

(1989) 08 CAL CK 0049
In the Calcutta High Court
In re: Chittaranjan Koley

Date of Decision : 10-08-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226, 301
West Bengal Entertainment-cum-Amusement Tax Act, 1982 — Section 4, 4A, 5

Citation : (1989) 2 CALLT 222

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : L.C. Bihani, Miss Suchandra Mukherjee, for the Appellant; A.C. Moitra, S. Dasgupta, Miss Sipra Mazumdar and Mr. S.C. Ukil, (Government Pleader), for State, for the Respondent

Judgement

Susanta Chatterji, J.—A large number of writ petitions under Article 226 of the Constitution of India were admitted by this Court filed by several hundred petitioners challenging West Bengal Luxury-cum-Entertainment and Amusement Tax (Second Amendment) Act, 1987 and praying for a declaration that Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 as incorporated by West Bengal Taxation Law (Second Amendment) Act, 1987 and West Bengal Cinematograph (Regulation of Special Exhibition) Order 1987 and all notifications and circulars issued thereunder are unconstitutional and void and to restrain the State respondents to initiate cases and seize the video sets where public shows are being held without permission and without payment of stipulated tax and not to disturb and/or interfere with the respective business of the petitioners and the public shows of the Video at the coffee centres and restaurants in any manner and in any form whatsoever. Since common questions of law and facts have arisen in all the cases, they were heard analogously and/or simultaneously and by allowing some learned Lawyers to argue the case on behalf of the writ petitioners as agreed by several learned Lawyers appearing in different cases seeking reliefs in the like manner. This judgment is intended to cover all the said writ petitions popularly terms as "Video Cases".

2. It is commonly stated in the writ petitions that the respective petitioners with great difficulty started coffee houses and/or restaurants at different places where

tea, coffee and snacks are supplied to the customers. With a view to provide extra attraction to the customers, the writ petitioners in their respective places of business, maintained television sets with video and public shows of films are held without asking any separate and/or extra fees or by selling tickets for such video shows. It is further stated that the petitioners cannot afford more spaces for the customers as are provided generally in the cinema halls and there is nothing to sell tickets and to pay any amusement tax in this behalf. According to the petitioners, the running of a video show at a restaurant and/or coffee house cannot stand at par with the shows held in the cinema halls. Since the petitioners are required to pay professional taxes under the Bengal Municipal Tax Act and West Bengal Panchayat Act for running their respective business there is no question of payment of any other tax for the video shows which are incidentally held for the entertainment of the customers and to booster the sale. The enjoyment provided to the customers is humble in nature and since notices had been issued by the District Magistrates/other Authorities demanding weekly taxes from the coffee houses/restaurants and directed that without having licence, no exhibition of the film can be made from any such coffee house and/or restaurant, the petitioners are very much aggrieved. The petitioners have also challenged the notification where it is provided that VCR/VCP show in hotel and restaurant (without lodging facilities) will be assessed at Rs. 750 per week per set with effect from 17th July, 1987 and all exhibitors of video shows will be required to obtain licence from licensing authorities/District Magistrates in the Districts and the Commissioner of Police in Calcutta for public exhibition. There was further indication that for holding video shows in the coffee shops, restaurants, bars restaurant, buses etc., the Organizers will be required to take licence under the West Bengal Cinematograph (Regulation of Special Exhibition) Order 1987 from the aforesaid authorities and retention, display or storage of unconserved tapes, or unauthorisedly made video films for commercial purpose is prohibited. It is alleged that after the said notification the Agricultural income tax Officers/Sub-Divisional Officers and Block Development Officers in their respective areas are insisting that without having a proper licence for commercial video shows, the video shows will not be allowed in any hotel, restaurant and coffee house, etc., and consequently the video shows occasionally made at such places are being seriously disturbed. It is stated also that previously an attempt was made by the Government of West Bengal to bring exhibition of video films shows within the scope of West Bengal Cinematograph Act but in a previous writ petition, the Hon'ble High Court at Calcutta decided that in view of the existing provisions of West Bengal Cinematograph Act and the West Bengal Cinema Regulation Rules, the exhibition of Video cannot be brought within the purview of the said Act. It has also been highlighted that if with the existing sitting capacity of the respective places of business of the petitioners is considered in the proper perspective the amusement tax has to be assessed as done in cinema houses and the rates would be very small and the quantum of amount as claimed is arbitrary and without lawful basis whatsoever. The introduction of Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 is unjust and

unfair and the amended provisions of the Act suffers from various inherent defects and the same is contrary to and inconsistent with the constitutional safeguards and such an amended provision is liable to be struck down. Several defects and lacuna had been sought to be demonstrated by making a comparative study as to payment of tax in cinema halls and the restaurant and coffee house where video shows are exhibited in order to point out that the impugned legislation is ultra vires and the Court should interfere to grant reliefs to the petitioners in the manner as prayed for.

3. It is a specific challenge of the petitioners that the amended provisions of the Act as stated above directly impede trade of films and freedom of trade and commerce within the meaning of Article 301 of the Constitution of India and the levy per week for each coffee shop and restaurant holding a video cassette record by way of Rs. 750 per set is also arbitrary and in violation of the provisions under Articles 14 and 19(1) (g) of the Constitution of India. It is emphasized that the rate of tax is an essential legislative function. It could have been understood that like a licence or registration fee, the maximum rate should not have been fixed exceeding Rs. 100 and Rs. 200 per year. By way of permitting the Executive Authority to fix a rate without any guideline is an excessive delegation of power and the same is also hit by the constitutional safeguards. Although the petitioners have no intention to open the commercial video shows in their respective hotels, restaurants and coffee houses, the respondent authorities are insisting that the petitioners must apply for necessary licence for video house in terms of the notification and circulars otherwise they will be penalised. The petitioners further alleged that the respondents cannot compel them to apply for new commercial video show houses in terms of the memo and while the Government of India has dispensed with licence fees for television sets, videos, V.C.Rs., the State authorities are attempting to seize the video sets where public shows are being exhibited without permission and without payment of tax of Rs. 750 per week per set. It is quite distinguishable according to the petitioners from the exhibition of films through video or the shows of the films in cinema houses, there is certainly discrimination while no tax is levied by the State Government for the video shows organised by clubs, institutions and other social-organisations where the small traders and businessmen having small hotels, restaurants and coffee houses would be compelled to pay such exorbitant charges of Rs. 750 per week per set and will be subjected to obtain licence. In the changed socio-economic prospect of the rural and urban set up the video shows do not stand any further for any luxury. Those are to be treated as essential parts of life and no steps should be taken by any welfare State to put an embargo as claimed by the petitioners.

4. Elaborating all these points as indicated above, the petitioners have moved the writ jurisdiction of this Court mainly on the grounds that Section 4A of the West Bengal Entertainment-cum Amusement Tax Act, 1982 and West Bengal Taxation Laws (Second Amendment) Act, 1987 violate the provisions of Articles 14 and 19(1) (g) of the Constitution of India, and that Section 4A of the said Act

impedes the flow of film trade and also with the Cinematograph (Regulation of Special Exhibition) Order, 1987 to be unreasonable restrictions to the restaurants and coffee houses of the petitioners where video shows are held to earn livelihood of the petitioners. It is also brought to the notice of the Court that no guideline having been fixed as to under what circumstances levy should be Rs. 100 or Rs. 750 having such a wide margin of differences the provisions of Section 4A of the said Act as incorporated by West Bengal Taxation Laws (Amendment) Act, 1987 is arbitrary and unreasonable and violates the Articles 14 and 19(1) (g) of the Constitution of India. The video shows as alleged are conducted for earning by way of exhibition and it is purely a form of publicity and as such insertion of the word "luxury" by amending the Entertainment-cum-Amusement Tax is void and cannot sustain in law. Much emphasis has been laid to the fact that the respondents are acting illegally and in excess of the jurisdiction and attempts have been made arbitrarily to take away the right to trade of the petitioners as guaranteed under the Constitution of India and the West Bengal Taxation Laws (Second Amendment) Act, 1982 has made unreasonable restrictions upon the petitioner's business and it is not made in the interest of the general public.

5. The State respondents have contested the writ petitions and in spite of several opportunities being given to file affidavits in time, no steps were taken by the State to place on record all relevant papers and documents for effective adjudication of the matter in dispute. However, in one or two cases, affidavits-in-opposition have been filed wherefrom it appears that by Section 8 sub-section 5 of the West Bengal Taxation Laws (Second Amendment) Act, 1983, Section 4A was introduced after Section 4 of the West Bengal Entertainment-cum-Amusement Tax Act, 1982. The text of Section 4A thus as follows:

(a) By Section 8 sub-section 5 of the West Bengal Taxation Laws (Second Amendment) Act, 1983 Section 4A (hereinafter referred to as West Bengal Act XV of 1983) was introduced after Section 4 of the, West Bengal Entertainment-cum-Amusement Tax Act, 1982, which is as follows:

Subject to the other provisions elsewhere contained in this Act, there shall be levied and collected on and from a holder of a video cassette recorder set or sets or holder of a video cassette player set or sets a luxury-cum-entertainment and amusement tax, in addition to such tax referred to in Section 4, where such holder makes any public performance or exhibition of films through a video cassette recorder set or a video cassette player set against payment made or to be made by persons admitted to witness such performance or exhibition at the rate of (i) Rupees five hundred per week during which any such performance or exhibition is made, for each video cassette recorder set or video cassette player set used for such performance or exhibition, if the place of any performance or exhibition during such week is situated within the area Calcutta Metropolitan District as described in the schedule to the Calcutta Metropolitan Planning Area (use and Development of Land) Control Act, 1965 or (ii) Rupees two hundred

and fifty per week, during which any such performance or exhibition is made for each video cassette recorder set or video cassette player set used for such performance or exhibition, if Clause (i) does not apply.

6. It is also placed on record that the provisions of Section 4 of West Bengal Entertainment-cum-Amusement Tax Act, 1982 (West Bengal Act VI of 1982) empowers the Government to levy and collect Entertainment-cum-Amusement Tax on and from every holder of television set or sets. The Section 4 of the (Act VI of 1982) runs thus:

subject to the other provisions elsewhere contained in this Act, there shall be levied and collect on and from every holder of a television set or sets an entertainment-cum-amusement tax at the rate of rupees fifty for each year per television set, held or possessed by him:

Provided that if the holder of a television set or sets becomes liable to pay the tax after the 30th day of June during a year, he shall be liable to pay during that year one half of the amount of tax as specified above.

Accordingly, by Section 8(1) of the West Bengal Taxation Laws (Second Amendment) Act, 1983 the words "Luxury-cum-Entertainment and Amusement Tax on and from the holders of the television sets, videocassette sets were substituted. Previously, several writ petitions were filed which were disposed of by Suhas Chandra Sen J. and State was given leave to make suitable amendments in the rules and the conditions of licence regarding the video shows and thus by mending Act of 1985 (West Bengal Act V of 1985) Entertainment-cum-Amusement Tax) was fixed of Rs. 10) per set only. Subsequently, by Section 9 of West Bengal Taxation Laws (Amendment) Act, 1986 the amendments were made in the West Bengal Entertainment-cum-Amusement Tax Act, 1982. Since in the case of Midnapore Video Owners" Association, it has been found that the imposition was valid and lawful, mere enhancement of rate from Rs. 500 per week to Rs. 750 per week is not illegal. The writ petitions, according to the respondents, are misconceived and those are liable to be dismissed.

7. This Court has heard the matters patiently and tried to consider the points diligently. Every endeavour has been made to understand the points rightly with a view to decide the cases justly. The petitioners have challenged the amended provision of West Bengal Entertainment-cum-Amusement Tax Act mainly on the grounds:

- (a) The amended Act is arbitrary and unreasonable;
- (b) There is unreasonable restriction to carry on the business and it offends Articles 14 and 19(1) (g) of the Constitution of India;
- (c) Imposition of tax Rs. 750 per week per set is in violation of the principles of natural justice;
- (d) It is a case of hardship on the petitioners so as to lead to extinction of

business.

8. In order to appreciate the points canvassed by the petitioners, it is necessary to refer the preamble of West Bengal Entertainment-cum Amusement Tax Act, 1982:

An Act to provide for the levy and collection of Luxury-cum-Entertainment and Amusement Tax on and from the holders of television sets, if the cassette recorder sets and video cassette player sets in West Bengal.

Whereas it is expedient to provide for the levy and collection of Luxury-cum-Entertainment and Amusement Tax on and from the holders of television sets, video cassette recorder sets and video cassette player sets in West Bengal for raising additional resources for the benefit of State and for matters connected therewith or incidental thereto.

9. Thus the preamble is meant for (i) raising resources for the benefit of the State (ii) for matters connected therewith or incidental thereto.

10. It appears from the materials on record that in the year 1985 several writ applications were moved before the High Court at Calcutta by exhibitors of films through video cassette recorders and television sets. The main points involved in those writ matters were as follows:

(i) Whether the petitioners could be required by the West Bengal Government to obtain a licence for the purpose of exhibiting films by videocassette and television sets.

(ii) Whether assuming that the West Bengal Cinemas (Regulation) Act, 1954 applied to video, an exhibition could be required to take a licence under the Act because the rules and the terms and conditions of the licences that were laid down in the rules could not be made applicable to the video cassette.

(iii) Whether the tax imposed by Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 could be lawfully levied on a holders of a video who do not charge any fee for exhibition of films through video; and

(iv) Whether the exhibitors of films through video have to pay two-fold tax (i.e., tax u/s 4A for the public programmes of films and tax as a holder of a T.V. set through which the films are exhibited).

11. The said writ applications were heard by Suhas Chandra Sen J, and by the judgment and order dated 10th of October, 1985 passed in Civil Order No. 945 (W) of 1985 (Salil Kumar Chatterjee & Ors. vs. District Magistrate, Birbhum & Ors.) it has been held -

(i) The video shows organised by the petitioners come within the ambit of the West Bengal Cinema (Regulation) Act, 1954:

(ii) It would be unreasonable to require the petitioners to acquire licences under the aforesaid Act under the existing rules and the prescribed conditions of the

licence.

(iii) The respondents would be at liberty to make suitable amendments in the rules and also the conditions of licence and thereafter, require the petitioners to obtain licence for organizing video shows.

(iv) The petitioners who do not charge any separate fees from their customers for watching T.V. programme or video shows in their tea/ coffee shops are not liable to pay any tax u/s 4A of the Act VI of 1982.

12. In the background of such circumstances, the Amending Act of 1985 (West Bengal Act V of 1985) has to be considered. By such amending Act Entertainment-cum-Amusement Tax was fixed at Rs. 1% per set only. Subsequently, by Section 9 of the West Bengal Taxation Laws (Amendment) Act, 1986 (West Bengal Act I of 1986) following amendments were made in the West Bengal Entertainment-cum-Amusement Tax Act, 1982:

(1) Section 4 shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub section shall be added -

(2) No tax shall be levied and collected on and from a holder of a television set or sets under Clause (a) or Clause (b) of sub-section (1) for any year or part thereof subsequent to the year 1985".

(2) In Section 4A

(a) in sub-section (1) for the words "one hundred" the words "five hundred" shall be substituted:

(b) after sub-section (2) the following sub-section shall be inserted:

(3) Subject to the provisions contained elsewhere in this Act, there shall be levied and collected on and from a holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets a Luxury-cum-Entertainment and Amusement Tax, in addition to such tax referred to in Section 4, where such holder makes any performance or exhibition of films through such set in a shop, hotel, restaurant or business place and is not liable to pay tax under sub-section (1) at such rate, not exceeding rupees five hundred per year per set, used for such performance or exhibition and such tax shall be payable by such holder within such time as may be specified in a notification issued by the State Government in this behalf.

(1) In Clause (b) of sub-section (3) of Section 5 after the word, figure and brackets "sub-section (2)" the words figures and brackets "or sub-section (3)" shall be inserted.

13. In the year 1987, West Bengal Entertainment-cum-Amusement Tax Act, 1982 was further amended by Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1987 (West Bengal Act VI of 1987) whereby in Section 4A in West Bengal Entertainment-cum-Amusement Tax Act, 1982 for sub-section (3)

the following sub-section was substituted:

(3) Subject to the provisions contained elsewhere in this Act, there shall be levied and collected on and from a holder of a video cassette recorder set or sets or a holder of a video cassette player set or sets a Luxury-cum-Entertainment and Amusement tax, in addition to such tax referred to in Section 4 where -

(a) the holder who is not liable to pay tax under sub-section (1) makes any performance or exhibition of films through such set or sets in a hotel having lodging facilities at such rate not exceeding rupees ten thousand per set per year set used for such performance or exhibition as may be specified in a notification issued by the State Government in this behalf,

(b) The holder of such set or sets other than the holder mentioned in Clause (a) who is not liable to pay tax under sub-section (1) makes performance or exhibition of films through such set or sets in a hotel, shop, restaurant or business place at such rate not exceeding rupees seven hundred and fifty per week per set used for such performance or exhibition as may be specified in a notification issued by the State Government in this behalf.

13a. It is clear from the records that the aforesaid Section 7 of West Bengal Act VI of 1987 came into effect on 10th of July, 1987.

14. It is thus apparent that in the year 1987 in exercise of power conferred by Section 9 of the West Bengal Cinema (Regulation) Act, of 1954 amendments were made in the West Bengal Cinemas (Regulation of Public Exhibition) Rules, 1956. By the said amendment Rule 2 after Clause (1), Clause 1(a) was inserted which has defined commercial purpose. Further, West Bengal Cinematograph (Regulation of Special Exhibition) Order, 1987 came into force in the year 1987 for regulating the exhibitors in West Bengal by means of Cinematograph other than public exhibition which prescribed Act as to certain rules and conditions. The said Order of 1987 requires a person to obtain a licence in Form II for special exhibition of video films by Cinematograph Act.

15. Amongst various learned lawyers arguing the case for the petitioners Mr. L.C. Bihani, the Learned Advocate with his ability tried his best to assist this Court to adjudicate this case in the proper perspective. He has referred to a number of English decisions and also decisions of several Courts of India. He has also drawn the attention of Court to the case of Gill vs. Donald Humberstone Company Ltd. (1963) (1) W.L.R. 929, It is found there that the Court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result since this is unlikely to have been intended by Parliament. The attention of this Court has also been drawn to the decision of Gard vs. Sewers Commission (1885) Ch. Divn. 486 and particularly at Page 511 where it is observed that the Court seeks to avoid a construction that causes unjustifiably inconvenience to persons who are subject to enactment since this is unlikely to have been intended by Parliament. Lord Coke adds that "not only what is lawful but also what is convenient is to be considered. The Act which is inconvenient or against

reasons, is not permitted in law. It has also been canvassed in *I.R.C. vs. Hinchby - 1960 (A.C.) 748* whereunder it is found that its principle of legal policy with law should be just, and that Court decision should further the ends of justice.

16. Mr. Bihani has further developed his argument as to the permissible classification by drawing inspiration from the cases reported in *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, and *Pathumma and Others Vs. State of Kerala and Others*, . He has tried to convince the Court that the only object of this Act is to realize revenue and there is no reasonable basis for such enactment. He has referred the cases reported in *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, , *The State of Kerala Vs. Haji K. Kutty Naha and Others etc.*, . The entire spirit of his argument is that the amended provision of the Act and the Rule are arbitrary and unconstitutional. Mr. Islam another Learned Advocate for the petitioner has also creditably argued the case by submitting that the flat rate of Rs. 750 is unjust and there is unequal treatment.

17. The Learned Government Pleader and also Mr. Moitra appearing for the State respondents have tried to convince this Court that the challenge to the amended legislation has no merit. The attention of the Court has also been drawn to the cases reported in 1978 All ER, 42, AIR 1954 S.C. 254, *Pannalal Binjraj Vs. Union of India (UOI)*, , *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, and in particular with regard to unreasonable restriction as observed in AIR 1984, Mad 278.

18. Considering the lengthy argument advanced by both sides, it appears that the Supreme Court in case of *Raja Jagannath Baksh Singh Vs. The State of Uttar Pradesh and Another*, has laid down some principles on the jurisdiction of the Court to question the validity of taxing statute:

.... (ii) A taxing statute can be held to contravene Article 14 if it purports to impose on the same class of property similarly situated and incidents of tax which leads to obvious inequality. It is for the legislature to decide on what objects to levy tax and on what rates and it is not for the Courts to consider whether a different rate should have been prescribed for the law;

(iii) The legislature is also competent to classify person or persons into different categories and taxing differently and if the classification thus made is rationale, the taxing statute cannot be challenged merely because different rates of taxation must prescribe from different categories of persons or objects but if in its operation, any taxing statute is found to be contravened Article 14, it would be to Courts to strike it down as having to the citizens equality before the law guaranteed by Article 14.

(iv) Though the validity of a taxing statute cannot be challenged merely that it imposed unreasonable high burden, it does not follow that a taxing statute cannot be challenged on the ground that it is not a colourable piece of legislation and as such a fraud on the legislative power conferred on the

legislature in question. Such a challenge cannot succeed by merely showing that tax levied is unreasonably high or excessive, other relevant circumstances which justified the conclusion that the statute is colourable and as such amounts to fraud must also be put.

19. Looking to the various decisions of the Supreme Court of India and particularly to the test laid down in the case of Raja Jagannath Baksh Singh, this Court has to find out as to whether there is any lack of jurisdiction to introduce the amended provision or that the amended provision as challenged suffers from certain inherent defects and whether those are contrary to the constitutional safeguards. This Court has to examine whether the amended provision suffers from unreasonable classification and there is colourable exercise of power. It will appear from the case of K.L. Moopil Nair vs. State of Kerala, AIR 1968 S.C., 552 that the Supreme Court found that the provisions of the Act laid down a procedure outlying the policy to impose uniform rate of tax, There were no provisions for appeal and notice to be served. In that case the Supreme Court held that legislature was so earnest about levying and realizing tax that it could not wait for regular survey of lands with a view to determine the extent and character of the land. The question arises in this present case is as to whether it is "must" for every hotel, restaurant or coffee house to run a video show and thus being compelled to take out a licence and to pay the charge as claimed by the State or there is an option for the respective traders to opt for exhibition of video shows in their respective places of business to attract customers or to booster their sales. Although an attempt has been made to equate the video shows being run at hotels, restaurants and coffee houses with regular cinema shows exhibited in cinema halls but from all practical points of view, there cannot be any comparison between a video show in public places of eating and in cinema houses.

20. While considering the present case, this Court finds that in the case of Pannalal Binraj Vs. Union of india (UOI), it has been found that if there is a possibility of discriminatory treatment of persons falling within the same group or category such possibility will not invalidate in law. It has further been held that it is necessary to see in whom discretion is vested. As the discretion is vested in the Government the abuse of powers cannot be inferred unless the manifestations are demonstrated in the broader canvass of life.

21. This Court has found that already in the case of Salil Kumar Chatterjee & Ors. vs. District Magistrate, Birbhum & Ors. Suhas Chandra Sen J. has already found that the Video shows organized by the persons clearly come within the ambit of the West Bengal Cinema (Regulation of Act, 1954), and it will be unreasonable to the petitioners to acquire licences under the said Act unless there is suitable amendments in the Rules and also the conditions of licence. Consequently, the amending Act of 1985 was enacted. In Salil Kumar Chatterjee's case it has been found that the Government has the jurisdiction to fix the rate of tax unless the same is provided to be the proprietary. From the

materials on record, it transpires further that before the rate was enhanced from Rs. 500 to Rs. 750 per week the same was Rs. 500 per week. At that stage in the case of Midnapore Video Owners' Association, Suhas Chandra Sen J. was pleased to hold that the imposition was quite valid and lawful. The said decision has not been challenged. It has to be seen however as to whether the petitioners can argue that the introduction of licence for the traders to run video shows at hotels, restaurants or coffee houses is something contrary to the protections provided under the Constitution. Upon detailed scrutiny this Court does not find that the amended provision suffers from any irregularity and illegality in the manner as challenged by the writ petitioners.

22. By looking to the decision in the case of Pannalal Binjraj Vs. Union of India (UOI), that if there is a possibility of discriminatory treatment all persons falling within the same group or category such possibility will not invalidate in law. It has further been held in that case that it is necessary to see in whom discretion is vested. It has also been settled in the case of Ram Prosad Dalmia as reported in AIR 1958 S.C., 549 that a statute which leaves it to the discretion of the Government to select, to classify the persons or things for applying those provisions according to the policy or principle laid down by statute itself, for guidance of the exercise of discretion by the Government in the case of such selection or classification is not violative of the provisions of the Article 14 of the Constitution.

23. This Court has scrutinized the amended provisions as it stands and this Court is of the view that the Government has not followed executive action but follows a reasonable and rationale classification. "Hardship" cannot always be treated as an objection to constitutional validity of legislation.

24. Section 4A of the amended Act had laid down that in sub-section (1) for the words "one hundred" the words "five hundred" shall be substituted. In year 1987 West Bengal Entertainment-cum-Amusement Tax Act, 1982, was further amended by Section 7 of the West Bengal Taxation Laws (Amendment) Act, 1987 whereby in Section 4A in the West Bengal Entertainment-cum-Amusement Tax Act, 1982 for sub-section (3) the following sub-section was substituted:

...(3) Subject to the provisions contained elsewhere in this Act there shall be levied and collected on and from a holder of a video cassette recorder set or sets a Luxury-cum-Entertainment and Amusement Tax, in addition to such tax referred to in Section 4 where -

(a) the holder who is not liable to pay tax under sub-section (1) makes any performance or exhibition of films through such set or sets in a hotel having lodging facilities at such rate not exceeding Rs. 1,000 per set per year used for such performance or exhibition as may be specified in a notification issued by the State Government in this behalf.

25. There is no challenge upto this portion of the amended laws but there is a strong challenge to the remaining portion which runs as follows:

(b) The holder of such set or sets other than the holder mentioned "" in Clause (s) who is not liable to pay tax under sub-section (1) makes performance or exhibition of films through such set or sets in a hotel, shop, restaurant or business place at such rate not exceeding Rs. 750 per week per set used for such performance or exhibition as may be specified in a notification issued by the State Government in this behalf.

26. This portion of the legislation, as it appears from all the writ petitions, is the subject matter of real dispute. The writ petitioners find that it has been taken for granted that irrespective of any consideration every video set holder in every hotel, restaurant and coffee house (where lodging is not provided) has to pay Rs. 750 per week per set. The petitioners are found to be seriously aggrieved to this part of this legislation as interpreted on behalf of the petitioners.

27. By closely looking to the said piece of amended legislation in between the lines, this Court finds that this part of legislation has given a discretionary power to the Government to fix such taxes not exceeding Rs. 750 per week per set as may be specified in a notification to be issued by the State Government. This part of the legislation confers the discretionary power upon the State Government to issue an appropriate notification by judging the appropriate situation where taxes would be levied. This conferment of power does not appear to be causing any act of excess jurisdiction or creating an unreasonable classification nor it appears to be a colourable legislation to the detriment of the interest of the writ petitioners as guaranteed under the Constitution. But it has to be examined whether there is proper nexus between this power of delegation to the Government and to, the issuance of the notification which may or may not be unjust and unfair by judging all the facts and circumstances of the proper cases. The delegation of power to the Government by legislation is nothing wrong. The legislation has not conferred any power to an Officer of the State. No employee of the State, however, high he is, has been vested with any power to issue any order for realization of taxes. The State Government has to issue an appropriate notification. Now, this Court has to find out whether any notification has been issued in terms of the amended legislation and as to whether such a notification is otherwise within the scope of the delegated power and whether the same is just and fair.

28. This Court has dearly found that there is nothing wrong in the amended provisions of the Act but this Court has to make a scrutiny again as to whether the impugned notification is consistent with the amended legislation or as to whether the power of discretion delegated to the State Government has rightly been exercised by issuing the impugned notification or not. Thus by looking to the impugned notification, this Court finds that the Government of West Bengal has recently made suitable amendment to West Bengal Cinema (Regulation of Public Exhibition) Rules, 1956 by making therein provisions as for issuance of licence for public exhibition of films made as video taxes, The amendments have been published in the Calcutta Gazette (Extraordinary) dated 16th April, 1987.

Thus all exhibitors of video shows will be required to obtain licence from the Licensing Authorities District Magistrate in the Districts and Commissioner of Police, in Calcutta for public exhibition. For holding video shows in the coffee houses, hotels, etc., buses, restaurants, etc., the organizers will be required to obtain licence under the West Bengal Cinematograph (Regulation of Special Exhibition) Order, 1987 from the authorities mentioned, displayed or storage of unauthorisedly made video films for commercial performance under the Rule. This Court does not find anything wrong in issuing such notification for asking the traders intending to display video shows, will have to obtain licences.

29. The rates have been fixed for V.C.R. (V.C.P. shows in hotel and restaurant) (without lodging facilities) are Rs. 750 per set per week from 17th July, 1987. Similarly, it is provided that V.C.R. [V.C.P. in luxury bus Rs. 1,000 per annum with effect from 1.4.85 and V.C.R.-V.C.P. in hotel Rs. 2,500 per annum with effect from 1.4.85. In the present cases, the only exception has been taken with regard to imposition of taxes by V.C.R.-V.C.P. shows in hotel and restaurant (without lodging facilities) to pay Rs. 750 per week per set irrespective of the urban area or rural area. This imposition of the rate is the highest as per the amended legislation. The discretion was given to the State Government to issue notification to impose taxes upto the maximum range of Rs. 750 per set per week. This discretion has got to be exercised justly and lawfully. This Court finds that with blind eyes, there cannot be issuance of a notification to impose taxes flatly without taking into account the position of the hotel, restaurant and coffee house irrespective of the places either in the rural area or in the urban area, or without taking into notice of the dimension of the business and various other factors of location, volume of business, nature of customers and quantum of income, etc. There must be an objective factor to impose taxes by issuing the notification. Just, because the legislation has been made conferring the power to the State Government to issue notification, it will not be permitted to be issued without exercising the discretion properly and unless it is found just and proper. This Court finds with anxieties that the impugned notification issued without keeping any reservation and without considering any factor to impose the maximum rate of taxes of Rs. 750 per set per week in the flat rate is wholly unwarranted and uncalled for. This Court finds that the State Government has certainly the power to issue the notification by imposing such taxes in the manner as provided in the amended legislation, but it has to be remembered that the legislation has delegated the power of discretion to the appropriate Govt. to judge the situation and to consider the appropriate cases to impose such taxes as would be required by taking into consideration of all factors. Any blind application of law in a pedantic manner cannot be appreciated by a Court of law. Law has to be appreciated in the most pragmatic way and every endeavour must be made to broaden the horizon of law in order to appreciate the same for all practical purposes and to implement the same in a lawful way and which will not cause unnecessary inconvenience.

30. Thus, considering the entire amended legislation and the impugned

notification in its entirety, this Court does not find any merit in the writ petitions while there is a challenge to the amended provisions of the Act and Rule. This Court overrules all the objections taken by the petitioners in this behalf. But at the same time, this Court finds substance in the objection raised by the petitioners as to the portion of the impugned notification where there is imposition of flat rate of taxes Rs. 750 per week per set for V.C.R./V.C.P. shows in hotel and restaurant (without lodging facilities) from 17th of July, 1987. This portion of the notification appears to be unjust and unconstitutional. This is colourable exercise of right and powers and the same is found to be unreasonable. This portion of the notification is inconsistent with the delegation of power conferred by the amended provisions of law. As such, this portion of the notification is struck down and deemed to be found non-est. Other portion of the notification are allowed to remain and by construing the entire notification, it appears that any video show either by V.C.R.-V.C.P. in hotel, restaurant or coffee house in urban area will have to be equated as commercial shows and they will have to pay charges for Rs. 500 per set per week and in the rural area they will have to pay Rs. 250 per week per set, until any fresh notification is issued by the State Government in accordance with law. It is made clear that the State Government has right within the scope of the amended legislation as indicated above to issue any fresh notification by levying taxes to be paid for video shows in hotels, restaurants and coffee houses by taking into consideration of the place of business in rural area and urban area and various other factors as some of them indicated above.

31. For the foregoing reasons, the writ petitioners have limited success and the writ petitions are disposed finally by holding that the amended provisions as challenged in the writ petitions are overruled but the portion of the impugned notification that provided payment of Rs. 750 per week per set in the flat way for V.C.R. / V.C.P shows in hotels and restaurants is struck down. All interim orders, if any, are vacated. There will be no separate order as to costs.