

(1990) 01 KAR CK 0031
In the Karnataka High Court
Case No : W.A. No's. 1214 to 1237 of 1988

State of Karnataka and Another

APPELLANT

Vs

B. Ganesha Krishna Bhat and Others etc.

RESPONDENT

Date of Decision : 05-01-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Karnataka Entertainment Tax Act, 1958 — Section 4 B

Citation : AIR 1991 Kar 28 : (1990) ILR (Kar) 1045

Hon'ble Judges : S. Rajendra Babu, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : M.R. Achar, for the Appellant; K. Suryanarayana Rao, B.G. Sridharan, R. Gururajan, B.V. Katageri, C.N. Kamath and S.R. Nayak, for the Respondent

Judgement

Rajendra Babu, J.—This batch of writ appeals arise out of an order made by a learned single Judge of this Court striking down and holding that Section 4-B of the Karnataka Entertainment Tax Act, 1958 (hereinafter referred to as the Act) is unconstitutional.

2. The respondents who are licensees under the Cinematographs Act to conduct video shows by exhibiting cinematograph films through Television and Video Cassette Recorders challenged in several writ petitions the constitutional validity of Section 4-B of the Act on various grounds which can be summarised as under :--

- (i) That Section 4-B of the Act is not a charging provision;
- (ii) That the levy does not fit into the scheme of the Act in view of the fact that it does not provide for assessment, appeal and other procedural safeguards;
- (iii) That the levy of flat rate of tax u/s. 4-B is arbitrary and in violation of Arts. 14 and 19(1)(g) of the Constitution; and

(iv) That the levy u/s. 4-B at a flat rate of Rs. 2,500/- per month on video shows is not relatable to entry 62 of list 2 of VII schedule to the Constitution and is in fact a levy on the properties of the show and not on entertainment.

3. The learned single Judge accepted the contentions raised on behalf of the respondents and struck down the said provision.

4. The State being aggrieved by the said decision in the writ petitions, has come up in appeals questioning the correctness of the conclusions and reasoning of the learned single Judge.

5. We shall take up for consideration the contentions raised by the respondents inasmuch as the result of these appeals would depend upon the tenability and acceptability of the same.

6. The video cassette parlors are a class by themselves and cannot be compared to any ordinary cinema theatres exhibiting cinemas. Considering the nature of activity carried on by them in a small place for a small gathering the levy of tax irrespective of the rate of charges, the number of persons admitted, the locality in which it is run and the population in the locality, whether it is a big city or a small town or a mere village, lacks classification and lack of classification itself has led to discrimination as found in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, and in *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, . The learned counsel for the respondents further elaborating their arguments on this aspect of the matter, submitted that a flat rate of tax at Rs. 2,500/- per month is not justifiable at all.

7. In *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, the Supreme Court was concerned as to the validity of Travancore-Cochin Land Tax Act which levied a uniform tax at the rate of a Rs. 2 per acre. Petitioner's grievance therein was that though he owned considerable tract of land his income was only Rs. 3,100/- per year and was insufficient to pay the tax. The Supreme Court held that ordinarily all tax on land or land revenue was imposed on the actual or potential productivity of the land and a uniform rate without reference to potential productivity was discriminatory. That was one of those cases where lack of classification created the inequality. The effect of the decision in *Moopil Nair's* case has been subject matter of consideration by several decisions and reference to a few of them would be necessary.

7A. Subsequent to the decision in *Moopii Nair's* case by another Act known as Kerala Plantations Additional Tax Act, a tax at the rate of Rs. 50 per hectare was imposed on the ground that it was not based on the yield from the land. The area of plantation was determined as a quotient obtained by dividing the total number of trees by different numbers in certain cases or the actual extent which gave the yield in other cases. If the area determined was larger than the actual cultivated area, the tax was payable only in respect of actual cultivated area. The petitioner contended that the actual yield from these plantations in different areas of the State were different and hence a uniform rate of tax was

discriminatory. The Supreme Court in *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, rejected this contention holding that a uniform rate of tax fell more heavily on some plantations than on others because the profits were widely discrepant and if that was discrimination "hardly any tax direct or indirect would escape the same censure". The Court took the view that that was not a case where barren lands were subjected to equality to productive lands and the methods of calculation under the impugned Act to find out the area of plantation was held to equalise different plantations for purposes of taxability.

8. The trend of decisions starting from *Twyford Tea Company's* case would disclose that the ratio of *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, is applied only where lands and buildings, which have apparently no income, are taxed along with others which produce income. The view expressed in *Moopii Nair's* case has not been applied outside taxation on lands and buildings. In *Avinder Singh and Others Vs. State of Punjab and Others*, where tax at rupee one was levied on liquor bottles irrespective of the contents in them and the Supreme Court upheld the validity of the same. Again in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, the Supreme Court held that a broad classification is sufficient. The facts in that case were that the former system of classification on the basis of quantity of safety matches produced in a factory for purposes of levy of excise duty was altered and the duty was leviable on the basis of safety matches whether manufactured by aid of power or not. This new classification was harsh on small-scale manufacturers who were formerly entitled to concessional rates. This contention was rejected that the Court would not strike down the taxation statute because there was room for further classification. Referring to *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, the Supreme Court in *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, stated thus:

"It is sound law that refusal to make rational classification where grossly dissimilar subjects are treated by the law violates the mandate of Art. 14. Even so, where the limited classification adopted in the present case is based upon a relevant differentia which has a nexus to the legislative end of taxation, the Court cannot strike down the law on the score that there is room for further classification. Refusal to classify is one thing and it bears on constitutionality, not launching on micro-classification to work out perfect justice is left to executive expediency and legislative judgment and not for forensic wisdom."

In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, where levy of purchase tax by weight was again upheld irrespective of the sucrose content in it. In that case, *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, was considered by the Supreme Court in para-52 of its judgment, thus :

"Reference to *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, was made at the bar to persuade us that unequals cannot be tortured

into equality -- a vice which stultifies the soul of Article 4 as Anatole France exposed in his sardonic epigram that "the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread". We are sure that equality has two sides, both important and Moopil Nair adverted to one of the facets. Nothing more can be squeezed out of that case. The inequality of situation, in the total conspectus of socio-economic facts and human condition, must be striking and the unjust equality the rule forces down on unequals must be glaring. In taxation, the many criteria of intrinsic intricacy and pragmatic plurality persuade the court, as a realist instrument and respecter of the other two branches, to allow considerable free play although never any play for caprice, mala fides or cruel recklessness in intent and effect."

9. The objector of subjecting taxing power to Article 14 of the Constitution is that the State should evenly and equitably distribute the burden of taxation. The courts allow a wide latitude to legislative classification as there could be more than classification and if the legislature selects one of them courts would not be justified in interfering on the ground that the legislature ought to have adopted another basis which was more reasonable according to the Court. Hence, courts interfere only in cases where classification is capricious, fanciful or arbitrary or clearly unjust. A classification can be over-inclusive or under-inclusive. In the former case, situations or classes which ought to have been included are brought within the ambit of law and in the latter cases situations or classes which ought to have been ordinarily included are left out. In either case it does not seem proper to strike down the classification as a whole, unless it is incapable of extraction into the good and the bad or is so patently arbitrary and unjust.

10. In the present cases, the Act classifies all video parlors into one category and treats them alike apart from the ordinary cinematograph shows exhibited by theatres-permanent, semi-permanent or touring. The learned counsel appearing for the respondents admitted this classification between theatres showing ordinary cinematograph films on the one hand and video parlors on the other as reasonable. The only question for our consideration is whether further classification is required depending upon the population in an area or the size of the town or nearness to the city etc. As stated above, absence of further classification on the ground that there is scope for further classification the Courts cannot strike down the levy. Flat rate of tax as held in *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, *Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another*, and *Avinder Singh and Others Vs. State of Punjab and Others*, is not per se discriminatory.

Section 4-B of the Act provides for taxation on video parlors in lieu of taxation provided u/s. 3 or 3A or 4A of the Act. It is a consolidated sum of charge on the activity of showing video shows instead of adopting a cumbersome process of fixing the capacity of a theatre, the number of shows held and dependent on the number of shows held the tax should be assessed. A rough and ready rule is

adopted on the basis of each video cassette parlour irrespective of the days of shows, the capacity or the number of shows exhibited by him. This position would be necessitated considering the huge spurt in video parlors in the state irrespective of the fact that they are either in rural or urban areas and that is one of the modes of collection of tax and less difficult for the parlour owners to pay the tax. This obviates the necessity of maintaining account books, issue of tickets and the periodical visits of the officers to the parlors and the procedure for assessment. Thus, this measure adopted by the legislature therefore cannot be stated to be unreasonable.

11. Another facet of the argument advanced on the basis of Art. 14 of the Constitution is that there is procedural discrimination or arbitrariness inasmuch as there is no provision for assessment, appeal and other procedural safeguards. A bare reading of Section 4-B of the Act makes it clear that there is a fixed levy of Rs. 2,500 per month on each video parlour. The levy is fixed in the provision itself. There cannot be any variation at all depending upon the number of shows or the number of persons admitted or the seating capacity. It is a simple provision making collection at a fixed rate in respect of each of the video parlors. When such simple provisions are made it is wholly unnecessary for the legislature to make a provision for assessment or appeal. When the subject-matter of tax on video parlors under the Act is not complicated at all, the procedure prescribed even in the absence of assessment cannot be stated to be unreasonable. Such a view has been taken by the Supreme Court in *Ram Bachan Lal Vs. The State of Bihar*, . In the matter of payment of taxes under the Motor Vehicles Taxation Act a Division Bench of this Court has taken a similar view in *Syed Rafiq Ahmed v. R.T.O.* (1984) 1 Kar LJ 281 : (AIR 1984 NOC 254), which reads as under:

"S. 4 of the Karnataka Motor Vehicles Taxation Act, 1957, requires all taxes levied under S. 3 to be paid in advance by the registered owner or person having possession or control of the vehicle. Such advance payment of taxes, except in cases where the amount levied on motor vehicles, such as, mopeds, scooters, motor cycles does not exceed Rs. 300 for the entire year, is required to be made for the quarter, half year or year as may be chosen by such owner before such quarter, half year or year, but within the time stipulated therein. The liability and obligation to pay taxes on motor vehicles for the quarter, half year or year as the case may be is in advance and that obligation applies to vehicles registered within the State or outside the State also when they propose to enter this State and use the roads of the State."

11-A. The determination of rates of taxes payable on motor vehicles is comparatively an easy affair and in such cases it was held the procedure for assessment is excluded by implication.

11-B. In *Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another*, , the Supreme Court held that where procedural provisions lay down different methods to deal with persons similarly situated the same would be in violation of Article

14, but video parlors and cinemas stand on different footing and the rate of levy under S. 4-B of the Act is far lighter than under other provisions as stated in the statement of objects which is not refuted, and the procedure being simple, that principle can have no application.

In this context it is necessary to refer to two decisions of the Supreme Court which are apposite to the point under discussion. In repelling the contention that in the absence of a provision for corrective machinery by way of revision, or appeal the provisions conferring a power to decide or do a particular thing may have to be regarded as unreasonable or unguided, uncontrolled and arbitrary and hence violative of Art. 14 of the Constitution, the Supreme Court in *Babubhai and Co. and Others Vs. State of Gujarat and Others*, , stated thus at para-6 :

"It cannot be disputed that the absence of a provision for a corrective machinery by way of appeal or revision to a superior authority to rectify an adverse order passed by an authority or body on whom the power is conferred may indicate that the power so conferred is unreasonable or arbitrary but it is obvious that providing such corrective machinery is only one of the several ways in which the power could be checked or controlled and its absence will be one of the factors to be considered along with several other before coming to the conclusion that the power so conferred is unreasonable or arbitrary; in other words mere absence of a corrective machinery by way of appeal or revision by itself would not make the power unreasonable or arbitrary, much less would render the provision invalid. Regard will have to be had to several factors, such as, on whom the power is conferred, whether on a high official or a petty officer, what is the nature of the power -- whether the exercise thereof depends upon the subjective satisfaction of the authority or body on whom it is conferred or is it to be exercised objectively by reference to some existing facts or tests, whether or not it is a quasi-judicial power requiring that authority or body to observe principles of natural justice and make a speaking order etc.; the last mentioned factor particularly ensures application of mind on the part of the authority or body only to pertinent or germane material on the record excluding the extraneous and irrelevant and also subjects the order of the authority or body to judicial review under the writ jurisdiction of the Court on grounds of perversity, extraneous influence, mala fides and other blatant infirmities. Moreover all these factors will have to be considered in the light of the scheme of the enactment and the purpose intended to be achieved by the concerned provision. If on an examination of the Scheme of the enactment as also the purpose of the concerned provision it is found that the power to decide or do a particular thing is conferred on a very minor or petty officer, that the exercise thereof by him depends on his subjective satisfaction, that he is expected to exercise the power administratively without any obligation to make a speaking order then, of course, the absence of a corrective machinery will render the provision conferring such absolute and unfettered power invalid. But it is the cumulative effect of all these factors that will render the provision unreasonable or arbitrary and liable to be struck down."

Again in *Prakash Amichand Shah Vs. State of Gujarat and Others*, , a Constitution Bench of the Supreme Court held that there is no discrimination in providing for appeal or revision from some only of the decisions of an administrative authority unless absence of appeal from other decisions make whole procedure so oppressive and arbitrary and elucidated the law thus in para-32:

"Then it is contended that the Act which does not provide for an appeal from some of the decisions of the Town Planning Officer taken under Sec. 32 of the Act, while it has provided appeal to the Board of Appeal against some other decisions taken under the very same section was discriminatory. There is no rule that every decision of every officer under a statute should be made appealable and if it is not so made appealable the status should be struck down. It may be salutary if an appeal is provided against decisions on questions which are of great importance either to private parties or to the members of the general public, but ordinarily on such matters the legislature is the best Judge. Unless the Court finds that the absence of an appeal is likely to make the whole procedure oppressive and arbitrary, the Court does not condemn it as unconstitutional. On going through the provisions of Section 32 and other cognate provisions of the Act and considering the status of the officer who is appointed as a Town Planning Officer, we are of the view that it is not possible to hold that S. 32 of the Act is a provision which confers uncanalised and arbitrary power on the Town Planning Officer merely because of the denial of the right of appeal in some cases. Dealing with a similar contention advanced against S. 54 of the Act and Rule 27 of the Bombay Town Planning Rules, 1955, framed under the Act which authorised summary eviction of the occupants of land vesting in the local authority under S. 53 of the Act, this Court has held in *Babubhai and Co. and Others Vs. State of Gujarat and Others*, , that the absence of a corrective machinery by way of an appeal does not always make a provision unreasonable. We agree with the above view. In any event the remedy under Art. 226 of the Constitution of India is available to a person aggrieved by such orders."

11-C. In the present cases, when the payment of the amount of tax being fixed and the payment being by each one of the parlors which is licensed under the relevant provisions of law and the period is also fixed, it is impossible to understand as to how this provision can be stated to be arbitrary in the absence of provisions for assessment, appeal or revision. The Act itself having provided a different but simple procedure in respect of video cassette parlors to say that absence of assessment or appeal or revision provision in this regard would offend the scheme of the Act does not stand to reason.

12. The argument that the levy is exorbitant and unreasonable is not supported by material in the shape of particulars of income and expenditure involved to show that the rate of tax is so oppressive as to destroy or annihilate the trade altogether. Therefore, this argument based on Article 19(1)(g) of the Constitution

does not merit any serious consideration.

13. The argument that the provision does not make any concession as to the period and the rate of tax prescribed is too high cannot also stand to reason. It is clear that the rate of tax payable is for each month. If in any month no show is held the tax being one on entertainment it is clear that no tax is payable. The learned Government Advocate also did not rightly dispute this position in law. When the levy is made with reference to a period, such period and the amount of levy would constitute a unit of taxation. We derive support for this view from the decisions of this Court in Sampath Raj Vs. Regional Transport Officer, Viewed so, the tax at the rate of Rs. 2,500 per month itself constitutes a unit of taxation so far as video parlors are concerned. Hence, the apprehension of the respondents in this regard is unfounded. The State has undertaken to make suitable provisions providing for concessions by filing a memo which reads as follows :

"It was submitted on behalf of the appellants that on 29-11-1989 a memo on behalf of the State Government will be filed to the effect that the State Government will make an appropriate rule u/s 4-B of the Karnataka Entertainment Tax Act, 1958, providing relief by way of reduction or refund in cases of extreme hardship whenever the video shows cannot be conducted because of reasons beyond the control of licensees.

After consulting the Commissioner of Commercial Taxes and in view of the letter dated 1-12-1989 of the Joint Commissioner of Commercial Taxes (Legal), the appellants are filing this memo on the following terms : The State Government will make an appropriate rule u/s 4-B of the Act or an appropriate provision in the Act itself, providing certain relief either by way of reduction or refund in cases of extreme hardship whenever the video shows cannot be conducted because of reasons beyond the control of licensees. The State Government will make a necessary provision in this behalf as stated above in due course of time. It is submitted that if a provision by way of legislation is thought appropriate, such provision will be made after following the due procedure."

Therefore, this memo should allay the fears of the respondents that the tax levied would be collected irrespective of the shows held or not for any length of period once the licence is taken and they are bound to pay tax in each month even when in any month no show is held at all.

14. The respondents contended that Section 4-B of the Act is not a provision which provides for tax on entertainment but is really a tax on proprietorship of video parlors and hence has no competence to levy the tax in question. Elaborating this contention it is submitted that there can be a tax on the admission of a person to entertainment. When the rate of tax is not relatable to the admission of a person for entertainment, in substance it is not a tax on entertainment at all and therefore it is submitted that Section 4-B of the Act is invalid. As analysed earlier the levy u/s 4-B of the Act is a simple device for charging video parlors at a consolidated amount on a rough and ready basis.

That basis is only a measure of tax and not the taxable event or subject. The fact that video cassette parlour secures a licence and displays the cassettes for purposes of entertainment of the people visiting it, the inference is obvious that the same is meant for indulging in entertainment as understood ordinarily. If the activity carried on by the respondents is one of entertainment by displaying video cassettes the measure of tax adopted at Rs. 2,500/- per parlour per month cannot be stated to be unrelated to the power to tax on entertainment. Therefore, this argument also does not hold water.

15. The components which enter into the concept of a provision charging the tax are well known as held in several decisions of the Supreme Court including the decisions in Govind Saran Ganga Saran Vs. Commissioner of Sales Tax and Others, , The State of Tamil Nadu Vs. M.K. Kandaswami and Others, and they are :

- (i) Taxable event attracting the levy;
- (ii) Person on whom the levy is imposed and is obliged to pay the tax;
- (iii) Rate at which the tax is imposed; and
- (iv) The measure or value to which rate is applied for computing tax liability.

Under Section 4-B the exhibition of video shows is the subject matter of tax under the Act, payable by proprietors or owner or exhibitors of video shows and the rate of tax is Rs. 2,500/-. Thus, the provision clearly spells out all the necessary ingredients to charge the tax on video shows and the arguments to the contrary that it is not the charging section are untenable.

16. For the foregoing reasons, with great respect to the learned single Judge who decided the writ petitions, we set aside the order made therein and dismiss the writ petitions. Rule discharged.

17. Petitions dismissed.