

(1995) 11 AHC CK 0085
In the Allahabad High Court
Case No : Writ Petition No. 249 of 1995

Hindalco Industries Ltd. and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 15-11-1995

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 11(1), 2, 2(1), 3, 4B

Citation : AIR 1996 All 199

Hon'ble Judges : R.A. Sharma, J;O.P. Jain, J

Bench : Division Bench

Advocate : V.K. Upadhya, for the Appellant;

Final Decision : Partly Allowed

Judgement

O.P. Jain, J.—Petitioner No. 1, Hindalco industries Ltd. and Petitioner No. 2, one of its share-holders, have filed this writ petition with a prayer that a writ of certiorari be issued and the impugned order, Annexure "15" dated 3.2.1995, may be quashed.

2. The brief facts, leading to the petition, are that Hindalco Industries Ltd. (hereinafter called as Hindalco) has its factory at Renukoot, district Sonbhadra. The factory has a residential colony for its workers and employees which provides residential accommodation to them on a nominal licence fee. The houses are equipped with amenities; like water and electricity, etc., Hindalco also extends to its employees at their residential accommodations a Cable Net Work for viewing television programme and for that purpose it has installed a dish-antenna and other necessary equipments. The dish-antenna has been Installed after getting licence, Annexure "1" which has been renewed, vide Annexures "2" and "3". The Cable Net Work Is also registered with the Post Master in accordance with the Cable Television Network (Regulations) Ordinance of 1994. The Hindalco has given contract to Shyam Communication System, New Delhi to maintain the said Cable Television Net Work. The terms and conditions of the

agreement entered into between Hindalco and Shyam Communication System are contained in Annexure "6". Hindalco charges a nominal amount of Rs. 5 from its employees towards the maintenance charges of the aforesaid Cable Television Net Work, though the actual expenditure incurred by Hindalco for its establishment and maintenance is much more.

3. On 21st December, 1993, the District Magistrate, Sonbhadra vide Annexure 7" imposed Rs. 9,280 as entertainment tax for the Cable Television Net Work for December, 1993. Hindalco sent letter, Annexure "8" to the District Magistrate on 24th December, 1993 praying for time for making submission that the entertainment tax was not chargeable from it. The Senior Entertainment Tax Inspector, vide Annexure "9" informed Hindalco that three weeks time has been granted to it for showing cause. On 8th January, 1994, Hindalco submitted Annexure "10" contending that no entertainment tax is payable by it under the provisions of U.P. Entertainment and Betting Tax Act of 1979 (hereinafter called the Act). This contention was rejected by the District Magistrate, Sonbhadra on 17.9.1994 vide Annexure "11" and Hindalco was informed that it is liable to pay entertainment tax to the tune of Rs. 83,520 up to August, 1994. Another application, Annexure "12" was moved by Hindalco for giving one more opportunity to show cause. The A.D.M. (Finance & Revenue), Sonbhadra granted time to Hindalco vide Annexure "13" dated 2.11.1994. A detailed objection was filed by Hindalco on 28.11.1994 which is Annexure "14" and the objections raised were rejected by the impugned order, Annexure "15" dated 3.2.1995. Hindalco was called upon to pay Rs. 1,29,920 up to January, 1995. This amount was to be paid within seven days. Under these circumstances, Hindalco has filed the present writ petition.

4. The Respondents have filed the counter affidavit and rejoinder affidavit has been filed by the Petitioners. We have heard Sri V.B. Upadhyaya, senior counsel for the Petitioner and Sri S.M.A. Qazmi, learned standing counsel for the Respondents and have also gone through the record.

5. The first and foremost contention on behalf of the Petitioners is that under the provisions of the Act, entertainment tax is payable only for "admission" to an entertainment and that it contemplates some place of entertainment to which the person seeking entertainment is to be admitted. It is contended that for the Cable Net Work System, the person concerned is not admitted to a place of entertainment and the entertainment is provided to him at his own residence and, therefore, the provisions of the Act are not applicable to the case of Cable Television Net Work.

6. In order to appreciate this contention, some provisions of the Act have to be reproduced:

Section 2

(a) "admission to an entertainment" Includes admission to any place in which the entertainment is held;

(g) "entertainment" includes any exhibition, performance, amusement, game, sport or race (Including horse race) to which persons are admitted for payment and in the case of cinematograph exhibition, including exhibition of news-reels, documentaries, cartoons, advertisement shorts or slides, whether before or during the exhibition of a feature film or separately.

Section 2(1)

(i) any payment for seats or other accommodation in any form in a place of entertainment;

(iii) * * * *

(iii) any payment made for the loan or use of any instrument or contrivance which enables a person to get a normal or better view or hearing or enjoyment of the entertainment, which without the aid of such instrument or contrivance, such person would not get;

(iv) any payment, by whatever name called, for any purpose whatsoever, connected with an entertainment, which a person is required to make in any form as a condition of in addition to the payment, if any, for admission to the entertainment or without any such payment for admission.

(v)* * * * *

7. The contention on behalf of the Petitioner is that in the absence of admission to any place in which entertainment is held, no tax can be levied. T.V. Cable Operators neither provide any place nor charge any money for granting admission to any place. Similarly, the subscriber neither comes nor seeks admission or entrance to any place provided by the Operator but he views the programme on his own television in his residence or place of living. It is argued that Section 3 of the Act can have no application where the person making the admission is not admitted to any place which has been set apart or provided by the Organiser of the entertainment.

8. Learned Counsel for the Petitioner has invited our attention to the provisions of Section 4B of the Act which authorise the Government to levy tax from the proprietor of a public service vehicle which provides exhibition by means of video in such vehicle. Sub-section (3) of Section 4B imposes liability to pay tax on the proprietor of a hotel where exhibition by video is given in rooms let out to lodgers in a hotel. It is argued that but for this specific provision, the exhibition of video films in a public service vehicle or exhibition of video films in a hotel room would not have been taxable.

9. This contention cannot be upheld in view of definition of payment for admission given in Sub-section (1) of Section 2, reproduced above. The definition is an inclusive definition which includes not only seats or other accommodation or a place of entertainment but also covers "any payment by whatever name called for any purpose whatsoever, connected with an entertainment.

10. In fact this aspect of the case is covered by a Division Bench authority of this Court in Civil Misc. Writ Petition No. 1353 of 1993 and other connected writ petitions which are reported in Geep Industrial Syndicate Ltd. Allahabad and Ors. v. Union of India and Ors. 1992 ALJ (2) 783, in which similar contentions were advanced and were repelled.

11. At the time of admission of the present writ petition, this Court passed the following order:

It is stated by the learned Counsel for the Petitioner that the leading Writ Petition No. 9152 of 1991 was heard in November, 1994 and the judgment is reserved.

List immediately after delivery of judgment in the said writ petition.

12. The judgment of Writ Petition No. 9152 of 1991 has not been available to us but the judgment cited above covers the same ground and, therefore, it is not necessary to examine the above contentions in great detail.

13. Learned Counsel for the Petitioner has, however, argued that the case of Hindalco is on a different footing because Hindalco has no profit motive in providing video T.V. facilities to its employees. It is argued that the provision of the facility is in fact a welfare measure which does not depend on the volition of the employee and every residential unit in the township is provided with this facility without there being any application or request on the part of the employee. It is argued that only a token sum of Rs. 5 p.m. is being charged by the Hindalco from its employees for the maintenance of the Cable Net Work and that the actual amount paid by Hindalco to M/s. Shyam Communication System is much more. In support of this contention, the learned Counsel for the Petitioners has relied upon the agreement entered into by Hindalco with Shyam Communication System which is Annexure 6. Alongwith the supplementary affidavit, a photostat copy of the Standing Order applicable to the Company has also been produced.

14. Learned Counsel for the Petitioner has relied on the case of Tata Engineering and Locomotive Co. Ltd. Vs. The Sales Tax Officer and Regional Transport Officer, Poona and Another, . Another authority cited by the learned Counsel is I.T.I. Ltd. Allahabad v. Passenger Tax Officer Allahabad 1995 HVD (2) 152, which was decided by a Bench of which one of us (Hon"ble R.A. Sharma, J.) was a member. The above cases are of no help to the Petitioner. There tax was levied on the passengers carried by a public service vehicle. As the employees are not passengers and the vehicle in which they are carried cannot be said to be public service vehicle, it was held in those cases that the employer is not liable to pay the passenger tax. in the instant case, the position is different. Here, who is the viewer is not relevant. What is relevant is the fact of providing entertainment through Cable Net Work. if such facility of entertainment is provided and the viewers are charged for it, the liability to pay entertainment tax is created. The quantum of amount which is paid by the viewers in lieu of entertainment given to them is not relevant. The name which has been given to such an amount by the

employer is also not relevant. Once any sum is realised from the viewers for entertainment, liability to pay tax is created immediately.

15. The fact that the Hindalco is providing Cable Net Work facilities to its employees as a welfare measure and not with profit motive, may be a good ground for Hindalco to seek exemption for the payment of entertainment tax u/s 11(1) of the Act. For that purpose, Hindalco is at liberty to file an application before the State Government. But unless such an exemption is granted, Hindalco is liable to pay entertainment tax on the Cable T.V. Net Work connections given by it to its employees.

16. Another submission on behalf of the Petitioner is that before passing the impugned order, Annexure "15", the District Magistrate did not issue any notice to the Petitioner. From the facts mentioned above, it is clear that the Petitioners prayed for time vide Annexure "8" dated 24.12.93 and time was granted to them vide Annexure "9" dated 4.1.94. The Petitioners again sought time on 27th Sept., 94 vide Annexure "12" and again time was granted vide Annexure "13" dated 2.11.94. It cannot, therefore, be said that the impugned order has been passed without giving any notice to the Petitioner or without affording any opportunity to them to show cause against the levy of entertainment tax.

17. However, it does appear that the Petitioners raised a preliminary objection that no tax is payable by them and the plea taken by them in Annexure A-12 dated 27th Sept. 94, that there are only 4,000 connections, has not been adjudicated upon by the District, Magistrate, Tax has been levied on Hindalco on the basis that it has given 8,000 connections to its employees. This figure of 8,000 connections is based on Annexure "CA-2" which recites that at the time of inspection of the premises one Deepak Panera son of M.D. Panera told the inspecting Officer that there are 8,000 connections. This inspection took place on 14.7.1993. The Petitioners have filed rejoinder affidavit in paragraph 13 in which it is categorically stated that there is and there was no employee in the Petitioner's Company by the name of Deepak Panera at any time. The learned standing counsel has argued that Deepak Panera may not be an employee of Hindalco but he appears to be a representative of Shyam Communication System which was running the Cable Television Net Work on behalf of Hindalco and, therefore, notice to Deepak Panera, Annexure C.A.-is sufficient and Hindalco is bound by the statement made by Deepak Panera to the effect that there are 8,000 connections.

18. We have given careful consideration to this aspect of the matter and in our opinion, under the facts and circumstances of the case, any notice to Deepak Panera cannot be construed as notice to Hindalco because admittedly Deepak Panera was not an employee of Hindalco. Liability is to be fastened on Hindalco and it cannot be held bound by a statement, said to have been made by some representative of Shyam Communication System. There is no dispute about the fact that Hindalco is realising Rs. 5 p.m. from its employees for availing the facility of Cable T.V. Net Work. It is also admitted that every dwelling unit in

Hindalco township at Renukoot is provided with this facility. The exact number of residential unit in the township cannot be a matter of muc--dispute and there cannot be such a wide difference as the figure of 4,000--8,000 suggests. It is a fit case in which the District Magistrate should be directed to give a definite finding whether residential units are 4,000 or 8,000. It is, however, made clear that the order, Annexure "15" is found to be valid in so far as it imposes liability to pay entertainment tax on Hindalco. The exact amount has, however, to be worked out again in accordance with the number of residential units (4,000 or 8,000) which are provided with the facility of Cable T.V. Net Work.

19. in view of above discussion, the writ petition is partly allowed and while upholding the right of the State Government to realise entertainment tax from Hindalco, the demand raised vide Annexure 15 is quashed. The matter is remanded to the District Magistrate to decide the question about the number of residential units of the workmen, within a period of three months from the date of presentation of a certified copy of this order before him, after giving reasonable opportunity of being heard to the Petitioner. The District Magistrate will also get actual residential units inspected in the presence of representatives of the Petitioner, before passing fresh order.