

(2003) 01 JH CK 0139

In the Jharkhand High Court

Case No : Writ Petition (T) No. 2229 of 2002

Nicco Jubilee Park Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Bihar Entertainment Tax Act, 1948 — Section 10, 21A, 3, 6
General Clauses Act, 1897 — Section 24, 3(1)

Citation : (2003) 1 JCR 536

Hon'ble Judges : Vinod Kumar Gupta, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Debi Pal, M.S. Mittal and A.R. Chaudhury, for the Appellant; A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks the following reliefs :

"(a) For a declaration that the petitioner is not liable to pay entertainment tax under the provisions of Bihar Entertainment Tax Act, 1948 and the Rules framed thereunder inter alia on the following grounds :

(i) The State Government has not issued any notification levying taxes on amusement parks in exercise of its power u/s 3(1) of the Bihar Entertainment Tax Act, 1948 as substituted vide Act 3 of 1977.

(ii) The petitioner is not liable to pay entertainment tax in view of the notification issued u/s 10(2) of Entertainment Tax Act, 1948 exempting the payment of entertainment tax on sports.

(iii) The petitioner is not liable to pay entertainment tax in view of Section 10(1) (b) and (c) of the Bihar Entertainment Tax Act, 1948 as the entertainment provided for in the amusement park of the petitioner is mainly educational and scientific sports.

(b) For an appropriate writ or a writ in the nature of certiorari for quashing letter No. 1340 dated 7.12.2001 (Annexure-6) and letter No. 219 dated 11.1.2002 (Annexure 8) issued by Joint Commissioner of Commercial Taxes (Administration) Respondent No. 3) and issued by Deputy Commissioner of Commercial Taxes, Urban Circle, Jamshedpur (respondent No. 4) respectively to the extent it rejects the petitioner's application for exemption dated 1.6.2001 by a non-speaking order and it directs the petitioner to get itself registered under Bihar Entertainment Tax Act, 1948 and the rules made there under and for any other writ, order or direction as your Lordships may deem fit and proper for imparting substantial justice to the petitioner."

2. Let us deal with each point one by one.

3. In so far as the petitioner's contention that it is not liable to pay any entertainment tax because of non issuance of any notification prescribing the rate of tax in terms of Section 3 of the Bihar Entertainment Tax Act, 1948 is concerned it is to be noticed that Section 3 of 1948 Act in so far as it is relevant for our purpose, lays down that the State Government may fix by a notification issued for this purpose the amount of tax that would be levied and paid to the State Government. Sub-section (1) of Section 3 which is relevant for our purpose reads thus :

"3. Tax on Entertainments.--(1) Subject to provisions of this Act, there shall be levied and paid to the State Government an entertainment tax at such rate not exceeding one hundred fifty per centum of the amount of payment chargeable for admission as the State Government may fix by a notification issued in this behalf and such tax shall be payable by the proprietor of an entertainment."

4. In the writ petition the petitioner has pleaded that Sub-section (1) of Section 3 of 1948 Act originally was as follows :--

"Section 3.--Tax on payments for admission to Entertainments.--(1) Except as otherwise expressly provided in this Act, there shall be levied and paid to the State Government on all payments for admission to an entertainments, a tax at the rate of twenty five per centum of any such payment for admission :

Provided that the State Government may, from time to time, by notification, and subject to such conditions as it may deem fit to impose, fix a higher rate of Entertainments tax not exceeding the amount of such payment for admission, or any lower rate of tax payable under this Act in respect of any Entertainments or class or series of Entertainments specified in such notification."

5. The aforesaid pleading is contained in para 15 of the writ petition. In para 17 of the writ petition, the petitioner has further pleaded that the aforesaid Section 3 was repealed and substituted by the Bihar Entertainments Tax (Amendment) Act, 1976 (Act No. 3 of 1977) and the amended Sub-section (1) of Section 3 reads thus :--

"3. Tax on Entertainments.--(1) Subject to provisions of this Act, there shall be

levied and paid to the State Government an Entertainments Tax at such rates not exceeding one hundred fifty per centum of the amount of payment chargeable for admission as the State Government may fix by a notification issued in this behalf and such tax shall be payable by the proprietor of an Entertainments."''

6. In para 16 of the writ petition, the petitioner averred that in terms of Section 3(i) of the Act, the State Government issued a Notification on 1.12.1975 vide S.O. 1540 of this date which reads thus :--

"In exercise of the powers conferred by Sub-section (1) of Section 3 of the Bihar Entertainment Tax Act, 1948 (Bihar Act XXXV of 1948) the Governor of Bihar is pleased to fix the rate of Entertainment Tax at one hundred ten per centum of the payment chargeable for admission to entertainment."

7. In subsequent pleadings, as contained in paragraphs 18, 19, 20 and 21, the petitioner's contention is that Notification, S.O. 1540 dated 1.12.1975 was issued by the State Government in terms of Section 3(1) of the Act as it stood prior to its repeal and substitution by Act No. 3 of 1977 and because, consequent upon the repeal and substitution of Section 3(1) of the Act, by the aforesaid Amendment Act, the rate of tax had been increased, fresh Notification in terms of the amended Section 3(1) of the Act was required to be issued; but, the contention is that, since no fresh Notification was issued in terms of the amended Section 3(1) of the Act, the petitioner is not liable to pay any tax. In other words, the pith and substance of the contention is that the Notification S.O. 1540 dated 1.12.1975 having been issued under a repealed provision was not enforceable or operative and, therefore, cannot be treated to be a subsisting Notification in the eyes of law. The contention, in other words, is that Notification S.O. 1540 dated 1.12.1975 is non est in the eyes of law, because it having been issued at a point of time, when original Section 3(1) of the Act was in force, by prescribing a rate of tax higher (110%) than permissible under the original, un-amended Section 3(1) of the Act (100%), this non est Notification should not be enforced and, therefore, from all accounts, non-issuance of a fresh Notification after the repeal and substitution of Section 3(1) of the Act gave rise to a situation where the petitioner cannot be held liable to pay any tax, because the tax liability would arise only consequent upon the issuance of a valid Notification u/s 3(1) of the Act.

8. These contentions in the writ application had to be properly replied, dealt with and traversed on behalf of the respondents. One Mr. B. Kiro, Deputy Commissioner of Commercial Taxes, Jamshedpur Urban Circle, Jamshedpur, filed counter affidavit on behalf of the respondents. In the entire counter affidavit filed by him, the aforesaid contentions raised by the petitioner with respect to the original Section 3 of the Act, its amendment in 1976 and the issuance of the Notification No. S.O. 1540 dated. 1st December, 1975 fixing tax at the rate of 110 per centum of the payment chargeable for admission have not at all been dealt with. Actually, the counter affidavit is so clumsy, so vague and so evasive that it does not at all deal with any of the issues involved in the case. The counter affidavit does not rebut or refute the factual aspects and actually a

reading of the counter affidavit gives an impression to the Court that the petitioner's contention that the notification being S.O. No. 1540 was issued at a point of time prior to the amendment of Section 3 is correct. For ready reference and to much the averments in the writ petition, we reproduce herein below the following paragraphs of the counter affidavit to suggest how evasively and vaguely the "issues have been dealt with. We quote paragraphs 8, 10, 13 and 14 of the counter affidavit.

"8. That with regard to the statements made in Paras 7, 8, 13 to 17, 33, 34, 43, 46 & 47 require no comment.

10. That with regard to the statements made in Para 10, 18 & 26 of the writ petition under reply are matter of record.

13. That with regard to the statement made in Para 19 & 20 of the writ petition under reply, it is submitted that there is no need to issue separate notification for levying amusement park as it is covered by Section 3, 3-A and 3-B of the Bihar Entertainments Act, 1948.

14. That with regard to the statement made in Para 21 of the writ petition under reply, is matter of record. Moreover, the power to exempt from payment of tax lies with the State Government and no exemption-general or special order has been issued by the Government."

9. Apart from the aforesaid paragraphs in the counter affidavit else where also, there is no other averment with respect to any of the issues relevant for the purpose of adjudication of the disputes forming the subject matter of this writ petition. Actually and apparently, because we were led to believe and think that the Notification S.O. 1540 was apparently issued prior to the amendment of Section 3. We were inclined, treating the petitioner's contentions (unrefuted and unrebutted totally and absolutely by the respondents in the counter affidavit) as correct and were about to proceed to decide that Notification S.O. 1540 was either non est in the eyes of law or it was invalidly issued, de horse the unamended Section 3(1) of the Act or contrary to the mandate contained therein (because we were led to believe that whereas the Section provided a lower rate of tax, the Notification had fixed a higher rate, thus, violating the Section itself). The argument, however, remained inconclusive till lunch break and when we re-assembled after the break, Mr. A.K. Sinha, learned Advocate General (who took over the conduct of the case at that stage) brought to our notice the true and correct legal and factual position by submitting that Section 3(1) of 1948 Act was amended by the Bihar Entertainments Tax (Amendment) Ordinance, 1975 (Bihar Ordinance No. 204 of 1975) and subsequently by the Bihar Entertainments Tax [Amendment] Ordinance, 1976 (Bihar Ordinance 21 of 1976) and that by virtue of the aforesaid Ordinance, the original Sub-section (1) of Section 3 of the Act was substituted so as to enhance the maximum rate of Entertainment tax to 150 per cent of the amount of payment chargeable for admission in an Entertainment. Not only that, Mr. Sinha also referred to and relied upon Section

21(A) of the Bihar Entertainments Tax Act, 1948 whereby the Legislature clearly provided that the Bihar Entertainments Tax (Amendment) Ordinance, 1976 (Ordinance 21 of 1976) and some other ordinances amending various provisions of 1948 Act would be deemed to have come into force from the date of their respective promulgations and enactment of the rate of Entertainments Tax fixed by Notification No. S.O. 1540 dated 1st December, 1975 issued under Sub-section (1) of Section 3 of 1948 Act be deemed to have continued. For ready reference we reproduce hereinbelow Section 21-A which reads thus :

"21 -A. Validation and exemption.-- (1) The Bihar Entertainment Tax (Amendment) Ordinance, 1976 (Bihar Ordinance 21 of 1976), Bihar Entertainment Tax (Second Amendment) Ordinance, 1976 (Bihar Ordinance 103 of 1976), Bihar Entertainment Tax (Third Amendment) Ordinance, 1976 (Bihar Ordinance, 152 of 1976), The Bihar Entertainment Tax (Amendment) Act, 1976 (Bihar Act 3 of 1977), The Bihar Entertainment Tax (Amendment) Ordinance, 1985 (Bihar Ordinance 9 of 1985) and the Bihar Entertainment Tax (Amendment) Second Ordinance 1985 (Bihar Ordinance, 18 of 1985) shall be deemed to have come into force from the date of their respective promulgation and enactment and the rate of entertainment tax fixed by Notification S.O. 1540, dated the 1st December, 1975 issued under Sub-section (1) of Section 3 of Bihar Act 35 of 1948 shall, unless modified, superseded or cancelled, be deemed to have continued."

10. The aforesaid legal position as now brought out by the learned Advocate General makes it absolutely clear (and without any shadow of doubt) that Notification S.O. 1540 at the point of time it was issued was validly issued, the same being in conformity with the substituted and amended Section 3(1) of the Act, in as much as on the date the Notification S.O. 1540 was issued. Section 3(1) of the Act had already been amended, prescribing therein the rate of tax at 150% of the fee chargeable for an entertainment. Here we may also make a Reference to Section 24 of the General Clauses Act to quote with advantage this all important legal provision in support of the contention of the learned Advocate General that this Notification is validly saved even under this provision. Without any manner of doubt whatsoever and without any hesitation in our minds, we hold and declare that Notification S.O. 1540 dated 1st December, 1975 prescribing the rate of tax at 110% has been validly issued and would be deemed to have been validly issued at all times and that persons or Institutions coming or falling within the taxation net as per the charging Section (Section 3 of the Act) would be and have always been liable to pay tax as per the rate prescribed and fixed under this Notification.

This brings us to the second contention of the petitioner that it is entitled to be exempted from the payment of the tax (as chargeable u/s 3 of the Act). The provision regarding the grant of exemption from payment of tax is contained in Section 10 of the Act, Section 10 reads thus :--

"10. Entertainments exempted from payment of tax.--(1) The Entertainments tax

shall not be levied on payments for admission to any Entertainments where the State Government is satisfied-

(a) that the entire gross proceeds of the Entertainments are devoted to philanthropic, religious or charitable purposes without any charge on such proceeds for any expenses of the Entertainments; or

(b) that Entertainments is of a wholly educational character; or

(c) that the Entertainments is provided for purposes which are partly educational, cultural or scientific by an institution not conducted or established for profit; or

(d) that the Entertainments is provided by an institution not conducted for profit and established solely for the purpose of promoting the public health or the interests of agriculture or of a manufacturing industry and consists solely of an exhibition of articles which are of material interest in connection with questions relating to public health or agriculture, or of the products of the industry for promoting the interests of which the institution exists or of the materials, machinery, appliances or foodstuffs used in the production of those products.

(2) The State Government may, by general or special order, exempt any Entertainments or class of Entertainments or any person or class of persons from liability to pay the Entertainment Tax."

11. Dr. Pal, learned senior counsel for the petitioner has relied upon the notification being S.O. No. 834 dated 14th May, 1982, The averments regarding the issuance of this notification are contained in Paras 21, 22 and 23 of the writ application. Unfortunately, and very very sadly and regrettably, the counter affidavit of the respondents also does not deal with these averments in any specific manner and the reply to these averments in the counter affidavit again is couched in a very very evasive and vague manner. These averments in the counter affidavit once again give an impression to the Court that the respondents, perhaps, are agreeable with the stand of the petitioner that in terms of the Notification S.O. 834 dated 14th May, 1982, the petitioner is exempted from the payment of the tax. However, when we scrutinize the legal position, in the context of the fact situation, we find that we are not in a position to accept the contention of the learned Senior Counsel for the petitioner that the petitioner's amusement park is entitled to the grant of exemption. We are saying so because even if we place reliance on the Notification S.O. 834 dated 14th May, 1982, in proper perspective and in the true context in which it has been issued (about which we have very strong doubts) we cannot equate the activities carried on by the petitioner in its amusement park as any "sport" because we cannot by any stretch of imagination hold that the activities carried on by the petitioner in its amusement park amount to any "sporting" activity. To buttress his contention upon the applicability of the exemption Notification (S.O. 834), Dr. Pal relied upon the meaning of the word "sport" in two Dictionaries which we quote as under :--

"According to Shorter Oxford English Dictionary "Sport" means.--To amuse, recreate) oneself); to take one's pleasure, to amuse or recreate one self, esp. by active exercise in the open air; to take part in some game or play; to frolic or gambol, to engage in or practice field sports etc., to hunt or shoot for sport or amusement.

According to Webster's New Twentieth Century Dictionary "Sport" means; any activity or experience that gives enjoyment or recreation; pastime; diversion, such an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling squash, etc., fun, play, as, it was great sport to play in the surf.

Syn-play, game, diversion, amusement, frolic, mock, mockery, mirth, jest, joke."

12. While interpreting every expression in any legislation or delegated legislation or subordinate legislation, always the meaning defined in a Dictionary is not taken as an aid for proper understanding of that expression. Undoubtedly it is true that Dictionaries do provide some aid in proper understanding of meanings of expressions not defined in the legislation itself, but the Dictionary meanings, in abstract, cannot bodily be lifted and applied in an amusement park with reference to the activities carried on in that park and the nature of such activities. It is the petitioners own case that for every entry in the Park it charges Rs. 50/- per head and that it provides recreation through "rides" installed by it in the amusement park, the description of some of the "rides" has been given in paras 9 and 10 of the petition which included Striking Car, Pirate Ship and Moon Raker etc. etc. It is a common knowledge that amusement parks are meant for recreation; they cannot be termed as any sporting activity. Apart from this, the thrust of both the meanings in both the dictionaries is the activities carried out by the participants which result in some form of exercise and exertion etc. Apart from that, a plain reading of Section 10 clearly suggests that an exemption can be granted only if, inter alia, the gross proceeds are devoted to philanthropic, religious or charitable purposes or the entertainment is of a wholly educational character or that the entertainment is provided for the purposes which are partly educational, cultural or scientific by an institution and not conducted or established for profits etc. etc. It, therefore, appears that not earning profit would be a sine qua non to the grant of exemption. It is not the case pleaded or set up by the petitioner that the petitioner's venture is a non-profit making one and that it is wholly philanthropic, religious or charitable. This is apart from the basic issue that the amusement activities provided by the petitioner in that amusement park do not fall within the definition of the term "sport". In addition to the aforesaid aspects relating to the exemption, we have also to observe that the grant or non-grant of exemption is a matter which rests with the State Government. Admittedly, so far the State Government has not passed any order, nor has issued any notification granting exemption to the petitioner in so far as the payment of duty is concerned. In fact, the communication dated 11th

January, 2002 is suggestive of the fact that the petitioner's application dated 1st June, 2001 for grant of exemption has been rejected.

13. On a totality of the circumstances, therefore, we have no doubt that the petitioner is liable to pay entertainment tax and has all along been liable to pay tax right from the date it set up, commissioned and started its amusement park. Section 6 of 1948 Act reads thus :--

"6. Registration of proprietors of entertainment--(1) No proprietor of any entertainment shall, while being liable to pay the entertainments tax under this Act, carry on business as such proprietor unless he has been registered under this Act in the prescribed manner and possesses a registration certificate.

(2) Every proprietor required by Sub-section (1) to be registered shall make an application in this behalf in the prescribed manner to the prescribed authority.

(3) On receipt of an application, the prescribed authority shall, if he is satisfied that the application is in order, register the applicant and grant him a certificate of registration in the prescribed form.

(4) If upon information which has come into its possession, the prescribed authority is satisfied that any proprietor has been liable to pay the entertainment tax in respect of any period and has nevertheless willfully failed to apply for registrations, the prescribed authority shall, after giving the proprietor a reasonable opportunity of being heard, assess, to the best of his judgment, the amount of the entertainments tax, if any due from proprietor in respect of such period and all subsequent periods and the prescribed authority may direct that the proprietor shall pay, by way of penalty, in addition to amount so assessed, a sum not exceeding one and a half times of that amount.

(5) When a proprietor of an entertainment, in respect of which a certificate of registration has been granted under Sub-section (3) has discontinued or closed down his business as such proprietor, the prescribed authority shall cancel the registration with effect from the prescribed date."

14. Undoubtedly on 11.1.2002, the Deputy commissioner. Commercial Taxes, Jamshedpur had called upon the petitioner to get itself registered in terms of Section 6 (supra) but the matter was not followed up later on. Why did the respondents not follow up the matter of registration after issuing the communication dated 11.1.2002 has been sought to be explained to us by the learned Advocate General by submitting that when the respondents wanted to, in fact, proceed further in that matter, the petitioner set up a plea that the proceedings should be stalled because of the pendency of the present writ application in this Court. Apparently the respondents conveniently acceded to the petitioner's request and this despite the fact that this Court had not issued any interim direction nor passed any restraint order with respect to any such proceedings. It is indeed unfortunate that the respondents slept over the matter. Now, today, the learned Advocate General has submitted to us that the

respondents are very eager and keen to proceed against the petitioner in terms of Section 6 (supra). Undoubtedly, it goes without saying that it is the statutory obligation of the petitioner and it has been its statutory obligation all along to get itself registered u/s 6 (supra) and the failure to do so brings with it all adverse consequences as per law.

15. Before parting, we must observe that the deponent of the counter affidavit filed on behalf of the respondent Mr. B. Kiro, Deputy Commissioner, Commercial Taxes, Jamshedpur Urban Circle has not conducted himself well inasmuch as he did not care or bother to deal with all the issues involved in the case, nor did he bring to the notice of the Court all the relevant facts or the statutory provisions and, but for the timely assistance provided to us by the learned Advocate General, we would have gone on with the presumption that S.O. 1540 was issued prior to the amendment of Section 3 and so it was de hors the same. We leave it to the State Government to initiate whatever appropriate action is required in the matter.

16. With the aforesaid observations, this writ application is dismissed with costs assessed at Rs. 25,000/- (Rupees twenty five thousand).