

(1960) 12 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 320 of 1960

Calico Mills Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 19-12-1960

Acts Referred:

Central Provinces and Berar Entertainments Duty Act, 1936 — Section 2, 3(1)

Citation : AIR 1961 MP 257 : (1961) ILR (MP) 67 : (1961) JLJ 376 : (1961) 6 MPLJ 474

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, B.V. Shukla and A.H. Saifi, for the Appellant; H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

The question raised in this petition under Article 226 of the Constitution of India, is whether entertainments duty is exigible from the petitioners under the Central Provinces and Berar Entertainments Duty Act, 1936.

The material facts are these. The first petitioner, the Calico Mills Ltd., Ahmedabad, is a company engaged in the business of manufacture and sale of textiles. The second petitioner is an employee of the Calico Mills Ltd., whose duty is to exhibit Calico doth fabrics and advertise them for sale. In the usual course of their business the petitioners put up a canvas canopy styling it as "Calicloth Dome" on an open piece of land in Jabalpur for display and sale of the goods of the Calico Mills.

The Dome was enclosed on three sides. 1C was kept open on the side facing Jabalpur--Gwarighat road. The petitioners say that this side was kept open to enable all persons passing on the road and bystanders to have a clear perspective of the goods displayed for sale inside. The admission to the Dome

was free and unrestricted during the morning hours between 9 A.M. and 12 noon. According to the applicants, it was however restricted in the evening hours from 4 P.M. to 9 P.M. to bona fide purchasers.

The persons who were minded to go to the Dome in the evening were required to obtain a token of the value of Rs. 2/-. This amount was later on adjusted towards the price of cloth purchased by the person visiting the Dome. The token could thus be exchanged for Rs. 2/- worth of cloth fabrics inside the Dome. In order to attract a large number of visitors and promote the sales of their fabrics, the petitioners used to arrange every evening between 4 P.M. and 9 P.M. a display of the fabrics by mannequins who used to wear and show off Saries, costumes etc. manufactured by the Mills. The petitioners averred that this display by mannequins was visible to all persons standing outside and was not restricted to buyers inside the Dome.

On 24th October, 1960, the petitioners informed the District Excise Officer, Jabalpur of their intention to hold an exhibition for sale of their fabrics. In reply, the District Excise Officer, acting under the orders of the Collector, Jabalpur, intimated the petitioners that the tokens prescribed by the applicants for entrance to the Dome could not be exempted from entertainments duty and that they should affix duty stamps on the tokens "at the rate of 25 per cent of the total admission fee".

The petitioners contend that the display arranged by them was not an "entertainment" within the meaning of Section 2 (b) of the Act; that the token of Rs. 2/- obtained by a visitor in the evening was not by way of any payment for admission to entertainment; that it was nothing more than an agreement between the visitor and the petitioners that the visitor would purchase at least Rs. 2/- worth of calico cloth; and that therefore, no entertainments duty could be charged on them as proprietors of any entertainment.

The petitioners pray for the issuance of a writ of certiorari for quashing the order of the opponents Nos. 2 and 3 directing them to pay entertainments duty "at the rate of 25 per cent of the total admission fee". They also seek a writ in the nature of mandamus restraining the opponents from enforcing the provisions of the Act against them and for refund of the duty already levied, assessed and collected from them.

The facts about the display in the Dome and the system employed therein for regulating admission are not disputed by the respondents in the return filed by them. The right of the petitioners to regulate the manner of their trade and regulate admission has also not been contested, and it is admitted that the value of token obtained by a visitor could be adjusted towards the price of cloth purchased by him inside the Dome. The answer of the respondents is that during the evening hours the petitioners offered as an attraction a show and that admission to this show was restricted to the purchasers of tokens.

According to the respondents, "during this period a special programme of fashion

show by specially trained girls used to be displayed and for that show seating arrangement was also made inside the dome, and a stage was also erected for the performance of the show. A counter-foiled ticket worth Rs. 2/- was prescribed of which one part was issued to the visitor and the counterfoil was retained with the management of the show for their office and audit record. This ticket was to be shown at the entrance for allowing the admission inside the dome, and without the production of the ticket admission inside was not allowed". In paragraph-3 of the return, it has been further stated :

"The display and the performance inside was an entertainment, for the fashionable ladies and gentlemen of the towns who were rather attracted more towards the show than towards the purchase of cloth. As a well experienced businessman the petitioners had contrived this good contrivance by which the fashion show was not allowed to the visitors free of charge. Admission fee was itself sufficiently high and could be afforded by only those who are capable purchasers also. In heavy purchases the adjustment of Rs. 2/- had no significant proportion. The fact that the show may be visible to some extent to passers by on the road is irrelevant".

The respondents, therefore, say that under the scheme employed by the petitioners for the display and exhibition of their goods the levy of entertainments duty under the Act was justified.

4-A. The question as to the liability of the petitioners for the payment of entertainments duty depends upon the construction of the Act, and especially of Section 3 (1) of it. Section 3 (1), which is the charging section, is to the effect that "every proprietor of an entertainment shall in respect of every payment for admission to the entertainment in excess of two annas, pay to the State Government a duty at the rate of twenty-five per centum thereof".

The word "proprietor" has been defined in Section 2 (f) as including "in relation to any entertainment any person responsible for or for the time being in charge of the management thereof. The word "entertainment" has been defined in Section 2 (b) as "including any exhibition, performance, amusement, game or sport to which persons are admitted for payment"; and the expression "admission to an entertainment" as defined in Section 2 (a) includes "admission to any place in which the entertainment is held". Section 2 (d) gives the definition of "payment for admission" thus :

" "payment for admission" includes any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted to another part thereof for admission to which a payment involving duty or more duty is required and any payment for seats or other accommodation in a place of entertainment".

Now, it will be seen that the definitions given in Section 2 of "entertainment", "payment for admission", and "admission to an entertainment" are not precise. They are inclusive definitions. The terms must, therefore, first be understood in

their ordinary meaning and then in their enlarged meaning given by the definitions. It is well-settled that the word "include" is used in interpretation clauses; where it is intended that while the term defined should retain its ordinary meaning, its scope should be widened by specific enumeration of certain matters which its ordinary meaning may or may not comprise so as to make the definition enumerative, and not exhaustive and when it is so used these words or phrases must be construed as comprehending, not only such thing as they signify according to their natural import but also those things which the interpretation clause declares that they shall include. Again, where a term is interpreted in a statute as "including", the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances but merely as declaring what things should be comprehended within the terms where the circumstances require that they should.

The natural import of the term "entertainment" is amusement and gratification or some sort. The term connotes something in the nature of an organised entertainment. This is evident from the fact that the Act was enacted to provide for the levy of a duty in respect of admission to theatres, cinemas and other places of public entertainment. Therefore an entertainment to come within the definition of Section 2 (b) and of the provisions of the Act must be some exhibition, performance, amusement, game or sport for the purpose of entertainment, that is, for affording some sort of amusement and gratification to those who see or hear it.

In the present case, it is impossible to say on the agreed facts that there is any exhibition, performance, amusement, game or sport which is an integral component factor attracting the visitors to the Calico Dome. In the return, much emphasis was laid on the fact that during the evening hours there was "a special programme of fashion show by specially trained girls and for that show seating arrangement was also made inside the dome and a stage was also erected for the performance of the show".

But learned Government Advocate did not urge before us that this showing off of the fabrics by the mannequins was- any performance, amusement, game or sport. He, however, argued that the Dome was a place of entertainment inasmuch as it was an exhibition. Learned Government Advocate did not go to the extent of saying that the mannequins themselves were an "exhibition". On the other hand, he contended that even without the mannequins the display of the Fabrics by the petitioners in the manner they did inside the Dome was in itself an exhibition and an entertainment within the meaning of Section 2 (b).

We are unable to accept this argument, which seems to us to ignore certain basic facts and the primary object with which the petitioners put up the Dome for the display of their goods. No-body can doubt that the object of the display of the fabrics manufactured by the petitioners inside the Calico Dome was to advertise them and to promote their sales. There was not anything in the nature of an organised entertainment in the display of the fabrics themselves.

A person who visited the Dome went there as a prospective buyer and not as a spectator or as one of the audience to an entertainment. A display of the fabrics by mannequins wearing them was no doubt arranged during the evening hours. But that was not for the purpose of affording amusement Or gratification to the visitors but for enabling them to make a selection in the purchase of the goods they desired. It is common knowledge that the elegance and beauty of a wearing apparel can be best judged and appreciated when it is shown off by a person wearing it and not when it is folded and wrapped in packages.

It is also well known that many drapers and milliners of repute and standing display their goods on dummy models. It seems to us that a place where fabrics are displayed and shown off by mannequins wearing them is no more a place of entertainment than a shop establishment where wearing apparels are displayed on dummy models. Nothing turns on the fact that the display by mannequins was on a stage or on the fact that there was a seating arrangement inside the Dome for having a good view of the display, or again on the fact that "many fashionable ladies and gentlemen of the town were attracted more towards the show than towards the purchase of cloth". Many of them might have gone to the place merely for the purpose of watching the display and seeing something which they had not seen before. But the fact that these people went out of curiosity and novelty did not make the exhibition of cloth or the display by mannequins inside the Dome an entertainment, which otherwise was not an entertainment.

The word "exhibition" occurring in the definition of "entertainment" in Section 2 (b) must take its colour from the natural import of the term "entertainment". If certain goods are exposed to view for the purpose of sale, there is no doubt an exhibition of goods in the sense of "showing". But that is not any entertainment. The exhibition for sale of the fabrics themselves in elegant surroundings under a canopy put up. by the petitioners did not afford any gratification, diversion or amusement.

It was no more than a display of cloth and apparels in a well-decorated shop. The display by mannequins was simply a spectacle of living people instead of dummy models showing of the fabrics for impressing on the visitors the "chic" of the material manufactured by the petitioner-Mills. To call such an exhibition "entertainment" is to give a very strained meaning to the word and to the language of the Act. If, as we think, there was no entertainment inside the Dome then it follows that any payment made by a visitor for admission to the Dome cannot be regarded as "payment for admission" to entertainment

In fact, it is clear from the admitted facts of the case that no charge was made for admission to the Calico Dome. It is not disputed that the petitioners were entitled to regulate the system of their trade and to restrict entry to the Dome. If, having regard to limited space inside the Dome, and apprehending a rush of visitors attracted by a feature, very common and old in the premier cities of the countries but a new one in Jabalpur, the petitioners thought it necessary to restrict entry to the Dome to bona fide purchasers and secured this by requiring

the visitors in certain hours to obtain a token which could be exchanged for Rs. 2/- worth of Calico cloth, it cannot be said that the visitor paid Rs. 2/- for admission to the Dome.

The position of such a visitor is no different from that of a person paying for cloth purchased in a shop. One does not speak of such a person as one paying for admission to the shop. It may be that some persons interested more in the feature of display of fabrics by mannequins than in the purchase of any cloth did not make any purchase and did not cash in the form of cloth the value of the token. Or. again it may be that those making purchases of high value were indifferent to the credit allowable to them on the strength of a token.

But because of such vagaries of some visitors, one cannot run away from the facts and hold that the amount paid for the token was a payment for admission to an entertainment within the meaning of the Act. The token of Rs. 2/- obtained by a person visiting the Dome during evening hours was nothing more than a part advance payment towards the purchases that may be made. We do not entertain the slightest doubt that there was no entertainment within the provisions of the Act and the token obtained by a person visiting the Dome during certain hours was not a payment for admission to the Dome, much less a payment for admission to a place in which entertainment was held.

In deciding this matter, we have not had the advantage of the guidance and authority of any decision of this Court or of other High Courts. But Shri Sen, learned counsel appearing for the petitioners, referred us to *Lyons and Co. v. Fox* 1919 1 KB 11. *Cordiner v. Stockham* (1920) 1 KB 104, *Attorney-General v. Arts Theatre Club of London* 1932 All ER 663 (sic) and *Attorney-General v. London Casino. Ltd.* 1987 3 All ER 858. None of these cases is directly in point, though one of them viz. 1919 1 KB 11 (supra) is of some use. The general principles laid down in the judgments of *Darling*, *Lawrence*, and *Bailhache JJ.* favour the view we have taken.

That was a case of *Trocadero Restaurant*, a well known place in London, where during tea or dinner a concert was provided. The public were not admitted to the Restaurant unless they were about to take meals, and on the implied terms that they would make payments to the proprietors at the prices fixed by them. No charge was made in any form except for the meals, which was served both at a fixed price and also a la carte, and for which a bill was rendered to the customers before they left the Restaurant. A person who had finished his meal was allowed to remain in the Restaurant.

The dinner concert continued for one hour after the service of dinner had ceased. On these facts, the question arose whether the sum paid for the dinner was a payment for admission to an entertainment within the meaning of the Finance (New Duties) Act, 1916 (6 Geo. 5, c. 11). The Finance (New Duties) Act, 1916, defined the expressions "entertainment", "admission to an entertainment", "payment for admission" and "proprietor" in the same language as has been

used in the Act before us. Sub-section (1) of Section 1 of that Act was as follows :

"There shall, as from May 15, 1916, be charged, levied, and paid on all payments or admission to any entertainment as defined by this Act an Excise duty (in this Act referred to as "entertainments duty" at the following rate".

The majority of the Judges held that the payments made by the customers of the Restaurants were not "payments for admission" to an entertainment within the meaning of the Act. Bailhache J. put the matter thus :

"The question, therefore, which we have to determine is, what is the meaning of those words "payment for admission" to an entertainment in that section. I ask myself whether any ordinary intelligent person who had taken tea or had dined at the Trocadero would, using ordinary language, say that he had paid for admission to the Trocadero. The answer to that question must be in the negative. In ordinary language when one has paid for a dinner in a restaurant, one does not say that one has paid for admission to the restaurant any more than, when one pays for a pair of boots bought in a shop, one would say one was paying for admission to the shop.

On this authority there can be no doubt that the token obtained by a visitor to the Dome which could be exchanged for Rs. 2/- worth of cloth was not a payment for admission to an entertainment. The C. P. and Berar Entertainments Duty Act, 1936, is closely on the lines of the English Act of 1916 at least so far as the charging provisions and the definition clauses are concerned. The practice of display of fabrics, doth, costumes and dresses by mannequins is very common in England and has existed for years. It is not a new one. But we have not been able to find any English case where a mannequin parade held independently or as a part of an exhibition of fabrics, dresses etc. was held to be an entertainment in respect of which duty was payable under the Act of 1916.

For all these reasons, our conclusion is that the Calico Dome erected by the petitioners was not a place in which any entertainment within the provisions of the Act was held and no entertainments duty under the Act was payable by the petitioners. The result is that this petition is allowed. The order of the District Excise Officer, Jabalpur, contained in Annexure-III to the petition calling upon the petitioners to pay "entertainments duty" is quashed, and the opponents, are restrained from enforcing the provisions of the C. P. and Berar Entertainments Duty Act, 1936, against the petitioners. The petitioners are entitled to the refund of the amount already collected from them and the amount be refunded to them. The petitioners shall get costs of this petition. Counsel's fee is fixed at Rs. 200/-. The outstanding amount of security deposit shall be paid to the petitioners.