(1997) 11 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition Nos. 32908 and 32909 of 1997

M/s. Galaxy Theatre, Bangalore — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:
Karnataka Entertainments Tax Act, 1958 — Section 4A

Citation : (1998) 45 KarLJ 177

Hon'ble Judges : P. Vishwanatha Shetty, J

Judgement

1. Sri Shivayogiswamy, learned Government Pleader is directed to take notice.

2. The petitioner in this petition is a partnership firm running a cinema theatre and carrying on business in the name and style of Galaxy Theatre in Bangalore city. In this petition, the petitioner has challenged the constitutional validity of the third Proviso given to Section 4-A of the Karnataka Entertainments Tax Act (hereinafter referred to as ''the Act'').

3. It is the case of the petitioner that on account of the law and order problem, the petitioner could not exhibit cinema shows in its theatre on 9th February, 1996 and 20th February 1996 and also from 5th March, 1996 to 7th March, 1996 on account of an interim order passed by this Court in Writ Petition No. 6287 of 1996 restraining exhibition of a film known as "Bandit Queen". In this background, Sri Sarangan, learned Senior Counsel appearing for the petitioner points out that the 3rd proviso given to Section 4-A which enables a owner of the theatre who exhibits film to the extent it imposes a restriction to seek exemption from payment of composition tax to a minimum period of a week is unconstitutional as the same is highly arbitrary and unreasonable and violative of the right guaranteed to the petitioner under Article 14 of the Constitution of India. In support of his contention, Sri Sarangan also relied upon the decision of the Rajasthan High Court in the case of Kohinoor Exhibitor Private Limited v State of Rajasthan and Others, (1997)107 STC 141 (Raj.).

4. I am unable to accede to the submission of Sri Sarangan. Proviso to Section 4-

A which is under challenge in these petitions reads as under:

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

It is necessary to point out that this Court in the case of Karnataka Film Industry Development Corporation Limited, Bangalore v State of Karnataka and Others, 1995(39) Kar. L.J. 431, has upheld the constitutional validity of Section 4-A of the Act. However, Sri Sarangan would point out that the validity of the proviso which is under challenge in these petitions did not come up for consideration before this Court and the same has not been considered. It is no doubt true as pointed out by Sri Sarangan that this Court in the case of KarnatakaFilm Industry Development Corporation,supra, did not consider the validity of the 3rd proviso to Section 4-A which is under challenge in these petitions, but it is necessary to point out that Section 4-A of the Act is an enabling provision which enables the assessee to opt for composition instead of filing regular assessment as provided under the provisions of the Act if he so chooses. Under these circumstances, when the scheme which provides for composition in the payment of tax, contemplates certain restrictions to take the benefit of the composition unless the said provision on the face of it is highly arbitrary and discriminatory in nature, the said proviso cannot be struck down by this Court as unconstitutional. It is a matter of policy as to under what circumstances, the parties must be permitted to avail of the benefit of composition. There is no compulsion for an assessee to opt for composition. When an option is given and the discretion is left to the party not to opt for composition, it cannot be said the condition imposed is violative of Article 14 of the Constitution of India as contended by the learned Counsel for the petitioner. In the present case, the provision given to Section 4-A provides that a person to take the benefit of exemption from payment of tax must have been prevented from exhibiting the show in the theatre either due to any order of the Court or of the State Government or any other authority for a minimum period of seven days. The composition is permitted for a year. In a year consisting of 365 days, if the law provides that the person who has opted for composition must show that he was prevented from exhibiting the show in the theatre for a period of seven days i.e., a week it is not possible to accept that such provision is either discriminatory, arbitrary or unreasonable and violative of the right guaranteed to the petitioner under Article 14 of the Constitution of India. It is necessary to point out that while prescribing a period of seven days the Legislature must have felt that the exhibition of a show in a theatre is prevented for more than a week, it may affect the business or the income of the assessee and if it is less than seven days that such loss would be minimum and would be normally compensated like any other hazard of exhibition of a film in a theatre.

5. In this background the minimum period of seven days, is provided to seek exemption from payment of tax, in my view, it cannot be said that the said provision suffers from the vice of unconstitutionality. In the light of the above discussion, I am of the view that the decision of Rajasthan High Court in the case of Kohinoor Exhibitor, supra, relied upon by Sri Sarangan in my view is of no assistance to him. That is a case where the condition imposed or the minimum period prescribed was for a period of one month. In that context, the Rajasthan High Court took the view that the condition imposed was unconstitutional. That is not the position so far as the impugned provision is concerned. The period prescribed in the impugned provision is only seven days in a year. Therefore, the said minimum period in my opinion is reasonable and it is neither discriminatory nor arbitrary as contended by the learned Counsel for the petitioner. However, as stated earlier, the provision contained in Section 4-A of the Act providing for composition is an option given to an assessee.

6. So far as the challenge made to Notices-Annexures-C and D are concerned it is only a proposition notice. If the petitioner has any defence to the Notices-Annexures-C and D, it is open to the petitioner to file its objections as may be available to it in law. Therefore, I do not find any justification to examine the correctness of Notices-Annexures-C and D in these petitions. In the light of what is stated above, these petitions are liable to be dismissed. Accordingly, they are dismissed at the state of preliminary hearing stage itself without issuing rule. However, no order is made as to costs.

7. Sri Shivayogiswamy, learned Government Pleader is given four weeks'' time to file his memo of appearance.