

**(2003) 11 KAR CK 0052**

**In the Karnataka High Court**

**Case No : Writ Petition No. 21855 of 2002**

Atria Convergence Technologies Pvt. Ltd. and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

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**Date of Decision : 28-11-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19 (1) (g), 304  
Karnataka Entertainment Tax Act, 1958 — Section 4 G

**Citation : (2004) ILR (Kar) 901**

**Hon'ble Judges : R. Gururajan, J**

**Bench : Single Bench**

**Advocate :** H.B.V. Patil, Shalini Patil, N.G. Sreedhar, S. Krishna Dixit, B.V. Prakash Angadi, Rekha K.C., R. Nataraj, N.S. Satishchandra, A. Sampath and V. Mahesh, Kamath and Kamath and Sri S.K. Venkata Reddy and Assts, for the Appellant; Anand, HCGA, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

R. Gururajan, J.—The petitioner is M/s. Atria Convergence Technologies Pvt. Ltd., and others are before me challenging the Constitutional validity of Section-4G of the Karnataka Entertainment Act, 1958 in terms of Amendment Act No. 5/2002 as unconstitutional, arbitrary and illegal. They also challenge the consequential demands raised by them.

2. Facts in brief are as under:

The petitioners are multi system operators and are engaged in the business of receiving telephone signals from Private TV Channels. They distribute the signals to the Cable TV Operators. They do not transmit the television signals directly to the viewers. The Cable TV Operators use their own infrastructure and transmit signals for the purpose of viewing the programs telecast by various agencies. The petitioner collects towards his service, certain payments from cable operators. According to the petition averments, it is only the Cable TV Operator who provide entertainment to the customers and no entertainment as such is provided by the

petitioners.

3. The Karnataka Entertainment Tax was amended by the respondent. Clause 2(e), 2(g) and Section 4-G was introduced thereby a multi system operator like petitioner is required to pay 10% towards entertainment tax. Aggrieved by these amendment, the petitioners are before me as I mentioned earlier. Their essential contentions are that the levy on these petitioners are legislatively incompetent in terms of Entry 62 List 2 of VII Schedule in the light of no entertainment by them. They also argue that factually the entertainment provider can alone be namely Cable TV Operator made liable to pay the tax.

4. Respondents have entered appearance. They oppose the prayers. They say that in terms of Section 4-G, entertainment tax has been imposed on the Multi System Operators by the State. According to them, the respondents have a right to levy tax on these petitioners. They deny that an unreasonable restriction is created as suggested by the petitioner in terms of Article 19 and Article 304 of the Constitution. They further say that all T.V. entertainment reception is through a decoding process, which takes place inside the T.V. sets of the viewers. The existence of an additional decoder apparatus with the cable T.V. Operator does not materially alter the situation. They further say that it is a prerogative of the State to pick and choose the Taxable persons" for any levy. There is no discrimination in these cases. They further say that there is no legal compulsion of the Legislature to levy tax only on one point in a chain activity of entertainment in Cable T.V. Network. They say that all sorts of entertainment was covered by Entry 62. In conclusion, they want the petition to be dismissed.

5. Sri. Narasimha Murthy, learned Senior Counsel argues that there is no link between the petitioners and the viewers. He explains to me the operating system to contend that no entertainment as such is provided by the petitioner. At the most, according to the learned Counsel it is only a link in the chain. He refers to Entry 62 of List II of State list to contend that the levy of tax on entertainment is to be factual entertainment provided by the petitioners. If there is no entertainment provided by the petitioner, any link on them would be beyond the legislative competence of the State Government. His second argument is that the trade in question is a moving trade and that therefore, Articles 301 and 304 are applicable to the facts of this case. No prior approval is obtained before enactment of Section 4-G and that therefore, it is in violation of Article 304B of the Constitution of India. Learned Counsel also says that only a maximum of Rs. 2,500/-- in terms of Entry 60 List II is payable assuming that the trade of the petitioners is treated as profession. He also argues that tax on production would virtually amounts to an excise levy which is impermissible in law. Lastly, the learned Counsel says that the tax in question is an unreasonable restriction imposed on the petitioner and it is in violation of Article 19(1)(g) of the Constitution of India. Elaborating his submissions learned Counsel states that unless there is entertainment as such, no tax can be levied on the petitioners. He relies on several Judgments to which I would be adverting to at the relevant

place. He has invited my attention as to how the legislative entries have to be understood by the Court in terms of the Apex Court rulings. In so far as Article 301 is concerned, he says that there is no sanction and that therefore it has to be declared as un Constitutional and in violation of Article 304 of the Constitution of India.

6. Per contra, refuting everyone of the submissions, learned Government Advocate says that it cannot be said that the link is remote and on the other hand, the link provides an entertainment and that therefore tax can be levied. In so far as Article 301 is concerned, he says that the said submission has been noticed and rejected in the earlier cases.

7. After hearing the learned Counsel, I have carefully perused the material on record. Facts of the case would reveal that these petitioners do not provide any service or activity to the viewers of various programs telecast by various agencies. They receive the signals and distribute the same to the Cable TV Operators. It is the Cable TV Operators who ultimately provide entertainment to the viewers. A link is certainly available in terms of distribution of signals. Whether this link is sufficient or not for the purpose of levy of tax on entertainment in terms of Section 4-G, is to be considered by this Court in these petitions.

8. Let me see the law on the subject. Both the Counsel have referred to me various case laws with regard to the scope of understanding a Constitutional Entry in terms of the law laid down by Courts.

9. In AIR 1939 1 (Federal Court) , the Federal Court observed that "the rules which apply to the interpretation of other Statutes apply equally to the interpretation of a Constitutional enactment subject to the reservation that their application is of necessity conditioned by the subject matter of the enactment itself."

10. The Supreme Court, after noticing the Judgment in Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City, has ruled as under in para 6:

"The cardinal rule of interpretation, however, is this rider should be read in their ordinary, natural and grammatical meaning subject to this rider that in construing words in a constitutional enactment conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

11. The Supreme Court in The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, was dealing with a case with regard to entertainment tax levied by a cantonment board on the lessee of a cinema theatre on each show of the film exhibited by the theatre owner. The Supreme Court notices Entry 50 in Schedule 7 of the Government of India Act, 1935. The said entry reads as under:

"taxes on luxuries including taxes on entertainments, amusements, betting and

gambling."

It is same/similar as that of Entry 62 of List 2 of schedule 7 of the present Constitution. The Supreme Court rules in the said Judgment as under:

"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 there under 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 giver and the receiver of the luxuries, entertainments or amusements and both may, with equal propriety, be made amenable 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 or 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. A lawyer has to pay a tax or fee to take out a license irrespective of whether or not he actually practices. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the licence chooses to do so. The impugned tax is a tax on the act of entertainment resulting in a show. In our opinion, therefore, Section 73 is a law with respect to matters enumerated in entry 50 and not entry 46 and the Bombay legislature had ample power to enact this law."

12. In *Navnitlal C. Javeri Vs. K.K. Sen*, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, , Supreme Court notices in para 8 as under:

"What the entries in the Lists purport to do is to confer legislative powers on the respective Legislatures in respect of areas or fields covered by the said entries; and it is an elementary rule of construction that the widest possible construction must be put upon their words."

13. The Supreme Court in the recent Judgment in the case of *Municipal Council, Kota, Rajasthan Vs. The Delhi Cloth and General Mills Co. Ltd., Etc. Etc.*, has ruled in para 18 reading as under:

"We affirm the statement of law thus made above to be correct and in our view it is not the nomenclature used or chosen to christen the levy that is really relevant or determinative of the real character or the nature of the levy, for the purpose of adjudging a challenge to the competency or the power and authority to

legislate or impose a levy. What really has to be seen is the pith and substance or the real nature and character of the levy which has to be adjudged, with reference to the charge, viz., the taxable event and the incidence of the levy.

14. In the light of these Judgments, what is clear to this Court is that the mere nomenclature is not a conclusive test in these matters. It is further clear to this Court that while considering the Constitutional entry, no artificial meaning or arbitrary extension of meaning could be given while considering the legislative competence of a levy in terms of the entry in terms of the Judgment of the Supreme Court. This Court also has to notice the pith and substance while interpreting and while considering the legislative power in terms of the Constitutional entries while considering the legislative validity of a provision. Section 4-G, in the case on hand is a provision providing for levy of tax on multi system operator. Admittedly, this levy is made in terms of Entry 62 List 2 of Schedule VII. Entry 62 provides for tax on entertainment. The petitioners in the given set of facts cannot be said to provide any entertainment directly to the viewers. At the most, they act as a link in the chain. A link in the chain may be necessary for the ultimate payment of entertainment tax by providing entertainment to the viewers. So long that chain does not provide any entertainment, no tax can be levied u/s 4-G since the tax is "on entertainment" and not by way of entertainment. The argument of the Government Counsel that a chain is sufficient is not acceptable in the light of the understanding of a Constitutional entry and understanding the scope of levy of tax on entertainment. Any other meaning would result in extending the entry to an unreasonable meaning. The incident of tax is on entertainment in terms of Entry 62 List 2 of VII Schedule. There is no nexus in the case on hand for the purpose of tax u/s 4-G of the Act in the light of Entry 62 in the absence of entertainment being provided by the petitioners.

15. In the case on hand, connecting cable to the viewers T.V set and making the required signals available to the T.V. Set may amount to provision for entertainment in the context of the given circumstances. However, the same logic cannot be extended even to those activities which otherwise do not provide for any entertainment. In the instance case, as I mentioned earlier, the levy has no direct connection and if at all, there is some link, that link has to be ignored since no entertainment as such is provided by virtue of that link. Any levy of tax on such loose links would be running counter to the Constitutional entry of entertainment in terms of Entry 62 List 2 of the constitution. Therefore, I find substance in the argument of the learned Counsel for the petitioner that this Section cannot be given effect to on the ground of legislative incompetence. The argument of the learned Counsel for the State that a link do provide entertainment cannot be accepted to the facts of this case. In these circumstances, accepting the argument of the learned Counsel for the petitioner, I deem it proper to strike down Section 4-G by holding that it is in violation of the legislative power granted to the State legislature in terms of Entry 62 List 2 Schedule 7 of the Constitution of India.

16. The petitioners, however, have raised various other contentions. In the light of my findings on legislative incompetence, it is unnecessary for me to go into the other arguments advanced by the petitioner with regard to other issues.

17. This view of mine finds support by the Judgment of the Calcutta High Court in the case of Poorvi Communications v. State of West Bengal.

18. In the result, these petitions are allowed. Section 4-G of the Karnataka Entertainment Act, 1958 in terms of Amendment Act No. 5/2002 is declared as unconstitutional and beyond the powers granted to the State legislature in terms of the Constitution. Consequently, a further direction is issued to the respondent not to proceed/not to levy any entertainment tax on these petitioners in terms of Section 4-G of the Act.

19. Ordered accordingly. No costs.