

(2003) 07 KAR CK 0003
In the Karnataka High Court
Case No : Writ Petition No. 31285 of 2003

Bahar Enterprises

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 226
Karnataka Entertainment Tax Act, 1958 — Section 4 AA

Citation : AIR 2003 Kar 416 : (2003) 4 KCCR 297 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : G.R. Mohan, for the Appellant; Niloufer Akbar, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—The petitioner Bahar Enterprises, a Distributor of the film by name "Quyamat" is challenging Section 4AA of the Karnataka Entertainment Act of 1958. According to the petition averments, the petitioner had taken a Hindi Colour Feature Film "Quyamat" from the producer of the Movie M/s Baweja Movies Private Ltd., for distribution in various theatres. He has referred to the details with regard to his distribution. The film is ready for release and an advertisement has been issued in Indian Express fixing the date of release as 11-7-2003. According to the petitioner, there is a dispute between the Kannada Films Producers Association and the Exhibitors Association in relation to the screening of the pictures of other languages and with regard to service charges in terms of Annexure "A", The petitioner states that Section 4AA is to be struck down and according to the petitioner, it is in violation of Article 19(1)(g) of the Constitution. The grounds raised in the petition are that the amended provision has created hardship to the distributors. It is the contention of the producers that the benefits (service Tax) has to be passed on to them. With these facts and grounds, the petitioner is before me challenging the Constitutional validity of Section 4AA of the Karnataka Entertainment Act of 1958.

2. Sri G.R. Mohan, learned counsel appearing for the petitioner reiterates the facts and grounds raised in the petition. He says that the petitioner is unnecessarily prevented from carrying on his business on account of a dispute between the exhibitors and the producers in the matter of service tax. Learned Counsel says that no rules are framed and that the section is silent with regard to the distribution of service tax. He relies on two judgments of this Court in the case of Karnataka Bank Limited v. Smt. Rekha Rao in Vazeer Vs. The District Magistrate, .

3. After hearing the learned Counsel, I have carefully perused the material on record Section 4AA provides for collection of service charges by the Proprietor of a cinema theatre. It further provides for a Table in the matter of collection of service tax. Admittedly, the petitioner is only distributor. The petitioner is neither collecting nor paying the service tax. Therefore, the petitioner cannot be said to be a person aggrieved by the collection of service charges in terms of Section 4AA of the Act. When the same was confronted to the learned Counsel, he says that on account of the dispute with regard to the share of service tax between the producers and the exhibitors, he is unable to distribute the films. This answer cannot be an acceptable ground for striking down a provision enacted by the legislature in the matter of service charges. The dispute between the producers and the exhibitors cannot form any basis for striking down a provision in violation of Article 19 of the Constitution of India. Courts cannot be used as tools for settling disputes between two warring groups.

4. In these circumstances, I am not inclined to exercise my discretionary powers under Article 226 of the Constitution of India at the instance of the petitioner in the absence of any other rights of the petitioner being infringed on account of introduction of Section 4AA of the Act. No opinion is expressed with regard to the validity of Section 4AA of the Act.

5. Learned Counsel however refers to a Judgment of the Division Bench in Karnataka Bank Limited v. Smt. Rekha Rao in 2002 (1) KCCR 367 and a Judgment of this Court in Vazeer Vs. The District Magistrate, . The Division Bench in Karnataka Bank case has ruled with regard to the power of the Court. There cannot be any dispute over the said proposition. Similarly, the Judgment in the case of Vazeer is with regard to Article 19. That was a case in which the petitioner was aggrieved by the rejection of "No Objection Certificate" by the Government. These two judgments on the facts of this case do not come to the aid of the petitioner.

6. Petition stands rejected.