

(1988) 10 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 8941 of 1983

D. Shanmugam

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 10-10-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Entertainments Tax Act, 1939 — Section 4, 4(1), 5

Citation : (1988) 10 MAD CK 0014

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : V.K. Muthuswami, for P. Pandi, for the Appellant; R. Loka Priya, Government Advocate (Taxes), for the Respondent

Judgement

Swamikkannu, J.—This is a writ petition for the issue of a writ of declaration declaring that the provisions of sections 5-A and 5-B of the

Tamil Nadu Entertainments Tax Act, 1939, as amended by the Tamil Nadu Entertainments Tax (Amendment) Act, 1983 (Act 1 of 1983), are

ultra vires and unenforceable, so far as the petitioner's theatre is concerned.

2. It is, inter alia, stated in the affidavit filed in support of the writ petition that the petitioner's theatre was constructed in the year 1977 at a cost of

about Rs. 5 lakhs. It is a semi-permanent theatre located in a town panchayat village. The petitioner obtained form "C" licence on 6th October,

1978 and started to screen pictures from 9th October, 1978 onwards. The permitted capacity of the auditorium is 690 seats. The total gross

collection when the theatre is houseful is Rs. 427.75 per show. The petitioner is paying taxes under the compounding system provided in section 5-

B of the Tamil Nadu Entertainments Tax Act, 1939.

3. It is further submitted that the petitioner obtained a loan of Rs. 1 1/2 lakhs from State Bank of India for the construction of the theatre for which he is paying interest every month. For the sum of Rs. 5 lakhs invested by the petitioner, the interest works out at Rs. 7,500 per month. The other items of monthly expenses are Rs. 1,250 towards pay, Rs. 550 towards electricity, Rs. 650 towards carbon and Rs. 1,000 towards miscellaneous expenses. Thus, the total monthly expenses come to Rs. 10,950. The average weekly collection from the theatre is only Rs. 3,000. Out of this, a sum of Rs. 1,300 per week has to be paid as per the Act before 15th November, 1982, as entertainments tax, the balance is only Rs. 1,700 per week. On this basis, the monthly income is only Rs. 5,800 and there was a net loss of Rs. 5,150 per month.

4. The total investment for a touring cinema does not exceed Rs. 1 lakh and operational costs of such a touring cinema is also comparatively very low. The owners of touring cinemas are screening the same type of pictures and same number of shows as the owners of a semi-permanent theatres. They are earning more than the owners of the semi-permanent theatres. There are no grounds for differentiating between the two types of cinemas.

5. Originally, the semi-permanent theatres and the touring cinemas were treated alike and entertainment taxes were collected at fixed rates. The tax was levied at the rate of Rs. 60 per day for the cinemas in village panchayats and Rs. 90 per day for the cinemas in town panchayats irrespective of the number of shows and the amount realised by sale of tickets. Later on entertainment taxes are being collected at the compounding rates prescribed under sections 5-A and 5-B of the Act.

6. It is contended on behalf of the petitioner that the object of the compounding system is laudable as it eliminates unnecessary harassment by the officials and at the same time avoid evasion of taxes by the owners. But the method adopted by the State for fixing the amount of tax is arbitrary and unjust. It is seen from the charging section, namely, section 4, that the character and incidence of the levy is on the entry or admission to the entertainment and on the person who is being admitted to the entertainment though, for the sake of convenience recoverable from the proprietor, who is supposed to collect the same as part of the rate of admission. Hence it is

the actual admission which is the taxable event under the Act and could be the subject-matter of "taxation" under entry 62 of List II of the Seventh Schedule to the Constitution of India. In so far as sections 5-A and 5-B provide for a levy to the contrary on an imaginary event, it ceases to be a tax on entertainment, but really constitutes a tax on the income of the proprietor of the cinema and as such it is beyond the competency of the State Government.

7. It is further submitted on behalf of the petitioner by the learned counsel for the petitioner that the method of collection of tax under sections 5-A and 5-B leaves no option to the petitioner excepting to pay the tax without any reference to the actual collections from the petitioner's theatre.

There is no reasonable basis for fixing the maximum number of shows and collecting tax on the assumption that all the shows are houseful. It is also contended on behalf of the petitioner by his learned counsel that there is no basis for treating the petitioner's cinema theatre differently from the semi-permanent theatres (sic) when both are operating in mofussil areas. According to the petitioner, the classification is not reasonable and there is no justification for levying more tax for semi-permanent theatres than the touring cinema theatres whose operational costs are very much lower than the former.

8. The point for consideration is, whether sections 5-A and 5-B of the Entertainments Tax Act, 1939, can be declared as ultra vires and unenforceable.

9. Section 4(1) of the Act which is the charging section, reads as follows :

On each payment for admission to any entertainment, there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act), a tax (hereinafter referred to as "the entertainments tax") calculated at the following rates, namely :-

.....

In order to give effect to the compounding system for payment of taxes the sections 5-A and 5-B were introduced giving the option to the theatre owners to choose the method contemplated u/s 5-A or 5-B.

10. Section 5-A reads as follows :

Tax on shows field in certain theatres. - Notwithstanding anything contained in

this Act or in the Tamil Nadu Local Authorities Finance Act, 1961

(Tamil Nadu Act 52 of 1961) (hereinafter referred to in this section as "the Local Authorities Finance Act"), in the case of cinematograph

exhibitions held in the theatres specified in column (2) of the Table below and located in the local areas specified in the corresponding entry in

column (1) of the said Table, there shall be levied and paid to the State Government, a tax at the rate specified in the corresponding entry in

column (3) thereof.

THE TABLE

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Explanation I. - For the purposes of this section and of section 5-B, "gross collection capacity" in relation to a cinematograph exhibition, means the

notional aggregate of all payments for admission for a show (inclusive of the entertainments tax and the surcharge and additional surcharge on the

entertainments tax leviable under the Local Authorities Finance Act or under the Act) if all the seats or other accommodation available in the

theatre were occupied by spectators.

Explanation II. -

It is seen that under the said scheme, an owner of a theatre has to pay on the gross collection capacity of his theatre for every show. The

explanation to that section says, that the gross collection capacity means the houseful collection for every show. This means that tax is payable on

the basis that the theatre is full for all the shows irrespective of the actual collections. Similarly, if an owner opts to pay the tax u/s 5-B, he has to

pay the tax for fixed number of shows at the prescribed percentage on the gross collection capacity for a show. According to this method, an

owner has to pay tax for certain number of shows on the basis that all the shows are houseful irrespective of the actual number of shows and the

actual amounts collected by him. It is also averred in the affidavit that the provisions of sections 5-A and 5-B of the Tamil Nadu Entertainments

Tax Act, 1939, as amended by Amendment Act (Act 1 of 1983) are arbitrary, unconstitutional and against the principles of natural justice.

11. According to the respondents, the department has no knowledge about the expenses incurred by the petitioner in constructing and maintaining

the theatre. The theatre is paying a tax of Rs. 960 at the compounded rate. According to the amendment to section 5 introduced by Act No. 5 of

1978, the proprietor of an entertainment house has to choose the method either u/s 5-A or section 5-B under which he is willing to pay the tax.

The petitioner opted for payment u/s 5-B. The method and rate of tax on the number of shows held have been prescribed by the Legislature by

Act No. 5 of 1978. The petitioner has quoted section 4 as the charging section according to which the incidence of tax shall be on the person who

is admitted to witness the show. It was a policy decision of the Government to have extended the compounding system to such areas as

considered necessary. It is true that sections 5-A and 5-B have left no option to the petitioner to pay tax according to the actual collections. The

Government have the necessary powers to introduce the compounding system of taxation in lieu of the levy u/s 4. The new sections 5-A and 5-B

are not only legal and valid but also reasonable. The amending Act was brought only after duly considering the advantageous position of the

permanent theatres over touring cinemas. The petitioner has to pay tax at the prescribed rates only and the special concessions to pay at the lower

rate cannot be given. The petitioner has not made out any case for invoking article 226 of the Constitution.

In *Odion Mani Tiraiaragam v. State of Tamil Nadu* reported in 96 LW 338 as well as in the decision dated 23rd December, 1980, rendered in

Writ Petition No. 1296 of 1978, this Court has upheld the validity of sections 5-A and 5-B of the Act. It is only after a careful consideration of all

relevant factors, the rate of tax is fixed by the Government. There is absolutely no merit in the writ petition and the same is, therefore, dismissed.

Under the circumstances, there is no order as to costs.

12. Writ petition dismissed.