
(1982) 04 GUJ CK 0010
In the Gujarat High Court

H.T. Gursahaney	Vs	APPELLANT
State and Another		RESPONDENT

Date of Decision : 30-04-1982

Acts Referred:

Central Provinces and Berar Entertainments Duty Act, 1936 — Section 3(1)
Constitution of India, 1950 — Article 226
Gujarat Entertainment Tax Act, 1977 — Section 2(a), 2(e), 2(g), 3, 3

Citation : (1982) 2 GLR 526

Hon'ble Judges : R.C. Mankad, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—Video game machines have been installed by the petitioners in their parlours run in different names, such as "Dizzyland", "Wonderland". etc. Admission to there parlours is unrestricted and free of cost. In other words, no fee is charged by the proprietors of the parlours for admission to the parlour. Video game machines have been installed in these parlours and any person who desires to play the electronic game can use the machine by dropping two fifty-paise coins in its slot. It is not as if any performance appears en the screen of the machine as soon as the coins are dropped in the slot of the machine. A player who desires to use the machine must activate it by either pressing the push buttons or the lever provided for the same. Once the machine is activated the human mind is pitted against the computer-mind and the battle of wits ensues. If the player is able to manipulate the lever or the push-buttons by sharp reflexes so as to beat the computer-mind, the human mind scores a point over the computer-mind and the player enjoys the thrill of having succeeded in scoring a point. That entitles the player to a second round till he loses to the computer mind in the combat. In other words, it depends on the intelligence and sharp reflexes of the player who operates the machine to score a point over the computer mind. The petitioners contend that the amount dropped in the slot is by way of hire charges for using the machine. No payment is charged from the player or the onlookers for entry to the parlour.

2. The petitioners who are the proprietors of such parlours were served with show cause notices directing them to submit accounts for payment of entertainment tax on the income received from the coins dropped in the slots of the video machines in exercise of power conferred by Section 3 of the Gujarat Entertainments Tax Act, 1977, (hereinafter referred to as "the Act") On receipt of these notices the petitioners showed cause pointing out that income from video machines installed in their parlours could not attract the provisions of Section 3 of the Act because no payment was charged for admission to the parlours or from the bystanders in the parlours while the machine was in use by one of the players who had dropped coins in the slot. The Mamlatdar (Entertainment Tax), Ahmedabad, however, came to the conclusion that the loan or use of any instrument or contrivance referred to in Section 2(g)(iv) fell within the meaning of the expression "payment for admission" and, therefore, the proprietors of the parlours were liable to pay entertainment tax u/s 3 of the Act. The Mamlatdar, therefore, called upon the proprietors of the parlours, that is, the petitioners of this group of petitions, to pay entertainment tax on the amounts collected from the machines during the relevant period. The petitioners, feeling aggrieved by this order preferred the present writ petitions under Article 226 of the Constitution of India.

3. On behalf of the respondent Shri M.N. Buch, Competent Officer-cum-resident Deputy Collector has filed his affidavit-in-reply wherein he has pointed out that by reference to the definitions contained in Sections 2(a), 2(e) and 2(g)(v) of the Act that video games would fall within the meaning of a game or sport and since a price is recovered for operating the video machines which provide entertainment to players, the proprietors of the parlours are liable to tax u/s 3 of the Act. According to him the expression "admission to an entertainment" would not necessarily imply admission to a physical place/ surrounding to which a person enters but would include admission to entertainment meaning thereby admission to the parlour for the purpose of playing the video game installed in the said parlour on payment of a price to be paid by inserting coins in the slot of the machine. It is pertinent to note that in the affidavit-in-reply reliance is not placed on Clause (iv) of Section 2(g) of the Act to which a reference is made by the Mamlatdar in his impugned order. Broadly speaking, the question which, therefore, arises for our consideration is, whether coins inserted in the slot of the video machines to enable the player to play the game tantamount to "payment for admission to entertainment"?

4. In order to understand the controversy between the parties, reference may be made to a few provisions of the Act. The Act repeals the Bombay Entertainments Duty Act, 1923, the preamble whereof provided that it was an Act to impose a duty in respect of admission to entertainments in the State of Bombay. The preamble to our Act shows that it is an Act to consolidate and amend the law relating to the imposition of a tax on entertainments in the State of Gujarat. The relevant entries in List II of the Seventh Schedule to the Constitution are Entry 33 and Entry 62. Entry 33 deals with theatres and dramatic performances;

cinemas subject to the provisions of Entry 60 of List 1; sports, entertainments and amusements. Entry 62 deals with taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. The expressions "entertainment", "admission to an entertainment" and "payment for admission" have been defined as under by Section 2 of the Act:

2(e) "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment;

2(a) "admission to an entertainment" includes admission to any place in which the entertainment is held:

2(g) "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 entertainment;

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

(v) any payment for any purpose whatsoever connected with an 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;

(vi) any payment for admission of a motor vehicle into the auditorium of a cinema known as Drive-in-Cinema:

The term "proprietor", in relation to any entertainment includes the owner thereof and any person who is responsible for, or who is for the time being in charge of, the management thereof as per Clause (j) of Section 2 of the Act. Section 2(k) lays down that "tax" means an entertainment tax levied u/s 3 or Section 4 of the Act. That brings us to the charging Section (1)(a) which provides that there shall be levied and paid to the State Government on, every payment for admission to an entertainment, other than the payment for admission referred to in Clause (b), a tax, at the rates enumerated in the sub-clauses immediately following. We are not concerned with Clause (b) of Sub-section (1) of Section 3 which refers to payment for admission of a motor vehicle into the auditorium of a cinema known as Drive-in-Cinema. Section 4(1) lays down that there shall be levied and paid to the State Government on every complimentary ticket issued by the proprietor, a tax at the appropriate rate specified in Section 3, as if full payment had been made for admission to the entertainment. "Complimentary ticket" is defined by Section 2(d) of the Act to mean a ticket,

pass, invitation card or such other document for admission to an entertainment free of any payment or at a reduced rate of payment for such admission. Section 7 next provides that where a tax u/s 3 or Section 4 is livable, in respect of the admission of a person to an entertainment, no person other than a person who has to perform any duty in connection with such entertainment shall be admitted to any entertainment.

5. While considering the scheme of the Bombay Entertainments Duty Act, 1923, which held the field before our Act came into force, a Division Bench of this Court in *Liberty Talkies v. State* (1967) 8 G.L.R. 609 at 613 observed that Section 3 which is the charging section provides for the levy of entertainment duty on "all payments for admission" to an entertainment and the word "all" preceding the words "payments for admission" is an all embracing word intended to bring within the scope and ambit of the words it governs, all that can possibly be included in them. Raising the question: what is included within the connotation of the expression "payment for admission"? The Division Bench pointed out that the said expression as defined in Section 2(b) is an inclusive definition but that does not mean that the inclusive clause prevents the expression receiving its ordinary popular and natural meaning wherever properly so applicable. Now, it will be seen that the definitions given in Sections 2(a), 2(e) and 2(g) of the Act are inclusive definitions and the expressions so defined must, therefore, first be understood in their ordinary meaning and then in their enlarged meaning because it is well settled that the legislature resorts to an inclusive definition for the purpose of enlarging the meaning of the expressions it defines. The expression "payment for admission" according to its plain natural connotation means what a party pays to secure admission to an entertainment. The dictionary meaning of the word "entertainment" was considered by a Division Bench of the Rajasthan High Court in paragraphs 5, 6 and 7 of the judgment in *Maharaja of Jaipur Museum Trust v. State of Rajasthan* (1972) Tax L.R. 2428 and we can do no better than reproduce the relevant paragraphs:

"5. In order to have an accurate idea of the meaning of the word "entertainment" in its ordinary and general acceptance, we may also refer to Butterworth's "Words and Phrases", legally defined. There it has been stated:

"an entertainment to come within the provisions of the Finance (New Duties) Act, 1916 (repealed) must be some "exhibition, performance, amusement, game or sport" provided, though not necessarily by the owner of the place of entertainment, for the purpose of entertaining those who pay to see or to hear it.

6. Venkataramaiah similarly, in "Law Lexicon" states, entertainment" is a word of general import. In common parlance, it includes cinema shows, dramatic performance, etc. In Chamber's 20th Century Dictionary, the meaning of this word is "a performance or a show intended to give pleasure".

7. In Ananthakrishna Iyer's "Law Terms and phrases", "entertainment" has been stated-the natural import of the term is amusement and gratification of some

sort. The term connotes something in the nature of an organized entertainment." The emphasis evidently is upon some kind of organisation to provide amusement.

It is, therefore, clear from the above definitions that "entertainment" in common parlance means some sort of a performance which gives amusement or gratification to the spectators. That is why the Madhya Pradesh High Court in *Calico Mills Ltd. Vs. State of Madhya Pradesh and Others*, while dealing with the term "entertainment" used in an identical statute-C.P. and Barer Entertainments Duty Act, 1936 observed as under in paragraph 6 of its judgment:

The natural import of the term "entertainment" is amusement and gratification of some sort. The term connotes something in the nature of an organized entertainment.

6. Having ascertained the natural import of the term "entertainment", we may now proceed to consider the relevant provisions of the Act referred to earlier. Now the expression "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. The expression "admission to an entertainment" includes admission to any place in which entertainment is "held. If we read the definitions in Sections 2(a) and 2(e) together, it becomes clear that "admission to an entertainment" means admission to any place in which any exhibition, performance, amusement, game or sport is held. It clearly contemplates entry to a place where some game is played. "Payment for admission" means payment to be made for admission to a place of entertainment, that is, a place where some exhibition, performance, amusement, game or sport is held or any payment made in connection with an entertainment which a person is required to make as a condition of attending or continuing to attend the entertainment. Section 3 levies tax on "every payment for admission to an entertainment", that is, exhibition, performance, amusement, game or sport. In other words, the tax is on payment for admission to a game, not payment made for playing the game. The tax is on something which is, therefore, objective and not subjective.

7. Chagla C.J., in *State of Bombay v. Chamarbaugwalla* 57 Bom. L.R. 288 at page 331 while dealing with the alternative argument made by the learned Counsel for the State Government that the legislation deals with entertainment and amusement, made the following pertinent observations:

The entertainment and amusement contemplated by entry 33 of List II with regard to legislation and entry 62 of List II with regard to taxes is not the subjective entertainment or amusement which a person may receive by solving a cross worn puzzle or by indulging in any other mental or intellectual pleasure. The entertainment or amusement contemplated is something objective outside the person amused or entertained, and with regard to the tax on entertainment and amusement, the tax also is on the spectator who witnesses some amusement or entertainment. Therefore, although it may be said that a person who solves a crossword puzzle is amusing himself or entertaining himself, this is

not the amusement which the Constitution contemplates in placing the topic of entertainments and amusements in the relevant entries.

We are in respectful agreement with the view expressed that tax on entertainment contemplated by the Act is not on entertainment which is subjective but can be levied on entertainment which is objective. Although this decision of the Bombay High Court was reversed by the Supreme Court in *The State of Bombay Vs. R.M.D. Chamarbaugwala*, on the question whether the impugned law dealt with trade, commerce or business, the view quoted above with regard to the scope of entertainment remained untouched.

8. In *Calico Mill's case* (supra) the facts reveal that the petitioners, Calico Mills, had put up a canvas canopy known as "Cal cloth dome" for display and sale of its fabrics. Admission to the dome was unrestricted and free but during the evenings only bona fide purchasers who purchased token on payment of Rs. 2/- were admitted to the dome. This amount of Rs. 2/- was later adjusted towards the price of the fabric purchased by the customer visiting the dome. In order to attract a larger number of visitors and to promote the sales of their fabrics, the petitioners used to arrange every evening a display of fabrics by mannequins who used to wear and show off series, costumes, dresses, etc. made from fabrics manufactured by the petitioners. This display was visible to even persons who stood outside the dome apart from its being unrestricted to customers inside the dome. The question which came up for consideration was, whether entertainment duty could be levied on the sums collected by way of tokens u/s 3(1) of the C.P. and Barer Entertainments Duty Act, 1936 which defines the expressions "entertainment", "admission to entertainment", "payment for admission" and "proprietor" in the same language in which they have been defined in our Act. The learned Judges constituting the Division Bench after referring to the definitions of the aforesaid expression made the observations, which we have referred to earlier namely:

The natural import of the term "entertainment" is amusement and gratification of some sort. The term connotes something in the nature of an organized entertainment.

9. In *Maharaja of Jaipur Museum Trust case* (supra) the State of Rajasthan sought to levy entertainment duty on admission tickets issued by the Trust for entry to the exhibition. The facts revealed that the former ruler of Jaipur had by a registered deed dated 16th April 1959 created a trust and founded a museum in a portion of the City Palace, Jaipur, for the benefit of the public. His Highness had a vast and valuable collection of various articles of historical, scientific, literary and archaeological interest and importance which came to his possession from several past generations. Relinquishing all his right, title and interest over the said articles, he handed them over for being placed in the museum founded for the benefit of the public and visitors who visited the historic city of Jaipur. The Secretary of the Trust framed Rules prescribing the ticket charges for admission to the museum which varied from Re. 1 to Rs. 4 depending on the categories of

the visitors and areas of their interest. There was provision for free pass in certain cases. The Entertainment Tax Officer issued a notice to the trust to pay entertainment tax livable on the admission tickets issued by the trust and demanded year wise accounts. The trust denied its liability to pay lax. It stated that the museum is not a place of entertainment where any performance is held it is a place of historical importance where persons of literary and artistic taste come to study the works of art. It appears that after the reply was sent by the trust, no action was taken for the levy and collection of entertainment duty for almost seven years. Thereafter a fresh show cause notice was issued and on the trust denying its liability to pay on the very same grounds as urged earlier, an order was passed holding that the museum fell within the definition of entertainments", that the tax was livable on the admission fee charged for admission to the exhibition and that since the trust had failed to comply with the provisions of the statute, it was liable to pay penalty. The Court referred to the dictionary meanings of the word "entertainment" which we have reproduced earlier and then concluded as under:

In the light of the principles enunciated in the cases and the meanings assigned to the word "entertainment" in the various books referred to above, and having regard to the preamble of the Act, we have no hesitation in coming to the conclusion that to bring an exhibition into the definition of "entertainment," a continuous process of performance may not be necessary but it is essential that the exhibition should be displayed with a view to provide amusement or gratification of any kind to the visitors and the fact that some persons might derive subjective gratification from exhibition, though not arranged for that purpose, is not relevant.

10. The Supreme Court in Markand Saroop Aggarwal and Others Vs. M.M. Bajaj and Another, had an occasion to deal with similar expressions used in the U.P. Entertainment and Betting Tax Act, 1937. That was a case in which a restaurant was holding cabaret performances every evening. The minimum charges for eatables at the time of cabaret were Rs. 5/- at evening tea, and Rs. 10 at dinner time from 10.00 P.M. onwards. These amounts were adjusted towards the eatables that were consumed. The price of eatables were not raised for the purpose of covering the entertainment, but whether a person consumed anything or not, he had to pay Rs. 5/- for the evening and Rs. 10/- for the night. A minimum fee was levied, for taking a seat for witnessing the show and for taking tea or dinner. It was in the background of these facts that the Supreme Court held that cabaret show is an item of entertainment and that of the normal rates were charged for the items consumed and incidentally a show was put up, it could not have attracted the provisions of the Act but since a minimum charge of Rs. 5/- and Rs. 10/- required to be paid, whether the customer consumed eatables or not, it tantamount to payment for entertainment and, therefore, falls within the mischief of the Act. Dealing with the definitions of the expressions "admission to an entertainment" and "payment for admission." Their Lordships observed that admission to an entertainment" would include admission to any

place in which entertainment is held and "payment for admission" would include any payment for any purpose whatsoever, connected with an entertainment which a person is required to make as a condition for attending or continuing to attend the entertainment.

11. We may lastly refer to a decision of the Madhya Pradesh High Court in *Harris Nelson v. State of M.P.* (Miscellaneous Petition No. 567 of 1981 decided by a Division Bench of that Court on 23rd February 1982). The learned Judges after referring to the observations of Chagla, C.J., which we have reproduced earlier and the case of the Maharaja of Jaipur Museum Trust (*supra*) while dealing with the question whether the money received by the proprietor of a parlour who had installed a Video Game was liable to entertainment tax observed as under:

If for deriving entertainment, a visitor has to perform something then what he sees or hears as a result of his performance is not entertainment provided by the petitioners. It is true that in the course of performance, a performer may also feel entertained but that is not what is contemplated by the charging section. To bring an activity of the proprietor within the net of the charging section, that activity by itself, without anything more, should be likely to amuse or entertain a person.

12. We are in respectful agreement with the aforesaid view expressed by the learned Judges of the Madhya Pradesh High Court.

13. To sum up it is true that a person operating a Video machine by inserting two 50 paise coins in the slot thereof may feel thrilled and entertained should he be able to score a point by his sharp reflexes and mental prowess over the electronic mind of the machine. By merely inserting two 50 paise coins in the Video machine he is not going to feel thrilled or entertained. The proprietor of the parlour is not putting up any show or performance, admission to which is permissible on payment of a fixed amount. In the instant cases admittedly admission to the parlour is unrestricted and free and nothing is charged for staying in the parlour while some player is operating the Video game machine. The machine remains dumb even after the insertion of the coins till it is activated by the player by operating the lever on the push buttons meant for the purpose of playing the game offered by the machine. Obviously, therefore, there is no payment for admission to an entertainment because none is offered by the proprietors of the parlours. However, a person who operates the machine does feel thrilled and entertained if he secures a point and succeeds in securing a second chance to play the game without being required to insert coins once again in the slot of the machine. The number of chances which a player gets depends on the number of times he scores a point over the electronic mind. "Entertainment", therefore, within the meaning of Section 2(e) has reference to some entertainment offered by the proprietor or some place of entertainment where any exhibition, performance, amusement, game or sport is held to which persons are admitted for payment. The word "game" must also take colors from the preceding words, namely, "exhibition, performance and amusement". That is

why it was observed in the Calico Mill's case (*supra*) that the term connotes something in the nature of an organized entertainment. It does not refer to an entertainment which a player gets or derives by playing a game on the Video machine. If such an interpretation is put, we are afraid that charges paid to a Club for meeting the expenses incurred by it for providing playing cards would be liable to entertainment tax from the players who are playing a game of bridge and feeling entertained or thrilled by their own performance. Surely, such is not the concept of entertainment tax under the Act. We are, therefore, of the opinion that the proprietors of the parlours who have installed Video machines are not liable to pay entertainment duty or tax on the amount inserted in the slot of those machines by the players who are operating the machines.

14. For the above reasons we hold that the order passed by the prescribed officer calling upon the petitioners to pay entertainment duty on the amount earned by them through the Video game machines installed in their parlours must be quashed and set aside and the respondents are hereby ordered to forbear and desist from recovering entertainment duty or tax from the petitioners under the impugned orders. The rule in each petition is made absolute accordingly. The respondents will pay the costs of the petitioners.