

(1995) 07 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11210 of 1994

Bhupinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Punjab Entertainment Duty (Amendment) Ordinance 1993 — Section 3A

Citation : (1995) 111 PLR 387

Hon'ble Judges : S.S. Sudhalkar, J; R.P. Sethi, J

Bench : Division Bench

Advocate : M.L. Sarin, Vikas Suri, Hemant Sarin and Alka Sarin, for the Appellant; G.K. Chatrath, General, S.S. Shergill, D.A.G. and S.S. Kang, D.A.G., for the Respondent

Judgement

R.P. Sethi, J.—Constitutional validity of the Punjab Entertainment Tax (Cinematographic Shows) Amendment Ordinance, 1993, (Ordinance No. 4 of 1993) Punjab Entertainment Duty (Amendment) Ordinance 1993, (Ordinance No. 5 of 1993), notifications issued thereunder and under Punjab Entertainment Tax (Cinematographic Shows) Amendment Act, 1994 and Punjab Entertainments Duty (Amendment) Act, 1994, being Acts Nos. 20 and 21 of 1994, have been challenged in this bunch of writ petitions mainly on the ground of legislative incompetence of the State Governor and the State Legislature. It is submitted that the imposition of lump-sum entertainment duty and Show-Tax was unconstitutional. Constitutional validity has also been challenged on the ground of being contrary to the guarantee of equality enshrined under Article 14 of the Constitution of India. It is contended that vide the impugned provisions, the entertainment-duty and Show Tax have been clubbed together the same being contrary to the constitutional mandate are liable to be set aside. The petitioners have further urged that as they have not been given any option to be either bound by the new Act or under the old Act, the amending provisions being beyond the scope of legislative competence of the respondents were liable to be

quashed. It is further submitted that as the liability to pay the tax has been shifted from cinema viewers to the cinema owners, same being contrary to Entry No. 62 of List II of Seventh Schedule of the Constitution was void and did not bind the petitioners.

2. In writ petition Nos. 12517, 12990, 12986, 12987, 12988, 13188, 13608, 13609, 13640, 13698, 13454, 13979, 13980, 13473, 13897, 13664, 13472, 13700, 13123, 13760, 13343, 13702, 13759, 13607, 12939, 13344, 13699, 13671, 13321, 13287, 13652, 13651, 13701, 14265 of 1993 and 99, 1649, 2496, 3046, 12313, 7438, 7439, 10360, 17342, 2495, 7550, 3837, 7549, 3619, 13152 & 13163 of 1994 constitutional validity of 1993 Ordinance has been challenged, whereas in writ petition Nos. 11210, 18576, 18154, 15348, 10855, 10857, 11165, 12723, 11730, 11729, 12317, 15349, 12726, 12356, 13542, 13503, 17636, 11164, 11181, 12724, 17396, 11160, 11057, 12142, 13481, 11179, 11055, 11380, 11157, 11162, 13417, 12358, 10881, 11159, 10834, 11161, 11376, 11379, 11381, 14743, 14742, 17482, 11377, 11617, 15347, 15050, 10856, 10854, 10879, 13755, 12725, 10858, 11156, 10668, 11918, 11163, 11158, 11155, 10882, 10880, 11292, 11293, 11056, 10668, 11154 of 1994, 13621 of 1993 and 2145, 3606, 2099 of 1995 the provisions of Punjab Ordinances No. 2 & 3 of 1994, which were enacted as Punjab State Act Nos. 20 & 21 of 1994 and the notifications issued thereunder, have also been assailed on the grounds noted herein above. The action of the respondents is also alleged to be contrary to the principle of "Promissory Estoppel."

3. The petitioners in all these petitions are cinema owners in the State of Punjab. The respondent-State had enacted the Punjab Entertainments Tax (Cinematographic Shows) Act, 1954, being Punjab Act No. 8 of 1954, under which provision was made for levying of entertainment tax on every show of a cinematographic exhibition for the public, which was commonly known as "Show Tax". The maximum prescribed show tax under the Entertainments Tax Act was Rs. 150/-. Different rates could be fixed for the cinemas falling in three different categories in the State of Punjab. This Tax was to be charged on the basis of number of seats actually occupied. The State of Punjab promulgated Ordinance No. 4 of 1993, making various changes in the entertainment tax. The maximum amount of show tax chargeable u/s 3 of the Entertainment Tax Act was enhanced from Rs. 150/- to Rs. 5,000/-. Section 3-A was incorporated for payment of tax in lump-sum.

4. Respondent-State had also enacted a statute levying entertainment duty, known as "Punjab Entertainments Duty Act, 1955", being Act No. 16 of 1955. Under the Entertainments Duty Act, respondent No. 1 was entitled to levy entertainment duty not exceeding 125% of the payment for admission excluding 40% of the seating capacity. The mode of payment was prescribed by affixing adhesive stamps on the tickets sold. Vide Ordinance No. 5 of 1993, the respondent-State added Sub-section 5 to Section 11 of the Entertainments Duty Act on September 29, 1993 and simultaneously issued a notification laying down

the lump-sum entertainment tax payable by cinema houses in the State of Punjab. The earlier notification dated May 3, 1978, was superseded. It is contended that the said subsequent notification was issued without prior publication of a draft thereof, as required under the relevant provisions of law.

5. On June 10, 1994, another Ordinance, being Ordinance No. 2 of 1994, was issued, whereby various changes were made in the Entertainment Tax Act. Sections 3 and 3-A were substituted to the effect that the Entertainment Tax would be levied and paid to respondent No. 1 on the basis of gross capacity collection per show, held in a cinema house as per the rates of tax shown against the category of the area where by cinema is situate and the type of cinema house, as shown in the table attached with the Amending Act. On the same day, Punjab Ordinance No. 3 of 1994 was also issued, whereby Sub-section 5 of Section 11 of the Entertainments Duty Act was omitted and Section 3-A was inserted to the effect that no entertainment duty shall be livable on the proprietor who is liable to pay entertainment tax under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954. It is contended that the rates of admission of tickets and the total amount chargeable are fixed by the District Magistrate, being the Licensing Authority. The earlier rates fixed by the District Magistrate, were revised, which included all the taxes after the amendments levying taxes. The petitioners also submitted that besides paying entertainment duty and show tax, they are also being asked to pay municipal tax to the Municipal Corporation/Local Bodies under the relevant statutes. The respondent-authorities vide various orders passed by them, determined the gross capacity per show of the petitioners-cinema owners at the rates detailed by each of them. The respondents have worked out the tax payable fortnightly by the petitioners in terms of Section 3 of the Amending provisions.

Vide Act No. 21 of 1994, the Punjab Ordinance No. 3 of 1994 was repealed and vide Punjab Act No. 20 of 1994, Punjab Ordinance No. 2 of 1994 was repealed. It is worth mentioning that the provisions of the aforesaid two enactments, vide which Ordinances aforesaid were repealed and the statutes enacted, have not been specifically challenged before us. However, as the provisions of the Act are *pari-materia* identical to the Ordinances, we have opted to determine their legality also with the object of avoiding further litigation.

6. The writ petitions have been resisted by the respondents on various grounds, as detailed in the replies filed on their behalf. It is submitted that the State Legislature had competence to impose the impugned tax under Entry No. 62 of List II of seventh Schedule. It is further submitted that the amendments made are strictly in accordance with the observations made by the Supreme Court in *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, and *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, . It is contended that the impugned provisions are not unconstitutional on any ground much less alleged ground of inequality. The principle of "Equitable Estoppel" is not applicable in the case and the provisions have been made to plug the holes

by which the cinema owners were allegedly evading the payment of tax. The method of calculation of tax is claimed to be fair and equitable. The decrease in income of the petitioners is stated to be no ground to challenge the vires and constitutionality of a legislative Act, particularly when the Legislature's competence is conceded. The respondents claim to have rationalised the tax structure with an intention to prevent the tax evasion. Lump-sum payment of the entertainment tax is stated to have been levied on the basis of gross collection capacity per show calculated on the basis of notional aggregate of all the payments for admission that the proprietor would realise per shown in respect of all the seats. System of affixing the adhesive stamps is stated to have been dispensed with by making appropriate amendment in the Amending Ordinance and the Statute. The imposition of lump-sum levy does not in any way adversely affect the interests of the cinema owners and it does not result in double taxation, as alleged by the petitioners in some of petitions. The prevalent provisions regarding imposition of cinema show tax and entertainment duty prior to the impugned amendments have been admitted. It is further contended that the lump-sum tax has been levied on a rational basis by classifying the theatres into different classes, namely air conditioned, air cooled and ordinary. The theatres have further been categorised on the basis of the area in which they are situated.

7. In the replication and reply filed thereto, both the parties have reiterated their stands, initially asserted.

8. It has been brought to our notice that in all, there are 156 cinema-theatres in the State of Punjab 56 writ petitions are stated to have been filed against the Ordinance of 1993, whereas 67 writ petitions have been filed against the Ordinance and notifications issued in 1994. 30 petitioners are stated to be common in both the sets of writ petitions.

9. In order to appreciate the rival contentions of the parties, it is desirable to refer to the impugned provisions, of which the petitioners are aggrieved.

10. Vide Act No. 21 of 1994, by which Ordinance No. 3 of 1994 was repealed, Section 3-A was inserted providing.

"Notwithstanding any thing contained in this Act, no entertainment duty shall be leviable on the proprietor who is liable to pay entertainment tax under the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954."

11. Vide Sub-section 2 of Section 4 of the Amending Act, it was provided.

"Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the Ordinance amended by Ordinance No. 3 of 1994, shall be deemed to have been done or taken under the principal Act, as amended by Act no. 21 of 1994."

12. Vide Act No. 20 of 1994, by which Ordinance No. 2 of 1994, was repealed, Section 3 of the principal Act was substituted providing as follows:-

"Levy of tax - Except as otherwise expressly provided in this Act, there shall be levied, charged and paid to the State Government an entertainment tax on the gross collection capacity of cinematograph show held in a cinema house, specified in column 2 of the table given below and located in the area specified in the corresponding entry in column 1 of the said table and calculated at the rates specified in the corresponding entry in column 3 or column 4 of the said table, as the case may be".

13. Section 3-A was inserted, which provided option to pay tax in lieu of tax payable u/s 3 in the form and the manner prescribed thereunder.

14. Section 3-B provides that no entertainment tax shall be levied or charged from the proprietors of a cinema house for the period a cinema house remained closed, provided it remained closed for a minimum period of three consecutive days.

15. By Section 3-C, the proprietor of a cinema house was made liable to pay the tax in case of any exemption granted by the State Government by order passed under Sub-section 2 of Section 6 of the Act.

16. Section 3-D prohibits the proprietor of a cinema house from reducing the seating capacity without the prior approval of the Commissioner.

17. u/s 3-E, the Assistant Excise and Taxation Commissioner, in-charge of the District was authorised to determine the gross collection capacity per show of every cinema house falling within his jurisdiction and communicate the same to the proprietor within a fortnight from the commencement of the Punjab Entertainments Tax (Cinematograph Shows) Amendment Act, 1994.

18. Section 5 of the principal Act was amended by substituting Sub-section (1) making a provision for the proprietor of a cinema to deposit into the concerned treasury an amount by way of security, mentioned thereunder.

19. Section 6 of the principal Act was substituted providing that no entertainment tax shall be levied on a Public cinematograph exhibition where the Commissioner is satisfied on application made in this behalf in the prescribed manner that whole of the net proceeds of the tax will be devoted to philanthropic, charitable, educational or scientific purpose which have been approved, as such by the State Government.

20. Section 7 of the Act was substituted, which provided that every proprietor shall be required to furnish a return in the prescribed form and manner in respect of his cinema house, every fortnight within a period of seven days of the close of the fortnight.

21. Section 15-A was inserted, making a provisions for filing of appeal against the orders specified thereunder to the authorities mentioned in the Sub-section.

22. A proviso was added to Section 16 of the Principal Act which authorised the Commissioner to decide the applications after directing the applicants to deposit,

whole or in part, the amount of entertainment tax or penalty, if any, or both imposed on him under the Act.

23. Mr. Sarin, learned Senior Counsel, who appeared for most of the petitioners, alleged that as the liability to pay the tax has been shifted from cinema viewers to cinema owners, the same being contrary to the constitutional provisions is without jurisdiction and liable to be declared unconstitutional.

24. Sub-Article 3 to Article 246 of the Constitution provides that the State Legislature of any State shall have exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (known as "State List").

25. Entry No. 62 of the aforesaid list provides,

"tax on luxuries, including taxes on entertainments, amusements, betting and gambling."

It is submitted that the language of the entry aforesaid clearly indicates that the tax can be imposed upon such person who enjoys the luxuries, entertainments, amusements, betting and gambling and not on the person, who makes provision for such enjoyment. According to learned counsel for the petitioners, emphasis is upon the person and not upon the facility. It is contended that the State Legislature was, therefore, not entitled to shift the liability to pay the tax from the persons enjoying the facilities to the persons providing the facilities. The argument though attractive on the face of it, is without any substance in view of the Constitutional mandate and the pronouncements made by the Apex Court from time to time. It is worth noting that our constitutional system is modelled on the British Parliamentary system, where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of thus responsibility is its retaining the confidence of the legislative branch of the State. The Supreme Court in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, , has observed as follows:-

"In India, as in England the executive has to act subject to the control of the legislature, but in what way is this control exercised by the legislature? Under Article 53(1) of our Constitution, the executive power of the Union is vested in the President but under Article 75 there is to be a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formulator constitutional head of the executive and the real executive powers are vested in the Ministers or the Cabinet.

The same provisions obtain in regard to the Government of States, the Governor or the Rajpramukh, as the case may be occupies the position of the head of the executive in the State but it is virtually the Council of Ministers in each State that carries on the executive government in the Indian Constitution, therefore, we

have the same system of parliamentary executive as in England and the Council of Ministers of the legislature is, like the British Cabinet, "a hyphen which joins a buckle which fastens the legislative part of the State to the executive part."

The Cabinet enjoying as it does a majority in the legislature concentrates in itself the virtual control of both legislative and executive functions, and as the Ministers constituting the cabinet are presumably agreed on fundamentals and act on the principle of collective responsibility, the most important" questions of policy are all formulated by them."

26. In *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , it was observed by the Supreme Court.

"It should be remembered that the question before us relates to the correct interpretation of a word appearing in a Constitution Act which as has been said, must not be construed in any narrow and pedantic sense. Gwyer, C.J. in AIR 1939 1 (Federal Court) observed at pp. 4.5 that the rules which apply to the interpretation of other statutes apply equally to the interpretation of a constitutional enactment subject to due reservation that their application is of necessary conditioned by the subject-matter of the enactment itself. It should be remembered that the problem before us is to construe a word appearing in entry 54 which is a head of legislative power.

As pointed out by Gwyer, C.J. in AIR 1941 16 (Federal Court) none of the items in the Lists is to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters, which can fairly and reasonably be said to be comprehended in it. It is, therefore, clear and it is acknowledged by Chief Justice Chagla - that in construing an entry in a List conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein.

Reference to legislative practice may be admissible for cutting down the meaning of a word in order to reconcile two conflicting provisions in two legislative lists as way done in the "C.P. and Berar Act case (H)" (supra) or to enlarge their ordinary meaning as in the "State of Bombay v. F.N. Balsara AIR 1951 S.C. 318(J). The cardinal rule of interpretation, however, is that words 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."

27. In *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, Apex Court specifically dealt with the scope of Entry Nos. 60 and 62 of List II of Seventh Schedule of the Constitution and after dealing with Entry No. 50 of the Government of India Act, 1935, it was held.

"As pointed out by this Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, , following certain earlier decisions referred to therein,

the entries in the legislative list should not be read in a narrow or restricted sense and that each general word 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 entertainment 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 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 or 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 licence 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 S. 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."

28. In view of the lucid judgments of the Supreme Court, referred to herein above, it cannot be said that the impugned provisions of the Ordinances and the Amending Acts were without jurisdiction, because admittedly the tax has been imposed upon entertainments and amusement, which is clearly the object of Entry No. 62 of List II of Seventh Schedule of the Constitution of India, there being no difference between the giver and receiver of the entertainment.

29. Learned counsel for the petitioner has relied upon the judgment of Bombay High Court in Ramesh Waman Toke and Ors. v. The State of Maharashtra and Ors. AIR 1984 Bom 45 to submit that the taxes sought to be recovered in the present case are not, in fact, the subject matter of Entry No. 62 of List II of Seventh Schedule. It is worth mentioning that in the aforesaid case also, the Court held :-

"The basis on which the tax can be validly levied, is the fact of entertainment. Taxing event is the entertainment. If there is no entertainment at all, the question of levying entertainment tax in exercise of the legislative powers conferred upon the State Legislature does not arise at all."

30. In the facts and circumstances of that case, where the tax was imposed on video exhibition the Court held:-

"In our opinion, this is not a tax at all which the State Legislature is entitled to levy under item 62 of the State List. In order that entertainment duty should amount to a tax on entertainment it should be levied on entertainment which is actually held and not on entertainment which is theoretically capable of being held."

Looking at the relevant provisions of the offending statute, the Court in that case came to the conclusion that the tax imposed was not a tax within the meaning of Entry No. 62 of List II of the Seventh Schedule. We have our doubts about the judgment in Ramesh Waman Take's case -(supra), but the effect of that judgment does not in any way change the complexion of the present case regarding the legislative competence of the State Legislature to impose the entertainment tax under Entry No. 62. Even in this case, the Bombay High Court relied upon the judgment of Supreme Court in Western India Theatres Ltd.'s case (supra).

31. It is not disputed by learned Advocate General, Punjab, that if the provisions of either the Ordinances or the Amending Act or the notifications issued thereunder are found to be suffering from any legal lacunae, the same can be declared unconstitutional.

32. So far as Ordinance of 1993 is concerned, by inserting Section 3 A in the principal Act, it was provided that the State Government, if satisfied regarding expediency in public interest, may by notification in the official gazette direct that in respect of public cinematograph exhibition to which persons are admitted on payment, a proprietor shall pay such lumpsum entertainment tax and subject to such conditions, as the State Government may specify in the notification.

33. Similarly, Section 12-B of the Act provided that if any proprietor failed to pay the amount of entertainment tax due under this Act, he shall, in addition to the amount of entertainment tax, be liable to pay simple interest on the amount of tax due from him at the rate of one percent per month from the date immediately following the last date for the submission of the return for a period of one month and thereafter at the rate of one and a half per centum per month till the default continues. It was further provided that if the amount of entertainment tax alongwith amount of interest under Sub-section (1) due from a proprietor is not paid by him within the period specified in the prescribed notice, the proprietor shall, in addition to the amount due under the Sub-section, be liable to pay a simple interest on the due amount at the rate of one per centum per month from the date following the date on which the period specified

in the aforesaid notice expired and thereafter at the rate of one and a half per centum per month till the default continued. It was further provided that the amount of interest payable under this section shall be calculated by treating part of a month as one month but no interest shall be chargeable if the total amount payable on account of tax was fifty rupees or less and if such an amount was more than fifty rupees but less than one hundred, interest shall be calculated treating such amount to be one hundred rupees.

34. It is contended that the provisions of 1993 Ordinance conferred unbridled and unguided powers on the executive to impose and recover the lump-sum tax, which in fact and in essence amounted to result in discrimination, thereby offending Articles 14 of the Constitution. A comparison of the corresponding amendment made in 1994 strengthens the submission of the petitioners regarding constitutional validity of 1993 Ordinance. Reference to the payment of, "such lump-sum entertainment tax and subject to such conditions, as the State Government may specify in the notifications", clearly speak of the vice of discrimination, which admittedly and inherently existed in Section 3-A of the Offending Ordinance of 1993.

35. It is acknowledged position now that the law does not permit the executive to pass such orders, which may authorise special treatment or grant of exemptions in favour of some and against the others, without providing any definite guidelines or standards for such differentiation, which if allowed shall amount to discrimination. The Legislature has the power to make classification provided the statute itself indicates the persons or things to whom its provisions are intended to apply. The Legislation can also authorise the State to make classification after laying down the principle or policy. The classification can be made only if there is a nexus intended to be achieved by the Act or such classification is necessitated on the basis of geographical or historical background. The State cannot be permitted to infringe the right of equality enshrined in Article 14 of the Constitution. Persons similarly situated cannot be permitted to be discriminated without proper classification, guidelines or nexus spelt out in the legislation itself. No discrimination is permissible within the members of a well defined class as the cinema owners in Punjab are Classification on the basis of location of cinema, their income etc. as spelt out under the statute, may be held to be legal and permissible. A perusal of Section 3-A of the Offending Ordinance would, however, show that it gave unbridled and unguided power to the State to make classification, which is discriminatory, authorising the executive to provide differential treatment to similarly, situated cinema owners. It envisages arbitrary State action and did not stand the touch stone of equality, as contemplated by Article 14 of the Constitution.

36. The respondent-State being itself aware of the legal infirmity existing in the Ordinance, enacted Act Nos. 20 and 21 of 1994 by removing the vice of unconstitutionality, permitting hostile discrimination by the executive. While introducing the amending Act, it was stated in the Statement of Objects and

Reasons: -

"The Punjab Government vide Ordinance dated the 29th September, 1993 approved the levy and collection of entertainment tax on existing cinema houses on lumpsum basis under the Punjab Entertainment Tax (Cinematograph Shows) Act, 1954. Under this system, the entertainment tax on cinema houses only was made available under the Cinematograph Shows Act and not under the Entertainments Duty Act, 1955, by merging the accruals from entertainment duty and show tax, cinema-wise from 1982-83 to 1991-92 and taking the average thereof and also with an increase of 25% and a further 10% increase every year. (However, subsequently it was felt that this system of levy of tax on lumpsum basis had some legal infirmities).

2. Some of the cinema owners challenged this lumpsum levy of tax in the High Court of Punjab and Haryana. Ultimately it was felt that in order to remove the legal lacunae, some rationale system of levy and collection of entertainment tax may be adopted. The pattern of Andhra Pradesh Cinematograph Act was found to be the most appropriate with certain modifications as applicable to the State of Punjab. This system has been upheld upto the Apex Court of Law. In view of this, the Punjab Entertainment Tax (Cinematograph Shows) Act, 1954 needed some amendments and also to protect the financial interest of the State, which at the moment is passing through an acute financial crisis. The proposed amendments are aimed at achieving the object of collection of entertainment tax and without intervention of inspector Raj. It envisages to provide an option to the proprietors of cinema houses in the payment of entertainment tax in a lumpsum manner. The levy of tax has been rationalised and made more equitable and just. By introducing the new system on the pattern of the Andhra Pradesh Cinematograph Act, it is expected that there will be collection of entertainment tax of about Rs. 8 crores as compared to Rs. 6.54 crores during the year 1992-93.

3. Now the Vidhan Sabha Session has been summoned with effect from 2nd September, 1994 and it is necessary to convert the Ordinance No. 2 of 1994 into a Bill during this session."

37. Under the circumstances, Punjab Entertainment Tax (Cinematograph Shows) Amendment Ordinance, 1993 (Ordinance No. 4 of 1993) and Punjab Entertainments Duty (Amendment) Ordinance, 1993 (Ordinance No. 5 of 1993) and the notifications issued thereunder are declared to be unconstitutional.

38. So far as the Ordinances and Acts of 1994 are concerned, much has not been left to be argued in view of the judgment of the Supreme Court in Venkateshwara Theatre v. State of Andhra Pradesh AIR 1993 S.C. 47. In that case, after amendment of Act No. 24 of 1994 of Andhra Pradesh, the system of levy of tax on the basis of number of persons actually admitted, to the cinema house was dispensed with and the tax was decided to be levied on the basis of percentage of the gross collection capacity per show and different percentages were prescribed depending upon the type of theatre and nature of the local area

where it was situated. Option was given to pay the tax on the basis of the prescribed percentage fixed for a fixed number of shows in a week irrespective of the number of shows actually held. It was argued that by the amendment, nature of the tax was altered and that the said tax had ceased to be a tax on entertainments. It was further submitted that the lump-sum tax imposed was beyond the field of legislative competence conferred on the State Legislature by Entry 62 of List II of the Seventy Schedule.

39. Vide amendment of Section 4 of the Andhra Pradesh Act, it was provided that there shall be levied and paid to the State Government a tax on the gross collection capacity on every show in respect of entertainments held in the theatres specified in the corresponding entry of the aforesaid table, calculated at the rates specified in the corresponding entry in column (3) thereof. Section 4-A provided that in addition to the tax u/s 4, there shall be levied and paid to the Government in case of entertainment held in the local areas specified in column (1) of the corresponding table, a tax calculated at the rates specified in the corresponding entry in column (2) thereof.

40. Section 5 of the Andhra Pradesh Act provided that in lieu of the tax payable u/s 4 in case of entertainments held in the theatres specified in the corresponding entry, 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 the column (3) thereof.

41. A comparative study of the provisions of Andhra Pradesh Act noticed by the Hon'ble Supreme Court and the Punjab Amending Acts No. 20 and 21 of 1994 would indicate that the provisions made are *pari-materia* the same and identical. The arguments advanced to assail the constitutional validity of the Punjab Act were similar as noticed by the Supreme Court in the aforesaid case of Vankateshwara Theatre. The counsel appearing in that case had assailed the constitutional validity of the provisions on the grounds:-

(1) that the impugned provisions do not fall within the ambit of the legislative power conferred on the State Legislature under Entry 62 of the List II of the Seventh Schedule of the Constitution; and

(2) that the impugned provisions were violative of the right to equality guaranteed under Article 14 of the Constitution inasmuch as they treated unequals as equal by imposing tax at a uniform rate on a particular class of cinema theatres irrespective of their location and occupancy.

42. The Supreme Court dealt with both the arguments and held as follows:-

"10. While considering the question as to legislative competence of the State Legislature it is necessary to bear in mind that the impugned provisions provide for imposition of a tax and a tax has two distinct elements, viz., subject of the tax and the measure of the tax. The subject of the tax is the person, thing or activity on which the tax is imposed, and the measure of the tax is the standard

by which the amount of tax is measured. The competence of the Legislature to enact a law imposing a tax under a particular head of the legislative list has to be examined in the context of the subject of the tax. If the subject of the tax falls within the ambit of the legislative power conferred by the head of legislative entry it would be within the competence of the Legislature to impose such a tax. It is, therefore, necessary to examine the scope of the legislative entry, viz., Entry 62 of List II, which is invoked in support of the competence of the State Legislature to impose the tax and ascertain whether the subject of the tax imposed by the impugned provisions falls within the ambit of the said entry. Entry 62 of List II is as follows :-

"62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling."

11. The said entry is in pari materia with Entry 50 of the Provincial List in the Seventh Schedule to the Government of India Act, 1935. Construing the said entry this Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, has rejected the contention that the entry contemplates a law imposing taxes on persons who receive or enjoy the luxuries or the entertainments or the amusements and has held:-

"The entry contemplates luxuries, entertainments and amusements as objects on which the tax is to be imposed.....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 (P. 69 of S.C.R.) (at P. 585 of A.I.R.)".

12. In that case, the cantonment Board had imposed entertainment tax of Rs. 10 per show on the cinema houses of the appellant in the said appeal and Rs. 5 per show on others. Upholding the said imposition this Court has held (*The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*,).

"It is a tax imposed on every show, that is to say, on every instance of the exercise of a particular trade, calling or employment. If there is no show, there is no tax.....The impugned tax is a tax on the entertainment resulting in a show (Pp. 69-70 of S.C.R.)(585 of A.I.R.)".

13. Similarly, in *Y.V. Srinivasamurthy v. State of Mysore* (A.I.R. 1959 S.C. 894) (supra) upholding the provisions of the Mysore Cinematograph Shows Act, 1951 enacted under the Constitution, which authorised levy of tax on cinematograph shows at rates prescribed in a rising scale according to the seating accommodation and the cities where the cinematograph shows was held, this Court following the decision in *Western India Theatres Case* (A.I.R. 1959 S.C. 585)(supra) held that the said Act was validly enacted in exercise of the legislative power conferred by Entry 72 of List II.

14. In the instant case, we find that prior to the enactment of Act 24 of 1984, Section 4 provided for levy of entertainment tax on the basis of each payment

for admission to the cinema theatre and u/s 4-C in respect of entertainments held within the jurisdiction of a local authority whose population did not exceed 25,000, the tax was levied on the basis of the prescribed percentage of the gross collection capacity per show. In other words, there were two modes for levy of the tax, one on the basis of the actual number of persons admitted to each show and the other on the basis of the percentage of the gross collection capacity per show. As a result, of the amendments introduced by Act 24 of 1984, the system for levy of tax on the basis of number of persons actually admitted to each show was dispensed with and the tax was to be levied on the basis of the percentage of the gross collection capacity per show and different percentages were prescribed depending on the type of the theatre and the nature of the local area where it was situated. u/s 5, an option was given to pay a tax on the basis of the prescribed percentage fixed for a fixed number of shows in a week irrespective of the number of shows actually held. It is not disputed that the tax as it was being levied prior to January 1, 1984, i.e. before the amendment of Section 4 by Act 24 of 1984, was a tax on entertainment falling within the ambit of Entry 62 of List II. The question is whether the alteration in the said mode of levy of tax by Act 24 of 1984 has the effect of altering the nature of the tax in a way that it has ceased to be a tax on entertainments and falls beyond the field of legislative competence conferred on the State Legislature by Entry 62 of List II. In our view, the said question must be answered in the negative. The fact that instead of tax being levied on the basis of the payments for admission made by the persons actually admitted in the theatre it is being levied on the basis of the gross collection capacity per show calculated on the basis of the notional aggregate of all the payments for admission which the proprietor would realise per show if all the seats or accommodation in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission, would not, in our opinion, alter the nature of the tax or the subject-matter of the tax which continues to be a tax on entertainment. The mode of levy based on "per payment for admission" prescribed u/s 4(1) prior to amendment by Act 4 of 1984 necessitated enquiry into the number of shows held at the theatre and the number of persons admitted to a cinema theatre for each show and gave room for abuse both on the part of proprietor as well as other officers in charge of assessment of collection of tax. The mode of levy or measure of the tax prescribed u/s 4(1), as substituted by Act 24 of 1984, is a more convenient mode of levy of the tax inasmuch as it dispenses with the need to verify or enquiry into the number of persons admitted to each show and to verify the correctness or otherwise of the returns submitted by the proprietor containing the number of persons admitted to each show and the amount of tax collected.

15. Prior to the enactment of Act 24 of 1984, tax was leviable on the basis of either of the two modes u/s 4(1) and 4-C. On an examination of the rates prescribed under both the modes, the High Court found that under system of consolidated levy prescribed u/s 4-C, the proprietor could break even if the

average rate of occupancy was 40%. As regards the rates prescribed under Sections 4 and 5 as amended by Act 24 of 1984, the High Court has observed that the said rates are based on an average expected occupancy rate of less than 50% or 66% depending upon the area in which the theatre is situated. This would mean that the entrainment tax that would be collected over and above the average occupancy rate would constitute the profit of the proprietor. In the circumstances, it cannot be said that the adoption of the system of consolidated levy in Section 4(1) as amended by Act 24 of 1984 alters the nature of tax and it has ceased to be a tax on entertainments.

16. It has been urged that since both the modes of levy of tax were prevalent prior to the enactment of Act 24 of 1984, an option should have been given to the proprietor of a cinema theatre to choose between either of the two modes and that under the impugned provisions the choice is confined to two modes of assessment under the same system of consolidated levy based on the gross collection capacity per show, one on the basis of gross collection capacity per show u/s 4(1) and other on the basis of gross collection capacity per show for a prescribed number of shows per week u/s 5. We find no substance in this contention. Once it is held that tax on entertainment could be levied, by either of the two modes, viz., per payment of admission or gross collection capacity per show, it is for the legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to the proprietor to the cinema theatre in this regard. The legislature does not transgress the limits of its legislative powers conferred on it under Entry 62 of List II it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments.

17. We are, therefore, unable to accept the contention urged on behalf of the appellants that the impugned provisions contained in sections 4 and 5 as amended by Act 24 of 1984 are ultra vires the legislative power conferred on the State Legislature under Entry 62 of List II.

Learned counsel appearing for the petitioners have further submitted that the offending provisions were violative of the provisions of Article 14 of the Constitution of India, which required to be quashed by accepting the petitions filed on behalf of the petitioners. After going into details of the arguments addressed in this behalf a reference is made to the judgment of the Supreme Court in Vankateshwara Theatre's case (supra) in this behalf also. The Apex Court held as under :-

"18. The challenge to the impugned provisions on the basis of Article 14 is grounded on the principle that discrimination would result if unequals are treated equally and reliance is placed on the decision of this Court in Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . It has been urged that u/s 4, as substituted by Act 24 of 1984, a uniform rate has been prescribed for cinema theatres of a particular class situate in different parts of the same local area although the average rate of occupancy in the cinema theatres located

in different parts of the same local area is not the same and a cinema theatre which is located in the central part of the local area would have better rate of occupancy as compared to a theatre located in a remote part and further that occupancy in the theatre depends on various other factors which have not been taken into account. We find it difficult to accept this contention.

19. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" "contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to the U.S. constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has of necessity to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies. It is recognised that the State must possess the power of distinguishing and classifying persons or things to be subject to such laws, it is, however, required that the classification must satisfy two conditions, namely (i) it is founded on an intelligible differential which distinguishes those that are grouped together from others, and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary (See. In Re: The Special Courts Bill, 1978, . 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. (See Khandige Sham Bhat and Others Vs. The Agricultural Income Tax Officer,

20. Since in the present case we are dealing with a taxation measure it is necessary to point out that in the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for the tax purposes so long as it refrains from clear and hostile discrimination against particular person or classes. (See East India Tobacco Co. Vs. State of Andhra Pradesh, ; P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others, ; Federation of Hotel and Restaurant Association of India, etc., Vs. Union of India (UOI) and Others, ; Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, ; and Gannon Dunkerley and Co. and Others Vs. State of Rajasthan and Others,).

21. Reference, in this context, may also be made to the decision of the U.S. Supreme Court in San Antonio Independent School District v. Independent School District v. Rodriguez (1973) 411 U.S. 1 at p. 41 wherein Justice Stewart, speaking for the majority has observed :

"No scheme of taxation, whether the tax is imposed on property, income or

purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the court does well not to impose too rigorous a standard of scrutiny test all local fiscal schemes become subjects of criticism under the Equal Protection Clause".

22. Just as a difference in the treatment of persons similarly situated leads to discrimination so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law.

23. In *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, , this Court was dealing with a law providing for imposition of uniform land tax at a flat rate without having regard to the quality of the land or its productive capacity. The law was held to be violative of Article 14 of the Constitution on the ground that lack of classification had created inequality.

24. The said decision in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, has been explained by this Court in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, . in the context of challenge to the viability of Section 10 of the Payment of Bonus Act, 1965 providing for payment of a minimum bonus of 4% by all industrial establishments irrespective of the fact whether they were making profit. This court held that the judgment in *Moopil Nair's* case (supra) has not enunciated any broad proposition that when persons or objects which are unequals are treated in the same manner and are subjected to the same burden or liability discrimination inevitably results. It was observed.

"It was not said by the Court in that case that imposition of uniform liability upon persons, objects or transactions which are unequal must of necessity lead to discrimination. Ordinarily it may be predicated of unproductive agricultural land that it is incapable of being put to profitable agricultural use at any time. But that cannot be so predicated of an industrial establishment which has suffered loss in the accounting year, or even over several years successively. Such an establishment may suffer loss in one year and make profit in another (p. 35 of S.C.R.): at p. 704 of A.I.R."

It was further observed :

"Equal treatment of unequal objects, transactions or persons is not liable to be struck down as discriminatory unless there is simultaneously absence of a rational relation to the object intended to be achieved by the law (p. 36 of S.C.R.):(at p.706 of A.I.R.)"

25. The limitations of the application of the principle that discrimination would result if unequals are treated as equal, in the field of taxation, have been pointed out by this Court in *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, wherein tax at a uniform rate was imposed on plantations. Hidayatullah, C.J. speaking for the majority while upholding the . tax, has observed:

"The burden is on a person complaining of discrimination. The burden is providing 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 "hostile 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 give different outturns in terms of money and mileage. Cinemas pay the same show fee. We do not take a doctrinaire view of equality (pp. 393-94 of S.C.R.) : (at p. 1138 of A.I.R.)".

26. In the instant case, we find that the legislature has prescribed different rates of tax by classifying theatres into different classes, namely, air-conditioned and air-cooled, (cooled) permanent and semi-permanent and touring and temporary. The theatres have further been categorised on the basis of the type of the local area in which they are situate. It cannot, therefore, be said that there has been no attempt on the part of the legislature to classify the cinema theatres taking into consideration the differentiating circumstances for the purpose of imposition of tax. The grievance of the appellants is that the classification is not perfect. What they want is that there should have been further classification amongst the theatres falling in the same class on the basis of the location of the theatre in each local area. We do not think that such a contention is well-founded.

27. In relation to cinema theatre it can be said that the attendance in the various cinema theatres within a local area would not be uniform and would depend on factors which may vary from time to time. But this does not mean that cinema theatres in a particular category of local area will always be at a disadvantage so as to be prejudicially affected by a uniform rate as compared to cinema theatres having a better location in the same local area. It is, therefore, not possible to accept the contention that the impugned provisions are violative of right to equality guaranteed under Article 14 of the Constitution on the basis that unequals are being treated equally".

43. Similarly, contention of learned counsel for the petitioners that the respondents were not justified in changing law regarding imposition of tax on the principle of "Promissory Estoppel", is without any substance and cannot be made a basis for granting any relief to the petitioners. Promissory Estoppel has been held to be the development of recent times. The Supreme Court considered the question of "Promissory Estoppel" in the case of *Union of India v. M/s. Anglo Afghan Agencies Ltd.* AIR 1968 S.C. 718 and held that the Government cannot escape its obligation by saying that the estoppels do not bind it and that the

Government was bound under the circumstances, by the doctrine of "Promissory Estoppel". While dealing with the Anglo Afghan case, their Lordships of the Supreme Court placed reliance on the following passage from a judgment given by Lord Denning in the King's Bench in *Robertson v. Minister of Pensions* (1949) 1 K.B. 227.

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine that the crown cannot bind itself so as to fetter its future executive action. That doctrine was propounded by Rowlatt, J. in 1921 3 KB 500 but it was unnecessary for the decision because in the statement there was not a promise which was intended to be binding but only an expression of intention. Rowlatt, J. seems to have been influenced by the cases on the right of the Crown to dismiss its servants at pleasure, but those cases must now all be read in the light of the judgment of Lord Atkin in *Reilly v. The King* 1934 AC 176

In my opinion the defence of executive necessity is of limited scope. It only avails the Crown where there is an implied term to the effect or that is the true meaning of the contract."

44. In *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, , the principles enunciated in *Anglo Afghan's* case (supra) were considered and approved. In *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, , it was held :-

"There is undoubtedly a clear distinction between a representation of an existing fact and a representation that something will be done in future. The former may, if it amounts to a representation as to some fact alleged at the time to be actually in existence raise an estoppel, if another person alters his position relying upon the representation. A representation that something will be done in the future may result in a contract, if another person to whom it is addressed acts upon it. A representation that something will be done in future, is not a representation that it is true when made. But between a representation of a fact which is untrue and a representation expressed or implied to do something in future, there is no clear of antitheses. A representation that something will be done in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person, it may unless the statute governing the person making the representation provides otherwise result in an agreement enforceable at law if the statute requires that the agreement shall be in a certain form no contract may result from the representation and acting, therefore, but the law is not powerless to raise in appropriate cases an enquiry against him to compel performance of the obligation arising out of his representation."

45. In order to attract the doctrine of "Equitable Estoppel" it has to be shown that the promise made was unequivocal which persuaded the petitioner to change his position to his prejudice. The petitioner has to further show that in

the absence of such an assurance, it would have not changed his position to his detriment. The claimant is further called upon to satisfy the Court that by the alleged withdrawal of the promises, he had to suffer losses. The Courts insist the Government to be bound by its promises, to prevent injustice or fraud and would not make the Government a slave of its policy for all times to come. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, , it was observed that the doctrine of estoppel does not apply against the State in its governmental, public or sovereign capacity. An exception, however, it was stated, arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice.

46. In the instant case, the petitioners have not been in a position to show that any promise was ever made or incentive promised which prompted or allured them to construct cinema halls for providing entertainments to the citizen. The petitioners have also not shown as to how they were deprived, or likely to be deprived of the investment made in the construction of the cinema halls on the basis of the amendment made in the impugned provisions. Plea of Equitable Estoppels, in the context of the present case, apparently appears to be concocted, fabricated and afterthought.

47. It has been next contended that as the amending provisions are likely to result in loss of income to the petitioners, the same being unreasonable are liable to be quashed/modified. Such a plea is also not available to the petitioners in view of the judgment of the Supreme Court in *Minerva Talkies, Bangalore and Others Vs. State of Karnataka and Others*, , wherein it was held :-

"No rule or law can be declared to be unreasonable merely because there is a reduction in the income of a citizen on account of the regulation of the business."

48. Similarly the mere apprehension of the petitioners that if the statute is not declared unconstitutional, they would have to close down their business, cannot be accepted as the Constitution does not guarantee a right to carry business only on profitable grounds. In *Malwa Bus Service (Private) Limited and Others Vs. State of Punjab and Others*, such a plea was considered by the Supreme Court and it was held :-

"It was lastly urged that the levy is almost confiscatory in character and the petitioners would have to close down their business as stage carriage operators. It is stated that the passenger fares were permitted to be raised by about 43 per cent just before the levy was increased in this case and it is even now open to the operators to move the State Government to increase the rates if they feel that there is a case for doing so. But on the facts and in the circumstances of the case, we feel that it is not possible to hold that the impugned levy imposes an unreasonable restriction on the freedom of the petitioners to carry on business. The consideration similar to those which weighed with this court in upholding the Mustard Oil Price Control Order, 1977 in *Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, . ought to be applied in this case also. Though patent

injustice to the operators of the stage carriage in fixing lower returns on the tickets issued to passengers should not be encouraged, a reasonable return on investment or a reasonable rate of profits cannot be the sine qua non of the validity of the order of the Government fixing the maximum fares which the operators may collect from their passengers. It cannot also be said that merely because a business becomes uneconomical as a consequence of a new levy, the new levy would amount to an unreasonable restriction on the fundamental right to carry on the said business. It is, however, open to the State Government to make any modifications in the fares if it feels that there is a need to do so. But the impugned levy cannot be struck down on the ground that the operation of the stage carriages has become unconstitutional after the introduction of the impugned levy. Moreover the material placed by the petitioners is not also sufficient to decide whether the business has really become uneconomical or not. We do not, therefore, find any merit in this ground also."

49. No other point was argued before us.

50. Under the circumstances the writ petitions are disposed of with the following directions:-

(i) that the Ordinance No. 4 and 5 of 1993 being unconstitutional the notifications issued thereunder are declared ultra vires.

(ii) that the petitioners, who had challenged vires of the aforesaid Ordinances, shall be liable to pay the entertainment/show tax according to the unamended Acts for the period the aforesaid Ordinance remained in force.

(iii) that the Ordinance and Acts of 1994 are declared to be constitutional, legal, valid and within the legislative competence of the State legislature.

(iv) that the notifications issued in pursuance of 1994 Ordinances and Acts are also declared to be legal, valid and in accordance with law. The petitioners are liable to pay tax as demanded vide the orders impugned in these petitions.

(v) After the disposal of these writ petitions, petitioners shall be liable to pay the tax along with interest, as provided by the amending statutes.

(vi) The petitioners, who had challenged vires of Ordinances and Act of 1994, are held liable to pay costs, which are assessed at Rs. 1,000/- per petition.