(1992) 08 SC CK 0075

In the Supreme Court Of India

Case No : W.P.(C) No.-002426-002449 / 1980

Darshan Lal Mehra and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 04-08-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 285
Uttar Pradesh Nagar Mahapalika Act, 1959 — Section 172(2), 199, 2(77), 200, 201

Citation : AIR 1992 SC 1848 : (1992) 4 JT 417 : (1992) 2 SCALE 113 : (1992) 4 SCC 28 : (1992) 3 SCR 704 : (1992) 87 STC 377 : (1992) 2 UJ 461 : (1992) 2 UPLBEC 1162

Hon'ble Judges : Ramaswamy, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The imposition of "theatre tax" by the Nagar Mahapalika, Lucknow has been challenged by the cinema owners/lessees in these petitions under Article 32 of the Constitution of India.

2. Sections 172 and 2(77) of the U.P. Nagar Mahapalika Adhiniyam, 1959 (the Act) are reproduced hereunder :

Section 172 : Taxes to be imposed under this Act.

(1) For the purposes of this Act and subject to the provisions thereof and of Article 285 of the Constitution of India, the Mahapalika shall impose the following taxes, namely:

(a) Property taxes,

(b) & (c)

(2) In addition to the taxes specified in Sub-section (1), the Mahapalika may for the purposes of this Act and subject to the provisions thereof impose any of the following taxes, namely.

(a) a tax on trades, callings and professions and holding of public or private appointments;

(b)to(h)

(i) a theatre tax; and

(j) any other tax which the State Legislature has the power under the Constitution of India to impose in the State.

(3) The Mahapalika taxes shall be assessed and levied in accordance with the provisions of this Act and the Rules and byelaws framed thereunder.

(4) Nothing in this section shall authorise the imposition of any tax which the State Legislature has no power to impose in the State under the Constitution of India.

Section 2 : In this Act unless there be something repugnant to the subject or context.

(77) "theatre tax" means a tax on amusement or entertainments.

3. Sub-section (1) of Section 199 of the Act requires the Nagar Mahapalika to make a preliminary proposal specifying the tax which it desires to impose u/s 172(2) of the Act, the persons or class of persons to be made liable, the amount or rate leviable for each such person or class of persons and any other information which the Government requires. It further requires the executive committee of the Nagar Mahapalika to draft the rules in that respect which are finally to be framed by the State Government. The draft rules are published in the prescribed manner to enable the affected public to file objections. Section 200 of the Act makes it obligatory for the Nagar Mahapalika to consider the objections so received and to re-publish the draft rules in case any change is made therein as a result of such consideration. After considering all the objections the draft rules are finalised by the Nagar Mahapalika and are forwarded to the State Government along with the objections. Section201 of the Act empowers the State Government to reject, modify or to accept the proposed rules. u/s 202 of the Act it is only after the rules are finalised by the State Government that the Nagar Mahapalika can pass a special resolution imposing the tax from the date to be specified. u/s 203 the special resolution is sent to the Government and the tax is imposed on the publication of the resolution in the Government Gazette. Section 540(4) of the Act provides that all rules made under the Act shall be laid for not less than 14 days before each House of the State Legislature as soon as they are made and shall be subject to such modifications as the Legislature may make during the session they are so laid.

4. The proposal of the Nagar Mahapalika, Lucknow to levy theatre tax, @ Rs. 5/- per cinema show held in a building assessed on annual rental value of Rupees 10,000/- or more and @ Rs. 3/- per cinema show held in a building assessed on annual rental value of less than Rs. 10,000/-, was accepted by the State

Government by following the procedure laid down under the Act. The rules called The Lucknow Nagar Mahapalika Theatre Tax Rules were framed and enforced with effect from December 15, 1965 and thereafter the tax was levied with effect from June 1, 1967. The rate of tax was increased from time to time and finally by a notification dated October 30, 1979 published in the U.P. Government Gazette dated October 31, 1979 the theatre tax was enhanced to Rs. 25/- per show on all class-I cinemas with annual rental value of more than Rs. 10,000/-and Rs. 20/- per show on all class II cinemas with annual rental value of Rs. 10,000/- or less.

5. At this stage we may notice the fact that the theatre tax imposed by Nagar Mahapalika, Allahabad was challenged by the cinema exhibitors before the Allahabad High Court by way of a writ petition under Article 226 of the Constitution of India. The grounds of attack were substantially the same as before us in these petitions. A learned single Judge of the High Court dismissed the writ petition. Appeal against the judgment of the learned single Judge was dismissed by a Division Bench consisting of R. S. Pathak and H. Swarup, JJ. The judgment rendered by the Division Bench of the High Court is reported as Niranjan Lal Bhargava Trust, Allahabad v. State of U.P. 1972 All LJ 279 : 1972 Tax LR 2022.

6. Gulu Thadani, petitioner No. 6 before us challenged the initial imposition of theatre tax by filing a civil suit in the Court of Civil Judge, Lucknow which was dismissed. He contested the suit up to the High Court. A learned single Judge of the High Court, following the judgment in Niranjan Lal Bhargava Trust case, dismissed the second appeal filed by Gulu Thadani on November 27, 1976. On December 17, 1976, about 20 days after the dismissal of the regular second appeal by the High Court, the petitioners before us filed a Writ Petition No. 3512/76 in the Allahabad High Court (Lucknow Bench) challenging the imposition of theatre tax on various grounds. The said petition is still pending before the High Court.

7. The learned Counsel for the petitioners has contended that Section 172(2) of the Act is unconstitutional because the Legislature has abdicated its function by delegating the essential legislative powers upon the Nagar Palikas to levy all or any of the taxes enumerated in the Section. According to him the said power is unguided and uncanalised. We do not agree with the learned Counsel. Section 172(2) of the Act authorises the Mahapalikas to impose the taxes mentioned therein, "for the purposes of this Act". The obligations and functions cast upon the Mahapalikas are laid down in various provisions of the Act. The taxes u/s 172(2) of the Act, therefore, can be levied by the Mahapalikas only for implementing those purposes and for no other purpose. The Mahapalikas have to provide special civic amenities at the places where cinemas/theatres are situated. So long as the tax has a reasonable relation to the purposes of the Act the same cannot be held to be arbitrary. The rate of tax to be levied and the persons or the class of persons liable to pay the same is determined by inviting

objections which are finally considered and decided by the State Government. There is no force in the argument that the Legislature has abdicated its function to the Mahapalikas. The tax is levied in accordance with the statutory rules framed by the State Government and the said rules are laid before each House of the State Legislature for not less than 14 days and are subject to such modifications as the Legislature may make during the session they are so laid. The view we have taken, we are supported by the judgments of this Court, in Gopal Narain Vs. State of Uttar Pradesh and Another, and The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, . We, therefore, reject the contention raised by the learned Counsel for the petitioners.

8. The second contention raised by the learned Counsel for the petitioner is that the classification of cinemas on the basis of annual rental value for the purpose of fixing the rate of tax is arbitrary and as such is violative of Article 14 of the Constitution of India. According to him the classification has no nexus with the objects sought to be achieved. We do not agree. In The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, the Cantonment Board, Poona imposed entertainment tax on cinemas. Rs. 10/- per show was levied on the two cinemas of Western India Theatres Ltd. and Rs. 5/- per show in other cases. The argument raised before this Court to the effect that the Cantonment Board had singled out the two cinema houses for discriminatory treatment by imposing higher rate of tax, was answered as under at p. 585 of AIR:

It may not be unreasonable or improper if a higher tax is imposed on the shows given by a cinema house which contains large seating accommodation and is situate in fashionable or busy localities where the number of visitors is more numerous and in more affluent circumstances than the tax that may be imposed on shows given in a smaller cinema house containing less accommodation and situate in some localities where the visitors are less numerous or financially in less affluent circumstances, for the two cannot, in those circumstances, be said to be similarly situate.

9. The annual rental value under the Act indicate the extent of the accommodation, its quality, the locality in which it is situated and; other factors which relate to the enjoyment of the building. The theatre tax is levied as a tax on amusement and entertainment. The amusement in a building is affected by all those factors which are taken into consideration while fixing the annual rental value of the building. Higher rental value in relation to a cinema house shows that it has better accommodation, better situation and better facilities for amusement and entertainment. The higher annual value is indicative of a better quality cinema house as compared to a cinema house which has a lesser annual rental value. We are, therefore, of the view that there is nothing unreasonable or improper in classifying the cinema houses on the basis of annual rental value. The learned Counsel for the petitioners has not raised any other point before us.

10. The writ petitions are dismissed with costs. We quantify the costs as Rs. 1,000/- to be paid by each petitioner.

