

(1963) 11 KL CK 0022
In the High Court Of Kerala
Case No : A.S. No. 894 of 1960

M. Ismail

APPELLANT

Vs

Commissioner, Mattancherry Municipal Council

RESPONDENT

Date of Decision : 05-11-1963

Acts Referred:

Travancore-Cochin Local Authorities Entertainments Tax Act, 1951 — Section 2(8), 4, 5(1), 6(1)

Citation : AIR 1964 Ker 79

Hon'ble Judges : T.K. Joseph, J; T.C. Raghavan, J; S. Velu Pillai, J

Bench : Full Bench

Advocate : P.K. Kurian, for the Appellant; K.V. Suryanarayana Iyer, for the Respondent

Final Decision : Partly Allowed

Judgement

Velu Pillai, J.—The questions in this writ appeal arise on the provisions of the Travancore-Cochin Local Authorities Entertainments Tax Act, 1951. This was enacted as its preamble says, "to give power to local authorities to impose a tax on amusements and other entertainments". Section 3 of the Act which may be said to be the charging Section is in the following terms :

"Any local authority in whose local area this Act is in force may levy a tax (hereinafter referred to as the entertainments tax) at a rate not less than ten per cent, nor exceeding twenty-five per cent, on all payments for admission to any entertainment"".

Pursuant to this, the respondent, the Mattancherry Municipality, by its bye-law fixed the rate of entertainments tax at 18 3/4 per cent on all payments for admission to any entertainment. The meaning of the term "payment for admission" is in controversy. According to the respondent it connotes whatever amount is actually paid by a person for obtaining admission to the entertainment and according to the appellant, the proprietor of an entertainment called Star Talkies situated in Mattancherry, it connotes only the balance of such amount

after deducting therefrom a sum equivalent to the entertainments tax payable. The learned single Judge has accepted the contention of the respondent and dismissed the appellant's writ petition.

2. The Act has furnished a definition, though an inclusive one, of the term "payment for admission" which supports the respondent's contention. That definition is as follows:

Section 2. "In this Act, unless there is any thing repugnant in the subject or context:

* * * * (8) "Payment for admission" includes:

(a) any payment made by a person who having been admitted to one part of a place of entertainment is subsequently admitted to another part thereof, for admission to which a payment involving a tax or a higher rate of tax is required;

(b) any payment for seats or other accommodation in a place of entertainment; and

(c) any payment for any purpose whatsoever connected with an entertainment which a person is required to make as a condition of attending-or continuing to attend the entertainment in addition to the payment, if any, for admission to the entertainment".

It seems to us implicit in the definition, that payment for admission is the totality of the payment made by a person for securing admission to an entertainment, without excluding any part of it without which he would not be admitted. Entertainments to which admission is by tickets are treated as a separate category by the Act for the purpose of the levy, assessment, and collection of entertainments tax and even in this category fall cases, in which it is open to the proprietor, subject to rules, to compound the tax for a consolidated payment. Such cases of compounding apart, the present case pertains to the above category and our discussion is strictly limited to it. The material part of Section 5(1)(a) reads :

".....no person shall be admitted for payment to any entertainment where the payment is subject to the entertainments tax, except :

(a) with a ticket stamped with an impressed, embossed, engraved or adhesive label issued by the local authority indicating the proper tax for such ticket".

This casts a duty on the local authority to issue a label indicating the proper entertainments tax for each ticket with which it is to be stamped. Section 6(1) so far as it is relevant, provides that,

"the entertainments tax shall be levied in respect of each person admitted for payment and in the case of admission by ticket, shall be paid by means of a ticket referred to in Clause (a) of Sub-section (1) of Section 5....."

The combined effect of Section 5(1) (a) and Section 6(1) as extracted, is that no

person shall be admitted to an entertainment except on a ticket of admission, the full value of which is inclusive of the entertainments tax payable thereon which is indicated by the label issued by the local authority to be stamped on it. This is the manner as prescribed by the Act, for the collection of tax. In effect, in such cases the tax is passed on to the person admitted for payment to the entertainment and is collected by the proprietor by the sale of a ticket to him stamped with the label issued by the local authority.

3. Rules entitled "Local Authorities Entertainments Tax Rules, 1951" have been framed under the Act, the scheme of which may be noticed generally. Rule 10 casts on the proprietor the duty to print or stamp or mark on the tickets, the "price of admission" and a statement that such price is exclusive of the entertainments tax, Rule 11 enjoins that the stamp referred to in Section 5(1)(a) has to be securely affixed to the ticket of admission, and Rule 12 prohibits the sale by the proprietor on "payment for admission", any ticket other than a ticket duly stamped denoting the proper amount of the entertainments tax payable in respect of such ticket. Then follow other Rules, "which make provision for the collection and defacing of tickets and stamps on admission, for the maintenance of books or registers and records by the proprietor for the protection of the revenue, and for the inspection thereof by an officer appointed by the local authority. Though the term "price of admission" is exclusive of the entertainments tax for the purpose of Rule 10, it is inclusive of it for the purpose of Rule 3; this concept of "price of admission" in Rule 10 is not to be confused with the concept of "payment for admission", in the Act and in Rule 12.

4. The Madras Entertainments Tax Act, 1939, and the Rules framed under it, contain more or less similar provisions. The definition of the term "payment for admission" in Section 3(7) of that Act is in identical terms. The charging provision in the case of cinematograph exhibitions which, are treated separately, is the first proviso to Section 4(1) of that Act and reads:

"Provided that in the case of cinematograph exhibitions, the tax shall be calculated at the rates specified above on each payment for admission, after excluding from such payment the amount of the tax".

The exclusion of tax from "such payment" is almost conclusive, that but for it, "payment for admission" is inclusive of the entertainments tax. The mention of the words, "inclusive of the amount of tax" in brackets, in relation to payment for admission in other parts of that Act, is for greater emphasis and clarification. We do not find any reason to think, that "payment for admission" as a concept should receive a different interpretation under the Travancore-Cochin Local Authorities Entertainments Tax Act.

5. While therefore we agree with the learned single Judge as to the import of the term "payment for admission", we have said enough to make it clear that we do not agree that Section 5(1)(a) of the Act is designed only for the purpose of preventing evasion of the tax by the proprietor or that there is nothing in the Act

or in the Rules to indicate that the proprietor is only an agent of the local authority for collecting the tax. In *K. Viswanathan Vs. The State of Madras*, a case decided under the provisions of the Madras Entertainments Tax Act, 1939 a division bench of the Madras High. Court observed:

"The amount so collected from the persons who attended the cinema was for paying it over as entertainments tax to the Government. If that amount was in excess of what was legally due, namely, three pies on each ticket, the excess would belong to the individual who had paid the money and not to the appellant, who merely collected the money on behalf of the State. The Management of a cinema is made by the statute an agent as it were for the collection of the entertainments tax; once the collection was made and the amount paid to the Government, the agency would cease.

* * * * We have already referred to the relevant provisions in the Madras Entertainments Tax Act which shows that what is collected by the person providing the entertainment tax is a tax for being paid over to the Government. The circumstance that such tax is collected along with the admission fee for the particular entertainment cannot alter the nature of what is collected on behalf of the Government or of the obligation on the part of the person so collecting to transfer the entirety of the amount so collected from the public".

We are in agreement with the above, so far as cases falling within the category under discussion are concerned, and we do not think that this can in any way affect our interpretation of the term "payment for admission". The practice if any, of collecting entertainments tax before the issue of labels u/s 5(1)(a) of the Act to the proprietor for stamping the tickets cannot also affect the true legal position. We do not share the apprehension of learned counsel for the appellant, that our interpretation of the term "payment for admission" would lead to a practical difficulty in fixing the entertainments tax which has to be determined by the local authority, before the stamping of tickets. The rate of entertainments tax fixed by the respondent being 18 3/4% of the payment for admission, the price of admission marked or printed on the ticket under R. 10 which is exclusive of the tax, has to be regarded as representing 81 1/4% of the payment for admission and on that basis the proper tax payable on the ticket, can be ascertained and indicated on the label with which it is to be stamped.

6. This leads to the next point urged before us for the appellant, that the respondent has not complied with its statutory duty u/s 5(1)(a) and the Rules, of issuing labels indicating the tax for stamping the tickets, and at the same time has insisted on payment of the tax in advance, reckoned at 18 3/4% of the price of admission marked on the tickets and received the same. It would appear, that when the appellant intimated the respondent that he proposed to print and sell tickets in the form shown in Ext. B-1 noting the price for admission, the entertainments tax computed at 18 3/4% of such price, and the "total value", the latter rightly rejected them as not in form and called upon the former by Ext. B-2 dated the 1st May 1956, to present tickets in accordance with Rule 10 for

stamping u/s 5(1)(a) and Rule 12. The appellant then forwarded tickets under covering letter Ext. B-4 dated the 1st June, 1956, purporting to be in compliance with the direction in Ext. B-2, but without prejudice to the "position taken up" by him. This was followed by a reminder Ext. B-5 accompanied by a remittance. The respondent replied by Ext. B-6 dated the 7th June, 1956 that the matter was already before the Municipal Council and that pending its decision, the status quo ante may be maintained".

Finally, the appellant gave notice Ext. B-7 to the respondent, in which, while maintaining his stand that the levy on the full value of the ticket amounted to a tax on tax and was illegal. He called upon the respondent to comply with its "statutory duty to issue (us) tickets as contemplated u/s 5(1)(a) of the Act", undertaking to "produce the tickets which will have to be stamped with (an) impressed embossed, engraved or adhesive labels"". Not receiving a reply the writ petition was filed on the 27th September, 1957, in which prayer (b) is as follows :

"to issue a writ of mandamus and/or other appropriate writ, order or direction, directing the respondent to issue stamped tickets in the proper form contemplated under the Travancore-Cochin Local Authorities Entertainments Tax Act, 1951 and the Rules framed thereunder and the Bye-laws of the Mattancherry Municipality framed under the Act".

In the affidavit in support of the writ petition, after referring generally to representations made to the respondent, and to the correspondence evidenced by Ext. B series, it was averred in paragraph 10 as follows:

"Since no communication whatsoever was received a letter dated the 18th June, 1957, was addressed to the Executive Authority, Mattancherry Municipal Council asking him to comply with his statutory duty to issue the petitioner with tickets as contemplated u/s 5(1)(a) of the Act and to reimburse to the petitioner the amounts collected by way of tax on tax".

Apparently the letter of the 18th June, 1957, referred to is Ext. B-7. In paragraph 12, it was also averred, that the appellant has been "incurring losses day after day on account of the attitude of the Municipality in insisting on the illegal levy in the illegal form". To these aver-meats, the respondent gave no reply in its counter. At the hearing of this appeal, the appellant produced before us some of the tickets which are in current use; these are marked only with the price of admission exclusive of entertainments tax and are in accord with Rule 10. Instead of issuing labels noting the tax payable for stamping the tickets, the respondent has affixed on them what is said to be its seal,-- a seal whose features are hardly decipherable, whose identity as a seal itself is open to question, and which, if it is a seal, does no credit to the institution which possesses and uses it. That however is a different thing. It is quite obvious, that without the labels indicating the tax being stamped on the tickets in accordance with Section 5(1)(a) and the Rules, the appellant could not collect the tax in

accordance with Section 6(1) of the Act, and any payment made to the respondent by way of tax without the latter's complying with its statutory duty, would be an illegal levy and be refundable by it. Though we are prepared to agree, that on the materials before us, a refund cannot be ordered even if it were competent to us to do so in a proceeding like this, in view of what has been stated above, we are unable to restrict the scope of this appeal to a consideration of the question, whether payment for admission is inclusive of tax or not, or whether Ext, A, the impugned order of the respondent authorises the levy of a tax on tax or is liable to be quashed or not. The appellant has come to Court at the earliest possible opportunity, in the year 1957. On the provisions of the Act and the Rules, and on the averments in the affidavit and the materials produced, we are satisfied that this is eminently a fit case for granting prayer (b) in the writ petition,

7. In the result, while we agree that Ext. A is not liable to be quashed, we order that mandamus shall issue to the respondent, for the issue of labels indicating the proper entertainments tax payable for each ticket of admission for stamping the same, in cases not covered by Section 4 of the Act, as a condition precedent to the levy and collection of entertainments tax. To this extent, the order of the learned single Judge is modified, and this appeal allowed; we also order that the parties shall bear their costs in this appeal and in the writ petition, O. P. 387 of 1957.