(1990) 02 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 263 of 1987

State of Punjab APPELLANT

Vs

Jaswant Theatre and Another RESPONDENT

Date of Decision : 28-02-1990

Acts Referred:
Punjab Municipal Act, 1911 — Section 62

Citation : (1990) 186 ITR 655 : (1990) 97 PLR 685

Hon'ble Judges : J.V. Gupta, Acting C.J.;M.S. Liberhan, J

Bench : Division Bench

Advocate : H.S. Bedi, General, for the Appellant; Ashok Bha A.K. Mittal and K.B. Bhandari and Pardeep Bhandari, for the Respondent

Judgement

M.S. Liberhan, J.—This judgment will dispose of Letters Patent Appeal No. 263 of 1987.

2. The appellant has challenged the judgment dated March 27, 1987, by which the enhancement of show tax, and the imposition of entertainment tax were quashed.

3. The facts relevant to the questions raised can be briefly stated thus.

4. In November 1960, the Municipal Committee, Sunam, imposed show tax at the rate of Rs. 4 and from time to time, the rate of tax was increased when finally the schedules of rates of show tax were amended. The show tax was imposed at different rates keeping in view the nature of the cinema hall and other facilities provided in it. The increase in rate on show tax came into force with effect from April 16, 1977.

5. The Municipal Committee, vide its Notification dated January 7, 1977, imposed entertainment tax on the tickets sold at the rate of 0.05 paise per sold ticket. By the same notification that imposed the entertainment tax, bye-laws relating to the entertainment tax were also notified. Jaswant Theatre, through its partner, impugned the imposition of entertainment tax as well as show tax being

unconstitutional, inter alia, on the grounds (1) that no machinery for its assessment has been provided in the notification, and (ii) provisions of Section 61 and Section 62(2) of the Punjab Municipal Act, 1911, were not complied with, i.e., notice inviting objections did not define the class of persons, the description of property proposed to be taxed and the system of assessment to be adopted. The imposition was alleged to be arbitrary, oppressive and confiscating in character. No opportunity of hearing was granted to the writ petitioner either before enhancing the rate of show tax or imposing the entertainment tax.

6. The appellant controverted the submissions made by the writ petitioner. The learned single judge held the notification to be invalid on the ground that it does not define the class of persons liable for payment of tax, nor is there any description of property liable for tax, and further that no system of assessment has been provided. Similarly, the notification with respect to show tax was quashed on the ground that it does not define the persons liable for tax and it cannot be left to the sweet will of the Municipal Committee to charge the show tax from any person, nor has any authority been designated to make the assessment. It was further held that neither had machinery for adjudication of the disputes relating to the show tax and entertainment tax been provided, nor were the authorities who were to determine the tax spelled out and, consequently, the notifications were quashed.

7. Learned counsel for the appellant urged that the findings of the learned single judge cannot be sustained, It was submitted that show tax was imposed as far back as in 1960. The petitioner has not challenged the said notification. The only notification which is under challenge is with respect to the enhancement of the show tax, The machinery for its assessment has been provided by Chapter VII of the Municipal Account Code, 1930. The person liable to pay the show tax is obvious as it would be the person running the show who would be liable to pay the show tax.

8. So far as the entertainment tax is concerned, learned counsel for the appellant urged that bye-laws were promulgated along with the imposition of the tax. The bye-laws define the proprietor of a cinema. It also provided that tax shall be collected by the cinema authorities on the sale of cinema tickets. The proprietor of the cinema was fixed with the responsibility to submit the statements mentioning the serial numbers of the sold cinema tickets along with the tax collected on Monday and Saturday of every week. Breach of non-compliance with the bye-laws by the proprietor of the cinema was made punishable. It was argued that the bye-laws are to be read with the notification imposing the tax. Reading both of them together, it is clear that all the essentials of Section 62 of the Punjab Municipal Act, 1911, are completely complied with. The orders are appealable u/s 84 of the Punjab Municipal Act, 1911, and the person entitled to collect the tax has been defined in Chapter VII of the Municipal Account Code, 1980. He further submitted that the findings arrived at by the learned single judge cannot be sustained.

9. Learned counsel for the respondents refuted the submissions made by counsel for the appellant. It was urged that since both the notifications do not specify either the persons liable for payment of tax or the property liable for tax nor has any system for assessment been mentioned, the imposition of tax is in violation of the mandatory provisions of Section 62 of the Punjab Municipal Act, 1911, and cannot be sustained. It was contended that tax can be charged only if the charging provisions are clear and fix the tiability of the tax on a person or persons. The liability of the assessees cannot be fixed by implication. Even payment of tax earlier cannot make a person liable for tax in the absence of a clear charging provision. The charging provisions of the Act have to be clear. The tax cannot be imposed by analogies or inferences or after probing into the intention of the Legislature to implement the intention. The tax can be imposed by stating so clearly and there cannot be a tax by intendment. There is no equity in tax, nor is there any presumption with respect to tax.

10. Learned counsel relied on a Division Bench judgment of this court in Civil Writ Petition No. 1993 of 1978 (Bhagwan Dass Bir Chand v. State Government of Punjab decided on December 20, 1979), wherein the notification couched in similar language was quashed on account of not having specified the person who was liable to pay tax as well as non-provision of the machinery for imposition and recovery of the prescribed tax.

11. In order to determine the respective issues raised in the appeal, it would be expedient to refer to the notification as well as the sections.

12. Section 62 reads as under :

"62. Procedure to impose taxes. -- (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax u/s 61.

(2) When such a resolution has been passed, the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee ; and the committee shall, at a special meeting, take his objection into consideration.

(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals along with a notice indicating that they are modifications of those previously published for objection.

(5) Any objections which may, within thirty days, be received to the amended proposals shall be dealt with in the manner prescribed in Sub-section (3).

(6) When the committee has finally settled its proposals, it shall, if the proposed tax falls under Clauses (b) to (f) of Sub-section (1) of Section 61, direct that the

tax be imposed, and shall forward a copy of its order to the effect through the Deputy Commissioner, to the State Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection, if any, made in connection therewith to the Deputy Commissioner.

(7) If the proposed tax falls under Clause (a) of Sub-section (1) of Section 61, the Deputy Commissioner, after considering the objections received under Sub-sections (3) and (5), may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the State Government a copy of the proposals and his order of sanction ; and if the tax falls under Sub-section (2) of Section 61, the Deputy Commissioner shall submit the proposals and objections with his recommendations to the State Government.

(8) The State Government, on receiving proposals for taxation under Sub-section (2), may sanction or refuse to sanction the same or return them to the committee for further consideration ....

(10) (a) When a copy of an order under Sub-sections (6) and (7) has been received, or

(b) When a proposal has been sanctioned under Sub-section (8), the State Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than one month from the date of notification, on which the tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July or on the first day October in any year, and if it comes into force on any other than the first day of the year by which it is leviable shall be leviable by the quarter till the first day of such year then next ensuing.

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act."

13. The notification, dated March 7, 1977, for imposition of the show tax reads as under :

"Local Government Department, Notification, the 7th March, 1977.

No. 756/ADSIGIL/77/153

In pursuance of the provisions of Sub-section (1) of Section 62 of the Punjab Municipal Act, 1911, it is hereby notified that, with the previous sanction of the Governor of Punjab, the Municipal Committee, Sunam, in Sangrur District, has made the following amendment in the Punjab Government Notification No. 4863-101-66/14943 dated 8th June, 1966, as subsequently amended, vide Notification No. 2729-6CII-73/15392 dated 14th June, 1973, imposing show tax within the limits of Sunam Municipality, the amended rates shall come into force with effect from April 16, 1977.

AMENDMENT Item No. 2 of the existing Schedule shall be substituted as udner:

Serial No

Description of cinema hall

Rate of show tax per show

1.

Air-conditioned cinema hall or cinema halls where this facility is available

Rs. 15

2.

Cinema halls with facility of air-cooling

Rs. 10

3.

Cinema halls where neither of the above facility is available

Sd. J. S. Bindra, Joint Secretary to Government Pb. Local Government Department, Chandigarh."

14. The notification, dated January 7, 1977, for imposition of the show tax reads as under :

"Local Government Department

Notification No. 9-A DSLGII-77/704. The 7th January, 1977

Whereas the Municipal Committee, Sunam, in Sangrur District, in exercise of the powers conferred by Sub-section (2) of Section 61 and Sections 188 and 199 of the Punjab Municipal Act, 1911, has proposed an entertainment tax on sold cinema tickets at the rate of 0.50 paise per sold cinema ticket and framed bye-laws to regulate it within the Sunam Municipal Committee.

And whereas the said proposal has been mentioned and confirmed by the Governor of Punjab under Sub-section (8) of Section 201 of the said Act.

Now, therefore, in pursuance of Sub-section (10) of Section 62 and Section 201 of said Act, the Governor of Punjab is pleased to notify the imposition of the said tax and its bye-laws shall come into force in the said municipality with effect from February 15, 1977.

BYE-LAWS

1. The proprietor of a cinema means proprietor, partner, manager, or any other authorised person who is responsible for the management of cinema.

2. The tax shall be collected by the cinema authorities at the time of sale of cinema tickets by affixing the rubber stamp to be provided by the committee bearing the words ''Municipal entertainment tax''.

3. The proprietor of the cinema shall be responsible for submitting a statement mentioning the number of sold cinema tickets along with tax collected up to the preceding day, on every Monday and Saturday of the week.

4. In case of breach or abetment of any bye-laws, the proprietor of the cinema shall be punishable by the magistrate with a fine which may extend up to Rs. 500 (sic) may extend to Rs. 5 for everyday after the first duration of the breach continued."

Further, it would be advantageous to refer to Chapter VII of the Punjab Municipal Account Code, 1930, which promulgates the rules. After providing specifically rules relating to budget, structure of accounts, receipts, octroi and terminal tax, Chapter VII relates to other taxes. Chapter VII(1) of the Code relates to appointment and duties of a tax superintendent/tax inspector, as may be necessary for the assessment and collection of such taxes. The tax superintendent has been made responsible for the assessment and collection of all taxes and other fees due to the committee.

15. On reading Section 62 of the Act under which admittedly the tax has been imposed, the basic design revealed from the language in which the section is woven is that the committee, after proposing to impose a tax, shall pass a resolution to that effect and shall publish the same (i) by defining the class of persons ; (ii) description of property proposed to be taxed ; and (iii) the amount or rate of tax to be imposed with the system of assessment proposed to be adopted and invite objections to the same from the public at large. After determining the objections either with the modifications or without modifications as it deems fit, the committee shall submit its proposal to the Deputy Commissioner who would forward the same to the Slate Government. The State Government may sanction or refuse to sanction the proposal as set out by Section 62(2), i.e., the class of persons to be taxed, description of the property to be taxed, amount or rate of tax to be imposed and the system of assessment of the proposed tax. After the Government accepts the proposal, it shall publish the same in the Government notification and shall notify the imposition of the tax proposed u/s 62(2) either with the modifications or as such. The statute itself provides that, on the issuance of the notification of imposition of tax under this section, the notification shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

16. The syndrome which emerges from the rules referred to by counsel for the Municipal Committee is that the Municipal Committee had been enjoined upon to employ a tax superintendent and such other staff which may be necessary for the assessment and collection of such tax. The tax superintendent appointed, in addition to other duties, was entrusted with the responsibility generally for the

assessment and collection of the taxes other than octroi and terminal taxes.

17. The basic question required to be considered is what is the mandate of Section 62(2) of the Punjab Municipal Act, 1911. The conspectus of the view which emerges is that the Municipal Committee proposing the tax shall publish a notice inviting objections. The legislation provides that the notice shall contain (i) the defined class of persons proposed to be taxed ; (ii) the amount or the rate of tax ; and (iii) the system of assessment. The committee, after considering the objections and finally settling the proposal, was enjoined upon to forward a copy of its order through the Deputy Commissioner to the State Government in case tax is payable by the owner of a building and land not exceeding 15 per cent. of the annual rental value ; if the tax is on a person practising any profession or art or carrying on any trade in the municipal area. If the tax is of any other nature, then the proposal along with the objections was to be sent to the Deputy Commissioner The Deputy Commissioner, after taking into consideration the objections received by the Municipal Committee, has the discretion to refuse to sanction the proposal or return the same to the committee for further consideration or sanction them as such with or without modifications. The Deputy Commissioner is not authorised to increase the amount or rate of tax. The Deputy Commissioner is enjoined upon to send a copy of the proposal as well as his order to the State who would either sanction or refuse to sanction or return the case to the committee for reconsideration. After taking a decision with respect to the proposal, the State Government is to notify the imposition of tax in accordance with such proposals or the order with effect from the date it is notified which should not be less than one month from the date of the notification on which the tax shall come into force. It is provided that the issuance of the notification shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

18. From the undisputed facts so far as show tax is concerned, it emerges that the notification issued describes the nature of the tax, i.e., cinema show and the rate of tax. The event of the tax has been described but. admittedly, the class of persons or the description of the property to be taxed or the system of assessment has not been notified. An attempt was made to contend that a system of assessment is inherent in the notification and that the cinema show is the event to be taxed. Cinema show has not been defined. No regulations have been provided, no machinery for assessment or to determine the disputes has been provided. An attempt was made to urge that in all municipal committees there are always tax superintendents whose duty is to assess and collect such taxes. The tax superintendent may be a person authorised to assess and collect the tax but no authority has been conferred on him with respect to the system of assessment. "Cinema show" has not been defined for the purpose of the tax. The notification does not define the person who is to be liable for the tax. It does not describe whether a show shown in a house would also be liable for tax or show shown in a cinema hall alone is to be taxed, nor does it define what is the show, whether a part of a show would include the show or what would be a complete

show for the purpose of tax.

19. It has become axiomatic that no person can be charged with a tax unless the taxing statute enjoins and the imposition is a clear impost on a person charged with the liability. No tax can be imposed by inference or analogy. The persons liable have to be notified, the event of liability has to be specified, the tax has to be capable of being calculated and fixed and cannot be left to imagination. One has not to yield to vague and unregulated benevolences. The statutory description has to provide for the entire system of the tax. It cannot be left to the discretion of the executors. In taxing statutes, complete guidelines have to be provided within the four corners of which the collector of the tax is required to act. The assessee has to merely look at the statute and what it clearly says ; there cannot be any tax by intendment. Nothing can be read and nothing can be employed except to look fairly at the language used in the statute imposing the impost. Testing the said notification on the above principles, we are of the opinion that the imposition of show tax suffers from vagueness as far as the persons liable to be taxed and the event of liability is concerned apart from the fact that no system for assessment has been provided for. Thus, the imposition of show tax cannot be sustained.

20. With respect to entertainment tax, learned counsel for the appellant contended that the essentials of Section 62 have been complied with inasmuch as, with the imposition of the tax, regulations defining the nature of the property to be taxed as well as the persons liable for the same have also been notified. The notification for imposition of tax and the regulations having been published simultaneously, have to be read together by adopting the principles of reading the notification in its pith and substance.

21. We do not find force in the contention of counsel for the appellant inasmuch as though the description of the cinema hall has been given and the rate of tax per show has been defined, but, as discussed above, nothing has been said as to what a show is nor the person who would be liable ?or the tax has been defined. Providing a definition of the proprietor of a cinema and desiring the cinema authorities to collect the tax at the time of sale of the tickets does not make it any the better and does not validate the imposition of the show tax. It is not provided whether the tax is to be calculated by the cinema authorities or the owner of the cinema hall or the person running the show or the manager or the authorised persons responsible for the management of the cinema shows. No doubt, a responsibility has been fixed on the proprietor of the cinema to submit the statements with respect to sale of cinema tickets as well as the tax collected. May be that upon the proprietor has been enjoined the duty of collecting the tax, but nothing has been provided from whom he is required to collect it.

22. For the reasons recorded above, we find no force in the appeal. The same is dismissed with no order as to costs.

