

(1990) 11 GUJ CK 0034
In the Gujarat High Court
Case No : Spl. Civil Application No. 37 of 1979

Ramanlal B. Jariwala

APPELLANT

Vs

District Magistrate, Surat and Another

RESPONDENT

Date of Decision : 22-11-1990

Acts Referred:

Gujarat Entertainment Tax Act, 1977 — Section 2, 3(1)

Citation : AIR 1992 Guj 38 : (1992) 1 GLR 46

Hon'ble Judges : Y.B. Bhatt, J;S.B. Majmudar, J

Bench : Division Bench

Advocate : R.M. Vin, for the Appellant; K.M. Mehta, Asstt. Govt. Pleader, for the Respondent

Judgement

Majmudar, J.—This petition raises a short but interesting question as to whether the respondent-State of Gujarat and its authorities functioning under the Gujarat Entertainment Tax Act, 1977 are entitled to collect entertainment tax on charges levied at the petitioner's cinema theatre from the passengers who use the lift facility available at the theatre. The factual matrix leading to this petition may be looked at, at the outset.

2. The petitioner is a partner of a duly registered partnership firm named Raman Brothers. They run a cinema house named Ratan Talkies at Shalabatpura locality in the Sutra city. The said cinema house is a part of a double decker theatre. One cinema house being Rupam talkies situated on the ground floor and petitioner's Ratan talkies being at a height of about 35 feet from the ground floor. The petitioner and his firm at the time of construction of the theatre made a provision for a lift to go to the upper deck that is at a height where Ratan talkies is situated. In the beginning, the petitioner and his firm gave benefit of the lift, free of charge to the cinemagoers. The construction of the lift was done by him at huge cost as submitted by the petitioner. According to the petitioner, maintenance cost of the lift was also going to be prohibitively expensive. There were frequent breakdown due to the snapping of lift chords. One such snapping

of one chord cost about Rs. 1,500/ - per repair. As a result thereof, the petitioner and his firm were compelled to introduce a small and nominal charge of 10 paise per passenger per upward trip. The said charge was to be collected and in fact was collected from only those who wanted to avail of the service. Those who did not want to avail of the service offered by the lift had not to pay ten paise and on payment of usual charges, they could be admitted to entertainment in Ratan talkies on the first floor. A separate slip in token of the receipt of ten paise was issued to every person availing of the service of the lift. According to the petitioner, those who did not want to avail of the lift service used to climb the ladder for going to Ratan talkies as the height was only 35" and it was easy and feasible for cinegoers to go to the foyer of Ratan talkies by climbing the ladders. It is further the case of the petitioner that even according to the bye-laws of the Surat Municipal Corporation, it was not compulsory to provide lift facility at the height of 35".

3. It appears that somewhere in June 1978, respondent No. I - District Magistrate, Surat who is also the authority under the Gujarat Entertainment Tax Act, 1977 ("the Act" for short), challenged the action of the petitioner of charging 10 paise from the cinegoers who used the lift. The petitioner by his reply dated 14-6-1978 submitted that he was not prohibited from charging such charge on use of the lift. It appears that thereafter respondent No. I sent further letter dated 21-7-1978 to the petitioner maintaining that charge for lift cannot be collected by the petitioner and if he wanted to collect charge, he may collect only on condition that the petitioner should collect entertainment tax on this charge of ten paise per person for the use of the lift. The said communication is at Annexure D. Thereafter, the petitioner made a representation to the Second respondent State of Gujarat in Finance Department. The finance Secretary through his subordinate officer's letter dated 15-12-1978, however, rejected the representation of the petitioner as per communication at Annexure "E". It is in these circumstances that the petitioner has approached this Court for a declaration that levy and collection of entertainment duty on lift-charge is illegal and ultra vires and for permanently restraining the respondents from collecting the same from the petitioner. In the alternative, it is submitted that if such levy and collection is found to be flowing from the provisions of Sections 2(a), 2(e), 2(g) and Section 3 of the Act, then in that case, these provisions would be illegal and ultra vires and would be liable to be struck down.

4. We have heard the learned Advocates of the parties on this question. In our view, the submission made by the petitioner is well justified and has got to be accepted. The facts stated in the petition are not controverted by the respondents by filing any affidavit-in-reply. We must, therefore, proceed on the uncontroversial factual position, that the petitioner's cinema theatre which would be having auditorium and where cinema pictures-are exhibited is situated at a height of 35" from the ground floor and that auditorium can be approached after crossing the foyer on the first floor and thereafter crossing glass partition as mentioned in the petition. So far as lift is concerned, the petitioner on the ground

floor provides the facility and any party who wants to go on the first floor can approach the foyer and utilise the lift on payment of ten paise per upward trip. The short question is, whether such payment, which the petitioner collects from the cinegoer, can be brought within the network of the Act. The answer to this question depends upon true construction of the relevant provisions of the Act. Section 3(1) of the Act is relevant charging section for our present purpose. It provides that "there shall be levied and paid to the State Government on every payment for admission to an entertainment, other than the payment for admission referred to in clause (b), a tax, at the following rates....." We are not concerned with the rates of tax. Clause (b) also is not relevant for our present purpose as it refers to drive-in-cinema. The petitioner's cinema is not drive-in-cinema. From Section 3(1), it becomes obvious that for attracting charge to tax, payment should be levied by the entertainer viz. cinema owner for admission to entertainment. It is also obvious that tax cannot be levied for payment for admission to any other facility which does not amount to entertainment, as such type of levy which is not levied for the purpose of entertainment would become ultra vires the powers of the State legislature, as seen from Entry 62 of Part 11 of Seventh Schedule to the Constitution. The said Entry provides that State legislature is competent to levy taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. Consequent tax must be on payment received for permitting benefit of entertainment. It must, therefore, be found out as to whether payment of ten paise per passenger for use of lift charged by the petitioner for going to the first floor foyer is payment for admission to entertainment. On first principle, it is difficult to comprehend as to what entertainment a person would get by traveling in the lift for approaching given destination. But even that apart, when we turn to the relevant definitions in the Act, we find that admission to entertainment is defined by Section 2(a) to include admission to any place in which the entertainment is held. "Entertainment" is defined by Section 2(e) to include any exhibition, performance, amusement, game or sport to which persons are admitted for payment. "Payment for admission" is defined by Section 2(g) to include various payments such as payment for seats or other accommodation in a place of entertainment. Especially, clause (v) of Section 2(g) is worth noting in this connection. It provides that 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. On the facts of the present case, it is difficult to comprehend as to how a person who pays ten paise per upward trip in lift for approaching the cine auditorium on the first floor is paying for being admitted to a place where entertainment is held. The term "entertainment" as seen above includes any exhibition, performance, amusement, game or sport to which persons are admitted for payment. None of these elements exists when a person travels in a lift. There is no exhibition, amusement or game or sport, enjoyed by a person traveling in lift. What is relevant is payment for being admitted to place of entertainment. Ten paise

charged by the petitioner from cinegoers are not for admission to auditorium but they are charged for admission to lift. Section 2(g)(v) cannot be of any avail to the Revenue for the simple reason that the payment is not 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. If the petitioner had provided that whether a person travels by lift or not, he will have to pay ten paise more for being admitted to the picture show in the auditorium then the respondent could have submitted with emphasis that Section 2(g)(v) would apply. But on the facts of the present case, it is obvious that it is not compulsory for any one to utilise the lift facility given by the petitioner at the cinema theatre. If a cinegoer climbs up to the first floor then he need not pay ten paise. But if he wants to avail of the extra facility of lift, he will have to pay ten paise more. It has nothing to do with entertainment for which he is said to be paying. Thus, on the scheme of the relevant provisions of the Act, conclusion is inescapable that charging of ten paise per passenger who is given facility of using lift situated in the cinema theatre is not any payment received for admission to any entertainment. It is easy to visualise that in a cinema theatre especially double decker cinema, lift facility may be offered for convenience of cinegoers to go to upper floor where cinema auditoriums are situated, on upper floors, there may be book stalls, restaurants, ice-cream parlours and without entering the auditorium, person may like to utilise any of these other services or facilities. He may go to purchase books on the first floor or second floor. If he chooses to use the lift, he has to pay for it. But that may have nothing to do with the picture show which may be exhibited in the auditorium. He may go only for snacks on the first floor or second floor or to have only a bowl of ice-cream there. Similarly, in many theatres, parking facilities are provided wherein cinegoers can conveniently park their scooters and/or cars on payment. Such payment cannot be said to be payment made for admission to entertainment unless such payments are made compulsory for every cinegoer before he can enter the auditorium. In the absence of such situation therefore, it cannot be said that mere collecting of ten paise for getting extra facility of lift if required by any cinegoer would by itself bring this levy within the fold of the Act. The respondents were, therefore, patently in error in insisting that the petitioner should pay entertainment tax on the lift charges collected by him, from the cinegoers who go to his cinema theatre. The learned Assistant Government Pleader could not show us how such type of levy can be sustained under the provisions of the Act. Consequently, it must be held that insistence of the respondents in calling upon the petitioner to pay entertainment tax on the lift charges on the facts of this case is totally illegal and without jurisdiction. The reasoning given in Annexure F for demanding entertainment tax on the basis of Section 2(g)(v) and 3(1)(k) is also patently illegal and ultra vires as these provisions do not cover such type of levy as seen earlier.

5. In the result, rule is made absolute in terms of para 19 (B). Respondents are permanently restrained from levying and collecting entertainment tax on the lift

charge of ten paise which the petitioner is charging from passengers who voluntarily wish to utilise the facility of lift at the petitioners' theatre. In view of the said decision of ours, and the relief which is given to the petitioner, the alternative submission that the provisions may be declared as ultra vires would not survive. Hence, prayer 19(A) is not granted as it has become of academic interest in the light of our granting prayer 19(B) to the petitioners. As the petition is being allowed, whatever deposits of lift charges have been kept by the petitioner in a separate savings bank account as per the interim order dated 24-9-1979 will now be permitted to be appropriated by the petitioner to his own use. The petitioner will be entitled to operate the said bank account in accordance with law. Order accordingly.

6. Order accordingly.