(1974) 12 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 565 of 1974

Jabalpur and another APPELLANT

Vs

State of Madhya Pradesh and others RESPONDENT

Date of Decision : 02-12-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 2, 3, 3(2)

Citation : (1978) ILR (MP) 750

Hon'ble Judges : P.K. Tare, C.J;B.R. Dubey, J

Bench : Division Bench

Advocate : R.S. Dabir and O.P. Namdev, for the Appellant; K.K. Adhikari Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.R. Dube, J.—The petitioners have, by this petition under Article 226 of the Constitution, challenged the levy of entertainment duty, and the recovery proceedings initiated by the District Excise Authorities, Jabalpur, for two performances named as "Mahinder Kapoor Nite" organised by petitioner No. 2 on behalf of petitioner No. 1 Company, on the 7th and 8th July, 1974.

2. The petitioner No. 1 is a limited Company registered and incorporated under the Companies Act, 1956, in the name of Home Decorators & Finance Private Limited, Jabalpur. The petitioner No. 2 is the Managing Director of the said Company. The petitioner Company has organised a scheme for groups of members with a view to encourage saving and to give other benefits to the members. A new Group has been formed by the said Company, known as "Nav-Nirman Group". According to the rules and regulations of the said Group, a member is admitted to this Group on payment of Rs. 2/- as admission fee (not refundable) and Rs. 10/- as membership sub-scription (refundable after ten years). The scheme provides for distribution of prizes by drawing lucky numbers,

periodically.

3. The case of the petitioners is that in order to popularise the scheme, the Company had invited artists from outside for giving performance before the members of the Group only. Accordingly, two performances were held on the 7th and 8th July 1974, in the Manas Bhawan Hall, Wright Town, Jabalpur. Admission to the said performances was given to the members of the Group and some important persons who were invited for the inaguration without accepting any payment from them. It is, therefore, urged that the provisions of the Madhya Pradesh Entertainments Duty Act, 1936 (heieinafter called as the Act) and the rules thereunder were not applicable to the aforesaid performances.

4. The performances were originally scheduled to be held on 25th and 26th May, 1974 for which publicity was given by the petitioner Company. It is alleged that at that time the respondent No. 2 had informed petitioner No. 2 on telephone that the petitioner Company will have to pay entertainment duty for the performances in question under the Act. The petitioner No. 2 made his submissions to the authorities concerned, that no entertainment duty was payable on the said performances, but he was informed by respondent No. 2, vide memo dated 9-5-1974 (Annexure-H) that section 3 of the Act being clear, the assessment of the duty shall be made according to the provisions contained in that section. It is further alleged that on the 7th and 8th July 1974, when the performances were held, the District Excise Authorities attended the shows under the pretext of counting the attendance and by arbitrary and untrue counting, assessed the duty and surcharge to the tune of Rs 36,289.56 paise, out of which Rs. 5000 /- were recovered from the petitioner No. 2 on 8th July 1974 before the commencement of the performance under coerclon and duress. After that, in order to recover the balance valuable movable property of the petitioner Company was unlawfully attached. It is also alleged that the respondents, with a view to harass the petitioners are threatening to launch prosecution and other proceedings for the alleged breach of the Act.

5. The respondents in their return inter alia pleaded that the programme "Mahinder Kapoor Nite" organised by the petitioners was a pure and simple entertainment and in order to avoid the payment of tax, the payment for admission to the said entertainment was collected in the name of membership fee. It was further averred that the checking by the District Excise staff revealed that entries to the programme were allowed on payment whether it was on the basis of invitation card or membership card. It is, therefore, urged that the petitioners were liable to pay duty u/s 3(2) of the Act, and as they contravened the provisions of the Act by not purchasing the entertainment duty stamps from the treasury, the District Excise Authorities were justified in determining the tax which was payable and in taking other legal actions.

6. The point which arises for determination is whether entertainment duty was payable for admission to the performance "Mahinder Kapoor Nite" organised on 7th and 8th July 1974, by petitioner No. 2 at Manas Bhawan, Jabalpur. According

to the definition in Clause (b) of section 2 of the Act, "entertainment" includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. Clause (d) of section 2 defines payment for admission as under:--

''Payment for admission'' includes 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 duty or more duty is required and any payment for seats or other accommodation in a place of entertainment

Clause (c) of section 2 of the Act says that "entertainment duty" means a duty levied u/s 3. The amended section 3 of the Act, which is the charging section, reads thus:--

3. Entertainment Duty.--(1) Every proprietor of an entertainment shall, in respect of every payment for admission to the entertainment, pay to the State Government a duty at the rate of 36 per centum thereof:

Provided that the duty payable in respect of any payment for admission to a cinematograph exhibition in excess of Rs. 1.50 P. shall be at the rate of 45 per centum thereof;

Provided further that no duty shall be payable in respect of any payment for admission to an entertainment not exceeding twelve paise except where such payment is for admission to a cinematograph exhibition in a permanent structure.

(2) Where the payment for admission to an entertainment is made by means of a lump sum paid as a subscription or contribution to any person, or for a season ticket or for the right of admission to series of entertainments or to any entertainment during a certain period of time, or for any privilege, right, facility or thing combined with the right of admission to entertainment or involving such right of admission without further payment or at a reduced Charge, the entertainments duty shall be paid on the amount of such lump sum:

Provided that where the State Government is of opinion that the payment of a lump sum represents payment for other privileges, rights or purposes besides the admission to an entertainment or Covers admission to an entertainment during any period for which the duty has not been in operation, the duty shall be charged on such an amount as appears to the State Government to represent the right of admission to entertainments in respect of which the entertainments duty is payable.

(3) Where the entertainments duty on being calculated under this section involves a fraction of a Paisa, such a fraction shall be rounded off to next higher Paisa.

7. The Rules and Regulations (Annexure-C) pertaining to Nav-Nirman Group reveal that membership of Five Lakh persons was contemplated for the formation

of the said Group. It appears that in order to attract the people to become members of this Group in large number, the petitioners thought out a device to organise the performance "Mahinder Kapoor Nite" according to which all those who became members of the Group by paying the admission fee Rs. 2/- and subscription Rs. 10/- were given admission to the performance without any extra payment. It is therefore clear that the total payment of Rs. 12 - made by the persons who became members was not a payment for any "seat or other accommodation" in the place where the said performance was held. Rule 13 of the Rules and Regulations (Annexure-G) provides as under:--

Membership of the Group is for 10 years and cannot be cancelled or withdrawn by the member before maturity of the Group. Prizes and Film Star show are added incentive and not part of the Scheme and are not binding on the Company under circumstances beyond control.

According to the aforesaid rule, the Film Star show in the name of "Mahinder Kapoor Nite" was not a part of the scheme but it was only an added incentive. Therefore, a person who becomes a member of the Group on payment of the prescribed admission fee and the subscription does not get any right for admission to the Film Star show, if any, organised by the petitioners. He is only entitled to get the benefits of the scheme for a period of ten years. The petitioners are also bound under die contract to provide the benefits of the scheme to the member for the aforesaid period. In a case where payment is made for admission to an entertainment, the right of the person who pays for such admission to see the entertainment and the obligation of the proprietor of any entertainment to exhibit it come to an end when the entertainment is over. Such is not the position here with respect to the members of the Group vis-a-vis the petitioners. On the other hand, their contractual rights and Obligation remain intact for a period of ten years.

8. Besides the members of the Group who were given admission to the entertainment, the petitioners had also issued certain invitation cards to important persons of the town who were invited for the inagurations. It was alleged by the respondents that the petitioners received payment for admission to the entertainment even on the basis of invitation cards. This allegation the respondents were not able to substantiate. The respondents have produced along with the return copies of two summary sheets (Annexure R/4) in support of the allegation that two persons Balmukund Tiwari and Ranjit Kumar were caught on 8-7-1974 who got the admission to the entertainment without any ticket in contravention of Rule 5 (2) of the Central Provinces and Berar Entertainments Duty Rules, 1942, and they were punished by the Magistrate First Class, Jabalpur, under Rule 27 (it ought to have been Rule 25) of the said Rules. After the close of the arguments, the learned Government Advocate filed certified copies of these proceedings. The respondents also filed copies of two Panchanamas in which the facts were recorded that the above named two persons were checked on 8-7-1974 at Manas Bhavan, Jabalpur, while they were

seeing the performance "Mahinder Kapoor Nite" and they had produced a pass in which it was written as under:--

Home Decorators & Finance Private Ltd. Jabalpur. Board Pass Mahinder Kapoor Nite on 26th May 1974. Allowed one person. Phone No. 3325.

In the said Panchanamas it was also recorded that the aforesaid two persons on being questioned had stated that they had obtained the passes in the above form on payment of Rs. 5/- each from some persons working on behalf of the petitioners. In the first place, the admission passes said to have been found in possession of these two persons were not for the admission on 8-7-1974. Hence they could not have paid a sum of Rs. 5/- each for admission passes which were to be used only on 26-5-1974, in case the performance had been held on that day. Moreover, from the copies of the summary-sheets it is not clear that Balmukund and Ranjit Kumar, who were convicted for the breach of Rule 5 (2) on their admissions, had stated before the Magistrate that they purchased the passes on payment of a sum of Rs, 5/- each. Even presuming though not conceding that certain persons managed to get admission on payment, that must have been due to mischief of some body who took money in an illegal manner. But that does not mean that the petitioners gave admission to some persons on payment of money. According to the case of the petitioners they had invited certain persons on the first day for Inauguration. The respondents have produced Annexure R/5 which is a copy of the invitation card which reads thus: --

Management and Start of Home Decorators and Finance Private Ltd. shall be delighted with your presence at Manas Bhavan, Jabalpur, on the occasion of Mahinder Kapoor Nite on Sunday the 7th July 1974.

It is not the case of the respondents that such an invitation card was issued by the petitioners on receiving payment of any sum.

9. It may be pointed out that the District Excise Authorities checked the programme of 7th July 1974 and noted the attendance as under: --

(1)

Persons admitted on the basis of so-called membership cards (gents)

..2106

(2)

Persons admitted on the basis of so-called membership cards (ladies)

..453

(3)

Persons admitted on the basis of so-called invitation card

..630

Total

3189

Similarly, on 8th July 1974, the attendance was marked as under;-

(1)

Persons admitted on the basis of so-called membership cards (ladies and gents combined)

4336

(2)

Persons admitted on the basis of so-called invitation cards, some of which were sold, and on the basis of Board passes

313

Total

4649

It may be pointed out that it is not the allegation of the respondents that on the first day, i. e., 7th July 1974, invitation cards issued to 630 invitees were sold. As regards the second day, the allegation is that admission was given to 313 persons on invitation cards and some of them were sold. However, as already stated earlier, the allegation that some of the cards were sold is not substantiated. Therefore, the acceptable position would be that the total invitees on both the days who were 943 in number were admitted to the performances without any payment. As regards the admission to the members, we have already said that the amount of Rs. 12 /- received from each member was not towards admission to the said performances. But, strangely enough, the District Excise Authorities counted the total number of persons inclusive of members and invitees who were admitted to the performances and after multiplying that figure by 12, on the hypothesis that each person was given admission to the performance on payment of Rs. 12/-, assessed the entertainments duty at 36% the total figure which was so arrived at, arbitrarily.

10. In case it were to be held that the entertainment duty was payable under sub-section (2) of section 3 of the Act in the sense that the lumpsum subscription of Rs. 10/-paid by each member of the Group involved a right of admission to the entertainment organised by the petitioners, the State Government ought to have assessed the entertainment duty in accordance with the provisions contained in the proviso to sub-section (2) of section 3 of the Act. In that case, it was necessary for the respondents to determine the amount; out of the lump sum of Rs. 10/-, which may appear to represent the right of a member of the Group for admission to the entertainment in question. By way of demonstration, it may be pointed out that the subscription of Rs. 10 received by the petitioners from each member is with respect to the membership for a period

of ten years. Thus, if in a particular year the petitioners gave the additional facility of entertainment to its members it will have to be determined what fraction of the rupee would represent the right of the member for admission to such an entertainment. It may be pointed out that neither the aforesaid proviso nor the Entertainment Duty Rules have provided any method for apportionment of the amount representing the right of admission to entertainment in such a case. We are afraid, in the absence of any such method having been provided by the law for such apportionment, an assessment if made by the State Government in this behalf may again involve the dement of arbitrariness. At any rate, assessment of entertainment duty on the full amount of Rs. 12/- recovered by the petitioners towards the Admission Fee and subscription for membership of "Nav-Nirman Group" was wholly arbitrary another contravention of the proviso to sub-section (2) of section 3 of the Act. Moreover, assessment of entertainment duty on the admission of the invitees to the said performances was also wholly illegal.

11. For the above reasons, we hold that no entertainment duty was payable by the petitioners for the admission of the persons to the performances "Mahinder Kapoor Nite" organised by them on 7th and 8th July 1974. We also hold that the assessment of entertainment duty made by the District Excise Authorities with respect to these performances was wholly unauthorised and illegal and hence they have got no right to recover it. As the respondents have recovered the amount of Rs. 5000/- from the petitioners, towards the recovery of the entertainment duty in part, without any legal right or authority, they are bound to refund it to the petitioners. This view gets support from the decision in Patel India Private Limited Vs. Union of India and Others, in which their Lordships of the Supreme Court held that the excess duty recovered by Customs Authorities without lawful authority must be refunded.

12. Thus, this writ petition is allowed. The assessment of entertainment duty vide Annexurcs J/1 and L/1, and the consequent demand notices Annexurrs J /3 and L /2 are hereby quashed. The respondents are also directed to refund the amount of Rs. 5000/- exacted from the petitioner No. 2 towards the part recovery of the entertainment duty. Looking to the facts of the case, parties to bear their own costs as incurred. The security amount deposited by the petitioners shall be refunded to them.