(1982) 03 KAR CK 0020

In the Karnataka High Court

Case No : WP 8789 & 8790/82

Sri Lakshmi Touring Talkies — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:
Karnataka Entertainments Tax Act, 1958 — Section 4

Citation : (1982) 100 KarLJ 55

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. These two writ petitions are disposed by the following common order at the stage of preliminary hearing after notice to respondents who have entered appearance through the learned High Court Government Pleader.

2. Petitioners are owners of touring cinema houses at Channagiri Town. They are aggrieved by the notice issued by the Asst. Commercial Tax Officer informing them that in view of the fact that the population of Channagiri Town has exceeded ten thousand, according to the provisional population Census, 1981, they are no longer eligible for composition under S. 4-A of the Karnataka Entertainments Tax, Act, 1958 (hereinafter referred to as the Act).

3. In substance the above notices required the petitioners to pay entertainment tax under S. 3 of the Act. S. 3 is the main charging section, while S. 4 is also a charging section, but in respect of show taxes S. 4-A of the Act provides for composition by cinema theatre owners in towns with less than ten thousand population where the owners can pay a lumpsum amount equal to 12-1/2 per cent of the maximum collection possible if seats have been filled in the theatre. Otherwise, the owners are required to pay entertainment tax in advance of the actual sale of tickets with weekly or fort-nightly returns as the case may be in the case of theatres situate in towns or cities which have population exceeding ten thousand.

4. Sri B.G. Sridharan, learned counsel for the petitioners strenuously contended that the notices are without jurisdiction, on the ground that 1981 Census figures

provisionally or otherwise have not been published and therefore the second respondent-Asst. Commercial Tax Officer had no jurisdiction to issue the notices. Secondly, he contended that the definition of population contained in S. 2(1)(a) of the Act relates to the population as on the date of the commencement of the Act and. not periodical fluctuations in the population as ascertained at any Census. The reference to the census in the definition according to the learned counsel is only to the census preceding the date on which the Act came into force.

5. The first of the arguments is not at all tenable as Government of India have published the provisional figures of census conducted in 1981. It is published by the Government of India on the authority of the Director of Census Operations in Karnataka. A perusal of the publication shows that copyright is obtained by the Government of India in 1981 itself. Therefore, there has been publication of the census figures and at page 278 population of Channagiri town is shown as 11,874 (Censuf of India, 1981 Series -9, Karnataka).

6. The second argument advanced requires some consideration. Under S. 4 of the Act an Explanation was provided and population was defined at sub-clause (a) of that Explanation. That has since been deleted by Karnataka Entertainment Tax (Amendment) Act of 1979, by which clause (a) to the Expln. to S. 4 of the Act has been omitted. In the same amendment Act, sub-clause (a) to subsection (1) of S. 2 is added and the population is defined in identical terms as it was found in Expln. (a) to S. 4 of the Act before its deletion and that reads as follows:

"Population means the population as ascertained at last preceding census of which the relevant figures are published."

From the clear language of the definition of the term ''Population'' it is reasonable to infer that population is not static for the purpose of the Act but growing or increasing or decreasing, depending upon the circumstances obtaining in any given area in the State with which we are concerned. The use of the term ''ascertained'' clearly indicates that enumeration should take place from time to time. Similarly, the use of the terms ''last preceding census'' also indicates that the enumeration ascertainment has again to take place. If that is so understood the relevant figures which are required to be published are figures which are ascertained after the preceding census which necessarily means the figures after the latest census is conducted.

7. This construction placed on the definition of the term ''population'' derives strength from the language contained in S. 4-A of the Act. Sub-section (1) of S. 4-A provides for levy of entertainment tax under the Act at the rate of 12 1/2 per cent of the gross collection capacity of a theatre which is situated within five kms. from the limits of a local authority whose population does not exceed ten thousand. Sub-section (3) provides that Ss. 3, 3-A and 3-B and S. 4 of the Act shall not apply to entertainments to which sub-section (1) of S. 4-A is applicable. The Amendment Act came into force in the year 1979 and was prospective in its application. Therefore, reference to population in sub-section (1) of S. 4-A of the

Act must be construed as reference to the population that exists at any given time within the limits of a local authority, for an owner benefited by that section to derive the benefit conferred by the sub-section. If it is so understood then the periodical increase in population as published after the census should bring into operation Ss. 3, 3-A, 3-B and S. 4 which have been made inapplicable as already pointed out to cinema theatres situated within the local limits of a local authority with not more than ten thousand population. Per contra, if there is a decrease in the population after the publication of census figures at any given point of time benefit not enjoyed by a theatre may be extended to it by the same process of reason. The arguments of the learned counsel overlook the fact that we are concerned with the interpretation of a taxation statute. The primary object of taxation statute is to augment the revenue of the State and not to keep it static. If the arguments advanced by the learned counsel are accepted, then revenue from cinema theatres situated in towns which have great scope for development will never augment the revenue from entertainment tax even if the population increases ten fold. For the same reason, even if ten more permanent theatres are built in such towns, if the arguments are accepted, all of them pay tax at the rate of 12 1/2 per cent of the gross earning capacity of the theatre and not on the basis of the number of persons entertained based on the value of the tickets sold, as under S. 3 of the Act.

For the reasons stated above, the two arguments advanced by the learned counsel are rejected and the writ petitions are dismissed without rule being issued.

