

(1989) 08 KAR CK 0002

In the Karnataka High Court

Case No : W. Ps. No's. 10966 and 12233 of 1989

Karnataka State Cine Junior Artists Association

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-08-1989

Acts Referred:

Karnataka Entertainment Tax Act, 1958 — Section 3 A, 3 C, 3 C (i) (a), 4 A (i)
Karnataka Entertainment Tax Rules, 1959 — Rule 47B

Citation : (1990) ILR (Kar) 2195

Hon'ble Judges : Rajasekhara Murthy, J

Bench : Single Bench

Advocate : S.K.V. Chalapathy and H.K. Vasudeva Reddy, for the Appellant; H.L. Dattu, HCCP for R-1 to R-3, Shivraj Patil, for R-4 and H. Rangavittalachar, for R-5, for the Respondent

Judgement

Rajasekhara Murthy, J.—The first Writ Petition (W.P.No. 10966/89), is filed by the Karnataka State Cine Junior Artists" Association, represented by its President and the second petition (W.P.No. 12233/89) is filed by the two-persons, the first of whom is a Professor of Kannada and the second is a Reader in Kannada, Vijaya College. They claimed to be interested in the advancement of Kannada -language and the interests of Kannadigas, inter alia, the promotion and encouragement of Kannada-films and the Kannada film industry in the Karnataka State.

2. Both the petitions are filed as public interest litigation and have challenged the Government Order dated 13th June 1989 granting 50% entertainment-tax under Sections 3C(i)(a) and 4A(i) of the Karnataka Entertainment Tax Act, 1958 (the Act) to the Kannada Feature Film - "SHARAVEGADA SARADARA".

3. The State of Karnataka, the Commissioner of Commercial Taxes and the Director of Information and Publicity are respondents-1 to 3 to the Writ Petition. Respondent-4 is the producer of the film; respondent-5 is the distributor of the film and respondent-6, in both the petitions, was given-up by the petitioners and the Writ Petitions are, therefore, dismissed as against him.

4. The contention of the petitioners in the first petition is that they are interested as Cine-Artists and at the same time promoting and safeguarding the interest of the technicians connected with the film industry in the State of Karnataka. The two petitioners in the second Writ Petition, though are not directly connected with the film industry as such, have challenged the Government Order, referred to above, with the sole-object of preventing Kannada films, which are not produced within the State of Karnataka from availing the concession in the payment of entertainment tax to which they are not entitled to. They have put-forward a plea and challenged the Government Order issued in this behalf granting 50% tax-concession to the film "Sharavegada Saradara", in order to safeguard the interests of the technicians and all others connected with the film industry in the Karnataka State and in the larger-interest and the welfare of Kannadigas as such.

5. In the first Writ Petition filed by the Junior-artists", the primary object as advanced by their learned Counsel is to safeguard the interests of the Junior-artists", technicians, workers and others connected with the film industry, and they have also challenged the Government Order, as a public-interest litigation with the sole-object of preventing the illegal concession being obtained by the producers who have not produced the Kannada film in the State of Karnataka.

6. The common contentions of the petitioners is that the entire production of the film - "Sharavegada Saradara" did not take place within the State of Karnataka and on the admitted facts, which are set-out in the Government Order itself, the film was not entitled to any concession u/s 3C(i)(a) of the Act. In support of this contention certain facts are prominently brought-out and pressed for acceptance in support of their challenge to the Government Order.

7. It is submitted, at the out-set, that a Certificate for public-exhibition issued by the Central Board of Film-Certification is in respect of "Sharavegada Saradara" a feature film in Kannada of 35.MM guage. Such certificate was issued on May 12, 1989, a copy of which is produced as Annexure-"A". This, according to the petitioner, has relevance and importance since it is not the 35.MM film that is granted concession but the film "Sharavegada Saradara" produced in 70.MM.

8. What is sought to be made out by the above important factual position is that after obtaining a certificate from the Government of India for the 35 MM film, the producers took/the film to Madras to get it blown-up to 70 MM film, and recording, re-recording and mixing was done at Madras. It is also asserted in the Writ Petition that only one copy of the film has been blown-up to 70 MM and released in Santosh Theatre, Bangalore, and in all other places only 35 MM film has been released. This contravention adopted by the producers for the purpose of making it appear that the film is a 70 MM production and the technical facilities for recording, re-recording and mixing are not available in Bangalore, is attacked by the petitioners a fraud on the Government.

9. So also the petitioners in the second case have made similar allegations that

with the sole intention of getting tax concession, one copy of the film was blown-up to 70 MM. with a malafide and oblique motive to get the tax concession.

10. The Government Order is thus challenged by the petitioners as an illegal order and as one made without jurisdiction by the Government thus affecting the interest of the public, in general and that of the public-exchequer, in particular which is to suffer.

11. These Writ Petitions are opposed on behalf of Respondents 1 to 3 - the State, which has passed the Government Order, the Commissioner for Commercial Taxes, who is entrusted with the administration of the Entertainment Tax Act, and the Director of Information and Publicity, who plays an important role in the scheme of the Act, since he is the authority to issue the necessary certificate on the production of which the exhibitor is expected to collect only 50% of the tax-confessional levy of tax.

12. The Writ Petitions are also stoutly opposed both on behalf of the producer-respondent-4, and the Distributor of the film, Respondent-5.

13. All the respondents have questioned the locus standi of the petitioners to the Writ Petitions, and the maintainability of the Writ Petitions as a public-interest litigation. Since this question is closely linked with the challenge made to the Government Order, I propose to deal with the preliminary-objection along with the validity of the Government Order.

14. Before dealing with the contentions urged on behalf of the petitioners, it is necessary to refer to the scheme of the Act and the relevant Section 3C and Rule 47B of the Rules.

15. Under the scheme of the Act, the object of which is to levy entertainment tax on entertainments, tax is levied on each payment for admission to an entertainment.

16. Section 3 is the charging section which provides for the rates of tax on the basis of varying charges for admission.

17. Section 3A provides for levy of surcharge of 100% on the rate of such entertainment tax.

18. Section 3C is a special provision made in respect of certain films referred to therein providing for grant of concession in the levy of entertainment tax and for total exemption to Award films.

19. The entire Section 3C is produced below for ready reference:-

"3C. SPECIAL PROVISION IN RESPECT OF CERTAIN FILMS:-

(1) Notwithstanding anything contained in Sections 3 and 3A, -

(a) in the case of a cinematograph show of a Kannada, Kodava, Konkani or Tulu film produced in the State of Karnataka the rates of entertainment tax payable

shall be one half of the rates specified therein;

(b) 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 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 therein for a period of six months from the date of the first release of such film in the State of Karnataka.

Explanation:- For the purpose of this Section,-

(a) the date of first release in the State of Karnataka shall be such date as the State Government may by Notification, specify;

(b) entertainments tax includes surcharge leviable u/s 3A.

(1A) Notwithstanding anything contained in Sub-section (1), where, a Kannada, Kodava, Konkani or Tulu film has secured after the first day of April, 1981 a best feature film award granted by the Central or any State Government or an internationally recognised award notified by the State Government, no entertainments tax shall be payable for a period of one year from such date as may be specified by the State Government;

(2) Notwithstanding anything contained in Section 3 and 3A, in the case of a cinematograph show of a film other than a Kannada, Kodava, Konkani or Tulu film which has secured after the first day of April 1981, (a best feature film award) an award granted by the Central Government or any State Government or an internationally recognised award notified by the State Government, no entertainments tax shall be payable for a period of six months from such date as may be specified by the State Government."

20. u/s 3C(1)(a), in case of a Kannada, Kodava, Konkani or Tulu film produced in the State of Karnataka the rates of entertainment tax payable for such shows, is fixed at a concessional rate of one-half of the rates specified in Sections 3 and 3A.

21. Under Sub-clause (b) 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 the censor certificate issued by the Central Board of film certification on or before the thirty first day of December 1987, the rates of Entertainment Tax payable shall be one half of the rates specified therein for a period of six months from the date of the first release of the film in the State of Karnataka.

22. Under Sub-section (1A), a Kannada, Kodava, Konkani and Tulu film has secured, after 1st of April 1981, a Best-Feature Film Award, granted by the Central or any State Government or an internationally recognised award notified by the State Government, no entertainment tax shall be payable for a period of one year from such date as may be specified by the State Government.

23. Under Sub-section (2), any film other than a Kannada, Kodava, Konkani or Tulu film which has secured, after 1-4-1981 a Best Feature Film Award, either by

the Central Government or by any State Government, no entertainment tax shall be payable for a period of six months.

24. A perusal of these special provisions referred to above, shows that the Legislature has, with a view to encourage the production of Kannada, Kodava, Konkani or Tulu films in the State of Karnataka, and for the development of the film industry in the State, has reduced the entertainment tax to one half of the rates payable on other films produced, outside the State.

25. In Sub-clause (b), the same rate of concessional levy is provided on all such films produced outside the State of Karnataka on or before 31-12-1987.

26. The provision made under Sub-clause (b), as can be gathered from the objects and reasons and fixing 31-12-1987 as the relevant date appears to have been inserted by virtue of the fact that facilities for production of a film are available within the State.

27. Before I deal with the challenge made to the validity of the Government Order, it would be appropriate to deal with the contentions urged on behalf of the petitioners and the arguments in reply by the respondents on the question of locus standi of the petitioners and the maintainability of the petitions as public interest litigation.

28. Petitioners have cited before me a number of decisions of the Supreme Court and of this Court in support of their argument.

29. Therefore, the question as to the maintainability of the petitions in the form in which and for the purpose for which they are presented before this Court, would have to be decided on the basis of the law laid down by the Supreme Court and the observations made in the various decisions arising under diverse circumstances.

30. Sri B.K.V. Chalapathy, learned Counsel for the petitioners in W.P.No. 10966/89 has relied upon the decision reported in Ram and Shyam Company Vs. State of Haryana and Others, (See: Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . Sri Bhagwati, J: (as he then was) at pages 1637 and 1638, quoting from the decision in Ramana Dayaram Shetty's case, the Supreme Court further observed:

"That the Government must act in public interest, it cannot act arbitrarily or without reason and if it does so, its action would be liable to be invalidated."

These observations were made by the Supreme Court in the context of the grant of lease of minerals under the Punjab Mines and Minerals Concession Rules framed under the Mines and Minerals Act.

31. On the facts of that case, the Supreme Court set aside the order made by the Government unilaterally accepting the highest offer by the rival bidder. The action of the Government was held arbitrary and the grant invalid.

32. A.K. Roy and Another Vs. State of Punjab and Others, quoting from Craies on Statute Law, 6th Edition, Page 263, the Supreme Court held as follows:-

"Where a power is given to do a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise."

33. Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

It was a case of licence granted to construct a cinema in Greater Bombay by the Commissioner of Police under the City of Bombay Police Act.

34. It was held by the Supreme Court that only the person vested with the authority to grant or refuse the licence for construction of a building to be used as a cinema house, was the Commissioner of Police, who had the absolute discretion, at any time, to cancel or suspend any licence which had been granted under the Rules. The Supreme Court held that the State Government had no power to interfere with the same.

35. Ramsharan Autyanuprasi and another Vs. Union of India and others,

Though the Writ Petition in that case was dismissed by the Supreme Court certain observations reproduced below made by Sri Sabyasachi Mukharji, J: in Paragraph-15 are relied upon by the petitioners.

"15.....Public interest litigation is an instrument for the administration of justice to be used properly in proper cases."

Rudraiah Raju Vs. State of Karnataka,

Quoting extensively from the Judgment of the Supreme Court in S.P. Gupta Vs. President of India and Others, this Court held:

"20.....that it is for the Courts to decide in a given case as to whether it merits interference at the hands of the Court in a Public Interest Petition....."

It would be necessary to quote from Paragraph-19A, in S.P. Gupta's case :-

"19A....If public duties are to be enforced and social collective "diffused" rights and interests are to be protected we have to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the Court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is for this reason that in public interest litigation - litigation undertaken for the purpose of redressing public injury, enforcing public duty, protecting social, collective, "diffused" rights and interests or vindicating public interest, any citizen who is acting bona fide and who has sufficient interest has to be accorded standing. What is sufficient interest to give standing to a member of the public would have to be determined by the Court in each individual case. It is not possible for the Court to lay down any hard and fast rule

or any strait-jacket formula for the purpose of defining or delimiting sufficient interest. It has necessarily to be left to the discretion of the Court, The reason is that in a modern complex society which is seeking to bring about transformation of its social and economic structure and trying to reach social justice to the vulnerable sections of the people by creating new social, collective "diffuse" rights and interest and imposing new public duties on the State and other public authorities, infinite number of situations are bound to arise which cannot be imprisoned in a rigid mould or a procrustean formula. The Judge who has the correct social perspective and who is on the same wave-length as the Constitution will be able to decide, without any difficulty and in consonance with the constitutional objectives, whether a member of the public moving the Court in a particular case has sufficient interest to initiate the action."

Relying upon these observations of the Supreme Court in the said case, the Division Bench of this Court held:

"that in a public interest litigation involving cases of arbitrary, capricious or malafide exercise of power, no narrow or pedantic view of locus standi should be taken." (Page 588).

36. Since this preliminary point is dependent upon and is inextricably linked with the challenge made to the validity of the Government Order, I will deal with that argument also.

37. Coming to the challenge made to the validity of the Government Order and the jurisdiction or competency of the Government in granting the concession to the film, the submissions made on behalf of the petitioners are these:-

- (i) the subject of extending concession to a film as contemplated in Section 3C(i)(a) is governed by the statute;
- (ii) no discretion is vested in the Government in the matter of granting of concession or relaxing the condition for grant of concession; and,
- (iii) the Government Order made solely on the basis of the Minister's assurance is contrary to law and is liable to be quashed.

38. Elaborating these contentions it is argued that Section 3C(i)(a) is, as much a charging section as Sections 3 and 3A of the Act, and provides for a concessional levy subject to the requirement of the said provision being satisfied and the rate of entertainment tax to be levied in such cases shall be one-half of the regular-rate.

39. Rule 478 framed in exercise of the powers conferred u/s 18 of the Act, provides for the procedure for claiming tax concession as per Section 3C(1)(a) or 4A(1)(a) of the Act.

We are concerned in the present: case with Section 3C(i)(a) only.

40. It is pointed out that Rule 47B was framed by the Government to take effect

from 23-8-1986 and the object of framing this Rule, it cannot be disputed, was only to give effect to and to provide for the procedure to claim and grant tax exemption u/s 3C(i)(a).

41. From a perusal of the provisions providing for exemption and the Rule made thereunder, two conditions have to be satisfied before the concession of 50% can be granted under the said provision:

- (i) the film must be produced in the State of Karnataka; and
- (ii) the proprietor claiming tax concession should produce a certificate to that effect from the authority competent to grant subsidy to such film.

42. That the authority empowered to grant such certificate is the Director of Information and Publicity, is what can be inferred from the Subsidy Rules framed by the Government and contained in the order dated 8th July 1988. Subsidy is granted by the Government to encourage production of films in Kannada and other regional language feature films in the State and for the development of the film industry.

43. The petitioners have placed strong reliance on certain facts borne out from the Government Order itself. They are:

- (i) that the entire film was not produced in the Karnataka State to be entitled for 50% concession in the Entertainment Tax payable;
- (ii) that the Director of Information and Publicity expressed his inability to give the certificate for the purpose of granting concessional rate of tax, and
- (iii) that the tax concession was granted solely on the assurance of the Minister for Information.

44. Elaborating the argument on the basis of this uncontroverted factual position, it was argued for the petitioners that the opinion of the Director who is the Competent Authority to issue the certificate has been ignored and the Government's action in relaxing the condition imposed under the Statute for claiming or granting exemption of 50% tax is without jurisdiction and made in excess of authority and highly arbitrary. The second important aspect argued with emphasis is, that the Government exercised the discretion in relaxing the condition for grant of tax concession while the Government does not possess any such discretion under the Act and the Government's action in exercising this power is, therefore, ex facie, illegal and the Government has usurped the power giving a go by to the mandatory requirement of the relevant provision in the Act to be satisfied before granting any such exemption.

45. The third challenge made to the Government Order is the way in which the Government Order was issued only to keep up the promise and assurance held out by the Minister for Information on the Floor of the Assembly in flagrant disregard of the Statutory provision.

46. It is argued by Sri Chalapathy that no discretion can be claimed by the Government contrary to the statute. It is also an admitted fact and the definite case of the Government, as seen from the Government Order itself, that the concession was extended because of the Minister's assurance.

47. On this question Sri Chalapathy has relied upon the following decisions:

Mathra Prashad and Sons Vs. State of Punjab,

That was a case which arose under the East Punjab General Sales Tax Act. Dealing with the question whether there can be a estoppel against the Statute and in that case in the context of the assurance given by the State Government in the said case in a Press-note, the Supreme Court held:

".....

There can be no estoppel against a statute. If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it chose to collect it."

48. Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others,

It was a case which arose under the Punjab Municipal Act. It is useful to reproduce the observations made by the Supreme Court made in Paragraph-50 at Page 1305:

"50. On a consideration of the decisions of this Court it is clear that there can be promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its Officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority. The Court can enforce compliance by a public authority of the obligation laid on him if he arbitrarily or on his mere whim ignores the promises made by him on behalf of the Government. It would be open to the authority to plead and prove that there were special considerations which necessitated his not being able to comply with his obligations in public interest."

The Supreme Court held, while dismissing the appeal thus:-

"Para-53. The levy of tax being for a public purpose i.e., for augmenting the revenues of the municipality as laid down in Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, the plea of estoppel is not available. The order of the Government directing the levy of octroi in pursuance of the resolution of the municipality cannot also be challenged as it is in the exercise of its statutory duty."

49. A.C. Jose Vs. Sivan Pillai and Others, Headnote (b).

That was an election appeal under the Representation of the People Act. The

order of the Election Commission directing the casting of votes under the mechanical process was challenged before the Supreme Court.

The Supreme Court held, (on the basis of the law as it stood then):

".....

(b) where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324,"

The order of the Election Commission directing casting of ballot-votes by machines in some of the polling stations was held without jurisdiction.

The Supreme Court further observed that while considering a statutory provision there can be no estoppel against a statute. (See A.C. Jose Vs. Sivan Pillai and Others,

50. Vitthalrao Mahale Vs. State of Madhya Pradesh and Others,

That was a case of an assurance given by the State Minister to establish a - health centre in certain village, the High Court held:

"that there cannot be any promissory estoppel against the State Government even assuming the allegations of the petitioner to be true. Even if the Minister had given any assurance, the State which is the final authority was not bound by such an assurance. The doctrine of estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. The Government would not be bound by the act of its officers and agents who act beyond the scope of their authority and a person dealing with the agent of the Government must be held to have notice of the limitations of his authority."

51. It was, therefore, vehemently contended by Sri Chalapathy relying on the principle of law enumerated in the above decisions, that the Minister for Information in the present case, could not have given any assurance on the floor of the Assembly and the contention that such an assurance cannot be held against the mandatory provisions of the Statute, has to be accepted.

52. In support of the arguments advanced by Sri Chalapathy, Sri H.K. Vasudeva Reddy, learned Counsel for the petitioners in W.P.Nos. 12233 of 1989 submitted that the order of the Government is, on the face of it, one made without application of mind and in flagrant contravention of the statutory provisions relating to grant of tax-concession resulting in prejudice to the interests of revenue.

53. He has also pointed out from the scheme of the Act, and in particular, Section 3A, under which the surcharge collected is required to be credited to the

Consolidated Fund of the State. He has also pointed out that u/s 17, 90% of the tax collected u/s 3, is paid to the local authority within whose jurisdiction the tax on entertainment is collected and the balance of 10% is credited to the State Government. It was, therefore, argued having regard to the object of levying the entertainment tax, that the ultimate beneficiary of the tax collected u/s 3 is the public, at large, and no discretion can be exercised by the Government on this subject, and no relaxation can be granted by the Government, as is done in the present case, except in a case where the condition precedent for the concessional tax is satisfied. It is also argued that Section 3C being a special provision and being an exception to the general provisions viz., Sections 3 and 3A should be strictly construed. Reliance was also placed on Rule 47B, which is a rule found in Part-VIII (the Miscellaneous Rules), provide for issue of a certificate for implementing 3C(1)(a) and framed for issue of a certificate by the Director of Information and Publicity.

54. The learned Counsel has also pointed out that before Section 3C was amended by Karnataka Act 22/85, all the Kannada, Kodava, Konkani and Tulu films, Irrespective of the place of production, were entitled for 50% concession in payment of tax. It was, therefore, argued, that after the amendment of the said provision by Act 22/85, production in the State is made a condition precedent and a film which is produced in the State only, is entitled to the tax concession. The learned Counsel has also adverted to the provisions of Section 7 of the Act, which provides for the exemptions and reduction in the rate of entertainment tax payable in respect of a particular class of films enumerated in the said Section and in respect of which the Government has absolute discretion.

55. The argument, therefore, that proceeds on the basis of these provisions is, that the discretion that the State Government can exercise for granting exemption or reduction in the rate of tax payable under the Act can only be traced to Section 7 of the Act, and to no other Section, much less Section 3C(1) (a).

56. The learned Counsel has cited, in support of the above contention the decisions reported in:

- (i) COMMISSIONER OF POLICE, BOMBAY v. GORDHANDAS BHANJI.
- (ii) A.K. ROY AND ANR. v. STATE OF PUNJAB AND ORS., PARA-10.
- (iii) K.N. SHIVANNA v. THE STATE OF MYSORE AND ORS., (1969) 2 Mys.L.J. 54
- (iv) Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, and
- (v) VIDYANAGAR PETTY SHOP - KEEPERS ASSOCIATION v. CORPORATION, RE:Minister" s assurance.

57. So far as the maintainability of the petition, as a public interest litigation is concerned, the learned Counsel has relied upon the decision of the Supreme

Court in Ram and Shyam Company Vs. State of Haryana and Others, , Ramsharan Autyanuprasi and another Vs. Union of India and others, and.

58. In reply to the contentions urged on behalf of the petitioners, it was argued by Sri Dattu, the learned Government Pleader, on behalf of Respondents 1 to 3 supporting the Government Order, that the Government, in exercise of its discretion, relaxed the condition for grant of exemption.

59. He has submitted that the Government on an earlier occasion granted similar exemption relaxing the condition contained in Section 3C(1)(a). He also strongly relied upon the assurance given by the Minister for Information and Tourism on the floor of the Assembly and the circumstances under which the producer was granted the permission to utilise the facilities available outside the State having regard to the special circumstances pleaded by the producer.

60. Sri Dattu also submitted that the Government which is the ultimate source of power cannot be denied the discretion to give the small relaxation of the Rules made in exercise of its discretion on the special circumstances of the case. Finally, it was argued that the ultimate beneficiaries by the concession are the public who patronise Kannada films.

61. None of these reasons appeal to me, and more so in a case like this in which the competency of the Government to grant the tax concession is challenged and strict interpretation of the taxing Statute is called for.

62. Nextly, the Government Order was sought to be supported on behalf of the producer - Respondent-4, by Sri Shivaraj Patil, his learned Counsel. The Writ Petitions were vehemently opposed both on the question of maintainability and the locus standi. The learned Counsel has cited from the Rules of Business of the Assembly and Rule 281 which deals with the assurance by the Ministers and Constitution of Committees to go into such assurances. The learned Counsel has also relied upon the decision of the Supreme Court in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and the observations of Justice Sri Khalid (in Paras 45, 58 and 59), dealing with the need for the Courts to put restrictions on themselves in entertaining public-interest litigations He has also relied upon the decision of this Court in KANTHAMMA AND ORS. v. STATE OF KARNATAKA AND ANR. 1984 (2) KLJ 271 wherein, this Court upheld the scheme for acquisition under the B.D.A. Act while dealing with Section 27 of the B.D.A. Act and the interpretation of substantial execution of the scheme for purposes of Section 27 of the B.D.A. Act.

63. It was also vehemently argued by the learned Counsel that the petitioners have not shown or established their interest in the subject-matter and have not shown the loss that would ensue to the State on account of the relaxation of the condition for granting the tax concession. It is also argued that unless the petitioners prove the actual loss occasioned on account of the tax concession, their grievance in the Writ Petitions about the loss of revenue is only imaginary and the Writ Petitions should be dismissed on this ground.

64. The learned Counsel relied upon the decision reported in Rudraiah Raju Vs. State of Karnataka, : , Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, and S.P. Gupta Vs. President of India and Others,

65. The learned Counsel also placed reliance upon the Subsidy Rules and he further submitted that those Rules must be read into and considered as part of the provisions relating to the grant of concessional rate of tax. The argument developed on the basis of the Subsidy Rules is, that the Director is vested with the discretion under the Rules to permit production outside the State and also in other matters relevant for the purpose of granting subsidy to the producer of the film.

66. It was also argued by the learned Counsel that the State Government can independently pass an order u/s 3 itself. The further argument is, that Rule 47B only empowers the Director constituting him as one other authority to issue the certificate. The learned Counsel has relied upon the decision of the Supreme Court in 1989 SCC(2) 679 Broach District Co-operative Cotton Sales Ginning & Pressing Society Ltd. v. Commissioner of Income Tax in support of his contention that the exemption provision should be interpreted liberally. Another case in the same volume found at page-676 India Cements Ltd. v. Collector of Central Excise dealing with a Trade Notice issued u/s 80P of the Companies Act is also relied upon. One other decision relied upon by the learned Counsel is: 1989 (3) SCC 345 (Feb) Collector of Central Excise v. Jayant Oil Mills, dealing with exemptions of food-products and food preparations under the Central Excise Act, for the same proposition.

67. Sri Rangavittalachar, learned Counsel appearing for Respondent-5, the Distributor of the Film has also opposed entertaining the Writ Petitions and giving any relief as prayed for. He has also reiterated that the Government is the ultimate authority in the matter of granting concession u/s 3C(1)(a) of the Act and having regard to the expenses of only 2 lakhs incurred for re-recording, etc., outside the State as against Rs. 40 to 50 lakhs spent for the entire production of the film within the State by the Producer, the Government was right in exercising its discretion taking into consideration all the facts relevant for granting the concession. He further submitted that there is no Rule or Procedure to decide in what manner the condition imposed as to "production in the Stats" should be understood for purposes of extending the concession. He has also drawn my attention to Rule 47B, which provides for production of a certificate by the Exhibitor and not by the producer. The argument of the learned Counsel is that in the absence of a rule requiring production of a certificate by the producer, the Government has rightly exercised its discretion and its executive power and in granting the tax concession.

68. He has also relied upon certain observations made in S.P. Gupta's case in support of his argument, that no public-injury is caused to the petitioners and the benefit, if at all, which flows from the tax-concession goes to the public, who patronise Kannada films. The learned Counsel has also relied upon Paragraph-20

in Rudraiah Raju's case and the guidelines laid down by this Court to interfere in a public interest litigation.

69. One other argument that requires to be noticed is, that the Government Order does not give rise to any cause of action, and, if at all, it could only be the order of the Entertainment Tax Officer giving concession that can give rise to any cause of action. On this premise, it was argued that mere quashing of the Government Order would be futile, unless, the order passed by the jurisdictional-Entertainment Tax Officer is challenged.

70. He has also supported the argument of Sri Shivaraj Patil that loss to the public exchequer is not proved nor quantified nor demonstrated by the petitioners and, hence, their allegations in this behalf, which are vague, should be rejected.

71. Finally, it was argued that the Writ Petitions, to which the Exhibitors are not made parties, are not maintainable since it is the Exhibitors who collect the entertainment tax on behalf of the Government that are affected in the event of the Government Order being quashed.

72. Having carefully considered the contentions and the arguments advanced by the learned Counsel for the petitioners and the respondents and the various decisions relied upon by both sides, I hold on the question of locus standi and on the maintainability of the Writ Petitions as public interest litigation; that the Writ Petitions are maintainable and the petitioners have locus standi to challenge the Government Order for the reasons urged in the Writ Petitions.

73. Let me now deal with the relevant provisions relating to the grant of concession in payment of entertainment tax under the Act.

74. Section 3C(1)(a) is the provision under which the films produced in the regional-languages, i.e., Kannada, Kodava, Konkani or Tulu in the State of Karnataka are levied entertainment tax at one half of the rates specified in Sections 3 and 3A of the Act.

75. In case of a regional film produced outside the State on or before 31-12-1987 the same concession of one-half of the tax is given for a period of 6 months.

76. Section 3C(1A)(1) provides for total exemption from payment of entertainment tax for a period of one year from such date as may be specified by the State Government in respect of a Kannada, Kodava, Konkani or Tulu film which has secured, after the 1st day of April 1981, a Best Feature Film Award granted by the Central or any State Government or an internationally recognised award notified by the State Government.

77. u/s (1A)(2), film other than a regional language film, which has secured a Best Feature Film Award granted by the Central Government or any State Government or an internationally recognised award notified by the State

Government, is entitled for exemption from entertainment tax for a period of 6 months.

78. The award referred to in Sub-section (1A)(1) is an award to a regional language film produced, whether in the State of Karnataka or outside the State of Karnataka. The exemption extended under Sub-section (2) is in respect of other films produced in any other language and which has secured a Best Feature Film Award.

79. We are concerned in this case with only Section 3C(1)(a) and the challenge to the Government Order in this case is; that the condition for levy of tax at one-half of the rates specified in Sections 3 and 3A has not been satisfied. To be entitled for concession of tax the condition imposed by the Act is that such regional film must have been produced in the State of Karnataka.

80. Under the scheme of the Act, entertainment tax is levied on each admission to an entertainment either at a stipulated rate on the charges for admission as per the table annexed to Section 3 or at a certain rate fixed on the gross-collection capacity depending upon the population as provided u/s 4A.

81. The charging Sections - Sections 3 and 4A provide for the rates of tax for the levy of entertainment tax and Section 3A provides for the levy of surcharge of 100% on the rate of entertainment tax levied.

82. Section 3C comes as a special provision in respect of certain films referred to therein. Section 3C before its amendment by Act 22/85 provided for levy of one-half of the rate of tax leviable under the Act on the cinematograph show of a Kannada, Kodava, Konkani or Tulu film.

Award films were exempted from payment of tax for a period of one year.

83. u/s 3C, as amended by Karnataka Act 22/85, entertainment tax is levied at 50% of the rates of tax normally charged if the condition specified for the grant of the said concessional tax is satisfied. The Award films produced in any one of the regional languages and other films are totally exempt from tax as provided u/s 3C(1A)(1) and (2).

84. Rule 47B is framed by the Government to give effect to the tax concession provided u/s 3C(1)(a). An exhibitor is required to produce a certificate obtained from the Director of Information and Publicity, that the film is produced in the State of Karnataka. The Director is constituted as the Competent Authority to issue the certificate and he is also the Competent Authority to grant subsidy to regional films produced in the State of Karnataka.

85. The Government has under the scheme for grant of subsidies imposed certain conditions for the grant. The subsidy is meant for feature films in regional languages produced in the State of Karnataka. They are contained in the Government Order No. ITY 212 PIF dated 8th July 1986. The object of grant of subsidy to Kannada and other regional language feature films is to encourage

and develop the film industry in the State and for this purpose the subsidy rules are framed by an executive order.

86. Under the subsidy Rules, a full-length Kannada-and other regional language feature film produced in colour and processed in the State of Karnataka is given a subsidy of Rs. 2,50,000/-, and for a black and white film Rs. 1,50,000/- is given as subsidy. In addition, a Kannada art or off beat film made within the State is given a higher subsidy of Rs. 3 lakhs.

87. One other condition imposed for getting the subsidy is that the film should have possessed the certificate issued by the Regional Board of Film Certification. No subsidy is payable to the films which have got done:

(a) sound - recording;

(b) re-recording;

(c) dubbing and processing

outside the State of Karnataka after 1-1-1986. This condition is applicable to all films which apply for grant of subsidy after 1-1-1986.

88. The scheme of subsidy is thus intimately connected with the tax concession given to a regional language film produced in Karnataka. The Director is the common authority, both for granting certificate on the strength of which the exhibitor is authorised to collect only 50% of the tax and for granting subsidy. The common condition that is required to be satisfied both for getting a subsidy/ tax concession is, that the film should have been produced in the Karnataka State.

89. This is the scheme of the Act providing for granting concessional rate u/s 3C(1)(a) is concerned.

90. Let me now proceed to examine whether the film "Sharavegada Saradara" satisfied the condition contained in Section 3C(1)(a) and the tax concession granted by the Government in its Order No. FD 81 CEF 1989 dated 13-6-1989 is in accordance with law governing the grant of concession?

91. The relevant provisions of the Act referred to above are self-contained provisions governing the grant of tax concession to a regional language film.

92. The questions that arise for decision out of the pleadings and the arguments advanced by both parties are:-

(i) whether the Government has authority or competence to grant the concession u/s 3C(1)(a) of the Act? and

(ii) whether the Government Order is justifiable as a valid Order made in accordance with law?

93. Some arguments are advanced by the Counsel for the parties to the Writ

Petitions as to how "the production of the film" is to be understood in the context of the said expression used in Section 3C(1)(a). In the absence of any specified material placed before me by any of the parties, it is to be understood from common knowledge, in film circle and trade, that a film is said to have been produced when it is ready for exhibition, which means and includes all technical processes necessary for its completion and is ready for screening, and has been issued a censor-certificate.

94. One other important requirement under the Cinematograph Act and the Karnataka Cinemas (Regulation) Act and the Rules frames thereunder, is that no film which is not certified as suitable for public exhibition by the Censor Board constituted by the Government of India under the Cinematograph Act, can be exhibited. In this case, what is interesting to note is that the film "Sharavegada Saradara" produced in 35 MM. guage was certified by the Board for public exhibition by its certificate dated 12th May 1989. It is only after the film is certified by the Film Board that it can apply for subsidy and tax-concession under the Act. The Director should certify that the film was entirely produced in Karnataka State and a certificate is issued by the Director to the Exhibitor of the film under Rule 47B, if the Director is satisfied about the requirement to get tax concession. Such certificate authorises the Exhibitor to collect only 50% of the tax.

95. It was argued by the learned Counsel appearing for the petitioners in W.P. 10966/89 that the producer has played fraud on the Government misrepresenting that the film was produced in 70 MM. guage and recording and re-recording, etc., was done in Madras with the permission of the Minister for Information and Tourism.

96. There is some misstatement of facts at various stages on this aspect and it is made to appear that what was produced in the State of Karnataka was a 70 MM. film and the producer had to go to Madras as certain technical processes for recording, re-recording, etc., had to be done at Madras only since according to the producer, such facilities were not available in the State at the relevant time.

97. It is unnecessary to deal with all these statements and counter-statements made by the parties for the purpose of deciding the main issue in the case. But the one relevant fact that has got to be borne in mind is that the film that was certified by the Central Board was a 35 MM. film and the film which is now granted tax concession is a 70 MM. film. Therefore, what follows from these facts is that the film which now enjoys a tax concession is not the film certified by the Film-Censor-Board under the Cinematograph Act. 98. The Director has also reported to the Government that the film-censor-certificate and the laboratory certificate presented to the Department did not indicate that it was a 70 MM. film.

99. The Government Pleader is not able to justify this apparent inconsistency and has not able to give any satisfactory explanation as to how a 70 MM. film got the exemption while the film that was certified by the Film-Censor Board was a 35

MM. film.

100. This takes me to the next question about the legality of the order made by the Government in granting tax concession which is the subject-matter of these Writ Petitions.

101. I have perused the concerned file of the Government culminating in the Government Order. I have also perused the file of the Director for Information and Publicity relating to grant of subsidy and grant of tax concession.

102. It is seen that the Director who is the Competent Authority prescribed under the Rules to grant a certificate that the film "Sharavegada Saradara" is eligible for tax concession, expressed his inability to give such a certificate.

103. The reasons and circumstances for not granting the certificate as stated by the Director, are:-

"That the producers went outside the State for recording, re-recording and mixing etc., for which technical facilities are available in the State, and that the producers never sought the permission of the Director to produce a 70 MM. film or in cinemascope."

104. On the other hand, it is seen from the file that the Director did inform the producers to avail of the facilities for recording, re-recording which are existing in the State and that they were also told that they would not be entitled to any subsidy if they did the recording, re-recording, etc., outside the State.

105. The producers, thereafter, appear to have by-passed the Director and approached the concerned Minister for permission to do four track stereophonic recording in Madras.

106. The fact remains that the producers got the recording, re-recording and mixing done at Madras along with sound-mixing and six-track coating of 70 MM. film, on the strength of the assurance given by the Minister. But, the Director has pointed out that there was no communication to him, at any time, about the assurance or oral permission given by the Minister to avail of the technical facilities at Madras.

107. However, the technical opinion of the Director was that it was obligatory under the Rules to avail of all the technical facilities existing in the State and this was a condition precedent for claiming tax exemption. Expressing his views in the matter, as stated above, the Director left it to the Government to take a decision whether to grant concession or not in those circumstances.

108. Though no exhibitor approached him for issue of the necessary certificate, it is the producer -respondent 4, who was very much in the picture and approached the Director, approached the Minister for Information and the Government seeking tax-concession.

109. The Government file reveals and unfolds certain interesting facts leading to

the grant of tax-concession. It is seen that all the concerned-authorities responsible to take a decision in the matter, including the Finance Commissioner were of the firm view that the film was not entitled to the tax concession.

110. However, the producers seem to have continued their efforts at various levels and the matter was directed to be re-examined by the Governor and thereafter a letter was addressed to Dr. Krishnamurthy I.P.S., the Director of Information and Publicity. On the basis of a fresh report received from the Director, the matter was placed before the Governor to consider the request of the producers for tax concession in view of the special circumstances pleaded. The proposal to grant concession was approved by the Governor and later ratified by the Executive-Committee.

111. This decision was taken virtually overruling the decision taken by the Director, and the Finance Commissioner taking refuge under the statement made by the then Minister for Information, Kannada and Culture and the assurance given by him on the floor of the Assembly.

112. The facts narrated above, and the circumstances under which the Government Order came to be issued lead to the irresistible conclusion that the Government Order is liable to be struck down as one made without jurisdiction. It is necessary to point out that no discretion whatever is vested in the Government under the relevant provisions of the Act and the Rules in the matter of granting tax-concession u/s 3C(i)(a) of the Act. I am impelled to observe that the Government has interfered in the discretion exercised by the statutory authority to grant concession u/s 3C(i)(a) and in the administration of the Act.

113. It is clear from the Government file that the Governor has evinced special interest in the matter and the decision to grant the tax concession was taken on his initiative.

114. Thus, by the impugned order made by the Government, the film which was not entitled to the tax concession under the Rules, according to the technical opinion of the Director of Information and Publicity, has been given the tax concession wholly on irrelevant considerations over-ruling the Director's opinion and in the absence of a certificate issued under Rule 47B.

115. It is needless to mention that this has resulted in loss of revenue, and what is more, the Government's action is sought to be justified before me vehemently.

116. I am also convinced that this Court is justified in entertaining the two Writ Petitions as public-interest-litigation in the light of the allegations made in the Writ Petitions which stand proved on all relevant and important issues.

117. The Government Order No. FD 81 CEF 1989 dated 13-6-1989 is, therefore, quashed for the above reasons.

118. The decision was pronounced by me on 1-8-1989 and the reasons for arriving at the said decision, are furnished in this Order.