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(1958) 09 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 321, 351, 354, 478, 480, 482, 484, 486, 490, 494, 496, 536, 578, 599, 737 to 745 of 1955 and 8, 100, 207, 219, 310, 312, 840 of 1958 and 157 of 1957

T. Aswathanarayana and Others — APPELLANT

Vs

The State of Andhra and Another — RESPONDENT

Date of Decision : 12-09-1958

Acts Referred:
Constitution of India, 1950 — Article 13, 14, 246, 265, 276

Citation : AIR 1959 AP 461

Hon'ble Judges : P. Chandra Reddy, C.J;Kumarayya, J

Bench : Division Bench

Advocate : R.M. Seshadri, K. Venkatarama Rao, D. Surya Prakasa Rao, S. Nageswara Rao, A. Bhujanga Rao, C.S. Govindaswamy, V.V. Krishnamurthy and A. Satyanarayana, for the Appellant; D. Narasara Raju, General and P. Ramachandra Reddy, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—The constitutional validity of Section 4-A of the Madras Entertainments Tax Act is put in issue in these writ petitions. The petitioners are exhibitors of Motion Pictures. They are either owners of theatre houses or lessees thereof in various parts of the State of Andhra Pradesh, The Government of Andhra Pradesh imposed a tax on each of the cinematograph exhibitions in the theatres, in exercise of the powers conferred on it by Section 4-A of the impugned legislation. The jurisdiction of this Court is invoked under Article 226 of the Constitution to strike down the offending section as being unconstitutional. It is contended that it was ultra vires the powers of the concerned legislature to have passed this measure.

2. Before we deal with the various contentions advanced on behalf of the petitioners, it is useful to set out the terms of the offending section ;

"4-A. (1) In the case of cinematograph exhibitions, in addition to the tax u/s 4,

there shall be levied and paid to the State Government a tax calculated at the following rates, namely :

Rate of tax.

(i)

Exhibitions held in the City of Madras.

Two rupees eight annas for every show.

(ii)

Exhibitions held in municipalities notified in this behalf by the State Government in the Fort St. George Gazette.

Two rupees for every show.

(iii)

Exhibitions held in other municipalities.

One rupee eight annas for every show.

(iv)

Exhibitions held else-where other than those held with cinematograph appar-atus and plant taken from place to place either in panchayat areas with a population of less than ten thousand at the last census or in non-panchayat areas.

One rupee for every show.

(2) The tax levied under Sub-section (1) shall be recoverable from the proprietor.

(3) The provisions of this Act other than Sections 4,6,7 and 13 shall, in so far as may be, apply in relation to the tax payable under Sub-section (1) as they apply in relation to the tax payable u/s 4"

3. For the first lime, the Provincial Legislature of Madras enacted the Madras Entertainment Tax Act in 1939, levying a tax on payment for admissions to entertainments. A provision permitting the levy of additional tax on cinematograph exhibitions was inserted in this statute by the Madras Entertainment Tax (Amendment), Act, 1949 (Act XVII of 1949).

This Act was to be in force only for a period of one year from 1-8-1949 on which date it came into operation. Its life was extended from time to time till 1955 when the President of India enacted, by virtue of the powers conferred on him by Section 3 of the Andhra State Legislature (Delegation of Powers) Act, 1954, the Madras Entertainments Tax (Andhra Amendment) Act. 1955, extending for a further period of one year from 31-3-1955 the Madras Act XVII of 1949. Finally this was made a permanent legislative measure by the Andhra Re-enacting Act VI of 1956.

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4. The constitutionality of this provision ol law is attacked on the ground that this was beyond the legislative competence of the Slate Legislature. It was urged that no power was conferred on the State to make taxing laws in regard to cinematograph shows. This power is not included in the State List (List No. 2 of the 7th Schedule). The problem thus posed has to be solved with reference to the relevant entries in list No. II which, enumerates the various subjects that are assigned to State legislatures under Article 246 of the Constitution.

Item 62 gives exclusive power to the State legislature to make laws in regard to taxes on luxuries including taxes on entertainments, amusements, belting and gambling. Two other entries to which our attention was invited as having a bearing on the present enquiry are Items 33 and 60 of the same list. :

"33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments'' and amusements."

"60. Taxes on professions, trades, callings and employments."

5. An argument is pressed upon us that Section 4-A cannot be brought within the range of entry 62, since cinema shows cannot be described as entertainments within the meaning of this item. "Entertainments" as contemplated by this entry are exclusive of exhibitions in cinema theatres and consequently Entry 62 does not authorise any levy on cinema shows. Support is sought for this proposition from the wording of entry 33 of the State List.

The argument based upon this entry is that if cinematograph exhibitions could be brought within the content of "entertainments," it was needless for the Constitution-makers to have included specifically cinemas in entry 33. This denotes the intendment of the Constitution to exclude cinemas from the purview of "entertainments." In the absence of a definite mention of cinemas in any of the entries in the State list, the State Legislature cannot have power to make the impost thereon, adds the learned Counsel.

6. In our opinion this is not a substantial argument. The word "entertainments" occurring in Entry 62 is of wide significance and embraces within its fold cinematograph exhibitions. It includes all varieties of entertainments- and there is no warrant for confining it to entertainments or amusements other than cinema shows. The specific mention of cinemas in Entry 33 does not disclose the intention of the framers of the Constitution to take away cinemas from the ambit of that entry.

Obviously, cinemas had to be separately mentioned because the power to make laws in regard to cinemas given to State Legislatures was subject to item 60 of the Union List which relates to sanctioning of cinematograph films for exhibition. It was to make this clear that cinemas must have been specifically mentioned. This circumstance cannot in any way, establish the theory that entertainments" cannot take in cinematograph shows.

7. A perusal of the various entries in the several lists shows that they start with

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words of general conception followed by terms with meanings which are comprehended in the general terms. The additional words do not in any way restrict the scope of the general terms but clarify the range and the object of legislation contemplated, as comprised in the opening words. Each word in an entry or each entry in a list should not be so read as excluding or reducing the content of the other especially when they confer powers on the same legislature. The words in an entry may overlap, but that does not mean that they exclude the other.

8. In this connection, we may usefully refer to Manikkasundara v. R.S. Nayudu, AIR 1947 F.C.I 1, which considered the scope of entry 34 of List II in the 7th Schedule to the Government of India, Act, 1935, which was in these words :

"Charities and charitable institution; charitable and religious endowments."

The question that fell to be considered there was whether the Madras Temple Entry Authorisation and Indemnity Act of 1939 was within the legislative competence of the Provincial Legislature. The answer to this depended on whether it could fall under entry 34 set out above. The federal Court decided that the word "charities" was an appropriate generic term including all public, secular, charitable and religious trusts and institutions recognised as such by British Indian law and a power to legislate in respect of "charities" will include a power to legislate in respect of all matters connected with religious charities and institutions.

The language of the entries in the Government of India Act, 1935 is also identical with that of the entries in the list to the 7th Schedule of the Constitution. In dealing with the ambit of the entry Spens, C. J. observed as follows :

"It is true that the general principles referred to earlier in this judgment and taken from Maxwell on the Interpretation of Statutes may often properly be applied. But all such general priciples of construction must yield to definite indications in the context that the portions of an enactment to be construed have not been drafted on the basis of any such principle. In our opinion it is only necessary to consider in detail a number of entries in the List in Schedule VII to come to the conclusion that so far from the principle referred to having been kept in view throughout the drafting of these Lists, a very different principle has in fact, been adopted in a large number of cases.

In such last mentioned cases, it seems to us that the entries start with the use of some term or phrase of very general and far-reaching conception, and that then such term or phrase is followed by a number of words or phrases with meanings which migh well be included in the meaning of the opening term or phrase, if that bad been left to stand alone, or with meanings indicating a somewhat different approach to the subject of legislation intended to be included in the opening term or phrase. Such additional words and phrases are added for the purpose of removing doubts as to the wide scope of the meaning of the opening term or phrase."

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9. The general principle contained in "Maxwell on the Interpretation of Statutes" referred to above is to the effect that when two words or expressions are coupled together one of which gene-Tally includes the other, it is obvious that the more general term is used with meaning including the specific one.

10. Another rule which is appropriate in this inquiry is contained in the Judgment of Sir Maurice Gwyer in AIR 1941 16 (Federal Court)

"The subjects dealt with in the three legislative lists are not always set out with "scientific definition. It would be practically impossible, for example, to define each item in the provincial list in such a way as to make it exclusive of every item in that list and parliament seems to have been content to take a number of comprehensive categories and to describe each of them by words of broad and general import .....

I think, however, that none of the items is to be read in a narrow or restricted sense, and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it."

11. It is thus manifest that the mention of cinemas in entry 33 has not the effect of reducing the content of the expression "entertainments" employed therein and Entry 62. "Entertainments" is a word of general import. In common parlance, it includes cinema shows, dramatic performance etc. In Chamber''s 20th Century Dictionary, the meaning of this word is ''''a performance or a show intended to give pleasure." It cannot be denied that cinematograph show is a show that gives pleasure. If the contention of the petitioners founded on item 33 is to be accented, it should be held that all theatres and dramatic performances were not within the contemplation of this entry.

To exclude all theatres, dramatic performances and cinema shows is to render this power of taxation practically nugatory and there is no reason why we should read this expression in such a way as to have that effect. We do not think that a reading of Entries 33 and 62 of List II, can lead to such a result or disclose the intendment that is attributed to entry 62.

12. It was alternatively maintained that the tax envisaged is the one bearing on those that really receive entertainments and not on persons that provide it. The exhibitors of a film in a theatre do not derive any entertainment or amusement by the shows. To them, it is only a calling or a business. The tax on entertainments is necessarily a tax on expenditure. It is levied to discourage expenditure, to induce or encourage saving, adds the learned Counsel for the petitioners. He says that there is a passage in Findlay Shirras Science of Public Finance (3rd Edition) Vol. 2, page 685 which supports this theory :

"The amusement tax like other expenditure taxes was introduced at a time when it was necessary to levy as much tax as possible on all forms of luxury expenditure and to encourage saving."

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13. We arc not very much impressed with the contention in this regard. The expression used in Entry 62 is "entertainments" and to delimit it to the persons who receive entertainment, or in other words, to persons that seek admission to the show, is to import a restriction into it for which there is no warrant. The entry does not draw a distinction between one who derives the amusement and one who caters it. It seems to cover both categories.

The various entries in the respective lists are to be treated as topics or categories of legislation. Words are used in a most comprehensive sense. All aspects comprised in the subject of legislative power must be taken to have been comprehended in the particular entry. We must assume that legislative power is granted in regard to any given subject to cover every conceivable aspect of it. In construing the words in a Constitutional enactment vesting legislative power, a very liberal construction should be put upon them so that they may have effect in their widest amplitude. A constitution should not be construed in a narrow "or a pedantic sense."

14. The principle is stated thus by Viscount Sankey, L. C. in AIR 1935 158 (Privy Council) at p. 162) :

"Indeed, in interpreting a constituent or organic statute such as the Act that construction most beneficial to the widest possible amplitude of its powers must be adopted. This principle has been again clearly laid down by the Judicial Committee in AIR 1930 120 (Privy Council) "

15. In our opinion, the legislative subject contained in entry 62 is broad enough to take in all persons connected with the entertainment and to confine it to cinema goers only is to give a narrow interpretation to it. What is contemplated in that entry is entertainment as such and it is not limited to cinema goers only; nor is there any basis for such limitation.

16. This view of ours is in accordance with a judgment of the Bombay High Court in Cantonment Board, Poona Vs. Western India Theatres Ltd., . There it was ruled inter alia, that a Provincial legislature could, in exercise of its powers conferred by Entry 50 in List II of the 7th Schedule to the Government of India Act, 1935, corresponding to the present Entry 62, make a provision in an enactment to authorise the municipality to impose a tax upon shows given at the cinemas situated within its limits.

17. The statement said to be contained in Shirras "Science of Public Finance" cannot throw any light on the interpretation of Entry 62. That alleged statement refers only to the general policy underlying taxation on expenditure. Further, it cannot be said that the same result (of discouraging unproductive expenditure) cannot be achieved by levying a tax on entertainments as such, which contribute to the alleged wasteful expenditure. However, this need not detain us any longer as the material entry has to be construed with reference to the general principles indicated above.

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18. Another contention pressed upon us was that the tax leviable under this offending provision is an unreasonable one in that the exhibitor has to pay on every show irrespective of the size of the audience and the collection to be made by him. It is futile to make a complaint on these lines. In construing a taxing measure, the question of reasonableness cannot enter the judicial mind. The only consideration which is germane in this connection is whether the legislation challenged is permitted by the Constitution. The reasonableness or otherwise of a legislative measure is a matter of legislative policy and it is not for the courts to adjudicate upon it.

19. We will next take up the point raised by the counsel for the petitioners that a tax of this description falls under entry 60 of the same list in that it is an impost on the trade or calling of the proprietor or the lessee of the cinema theatre. The exhibition of a film is his trade or calling and as such a tax to be collected from him would amount to a tax on his trade or calling. It has also to be borne in mind that this tax could not be collected from persons obtaining admission to the show which circumstance also supports this position.

20. It is further argued that if there is overlapping of Entry 62 with entry 60, it is the latter that is to prevail. The learned Counsel submits that entry 60 is subject to Article 276 which imposes a limit on the amount of the tax. The intendment of that Article as indicated by its opening words "notwithstanding" etc., discloses that entry 62 should be subject to the limitation involved in it. In other words, entry 60 comes into play whenever the tax bears on the occupation or profession of a person.

Again, the Constitution Act, proceeds the argument, deliberately set a limit on the taxing capacity of the provincial legislatures in regard to the incomes derived from a profession or calling or an occupation so that the Central revenues might not be affected. The taxes paid on such income are items properly deductible from the Income Tax and if higher taxes are permitted for provinces under that head, to that extent, the Income Tax which is the Union source will be considerably reduced. So, an imposition in regard to the cinema shows should not exceed Rs. 250/- per annum.

21. The learned Counsel also called in aid a judgment of the Federal Court in In the matter of Central Provinces and Berar Sales of Motor Spirit and Lubricant Taxation Act, 1938, AIR 1939 1 (Federal Court) as also two judgments of the Nagpur High Court in AIR 1949 190 (Nagpur) and AIR 1949 215 (Nagpur) and a judgment of the Madhva Bharat High Court in Shrikrishna v. Ujjain Municipality, AIR 1953, MB 145.

22. We are not able to accept the theory propounded by the learned Counsel. The objects of the two entries are altogether different and they operate on distinct fields. The legislative topic embodied in entry 60 relates to the privilege of carrying on profession or trade, whereas entry 62 empowers State legislatures to levy tax on entertainments as such and not on any individual carrying on trade

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or profession. The levy is on each exhibition or show. Nothing could be collected from the exhibitor by way of tax if no show is given by him. It is only the exhibition that is made liable for the tax.

23. In considering whether this tax falls under one or other of the entries, the pith and substance of the legislation has to be taken into account. The question has to be answered with reference to the true content of the enactment. It is the substance of the legislation and not the form that has to be taken into account in judging its true character. In each case, the Court has to consider what the substance and effect of the legislation under challenge are, and attribute it to the proper entry in a list or lists according to its true nature.

To ascertain the essential character of the tax, we have to look into the charging section of the statute because "the identification of the subject-matter of the tax is only to be found in that Section." In the present case, the charging Section (Section 4-A) clearly indicates that it is a tax on each show and not on the calling of the exhibitor who, as we have already stated, does not incur any liability in this behalf so long as he does not give any exhibition.

24. It was laid down by the Federal Court in AIR 1949 81 (Federal Court) among other things, that in substance the property tax levied by Section 3 of the Punjab Urban Immovable Property Tax Act, (Act XVII of 1940) falls within Item 42 of the Provincial list and is not a tax on income falling within item 54 of the Federal list of the Government of India Act, although the basis of the tax is the annual value of the building. The Act that fell to be construed by their Lordships, purported to tax house property which prima facie the Provincial legislature was allowed to do under item 42 of list 2 of the Government of India Act.

A contention was advanced that the basis of the tax was the annual value of the building and since the same basis was used in the Income Tax for computing income from the property, the tax levied by the offending Act was, in substance, a tax on income. This was negatived and the conclusion indicated above was reached by the Federal Court. In the course of the judgment, Fazl Ali, J., who delivered the opinion of the Court referred to the dictum of Sir Maurice Gwyer, C. J. in AIR 1941 47 (Federal Court)

"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid, because the legislature enacting them may appear to have legislated in a forbidden sphere.

Hence the rule which has been evolved by the Judicial Committee, whereby the impugned statute is examined to ascertain its ''pith and substance'' or its ''true nature and character'' for the purpose of determining whether it is legislation with respect to matters in this list or in that."

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25. Nor does the fact that Sub-section 2 of Section 4-A envisages the recovery of the tax leviable under Sub-section 1 from the proprietor, indicative of the imposition being one on the calling of the exhibitor. That sub-section creates only machinery for collection of the tax. That is not the section by which the liability fur tax is created, the charging section being Sub-section 1. We cannot derive any assistance from the nature of the machinery in judging the character of a particular tax. In this context, the remarks of Lord Thankerton in Reference under Government of Ireland Act 1920, Section 51 (1938) 2 All ER 111 at p. 115 are apposite ;

"But, in the opinion of their Lordships it is the essential character of the particular tax charged that is to be regarded, and the nature of the machinery often complicated -- by which the tax is to be assessed is not of assistance except in so far as it may throw light on the general character of the tax."

We cannot also regard that the circumstance that the incidence of tax falls on the exhibitor is in any way decisive of the matter. The incidence of the tax is wholly irrelevant in the consideration of its substance or nature. If in its real character or in pith and substance it is a tax on the cinematograph shows as such, the fact that the tax burden is to be borne by the person giving the exhibitions and cannot be passed on to persons who obtain admission on payment to the show would not alter its character. This view of ours is reinforced by K.G. Rangaswami Chettiar and Co. Vs. Government of Madras, .

26. The argument built on Article 276 is equally fallacious. Article 276, so far as is relevant, recites :

"276 (1). Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings, and employments shall not exceed two hundred and fifty rupees per annum."

27. It is manifest that the non-obstante clause has reference only to topics within the exclusive domain of the centre. This is made plain by the words "no law ..... shall be invalid on the ground that it relates to a tax on income." It has thus no relation to the entries in List II so that it does not touch entry 62. Hence, taxes coming within the purview of entry 60 are not hit at by Article 276. The considerations regarding the adverse effect on Income Tax etc., will apply only to a levy under entry 60 which attracts Article 276 and entry 63 is outside the restriction envisaged in Article 276(2). It follows that the contention based on Article 276 is devoid of substance.

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28. We will now proceed to consider the cases cited by the counsel for the petitioners, AIR 1939 1 (Federal Court) has no bearing on the present controversy. There, the validity of the Central: Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act 1938, was challenged as being Ultra Vires the powers of the Central Provinces and Berar. Section 3 (1) of the Provincial Act authorised a levy of tax on the retail sales of motor spirits and lubricants at a particular rate on the Value of such sales. The Government of India questioned its validity on the objection that the tax imposed by Section 3 (1) of the impugned Act, in so far as it may fall on motor spirit and lubricants of Indian origin, is a duty of Excise within Entry (45) and therefore an intrusion upon a field of taxation reserved by the Government of India Act exclusively for the Federal Legislature.

This contention was repelled by the Federal Court in the view that though excisable goods fell under Item 45, List I, the intention of the Imperial Legislature was that taxes on consumption of such goods should be given exclusively to the provinces and hence it was within the exclusive competence of the provincial legislature to levy taxes on tile "entry of the goods into local area for purposes of consumption, use and sale therein," The passage called in aid by the learned Counsel for the petitioners occurring at p. 40 is as follows:

"Similarly, item 60 (List II) relates to ''taxes'' on Luxuries.'' These ''Luxuries'' may be excisable under item 45 (List I) yet, being objects of consumption within the Province, they appear to have been taken out of the purview of Item 45 (List I) and allocated to the Provinces."

We are unable to see how these remarks are of any assistance to the petitioners and the learned Counsel is not able to say to what use he could put thorn.

29. So far as the rulings of the Nagpur and Madhya Bharat High Courts are concerned, undoubtedly, they lend countenance to the proposition advanced by the petitioners. AIR 1949 190 (Nagpur) is not a considered judgment but is based on the concession made in the court below. The tax in question there was one on trades, professions, callings or employments.

The offending notification in that case was issued in 1943 sanctioning with effect from a particular date the imposition by the Dist. Council, Bhandara, of a tax at the rate of one anna per khandi on persons carrying on the trade of husking, milling or grinding of grains subject to the condition that the total amount payable in respect of any person by way of such tax shall not exceed Rs. 50/- per annum. A suit was laid for recovering the excess amount paid. Justice Bose (as he then was) referred the question whether the tax could be termed a tax on professions, trades, callings or employments, to a Bench. The Bench, before which it came up for hearing, observed ;

"We are clear that the tax in question is a tax which can be so termed. This was in fact conceded in the court below."

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It also appears that the only contention raised before the Bench was that the persons who gave the grain for grinding and not the owners of the mill were the traders concerned. This point, they thought, was devoid of substance. There is thus no discussion on the aspect which is involved in these petitions. There is an essential distinction between the impost in question before us and the one involved in the Nagpur case.

In the cited case, the notification itself proceeded on the assumption that it was a tax on professions and therefore limited it to Rs. 50/- in view of Section 142A of the Government of India Act, 1935. Further, it was a tax on the persons carrying on trade unlike the present, where the imposition is on the cinematograph shows. The second case, AIR 1949 215 (Nagpur) falls into the same category. The case proceeded on the footing that it was a profession tax.

30. The ruling of the Madhya Bharat High Court in AIR 1953 MP 145 also does not throw much light on the point in dispute. There was no controversy as to whether performance tax at Rs, 5/- per show leviable under the notification of a Municipality within the jurisdiction of Madhya Bharat State under entry 60 or 62 of the State List. The only question debated there was whether it was a tax on profession or trade or one on income which can be imposed only by the parliament and consequently illegal. The Madhya Bharat High Court held that it was a tax payable by a person who followed the business of showing cinematograph films for profit and as such it was permissible for the state Legislature to legislate with regard to such a tax and that it was not a tax on income.

30-a. Thus the cases cited by the learned Counsel for the petitioners do not afford much guidance in the determination of this issue before us.

31. On the other hand, a decision of the Punjab High Court reported in Silver Screen Enterprises v. State, AIR 1958 P&h203, has dealt with this issue and the ratio decidendi thereof is in conformity with the view taken by us. It is stated there that the levy of tax on cinematograph shows is a tax on entertainments and falls under entry 62 of List II and the mere fact that the individuals from whom it is collected followed the vocation of providing entertainment could not make it a tax within the range of entry 60.

32. The pronouncement of the Supreme Court in The State of Bombay Vs. R.M.D. Chamarbaugwala, is of considerable help in this context. There the validity of the Bombay Lotteries and Prize Competitions Control and Tax Act (LIV of 1948) fell to be considered. Under that Act, the tax was levied on promoters of cross-word prize competitions on the gross receipts and entrance fee collected from the competitors.

The Bombay High Court accepted the contention of one of the promoters of the R. M. D. C. Cross-words, that the tax challenged was not a tax on betting or gambling and therefore the offending legislation did not come under entry 62 of the State List, This argument did not find favour with the Supreme Court. It was

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Jaid down by the Constitution Bench that the impugned Act was on the topic of betting and gambling under entry 62.

The learned Judges were not impressed with the theory that Section 12-A of the legislation there assailed did not fall within entry 62 since it did not impose a tax on the gamble but imposed a tax on the petitioners who did not themselves gamble but who only promoted prize competitions. In repelling the argument. Chief Justice Das observed :

"So far as the promoters are concerned the tax levied from them can only be regarded as tax on the trade of prize competitions carried on by them. This, with respect, is taking a very narrow view of the matter. Entry 62 talks of taxes on the men who bet or gamble. It is necessary, therefore, to bear in mind the real nature of the tax."

His Lordship added in the course of the judgment:

''''If in particular circumstances it is economically undesirable or practically impossible to pass on the tax to the gamblers, that circumstance is not a decisive or even a relevant consideration for ascertaining the true nature of the tax, for it does not affect the general tendency of the tax which remains."

We therefore hold on the language of the relevant entries and on the authorities considered above that the offending statute is within the legislative competence of the State Legislature and cannot be successfully attacked.

33. The last ground urged in support of the contention as to the invalidity of the impugned section is founded on Article 14 of the Constitution, It is maintained that the impugned statute infringes Article 14 of the Constitution in that it has made discrimination between exhibitors of cinematograph shows and persons giving other entertainments. We are unable to discover any basis for the complaint as to the violation of the principle enshrined in Article 14 of the Constitution, namely, equality before the law and equal protection of the laws. Article 14 does not preclude a legislature from making a classification for purposes of tax laws,

The Article does permit a considerable latitude with regard to classification for taxation. All that it postulates is that all persons equally situated should be treated alike and no discrimination cap be made either in the privileges conferred or in the liabilities imposed. The doctrine of equality of laws and equal protection of laws has been authoritatively stated by the Supreme Court of India in Budhan Choudhry and Others Vs. The State of Bihar, :

"It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that that differentia must have a rational

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relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decision of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

There can therefore be no doubt that the classification could be based on objects or occupations or the like. To sustain a classification under this Article, it should be based on real differences "as distinguished from irrelevant and artificial ones." But the classification should be founded on a differentia having reasonable relation to the object of the impugned law. As stated in Willis on the Constitutional Law:

''''The Supreme Court permits a wider discretion in classification under the power of taxation if possible than it does under the Police Power. One reason for this undoubtedly is the urgent need for revenue by the various Governmental agencies. A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably."

Thus, it is open to the legislature to choose particular objects for purposes of taxation without violating the principle enshrined in Article 14. It would amount to discrimination only if cinema shows given in particular theatres are chosen for the purpose of taxation arbitrarily. Another consideration to be borne in mind in this context is that there is a strong presumption in favour of the validity of legislative classification and it is for those who challange it as arbitrary and unconstitutional to establish it beyond all doubt. In this case, the petitioners have not shown us how the selection of cinematograph shows for purposes of taxation is arbitrary.

34. There is an elaborate discussion in Butchayya Chovvdary v. State of Andhra Fradesh, 1958 A LT 36 : (AIR 1958 A P 294), on the principles underlying Article 14 of the Constitution. The question there was whether the State of Andhra Pradesh by selecting Virginia tobacco from other categories of tobacco and by imposing a tax thereon has discriminated against dealers in that Variety of tobacco was not discriminatory as it was founded on a reasonable classification. For these reasons the argument based upon Article 14 is mis-conceived and has to be rejected.

35. A further submission to be noticed is that, by giving unfettered discretion to the Provincial Government to choose particular kinds of municipalities for the levy of tax at Rs. 2/- for every show, the legislature has given scope to the Government to practise discrimination, This is not a point raised in the petitions but mentioned in the course of arguments, and so there was no scope for the Government to meet it There may be many answers to it and it is not necessary

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for us to speculate about it. This contention is also rejected.

36. On the above discussion, alt these petitions shall be and are accordingly dismissed with costs which we fix at Rs. 75 in each.

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