

(1994) 02 KAR CK 0004
In the Karnataka High Court
Case No : W.A. No. 344 of 1994

Karnataka State Cable T.V. and Dish Operators Welfare
Association

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Constitution of India, 1950 — Article 301, 304
Karnataka Entertainment Tax Act, 1958 — Section 4 (c)

Citation : (1994) ILR (Kar) 741 : (1994) 38 KarLJ 295

Hon'ble Judges : S.B. Majmudar, C.J; N.D.V. Bhat, J

Bench : Division Bench

Advocate : N.R. Nagaraj, for the Appellant;

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J

1. This Writ Appeal is taken out by the appellant original Writ petitioner, who is running a Cable TV and Dish Antenna operator's business. He is receiving signals from the satellite by way of dish antenna and then is transmitting the same through cables to various television sets, the subscribers of which get the benefit of reproduction of the signals on their TV sets and in which the programmes are transmitted to them by way of Dish Antenna and Cable TV. He also transmits signals of pre-recorded cassettes replayed through his V.C.R./V.C.P, so that the viewers can see the pictures on their T.V. sets as pre-recorded in those cassettes. The appellant charges Rs. 50/- each from his subscribers per month for enabling them to enjoy this benefit. The State of Karnataka introduced Section 4(c) to the Karnataka Entertainment Tax Act, 1958 (for short, the "Act"), which provided for levy of Entertainment Tax on the Cable T.V. and Dish operating establishments in the State as under:

i) providing entertainments through antenna and cable television exclusively - Rs. 20/- per month per connection.

ii) providing entertainments through cable television exclusively - Rs. 15/- per month per connection

provided no tax shall be payable under these sections if the period of connection holder in any month is less than fifteen days.

It is this Section that was brought in challenge before the learned single Judge by the appellant. Various contentions were raised centering round the legality of the said provision. The learned Judge after considering these contentions and hearing the concerned parties repelled all the contentions and upheld the vires of the said Section and dismissed the Writ Petition. This is how the appellant is before us in this Appeal.

2. It may be noted that the learned single Judge disposed of a batch of Writ Petitions raising similar contentions. The appellant's Petition is W.P.No. 31118/93. All those Writ Petitions were dismissed and the common challenge to Section 4(c) of the Act was repelled.

3. In support of this Appeal, learned Counsel for the appellant raised the following contentions for our consideration:-

i) Section 4(c) of the Act is beyond the competence of the State Legislature, to enact;

ii) Levy of Rs. 20/- per month by way of entertainment tax as per Section 4(c)(i) of the Act is arbitrary and confiscatory in nature;

iii) The said section ex facie could not have been enacted by the Legislature as it has nothing to do with entertainment;

iv) The said section discriminates the cable TV operators in Karnataka State who are receiving signals from the satellite as compared to Doordarshan which is Government of India undertaking the activity of which is not subjected to any such tax though Doordarshan is also said to have been providing entertainment to the viewers of Doordarshan programmes on the TV sets in their drawing rooms;

v) Section 4(c) of the Act is violative of Articles 301 and 304 of the Constitution of India;

vi) Section 4(c) of the Act will also fail on the test of Article 304(c) of the Constitution as the procedure required therein is not followed while enacting the said Section and lastly;

vii) The proviso that no tax shall be paid if the period of connection holder in any month is less than 15 days is arbitrary, as if a person holds connection for 16 days or more he will have to pay the tax. But if the connection given is for less than 15 days he will not have to pay tax and therefore the proviso is hit by Article 14 of the Constitution.

4. We shall deal with the submissions seriatim. So far as the legislative

competence is concerned, we may note that there is Entry 31 in List-1 which gives exclusive jurisdiction to enact laws on the topics covered by the Entry. List - I of VII Schedule to the Constitution provides for Entry-31, which deals with Posts & Telegraphs, Telephone, Wireless, Broadcasting and other like forms of communication. This Entry gives power to the Parliament to legislate on these topics which deal with controlling and functioning of Posts and Telegraphs, Wireless, Broadcasting etc. It cannot be disputed that in a way the dish antenna will be a form of communication that can be covered by Entry regarding wireless and therefore Indian Telegraph Act, may also apply and the procedure required for getting licence under that the Act may have to be followed by Cable TV operators, but the moot question is whether the State Legislature can enact a provision regarding Entertainment Tax when entertainment is generated by the use of such wireless apparatus. For that, we will have to turn to List II of the State List; Entry 62 therein deals with taxes on luxuries, including taxes on entertainments; betting and gambling. All sorts of entertainments can be covered by this Entry. Such legislation can be enacted under Entry 62 by the State Legislature. Section 4(c) of the Act, in its pith and substance, seeks to tax entertainment made available to the subscribers of Cable T.V connections who in their own drawing room enjoy the programmes which are sent to them from the signals channelised by the Dish antenna and through Cable network attached to their TV sets. It cannot be disputed that the entertainment which the customer receives prompts him to make monthly subscription of Rs. 50/- to the appellant. This legislation cannot be said to be dealing with regulation of Telegraph or Broadcasting which would be covered by Entry 31 of the Union List. It may be that the appellant's activity may get covered by Telegraph Act falling within Entry 31 in the Union List. Hence he may have to follow the licencing procedure under the Central Act. But it is well settled that one and the same person may be subjected to different taxes and procedures under different laws enacted under different legislative Entries. That would not mean that the legislation can only be covered by the Union List and the State cannot legislate on the topic covered by Entry 62; if any entertainment is generated by the use of wireless apparatus. So far as entertainment tax is concerned, it is squarely covered by Entry 62 of the State List only and not by Entry 31 of the Union List. The first contention is therefore, rejected.

5. Coming to the second contention, it is difficult to appreciate how tax of Rs. 20/- per month for entertainment made available to the subscriber for the whole month through his T.V. set in his drawing room can be said to be in any way exorbitant or arbitrary in nature. It is true that the appellant is charging Rs. 50/- and will have to pay Rs. 20/- by way of tax. But that does not mean that he cannot pass on that burden to his customer by enhancing the subscription fee from Rs. 50/- to Rs. 70/- per month if he so likes. Learned Counsel submits that if the monthly subscription is increased the number of customers will be reduced. But that is an occupational hazard which cannot be avoided. It is for him to win the confidence and goodwill of the customers that they do not feel the pinch of

Rs. 20/- more if they want to have the entertainment for the whole month through the services given by the appellant. Consequently, it is not possible to agree with the second contention.

6. So far as the third contention is concerned it was submitted that there is no entertainment at all involved in the activity carried on by the appellant. It is difficult to appreciate this contention also. The appellant does receive signals from Dish antennae, then by way of Cables he transmits them to various TV sets to his subscribers who can enjoy the benefit thereof in their drawing room. It cannot be disputed that the Cable TV subscribers view the programmes which cover cinematographs, other variety entertainment programmes, music programme, pre-recorded video cassettes containing all sorts of pictures which can be viewed on the TV set, through this infrastructure of the appellant. Learned Counsel submitted that this is more informative in nature. According to him, programmes which are of informative or educative nature do not partake the character of entertainment. Even this contention cannot be accepted for the simple reason that entertainment or the pleasure which a spectator may receive by witnessing the programme on the TV may come out of even an educative picture, still it will remain an entertainment for him. This contention is squarely answered against the appellant by the Decision of the Supreme Court in the case of *Geeta Enterprises and Others Vs. State of U.P. and Others*, Mr. Justice Fazal Ali speaking for the Bench observed that the word "entertainment" has been used in Section 2(3) of the UP. Act in a very wide sense so as to include within its ambit, entertainment of any kind including one which may be purely educative. Therefore, the word "entertainment" as found in Entry 62, List-11 of the State List in the Seventh Schedule cannot be narrowly construed as tried to be suggested by the appellant. The third contention is therefore to rejected.

7. So far as the fourth contention is concerned, it is difficult to appreciate how the State can be found fault with, in not taxing Doordarshan. It is obvious that private Cable TV operators form a different class as compared to Doordarshan which is run by the Union Government and forms entirely a different category. It may be true that Doordarshan may also be providing entertainment to the spectators who may witness Doordarshan telecast on the National network and which may also be transmitted to them through the Dish antennae or by direct satellite signals, still it is for the Legislature to decide as to which category of persons should be brought within the network of Entertainment Tax. All private Cable TV operators in the State are uniformly treated by Section 4(c) of the Act, Only Doordarshan is not covered. It cannot be said that Doordarshan forms part of the same category and is given a special treatment. Doordarshan can never be equated with private Cable TV operators who collect subscriptions from subscribers for carrying on their business. Consequently, no question of hostile discrimination arises in the facts of the present case insofar as Doordarshan network is not brought within this tax structure. The fourth contention is also rejected.

8. So far as the 5th contention that Section 4(c) of the Act is violative of Article 301 of the Constitution is concerned, it has to be observed that Article 301 has nothing to do with the present controversy. Article 301 of the Constitution provides for freedom of trade, commerce and intercourse and lays down that subject to the other provisions of this part, trade, commerce and intercourse through-out the territory of India shall be free. When we asked the learned Counsel to show us as to how Article 301 can get attracted, he said that the signals coming from satellite in open sky travel over various parts of the Country comprising of different States and ultimately may get concentrated and reflected through the Dish antenna in Karnataka State and get transmitted ultimately till they repose in the television set of the customer and therefore there is an element of inter-State commerce. To say the least, this argument is totally far fetched and miles away from the network of Article 301. There is no inter-State trade or commerce involved in this transaction. Section 4(c) of the Act, has nothing to do with and there is also no remotest chance thereunder to do anything with inter-State trade or commerce. So far as Article 304 is concerned, it says:

"304. Restrictions on trade, commerce and intercourse among States. - Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -

a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest."

This Article has also nothing to do with the nature of the activity carried on by the appellant and the impugned Section 4(c) when it seeks to impose tax on entertainment which is generated in Karnataka State itself when the subscribers enjoy the entertainment in their drawing rooms situated admittedly within Karnataka State. (Therefore Article 304 is out of picture. Consequently, the fifth submission also has no substance and stands rejected.

9. The next contention is the off shoot of the earlier contention namely that Article 304(b) was not followed. Clause (b) of Article 304 provides that no Bill or amendment for the purpose of Clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President. When Article 304 itself does not apply as we have shown above, there is no occasion for the State Legislature to follow the Proviso to Section 304(b) and to get previous sanction of the President. Therefore, this contention also has no force and the same is rejected.

10. The last submission is also to be rejected. If the Proviso to Section 4(c) is held to be bad as submitted, the appellant will have to pay Entertainment Tax

even if he provides entertainment by way of cable TV to his customers for even one day. We fail to appreciate how that improves the case of the appellant any further. This Proviso is beneficial to him, in the sense that if the appellant can show to the taxing authorities that the particular subscriber to whom he has given connection from his Cable TV network used it for only 14 days or less, then he will be out of the clutches of Section 4(c) of the Act. This is a safety valve provided to persons like the appellant and the appellant cannot afford to challenge that safety valve, if he does it, it will be at his own risk. We do not find anything wrong or obnoxious in the Proviso. The Proviso is based on a rational basis, namely, that if a Cable TV operator has given temporary connection to a subscriber who wants the benefit of this entertainment for a short time, say on account of some momentary requirement like marriage ceremony or any religious ceremony or any other temporary requirement, where he wants to entertain his guests and he himself does not want it on regular basis, then this benefit is available and that benefit is made available upto 14 days. If such connection exceeds 14 days then it would be covered by the entertainment tax at the rate of Rs. 20/- per month. It is obvious that such a cut-off date has a rational nexus with the object sought to be achieved, the object being not to tax unnecessarily those customers who take this entertainment for a short momentary period and for momentary occasion or occasions which are not to be of repetitive type. It cannot be held to be arbitrary from any sense. Therefore, there is nothing wrong in the Proviso, apart from the fact that if the Proviso fails the appellant will be worse off rather than being better off. This contention therefore fails and is rejected.

11. These were the only contentions canvassed in this Appeal. As they are devoid of substance, the Appeal fails and is dismissed.

12. However, at the request of the appellant, four more weeks' time is given to him to file objections to the demand notice before the assessing authority.