(1987) 03 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 464 of 1979

Jaswant Theatre APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1987) 168 ITR 38

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : K.P. Bhandari and Ravi Kapur, for the Appellant; G.S. Grewal, General for respondent No. 1, Parveen Goyal and Jasbir Singh, for the Respondent

Judgement

D.V. Sehgal, J.—The petitioner, a firm operating a cinema by the name of Jaswant Theatre, Sunam, has through the present writ petition sought issuance of a writ of certiorari quashing notifications, annexures P-1 to P-5, and for grant of appropriate relief as the circumstances of the case may warrant.

2. The town of Sunam where the cinema of the petitioner is situated has its Municipal Committee, respondent No. 2. On the proposal of respondent No. 2, the State of Punjab, respondent No. 1, issued a notification dated June 8, 1966, annexure P-1, which is to the following effect :

" In pursuance of the provisions of Sub-section (10) of Section 62 of the Punjab Municipal Act, 1911, it is hereby notified that with the previous sanction of the Governor of Punjab, the Municipal Committee, Sunam, in the Sangrur District, has made the following amendment in the Punjab Government Notification No. 12614-CI(6CI)-62472, dated November 18, 1960, as subsequently amended, imposing show tax within the limits of Sunam Municipality.

AMENDMENT

Item No. 1 of the existing schedule shall be substituted as under :

Serial

Description

Rate of tax per show

No.

1.

Cinema Show

Four rupees.

The amendment shall come into force with effect from August 1, 1966."

Through a subsequent notification dated June 27, 1973, annexure P-2, the following amendment was made in the notification, annexure P-1 :

" Item No....of the existing schedule shall be substituted as under :

Serial

Description

Rate of tax per show

No.

1.

Cinema show

Five rupees

The amendment shall come into force with effect from October 1, 1973."

The notification was further amended by yet another notification issued by respondent No. 1 on March 7, 1977, annexue P-3, which is to the following effect :

" Item No. 2 of the existing schedule shall be substituted as under :

Serial No.

Description of cinema halls

Rate of show tax per show.

Rs.

1.

Air-conditioned cinema halls or cinema halls where this facility is available

15

2.

Cinema halls where facility of air cooling is available

10

3.

Cinema halls where neither of the above facilities is available

5"

The executive officer of respondent No. 2 later informed the petitioner, vide letter dated April 1, 1977, annexure P-4, that in view of the amendment brought into force, vide notification annexure P-3, the payment of show tax by the petitioner has been increased from Rs. 5 to Rs. 10 with effect from April 16, 1977, and directed it to deposit the same. These notifications have been challenged by the petitioner on the ground that the class of persons or description of the property liable to the payment of tax is not defined therein. The system of assessment of tax to be adopted is also not mentioned. As such, these notifications do not comply with the mandatory provisions of Sub-section (2) of Section 62 of the Punjab Municipal Act, 1911 (for short " the Act ").

The above challenge to annexures P-1 to P-4 is sought to be met by the respondents by filing their respective written statements. It has been contended before me on their behalf that it is understood that the person who is operating the cinema is liable to make payment of the show tax levied thereby and the mode of assessment is also clear as the show tax is payable per cinema show.

3. It is not necessary for me to dilate on the rival contentions raised on behalf of the respective parties as the matter is fully covered by a judgment of I.S. Tiwana J. in Bhagwan Dass Bir Chand, Sangrur v. State Government of Punjab (Civil Writ Petition No. 3495 of 1978, decided on November 17, 1983) wherein, inter alia, the learned judge held as under:

" This submission is obviously devoid of any merit for the short reason that the respondent-municipal committee cannot plausibly and justifiably plead not to carry out the mandate of law as specified in Sub-section (2) of Section 62. Counsel cannot explain as to why the person either owning the cinema hall wherein the show is being displayed or providing other facilities for the show, can be made liable to pay the tax instead of the person displaying or running the show. It cannot be left to the sweet will of the municipal committee to recover it from any of the persons. Further, in the case of a dispute as to under which of the three categories specified in annexure P-3, a particular cinema falls, no authority has been designated to resolve the same and to ultimately determine the quantum of tax to be paid by the assessee. "

The challenge made by the petitioner as regards the vires of the notification dated January 1, 1977, annexure P-5, is to the effect that in spite of the fact that it provides for the bye-laws to regulate the levy and collection of entertainment tax on the sale of cinema tickets, the said bye-laws do not provide as to who shall be the assessing authority and in case of dispute between the assessee and the municipal committee regarding the amount of tax, who will determine the same. To appreciate this submission, it is necessary to reproduce here the bye-laws which have been notified, vide annexure P-5 :

" 1. The proprietor of a cinema means proprietor, partner, manager or any other authorised person who is responsible for the management of the cinema.

2. The tax shall be collected by the cinema authorities at the time of sale of cinema tickets by affixing the rubber stamp to be provided by the committee bearing the words '' Municipal Entertainment Tax''.

3. The proprietor of the cinema shall be responsible to submit a statement mentioning the serial number of sold cinema tickets along with tax collected up to the preceding day, on every Monday and Saturday of the week.

4. In case of breach or abetement of any bye-laws, the proprietor of the cinema shall be punishable by the Magistrate with a fine which may extend up to Rs. 500 and for continuous breach, with a further fine which may extend to Rs. 5 for every day after the first during which the breach continued. "

A perusal of the above bye-laws makes it clear that neither any assessing authority has been prescribed nor any machinery has been provided for adjudication of a dispute with regard to the amount of tax which may arise between the assessee and the municipal committee.

4. Learned counsel for the respondents submitted that in case the proprietor of the cinema does not deposit the requisite amount of entertainment tax and commits breach of the bye-laws, he shall be punishable by a Magistrate with a fine as laid down in bye-law No. 4. Thus, according to learned counsel, the machinery for adjudication of any such dispute regarding assessment, payment and collection of tax is provided by the bye-laws. Before I deal with this contention, it would be educative to reproduce here the observations of a Division Bench of this court in Bhagwan Dass Bir Chand, Sangrur v. State of Punjab (Civil Writ Petition No. 1993 of 1978, decided on December 20, 1979), which followed the dictum of the Supreme Court in Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator, :

" The notification provides regarding imposition of tax at the rate of 10 paise per sold ticket which was later reduced to 5 paise. It prescribes only the rate of assessment and not the system. It also does not prescribe as to who was liable to pay the tax, i.e., whether the person who purchases the ticket is liable to pay the tax or the person who sells it. It is an established principle of law that the subject cannot be taxed unless the charging provision clearly imposed the obligation (See Commissioner of Income Tax, Madras Vs. Ajax Products Ltd. through its Liquidator,). It is also not clear from the notification that in case of dispute regarding the amount of tax, as to who will determine the same. The matter has been dealt with above at a considerable length. In view of the above observations, the notification is liable to be struck down. "

It is clear from the above observations that it is mandatory not only to prescribe the assessing authority but to provide for the machinery for adjudication of a dispute regarding the amount of tax which may arise between the assessee and the municipal committee. Bye-law No. 4 does not cover this eventuality. It is the assessing authority which has to give its decision whether the entertainment tax paid according to the mode prescribed in the bye-laws falls short of the levy or is in excess of it where a dispute of this nature arises. It is again for such an authority to give a finding as to whether the bye-laws are being complied with and the tax is being properly paid. Clause 4 of the bye-laws only provides for prosecution of the assessee in case of breach of the bye-laws by him. I, therefore, have no doubt in my mind that the bye-laws fall short of the necessary requirements as they do not provide for adjudication of disputes regarding the amount of tax nor do they prescribe the authority which shall determine the same. The notification, annexure P-5, is, therefore, violative of Sub-section (2) of Section 62 of the Act.

5. As a result, this petition is allowed. The notifications, annexures P-1, P-2, P-3 and P-5 and the letter, annexure P-4, are quashed. As a consequence, respondent No. 2 is directed to refund to the petitioner the amount of show tax paid by the petitioner to it in pursuance of the notifications, annexures P-1, P-2 and P-3 and the letter annexure P-4. As regards the entertainment tax in respect of which notification, annexure P-5, has been quashed, the petitioner is directed to deposit the total entertainment tax collected by it in this court within a period of six weeks with full account. The amount deposited shall be paid to the person who is later found entitled to it. The interested parties may file applications for payment of the amount which shall be decided by this court. Wide publicity in this regard will be given by the office in Sunam town where the tax has been collected or is to be collected.

6. The petitioner shall also get the costs of this writ petition which are assessed at Rs. 500 and shall be paid by respondent No. 2.