

(1995) 02 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No's. 33108/94, 29896/94

Karnataka Film Industry Development Corporation Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Entertainment Tax Act, 1958 — Section 3 B, 4 A

Citation : AIR 1995 Kar 397 : (1995) ILR (Kar) 1758 : (1995) 39 KarLJ 431

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri S.R. Goutham, for the Appellant; Smt. V. Vidya, Government Advocate, for the Respondent

Judgement

1. In this bunch of petitions the petitioners call in question the constitutional validity of Sections 3B and 4A of the Karnataka Entertainments Tax Act, 1958 hereinafter referred to as the Act, as inserted by Karnataka Entertainments Tax Amendment Act, (994 (Karnataka Act No. 25 of 1994) with effect from 27th of September, 1994. By the insertion of the said two provisions, the Legislature introduced in the State of Karnataka levy of entertainment-tax on cinematograph shows conducted in Cinema Halls by adoption of the "Gross Collection Capacity" method also known as the composition system. As a result of the introduction of the said system, levy and collection of tax on entertainments in so far as cinematograph shows in Cinema halts are concerned went out of the purview of Section 3 of the Karnataka Entertainments Tax Act, 1958 and ceased to be governed by what is known as "admission system", according to which, entertainment tax is collected at the prescribed rates in proportion to the number of viewers admitted to a cinema hail. Before proceeding any further, it is necessary to state a few facts in the back-ground.

2. The Karnataka Film Chamber of Commerce appears to have presented a memorandum to the State Government in the year 1991 suggesting the

introduction of a slab system of taxation in place of the then prevailing "admission system". Similar demand appears to have been made in the adjoining State of Maharashtra also with the result that both in the State of Karnataka and in Maharashtra, Committees were constituted with a view to examine in detail the feasibility of switching-over to the "Composition System" of collecting entertainment tax. According to this system, the entertainment tax is charged from the exhibitors at a prescribed rate depending upon the gross collection capacity of the cinema hall concerned.

3. A Committee on Film Industry appears to have been constituted even by the Central Government who made a recommendation to the following effect:

"The Committee feels that the compounding system of entertainment-tax instead of levy related to different slabs of admission rates should be introduced in all States Union Territories because it not only saves exhibitors from harassment and inconvenience, but it also reduces administrative work and makes collection easier. This system is particularly beneficial for small towns and touring theatres, where the State Governments do not have adequate machinery for tax collection and the instance of tax evasion are frequent. The Committee recommends that the rates of entertainment-tax under compounding system being levied in Andhra Pradesh and Kerala should be circulated among all State Governments/ Union Territories for suitably adoption by them on optional basis. We also recommend that the rates proposed for the compound system of entertainment tax should be very low."

4. The Committee of Secretaries set-up by the Maharashtra Government also appears to have urged the introduction of the "Composition System" in that State though on an optional basis. In the adjoining States of Andhra Pradesh and Kerala, however, the "Composition System" was introduced and is prevalent as an absolute system without any option given to the exhibitors to choose between the two.

5. The Committee set up by the State of Karnataka which came to be known as "Subbarao Committee" submitted a report on the 1st of March, 1994. The Committee after deliberations with the leaders of the Industry felt that it was worthwhile switching-over to the "Composition System" and recommended that the rate of tax to be recovered from the exhibitors should depend upon the population of the "Local Authority" town or City within whose limits the theatre concerned was located. For the Regional Kannada Films, the Committee recommended a flat rate of 50% of what was payable by exhibitors of other movies.

6. On receipt of the Report from the Committee, the Government introduced a Bill for the insertion of Sections 3B and 4A into the Karnataka entertainment Tax Act. The statement of objects and reasons for the introduction of the said Bill indicated that the same was inter alia meant to levy entertainment-tax on cinematograph shows on the basis of the gross collection capacity per show of

the Cinema Theatre situated within the limits of a local Authority, town or village having a population of more than 15,000, and a levy of entertainment-tax at one-half of the rate in respect of a Kannada film. The Bill was in the due course passed resulting in the promulgation of Karnataka Act No. 25/ 1994 inter alia inserting Sections 3B and section 4A in to the parent Act. Consequently, even when Section 3 of the Act, under which entertainment-tax was being charged originally continues in the Statute Book, Section 3B carves-out a special provision for collection of Entertainment-Tax on Cinematograph shows held in Cinema Theatres. Section 4A makes an additional provision, according to which an exhibitor can in lieu of entertainment-tax payable u/s 3B at his option and subject to such conditions, as may be prescribed, pay the amount of tax every week as specified in column (3) of the table below the said Section.

7. Section 3 of the Act which regulate the levy and collection of entertainment-tax on each payment for admission to an entertainment, reads thus:--

"Tax on payments for admission to entertainments:-- (1) There shall be levied and paid to the State Government on each payments for admission to an entertainment, entertainments tax at the following rates, namely:--

TABLE

SI. No.

Payment for admission (excluding the amount of tax)

Rate of tax

1

2

3

(a)

docs not exceed one rupee and twenty five paise;

Thirty-five per cent of such payment

(b)

exceeds one rupee and twenty-five paise but does not exceed two rupees and fifty paise;

Forty-five per cent of such payment

(c)

exceeds two rupees and fifty paise

Fifty-five per cent of such payment

2&3(x x x x x)4 (1-A)(x x x x x)5 (x x x x x) (2) Notwithstanding anything

contained in sub-section (1) 6 (xxxxxxx) there shall be levied and paid to the State Government (except as otherwise expressly provided in this Act) on every complimentary ticket issued by the proprietor of an entertainment, the entertainments tax at the appropriate rate specified in sub-section (1)7(xxxxxx) in respect of such entertainment, as if full payment had been made for admission to the entertainment according to the class of seat or accommodation which the holder of such ticket is entitled to occupy or use; and for the purpose of this Act, the holder of such ticket shall be deemed to have been admitted on payment.

8 (Provided that where the seat or accommodation which the holder of such a ticket is entitled to occupy or use is different from the classes of seat or accommodation inside the auditorium or place of entertainment and for admission to the said seat or accommodation no payment is fixed, the holder of such ticket shall be deemed to be entitled to occupy or use the highest class of seat or accommodation and shall for purposes of this Act, be deemed to have been admitted on payment of the charges for such highest class of seat or accommodation.)

8. The term "Entertainment" has been defined by S. 2(e) to mean a horse race or cinematograph show including video shows to which persons are admitted on payment; for exhibition of films, or moving pictures or series of pictures which are viewed and heard on the television receiving set, with the aid of any type of antennae with a cable network attached to it or cable television for which persons are required to make payment by way of contribution or subscription or installation and connection charges or any other charges collected in any manner whatsoever.

9. Section 3-B which ushers in the "Composition system" may also be reproduced in extenso. The same reads thus:--

"Levy of tax on cinematograph shows:--(1) Notwithstanding anything contained in S. 3 or 3-A and subject to such rules as may be prescribed there shall be levied and paid to the State Government a tax on the gross collection capacity on every cinematograph show other than video shows, in respect of entertainments held in the cinema theatres situated within the limits of a local authority or town or village specified in column (2) of the table below calculated at the rates specified in the corresponding entries in the column (3) thereof.

TABLE

Sl.No.

Local authority/ Town, village population of which

Rate of tax on the gross collection capacity per show

(1)

(2)

(3)

1.

does not exceed 15,000

fifteen per cent

2.

exceeds 15,000 but does not exceed 50,000

eighteen per cent

3.

exceeds 50,000 but does not exceed 1,00,000

twenty per cent

4.

exceeds 1,00,000 but does not exceeds 3,00,000

twenty-five per cent

5.

exceeds 3,00,000 but does not exceed 5,00,000

twenty-seven per cent

6.

exceeds 5,00,000 but does not exceed 10,00,000

thirty per cent

7.

exceeds 10,00,000

thirty-three per cent

Explanation:-- For the purpose of this section and S. 4-A gross collection capacity per show shall mean the national aggregate of all payments for admission, the proprietor would realise per show if all the seats or accommodation as determined by the licensing authority under the Karnataka Cinemas (Regulation) Act, 1964, in respect of the place of entertainment are occupied and collected at the maximum rate of payment for admission as determined in this behalf by the prescribed authority.

(2) The amount of tax under sub-sec. (1) shall be payable by the proprietor on the actual number of shows held by him in a week.

(3) No proprietor shall collect or cause to be collected any amount in excess of

the payment for admission taken into consideration for calculating the gross collection capacity of the cinema theatre.

10. Section 4-A which provides an option to the exhibitors to adopt the weekly system of assessment and payment of tax, reads thus :--

"Tax on cinematograph shows in certain places:--

(1) In lieu of entertainment tax payable under S. 3-B in the case of cinematograph shows held in a cinema theatre situated within the limits of a local authority or town or village specified in column (2) of the table below, the proprietor may, at his option and subject to such conditions, as may be prescribed, pay the amount of tax every week as specified in column (3) thereof-

TABLE

Sl. No.

Local authority/Town, Village population of which

Amount of tax

(1)

(2)

(3)

1.

does not exceed 15,000

ten per cent of gross collection capacity per show x 12

2.

exceeds 15,000 but does not exceed 50,000

thirteen per cent of gross collection capacity per show x13

3.

exceeds 50,000 but does not exceed 1,00,000

fifteen per cent of gross collection capacity per show x14

4.

exceeds 1,00,000 but does not exceed 3,00,000

twenty per cent of gross collection capacity per show x23

5.

exceeds 3,00,000 but does not exceed 5,00,000

twenty-two per cent of gross collection capacity per show x23

6.

exceeds 5,00,000 but does not exceed 10,00,000

twenty-five per cent of gross collection capacity per show x23

7.

exceeds 10,00,000

twenty-eight per cent of gross collection capacity per show x 23

Provided that in the case of cinematograph show of a Kannada, Kodava, Konkani or Tulu film which has secured after the First of April, 1981 a best feature film award granted by the Central Government or any State Government or an internationally recognised award notified by the State Government, no tax shall be payable under this sub-section, for a period of one year from such date as may be specified by the State Government:

Provided further that in the case of a cinematograph show of a film other than Kannada, Kodava, Konkani or Tulu film which has secured after the First day of April, 1981 a best feature film award granted by the Central Government or any State Government or an internationally recognised award notified by the State Government, no tax shall be payable under this sub-section for a period of six months from such date as may be specified by the State Government:

Provided also that:--

(i) in the case of a cinematograph show of a Kannada, Kodava, Konkani or Tulu film produced in the State of Karnataka the rates of entertainments tax payable shall be one-half of the rates specified in the table under sub-section (1);

(ii) in the case of a cinematograph show of a Kannada, Kodava, Konkani or Tulu film produced outside the State of Karnataka and which has secured a Censor Certificate issued by the Central Board of Film Certification on or before the Thirty-first day of December, 1987, the rates of entertainments tax payable shall be one-half of the rates specified in the table under sub-section (1);

Provided also that if the proprietor is unable to conduct a show during the whole period of a week due to non-renewal of licence under the Karnataka Cinemas (Regulations) Act, 1964 or due to any order by Court or by the State Government or any other authority, no tax shall be payable for that week subject to his production of proof for having not conducted any show during the whole period of such weeks.

(2) After the determination of the gross collection capacity of a cinema theatre, no change or modification either in the number of seats or accommodation or in the rates of payment for admission to such theatre shall be made, unless the proprietor has given fifteen days notice thereof to the prescribed authority and, until the gross collection capacity is redetermined the proprietor shall pay the tax as previously fixed.

(3) x x x x x. (4) No proprietor of a cinema theatre to which sub-sec. (1) is applicable shall collect or cause to be collected any amount either by way of tax or otherwise in excess of the payment for admission taken into consideration for calculating the gross collection capacity of such theatre.

(5) (a) Notwithstanding anything in this section, where a cinematograph film is allowed exemption from, or reduction in the payment of tax under sub-sec. (1) the rates of payment for admission shall be reduced in respect of each admission to the extent of the tax exempted or reduced in respect of such payment. Where a proprietor does not reduce the rates of payment for admission he shall, in addition to any other penalty under this Act, be liable to pay tax as if no exemption or reduction from the payment of tax was made under sub-sec. (1);

(b) Notwithstanding the reduction in the rates of payment for admission under Cl. (a) the gross collection capacity for the purpose of payment of tax under sub-sec. (1) shall remain unaltered.

(6) The amount of tax payable under sub-sec. (1) shall be payable by the proprietor irrespective of the actual number of shows held by him in a week.

(6-A) The option permitted under this section shall continue to be in force till the end of the financial year in which such option is permitted.

11. A plain though conjoint reading of the provisions of Ss. 3-B and 4-A makes it fairly manifest that with effect from the date of introduction of the impugned provisions of Ss. 3-B and 4-A, the levy of Entertainment Tax in respect of cinematograph show held in a Cinema Theatre have ceased to be regulated by S. 3 and is now covered by S. 3-B or at the option of the exhibitor by S. 4-A thereof. It follows that as against the earlier system of entertainment tax being levied and recovered depending upon the number of viewers admitted to Cinema hall, the liability of the exhibitor to pay the entertainment-tax has to be determined depending upon the gross collection capacity for a show of the Cinema Theatre where the show is conducted. The gross collection capacity is in turn calculated in terms of the Explanation to S. 3-B, according to which, the notional aggregate of payments for admission which a proprietor would realise per show if all the seats or accommodation as determined by the Licensing Authority under the Cinema Regulation 1964 in respect of the place of entertainment are occupied and collected at the maximum rate of payment for admission, is termed as the gross collection capacity of the Cinema Theatre concerned. Depending upon the place where the Cinema is located, the appropriate rate of tax as mentioned in Table-III of S. 3-B is applied to work-out the exact amount of tax liability which a Cinematograph show would attract for any particular theatre. S. 4-B on the other hand only gives an option to the exhibitor to be assessed to pay entertainment tax on "Weekly Basis" depending upon the gross collection capacity at the rate and the multiple prescribed in Column-III of the Table below the said Section.

12. It is therefore apparent that an exhibitor has in view of the provisions of Ss.

3-B and 4-A on option only to be assessed either on "Per show" or "Per Week" basis. The principle underlying both these assessments are however common namely the "Composition method" of levy and calculation, as distinguished from the "Admission Method" where the tax was levied and collected depending upon the number of viewers admitted to a Cinematograph show.

13. On behalf of the petitioners it was strenuously urged that the tax levied in terms of Ss. 3-B and 4-A (supra) is in substance a tax on the income of the exhibitor and falls under Entry 82 of List-I of the VII schedule to the Constitution. It was contended that the true character of the tax which was being levied in terms of the above provisions, was a tax on the income of the exhibitor, for regardless whether the Cinema was for a given show occupied by the viewers to its full capacity or only a small percentage of the full capacity was utilised, the provisions under challenge made the exhibitor liable to pay the entertainment tax on the assumption that the Cinema hall was occupied to its full capacity. The exhibitor was thus subject to a levy which he is bound to satisfy out of his own income unrelated to the number of viewers he has actually admitted to the Cinema hall.

14. "ENTRY-82 of the Union List reads thus:

"Taxes on Income other than Agricultural Income."

15. Entry-62 of the II List to the VII Schedule on the other hand goes thus:--

"Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling."

16. The question whether a tax on the holding of a Cinematograph show regardless whether the same is recoverable from the person entertained or is to be paid by the person conducting the show, is a tax on the income of the exhibitor fell directly for consideration of a Full Bench of this Court in *Y. V. Srinivasamurthy v. The State of Mysore* (ILR 1956 Mys 22). That was a case in which the exhibitors of films had called in question the constitutional validity of the Mysore Cinematograph Shows Act (Mysore Act No. 16 1959) levying a show tax on the exhibitors of films in addition to the entertainment Tax leviable under the Mysore Amusements Tax Act, 1932. The argument of the petitioners was that show tax being different from an Amusement Tax, payable under the 1932 Act, the former was in substance a tax on the income of the exhibitor which fell outside the legislative competence of the State legislature and was more appropriately covered by Entry-82 of the "Union List". A Full Bench of this Court however repelled this contention and held that the tax in question even though recoverable from the exhibitor was in substance a tax on entertainments covered by Entry-62 of the State List. The Full Bench observed thus:

"The main point on which there is a divergence of opinion is whether this is a tax on "profession, trade, calling and employment" provided for in entry No. 60 or a tax on "luxuries including taxes on entertainments, amusements, betting and

gambling" specified in entry No. 62 of the seventh schedule in the Constitution of India."

XXX XXX

The tax is not peculiar to this State and the levy under similar enactments in other States has been challenged in some cases. Of these, *Sri. Krishna v. Ujjain Municipality (sic)* (1) has been strongly relied upon as it was held in that case that the tax is of the category referred to in entry 60 and should not exceed the maximum fixed by Art. 276. The applicability of entry No. 62 does not appear to have been raised at all and the decision is based only on a consideration of the scope of entry No. 60. Whether it is due to the counsel for the assessing authority having conceded that entry No. 60 is the source of power to levy the tax or otherwise, the case cannot be treated as laying down that entry No. 62 cannot be invoked. On the other hand *Cantonment Board, The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, and Kantilal Chaturbhuj Shah v. Palitana Municipality (sic)* (3) are cases directly in point and against the petitioners. The latter case deals with contentions identical with those urged here and the provisions in the Government of India Act corresponding to entry No. 62 are discussed in the former case. The view taken in these cases that the tax on cinema show is not one on profession, trade or calling but a tax on entertainment appears to have been expressed recently in a case of the East Punjab High Court."

17. The judgment of this Court was taken-up in Appeal before the Supreme Court, which Appeal was dismissed by the apex Court, upholding the view taken by the Full Bench with the following observations:

"It is only necessary here to refer to an additional argument that was advanced by learned counsel for the appellants before us in support of his contention. He drew our attention to entry-33 of List-11 of the Seventh Schedule to the Constitution which runs as follows: "Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements". He contends that that entry covers laws made with respect to each of the items as separate subject but points out that entry 62, which has been quoted above, permits imposition of tax only on luxuries including taxes on entertainments, amusements, betting and gambling. Learned counsel concludes that that law made with respect to entry 62 cannot permit imposition of taxes on cinemas, for the word "cinemas" mentioned in entry 33 has been omitted from entry 62. We do not think there is any substance in this argument. Learned counsel agrees that the words "entertainments" and "amusements," are wide enough to include theatres, dramatic performances, cinemas, sports and the like, If his argument is correct, then, on a parity of reasoning, the State Legislature will have no competence to enact a law imposing a tax on theatres or dramatic performances or sports, for none of those words are mentioned in entry 62. This is sufficient to repel this argument. The truth of the matter is that "cinema" had to be specifically mentioned in entry 33 of List II in order to avoid any possible

conflict between it and entry 60 in List I."

18. In *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona*, Cantonment, the Supreme Court was called upon to consider the question of validity of the tax on Cinemas and Entertainments imposed on the exhibitors by the Cantonment Board of Poona, Cantonment Area, before the promulgation of the Constitution. The Appellant before the Supreme Court had challenged the levy of the tax in question by instituting a Civil suit inter alia contending that the same was beyond the Legislative competence of the Cantonment Board and being a tax on professions, Trades and calling felt under Entry 46 of the principal list of the Government of India Act, 1935. Repelling this contention a Constitution Bench of the Supreme Court speaking through S. R. Das, C.J., observed thus:--

"As pointed out by this Court in *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, following certain earlier decisions referred to therein, the entries in the legislative list should not be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It has been accepted as well settled that in construing such an entry conferring legislative powers the widest possible construction according to their ordinary meaning must be put upon the words used therein. In view of this well established rule of interpretation, there can be no reason to construe the words "taxes on luxuries or entertainments or amusements" in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regard an entertainment tax as tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment; it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainments or amusements. The entry, as we have said contemplates a law with respect to these matters regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver or the receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling. It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax. A lawyer has to pay a tax or fee to take out a license irrespective of whether or not he actually practices. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the license chooses to do so. The impugned tax is a tax on the act of entertainment resulting in a show. In our opinion, therefore S. 73 is a law with respect to matters enumerated in entry 50 and not entry 46 and the Bombay legislature

had ample power to enact this law."

19. In *Basaweshwara Touring Talkies v. State of Karnataka* (W. P. No. 9749 decided on 22nd August, 1983), a bunch of petitions were filed by owners of Cinema Theatres/ exhibitors of Cinematograph films calling in question the Karnataka Taxation and certain other Laws Amendment Act, 1982, in so far as the same amended Ss. 4 and 4-A of the Karnataka entertainment Tax Act, 1958 (Karnataka Act No. 30 of 1958) inter alia on the ground that the taxes levied under the Amendment. Act, were in reality taxes on income of the Cinema owners falling under Entry No. 82 of the "Union List". A single Judge of this Court (Puttaswamy, J.) relying upon the judgments of the apex Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, repelled the contention and held that the tax levied by the amended provisions of Ss. 4 and 4-A were taxes referable to Entry 62 of the "State List" and not a tax on income as envisaged by Entry 82 of "Union List".

20. The question has however been authoritatively answered by the apex Court in *Venkateshwara Theatre Vs. State of Andhra Pradesh and Others*, In that case, the argument advanced by the exhibitors was precisely the same as has been advanced before me in these petitions. It was contended that the levy of the tax in question, based not on the number of actual viewers admitted to a Cinema hall, but on the gross collection capacity of the Theatre in which the film was exhibited, was a tax which fell outside the purview of Entry 62 of the State List. The argument was advanced in the context of the introduction in the State of Andhra Pradesh of a system of levy of entertainment Tax similar to the one introduced by the provisions of Ss. 3-B and 4-A of the Karnataka entertainment Tax" Act 1958 making the gross collection capacity of the theatre as the basis for the charge rather than the number of viewers admitted to the show. Relying upon the earlier two Constitution Bench judgments of the Supreme Court in *The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment*, their Lordships of the Supreme Court held that the levy and collection of tax on the basis of the gross collection capacity per show, calculated on the basis of the notional aggregate of all the payments for admission, did not alter the nature of the tax or the subject matter thereof which continued to be a tax on entertainment. Their Lordships observed that levy and collection of the tax either on the basis of the actual number of viewers admitted or on the basis of the gross collection capacity of the theatre only two different modes for the purpose one of which could have been chosen by the legislature and in having chosen the composition system the legislature did not transgress the limits of its legislative powers conferred under Entry 62 of the "State List". Their Lordships in this connection observed thus:--

"In other words, there were two modes for levy of the tax, one on the basis of the actual number of persons admitted to each show and other on the basis of the percentage of the gross collection capacity per show. As a result of the amendments introduced by Act (24 of 1984), the system for levy of tax on the

basis of number of persons actually admitted to each show was dispensed with and the tax was to be levied on the basis of the percentage of the gross collection capacity per show and different percentages were prescribed depending on the type of the theatre and the nature of the local area where it was situated. Under S. 5 an adoption was given to pay tax on the basis of the prescribed percentage fixed for a fixed number of shows in a week irrespective of the number of shows actually held. It is not disputed that the tax as it was being levied prior to January 1, 1984, i.e., before the amendment of S. 4 by Act (24 of 1984), was a tax on entertainment falling within the ambit of Entry 62 of List II. The question is whether the alteration in the said mode of levy of tax by Act (24 of 1984) has the effect of altering the nature of the tax in a way that it has ceased to be a tax on entertainments and falls beyond the field of legislative competence conferred on the State Legislature by Entry 62 of List II. In our view, the said question must be answered in the negative. The fact that instead of tax being levied on the basis of the payment for admission made by the persons actually admitted in the theatre it is being levied on the basis of the gross collection capacity per show calculated on the basis of the notional aggregate of all the payments for admission which the proprietor would realise per show if all the seats or accommodation in respect of the place of entertainment are occupied and calculated at the maximum rate of payments for admission, would not, in our opinion, alter the nature of the tax or the subject-matter of the tax which continues to be a tax on entertainment. The mode of levy based on per payment for admission prescribed under S. 4(1) prior to amendment by Act (24 of 1984) necessitated enquiry into the number of shows held at the theatre and the number of persons admitted to a cinema theatre for each show and gave room for abuse both on the part of proprietor as well as other officers incharge of assessment and collection of tax. The mode of levy of measure of the tax prescribed under S. 4(1), as substituted by Act (24 of 1984), is a more convenient mode of levy of the tax inasmuch as it dispense with the need to verify or enquire into the number of persons admitted to each show and to verify the correctness or otherwise of the returns submitted by the proprietor containing the number of persons admitted to each show and the amount of tax collected.

xxx xxx xxx

It has been urged that since both the modes of levy of tax were prevalent prior to the enactment of Act 24 of 1984, an option, should have been given to the proprietor of a cinema theatre to choose between either of the two modes and that under the impugned provisions the choice is confined to two modes of assessment under the same system of consolidated levy based on the gross collection capacity per show, one on the basis of gross collection capacity per show under S. 4(1) and other on the basis of gross collection capacity per show for a prescribed number of shows per week under S. 5. We find no substance in this contention. Once it is held that tax on entertainment could be levied by either of the two modes, viz., per payment of admission or gross collection

capacity per show, it is for the legislature to decide the particular mode or modes of levy to be adopted and whether a choice should be available to the proprietor of the cinema theatre in this regard. The Legislature does not transgress the limits of its legislative power conferred on it under Entry 62 of List II if it decides that consolidated levy on the basis of gross collection capacity per show shall be the only mode for levy of tax on entertainments.

xxx xxx xxx

We are, therefore, unable to accept the contention urged on behalf of the appellants that the impugned provisions contained in Ss. 4 and 5 as amended by Act (24 of 1984) are ultra vires the legislative power conferred on the State Legislature under Entry 62 of List II."

21. Respectfully following the view expressed by their Lordships in the above case, I have no hesitation in holding that the levy and collection of entertainment Tax on the basis of "Composition System" or the gross collection capacity of a Theatre in terms of Ss. 3-Bor 4-A of the Karnataka State entertainment Tax Act, 1958 is nevertheless a tax on Entertainment, referable to Entry 62 of the "State List" and not Entry 82 of the "Union List" as contended by the petitioners. The first ground of challenge urged by the learned counsel for the petitioners therefore fails.

22. It was next contended that the method provided for levy and collection of the tax in question by Ss. 3-B and 4A was patently arbitrary and discriminatory in character inasmuch as the said two provisions authorise the levy of a heavy burden by way of tax on the exhibitor of a film purely on the basis of a presumption as to the number of viewers of actually watching the Cinematograph show in a Cinema hall which presumption was wholly unrelated to the true facts and therefore fell foul of the guarantee contained in Art. 14 of the Constitution. It was urged that the method earlier prescribed for collection of entertainment tax by S. 3 of the Act was rational and universally acceptable and therefore ought not to have been replaced by the "Composition System" introduced under the impugned provisions. It was argued that a taxing statute was not immune from the challenge under Art. 14 of the Constitution and that once it was demonstrated that the provision was discriminatory or arbitrary, the Courts should not hesitate in striking down the same as ultra vires.

23. That taxing statutes are not wholly immune from an attack on the ground that the same infringe the equality clause contained in Art. 14, cannot be disputed. The question in each case will however be whether a Statute does actually infringe Art. 14 while classifying persons or subject matters into different categories for purposes of subjecting them to the burden of taxes. In the present case, the charge of arbitrariness and discrimination against the impugned provisions is primarily based on the fact that entertainment Tax ought to be recovered on the basis of the number of person; actually admitted to a Cinema hall for entertainment. This, contend, the learned counsel for petitioners would

be the most rational and acceptable method for levy and recovery of the tax in question. Levying or collecting entertainment Tax not on the basis of the actual number of persons admitted to a Cinematograph show but on the basis of the gross collection capacity of the Theatre to which they are admitted, it is argued was arbitrary, unfair and irrational. The question, therefore, is whether the "Composition System" of recovering the entertainment Tax is an acceptable and legally permissible method for the levy and recovery of the tax in question. An answer to this has been squarely provided by their Lordships of the Supreme Court in *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*, That was a case which arose from the State of Tamil Nadu, where entertainment Tax was upto the year 1978 charged on the actual number of tickets sold, and like the system prevalent, in Karnataka before the introduction of the impugned provisions of Secs. 3B and 4A of the Act, the owners/ exhibitors of the Cinema Theatres were required to make over the actual amount of entertainment tax collected by them for each show to the Government. With a view however to simplify the collection of tax, Secs. 5A and 5B were introduced by the 1978 amendment to the Tamil Nadu Act. By these sections the substitute method of collection of entertainment tax was introduced based upon the gross collection capacity of a Cinema Theatre, founded on the same principle as the system which is now introduced under the impugned provisions in the State of Karnataka. The exhibitors had the option of paying the tax per show or on "Weekly" basis. If they opted to pay the tax every week the exhibitors were entitled to exhibit any number of shows not exceeding 28. This system dispensed with the requirement of verification of the number of tickets sold for each show in the Cinema Theatre, but the same was not made applicable to the entire State of Tamil Nadu. Theatres situated within the Municipal Corporation of Madras and Madurai, Coimbatore and the special grade Municipalities continued to be governed by the original system of taxation namely the "Admission System". Theatres situated in all other local areas of the States were governed by the "Composition System".

24. By Tamil Nadu Act 40/1989, the Parent Act was amended by virtue whereof all the Theatres situated within the radius of 5 Kilometres from the peripheral limits of such areas were brought within the purview of the "Admission System". Consequently, Theatres situated within the 5 Kilometres belt from the areas where admission system was prevalent which were hitherto governed by the "Composition System" were brought over to the "Admission System". Theatres which fell within this 5 Kilometres belt and which were taken-out of the purview of the "Composition System" filed writ petitions before the Madras High Court, challenging the said amendment inter alia on the ground that the provisions of the amending Act were offensive to Article 14 of the Constitution. A Division Bench of the Madras High Court dismissed these petitions upholding the amendment, which judgment was taken up in appeal before the Supreme Court. "The petitioners" grievance in the appeals was ironically quite the reverse of what has been urged in these cases before me. It was contended on behalf of

the petitioners in the said case that the "Composition System" was a more beneficial system which could not have been legitimately denied to the theatre owners in Tamil Nadu, merely by reason of the fact that their theatres fell within the 5 Kilometres belt of around the Corporation and the Special Grade Municipal area around which they were situated. According to the petitioners the "Admission System" prevalent within the Corporation and Special Grade Municipalities was more harsh and cumbersome than the Composition System that was prevalent outside the said areas. Their Lordships of the Supreme Court while repelling this contention and upholding the judgment of the Madras High Court held that the classification between theatres situated within the 5 Kilometres belt and theatres situated outside the belt was not unreasonable one and that theatres within the belt were akin and comparable to the theatres situate within the areas of Corporation and Special Grade Municipalities. Referring to the "Composition System" the apex Court observed that the same was only a substitute system and the formula evolved thereunder was supposed to represent though approximately the true amount collected by an exhibitor by way of entertainment-tax. The following passage from the judgment of the Supreme Court may be gainfully reproduced :--

"Reference in this connection may also be made to the position obtaining in Andhra Pradesh as is evidenced by the judgment in writ petition No. 6404/1986 and batch dated 19th July, 1984 (sic) which is now pending appeal in his Court. In that State, the exhibitors are opposing the composition system. They want the admission system to continue. We need not go into the precise reasons why the exhibitors in Andhra Pradesh are opposing the composition system or why the Tamil Nadu exhibitors are opposing the admission system. Suffice it to say, that composition system is only a substitute system and the formula evolved thereunder is supposed to represent approximately the true amount collected by an exhibitors by way of entertainment-tax. Under both the systems, the entertainment tax collected to the State, may be that the composition system is more convenient in the sense that it obviates keeping of records, establishing their correctness and so on and so forth."

25. As already pointed out earlier in the adjoining State of Andhra Pradesh also such a system was introduced by the introduction of Sections 4, 4A and 5 of the Andhra Pradesh entertainment Tax Act 1958. The Exhibitors in the State of Andhra Pradesh made a grievance against the said system and called in question the constitutional validity of the provisions aforesaid which petitions were dismissed by the Division Bench of the said High Court upholding the constitutional vires of the provisions of the Act introducing the "Composition System". The matter was then taken to the Supreme Court where it was contended that the mode of gross collection system was discriminatory and therefore offensive of Article 14 of the Constitution of India. Their Lordships however repelled this contention holding that the mode of levy or measure of tax prescribed under Sec. 4(1) as substituted by Act 24/1984 was a more convenient mode of levy of tax inasmuch as the same dispensed with the need to verify or

enquire into the number of persons admitted to each show and verify the correctness or otherwise of the returns submitted by the exhibitors as to the number of persons admitted to each show and the amount of tax collected. Their Lordships also held that once tax on entertainment could be levied by either one of the two modes namely; 1) By payment on "Admission Method" or 2) Gross collection capacity per show, it was for the Legislature to decide the particular mode or modes of levy to be adopted and whether a choice should or should not be available to the proprietor of the Cinema Theatre in this regard. The Legislature, it was held, does not transgress the limits of its legislative power conferred on it under Entry-62 of List-II if it decides that a consolidated levy on the basis of gross collection per show shall be the only mode for levy of tax on entertainments.

26. In the State of Karnataka and Another Vs. B. Ganesha Krishna Bhat and Others etc., the constitutional validity of Sec. 4B of Karnataka Entertainment-tax Act 1958 was challenged inter alia on the ground that the same was offensive of Article 14 of the Constitution inasmuch as a consolidated levy of Rs. 2,500/- per month was imposed on each Video Parlour in the State regardless of the location of the Parlour, the number of shows exhibited by it or the seating capacity thereof. While the challenge was upheld by a single Judge of this Court, a Division Bench of this Court in an appeal filed by the State, turned down the same holding that Section 4B of the Act provided for taxation by a rough and ready Rule as a substitute for the cumbersome process earlier prescribed. This Court observed thus:--

"Section 4-B of the Act provides for taxation on video parlors in lieu of taxation provided u/s. 3 or 3A or 4A of the Act. It is a consolidated sum of charge on the activity of showing video shows instead of adopting a cumbersome process of fixing the capacity of a theatre, the number of shows held and depended on the number of shows held the tax should be assessed. A rough and ready rule is adopted on the basis of each video cassette parlour irrespective of the days of shows, the capacity or the number of shows exhibited by him. This position would be necessitated considering the huge spurt in video parlors in the state irrespective of the fact that they are either in rural or urban areas and that is one of the modes of collection of tax and less difficult for the parlour owners to pay the tax. This obviates the necessity of maintaining account books issue of tickets and the periodical visits of the officers to the parlors and the procedure for assessment. Thus, this measure adopted by the legislature therefore cannot be stated to be unreasonable."

27. A conspectus of the above judgments therefore leads to the conclusion that the levy of entertainment-tax is permissible both on the basis of the "Admission" as also by adopting the "Composition System". The very fact that the levy does not correlate to the number of persons actually admitted to a Cinema or a Video Parlour for entertainment, does not by itself render the same unfair, irrational or discriminatory so as to offend Article 14 of the Constitution. The system is

devised by the legislature on the assumption that the formula prescribed for calculating the amount of tax payable by the exhibitor approximately represents the tax collected on each show by the exhibitor. This system has the advantage of doing-away with the cumbersome process of verification of returns, checking the number of persons actually admitted to each show and the amount of tax collected by the exhibitor. It is a system which has been preferred over the "Admission System" on account of its rough and ready method thereby avoiding not only harassment to the exhibitors but also reducing the chance of leakage of revenue and consequent complications. The "Composition System" of levy and collection cannot therefore be said to be something alien to the known and recognised modes of collection of entertainment tax. As a matter of fact, this system has come to stay in the States of Kerala, Andhra Pradesh and Tamil Nadu, and has been treated to be a more beneficial system of taxation than the "Admission System" earlier prevalent. The very fact therefore that the exhibitors incur their liability to pay entertainment-tax not by reference to the number of viewers actually admitted to a Cinema-hall but on the basis of the gross collection capacity of the theatre, does not make the system so repulsive, irrational or unacceptable that the same should be struck down as ultra vires of Article 14 of the Constitution.

28. It was next argued by the learned counsel for the petitioners that the provisions of Secs. 3B and 4A, operated harshly and rendered the exhibitors liable to pay entertainment tax out of their own pocket, in case the theatres owned by them were running anything below 70% of occupancy per show. They in this regard relied upon the statements of calculations enclosed with their writ petitions to demonstrate that the gross collections would be always less than the tax liability in case the shows were not running with a minimum of 70% occupancy. Such a situation contended the learned counsel could not be countenanced by law and clearly made the impugned provisions wholly arbitrary and irrational hence offensive to Art. 14 of the Constitution. The argument no doubt sounds attractive on its face value, but does not survive a closer look. The reasons for saying so are not far to seek. In the first place, the petitioners have not placed any material on record to firmly establish the correctness of the factual matrix on which they are building the edifice of their argument. In other words, except enclosing a statement suggesting the gross collection in relation to the percentage of occupancy they have not made any attempt to place on record any cogent material on the basis of which the figures, furnished can be accepted and made a basis for any serious exercise testing the Constitutional vires of the provisions in question, secondly as observed by their Lordships of the Supreme Court, the provisions bring in the composition method of charging entertainment-tax, on the basis of a certain formula which approximately represents the entertainment-tax collected by the exhibitor. What is important is to bear in mind that the composition method does not claim or purport to recover the exact amount which is collected by the exhibitor from the Cinematograph. The method is only an approximation which nearly represents the amount that the exhibitor

is supposed to have collected. This method thus has its shortcomings but, looking to the fact that the legislature enjoys a certain amount of latitude in choosing the method by which the taxes are imposed and collected, the same has been upheld by the Supreme Court, keeping in view the fact that this method is more convenient, dispense, with the need to verify the returns submitted by the exhibitors and helps plugging the leakage in revenue which was a necessary evil accompanying the admission system being so much admired by the petitioners, in these writ petitions. The very fact, therefore that while providing the method of approximation the legislature, starts with a certain assumed occupancy of the theatres running Cinematograph shows, can be no reason for dubbing the system as irrational or unfair as urged by the petitioners. It is true that even though theatres situated in less populated places, the rate of tax is calculated applying a lesser multiple of percentage this multiple rises to as high as 33% in the case of theatres located in cities and towns with more than 10 lakhs population. The result is that for theatres in bigger cities and towns the break even percentage of occupancy may be higher in comparison to smaller towns and villages. But as to what should be the ideal multiple to strike a reasonable balance between, the occupancy of a theatre and the tax to be recovered from it is a matter which in the very nature of things would require a detailed study based on facts and figures, location and potential of the theatre concerned, and the past experience, which study this Court is ill-equipped to conduct or embark upon. These are matters which legitimately fall in the domain of the law-makers, who are supposed and in fact presumed to have taken them into consideration while enacting the law.

29. The Legislature is presumed to be supremely wise. Its laws are directed against problems made manifest by experience. Its discriminations are based on rational differentia and it is presumed to be aware of the need of the times and the necessity behind the making of laws. It is precisely for these reasons that there is a presumption in favour of the Constitutional validity of a Statutory provision. The burden to prove that any such provision is unconstitutional either because the same is in excess of the legislative competence of the legislature enacting it or because the same offends any fundamental or other constitutional right, lies on the person challenging the vires of the provision. This burden is heavier in cases involving Taxing Statutes, where the petitioners assailing any such provisions, are supposed to discharge the same satisfactorily by placing all such facts and material on record as would enable the Court examining the validity of the provisions to bring into bold relief the crucial, factual or other aspects of the case, on which would turn the question of the validity of the provision. While the Courts are not hesitant let alone reluctant in examining a challenge to the constitutional validity of a statutory provisions, they insist upon not only proper pleading but adequate proof in support of such challenge so as to displace the initial presumption of constitutionality that stands by such a provision. This burden has not been discharged by the petitioners in the instant case at least in so far as their grievance that the provisions of Sections 3B and

4B of the Act, operate so harshly as to make the same irrational and arbitrary and therefore offensive to the Article 14 of the Constitution. The burden which the petitioners were required to discharge in this case was no doubt heavy for besides the presumption ordinarily available" to a statutory provision, the fact that the apex Court had in the two cases referred to earlier accepted the "Composition Method" as a permissible mode of collection of entertainment tax, substantially reduced the area of a possible debate on the wisdom or "permissibility" of such a system. The apex Court having in principle accepted the permissibility of the levy and collection of entertainment tax on the basis of the "Composition System" the petitioners were duty bound to demonstrate that the system so approved by their Lordships of the Supreme Court operated so harshly and unfairly as to make it wholly offensive to reason and common sense or to deprive the levy and the collection of the character of being a tax on entertainment. In this endeavour, the petitioners have not succeeded nor indeed was any serious attempt made on their behalf to discharge the burden that lay on them. I have therefore no option but to reject the plea raised by the petitioners notwithstanding the fact that the same was urged rather tenaciously, before me.

30. It was then contended by the learned counsel for the petitioners that the "Composition Method" as envisaged under the impugned provisions of Secs. 3B and 4A of the Act, was legally unsustainable as the same was discriminatory in character. They urged that the basis of the classification for imposition of different rates of entertainment tax was irrational and that a classification based entirely on the population of the town or the City where the Theatre was situate, was unsound and offensive to Article 14 of the Constitution. An attempt was made by them to distinguish the judgment of the apex Court in Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, on the ground that in the said case, the Supreme-Court was dealing with the provisions of the Andhra Act where the classification of theatres was based not only upon the local body, within whose territorial limits, the theatres were situate but also on the basis of - the type or the class of the theatres. They argued that theatres have not been classified in different categories for purposes of imposition of different rates of taxes in terms of the impugned provisions with the result that unequals are being treated equally which is yet another form of hostile discrimination offensive to Article 14 of the Constitution.

31. Article 14 of the Constitution embodies one of the most valuable and cherished guarantees available to the citizens of this country. Its scope and content has been the subject matter of numerous judgments of Supreme Court. Reference to all these judgments is in my opinion unnecessary for it is now well settled that what Article 14 forbids is class legislation and not reasonable classification, for the purposes of legislation. In order however, that any such classification satisfies the requirement of Article 14 it must fulfill two conditions, viz., (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left

out of the group., and (2) that the differentia must have a rational relation to the object sought to be achieved, by the statute in question. This has been the consistent exposition of the true content and meaning of Article 14, by numerous judgments of the Supreme Court, starting with the Constitution Bench judgment of the apex Court in *Budhan Choudhry and Others Vs. The State of Bihar*, where their Lordships explained the true meaning and scope of Article 14 in the following words:

"The provisions of Art. 14 of the Constitution have come up for discussion before that Court in a number of cases, namely, *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, (B) *The State of Bombay and Another Vs. F.N. Balsara*, (C), *The State of West Bengal Vs. Anwar Ali Sarkar*, (D), *Kathi Raning Rawat Vs. The State of Saurashtra*, (E), *Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay*, (F). *Syed Qasim Razvi Vs. The State of Hyderabad and Others*, (G), and *Habeeb Mohamed Vs. The State of Hyderabad*, (H). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure."

32. The above enunciation of the true scope and content of Article 14 has been reaffirmed by the apex Court in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and numerous subsequent judgments in which the view expressed in the aforesaid two judgments have been considered and reiterated. In the later judgment. Chief Justice S. R. Das speaking for the Constitution bench of the apex Court, identified the following propositions as well established, or the authority of the earlier judgments of that Court:

"(a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the legislature understands and correctly

appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporation to hostile or discriminating legislation. The above principles will have to be borne in mind by the Court when it is called upon to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws."

33. I may gainfully quote the following passage from the judgments of their Lordships of the Supreme Court in *Gauri Shanker and others Vs. Union of India and others*,

"It is implicit from the above, that equals should not be treated unlike and unlike should not be treated alike. Likes should be treated alike. It is settled law that in giving effect to the said salutary principle, a mathematical precision is not envisaged and there should be no fanatical or doctrinaire or wooden approach to the matter. A practical or realistic approach should be adopted. It is open to the State to classify persons or things, or objects, for legitimate purpose."

34. In so far as taxing statutes are concerned the Supreme Court has in a large number of cases held that such statutes are not wholly immune from an attack on the ground, that they infringe the equality clause in Article 14, although the courts are not concerned with the policy underlying a taxing statute nor even with the question whether a particular tax should have been imposed or could have been imposed in a different way or in a way that the Court might think more just and proper. The trend of the later judgments of the Supreme Court however, show that in regard to taxing statutes the Courts have conceded a greater latitude to the legislature, both in the matter of classification of the persons and subject as also to the mode and the methods of recovery of taxes from them. Reference in this connection may be made to only 3 judgments, viz. *Elal Hotels and Investments Limited and Others Vs. Union of India*, *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, and *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*,

35. In *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, their Lordships observed thus:

"It is not in dispute that taxation laws must also pass the test of Art. 14. That has been laid down by this Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, But as observed by this Court in *East India Tobacco Co. Vs. State of Andhra Pradesh*, in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Art. 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

To the same effect is the view taken in *Elel Hotels and Investments Limited and Others Vs. Union of India*, where their Lordships held as follows:

"It is now well settled that a very wide latitude is available to the legislature in the matter of classification of objects, persons and things for purposes of taxation. It must need to be so, having regard to the complexities involved in the formulation of a taxation policy. Taxation is not now a mere source of raising money to defray expenses of Government. It is a recognised fiscal tool to achieve fiscal and social objectives. The differential of classification presupposes and proceeds on the premise that it distinguished and keeps apart as a distinct class hotels with higher economic status reflected in one of the indicia of such economic superiority. The presumption of constitutionality has not dislodged by the petitioners by demonstrating how even hotels, not brought into the class, have also equal or higher chargeable receipts and how the assumption of economic superiority of hotels to which the Act is applied is erroneous or irrelevant."

36. In *Sri Srinivasa Theatre and Others Vs. Government of Tamil Nadu and Others*, reference where to has been made in the earlier part of this judgment also, their Lordships relying upon the aforesaid judgments observed thus :

"We do not mean to say that taxation laws are immune from attack based upon Article 14. It is only that Parliament and legislatures are accorded a greater freedom and latitude in choosing the persons upon whom and the situations and stages at this greater latitude has been recognised in USA and UK even without resorting to the concepts of equality before law" or "the equal protection of laws" --as something that is inherent in the very power of taxation and it has been accepted in this country as well (see in this connection the decision of Subba Rao, C.J., (as he then was) in *Gorantia Butchayya Chowdary and others Vs. The State of Andhra (now Andhra Pradesh) and others*, where the several US and English decisions have been carefully analysed and explained). In the context of

our Constitution, however, there is an added obligation upon the State to employ the power of taxation -- nay, all its powers to achieve the goal adumbrated in Art. 38."

37. It is therefore fairly well settled that even when a taxing statute is not immune from a challenge under Article 14 of the Constitution, the legislature has a greater latitude in classifying the persons, whom it decides to tax the extent of tax it decides to impose or the subjects or the activity which it brings within the tax net. It therefore follows that while examining the constitutionality of a classification made by a statute, the Court must constantly keep in mind that, the question of classification is primarily one of legislative judgment, and does not ordinarily become a judicial question. The Court's approach in such a situation has therefore to be cautious and pragmatic rather than doctrinaire or wooden. I may in this connection gainfully quote the following passage from the judgment of the Lordships of the Supreme Court in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*,

"Certain principles which bear upon classification may be mentioned here. It is true that a State may classify persons and objects for the purpose of legislation and pass laws for the purpose of obtaining revenue or other objects. Every differentiation is not a discrimination. But classification can be sustained only if it is founded on pertinent and real differences as distinguished from irrelevant and artificial ones. The constitutional standard by which the sufficiency of the differentia which form a valid basis for classification may be measured, has been repeatedly stated by the Courts. If it rests on a difference which bears a fair and just relation to the object for which it is proposed, it is constitutional. To put it differently, the means must have nexus with the ends. Even so, a large latitude is allowed to the State for classification upon a reasonable basis and what is reasonable is a question of practical details and a variety of facts which the court will be reluctant and perhaps ill-equipped to investigate. In this imperfect world perfection even in grouping is an ambition hardly ever accomplished. In this context, we have to remember the relationship between the legislative and judicial departments of Government in the determination of the validity of classification. Of course, in the last analysis courts possess the power to pronounce on constitutionality of the acts of the other branches whether a classification is based upon substantial differences or is arbitrary, fanciful and consequently illegal. At the same time, the question of classification is primarily for legislative judgment and ordinarily does not become a judicial question. A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judiciary cannot rush in where even the legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation."

38. Let us now examine the provisions of Sections 3B and 4B of the Act, in the context of the principles laid down in the judgments mentioned above. A plain reading of the provisions of the aforesaid two Sections would show that theatres

for purposes of rate of tax payable by them have been classified on the basis of their location in a particular village, town or city. It is further apparent that theatres located in bigger towns with more population have been subjected to a higher rate of tax, in comparison to theatres located in smaller towns or villages. For theatres in villages the maximum rate of tax is 15% which gradually rises higher depending upon the population of the city or town where the same is located, and goes upto 33% in case the theatre is located in a town or city which has a population of more than 10 lakhs. The question then is whether a classification made on the basis of population of the village, town or the city where the theatre is located is a valid and permissible classification for purposes of imposing a different rate of tax. In other words, the question is whether a classification based on population of the place where a theatre is located is a valid classification within the meaning of Article 14 of the Constitution.

39. Learned Counsel appearing for the petitioners contended that a classification based entirely on the population of the village, town or the city where the theatre is situated is not a valid or a proper classification. I see no substance in this argument whatsoever. The reasons are not far to seek. The rate of tax which an exhibitor owning or running a theatre should be subjected to will depend upon the potential of the place where the theatre is located. In other words, a theatre located in a town has a better potential on account of the population to which it provides entertainment, than a theatre located in a village which has, if I may use the expression a much reduced catchment area. Similarly, a theatre situated in a city with a higher population or a population beyond 10 lakhs is more advantageously placed and therefore has the potential of running houseful shows of entertainment and thereby will have the potential and the capacity to collect a much higher amount of entertainment tax in comparison to a theatre situated in a smaller place or in a village. Theatres situated in towns and cities with a particular population are therefore a class by themselves. Any such classification on the basis of the locational advantage or disadvantage cannot be said to be an unreasonable, imaginary or illusory classification so as to be offensive to Article 14 of the Constitution. Such a classification is intelligible and based on a rational differentia. Theatres situated in villages with less than 15000 population are a class by themselves, and so are the theatres situate in towns and cities, depending upon their population. That is so because, the capacity of these theatres to collect entertainment-tax is directly proportional to the population of viewers residing in any such town or city. Theatres in bigger towns and cities have greater potential and prospects of collecting a higher amount of tax not only because of the population, which these theatres cater to, but also because of the floating population which visits these towns and cities. Such a classification cannot therefore be found fault with.

40. The next question then is whether the classification made has any nexus with the object sought to be achieved by the Act. The object which the Act seeks to achieve is to recover entertainment-tax from the exhibitors of cinematograph shows on the basis of the gross collection capacity of their theatres. The gross

collection capacity would in turn have a direct correlation with the capacity of the town or the city where the theatre is located to provide a higher potential of viewers so as to enable the theatre owner or the exhibitor to run the cinematograph shows with the higher percentage of occupancy in the same. There is therefore no gain said that a theatre situated in a city with a population of more than 10 lakhs has a higher potential of collecting a higher amount of entertainment-tax than a theatre situated in a village, who on account of much lesser population of the place where it is located has a proportionately lesser opportunity of collecting entertainment-tax. The rate of tax imposed by Sections 3(B) and 4(A) of the Act is thus directly related to the locational advantage or disadvantage being enjoyed or suffered by a particular theatre. This clearly establishes a nexus between the object which the Act seeks to achieve and the classification made by the impugned provisions. It therefore follows that the provisions of Secs. 3(R) and 4(A) do not make a hostile classification offensive to Article 14, as argued by the petitioners.

41. Learned counsel for the petitioners, however, submitted that there was a possibility and according to them a dire need for a further classification among the theatres for purposes of imposing different rates of entertainment-tax, on different theatres. They contended that theatres situated within a city could not be treated alike as the locational and other advantages of each theatre in comparison to other is different. It is submitted that a theatre situated in the peripheral area of a city would not have the same advantage, opportunity or potential of collecting entertainment-tax as a theatre situated in a centre of the city may have. They also contended that a theatre which is not Air-conditioned may not have the same potential or the opportunity of collecting the entertainment-tax as a theatre which is Airconditioned. A further classification of theatres was therefore imperative, contended the learned counsel, if the same were to be held to be constitutionally valid. I see no substance even in this submission of the learned counsel. The very fact that a further classification or a micro classification was possible in a given situation which has not been made by the legislature does not necessarily lead to the conclusion that the classification already made is imperfect. In this imperfect world perfection is an ambition rarely accomplished. To demand a classification which would be perfect to the last farthing is therefore Utopian. This is particularly so in matters of taxation; where the very nature of the classification proceeds on an assumption or approximation which can hardly ever be capable of a mathematical precision. To suggest that the classification for purposes of the rate of tax to be levied should be true to the advantages or disadvantages being suffered by each and every theatre whether by reason of the distance at which it is located or the facilities or comforts if additionally provides, is to demand a virtual impossible feat from the legislature. It is precisely for all these reasons that the law allows to the legislature a greater latitude in matters relating to taxing statutes. That a further classification was possible but has not been made does not in itself lead to the inference that the classification made is incomplete or unsustainable -- is much

too well settled a proposition to need any authority, reference may all the same be made to the judgment of the Supreme Court in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, where their Lordships observe thus :

"Bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle. Another proposition which is equally settled is that merely because there is room for classification it does not follow that legislation without classification is always unconstitutional. The Court cannot strike down a law because it has not made the classification which commends to the Court as proper. Nor can the legislative power be said to have been unconstitutionally exercised because within the class a sub-classification was reasonable but has not been made. The modern State, in exercising its sovereign power of taxation, has to deal with complex factors relating to the objects to be taxed, the quantum to be levied, the conditions subject to which the levy has to be made, the social and economic policies which the tax is designed to subserve, and what not. From the judicial inspection tower the Court may only search for arbitrary and irrational classification and its obverse namely, capricious uniformity of treatment where a crying dissimilarity exists in reality. Unconstitutionally and not unwisdom of a legislation is the narrow area of judicial review. Case law discussed."

42. In *State of Karnataka and Another Vs. B. Ganesha Krishna Bhat and Others etc.*, while upholding a uniform levy of Rs. 2500/- on video shows, a Division Bench of this Court, held that a levy could not be struck down simply on the ground that there was scope for further classification which the legislature has not made. This Court opined thus:

"In the present case, the Act classifies all video parlors into one category and treats them alike apart from the ordinary cinematograph shows exhibited by theatres-- permanent, semi-permanent or touring. The learned counsel appearing for the respondents admitted this classification between theatres showing ordinary cinematograph films on the one hand and video parlors on the other as reasonable. The only question for our consideration is whether further classification is required depending upon the population in an area or the size of the town or nearness to the city etc. As stated above, absence, of further classification on the ground that there is scope for further classification the Courts cannot strike down levy. Flat rate of tax as held in *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, and *Avinder Singh and Others Vs. State of Punjab and Others*, not per se discriminatory.

Section 4-B of the Act provides for taxation on video parlors in lieu of taxation provided under S. 3 or 3A or 4A of the Act. It is a consolidated sum of charge on the activity of showing video shows instead of adopting a cumbersome process of fixing the capacity of a theatre, the number of shows held and dependent on the

number of shows held the tax should be assessed. A rough and ready rule is adopted on the basis of each video cassette parlour irrespective of the days of shows, the capacity or the number of shows exhibited by him. This position would be necessitated considering the huge spurt in video parlors in the State irrespective of the fact that they are either in rural or urban areas and that is one of the modes of collection of tax and less difficult for the parlour owners to pay the tax. This obviates the necessity of maintaining account books, issue of tickets and the periodical visits of the officers to the parlors and the procedure for assessment. Thus, this measure adopted by the legislature therefore cannot be stated to be unreasonable."

An argument similar to the one made by the petitioners in this case was made in Venkateshwara Theatre Vs. State of Andhra Pradesh and Others, also before then Lordships of the Supreme Court. The same was however repelled by the Court. I have therefore no hesitation in rejecting the argument advanced on behalf of the petitioners, nor does in my opinion the absence of a further classification of the theatres, render the classification otherwise made in Ss. 3B and 4A unconstitutional. I may at this stage gainfully quote the following passage, from the judgment of Venkatachalaiah,),, as his Lordship then was in B.P. Automobiles and Others Vs. State of Karnataka and Another, stating the approach which a Court has to adopt, while examining the question of constitutional vires of an enactment. His Lordship observed thus:

Even if there is a doubt in the mind of the Court in regard to a question of constitutionality, it must be resolved by upholding constitutionality. Thomas Cooley (A Treatise on the Constitutional Limitations, page 182) says :

"It has been said by an eminent jurist, that when courts are called upon to pronounce the invalidity of an Act of legislation, passed with all the forms and ceremonies requisite to give it the force of law, they will approach the question with great caution, examine it in every possible aspect, and ponder upon it as long as deliberation and patient attention can throw any new light upon the subject and never declare a statute void, unless the nullity and invalidity of the Act are placed in their judgment beyond reasonable doubt. A reasonable doubt must be solved in favour of the legislative action, and the Act be sustained."

That takes me to the argument of Mr. Sridharan, learned counsel appearing for some of the petitioners, that the continuance of the provisions of Sec. 3 of the statute book, means that the same continues to be applicable to cinematograph shows in cinema-halls. He argued that the term entertainment-tax has been defined by R. 3(f) as a tax payable under S. 3 of the Act, which leads to the inference that the charging section continues to be S. 3 and therefore, introduction of Ss. 3B and 4A notwithstanding, the cinematograph show continue to be governed by the said provision. Any other interpretation, contended the learned counsel, would make the Act otiose, and should therefore be avoided. I am not impressed by this submission of the learned counsel. Section 3B starts with a non obstante clause and carves out a special provision, for cinematograph

shows in cinema theatres. The said provision has therefore to be read as a proviso to S. 3 which would continue to serve the function of a charging section subject to the further provision contained in Ss. 3B and 4A. So read, there is no anomaly or incompatibility in the provisions of Ss. 3, 3B and 4A, nor does the insertion of the later two provisions, make the Act or the scheme thereunder unworkable.

In the result these petitions have no merits, and are hereby dismissed, but without any orders as to costs. The interim orders granted in all these cases, shall stand vacated forthwith.

43. Petitions dismissed.