(1996) 11 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 4 of 1988

M. Raja Rao APPELLANT

Vs

Govt. of A.P. and Others RESPONDENT

Date of Decision : 14-11-1996

Acts Referred:

Andhra Pradesh Entertainment Tax Act, 1939 — Section 4, 5, 9B
Andhra Pradesh Entertainment Tax Rules, 1939 — Rule 27, 33
Constitution of India, 1950 — Article 226

Citation : (1997) 5 ALD 119 : (1997) 2 ALT 812

Hon'ble Judges : Neelam Sanjiva Reddy, J;N.Y. Hanumanthappa, J

Bench : Division Bench

Advocate : M.V. Ramana Reddy, for the Appellant; G.P. for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

N.Y. Hanumanthappa, J.—The point for consideration in this writ appeal is whether the person exhibiting entertainment shows is liable to pay entertainment tax in spite of he being prevented due to vis-major or by illegal interference by the State or for the reasons beyond licencee''s control to admit the persons to entertainment on payment ?

2. In order to answer the above question it is appropriate to refer to some of the facts: The appellant constructed a temporary cinema theatre under the name and style "Royal Touring Talkies" at Jangareddigudem, West Godavari District. He entered into an agreement u/s 5 of the A.P. Entertainment Tax Act hereinafter referred to as the Tax Act for payment of entertainment tax with the authorities constituted under the said Act. Pursuant to the agreement he paid tax up to 5-3-1978. When he was exhibiting cinemas one Mr. K. Krishnamurthy constructed a permanent cinema theatre called Lakshmi talkies at jangareddigudem which is at a distance of 400 metres from the theatre of the appellant. The appellant obtained exemption from the Government to run shows

though it is situated within a distance of 400 metres and exhibited the shows till 1-3-1978. Subsequent to this no exemption was granted by the Government. Consequently his request to renew the licence to conduct shows was also refused by the Authorities constituted under the Cinemas (Regulation) Act of 1955 hereinafter referred to as 1955 Act by its order dated 9-2-1978 beyond 1-3-1978. Thus from 1-3-1978 the appellant stopped exhibiting shows in his temporary theatre. His request to grant permission to shift the temporary theatre from the place where it was situated to some other place of Jangareddigudem was also refused. Stopping of exhibiting films was not voluntary but at the instance of the Government, namely, refusing to grant licence under the Cinematograph Act and permission under the Entertainment Tax Act.

3. When things stood thus, the Assessment Officer issued notice on 10-2-1980 to the appellant calling upon him to pay entertainment Tax for the period from 12-3-1978 to 2-10-1978 in a sum of Rs. 20, 145-66 (Rs.649-86 per week). In the notice of demand the authorities also demanded the petitioner to pay interest accrued on the above tax amounting to Rs. 4,053-00 holding that u/s 5 (1) of the Tax Act read with Rule 33 of the A.P. Entertainments Tax Rules the tax payable by the appellant was once for all agreed for the entire period of one year irrespective of the fact whether the licencee screened the shows or not.

4. Challenging the said notice the appellant filed Writ Petition No. 3488 of 1980 before this Court contending that the demand made by the Assessing Authorities is illegal, arbitrary and without jurisdiction and as such the same deserves to be quashed.

5. On service of notice the respondents filed counter taking a stand that demand notice issued by the Assessing authority is a just one and the same is within the competency of the authority. Irrespective of the fact whether the appellant exhibited shows or not he is liable to pay tax as demanded as per the original terms of the agreement between himself and the authority under the A.P. Entertainment Tax Act. The said stand was disputed by the petitioner by filing reply. However the learned single judge, after hearing both sides dismissed the writ petition holding that the appellant is liable to pay the amount claimed in the notice.

6. Aggrieved by the order dated 19-3-1987 passed by the learned Single Judge this writ appeal is filed.

7. Sri M.V. Ramana Reddy, the learned senior Counsel appearing for the appellant attacked the order of the learned Single Judge on the following grounds:

1. The order of the learned Single Judge is quite arbitrary and illegal.

2. The order of the learned Single Judge runs contrary to Sections 4 and 5 of the Entertainment Tax Act

3. When by the acts of the State the appellant was prevented from holding shows no question of his paying tax does arise.

4. The demand notice issued by the authorities was not proper as it was meant for payment of total amount. Such a decision should not have been taken without hearing the appellant, on the matter. Thus the said demand is in violation of principles of natural justice.

8. To support his contention the learned counsel for the appellant relied on a Division Bench decision of this Court comprising Chief Justice and P.A. Chowdary, J. on 3-8-1979 in Writ Petition Nos. 1318 of 1978 and 2 of 1979.

9. On the other hand the learned Government Pleader argued: that no merit in the contentions raised by the appellant. Having entered into an agreement with the Department the appellant is bound to pay entertainment tax for the entire period of agreement irrespective of the fact whether he held shows or not. The appellant is bound by the provisions of the Sections 4 and 5 of the A.P. Entertainment Tax Act and Rule 27(10) (d) of the A.P. Entertainments Tax Rules. He lastly contended that the writ petition itself is not maintainable as against the demand notice issued by the Assessing Authority an appeal lies to the Deputy Commissioner of Commercial Taxes u/s 9-B of the Tax Act.

10. In order to dispose of this appeal it is appropriate to bear in mind the effect of the following sections and Rules.

11. Sub-section 4 of Section 3 of the A.P. Entertainment Tax Act defines the word ''entertainment'' which means cinematograph exhibition to which persons are admitted on payment. Section 4(1) of the Act deals with entertainment tax:

"4(1) There shall be levied and paid to the State Government a tax on the gross collection capacity on every show in respect of entertainments held in the theatres"

Section 5 of the Act reads as follows:

"5. Option to pay tax in lieu of tax payable u/s 4:

(1) in lieu of the tax payable u/s 4, in case of entertainments held in the theatres located in the local areas the proprietor thereof may at his option and subject to such conditions as may be prescribed pay the amount of tax to the Stale Government every week.

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

(3) Any proprietor who opts to pay tax under this section shall apply in the prescribed form to the prescribed authority to be permitted to pay the tax under this section.

(4) On being so permitted such proprietor shall pay the tax for every week as specified in sub-section (1).

(5) 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.

(6) It shall be lawful for the prescribed authority to vary the amount of tax payable by the proprietor under sub-section (1) during the period of option permitted under this section at any time, if there is an increase in the gross collection capacity per show in respect of the place of entertainment by virtue of an upward revision of the rate of payment for admission therein or of the seating capacity or accommodation thereof or where the local area in respect of which permission is granted is upgraded; or if it is found for any reason that the amount of tax has been fixed lower than the correct amount.

(6-A) Notwithstanding anything contained in sub-section (6), it shall be lawful for the prescribed authority to reduce the amount of tax payable by the proprietor under sub-section (1) during the financial year commencing from 1st April, 1988 and ending with the 31st March 1989, if there is a reduction in seating capacity or accommodation of the place of entertainment at any time during the period commencing from 1st April 1988 and ending with 30th September 1988.

(7) Every proprietor who has been permitted to pay the tax under this section shall intimate to the prescribed authority forthwith such increase in the gross collection capacity per show in respect of the place of entertainments failing which it shall be open to the prescribed authority by giving fifteen days notice to cancel the option so permitted.

(8) Where a proprietor fails to pay the amount of tax on the due date such amount of tax shall be recoverable with interest calculated at such rate as may be prescribed.

12. From the above it is clear that firstly theatre owner shall admit persons on payment of money. Secondly liability arises when the entertainment availed. Section 5 of the Act gives option to the licencee to avail the mode of payment of tax so as to gain benefit of concession in the quantum of tax to be paid.

13. According to the learned Government Pleader under Rule 27 of A.P. Entertainments Tax Rules irrespective of licencee conducting shows or not in his cinema theatre he is liable to pay tax. To know how far the contention of the learned Government Pleader is correct it is appropriate to extract Rule 27 of the A.P. Entertainments Tax Rules:

"27 (1) The prescribed authority for the purpose of permitting the proprietor who opts to pay tax u/s 5 of the Act shall be entertainment Tax Officer having jurisdiction over the place of entertainment.

(2) to (8)......

(9) The tax for each week shall be paid into the Government treasury.

(10) (a) The proprietor shall intimate in writing to Entertainments Tax Officer every proposed change or variation in the gross collection capacity of the place of entertainment either by virtue of any modification or revision of the rate or rates of admission or any change in the accommodation or class or classes of

accommodation as approved by the competent authority prior to such change.

(b) and (c)........

(d) If the revised or modified gross collection capacity results in decrease over the existing gross collection capacity, the proprietor shall continue to pay the amount of tax payable u/s 5 of the Act before such revision or modification till the end of the financial year in which change has taken place.

(11), (12) and (13) ....

14. u/s 4 of the Act it is clear that liability to pay tax arises when once shows are exhibited and persons are admitted. If the agreement is still in existence in view of Rule 27 of the A.P. Entertainments Tax Rules whether a person i.e. licencee admitted the persons to visit shows or exhibited shows inconsequential. However, if the shows are not held because of vis-major or acts of the authorities of the Government, the licencee cannot be made liable to pay tax.

15. It is the case of the appellant that subsequent to 1-3-1978, licence for holding shows and other entertainment is not renewed. On the other hand it was refused by the authorities in spite of the appellant showing that he is entitled for the renewal of the licence. Reasons for non-holding of shows for the period covered under the demand notice was well within the knowledge of the Assessing Authorities. Since the appellant was prevented from holding entertainment shows for the reasons beyond his control, namely, due to refusal of licence and permission by the authorities concerned for the period subsequent to 1-3-1978 it is not proper on the part of the authorities to make demand for payment of entertainment tax for the said period. Hence, the point raised is answered negatively.

16. The learned Government Pleader on the other hand contended that u/s 9-B of the A.P. Entertainment Tax Act the appellant had an alternative remedy against the order of Assessing authority. Instead of availing the said remedy the appellant straightaway came to this Court and requested to exercise its power under Article 226 of the Constitution. As he failed to avail the said alternative remedy the writ appeal should not be entertained.

17. Section 9-B of the Tax Act reads as under:

"9-B. Appeals (1) Any proprietor aggrieved by an order passed or a proceeding recorded by any authority under the provisions of this Act, may within thirty days from the date on which the order or proceeding was served on him appeal to such appellate authority as may be prescribed:

Provided that the appellate authority may admit an appeal preferred after a period of thirty days aforesaid if it is satisfied that the proprietor has sufficient cause for not preferring the appeal within that period.

The exercise of alternative remedy is not a rule of law but it is a matter of convenience. Where an order prima facie is illegal or contrary to a statute or suffers from non-compliance of principles of natural justice or violation of any of the fundamental rights the Court can exercise its powers under Article 226 of the Constitution of India. The facts narrated reveal that the demand made by the Assessing Authority is quite arbitrary and illegal. The amount determined by him is not preceded by any enquiry or hearing. Further the said demand runs contrary to Section 4 of the Act. The plea of alternative remedy also was not urged by the State when the matter was pending before the learned Single Judge. The learned Government Pleader made a reference to Rule 33 of the Rules but on facts its application has no effect. Accordingly not exhausting the alternative remedy has not vitiated the proceedings.

18. Having reached conclusions on the point to be answered and also on the point of alternative remedy raised by the learned Government Pleader we have been constrained to hold that there cannot be any demand for payment of entertainment tax for the period when the shows were not held due to refusal to grant or renew licence or permission. We hold that the view taken by the learned Single Judge that the appellant is liable to pay the tax demanded is incorrect.

19. Accordingly this writ appeal is allowed and the order of the learned Single Judge as well as the demand notice issued by the Assessing Authority for a sum of Rs. 24,198-66 are quashed. No order as to costs.