
(2008) 08 DEL CK 0032

In the Delhi High Court

Case No : Writ Petition (C) No. 2578 of 1986

Hotel Rajdoot Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

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

Citation : AIR 2009 Delhi 26 : (2008) 152 DLT 606 : (2008) 105 DRJ 645

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Lalit Bhasin and Zainul Abidin, for the Appellant; Zubeda Begum, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—Petitioner is a private limited company which, inter alia, owns and operates Hotel Rajdoot, Mathura Road, New Delhi. The hotel commenced its operation in the year 1965. Two distinct restaurants were opened in the hotels, namely "El Dorado" and "Pussycat Discotheque". The "El Dorado" restaurant provided entertainment to customers by way of music played by live band and daily cabaret shows and Indian dances. The customers were not permitted to dance there. While having food they enjoyed live band played as well as cabaret shows. Petitioner was paying entertainment tax from the entry fee charged from customers of aforesaid restaurant. The other restaurant i.e. "Pussycat Discotheque" had a different menu and atmosphere as compared to "El Dorado" restaurant. A dance floor was provided there to customers for dancing to the recorded music. Timing of the discotheque was from 9 P.M. to Midnight and on Saturdays from 9 P.M. to 2 A.M. Lighting arrangement was kept low. Only couples were provided entry to provide them an element of privacy. Customers were also served with hard and soft drinks with their meals. Couples who visit discotheque were charged with an entry fee of Rs. 100 i.e. @ Rs. 50/- per head. Out of an amount of Rs. 50 per head, Rs. 25/- was charged towards temporary

membership and balance Rs. 25/- was adjusted towards their bill of food and beverages.

On 29.9.1981 a communication was sent to the petitioner by respondent No. 2 i.e. Entertainment Tax Officer stating that "discotheque" in the hotel fall within the definition of "entertainment" as defined u/s 2 (Clause 3) of U.P. Entertainment and Betting Tax Act, 1937 as extended to Union Territory of Delhi and petitioner was asked to furnish the necessary information along with complete statement of account of the discotheque so that entertainment tax can be levied. On 12.2.1985 another letter was sent by respondent No. 2 wherein petitioner was informed that it was liable to pay the entertainment tax u/s 3(3) of the Act. Petitioner was asked to submit details of accounts so that the levy of entertainment tax can be sorted out.

In response to above the petitioner submitted written submissions giving details of activities being carried out in "discotheque" and submitted that no entertainment tax could be levied. Vide communication dated 7.11.1986 General Manager of petitioner was called on 12.11.1986 along with records of "discotheque".

Petitioner appeared before respondent No. 2 on the said date and reiterated its stand by again submitting written submissions and submitted that no entertainment tax u/s 3(3) of the said Act is leviable. As respondent No. 2 was not inclined to agree with the submissions of petitioner, it filed the present petition.

Petitioner also challenged the constitutional validity of U.P. Entertainment and Betting Tax Act, 1937 as extended to Union Territory of Delhi (hereinafter referred to as the Act) alleging that same is an illegal restraint on the petitioner's right to carry on business and, thus, violative of Article 14 and 19(1) (g) of the Constitution of India.

During the pendency of the writ petition, this Court vide its order dated 20.1.1987 directed respondent No. 2 i.e. Entertainment Tax Officer to decide preliminary point i.e. as to whether the entertainment tax was leviable from the petitioner for the programme in "Pussycat Discotheque" and, if so, the quantum of entertainment tax payable by the petitioner. Thereafter, petitioners furnished details as demanded by respondent No. 2 and after hearing the petitioner, order dated 20.4.1990 was passed holding that "discotheque" is a place of "entertainment" and the temporary membership fee is payment for admission to an entertainment and, thus, petitioner is liable to pay entertainment tax and computed the same as Rs. 7,10,459/- as from November, 1976 to 19th November, 1988 (till the date of closure). Thereafter, petitioner amended the petition and challenged the aforesaid order also.

2. Learned Counsel for the petitioner contended that "discotheque" provides food and drinks with provision of dance floor for guests who wished to dance to recorded music, as such "discotheque" does not come within definition of

"entertainment" within the meaning of Section 2(3) of the Act. It is contended that impugned order is based on wrong interpretation of judgment of Hon"ble Supreme Court in Geeta Enterprises and Others Vs. State of U.P. and Others, , and the said case has no applicability to the facts of the present case. It is contended that no entertainment was provided in the discotheque by way of cabaret, live band or Indian dance etc. as such there was no entertainment and no entertainment tax could have been levied. It is further contended that the entry fee charged from guest towards temporary membership was only for restricting the entry of anti-social elements and also on account of space constraints in the discotheque and the same was not charged for "entertainment" or "amusement".

3. On the other hand, counsel for the respondent argued that the present case is covered by the judgment of Supreme Court in Geeta Enterprises v. State of U.P. and Ors. (supra) wherein certain tests are laid down for a show to be an "entertainment" within the meaning of the Act. It is contended that applying the judgment of Supreme Court in aforesaid case, Bombay High Court (East India Hotel v. State of Maharashtra) 1985 BLR 90 as well as this Court (East India Hotel v. Union of India in WP(C) 43/1987 and 44/1987 decided on 24.9.2004) on a similar issue in respect of a different hotel has held that discotheque where there is a dance floor and recorded music is being played and an entry fee is charged is liable to pay entertainment tax under the Act.

4. We have heard learned Counsel for parties and perused the record.

5. The question for determination is whether the petitioner is liable to pay entertainment tax on the payment received for admission to "Pussycat discotheque" under the provision of U.P. Entertainment and Betting Tax Act, 1937 as extended to Union Territory of Delhi.

6. Section 3(1) of the Act is the charging Section as per which entertainment tax shall be levied and paid to Government on all payments for admission to any entertainment, a tax at the rate specified in the section. Section 2(3) of the Act defines the word "entertainment" which is as under:

(3) "entertainment" includes any exhibitional performance, amusement, game or sport to which persons are admitted for payment

The definition given to word "entertainment" is very wide. The use of expression "includes" indicates that the activities enumerated in the provisions are illustrative and not exhaustive. Section 2(6) of the Act defines "payment for admission". The same is reproduced as under:

(6) payment for admission" includes-

(i) any payment made by a person who, having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving tax or more tax is required;

- (ii) any payment for seats or other accommodation in a place of entertainment;
- (iii) any payment for a programme or synopsis of an entertainment; and
- (iv) any payment for any purpose whatsoever connected with any entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment.

The term "entertainment" as used in Section 2(3) in the Act has been interpreted by the Supreme Court in the judgment of *M/s Geeta Enterprises and Ors. v. State of U.P. and Ors.* (supra). The question involved in the said case was as to whether the video show of games and sports etc. enjoyed by persons operating the machine on payment of a fixed charge was "entertainment" within the meaning of Section 2(3) of the Act and thus liable to entertainment tax.

Considering the legal connotation of word "entertainment" as defined in various books, the Hon'ble Supreme Court laid down the following tests for determining as to whether a particular activity falls within the definition of "entertainment" as embodied in Section 2(3) of the Act:

- (1) that the show, performance, game or sport, etc. must contain a public colour in that the show should be open to public in a hall, theatre or any other place where members of the public are invited or attend the show;
- (2) that the show may provide any kind of amusement whether sport, game or even a performance which requires some amount of skill; in some of the cases, it has been held that even holding of a tambola in a club hall amounts to entertainment although the playing of tambola does to some extent, involves a little skill;
- (3) that even if admission to the hall may be free but if the exhibitor derives some benefit in terms of money it would be deemed to be an entertainment;
- (4) that the duration of the show or the identity of the person who operates the machine and derives pleasure or entertainment or that the operator who pays himself feels entertained is wholly irrelevant in judging the actual meaning of the word "entertainment" as used in Section 2 (3) of the Act. So also the fact that the income derived from the show is shared by one or more persons who run the show.

7. As per case of the petitioner, the primary object of running the "Pussycat discotheque" was to provide a different menu and atmosphere to the customers. Lighting arrangement in the discotheque is also kept low as only couples are permitted entry so that there could be an element of privacy. Apart from meals, customers were served with hot and soft drinks with the meals. An Entry fee of Rs. 100/- @ Rs. 50/- per head was charged. Dance floor was provided so that if any guest wished to dance to the recorded music he was free to dance. Thus, there was undoubtedly an element of amusement for couples whether dancing

themselves or sitting in the hall and enjoying and listening to the recorded music.

In our view the activities performed at the "discotheque", by the facts as disclosed in the petition, bring the same within the definition of "entertainment". The tests laid down by Supreme Court are fully satisfied in this case. The activities clearly fall within the definition of "entertainment". Thus admission to a "discotheque" is a place where an "entertainment" is held as such it clearly falls within the definition of "entertainment" u/s 2(3) of the Act.

8. On the similar facts in the case of East India Hotel Ltd. v. Union of India (in W.P.(C) 43/1987 and 44/1987 decided on 24.09.2004), learned Single Judge of this Court has held that entertainment tax has to be paid on the cover charge/ fixed fee imposed in respect of entry to the discotheque. In East India Hotel Limited v. State of Maharashtra 1985 Bombay Law Reporter 90, in almost similar facts in respect of a hotel in Bombay where discotheque was being run, definition of "entertainment" was given a wide interpretation and it was held that payment for discotheque is a payment for admission to an "entertainment".

In both the above cases judgment of Hon"ble Supreme Court in Geeta Enterprises (supra) has been followed for interpreting the meaning of word "entertainment".

9. Learned Counsel contended that there was no public show in a discotheque as such judgment of Supreme Court in Geeta Enterprises (supra) is not applicable. Considering the facts of the case, we find no distinction between a case where performance is by a person other than the person who has made the payment and the case where the facilities are provided by the assessee i.e. the petitioner in the present case and the entertainment is in pursuance of the facilities provided. In Geeta Enterprises and Ors. v. State of U.P. and Ors. (supra) where assessee i.e. petitioner was providing the facility of video machine and the entertainment was by the payee by use of some of his skills, it has been held to be an "entertainment". The contention raised has no force and is rejected.

We have also considered the judgment of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, relied upon by learned Counsel for the petitioner. The facts of that case are different and are not applicable to the present case.

It may be mentioned that though in the petition, petitioner has raised a plea that the Act is violative of Article 14 and Article 19(1)(g) of Constitution, however, no arguments have been advanced on the said plea. In these circumstances, we presume that petitioner has given up the said plea.

In view of above discussion, we find no infirmity in the impugned orders under challenge which calls for interference of this Court. We accordingly dismiss the writ petition.