
(2012) 01 MP CK 0111
In the Madhya Pradesh High Court
Case No : Writ Petition 7517 of 2011

Fun Multiplex Pvt. Ltd.

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Municipal Corporation Act, 1956 — Section 132(1), 132(6), 132(9), 73

Citation : (2012) 1 MPHT 449

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : B.S. Bhadoria, for the Appellant; Vivek Khedkar, Dy. Advocate General for the Respondent Nos. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Heard.

1. Petitioner has filed this petition against the order dated 17-10-2011 (Annexure P-I), passed by the Commissioner, Municipal Corporation, Gwalior. Petitioner is a Private Limited Company, named as "Fun Multiplex Pvt. Ltd., Deendayal Mall, Gwalior". It had constructed a Multiplex Cinema Hall in Deendayal Mall, Gwalior. It was granted a licence under the provisions of the M.P. Cinemas (Regulation) Rules, 1972 on 14th August, 2008 by the District Magistrate, Gwalior. The petitioner has been paying a show tax at the rate of Rs. 50/- per show for per screen imposed by the Municipal Corporation. Thereafter, vide impugned order dated 17-10-2011 the Corporation had increased the show tax from Rs. 50/- to Rs. 500/- per show per screen, which is under challenge in this petition.

2. The Municipal Corporation in its reply contended that Municipal Corporation has power and authority to enhance tax on theatres, theatrical performances and other shows of public amusement u/s 132 (6) (m) of the Municipal Corporation Act, 1956, herein after referred to as the "Act of 1956". Hence, the Corporation has imposed the tax and also enhanced the tax.

3. Learned Counsel for the petitioner has contended that exhibition of movies in a cinema theater does not fall under the provisions of Section 132 (6)(m) of the Act of 1956, hence, the Corporation has no power and authority to impose the aforesaid tax. Learned Counsel further submitted that the tax can be enhanced with the previous sanction of the State Government and because no sanction had been taken by the Corporation to enhance the tax, hence, enhancement of tax at the rate of Rs. 500/- per show per screen is arbitrary and illegal.

4. Contrary to this, learned Deputy Advocate General, contended that the Municipal Corporation has power and authority to impose tax u/s 132 (6) (m) of the Act of 1956, and it has power to enhance the tax. No approval from the State Government is necessary for the aforesaid purpose, hence the order passed by the Corporation is in accordance with law. In support of his contentions, learned Counsel relied on the judgment of the Hon'ble Supreme Court in the case of Western India Theatres Limited Vs. Cantonment Board, Poona, AIR 1956 SC 582.

5. Undisputed facts of the case are that earlier the Corporation imposed the show tax at the rate of Rs. 50/- per show per screen, which had been paid by the petitioner. Subsequently, the rate of show tax has been enhanced from Rs. 50/- to Rs. 500/-. Section 132 (6) of the Act of 1956 provides power to the Corporation to impose some more tax. Sub-section (m) of Section 132 (6) of the Act of 1956 gives power to impose tax on theaters, theatrical performances and other shows for public amusement. The relevant provisions are as under :-

132. Taxes to be imposed under this Act.-

(1) *** **

(6) In addition to the taxes specified in sub-section (1), the Corporation may, for the purpose of this act, subject to any general or special order which the State Government may make in this behalf, impose any of the following taxes, namely :-

(a) *** **

(m) a tax on theatres, theatrical performances and other shows for public amusement.

6. Earlier, the State Government had prescribed maximum limit of Rs. 200/- and Rs. 50/- per show per screen, which can be imposed by the Corporation under the show tax vide notification dated 24th June, 1998 issued u/s 132, sub-section (9) of the Act of 1956. The aforesaid section was omitted vide M.P. Act No. 29 of 2003. Prior to omission sub-section (9) was as under :-

(9) The State Government may, by notification, in the Official Gazette, prescribe the maximum and minimum rate of any tax specified in this section, subject to which the Corporation shall determine the rate of such tax.

7. From perusal of sub-section (6) of Section 132 of the Act of 1956, it is clear that the Corporation can impose any tax mentioned in the aforesaid section

subject to any general and special order, which the State Government make in this behalf. From the aforesaid section, it is clear that power of the Corporation to impose tax is subject to rider prescribed in Section 132, sub-section (6) of the Act of 1956. It means that it is necessary for the Corporation to get prior permission of the Government before enhancing the tax from Rs. 50/- to Rs. 500/- per show per screen. Admittedly, no such permission has been taken by the Corporation in this behalf. Earlier, the Corporation had power to impose show tax at the maximum rate of Rs. 200/- per show per screen.

8. Hence, in our opinion, enhancement of show tax by the Corporation is without prior permission of the State Government is without power and authority.

9. The arguments advanced by the learned Counsel for the petitioner that the Corporation has no power and authority to impose show tax per show per screen exhibited in the cinema is not acceptable because it has been mentioned in Section 132 (6) (m) of the Act of 1956 that the Corporation has power to impose tax on theatres, theatrical performances and other shows for public amusement. Admittedly, the petitioner has been exhibiting movies in cinema for the purpose of amusement of public.

10. Hon'ble the Supreme Court in the case of *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, has held as under, in regard to imposition of show tax :- (7) As pointed out by this Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, following certain earlier decisions referred to therein, the entries in the Legislative list should not be read in a narrow or restricted sense and that each general words should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It has been accepted as well settled that in construing such an entry an entry conferring Legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. In view of this well established rule of interpretation, there can be no reason to construe the words "taxes on luxuries or entertainment or amusements" in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the works are to be so regarded, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regard an entertainment tax as a tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment, it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainment or amusements. The entry, as we have said, contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls

on the giver or the receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling. It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax. A lawyer has to pay a tax or fee to take out a license irrespective of whether or not he actually practices. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the license chooses to do so. The impugned tax is a tax on the act of entertainment resulting in a show. In our opinion, therefore, Section 73 is a law with respect to matters enumerated in Entry 50 and not Entry 46 and the Bombay Legislature had ample powers to enact this law.

Hence, the arguments advanced by the learned Counsel in this behalf is hereby rejected.

Consequently the petition is allowed in part. Impugned order (Annexure P-1), in regard to enhancement of show tax is hereby quashed. However, it is observed that the Corporation is at liberty to enhance show tax in accordance with law after prior approval from the State Government in excess of the limit fixed by the Notification dated 24th June, 1998. No order as to costs.