
(1995) 07 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 1190 of 1994

Kamla Palace

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Uttar Pradesh Entertainments and Betting Tax Act, 1979 — Section 3A

Citation : (1995) 07 AHC CK 0084

Hon'ble Judges : R.A.Sharma, J and D.K.Seth, J

Final Decision : Allowed

Judgement

R.A.Sharma, J.—In order to encourage the construction of new cinema houses in small towns having a population of not more than one lac, the Government of U. P. issued incentive scheme, vide order, dated September 17, 1983 providing for grantinaid in the form of partial exemption from payment of entertainment tax for a period of three to four years depending on the population of the towns, to newly constructed permanent cinema houses. The above G.O. was amended, vide G.O., dated July 21, 1986. The latter G.O. was substituted by another G.O., dated July 18, 1989, according to which the permanent cinema houses constructed within the specified period will be entitled to grantinaid in the form of exemption from payment of the entertainment tax for a period of three years on certain conditions, one of which is that such cinema houses will not keep their admission rate (inclusive of tax) more than Rs. 5. Para 2 of the last G.O. has been substituted by G.O., dated May 14, 1992, according to which grantinaid to the newly constructed cinema houses under the incentive scheme will be for a period of three years to the extent of 75% of the amount of entertainment tax payable in relation to the film exhibited in the cinema house in question. All other conditions contained in G.O., dated July 18, 1989, including the condition of keeping admission rate (inclusive of tax) not more than Rs. 5, have been retained and are still operative. Therefore, such cinema houses which are getting grantinaid under the incentive scheme, cannot charge admission rate more than

Rs, 5 (inclusive of the tax).

2. Petitioners have constructed permanent cinema houses in small towns under the incentive scheme. They obtained licences under the U. P. Cinemas (Regulation) Act, 1955 and Rules framed thereunder, for carrying on their business.

3. The U. P. Entertainment and Betting Tax Act, 1979 (hereinafter referred to as the Act) provides for levy of entertainment tax on all payments for admission to any entertainment at the prescribed rates. By U. P. Cinemas and Taxation Laws (Amendment) Act, 1989 (U. P. Act No. 12 of 1989) Section 3A was inserted in the Act authorising the proprietors of centrally aircooled or centrally airconditioned cinema to realise from the person making payment for admission to an entertainment in such cinemas extra charge of ten paise and twentyfive paise for aircooling or air conditioning, respective. The amount so charged under the said provision was exempted from payment of entertainment tax. By U. P. Act No. 14 of 1992 the said Section 3A was substituted by a new section whereby in addition to extra charge for aircooling and airconditioning, the proprietor of a cinema house was also permitted to realise from the person making payment for admission to an entertainment extra charge of 25 paise for maintenance of the cinema premises. The substituted Section 3A is as under :

"3A. Extra charges for maintenance of cinema and aircooled and airconditioned facility. (I) Notwithstanding anything contained in this Act, the proprietor of a cinema may realise from the person making payment for admission to an entertainment in such cinema,

(a) an extra charge of twentyfive paise which shall be utilised for maintenance of the cinema premises ;

(b) in case of a centrally aircooled or centrally airconditioned cinema a further extra charge of ten paise and twentyfive paise for aircooling or airconditioning facility respectively during the period commencing on the fifteenth day of March in any year and ending the fifteenth day of October next following :

Provided that the proprietor of a cinema receiving grantinaid from the State Government Bunder any incentive scheme shall not be entitled to realise extra charge under clause (a) during the period such grantinaid is received by him.

(2) The amount charged under subsection (1) shall not be deemed to be payment for admission to an entertainment.

(3) Where the extra charge referred to

(a) in clause (a) of subsection (1) has not been utilised for maintenance of cinema premises ;

(b) in clause (b) of subsection (1) has been realised without providing the aircooling or airconditioning facility, as the case may be, the amount so realised shall be deemed to represent the aggregate of additional payment for admission

to the entertainment and entertainment tax payable thereon."

The amount of twentyfive paise in clause (a) of subsection (1) of Section 3A for maintenance of cinema premises has, by subsequent amendment, been raised to Re. 1.

4. According to the proviso to subsection (1) of newly added Section 3A of the Act the proprietor of a cinema house receiving grantinaid under the incentive scheme, is not entitled to realise extra charge under clause (a) for maintenance of cinema premises during the period the grantinaid is received by him. The Government has issued order in pursuance of the above proviso prohibiting the proprietors of the cinema houses constructed under the incentive schemes, from realising extra amount for maintenance of cinema premises. Petitioners who have constructed permanent cinema houses under incentive schemes in small towns have, by means of these writ petitions, challenged the validity of the said proviso to subsection (1) of Section 3A of the Act and the Government Orders issued thereunder, whereby they have been prohibited from realising extra charge of Re. 1 for maintenance of their cinema premises.

5. The Government has filed counteraffidavit and the petitioners have filed rejoinder affidavits in reply thereto. We have heard learned counsel for the parties.

6. The sole contention raised by learned counsel for that by the said proviso to subsection (1) of Section petitioners have been discriminated against in violation the petitioners is 3A of the Act the of Article 14 of the Constitution. This has been disputed by the learned Standing Counsel.

7. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law and equal protection of the laws. This article ensures that amongst equals law shall be equal and it shall be equally administered. It requires that like shall be treated alike. Although by this Article the State has been prohibited from making any discrimination, but it does not prohibit it from making reasonable classification. It is now well settled by series of decisions of Hon"ble Supreme Court that valid classification under this Article must satisfy two conditions, namely (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group ; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. Differential treatment by itself may not violate constitutional guarantee contained in Article 14 of the Constitution provided there is a reasonable basis for classification. But it is not every difference which could justify the classification. Difference must be substantial and real and it must have nexus with the object should to be achieved. In ibis connection reference may be made to Roop Chand v. Delhi Development Authority, AIR 1989 SC 307, wherein it was laid down as under ;

"In T. Davasan v. Union of India, 1961 (4) SCR 680 at pp. 689 and 690 : AIR 1964 SC 179 at p. 185 this Court observed :

".....What is meant by equality in this Article is, equality amongst equals. It does not provide for an absolute equality of treatment to all persons in utter disregard in every conceivable circumstances of the differences such as age, sex, education and so on and so forth as may be found amongst people in general. Indeed, while the aim of this Article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answer the same description and the differences which may obtain between them are of no relevance for the purpose of applying a particular law reasonable classification is permissible. It does not mean anything more."

But then the process of classification is in itself productive of inequality and in that sense antithetical of equality. The process would be constitutionally valid if it recognises a preexisting inequality and acts in aid of amelioration of the effects of such proexistent inequality. But the process cannot in itself generate or aggravate the inequality. The process cannot merely blow up or magnify in substantial or microscopic differences on merely mere tricious or plausible differences. The over emphasis on the doctrine of classification or any anxious and sustained attempts to discover some basis for classification may gradually and imperceptibly deprive the article of its precious content and end in replacing doctrine of equality by the doctrine of classification. The presumption of good faith in and of constitutionality of a classification cannot be pushed "to the point of predicating some possible or hypothetical but undisclosed and unknown reason for a classification rendering the precious guarantee or equality" a mere rope of sand"".

"To overdo classification is to undo equality". The idea of similarity or dissimilarity of situations of persons, to justify classification, cannot rest on merely differentia which may, by themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance of nexus to objects sought to be classification."

For upholding classification under Article 14 of the Constitution mere difference between the two sets of persons is not enough. The further requirement is that the differences must be real and should also be relevant to the goal sought to be achieved by the impugned provisions which makes the classification. The Government has promulgated incentive schemes providing for grantinaid in the form of partial exemption from payment of entertainment tax, so as to encourage the construction of permanent cinema houses in small towns having a population of not more than one lac. These incentive scheme were promulgated by the State Government due to increasing popularity of television and Cable TV network, on account of which not only the new cinema houses were not being constructed but the standard of maintenance of cinema houses has also deteriorated. This is also clear from the Statement of Object and Reason of U. P.

Act No. 14 of 1992, whereby Section 3A was substituted, which is reproduced below :

"The proprietors of cinemas in the State have been facing financial crisis for the last several years due to the ever increasing popularity of exhibition of moving pictures through Cable T. V. network. Consequently the standard of maintenance of Cinema halls has deteriorated. The Cinema Exhibitors Federation has made a demand for grant of a certain percentage of Entertainment Tax to the proprietors of Cinemas as the development allowance. Besides, the proprietors of centrally aircooled and centrally airconditioned cinemas, who have been allowed to realise extra charges of ten paise and twentyfive paise respectively from persons making payment for admission to the entertainments in the Cinemas during the period from 15th of March to 15th of September in an year, have also represented for extension to the said period as such facilities to the Cinema viewers are necessary for further period beyond 15th day 11 September.

After considering the matter, with a view to ensure additional facilities to the public visiting cinema halls to view cinematograph exhibition it has been decided to amend the Uttar Pradesh Entertainment and Betting Tax Act, 1979 to allow, realisation of an extra charge of twentyfive paise for the specific purpose of maintenance of the cinema premises and realisation of extra charges at the existing rates for providing centrally aircooling or airconditioning facilities to the viewers for a period up to 15th of October, instead of 15th of September every year and to obviate the necessity of prior permission of the District Magistrate for such realisation."

From the above Statement of Object and Reason it becomes clear that provisions for extra charge for maintenance and for aircooling and airconditioning of cinema premises have been enacted, "with a view to ensure additional facilities to the public visiting cinema halls to view cinematograph exhibition". Section 3A was thus enacted with a view to provide better facilities to the viewers.

8. The object of Section 3A providing for extra charge for maintenance of cinema premises, is to ensure that those premises are properly maintained so as to provide better facilities to the viewers. Maintenance of the cinema houses is required irrespective of the grantinaid from the State. It may be that for the old cinema houses amount of maintenance may be more as compared to the newly constructed cinema houses. But even newly constructed cinema houses are required to be maintained, although the amount for such maintenance may not be as heavy as that which is required for the old cinema houses. But that does not make much difference because of subsection (3) of Section 3A of the Act, which provides that if the extra charge under clause (a) to subsection (1) has been utilised for maintenance of cinema premises it shall be deemed to represent the aggregate of the additional payment for admission to the entertainment and entertainment tax shall be payable thereon.

9. Although each and every cinema house has to be maintained in order to

provide better facilities to the viewers and for this purpose provision has been made permitting the proprietors of the cinema houses to realise extra charges from the viewers at the prescribed rate, but this benefit has been denied to those cinema houses which are getting grantinaid. Learned Standing Counsel has tried to justify it on two grounds viz. (i) cinema owners getting grantinaid under the incentive scheme form a different class than those who are not receiving the grantinaid; and (ii) cinema owners receiving grantinaid have already been benefited financially and, therefore, they can maintain their cinema premises. These contentions are devoid of merit.

10. Both types of cinema houses, i.e. those getting grantinaid and those not getting such an aid, are in the same position. Both are permanent cinema houses. Both have been granted licences under the U. P. Cinema (Regulation) Act, 1955 and the Rules framed thereunder for carrying on their business. Both are governed by regulatory provisions of the said Act and the Rules. Both are obliged under law to pay entertainment tax on all payments for admission to any entertainment. Both have been allowed to realise extra charges for aircooling and airconditioning. Both are required to be maintained for providing better facilities to the viewers. These cinema houses form one class for the purposes of Section 3A even if some of them are receiving grantinaid. There is no reasonable basis for treating cinema houses getting grantinaid differently. They stand in the same position.

11. It is because of the incentive schemes announced by the State Government from time to time that the new cinema houses are being constructed. If after establishment of new cinema houses the Government withdraws those incentives it will be open to the proprietors of those cinema houses to challenge the said action on the ground of Article 14 of the Constitution and the promissory estoppel. If it cannot withdraw the facilities/incentives on the basis of which the cinema houses have been constructed, it is also not open to it to reduce such facilities/incentives by denying the benefit of maintenance allowance. It is true that Rule of promissory estoppel is not applicable against the legislative act, but even statutory provision has to be fair and reasonable in consonance with the principle of Article 14 of the Constitution. If people have constructed pucca cinema houses on the basis of incentives offered by the State in the form of grantinaid it will be highly unfair on its part to deny the benefit of maintenance charge to such cinema houses, when every cinema house is required to be maintained and the proprietors of such cinema houses have been prohibited from charging admission rate "inclusive of tax" not more than Rs. 5. There is no such restriction as regards the other cinema houses. The impugned proviso thus violates the principle of Article 14 of the Constitution of India.

12. There is also no nexus between the basis of the classification and the object which is sought to be achieved by Section 3A of the Act. When object of the said provision is the proper maintenance of the cinema houses in order to provide better facilities to the viewers, the basis of difference, namely, grantinaid has no

relevance and rational relation to that object. From perusal of the Statement of Aims and Object of U. P. Act No. 14 of 1992 it is apparent that cinema houses are facing financial crisis due to ever increasing popularity of television and Cable TV network on account of which it is not possible to the proprietors of the Cinema houses to maintain their premises. In case extra charge for maintenance of cinema premises is not permitted to be realised by the cinema houses receiving grant-in-aid, it may not be possible for them to maintain their premises and this may go against the interest of the viewers. This will frustrate the very purpose and object which is sought to be achieved.

13. Here it may also be mentioned that in the matter of Taxation Laws the Legislature enjoys greater latitude as regards classification, choice of persons and the article to be taxed, fixation of rate of taxation etc. and its choice is normally respected by the Court. But taxation laws are also subject to Article 14 of the Constitution. If there is no reasonable basis for classification or that differentiation has no reasonable relation to the object sought to be achieved by the provisions in question, the Courts have full power to strike down such a legislation. In the instant case there is neither any reasonable basis for treatment of the cinema houses getting grant-in-aid differently nor does the differentiation on which the classification has been made, have any rational relation to the object sought to be achieved by the Legislature. Proviso to subsection (1) of Section 3A of the Act is, therefore, ultra vires being violative of Article 14 of the Constitution of India and has to be struck down.

14. These writ petitions are allowed. Proviso to subsection (I) of Section 3A of the Uttar Pradesh Entertainments and Betting Tax Act, 1979 and the Government Orders issued thereunder are declared ultra vires. The petitioners shall furnish accounts of the amount collected by virtue of the interim orders passed by this Court to the appropriate authorities who will be entitled to look into the same and take steps with regard thereto in accordance with law. If any such amount is found to have not been spent for the purpose of maintenance the same shall be chargeable to entertainment tax.