**(2000) 11 MP CK 0031**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Petition No. 1910/91

Ramesh Chandra APPELLANT

Vs

State of M.P. and others RESPONDENT

**Date of Decision :** 30-11-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Cinemas (Regulation) Rules, 1972 — Rule 2, 2(C)
Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 3

**Citation :** (2003) 96 FLR 421 : (2003) ILR (MP) 391 : (2001) 2 JLJ 308 : (2001) 1 MPHT 481 : (2001) 1 MPLJ 275

**Hon'ble Judges :** A.M. Sapre, J

**Bench :** Single Bench

**Advocate :** Shri R.S. Chandrawade, for the Appellant; Shri S. Mukati, Government Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

A.M. Sapre, J.

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner questions the legality and validity of a demand made by the respondent No. 3 (District Excise Officer, Khargone) asking the petitioner to pay entertainment tax at the enhanced monthly rate of Rs. 3,937/- in place of Rs. 1,687/- on the strength of an amendment made on 1-4-1991 in the M.P. Entertainment Duty and Advertisements Tax Act, 1936. Facts of the case lie in a narrow compass.

Petitioner is having his V.C.R. Parlour in a Village-Gogawa in Tehsil Khargone in District West Nimad. The petitioner in his VCR Parlour (Premsukh Video House) was at all relevant time exhibiting films to public. Petitioner had taken licence for running and exhibiting films under the provisions of M.P. Cinema Regulation Act (Annexure P-I).This licence was being renewed from time to time as is clear from the endorsement made in the licence (Annexure P-I).

 

Under Section 3 of M.P. Entertainment Duty and Advertisement Tax Act (for short called Act) the petitioner is required to pay every month a total sum of Rs. 750/- by way of tax for exhibition of films in his Video Parlour. Petitioner was accordingly paying the said tax. In the year 1991, the State amended the table appended to Section 3 of the Act and increased the rates of tax payable by person engaged in the business of exhibition of films on VCR. The amendment made in the table is as under :--

Population  Screen size

Upto 51 C.M. (Rs. per month)

51 C.M. and above (Rs. per month)

(1)  (2)  (3)

1. Upto 10,000  *(A) 2625.00  (A) 3937.00

*(B) 1125.00  (B) 1687.00

2. From 10,001 upto 20,000  (A) 3375.00  (A) 5062.00

(B) 1687.00  (B) 2530.00

3. From 20,001 upto 50,000  (A) 4500.00  (A) 6750.00

(B) 2250.00  (B) 3375.00

4.

From 50,001 upto

1,00,000  (A) 6000.00  (A) 9000.00

(B) 3000.00  (B) 4500.00

5.

More than 1,00,000

100 percent on all classes on the sate of each ticket 100 percent on all classes on the sale of each ticket

Note : - *(A) Where there is cinema.

*(B) Where there is no cinema.

The Excise Officer on the basis of aforesaid amendment in the table referred supra, asked the petitioner to pay a sum of Rs. 3,937/- mentioned in Column No. 3 of item No. 1 in Category A. According to Excise Office, since the case of petitioner falls in category specified in (A) and hence, he is liable to pay Rs. 3,937/-. It is this demand which is impugned by the petitioner in this petition.

The stand of respondents while opposing the petition is that since at the relevant time, there was one touring talkies exhibiting the films in village Gogawa, where petitioner is having his place of business and hence, the case of the petitioner will fall in Note Ai.e,, Category 1, Column 3 (A) and not (B).

Heard Shri R.S. Chandrawade, learned counsel for the petitioner and Shri S. Mukati, learned Government Advocate for respondents.

The main submission of learned counsel for the petitioner while assailing the impugned demand was that it is based on incorrect reading or one may say incorrect interpretation of an amendment. According to learned counsel, the case of petitioner falls in category (B) of item No. 1 because admittedly there is no cinema in Village Gogawa. It was urged that where there is no cinema, the exhibitor (petitioner) is liable to pay only a sum of Rs. 1687/-by way of Tax in Category (B) and not Rs. 3,937/- falling in Category (A) which is payable only in those places where there exists a cinema. Learned counsel urged that the word cinema in note (A) and (B) appended to Table means permanent cinema and not touring cinema as contended by the respondent.

In reply, the submission of learned counsel for the State was that the word cinema used in Note A and B include permanent cinema as well as touring cinema. Relying upon the definition of the word cinema it was urged that the word cinema does not make any distinction between permanent cinema or/and touring cinema and therefore, once it is proved that in a place where the petitioner is carrying on a business of exhibition of films on VCR, there is a cinema (whether permanent or touring), the petitioner will have to pay Rs. 3,937/- in place of Rs. 1,687/-.

Having heard the learned counsel for the parties and having examined the issue in the context of the scheme of the Act, I find no merit in this petition. In my opinion, the word cinema used in Note A and B to the amendment includes permanent as also touring cinema. This becomes clear when one reads the definition of the word cinema in Rule2 (C) of M.P. Cinema (Regulation) Rules, 1972. It clearly says that cinema means any place wherein an exhibition by means of cinematograph is given. Perusal of this definition would clearly indicate that it does not make any distinction between permanent cinema and touring cinema. It is neither disputed nor can be disputed that even in touring cinema it exhibits cinema i.e., films. The object of permanent cinema or/and touring is the same namely, exhibition of films. In other words, no distinction has been made between permanent cinema and touring cinema so far as it deals with payment of tax u/s 3 of the Act.

Accordingly, it has to be held that the word cinema mentioned in note A and B to the table appended to Section 3 would also include touring cinema. The necessary consequence then would be that if in a place where petitioner is exhibiting his films on VCR and if there was also a touring cinema for a particular period, operating and exhibiting films then in that event, the petitioner will have to pay tax only for that period i.e., during the period touring cinema exhibited films in that area as per the rates prescribed in Column A of table appended to

 

Section 3 of Act.

In view of aforesaid discussion, I do not find any merit in the petition. It is accordingly dismissed.

No costs. Security amount, if deposited by the petitioner, be refunded.

Misc. Petition dismissed.