the entry, the Act too seeks "to impose taxes on entertainments in the State of Andhra Pradesh". The preamble recites :

"Whereas it is expedient to provide for the levy by the State Government of taxes on amusements and other entertainments."

21. Section 4, as amended by the Amendment Act, levies the "tax on every show in respect of entertainments held in a theatre". It is clearly and avowedly a tax on entertainments held. Prior to amendment, the levy on entertainments was tacked on to the payment for admission to an entertainment held. In either event, it is entertainment tax. Mr. Babul Reddy says that entertainment is entertainment only when there is audience. He says that, if there is not a single person present, it is no entertainment at all. We are afraid Mr. Babul Reddy is taking an extreme example when he contemplates a show being held even when not a single soul is present. An entertainment held is an entertainment held, whether the theatre is full to its capacity, or whether its capacity is not fully occupied. It is difficult to conceive of a show being held with no one present; no proprietor would do that. The consolidated levy system does not envisage - nor did it envisage in the past, when it applied to areas with less than 25,000 population - full capacity occupancy for each show held; had it done so, it would have prescribed tax at such percentage of gross collection capacity as would equal the amount of tax collected in case of full capacity occupancy. The Legislature has been realistic; it has taken the same rate of occupancy as the basis of levy as was in vogue u/s 4-C in the case of gram panchayats and

townships. The rate prescribed by section 4-C was never complained of as either unreasonable or arbitrary. Indeed, according to Mr. Babul Reddy, it was quite advantageous to the proprietors. If it was advantageous then, it would continue to be advantageous even now in the case of gram panchayats and townships, falling under clause (g) in the table in section 4(1). The Legislature has increased the percentage gradually with the rise in the level/grade of the local authority. This is based on the assumption that compared to villages in towns, compared to smaller towns in bigger towns, and compared to bigger towns in cities, more and more people attend these shows. That this expectation is realistic and fully justified, would become evident from our discussion in section G hereinafter. The maximum rate of occupancy expected - in the case of air-conditioned theatres in the municipal corporation areas - is 66 per cent - 67 per cent, and the rate of tax is based upon such occupancy. That this rate is reasonable would also be evident from section G in our judgment. Thus, we are unable to appreciate the oft-repeated contention of Mr. Babul Reddy that since an entertainment means a number of persons attending it, the tax must be levied and calculated with reference to such number. We may reiterate that the tax is upon entertainment, and not upon those entertained. It has to be paid by the person who provides the entertainment.

22. Entry 62 in List II is only a head of legislation. It merely empowers the State Legislature to levy taxes on entertainments and amusements. It does not further say in what manner the tax should be levied, nor does it prescribe the measure which the Legislature should adopt in levying the tax. Therefore, so long as the tax levied retains the character of entertainment tax, the Legislature is competent to adopt such basis of such measure, or such method of levy, as it thinks appropriate. It must be remembered that, within the field allotted to it, the Legislature is sovereign, and no limitation can be conceived upon its competence, except the ones clearly flowing from any of the constitutional provisions. It is not possible to agree that the only method in which the Legislature can levy the entertainment tax is the method prescribed in the old section 4 of the Act, and not any other method. Indeed, even till January 1, 1984, and for that matter till March 23, 1984, the tax was being levied on two bases. One was "per payment for admission" basis (section 4 of the Act), and the other was on a consolidated basis per show (section 4-C). In either event, the tax was upon entertainment and was collected by the person who provided the entertainment, though calculated in different ways. No case could be brought to our notice which conceives, or imposes any such restriction, as contended for, upon the plenary power of the Legislature. Indeed, a similar contention was rejected by the Supreme Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, . Entry 50 in List II of the Seventh Schedule of the Government of India Act, 1935, empowered the Provincial Legislatures to levy "taxes on luxuries including taxes on entertainments, amusements betting and gambling". Section 60 of the Cantonments Act, 1924, empowered the Board to levy taxes with the previous sanction of the Central

Government. It was empowered to levy the same taxes which the State Legislature was entitled to levy under the Government of India Act. By a notification dated 17th June, 1948, taxes were levied in the Cantonment, Poona, in the following manner :

"V. Tax on entertainments :

1. Cinemas, talkies or dramas : In the case of the West-End and Capitol per show .. Rs. 10 In other cases .. Rs. 5 per show 2. Circus .. Rs. 2 per show 3. Horse races .. Rs. 100 per day of race meeting 4. Amusement park .. Rs. 20 per day."

23. The levy was challenged by the proprietor of West End and Capitol Theatres, on various grounds. The contention of the proprietor was that entry 60 aforesaid "contemplates a law imposing taxes on persons who receive or enjoy the luxuries or the entertainments or the amusements and, therefore, no law made with respect to matters covered by this entry can impose a tax on persons who provide the luxuries, entertainments or amusements, for the last mentioned persons themselves receive or enjoy no luxury or entertainment or amusement, but simply carry on their profession, trade or calling." It was urged that the law impugned therein was really one with respect to entry 46 (corresponding to present entry 60) and was, therefore, subject to the ceiling prescribed in section 142-A of the Government of India Act, 1935 (corresponding to article 276 of the Constitution). This argument was rejected by the Supreme Court, relying upon its earlier decision in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, . The Supreme Court observed :

".... the entries in the legislative list should not be read in a narrow or restricted sense and that each general words should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It has been accepted as well-settled that in construing such an entry conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. In view of this well-established rule of interpretation, there can be no reason to construe the words "taxes on luxuries or entertainments or amusements" in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded as we think they must, there can be no reason to differentiate between the given and the receiver of the luxuries, entertainments, or amusements and both any, with equal propriety, be made amendable to the tax. It is true that economists regard an entertainment tax as a tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment, it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainments, or amusements. The entry, as we have said, contemplates a law with respect to these matters regarded as

objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver of the receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling. It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax."

24. We may also refer to another decision of the Supreme Court in *Y. V. Srinivasamurthy v. State of Mysore* AIR 1959 SC 894. Section 3 of the Mysore Cinematograph Shows Tax Act, 1951, levied entertainment tax "in a rising scale according to the seating accommodation and the cities where the cinematograph show is held" - as extracted in the decision of the Supreme Court. (It may be noticed that the basis of levy is the same as is adopted in section 4 of the Amendment Act). The levy was challenged as travelling beyond entry 62 in List II of the Seventh Schedule, and as constituting a tax within the meaning of entry 60 of List II. This argument was summarily rejected by the Supreme Court with reference to its earlier decision in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, .

25. It must, therefore, be held that, merely because the basis or the method of levy is changed, the levy does not cease to be entertainment tax, nor can it be said to be ultra vires the powers of the State Legislature. Indeed, an unreported Bench decision of the Bombay High Court dated February 28, 1984, in Writ Petition Nos. 38 and 240 of 1984, relied upon by Mr. P. Babul Reddy, clearly negatives his contention. That case arose under the Bombay Entertainments Duty (Amendment) Ordinance, 1983, which introduced, like the impugned Andhra Pradesh Amendment Act, a new form of levy. Under the Bombay Act too, previously the levy was on "payment for admission to any entertainment"; but, by virtue of the Amending Ordinance, while retaining the old method of levy for some entertainments, a new method, viz., a consolidated levy, was introduced for some other forms of entertainments. After the amendment, section 3(1) of the Act, which is the charging section, reads as follows :

"There shall be levied and paid to the State Government on all payments for admission to any entertainment a duty (hereinafter referred to as "entertainment duty") at the following rate or consolidated sum of money, or as the case may be, lumpsum, namely"

26. The argument was that the concept of entertainment duty is inseparable from the payment that is made by the person claiming admission to the entertainment and that, no other basis for levying of entertainment duty can be employed by the Legislature for levying entertainment duty. It was also argued that the second method of levy, viz., the consolidated levy, being inconsistent with the first method of levy (per payment for admission), must be ignored. Both these arguments were rejected. (It is, however, not necessary to refer to the reasoning upon which the first argument was rejected). It was observed by the Bench :

"The second basis which has been adopted is the consolidated sum of money in the case of touring cinemas while the third basis is the lumpsum which is applicable to the entertainment of video exhibition. As long as entertainment levy is on entertainment, one cannot see why the Legislature cannot adopt different basis for the said levy. In the case of race-courses the levy is on the basis of payments for admission made by a person seeking entertainment. So also is the case of entertainment other than touring cinemas, video exhibition and video games. These are provided in clauses (a) and (b) of section 3(1) of the Act. In the case of touring cinemas and video exhibitions by the amending provisions different basis for the levy of entertainment duty have been adopted. We do not see why such different basis cannot be adopted for the levy of entertainment duty if the duty in substance is on entertainment. Neither the Constitution nor any other provision of law prohibits the adoption of a basis other than the "payment for admission to entertainment" for levying entertainment duty. It is conceivable, for example, the entertainment duty could be levied on the number of shows held in a place of entertainment. It is, therefore, not possible for us to accept the contention urged on behalf of the petitioners that the provisions contained in clauses (c) and (d) of section 3(1) as amended by the Ordinance are invalid on the ground that they do not adopt "payments for admission to entertainment" as the basis of levy of entertainment duty".

27. What has been said above, fully accords with our view.

28. Mr. Babul Reddy, relied upon the said Bench judgment of Bombay High Court in so far as it struck down those provisions which levied the tax irrespective of the holding of the shows. Following the dictum of the Supreme Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, , viz., that "if there is no show, there is no tax", the Bench held that the levy of tax irrespective of the fact whether the entertainment/show is held or not, is bad. But, so far as the impugned A.P. Amendment Act is concerned, the said vice is not found therein. According to section 4, the consolidated levy is on a show. Only if a show is held, the tax is to be paid according to section 4(1). If no show is held, no tax is payable. It is true that, u/s 5, the prescribed tax has to be paid irrespective of the number of shows held, and even in a case where no show is held; but, that method is only optional. There is no compulsion on any proprietor to opt for the section 5 method of levy. We are, therefore, unable to see how the decision of the Bombay High Court on this score is of any help to the petitioners.

29. We may also refer in this connection to the decision of the Supreme Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, , where too a similar argument was rejected. It was argued that, whereas entry 62 authorises the levy of tax on betting and gambling, the levy and collection of it from the persons engaged in carrying on the business of betting and gambling is outside the purview of entry 62 and amounts to imposing a tax on profession/occupation, within the meaning of entry 60. This argument was rejected in the following words :

"This, with respect, is taking a very narrow view of the matter. Entry 62 talks of taxes on betting and gambling and not of taxes on the men who bet or gamble. It is necessary, therefore, to bear in mind the real nature of the tax. The tax imposed by section 12A is, in terms, a percentage of the sums specified in the declaration made u/s 15 by the promoter or a lumpsum having regard to the circulation and distribution of the newspaper or publication in the State

..... It is clear, therefore, that the tax sought to be imposed by the impugned Act is a percentage of the aggregate of the entry fees received from the State of Bombay. On ultimate analysis it is a tax on each entry fee received from each individual competitor who remits it from the State of Bombay

It is a kind of tax which, in the language of J. S. Mill quoted by Lord Hobhouse in *Bank of Toronto v. Lambe* (1887) 12 AC 575 (D), is demanded from the promoter in the expectation and intention that he shall indemnify himself at the expense of the gamblers who sent entrance fees to him. That, we think, is the general tendency of the tax according to the common understanding of men."

30. Another limb of the same argument advanced by Mr. B. Subhashan Reddy is that, inasmuch as section 4-A of the Act levies entertainment tax per show - what may be conveniently called "show tax", the power of the Legislature to enact a law under entry 62 got exhausted with it. If so, the learned counsel argues, the levy of entertainment tax u/s 4 on the gross collection capacity basis, is not an "entertainment tax" but either a profession tax or a property tax, or an Income Tax, as the case may be. We are unable to appreciate this contention. There is no principle that a tax which a Legislature is competent to impose should be levied under only one section. The show tax itself could have been levied by the same section 4, by providing another sub-section. It is, therefore, a mistake to argue that the power of the Legislature to enact a law with reference to entry 62 got exhausted by enacting section 4-A. Both section 4 and section 4-A levy entertainment tax, though on different bases.

31. Since we have held that the tax levied by section 4 of the Amendment Act is "entertainment tax", it is not really necessary to deal with the submission of the learned counsel that it in effect amounts to tax on profession, or on property, or on income. This is not a tax on profession, because the tax is levied only if entertainment is held, and not because the proprietor is carrying on the profession of providing entertainment. Similarly, the tax cannot be held to be a tax on property, for the very same reason that the tax is leviable only if a show is held. As we have observed hereinbefore, the position u/s 5 is different, because it is only optional and voluntary. There is no compulsion to adopt or opt for the composition levy system u/s 5. But, if one opts for, or adopts that system, he has to take that system as evolved by the Legislature, or not at all. In any event, if a proprietor voluntarily opts for that system, he cannot yet be heard to complain that the said system is bad, because he has opted for that system with his eyes open and knowing fully well the totality of that scheme. Similarly, the impugned tax cannot also be treated as a tax on income, its character and basis of levy is

basically and conceptually different; it is a method devised to collect, in effect, what is collected by the proprietor on account of entertainment tax from the persons admitted to entertainment. This aspect we shall elaborately discuss while dealing with the attack based upon article 19(1)(g) of the Constitution.

32. For all the above reasons, the first contention of Mr. P. Babul Reddy that the method of levy adopted by the Legislature in section 4 of the Amendment Act is ultra vires its powers is rejected.

F. Challenge based upon article 14 :

Section 4 of the Amendment Act, as already indicated, provides for a two-fold classification of the theatres for the purpose of levy of tax u/s 4(1). One is local authority-wise classification, and the other theatre-wise classification. Theatres situated within the municipal corporations of Hyderabad and Secunderabad, Vijayawada, Visakhapatnam and the Secunderabad cantonment area, and the contiguous area of 2 kilometers thereof, are classified into one category, whereas the theatres situated within the selection grade municipalities and the contiguous area of 2 kilometers thereof, are classified into another group. Similarly, a distinction is made between special grade, first grade, second grade and third grade municipalities, and gram panchayats. For theatres within the lower grade municipalities, lower percentages are prescribed in a descending order. Then again, within each local authority area up to and inclusive of first grade municipalities, a distinction is made between air-conditioned, air-cooled and ordinary theatres, and for them different rates are provided - again in a descending order. A look at the table contained in section 4(1) bears out this aspect. Thus, the Act has made a two-fold classification of theatres for the purpose of tax u/s 4(1). The contention of the petitioners, however, is that this classification is not sufficient to ensure equality. It is submitted that unequals cannot be treated equally, since that by itself amounts to discrimination. It is argued that the classification contained in section 4(1) falls short of this requirement, and is inadequate and unsatisfactory, it has the effect of treating unequally situated proprietors in the same manner and is, therefore, violative of article 14. It is contended that the Legislature ought to have provided a more comprehensive classification to ensure that unequals are not treated equally and that, some theatres are not obliged to pay the tax out of their own revenues, which would drive them out of the business. It is contended that there may be two air-conditioned theatres within the same local authority but they may not be similarly situated for more than one reason. One may be in the heart of the city, and another in the outskirts or in the contiguous area of two kilometers, as the case may be. While the theatre in the heart of the city will get more audience, the theatre in the outskirts would not. The theatre in the outskirts or the periphery cannot expect or think of the same rate of occupancy as the theatre in the heart of the city. If so, it is contended, it is discriminatory and unreasonable to subject both the theatres to the same rate of taxation just because both the theatres happen to have the same seating capacity or accommodation, as the

case may be. While the theatre in the heart of the city will be able to pay the taxes, the theatre in the outskirts or in the periphery would not be able to pay at the same rate, and thus would be driven out of business, it is argued. We are unable to appreciate this argument. The whole argument is premised on the assumption that it is the location that matter. In other words, the assumption is that a theatre situated in the heart of the city will always get more audience than a theatre situated elsewhere. This is not true. The rate of occupancy in a theatre depends upon several variable factors. The quality of the pictures, the facilities/ comforts provided, the age of the theatre, and even the traffic restrictions, if any, in front of the theatre - whether it is a two-way or one way street - determine the rate of occupancy. It is conceded by the learned counsel for the petitioners that there may be a difference in the rate of occupancy between two air-conditioned theatres situated in the heart of the City of Hyderabad, say, Abid"s. It is also conceded that a far-flung air-conditioned theatre may have a better rate of occupancy than an air-conditioned theatre in the heart of the city. It is thus evident that location alone cannot constitute the basis for classification. It may be that the proprietor or lessee of a cinema-theatre situated in the outskirts of the city is better and well-connected with the distributors or the producers of films, and gets better pictures, while the proprietor/lessee of a cinema theatre in the heart of the city may not be so well-connected, with the result that he does not get good or fetching pictures. Indeed, instances are not lacking where the distributors who are powerful people in the film industry, themselves own theatres. They would prefer their own theatres, even though they are situated afar, to other theatres which may be situated in the heart of the city. Then again, the question arises "what do you mean by heart of the city ?" There may be several equally important or busy centres in a given city, or town. Then again, there is another factor. A person constructing an air-conditioned theatre with a large investment would necessarily assess the audience, or the type of audience, which he will get. He would modulate his investment having regard to the return he expects from his investment. For this reason, nobody would go and construct an air-conditioned theatre or a costly theatre in the outskirts or the periphery of a city where he cannot expect a fairly high rate of occupancy. It is for this reason that one finds air-conditioned and costly theatres coming up only in busy and important sections or localities of a city or town, as the case may be, while in the outskirts one finds, generally speaking, less costly or ordinary theatres. One is also expected to fix the size of the auditorium or the number of seats, having regard to the expected rate of occupancy. What we wish to emphasize is that, it is difficult to pin-point any single factor as responsible for the success or failure, or for the high rate or low rate of occupancy. There are any number of factors which go to determine the rate of occupancy in a theatre. Indeed it may not be possible or practicable for the Legislature to conceive of, or devise such classification as to meet every conceivable situation, or to ensure that not a single proprietor of a cinema theatre is prejudiced. That is not the requirement of the law as well. In this connection, we may refer to the letter dated July 26, 1983 of the A.P. Film Chamber of Commerce (fully set out in section G),

suggesting extension of consolidated levy system to the entire State. While suggesting the rate of taxation on the basis of gross collection capacity, it was never suggested that a distinction should be made between a theatre and theatre situated in the same local area, on the basis suggested now. Only a two-fold classification, as is now adopted in section 4, was suggested - and that was accepted by the Government and the Legislature. It must be remembered that the impugned law is a taxing enactment, where a wide discretion is always allowed to the Legislature in the matter of classification and in the matter of selection of persons to be taxed. The following passage from the decision of the Supreme Court in *East India Tobacco Co. Vs. State of Andhra Pradesh*, can usefully be referred to in this behalf :

"It is not in dispute that taxation laws must also pass the test of article 14. That has been laid down recently by this Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . But, in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of article 14. The following statement of the law in *Willis on "Constitutional Law"*, page 587, would correctly represent the position with reference to taxing statutes under our Constitution :

"A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation."

In the light of these principles, we may now proceed to discuss whether the impugned Act repugnant to article 14 of the Constitution. The point for consideration is whether there is in fact a real distinction between Virginia tobacco and other tobacco called country tobacco" Nattu tobacco". If there is, then the Act is valid; if not, it must be held to be unconstitutional. The finding of learned Judges on this point is as follows :

"Broadly, there are two types, Virginia and Nattu, differing in taste, light, colour and texture There are obvious differences between the two categories of tobacco, in the nomenclature used, in the process of growing, curing and grading, in the market facilities, foreign and inland, in the price and in the variety of uses to which they are put and also the class of customers that take to them."

Thus it will be seen that Virginia tobacco has features which distinguish it from country tobacco, and can be treated as a class in itself. It will, therefore, be within the power of the State to impose a tax on the sales of Virginia tobacco while exempting the country tobacco.

It is argued for the appellants that to repel the charge of discrimination in taxing

only Virginia tobacco, and not the country tobacco it is not sufficient merely to show that there are differences between the two varieties, but that it must further be shown, as held in *Budhan Choudhry and Others Vs. The State of Bihar*, and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, that the differentia has reasonable relation to the object of the legislation. The differences between the Virginia tobacco and the country tobacco, as found by the learned Judges are not, it is argued, germane to the levy of sales tax, and so there is no valid classification. We are unable to agree with this contention. If a State can validly pick and choose one commodity for taxation and that is not open to attack under article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."

33. This decision also reiterates the proposition that, where a person assails a legislation as discriminatory and violative of article 14, it is for him "to establish that it is not based on a valid classification and (that) it is well-settled that this burden is all the heavier when the legislation under attack is a taxing statute". The Supreme Court cited with approval the observations of the United States Supreme Court in *Madden v. Kentucky* 84 Lawyers' Edition, 590, to the following effect :

"In taxation even more than in other in other fields, Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

34. Indeed, in *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, , the Supreme Court had an occasion to point out that it is impossible to conceive of absolute equality between two persons at any given point of time, and if so, it is not reasonable to expect the Legislature to ensure absolute equal treatment. *Hidayatullah, C.J.*, speaking for the majority, observed :

"The burden is on a person complaining of discrimination. The burden is proving not possible "inequality" but hostile "unequal" treatment. This is more so when uniform taxes are levied. It is not proved to us how the different plantations can be said to be "hostilely or unequally" treated. A uniform wheel tax on cars does not take into account the value of the car, the mileage it runs, or in the case of taxis, the profits it makes and the miles per gallon it delivers. An Ambassador taxi and a Fiat taxi given different out-turns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality. The Legislature has obviously thought of equalising the tax throughout a method which is inherent in the tax scheme. Nothing has been said to show that there is inequality much less "hostile treatment". All that is said is that the State must demonstrate equality. That is not the approach. At this rate nothing can ever be proved to be equal to another"

35. The learned Judge quoted *Rottschaefter* in his book "Constitutional Law" (at page 668), where the learned author stated :

""A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax". The decisions of the Supreme Court in this field have permitted a State Legislature to exercise "an extremely wide discretion" in classifying property for tax purposes "so long as it refrained from clear and hostile discrimination against particular persons or classes"."

36. Another decision referred to by the learned Judge, and which can usefully be extracted herein, is the decision of the Supreme Court in *Khandige Sham Bhat v. Agricultural Income Tax Officer* AIR 1963 SC 591. The passage extracted reads thus :

"If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine : vide *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, and *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification, so long it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways

37. In *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, , the Supreme Court was considering the validity of the Kerala Plantation (Additional Tax) Act, 1960, as amended by 1967 Amendment Act, which levied a tax on plantations and, for that purpose, classified the plantations into seven categories, and imposed a uniform rate of Rs. 50 per hectare. In the case of cocoanut, arecanut, rubber, coffee, and pepper plantations, the plants capable of yielding produce were to be counted and then the hectares determined by dividing the total number of plants by a certain figure, while in the case of other plantation, the extent of land yielding crop was itself taken as the measure of tax. The Supreme Court justified the said difference in the method of taxation as fair and just, since the idea behind the said classification was to treat one actual hectare of crop-yielding plantation in the latter category as equal to the other areas converted into hectares on the basis of the number of plants or trees, in the former category. It was also observed that the differences in yield between one plantation and another having the same crop, no doubt, arise from situation, altitude and rainfall, but they are not the only factors making the difference. Inasmuch as the law there did not single out any particular plantation for hostile or unequal treatment, it was held that there was no discrimination, notwithstanding the uniform rate for each plantation, levied on the above two

bases.

38. Another principle which can usefully be referred to in this behalf, is the one enunciated in the decision of the Supreme Court in the *Bearer Bonds*" case, viz., *R. K. Garg v. Union of India* AIR 1981 SC 2138. It was observed there :

"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 than 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 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 States Supreme Court in *Secretary of Agriculture v. Central Roig. Refining Company* (1950) 94 L Ed 381, be converted into Tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of 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 a 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 the 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."

39. Applying the above principles, it must be held that the two-fold classification made by section 4 cannot be said to be either discriminatory, or arbitrary, much less can it be said that it metes out hostile discrimination to certain theatres. The statute in question is a taxing statute, and since it is not possible to predicate absolute equality between two theatres, and also because the situation and economics of each theatre are different, it is impossible to expect, or call upon the Legislature to evolve such classification which would meet every conceivable case and which would not result in prejudice even to a single theatre. It should also be noticed that, different rates have been prescribed for different local areas and for different types of theatres, i.e., ordinary, air-cooled and air-conditioned. The Legislature took note of the fact that the rate of occupancy in village will be lower compared to towns, and similarly, in bigger towns there will be greater rate of occupancy, and finally in cities, the rate of occupancy would be even higher. It cannot be said that this expectation is unrealistic, or so unreasonable as to call for interference by this Court. It is a well-known fact that, compared to villages, in towns, and compared to towns, in cities, there is more availability and flow of cash. More number of city folk see the pictures, than the villagers. It is for this reason that the Legislature provided higher rates of tax for towns and cities. Similarly, the Legislature expected that more number of people will attend air-conditioned or air-cooled theatres, than ordinary theatres in cities and major towns, not merely because of the comfort provided by air-conditioned and air-cooled theatres but also because these theatres normally get and screen better and first-run pictures. No material has been placed before us by the petitioners to show that this classification among local authorities, or among ordinary, air-cooled and air-conditioned theatres, is either unreasonable or unrelated to the object. Accordingly, we see no reason to hold the said classification either bad, or inadequate.

40. Before, however, concluding this aspect, it is necessary to deal with certain cases cited by the counsel for the petitioners. The first one is the decision of the Supreme Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . In this case, the Travancore-Cochin Land Tax Act, 1955, as amended by Act 10 of 1957, was attacked on the ground, inter alia, of violation of article 14 of the Constitution. The Act levied a tax called "land tax" at a flat rate of Rs. 2 per acre in all the forests in the State of Kerala. The said tax was payable

irrespective of the fact whether the owner of the forest derived any income, or whether the property is capable of yielding any income, or not. No classification whatsoever as made in this case among the several forests in the State for the purpose of levy of the said tax. It was struck down by the Supreme Court holding that, ordinarily a tax on land, or land revenue is assessed on the actual or potential productivity of the land sought to be taxed, whereas no attempt was made in that Act to classify or differentiate the forests on that basis. It was observed that there may be several categories of land and that, while one category of land may not be capable of yielding any income because it is arid desert, the second category may be capable of yielding some income, but only on investment of a disproportionately large amount and capital; the third may be capable of yielding income just enough to pay for the incidental expenses and labour charges, besides land tax or revenue, while the fourth one may be making large profits because of its fertility. It was observed that the levy of uniform land tax on all the four categories amounts to treating the unequals as equals, which itself is discriminatory. While no exception can be taken to the principle enunciated, we see no analogy between the facts of that case, and those of the present case. That was a case where no classification whatsoever was made, whereas in the case before us there is a two-fold classification, as stated above.

41. The next decision is in *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, . This again was a case from Kerala, but relating to the tax on buildings. The tax was levied on building having regard to the total floor area. On buildings with total floor area between 1,000 and 2,000 sq. ft., the tax varied between Rs. 100 and Rs. 200. On buildings with floor area between 2,000 and 4,000 sq. ft., it varied between Rs. 400 and Rs. 800, and so on. What, however, was crucial in the case was that, for determining the quantum of tax, the sole test was the area of the floor of the building. No distinction was made between buildings, having regard to the purpose for which the building is used, the nature of the structure, the town or the locality in which the building is situated, the economic rent which may be obtained, the cost of the building and other related circumstances which would be relevant in evolving a rational system of taxation of buildings. It is for this reason that the levy was held to be bad, on the same principle as in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . Again we must say that the facts of this case bear no analogy to the case before us. Here, the theatres are classified not only local authority-wise, but also having regard to their nature of construction, which takes in the type and cost of construction as well. Indeed, both the above cases have been referred to and distinguished in the case *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, , referred to supra.

42. We may indicate that, unreasonableness of the levy was argued before us both under article 14, as well under article 19. With a view to avoid repetition, we would deal with the reasonableness of the levy while dealing with the attack based on article 19(1)(g).

G. Challenge based on article 19(1)(g) :

The reasoning on this count is that, the petitioners being citizens of India have a fundamental right to carry on business and that, levying the entertainment tax at a certain percentage of the gross collection capacity, without reference to the actual collection of entertainment tax, or the actual total collections, as the case may be, amount to an unreasonable restriction upon the said fundamental right. It is argued that the said levy is expropriatory, inasmuch as the petitioners would be obliged to pay more amount towards tax than what they collect. Necessarily, therefore - it is argued - the petitioners would have to dip into their own revenues to pay the said tax. In some cases, it is pointed out, the total collection made by a theatre in a week or month, is sufficient just for paying the tax, leaving nothing for the proprietor even to meet other expenses. A scary picture has been painted before us that, if the impugned tax is upheld, several theatres in the State have to be closed down. It is for this reason that we have examined this argument at great depth and with good amount of care. We now proceed to examine the correctness of the said reasoning.

43. We have indicated hereinbefore that the consolidated levy system was already in force in the State u/s 4-C of the Act, but was confined to theatres situated within local authorities with a population not exceeding 25,000. The rate of entertainment tax u/s 4, was 35 per cent where the payment for admission was not more than Rs. 1.50, and 45 per cent in case the payment for admission was not more than Rs. 1.50. As against these rates prescribed in section 4(1) of the unamended Act, section 4-C provided 13 per cent to 14 1/2 per cent of the gross collection capacity per show, as the tax payable by theatres governed by that section. In section A we have given an illustration and shown how this method of taxation was beneficial to the proprietors, and more so, in case, they opted for the composition scheme under the old section 5. We have also demonstrated how less than 50 per cent average occupancy over a week or a month would be sufficient to enable a proprietor to pay the tax. Indeed, Mr. P. Babulu Reddy, who led the arguments in this batch of writ petitions, opened his arguments with the premise that this system was very much beneficial and advantageous for the proprietors and, for that reason, they never complained of the same all these years. We shall now demonstrate how the very same method and level of taxation is continued now - with some variation in the case of towns and cities.

44. On December 29, 1983, Ordinance No. 31 of 1983 was issued raising the entertainment tax of 65 per cent - 80 per cent of the payment for admission, as against the previous 35 per cent - 45 per cent. Simultaneously, under G.O. Ms. No. 615 the rates of admission were also raised. According to the impugned Amendment Act, the tax payable by a permanent and semi-permanent theatre in a gram panchayat/selection grade gram panchayat/township/any other local area [not falling within categories (a) to (f) mentioned in the table in section 4(1)], is 20 per cent the gross collection capacity. In other words, if a cinema theatre in a

gram panchayat or township is having 1,000 seats and the rate of admission, excluding the entertainment tax is, say, Rs. 2,000, the proprietor would be collecting an amount of Rs. 1,500 by way of entertainment tax (we are taking a mean figure of 75 per cent in the range of 65 per cent - 80 per cent prescribed by Ordinance 31 of 1983, and which rates continue to obtain even today). Thus, the total gross collection of the proprietor would be Rs. 3,500 out of which Rs. 1,500 represents the amount collected on account of entertainment tax. As again this, he would be paying, u/s 4(1) of the Amendment Act, 20 per cent of the gross collection, i.e., 20 per cent of Rs. 3,500 towards entertainment tax, which comes to Rs. 700, which is less than 50 per cent of the amount he collects. The Legislature has fixed this lower rate of tax because of the realisation that the proprietor may not have full occupancy for each show of the day, or each day of the week, or each week of the month, as the case may be. But, the above illustration proves that less than 50 per cent average occupancy rate would be sufficient to enable a proprietor to meet the tax liability. What he would be collecting on account of entertainment tax would be enough for paying the tax levied u/s 4(1) of the Amendment Act. Indeed, if his occupancy rate is 50 per cent or more, he stands to gain, because whatever he collects on account of entertainment tax over and above the amount he has to pay, would constitute his income. As we have already indicated, if a proprietor opts u/s 5, the rate suddenly descends to 15 per cent, and even the number of shows would be less. In such a case, even 40 per cent average occupancy rate would be sufficient for him to break even, in the matter of collection and payment of tax. Now, we shall take the case of a first grade municipality mentioned in category (d) in the table contained in section 4(1). If it is an ordinary theatre, it has to pay tax at the rate of 23 per cent. If we adopt the same figures as given in the above illustration, as against the amount of Rs. 1,500 collected by the proprietor of this theatre, on account of entertainment tax, he would be liable to pay a sum of Rs. 805 per show towards the tax (at the rate of 23 per cent of the gross collection capacity). In other words, an average occupancy ratio of less than 55 per cent would enable him to break even. In case of section 5, however, even less than 50 per cent average occupancy rate would be sufficient. In the case of an air-conditioned theatre in this municipality, however, the proprietor would be obliged to pay Rs. 910 as against Rs. 1,500 collected by him, which means that he must have 60 per cent average occupancy rate to break even. Now coming to the theatres within the municipal corporations of Hyderabad and Secunderabad, Vijayawada and Visakhapatnam, the average occupancy rate should be little higher in each respective category of theatres. The rate for ordinary theatres within the municipal corporations is 25 per cent, which means that they must have about 58 per cent average occupancy rate to break even, whereas in the case of air-conditioned theatres within these cities, the proprietor would be obliged to pay Rs. 1,015 as against the amount of Rs. 1,500 collected by him, which means that he must have about 67 per cent average occupancy rate to break even.

45. Thus, it is evident that the Legislature proceeded on a definite and clearly ascertainable basis. It proceeded on the assumption that, while the average occupancy rate in a village will be lower, the rate of occupancy will ascend higher and higher corresponding to the level or grade of the local authority. A look at the rates prescribed in section 4(1) bears out this analysis.

46. We shall now refer to certain definite figures supplied to us by the counsel for the petitioners in this behalf. Mr. E. Raja Rao, the learned counsel for the petitioner in W.P. No. 7014 of 1984 has supplied us the figures relating to the "Padma Priya" theatre, an air-conditioned theatre situated at Kakinada. Kakinada is a selection grade municipality. The following table of particulars has been furnished by the learned counsel :

				At the Gross			
Net approx Tax under		Tax under		Tax under		rate of 57 per	
section occupation		cent 31 of 1983		4(1) of 5(1) of		(percentage) approx. 43 Act	
24	of	Act	24	per	cent	1984	of
				Rs. Ps. Rs. Ps.			
Rs.	Ps.	Rs.	Ps.	100 per cent	3,845.50	2,179.50	1,666.00
885.00	90	per cent	3,461.00	1,973.00	1,488.00	1,077.00	885.00
3,076.00	1,753.00	1,322.00	1,077.00	885.00	70 per cent	2,692.00	1,534.00
1,265.00	1,077.00	885.00	60 per cent	2,307.00	1,315.00	992.00	1,077.00
885.00	50 per cent	1,923.00	1,096.00	827.00	1,077.00	885.00	40 per cent
1,538.00	877.00	661.00	1,077.00	885.00	30 per cent	1,154.00	658.00
1,077.00	885.00						

47. According to these figures, the proprietor of this theatre must have 64 per cent average rate of occupancy in a week or month, as the case may be, to break even in the matter of payment of tax. In other words, with the said rate of occupancy, what he would be paying on account of tax u/s of the Amendment Act would be the same as he would be collecting on account of tax. But, if he opts u/s 5, it would be enough if he has 53 per cent of average occupancy rate. We must, however, mention that, according to the particulars furnished by the learned counsel, the petitioner's rate of occupancy during the period March 26, 1984 to April 26, 1984, is only 53 per cent. We shall discuss about the correctness of the actual occupancy particulars furnished by the petitioners, a little while later.

48. We may also refer to another set of particulars furnished by Sri S. Dasaratharama Reddi with respect to "Theatre Anita" at Nellore. It is an ordinary theatre. The particulars furnished are to the following effect :

				Total Occupancy			
Gross Net Total		Total Tax per		gross tax per		per show	
under show		per section		Ordinance 4(1) of 5(1) of		31 of Act 24	
1983	of	1984	of	1984	of	1984	of
				(1) (2) (3) (4)			

(5)	(6)	(7)	----- Rs.									
Ps.	Rs.	Ps.	Rs.	Ps.	Rs.	Ps.	Rs.	Ps.	Rs.	Ps.	Rs.	Ps.
3,079.00	100	3,079.00	1,755.05									
1,323.95	738.96	586.01	per cent (house full)	70	per cent	2,155.30	1,228.54					
926.76	738.96	586.01	60	per cent	1,847.40	1,053.03	794.37	738.96	586.01			
50	per cent	1,539.50	877.53	661.98	738.96	586.01	40	per cent	1,231.60			
702.02			529.58				738.96		586.01			

49. According to these particulars, 58 per cent average occupancy rate would be sufficient for the proprietor to break even u/s 4 of the Amendment Act, whereas in the case of his opting u/s 5, even less than 50 per cent average occupancy rate would do. Of course, according to the particulars furnished, his rate of occupancy is only 22.89 per cent during the period March 26, 1984 to May 13, 1984.

50. While we do not wish to burden this judgment with the particulars of several theatres furnished to us, we would refer to the particulars furnished with respect to a theatre, "Sree Venkateswara Picture Palace, Ongole" to demonstrate the unacceptability of the actual occupancy figures placed before us by the petitioners. According to the statistics furnished by Sri M. R. K. Choudhary, the learned counsel for the petitioner in W.P. No. 6827 of 1984, the average occupancy rate was 44 per cent during the year 1981-82 (financial year), 35 per cent during 1982-83, and only 28 per cent during 1983-84. It is stated that, on account of this low occupancy rate, the petitioner applied for reduction of the seating capacity in his theatre. He requested that, from the total seating capacity of 922, it may be reduced to 779, i.e., he asked for a reduction of only 15 per cent. Particularly in the reserved class where, according to his figure, the rate of occupancy is very low, he asked for only a nominal reduction from 136 seats to 126 seats. If the particulars furnished by this theatre owner are correct, and in the last three years his occupancy rate never went above 44 per cent and when in fact his occupancy rate was going down steeply over the said period, one would expect him to have asked for more substantial reduction in the seating capacity, than the 15 per cent, he asked for. This only makes us suspect the correctness of the actual occupancy rates furnished by the several petitioners. In fact, some counsel have furnished figures showing as low an occupancy rate as 10 per cent. For example, in the case of "Alka Theatre" in the city of Hyderabad, it is stated that during the period January 1, 1984 to March 22, 1984 their average occupancy rate was only 9.9 per cent. In the case of "Apsara", "Menaka" and "Sree Ramana" theatres, all situated within the city of Hyderabad, the average occupancy rate during the same period is shown as 13. 8 per cent, 14 per cent and 15 per cent, respectively. It is stated that even during the last few years the occupancy rates were the same. We find it difficult to believe that, with such low occupancy rate, the theatres were still able to survive in the business. These figures furnished to us must be examined in the light of the allegation made in the counter-affidavit that, this new method of consolidated levy was brought in with a view not only to simplify the tax structure, but also to plug the

large scale evasion prevalent in the State. It is stated in paragraphs 3 and 5 of the counter-affidavit, as follows :

"(3) In order to simplify the structure of entertainment tax, Government decided to merge the existing tax and additional tax on each payment for admission and also to provide facility of option to pay the amount of tax as percentage on the gross collection capacity in all theatres in the State and also to levy the tax on the basis of the status of the local area without reference to the population.

(4)

(5) After the promulgation of the Ordinance, various representations have been received by the Government. Thereupon the Government examined the desirability of replacing the present system of levy of tax on each payment for admission with a view to further rationalise and simplify the system of levy of entertainments tax and to reduce the possibility of evasion of tax and to ensure realisation of proper tax revenue under the Entertainments Tax Act. In this regard the Government also held discussions with the Film Chamber of Commerce, Film Exhibitors' Association and also film producers. Thereupon, the Government introduced the L.A. Bill No. 14 of 1984 to amend the Andhra Pradesh Entertainments Tax Act, 1939, in the A.P. Legislative Assembly on March 16, 1984."

51. In the above circumstances, we view with scepticism the actual occupancy figures furnished by the petitioners. There is also the allegation of large scale evasion of tax pleaded by the Government. If the average rate of occupancy is 10 per cent, then the situation must be that the occupancy rate never goes beyond 20 per cent, and in some cases it falls to as low as 1 per cent or 2 per cent. These appear to be wholly unrealistic figures. It is difficult to believe that when the theatres in villages are having not less than 50 per cent average occupancy, the theatres in bigger towns and cities would be having only 10 per cent or 15 per cent average occupancy. In fact, they should have more occupancy - not less. This fact would become more evident if we refer to some more facts.

52. The learned Government Pleader has placed before us the letter dated July 26, 1983, from the Andhra Pradesh Film Chamber of Commerce, addressed to the Honourable Chief Minister. In this letter, the exhibitors not only asked for introduction of a slab system all over the State, but also suggested the rates of tax. It would be appropriate to extract the letter in its entirety, omitting the printed matter in the margin mentioning the names of the President, Vice-President, Honorary Secretary, and other office-bearers of the Association :

26-7-1983

"Sri N. T. Rama Rao Hon'ble Chief Minister of Government of Andhra Pradesh, Hyderabad.

Sir,

You are aware our Chamber has been representing to the Government for enhancement of admission rates since more than two years and other concessions to the industry as film business is declared as an industry. We had also represented earlier that the slab system may be applied to the exhibition centres up to 50,000 population. However, as we understand now that the Government is trying to come to certain decisions on admission rates and the fixation of entertainments tax to the exhibition industry in Andhra Pradesh, we are submitting herewith entertainment tax rate to be applied for slab system after the joint meeting of all the sectors of our Chambers today, and we are giving hereunder the suggestions on the tax system for your consideration :

Compulsory Compounding Municipal corporations (twin cities, Vijayawada and Visakhapatnam) : For air-conditioned 20 per cent for 21 shows For air-cooled 19 per cent for 21 shows For ordinary theatres 18 per cent for 21 shows Select and special grade municipalities 21 per cent 16 per cent for 21 shows First grade municipalities 19 per cent 14 per cent for 21 shows Second grade municipalities 18 per cent 13 per cent for 21 shows Third grade municipalities 17 per cent 12 per cent for 21 shows Major panchayats 16 per cent 11 per cent for 14 shows Minor panchayats 14 per cent 9 per cent for 10 shows Touring and open-air 13 per cent 8 per cent for 7 shows Theatres

Due consideration is to be given to the theatres which are on the outskirts of the cities which are not screening new release pictures. A reduction of 3 per cent is to be given for these theatres.

Thanking you,

Yours faithfully, Sd/- (G. V. RAGHAVENDRA RAO), President."

53. A reading of the letters shows that the rates suggested by the Association are the percentages of the gross collection capacity only. Indeed, the said figures cannot be understood otherwise. The consolidated levy system was already in vogue, but confined to local authorities with less than 25,000 population; there the tax was levied at a certain percentage of gross collection capacity. The Association was asking for extension of the said system to the entire State, and also suggested the rates. The expression "compulsory" in the table contained in the said letter, means the rates u/s 4, while the expression "compounding" means the tax u/s 5, of the Amendment Act. It would also be seen that, while the Association has not suggested "compulsory" rates for air-conditioned, air-cooled and ordinary theatres within the municipal corporations, but suggested only the compounding rates, it has suggested both compulsory and compounding rates for theatres situated within other municipalities and gram panchayats. Uniformly they have maintained a difference of 5 per cent between the compulsory and compounding rates. Adopting the same difference, the "compulsory" rates for air-conditioned, air-cooled and ordinary theatres within the municipal corporations of twin cities, Vijayawada and Visakhapatnam would be 25 per cent, 24 per cent and 23 per cent, respectively.

54. The Government has accepted the suggestion of the Association to introduce a consolidated levy system, as also the optional compounding system to the entire State, but has only varied the rates suggested by the Association. As against 25 per cent, 24 per cent and 23 per cent suggested for air-conditioned, air-cooled and ordinary theatres within the municipal corporation areas, as explained above, the Legislature has prescribed 29 per cent, 28 per cent and 25 per cent. Of course, the Association suggested a uniform rate of 21 per cent u/s 4 for all the theatres in special grade municipalities, without making any distinction between air-conditioned, air-cooled and ordinary theatres; but, the Legislature has adopted different rates both for selection grade and special grade municipalities, and has also made a classification as among air-conditioned, air-cooled and ordinary theatres. In the case of selection grade municipalities, the rates are 28 per cent, 27 per cent and 24 per cent, respectively, whereas in the case of special grade municipalities, the rates are 27 per cent, 26 per cent and 23 per cent, respectively. So far as section 5 rates are concerned, there is a similar difference between the rates suggested by the Association and the rates adopted by the Government. As against 20 per cent for 21 shows in air-conditioned theatres suggested by the Association, the Legislature has prescribed 24 per cent on 22 shows. Similarly, in the case of ordinary theatres within the municipal corporations, as against 18 per cent for 21 shows suggested by the Association, the Legislature has prescribed 20 per cent for 22 shows. This letter of the A.P. Film Chamber of Commerce is very significant, and establishes the following facts : viz., (i) extension of compulsory consolidated levy system to the entire State was suggested by the A.P. Film Chamber of Commerce itself; (ii) the rates of tax suggested by the Association clearly belie the actual occupancy figures furnished by the petitioners. The rates now prescribed by the Legislature vary from 2 per cent to 4 per cent over the rates suggested by the Association. If the rates now prescribed by section 4 of the Amendment Act contemplate an occupancy ratio of 66 per cent to 50 per cent, it would follow that the rates suggested by the Association contemplate, and are based upon, a slightly lower rate of occupancy, by about 5 per cent to 10 per cent. If, according to the picture painted before us, a large number of theatres except a few fortunate ones, are having an average occupancy rate far below 50 per cent, it is inconceivable as to why the A.P. Film Chamber of Commerce suggested the above rates; (iii) that, there ought to be a distinction between the theatres situated within the municipal corporations, and the theatres situated within the selection grade and special grade municipalities, and so on was an idea put forward by the A.P. Film Chamber of Commerce itself. The letter itself suggests a descending rate of tax for theatres situated in the lesser level of local authorities. What is very significant is that, in this letter it is not suggested that, as between the theatres situated in the same local authority area, there should be a distinction depending upon their location, viz., whether they are situated in the heart of the city or town, as the case may be, or whether they are situated in the outskirts or in a far away locality.

55. The above discussion shows that the rates of tax now prescribed u/s 4, based as they are on an average expected occupancy rate of less than 50 per cent to 66 per cent, cannot be said to be either unreasonable or expropriatory. From 1976 to 1984 the consolidated levy system was in vogue in local authorities with less than 25,000 population. The rates of tax prescribed for them were premised upon expected average occupancy rate of slightly less than 50 per cent in the case of section 4-C, and about 40 per cent in the case of section 5. The same expected rate of occupancy constitutes the basis for the present rates prescribed for gram panchayats and townships. Only in the case of municipalities and corporations, the expected average occupancy rate is taken at a gradually rising figure. That there ought to be a distinction in the matter of rate of taxation as between municipal corporations, select and special grade municipalities, first grade, second grade and third grade municipalities, respectively and gram panchayats, is suggested by the A.P. Film Chamber of Commerce itself, as stated above. Practically the same distinction as suggested by the A.P. Film Chamber of Commerce, with slight variations, has been maintained between the theatres situated in various classes of local authorities. We may reiterate that the distinction as between the theatres situated within the same local authority area was never suggested by the A.P. Film Chamber of Commerce, and is put forward for the first time only in these writ petitions.

56. Faced with the above letter of the A.P. Film Chamber of Commerce, an Association of the film exhibitors, some counsel sought to contend that their clients are not members of the said Association; that, they were not aware of the said representation and that, they are not bound by the said representation. We are unable to appreciate this submission. Even in paragraph 5 of the counter-affidavit, it was clearly stated that the Government held discussions with the A.P. Film Chamber of Commerce, Film Exhibitors' Association, and also film producers, and the learned Government Pleader has produced the record before us containing the said letter. We are not treating the said letter as amounting to an estoppel against the petitioners, nor are we saying that, because of the said representation, the petitioners are not entitled to urge their contentions. We are relying upon the said letter only to examine the reasonableness of the rates prescribed by the Amendment Act and the distinction made local authority-wise. According to us, it is an important circumstance relevant on the above aspects, and not that it is conclusive against the petitioners. Therefore, it is really immaterial which particular theatre concerned in this batch of writ petitions was, or was not a member of the A.P. Film Chamber of Commerce.

57. It was argued by the counsel for the petitioners that, whereas in the case of an attack upon the statute based upon article 14 of the Constitution, the burden is upon the petitioners to establish the vice, in the case of attack based on article 19, it is for the State to justify that the restrictions imposed by it are reasonable. It was contended that, in this case, the State has failed to discharge the said burden, inasmuch as it has not placed any material before the Court to show how, and why the rates prescribed by it are reasonable. It is argued that, no

enquiry was made either by the Government, or a committee or a commission appointed by it, nor were any objections or representations called for from the exhibitors, before prescribing the said rates. Reliance was placed upon the decision of the Supreme Court in *R. K. Garg v. Union of India* AIR 1981 SC 2138, in this behalf. But, as elaborated by us hereinbefore, the State has not done anything new or different than what was already in vogue. The consolidated levy system, as well as the composition levy system which were already in vogue but confined to local authority areas with less than 25,000 populations, were extended to the entire State. So far as the gram panchayats and townships are concerned, the same rates are adopted (we have already demonstrated how the higher rates prescribed in section 4 for gram panchayats as compared to the lower rates prescribed in section 4-C of the main Act, are attributable to the rise in the level of entertainment tax, i.e., from 35 per cent - 45 per cent to 65 per cent - 80 per cent). The higher rate of tax in the case of bigger local authority areas is, as demonstrated above, a fact of life recognized by the Legislature, and was also recognized, and proposed by the A.P. Film Chamber of Commerce itself. In such a situation, we are unable to understand as to why, and how the several theatres would be obliged to close down if the impugned Amendment Act is upheld. Indeed, many better-run theatres would be better-off, because all the entertainment tax they would be collecting over and above the expected average occupancy rate (underlying the rates of tax prescribed) would constitute their own profit. It may be that there may be a few theatres here and there which may not be able to attract the said rate of expected occupancy and in those cases it may work to their prejudice; but, merely because of the possibility of such cases occurring here and there, it cannot be held that the rate of tax prescribed is unreasonable. A broad view has to be taken in such matters, and more so in the matter of levy of rates by a taxing enactment. The Act is designed to simplify the tax structure and its collection, with a view to eliminate the scope for evasion and corruption. Previously, every fact stated by the proprietor was the subject-matter of verification. The number of shows held by him, the number of persons admitted to a cinema theatre for each show, were also the subject-matter of enquiry and, in the very nature of things, it was impracticable and inconvenient, and gave room for any amount of abuse both on the part of the proprietors, as well as the officers in charge of assessment and collection of tax. Under the new system, all these enquiries are eliminated to a very large extent. If it is a case of section 5, practically no enquiry is necessary. The tax payable has to be determined having regard to the seating capacity, rates of admission, and percentage, and the number of shows prescribed in the section. In the case of section 4, the only verification that now needs to be done is the number of shows held by a proprietor. No other investigation or verification is necessary. If a show is held, a particular amount of tax is payable, which is arrived at on the basis of the formula prescribed in the section. It is in the interest of the State and the public at large that such laws are made eliminate, as far as possible, room for evasion and corruption. We must, accordingly, hold that the impugned enactment does not constitute an unreasonable restriction upon the petitioners"

fundamental right, guaranteed to them by article 19(1)(g) of the Constitution, and is, accordingly, valid.

58. Yet another general argument advanced by Sri S. Parvatha Rao is rather novel. His argument runs as follows : Unit March 23, 1984 (the date on which Ordinance No. 9 of 1984 was issued and the date from which the Amendment Act is given retrospective effect), the entertainment tax was levied by section 4 on a particular percentage of the payment for admission (excluding entertainment tax). The totality of payment for admission plus entertainment tax, constituted the effective payment for admission. But under the Amendment Act, there is no section levying the entertainment tax at all. The levy is now upon the gross collection capacity, all of which constitutes the proprietor's income. In other words, in case of a ticket of Rs. 7 denomination, the entire Rs. 7 is the gross income of the proprietor, and no part of it represents the entertainment tax. The previous composition of Rs. 7, viz., Rs. 3.10, representing the entertainment tax, and Rs. 3.90, representing the payment for admission per se, no longer subsists after March 23, 1984. Therefore, it is argued, the present levy u/s 4 constitutes a tax on income. We find it impossible to agree. It is admitted that, even after March 23, 1984, the proprietors are collecting the same payments for admission as they were charging prior to March 23, 1984, and which are prescribed by G.O. Ms. No. 615 dated December 29, 1983. G.O. Ms. No. 615 was issued on the same date, along with Ordinance No. 31 of 1983, which raised the level of percentage of taxation, as mentioned supra. The rates in G.O. Ms. No. 615 were fixed keeping in view the said level and incidence of taxation. If Mr. Parvatha Rao says that what the proprietor is collecting is only the payment for admission excluding entertainment tax, then he must collect only Rs. 3.90, and not Rs. 7. He cannot be permitted to say that he can collect Rs. 7 and, at the same time, say that no part of Rs. 7 represents the entertainment tax. Acceptance of this argument would not only amount to shutting our eyes to reality, but would also amount to ignoring the statutory provisions and conferring unexpected and extraordinary benefits upon the proprietors, unintended by the Legislature or the Government. We are of the opinion that the payments for admission prescribed by G.O. Ms. No. 615 are made up of two components, viz., (i) payment for admission per se, and (ii) entertainment tax. Section 4 of the Amendment Act devises a new method of levy, designed to collect that amount from the proprietor which he collects on account of entertainment tax. The only difference between the old system and the new system is that, instead of tacking on the tax to each payment for admission, the tax is now tacked on to the gross collection capacity, providing a lesser rate, for the reasons explained at length hereinbefore.

H. Minor and specific submissions :

(i) A controversy was raised before us as to the meaning of the words "seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, in respect of the place of

entertainment", occurring in explanation 1 to section 4. The explanation says "'gross collection capacity per show" shall mean the notional aggregate of all payments for admission, the proprietor would realise per show, if all the seats or accommodation as determined by the licensing authority under the Andhra Pradesh Cinemas (Regulation) Act, 1955, in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission as determined by the said licensing authority". The Andhra Pradesh Cinemas (Regulation) Rules, 1970, made under the Andhra Pradesh Cinemas (Regulation) Act, provide for the seating arrangement, accommodation, and the rates of admission. So far as the seating arrangement is concerned, it is clause 19 of appendix I to the Rules that is relevant. Sub-clause (1) and (2) of clause 19 reads as follows :

"19. Seating arrangements. - (1) The number of seats in any part of the auditorium shall not exceed the maximum number prescribed in the licence by the licensing authority for admission into that part of the auditorium.

(2) The number of persons to be admitted into any part of the auditorium shall be determined by calculating at the rate of 25 persons per 9 square metres of floor area, in respect of such portions as are provided with chairs having backs and arms, and at the rate of 30 persons per 9 square metres of floor area, in respect of other portions, after excluding the area of entrances, passages, gangways, stage, stair-cases and all places to which the public are not admitted :

Provided that the rates for calculations specified above shall be applicable only to permanent cinema buildings and temporary cinema buildings constructed with non-inflammable materials ".

59. The rates of admission are, however, fixed by the licensing authority under rule 12(3) of the Rules, which reads as follows :

"12(3)(a) The licensing authority, while granting or renewing a licence in form B shall also fix the maximum rates of payment for admission to the difference classes in the licensed premises.

(b) These rates shall not be increased during the currency of the licence without an order in writing by the licensing authority permitting such increase.

(c) The order of the licensing authority is liable to be cancelled or modified by the Government, if they consider such a course just or necessary.

(d) Any person aggrieved by the order of the licensing authority may appeal to the Government who may make such order as is deemed fit."

60. The form of licence (form B) also deals with this aspect. Column 11 along with the table appended thereto (i.e., to form B), reads as follows :

"11. Maximum number of persons permitted and maximum rates of admission allowed in each part of the auditorium under sub-paragraph (2) of paragraph 19 of appendix 1 and sub-rule (3) of rule 12.

-----	Class	of
Maximum number of admission	Maximum rates of accommodation	persons permitted allowed
-----	(1)	(2) (3)
-----	Note. - These rates of admission shall not be increased during the currency of this licence without an order in writing by the licensing authority permitting such increase.	

61. It would be evident from a reading of the above provisions that what the law prescribed is only the maximum number of seats and maximum number for admission. For example, while granting the permission for construction of a cinema, the prescribed authority may provide the maximum number of seats to be provided in the auditorium, at 1,000. In such a case, it is not open to the proprietor to instal more than 1,000 seats; but, he can certainly install less number of seats than 1,000. If he installs only 900 seats leaving no open space in the auditorium, it would be reasonable to say that the maximum number of persons to be admitted into that theatre is 900. It would be reasonable to hold that, since 900 seats took up the entire space in the auditorium, only 900 persons can be permitted and that, therefore, the seating capacity is only 900. The situation may, however, be different if a person, while installing 900 seats, also leaves some open space, where he is permitted to make the persons squat on the ground. In such a situation, the capacity of open accommodation has to be determined in accordance with sub-clause (2) of clause 19 of appendix I. In other words, where the entire accommodation in the auditorium is occupied by fixed seats, the number of seats shall be taken as the maximum number of seats for the purpose of the explanation to section 4. If, however, there is any open space/accommodation in the auditorium not occupied by fixed seats, where he is permitted to make persons squat on the floor, then the capacity of such accommodation has to be determined in accordance with sub-clause (2) of clause 19, of appendix I, for the purpose of the explanation.

62. So far as the rates of admission are concerned, the position is slightly different. Within the several rates of admission notified by the Government, it is open to a proprietor to adopt such of those figures as he chooses. In every case he is not bound to adopt the maximum figures permissible. He may adopt even lesser figures; but, the figures he adopts must be those prescribed by the Government. Of course, the rates of admission have to be approved by the prescribed authority and mentioned in the B form licence. It is the rates of admission, which are approved by the licensing authority, which have to be taken into account for the purpose of the explanation to section 4(1) of the Amendment Act.

(ii) The other question is : what happens to the agreements entered into u/s 5, whose term is not yet over ? The complaint of the concerned petitioners is : even though the period for which they had entered into an agreement is not yet over,

the authorities are saying that that agreement is no longer effective and are calling upon the petitioners to pay tax according to new section 4 or section 5, as the case may be. It may be remembered that, according to section 5 as it obtained prior to January 1, 1984, persons opting for that system were obtained to enter into an agreement with the prescribed authority. Once the agreement is entered into, the rights of the parties are governed by the agreement. There is no express provision in the Amendment Act terminating such agreements. The only question is, whether the said consequences follows by necessary implication. The contention of the learned Government Pleader is that, inasmuch as the very statutory provision under which the agreements were entered into has since been repealed, the agreements too come to an end automatically. We are not prepared to agree with the learned Government Pleader. The old section 5 has been repealed by re-enacting it. Even now, it continues to apply to areas to which old section 5 applied. No doubt, there would be difference in rates of tax; but, that is no ground for saying that, by necessary implication, the agreements are put an end to. Section 8 of the A.P. General Clauses Act, 1981, has the effect of saving such agreements. Section 8, in so far as it is relevant for the purpose of this case, says :

"8. Where any Act, to which this chapter applies, repeals any other enactment, then the repeal shall not -

(a) affect anything done or

(b)

(c) affect anything duly done or suffered under any enactment so repealed; or

(d) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ..."

The agreement entered into in this case certainly confers a right or privilege, as the case may be, upon the proprietor. It is also a thing done under the previous enactment. If so, unless there is anything contrary in the context of the repealed law, the agreement is saved. In this connection, it may be seen that if it was the intention of section 5 of the Amendment Act to put an end to the agreements already entered into and in force, then the section would have opened with either a non-obstante clause, or would have employed some words indicating that intention. In the absence of any such words or indication, it is not possible to agree with the learned Government Pleader. The learned Government Pleader also relied upon section 18 of the A.P. General Clause Act, in support of his contention. Section 18 reads as follows :

"18. References to provisions in Acts repealed and re-enacted. - Where an Act repeals and re-enacts, with or without modification, all or any of the provisions of a former Act, references in any other Act to the provision so repealed shall be construed as references to the provisions so re-enacted, and if notifications have

been published, proclamations or certificates issued, powers conferred, forms prescribed, local limits defined, offices established, orders, rules and appointments made, engagements entered into, licences or permits granted, and other things duly done, under the provisions so repealed, the same shall be deemed, so far as the same are consistent with the provisions so re-enacted, to have been respectively published, issued, conferred, prescribed, defined, established, made, entered into, granted or done under the provisions so re-enacted."

We are unable to see how the language of the said section advances his contention. All that it says is that if any engagements are entered into under the repealed enactment, such engagements shall be deemed to be the engagements entered into under the repealed Act, in so far as the provisions thereof are consistent with the provisions so re-enacted. But, it does not follow from section 18 that, all agreements entered into under the repealed law stand abrogated, if not consistent with the re-enacted law in every particular. We, therefore, hold that the agreements already entered into u/s 5, prior to January 1, 1984, will be effective and valid for the period for which they are entered into. On the expiry of the said agreements, however, the proprietors would be governed by the law in force on that date.

(iii) Another argument advanced by certain counsel is that, whereas sub-section (3) of section 5 contemplates rules to be made prescribing the form in which the option should be exercised, and also prescribing the authority who shall permit the proprietor to be governed by section 5, they have not been made and no such form or authority had been prescribed so far. The contention is that, because the form is not prescribed and the authority also is not prescribed as contemplated by sub-section (3) of section 5, section 5 itself must be deemed not to have come into force. We are unable to accept this argument. So far as the prescribed authority is concerned, section 18 of the A.P. General Clauses Act furnishes a complete answer. According to it, if an Act repeals and re-enacts with or without modifications, all or any of the provisions of the former Act, the notifications published, powers conferred, offices established and rules and appointments made under the provisions so repealed, shall be deemed to have been respectively published, issued, prescribed, made or done under the provisions so re-enacted, so far as the same are consistent with the re-enacted provisions. In this case, the old section 5 has been repealed and re-enacted with certain modifications. Whereas its operation was confined to certain areas prescribed in section 4-C, now it extends to all areas prescribed in the present section 4. Therefore, the authority prescribed under the old section 5 will be the authority for purposes of the new section 5. It may be remembered that, section 5(1) contemplated an agreement to be entered into with the prescribed authority, for compounding the tax. Even now, section 5 provides for compounding the tax and if so, the authority prescribed under the old section 5 will also be the authority prescribed for present section 5. So far as the prescribed form in which the option should be exercised, is concerned, it is true

that the old section 5 did not prescribed any such form; but, the mere absence of a prescribed form would not affect the enforceability or operation of section 5. It is always open to the proprietors to send an intimation on an ordinary paper, and the authorities would be bound to treat it as a proper intimation. They would not be entitled to reject the intimation on the ground that it is not in the prescribed form for the simple reason that no form is prescribed ? Indeed, Mr. M. R. K. Choudhary, the learned counsel for the petitioners in W.P. Nos. 6826 and 6827 of 1984, who raised this contention, admitted that his client did indeed send an intimation on ordinary paper and that, they have been paying the tax under, and in accordance with section 5 since then. Firstly, having sent an intimation which has been acted upon - in view of the fact that the petitioners have been paying without any objection by the authority, the tax u/s 5 - it is not open to the petitioners to raise this contention. Secondly, the decision of the Supreme Court in the The Dargah Committee, Ajmer Vs. State of Rajasthan, furnishes a complete answer to this submission. It has been held that, merely because the forms to be prescribed by rules are not prescribed, the Act cannot be said to have not come into operation, or to be ineffective or unenforceable.

(iv) Mr. M. R. K. Choudhary raised a further contention to the effect that, section 5, in so far as it does not provide for reduction of the composition amount in case of reduction of seating capacity of a theatre, during the period of one year (for which the option is exercised), is discriminatory. The contention is that, once an option is exercised u/s 5 of the Amendment Act, it is effective and valid till the end of the financial year in which such option is permitted [vide sub-section (5)]. While sub-section (6), it is contended, provides for enhancement of the composition amount in case the seating capacity/accommodation or the rates of payment for admission are enhanced, there is no provision in section 5 which provides for a decrease in the composition amount in case of either reduction of seating capacity/accommodation, or the rates of payments for admission. We are unable to agree. Section 5 is only optional; no one is compelled to be governed by it, or to opt for the composition scheme contained in section 5. Section 5 evolves a self-contained scheme. According to the said scheme, the option once exercised is in force till the end of the financial year in which such option is permitted. It only provides for enhancement of the composition amount in certain situations mentioned in sub-section (6), but not for reduction in any case whatsoever. Section 5 prescribes a concessional rate of tax, and the number of shows also is fixed while permitting the proprietor to exhibit more number of shows, if he so wishes. Therefore, if a person opts to be governed by section 5, he does so with his eyes open. He must be deemed to have accepted all the conditions and features of the scheme. It is not open to him to say that he will avail of the beneficial provisions of the scheme, while rejecting those features which are not advantageous to him. Such a plea cannot be permitted, Either he opts to section 5, or does not. If he opts, he has to take section 5 as it stands. He cannot say that section or the scheme is bad for the reason that it does not contain a particular provision. This contention also is, accordingly, rejected. In

this view of the matter, we do not think it necessary to refer to the facts in W.P. No. 6827 of 1984, with reference to which facts this contention was urged.

Another subsidiary contention urged in this behalf by Mr. M. R. K. Choudhary is that, though the petitioner in W.P. No. 6827 of 1984 intimated his option to be governed by section 5, on April 7, 1984, no communication was sent by the prescribed authority "permitting" the option. Therefore, he sought to contend that the petitioner would not be governed by section 5 from April 7, 1984, notwithstanding that he has been paying the amounts only in accordance with section 5. He contended that, the petitioner is entitled to give a fresh intimation, now (after reduction of the seating capacity) and that, the prescribed authority is under an obligation to "permit" the said intimation, by determining the amount as per the reduced seating capacity (on May 31, 1984, the seating capacity of the petitioner's theatre was reduced). It may be that the prescribed authority has not sent a communication formally permitting the petitioner to opt u/s 5; yet, in view of the fact that the petitioner has been paying only in accordance with section 5 and no objection was raised thereto by the prescribed authority, it is clear that the petitioner was permitted to be governed by section 5. In other words, his option was permitted. Having availed of the beneficial rate contained in section 5, since April 7, 1984, it is not open to the petitioner now to argue that he is not governed by section 5 and that, he will exercise a fresh option now. The option exercised by him on April 7, 1984, is good and valid till the end of the financial year 1984-85, i.e., till March 31, 1985, and the amount determined u/s 5 as on that date, cannot be reduced for any reason. Normally, however, the authority must send a communication signifying his permission.

(v) Another contention raised with reference to section 5, by Mr. Channabasappa Desai in W.P. Nos. 7448, 7450, 7452 and 7443 of 1984, is to the licensing authority under the A.P. Cinemas (Regulation) Act, 1955, for reduction in the rates of admission. According to G.O. Ms. No. 615, the authority has no power to refuse the reduction for any reason whatsoever. The proprietor is given the liberty to adopt such rates as he chooses, subject to the maximum rates prescribed for different categories of theatres in the State. Yet, the counsel complains, the licensing authority granting the permission for reduction only on April 6, 1984, that too with effect from April 10, 1984. Meanwhile, since the financial year had begun on April 1, 1984, the petitioner opted for the scheme u/s 5, and the prescribed authority u/s 5 is determining the composition amount only on the basis of the rates of admission in force on April 2, 1984 and without taking into account the reduction made on April 6, 1984, with effect from April 10, 1984. It is submitted that the petitioner is suffering grave prejudice on this account, and it is exclusively the consequence of delay on the part of the licensing authority in communicating his acceptance of the reduction of rates.

G.O. Ms. No. 615 dated December 29, 1983, which prescribes the enhanced rates of payments for admission, says, inter alia, as follows :

"(3) If any of the theatre owners propose to fix a lower rate than the above

maximum rates, they may be allowed and the licensing authorities may permit them to do so.

(4)

(5) All the licensing authorities are, therefore, advised to fix the rates of admission asked for by the theatre owners within the ceiling, i.e., maximum rates of admission allowed in para 2 above"

Thus, the petitioner is given the right to opt either for the maximum rates prescribed, or for lesser rates. Once a proprietor opts for a lesser rate prescribed, than the maximum rates permitted for his theatre, he cannot be refused the permission. In other words, the authority has no power to refuse the request on any ground. If so, the authority to whom the proprietor applies for reduction of rates, must intimate his acceptance with reasonable promptitude, and without any undue delay. All that he has to verify is that, the new rates which the proprietor is proposing are the rates prescribed by the G.O. and permissible for the type of theatre; for this, he need not take more than two weeks. Reasonably speaking, one week can be taken as the outer limit within which he should signify his response. While we cannot say, on the material placed before us, on which date actually did the petitioners in these four writ petitions apply for reduction of rates of admission, all we wish to say is that, in case the licensing authority has not indicated his response within one week from the date of receipt of application, it shall be deemed that, with effect from the expiry of seventh day from the date of receipt of the application by the licensing authority, the proposed reduced rates have come into existence, - so long as the rates are those which are prescribed by G.O. Ms. No. 615. It is open to the petitioners to satisfy the prescribed authority u/s 5 of the Amendment Act about the aforesaid facts, and the authority shall pass appropriate orders on that basis, keeping in mind the observations made herein. If it is found that the rates of admission must be deemed to have been reduced with effect from the date, on or before the date on which the petitioners exercised their option u/s 5, the composition amount u/s 5 shall be determined with reference to such reduced rates.

(vi) Another reason the impugned levy was said to be expropriatory is that, in some cases it may not be possible to pass on the tax burden to the consumer. This contention is based on the premises that the tax is levied upon the person entertainment and that, therefore, the exhibitor must always be able to pass on the tax burden to the consumer; the burden should never fall upon the exhibitor, it is argued. If the burden falls upon the exhibitor, it is contended it becomes a tax on his income, because having not collected from the consumer, the exhibitor would be obliged to pay the tax from out of his pocket. Firstly, the premise on which this argument is built up, viz., that the tax is levied upon the person entertained, (consumer), is itself unsustainable in law, as pointed out hereinbefore. Even otherwise, the mere fact that in some cases the exhibitor cannot pass on the burden to the consumer, is no ground for holding the levy as illegal. A similar argument under the Sales Tax Act was rejected by the Supreme

Court in *S. Kodar Vs. State of Kerala*, . Section 2(1) of the Tamil Nadu General Sales Tax Act provided that, in the case of a dealer whose total turnover for a year exceeded 10 lakhs of rupees, the tax payable by him thereunder shall be increased by an additional tax at the rate of 5 percent of the tax payable by the dealer for that year. It was argued that it is a tax on income and outside the purview of the State Legislature. The second contention was that, the provision of the Act, in so far as it prohibited a dealer from collecting the tax from the purchaser, was an unreasonable restriction upon the fundamental right of the dealer to carry on trade, under article 19(1)(g) of the Constitution. This argument was rejected holding, "it is not necessary that the dealer should be enabled to pass on the incidence of the tax on sale to the purchaser in order that it might be a tax on sale of goods". It was observed that the dealer may pass on the said burden to the consumer, but that condition is not a sine qua non for the validity of the levy, or of the tax. It was further observed :

"It is, no doubt true that every tax imposes some restriction upon the right to carry on a business; but, it would not follow that the imposition of the tax is question is an unreasonable restriction upon the appellant's fundamental right to carry on trade. Generally speaking, the amount or rate of a tax is a matter exclusively within the legislative judgment and as long as a tax retains its avowed character and does not confiscate property to the State under the guise of a tax, its reasonableness is outside the judicial ken."

(vii) Another contention raised in W.P. No. 7659 of 1984 and some other writ petitions is that, the higher rate of tax imposed on air-conditioned, and air-cooled theatres as compared to ordinary theatres, is discriminatory against the air-conditioned and air-cooled theatres and is, therefore, void. We are wholly unable to appreciate this contention. The air-conditioned and air-cooled theatres form a distinct category from the ordinary theatres. Indeed, there is a distinction as between air-conditioned and air-cooled theatre. People would prefer to go to an air-conditioned or air-cooled theatre, than an ordinary theatre. Particularly during summer and other hot days, many people would prefer not to go to ordinary theatres. On the contrary, the very air-conditioned or air-cooled comfort may attract some, on such hot days. It is the contention of the petitioner themselves that an air-conditioned or air-cooled theatre requires a huge extra investment, over and above what is required for an ordinary theatre. The distributors and producers of pictures also naturally prefer air-conditioned and/or air-cooled theatres, as against ordinary theatres for their better and first-run pictures. Thus, the classification made between them is reasonable and related to the object. The higher rate of tax levied upon air-conditioned and air-cooled theatres is perfectly reasonable.

(viii) Mr. S. Parvatha Rao has raised another contention in W.P. No. 7676 of 1984. His case is this : The theatre, "Sri Sai Talkies" constructed in 1949 is situated in the cantonment area of Bolarum. It is 10 kilometers away from the Secunderabad city limits. Only second-run or third-run films are exhibited in this

theatre. From 1965 onwards, the Defence personnel, who constitute the main audience of this theatre, are not patronising this theatre for the reason that, open-air cinemas are being exhibited all round, which are exempt from entertainment tax. The result of this, it is stated, is that the occupancy rate is hardly 10 percent to 12 percent. Because the theatre is situated in the cantonment area, the petitioner can neither demolish it, nor construct a new theatre in its place, except with the permission of the cantonment authorities, which is normally not granted. In such a situation, the new levy u/s 4 is bound to ruin the theatre completely, since it would be impossible for this theatre to pay the tax in accordance with section 4, or even in accordance with section 5. It is stated that, because it is situated within the cantonment limits, the petitioner cannot even sell it. The submission is that, many of the theatres in the gram panchayats in the State are far better-off than this theatre. Mr. Parvatha Rao contended, while supporting the other contentions urged in this batch of writ petitions, that the absence of a provision for exemption in the Act, renders the Act too harsh and expropriatory.

Inasmuch as no individual counters have been filed in these writ petitions, the facts stated above have not been, and could not be controverted by the respondents. Inasmuch as this batch of writ petitions was admitted only in April 1984 or later, and posted for hearing within a few weeks of the reopening of the courts after summer vacation, the learned Government Pleader stated that it has not been possible to verify the individual facts and circumstances stated in these several writ petitions, and to file counters with respect to those averments. He stated that, only a general counter meeting to legal submissions raised could be filed, within this short period. It is, therefore, not possible for us to express any opinion on the correctness or otherwise of the facts alleged by the petitioner, except to reiterate our scepticism about the correctness of such low occupancy figures as 10 per cent or 12 per cent. This scepticism of ours is based upon our opinion that a theatre with such a low rate of occupancy cannot survive in business and that, the simple law of economics would drive it out of the market. But, even if the said figures are taken to be correct in the cases of this particular theatre, even then it would not affect the validity of sections 4 and 5, for the reasons given hereinbefore.

The only question to be dealt with is, whether the absence of a power to exempt renders the Act harsh and expropriatory. Section 19-A of the Act, before its amendment by the Amendment Act, read as follows :

"19-A. Power to exempt tax payable u/s 4-C or sum payable u/s 5. - The state Government may, by notification in the Andhra Pradesh Gazette, and for reasons to be specified therein, exempt, whether prospectively or retrospectively, any proprietor or class of proprietors from the levy of tax payable u/s 4-C or the fixed sum referred to in sub-section (1) of section 5 or any part thereof subject to such conditions and restrictions as they may deem fit to impose and may in like manner vary or cancel such notification."

By section 15 of the Amendment Act, for the expression "from the levy of tax payable u/s 4-C or the fixed sum", the words "from the payment of the amount of tax" are substituted. The result of the amendment is that, this power of exemption can be exercised only in respect of the amount payable u/s 5, but not with respect to the amount payable u/s 4. The only reason that the power of exemption is made available with respect to the amount payable u/s 5 but not with respect to section 4, may be that the amount payable u/s 5, once determined, is valid for one year and can only be enhanced but not reduced in any circumstances. In some cases, this may operate very harshly upon the person opting to section 5 and, for this reason, the Legislature must have thought it fit to clothe the Government with the power of exemption to be exercised in appropriate circumstances, subject to appropriate conditions or restrictions, as the case may be. But, so far as section 4 is concerned, the tax is payable only if a show is held, and not otherwise. The tax has to be assessed per each show. It is for this reason that the power of exemption may not have been made available in case of the amount payable u/s 4. Though section 5 is an adjunct to section 4, yet section 5 contains an independent or self-contained composition scheme, and thus stands on a different footing. It, therefore, cannot be said that either section 19-A as amended by the Amendment Act, or the Act, is discriminatory or void, for the reasons suggested. We may, however, observe that the State may examine the desirability of amending section 19-A, so as to extend the power of exemption even in case of the amount payable u/s 4. If there are any bona fide cases of hardship, they can be met by reserving such power in the Government, to be exercised on due verification. In this behalf, we may refer to the fact that it is always open to a proprietor to apply for reduction of his seating capacity/accommodation, or the rates of payment for admission, as the case may be, to accord with the occupancy position. There is no reason to believe that, if and when such an application is made by any of the petitioners including the petitioner concerned in W.P. No. 7676 of 1984, the appropriate authorities under the A.P. Cinemas (Regulation) Act and the Rules, would not consider the same according to law and taking into account the relevant facts and circumstances of the case.

(ix) Mr. G. R. Subbarayan, the learned counsel appearing in some of the writ petitions, contended that though the petitioners have applied for reduction of seating capacity, the authorities are not taking any action thereon while, at the same time, taking into account the existing seating capacity both for the purpose of section 4, as well as section 5. A similar submission was dealt with by a Bench of this Court, to which one of us (Jeevan Reddy), J.) was a party, in *State of Andhra Pradesh v. A.P. Cinema Exhibitors* (1978) 2 APLJ 442 in the following words :

"The seating capacity is fixed in accordance with the provisions of the Andhra Pradesh Cinemas (Regulation) Act and the Rules made thereunder. The seating capacity and other particulars can be revised only with the permission of the competent authority under those provisions. It is to be presumed that whenever

an exhibitor applies for reduction in seating capacity, the authorities under the said Act and the Rules would examine the request on merits and would permit the revision therein only on being satisfied about the genuineness thereof".

We reaffirm the said observations. We have already clarified elsewhere that, if any open space or accommodation is left within the auditorium, where the proprietor is permitted to admit persons squatting on the floor, the capacity thereof has to be determined in accordance with sub clause (2) of clause 19 of appendix I to the A.P. Cinemas (Regulation) Rules; but, if the entire auditorium is fully covered by the fixed seats, then the number of fixed seats should be taken as its maximum capacity, and also as the number of persons to be permitted within the auditorium. We have also observed hereinbefore that, notwithstanding the maximum capacity being prescribed for a particular theatre at, say, 1,000, it is open to the proprietor to instal lesser number of seats say, 900, by providing more space between the rows, or by providing more comfortable and wider seats, as the case may be. So long as there is no open accommodation left in the auditorium wherein the proprietor is permitted to make the people squat on the ground, the fixed number of seats alone has to be taken as the capacity of the theatre for the purpose of the explanation to section 4, as well as section 5. The authorities under the A.P. Cinemas (Regulation) Rules shall, therefore, consider and dispose of the said applications filed by the petitioners for reduction in the seating capacity, in accordance with law and in the light of the observations made herein. It is clarified that if the authority is inclined to reduce the seating capacity, it can also impose such conditions as it may think appropriate, to eliminate any scope for any abuse or misuse of such reduction by the proprietor. If the seating capacity is reduced by the licensing authority under the A.P. Cinemas (Regulation) Rules, the authority under the Entertainments Tax Act shall take the same reduced capacity as the basis for determining the amount payable u/s 4 - of course, also taking into consideration the open space or accommodation, if any, as clarified above. In case of section 5, however, the situation would be slightly different, because the reduction in seating capacity cannot have the effect of reducing the composition amount during the financial year, during which the option has already been exercised and permitted. In case, however, the option is exercised for the first time after reduction of the seating capacity, the prescribed authority shall determine the composition amount taking into account the said reduced capacity, and also the open accommodation, if any, as explained herein.

(x) Another contention raised is to the effect that, as between the gram panchayats, there ought to have been a further classification, viz., between major and minor panchayats, and again between panchayats and townships, all of which are now grouped together under clause (g) of the table in section 4(1). We are unable to appreciate this contention. We have already dealt with a similar contention while dealing with the attack upon the constitutionality of the Act, based on article 14, and it is not necessary to repeat ourselves. For the same reasons, this contention is rejected.

(xi) Yet another contention urged was that, where a proprietor opts for the scheme u/s 5, the show tax imposed by section 4-A should not be levied. Reliance is placed upon clause (ii) in sub-section (1) of section 5, as it obtained prior to January 1, 1984. It is not possible to agree. The old section 5 provided for a reduced rate of show tax; but, section 5, as introduced by the Amendment Act, does not provide for a show tax. Section 5 merely corresponds to section 4, whereas the show tax imposed by section 4-A is a tax in addition to the tax u/s 4. It is, therefore, not possible to agree that in a case where the proprietor opts for the composition scheme u/s 5, the show tax u/s 4-A is not payable.

(xii) One final criticism against the impugned levy is that, it confers an undeserved advantage upon some, while driving some out of the business altogether. It is pointed out that there are some theatres, particularly in cities and major towns, which are packed to the capacity for almost every show; at any rate their average rate of occupancy is far higher than 66-67 per cent. In case of such theatres, it is contended, all that they collect on account of tax over and above what they have to pay u/s 4 or u/s 5, as the case may be, will be their profit, pure and simple, whereas, it is contended, some theatres on the other spectrum of the scale would have to close down. Firstly, this situation is not new. It was there even prior to January 1, 1984, but confined to local authority areas with less than 25,000 population. Secondly, such a fortuitous consequence is inherent in the very system of consolidated levy - but, on that account, the Act cannot be held to be intended to benefit some or ruin some. The real intention behind the Act is to simplify the tax structure and to plug evasion. It is beyond all dispute that, by this new system of levy, the public revenue will be substantially enhanced. When public interest is so served, the aforesaid unintended consequence cannot be said to affect its reasonableness or validity.

I. For the above reasons, all the writ petitions fail and are dismissed, subject to clarifications and directions contained in section H of this judgment. We direct the parties to bear their own costs in these writ petitions. Government Pleader's fee Rs. 100 in each.

63. Writ petitions dismissed.

64. After the judgment was pronounced, Mr. B. Subhashan Reddy, counsel for some of the writ petitioners, brought to our notice the following difficulty in implementing the interim orders of this Court. He submitted that in all these writ petitions uniform interim orders were passed permitting the proprietors to pay tax at the rate they were paying under and in accordance with the Ordinance 31 of 1983 and that stay was granted for the difference of amount, i.e., difference between the tax payable as per the Amendment Act and the tax payable under Ordinance 31 of 1983 on condition of the petitioners furnishing bank guarantee for such difference in amount. Mr. Subhashan Reddy stated that after April 1, 1984 some of the proprietors have opted to be governed by the composition scheme u/s 5 as introduced by the Amendment Act. He says the inspite of the "proprietors" opting to the composition scheme u/s 5, the authorities are calling

upon them to pay the tax only in accordance with section 4 of the Amendment Act and not in accordance with section 5 of the Amendment Act. In view of this representation and also because the matter pertains to what happened during the pendency of these writ petitions, the following clarification is made :

During the period intervening January 1, 1984 and March 23, 1984, the proprietors will be governed by section 4 as introduced by Ordinance 31 of 1983. Of course, those proprietors, if any, who had opted to be governed by section 5 as introduced by the said Ordinance, will be governed by that section. But, from March 23, 1984 onwards all the theatres in the State shall be governed by section 4 of the Amendment Act. However, if any of the proprietors have opted or do hereinafter opt to be governed by section 5 of the Amendment Act, they shall be governed by section 5 from the date of the receipt of their option by the concerned entertainment tax officer. In other words, from the date of such receipt of their option, they will be liable to pay the tax only in accordance with section 5.

65. The counsel for the petitioner made an oral request for leave to appeal to the Supreme Court both under article 132(1) as well as under article 133(1) of the Constitution of India. We are, however, not persuaded that this case is one which deserves to be certified under article 132(1) as a case involving a substantial question of law as to interpretation of the Constitution nor in our opinion does it deserve to be certified under article 133(1). In our opinion the case does not involve a substantial question of law of general importance which, in our opinion, needs to be decided by the Supreme Court. As the judgment makes clear, the several questions raised herein are concluded by more than one decision of the Supreme Court and we have merely followed and applied the decisions of the Supreme Court. The oral request for leave is accordingly rejected.

66. Counsel for the petitioners, however, further made a request for suspending the operation of this judgment for a period of one month so as to enable them to approach the Supreme Court by way of special leave and obtain interim orders from that court. It is brought to our notice that this Court has granted stay in all these matters subject to certain conditions. In the circumstances of the case, we suspend the operation of this judgment for a period of four weeks only from today, on condition that the petitioners continue to observe and comply with the conditions already imposed in their respective stay orders. The learned Government Pleader brought to our notice that in the case of air-conditioned theatres, this Court has allowed them to pay at the rate applicable to ordinary theatres, without imposing any conditions like furnishing of security or bank guarantee. He requested that in such cases we should direct the furnishing of bank guarantee as a condition for suspending the order. But inasmuch as it is only for a limited period of four weeks, we are not inclined to impose the said condition. It is made further clear that this order will ensure only to the benefit of those proprietors who have been regularly complying with the conditions already imposed by this Court in their respective stay orders till today. It is made clear

that in no circumstances, the above period of four weeks shall be extended.

ORDER

(W.P. Nos. 6948 of 1984 and batch)

(Order of the bench delivered by JEEVAN REDDY, J.)

October 12, 1984

67. It is complained by several learned counsel appearing for the petitioners that the copies of judgment in W.P. Nos. 6948 of 1984 and batch, have not so far been supplied to them, in spite of our directions to supply, within two weeks. The office explains that copies could not be furnished because of the curfew which was imposed in this area and the consequent disturbance in the working of the office, soon after passing of the said judgment.

68. Be that as it may, we direct the office to furnish copies to the petitioners, within ten days from today. The judgment in W.P. No. 6948 of 1984 and batch dated July 19, 1984 will be suspended, subject to the same terms and conditions, as are indicated therein, till the end of October, 1984.