(1982) 11 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3642 of 1975

Simla Talkies, Ferozepore City APPELLANT

Vs

State of Punjab and others RESPONDENT

Date of Decision : 23-11-1982

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 11 P&H CK 0060

Hon'ble Judges : A.S. Bains, J

Bench : Single Bench

Advocate : Yog Raj Sachdeva, for the Appellant; Kulwant Kaur for A.G. Pb. and Mr. M.L. Sarin, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bains, J.—M/s. Simla Talkies, Ferozepore City, a partnership firm, through its partner Opinder Nath Kakar, has challenged the enhancement of show tax from Rs. 10/- to Rs. 20/- made vide order of the Executive Officer, Municipal Committee, Ferozepore City (Respondent No. 3), dated 23rd May, 1975, by way of this writ petition under articles 226/227 of the Constitution of India.

2. The case of the petitioner is that the Municipal Committee had no authority in law to enhance the show tax on a Cinema House which is tax on the profession, trade or callings or employment as exhibition of films is for the entertainment of the public. Article 276 read with item No. 60 of List II of the 7th Schedule to the Constitution of India only authorizes the maximum amount of taxes on professions, trades, callings and employment at Rs. 250/- per Annum and that the enhancement of show tax from Rs. 10/- to, Rs. 20/- per show is beyond the legislative competence of the State Legislature and the Municipal Committee both and that it is a fetter on the fundamental right of the petitioner to have the liberty of his own profession or calling and that it amounts to discrimination. I do not find any merit in either of these contentions the show tax will fall under item 62 of List II (State List) of 7th Schedule to the Constitution of India and not

under item 60 read with article 276. Item 62 reads as under:--

Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

There is nothing wrong in the enhancement of show tax, which does not in any way hampers or restricts the profession or trade of the petitioner It is settled law that reasonable restrictions can be imposed and the enhancement of show tax is quite reasonable in view of the increase in the income of the cinema houses. Similar matter came up before a Division Bench of this Court reported as Silver Screen Enterprises and others v. The State and another (1956) 58 P.L.R. 203 wherein it was observed by their lordships as under:--

The levy of entertainment tax on cinematograph shows exhibited in public is a tax on entertainment and falls under Sch. VII List 2 Entry 62. The mere fact that the person who pays the tax follows the vocation of providing entertainment for public does not make it a tax which falls under Entry 60. Hence Art 276 of the Constitution is not offended by any provision of the Punjab Entertainments Tax (Cinematograph Shows) Act, 1954.

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The power to grant exemption does not affect the power to levy a tax and there is nothing in section 6(2) which invalidates the rest of the Act nor the notification whereby the petitioners have been held liable to pay tax.

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There is no such thing as an ideally just tax. Almost any kind of tax affects a smaller businessman more adversely than his more fortunate rival, and the fact which a cinema which attracts a larger number of visitors has to pay the same tax as another house to which very few individuals go is scarecely a reason for holding that article 14 of the Constitution has been violated.

Similar matter also came up before the Supreme Court in the case reported as The Western India Theatres Ltd. Vs. The Cantonment Board, Poona, Cantonment, wherein it was observed by their Lordships of the Supreme Court that a tax levied by a Cantonment Board on the lessee of a cinema theatre on each show of the film exhibited by him is a valid tax. There is, thus, no ground for any further controversy. The matter is concluded by the aforesaid authority of the Supreme Court and also by this High Court. Mr. Sachdeva, learned counsel for the petitioner, relied upon a decision of the High Court of Madhya Bharat reported as Shrikrishna Shaligram v. Municipal Committee, Ujjain AIR 1953 M.B. 145. With utmost respect, this authority does not lay down the correct law. Moreover, it was noticed by the aforesaid Division Bench of this Court and dissented from.

3. For the reasons recorded I am of the view that no case it made out for invoking the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India.

4. In the result, the petition is dismissed with costs. Counsel''s fee Rs. 500/.