

(1988) 06 KAR CK 0038

In the Karnataka High Court

Case No : Writ Petition No's. 7127 to 7134, 8716, 8717, 9341 to 9346, 10760 to 10762, 11505, 11506, 12491, 13825 and 14884 of 1987

B. Ganesha Krishna Bhat

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-06-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 32
Karnataka Entertainment Tax Act, 1958 — Section 3, 3 A, 4 B

Citation : (1989) 73 STC 267

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : Inder kumar, K. Suryanarayana Rao, B.G. Sridaran, R. Gururajan, B.V. Katageri and S.R. Nayak, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

S.R. Rajasekhara Murthy, J.—The petitioners in these writ petitions are the licensees conducting video shows by exhibiting cinematograph films on television screen through video cassette recorder and are holding licenses issued by the Karnataka Exhibition of Films on television screen through Video-cassettes Recording (Regulation) Rules, 1984. (Hereinafter referred to as "the VCR Rules").

2. The term "cinematograph show" occurring in the definition of "entertainment" in section 2(e) of the Karnataka Entertainments Tax Act, 1958, was amended by an explanation inserted in section 2(e) by Act 3 of 1986 to include video show.

3. Section 4B was also inserted by Act 3 of 1985 providing for levy and collection of tax under the Karnataka Entertainments Tax Act, 1958 (hereinafter referred to as the "Act"). The said section 4B reads as under :

"4B. Special provision in respect of video shows. - In lieu of the tax payable under sections 3, 3A, 4 or 4A, subject to such rules as may be prescribed, in the case of video shows, there shall be levied and paid to the State Government, entertainments tax at the rate of one hundred rupees per month."

4. By Act 22 of 1986, the rate of tax was enhanced to Rs. 1,000 per month.
5. Again by Karnataka Act 15 of 1987 the said provision was amended to provide for levy of tax on video shows at the rate of Rs. 2,500 per month in place of Rs. 1,000. This provision is challenged by the petitioners as ultra vires the Act and also on the ground that it is violative of articles 14 and 19 of the Constitution of India.
6. By an amendment sought to the writ petitions, an additional ground is raised that the scheme of section 4B providing for levy of tax on video shows, u/s 4B is repugnant to the scheme of the levy of entertainment tax as contemplated under the provisions of the Act.
7. It is argued that the levy at a fixed rate of Rs. 2,600 per month does not fit into the scheme of the levy of entertainment tax as provided and envisaged under the Act under which entertainment tax is levied and collected on each admission or on the basis of a composition tax u/s 4A, on each show.
8. It is argued by Sri Inder kumar, learned counsel appearing for a majority of the petitioners, that the lump sum levy of entertainment tax at the rate of Rs. 2,600 per month, irrespective of the seating capacity, the population of the place in which the shows are exhibited, the rates of admission and the number of shows, has no nexus to the scheme and the object of the Act, besides, being violative of articles 14 and 19(1)(g) of the Constitution and is, therefore, liable to be struck down.
9. Elaborating this contention, it is argued by the learned counsel that under the charging section 3 of the Act what is contemplated is levy of tax on each payment for admission to an entertainment. Section 4 provides for levy of additional tax. The Act provides for scheme for payment of tax u/s 4A, what is known as "composition tax". It is also shown that the tax under the Act is either collected on every admission u/s 3 or on every show under the scheme of section 4A. The levy of show tax u/s 4 is common to every exhibitor who pays tax either u/s 3 or u/s 4A.
10. Comparing these provisions with the special provisions provided for levy of tax on video shows u/s 4B, it is argued that on account of the lump sum amount of Rs. 2,500 being fixed as the tax for each month, no other provision of the Act providing for filing of return and assessment and appeals, rectification, etc., is made applicable to the petitioners and other exhibitors who are governed by the special provision. It is also argued with some emphasis that having regard to the special nature of the lump sum tax on video shows, it is not a tax payable u/s 3, the charging section. As can be seen from the very provision, it is pointed out, that this special provision is in lieu of the tax payable under sections 3, 3A, 4 or 4A, and that, therefore, the argument proceeds, that this is not a tax which can be called a tax under the charging section 3, which imposes a tax on entertainment. The other learned counsel for the petitioners - Sriyuths : B. G. Sridaran, C. N. Kamath and B. V. Katageri have supported Sri Inder kumar.

11. It is contended on behalf of the respondents by Sri Dattu, learned High Court Government Pleader, that the levy on video shows is also a levy on entertainment under the Act which provides for levy of tax on entertainments, that the special provisions are provided u/s 4B having regard to the fact that the exhibitors of video shows are treated as a distinct class of exhibitors different from the other owners or exhibitors, who pay the tax u/s 3 or 4A, in addition to the show tax; that the permits are issued by the District Magistrates under the VCR Rules and the levy of tax on the said licences is provided by the special provisions of section 4B having regard to the fact that the video shows are meant for a smaller number of people at a time and are not exhibited in a regular cinema house, and that, therefore, the insistence on all the other elaborate procedure as are applicable to the other exhibitors of cinema shows is dispensed with. It is also argued that these special provisions are provided in place of and as a substitution for the procedure to levy tax under the Act which is applicable to others. It is also demonstrated in the statement of objections that the levy on video shows, if calculated and levied applying the provisions of either section 3 or 4A, the tax effect on the petitioners per month on the basis of the number of shows or on each admission, would be far heavier.

12. The writ petitions are also opposed on the ground that the levy cannot be challenged as excessive nor can an argument based on articles 14 and 19(1)(g) could be entertained in a matter relating to taxation. It is also further argued that special provisions for levy of tax on video shows treating the licensees under the VCR Rules, as a class by themselves, is not violative of article 14 of the Constitution nor is there any substance in the argument that the levy is confiscatory in nature.

13. Sri Inder kumar has relied upon a number of decisions of the Supreme Court and other High Courts in support of his contention that the levy u/s 4B is violative of article 14. It is also urged that the levy is unreasonable and irrational and is, therefore, liable to be struck down, as having no nexus to the object of the Act.

14. The decisions, cited in their order, are these :

(i) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, .

15. In Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, , the petitioners who were owners of forest areas in certain parts of the State of Kerala, challenged the constitutional validity of the provisions of the Travancore Cochin Land Tax Act, 1955, in particular the provisions of section 5A. The grounds of attack by the petitioners before the Supreme Court were :

(i) levy of tax at a flat rate of Rs. 2 per acre irrespective of the quality of the land or its productive capacity, was arbitrary and unreasonable and violative of article 19(1)(f) of the Constitution;

(ii) the Act which did not provide for issue of notice, enquiry or investigation of

facts before the provisional assessment was made;

(iii) no right of appeal was provided to any higher authority against the order of provisional assessment;

(iv) no provision for hearing the assessee at any stage, was provided under the Act.

16. The Supreme Court struck down the provisions on the following grounds :

"The Act thus proposes to impose a liability on land-holders to pay a tax which is not to be levied on a judicial basis, because (1) the procedure to be adopted does not require a notice to be given to the proposed assessee; (2) there is no procedure for rectification of mistakes committed by the assessing authority; (3) there is no procedure prescribed for obtaining the opinion of a superior civil court on questions of law, as is generally found in all taxing statutes, and (4) no duty is cast upon the assessing authority to act judicially in the matter of assessment proceedings. Nor is there any right of appeal provided to such assessees as may feel aggrieved by the order of assessment."

(ii) State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, , in which a flat rate of levy under the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act was struck down by the Andhra Pradesh High Court was upheld by the Supreme Court. The Supreme Court held that the whole imposition of assessment was left to the arbitrary discretion of the officers not named in the Act without giving any remedy to the assessees for questioning the correctness of any of the important stages in the matter of assessment such as ayacut, taram, rate or classification or even in regard to the calculation of the figures. The Act was struck down as offending article 14.

17. The other challenge made to section 4B of the Act is that the special provisions are liable to be struck down on the sole ground that they do not provide for an appeal under the Act nor is any provision made for reduction or waiver of the tax depending upon various factors warranting such reduction or waiver. The learned counsel relies upon the decision of the Supreme Court in - (i) Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, and (ii) Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, in support of this ground and a Division Bench decision of this Court in (iii) Lakshmi Bags Manufacturing Co. v. State of Mysore [1969] 24 STC 361.

18. It is necessary to notice, in brief, to the facts of the case in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, .

19. Proceedings started against the appellant before the Supreme Court under the Taxation on Income (Investigation Commission) Act, 1947, were challenged under article 32 of the Constitution.

20. It was contended before the Supreme Court that the provisions of the impugned Act were more drastic than the normal procedure provided under the

Income Tax Act to tax evaded income and was also prejudicial to the assessee inasmuch as the impugned Act under which the assessee who were proceeded against under the other provisions of the Act, was discriminatory as no right of appeal was provided and the assessment or the reassessment u/s 8 of the Act was made final.

21. The Supreme Court, therefore, struck down the Act as violative of article 14 on this sole ground.

22. In *Lakshmi Bags Manufacturing Co. v. State of Mysore* [1969] 24 STC 361, this Court struck down section 12A of the Mysore Sales Tax Act before its amendment by Act 3 of 1966 on the sole ground that it did not provide for an appeal or revision when the provision was invoked by the Deputy Commissioner under the Act. This Court followed *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, .

23. Relying on these decisions, it is argued that for the deprivation of right of appeal, the imposition of tax under the aforesaid provision is liable to be struck down as violative of article 14.

24. On these arguments, the points that arise for consideration in these writ petitions are :

(i) whether, the levy of tax under the special provisions provided u/s 4B on video shows, is a levy within the scope and ambit of the Karnataka Entertainments Tax Act ? and

(ii) whether, the said levy is violative of articles 14 and 19(1)(g) of the Constitution ?

25. So far as the first point is concerned, it cannot be disputed that the special provisions contained in section 4B are introduced with the avowed object of providing for a special procedure for levy in respect of video shows. It is also the scheme of the levy that none of the provisions of sections 3, 3A, 4 or 4A, which provide for the procedure and mode of levy on other types of entertainments are concerned, is made applicable to the video shows since section 4B is enacted as a special procedure and in substitution for the regular procedure and mode of levy.

26. As already stated in detail that the regular mode of levy under sections 3 and 3A or 4 or 4A of the Act is on the basis of each admission or on the basis of population. Even in cases falling u/s 4A, the exhibitors are given an option for the levy u/s 3 or u/s 4A, namely, the payment of composition tax on the basis of the population. Thus, it can be seen that under the charging section the Act provides for levy of entertainment tax on each admission and this levy is passed on to the patrons. But, if the exhibitor exercises an option to pay the tax u/s 4A, then the tax is levied in the mode provided under the said provision, namely, on certain percentage of rate on the gross collection capacity (GCC), as specified therein.

27. Therefore, the important point that arises for consideration is, whether the special procedure contemplated u/s 4B can fit into the scheme of Act and the levy u/s 4B construed as a tax on entertainment under the charging section. The provision, of section 4B itself indicates that the levy of tax on video shows is a tax imposed, de hors the charging section. If that is the undisputed position, what is the nature of this levy, is it a tax on entertainments within the purview of the Karnataka Entertainments Tax Act ?

28. The second and more important point for consideration is, whether these special provisions satisfy the tests laid down by the Supreme Court in *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*,

29. On the first question the argument is that section 4B is a colourable piece of legislation and is liable to be struck down on the sole ground that arbitrary and unguided power is conferred on the State Legislature to impose a fixed sum of tax for each month. As could be seen from the history of this particular levy on video shows, to start with, it was Rs. 100 per month, and it was enhanced to Rs. 1,000, and by Act 15 of 1987 it was enhanced to Rs. 2,500 per month. The argument of the petitioners that this special provision gives unguided power to levy any ad hoc sum payable for each month and is violative of articles 14 and 19(1)(g), is not without substance.

30. Taking up this contention for consideration, it can be seen from the scheme of the Act that the recognised method of levy of tax on entertainments is, it is either on the basis of each admission or on the basis of population. Any other mode of levy should have relation or nexus to the object of the Act, namely, to levy tax on entertainments. That it is a levy on entertainment through the medium of video shows is not in dispute. But the case of the department is that a permit to run video shows is issued under the Rules framed under the Karnataka Cinema (Regulations) Rules and that the special provision u/s 4B is made specially for the video shows providing for levy at a fixed rate in lieu of tax payable under sections 3, 3A, 4 and 4A. It is, therefore, argued that the other provisions of the Act which are applicable to the owners or exhibitors of cinematograph shows in a cinema theatre, are deliberately not made applicable to the video shows. It is further argued that the rate of tax cannot be a subject-matter for challenge in a writ petition and it is the prerogative of the legislature to impose the tax at any fixed rate as applicable to all the persons who run video shows.

31. In support of this contention Sri Dattu, the learned Government Pleader, has cited the following decisions :

(i) *Jagannath and Others Vs. Union of India (UOI)*,

Wherein, it was held by the Supreme Court that heavy tax is not a challenge which can be entertained by courts.

(ii) *Y. V. Srinivasamurthy v. State of Mysore AIR 1969 SC 894*.

The Supreme Court did not go into the question regarding quantum since it was neither argued before the High Court nor demonstrated how it was excessive. Therefore, this case does not help the respondent.

(iii) Avinder Singh and Others Vs. State of Punjab and Others, .

Under the Punjab Municipal Corporation Act, 1976, levy of tax on Indian made foreign liquor at flat rate of Re. 1 per bottle was upheld by the Supreme Court.

The facts are distinguishable and has no bearing on the present case.

(iv) B. A. Jayaram v. State of Karnataka (W.P. Nos. 5224 to 5231 of 1987 and connected cases disposed of by this Court on 8/9th and 10th September, 1987) :

32. In which the levy of Motor Vehicles Taxation (Amendment) Act 8 of 1987 raising the levy of tax on tourist vehicles from Rs. 500 per seat to Rs. 2,000 per seat per quarter, was upheld. This Court (a Division Bench), held that the classification of tourist operators as a valid and sustainable classification and also declined not to interfere with the rate of levy on the ground it was entirely a matter of legislative judgment, though the court expressed the view that the distribution of the tax burden on this particular class of operators was rather harsh.

33. The Division Bench relied upon the decisions of the Supreme Court in S. Kodar Vs. State of Kerala, and Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others, among several other decisions, in support of their view upholding the quantum of levy.

34. But the more important ground of attack by the petitioners which is dealt with by me earlier is that the levy suffers from arbitrariness and unreasonableness which cannot constitute a sound foundation to justify any fiscal statute.

35. It is demonstrated that from the very nature of the scheme of section 4B and the absence of any provision providing for any reduction or waiver of this fixed levy, the petitioners cannot claim any deduction or waiver of the tax even if it is proved to the satisfaction of the authorities administering the Act that for any reason beyond the control of the licensees, they could not conduct any shows or conduct the number of shows permitted in the licence. That the impugned provisions do not contain such provisions cannot be disputed.

36. The absence of provision for appeal is also a vitiating factor, as held by the Supreme Court in Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, and reiterated in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . The deprivation of an appellate remedy against an imposition of tax renders such provision unconstitutional and also open to challenge as arbitrary and unreasonable and, therefore, violative of article 14.

37. The impugned provisions which impose a fixed rate of tax irrespective of whether the exhibitor has run the shows or not for various reasons, introduces

an unscientific and arbitrary method of assessment. What is more, it does not fit into the scheme of levy of entertainment tax under the Act which is levied either on each admission or on each show.

38. Therefore, for the reasons stated above, section 4B of the Act under which the tax is levied on video shows is liable to be struck down. The writ petitions are accordingly allowed, and section 4B of the Act is declared unconstitutional. The State Government is given three months' time to give effect to this ruling.

39. Writ petitions allowed.