
(2012) 02 MP CK 0132

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9562 of 2011

Digi Cable Network Private Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 246, 265

Finance Act, 1994 — Section 65(105)

Madhya Pradesh Vilasita, Manoranjan, Amod Evam Vigyapan Kar Adhiniyam, 2011 —
Section 10, 2(1)(a), 2(1)(e), 3, 4

Citation : AIR 2013 MP 36

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : G.N. Purohit, with Anand Nayak, A.S. Jha, with B.M. Prasad, Sanjay Agrawal and Mukesh Agrawal, for the Appellant; Naman Nagrath, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, J.—This order shall also dispose of Writ Petition Nos. 10306, 11554, 12591, 13285, 18938 and 19086, all of 2011. The petitioners, in all these petitions, are Multi-System Operators (in short, "the MSOs"). They are engaged in the business of receiving and then providing television signals to cable operators of various localities who, in turn, further transmit the signals to their subscribers. The petitioners have challenged the vires of sections 2(1)(a), (b), (d), (e), h(iii), h(vi), (m), (p), (q), (s), (t), 3, 4, 5, 6, 7 and 10 of the Madhya Pradesh Vilasita, Manoranjan. Amod Evam Vigyapan Kar Adhiniyam, 2011 (in short, "the Adhiniyam 2011") insofar as they relate to imposition of entertainment tax at the rate of 20 per cent, of the turnover. "Their main contention is that imposition of entertainment tax on them is beyond the legislative competence of the State Government as they are already subjected to service tax for their services u/s 65(105)(sic) of the Finance Act, 1994. According to them, entertainment tax is also contrary to the settled law and violative of

Articles 14, 19(1)(g), 246 and 265 of the Constitution of India.

1A. The State Government on the other hand, in its return, has defended the validity of the provisions of the Adhiniyam 2011 pursuant to which entertainment tax has been levied on the petitioners. The State has also relied upon the decision of the Supreme Court in *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, which the Supreme Court later followed in *Civil Appeal Nos. 7026-7029 of 2011 Indusind Media and Commun. Ltd. and Another Vs. Mamlatdar and Others*,

2. By the Adhiniyam 2011 the State Government has levied entertainment tax on the MSOs and cable operators. Its section 2(1)(e), (h) and (p) define "'cable operator", "entertainment" and "proprietor" which reads as under:

2(1)(e) "cable operator" means any person engaged in the business of receiving and distributing satellite signals, communication network, including production and transmission of programmes and packages.

(h) "entertainment" includes -

(i) any exhibition, performance, amusement, game or sport to which persons are admitted;

(ii) entertainment provided by a direct to home (DTH) Service Provider through Satellite;

(iii) entertainment provided by a cable operator through cable service;

(iv) ring tones, music, videos, movies, animations, games, jokes, etc. provided by a Telecom Service provider through telecom service:

(v) contests organised through telecom services by the Telecom Service Provider or any person:

(vi) entertainment provided by any other technological means or device.

(p) "proprietor" in relation to any advertisement, entertainment or luxury includes any person responsible for or for the time being in-charge of the management thereof.

3. Section 6(1) of the Adhiniyam 2011 deals with charges and rate of tax. Its relevant extract is as under:

(a) xxx

(b) In case of a proprietor:-

(i) xxx

(ii) xxx

(iii) on entertainment. 20 per cent of the turnover.

4. As already mentioned above, the petitioners are admittedly MSOs and they after receiving television signals transmit them to the cable operators and thereafter the cable operators further transmit signals to the subscribers. In *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, the Supreme Court has held that the State Government has legislative competence to levy entertainment tax through cable television network on MSOs as they have direct and close nexus with entertainment provided to viewers and they are the providers of entertainment. The Supreme Court has also held that levy of such entertainment tax on MSOs is neither discriminatory nor violative of Article 19(1)(g) of the Constitution. This decision was later followed by the Supreme Court in *Indusind Media and Commun. Ltd. and Another Vs. Mamlatdar and Others*,) which was a matter from the State of Gujarat and an entertainment tax was levied on the MSOs. In this case, the Supreme Court has held that since such MSOs are connected to an organization of entertainment, they fall within the meaning of "proprietor" and the issue that MSOs are liable to pay entertainment tax is not longer *res integra*.

5. Having regard to the above referred decisions of the Supreme Court, we are not inclined to hold that the provisions under challenge are *ultra vires* the Constitution. Further, merely because the petitioners are liable to pay service tax under the provisions of the Central Act. it cannot be held that they are not liable to pay entertainment tax under the provisions of the State Act. For these reasons, we dismiss the petitions but without any order as to costs.