

(1960) 10 BOM CK 0007
In the Bombay High Court
Case No : Second Appeal No. 845 of 1955

Chandrabhal Shivshankar Buksh

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 12-10-1960

Acts Referred:

Central Provinces and Berar Entertainments Duty Act, 1936 — Section 4, 4A

Citation : (1961) 63 BOMLR 485

Hon'ble Judges : Abhyankar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhyankar, J.—The appellant Chandrabhal has filed this second appeal against the concurrent judgment of the Courts below dismissing his suit for refund of Rs. 2,112-8-0 recovered from him by way of entertainment duty.

2. The appellant admittedly was a proprietor of a show which called itself "Grand Exhibition and Amusement Park" at which a number of persons were admitted on payment of certain amount. At this show two mechanical devices, called Chairplane and Giant Wheel, were constructed. Chairplane is a contraption with chairs and by mechanical operation they are sent round in circular motion. The Giant Wheel is a contrivance which has hanging seats and while the wheel is going round certain number of times, the persons sit in those hanging seats. The appellant admittedly collected payments on admission to this amusement show. What the appellant contends is that he is not liable for payment of any entertainment duty on the payments received for using the two devices because under the C.P. and Berar Entertainments Duty Act (XXX of 1936) that would not mean amusement. Now, there is a definition of "entertainment" in the Act. In Clause (b) of Section 2 there is an inclusive definition of "entertainment" as follows:

"entertainment" includes any exhibition, performance, amusement, game or

sport to which persons are admitted for payment;

Now, it is difficult to appreciate that a person who is admitted for payment to enjoy a joy ride either on a Chairplane or on a Giant Wheel is not admitted to an entertainment. It is an amusement in any case. It is not necessary for an entertainment to be "amusement" that some other person should do something by which the visitor is amused. A visitor can be amused by amusement by doing something himself or by mechanical effect of either a Giant Wheel or a Chairplane as it is called. I do not, therefore, agree with the contention raised by the learned Counsel for the appellant that the proprietor was not liable under the Act because he was not a proprietor of "entertainment" to which persons were admitted for payment.

3. It is next contended that the proprietor had not complied with Section 4 or 4-A of the C. P. and Berar Entertainments Duty Act, and that non-compliance with either of the provisions would only lead to prosecution and subsequently conviction on such prosecution and levy or demand of duty which has not been paid according to the scale by way of penalty. What is contended is that in the absence of prosecution, the duty payable on payment for admission under the Act does not become an arrear and is not capable of being realised. Again it is not possible to uphold this contention in view of the charging Section 3(1) of the Act, as it originally stood or subsequently amended. The charging section, as it originally stood, says:

There shall be levied on all payments for admission to any entertainment a duty at the rates specified in the following table and the amount of duty so levied shall be paid to the State Government:-...

Section 3(1), as amended, in unequivocal terms says:

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.

Thus, under either provision, original or amended, it is clear to my mind that the incidence is on payment for admission to entertainment and the payment being to the proprietor the liability is of the proprietor and not of the visitor who pays for admission to the entertainment. Once this is clear, I do not see how it can be said that by non-compliance with the subsequent provisions of the Act, the initial liability created by the charging section could be said not to have arisen merely because the proprietor had not complied with Section 4 or Section 4-A of the Act. It is the duty of the proprietor to pay to the Government for every payment for admission received by him according to the provisions of the Act. It does not matter whether in his turn the proprietor transfers the burden to the person who pays for admission to the entertainment. It is further clear that the scheme of the Act itself postulates that it is not necessary to comply with the provisions of Section 4 in a case where the proprietor acts otherwise, namely to make bulk payment in lieu of purchasing the stamp tickets which have to be pasted on

tickets for payment for admission to the entertainment. It is also clear that a proprietor may admit persons to entertainment without paying the tax and yet he will have to pay the tax himself, or he may, as a matter of policy or competition, forego to recover the tax or transfer the burden to the visitor. That being the scheme, it is not possible to accept the contention of the learned Counsel for the appellants that the liability for the tax is not of the proprietor but that of the visitor who pays for admission to the entertainment. It is also not possible to accept another contention that the amount to be recovered is by way of penalty to the extent of the amount of the tax evaded.

4. It is further contended by Mr. Dharmadhikari, learned Counsel for the appellant, that on true construction of Section 10 of the Act the sum may become an arrear of entertainment duty only if Section 5 of the Act comes into operation, i.e. if there is prosecution and conviction and after such conviction such amount is found not to have been paid. It is difficult for me to accept this contention of Mr. Dharmadhikari. The arrear of "entertainment duty" is that sum which should have been paid by the proprietor. The words "arrear of entertainment duty" have not been defined in the Act and should bear their normal and ordinary meaning. If Section 3 creates a liability in the proprietor to pay the duty called entertainment duty in respect of every payment for admission, then such a duty will become an arrear of entertainment duty the moment there is payment for admission and the duty payable on such payment for admission has not been paid to the Government. I am, therefore, unable to accept this contention.

5. It is lastly argued that there was certain default on the part of the officers to collect the entertainment duty, and that no entertainment duty was payable by the proprietor when the proprietor, in fact, did not collect the tax or the duty from the persons who had paid for admission to the entertainment on the strength of alleged representations of the officers. The findings of both the Courts below are against these contentions which are raised. These being findings of fact are binding on me in this case.

6. In the result, the appeal fails and is dismissed with costs.