(1987) 08 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No. 13638 of 1986

Nirmala Chitra Mandira APPELLANT

Vs

The State of Karnataka and Another RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Karnataka Entertainment Tax Act, 1958 — Section 2 (g, 4 A, 4 A (6)

Citation : (1988) 69 STC 264

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

S.R. Rajasekhara Murthy, J.—Sub-section (6) of section 4A of the Karnataka Entertainments Tax Act, 1958 (the Act), as inserted by Karnataka Act 22 of 1985 is challenged in this writ petition.

2. The exhibitor is taxed u/s 4A of the Act. Under the scheme of section 4A of the Act, tax is levied on each show of entertainment depending upon the population and the rate prescribed in the table annexed to section 4A. The exhibitor is required to file a return under rule 41C of the Karnataka Entertainments Tax Rules, 1959 (the Rules), at the end of every week in form No. XA along with the proof of payment of tax calculated on the basis indicated in the permit.

3. Sub-section (6) of section 4A was inserted by Karnataka Act 22 of 1985. Under the said provision the proprietor is required to produce a certificate in the prescribed form along with his return from local authority or any other authority notified by the Government, if he has not conducted any show on any day or days during the week. The certificate is to be produced in form XC as prescribed by rule 41C(1a) of the Karnataka Entertainments Tax (Amendment) Rules, 1985. That form is reproduced below :

"FORM XC

[See rule 41C(1a)]

Certified that M/s. .... (here specify the name of the theatre) did not conduct the morning/matinee/first show/second show on .... (here specify the date)."

4. It is the contention of Sri B. G. Sridharan, learned counsel for the petitioner, that this provision in section 4A(6) has to be struck down as ultra vires on the ground that it is impossible of compliance. The argument of the learned counsel is that no other authority other than the "local authority" referred to in sub-section (6) is notified by the Government. "Local authority" as defined u/s 2(g) of the Act - means all local bodies from corporation to village panchayat. Even with respect to the certificate to be obtained from the local authority, it is submitted that the provision is left in vagueness. It is not indicated who the local authority is and who is the person competent to issue the certificate required.

5. It is also argued with some emphasis that there is no corresponding obligation imposed under the Act or the Rules on the authority who is required to issue such certificate. It is, therefore, argued that having regard to the a vagueness of the provision of sub-section (6) and the absence of rules framed for implementing this provision, it is practically impossible for the petitioner and other exhibitors to comply with the requirement of that rule.

6. Sri Sridharan has highlighted the practical difficulties and the problems the petitioner would be exposed to, if he is to obtain a certificate from the local authority, who is not specified under the Act. It is also argued that the exhibitor is thrown at the mercy of the local authority and no remedy is provided if they refuse to issue the certificate or delayed unreasonably.

7. Sri Dattu has filed statement of objections in W.P. No. 2054 of 1987 [B. N. Puttannaiah v. State of Karnataka] which covers the contentions in this writ petition also on behalf of the respondents, justifying rule 41C(6) and the insertion of sub-section (6) of section 4A of the Act. It is pleaded that the said provision is absolutely necessary to prevent evasion of tax by the exhibitor. It is pointed out that rule 41C did not provide for any method to detect evasion since tax was paid on the number of shows conducted during the week as shown in the return submitted. It was therefore felt that a suitable provision to plug this loop-hole in the Rules was necessary and sub-section (6) was inserted in section 4A.

8. There is considerable force in the submissions of Sri Dattu.

9. As already stated the tax is levied on the exhibitor falling u/s 4A on each show. Therefore, insisting on a certificate being issued as required under the Rules cannot be construed as a provision which has not nexus to the scheme u/s 4A.

10. From a perusal of the scheme of the Act, I am of the view that the present provision of section 4A(6) is introduced with the sole object of preventing evasion of tax by an exhibitor who is covered u/s 4A. And insistence on

producing a certificate in form XC is also necessary to effectively implement the provisions of section 4A(6).

11. I, therefore, uphold sub-section (6) of section 4A as a provision incidental to and necessary for implementing the provision of the Act and preventing the evasion of tax.

12. But, in view of the provisions and the rule prescribed, it is necessary to issue a mandamus to the State Government in the following terms :

(i) to prescribe the authority who is competent to issue the certificate in form XC;

(ii) to provide for the procedure in the Rules for issue of the certificate;

(iii) to impose corresponding obligation on such local authority to issue the certificate as per the rules to be prescribed; and

(iv) to provide for a remedy to the exhibitor in case of refusal or delay to issue the certificate.

13. It is also made clear that the impugned provisions shall not be enforced until the above directions are complied with.

14. Order accordingly.