(1994) 03 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1669 of 1993 (R)

Sky Vision T.V. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 22-03-1994

Acts Referred:
Constitution of India, 1950 — Article 265

Citation : (1995) 2 BLJR 845

Hon'ble Judges : R.N. Sahay, J;Gurusharan Sharma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.N. Sahay, J.—All the petitioners are partners and/or proprietors of firms engaged in the trade of cable T.V. operation. Their field of activity is in the district of Dhanbad. The petitioners have installed Dish Antennas and are receiving programmes which are beemed through Satellite and through cables and other electronic gadgets. Then they distribute the programmes to the consumers through T.V. Sets. The petitioners are receiving programmes through Satellite systems viz., Insat 2-A. Asiaset and Arabset. From the above mentioned Satellites petitioners are receiving programmes from 14 channels. The petitioners can rely only 4/5 channels at a time through Receivers and/or distributors.

2. The petitioners charge installation cost from the consumer for laying cables from the place where the Dish Antena is set up to the place where the Television sets of the consumers are set up. Initial cost varies depending upon the distance of the T.V. set from the location of the Dish Antennas of the petitioners. These charges include T.V. tuning, checking of wires, replacement of wires, amplifier system, Tap off and other electronic items. The petitioners have to employ various people as servicemen to manage the correct functioning of the entire system and for removing any defect in the Cable network or other electronic items and in lieu of these services provided by the petitioners, the petitioners levy a nominal service charge from the consumers.

3. According to the petitioners till date no law for regulation of the operations of Dish Antennas has been passed or made by the Central Government and/or the State Government.

4. It appears that the Commissioner of Commercial Tax Patna issued a Circular dated 4.12.1992 to all Subordinate Commercial Tax Officers to the effect that having regard to the provisions contained in the Bihar Entertainment Tax Act 1948, Dish Antennas/Cable T.V. Operators who provide entertainment are liable to pay Entertainment Tax @ 110%-under Section 3 of the Act. A direction was issued for realisation of the tax from the cable operators. The aforesaid circular was issued after obtaining the opinion of the Advocate General of Bihar. The Circular is annexed as Annexure-1 to the writ application.

5. Pursuant to the above circular the petitioners have been issued show cause notices (Annexure-2) wherein it has been stated that petitioners are distributing entertainment programmes through Dish Antennas and they have not registered themselves under the Provisions of the Bihar Entertainment Act 1948, and as such they have also not paid entertainment tax, and hence why a proceeding be not initiated u/s 6(4) of the Act.

6. By this application, the petitioners have impugned the vires of Annexure-1 and 2.

7. The petitioners maintain that under the existing provisions in the Act no tax can be levied without amending the act suitably to bring the cable operators within the purview of the Act. It is contended that the impugned circular was issued on the opinion of the Advocate General without considering the question as to whether the Act could be made applicable to the cable operators.

8. The most question for consideration is as to whether Bihar Entertainment Tax Act 1948, contains any provisions regarding imposition of tax on distribution of programme through dish antenna and the circular issued by the second-respondent ultra-vires the Act.

9. This renders necessity to consider the relevant provisions of the Act. This act cane into force on Ist October, 1948 and was enacted for the purpose of imposition of tax on amusement and other entertainment in the State of Bihar. The relevant provisions in the definition Clause (Section 2 of the Act) reads as follows:

2(a) "Admission" include admission as a spectator or as one of an audiance and admission for the purpose of amusement by taking part in an entertainment;

2(b)...

2(bb)...

2(c)...

2(d) "entertainment" includes any exhibition performance, amusement, game, sport or races to which persons are admitted for payment,

2(e) "Entertainment Tax" includes tax levied under Sections 3, 3-A and 3-C;

2(f)...

2(g) "payment for admission" includes-

(i) any payment made by a person who, having been admitted to one part of a place of entertainment, is subsequently admitted another part thereof, for admission to which a payment involving a tax or a higher tax is required;

(ii) any payment for seats or other accommodation in a place of entertainment; and

(iii) any payment for any purpose whatsoever connected with art entertainment which a person is required to make as a condition of attending or constituting to attend the entertainment in addition to the payment, if any for admission to the entertainment;

2(h)...

2(i) "proprietor" in relation to any entertainment includes any person responsible for or for the time being incharge of the management thereof;

2(j)...

2(k) "ticket" means a ticket for the purpose of securing admission to an entertainment.

10. Section 3 of the Act provides tax on entertainment and it reads as follows:

3. Tax on entertainment.--(1) Subject to the provisions of this Act, there shall be levied and paid to the State Government an entertainment tax at such rates not exceeding one hundred fifty percentum 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.

(2) There shall further be levied and paid to the State Government, a tax at such rate, not exceeding rupees one hundred for every show of an entertainment as the State Government may from time to time fix and notify and such tax shall be deemed to be part of the entertainment tax and shall be payable by the proprietor of an entertainment:

Provided that nothing in Sub-section (1) and

(2) shall preclude the State Government from fixing and notifying different rates of entertainment tax for different entertainment''s or different classes of an entertainment or entertainments of different places or areas.

Section 3 is relevant for the purpose of this case.

11. In Bankipur Club Ltd. v. State of Bihar 1984 BRLJ 32 it has been held that

cinema shows held in club periodically for members and their dependants only for which club realising only monthly membership fee and no specific charge is realised for cinema shows; did not attract the provision of the Act and as such club was not liable towards entertainment tax or even registered with the department.

12. There is a specific provision in the Act for levying tax on commercial Video exhibition in Section 3(c) of the Act, Section 4 of the Act lays down that the proprietor shall be entitled to collect from persons admitted to the entertainments an amount equal to the entertainment tax payable in respect of tickets or complimentary tickets issued. Section 5(A) of the Act provides for levy and collection of tax. This section reads as follows:

5-A. Levy and Collection.-Subject to the provisions of this Act and such rules as may be prescribed, entertainments tax shall-

(i) be levied in respect of such person admitted to the entertainment.

(ii) be paid in the case of admission by stamped tickets as provided Section 5 by means of a stamp on such tickets.

(iii) be calculated and paid in the case of admission otherwise than by stamped tickets, on the number of persons admitted, and

(iv) be recoverable from the proprietor in the case of admission otherwise than by stamped tickets.

13. Section 6 of the Act provides for registration of entertainment and lays down:

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 satisfied that the application is in order, register the applicant and grant him 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 wilfully failed to apply for registrations, the prescribed authority shall, after giving the proprietor a reasonable opportunity of being heard, asses, 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 bis business as such proprietor, the prescribed authority shall cancel the registration with effect from the prescribed date.

Section 7(A) of the Act provides for suspension or revocation of licence for entertainment. Section 9 of the Act provides for submissions of returns and payment and recovery of the entertainment tax.

14. u/s 3 of the Act tax can be levied for "entertainment" provide it is covered by the definition of entertainment in Section 2(d) of the Act. It is clear from the definition of "entertainment" that only exhibition, performance or amusement is not sufficient to attract the definition "unless persons are admitted for payment"/ It is further clarified from the definition of "admission" and "payment" for admission" as defined in Section 2(a) and 2(g) of the Act respectively.

15. The learned Govt. Advocate, appearing for the State defended the circular (Annexure-1) in view of Section 3 of the Act. It is submitted that there was no need to amend the Bihar Entertainment Tax Act, 1948 in respect of operators of cable T.V. It is true that entertainment is not provided at the operators'' end, but it is provided at the spectators place through cable system, the mechanism of which is controlled at the operators'' end. It is submitted that since the operators charge fee for the entertainment they are liable to be taxed. The learned Counsel submitted that the expression ''entertainment'' as defined in the Act has a wide amplitude and within its ambit included entertainment of any kind including one which may be educative. The demand of entertainment tax is justified on averments made in Paragraph 20 of the counter-affidavit quoted hereunder:

20. That with regard to the statements made in Paragraphs 8 and 9 of the writ application,, it is submitted that the Cable T.V. Operators while giving connection to the subscribers lay cable instal other equipment and so they charge towards installation. But after installation, they are charging Rs. 100 to 150/- per month towards providing entertainment to homes of consumers. It is not necessary that a "public place" is provided for such entertainment. Entertainment can be provided at the door steps or homes of a person or group of persons. Since operators beaming television signals, thus providing entertainment through satellite are not directly or indirectly connected with the T.V. set owners, who constitute audiance. Dish Antenna Operators can be said to directly providing entertainment to the people through Dish Antenna, amlifier and cable network. And it is they, and not the Satellite owners, who are charging fee, in the name of service charges from the people. Every Cinema Operators does the same things for the audiance like Dish Antenna Operators, like maintaining Projectors and other audio-Visual equipments. But such acts are not main and primary acts they are incidental to the main act of providing entertainment through Cinema Projects in case of Cinema Operators and through Dish Anfena receiver-amplifier-

cable systems in case of Dish Antenna Operators. So actually, they are charging towards the cost of providing entertainment.

16. Learned Govt. Advocate but tressed his argument by heavily relying upon Geeta Enterprises and Others Vs. State of U.P. and Others, In the aforementioned case, the Hon''ble Supreme Court considered whether Video show was exigible for tax under the provisions of U.P. Entertainment Tax Act, 1937. The definition of ''entertainment'' U.P. Act is para-material with Section 2(d) of the Bihar Entertainment Tax Act. The Hon''ble Supreme Court ascertained the correct meaning and import of the word ''entertainment'' and in para 6 of the report:

Entertainment...for a PUBLIC OR SPECIAL Occasion"... is an entertainment in the sense of a gathering of persons for entertainment.

"Entertainment" (Shall Lotteries and Gaming Act, 1956 (c. 45, Section 4(1)) included a tombola drive alone without accompanying festivities.

The monologue or patter of a comedian, even if delivered at an entertainment provided by an institution whose activities are partly educational was held to be a "variety entertainment" within the meaning of the Section.

Similarly in Words and Phrases, Judicially Defined (Vol. 2 pp. 206-207) the word entertainment has been defined thus:

Entertainment is something connected with the enjoyment of refreshment rooms, tables and the like. It is something beyond refreshment; it is the accommodation provided, whether that includes a musical or other amusement or not.

Similarly in Words and Phrases (Permanent Edn; Vol. 14-A. P. 353) ''entertainment'' has been defined thus:

An entertainment is a source or means of amusement; a diverting performance, especially a public performance, as a concert, drama, or the like.

Entertainment denotes that which serves for amusement, and "amusement" is defined as a pleasurable occupation of the senses, or that which furnishes it, as dancing, sports, or music.

Likewise, in Readers'' Digest Family Word Finder at p. 264, ''entertainment, has been defined thus:

Entertainment amusement, diversion, distraction, recreation, fun, play, good time, pastime, novelty; pleasure, enjoyment, satisfaction.

In Webster''s Third New International Dictionary the word "entertainment" has been defined at p. 757 thus:

"Entertainment" the act of diverting, amusing, or causing someone''s time to pass agreeably.

"Sometimes that diverts, amuses, or occupies the attention agreeably.

A public performance designed to divert or amuse.

Similarly in the Concise English Dictionary by Hayward and Sparkes the word ''entertainment'' has been defined thus:

the art of entertainment, amusing or diverting, the pleasure afforded to the mind by anything interesting, amusement, other performance intended to amuse.

17. The Hon''ble Supreme Court observed in Paragraph 7:

Sub-section (3) itself by using the word ''entertainment'', as "any exhibitional, performance, amusement, game or sport to which persons are admitted for payment" has extended the scope of entertainment to expressly include any kind of amusement, game or sport. It cannot be disputed in the present case that by operating the video, the operator of the video pays 50 paise per 30 seconds for playing the games, sports and other kind of performances whichare shown on the machine and which can be watched by interested spectators.

18. In my opinion/reliance on the aforesaid decision by the learned Govt. Advocate is totally misplaced and does not support his contention that Cable T.V. operators likewise will be subject to Section 3 of the Bihar Act. It is worthy to note that specific provision has been made in the Bihar Act for tax on Video shows.

19. In my considered opinion, Section 2(d) of the Act plainly is not attracted since there is no question of persons being admitted for entertainment. Having regard to the existing provision of the Act, the Act is unworkable so far cable operators are concerned and unless amendment is made in the Act, no entertainment tax can be levied merely on the circular of the Commissioner, Commercial Taxes. Assuming that u/s 3 of the Act the petitioners are liable to pay entertainment tax in absence of any notification by the State Government under Sub-section (1) of Section 3, no tax can be levied.

20. Under Article 265 of the Constitution of India no tax shall be levied or collected by the authorities except by law. In State of Mysore and Others Vs. D. Cawasji and Company and Others, it was held by the Supreme Court that law in this context means an Act of the Legislature and cannot comprise an executive order or a rule without express statutory authority. An executive order, or executive instruction or custom, thus, cannot justify an imposition as held by the Supreme Court in the case of Harivansh Lal Mehra Vs. State of Maharashtra, . In Rayalseema Constructions Vs. Deputy Commercial Tax Officer, Mannady Division, Madras 1 and Others, it has been held that the words "levy and collection" are used in this Article in a comprehensive sense and are intended to include the entire process of taxation commencing from taxing statute to the taking away of the money from the pocket of the citizen. In this connection reference may also be made to the case of A. Venkata Subba Rao Vs. State of Andhra Pradesh, .

21. In the result, I hold that the impugned circular is ultra vires the Bihar Entertainment Tax Act & Article 265 of the Constitution of India and hence writ of certiorari must be granted to quash the circular of the second-respondent (Annexure-1). We accordingly quash the show cause notice issued to the petitioners (Annexure-2).

22. This writ application is accordingly allowed. There shall be no order as to costs.

Gurusharan Sharma, J.

23. I agree.